

ORDINANCE NO. 09-2038

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING CHAPTER 19.108: WIRELESS COMMUNICATIONS FACILITIES, OF
THE CUPERTINO MUNICIPAL CODE REGARDING THE EXPANSION OF
POTENTIAL SITE LOCATIONS, ADDING DESIGN AND SITING REVIEW
CRITERIA AND MISCELLANEOUS TECHNICAL CHANGES

THE CITY COUNCIL OF THE CITY OF CUPERTINO DOES HEREBY
ORDAIN that the following sections of the Cupertino Municipal Code shall be amended
to read as follows:

CHAPTER 19.108: WIRELESS COMMUNICATIONS FACILITIES

Section

19.108.010	Purpose.
19.108.020	Applicability of regulations.
19.108.030	Definitions.
19.108.040	Site locations.
19.108.050	General site development regulations.
19.108.060	Specific site development regulations.
19.108.070	Design and siting review.
19.108.080	Application requirements.
19.108.090	Permitting.
19.108.100	Exceptions.

19.108.010 Purpose.

This chapter establishes regulations pertaining to the location, siting, development, design and permitting of wireless communications facilities for all zones existing in this city in order to:

- A. Facilitate the development of a wireless communications infrastructure in the City for commercial, public and emergency uses, and
- B. Protect the health, safety, welfare and aesthetic concerns of the public.

19.108.020 Applicability of Regulations.

This chapter applies to all types of aerials and associated facilities used for wireless communications, that is, the transmitting and/or receiving of voice, data, video images and other information through the air via signals in the radio and microwave frequency band. This includes aerials for amateur radio, television, wireless modems, cellular phones, enhanced specialized mobile radio (ESMR), personal communications services (PCS), paging systems, satellite communications and other wireless communication technologies utilizing signals in the radio and microwave frequency band. No wireless communication facility: antennas, masts, towers and associated equipment shall be hereafter erected, structurally altered or enlarged other than in conformance with the provisions of this chapter and other applicable provisions of this title.

19.108.030 Definitions.

As used in this chapter, the following terms are defined in this section:

- A. “Aerial” means a stationary transmitting and/or receiving wireless communication device consisting of one or any combination of the elements listed below:
 - 1. “Antenna” means a horizontal or vertical element or array, panel or dish that may be attached to a mast or a tower for the purpose of transmitting or receiving radio or microwave frequency signals.
 - 2. “Mast” means a vertical element consisting of a tube or rod, which supports an antenna.
 - 3. “Tower” means a vertical framework of cross elements, which supports either an antenna, mast or both.
 - 4. “Guy wires” means wires necessary to insure the safety and stability of an antenna, mast or both.
- B. “Collocation” means the placement of aerials and other facilities belonging to two or more communication service providers on a single mast or building.

19.108.040 Site Locations.

- A. Residential and Home Occupation Aerials.
 - 1. Aerials intended for the private use of onsite residents and guests and for home occupation purposes are allowed on all residentially zoned and used properties.
- B. Commercial, Office, Industrial, Public Utility Aerials.

1. Aerials intended for commercial, office, industrial and public use are prohibited on residentially zoned and used properties, except the RHS zoning district. Aerials may also be allowed on common-interest areas of residential or mixed-use planned development zoned properties subject to use permit approval and homeowner association approval.
2. Such aerials are allowed in all other zoning districts pursuant to permitting procedures established under Section 19.108.090.
3. Such aerials are allowed on utility poles and towers, regardless of the zoning district, as long as the aerial complies with Section 19.108.080(c).

19.108.050 General Site Development Regulations.

Provisions in Section 19.108.050 apply to all residential and home occupation, commercial, office, industrial and public utility aerials.

A. Aerials.

1. Aerials shall not exceed a height of fifty-five feet above finished grade measured at the mast base, unless otherwise provided in accordance with Section 19.108.060.

B. Antenna.

1. An antenna consisting of a single vertical element not more than four inches in diameter in lieu of a horizontal arrangement shall be excepted from the height restriction.
2. Antennas and/or guy wires shall not overlap adjoining properties and shall not encroach upon an easement without the written consent of the owner of the easement which shall be attached to the application for a building permit.

C. Masts and Towers.

1. The number of towers, and detached masts exceeding eight inches in diameter at the base and thirty feet in height above ground level, shall be limited as follows:

Lot Size	Maximum Number of Towers and Detached Masts per lot
Less than 30,000 square feet	One.
30,000 square	Two. Additional towers, and

feet or more	detached masts, above two, not meeting the criteria stated in Section 19.108.050.C.1. require use permit approval by the Planning Commission.
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2. Wood towers shall not be erected.

19.108.060 Specific Site Development Regulations.

A. Residential and Home Occupation Aerials.

1. Aerials with panel or dish antennas of more than ten square feet shall comply with the setbacks and height limits for accessory structures.
2. Masts and towers shall be located at least ten feet to the rear of the front building setback line and shall be set back at least six feet from any property boundary.

B. Commercial, Office, Industrial, Public Utility Aerials.

1. Aerials mounted on buildings that exceed the aerial height limits stated in Section 19.108.050 may extend six feet above the building parapet wall. An additional one foot of height is allowed for every ten feet that the aerial is setback from the parapet, to a maximum height of ten feet above the building parapet, before a height exception is required.
2. With the exception of a utility pole or tower used as an aerial, detached masts and towers shall be set back a minimum of seventy-five feet from a residentially zoned property or a distance equal to one foot for every one foot of structure height, whichever is greater. Building mounted aerials shall be set back a minimum of seventy-five feet horizontally from any residentially zoned property. Detached masts and towers, with the exception of a utility pole or tower used as an aerial, that are otherwise permitted in a residential zoning district by this ordinance, shall be set back a minimum of seventy-five feet from abutting residentially zoned properties, and building mounted aerials shall be set back a minimum of seventy-five feet horizontally from abutting residentially zoned properties.
3. Base equipment stations shall comply with the setbacks of the zoning district and the City's noise standards provided in Chapter 10.48.

19.108.070 Design and Siting Review.

For aerials requiring discretionary review, the primary review objectives are to ensure the goals of 19.108.010 are met and to blend the design of the aerial into the surrounding

environment, or site the aerial in such a manner to minimize the visual intrusiveness of the structure or artistically enhance the appearance of the aerial. This review may include, but not be limited to, the following criteria:

- A. Gaps in coverage that would create emergency communication problems;
- B. Viability of alternative locations, such as commercial, industrial, office, and public building sites.
- C. Method of antenna-mounting, that is, wall-mounting, roof-mounting or a freestanding structure.
- D. Colors, materials and textures to integrate the aerial into the surrounding environment or building;
- E. Landscaping to screen the aerial;
- F. Proximity and visibility of the aerial to residential properties and public right-of-ways;
- G. Dispersal of aerial locations to avoid visual clutter;
- H. Concentration of aerial locations to avoid visual clutter;
- I. Opportunities for collocation of aerials on existing masts and towers where visual intrusiveness is reduced;
- J. Design of the building or enclosure, which houses the related base equipment and its compatibility with the adjoining building architecture;
- K. Opportunities to develop context-appropriate, artistically enhanced aerial designs;
- L. Screening of highly visible rooftop-mounted aerials; and
- M. Balancing of aesthetic concerns with the need to provide a functional communications system.

19.108.080 Application Requirements.

In addition to the standard application requirements, the applicant may be required to provide the following materials:

- A. If more than one aerial is planned in the City within a year by a single communication service provider, a master plan shall be prepared of all facilities that can be reasonably foreseen, showing the proposed aerial sites and existing commercial, office, industrial and public utility aerial locations within a one mile

radius of the proposed sites. The purpose of this requirement is to identify opportunities for clustering, dispersal and collocation of aerials to reduce visual intrusiveness;

- B. Erection of a mock aerial, computer simulation or sight-line elevations for all aerials to help assess the visual effects;
- C. Documentation that the technology and usage of that technology meets Federal Communications Commission adopted safety standards.

19.108.090 Permitting.

- A. For all zoning districts, aerials that exceed maximum height limits require a height exception except as otherwise provided in Section 19.108.060.
- B. For zoning districts that require design review, permitting procedures shall be as followed:
 - 1. For aerials that are minimally visible to residential properties and public rights-of-way, the Director of Community Development shall process such applications in accordance with Chapter 19.132.
 - 2. For building-mounted aerials that are moderately visible to residential properties and public rights-of-way, the Director of Community Development, in his discretion, may refer an application to the Planning Commission for design review and approval in accordance with Chapter 19.132.
 - 3. For detached aerials that are moderately to highly visible to residential properties and public rights-of-way, a use permit approved by the Planning Commission is required.
 - 4. Public Noticing: In addition to the public hearing noticing prescribed by the planning permit regulations, the City shall extend mailed written notice of such hearing to each owner of record of real property within one thousand feet of the exterior boundary of the property for which entitlement is sought as such owner of record is shown in the last tax assessment roll pursuant to Section 65091 of the California Government Code. The Director of Community Development may extend mailed written notice beyond one thousand feet, if in his judgment, the application for permit may have negative effects on a larger area.

For aerials approved in accordance with Chapter 19.132, the Director of Community Development shall provide mailed written notice of his decision, within five calendar days from the date of the decision, to each owner of record of real property within one thousand feet of the exterior boundary of the property for which entitlement is sought as such owner of record is shown

in the last tax assessment roll pursuant to Section 65091 of the California Government Code.

5. Abandonment: All City approvals for new aerials and modifications of existing aerial approvals shall be conditioned to require the removal of the aerial, its associated facilities and restoration of the land to its former condition if the aerial is not used for its permitted purpose for a period of eighteen months. The property owner or applicant shall bear the entire cost of demolition and land restoration.
6. All commercial, office, industrial, and public utility aerial mast and tower approvals shall be conditioned to allow the collocation of aerials and related facilities of other commercial, office, industrial, and public utility users where appropriate and feasible.
7. The Planning Commission, in its review of aerial applications, shall seek the technical consultation of the designated member or members of the Technology, Information and Communications Commission.

19.108.100 Exceptions.

- A. An exception may be granted by the Planning Commission for an aerial height exceeding the maximum limit where practical difficulties, unnecessary hardships, or results inconsistent with the purpose and intent of this chapter result from strict application of the chapter provisions.
- B. A request for exception must be submitted on a form as prescribed by the Director of Community Development. The application shall be accompanied by a fee prescribed by City Council resolution. Upon receipt of an exception application, a time and place for a public hearing before the Planning Commission shall be set. A Notice of Public Hearing for an exception under this chapter shall be given in the same manner as provided in Section 19.120.060 and Section 19.108.090(B)(4). The Planning Commission shall hold a public hearing at which time the Planning Commission may grant the exception based upon all of the following findings:
 1. That the literal enforcement of the provisions of this chapter will result in restrictions inconsistent with the spirit and intent of this chapter;
 2. That granting of an exception will not result in a condition that will be detrimental or injurious to property or improvements in the vicinity and will not be materially detrimental to the public health, safety or welfare;
 3. That the exception to be granted will not result in a hazardous condition for pedestrian and vehicular traffic.

- C. After closing the public hearing, the Planning Commission may approve, conditionally approve or deny the application for exception. The Commission's decision on the exception request may be appealed to the City Council as provided for in Chapter 19.136.

INTRODUCED at a regular meeting of the City Council of the City of Cupertino this 3rd day of February, 2009, and ENACTED at a regular meeting of the City Council of the City of Cupertino this 17th day of February, 2009, by the following vote:

Vote Members of the City Council

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

APPROVED:

City Clerk

Mayor, City of Cupertino