

ORDINANCE NO. 20-04

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RANCHO SANTA MARGARITA, CALIFORNIA, ADDING NEW SECTION 9.04.055 (SMALL WIRELESS FACILITIES), AMENDING SUBSECTION (1) (EXEMPTIONS) OF EXISTING SECTION 9.04.050 (WIRELESS COMMUNICATION FACILITIES), AND ADDING NEW SECTION 9.02.060 (INDEMNIFICATION) TO TITLE 9 (PLANNING AND ZONING) OF THE RANCHO SANTA MARGARITA MUNICIPAL CODE REGARDING THE DEPLOYMENT OF SMALL WIRELESS FACILITIES

THE CITY COUNCIL OF THE CITY OF RANCHO SANTA MARGARITA, CALIFORNIA, DOES HEREBY FIND AND DETERMINE AS FOLLOWS:

WHEREAS, on September 26, 2018, the Federal Communications Commission ("FCC") adopted its Declaratory Ruling, Third Report, and Order ("Order") "In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment," which set forth new limitations on local standards for, and accelerating the processing of, the siting of small wireless facilities by all local jurisdictions over such applications; and,

WHEREAS, the Order provides that all local jurisdictions must comply with various restrictions on the exercise of local aesthetic, zoning, public works, and fee restrictions when dealing with installation applications for small wireless facilities. The Order further provides that all agencies should be capable of fully implementing its provisions within 180 days of its adoption, which was on September 26, 2018. The Order provides that the trend toward small wireless facilities to deploy 5G and other next-generation wireless services requires greater densification and pace of build out to enable widespread deployment as is sought by the wireless industry. The Order states that as much as 80% of all new deployments will entail small wireless facilities going forward; and,

WHEREAS, the Order provides that wireless providers variably estimate that the preference towards small wireless facilities will likely result in ten to one hundred times the number of wireless facilities existing in the nation, and estimates of the number of small wireless facilities nationwide would grow from 150,000 this year to nearly 800,000 by year 2026. Based on estimates of small wireless facilities transmitting only a few hundred feet by some providers as stated by the Order, the number of small wireless facilities could grow to as many as 25-29 per provider per square mile within cities; and,

WHEREAS, the Order is intended to facilitate the spread, growth, and accumulation of small wireless facilities over a short period of time to ensure deployment of 5G technology that the FCC claims will enable increased competition in healthcare, Internet of Things applications, lifesaving car technologies, and create jobs, possibly increasing the U.S. economy by as much as \$100 billion by speeding up the deployment

of small wireless facilities by only one year. The Order reduces the "shot clock" period allowable for cities to review, comment upon, consider, and make a final determination on small wireless facility applications for as many as 90 days for new facilities and as many as 60 days for collocated and modified facilities; and,

WHEREAS, small wireless facilities are primarily installed within public rights-of-way and as such create significant and far-reaching local concerns in traffic and pedestrian safety, aesthetics, protection, and preservation of public property, and the health, safety, and welfare of the general public; and,

WHEREAS, installation of small wireless facilities within the public right-of-way can pose a threat to the public health, safety and welfare, including: disturbance to the right-of-way through the installation and maintenance of wireless facilities; traffic and pedestrian safety hazards due to the unsafe location of wireless facilities; land use conflicts and incompatibilities including excessive height of poles and towers; creation of visual and aesthetic blights and potential safety concerns arising from excessive size, heights, noise or lack of camouflaging of wireless facilities including the associated pedestals, meters, equipment and power generators; and the creation of unnecessary visual and aesthetic blight by failing to utilize alternative technologies or capitalizing on collocation opportunities which may negatively impact the unique quality and character of the City; and,

WHEREAS, the City currently regulates all wireless communications facilities in the public right-of-way as a major wireless communication facility as provided in Section 9.04.050 of the Rancho Santa Margarita Municipal Code, which does not specifically address small wireless facilities; and,

WHEREAS, existing provisions and standards of the Rancho Santa Margarita Municipal Code have not been updated to reflect the development of current wireless communications technologies, such as small wireless facilities and DAS systems ("Distributed Antenna Systems") which are now among the preferred method of providing wireless communications services; and,

WHEREAS, the Federal Telecommunications Act of 1996 preempts and declares invalid all state rules that restrict entry or limit competition in both local and long-distance telephone service; and,

WHEREAS, the California Public Utilities Commission ("CPUC") is primarily responsible for the implementation of local telephone competition and the CPUC issues certificates of public convenience and necessity to new entrants that are qualified to provide competitive local telephone exchange services and related telecommunications service, whether using their own facilities or the facilities or services provided by other authorized telephone corporations; and,

WHEREAS, Section 234(a) of the California Public Utilities Code defines a "telephone corporation" as "every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state;" and,

WHEREAS, Section 616 of the California Public Utilities Code provides that a telephone corporation "may condemn any property necessary for the construction and maintenance of its telephone line;" and,

WHEREAS, many wireless service providers are eligible to utilize the public right-of-way pursuant to a Certificate of Public Convenience and Necessity, as issued by the California Public Utilities Commission; and,

WHEREAS, Section 2902 of the California Public Utilities Code authorizes municipal corporations to retain their powers of control to supervise and regulate the relationships between a public utility and the general public in matters affecting the health, convenience, and safety of the general public, including matters such as the use and repair of public streets by any public utility and the location of the poles, wires, mains, or conduits of any public utility on, under, or above any public streets. The primary and highest purpose of public streets, rights-of-way, roads, and highways is the safe and efficient accommodation of the traveling public, including without limitation motor vehicles, automobiles, trucks, buses and other modes of public transportation, bicycles, pedestrians, and emergency and first responder vehicles. Street signs, street lights, and drainage systems also provide services and enhancements that protect and serve the traveling public. The City Council finds that all other uses of the public right-of-way are ancillary and secondary to the primary purpose and use of the public right-of-way and will only be allowed to the extent such secondary uses do not impede the traveling public or compromise the safety of the members of the public and the residents and businesses of the City; and,

WHEREAS, Section 7901 of the California Public Utilities Code authorizes telephone/telegraph corporations to construct telephone/telegraph lines upon any public road or highway, along or across any of the waters or lands within this state, and to erect poles, posts, piers, or abatements for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters; and,

WHEREAS, Section 7901.1 of the California Public Utilities Code confirms the right of municipalities to exercise reasonable control as to the time, place, and manner in which roadways, highways, and waterways are accessed, which control must be applied to all entities in an equivalent manner; and,

WHEREAS, Section 50030 of the California Government Code states that permit fees imposed by a city for the placement, installation, repair, or upgrading of telecommunications facilities, such as lines, poles, or antennas, by a telephone corporation that has obtained all required authorizations from the CPUC and the FCC to provide telecommunications services cannot exceed the reasonable costs of providing service for which the fee is charged and cannot be levied for general revenue; and,

WHEREAS, state and federal law have changed substantially and the City is in need of clear regulations for small wireless facility installations given the number of anticipated applications and legal timelines upon which the City must act; and,

WHEREAS, the public right-of-way in the City is a uniquely valuable public resource, closely linked with the City's unique small-town character, as well as its attractiveness for visitors, members of the business community, and residents alike. The reasonably regulated and orderly deployment of small wireless facilities in the public right-of-way is desirable, and unregulated or disorderly deployment represents an ever-increasing threat to the health, welfare, and safety of the community; and,

WHEREAS, the regulation of installations, including small wireless facilities, in the public right-of-way is necessary to protect and preserve the aesthetics in the community, as well as the values of properties within the City, and to ensure that such installations are installed using the least intrusive means possible; and,

WHEREAS, the City Council recognizes its responsibilities under the Federal Telecommunications Act of 1996 and state law, and believes that it is acting consistent with the current state of the law in ensuring that irreversible development activity does not occur that would harm the public health, safety, or welfare. The City does not intend that this Ordinance prohibit or have the effect of prohibiting the provision of telecommunications service; rather, this Ordinance includes appropriate regulations to ensure that the installation, augmentation, and relocation of small wireless facilities in the City are conducted in such a manner as to lawfully balance the legal rights of applicants under the Federal Telecommunications Act, the rules/regulations promulgated thereunder, and the California Public Utilities Code, while at the same time, protect the health, safety, and welfare of the general public and land use concerns described herein.

THE CITY COUNCIL OF THE CITY OF RANCHO SANTA MARGARITA, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The above recitals are true and correct, and are incorporated herein by reference.

SECTION 2. Section 9.04.055 (Small Wireless Facilities) of Chapter 9.04 (Regulations for Special Uses and Structures) of Title 9 (Planning and Zoning) is hereby added to the Rancho Santa Margarita Municipal Code, which shall read as follows:

**Sec. 9.04.055. – Small wireless facilities.**

(a) *Statement of purpose.* The purpose and intent of this section is to:

- (1) Provide a uniform and comprehensive set of regulations and standards for the permitting, development, siting, installation, design, operation, and maintenance of small wireless facilities in the City.
- (2) Establish clear local guidelines, standards, and time frames for the exercise of local authority with respect to the regulation of small wireless facilities in the City.
- (3) Impose clear and reasonable requirements so that applications for small wireless facilities will be processed in a consistent and timely manner. This

section imposes requirements that are necessary to protect public health, safety, welfare, aesthetics, and provide for the orderly, managed, and efficient deployment of small wireless facilities in accordance with state and federal laws, rules, and regulations.

- (4) Provide for the orderly, managed, and efficient development of small wireless facilities in accordance with state and federal laws, rules, and regulations and permit and manage reasonable access to public rights-of-way of the City for telecommunications purposes on a competitively neutral basis.
- (5) Enable the City to discharge its public trust responsibilities consistent with rapidly evolving federal and state regulatory policies, industry competition, and technological development through the encouragement of advanced and competitive telecommunications services on the widest possible equivalent basis to the businesses, institutions, and residents of the City while continuing to fairly and responsibly protect the public health, safety, and welfare.
- (6) Promote and protect public health, safety, welfare, and the aesthetic quality of the City consistent with the goals, objectives, and policies of the General Plan.
- (7) Conserve the limited physical capacity of public rights-of-way held in public trust by the City.
- (8) Assure that the City's current and ongoing costs of granting and regulating private access to and use of public rights-of-way are fully paid by the persons seeking such access and causing such costs while securing fair and reasonable compensation for the City and the residents of the City for permitting private use of public rights-of-way, within the limits established by the FCC.
- (9) This section is not intended nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any small wireless service provider's ability to provide small wireless facilities; (2) prohibit or effectively prohibit any entity's ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules or regulations for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent services; (4) deny any request for authorization to place, construct, or modify small wireless facilities on the basis of environmental effects of radio-frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions; (5) prohibit any collocation or modification that the City may not deny under federal or state law; or (6) otherwise authorize the City to preempt any applicable federal or state law.

- (b) *Definitions.* For the purpose of this section, the words and terms defined in this subsection (b) shall have the meaning set forth herein unless the context clearly indicates or requires a different meaning.

*Accessory Equipment* means any equipment, other than antenna equipment, associated with the installation of a small wireless facility.

*Antenna* means the same as defined by the FCC in 47 C.F.R. § 1.6002(b), as may be amended or superseded, which defines that term as an apparatus designed for the purpose of emitting radiofrequency radiation, to be operated or operating from a fixed location, for the provision of personal wireless service and any commingled information services.

*Antenna Equipment* means the same as defined by the FCC in 47 C.F.R. § 1.6002(c), as may be amended or superseded, which defines the term as equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.

*Antenna Facility* means the same as defined by the FCC in 47 C.F.R. § 1.6002(d), as may be amended or superseded, which defines the term as an antenna and associated antenna equipment.

*Applicant* means a person or entity that submits an application for a Small Wireless Facility Permit under the provisions of this section and the agents, employees, and contractors of such person or entity.

*Collocation* means the same as defined by the FCC in 47 C.F.R. § 1.6002(g), as may be amended or superseded, which defines that term as mounting or installing an antenna facility on a pre-existing structure, and/or modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

*Decorative Pole* means any pole that includes decorative or ornamental features, design elements and/or finials intended to enhance the appearance of the pole or the public rights-of-way in which the pole is located.

*Deployment* means the same as defined by the FCC in 47 C.F.R. § 1.6002(h), as may be amended or superseded, which defines the term as placement, construction, or modification of a personal wireless service facility.

*Development Services Director* means the Development Services Director for the City or a designee of the City Manager.

*FCC* means the Federal Communications Commission or its duly appointed successor agency.

*Modification* means any change to a small wireless facility that involves any of the following: collocation, expansion, alteration, enlargement, intensification, or augmentation, including, but not limited to, a change in size, shape, color, visual design, or exterior material. Modification does not include repair, replacement, or maintenance if those actions do not involve a change to the small wireless facility involving any of the following: collocation, expansion, enlargement, intensification, or augmentation.

*New Pole* means any pole erected or installed after the effective date of this section. The term "New Pole" does not include a "Replacement Pole" as defined in this section.

*Pole* means a single shaft of wood, steel, concrete, or other material capable of supporting the equipment mounted thereon in a safe and adequate manner and as required by provisions of this Code.

*Public Right-of-Way or Right-of-Way* means any public street, public way, public alley, or public place, laid out, reserved, or dedicated for street, sidewalk, storm drainage, bicycle path, or other public uses or purposes under the jurisdiction of the City.

*Public Works Director* means the Public Works Director/City Engineer of the City or the designee of the City Manager.

*Replacement Pole* means and shall only include a pole or structure that replaces a pole in the exact same location in order to accommodate small wireless facilities at the time the replacement pole is approved.

*Small wireless facility or facility* means the same as defined by the FCC in 47 C.F.R. § 1.6002(l), as may be amended or superseded, which defines the term as a facility that meets each of the following conditions:

- (1) The facility is: (i) mounted on structures 50 feet or less in height including their antennas; or (ii) mounted on structures no more than 10 percent taller than other adjacent structures; or (iii) does not extend existing structures on which it is located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
- (2) Each antenna associated with any deployment, excluding associated antenna equipment, is no more than three cubic feet in volume;
- (3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
- (4) The facility does not require antenna structure registration under 47 C.F.R. Part 17;

- (5) The facility is not located on Tribal lands, as defined under 36 C.F.R. 800.16(x); and
- (6) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. 1.1307(b).

*Structure* means the same as defined by the FCC in 47 C.F.R. § 1.6002(m), as may be amended or superseded, which defines the term as a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).

- (c) *General provision.* Notwithstanding any provision of the Rancho Santa Margarita Municipal Code to the contrary, this section shall govern all applications for Small Wireless Facility Permits in the City.
- (d) *Required approvals.*
  - (1) A Small Wireless Facility Permit shall be required to locate or modify any small wireless facility on a pole, new pole, replacement pole, or structure located within the City, including without limitation on any public rights-of-way. No small wireless facility shall be located or modified within the City on any property, including the public right-of-way, without the issuance of an administrative Small Wireless Facility Permit, as required by this section. The Development Services Director, in consultation with the Public Works Director, shall have the authority to approve, approve with conditions, or deny any application for the deployment or modification of a small wireless facility.
  - (2) Each applicant for a Small Wireless Facility Permit pursuant to this section proposed for location in or on any public right-of-way within the City shall also submit an application for an Encroachment Permit pursuant to the provisions of Chapter 11.07 of this Code. The application for an Encroachment Permit shall be processed, reviewed, and approved concurrently with the application for a Small Wireless Facility Permit pursuant to the provisions of this section.
  - (3) An administrative approval granted under this section shall not confer any exclusive right, privilege, license, or franchise to occupy or use the public right-of-way of the City for delivery of telecommunication services of any kind or for any other purposes.
  - (4) All required approvals under this section shall be processed in conformance with the time periods established by applicable state and federal law, and FCC regulations and orders.



- (e) *Application content.* All applications for a Small Wireless Facility Permit required by this section and all required submittals must be made in writing by the applicant on such form as the Development Services Director may prescribe, which shall include the information specified in this subsection in addition to all other information determined necessary by the Development Services Director, in consultation with the Public Works Director:
- (1) Full name and contact information of the small wireless facility owner, small wireless facility operator, agent (if any), and property owner, and related letter(s) of authorization from the small wireless facility and/or property owner.
  - (2) A full written description of the proposed small wireless facility, including its purpose and specifications.
  - (3) A detailed site plan or photo simulation of the small wireless facility containing the exact proposed location of the small wireless facility, and any existing wireless facilities within a five hundred (500) foot radius of the proposed location.
  - (4) Photographs of all proposed small wireless facility equipment and an accurate visual impact analysis with photo simulations, including reasonable line-of-sight locations from public streets, nearby vicinity, or other adjacent viewpoints as may be required by the Development Services Director, in consultation with the Public Works Director, and a map that shows the photo location of each view angle.
  - (5) Building elevations and roof plan (for building- and/or rooftop-mounted small wireless facilities) indicating exact location and dimensions of equipment proposed. For all other small wireless facilities not mounted to a building or rooftop, indicate surrounding grades, structures, and landscaping from all sides.
  - (6) Proposed landscaping and/or nonvegetative screening plan for all aspects of the small wireless facility.
  - (7) Written documentation demonstrating a good faith effort to locate the proposed small wireless facility in the least aesthetically intrusive location and screened to the greatest extent feasible in accordance with the design and development standards listed within this section.
  - (8) If the application is for a small wireless facility that will be located within the public right-of-way, the applicant shall state the basis for its claimed right to enter the right-of-way, and provide a copy of its certificate of public convenience and necessity (CPCN), if a CPCN has been issued by the California Public Utilities Commission.

- (9) Evidence from the equipment manufacturer that the ambient noise emitted from all proposed equipment will not, both individually and cumulatively, exceed the applicable noise limits as found in Chapter 5.04 of this Code.
  - (10) Evidence that demonstrates that the small wireless facility's antenna does not exceed three (3) cubic feet in volume, and all other equipment (antenna equipment and accessory equipment) does not exceed twenty-eight (28) cubic feet in volume.
  - (11) An application and processing fee in an amount consistent with FCC regulations as established within a resolution by the City Council for the estimated cost of the City, including staff time, and all other costs of whatever type or variety, incurred for the processing, review, commenting upon, evaluation, and consideration of the small wireless facility application.
  - (12) A siting analysis which identifies a minimum of two (2) other least aesthetically intrusive locations within or outside the City that could serve the area intended to be served by the small wireless facility. The alternative site analysis should include at least one (1) collocation site, if feasible.
  - (13) A radio-frequency (RF) exposure compliance report prepared and certified by an RF engineer licensed by the State of California that certifies that the proposed small wireless facility, as well as any collocated facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts effective radio power (ERP)) for all existing and proposed antennas at the site and show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.
- (f) *Design and development standards for small wireless facilities.*
- (1) Small wireless facilities shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, inconvenience to the public's use of the public right-of-way, or create safety hazards to pedestrians and motorists.
  - (2) Small wireless facilities shall not be located within any portion of the public right-of-way interfering with access to fire hydrants, fire stations, water valves, underground vaults, valve housing structures, utility lines or facilities, or any other vital public health and safety facility.
  - (3) The applicant shall use screening and camouflage design techniques in the design and placement of small wireless facilities to ensure such facilities are as visually inconspicuous as possible.

- (4) Small wireless facilities shall be sited at least three hundred (300) feet away from other small wireless facilities to avoid an over-concentration of such facilities, to preserve community aesthetics, and to avoid the creation of potential hazards or inconvenience to the travelling public. Collocated small wireless facilities on the same pole/structure are not required to meet this minimum spacing standard with respect to one another.
  - (5) To preserve community aesthetics, all small wireless facilities, excluding antennas and aboveground vents, shall be pole-mounted or placed underground, flush to the finished grade, whenever there are no physical or site constraints to make undergrounding infeasible, except as may be determined by the Development Services Director, in consultation with the Public Works Director. Infeasibility shall not be demonstrated by the mere cost to place the equipment underground.
  - (6) The applicant shall use the least visible antennas as possible to ensure the antenna is as visually inconspicuous as possible.
  - (7) All above-ground equipment must provide adequate sight distance in accordance with Section 9.06.100 of this Code.
  - (8) If an applicant proposes to replace a pole to accommodate the small wireless facility, the replacement pole shall match the appearance of the original pole to the extent feasible, unless the Development Services Director, in consultation with the Public Works Director, finds that another design accomplishes objectives of this subsection.
  - (9) Small wireless facilities may incorporate reasonable and appropriate security measures, such as fences, walls, and anti-climbing devices, to prevent unauthorized access, theft, and vandalism. Security measures must be designed to enhance concealment to the maximum extent feasible. Security measures shall not include barbed wire, razor ribbon, electrified fences or any similar security measures.
  - (10) Small wireless facilities shall not be installed on decorative poles, except as may be determined by the Development Services Director, in consultation with the Public Works Director.
- (g) *Installation and operation requirements for small wireless facilities.*
- (1) Small wireless facilities shall be operated in a manner so as to avoid any significant adverse impacts caused by noise.
    - a. Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 10:00 p.m. and 7:00 a.m.

- b. At no time shall equipment noise from any small wireless facility exceed the applicable noise levels as established under Chapter 5.04 of this Code.
- (2) Small wireless facilities shall not bear any signs or advertising devices other than certification, warning, or other signage required by law or permitted by the City.
  - (3) Small wireless facility equipment shall not be illuminated unless specifically required by the Federal Aviation Administration, the FCC, or other governmental agency.
  - (4) The City recognizes that the advances associated with telecommunication equipment is subject to rapid changes and upgrades as a result of industry competition and customer demands, and anticipates that antennas and related equipment with reduced visual impacts will be available in the future with comparable or improved coverage and capacity capabilities. The City finds that it is in the interest of the public health, safety, and welfare that small wireless facilities be required to replace older facilities with newer equipment of equal or greater capacity and reduced visual impacts as equipment improvements become available. Small wireless facilities shall be reviewed every five (5) years from the approval date of the Small Wireless Facility Permit in order to review equipment.
  - (5) Only pole-mounted small wireless facilities shall be permitted in the public right-of-way. All poles shall be designed to be the minimum functional height and width required to support the proposed small wireless facility installation and meet FCC requirements.
  - (6) Pole-mounted equipment shall be designed to occupy the least amount of space in the right-of-way that is technically feasible.
  - (7) All antennas shall be installed so as not to preclude possible future collocation by the same or other operators.
  - (8) Each antenna associated with any deployment shall be no more than three (3) cubic feet in volume. All other equipment associated with the small wireless facility, including associated antenna equipment and accessory equipment, shall be no more than twenty-eight (28) cubic feet in volume.
  - (9) Small wireless facilities must be mounted on structures fifty (50) feet or less in height including their antenna, or mounted on structures no more than ten (10) percent taller than other adjacent structures, or do not extend existing structures on which the small wireless facility is located to a height of more than fifty (50) feet or by more than ten (10) percent, whichever is greater.

- (10) Small wireless facilities shall be maintained in good working order and condition and shall be fully operable at all times. Each small wireless facility shall be clean and free of general dirt and grease; chipped, faded, peeling, and cracked paint; rust and corrosion; cracks, dents, and discoloration; missing, discolored, or damaged artificial foliage or other camouflage; graffiti, bills, stickers, advertisements, litter and debris; and damaged structural parts.
  - (11) Small wireless facilities shall be built in compliance with the Americans with Disabilities Act.
- (h) *Conditions of approval for small wireless facilities.* In addition to compliance with the requirements of this section, approval of small wireless facilities shall be subject to each of the following conditions of approval, as well as any modification of these conditions or additional conditions of approval deemed reasonably necessary by the Development Services Director, in consultation with the Public Works Director:
- (1) In the event the construction of a small wireless facility, as approved pursuant to this section, requires a Building Permit under the provisions of Title 10 of this Code, all conditions and restrictions imposed on the Small Wireless Facility Permit and Encroachment Permit approved pursuant to the provisions of this section shall be incorporated in, and made a condition of such Building Permit. All conditions shall be binding as to the applicant and all successors in interest to permittee. The permittee must construct, install, and operate the small wireless facility in strict compliance with all approved permits.
  - (2) As more concealable equipment evolves and becomes available, the permittee shall place above-ground equipment below ground, including, but not limited to:
    - a. Any accessory equipment that has been mounted to a small wireless facility or pole or mounted on the ground; and
    - b. Replace larger, more visually intrusive small wireless facilities with smaller, less visually intrusive facilities, after receiving all necessary permits and approvals required pursuant to this Code.
  - (3) The permittee shall submit and maintain current at all times basic contact and site information on a form as may be provided by the Development Services Director, in consultation with the Public Works Director. The permittee shall notify the Development Services Director of any changes to the information submitted within seven (7) days of any change, including change of the name or corporate legal status of the owner or operator. This information shall include, but is not limited to, the following:

- a. Identity, including the name, address and 24-hour local or toll-free contact phone number of the permittee, the owner, the operator, and the agent or person responsible for the maintenance of the small wireless facility.
  - b. The corporate legal status of the owner of the small wireless facility, including official identification numbers and FCC certification.
  - c. Name, address, and telephone number of the property owner if different than the permittee.
- (4) The permittee shall not place any small wireless facility that will deny access to, or otherwise interfere with, any public utility, easement, or right-of-way located on the site. The permittee shall allow the City reasonable access to, and maintenance of, all utilities and existing public improvements within or adjacent to the site, including, but not limited to, pavement, trees, public utilities, lighting, and public signage.
  - (5) At all times, all required notices and signs shall be posted on the site as required by the FCC and California Public Utilities Commission, and as approved by the City. The location and dimensions of a sign bearing the emergency contact name and telephone number shall be posted pursuant to the approved plans.
  - (6) At all times, the permittee shall ensure that the small wireless facility complies with the most current regulatory and operational standards including, but not limited to, radio-frequency emissions standards adopted by the FCC and antenna height standards adopted by the Federal Aviation Administration.
  - (7) Every five (5) years the permittee shall submit to the Development Services Director a written report by a qualified licensed radio-frequency emissions engineer, certifying that the facility follows the radio-frequency emissions guidelines or standards of the FCC. Additionally, if at any time while the Small Wireless Facility Permit is in effect the Development Services Director, in consultation with the Public Works Director, determines there is good cause to believe that the small wireless facility may emit radio-frequency emissions that are likely to exceed FCC standards, the Development Services Director may require the permittee to submit a report described by this section. Failure to comply with this provision shall be grounds for revocation of the Small Wireless Facility Permit by the Development Services Director. This provision shall not apply to small wireless facilities that are categorically excluded from assessment per FCC Regulation 47 C.F.R. § 1.1307(b), as may be amended or superseded.

- (8) The permittee shall assume full liability for damage or injury caused to any property or person by the small wireless facility.
- (9) The permittee shall agree to the following indemnity provision, as approved by the City Attorney, which shall substantially read as follows: The permittee of any administrative or discretionary land use entitlement permit issued under the provisions of this section shall indemnify, defend, and hold the City, its officers, agents, employees, and representatives ("Indemnitees"), harmless from and against any and all loss, damage, liability, claim, demand, suit, cost, and expense whatsoever, including reasonable attorneys' fees, regardless of the merit or outcome of any such claim or suit arising from or in any manner connected with the issuance of any such permits or approvals and/or the installation, construction, maintenance, use, or operation of the work contemplated on private property, City property, or the public right-of-way for such permits, regardless of whether the Indemnitees reviewed and approved any plans or inspected any work or improvement, including any encroachment, and regardless of whether such maintenance, repair, replacement, or condition was affected or caused by the Indemnitees, except as provided by law.
- (10) All conditions of approval shall be binding as to the applicant and all successors in interest to the permittee.
  - (i) *Additional conditions of approval for small wireless facilities in the public right-of-way.* In addition to compliance with the requirements of Section 9.04.055 and the conditions of approval stated above in subsection (h), including without limitation the terms and conditions set forth in an approved Encroachment Permit, approval of small wireless facilities in the public right-of-way shall be subject to the following conditions of approval and any modification of these conditions or additional conditions of approval deemed necessary by the Development Services Director, in consultation with the Public Works Director:
    - (1) The small wireless facility shall be subject to such conditions, changes or limitations as are from time to time deemed necessary by the Development Services Director, in consultation with the Public Works Director, for the purpose of: (a) protecting the public health, safety, and welfare, (b) preventing interference with pedestrian and vehicular traffic, and (c) preventing damage to the public right-of-way or any property adjacent to it.
    - (2) The permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior written consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the City shall be moved to accommodate a small wireless facility unless the Development Services Director, in consultation with the Public Works Director, determines that such movement will not adversely affect the City or any surrounding businesses or residents, and the permittee pays all costs and

expenses related to the relocation of the City's structure, improvement, or property. Prior to commencement of any work pursuant to an Encroachment Permit issued for any small wireless facility within the public right-of-way, the permittee shall provide the City with documentation establishing to the City's satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement, or property within the public right-of-way to be affected by applicant's small wireless facility.

- (3) The permittee shall repair, at its sole cost and expense, any damage including, but not limited to subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to City streets, sidewalks, curbs, gutters, trees, parkways, slopes, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility lines and systems, or sewer systems and sewer lines that result from any activities performed in connection with the installation or maintenance of a small wireless facility in the public right-of-way. The permittee shall restore such areas, structures, and systems to the condition in which they existed prior to the installation or maintenance that necessitated the repairs. In the event the permittee fails to complete such repair within the number of days stated on a written notice by the Development Services Director, the Public Works Director shall cause such repair to be completed at permittee's sole cost and expense.
- (4) The permittee shall modify, remove, or relocate its small wireless facility, or portion thereof, without cost or expense to the City, if and when made necessary by:
  - a. Any public improvement project, including, but not limited to, the construction, maintenance, or operation of any underground or aboveground public infrastructure including but not limited to sewers, storm drains, conduits, gas, water, electric or other utility systems, or pipes owned by the City or any other public agency;
  - b. Any abandonment of any street, sidewalk, or other public facility;
  - c. Any change of grade, alignment or width of any street, sidewalk, or other public facility; or
  - d. A determination by the Development Services Director, in consultation with the Public Works Director, that the small wireless facility has become incompatible with public health, safety, or welfare or the public's use of the public right-of-way.
- (5) Any modification, removal, or relocation of the small wireless facility shall be completed within ninety (90) days of written notification by the Development Services Director, in consultation with the Public Works Director, unless exigencies dictate a different period for removal or



relocation. Modification or relocation of the small wireless facility shall require submittal, review, and approval of a permit amendment pursuant to this Code. The permittee shall be entitled, on permittee's election, to either a pro-rata refund of fees paid for the original permit or to a new permit, without additional fee, at a location as close to the original location as the standards set forth in this Code allow. In the event the small wireless facility is not modified, removed, or relocated within said period of time, the City may cause the same to be done at the sole cost and expense of permittee. In the event of exigent circumstances, as determined by the Development Services Director, in consultation with the Public Works Director, the City may modify, remove, or relocate small wireless facilities without prior notice to permittee provided permittee is notified in writing within a reasonable period thereafter.

(j) *Abandonment or discontinuation of use.*

(1) Small wireless facilities that have not provided wireless communication services for a cumulative period of ninety (90) days in a one (1) year period shall be considered abandoned and shall be removed promptly from the premises no later than three (3) months after written notification is sent by the Development Services Director, in consultation with the Public Works Director, to the operator of the small wireless facility and property owner. Such removal shall be in accordance with proper health and safety requirements and all ordinances, rules and regulations of the City. The permittee shall send to the City a copy of the discontinuation notice required by the California Public Utilities Commission or FCC at the time the notice is sent to the regulatory agencies.

(2) Small wireless facilities that are abandoned but not removed within the required three (3) month period from the date of notice shall be in violation of this section, and the operators of the small wireless facility and the owners of the property shall be subject to penalties for violations under the enforcement and penalties provisions of this Code. The City may remove all abandoned small wireless facilities following the three (3) month removal period at the operators' expense. Facilities removed by the City shall be stored for no less than fifteen (15) days and thereafter disposed of by public auction, if deemed to be of value by the City, or otherwise as permitted by law.

(k) *Appeals.* A decision of the Development Services Director pursuant to this section may be appealed on behalf of the applicant to the Planning Commission pursuant to Section 9.08.030 and Table 9.08.1 of this Code and such appeal shall be reviewed and decided in conformance with the time periods and procedures established by applicable state and federal law, and FCC regulations and orders.

**SECTION 3.** Subsection (1) (Exemptions) of Section 9.04.050 (Wireless Communication Facilities) of Chapter 9.04 (Regulations for Special Uses and Structures)

of Title 9 (Planning and Zoning) of the Rancho Santa Margarita Municipal Code is hereby amended to read as follows:

(1) *Exemptions.*

- a. *Emergencies.* In the event an emergency or disaster is declared for the area, the Development Services Director may exempt wireless communication facilities from the requirements of this section during the duration of such emergency or disaster.
- b. *Small wireless facilities.* Small wireless facilities covered by and/or subject to the provisions of Section 9.04.055 are exempt from and shall not be governed by this Section 9.04.050.

**SECTION 4.** Section 9.02.060 (Indemnification) of Chapter 9.02 (Enforcement, Violations, Abatement and Penalties) of Title 9 (Planning and Zoning) is hereby added to the Rancho Santa Margarita Municipal Code, which shall read as follows:

**Sec. 9.02.060. – Indemnification.**

The permittee of any administrative or discretionary land use entitlement permit issued under the provisions of this Title shall agree to the following indemnity provision, as approved by the City Attorney: The permittee shall indemnify, defend, and hold the City, its officers, agents, employees, and representatives ("Indemnitees"), harmless from and against any and all loss, damage, liability, claim, demand, suit, cost, and expense whatsoever, including reasonable attorneys' fees, regardless of the merit or outcome of any such claim or suit arising from or in any manner connected with the issuance of any such permits or approvals and/or the installation, construction, maintenance, use, or operation of the work contemplated on private property, City property, or the public right-of-way for such permits, regardless of whether the Indemnitees reviewed and approved any plans or inspected any work or improvement, including any encroachment, and regardless of whether such maintenance, repair, replacement, or condition was affected or caused by the Indemnitees, except as provided by law.

**SECTION 5.** Public Resources Code § 21065 defines "project" as "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." The proposed Ordinance does not have the potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, as the Ordinance does not call for any change in the existing environmental conditions within the City. The proposed Ordinance merely updates existing City regulations to reflect the FCC's new laws governing the deployment of small wireless facilities, which are already permitted uses within the City. Accordingly, the Ordinance is not a "project" subject to CEQA. (Public Resources Code § 21065; CEQA Guidelines § 15378(a).)

Even if the Ordinance could be construed to be a project subject to CEQA, the proposed Ordinance is exempt because the proposed Ordinance merely updates existing City

regulations to reflect the FCC's new laws governing the deployment of small wireless facilities and does not authorize new programs or activities. The proposed Ordinance calls for the continued operation of small wireless facilities involving no expansion of the existing uses. As a result, the proposed Ordinance is exempt from CEQA pursuant to the Class 1 exemption.

Moreover, CEQA's Class 3 Exemption applies to the construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. (CEQA Guidelines, § 15303.) The proposed Ordinance allows for the deployment of new, small wireless facilities on pre-existing or new small structures within the City, therefore, the proposed Ordinance is exempt from CEQA pursuant to the Class 3 exemption.

**SECTION 6.** If any section, subsection, subdivision, 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 hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more section, subsection, subdivision, sentence, clause, phrase, or portion thereof be declared invalid or unconstitutional.

**SECTION 7.** 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 days after passage and adoption as may be 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 days prior to the date of adoption of this Ordinance; and, within fifteen 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 10<sup>TH</sup> DAY OF JUNE 2020, BY VOTE AS FOLLOWS:

AYES: Council Members Figueroa, Gamble, Holloway, Mayor Pro Tempore Beall and Mayor McGirr (5)

NOES: None (0)

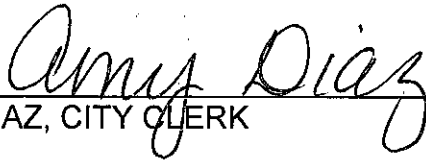
ABSTAIN: None (0)

ABSENT: None (0)



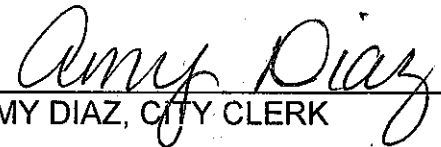
BRADLEY J. MCGIRR, MAYOR

ATTEST:

  
\_\_\_\_\_  
AMY DIAZ, CITY CLERK

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) ss  
CITY OF RANCHO SANTA MARGARITA )

I, Amy Diaz, City Clerk of the City of Rancho Santa Margarita, California, DO HEREBY CERTIFY that the foregoing Ordinance No. 20-04 was duly introduced and placed upon its first reading at a Regular Meeting of the City Council on the 27<sup>th</sup> day of May, 2020, and that thereafter, said Ordinance was duly adopted and passed at a Regular Meeting of the City Council held on the 10<sup>th</sup> day of June, 2020.

  
\_\_\_\_\_  
AMY DIAZ, CITY CLERK

AFFIDAVIT OF POSTING  
AND PUBLICATION

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) ss  
CITY OF RANCHO SANTA MARGARITA )

AMY DIAZ, being first duly sworn, deposes and says:

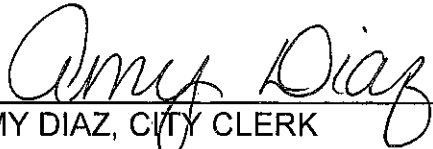
That she is the duly appointed and qualified City Clerk of the City of City of Rancho Santa Margarita;

That in compliance with State Laws of the State of California, ORDINANCE NO. 20-04, being:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RANCHO SANTA MARGARITA, CALIFORNIA, ADDING NEW SECTION 9.04.055 (SMALL WIRELESS FACILITIES), AMENDING SUBSECTION (1) (EXEMPTIONS) OF EXISTING SECTION 9.04.050 (WIRELESS COMMUNICATION FACILITIES), AND ADDING NEW SECTION 9.02.060 (INDEMNIFICATION) TO TITLE 9 (PLANNING AND ZONING) OF THE RANCHO SANTA MARGARITA MUNICIPAL CODE REGARDING THE DEPLOYMENT OF SMALL WIRELESS FACILITIES

on the 19<sup>th</sup> day of June 2020, was published in the Orange County Register; and was, in compliance with City Resolution No. 00-01-06-07, on the 19<sup>th</sup> day of June, caused to be posted in three places in the City of Rancho Santa Margarita, to wit:

Rancho Santa Margarita City Hall  
Fire Station 45  
Trabuco Canyon Water District

  
\_\_\_\_\_  
AMY DIAZ, CITY CLERK  
Rancho Santa Margarita, California