



TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** July 28, 2015

From: Carol Miller, Principal Planner **Item No:** 4
Planning Department

Subject: ADOPT ORDINANCE NO. 471, AN ORDINANCE OF THE TOWN OF APPLE VALLEY, MODIFYING CHAPTER 9.77 OF THE MUNICIPAL CODE AS IT RELATES TO MODIFICATIONS TO EXISTING WIRELESS TELECOMMUNICATION TOWERS AND ANTENNAS CONSISTENT WITH FEDERAL LAW

T.M. Approval: _____

Budgeted Item: Yes No N/A

RECOMMENDED ACTION:

Adopt Ordinance No. 471.

SUMMARY:

At its July 14, 2015 meeting, the Town Council reviewed and introduced Ordinance No. 471, amending Chapter 9.77 of the Town of Apple Valley Municipal Code as it pertains to wireless telecommunication. As part of the requirements to adopt any new ordinance, Ordinance No. 471 has been scheduled for adoption at the July 28, 2015 Town Council meeting.

FISCAL IMPACT:

Not Applicable.

ATTACHMENTS:

Ordinance No. 471

ORDINANCE NO. 471

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING SECTION 9.77 WIRELESS TELECOMMUNICATION TOWERS AND ANTENNAS

WHEREAS, Title 9 “Development Code” of the Municipal Code of the Town of Apple Valley was adopted by the Town Council on April 27, 2010; and

WHEREAS, Title 9 “Development Code” of the Municipal Code of the Town of Apple Valley has been previously modified by the Town Council on the recommendation of the Planning Commission; and

WHEREAS, specific changes to Section 9.77 “Wireless Telecommunication Towers and Antenna”, as it relates to modifications to existing wireless telecommunication towers and antenna within the Town of Apple Valley; and

WHEREAS, the project is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the State Guidelines to Implement CEQA, which states that the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question, the proposed Code Amendment, may have a significant effect on the environment, the activity is not subject to CEQA; and

WHEREAS, on May 6, 2015, the Planning Commission of the Town of Apple Valley conducted a duly noticed public hearing on Development Code Amendment No. 2015-001, receiving testimony from the public and adopting Planning Commission Resolution No. 2015-003 forwarding a recommendation to the Council; and

WHEREAS, on July 14, 2015, the Town Council of the Town of Apple Valley conducted a duly noticed and advertised public hearings on Development Code Amendment No. 2015-001, receiving testimony from the public.

NOW, THEREFORE, the Town Council of the Town of Apple Valley, State of California, does ordain as follows:

Section 1. Find that the changes proposed by Development Code Amendment No. 2015-001 is consistent with the Goals and Policies of the Town of Apple Valley adopted General Plan.

Section 2. Pursuant to Section 15061(b)(3) of the State Guidelines to Implement the California Environmental Quality Act (CEQA), it can be determined that the code amendment is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty, as with the proposed Code Amendment, that there is no possibility that the proposal approved under Development Code Amendment No. 2015-

001 will have a significant effect on the environment and; therefore, the amendment is EXEMPT from further environmental review.

Section 3. Amend the Development Code Section 9.77.090 *Definitions* to read as follows:

9.77.090 DEFINITIONS

As used in this Section, the following terms shall have the meanings set forth below:

- A.** “Alternative tower structure” means man-made trees, clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.
- B.** “Antenna” means any exterior transmitting or receiving device mounted on a tower, building structure, or alternative tower structure, and used in communication that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunication signals or other communication signals.
- C.** “Backhaul network” means the lines that connect a provider’s towers/cell sites to one or more cellular telephone switching offices, and/or long distance providers, or the public switched telephone network.
- D.** “Base Station” means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network, including (a) equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul and (b) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks). Base Station does not include Tower.
- E.** Cable micro cell network means a cable network using multiple low-powered transmitters/receivers attached to existing wire line systems, such as conventional cable or telephone wires, or similar technology, that does not require the use of towers.
- F.** “Collocation Facility” means the placement or installation of wireless facilities, including antennas, and related equipment, on, or immediately adjacent to, a wireless telecommunications collocation facility.
- G.** “Director” means the Town’s Director of Economic and Community Development or his or her designee.

- H.** Electro magnetic interference means the distortion, disruption or blockage of the clear reception or transmission of any radio, television, communications, data or other type of electronic communications media.
- I.** “Eligible Facilities Request” means any request for modification of an existing wireless tower or base station that involves (a) a collocation of new transmission equipment, (b) removal of transmission equipment, or (c) replacement of transmission equipment.
- J.** “FAA” means the Federal Aviation Administration.
- K.** “FCC” means the Federal Communications Commission.
- L.** “Height” means, when referring to a tower or other structure, the distance measured from the finished grade of the parcel on which the structure is located to the highest point on the tower or other structure, including the base pad and any antenna.
- M.** Monopole means any singular, monolithic structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio and similar communication purposes. Also see “Tower”.
- N.** Parabolic means a curved or cone shaped structure.
- O.** “Preexisting towers and preexisting antennas” means any tower or antenna for which a building permit or conditional use permit has been properly issued prior to the effective date of this Section, including permitted towers or antennas that have not yet been constructed, so long as such approval is current and not expired.
- P.** “Stealth” antennas or towers shall mean communications facilities, towers and individual antennas using innovative camouflaging techniques to virtually completely screen or conceal such communications facilities, towers and individual antennas from view.
- Q.** “Substantial Change” means a modification that substantially changes the physical dimensions of an eligible support structure if it meets any of the following:

For towers located outside of the right of way:

1. It increases the height of the tower by more than ten percent (10%) or by the height of one (1) additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater;
2. It involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty (20) feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater;

3. It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets;
4. It entails any excavation or deployment outside the site;
5. It would defeat the concealment elements of the tower;
6. It does not comply with existing conditions of approval for the tower provided that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified above; or
7. It does not comply with applicable building codes or other applicable health and safety standards.

For other towers and wireless communications facilities:

1. It increases the height of the structure by more than ten percent (10%) or more than ten (10) feet, whichever is greater;
2. It involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) feet;
3. It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets;
4. It involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten percent (10%) larger in height or overall volume than any other ground cabinets associated with the structure;
5. It entails any excavation or deployment outside the site;
6. It would defeat the concealment elements of the tower or base station;
7. It does not comply with existing conditions of approval for the tower or base station provided that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified above; or
8. It does not comply with applicable building codes or other applicable health and safety standards.

R. "Tower" means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio and similar communication purposes, including self-supporting lattice towers, guyed towers or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative

tower structures, and the like. The term includes the structure and any support thereto.

- S.** Wireless systems mean any and all type or manner of electromagnetic devices, including antennas, towers, arrays, etc., and associated equipment, used for the transmission or reception of electromagnetic waves communicating any form of information including voice, picture or data.
- T.** “Wireless Telecommunications Facility” means equipment and network components such as towers, utility poles, transmitters, base stations, and emergency power systems that are integral to providing wireless telecommunication services.
- U.** “Wireless Telecommunication Collocation Facility” means a wireless telecommunications facility that includes collocation facilities.
- V.** “Wireless Communication Facility, Section 6409(a) Modification” or “Section 6409(a) Modification” means a modification of an existing wireless tower or base station that involves the collocation, removal or replacement of transmission equipment that does not substantially change the physical dimensions of such wireless tower or base station and that otherwise qualifies for approval pursuant to Section 6409(a) of the federal 2012 Middle Class Tax Relief and Job Creation Act as implemented by 47 C.F.R. 1.40001.

Section 4. Amend Chapter 9.77.100 *Applicability* to read as follows:

9.77.100 APPLICABILITY

- A. *New Commercial Towers and Antennas.*** All new commercial towers or antennas in the Town of Apple Valley shall be subject to these regulations, except as provided below.
- B. *Collocation Facilities.*** All new collocation facilities on, or immediately adjacent to a previously approved wireless telecommunication facility shall be subject to all collocation criteria in these regulations or as allowed under a Section 6409(a) modification.
- C. *Amateur Radio Station Operators/Receive Only Antennas.*** The maximum height of an amateur radio station operators/receive only antenna shall be fifty (50) feet as measured from grade level to the highest point of the antenna. This Section shall not govern any tower, or the installation of any antenna, that is under fifty (50) feet in height and is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receive only antennas.
- D. *Eligible Facilities Requests.*** Eligible Facilities Requests that do not require a “Substantial Change” shall be processed in accordance with Section 6409(a) of the federal 2012 Middle Class Tax Relief and Job Creation Act as implemented by 47 C.F.R. 1.40001. In reviewing permits for qualifying “Eligible Facilities

Request”, the Director or their designee shall be required to approve applications, but shall retain discretion to enforce compliance with applicable building, structural, electrical, and safety codes related to health and safety.

- E. *AM Array.*** For the purpose of implementing this Section, an AM array, consisting of one or more tower units, and supporting ground system which functions as one AM broadcasting antenna, shall be considered one tower. Measurements for setbacks and separation distances shall be measured from the outer perimeter of the towers included in the AM array. Additional tower units may be added within the perimeter of the AM array by right.
- F. *Modification of Tower/Base Stations.*** The Town may not deny any “Eligible Facilities Request” for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station, as defined in Section 9.77.090 “Definitions”.

Section 5. Amend Chapter 9.77.110 Subsection (B) to read as follows:

9.77.110 GENERAL REQUIREMENTS

- B. *Inventory of Existing and Anticipated Sites.*** Each applicant for an antenna and/or tower shall provide to the Director an inventory of its existing towers, antennas, or sites approved for towers or antennas, that are either within Town or within one mile of the border. An applicant for the placement of a new antenna on an approved co-location structure is exempt from this requirement. The Director may share such information with others seeking to locate antennas within the Town; however the Director is not, by sharing such information, in any way representing the accuracy of the information or warranting that such sites are available or suitable.

Section 6. Amend Chapter 9.77.130 Subsection (D)(4) to read as follows:

9.77.130 CONDITIONAL AND SPECIAL USE PERMITS

D. *Towers.*

- 4. *Height.*** The maximum antenna height of fifty (50) feet plus ten (10) additional feet in overall height is permitted to accommodate an architectural feature such as, but not limited to tree branches, roof top, parapet, etc., for the purpose of providing additional camouflage or screening shall apply to all towers for which a Special Use Permit or Conditional Use Permit is required, except within “Preferred Locations” as defined within this Chapter, provided, however, that the Planning Commission may increase the height limitation requirements if the goals of this ordinance would be better served by granting a Deviation as prescribed in Section 9.77.200 “Deviation from Established Standards” of this Code.

A maximum height of seventy-five (75) feet within “preferred locations” as defined within this Chapter is permitted. The Planning Commission may, however, increase the height limitation requirements for a tower if the goals of this ordinance would be better served by granting a Deviation as prescribed in Section 9.77.200 “Deviation from Established Standards” of this Code.

Section 7. Amend Chapter 9.77.190 *Co-Location of Telecommunications Facilities* to read as follows:

9.77.190 CO-LOCATION OF TELECOMMUNICATIONS FACILITIES

The Town of Apple Valley encourages the Telecommunication Industry to work cooperatively with one another in the placement of telecommunication facilities. The development standards and criteria for siting Telecommunication facilities as defined within this Chapter 9.77 “Wireless Telecommunications Towers and Antennas” for setback and separation distances may be reduced as noted below for multiple users (collocation) on or within a single structure. For the second user locating on or within a single facility, the development standards and criteria may be reduced by thirty percent (30%). For the third or more user(s) locating on or within a single facility, the development standards and criteria may be reduced by sixty percent (60%). Provided that the collocation facility is consistent with the conditions of the original wireless telecommunication facility where it will be located, and the above criteria, the collocation facility can be approved administratively, without a Conditional Use Permit. Conditions can be placed on the approval of the collocation facility, which pertain to height, location, bulk, size of the collocation facility; percentage of the original wireless telecommunication facility that may be occupied by collocation facilities; and, the aesthetic or design requirements for the collocation facility.

Any proposed collocation beyond those allowed under a Section 6409(a) modification shall be processed pursuant to this Chapter. Section 6409(a) modifications can be approved administratively by the Director. Applicants may appeal any decision related to a Section 6409(a) modification in the same manner as a Special Use Permit. Notwithstanding anything to the contrary in this code, any approval or a Section 6409(a) modification does not and shall not be construed to grant any rights beyond those granted by § 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (codified at 47 U.S.C. 1455) as implemented by 47 C.F.R. 1.40001. In the event § 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (codified at 47 U.S.C. 1455) or 47 C.F.R. 1.40001 are stayed, amended, revised or otherwise not in effect, no modifications to an existing wireless tower or base station shall be approved as a 6409(a) modification.

Section 8. Notice of Adoption. The Town Clerk of the Town of Apple Valley shall certify to the adoption of this ordinance and cause publication to occur in a newspaper of general circulation and published and circulated in the Town in a manner permitted under Section 36933 of the Government Code of the State of California.

Section 9. Effective Date. This Ordinance shall become effective thirty (30) days after the date of its adoption.

Section 10. Severability. If any provision of this Ordinance, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications and, to this end, the provisions of this Ordinance are declared to be severable.

ADOPTED by the Town Council and signed by the Mayor and attested by the Town Clerk this 28th day of July, 2015.

ATTEST:

Larry Cusack, Mayor

La Vonda M-Pearson, Town Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

John Brown, Town Attorney

Frank Robinson, Town Manager