

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

ADOPT ORDINANCE NO. 393 - AN AMENDMENT TO TITLE 9 "DEVELOPMENT CODE" OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE BY AMENDING TITLE 9 "DEVELOPMENT CODE" OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE, BY AMENDING VARIOUS SECTIONS OF CHAPTER 9.77 AS THEY RELATE TO THE REGULATIONS FOR WIRELESS TELECOMMUNICATION TOWER AND ANTENNAS

Summary Statement:

At its January 13, 2009 meeting, the Town Council reviewed and introduced Ordinance No. 393 as it relates to amending Title 9 "Development Code" of the Town of Apple Valley Municipal Code, by amending various sections of Chapter 9.77 as they relate to the regulations for wireless telecommunication tower and antennas. As part of the requirements to adopt a new Ordinance, Ordinance No. 393 has been scheduled for adoption at the January 27, 2009 Town Council meeting.

Recommended Action:

Adopt Ordinance No. 393

Proposed by: **Planning Division** **Item Number** _____

Town Manager Approval: _____ **Budget Item** **Yes** **No**

Town Council Meeting: January 27, 2009

ORDINANCE NO. 393

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING TITLE 9 “DEVELOPMENT CODE” OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE, BY AMENDING VARIOUS SECTIONS OF CHAPTER 9.77 AS THEY RELATE TO THE REGULATIONS FOR WIRELESS TELECOMMUNICATION TOWER AND ANTENNAS

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

Section 1. Recitals.

(i) Title 9 (Development Code) of the Municipal Code of the Town of Apple Valley was adopted by the Town Council on October 24, 2000; and

(ii) 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

(iii) Specific changes to Title 9 “Development Code” of the Town of Apple Valley Municipal Code include amending various sections of Chapter 9.77, related to wireless telecommunication facilities.

(iv) On November 14, 2008, Development Code Amendment No. 2008-002 was duly noticed in the Apple Valley News, a newspaper of general circulation within the Town of Apple Valley; and

(v) 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

(vi) On October 29, 2008 and December 3, 2008 the Planning Commission of the Town of Apple Valley conducted a duly noticed and advertised the public hearing on Development Code Amendment No. 2008-002, receiving testimony from the public and adopted Planning Commission Resolution No. 2008-008 recommending adoption of this Ordinance; and

(vii) Development Code Amendment No. 2008-002 is consistent with Title 9 (Development Code) of the Municipal Code of the Town of Apple Valley and shall promote the health, safety and general welfare of the citizens of the Town of Apple Valley.

Section 2. Findings.

(i) Find that the changes proposed by Development Code Amendment No. 2008-002 are consistent with the Goals and Policies of the Town of Apple Valley adopted General Plan.

(ii) Find that, based upon the State Guidelines to Implement the California Environmental Quality Act (CEQA), the project is exempt from further environmental review. Section 15061(b)(3), 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

Section 3. Amend subsection J. “General Requirements” within Section 9.77.110 to read as follows:

9.77.110 GENERAL REQUIREMENTS

J. *Public Notice.* For purposes of this Section, any conditional or special use request, variance request, deviation permit request or appeal of an administratively approved use or conditional use shall require public notice to all abutting property owners and all property owners of properties that are located within 1,500 feet of the affected site.

Section 4. Amend Section 9.77.130 in its entirety to read as follows:

9.77.130 CONDITIONAL AND SPECIAL USE PERMITS

A. *General.* The Planning Commission or Director, as applicable, shall approve, approve with conditions, or deny the permit application.

B. *Conditional Use Permit.* The following provisions shall govern the issuance of a Conditional Use Permit for towers, antennas or related facilities by the Planning Commission:

- 1.** If the tower or antenna is not a permitted use under Section 9.77.100 of this Chapter and the Special Use Permit provisions do not apply, then a Conditional Use Permit shall be required for the construction of a tower or the placement of an antenna in all commercial, office, industrial and open space districts. The construction of a tower or the placement of an antenna is expressly prohibited within any residential district, except on/within an approved and adopted “Preferred Location” as defined within Section 9.77.180 of this Code, or completely concealed in compliance with the definition of concealment as specified within Subsection 9.77.130 D 9 “Stealth/camouflaging of Facilities Required” of this Code.
- 2.** Applications for Conditional Use Permits under this Section shall be subject to the procedures and requirements of Title 9, Chapter 9.16 of the Town of Apple Valley Municipal Code, except as modified in this Section.
- 3.** In granting a Conditional Use Permit, the Planning Commission may impose conditions as prescribed in Title 9, Chapter 9.16 of the Town of Apple Valley Municipal Code, with specific consideration given to potential aesthetic impacts.

4. An applicant for a Conditional Use Permit shall submit the information described in this Section.

C. **Special Use Permit.** The following provisions shall govern the issuance of a Special Use Permit for towers, antennas or related facilities by the Director provided no Deviation Permit is being requested:

1. The Special Use Permit process applies to any of the following:
 - a. Totally concealed wireless telecommunication facilities;
 - b. Antennas that are architecturally integrated with an existing building or structure so as not to be recognized as an antenna;
 - c. Antennas that are mounted on existing water tanks, utility pole, ball field lighting and similar structures where the antenna height does not exceed the height by more than eight (8) feet with all equipment cabinets buried underground or concealed to the satisfaction of the Director;
 - d. Antennas that are mounted on existing or replaced traffic signal poles, provided that the pole design must be pre-approved and all equipment cabinets must be buried underground;
 - e. Antennas up to a maximum of fifteen (15) feet in height above an existing building or rooftop and that are screened from view from all adjacent public rights-of-way.
2. Applications for a Special Use Permit under this Section shall be subject to the procedures and requirements of Title 9, Chapter 9.16 of the Town of Apple Valley Municipal Code, except as modified in this Section.
3. In granting a Special Use Permit, the Director may impose conditions as prescribed in Title 9, Chapter 9.16 of the Town of Apple Valley Municipal Code, with specific consideration given to potential aesthetic impacts.
4. The Director shall refer the Special Use Permit to the Planning Commission when there are significant design issues, potential public controversy about the project or where a negative response to the public notice is received.
5. The public noticing requirement shall be in accordance with Section 9.77.110.J.
6. An applicant for a Special Use Permit shall submit the information described in this Section.

D. **Towers.**

1. **Information required.** In addition to any information required for applications for Conditional or Special Use Permits pursuant to Title 9 of the Town of Apple Valley Municipal Code, applicants for a Conditional or Special Use Permit for a tower shall submit the following information:
 - a. A scaled site plan clearly indicating the location, type and height of the proposed tower, on-site land uses and zoning, adjacent land uses and zoning within one

hundred fifty (150) feet of the edges of the property on which the tower is proposed to be located (including uses outside the Town of Apple Valley), General Plan classification of the site and all properties within the applicable separation distances set forth in Section 9.77.130 D 6, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower and any other structures, topography, parking, and other information deemed by the Director to be necessary to assess compliance with this ordinance.

- b.* Legal description of the site and leased parcel (if applicable).
- c.* The setback distance between the proposed tower and the nearest residential unit or residentially zoned properties.
- d.* The separation distance from other towers described in the inventory of existing sites submitted pursuant to Section 9.77.110 B shall be shown on an updated site plan or map. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing tower(s).
- e.* A landscape plan showing specific landscape materials.
- f.* Method of fencing, finished color and the method of camouflage and illumination of the tower.
- g.* A description of compliance with Sections 9.77.110 B, C, D, E, F, I and K, 9.77.130 D 4, 5 and 6, and all applicable federal, state or local laws.
- h.* A notarized statement by the applicant that states the design and construction of the tower will accommodate collocation of additional antennas for future users.
- i.* Identification of the entities providing the backhaul network for the tower(s) described in the application and other cellular sites owned or operated by the applicant in the Town of Apple Valley.
- j.* A description of the suitability of the use of existing towers, other structures or alternative technology not requiring the use of towers or structures to provide the services to be provided through the use of the proposed new tower.
- k.* A description of the feasible location(s) of future towers or antennas within the Town based upon existing physical, engineering, technological or geographical limitations in the event the proposed tower is erected.
- l.* Provide before and after photo simulations or renderings of the existing and proposed site showing a minimum of at least three view angles.
- m.* Samples of the materials proposed for use to stealth or conceal the proposed telecommunications facility.
- n.* A propagation map showing existing and proposed telecommunications facilities based on the lowest possible height that demonstrate actual need. The study will also indicate parameters that were used in the calculation/production, the appropriateness of the signal strength and the Effective Radiated Power (ERP) of

the antennas, i.e., their wattage. The height and wattage of existing facilities shall also be included.

- o.* Evidence demonstrating co-location or that co-location is impractical for reasons of: (a) lack of existing support structures; (b) insufficient structural support capabilities; (c) contractual provisions required by the owner in order to share an existing structure or to adapt an existing structure are unreasonable; (d) failing to meet needed service coverage area needs; or (e) other limiting factors that render existing tower unsuitable.

2. *Factors considered in granting Conditional and Special Use Permits for towers.* In addition to any standards for consideration of Conditional or Special Use Permit applications pursuant to Title 9 of the Town of Apple Valley Municipal Code, the Planning Commission or Director shall consider the following factors in determining whether to issue a Conditional or Special Use Permit. The Planning Commission may waive or reduce the burden on the applicant of one or more of these criteria if the Planning Commission concludes that the goals of this Chapter are better served by granting a Deviation as prescribed in Section 9.77.200 “Deviation from Established Standards” of this Code for the following:

- a.* Height of the proposed tower;
- b.* Proximity of the tower to residential structures and residential district boundaries;
- c.* Nature of uses on adjacent and nearby properties;
- d.* The impact the tower(s) may have upon the present and reasonably foreseen future aesthetics of the site, adjoining properties and general vicinity of the site;
- e.* Design of the Tower including the equipment cabinet or structure, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
- f.* Proposed ingress and egress; and
- g.* Availability of suitable existing towers, other structures, or alternative technologies not requiring the use of towers or structures, as discussed in Section 9.77.130 D 3 of this Chapter.
- h.* Stealth and/or camouflaging techniques proposed.

3. *Availability of suitable existing towers, other structures, or alternative technology.* No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Planning Commission or Director that no existing tower, structure or alternative technology that does not require the use of towers or structures can accommodate the applicant’s proposed antenna. An applicant shall submit information requested by the Planning Commission or Director related to the availability of suitable existing towers, other structures or alternative technology. Evidence submitted to demonstrate that no existing tower, structure or alternative technology can accommodate the applicant’s proposed antenna may consist of any or all of the following:

- a.* No existing towers or structures are located within the geographic area which meets the applicant's engineering requirements.
 - b.* Existing towers or structures are not of sufficient height to meet the applicant's engineering requirements.
 - c.* Existing towers or structures do not have sufficient structural strength to support the applicant's proposed antenna and related equipment and cannot, with reasonable alterations or costs, be strengthened or reinforced.
 - d.* The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
 - e.* The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
 - f.* The applicant demonstrates that there are other unmitigatable limiting factors that render existing towers and structures unsuitable.
 - g.* The applicant demonstrates that an alternative technology that does not require the use of towers or structures, such as a cable micro cell network using multiple low-powered transmitters/ receivers attached to a wire line system, is unsuitable. Costs of alternative technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable.
- 4. *Height.*** The maximum antenna height of fifty-five (55) 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.
- 5. *Setbacks.*** The following setback requirements shall apply to all towers for which a Special Use Permit or Conditional Use Permit is required, provided, however, that the Planning Commission may reduce the standard setback 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.* Towers must be set back a distance equal to at least seventy-five percent (75%) of the height of the tower from any adjoining lot line.
 - b.* Guy wires and accessory buildings must satisfy the minimum zoning district setback requirements.

6. **Separation.** The following separation requirements shall apply to all towers and antennas for which a Special Use Permit or Conditional Use Permit is required; provided, however, that the Planning Commission may reduce the standard separation 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. Separation from off-site uses/designated areas:
 - 1) Tower separation shall be measured from the base of the tower to the lot line of the off-site uses and/or designated areas as specified in Table 9.77.130-A.
 - 2) Separation requirements for towers shall comply with the minimum standards established in Table 9.77.130-A.

Table 9.77.130-A

Off-site Use Designated Areas	Separation Distance ¹
Single-family or duplex residential units ²	1,000 feet ³
Vacant residentially zoned lands.	1,000 feet ³
Existing multi-family residential units greater than duplex units	1,000 feet ³
Non-residentially zoned lands or non-residential uses, vacant or occupied	None; only zoning district minimum setbacks apply

- 3) Separation distances between towers.
 - a) Separation distances between towers shall be applicable for, and measured between, the proposed tower and preexisting towers. The separation distances shall be measured by drawing or following a straight line between the base for the existing tower and the proposed base, pursuant to a site plan of the proposed tower. The separation distances (listed in linear feet) shall be as shown in Table 9.77.130-B.

¹ Separation measured from base of tower to closest property line.

² Includes modular homes and mobile homes used for living purposes.

³ Except within adopted Preferred Locations or where completely concealed as specified in Subsection 9.77.130 D 9.

Table 9.77.130-B Existing Towers – Types

(Listed in Linear Ft) (Proposed Towers)	Lattice¹	Guyed¹	Monopole 50 Ft in Height or Greater¹	Monopole 50 Ft in Height or Less¹
Lattice	5,000 feet	5,000 feet	1,500 feet	750 feet
Guyed	5,000 feet ³	5,000 feet	1,500 feet	750 feet
Monopole 50 Ft in Height or Greater	1,500 feet	1,500 feet	1,500 feet	750 feet
Monopole 50 Ft in Height or Less	750 feet	750 feet	750 feet	750 feet

7. **Security fencing.** Towers shall be enclosed by security fencing (decorative block, wrought iron, or similar decorative fencing as approved by the Commission) not less than six feet in height and shall also be equipped with an appropriate anti-climbing device, provided however, that the Planning Commission may waive such requirements, as it deems appropriate. Chain link or similar material fencing is prohibited.

8. **Landscaping.** The following requirements shall govern the landscaping surrounding towers for which a Conditional or Special Use permit is required, provided, however, that the Planning Commission may waive such 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. Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound. The standard buffer shall consist of a landscaped strip at least four (4) feet wide outside the perimeter of the compound.
 - b. Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible.
 - c. All required and installed landscaping shall incorporated and maintain a functioning automatic sprinkler system, and said landscaping shall be maintained in a neat, orderly, disease and weed free manner at all times.

9. **Stealth/camouflaging of Facilities Required.** All telecommunication facilities located within the Town of Apple Valley shall be designed and constructed to be stealth/camouflaged. When used within this Code in reference to telecommunications facilities, equipment or structures, the term stealth or camouflage shall mean the following:

¹ Except within adopted Preferred Locations or where completely concealed as specified in Subsection 9.77.130 D 9.

- a. Physical design and construction of telecommunications facilities, equipment and structures which, by the nature of said design or construction, do not draw undue attention to the structure;
- b. Physical design and construction which does not directly interfere with any established view shed as determined by the Planning Commission at an open public hearing;
- c. Physical design and construction which results in a facility or structure which cannot clearly be distinguished from the general character of the area in which they are located; and
- d. Physical design and construction that, by its size, shape, appearance, color or other physical attributes, do not cause a conflict with the appearance, character and aesthetics of the site upon which the facility is located, the surrounding properties or the general neighborhood in which they are located.

The Town has two (2) preferred methods to stealth/camouflage new telecommunication facilities on a site. First is that by its physical design and construction the facility/tower and associated antenna/supporting equipment is concealed within an architecturally designed feature/structure newly constructed on site, which matches or compliments the existing main structures on-site. Second, the location of a new facility/tower and associated antenna/supporting equipment on or within an existing structure or building already on a site with no obviously distinguishable changes to that structure.

Mono-palms are inconsistent with the stealth/camouflaging noted above and are, therefore, expressly prohibited. Mono-poles and mono-pines are discouraged, but may be considered by the Planning Commission in the review of a Conditional Use Permit application when the applicant can demonstrate the lack of a reasonable, available alternative consistent with the stealth/camouflaging above within the physical environment where the facility is proposed to be located.

Section 5. Amend subsection B. “Buildings or Other Equipment Storage” within Section 9.77.150 to read as follows:

9.77.150 BUILDINGS OR OTHER EQUIPMENT STORAGE

B. *Antennas Mounted on Utility Poles or Parking Lot Light Standards.* The equipment cabinet or structure used in association with antennas mounted on utility poles or light poles in commercial, office, industrial or open space districts shall be no greater than eight (8) feet in height and one hundred (100) square feet in area. All equipment cabinets shall be buried underground;

Section 6. Amend Section 9.77.180 “Preferred Locations” in its entirety to read as follows:

9.77.180 “PREFERRED LOCATIONS”

- any public park;
- any private park, open to the public;
- any public school;

- any private school as the sole occupant of a site at least five (5) acres in size;
- any church as the sole occupant of a site at least three (3) acres in size;
- any commercially designated property of at least five (5) acres in size with a minimum of 30,000 square feet of developed structures on site;
- any developed industrially zoned property;
- any public or private golf courses;
- any existing public facilities such as a water tank, police or fire stations.

Section 7. Invalidation. The amendment by this Ordinance of Title 9 “Development Code” of the Town of Apple Valley Municipal Code as previously in effect, or of any other prior enactment, shall not be construed to invalidate any entitlement exercised or proceeding taken pursuant to such Title or other enactment while the same was in effect.

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 27th day of January, 2009.

Honorable Rick Roelle, Mayor

ATTEST:

La Vonda M-Pearson, Town Clerk

Approved as to form:

Approved as to content:

Mr. John Brown, Town Attorney

Mr. Frank Robinson, Town Manager