

ORDINANCE NO. 1135

AN ORDINANCE OF THE CITY OF SAN JUAN CAPISTRANO, CALIFORNIA, APPROVING CODE AMENDMENT (CA) 25-004 TO AMEND MUNICIPAL CODE SECTIONS 7-8.06, 9-2.303, 9-2.317, 9-2.347, 9-3.507; 9-3.533, 9-3.553, TITLE 9 TABLES 3-4, 3-6, 3-8, 3-10, 3-12, 3-14, AND 3-15, TO COMPREHENSIVELY UPDATE THE CITY'S ANTENNAS AND WIRELESS FACILITIES STANDARDS TO ENSURE THE CITY' REGULATIONS THAT GOVERN THE PLACEMENT OF ANTENNAS AND WIRELESS FACILITIES ON CITY AND PRIVATE PROPERTY ARE CONSISTENT WITH STATE AND FEDERAL REGULATIONS; AND A FINDING THAT SAID ACTION IS NOT A "PROJECT" AS DEFINED UNDER STATE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) GUIDELINES SECTION 15060(c)(3), AND IF IT WERE, IT WOULD BE CATEGORICALLY EXEMPT PER STATE CEQA GUIDELINES SECTIONS 15061(b)(3) AND 15320.

Whereas, the San Juan Capistrano Municipal Code Section 9-3.507 was adopted in October 2002, and has not been updated since to comply updates to state and federal law governing the City's regulatory authority over the siting of wireless facilities; and,

Whereas, on November 4, 2025, the City Council approved the initiation of Code Amendment 25-004 and directed staff to conduct an appropriate study for amendments in accordance with state and federal laws (the "Project"); and,

Whereas, as the Project is currently proposed, the amendments would impact Municipal Code Sections 7-8.06, 9-2.303, 9-2.317, 9-2.347, 9-3.507; 9-3.533, 9-3.553, Title 9 Tables 3-4, 3-6, 3-8, 3-10, 3-12, 3-14, and 3-15; and,

Whereas, the proposed Project is being processed pursuant to Section 9-2.301, Development Review, of the Land Use Code; and,

Whereas, pursuant to Section 21067 of the Public Resources Code and Section 15367 of the California Environmental Quality Act ("CEQA") Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.), the City of San Juan Capistrano is the lead agency for the proposed Project; and,

Whereas, in accordance with CEQA, the City's Environmental Administrator has determined that the proposed Code Amendment 25-004 is not subject to CEQA because it does not meet the definition of a "project" as defined under State CEQA Guidelines section 15060(c)(3). Even if it were considered a "project" under CEQA, it would be Categorically Exempt from further review per Sections 15061(b)(3) and 15320 of the State CEQA Guidelines; and

Whereas, the City Council has considered the Environmental Administrator's determination pursuant to Sections 15060 and 15061 of the California Environmental Quality Act (CEQA), has considered all project environmental documentation; and,

Whereas, the Planning Commission conducted a duly noticed public hearing on February 25, 2026, pursuant to Title 9, Land Use Code, Section 9-2.302 and City Council Policy 5 to consider public testimony on the proposed Project and has considered all relevant public comments and all documents and evidence submitted, including but not limited to the staff report and attachments, and materials submitted by the City; and,

Whereas, on April 21, 2026, the City Council conducted a duly noticed public hearing on this Ordinance pursuant to Municipal Code Section 9-2.302, at which time all persons wishing to testify were heard and the Project was fully considered; and,

Whereas, all other legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN JUAN CAPISTRANO DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Recitals.

The recitals set forth above are true and correct and are incorporated herein by reference as findings of the City Council.

SECTION 2. California Environmental Quality Act.

The City Council of the City of San Juan Capistrano does hereby find that the proposed Code Amendment (CA) 25-004 is not subject to the California Environmental Quality Act (CEQA) because it does not meet the definition of a “project” under CEQA. State CEQA Guidelines Section 15060(c) specifies that an activity is not subject to CEQA if it does not meet the definition of a “project” under Section 15378. In this case, the CA does not qualify as a project for two primary reasons:

First, Section 15378(a) defines a project as an activity that has the potential to cause either a direct physical change in the environment or an indirect physical change. The proposed amendment to the Municipal Code Sections 7-8.06, 9-2.303, 9-2.317, 9-2.347, 9-3.507; 9-3.533, 9-3.553, Title 9 Tables 3-4, 3-6, 3-8, 3-10, 3-12, 3-14, and 3-15 seeks to comply with state and federal regulations regarding wireless facilities. This amendment is aimed at updating the permitting and approval processes to reflect state and federal laws, but it does not authorize any new physical development or alter the intensity of land use in the area. Since there is no physical change involved, the amendment does not qualify as a project under CEQA.

Second, Section 15378(b)(5) explicitly excludes from the definition of a “project” the organizational or administrative activities of government that do not result in direct or indirect physical changes to the environment. The proposed Code Amendment is an administrative action that involves changes to the Municipal Code Sections 7-8.06,

9-2.303, 9-2.317, 9-2.347, 9-3.507; 9-3.533, 9-3.553, Title 9 Tables 3-4, 3-6, 3-8, 3-10, 3-12, 3-14, and 3-15, but it will not cause any physical changes to the environment. Therefore, it is not subject to CEQA.

Even if the Code Amendment were considered a “project” under CEQA, it would still be categorically exempt under State CEQA Guidelines Section 15320, which applies to organizational or reorganization activities by local governmental agencies, as long as the changes do not alter the geographical area in which existing powers are exercised. Since the Code Amendment only changes the permitting and approval processes to reflect state and federal laws, without involving any physical development or changing the geographic scope of the area, it qualifies for this categorical exemption. Additionally, the Common-Sense Exemption under CEQA Guidelines Section 15061(b)(3) also applies, as there is no possibility that the amendment could result in a significant effect on the environment.

Moreover, in the event that the ordinance is interpreted so as to permit installation of wireless facilities on a particular site, the installation would be exempt from CEQA review in accordance with either State CEQA Guidelines Section 15302 (replacement or reconstruction), State CEQA Guidelines Section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines Section 15304 (minor alterations to land).

Finally, none of the exceptions to categorical exemptions in CEQA Guidelines Section 15300.2 apply to this project. The amendment will not result in cumulative environmental impacts, as it does not authorize any new physical development. There are no unusual circumstances that would lead to significant environmental impacts, and the amendment will not affect scenic resources or historic resources as no physical changes are involved. Therefore, no further environmental review is necessary.

The Planning Commission hereby directs staff to prepare, execute and file with the Orange County Clerk and submit to the State Clearinghouse a Notice of Exemption within five (5) working days of Project’s final approval.

SECTION 3. Findings - Amendment of the Land Use Code.

Based on the entire record before the City Council and all written and oral evidence presented, the City Council of the City of San Juan Capistrano does hereby make the following findings as established by Section 9-2.309, Code Amendment, of Title 9, Land Use Code of the City of San Juan Capistrano:

1. The proposed Land Use Code Amendment conforms with the goals and policies of the General Plan because it fulfills the Public Services and Utilities Element Goal 7, which provides, “Work effectively with providers of natural gas, electricity, telephone, cable television and solid waste disposal to provide sufficient levels of these services,” and more specifically with Policy 7.3, which provides, “Encourage the

expansion of telecommunications capabilities to promote economic development of the community.” The updates to the Antennas and Wireless Facilities section of the Land Use code and bringing the code into consistency with state law will encourage the expansion of telecommunication capabilities within the City.

2. The proposed Land Use Code Amendment is necessary to implement the General Plan and to provide for public safety, convenience and/or general welfare because the proposed amendment achieves the goals and policies and implement specific programs identified within the General Plan Public Services and Utilities Element for the reasons listed above.

3. The proposed Land Use Code Amendment conforms with the intent of the Development Code and is consistent with all other related provisions thereof because the amendments would establish clear allowances and processes for permitting and establishing antennas and wireless facilities, all of which meet the intent of state and federal laws to make the development of all wireless facilities more streamline.

4. The proposed Land Use Code Amendment is reasonable and beneficial at this time because the City has identified these amendments as being necessary to be consistent with state and federal laws. Codifying these proposed amendments is reasonable and beneficial to the public for clear understanding of the City’s regulations.

SECTION 5. Approval.

The City Council of the City of San Juan Capistrano hereby approves Code Amendment (CA) 25-004, amending Municipal Code Sections 7-8.06, 9-2.303, 9-2.317, 9-2.347, 9-3.507; 9-3.533, 9-3.553, Title 9 Tables 3-4, 3-6, 3-8, 3-10, 3-12, 3-14, and 3-15 in Exhibit A. All referenced exhibits are attached hereto and incorporated herein by reference, and determines that no further CEQA review is required.

SECTION 6. Custodian of Records.

The documents and materials associated with this Resolution that constitute the record of proceedings on which these findings are based are located at San Juan Capistrano City Hall, 32400 Paseo Adelanto, San Juan Capistrano, California 92675. The Development Services Director is the custodian of the record of proceedings.

SECTION 7. Severability:

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of San Juan Capistrano hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof irrespective of the fact that any one or more

sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

SECTION 8. Effective Date.

This Ordinance shall take effect and be in force thirty (30) days after its passage.

SECTION 9. City Clerk's Certification.

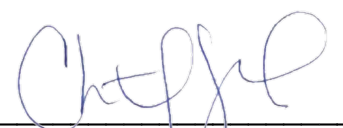
The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted at the duly designated posting places within the City and published once within fifteen (15) days after passage and adoption as required by law; or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the Office of the City Clerk five (5) days prior to the date of adoption of this Ordinance; and, within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

PASSED, APPROVED AND ADOPTED this 5th day of May 2026.



JOHN CAMPBELL, MAYOR

ATTEST:

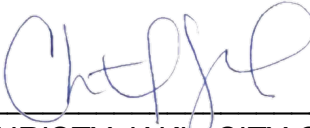


CHRISTY JAKL, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF SAN JUAN CAPISTRANO)

I, CHRISTY JAKL, City Clerk of the City of San Juan Capistrano, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1135 which was regularly introduced and placed upon its first reading at the Regular Meeting of the City Council on the 21th day of April 2026 and that thereafter, said Ordinance was duly adopted and passed at the Regular Meeting of the City Council on the 5th day of May 2026 by the following vote, to wit:

AYES: COUNCIL MEMBERS: Farias, Hart, Bourne, and Mayor Campbell
NOES: COUNCIL MEMBERS: None
ABSENT: COUNCIL MEMBERS: Taylor



CHRISTY JAKL, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss AFFIDAVIT OF POSTING
CITY OF SAN JUAN CAPISTRANO)

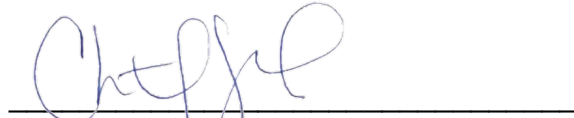
I, CHRISTY JAKL, declare as follows:

That I am the duly appointed and qualified City Clerk of the City of San Juan Capistrano;
That in compliance with State laws, Government Code section 36933(1) of the State of California, on the 15th day of April 2026, at least 5 days prior to the adoption of the ordinance, I caused to be posted a certified copy of the proposed ordinance entitled:

AN ORDINANCE OF THE CITY OF SAN JUAN CAPISTRANO, CALIFORNIA, APPROVING CODE AMENDMENT (CA) 25-004 TO AMEND MUNICIPAL CODE SECTIONS 7-8.06, 9-2.303, 9-2.317, 9-2.347, 9-3.507; 9-3.533, 9-3.553, TITLE 9 TABLES 3-4, 3-6, 3-8, 3-10, 3-12, 3-14, AND 3-15, TO COMPREHENSIVELY UPDATE THE CITY'S ANTENNAS AND WIRELESS FACILITIES STANDARDS TO ENSURE THE CITY' REGULATIONS THAT GOVERN THE PLACEMENT OF ANTENNAS AND WIRELESS FACILITIES ON CITY AND PRIVATE PROPERTY ARE CONSISTENT WITH STATE AND FEDERAL REGULATIONS; AND A FINDING THAT SAID ACTION

IS NOT A "PROJECT" AS DEFINED UNDER STATE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) GUIDELINES SECTION 15060(c)(3), AND IF IT WERE, IT WOULD BE CATEGORICALLY EXEMPT PER STATE CEQA GUIDELINES SECTIONS 15061(b)(3) AND 15320

This document was posted in the Office of the City Clerk



CHRISTY JAKL, CITY CLERK
San Juan Capistrano, California

STATE OF CALIFORNIA	)	
COUNTY OF ORANGE	) ss	AFFIDAVIT OF POSTING
CITY OF SAN JUAN CAPISTRANO	)	

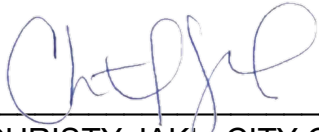
I, CHRISTY JAKL, declare as follows:

That I am the duly appointed and qualified City Clerk of the City of San Juan Capistrano; that in compliance with State laws, Government Code section 36933(1) of the State of California.

On the 6th of May 2026, I caused to be posted a certified copy of Ordinance No. 1135, adopted by the City Council on May 5, 2026, entitled:

AN ORDINANCE OF THE CITY OF SAN JUAN CAPISTRANO, CALIFORNIA, APPROVING CODE AMENDMENT (CA) 25-004 TO AMEND MUNICIPAL CODE SECTIONS 7-8.06, 9-2.303, 9-2.317, 9-2.347, 9-3.507; 9-3.533, 9-3.553, TITLE 9 TABLES 3-4, 3-6, 3-8, 3-10, 3-12, 3-14, AND 3-15, TO COMPREHENSIVELY UPDATE THE CITY'S ANTENNAS AND WIRELESS FACILITIES STANDARDS TO ENSURE THE CITY' REGULATIONS THAT GOVERN THE PLACEMENT OF ANTENNAS AND WIRELESS FACILITIES ON CITY AND PRIVATE PROPERTY ARE CONSISTENT WITH STATE AND FEDERAL REGULATIONS; AND A FINDING THAT SAID ACTION IS NOT A "PROJECT" AS DEFINED UNDER STATE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) GUIDELINES SECTION 15060(c)(3), AND IF IT WERE, IT WOULD BE CATEGORICALLY EXEMPT PER STATE CEQA GUIDELINES SECTIONS 15061(b)(3) AND 15320

This document was posted in the City Hall lobby public counter.



CHRISTY JAKL, CITY CLERK

San Juan Capistrano, California

EXHIBIT A

Section 9-3.507 Antennas and Wireless Facilities

- (a) Purpose and intent. The purpose of this Section 9-3.507 is to establish comprehensive requirements and standards for the development of wireless facilities in San Juan Capistrano on both public and private property. The standards are intended to balance rights and privileges granted under federal and state statutes with the need to protect neighbors from potential adverse impacts of such facilities, including but not limited to noise, traffic, aesthetic and other impacts over which the City has purview, and to preserve the visual character of the established community through appropriate design, siting, screening, maintenance, and location standards.
- (b) Definitions. As used in this section, terms are defined as follows:
- (1) Applicant: The person or entity applying for a permit to install wireless facilities.
 - (2) Base Station: Shall have the same meaning as defined by 47 C.F.R. Section 1.6100(b)(1), or any successor provision.
 - (3) Collocation: Shall mean the same as defined by the FCC in 47 C.F.R. § 1.6002(g), as may be amended, which defines that term as: (1) mounting or installing an antenna facility on a preexisting structure; and/or (2) modifying a structure for the purpose of mounting or installing an antenna facility on that structure. Notwithstanding the foregoing, for eligible facilities requests only, “collocation” has the same meaning as provided in 47 C.F.R. § 1.6100(b)(2), as may be amended, which defines that term as “[t]he mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.”.
 - (4) Eligible Facilities Request: Shall have the meaning as set forth in 47 C.F.R. Section 1.6100(b)(3), or any successor provision.
 - (5) Existing: Shall have the same meaning as provided in 47 C.F.R. § 1.6100(b)(5), as may be amended.
 - (6) FCC: The Federal Communications Commission or its lawful successor.
 - (7) Height of a wireless facility: The vertical distance measured from the natural undisturbed ground surface below the center of the base of said facility to the top of the facility itself or, if higher, to the tip of the highest antenna or appurtenance attached thereto. In the case of building-mounted facilities the height of the facility includes the height of the portion of the building on which it is mounted. In the case of crank-up or other similar towers whose height can be adjusted, the height of the facility shall be the maximum height to which it is capable of being raised.
 - (8) Permittee: Any person or entity granted a permit pursuant to Section 9-3.507, Antennas and Wireless Facilities.
 - (9) Roof-mounted or building-mounted facility: Shall mean a facility directly attached or affixed to the roof of, on the facade, or elsewhere on a pre-existing building, tank or similar structure other than a purpose built wireless tower.

- (10)Site: Shall have the same meaning as provided in 47 C.F.R. § 1.6100(b)(6), as may be amended.
- (11)Small Wireless Facility: Shall mean the same as defined by the FCC in 47 C.F.R. section 1.6002(l), or any successor provision.
- (12)Support structure: Shall mean any structure capable of supporting a base station, as defined in 47 C.F.R. section 1.6002(m), or any successor provision.
- (13)Temporary Wireless Facility: Shall mean any wireless facility intended or used to provide wireless services on a temporary or emergency basis lasting no longer than one (1) year, unless an extension is approved by the Planning Director, such as for a large-scale special event in which more users than usual gather in a single location or following a duly proclaimed local or state emergency, as defined in Government Code section 8558, requiring additional service capabilities
- (14)Tower: Shall mean the same as defined in 47 C.F.R. section 1.6100(b)(9), or any successor provision. This definition does not include utility poles.
- (15)Transmission equipment: Shall have the same meaning as provided in 47 C.F.R. § 1.6100(b)(8), as may be amended.
- (16)Utility pole: Shall mean any structure designed to support electric, telephone, and similar utility lines. A tower is not a utility pole.
- (17)Wireless facilities: Shall mean any transmitters, antenna structures, equipment cabinets, concealment, meters, switches, cabling, and other types of facilities used for the provision of wireless services at a fixed location, including, without limitation, any associated tower(s), support structure(s), and base station(s).

(c) Applicability, exemptions and nonconforming facilities.

- (1) A person who proposes to install, operate, or modify a wireless facility shall first obtain approval as outlined in this Section 9-3.507.
- (2) All wireless facilities lawfully established or constructed before the adoption of this Section 9-3.507 but which would be prohibited, regulated, or restricted differently under the current terms of this Section 9-3.507 are subject to Section 9-3.533 Nonconforming Uses, Lots, and Structures. Notwithstanding the foregoing, modifications to nonconforming wireless facilities submitted pursuant to the requirements for Type 5A applications (as described in subsection (c)(1)(E)(i)), that are determined to be eligible facilities requests will be allowed.
- (3) This Section 9-3.507 does not apply to the wireless facilities set forth below. Each exempt facility shall fully comply with other applicable requirements of the San Juan Capistrano Municipal Code to the extent not specially exempted in this Section 9-3.507.
 - (A) Over-the-air-reception-devices (OTARD) antennas. A single ground-mounted or building-mounted antenna not exceeding the maximum height permitted by this Section 9-3.507, including any mast supporting an antenna, that meets any

of the following descriptions and is intended for the sole use of a person occupying the same parcel:

- (i) Direct broadcast satellite antennas measuring one meter or less in diameter (or diagonal measurement) used to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite, including a hub or relay antenna used to receive or transmit fixed wireless services that are not classified as telecommunications services; and
 - (ii) Multipoint distribution services antennas measuring one meter or less in diameter (or diagonal measurement) used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, or to receive or transmit fixed wireless signals other than via satellite, including a hub or relay antenna used to receive or transmit fixed wireless services that are not classified as telecommunications services; and
 - (iii) Television broadcast system antennas.
- (B) Satellite earth station (SES) antennas measuring two meters or less in diameter (or diagonal measurement) located on a property within any commercial or industrial zoning district, provided: (1) the antenna is located entirely on and/or above the subject property; and (2) no portion of any ground-mounted antenna is within a required front yard setback for the main building, in front of the main building, within a required side yard setback of a corner lot or adjacent to a street. All SES antennas require a building permit for review of placement to ensure that adequate health and safety requirements are met.
- (C) Facilities constructed by or for FCC-licensed amateur radio operators that comply with the following provisions. Such facilities requires a building permit for review of placement to ensure that adequate health and safety requirements are met:
- (i) Location.
 - a. Ground-mounted:
 - 1. Shall be located in rear yard only.
 - 2. Antenna support structures may be located in rear yard and shall be located as far forward as possible from rear property line. Antenna support structure shall be no closer than 20' from any neighboring residential structure.
 - 3. All ground-mounted antennas shall be screened from neighboring properties and streets by walls, fences or landscaping at least 6' in height to obscure visibility at ground level from neighboring properties. Landscaping shall be a type and variety capable of

obscuring the visibility of the antenna within one year. The screening requirement may be reduced if landscaping inhibits the antenna's reception window, as determined by the Planning Director.

- b. Roof-mounted:
 - 1. Shall be located rear of center line of main structure.
- (ii) The antenna structure measures 24 inches or less in diameter or width, and when fully extended complies with the following maximum height standards:
 - a. Ground-mounted.
 - 1. Retractable antenna support structure fully extended including antenna(s) from finish grade: 75' and shall be retractable to 35' or less when not in use.
 - 2. Antenna support structure for vertical whip antenna(s): Maximum 35' height at base with maximum antenna height of 55'.
 - 3. Antenna support structures for array antennas in excess of 35' shall be retractable to 35' when not in use.
 - 4. Base of vertical whip antenna shall not exceed 35' with maximum antenna height of 55' from finish grade.
 - 5. Antenna support structures and antennas exceeding the above height limits are subject to approval of an exception. An exception or variance is not required if the above height limitations exceeds the maximum height allowed in the base district.
 - 6. All array antennas must be ground-mounted.
 - b. Roof-mounted.
 - 1. For vertical whip antennas, base shall not exceed 35', with 55' maximum antenna height from finish grade.
 - 2. Vertical whip antennas with a base height exceeding 35' and/or a maximum antenna height greater than 55' are subject to approval of an exception.
 - 3. Array antennas prohibited.
- (iii) The antenna boom measures 20 feet or less in length and is three inches or less in diameter.
- (iv) No antenna element exceeds the maximum height standards listed herein or two inches in diameter or width, with the exception of mid-element tuning devices which shall not exceed six inches in diameter or width.
- (v) Setbacks.
 - a. Front Yard: Antenna support structures shall not be located in the front yard as the term is defined in Appendix A – 9 Attachment 2 of the City of San Juan Capistrano Land Use Code.
 - b. Side Yard: Antenna support structures shall comply with setbacks for accessory structures. Overhangs, projections, arrays, and guy wires shall maintain a minimum 5' side yard setback. For corner lots,

overhangs, projections, arrays, and guy wires shall maintain a minimum 10' side yard setback closest to any adjacent street and/or park (whichever results in least visual impact).

- c. Rear Yard: Ground-mounted antenna support structures shall be located as far forward as possible from rear property line. A minimum rear setback of 5' shall be maintained for overhangs, projections, arrays, and guy wires.

- (vi) Finish. All antennas visible from off-site shall be in a finish deemed unobtrusive to the neighborhood where located, as determined by the Planning Director.

(D) Facilities owned and operated by the City or other public entity and located on public property.

(E) Wireless facilities erected and operated for emergency situations, as designated by the police chief or City Manager, so long as the facility is removed at the conclusion of the emergency.

(F) Wireless facilities proposed to be installed, operated, or modified within the public right of way shall be subject to Title 7, Chapter 10 "Wireless Facilities in Rights-of-Way."

(G) Wireless facilities that fall within the term "accessories" as defined in California Public Utilities Commission General Order 131-E, or any successor order.

- (d) Application types and approvals required. A person who proposes to install, operate, or modify a wireless facility subject to this Section 9-3.507 shall first obtain approval, as set forth in this subsection (d), unless the facility is exempt under Section 9-3.507(c). The shot clock periods established by the FCC are referenced here for convenience purposes only, and are not requirements of the San Juan Capistrano Municipal Code.

(1) Application Types.

(A) Type 1 – Collocation of a small wireless facility (60 Day Shot Clock). Type 1 applications shall be limited to applications wherein an applicant seeks to place a new small wireless facility upon an existing structure and either (i) the structure is not an existing tower or base station (as defined for eligible facilities request purposes) or (ii) the structure is an existing tower or base station (as defined for eligible facilities request purposes) but the proposed facility does not qualify as an eligible facilities request, If the completed facility would still meet the physical limits and requirements to meet the definition of a small wireless facility after the installation of the new equipment, then the application to install such new equipment is a Type I application.

(B) Type 2 – Collocation which does not qualify as Type 1 or a Type 5 (90 Day Shot Clock). Type 2 applications shall be limited to applications wherein an applicant is seeking to place a new wireless facility upon an existing structure which does not meet the definition of a small wireless facility or which will not meet the definition of a small wireless facility if and when the proposed new wireless facility equipment is installed upon the existing facility and/or structure and either (i) the structure is not an existing tower or base station (as defined for eligible facilities request purposes) or (ii) the structure is an existing tower or base station (as defined for eligible facilities request purposes) but the proposed facility does not qualify as an eligible facilities request.

(C) Type 3 – New small wireless facility on a new or replacement structure (90 Day Shot Clock). Type 3 applications shall be limited to applications seeking to install and/or construct a new small wireless facility that involves placement on a new or replacement structure.

(D) Type 4 – Other wireless facility (150 Day Shot Clock). Type 4 applications shall include any applications for the installation of a new wireless facility which does not meet the criteria for Type 1, 2, 3, 5, or 6 applications.

(E) Type 5 – Non-discretionary applications.

(i) Eligible facilities requests (60 Day Shot Clock). Type 5A applications shall include any applications that purport to meet the criteria for an eligible facilities request under federal law.

(ii) Collocation facilities (60 or 90 Day Shot Clock). Type 5B applications shall include a proposed collocation facility that meets all of the requirements of California Government Code section 65850.6.

(F) Type 6 – Temporary facilities. Type 6 applications shall include any applications for a temporary wireless facility as the term is defined in Appendix A – 9 Attachment 2 of the City of San Juan Capistrano Land Use Code.

(2) Permit Requirements. No wireless facility subject to this Section 9-3.507 shall be constructed, erected, placed, or modified anywhere within the City without first obtaining a permit pursuant to the requirements of this subsection (2) and without obtaining all permits required under any other applicable state, federal, or local laws or regulations.

(A) Conditional Use Permit Required. A conditional use permit shall be required for Type 3 and 4 applications, which shall be reviewed and processed in accordance with Section 9-2.317, Conditional Use Permit and the requirements of this Section 9-3.507.

(B) Administrative Approval Required. An administrative approval shall be required for Type 1 and 2 applications, which shall be reviewed and processed in accordance with Section 9-2.303 and the requirements of this Section 9-3.507,

except that the Planning Director's decision on administrative approvals for Type 1 and Type 2 wireless facilities may be appealed to the Zoning Administrator. The Zoning Administrator's decision on administrative approvals for Type 1 and Type 2 wireless facilities shall be final and not subject to further appeal.

(C) Temporary Use Permit Required. A temporary use permit shall be required for Type 6 applications, which shall be reviewed and processed in accordance with Section **9-2.347**, Temporary Use Permits of this Code and the requirements of this Section 9-3.507, except that the Planning Director's decision on Temporary Use Permits for wireless facilities shall be final and not subject to appeal.

(D) Non-Discretionary Approvals. A building permit shall be required for Type 5A applications that are determined to qualify as an eligible facilities request and Type 5B applications that are determined to qualify as a proposed collocation facility meeting all of the requirements of California Government Code section 65850.6.

(e) Application Submittal Requirements; Consultants.

(1) An applicant seeking an approval under this Section 9-3.507 shall complete and submit an application to the Department of Planning Services for review and processing, upon the form published by the Planning Director, which may be updated from time to time, and pay the associated application fees or deposits.

(2) The Planning Director is authorized, in his or her discretion, to select and retain independent consultant(s) in connection with the review of any application under this Section 9-3.507, including any issue that involves specialized or expert knowledge in connection with an application, such as application completeness or accuracy, structural engineering analysis, or compliance with FCC radio frequency emissions standards. The cost for the independent consultant shall be borne by the applicant.

(f) Findings.

(1) Findings for Approval of Type 3 and 4 Applications. The Planning Commission may approve a conditional use permit required by this Section 9-3.507, with or without conditions, only if, on the basis of the application and other materials or evidence provided in review thereof, all of the following findings can be made in an affirmative manner:

(A) The proposed use and design are consistent with the purpose, intent, and standards of this Code and any applicable specific plan or comprehensive development plan, except as otherwise approved;

(B) The site for the proposed use is adequate in size and shape to accommodate all yards, open spaces, setbacks, walls and fences, parking and loading areas,

fire and building code considerations, trash and recycling enclosures, and other features pertaining to the application;

(C) The site for the proposed use has adequate access and parking to support the use; and

(D) The wireless facility complies with all applicable requirements of this Section 9-3.507, including all requirements for the requested permit; all application requirements; and all applicable design, location, and development standards, or has met the requirements for a limited exception as outlined in subsection (h).

(2) Findings for Approval of Type 1 and 2 Applications. The Planning Director may approve an administrative approval application for Types 1 and 2, with or without conditions, only if, on the basis of the application and other materials or evidence provided in review thereof, the following finding can be made in an affirmative manner:

(A) The wireless facility complies with all applicable requirements of this Section 9-3.507, including all requirements for the requested permit; all application requirements; and all applicable design, location, and development standards, or has met the requirements for a limited exception as outlined in subsection (h).

(3) Findings for Approval of a Type 5A Application. The Planning Director may approve an application for Type 5A eligible facilities request, with or without conditions, only if, on the basis of the application and other materials or evidence provided in review thereof, all of the following findings can be made in an affirmative manner:

(A) The proposed modification meets each and every one of the applicable criteria for an eligible facilities request stated in 47 C.F.R. sections 1.6100(b)(3)–(9), or any successor provisions, after application of the definitions in 47 C.F.R. section 1.6100(b). The Planning Director shall make an express finding for each criterion; and

(B) The proposed facility will comply with all generally applicable laws.

(4) Findings for Approval of a Type 5B Application. The Planning Director may approve an application for Type 5B collocation facility, with or without conditions, only if, on the basis of the application and other materials or evidence provided in review thereof, the following finding can be made in an affirmative manner:

(A) The wireless facility complies with all of the requirements of Section 65850.6 of the California Government Code; and

(B) The wireless facility will comply with all generally applicable laws.

(5) Findings for Approval of a Type 6 Application. The Planning Director may approve a temporary use permit required by this Section 9-3.507, with or without conditions, only if, on the basis of the application and other materials or evidence provided in review thereof, all of the following findings can be made in an affirmative manner:

(A) All findings for approval required for a temporary use permit as specified in Section 9-2.347(j);

(B) The wireless facility complies with all applicable requirements of this Section 9-3.507, including all requirements for the requested permit; all application requirements; and all applicable design, location, and development standards, or has met the requirements for a limited exception as outlined in subsection (h); and

(C) The wireless facility will comply with all generally applicable laws.

(g) Decisions; Denial Without Prejudice.

(1) Decisions. The decisions made under this section shall be in writing. A denial must be supported by substantial evidence and:

(A) Cannot be based on the environmental effects of radio frequency (RF) emissions if the facility complies with the FCC's RF regulations; and

(B) Cannot violate state or federal law.

(2) Denial without prejudice. The denial of Type 5A or 5B application shall be without prejudice.

(3) Denial without prejudice due to failure to respond to notice(s) of incompleteness. To promote efficient review and timely decisions, any application governed under this Section 9-3.507 regardless of type may be denied without prejudice by the Planning Director when the applicant fails to tender a substantive response to the city within 120 calendar days after the Planning Director deems the application incomplete in a written notice to the applicant. The Planning Director, in his or her discretion, may grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the one hundred twentieth day that shows good cause to grant the extension. Good cause for an extension shall include, without limitation, delays due to circumstances outside the applicant's reasonable control.

(h) General location, design, and development standards. Each wireless facility subject to this Section 9-3.507 (except Type 5A and Type 5B) shall be designed, installed and

operated in compliance with these location, design and development standards, unless specifically stated otherwise in this Section 9-3.507.

(1) Location standards. This subsection identifies the location standards applicable to wireless facilities in the City.

(A) Residential (RA, HR, RSE, RS, RG, RM, VHD, MHP, MRD, PRD).

- (i) Wireless facilities may be located within the rights-of-way (as the term is defined in Section 7-10.02) of residential districts consistent with to the requirements of Title 7, Chapter 10 “Wireless Facilities in Rights-of-Way”. All other wireless facilities in residential districts are prohibited.

(B) Commercial (TC, TCE, NC, GC, OC).

- (i) Subject to the requirements in this Section 9-3.507, wireless facilities are allowed in commercial districts but must comply with the following standards:
 - a. Facility complies with the setback and location requirements of the underlying base district and is at least five (5) feet from the property line.
 - b. Facility is located in the rear or side yard, except street yard.
 - c. Roof-mounted facilities are permitted if mounted on flat portion of roof with parapets or other screening that matches structure architecture.

(C) Industrial/All Other Zones (CM, IP, A, P&I, Open Space, FM, SWF, PC, SP/PP).

- (i) Subject to the requirements in this Section 9-3.507, wireless facilities are allowed in industrial districts and all other districts listed above (P&I, Open Space, FM, SWF, PC, SP/PP), so long as such use is not prohibited under any specific plan or comprehensive development plan, and so long as the facility complies with the following standards:
 - a. Facility complies with the setback and location requirements of the underlying base district.
 - b. Facility is located in the rear or side yard and is at least five (5) feet from the property line.
 - c. Roof-mounted facilities are permitted if mounted on flat portion of roof with parapets or other screening that matches structure architecture.

(D) No wireless facility or its supporting structure shall be located in the area between the front property line and the main structure or building.

(2) Design and development standards. Wireless facilities shall be designed and developed to minimize their visual impact as viewed from surrounding properties and public streets. The following minimum standards shall apply:

(A) Stealth/Concealment. All wireless facilities must be stealth to the maximum extent feasible. Stealth concealment techniques include, without limitation:

- (i) Transmission equipment placed completely within existing or replacement architectural features such that the installation causes no visible change in the underlying structure;
 - (ii) Deployment of facilities on a pre-existing building, water tank or similar structure not built for the purpose of a wireless facility using elements, measures, and techniques that mimic or blend in with the underlying structure, surrounding environment or adjacent uses;
 - (iii) Deployment of roof-mounted facilities using parapets, cupolas or other screening that matches structure architecture, including use of a setback from the building's rooftop edge by the equivalent of the height of the facility or a minimum of 10 feet, whichever is greater;
 - (iv) New architectural features that mimic or blend with the underlying or surrounding structures in style, proportion and construction quality such that they appear part of the original structure's design; and
 - (v) Concealment elements, measures and techniques that mimic or blend with the underlying structure, surrounding environment or adjacent uses.
 - a. These include the following:
 - 1. Water towers or tanks on agricultural or equestrian properties.
 - 2. Trees of the same variety as surrounding trees so long as foliage can completely conceal equipment.
 - 3. Light poles which function for standard illumination.
- (B) Height. Wireless facilities may not exceed 50 feet above grade or the maximum height allowed by this Code for the underlying zoning district where the facility is proposed, whichever is greater.
- (C) Finishes. All exterior surfaces shall be painted, colored, and/or wrapped in flat, muted, subdued, nonreflective hues that match the underlying structure or blend with the surrounding environment. All exterior surfaces on wireless facilities shall be constructed from, or coated with, graffiti-resistant materials. All finishes shall be subject to the reviewing authority's prior approval.
- (D) Trees and Landscaping. Wireless facilities shall not be installed (in whole or in part) on new poles within any tree drip line. All wireless facilities proposed to be placed in a landscaped area must include landscape and/or hardscape features (which may include, without limitation, trees, shrubs and ground cover) and a landscape maintenance plan. The existing native vegetation shall be maintained to the maximum extent feasible. The reviewing authority may

require additional landscape features to screen the wireless facility from public view, avoid or mitigate potential adverse impacts on adjacent properties or otherwise enhance the stealth techniques required under this chapter. All plants proposed or required must be reviewed as part of a formal landscaping plan and approved by the City.

- (E) Lights. Wireless facilities may not include exterior lights other than as may be required under the Federal Aviation Administration, FCC, or other applicable Federal or State governmental regulations. All exterior lights permitted or required to be installed must be installed in locations and within enclosures that mitigate illumination impacts on other properties to the maximum extent feasible. Any lights associated with the electronic equipment shall be appropriately shielded from public view. Any light beacons or lightning arresters shall be included in the overall height calculation.
- (F) Signage, Advertisements. All wireless facilities must include signage that accurately identifies the equipment owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Wireless facilities may not bear any other signage or advertisements unless expressly approved by the reviewing authority, required by law or recommended under FCC or other Federal governmental agencies for compliance with RF emissions regulations.
- (G) Security Measures. To prevent unauthorized access, theft, vandalism, attractive nuisance or other hazards, reasonable and appropriate security measures, such as fences, walls and anti-climbing devices may be approved. Security measures shall be designed and implemented in a manner that enhances or contributes to the overall stealth, and the reviewing authority may condition approval on additional stealth elements to mitigate any aesthetic impacts, which may include, without limitation, additional landscape or hardscape features. Barbed wire, razor ribbon, electrified fences or any similar security measures are prohibited. Alarm systems shall not include any visible alarms or audible sirens or other sounds. All screening elements including building and landscape elements shall be maintained in a safe and structurally sound condition consistent with approved plans.
- (H) Fire Safety. All wireless facilities shall be designed by qualified, licensed persons to provide the maximum protection that is technically feasible to prevent electrical and fire hazards. All wireless facilities shall be proactively monitored and maintained to continue and, if possible, improve the safety design.
- (I) Compliance With Laws. All wireless facilities must be designed and sited in compliance with all applicable Federal, State, regional, and local laws, regulations, rules, restrictions and conditions, which includes without limitation the California Building Standards Code, Americans with Disabilities Act,

general plan and any applicable specific plan, this Code and any conditions or restrictions in any permit or other governmental approval issued by any public agency with jurisdiction over the project.

(J) Public health. No wireless facility shall be sited or operated in such a manner that it produces, either by itself or in combination with other such facilities, at any time power densities in any inhabited area that exceed the FCC's maximum permissible exposure (MPE) limits for electric and magnetic field strength and power density for transmitters or any more restrictive standard subsequently adopted or promulgated by the City, county, state or federal government. Absolute compliance with FCC Office of Engineering Technology (OET) Bulletin 65, as amended, is mandatory, and any violation of this subsection (J) shall be grounds for the City to immediately terminate any permit granted hereunder, or to order the immediate service termination of any nonpermitted, noncomplying facility constructed within the City.

(K) Electric Service. The City strongly encourages site operators to use flat-rate electric service when it would eliminate the need for a meter and is available. Backup power supply (i.e., generator or backup batteries) shall be enclosed within a structure and screened as may be required by the Planning Director and/or hearing body.

(L) Adequate grounding. Every wireless facility must be adequately grounded with a ground wire for protection against a direct strike of lightning in a manner acceptable to the Building Official.

(3) Administrative Detailed Guidelines for Wireless Facilities. The Planning Commission may adopt administrative detailed guidelines for wireless facilities to clarify the location, design, and development standards in this Section 9-3.507. These administrative guidelines may include more specific standards for particular wireless facility location, design, and development, but shall not unreasonably discriminate between functionally equivalent service providers. If a conflict arises between the development standards specified in this Section 9-3.507 and the administrative detailed wireless facility design guidelines, the development standards specified in this Section 9-3.507 shall control.

(i) Limited exceptions to location, design, and development standards.

(1) The Planning Director and/or the hearing body considering the application may grant exceptions to the design, development and location standards for wireless facilities subject to this Section 9-3.507, if it is determined that denial of an application or strict adherence to the design, development and location standards would:

(A) Prohibit or effectively prohibit the provision of personal wireless services, within the meaning of federal law; or

- (B) Violate applicable laws or regulations other than (1) above; or
 - (C) Involve only minor noncompliance with a requirement, provided such noncompliance either results in no increase in visual harms to the community or provides other benefits.
- (2) To be considered, the applicant must request an exception at the time of application submittal, and the applicant has the burden of proof.
 - (3) If the Planning Director and/or the hearing body considering the application finds that an exception is warranted, said requirements may be waived, but only to the minimum extent required to avoid the prohibition, violation, or technically infeasible location, design or installation or minor noncompliance.
- (j) Standard conditions of approval. All permits issued in accordance with this Section 9-3.507, except for Type 6 temporary facility, whether approved by the Planning Director and/or the hearing body considering the application, or deemed approved by the operation of law, shall be automatically subject to the conditions in this subsection (j). The Planning Director and/or the hearing body considering the application shall have discretion to modify, supplement, waive or amend these conditions on a case-by-case basis as may be necessary or appropriate under the circumstances to protect public health and safety or allow for the proper operation of the approved facility consistent with the goals of Section 9-3.507.
- (1) Permit term. The permit for a wireless facility will automatically expire at 12:01 a.m. local time exactly 10 years and one day from the issuance date. Any other permits or approvals issued in connection with an application subject to this section, which includes without limitation any permits or other approvals deemed- granted or deemed- approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law. This condition shall not apply to Type 5A and Type 5B facilities.
 - (2) Compliance with Laws. The permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations and other rules.
 - (3) Noise. All wireless facilities must be compliant with all applicable noise regulations, which includes, without limitation, any noise regulations in this Code. The City may require the applicant to incorporate appropriate noise-baffling materials and/or noise-mitigating strategies to avoid any ambient noise from equipment reasonably likely to exceed the applicable noise regulations.
 - (4) Contact information for responsible parties. The permittee shall at all times maintain accurate contact information for all parties responsible for the wireless facility, which shall include a phone number, street mailing address and email address for at least one natural person. All such contact information for responsible

parties shall be provided to the Planning Director upon permittee's receipt of the Planning Director's written request, except in an emergency determined by the city when all such contact information for responsible parties shall be immediately provided to the Planning Director upon that person's verbal request.

- (5) Indemnities. The permittee and, if applicable, the owner of the private property upon which the facility is installed shall defend, indemnify and hold harmless the City of San Juan Capistrano, its agents, officers, officials and employees (1) from any and all damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs of mandamus and other actions or proceedings brought against the City or its agents, officers, officials or employees to challenge, attack, seek to modify, set aside, void or annul the City's approval of the permit, and (2) from any and all damages, liabilities, injuries, losses, costs and expenses and any and all claims, demands, law suits or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors or independent contractors. In the event the City becomes aware of any such actions or claims the City shall promptly notify the permittee and the private property owner, if applicable, and shall reasonably cooperate in the defense. It is expressly agreed that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall reimburse city for any costs and expenses directly and necessarily incurred by the City in the course of the defense.
- (6) Adverse impacts on adjacent properties. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification and removal of the wireless facility.
- (7) General maintenance. The site and the wireless facilities, including but not limited to all landscaping, fencing, screening, and related transmission equipment, must be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval. If the approved plans do not depict or include screening requirements, the following minimum screening requirements shall apply: (1) all ground equipment must be completely enclosed by solid appearing gates, fence, decorative wall, or dense plantings which will adequately screen the equipment; and (2) all antennas must be screened from the public right-of-ways by implementing enclosures or other measures that match the color and finish of the buildings or structures they are placed on.
- (8) Graffiti removal. All graffiti on wireless facilities must be removed at the sole expense of the permittee within 48 hours after notification from the City.

- (9) RF emissions exposure compliance. All wireless facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards. After transmitter and antenna system optimization, but prior to unattended operations of the wireless facility, permittee or its representative must provide the City documentation demonstrating compliance with all applicable RF emissions exposure standards as certified by a licensed engineer.
- (10) Build-out period. This permit shall lapse one year after its date of approval unless one of the following has occurred:
- (A) A building permit has been issued, substantial money has been expended, and construction diligently pursued; or
 - (B) The wireless facility is constructed or modified as approved and in operation; or
 - (C) The build-out period is extended by the City authority which originally approved the permit.
- (11) Lapse. The permit shall automatically lapse if, after the commencement of operation of the wireless facility, there is a discontinuance of the exercise of the entitlement granted by the permit for six (6) consecutive months or more.
- (12) Testing. Testing of back-up generators and other noise producing equipment shall take place on weekdays only, and only between the hours of 8:30 a.m. and 4:30 p.m., except that testing is prohibited on holidays that fall on a weekday. In addition, testing is prohibited on weekend days.
- (13) Utilities undergrounded. Unless the wireless facility is on a utility pole, extensions of electrical and telecommunications land lines to serve the wireless facility shall be underground.
- (14) Encroachment. Permittee must obtain an encroachment permit for any work, staging, operations, or construction access in the public right-of-way or on City-owned public property.
- (15) Other approvals. The permittee shall obtain all other applicable permits, approvals, and agreements necessary to install and operate the wireless facility in conformance with federal, state, and local laws, rules, and regulations.
- (16) Modifications. No changes shall be made to the approved plans, except for like-for-like modifications, replacements, alterations, and/or additions consist of upgrades or exchanges of equipment that are substantially similar in appearance and the same or less in size, dimensions, weight, and RF emissions to the then-

existing and approved equipment, without review and approval in accordance with this Section 9-3.507.

- (17) Performance and maintenance. All wireless facilities, including but not limited to fences, cabinets, poles and landscaping, shall be maintained in good working condition over the life of the permit. This shall include keeping the structures maintained to the visual standards established at the time of approval. The facility shall remain free from trash, debris, litter, graffiti and other forms of vandalism. Any damage shall be repaired as soon as practicable, and in no instance more than 10 calendar days from the time of notification by the city or after discovery by the permittee.
- (18) Bond. Prior to issuance of a building or electrical permit, the permittee shall file with the City, and shall maintain in good standing throughout the term of the approval, a bond or other surety or another form of security for the removal of the wireless facility in the event that the use is abandoned or the permit expires, or is revoked, or is otherwise terminated. The security shall be in the amount equal to 100% of the cost of physically removing the wireless facility and all related facilities and equipment on the site, based on the higher of two contractors' quotes for removal that are provided by the permittee.
- (19) City access. The City reserves the right of its employee, agents, and designated representatives to inspect permitted wireless facilities and property upon reasonable notice to the permittee. In case of an emergency or risk of imminent harm to persons or property within the vicinity of permitted facilities, the City reserves the right to enter upon the site of such facilities and to support, disable, or remove those elements of the facilities posing an immediate threat to public health and safety. The City shall make an effort to contact the permittee, prior to disabling or removing wireless facility elements.
- (20) Encourage grouping facilities. Where the wireless facility can accommodate another wireless facility upon its facility or upon the same site, the owner and operator of the facility shall allow another carrier to install its facilities and equipment thereon, provided the parties can mutually agree upon reasonable terms and conditions.
- (21) Interference. To the extent required by applicable federal rules and regulations, the operator of a wireless facility shall correct interference problems experienced by any person or entity with respect to equipment such as television, radio, computer, and telephone reception or transmission that are caused by the facility. If a federal agency with jurisdiction over such matters notifies the permittee that a facility is operating in violation of federal standards, the permittee shall promptly provide the Planning Director with a copy of any notice of such violation issued by any federal agency and further shall notify the Planning Director as applicable once the facility comes back into compliance with applicable standards.

(22)Discontinuance of use/Permit Expiration. The wireless facility shall be removed by permittee within 90 calendar days of the discontinuation of the use or of permit expiration, whichever is earlier, and the site shall be restored to its previous condition, unless the permittee has obtained all new and applicable entitlements, permits, and/or approvals for the wireless facility and its continued use of the site. For facilities located on City property, this requirement shall be included in the terms of the lease. For facilities located on other sites, the property owner is responsible for removal of the facility within 90 calendar days of the discontinuation of the use or of permit expiration, whichever is earlier, unless the permittee has obtained all new and applicable entitlements, permits, and/or approvals for the wireless facility and its continued use of the site. The permittee shall provide the Planning Department with a notice of intent to vacate the site a minimum of 30 calendar days before vacation.

(23)Conditions of Approval for Type 5A Facility. In addition to the foregoing Standard Conditions of Approval (except (1) which does not apply), any eligible facilities request approved pursuant to this Section 9-3.507 shall be subject to the following standard conditions unless modified by the Planning Director:

(A)No permit term extension. The city's grant or grant by operation of law of a permit for an eligible facilities request constitutes a federally mandated modification to the underlying permit or approval for the subject tower or base station. The city's grant or grant by operation of law of a permit for an eligible facilities request will not extend the permit term for any permit or other underlying regulatory approval and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station.

(B)No waiver of standing. The city's grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the City to challenge any federal statute or regulation concerning eligible facilities request or any eligible facilities request.

(C)Permit subject to conditions of underlying permit. Permits for eligible facilities requests shall be subject to the terms and conditions of the underlying permit for the existing tower or base station.

(24)Conditions of Approval for Type 5B Facility. In addition to the foregoing Standard Conditions of Approval (except (1) which does not apply), any Type 5B application approved pursuant to this Section 9-3.507 shall be subject to the following standard conditions unless modified by the Planning Director:

(A)No permit term extension. The city's grant or grant by operation of law of a permit for a Type 5B facility constitutes a state-mandated modification to the underlying permit or approval for the subject wireless telecommunications colocation facility (as defined in Cal. Gov. Code Section 65850.6). The city's grant or grant by operation of law of a permit for a Type 5B facility will not extend

the permit term for any permit or other underlying regulatory approval and its term shall be coterminous with the underlying permit or other regulatory approval for the subject wireless telecommunications colocation facility.

(B) Permit subject to conditions of underlying permit. Permits for Type 5B colocation requests shall be subject to the terms and conditions of the underlying permit for the existing wireless telecommunications colocation facility.

(k) Revocation.

(1) Permittee shall fully comply with all conditions related to any permit or approval granted under this Section 9-3.507 . Failure to comply with any condition of approval or maintenance of the facility in a matter that creates a public nuisance or otherwise causes jeopardy to the public health, welfare or safety shall constitute grounds for revocation. If such a violation is not remedied within a reasonable period, following written notice and an opportunity to cure, the City may schedule a public hearing before the Planning Commission to consider revocation of the permit. The Planning Commission revocation action may be appealed to the City Council pursuant to Section **9-2.311**, Appeals.

(2) If the permit is revoked pursuant to this subsection (k), the permittee shall remove its facility at its own expense and shall repair and restore the site to the condition that existed prior to the facility's installation or as required by the city within 90 days of revocation in accordance with applicable health and safety requirements. The permittee shall be responsible for obtaining all necessary permits for the facility's removal and site restoration.

(3) At any time after 90 days following permit revocation, the City may require the facility to be removed and restoration of the premises as the city deems appropriate. The city may, but shall not be required to, store the removed facility (or any part thereof). The facility permittee shall be liable for the entire cost of such removal, repair, restoration, and storage. The City may, in lieu of storing the removed facility, convert it to the City's use, sell it, or dispose of it in any manner deemed appropriate by the City.

Section 7-8.06 Other exceptions.

The provisions of this chapter and any resolution adopted pursuant to the provisions of Section 7-8.03 of this chapter shall not apply to the following types of facilities, unless otherwise provided in such resolution:

- (a) Poles or electroliers used exclusively for street lighting;
- (b) Overhead wires (exclusive of supporting structures) crossing any portion of a district within which overhead wires have been prohibited, or connecting to buildings on the perimeter of a district, where such wires originate in an area from which poles, overhead wires, and associated overhead structures are not prohibited;
- (c) Poles, overhead wires, and associated overhead structures used for the transmission of electric energy at nominal voltages in excess of 34,500 volts;
- (d) Overhead wires attached to the exterior surface of a building by means of a bracket or other fixture and extending from one location on the building to another location on the same building or to an adjacent building without crossing any public street;
- (e) Antennas and wireless facilities subject to Section 9-3.507;
- (f) Equipment appurtenant to underground facilities, such as surface-mounted transformers, pedestal-mounted terminal boxes and meter cabinets, and concealed ducts; and
- (g) Temporary poles, overhead wires, and associated overhead structures used, or to be used, in conjunction with construction projects.

Section 9-2.303 Administrative approvals.

- (a) Authority of the Planning Director. The Planning Director has been granted authority of administrative approval in accordance with Chapter 3 Zoning Districts and Standards of this title, subject to specific findings and procedures. Except for wireless facilities subject to Section 9-3.507, the Planning Director may also refer projects identified under this section to the Design Review Committee for recommendation prior to final approval, upon determining that input from the Design Review Committee is warranted based on proposed design, colors, materials, massing, architectural style, compatibility with surrounding properties, landscaping, lighting, signage, or other similar design feature. The following items are hereby delegated to the Planning Director or designee for review and approval:
- (1) Antennas and wireless facility applications in compliance with the provisions of Section 9-3.507;
 - (2) Awnings in all nonresidential districts where the awning is structurally attached to the principal permitted structure in compliance with Section 9-3.501, Accessory Uses and Structures;
 - (3) Building additions not to exceed 10% of the gross floor area of the existing building or 1,000 square feet, whichever is less, provided that the Planning Director finds that the expansion: (A) will not change the use or density of the project and that all required parking, landscaping, open space and setbacks and other required features are maintained or provided on the site; (B) will not result in new or additional environmental impacts pursuant to CEQA; (C) conforms to all applicable Code requirements; (D) is consistent with the City's design guidelines and the character of the existing development or land use approval with respect to architectural style, colors, materials, massing, scale, and other design features;
 - (4) Minor modifications to existing development projects or approvals, provided that the Planning Director finds that the minor modification: (A) does not change the use, intensity, or density of the project; (B) does not result in new or additional environmental impacts pursuant to CEQA; (C) does not deviate from applicable Code requirements; (D) is consistent with the City's design guidelines and the character of the existing development or approval with respect to architectural style, colors, materials, massing, scale, landscaping, lighting, and other design features. Proposed minor modifications to colors, windows and doors, landscape palette, signage, lighting, and other design features shall be routed to the Design Review Committee for review, whenever the Planning Director determines that the modifications may change the visual character of the building or site;
 - (5) Minor modifications to grading plans or grading of existing lots, pursuant to the Section 9-4.423(b);
 - (6) Equestrian shows and exhibits as permitted in compliance with the provisions under Section 9-3.515, Equestrian Standards;
 - (7) Exterior lighting as permitted in individual districts in compliance with the provisions of Section 9-3.529, Lighting Standards;

- (8) Fences exceeding maximum height requirements provided they are in compliance with the provisions of Section 9-3.517, Fences, Walls, and Hedges;
 - (9) Home business permit applications that comply with the provisions of Section 9-3.523, Home Business;
 - (10) Minor modifications to approved tentative tract or parcel maps, pursuant to Section 9-4.423(b);
 - (11) Outdoor dining, provided that a finding is made that adequate parking is provided for the outdoor dining use;
 - (12) Outdoor display of merchandise and product display for an existing building provided that such outdoor display complies with the provisions under Section 9-3.549, Storage and Display;
 - (13) Outdoor storage as permitted in individual districts in compliance with the provisions under Section 9-3.549, Storage and Display;
 - (14) Roof eaves and gables on accessory structures in excess of 12 inches, measured from the vertical side of the unit, in compliance with Section 9-3.501, Accessory Uses and Structures;
 - (15) Sign permit applications in compliance with the provisions of Section 9-3.543, Signs;
 - (16) Special activity permit applications in compliance with the provisions of Section 9-3.547, Special Activities;
 - (17) Minor alterations to structures listed on the Inventory of Historic and Cultural Landmarks (IHCL) consisting of replacement or modification of doors and windows; the addition of first floor porches and decks; the replacement of roofing material or building siding; minor improvements to landscaping, hardscape, walls, fences, arbors, and other landscape features; and similar minor site or building alterations, provided that any such alteration has been reviewed for conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995, Weeks and Grimmer).
- (b) Application completeness. The Planning Director shall prescribe the type and form of information required to process an administrative approval, provided that during the review process other information may be required by the Planning Director or other reviewing authority to complete the review process. Once an application is received by the Department of Planning Services, the application will be reviewed for completeness. If the Department of Planning Services finds the application to be complete, then the application will be processed according to the procedure described in subsection (c), Process. If the application is found to be incomplete, the Department of Planning Services will notify the applicant in writing within 30 days what additional information is required, and the application will not be processed until that information is received by the Department of Planning Services.
- (c) Process. Upon receipt of a complete application form and all supporting information, the Planning Director shall review and evaluate the application based on the applicable provisions of this Land Use Code and shall approve, deny, approve subject to modifications or conditions, or refer the project to the Planning

Commission for review and action pursuant to Section 9-1.109(f), except that the Planning Director may not refer Administrative Approvals for wireless facilities subject to Section 9-3.507 to the Planning Commission. When determined to be warranted based on the nature or intensity of the project, the Planning Director shall provide mailed notice to contiguous property owners and any other owners of property which, in his/her determination, have the potential to be affected by the proposed project, no later than 10 days prior to the decision date, pursuant to Section 9-2.302(h). Said notice shall include information about the proposal, the location of the project site, environmental determination, date of the proposed decision, and contact information for the Planning Department.

- (d) Time limit for implementation. An administrative approval that modifies a prior land use approval (such as an architectural control modification) shall be valid until the expiration date of the approval that it modifies, and may be extended concurrently with any extensions granted for the concurrent approval(s). For other administrative approvals, the Planning Director may establish an expiration date, where deemed appropriate, not to exceed an initial approval period of 12 months, during which time the use or improvement that is the subject of the administrative approval must take place. One time extension not to exceed an additional 12 months may be granted by the Planning Director for an administrative approval filed with no other applications, provided that no substantial changes have been made to the approved plan and that all the original findings and conditions of approval are determined by the Planning Director to remain valid.
- (e) Appeals. Decisions of the Planning Director regarding administrative approvals may be appealed in accordance with Section 9-2.311, Appeals, except that the Planning Director's decision on administrative approvals for antennas and wireless facilities subject to Section 9-3.507 shall be final and not subject to appeal.

Section 9-2.317 Conditional use permit.

- (a) Purpose and intent. Chapter 3 (Zoning Districts and Standards) of this title contains listings of land uses that are permitted within the various zoning districts upon approval of a conditional use permit (CUP). Such uses require approval of a CUP for their establishment because, although such uses may be deemed consistent with the purpose and intent of the district, they typically have characteristics that require special regulation in order to avoid or minimize potential adverse impacts on surrounding properties. Therefore, each such proposed conditional use shall be reviewed individually to determine whether the subject land use should be permitted at the particular location proposed and what special conditions should be placed on the establishment and operation of an approved conditional use permit. The conditional use permit process is intended to provide an opportunity for public review and evaluation of site-specific requirements and characteristics; to provide adequate mitigation of any potentially adverse impacts; and to ensure that all site development regulations and performance standards are provided in accordance with this Land Use Code. In addition, the conditional use permit provides a means of monitoring compliance with conditions of operation that may be applied to the use in order to protect public health, safety, and welfare, and to ensure compliance with the General Plan.
- (b) Applicability. Only those uses listed in the District Regulations of Chapter 3 Zoning Districts and Standards of this title as permitted conditional uses or those uses added to such listing by “determination of use” (ref. Article 2 District Regulations: General Provisions of Chapter 3 of this title) may be approved within a given district by means of a CUP. No person shall undertake, conduct or use, or cause to be undertaken, conducted or used, any development projects that require a conditional use permit, without having first complied with the provisions of this section.
- (c) Conditional use permit review process.
 - (1) Applications for conditional use permits may be filed with the Department of Planning Services by a record owner of the property in question or by the owner’s authorized agent. The Planning Director shall prescribe the form of application and the supporting information required to initiate both environmental review (pursuant to Article 2 Environmental Review Procedures of Chapter 2 of this title) and the CUP application review. A preliminary development review meeting between city staff and the applicant may be conducted prior to filing of the formal application, pursuant to Section 9-2.301(c).
 - (2) Each applicant for a CUP shall submit information deemed necessary to complete environmental review and the consideration of the application itself, along with the required fee or deposit as established by City Council resolution. The application shall be accompanied by the required number of site plan maps, floor plans, elevations, and other documentation on site conditions as required by staff to review the proposal.

- (3) Once an application is received by the Department of Planning Services, the application will be reviewed for completeness and processed pursuant to the timelines established in Section 9-2.301
 - (4) The Planning Commission may have the authority to approve, deny, or approve with conditions CUP applications at a public hearing noticed pursuant to Section 9-2.302(f). The Planning Director may forward the CUP application to various City boards and commissions for review and recommendation on design, circulation and traffic, cultural resources, recreation or trails, as deemed appropriate by the Director prior to scheduling the CUP for a public hearing by the Planning Commission.
- (d) Findings. In order to approve a CUP application, the reviewing authority shall make the following findings, except for approvals of a CUP application for wireless facilities subject to Section 9-3.507, which shall be subject to the findings required in Section 9-3.507(f)(1):
- (1) The proposed use and design are consistent with the maps and policies of the General Plan;
 - (2) The proposed use and design are consistent with the purpose, intent, and standards of the Land Use Code and any applicable specific plan or comprehensive development plan, except as otherwise approved;
 - (3) The site for the proposed use is adequate in size and shape to accommodate all yards, open spaces, setbacks, walls and fences, parking and loading areas, fire and building code considerations, trash and recycling enclosures, and other features pertaining to the application;
 - (4) The proposed use and the ongoing operation of the use are compatible with abutting properties and the permitted uses thereof, and will not generate excessive light, noise, vibration, odors, visual blight, traffic, or other disturbances, nuisances, or hazards; and
 - (5) The site for the proposed use has adequate access and parking to support the use.
- (e) Conditions of approval. In granting any conditional use permit, the reviewing authority shall affix those conditions that it deems necessary in order to safeguard the public health, safety and general welfare of the district and to ensure compliance with the General Plan. Where the proposed use, adjacent land uses, environmental effects or limitations, topography, or traffic circulation is found to so require, the reviewing authority may establish more stringent regulations than those otherwise specified for the zone district in which the project is located. The City may require dedication of land or easements for public use, provided that there is a reasonable relationship between the required dedication and the impact of the proposed development, and that the required dedication is related both in nature and extent to the impact of the proposed development. In order to mitigate the possible adverse impact of a conditionally-permitted use on surrounding properties and to ensure overall consistency of the use with the Land Use Code and the General Plan, conditions may include, but are not limited to, restrictions on hours of operation; types of activities; noise levels; lighting levels and hours; provision and maintenance

of buffer areas, yards and spaces; provision and maintenance of landscaping; regulation of ingress and egress; regulation of signs; required site maintenance; parking management; waste management; or other operational considerations as deemed appropriate by the reviewing authority.

- (f) Establishment of use. Use of property as authorized by an approved conditional use permit shall adhere to the following requirements:
 - (1) Time period for establishment. Conditional use permits, when approved, authorize the establishment and operation of a particular land use at a particular location. As such, the establishment and development of an approved conditional use permit must be diligently pursued. Therefore, the conditional use must be established at the approved location within a time period specified in the CUP approval by the reviewing authority, which shall not exceed two years. Establishment of the use shall be deemed to consist of the satisfaction of all relevant CUP conditions of approval and one of the following three actions: (i) the issuance of a building permit for new construction (if said permit expires, approval of conditional use permit shall become null and void); (ii) the issuance of a certificate of use and occupancy for the establishment of a conditional use in an existing structure; or (iii) the commencement of operation of the conditional use permit in cases where no construction or existing structure is involved (e.g., resource extraction). If the preceding requirements are not met within the time period specified in the CUP approval, the conditional use permit shall be rendered null and void. The Zoning Administrator may extend the time period for meeting the preceding requirements for establishment of the use up to one additional year, after holding a public hearing noticed pursuant to Section 9-2.302(f). Additional conditions may be imposed on a CUP in conjunction with a time extension, provided that such new conditions may only be imposed following a public hearing to receive testimony on the proposed additional conditions.
 - (2) Change of ownership. Conditional use permit approval shall apply only to the property for which the application was made, and shall apply to that property as long as the use for which approval was granted is in effect, regardless of changes in ownership.
 - (3) Duration of a conditional use. The reviewing authority may establish a reasonable time period for the duration of a conditional use permit on a site, based on substantial evidence that establishing an expiration date is necessary to protect public health, safety, and welfare and comply with applicable provisions of the General Plan and Land Use Code. Where no expiration date is established by the reviewing authority, the conditional use may continue to operate provided that it is in compliance with all conditions of approval and other applicable Code requirements.
- (g) Conditional uses existing on the effective date of this Code amendment.
 - (1) Any use existing on the effective date of this Code or the Official Zoning Map or any amendment thereto that was permitted subject to an approved conditional use permit, shall be deemed a pre-existing conditional use. Such

- use may continue in accordance with this Code, provided that the use is operated and maintained in compliance with the conditions prescribed at the time of its establishment, if any.
- (2) Any expansion, alteration, or reconstruction of a use or building containing a previously approved conditional use which has become nonconforming due to adoption of this Code or any subsequent amendments thereto shall comply with Section 9-3.533 regulating nonconforming uses, until such use is brought into conformance with the Land Use Code.
 - (3) Any use existing on the effective date of this Code or the Official Zoning Map or amendments thereto which would require approval of a conditional use permit to be established in that zone, but for which such approval has not been obtained, shall be deemed a nonconforming use and regulated by Section 9-3.533, except that the owner may file an application for a conditional use permit to legalize the use along with any proposed expansion, alternation, or reconstructions which comply with the requirements of this Code. Approval of any such CUP application would eliminate the classification of the property as “nonconforming.”
- (h) Minor modifications. Revisions or modification of an approved conditional use permit may be requested by the applicant in accordance with this section. Minor revisions to an approved CUP which will not increase or change the use or intensity of the use or impact fire and life safety, may be reviewed administratively pursuant to Section 9-2.303, Administrative Approvals. Major revisions or modifications to an approved CUP such as a change in conditions, expansion, intensification, location, hours of operation, or any change which may have the potential to impact fire and life safety, shall be reviewed by the Planning Commission pursuant to the same procedure used for a new CUP. Modifications shall be consistent with the City’s General Plan and surrounding community character.
 - (i) Discontinuance of, conditional use. Whenever any use of land, building or premises established under a conditional use permit is discontinued for a period of one year or more, it shall be unlawful to reestablish such use unless a new conditional use permit is approved in accordance with the provisions of this section.
 - (j) Appeals. Decisions on conditional use permit applications may be appealed to the City Council in accordance with Section 9-2.311, Appeals.
 - (k) Consistency with approved plans. A conditional use permit approval shall pertain only to those plans reviewed and approved with the CUP. Further, all plans approved with a CUP shall be considered an integral part of the CUP approval. The Planning Director shall ensure that any final working drawings for grading or construction authorized by a CUP approval are consistent with said previously-reviewed plans prior to release of working drawings for plan check.
 - (l) Periodic review. The Planning Commission may periodically review any conditional use permit to ensure that it is being operated in a manner consistent with conditions of approval or in a manner that is not detrimental to the public health, safety, or welfare, or materially injurious to persons or properties in the vicinity. If, after review, the Planning Commission deems that there is sufficient evidence to warrant a full examination, then a public hearing date shall be set pursuant to Section 9-2.302(m).

- (m) City revocation or modification.
 - (1) Any conditional use permit granted pursuant to this section, or granted under any prior Land Use Code of the City, may be revoked upon a finding by the Planning Commission that one or more of the following conditions exist:
 - (A) That the use is detrimental to the public health or safety or is a nuisance;
 - (B) That the permit or approval was obtained through misrepresentation on submittal documents, plans and/or other information provided to the City;
 - (C) That the applicant or successors in interest has not complied with one or more of the conditions of approval of the permit, or approval requirements.
 - (2) Any such finding by the Planning Commission shall be made after a public hearing of which the initial applicant (or any successor of record whose address has been furnished) shall be given 10 days of advance written notice by first class mail directed to the applicant's address of record (or such successor's address so furnished) as per the files of the Planning Department. Said notice shall contain a notification of the reasons that the revocation is being considered. The finding of the Planning Commission and the determination pursuant thereto, shall be subject to appeal pursuant to Section 9-2.311. Action of the Planning Commission, or the City Council on appeal, shall be by resolution, and shall contain specific findings and actions relative to the revocation.
 - (3) Notwithstanding the provisions set forth above, the Planning Commission, or the City Council on appeal, may act to modify the conditions of approval, and/or may grant a period of time within which the use may be reactivated, or within which time period noncompliance with conditions may be remedied.
- (n) New application following denial or revocation. Following the denial or revocation of a conditional use permit application, no application for a conditional use permit for the same or substantially the same use and design, on the same or substantially the same site, shall be filed within one year from the date of denial or revocation.
- (o) If the use for which the conditional use permit was issued has ceased or been suspended for a period of one year or more, the conditional use permit granted for said use shall expire, and any proposal to re-establish the same use on the same property will be subject to issuance of a new conditional use permit pursuant to the standards and requirements in effect as of the date of such subsequent approval.

Section 9-2.347 Temporary use permits.

- (a) Introduction. Certain temporary uses of land and structures are permitted within the City as specified in Section 9-3.553, Temporary Uses and Structures and as permitted through issuance of a temporary use permit in accordance with this section. The purpose of regulating land use activities of a temporary nature is to protect the public health, safety, and welfare; to ensure that temporary uses will be compatible with surrounding land uses; to protect rights of adjacent residents and property owners; to minimize adverse effects on surrounding properties and the environment; and to ensure that a temporary use is removed in a timely manner and that the site is restored to its original condition.
- (b) Uses allowed by temporary use permit. Any use identified in Section 9-3.553, Temporary Uses and Structures, may be permitted by approval of a temporary use permit. Other temporary uses which are determined by the Planning Director to be similar in nature and intensity to the uses listed in Section 9-3.553 may be permitted by approval of a temporary use permit, provided, however, that this process is not intended to allow establishment of a new use on property which would otherwise require discretionary land use approval. Establishment of a use in temporary or modular buildings does not constitute a temporary use, except as provided in Section 9-3.553
- (c) Application for temporary use permit. Application forms and required application information for the establishment of temporary uses shall be as prescribed by the Planning Director. Applications shall be submitted to the Department of Planning Services along with the required fee as established by City Council resolution. Once an application is received by the Department of Planning Services, the application will be reviewed pursuant to the timelines in Section 9-2.301. The Planning Director may require additional information where deemed necessary to complete the City's review of the application.
- (d) Environmental review. The Environmental Administrator shall review applications for temporary use permits pursuant to the Environmental Quality Act.
- (e) Reviewing authority. The Planning Director shall have the authority to approve, approve with conditions, or deny application for the establishment of temporary uses subject to findings. In cases where the Planning Director determines that the temporary use may have impacts on surrounding properties or the general public, the Planning Director may refer the application to the Planning Commission for review and final action, except that the Planning Director may not refer Temporary Use Permits for temporary wireless facilities subject to Section 9-3.507 to the Planning Commission.
- (f) Notice requirements. Prior to rendering a decision the Planning Director shall provide written notice to contiguous property owners, and may expand noticing to property owners in the area, of the requested temporary use, pursuant to Section 9-2.302(h). In the event the Planning Director refers the application to the Planning Commission, notice of a public meeting shall be given pursuant to Section 9-2.302(g).
- (g) Appeals. Any decision regarding a temporary use permit may be appealed in accordance with Section 9-2.311, Appeals, except that the Planning Director's

decision on Temporary Use Permits for temporary wireless facilities subject to Section 9-3.507 shall be final and not subject to appeal.

- (h) Time period for approval. A temporary use permit may be approved for an initial time period of one year. One extension of time not to exceed an additional 12 months time may be granted by the Planning Director for a temporary use permit, provided that no substantial changes have been made to the approved plan and that all the original findings and conditions of approval are determined by the Planning Director to remain valid.
- (i) Conditions of approval. The reviewing authority may establish conditions and limitations on a temporary use, including but not limited to hours of operation, provision of parking, signs, lighting, traffic control, site improvements, noise control, sanitary facilities, waste management, fire protection, provision of utilities, and other measures necessary to minimize potential effects on properties in the vicinity. The City may require a cash deposit or other security and/or indemnification as approved by the City Attorney to defray the costs of cleanup of a site by the City, in the event the applicant fails to leave the property in a presentable and satisfactory conditions, or to guarantee removal and/or conversion of any temporary use to a permanent use allowed in the zone district.
- (j) Findings. In order to approve or conditionally approve a temporary use permit application or any extension of time thereof, the reviewing authority must find that it meets the findings herein. In order to approve or conditionally approve a temporary use permit application for wireless facilities subject to Section 9-3.507, the Planning Director must find that it meets the findings herein and the additional findings required in Section 9-3.507(f)(5)(B)-(C):
 - (1) The temporary use is consistent with the General Plan, the zoning district, and any applicable specific plan or comprehensive development plan.
 - (2) Appropriate measures have been taken and conditions of approval have been added to protect the public health, safety, and welfare and to minimize detrimental effects on other properties.
 - (3) The temporary use will have adequate parking, access, and provisions for pedestrian safety.
 - (4) All temporary buildings and equipment meet applicable code requirements.
 - (5) Adequate provision has been made to ensure removal of the temporary use at the termination of the approval period, and restoration of the site to its prior condition or better.
- (k) Termination of temporary uses. Unless otherwise specified by an approved temporary use permit, all sites for temporary uses shall be cleaned of trash, debris, and any temporary structures within five days after termination of the use.

Section 9-3.533 Nonconforming uses, lots, and structures.

- (a) Purpose and intent. Within the districts established by Section 9-3.101 Districts Established, where there exist lots, structures, or uses of land and structures which were lawful before November 17, 1975, but which are prohibited or restricted by Chapter 3 of this title, this section provides for the regulation of such nonconformities by specifying the circumstances and conditions under which they may continue to exist.
- (b) Continuation of nonconformities. Except as otherwise permitted by the provisions of Chapters 1 through 5 of this title, nonconformities may be continuously maintained provided there is no alteration or addition to any structure, nor any enlargement of area, space, or volume occupied by such nonconformity.
- (c) Time periods affecting nonconformities. Unless otherwise specifically set forth, all time periods affecting nonconformities shall begin on November 15, 2002, or on the effective date of an amendment to the provisions of Chapters 1 through 5 of this title or change in the Official Zoning Map if such amendment or change causes a nonconformity.
- (d) Repairs and maintenance.
 - (1) Ordinary repairs and maintenance work. Ordinary repairs and maintenance work may be made to a nonconformity, subject to the following provisions:
 - (A) Maintenance work shall not include structural alterations, except those required by law or those required to make the structure and use conform to the standards and use regulations of the district in which such structure and use are located.
 - (B) Ordinary repairs and the repair or replacement of nonbearing walls, fixtures, wiring, and plumbing may be made to an extent not exceeding the latest assessed valuation of the structure. In no case, however, shall the cubic content of the structure as it existed when it became subject to nonconformity be increased.
 - (2) Repairs to damages. In the event such damage or destruction exceeds twice the assessed valuation of such structure, that structure shall not be reconstructed except in conformity with all use and area regulations for new structures in the district in which such structure is located.
 - (3) Strengthening and restoring. Nothing set forth in this section shall be deemed to prevent the strengthening or restoration to a safe condition of any structure or its support structure, or part thereof, declared to be unsafe by any officer of the City charged with protecting the public safety upon the order of such officer.
- (e) Enlargement. A nonconformity shall not be enlarged in volume or extended or relocated beyond the area it occupies, unless its enlargement, extension, or relocation is:
 - (1) Made to conform to the regulations of the district in which it is located; and
 - (2) Conforms to the following provisions:
 - (A) Any exception permitting the enlargement, extension, or relocation shall not be construed to extend the termination date, if any, of the subject nonconformity.

- (B) Where parking and loading requirements are the cause for nonconformity, the use shall not be intensified, nor associated structure enlarged or altered to create additional dwelling units, guest rooms, seating capacity, or floor area, unless additional parking and loading requirements are supplied and maintained to meet the parking requirements, subject to the provisions of Section 9-3.535 Parking.
- (f) Change of nonconforming uses to other uses. A nonconforming use shall not be changed to another use, except to a use permitted in the district where it is located.
- (g) Nonconforming lots and the construction of single-family dwellings. In any district in which single-family dwellings are permitted, a single family dwelling and the customary accessory structures may be erected on any lot which is only nonconforming with respect to the lot area and lot width standards. However, such lot shall be in separate ownership and not of continuous frontage with other lots in the same ownership.
- (h) Nonconforming lots in single ownership. If two or more unimproved lots with continuous frontage in single ownership are of record on September 17, 1975, and if all or part of such lots do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of Chapters 3 and 4 of this title. No portion of such a parcel shall be used or sold in a manner which diminishes compliance with the lot width and area requirements set forth in Chapters 3 and 4 of this title.
- (i) Nonconforming uses in the Specific Plan/Precise Plan (SP/PP) District. Minor modifications to nonconforming uses in areas designated Specific Plan/Precise Plan (SP/PP) and subject to a Specific or Precise Plan may be approved subject to the requirements of Section 9-3.317 Specific Plan/Precise Plan (SP/PP) District.
- (j) Nonconforming antennas and wireless facilities. All antennas and wireless facilities lawfully established or constructed before the adoption of the amended Section 9-3.507 (Ordinance No. XX) and which would be prohibited, regulated, or restricted differently under the current terms of Section 9-3.507 are considered legal nonconforming and are not subject to the development standards included in Section 9-3.507 provided that a record of its size, location, height and any other information deemed necessary by the Planning Director is on file with the Department of Planning Services. In order to secure any right under Section 9-3.507 , the antenna and wireless facility owner shall submit this record to the Department of Planning Services on a form or application supplied by the Department of Planning Services. The antenna and wireless facility owner is responsible for providing the necessary information to the City for inclusion in the record of nonconforming antennas and wireless facilities.
- (k) Nonconforming home business uses.
 - (1) Removal within 60 days. Any existing home business use in existence prior to November 15, 2002 which is nonconforming to the regulations of Section 9-3.523 Home Business are hereby deemed to be a public nuisance and shall be removed by the occupant within an amortization period of 60 days from enactment of the ordinance codified in this section.
 - (2) Extensions. The Planning Director may grant an exception to the above-stated maximum period of time for removing the home business use by granting an

additional permit of time for removal however, the extension of time shall not be greater than the time necessary to amortize documented expenditures directly associated with the home business use under applicable criteria of the Internal Revenue Code. The permittee shall have the burden of presenting creditable information to support the request.

- (l) Structures and plans previously approved.
 - (1) Any structure which was approved prior to November 15, 2002, but which does not conform to any or all of the provisions of Chapters 1 through 5 of this title, may be completed and used in accordance with the provisions of Chapters 1 through 5 of this title, or any amendment thereto, provided:
 - (A) The construction or proposed use of such structure is not in violation of any other law on November 15, 2002;
 - (B) Such structure is completed in accordance with the plans and specifications previously approved as to City requirements; and
 - (C) The building permits for the structure were obtained on or before November 15, 2002, and, once issued, the building permit did not become void.
 - (2) Approved tentative maps shall remain effective until November 15, 2002, or until such time as the map shall normally expire. If a tentative map approved prior to November 15, 2002, is considered for an extension, such extension may be granted upon a finding by the Planning Commission that the tentative map is in substantial compliance with the provisions of Chapters 3 and 4 of this title.
- (m) Removal of nonconforming uses or structures. The City may adopt abatement programs for nonconforming uses and structures that are found to cause a public nuisance. The abatement program shall identify an amortization period and process for the removal of nonconforming use or structure.
- (n) Violations. Any of the following violations shall immediately terminate the right to operate a nonconformity:
 - (1) Changing a nonconforming use to another use not permitted in the district or allowed pursuant to the provisions of subsection (f) of this section;
 - (2) Increasing or enlarging the area, space, or volume occupied by or devoted to such nonconforming use; or
 - (3) Increasing the number of personnel employed or volume of business performed so that such increase constitutes an intensification of the nonconforming use.
- (o) Notwithstanding anything to the contrary set forth in this section, the Development Services Director may, in his or her sole and absolute discretion, approve minor modifications to nonconforming uses and structures in the TC and TCE Districts.

Section 9-3.553 Temporary uses and structures.

The following uses and structures may be established as temporary uses or structures subject to prior approval by the Planning Director according to Section 9-2.347 Temporary Use Permit. Additional temporary uses may be established by the City Council by resolution.

- (a) Temporary storage of building materials. The temporary storage of building materials shall be restricted to those materials used during the construction of a building project. For the purposes of this subsection, "storage" shall include the temporary office of the contractor provided such office is located on the construction site or on property adjoining the construction site.
- (b) Large construction in residential yards.
 - (1) Large construction in residential yards shall pertain to a type of construction which is not incidental to the residential use nor of a commercial nature such as boat, plane, nonoperable automobile restoration, etc. Such activities may be permitted within a residential district subject to the issuance of a temporary use permit by the Planning Director:
 - (2) The applicant for a temporary use permit for such purpose shall comply with all of the following requirements:
 - (A) The proposed construction shall be of a type which will not be permanent, to the site and which shall not require the issuance of a building permit, such as for boat construction and car restoration;
 - (B) The construction shall not project into any required front or exterior side yard;
 - (C) The proposed item for construction shall be for the personal use of the applicant or the members of his or her immediate family;
 - (D) The proposed construction shall adhere to the requirements limiting excessive noise as set forth in Section 9-3.531 Noise Standards; and
 - (E) The temporary use permit shall be issued for a period not longer than one year. Extensions may be granted subject to the approval of the Planning Director.
- (c) Model homes and subdivision sales offices.
 - (1) General requirements. Temporary model homes and subdivision sales offices may be erected and maintained in conjunction with approved subdivisions in the City. Such uses shall be restricted to the first sales of lots or units within approved subdivisions and shall be subject to the following:
 - (A) All temporary elevation alterations of homes for commercial purposes shall be subject to prior approval by the Planning Director.
 - (B) The furnishings placed in a model home shall be maintained solely for the purposes accessory to the display of the model home.
 - (C) Banners, posters, pennants, ribbons, streamers, strings of light bulbs, spinners and other moving devices shall be prohibited.
 - (2) Use and occupancy. Temporary certificates of use and occupancy for the operation of model homes and subdivisions sales offices shall be issued by the

Division of Building and Safety upon approval by the Planning Director, subject to record of administrative approval.

- (3) Enforcement. Any violation of this Code pertaining to the operation or occupancy of model homes or subdivision sales offices shall be cause for the revocation of any use and occupancy permit previously issued for any model home or subdivision sales office.
- (d) Temporary residences and temporary caretaker residences.
 - (1) Outside the Floodplain Management District.
 - (A) Temporary residences or temporary caretaker residences located outside the Floodplain Management District are subject to the following requirements:
 - (i) Temporary residences or temporary caretaker residences shall be listed as a permitted use in the applicable district; and
 - (ii) Temporary residences or temporary caretaker residences shall meet all yard setback requirements of the applicable district.
 - (B) Temporary residences or temporary caretaker residences located outside the Floodplain Management District are also subject the following requirements:
 - (i) Temporary residences and temporary caretaker residences shall have a floor area no greater than 750 square feet; and
 - (ii) Temporary residences and temporary caretaker residences shall be removed no later than nine months after the issuance of the set-up permit for the permanent primary residence or temporary caretaker residence or upon the issuance of the “certificate of use and occupancy” for the permanent principal residence, permanent caretaker residence, or permanent use, whichever occurs first.
 - (C) The set-up permit for the temporary residence or temporary caretakers residence shall not be used until after the issuance of the building permit for the permanent principal residence, permanent caretakers residence, or permanent use.
 - (D) In order to assure compliance with the requirements of this subsection, a cash deposit or other form of surety shall be deposited in accordance with Section 9-5.101 Fees, Deposits, and Bonds.
 - (e) Within the Floodplain Management District. No temporary residences or temporary caretakers residences shall be situated within the Floodplain Management District.
 - (f) Use of vehicles. The temporary use of a mobilehome, recreational vehicle, truck, or other vehicle as a residence or commercial structure shall not exceed 10 days in all districts.
 - (g) Temporary classrooms for private schools. Temporary classrooms used at private schools shall be subject to the regulations contained in City Council Policy 415.
 - (h) Temporary wireless facilities subject to Section 9-3.507.

Title 9 Table 3-4, 3-6, 3-8, 3-10, 3-12, 3-14, & 3-15 Amendments

All references to the term antennas and cellular towers in Use Tables shall be replaced with the term “Antennas and Wireless Facilities”

Commercial Districts Table 3-4 Excerpt

Use	TC	TCE	NC	GC	OC	Notes and Comments
Radio and television towers and installations, radar installations, microwave relay stations, and antennas and wireless facilities and installations (commercial)	C	C	C	C	C	Except as noted in Section 9-3.507 Antennas and wireless facilities.

Industrial Districts Table 3-6 Excerpt

Use	CM	IP	A	Notes and Exceptions
Radio and television towers and installations, radar installations, microwave relay stations, and antennas and wireless facilities and installations (commercial)	C	C	C	Except as noted in Section 9-3.507 Antennas and wireless facilities.

Public & Institutional Table 3-8 Excerpt

Use	P&I	Notes and Exceptions
Radio and television towers and installations, radar installations, microwave relay stations, and antennas and wireless facilities and installations (commercial)	C	Except as noted in Section 9-3.507 Antennas and wireless facilities.

Open Space Table 3-10 Excerpt

Use	GOS	OSR	NP	CP	SP	RP	NOS	RC	Notes and Exceptions
Radio and television towers and installations, radar installations, microwave relay stations, and antennas and wireless facilities and installations (commercial)	C	C	C	C	C	C	C	C	Except as noted in Section 9-3.507 Antennas and wireless facilities.

Farm Market Table 3-12 Excerpt

Use	FM	Notes and Exceptions
Radio and television towers and installations, radar installations, microwave relay stations, and antennas and wireless facilities and installations (commercial)	C	Except as noted in Section 9-3.507 Antennas and wireless facilities.

Solid Waste Facility Table 3-14 Excerpt

Use	SWF	Notes and Exceptions
Radio and television towers and installations, radar installations, microwave relay stations, and antennas and wireless facilities and installations (commercial)	C	Except as noted in Section 9-3.507 Antennas and wireless facilities.

Planned Community Table 3-15 Excerpt

Use	PC	Notes and Exceptions
Radio and television towers and stations, radar installations, microwave relay stations, and antennas and wireless facilities and installations (commercial)	C	Except as noted in Section 9-3.507 Antennas and wireless facilities.

P = Principal use permitted by right

— = Not permitted

A = Accessory use permitted by right (subject to Section 9-3.501 Accessory Uses and Structures)

C = Conditional use permit required (subject to Section 9-2.317 Conditional Use Permit)