

ORDINANCE NO. 2895

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
CHULA VISTA AMENDING THE CHULA VISTA
MUNICIPAL CODE BY ADDING CHAPTER 19.89 RELATING
TO THE LOCATION AND CONSTRUCTION OF WIRELESS
TELECOMMUNICATIONS FACILITIES**

WHEREAS, the City wishes to regulate the location, design and construction of wireless telecommunication facilities in Chula Vista in order to serve, protect and promote the public health, safety and welfare, and to preserve and enhance the aesthetic qualities of the City of Chula Vista, as set forth in the Goals, Objectives and Policies of the General Plan; and

WHEREAS, the City believes that wireless telecommunication networks should be completed with the fewest possible facilities, in the least visible fashion, and with the least disruptive impact on neighborhoods and communities within the City of Chula Vista, while concurrently allowing for the orderly and efficient development of a wireless telecommunication infrastructure in accordance with the federal Telecommunications Act of 1996; and

WHEREAS, there is a general consensus between City staff, the Planning Commission and wireless industry representatives that the City's existing wireless policy should be streamlined to simplify and expedite processing applications for wireless telecommunications facilities; and

WHEREAS, to streamline the process, this ordinance sets forth specific design and operation standards and allows certain visually unobtrusive wireless telecommunication facilities to be processed administratively by the City's Zoning Administrator; and

WHEREAS, the City Planning Commission considered all reports, evidence, and testimony presented at the August 14, 2002 and December 11, 2002 public hearings with respect to this Ordinance and voted to recommend its adoption; and

WHEREAS, the Environmental Review Coordinator has reviewed this ordinance for compliance with the California Environmental Quality (CEQA) and has determined that the activity is not a "Project" as defined under Section 15378 of the State CEQA Guidelines; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines the activity is not subject to CEQA and no environmental review is necessary – although, future wireless telecommunications facilities proposed under this ordinance will require environmental review in accordance with CEQA; and

NOW, THEREFORE, the City Council of the City of Chula Vista does hereby ordain:

SECTION I. That Chapter 19.89 of the Chula Vista Municipal Code is hereby added to read as follows:

Chapter 19.89

WIRELESS TELECOMMUNICATIONS FACILITIES

Sections:

19.89.010	Purpose
19.89.020	Scope
19.89.030	Definitions
19.89.040	Permit processing
19.89.050	Development criteria
19.89.060	Variance
19.89.070	Abandonment

19.89.010 Purpose.

The purpose of these regulations and guidelines is to assure that wireless telecommunication networks are completed with the fewest possible facilities, in the least visible fashion, and with the least disruptive impact on neighborhoods and communities within the City of Chula Vista. The regulations set forth in this chapter are adopted to serve, protect and promote the public health, safety and welfare, and to preserve and enhance the aesthetic qualities of the City of Chula Vista, as set forth in the Goals, Objectives and Policies of the General Plan, while concurrently allowing for the orderly and efficient development of a wireless telecommunication infrastructure in accordance with the federal Telecommunications Act of 1996.

19.89.020 Scope.

This chapter shall apply to all wireless telecommunications facilities anywhere in the City of Chula Vista.

19.89.030 Definitions.

Unless otherwise stated, the following definitions pertain to this chapter:

Antenna. A device or system of wires, poles, rods, dishes or other devices of similar function, used for the transmission and/or reception of radio frequency signals for wireless telecommunications, as described in the Telecommunications Act of 1996.

Antenna array. A set of one or more whips, panels, discs or other devices used for the transmission or reception of radio frequency signals as part of a wireless telecommunications system. It may include an omni-directional antenna (“ship”), a directional antenna (“panel”) and parabolic antenna (“disc”). It does not include the support structure.

Cellular. An analog or digital wireless telecommunications technology that is based on a system of interconnected neighboring transmission and/or reception sites.

Co-location. The use of a common wireless telecommunications facility or common site by two or more service providers, or use by one provider of a single site for two or more technologies. It is also called “site sharing.”

Equipment facility. Also called “equipment”, “equipment enclosure” or “cabinet”. Any structure or device used to contain ancillary equipment for a wireless telecommunications facility, such as cabinets, shelters, additions to existing structures, pedestals, and other devices serving similar purposes. Typically, it includes an air conditioning unit, a heating unit, electrical supply, telephone hook-up and back-up power supply.

Façade-mounted antenna. Also called “building-mounted” or “surface-mounted”. An antenna that is directly attached to a building, to the façade of a building, or to the side of another structure such as a water tank, church steeple, freestanding sign, streetlight, or similar structure. An antenna attached to the roof or top of a structure is not a façade-mounted.

Ground-mounted. Mounted to a pole, monopole, tower, or other freestanding structure specifically constructed for the purpose of supporting an antenna.

Lattice tower. A self-supporting structure which consists of cross-bracing of structural steel to support antennas and related transmission equipment.

Monopole. A structure composed of a single spire, pole, or tower used to support antennas or related wireless telecommunications equipment. Flagpoles of typical height, diameter, and location are not considered monopoles.

Mounted. Attached to or supported by.

Personal Communications Service (PCS). Digital, low-power, high frequency commercial wireless radio communication technology that has the capacity for multiple communications services and the routing of calls to individuals, regardless of location.

Roof-mounted. Mounted above the eave line of a building or structure.

Stealth Facility. Any wireless telecommunications facility that is designed to blend into the surrounding environment, and is visually unobtrusive. Examples may include architecturally screened roof-mounted antennas; façade-mounted antennas painted and treated as architectural elements to blend with the existing building, thereby concealing the antenna; or artificial trees, such as monopalms and monopines; and flag poles of typical height, diameter, and location.

TCA. The federal Telecommunications Act of 1996.

Telecommunications. The transmission, between or among points specified by the user, of information of the user's choosing (including voice, data, image, graphics, and video), without change in the form or content of the information.

Wireless telecommunications facility. Also called “wireless facility” or “facility”. A facility consisting of any commercial antenna, monopole, microwave dish, and/or other related equipment (including software) necessary for the transmission and/or reception of cellular, personal communication service, and/or data radio communications.

19.89.040 **Applicability to City property and rights of way.**

Notwithstanding CVMC 19.89.020, wireless telecommunication facilities located on City property, rights of way, or other possessory and non-possessory interests in land shall not be subject to this chapter. Regulation of such facilities shall be accomplished through administrative rules, policies, programs, or agreements approved by the City Council and drafted consistent with the general policies established in CVMC 19.89.010.

19.89.050 **Permit processing.**

A Conditional Use Permit (CUP) as provided for in this title is required for all wireless telecommunications facilities subject to this chapter. Before a permit will be granted, the

operator or proposed operator of a wireless telecommunications facility must be specified and such operator must be legally approved by all applicable state and federal authorities to provide wireless telecommunications in the City.

The following wireless telecommunications facilities applications may be processed administratively by the City's zoning administrator: stealth facilities that do not exceed the maximum building height allowed in a particular zone; facilities that are façade-mounted and do not exceed the height of the parapet wall or roof line of the building; or a roof-mounted facility that is screened behind a solid material on all four sides and does not exceed the maximum height of the zone. All other wireless telecommunications facilities applications for conditional use permits, including any facility located on a vacant or residentially used lot in a single-family or two-family residential zone, shall require public hearings with the City of Chula Vista Planning Commission.

A denial of any application for a wireless telecommunication facility shall be based on the grounds of safeguarding the public's health, safety or welfare; be in writing; and set forth findings specifying the evidence for such denial.

19.89.060 Development criteria.

The following is development criteria for all wireless telecommunications facilities located within the city:

A. Design standards.

1. **Height.** Wireless telecommunications facilities are subject to the height limitation stipulated in this title and shall be as short as technologically feasible. Notwithstanding the application of such height limitations, the planning commission (but not the zoning administrator) may allow stealth design facilities to exceed the zone district height limit upon a specific finding that the proposed height is the only technologically feasible option for providing service to an area.

2. **Stealth technology and design.** Wireless telecommunications facilities shall utilize all practical means to conceal or minimize the visual impact thereof, including:

a. **Smallest technology.** The facility shall use and maintain the physically smallest practical devices to achieve the needs of the wireless telecommunications network.

b. **Most efficient technology.** The facility shall use and maintain the most efficient devices to achieve the needs of the wireless telecommunications network. In this context, "most efficient" means using the smallest number of facilities needed to achieve the needs of the network.

c. **Stealth design.** The facility shall be designed to be visually unobtrusive and blend into the surrounding area in a manner compatible with the local community character. Sites shall be maintained in good repair and appearance, and, to the extent possible, shall be improved and upgraded on a regular basis. Any proposed change that deviates from the original approval shall be submitted to the city's zoning administrator for over-the-counter review and approval.

3. **Co-location.** Wireless telecommunication facilities shall be co-located to the extent practicable. They should also be constructed and sited to accommodate the future co-location of other facilities. Conditional use permit applications for wireless telecommunications facilities that are not to be co-located shall contain a written statement that a good faith effort was made to attempt co-location at another site. Such statement shall also declare the justification for deciding not to co-locate.

Likewise, conditional use permit applications for wireless telecommunication facilities that are not to be constructed and sited to accommodate the future co-location of other facilities shall contain a written statement declaring the justification for failing to do so.

Co-location is discouraged, but not prohibited, for sites located on a residential lot in a single-family or two-family residential zone.

4. **Parking displacement.** Wireless telecommunications facilities shall not reduce available parking space below that which is required by applicable zoning laws.

5. **Setbacks.** All components of all wireless telecommunications facilities shall meet the setback requirements of the zoning district in which it is proposed to be located.

6. **Colors and materials.** Colors and materials shall be chosen to minimize visibility. All externally visible elements of a facility, including the antenna and supporting equipment, shall be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure and/or its surroundings, so as to make the antenna and related equipment as visually unobtrusive as possible. Proposed colors shall be identified by manufacturer and color name or number.

7. **Visual integration of antennas.** Facade-mounted antennas shall be architecturally integrated into the style and character of the structure, and painted and textured to match or complement the existing structure. Roof-mounted antennas shall be constructed at the minimum height possible to serve the provider's service area, shall be designed to minimize visibility from the surrounding areas, and painted and textured to match or complement the existing structure or building.

8. **Freestanding facilities.** Freestanding facilities, including ground-mounted antennas and monopoles, are discouraged and may be used only when no other alternative is feasible. When allowed, freestanding facilities shall be designed to the minimum functional height and width. Lattice towers are prohibited.

9. **Landscaping.** When portions of the facility are exposed to public view, they shall be landscaped with visual buffering, such as plant materials, walls and/or mounds that screen the view of the facility from public rights of way, public parklands and nearby residential properties. Existing mature growth trees and natural landforms on the site shall be preserved to the maximum extent feasible. Native plantings are to be used to the maximum extent possible.

10. **Equipment enclosures.** All equipment shall be placed completely underground when feasible or located inside an existing building. If such placement is not feasible, the equipment shall be completely enclosed within a solid-walled enclosure or building. Enclosures may not exceed 10 feet in height measured from the base of the foundation unless a greater height is necessary to maximize architectural integration and shall be screened by landscaping. Any visible cabinets, cables, air conditioning units, fencing, etc., shall be painted and textured to match the surrounding area so as to minimize visibility.

11. **Preventive design.** All facilities shall be designed to be resistant to and minimize opportunities for unauthorized access, climbing, vandalism, graffiti, and other conditions that would result in hazardous conditions or visual blight.

12. **Access to facilities.** All wireless telecommunication facilities shall be accessed from non-residential streets or right of ways to the maximum extent practical. Any constructed access shall be sited to avoid residential areas, streets or right of ways to the maximum extent practical.

13. **Construction methods.** All wireless telecommunication facilities shall be built in accordance with Uniform Building Code standards and, to the extent feasible, be protected against damage by fire, flooding, and earthquake. Reasonable measures shall be taken to keep wireless facilities in operation in the event of a natural disaster.

14. **Signs.** Other than required safety warning signs, no signs shall be placed on facilities or equipment.

15. **Modifying or upgrading facilities.** When modifying or upgrading wireless facilities, existing antennas and equipment shall, to the extent feasible, be replaced with antennas and equipment of equal or greater technical capacity and reduced size so as to reduce visual and noise impacts.

B. Operation and maintenance.

1. **Security lighting.** Security lighting shall be kept to a minimum. Any security lighting that may spill into residential zoning districts is discouraged and shall only be activated by a motion detector.

2. **Grounds maintenance.** All facilities and related equipment shall be maintained in good working order and free from trash, debris, graffiti and any form of vandalism. Any damaged equipment shall be repaired or replaced within thirty (30) calendar days of sustaining such damage. Graffiti shall be removed within forty-eight (48) hours of being notified by the City or others of its existence. Facilities containing landscaping elements shall be maintained in good condition at all times. Damaged, dead or decaying plant materials shall be removed and replaced within thirty (30) calendar days of sustaining such damage.

3. **Facility maintenance.** Routine maintenance of equipment located in residential zones or within one hundred (100) feet of a residential district, not requiring the facility to be taken "off line", shall be conducted only during the weekday hours of 8:00 a.m. to 5:00 p.m., holidays excepted. In other areas, and when a facility must be taken "off line", routine maintenance may be conducted at

any time. Emergency repairs and maintenance shall be conducted only in the cases of power outages and equipment failure or malfunction.

4. Noise attenuation. Each wireless telecommunications facility shall be operated in a manner that will minimize noise impacts to surrounding residents and persons using nearby parks, trails, and similar recreation areas. To achieve this objective, all air conditioning units and any other equipment emitting noise that is audible from beyond the property line on which a facility's is located shall be enclosed or equipped with noise attenuation devices that reduce the noise to the lowest feasible level. Backup generators shall only be operated during periods of power outages or for testing.

19.89.070 Variance.

Any person may apply for a variance subject to the requirements and conditions of this Title.

19.89.080 Abandonment.

- A. Prompt removal. Notwithstanding provisions to the contrary found elsewhere in this Title, a wireless telecommunications facility is considered abandoned and shall be promptly removed as provided herein if it ceases to provide wireless telecommunication services for 180 or more days. Such removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the City.
- B. Notice, appeal and hearing. A written notice of the determination of abandonment, as noted in subsection (A) of this section, shall be sent by certified first class mail, return receipt requested, or personally delivered to the operator of the wireless telecommunications facility at said operator's business address on file with the City or the operator's agent for service of process on file with the California Secretary of State. Service shall be effective on the date the notice was signed for or received. If the mailed notice is returned unsigned, service shall be deemed effective three business days after the mailing of a duplicate notice by regular first-class mail. The notice shall explain the consequences of failing to remove the facility and identify all hearing/appeal rights.

The operator may appeal the determination of abandonment within ten (10) business days of being served with the notice. After receiving the appeal, City Staff shall schedule a hearing on the matter to be conducted before the Planning Commission at which time the operator may present any relevant evidence on the issue of abandonment. The Planning Commission may affirm, reverse, or modify with or without conditions the determination of abandonment and shall make written findings in support of its decision. The decision of the Planning Commission shall be final.

- C. Nuisance. Any wireless telecommunications facility determined to be abandoned and not removed within thirty (30) calendar days from the date of notice, or where an appeal has been timely filed, within such time as prescribed by the planning commission following its final determination of abandonment, shall be in violation of this chapter, and the operator of such facility shall be subject to the penalties prescribed in this Title and Title 1 of the Chula Vista Municipal Code. Facilities determined to be abandoned and not removed within the time limits

prescribed herein, are deemed to be a nuisance, and notwithstanding the procedure described in subsection (B) of this section, may be abated as a nuisance in any manner provided by law.

19.89.080

Severability.

If any section, subsection, sentence, clause, phrase or word of this chapter is for any reason determined to be unconstitutional, invalid, void or unenforceable by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter.

The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, phrase or word thereof irrespective of the fact that any one or more sections, subsections, paragraphs, sentences, clauses, phrases or words be declared unconstitutional, invalid, void or unenforceable .

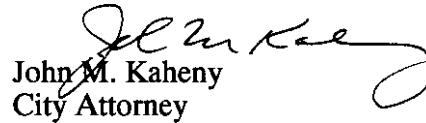
SECTION II. This ordinance shall take effect and be in full force on the thirtieth day from and after its adoption.

Submitted by

Approved as to form by



Robert A. Leiter
Planning and Building Director



John M. Kaheny
City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 28th day of January, 2003, by the following vote:

AYES:	Councilmembers:	Davis, Rindone, Salas, McCann, and Padilla
NAYS:	Councilmembers:	None
ABSENT:	Councilmembers:	None



Stephen Padilla, Mayor

ATTEST:



Susan Bigelow, City Clerk

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)
CITY OF CHULA VISTA)

I, Susan Bigelow, City Clerk of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 2895 had its first reading at a regular meeting held on the 21st day of January, 2003 and its second reading and adoption at a regular meeting of said City Council held on the 28th day of January, 2003.

Executed this 28th day of January, 2003.



Susan Bigelow, City Clerk