

ORDINANCE NO. 1192

URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UKIAH ADDING ARTICLE 9 TO CHAPTER 2 OF DIVISION 2 OF THE UKIAH CITY CODE

The City Council of the City of Ukiah hereby ordains as follows:

SECTION ONE

Article 9, entitled: Wireless Telecommunication Facilities, is hereby added to Chapter 2 of Division 2 of the Ukiah City Code and shall read as follows.

ARTICLE 9. WIRELESS TELECOMMUNICATION FACILITIES

§2390 PROMULGATION OF AESTHETIC GUIDELINES FOR DEPLOYMENTS OF WIRELESS TELECOMMUNICATIONS FACILITIES IN THE CITY OF UKIAH

Aesthetic guidelines for wireless telecommunications facilities shall be adopted and amended by the City Council by resolution. The first such resolution shall be adopted and become effective prior to April 15, 2019.

SECTION TWO. URGENCY ORDINANCE

This ordinance is hereby declared to be necessary for the immediate preservation of the public peace, health, and safety and will take effect and be in force upon its adoption by a fourth-fifths (4/5) vote of the members of the Ukiah City Council. The facts constituting the urgency are as follows:

1. On September 26, 2018, the Federal Communications Commission adopted a Declaratory Ruling and Third Report and Order ("FCC 18-133") regarding small wireless deployment and interpreting the requirements imposed on local governments by the Telecommunications Act of 1996. Regulations published in the Federal Register implementing the Declaratory Ruling became effective on January 14, 2019.
2. The Regulations require local agencies that wish to enforce aesthetic requirements on small cell wireless facilities to adopt such requirements by April 15, 2019. Any aesthetic standard adopted by cities must be: "(1) reasonable; (2) no more burdensome than those applied to other types of infrastructure deployments; and (3) objective and published in advance."
3. If the City does not have aesthetic guidelines for small cell wireless facilities in place by April 15, 2019, the City may lose the opportunity to enforce aesthetic requirements that will protect the public health, safety, and welfare.

SECTION THREE. FINDINGS. CITY COUNCIL AUTHORITY TO ADOPT ORDINANCE.

1. This Ordinance deals with the adoption of aesthetic guidelines for deployment of small cell wireless facilities. It will enact only minor changes in land use regulations, and its adoption will not allow for the development of any new or expanded wireless telecommunication facilities anywhere other than where they were previously allowed under existing federal, state and local law.
2. California Government Code § 65853 states that a zoning ordinance or an amendment to a zoning ordinance, in which the ordinance or amendment changes any property from one zone to another or imposes, removes, or modifies any regulation listed in Government Code § 65850, must be subject to a public hearing and recommendations by the Planning Commission prior to introduction of the ordinance by the City Council.

3. The regulations listed in Government Code § 65850 are as follows:

- (a) Regulate the use of buildings, structures, and land as between industry, business, residences, open space, including agriculture, recreation, enjoyment of scenic beauty, use of natural resources, and other purposes.
- (b) Regulate signs and billboards.
- (c) Regulate all of the following:
 - (1) The location, height, bulk, number of stories, and size of buildings and structures.
 - (2) The size and use of lots, yards, courts, and other open spaces.
 - (3) The percentage of a lot which may be occupied by a building or structure.
 - (4) The intensity of land use.
- (d) Establish requirements for off-street parking and loading.
- (e) Establish and maintain building setback lines.
- (f) Create civic districts around civic centers, public parks, public buildings, or public grounds, and establish regulations for those civic districts.

6. Because the proposed Ordinance does not regulate any category of regulation enumerated in Government Code § 65850, the introduction and adoption of this Ordinance does not first require a public hearing before and recommendations from the Planning Commission.

SECTION FOUR

1. **CEQA COMPLIANCE.** The adoption of this Ordinance is not subject to CEQA pursuant to Sections 15060(c)(2) and 15061(b)(3) of the State CEQA Guidelines, because it will not result in a direct or reasonably foreseeable indirect physical change in the environment and because there is no possibility that it may have a significant effect on the environment. In addition, wireless facilities themselves are exempt from CEQA pursuant to State CEQA Guidelines Section 15305, which exempts minor encroachment permits, and Section 15303, which exempts the installation of small equipment and facilities in a small structure.
2. **SEVERABILITY.** If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby. The City Council hereby declares that it would have adopted this Ordinance and any 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 otherwise invalid.

Introduced and Adopted on March 20, 2019, by the following roll call vote:

AYES: Councilmembers Orozco, Brown, Scalmanini, Crane, and Mayor Mulheren
NOES: None
ABSENT: None
ABSTAIN: None


Maureen Mulheren, Mayor

ATTEST:


Kristine Lawler, City Clerk