

ORDINANCE NO. 4358

AN ORDINANCE AMENDING PROVISIONS OF CHAPTER 20, DIVISION II
OF THE MENDOCINO COUNTY CODE RELATING TO WIRELESS COMMUNICATIONS

The Board of Supervisors of the County of Mendocino, State of California, ordains as follows:

Pursuant to Division II of Title 20, Chapter 20.548 of the Mendocino County Code, the following amendments and additions to the Mendocino County Code are hereby adopted:

Section 1. The following new definitions are added to Section 20.308.020 Definition (A) in their respective alphabetical positions:

"Antenna" means a device used in communications designed to radiate and/or capture electromagnetic signals.

"Antenna, building-mounted" means any antenna attached to and supported by a building or other structure more than 10 feet tall, other than an antenna tower, i.e., the exterior walls of a building, an existing parapet, the side of a water tank, the face of a church steeple, or the side of a freestanding sign.

"Antenna, roof-mounted" means an antenna directly attached to the roof of an existing building, water tank, tower or structure other than an antenna tower.

"Antenna tower" means any pole, tower, or other structure, over 10 feet tall, erected for the purpose of supporting one or more antennas.

"Antennas, commercial" means all antennas, parabolic dishes, relay towers and antenna support structures used to radiate and/or capture electromagnetic signals of radio, television and communication signals for commercial purposes. For the purposes of this definition, "commercial purposes" means communications for hire or material compensation, or the use of commercial frequencies, as these terms are defined by the Federal Communications Commission (FCC).

"Commercial antennas" shall not include antennas owned or operated by governmental facilities or personal wireless service facilities.

Section 2. The following new definitions are added to Section 20.308.030 – Definitions (C) in their alphabetical position:

"Co-location" means the installation of antennas operated by different entities in close proximity so that use of substantial elements of the facility such as the antenna tower, equipment shelter or fenced enclosures are shared. Co-location includes replacement of an existing tower with one capable of supporting additional antennas provided the overall height of the facility is not increased.

"Commercial Antennas" see "Antennas, Commercial" defined in Section 20.308.020.

Section 3. The following new definition is added to Section 20.308.040 – Definitions (E) in its alphabetical position.

"Eligible Facilities Request" (as defined in 47 Code of Federal Regulations 1.40001) means any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving either (1) collocation of new transmission equipment; (2) removal of transmission equipment; or (3) replacement of transmission equipment.

Section 4. The following new definition is added to Section 20.308.075 – Definitions (L) in its alphabetical position.

"Least visually obtrusive," with regard to wireless communication facilities, shall refer to technically feasible facility site and/or design alternatives that render the facility the most visually inconspicuous in terms of protection of views to and along the ocean and scenic coastal areas, minimization of the alteration of natural landforms, visual compatibility with the character of surrounding areas, and in designated highly scenic areas, subordination to the character of their setting, and in consideration of other technically feasible sites and/or designs. It does not mean that the facility must be completely hidden, but it may require screening or other camouflaging so that the facility is not immediately recognizable as a wireless communication facility from adjacent properties and roads used by the public.

Section 5. The following new definition is added to Section 20.308.130 – Definitions (W) in its alphabetical position:

"Wireless communication facility" means structures and/or equipment, including antennas, antenna towers, equipment cabinets, buildings, generators, fencing, access roads and the land upon which they are situated, associated with wireless communications.

Section 6. Chapter 20.522 is hereby added to Title 20, Division II of the Mendocino County Code to read as follows:

CHAPTER 20.522 – TOWERS AND ANTENNAS

Sec. 20.522.005 – Declaration.

The purpose of this Chapter is to establish the regulations, standards and circumstances for the siting, design, construction and maintenance of wireless communication facilities in the coastal areas of the unincorporated area of the County of Mendocino. The provisions of this Chapter are intended to locate and design wireless communication facilities so as to minimize negative impacts, such as, but not limited to, visual impacts, agricultural and open space land resource impacts, impacts to the community and aesthetic character, but to do so while complying with relevant federal and state law and regulations.

Radio, telephone, and other communication and transmission structures, towers, and antennas ("towers and antennas") are conditional uses subject to approval of a coastal development use permit in all zoning districts, except as otherwise provided in the Mendocino County Code.

Sec. 20.522.010 – Applicability.

Activities and development regulated by this Chapter include the siting, design, construction, maintenance and operation of all wireless communication facilities. The regulations in this Chapter are intended to be consistent with State and Federal law, in that they are not intended to: (1) be used to unreasonably discriminate among providers of functionally equivalent services; (2) have the effect of prohibiting personal wireless services within Mendocino County; (3) have the effect of prohibiting the siting of wireless communication facilities on the basis of the environmental or health effects of radio frequency emissions, to the extent that the regulated services and facilities comply with the regulations of the Federal Communications Commission concerning emissions.

This Chapter supersedes all other County provisions or regulations affecting towers and antennas within the Mendocino County Coastal Zoning Ordinance, Mendocino County Code Title 20, Division II. This Chapter is not applicable to the Mendocino County Inland Zoning Ordinance, Mendocino County Code Title 20, Division I or the Mendocino Town Plan Zoning Code, Mendocino County Code Title 20, Division III.

An appeal may be filed by an aggrieved person from any decision, determination, or requirement of the Planning and Building Services in accordance with Section 20.544.010 of this Division.

Sec. 20.522.015 – Exemptions.

The following wireless communication facilities are exempt from the requirements of this Chapter:

- (A) Private communication equipment utilized for personal use such as private radio, television, internet or ham radio reception antennas. Such facilities shall be limited in height by Section 20.444.025.
- (B) Commercial antenna additions to existing legal structures provided the antenna does not exceed the height limit for noncommercial antennas in the zoning district, is no more than one meter in diameter or width and which does not involve any ground disturbance, nor relies upon any equipment shelter, fenced enclosures, or a separate power generator. No more than three such antennas shall be located on any legal parcel without obtaining a Coastal Development Permit.
- (C) Small scale, low powered, short-range and visually inconspicuous, wireless internet transmitter/receivers (e.g., "wi-fi hotspots").
- (D) Temporary facilities erected and operated for use in emergency situations which are approved in writing in by the Director. Use of such facilities shall not exceed two weeks unless an extension is granted by the Director. Notification to the Director shall be provided within 72 hours of installation.
- (E) Any facility specifically exempted under federal or state law as determined by the Director.
- (F) The Director may exempt minor modifications to existing legal wireless communication facilities, if project is limited to replacing equipment with similar or with smaller or less visible equipment that will have little or no change in the visual impact of the facility. For the purposes of this section, a minor modification to visual impact shall mean no increase or intensification in the dimensions and/or no relocation of an existing and/or permitted wireless communication facility (including, but not limited to, its telecommunications tower or other structure designed to support telecommunications transmission, receiving and/or relaying antennas and/or equipment) resulting in no increase of the visual impact of said wireless communication facility.

The exemptions set forth in this section shall apply only to facilities demonstrating radio-frequency emission compliance with the Federal Communications Commission's limits for human exposure to radio frequency electromagnetic fields. Facilities determined to be exempt from this Chapter are required to obtain necessary building permits prior to commencing work.

Except as specifically noted, the exempt facilities set forth in this section shall be limited in height by the applicable zoning district height standard.

Wherever feasible, developers shall locate and design the exempt facilities set forth in this section to minimize aesthetic impacts by designing the facility to be compatible with their surroundings so as to be visually unobtrusive.

Sec. 20.522.020 – Permit Process.

- (A) All projects that meet the definition of an "eligible facilities request" as defined in 47 Code of Federal Regulations ("C.F.R."). 1.40001 and also Section 20.308.040 shall be permitted upon the issuance of a permit. Applications for an "eligible facilities request" shall be processed pursuant to the definitions, requirements and procedures set forth in 47 C.F.R. 1.40001, as may be amended from time to time; for the purpose of reviewing an "eligible facilities request," the definitions and procedures of 47 C.F.R. 1.40001 shall control and supersede any contrary definitions or procedures of this Chapter. Any guidelines or regulations adopted by the County regarding wireless communications facilities shall incorporate or make reference to the provisions of 47 C.F.R. 1.40001.
- (B) Provided a project is consistent with the Development Standards found in Section 20.522.025, as determined by the Director, the following types of wireless communication facilities and associated uses may be permitted upon the issuance of a coastal development permit:

1. Collocated facilities.
2. Building-mounted antennas.
3. Roof-mounted antennas.
4. New wireless communication facility.

(C) All other proposed wireless communication facilities not otherwise exempted pursuant to Section 20.522.015, and not meeting the standards of subsections (A) or (B) of this Section, shall be considered a conditional use and are subject to the requirements of Section 20.532.015(B) of this Division.

Sec. 20.522.025 - Development Standards.

(A) Collocated facilities. Additional antennas and associated equipment to be located upon an existing wireless communication facility shall comply with all of the following standards:

1. The type and size of the new antennas, associated equipment, and any improvements shall be consistent with the requirements of the original use permit(s) and other governing permit(s).
2. The new antenna array shall not increase the height of the existing communication tower beyond what was approved by previous applicable permits.
3. The width of the proposed antenna array shall not exceed the width of the existing array or arrays.
4. The combined level of radio frequency radiation for all arrays shall not exceed the maximum permissible exposure level set by the Federal Communications Commission.
5. All proposed wireless communication facilities shall comply with the policies of the County General Plan/Local Coastal Plan, town plans, and all applicable development standards for the zoning district in which the facility is to be located, including, but not limited to, policies for protection of visual resources (i.e., County Code Chapter 20.504) and protection of sensitive habitat areas (i.e., County Code Chapter 20.496).

(B) Building-mounted antennas. Building-mounted antennas shall be located and designed to appear as an integral part of the structure. To this end, they must comply with the following standards:

1. The antenna and mountings shall not project horizontally more than 30 inches from the building surface to which it is mounted.
2. Building-mounted antennas shall not exceed the maximum building height for the zoning district.
3. Antennas, connections and supports shall be treated to match or complement the color scheme of the building or structure to which they are attached, if visible from off site.
4. Antennas and connections shall not project more than 36 inches vertically above the side of the building or structure upon which it is mounted.
5. Antennas, connections and supports shall be located on a legal structure that has obtained all necessary permits.
6. All equipment shelters, cabinets or other structures appurtenant to the antenna facility shall be located either; 1) inside the building upon which facility is mounted, 2) on the ground outside the setback area or any required parking area, 3) on the roof or attached to building if screened from off-site views. Use of a fuel powered generator to power the site is prohibited unless evidence is

provided that it will not be audible from beyond property boundaries, and spill prevention, containment, and cleanup contingencies are included in its design.

7. The combined level of radio frequency radiation for all arrays shall not exceed the maximum permissible exposure level set by the Federal Communications Commission.
8. Antennas mounted on the exterior walls of a building entirely below the roof line or parapet top may extend into any required yard setback a distance not exceeding two feet.
9. All proposed wireless communication facilities shall comply with the policies of the County General Plan/Local Coastal Plan, town plans, and all applicable development standards for the zoning district in which the facility is to be located, including, but not limited to, policies for protection of visual resources (i.e., County Code Chapter 20.504) and protection of sensitive habitat areas (i.e., County Code Chapter 20.496).

(C) Roof-mounted antennas. Roof-mounted antennas shall be located and designed to appear as an integral part of the structure. To this end, they must comply with the following standards:

1. Roof-mounted antennas shall not exceed the maximum building height for the zoning district and shall not extend more than ten feet above existing roof line.
2. Antennas, connections and supports shall be treated to match or complement the color scheme of the building or structure to which they are attached, if visible from off site.
3. Antennas, connections and supports shall be located on a legal structure that has obtained all necessary permits.
4. All equipment shelters, cabinets or other structures utilized or built in connection with the antenna facility shall be located inside the building being utilized for the facility, or on the ground outside the setback area or any required parking area, or on the roof or attached to building if screened from off-site views. Use of a fuel powered generator to power the site is prohibited unless evidence is provided that it will not be audible from beyond property boundaries, and spill prevention, containment, and cleanup contingencies are included in its design.
5. Roof-mounted antennas shall be located as far back from the edge of the roof as technically possible to minimize visibility from street level locations.
6. The combined level of radio frequency radiation for all arrays shall not exceed the maximum permissible exposure level set by the Federal Communications Commission.
7. All proposed wireless communication facilities shall comply with the policies of the County General Plan/Local Coastal Plan, town plans, and all applicable development standards for the zoning district in which the facility is to be located, including, but not limited to, policies for protection of visual resources (i.e., County Code Chapter 20.504) and protection of sensitive habitat areas (i.e., County Code Chapter 20.496).

(D) New wireless communication facility. A new wireless communication facility, not otherwise building- or roof-mounted, shall be located and designed so as to be visually unobtrusive and effectively unnoticeable, not result in any adverse environmental impacts, and comply with the following standards:

1. No part of the facility shall exceed 50 feet in height above ground level, as defined in Section 20.308.025(L). All towers shall be designed to be the shortest height feasible so as to minimize visual impacts.
2. All wireless communication facilities shall be served by the minimum sized roads and parking areas as determined by Public Resources Code Section 4290 (i.e., State Fire Safe Regulations).

3. The wireless communication facility must be located in such a way as to have a backdrop of terrain which obscures the visibility of the facility and shall be discouraged on ridge top sites where they will be silhouetted against the sky from the surrounding community, or from highly used public locations. Any such installation must also be found not to create the potential for adverse impacts from site development such as access limitations, significant vegetation removal, or operational impacts such as noise (from generators or other accessory equipment). The siting and design criteria, as provided in Coastal Element Policies 3.5-4 and 3.5-8 and also the provisions within Section 20.504.015(C) of this Division, shall be utilized to provide for the protection of visual resources for all new wireless communication facilities.
4. Every wireless communication facility, by itself and in combination with other nearby wireless communication facilities, shall comply with the Federal Communications Commission's limits for human exposure to radio frequency electromagnetic fields.
5. All exterior surfaces of structures and equipment associated with a wireless communications facility shall have neutral, earth-tone colors and non-reflective materials selected to blend in hue and brightness with the surrounding environment.
6. Antenna towers shall not be built with guy wires in the absence of compelling evidence that there is no feasible construction alternative.
7. Towers shall not be so tall as to require Federal Aviation Administration lighting or markings.
8. To minimize visual impact to surrounding residences and schools, antenna towers shall be subject to setbacks required by the County Zoning Code and shall be setback a minimum of 110% of their overall height from any property line, and a minimum of 500% of their overall height from any off-site residence or school. Tower setbacks in excess of setback requirements by the Zoning Code may be reduced under any one of the following circumstances, subject to the processing of a Variance in accordance with Chapter 20.540 of this Division:
 - (a) All of the owners of affected properties agree to the reduced setback. A property is considered affected if its dwelling unit lies within a distance equivalent to the required setback for the subject tower prior to reduction and the reduced setback would result in the tower being located closer to the dwelling unit than the above setback would otherwise allow.
 - (b) Overall, the reduced setback enables greater mitigation of adverse visual and other environmental impacts than would otherwise be possible.
9. All wireless communications facilities shall comply with the applicable provisions of the California Building Code, California Electrical Code, California Plumbing Code, California Mechanical Code, California Fire Code, and rules and regulations imposed by state and federal agencies.
10. No trees that provide visual screening of the wireless communication facility shall be removed after project completion except to comply with fire safety regulations or to eliminate safety hazards. Tree trimming shall be limited to the minimum necessary for operation of the facility.
11. Use of a fuel powered generator to power the site is prohibited unless evidence is provided that it will not be audible from beyond property boundaries.
12. A road condition assessment for the wireless communication facility shall be required for any facility that relies on shared private road/access. When required, and prior to development of the site, the applicant shall provide to the Department, an assessment of the condition of the existing private road, serving the site to provide baseline data on the condition of the road. The assessment shall include photos and video as well as a written narrative to document the road's current or existing condition.

Prior to activation of the facility, or at a later date established by the Planning Director, any damage to the road associated with construction activity shall be repaired to condition that is equal to or better than the existing road condition.

Within two weeks after any road improvements are completed, the applicant shall provide to the Department, a post construction assessment of the condition of the private road serving the site to verify that adequate road repairs have been completed. The post assessment shall include photos and video as well as a written narrative to document the road's condition.

Notice of project shall be provided by the Department of Planning and Building Services to all property owners that use the shared private road.

13. New wireless communication facilities in any portion of the Coastal Zone shall be consistent with applicable policies of the County Local Coastal Program (LCP) and the California Coastal Act. No portion of a wireless communication facility shall extend onto or impede access to a publicly used beach.
14. All proposed wireless communication facilities shall comply with the policies of the County General Plan/Local Coastal Plan, town plans, and all applicable development standards for the zoning district in which the facility is to be located, including, but not limited to, policies for protection of visual resources (i.e. County Code Chapter 20.504) and protection of sensitive habitat areas (i.e., County Code Chapter 20.496).

Sec. 20.522.030 – Noticing.

- (A) Coastal development use permits for wireless communication facility. All noticing for hearings on use permit applications for wireless communications facilities shall be in accordance with the California Environmental Quality Act, except that notice shall be provided to all owners and occupants of real property within 1,000 feet of the site proposed for the facility. Expanded public notice may be provided for applications for new antenna towers when deemed necessary by the Director.

Sec. 20.522.035 – Application Requirements.

The following items shall be required for each permit for a wireless communications facility.

(A) Coastal Development Use Permits

1. All application materials generally required for a coastal development use permit.
2. All materials listed in the County Guidelines for the Development of Wireless Communication Facilities.
3. The Director may require additional information based on factors specific to an individual project. The Director may, at the applicant's expense, require independent peer review of any technical claims or data submitted as part of the review process.

(B) Coastal Development Permits

1. All application materials generally required for a coastal development permit.
2. A description of the facility that includes:
 - (a) The types of services to be provided by the applicant to its customers.
 - (b) The numbers, types and dimensions of antennas and other equipment to be installed.
 - (c) The power rating for all antennas and equipment.

- (d) A statement that the system will conform to radio frequency radiation emission standards adopted by the Federal Communications Commission.
3. A map showing the locations of all other existing and proposed antennas included in the applicant's system for provision of service within Mendocino County, showing the approximate area served by each antenna.
4. Evidence of ownership or authorization for use of the proposed site.
5. Evidence of easements or other authorization for proposed utility lines and for vehicular access between the site and a public road.
6. A site plan showing the location of all structures and equipment to be located on the site.
7. Elevations drawings of the facility including all structures and appurtenances.
8. The applicant shall submit any related information deemed necessary by the Director to determine that a proposed installation meets the Development Standards found in Section 20.522.025.

Sec. 20.522.040 – Required Findings for Wireless Communication Facilities

In order to grant any coastal development permit for a wireless communication facility, the approving body shall make the required coastal development permit findings (County Code Section 20.532.095 and 20.532.100) as well as the following findings:

- (A) That either: (1) the development of the proposed wireless communications facility as conditioned will not significantly affect any designated visual resources, environmentally sensitive habitat resources and/or other significant County resources, including agricultural, open space, and community character resources; or (2) there are no other environmentally equivalent and/or superior and technically feasible alternatives to the proposed wireless communications facility as conditioned (including alternative locations and/or designs) with less visual and/or other resource impacts and the proposed facility has been modified by condition and/or project design to minimize and mitigate its visual and other resource impacts.
- (B) That the proposed wireless communication facility as conditioned is in compliance with all Federal Communication Commission standards and requirements.
- (C) That the proposed wireless communication facility as conditioned is consistent with all the applicable requirements of the Local Coastal Program.

Any decision to deny a permit for a wireless communication facility shall be in writing and shall be supported by substantial evidence and shall specifically identify the reasons for the decision, the evidence that led to the decision and the written record of all evidence.

Sec. 20.522.045 – Validity

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this Chapter. The Board of Supervisors hereby declares that it would have passed this Chapter and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

Section 7. Adoption of Negative Declaration

1. An initial study and negative declaration ("Negative Declaration") relating to this ordinance, a copy of which is attached hereto as Exhibit A, was prepared and circulated for public review for a 30-day period from April 14, 2016, to May 14, 2016 in accordance with the requirements of

the California Environmental Quality Act (Pub. Res. Code § 21000 *et seq.*;) and the CEQA Guidelines (14 Cal. Code Regs. § 15000 *et seq.*).

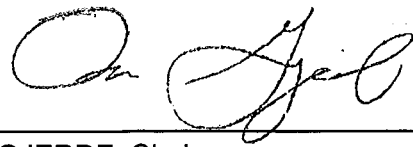
2. On June 12, the Board of Supervisors held a duly noticed public hearing on this ordinance and the Negative Declaration related thereto.
3. The Board of Supervisors hereby finds that the Negative Declaration for this ordinance was prepared pursuant to CEQA and the CEQA Guidelines.
4. The Board of Supervisors hereby certifies that it has reviewed and considered the Negative Declaration and all comments received during the public review process prior to reaching its decision on the ordinance. The Board of Supervisors further certifies that it used its independent judgment and analysis when considering this ordinance and the Negative Declaration.
5. The Board of Supervisors hereby finds and determines, on the basis of the whole record before it, that there is no substantial evidence in the record that there is any significant environmental impact that might arguably be anticipated to occur as a result of this ordinance that has not been examined in the Negative Declaration and that there is no substantial evidence that this ordinance will have a significant impact on the environment.
6. The Board of Supervisors hereby adopts the Negative Declaration in the form attached to this ordinance as Exhibit A and incorporated herein by this reference. The Board of Supervisors hereby directs the Department of Planning and Building Services to file a notice of determination in accordance with CEQA and the CEQA Guidelines.
7. The Board of Supervisors designates the Clerk of the Board as the custodian of the documents and other material which constitute the record of proceedings upon which the decision herein is based. These documents may be found at the office of the Clerk of the Board, 501 Low Gap Road, Room 1010, Ukiah, California 95482.

Section 8. Coastal Act Findings. The Board of Supervisors hereby finds and determines that the amendments made to the Mendocino County Zoning Code by this ordinance are consistent with the applicable goals and policies of the Local Coastal Plan.

Passed and adopted by the Board of Supervisors of the County of Mendocino, State of California, on this 12th day of July, 2016, by the following vote:


| | |
|---------|--|
| AYES: | Supervisors Brown, McCowen, Woodhouse, Gjerde, and Hamburg |
| NOES: | None |
| ABSENT: | None |

WHEREUPON, the Chairman declared said Ordinance passed and adopted and SO ORDERED.



DAN GJERDE, Chair
Mendocino County Board of Supervisors

ATTEST: CARMEL J. ANGELO
Clerk of the Board

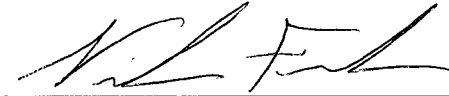
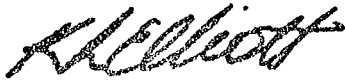


Deputy

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

BY: CARMEL J. ANGELO
Clerk of the Board

APPROVED AS TO FORM:
KATHARINE L. ELLIOTT
County Counsel



Deputy