

CALIFORNIA COASTAL COMMISSION

South Coast District Office
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Th13a

LCP-5-LGB-21-0042-1 (CITY OF LAGUNA BEACH)
AUGUST 11, 2022

EXHIBITS

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- Exhibit 1 – Part A: City Council Resolution No. 20.029 and Ordinance No. 1659 (Final Language Adopted by City)
- Exhibit 2 – Part B: City Council Resolution No. 21.011 and Ordinance No. 1654 (Final Language Adopted by City)
- Exhibit 3 – Part C: City Council Resolution No. 21.007 and Ordinance No. 1653 (Final Language Adopted by City)
- Exhibit 4 – Strikethrough/Insert Version of Proposed Changes to LCP

RESOLUTION NO. 20.029

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH, CALIFORNIA, ADOPTING LOCAL COASTAL PROGRAM AMENDMENT 20-6663 AMENDING LAGUNA BEACH MUNICIPAL CODE CHAPTER 25.05 (ADMINISTRATION) RELATING TO STREAMLINING OF THE ENTITLEMENT PROCESS, AND SECTIONS 25.50.008 (PERMITTED PROJECTIONS INTO REQUIRED SETBACKS) AND 25.50.012 (FENCES, WALLS, HEDGES, LATTICEWORK AND SCREENS) TO CLARIFY SETBACK REQUIREMENTS, AND REQUESTING CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION

WHEREAS, Section 30500 of the Public Resources Code requires each county and city to adopt a Local Coastal Program ("LCP") for that portion of the coastal zone within its jurisdiction;

WHEREAS, on January 13, 1993, the California Coastal Commission effectively certified the City of Laguna Beach ("City") LCP, and the City assumed coastal development permit-issuing authority;

WHEREAS, The City's current entitlement process can be lengthy and costly and staff have limited authority to process projects administratively;

WHEREAS, on March 5, 2019, the City Council directed the Community Development Department to work on amendments to the Zoning Code to streamline the application review process;

WHEREAS, in accordance with City Council direction, staff has drafted a Zoning Ordinance that maintains the existing development standards and design guidelines; however, the process in which some projects are reviewed and approved would be modified;

WHEREAS, the subject Local Coastal Program (LCP) amendment is consistent with the City's General Plan and LCP; and

WHEREAS, on April 21, 2021, the Planning Commission held a duly noticed public

1 hearing and unanimously voted to recommend that the City Council approve LCP Amendment 20-
2 6663 to amend portions of Chapter 25.05 (Administration) and Sections 25.50.008
3 (Encroachments and Projections into Required Yards) and 25.50.012 (Fences, Walls, Hedges,
4 Latticework and Screens) of the Municipal Code; and,

5 **WHEREAS**, on May 4, 2021, the City Council held a duly noticed public hearing at which
6 time all interested parties were given an opportunity to be heard and present testimony and evidence;

7
8 **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH**
9 **DOES RESOLVE AND ORDER** as follows:

10 **SECTION 1.** LCP Amendment 20-6663, amending Laguna Beach Municipal Code
11 Chapter 25.05 (Administration) and Sections 25.50.008 (Encroachments and Projections into
12 Required Yards) and 25.50.012 (Fences, Walls, Hedges, Latticework and Screens), as attached in
13 Exhibit A and incorporated herein by reference, is approved.

14 **SECTION 2.** The California Coastal Commission is hereby requested to consider, approve
15 and certify LCP Amendment 20-6663.

16 **SECTION 3.** LCP Amendment 20-6663 is statutorily exempt from the California
17 Environmental Quality Act (CEQA) pursuant to Section 15265(a)(1) of Title 14 of the California
18 Code of Regulations and Chapter 3 of the Coastal Act. In addition, Section 15265(a)(1) exempts local
19 governments from the requirements of preparing an environmental impact report or otherwise
20 complying with CEQA in connection with the adoption of a Local Coastal Program.

21 **SECTION 4.** Pursuant to Section 13551(b) of the Coastal Commission Regulations, LCP
22 Amendment No. 20-6663 shall take effect upon Coastal Commission approval, as provided in Public
23 Resources Code Sections 30512, 30513, and 30519.

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ADOPTED this 4th day of May 2021.



Bob Whalen, Mayor

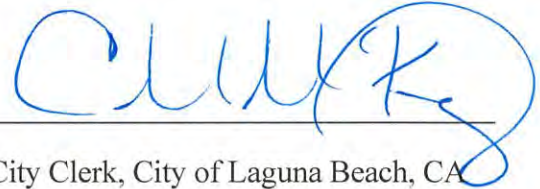
ATTEST:



City Clerk

I, ANN MARIE McKAY, City Clerk of the City of Laguna Beach, California, do hereby certify that the foregoing Resolution No. 20.029 was duly adopted at a Regular Meeting of the City Council of said City held on May 4, 2021 by the following vote:

AYES:	COUNCILMEMBER(S)	Blake, Weiss, Kempf, Whalen
NOES:	COUNCILMEMBER(S)	Iseman
ABSENT:	COUNCILMEMBER(S)	None



City Clerk, City of Laguna Beach, CA

Exhibit A

LCP Amendment 20-6663

Existing Municipal Code language is shown in regular font, new text in **bold/underline** font and deleted text in ~~strikethrough~~ font.

Chapter 25.05

ADMINISTRATION

- | | |
|-----------|---|
| 25.05.010 | Intent and purpose. |
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| 25.05.020 | Administrative use permit procedure. |
| 25.05.025 | Variances. |
| 25.05.030 | Conditional use permits. |
| 25.05.035 | Temporary use permits. |
| 25.05.040 | Design review |
| 25.05.050 | Coastal development permits. |
| 25.05.065 | Public notice. |
| 25.05.070 | Appeals and requests for review of discretionary decisions. |
| 25.05.075 | Revocation. |
| 25.05.080 | Reasonable accommodation. |

25.05.010 Intent and purpose.

It is the intent and purpose of this chapter to establish procedures necessary for the efficient processing of planning and development applications and requests.

(Ord. 1334 § 1, 1997).

25.05.015 Form of application, fees, and permit compliance.

(A) Prescribed by the Director of Community Development.

(1) The Director of Community Development shall prescribe the form and scope of all

variances, changes of district boundaries or reclassifications, general plan amendments and all other planning or development applications as identified in Chapter 25.05, and of accompanying data to be furnished so as to assure the fullest practicable presentation of facts for proper consideration of the matter and for the permanent record. Forms for such purposes may be provided.

(2) Each planning and development application shall include verification by at least one of the owners of property involved or their authorized agent attesting to the truth and correctness of all facts and maps presented with such application.

(3) Applications filed pursuant to this Title shall be numbered consecutively in the order of their filing and shall become a part of the permanent official records of the Department of Community Development and shall be attached thereto and permanently filed therewith copies of all notices and actions pertaining thereto.

(B) Complete Planning and Development Applications.

(1) No later than ~~thirty~~ **30 calendar** days after receipt of a planning or development application, the Department of Community Development shall determine whether the application is complete or incomplete.

(2) In the event an application is determined to be incomplete, the applicant shall be notified as to additional materials required to continue processing the application.

(3) Within ~~thirty~~ **30 calendar** ~~business~~ days of receipt of supplemental materials requested for applications previously determined incomplete, the Department of Community Development shall determine whether the application is complete.

(4) A decision determining an application to be incomplete may be appealed to the City Council by the applicant. The fee for such appeal is to be determined by City Council resolution.

(C) Signatures. If signatures of persons other than the applicant are required, or offered in support of or in opposition to the application, they may be received as evidence of notice having been served upon them of the pending application or as evidence of their opinion on the pending issue, but they shall in no case infringe upon or govern in the free exercise

of the powers vested in the City of Laguna Beach.

(D) Filing Fee Collection. Before accepting for filing any request or application submitted relative to Title 25 of this Code, ~~processing of items under the auspices of the California Environmental Quality Act, continuations of public hearings, encroachment permits into the public right-of-way, General Plan amendments, vacation or relinquishment of the public interest in land, rights-of-way or easements, and other requests requiring Planning Commission or Board of Adjustment Review, hearing or approval,~~ the Department of Community Development shall charge and collect a filing fee for each such request or application as determined by resolution of the City Council to cover the cost of making maps, sending out notices, and other incidental administrative expenses involved in the handling of the matter, including written staff reports.

(E) Refund of Filing Fees. Refund of all or any portion of the filing fees may be ordered by the Director of Community Development.

(F) Conformance by Officials. All officials or public employees vested with the duty or authority to issue permits or licenses where required by law shall conform to the provisions of this Title.

(G) Application. The provisions of this Title shall apply to all buildings, improvements, lots and premises, or portions thereof, owned, leased, operated or controlled by the City or any Department or officer thereof, or by any other municipal or quasi-municipal corporation or government, or any Department, Board or officer thereof.

25.05.020 Administrative Use Permit procedure.

(A) Application. Application for an Administrative Use Permit shall be made by a property owner or authorized agent for a use which this Title expressly requires an Administrative Use Permit. Applications shall contain such information as may be prescribed by the Director of Community Development.

(B) Filing Fee. Prior to accepting an application, the Department of Community Development shall charge and collect a filing fee as determined by resolution of the City Council.

1 (C) Public Notice. Public notice shall be subject to the provisions of Section 25.05.065 except
2 that if a Coastal Development Permit is required pursuant to Section 25.07, noticing for
3 that type of permit shall instead be carried out through the public notice provisions of
4 Section 25.07.014.

5 (D) Public Hearing. No hearing on the application shall be held unless requested by the
6 applicant or other noticed person. In the event a hearing is requested, the Department of
7 Community Development shall set a hearing date before the Director of Community
8 Development and shall notice said hearing pursuant to the provisions of subsection (C) of
9 this section.

10 (E) Approval. The Director of Community Development or authorized designee shall approve
11 or deny an Administrative Use Permit based upon compliance or noncompliance with the
12 City's zoning regulations.

13 (F) Appeal. Appeal is subject to the provisions of Section 25.05.070.

14 (Ord. 1577 § 2, 2013; Ord. 1555 § 2, 2011; Ord. 1334 § 1, 1997).

15
16 **25.05.025 Variances.**

17 (A) Intent and Purpose. The intent and purpose of this section is to establish procedures
18 whereby parcels or development projects may vary from the provisions of Title 25.
19 Variances may be granted when there are special circumstances applicable to the property
20 involved, including size, shape, topography, location and surroundings, that would cause
21 the strict application of the zoning ordinance to deprive the property of the privileges
22 enjoyed by other property in the vicinity and zone.

23 (B) Application.

24 (1) Application for a variance shall be made by a property owner or authorized agent.
25 Applications shall contain such information as prescribed by the Director of
26 Community Development.

27 (C) Filing Fee. Prior to accepting an application, the Director of Community Development
28 shall collect a filing fee as determined by resolution of the City Council.

1 (D) Public Notice. Public notice shall be subject to the provisions of Section 25.05.065, except
2 that if a Coastal Development Permit is required pursuant to Section 25.07, noticing for
3 that type of permit shall instead be carried out through the public notice provisions of
4 Section 25.07.014.

5 (E) Approval.

6 (1) The Board of Adjustment or Planning Commission as applicable, shall approve,
7 approve in part, conditionally approve or deny at a noticed public hearing a Variance
8 based upon the findings set forth in Section 25.05.025(F).

9 (2) Board of Adjustment or Planning Commission determinations, including findings, shall
10 be by resolution adopted by a majority of its membership.

11 (3) Written notice of determination, including findings, shall be mailed to the applicant or
12 authorized agent within ten business days of the date of the Board's or Planning
13 Commission's decision.

14 (4) The Board of Adjustment or Planning Commission, as applicable, in approving a
15 Variance, may set forth in its decision reasonable terms and conditions necessary to
16 protect the health, safety and welfare of the community and to assure the intent and
17 purpose of these regulations. It may also require such bonds and guarantees as
18 necessary to ~~insure~~ **ensure** that compliance with such terms and conditions is being or
19 will be achieved.

20 ~~(5) Any Variance granted shall be subject to such conditions that will assure that the~~
21 ~~adjustment authorized shall not constitute a grant of special privilege inconsistent with~~
22 ~~the limitations upon other properties in the vicinity and identical zoning classification.~~

23 (F) Findings.

24 (1) There are special circumstances applicable to the property involved, including size,
25 shape, topography, location or surroundings which cause the strict application of the
26 zoning ordinance to deprive such property of privileges enjoyed by other property in
27 the vicinity and under identical zoning classification.

28 (2) Such variance is necessary for the preservation and enjoyment of a substantial property

1 right of the applicant, which right is possessed by other property owners under like
2 conditions in the same vicinity and zone.

3 (3) The granting of the Variance will not be detrimental to the public health, safety,
4 convenience and welfare or injurious to property or improvements in the vicinity in
5 which the property is located.

6 (4) The granting of such a Variance will not be contrary to the objectives of the zoning
7 ordinance or the General Plan.

8 (G) Appeals. Appeals are subject to the provisions of Section 25.05.070.

9 (H) Effective Date/Expiration Date.

10 (1) Decisions on Variance applications by the Board of Adjustment or Planning
11 Commission, as applicable, shall become effective ten business days after the date of
12 the decision, unless appealed to the City Council.

13 (2) A Variance shall lapse and become void two years following the effective date unless a
14 shorter approval period is specified for the project or unless:

15 (a) A Building Permit is issued, and construction is begun and diligently pursued to
16 completion; or

17 (b) The Planning Commission or Board of Adjustment, as applicable, grants a two-year
18 extension of time or, after that initial extension of time, a final one-year extension
19 of time. Such time extensions shall be requested in writing by the applicant or
20 authorized agent prior to the expiration of the beginning two-year approval period
21 or any subsequently approved extensions of time.

22 (3) Extension of Time Findings. An extension of time of the beginning two-year approval
23 period may be granted by the Planning Commission or Board of Adjustment, as
24 applicable, if each of the following findings can be made:

25 (i) The zoning codes or standards applicable to the circumstances of the originally
26 approved variance have not materially changed; and

27 (ii) The neighborhood character has not changed so as to be materially inconsistent
28 with the findings made when the Variance was originally approved.

(I) Revocation. Revocations are subject to the provisions of Section 25.05.075.

(J) Planning Commission Variances.

(1) The Planning Commission shall act as the Board of Adjustment in hearing and determining the following Variances, subject to the procedures and findings established in Sections 25.05.025, 25.05.065(C) and (D), 25.05.070 and 25.05.075:

(a) Variance requests in conjunction with any matter pending before the Planning Commission for which the Commission has the primary discretionary responsibility;

(b) Variance requests in conjunction with subdivisions relating to lot dimension, area and yard requirements and access requirements may be granted when such requirements are deemed impractical, unreasonable or unnecessary for the proper design of such subdivision;

(c) Variance requests for indirect access; and

(d) Variance requests for construction of new residential units on lots taking access from streets with less than standard width.

~~(2) Administrative Approval for Certain Variances. The Director of Community Development shall approve or deny a Variance application for existing nonconforming conditions, except for nonconforming parking Variances, only when such project application does not require other Variances or is not otherwise subject to Design Review.~~

~~(a) The Variance application shall be made by a property owner or authorized agent. Applications shall contain such information, as prescribed by the Director of Community Development.~~

~~(b) The Variance application shall be subject to the same procedures set forth in Section 25.05.020(B) through (D), Administrative Use Permit Procedure.~~

~~(c) Findings. The determination of the Director of Community Development shall be based on the findings set forth in Section 25.05.025(F). Written notice of the determination including findings shall be mailed to the applicant or authorized agent within ten business days of the date of decision.~~

1 ~~(d) Appeal. Appeal is subject to the provisions of Section 25.05.070.~~

2 ~~(K) Modifications. Additions or enlargements of structures upon property for which a~~
3 ~~Variance has been granted shall not be allowed except pursuant to a subsequent Variance as~~
4 ~~might otherwise be required or granted pursuant to the tenths of this Title.~~

5
6 **25.05.030 Conditional Use Permits.**

7 (A) Intent and Purpose. It is the intent and purpose of this section to establish a procedure
8 whereby a Conditional Use Permit may be granted for those uses wherein Title 25
9 expressly requires such a permit. Uses subject to a Conditional Use Permit are those uses
10 necessary for the development of the community having inherent qualities or
11 characteristics which, unless provided for, would cause such uses to be incompatible or
12 inharmonious with adjacent or nearby permitted uses. Such uses may be modified to the
13 extent that they can be made compatible and harmonious with adjacent uses. This
14 flexibility is intended to provide a necessary means by which certain land uses can be
15 designed and arranged in accord with existing conditions of the neighborhood site,
16 topographic and street conditions, as well as the utilization of various design concepts, and
17 to allow denial of such uses where the required findings cannot be made.

18 (B) Application. Application for a Conditional Use Permit shall be made by a property owner
19 or authorized agent. Applications shall contain such information as prescribed by the
20 Director of Community Development.

21 (C) Filing Fee. Prior to accepting an application, the Department of Community Development
22 shall collect a filing fee as determined by resolution of the City Council.

23 (D) Public Notice. Public notice shall be subject to the provisions of Section 25.05.065, except
24 that if a Coastal Development Permit is required pursuant to ~~Section~~ **Chapter** 25.07,
25 noticing for that type of permit shall instead be carried out through the public notice
26 provisions of Section 25.07.014.

27 (E) Timing of Approvals. The Planning Commission shall review all Conditional Use Permit
28 applications ~~within 20 business days following the date upon which the applications are~~

~~accepted as complete.~~ If a project requires approval by both the Planning Commission and Board of Adjustment, the Conditional Use Permit shall be reviewed and approved first.

(F) Findings.

(1) The site for the proposed use is adequate in size and topography to accommodate said use, and all yards, spaces, walls and fences, parking, loading and landscaping are adequate to properly adjust such use with the land and uses in the vicinity.

(2) The site for the proposed use has access to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use.

(3) The proposed use will have no substantial adverse effect upon abutting property.

(4) The proposed use is consistent with the objectives and policies of the City's General Plan.

(5) The conditions stated in the decision are deemed necessary to protect the public health, safety and general welfare.

(G) Conditions of Approval.

(1) Conditions of approval may include, but are not limited to:

(a) Regulation of use;

(b) Special yards, spaces and buffers;

(c) Special fences, solid fences and walls;

(d) Surfacing of parking areas;

(e) Street, service road or alley dedications and improvements or appropriate bonds;

(f) Regulation of points of vehicular ingress and egress;

(g) Regulation of signs;

(h) Landscaping plan, to be reviewed and approved by the Department of Community Development;

(i) Maintenance of the grounds;

(j) Regulation of noise, vibration and odors;

(k) Regulation of hours for certain activities;

(l) Time period within which the proposed use shall be developed;

(m) Duration of use;

(n) Posting of a bond or bonds sufficient to guarantee the removal of any nonconforming structures or uses of the land upon the expiration of the period of the Conditional Use Permit; and

(o) Dedication of access rights.

(2) In addition to special conditions of approval, the following general conditions of approval shall be imposed upon each Conditional Use Permit:

(a) The right to a use and occupancy permit shall be contingent upon the fulfillment of all general and special conditions imposed by the Conditional Use Permit;

(b) All of the special conditions shall constitute restrictions running with the land, and shall be binding upon the owner of the land, and the successors or assigns;

(c) All of the special conditions shall be consented to in writing by the applicants and all owners of interests and lien holders;

(d) The resolution granting the application, together with all consent forms, shall be recorded by the recorder of Orange County;

(e) The permit shall be subject to review at any time upon receipt of written complaint.

(H) Appeals. Appeals are subject to the provisions of Section 25.05.070.

(I) Effective Date/Expiration Date.

(1) Decisions on Conditional Use Permit applications by the Planning Commission shall become effective ten business days after the date of the decision, unless appealed to the City Council.

(2) If an established time limit for development expires, or if a time limit for the duration of the use has been established as one of the conditions of approval, then the permit shall be considered to be revoked upon such date of expiration without any notification to the owner thereof.

(3) A Conditional Use Permit shall lapse and become void two years following the effective date unless a shorter approval period is specified for the project or unless:

(a) The privileges authorized are established; or

(b) A Building Permit is issued and construction is begun and diligently pursued to completion; or

(c) The Planning Commission grants a two-year extension of time or, after that initial extension of time, a final one-year extension of time. Such time extensions shall be requested in writing by the applicant or authorized agent prior to the expiration of the beginning two-year approval period or any subsequently approved extensions of time.

(4) Extension of Time Findings. An extension of time of the beginning two-year approval period may be granted by the Planning Commission, if each of the following findings can be made:

(i) The zoning codes or standards applicable to the circumstances of the originally approved Conditional Use Permit have not materially changed; and

(ii) The neighborhood character has not changed so as to be materially inconsistent with the findings made when the Conditional Use Permit was originally approved.

(5) If a Conditional Use Permit has been abandoned or terminated for any reason ~~for a period of at least one year~~, the permit shall expire and become void. **Abandonment shall depend on the concurrence of (1) an intention to abandon and (2) an overt act, or failure to act, which carries the implication the owner does not claim or retain any interest in the right to the use.**

(J) Revocation. Revocations are subject to the provisions of Municipal Code Section 25.05.075.

(K) Modifications. Additions, enlargements or modifications of uses or structures upon property for which a Conditional Use Permit has been granted shall not be allowed except pursuant to a subsequent Conditional Use Permit as might otherwise be required or granted pursuant to the terms of this Title.

25.05.035 Temporary Use Permits.

(A) Intent and Purpose. The intent of this section is to accommodate reasonable requests for

interim or temporary uses when such activities are desirable for the community, or are temporarily required in the process of establishing a permitted use or constructing a public facility. Temporary uses allowed under this section shall be consistent with the health, safety and general welfare of persons residing and working in the community, shall be conducted so as not to cause any detrimental effects on surrounding properties and the community, and shall not violate any other ordinance or regulation of the City.

(B) Uses Permitted Subject to Temporary Use Permit.

(1) The following uses may be permitted in residential zones:

- (a) Construction. Temporary structures, garages or sheds;
- (b) Parking and storage of earthmoving or construction equipment, when that parking or storage is incidental to an ongoing construction activity;
- (c) Storage of materials incidental to a Public Works project, subdivision or construction activity;
- (d) Tract home or lot sales office;
- (e) Events which require closure of public streets to traffic;
- (f) Temporary parking lots other than existing lots;
- (g) Such other uses as the Planning Commission may by resolution deem to be within the intent and purpose of this section.

(2) The following uses may be permitted in non-residential zones. Uses permitted in the industrial zones shall require special consideration to assure that those uses are compatible with the intent of those zones:

- (a) Art and handicraft shows (out of doors);
- (b) Carnivals;
- (c) Christmas tree sales;
- (d) Concerts;
- (e) Farmers market;
- (f) Horse shows and animal exhibitions;
- (g) Outdoor merchandise and display stands;

1 (h) Sporting events;

2 (i) Street vendors, temporary sales booths, sidewalk sales or enterprises of a similar
3 nature;

4 (j) Tents or canvas/plastic enclosures;

5 (k) Those temporary uses permitted in Section 25.05.035(B)(1);

6 (l) Such other uses as the planning commission may by resolution deem to be within
7 the intent and purpose of this section.

8 (C) Applications. Applications for a Temporary Use Permit shall be made by the property
9 owner or an authorized agent. Applications shall contain such information as prescribed by the
10 Director of Community Development.

11 (D) Filing Fee. Prior to accepting an application for a Temporary Use Permit, the Department
12 of Community Development shall collect a filing fee, as determined by resolution of the City
13 Council.

14 (E) Public Notice. All Temporary Use Permit applications referred to the Planning
15 Commission shall be subject to the public notice provisions of Section 25.05.065 except that if
16 a Coastal Development Permit is required pursuant to Chapter 25.07, noticing for that type of
17 permit shall instead be carried out through the public notice provisions of Section 25.07.014.

18 (F) Approvals.

19 (1) The Director of Community Development shall approve, approve in part, conditionally
20 approve or deny applications for Temporary Use Permits in the R-1 zone and for short-
21 term events (five days or less) deemed minor by the Director of Community
22 Development in any zone. Applications for temporary parking lots are excluded. At the
23 discretion of the Director of Community Development, Temporary Use Permit
24 applications may be referred to the Planning Commission. Determination shall be made
25 within ~~twenty~~20 business days of receipt of the application unless the matter is
26 referred to public hearing.

27 (2) In addition to a Temporary Use Permit, a coastal development permit must be obtained
28 for those temporary uses that involve development that requires a coastal development

1 permit as described in Chapter 25.07 Coastal Development Permits. The procedure to
2 obtain a coastal development permit shall be as described in Chapter 25.07.

3 (3) The Planning Commission shall approve, approve in part, conditionally approve or
4 deny all other applications for Temporary Use Permits. The Commission shall make
5 written findings that the project is consistent with applicable General Plan policies.
6 ~~Public hearing for Temporary Use Permits shall be scheduled not more than twenty~~
7 ~~business days following acceptance of a complete application.~~

8 (4) Written notice of determination shall be mailed to the applicant or authorized agent
9 within ~~ten~~ 10 business days of the decision of the Director of Community Development
10 or the Planning Commission.

11 (G) Conditions of Approval. Conditions of approval may include, but are not limited to:

- 12 (1) Regulations of hours;
13 (2) Requirement of bonds or other guarantees for cleanup or removal of structures or
14 equipment;
15 (3) Return of temporary use site to its original state within a specified period of time;
16 (4) Regulation of permit duration;
17 (5) Regulation of signs and advertising;
18 (6) Regulation of lighting;
19 (7) Regulation of public-address or sound system;
20 (8) Regulation of gas, smoke, noise, fumes, vibrations or other nuisances;
21 (9) Referral to Design Review;
22 (10) Such other conditions as are deemed necessary to protect the health, safety and
23 welfare of the community and to assure compliance with the intent and purpose of this
24 section.

25 (H) Appeals. Appeals are subject to the provisions of Section 25.05.070.

26 (I) Effective Date/Expiration Date. Planning Commission decisions on Temporary Use Permit
27 applications shall become effective fourteen calendar days after the date of the decision, unless
28 appealed to the City Council. Temporary Use Permits may be authorized for a maximum three

year time period.

(J) Revocation. Revocations are subject to the provisions of Section 25.05.075.

25.05.040 Design ~~review~~ Review.

(A) Intent and Purpose. The design review process consists of a review of a proposed development by the approval authority of either the Design Review Board or Planning ~~commission~~ **Commission** as specified herein ~~and is intended to provide the following: The~~ **Director of Community Development is the approval authority for Administrative Design Review as specified in Section 25.05.040(B)(3).** ~~as specified herein and~~ **The design review process is intended to achieve the following goals:**

- (1) That development projects comply with the applicable standards and design guidelines and criteria;
- (2) That development projects focus on quality designs, within a neighborhood context that results in creative design solutions for the City;
- (3) That development occurs with an orderly and harmonious appearance, including associated facilities, such as signs, landscaping and parking areas;
- (4) That the development review process minimizes contentiousness;
- (5) That the development review process considers public and private views;
- (6) That public health, safety and general welfare throughout the City is paramount;
- (7) That there is effective implementation of the applicable general and specific plan policies, which encourage the preservation and enhancement of the particular character and unique assets of the city; and
- (8) That development projects comply with the policies of the certified Local Coastal Program Land Use Plan, including, but not limited to, the shoreline access, open space, environmentally sensitive habitat, hillside protection and visual resource policies.

(B) Development Subject to Design Review.

- (1) All new buildings, structures and physical improvements and relocations, additions, extensions and exterior changes of or to existing buildings, structural and non-

1 structural improvements, including landscaping and grading, shall be subject to design
2 review, except as otherwise provided in Section 25.05.040(B)(2) and 25.05.040(B)(3).
3 Examples of physical improvements and site developments subject to a design review
4 hearing with the Design Review Board or Planning Commission include, but are
5 not limited to, the following:

- 6 (a) Commercial or industrial parking and loading areas;
- 7 (b) New vehicular access to streets or alleys;
- 8 (c) Retaining walls in excess of five feet in exposed height;
- 9 (d) Signs, as specified in Chapter 25.54; ("Sign Regulations");
- 10 (e) Permanent chain link or similar type of woven metal fences, and vinyl fences
11 that do not simulate natural material;
- 12 (f) Telecommunication facilities subject to the provisions of Chapters 11.06 and
13 25.55;
- 14 (g) Trash enclosures associated with a commercial use;
- 15 (h) Public street and sidewalk improvements;
- 16 (i) Above-ground utility structures;
- 17 (j) Total aggregate additions that are 50 percent or more of the existing gross
18 floor area as of January 13, 1993. ~~Additions that are 50% or more of the~~
19 ~~original gross floor area;~~ additions that create a new upper story, and additions
20 that exceed a height of 15 feet above the adjacent ground elevation ~~or additions~~
21 ~~that exceed 10% of the original gross floor area of an existing legal~~
22 ~~nonconforming structure;~~
- 23 (k) Shore protective devices;
- 24 (l) All buildings, structures and physical improvements in environmentally
25 sensitive areas and on lots with a slope greater than ~~thirty~~ 30 percent, except as
26 otherwise provided in Section 25.05.040(B)(2)(a)(iv);
- 27 (m) Grading in excess of ~~twenty~~ 20 cubic yards outside the building footprint,
28 except as specified in Section 22.10.010(e);

- (n) Clearing of native vegetation on undeveloped parcels and undeveloped portions of developed parcels, and native vegetation restoration plans, except for City required annual weed abatement;
- (o) All City projects within the scope of this section, except if the City Council waives the requirement of design review if it determines that there are special circumstances applicable to such project which require that the project proceed without delay;
- (p) Landscaping review for new development or additions that are ~~fifty~~ 50 percent or more of the original gross floor area, additions that create a new upper story or additions that exceed a height of fifteen feet above the adjacent ground elevation, and for structural improvements within environmentally sensitive habitat areas;
- (q) Modifications of previously approved design review plans, including approved landscape plans, except as otherwise provided in Sections 25.05.040(B)(2) and 25.05.040(B)(3);
- (r) Swimming pools, permanent spas (unless eligible for administrative design review) and their associated pool or spa equipment;
- (s) Outlining of the outside of buildings or portions thereof with lights. (If such outlining with lights is proposed on a building listed on the register; and
- (t) A hedge or hedges located within front, side and/or rear yards that is/are proposed to exceed the maximum allowable fence height, as set forth in Chapter 25.50.

(2) Exceptions. The following improvements shall be exempt from the design review process, ~~unless they are changes associated with approved design review plans, including landscape plans:~~ The Director of Community Development has the discretion to refer applications to the appropriate design review authority for consideration and final action. Exceptions shall be reviewed through the plan check process to ensure compliance with zoning standards.

(a) Additions to a single family residences in ~~residential zones~~ with no prior design review plans that:

- (i) Result in aggregate additions that ~~Are are~~ less than fifty 50 percent of the original existing gross floor area cumulative over time since January 13, 1993;
- (ii) Do not create a new upper story and do not exceed a height of ~~fifteen~~ 15 feet above the adjacent ground elevation;
- (iii) Are in conformance with the zoning regulations; and
- (iv) Are not within an environmentally sensitive area or where a licensed professional has determined that the proposed improvements do not impact the environmentally sensitive area subject to peer review when required.

(b) Minor modifications to approved design review plans, including, but not limited to:

- (i) Hardscape reconfigurations that do not reduce the existing open space and landscape open space;
- (ii) Landscape plans with no increased height, width, and spacing of vegetation; and
- (iii) Additions or relocations of windows and glass doors with adjacent neighbor consent;

~~(b)~~ Interior modifications to existing structures or approved plans, including those structures and plans approved by the approval authority, except interior alterations to historic structures as outlined in Chapter 25.45; (“Historic Preservation”);

(d) Exterior modifications to less than 50 percent area of any street facing façade of a building in a residential zone, and does not result in a style change of the building;

~~(e)~~ Repainting existing structures in residential zones provided that the paint

color was not required to specifically address a design-related issue such as consistency with the architectural style and surrounding neighborhood;

(~~df~~) Re-roofing buildings and structures ~~with similar materials~~with Class A roofing that is consistent with the architectural style and surrounding neighborhood, provided there are no changes to the dimensions, square footage, or roof pitch;

(eg) Retaining walls five feet or less in exposed height;

(~~fh~~) Slabs and patios at or below natural grade ~~and modifications to existing driveways or similar structures that comply with all other applicable provisions of this chapter;~~ and

(i) ~~Minor landscaping that does not have the potential to impact views at mature height;~~

(i) ~~m~~Modifications to existing driveways or similar structuresother hardscape that does not increase impervious surfaces and that complies with all other applicable provisions of this chapter;

(~~gi~~) ~~Wood or metal f~~Fences, walls and hedges that comply with the zoning regulations, except permanent chain link or similar type of woven metal fences. In residential areas, other decorative fences and walls, including but not limited to wood, vinyl simulating natural materials, fiberglass, steel, wrought iron, etc., which are determined to be compatible with the neighborhood and consistent with Section 25.50.012 ("Fences, walls, hedges, lattice work and screens") are permitted;

(~~hk~~) Window or exterior door replacements or insignificant changes in final design, such as moldings and windowpane material;

(j) Elevated decks three feet or less above adjacent existing grade;

(~~km~~) Railing changes;

(n) Skylights with operable automatic night shades;

(o) Conversion of existing landscaping to drought tolerant landscaping up to

six feet at mature growth height and provided that the existing landscaping was not required to specifically address a design-related issue such as view equity or privacy;

(lp) ~~Art work~~Artwork approved through the procedures outlined in Chapter 1.09; (“Art in Public Places”);

(mq) Signs, in conformance with an approved sign program subject to review and approval by the ~~d~~Director of ~~e~~Community ~~d~~Development; and

(nr) Temporary on-grade removable accessory structures used as play sets, swing sets, ~~and other similar unenclosed recreation equipment, and storage sheds~~ provided that: (i) the ~~ground area of the structure does not exceed one hundred twenty~~120 square feet in size, (ii) the ~~structure height~~ height is less than ~~twelve~~12 feet above adjacent ground elevation, and (iii) ~~the structure is not located in a required setback area~~minimum required setbacks of the underlying zone are met unless it receives administrative design review approval;

(os) ~~Second residential units~~Accessory dwelling units, only as set forth in Chapter 25.17;

(t) Grading of 20 cubic yards or less outside the building footprint, except as specified in Section 22.10.010(e);

(u) Fuel modification programs. Projects consisting solely of a new or modified fuel modification program shall be reviewed and approved by the Director of Community Development or his or her designee to evaluate landscape design, and by the Fire Chief or his or her designee for compliance with fuel modification regulations;

(v) Trash storage within the side yard when screened from public view by a wall or fence at least four (4) feet in height and does not impact required access for the property;

(w) Exterior wildfire resistant construction materials and methods in

accordance with Chapter 7A of the California Building Code, including but not limited to replacement of natural wood siding with fire resistant materials that simulate the appearance of wood, enclosing of roof eaves and wrapping of decks; and

(x) Seismic upgrades that do not affect the exterior appearance of the structure are eligible for an exception to design review.

(3) Administrative Design Review Process. An administrative design review process hearing may be conducted by the director of community development or his or her designee for development projects that: are considered to be minor or incidental as specified below, require neighbor notification, ~~and do not involve a new, other than for existing nonconforming conditions;~~ including, but not limited to, those listed below.

(a) Examples of Administrative Design Review Development ~~p~~Projects may include but are not limited to:-

(i) Those projects normally exempt under subsection (B)(2) that are determined by the Director of Community Development or his or her designee to pose potential impacts to neighboring properties;

(ii) Elevated decks more than ~~3~~ three feet above adjacent existing grade and structural additions within existing residential rooflines;

(iii) Portable and in-ground spas not exceeding a maximum of 600 gallons, and water features;

(iv) Pedestrian entry features that are outside the public right of way and do no impact line of sight and are in conformance with Section 25.50.012(B)(6);

(v) Mechanical equipment, including, but not limited to, air conditioners and pool/spa equipment that do not meet the requirements of Section 7.25.130(C);

~~(vi) Variance for existing nonconforming conditions, excluding parking;~~

(vi) City public works projects which are limited to replacement-in-kind or

1 maintenance and which are not located in environmentally sensitive or open
2 space areas, the Downtown Specific Plan Area, oceanfront properties or
3 public buildings or parks; and

4 (vii) Extensions of time as specified in Section 25.05.040(J)(3);

5 (viii) Additional covered or tandem parking as specified in Section
6 25.52.012 (G);

7 (ix) Decorative features such as fence posts, brick or stone columns may
8 extend up to twelve inches above the maximum allowable height within
9 the front yard;

10 (x) Revocable Encroachment Permits when not associated with a project
11 requiring a Design Review Board or Planning Commission decision;
12 and

13 ~~(viii) Minor modifications to approved design review plans, but which in no~~
14 ~~case involve:~~

15 ~~(1) An addition of more than twenty-five square feet,~~

16 ~~(2) Grading in excess of ten cubic yards, or~~

17 ~~(3) A relocation of windows or doors by more than one foot or where the~~
18 ~~approved location was determined because of privacy considerations;~~

19 (xi) Modifications to single- and multi-family structures in residential
20 zones. The Director of Community Development has the discretion to
21 refer any application to the Design Review Board and shall do so when
22 the proposed modifications to a prior design review approval conflict
23 with conditions of approval or a decision made by the Design Review
24 Board. The following modifications shall be allowed through
25 administrative design review:

26 (1) Architectural modifications that are consistent with the Residential
27 Design Guidelines;

28 (2) Minor roof alterations that do not adversely impact view equity;

1 (3) New or relocated windows and doors that do not obtain adjacent
2 neighbor consent;

3 (4) Additions to single-family residences with prior design review
4 approved plans that:

5 (a) Result in additions that are less than 50 percent of the prior
6 design review approved floor area when not a major remodel;

7 (b) Do not create a new upper story or do not exceed a height of 15
8 feet above the adjacent ground elevation;

9 (c) Are not within an environmentally sensitive area or where a
10 licensed professional has determined that the proposed
11 improvements do not impact the environmentally sensitive area
12 subject to peer review when required; and

13 (d) Are not within 5 years from the date of prior project approval
14 or while the project is under construction if the aggregate
15 additions are larger than 50 square feet.

16 (b) Public Notice for Administrative Design Review. Public notice shall be subject to
17 the provisions of Section 25.05.065, except that if a Coastal Development Permit is
18 required pursuant to ~~Section~~**Chapter** 25.07, noticing for that type of permit shall
19 instead be carried out through the public notice provisions of Section 25.07.014.

20 (c) Staking Requirements for Administrative Design Review. **All floor area additions**
21 **and roof alterations shall be staked.** If the Director of Community Development
22 or his or her designee determines that the minor project should be staked, the
23 staking requirements of subsections (C)(2)(a) and (b) of this section shall be
24 followed, except that the construction and certification of the staking shall be
25 completed at least 14 calendar days prior to the public hearing.

26 (d) Deliberation and Action on Administrative Design Review Applications. The
27 Director of Community Development or his or her designee shall conduct a public
28 hearing for designated administrative design review projects. After consideration of

all testimony and evidence presented at the public hearing and the Design Review Criteria specified in subsection H of this section, the Director of Community Development or his or her designee shall either approve, conditionally approve or deny the application in writing. An appeal of a decision on an administrative design review application is subject to the provisions of Section 25.05.070, and Section 25.07.016 when a coastal development permit is required.

(e) Approval Authority Referral. Prior to deliberation and action on an administrative design review application, the ~~director~~ **Director** of ~~community~~ **Community Development** or his or her designee may (at his or her discretion) refer the project application to the approval authority for hearing and consideration in accordance with subsections E and F.

(C) Application. Application for design review shall be made by a property owner or authorized agent. Applications shall contain such information as prescribed by the Director of Community Development.

(1) Early Neighbor Communication. The applicant shall communicate with owners of property within 300 ~~hundred~~ feet of the applicant's property notifying them of the proposed project. Such communication should take place prior to deciding on a final design to help resolve potential conflicts. Communication efforts shall include notification mailed to all property owners within ~~three hundred~~ **300** feet of the applicant's property. The noticing must be prepared and mailed by a professional listing service. Certification to the accuracy, completeness of the list, and date the notice was mailed is required to be provided by the company, along with a copy of the materials sent. Early neighbor communication must be completed prior to being scheduled for a hearing date. The following information shall be included in the early neighbor notification notice:

- (a) Applicant contact information.
- (b) Location of the proposed project.
- (c) A description of the proposed project.

(d) Information on how to participate in the design review process.

(2) Staking Requirements.

(a) A staking plan shall be prepared as specified on the most current zoning and design review submittal checklist. Staking poles and connecting ribbons, which accurately represent the full extent of the proposed structure, including decks and eaves, shall be constructed at least ~~twenty-one~~21 calendar days prior to the first public hearing. At least ~~twenty-one~~21 calendar days prior to the first public hearing, the location and height of the staking poles must be certified as accurate by a registered land surveyor or registered civil engineer licensed to conduct land surveys in the State of California. If complete and certified project staking is not in place at least ~~twenty-one~~21 calendar days prior to the **first Design Review Board public hearing date or 14 calendar days prior to the administrative design review public hearing**, the project shall be continued to a later date, ~~with re-noticing required~~. Neither the applicant, a relative of the applicant, nor any other person possessing a financial interest in the property or the project may certify the location and height accuracy of the staking poles. If the project is modified during the design review process because of a view consideration, **privacy or other concerns that the Board determines is necessary to restake**, the project shall be re-staked and re-certified at least 14 calendar days prior to any subsequent public hearing,

(b) A deposit for the removal of staking poles, in an amount approved by the City Council shall be made prior to the time the project is scheduled for public hearing. Staking poles shall be removed by the applicant within 20 calendar days after the final project decision ~~at the administrative or municipal level~~. Upon timely removal of the staking poles, the deposit shall be returned to the applicant. The applicant's failure to remove the staking poles within the prescribed time period shall result in the automatic forfeiture of the deposit, and the City shall remove the poles from the site.

(3) Biological Report Requirements. Prior to deliberation and action on a design review application, the applicant shall submit a biological report that is prepared by a professional in the fields of wildlife biology or botany for any proposal to clear native vegetation on undeveloped parcels that are located within or adjacent to areas designated high or very high value on the city's biological values maps and any other areas that contain environmentally sensitive habitat resources except for annual weed abatement and approved fuel modification programs.

(4) Fire Department Review and Approval. Prior to deliberation and action on a design review application for new construction and alterations involving 50 percent or more of an existing structure, the Fire Department shall review and approve or conditionally approve applications, including proposed fuel modification programs. Fuel modification programs or Alternative Materials and Methods (AM&Ms) requests, when determined necessary by the Fire Department, are required for any parcel having an "FM"—Fuel Modification designation or Very High Fire Hazard Severity Zone on the City's Geographic Information Mapping system. The Fire Department conditions of approval relating to public safety may not subsequently be modified by the approval authority without the Fire Department's review and approval.

(D) Filing Fee. Prior to accepting an application, the Department of Community Development shall charge and collect a filing fee as determined by resolution of the City Council.

(E) Public Notice. Public notice shall be subject to the provisions of Section 25.05.065, except that if a Coastal Development Permit is required pursuant to Section 25.07, noticing for that type of permit shall instead be carried out through the public notice provisions of Section 25.07.014.

(F) Deliberation and Action on Applications.

(1) The authorities responsible for reviewing and making decisions on design review applications are as follows:

(a) The design review board shall conduct a noticed public hearing on design

review applications for all single-family or two-family developments, including associated public right-of-way improvements.

(b) The planning commission shall conduct a noticed public hearing on all other design review applications, including but not limited to: residential development of three-families or more, all projects located in the downtown specific plan area, all non-residential development, all public works projects including Capital Improvements Projects (CIP) and development in the right-of-way, and projects for which the planning commission is the primary discretionary review authority, such as approval of a conditional use permit.

(2) Upon the conclusion of the public hearing on a design review application, and the consideration of all testimony and evidence presented at the public hearing, the approval authority shall approve, conditionally approve or deny the application. Determinations of design review applications shall be by majority vote of the voting members of the approval authority present.

(3) The approval, conditional approval, or denial of design review applications by the approval authority shall be based upon the design review criteria set forth in subsection H Section 25.05.040(H). Additional review criteria are specified in Section 25.07.012(F) when an associated Coastal Development Permit is required. Additional review criteria contained in specific plans and/or zoning overlays shall apply to projects located in areas covered by any such specific plans and/or zoning overlays.

(4) The approval, conditional approval or denial of design review applications by the approval authority shall be accompanied by findings correlated with the design review criteria set forth in subsection H. Section 25.07.012(G) requires written findings to be made when approving or conditionally approving an associated Coastal Development Permit.

(5) Design review hearings on a proposed residential development project ~~of three dwelling units or less~~ shall usually be limited to a maximum of two hearings. A third hearing may be permitted if the approval authority makes a finding that the applicant

1 followed the authority's direction(s) from the initial hearing in good faith and further
2 design work on the project is in the best interest of the community. The approval
3 authority may allow up to two continuances of hearings at which no substantive
4 discussion of the application occurs. Concept review hearings for residential dwelling
5 units of three units or less are not allowed, except where required by current City
6 ordinance. If required, concept review shall be limited to one hearing and shall count as
7 one of the above limited hearings.

8 (6) Written notice of the approval, conditional approval or denial of design review
9 applications shall be mailed to the applicant or authorized agent within 14 calendar
10 days of the date of the decision of the approval authority.

11 (7) Landscaping Conditions. The approval authority shall condition all landscaping
12 approvals with mature growth height limits and maintenance schedules (type and
13 frequency of pruning) for all vegetation that potentially impacts views. The
14 landscaping shall be installed in accordance with the approved landscape plans.
15 Thereafter, the landscaping shall be continuously maintained (including replanting, as
16 necessary) in compliance with the approved landscaping plans, unless such plans are
17 subsequently revised pursuant to subsection (B)(1)(~~yh~~) of this section. Minor
18 landscaping changes may be exempt from design review pursuant to subsection
19 (B)(2)(~~ib~~) of this section.

20 (8) Applications for design review approval constitute applications for a "permit" as that
21 term currently is used in California Government Code Section 65009(c)(1), and as
22 hereafter may be amended.

23 (G) Design Guidelines. "Design Guidelines" is a publication that has been developed by the
24 City to assist designers in understanding the Design Review criteria. These guidelines
25 complement the zoning regulations provided for in this Title by providing conceptual
26 examples of potential design solutions and design interpretations. The guidelines are
27 general and may be utilized with flexibility in their application to specific projects.

28 (H) Design Review Criteria. Physical improvements and site developments subject to design

review shall be designed and located in a manner which best satisfies the intent and purpose of design review, the City's village atmosphere and the design review criteria specified in this section. Village atmosphere shall be characterized by appropriately scaled development, diverse and unique architectural designs, pedestrian orientation and sensitivity to the natural conditions of the site. The property development standards as delineated in each zone are intended to provide the City with maximum flexibility and discretion in the decision making process, based upon the particular issues and circumstances in effect at the time development is proposed. These standards shall represent the maximum allowable building envelope for a given property. The actual development allowed **after the application of the design review criteria** will typically be less than the maximum designated by the general standards for the zone because of localized conditions identified during the design review process. A proposed development that has no variances from the Zoning Code does not have any presumptive development right or "entitlement." **The design review criteria are as follows:**

- (1) **Access.** Conflicts between vehicles, pedestrians and other modes of transportation should be minimized by specifically providing for each applicable mode of transportation. Handicapped access shall be provided as required by applicable statutes.
- (2) **Design Articulation.** Within the allowable building envelope, the appearance of building and retaining wall mass should be minimized. Articulation techniques including, but not limited to, separation, offsets, terracing and reducing the size of any one element in the structure may be used to reduce the appearance of mass.
- (3) **Design Integrity.** Consistency with the applicant's chosen style of architecture should be achieved by the use of appropriate materials and details. Remodels should be harmonious with the remaining existing architecture.
- (4) **Environmental Context.** Development should preserve and, where possible, enhance the City's scenic natural setting. Natural features, such as existing heritage trees, rock out-cropping, ridgelines and significant watercourses should be protected. Existing terrain should be utilized in the design and grading should be minimized.

- (5) General Plan Compliance. The development shall comply with all applicable policies of the general plan, including all of its elements, applicable specific plans, and the certified local coastal program.
- (6) Historic Preservation. Destruction or alteration to historic resources should be avoided whenever possible. See sSection 25.45 for more information.
- (7) Landscaping. Landscaping shall be incorporated as an integrated part of the structure's design and relate harmoniously to neighborhood and community landscaping themes. View equity shall be an important consideration in the landscape design. The relevant landscaping guidelines contained in the City's "Landscape and Scenic Highways Resource Document" should be incorporated, as appropriate, in the design and planned maintenance of proposed landscaping.
- (8) Lighting and Glare. Adequate lighting for individual and public safety shall be provided in a manner which does not significantly impact neighboring properties. Reflective materials and appurtenances that cause glare or a negative visual impact (e.g. skylights, white rock roofs, high-gloss ceramic tile roofs, reflective glass, etc.) should be avoided or mitigated to a level of insignificance in those locations where those surfaces are visible from neighboring properties.
- (9) Neighborhood Compatibility. Development shall be compatible with the existing development in the neighborhood and respect neighborhood character. Neighborhood character is the sum of the qualities that distinguish areas within the City, including historical patterns of development (e.g., structural heights, mass, scale or size), village atmosphere, landscaping themes and architectural styles.
- (10) Pedestrian Orientation. Commercial development design shall enhance and encourage pedestrian uses. Incorporation of articulated building masses, compact open spaces and courtyards, mixed use developments, use of landscaping as part of design, and orientation to pedestrian access should be maximized.
- (11) Privacy. The placement of activity areas (e.g., decks, picture windows and ceremonial or entertainment rooms) in locations that would result in a substantial invasion of

1 privacy of neighboring properties should be minimized.

2 (12) Public Art. Public art is encouraged and shall be displayed where feasible or required
3 by the Art in Public Places Ordinance.

4 (13) Sign Quality. Signs shall be incorporated into the architecture of the structure and
5 shall be made of high quality materials, be simple in design and be visually compatible
6 with the surrounding physical environment in terms of color, scale and size. Use of
7 natural materials in the construction of signs is encouraged.

8 (14) Sustainability. New development should consider architecture and building practices
9 which minimize environmental impacts and enhance energy efficiency by: (a) reducing
10 energy needs of buildings by proper site and structural design; (b) increasing the
11 building's ability to capture or generate energy; (c) using low-impact, sustainable and
12 recycled building materials; (d) using the latest Best Management Practices regarding
13 waste and water management; and (e) reducing site emissions.

14 (15) Swimming Pools, Spas and Water Features. Swimming pools, spas and water features
15 shall be located, designed and constructed where:

16 (a) geology conditions allow;

17 (b) noise produced by circulatory mechanical pumps and equipment is mitigated; and

18 (c) any associated fencing or other site improvements are compatible with neighboring
19 properties.

20 (16) View Equity. The development, including its landscaping, shall be designed to protect
21 existing views from neighboring properties without denying the subject property the
22 reasonable opportunity to develop as described and illustrated in the City's "Design
23 Guidelines." The "Design Guidelines" are intended to balance preservation of views
24 with the right to develop property.

25 **(I) Design Review Findings. Physical improvements and site developments subject to**
26 **Administrative or Design Review Board authority shall be designed and located in a**
27 **manner in overall consistency with the design review criteria specified in Section**
28 **25.05.040(H), and all other applicable design guidelines and characterized by**

appropriately scaled development, diverse and unique architectural designs, pedestrian orientation, and sensitivity to the natural conditions of the site. Any deviations from the design review criteria and other applicable design guidelines must be considered minor and reasonably related to good design principles and specific site conditions.

(H) Appeals. Appeals of the design review authority are subject to the provisions of Section 25.05.070, and Section 25.07.016 when a Coastal Development Permit is required.

(K) Effective Date/Expiration Date.

(1) A Design Review decision shall become effective 14 calendar days after the date of the decision, unless appealed to the City Council.

(2) Design Review approval shall lapse and become void two years following the effective date if the privileges authorized by design review are not executed or utilized or, if construction work is involved, such work is not commenced within such two-year period and diligently pursued to completion.

(3) ~~The approval authority may grant~~ The Director of Community Development or his or her designee may grant approval, through the administrative design review process, a two-year extension of time and, after that initial extension of time, a final one-year extension of time. Such time extensions shall be requested in writing by the applicant or authorized agent prior to the expiration of the beginning two-year approval period or a subsequently approved extension of time.

(4) Extension of Time Findings. An extension of time of the beginning two-year approval period may be granted by through the administrative design review process the ~~approval authority~~, if each of the following findings can be made:

(a) The zoning codes or standards applicable to the circumstances of the originally approved design review have not materially changed; and

(b) The neighborhood character has not changed so as to be materially inconsistent with the findings made when design review was originally approved.

(L) Reapplication Waiting Period. After denial of a project, no application for a project

located on the same parcel or building site may be filed or accepted for filing for two months.

Chapter 25.50 GENERAL YARD AND OPEN SPACE PROVISIONS

25.50.008 Permitted projections into required yards.

(A) Cornices, eaves, belt courses, balconies, greenhouse and bay windows (as defined in Section 25.50.008(E) below) or similar architectural features may cantilever into a required front or rear yard a distance equal to twenty percent of the required front or rear yard. Architectural features (exclusive of balconies) may cantilever into a required side yard a distance equal to forty percent of the required side yard; however, in no event shall any eave, belt course, be constructed less than two and one-half feet, or four feet in the case of green house or bay windows, including the window in an open position, from the side property line, or less than five feet from any other cornice, eave, belt course, greenhouse or bay windows or similar architectural feature on the same lot.

(B) A chimney or fireplace may extend or project into a required front, side or rear yard for a total distance of not to exceed twelve inches, provided that such projection does not extend along the length of such yard a total distance of more than six feet and does not extend closer than three feet to a side property line.

(C) Uncovered porches, patios, graded (fill) terraces, landing places or unenclosed and uncovered outside stairways which do not extend above the level of the first or ground floor of the building and not more than three feet above the natural grade of the ground may extend or project into any required minimum yard for a total distance of not more than six feet, but in no case closer than three feet to an interior side lot line.

Note: Porches, patios, graded (fill) terraces, landings or stairways which are covered or enclosed shall be considered as part of the building and shall not be permitted to extend into the required yards.

25.50.012 Fences, walls, hedges, latticework and screens.

1 (B) Permitted Fences, Walls, Hedges, Latticework and Screens.

2 (3) Fences, walls, hedges, latticework or screens not more than six feet in height may be
3 erected, installed or maintained within the side and rear yards of any lot, provided such
4 fences, walls, hedges, latticework or screens do not project into the front yard. The
5 fence height of this paragraph shall apply to the height of a retaining wall **consistent**
6 **with the permitted projection requirements in Section 25.50.008**, the purpose of
7 which is to create an ~~artificial yard elevation~~ **graded (fill) terrace**. Fence height shall
8 be determined as the height of the top of the fence above the natural grade immediately
9 adjacent to the location of the fence. Hedges may exceed the maximum allowable fence
10 heights in the side and/or rear yards, unless a hedge height claim has been filed against
11 the property containing the hedges and such hedges have been found by the city to
12 create a safety hazard and/or obstruct views from or sunlight to an adjacent property, as
13 set forth in Chapter 12.14.

ORDINANCE NO. 1659

**AN ORDINANCE OF THE CITY OF LAGUNA BEACH, CALIFORNIA,
AMENDING LAGUNA BEACH MUNICIPAL CODE CHAPTER 25.05
(ADMINISTRATION) RELATING TO STREAMLINING OF THE
ENTITLEMENT PROCESS AND AMENDING SECTIONS 25.50.008
(PERMITTED PROJECTIONS INTO REQUIRED SETBACKS) AND
25.50.012 (FENCES, WALLS, HEDGES, LATTICEWORK AND
SCREENS) TO CLARIFY SETBACK REQUIREMENTS**

WHEREAS, the City's current entitlement process can be lengthy, onerous and costly;
and

WHEREAS, staff have limited authority to process minor projects administratively; and

WHEREAS, on March 5, 2019, the City Council directed the Community Development
Department develop and propose amendments to the Zoning Code to streamline the application
review process; and

WHEREAS, in accordance with City Council direction, staff has drafted amendments to
the Zoning Ordinance that maintain the existing development standards and design guidelines and
opportunities for public involvement but nevertheless modify the process by which some projects
are reviewed and approved; and

WHEREAS, the subject Zoning Ordinance Amendment and associated Local Coastal
Program (LCP) Amendment is consistent with the City's General Plan and certified Local Coastal
Program; and

WHEREAS, on April 21, 2021, the City's Planning Commission held a duly noticed
public hearing and voted unanimously to recommend that the City Council approve LCP
Amendment 20-6663 and Zoning Ordinance Amendment 20-6662 to amend portions of Chapter
25.05 (Administration) and Sections 25.50.008 (Encroachments and Projections into Required

Yards) and 25.50.012 (Fences, Walls, Hedges, Latticework and Screens) of the Municipal Code;
and

WHEREAS, on May 4, 2021, the City Council held a duly noticed public hearing to consider the Planning Commission's recommendation and the testimony and evidence presented to the City Council; and

WHEREAS, on May 18, 2021, the City Council held a duly noticed public hearing to consider the Planning Commission's recommendation and the testimony and evidence presented to the City Council;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH DOES ORDAIN as follows:

SECTION 1. Section 25.05.015 ("Form of application, fees, and permit compliance") of the Laguna Beach Municipal Code is hereby amended to read in its entirety as follows:

(A) Prescribed by the Director of Community Development.

(1) The Director of Community Development shall prescribe the form and scope of all variances, changes of district boundaries or reclassifications, general plan amendments and all other planning or development applications as identified in Chapter 25.05, and of accompanying data to be furnished so as to assure the fullest practicable presentation of facts for proper consideration of the matter and for the permanent record. Forms for such purposes may be provided.

(2) Each planning and development application shall include verification by at least one of the owners of property involved or their authorized agent attesting to the truth and correctness of all facts and maps presented with such application.

(3) Applications filed pursuant to this Title shall be numbered consecutively in the order of their filing and shall become a part of the permanent official records of the Department of Community Development and shall be attached thereto and permanently filed therewith copies of all notices and actions pertaining thereto.

(B) Complete Planning and Development Applications.

(1) No later than 30 calendar days after receipt of a planning or development application, the Department of Community Development shall determine whether the application is complete or incomplete.

(2) In the event an application is determined to be incomplete, the applicant shall be notified as to additional materials required to continue processing the application.

(3) Within 30 calendar days of receipt of supplemental materials requested for applications previously determined incomplete, the Department of Community Development shall determine whether the application is complete.

(4) A decision determining an application to be incomplete may be appealed to the City Council by the applicant. The fee for such appeal is to be determined by City Council resolution.

(C) Signatures. If signatures of persons other than the applicant are required, or offered in support of or in opposition to the application, they may be received as

evidence of notice having been served upon them of the pending application or as evidence of their opinion on the pending issue, but they shall in no case infringe upon or govern in the free exercise of the powers vested in the City of Laguna Beach.

(D) Filing Fee Collection. Before accepting for filing any request or application submitted relative to Title 25 of this Code, the Department of Community Development shall charge and collect a filing fee for each such request or application as determined by resolution of the City Council to cover the cost of making maps, sending out notices, and other incidental administrative expenses involved in the handling of the matter, including written staff reports.

(E) Refund of Filing Fees. Refund of all or any portion of the filing fees may be ordered by the Director of Community Development.

(F) Conformance by Officials. All officials or public employees vested with the duty or authority to issue permits or licenses where required by law shall conform to the provisions of this Title.

(G) Application. The provisions of this Title shall apply to all buildings, improvements, lots and premises, or portions thereof, owned, leased, operated or controlled by the City or any Department or officer thereof, or by any other municipal or quasi-municipal corporation or government, or any Department, Board or officer thereof.

SECTION 2. Section 25.05.020 ("Administrative Use Permit procedure") of the Laguna Beach Municipal Code is hereby amended to read in its entirety as follows:

(A) Application. Application for an Administrative Use Permit shall be made by a property owner or authorized agent for a use which this Title expressly requires an Administrative Use Permit. Applications shall contain such information as may be prescribed by the Director of Community Development.

(B) Filing Fee. Prior to accepting an application, the Department of Community Development shall charge and collect a filing fee as determined by resolution of the City Council.

(C) Public Notice. Public notice shall be subject to the provisions of Section 25.05.065 except that if a Coastal Development Permit is required pursuant to Section 25.07, noticing for that type of permit shall instead be carried out through the public notice provisions of Section 25.07.014.

(D) Public Hearing. No hearing on the application shall be held unless requested by the applicant or other noticed person. In the event a hearing is requested, the Department of Community Development shall set a hearing date before the Director of Community Development and shall notice said hearing pursuant to the provisions of subsection (C) of this section.

(E) Approval. The Director of Community Development or authorized designee shall approve or deny an Administrative Use Permit based upon compliance or noncompliance with the City's zoning regulations.

(F) Appeal. Appeal is subject to the provisions of Section 25.05.070.

(Ord. 1577 § 2, 2013; Ord. 1555 § 2, 2011; Ord. 1334 § 1, 1997).

SECTION 3. Section 25.05.025 (“Variances”) of the Laguna Beach Municipal Code is hereby amended to read in its entirety as follows:

(A) Intent and Purpose. The intent and purpose of this section is to establish procedures whereby parcels or development projects may vary from the provisions of Title 25. Variances may be granted when there are special circumstances applicable to the property involved, including size, shape, topography, location and surroundings, that would cause the strict application of the zoning ordinance to deprive the property of the privileges enjoyed by other property in the vicinity and zone.

(B) Application.

(1) Application for a variance shall be made by a property owner or authorized agent. Applications shall contain such information as prescribed by the Director of Community Development.

(C) Filing Fee. Prior to accepting an application, the Director of Community Development shall collect a filing fee as determined by resolution of the City Council.

(D) Public Notice. Public notice shall be subject to the provisions of Section 25.05.065, except that if a Coastal Development Permit is required pursuant to Section 25.07, noticing for that type of permit shall instead be carried out through the public notice provisions of Section 25.07.014.

(E) Approval.

(1) The Board of Adjustment or Planning Commission as applicable, shall approve, approve in part, conditionally approve or deny at a noticed public hearing a Variance based upon the findings set forth in Section 25.05.025(F).

(2) Board of Adjustment or Planning Commission determinations, including findings, shall be by resolution adopted by a majority of its membership.

(3) Written notice of determination, including findings, shall be mailed to the applicant or authorized agent within ten business days of the date of the Board's or Planning Commission's decision.

(4) The Board of Adjustment or Planning Commission, as applicable, in approving a Variance, may set forth in its decision reasonable terms and conditions necessary to protect the health, safety and welfare of the community and to assure the intent and purpose of these regulations. It may also require such bonds and guarantees as necessary to ensure that compliance with such terms and conditions is being or will be achieved.

(F) Findings.

(1) There are special circumstances applicable to the property involved, including size, shape, topography, location or surroundings which cause the strict application of the zoning ordinance to deprive such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.

(2) Such variance is necessary for the preservation and enjoyment of a substantial property right of the applicant, which right is possessed by other property owners under like conditions in the same vicinity and zone.

(3) The granting of the Variance will not be detrimental to the public health, safety, convenience and welfare or injurious to property or improvements in the vicinity in which the property is located.

(4) The granting of such a Variance will not be contrary to the objectives of the zoning ordinance or the General Plan.

(G) Appeals. Appeals are subject to the provisions of Section 25.05.070.

(H) Effective Date/Expiration Date.

(1) Decisions on Variance applications by the Board of Adjustment or Planning Commission, as applicable, shall become effective ten business days after the date of the decision, unless appealed to the City Council.

(2) A Variance shall lapse and become void two years following the effective date unless a shorter approval period is specified for the project or unless:

(a) A Building Permit is issued, and construction is begun and diligently pursued to completion; or

(b) The Planning Commission or Board of Adjustment, as applicable, grants a two-year extension of time or, after that initial extension of time, a final one-year extension of time. Such time extensions shall be requested in writing by the applicant or authorized agent prior to the expiration of the beginning two-year approval period or any subsequently approved extensions of time.

(3) Extension of Time Findings. An extension of time of the beginning two-year approval period may be granted by the Planning Commission or Board of Adjustment, as applicable, if each of the following findings can be made:

(i) The zoning codes or standards applicable to the circumstances of the originally approved variance have not materially changed; and

(ii) The neighborhood character has not changed so as to be materially inconsistent with the findings made when the Variance was originally approved.

(I) Revocation. Revocations are subject to the provisions of Section 25.05.075.

(J) Planning Commission Variances.

(1) The Planning Commission shall act as the Board of Adjustment in hearing and determining the following Variances, subject to the procedures and findings established in Sections 25.05.025, 25.05.065(C) and (D), 25.05.070 and 25.05.075:

(a) Variance requests in conjunction with any matter pending before the Planning Commission for which the Commission has the primary discretionary responsibility;

(b) Variance requests in conjunction with subdivisions relating to lot dimension, area and yard requirements and access requirements may be granted when such requirements are deemed impractical, unreasonable or unnecessary for the proper design of such subdivision;

(c) Variance requests for indirect access; and

(d) Variance requests for construction of new residential units on lots taking access from streets with less than standard width

SECTION 4. Section 25.05.030 ("Conditional Use Permits") of the Laguna Beach Municipal Code is hereby amended to read in its entirety as follows:

(A) Intent and Purpose. It is the intent and purpose of this section to establish a procedure whereby a Conditional Use Permit may be granted for those uses wherein Title 25 expressly requires such a permit. Uses subject to a Conditional Use Permit are those uses necessary for the development of the community having inherent qualities or characteristics which, unless provided for, would cause such uses to be incompatible or inharmonious with adjacent or nearby permitted uses. Such uses may be modified to the extent that they can be made compatible and harmonious with adjacent uses. This flexibility is intended to provide a necessary means by which certain land uses can be designed and arranged in accord with existing conditions of the neighborhood site, topographic and street conditions, as well as the utilization of various design concepts, and to allow denial of such uses where the required findings cannot be made.

(B) Application. Application for a Conditional Use Permit shall be made by a property owner or authorized agent. Applications shall contain such information as prescribed by the Director of Community Development.

(C) Filing Fee. Prior to accepting an application, the Department of Community Development shall collect a filing fee as determined by resolution of the City Council.

(D) Public Notice. Public notice shall be subject to the provisions of Section 25.05.065, except that if a Coastal Development Permit is required pursuant to Chapter 25.07, noticing for that type of permit shall instead be carried out through the public notice provisions of Section 25.07.014.

(E) Timing of Approvals. The Planning Commission shall review all Conditional Use Permit applications. If a project requires approval by both the Planning

Commission and Board of Adjustment, the Conditional Use Permit shall be reviewed and approved first.

(F) Findings.

- (1) The site for the proposed use is adequate in size and topography to accommodate said use, and all yards, spaces, walls and fences, parking, loading and landscaping are adequate to properly adjust such use with the land and uses in the vicinity.
- (2) The site for the proposed use has access to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use.
- (3) The proposed use will have no substantial adverse effect upon abutting property.
- (4) The proposed use is consistent with the objectives and policies of the City's General Plan.
- (5) The conditions stated in the decision are deemed necessary to protect the public health, safety and general welfare.

(G) Conditions of Approval.

- (1) Conditions of approval may include, but are not limited to:
 - (a) Regulation of use;
 - (b) Special yards, spaces and buffers;
 - (c) Special fences, solid fences and walls;

- (d) Surfacing of parking areas;
 - (e) Street, service road or alley dedications and improvements or appropriate bonds;
 - (f) Regulation of points of vehicular ingress and egress;
 - (g) Regulation of signs;
 - (h) Landscaping plan, to be reviewed and approved by the Department of Community Development;
 - (i) Maintenance of the grounds;
 - (j) Regulation of noise, vibration and odors;
 - (k) Regulation of hours for certain activities;
 - (l) Time period within which the proposed use shall be developed;
 - (m) Duration of use;
 - (n) Posting of a bond or bonds sufficient to guarantee the removal of any nonconforming structures or uses of the land upon the expiration of the period of the Conditional Use Permit; and
 - (o) Dedication of access rights.
- (2) In addition to special conditions of approval, the following general conditions of approval shall be imposed upon each Conditional Use Permit:
- (a) The right to a use and occupancy permit shall be contingent upon the fulfillment of all general and special conditions imposed by the Conditional Use Permit;

- (b) All of the special conditions shall constitute restrictions running with the land, and shall be binding upon the owner of the land, and the successors or assigns;
 - (c) All of the special conditions shall be consented to in writing by the applicants and all owners of interests and lien holders;
 - (d) The resolution granting the application, together with all consent forms, shall be recorded by the recorder of Orange County;
 - (e) The permit shall be subject to review at any time upon receipt of written complaint.
- (H) Appeals. Appeals are subject to the provisions of Section 25.05.070.
- (I) Effective Date/Expiration Date.
- (1) Decisions on Conditional Use Permit applications by the Planning Commission shall become effective ten business days after the date of the decision, unless appealed to the City Council.
 - (2) If an established time limit for development expires, or if a time limit for the duration of the use has been established as one of the conditions of approval, then the permit shall be considered to be revoked upon such date of expiration without any notification to the owner thereof.
 - (3) A Conditional Use Permit shall lapse and become void two years following the effective date unless a shorter approval period is specified for the project or unless:

- (a) The privileges authorized are established; or
 - (b) A Building Permit is issued and construction is begun and diligently pursued to completion; or
 - (c) The Planning Commission grants a two-year extension of time or, after that initial extension of time, a final one-year extension of time. Such time extensions shall be requested in writing by the applicant or authorized agent prior to the expiration of the beginning two-year approval period or any subsequently approved extensions of time.
- (4) Extension of Time Findings. An extension of time of the beginning two-year approval period may be granted by the Planning Commission, if each of the following findings can be made:
- (i) The zoning codes or standards applicable to the circumstances of the originally approved Conditional Use Permit have not materially changed; and
 - (ii) The neighborhood character has not changed so as to be materially inconsistent with the findings made when the Conditional Use Permit was originally approved.
- (5) If a Conditional Use Permit has been abandoned or terminated for any reason, the permit shall expire and become void. Abandonment shall depend on the concurrence of (1) an intention to abandon and (2) an overt act, or failure to act, which carries the implication the owner does not claim or retain any interest in the right to the use.

(J) Revocation. Revocations are subject to the provisions of Municipal Code Section 25.05.075.

(K) Modifications. Additions, enlargements or modifications of uses or structures upon property for which a Conditional Use Permit has been granted shall not be allowed except pursuant to a subsequent Conditional Use Permit as might otherwise be required or granted pursuant to the terms of this Title.

SECTION 5. Section 25.05.035 ("Temporary Use Permits") of the Laguna Beach Municipal Code is hereby amended to read in its entirety as follows:

(A) Intent and Purpose. The intent of this section is to accommodate reasonable requests for interim or temporary uses when such activities are desirable for the community, or are temporarily required in the process of establishing a permitted use or constructing a public facility. Temporary uses allowed under this section shall be consistent with the health, safety and general welfare of persons residing and working in the community, shall be conducted so as not to cause any detrimental effects on surrounding properties and the community, and shall not violate any other ordinance or regulation of the City.

(B) Uses Permitted Subject to Temporary Use Permit.

(1) The following uses may be permitted in residential zones:

(a) Construction. Temporary structures, garages or sheds;

(b) Parking and storage of earthmoving or construction equipment, when that parking or storage is incidental to an ongoing construction activity;

- (c) Storage of materials incidental to a Public Works project, subdivision or construction activity;
- (d) Tract home or lot sales office;
- (e) Events which require closure of public streets to traffic;
- (f) Temporary parking lots other than existing lots;
- (g) Such other uses as the Planning Commission may by resolution deem to be within the intent and purpose of this section.

(2) The following uses may be permitted in non-residential zones. Uses permitted in the industrial zones shall require special consideration to assure that those uses are compatible with the intent of those zones:

- (a) Art and handicraft shows (out of doors);
- (b) Carnivals;
- (c) Christmas tree sales;
- (d) Concerts;
- (e) Farmers market;
- (f) Horse shows and animal exhibitions;
- (g) Outdoor merchandise and display stands;
- (h) Sporting events;
- (i) Street vendors, temporary sales booths, sidewalk sales or enterprises of a similar nature;
- (j) Tents or canvas/plastic enclosures;

(k) Those temporary uses permitted in Section 25.05.035(B)(1);

(l) Such other uses as the planning commission may by resolution deem to be within the intent and purpose of this section.

(C) Applications. Applications for a Temporary Use Permit shall be made by the property owner or an authorized agent. Applications shall contain such information as prescribed by the Director of Community Development.

(D) Filing Fee. Prior to accepting an application for a Temporary Use Permit, the Department of Community Development shall collect a filing fee, as determined by resolution of the City Council.

(E) Public Notice. All Temporary Use Permit applications referred to the Planning Commission shall be subject to the public notice provisions of Section 25.05.065 except that if a Coastal Development Permit is required pursuant to Chapter 25.07, noticing for that type of permit shall instead be carried out through the public notice provisions of Section 25.07.014.

(F) Approvals.

(1) The Director of Community Development shall approve, approve in part, conditionally approve or deny applications for Temporary Use Permits in the R-1 zone and for short-term events (five days or less) deemed minor by the Director of Community Development in any zone. Applications for temporary parking lots are excluded. At the discretion of the Director of Community Development, Temporary Use Permit applications may be referred to the Planning Commission.

Determination shall be made within 20 business days of receipt of the application unless the matter is referred to public hearing.

(2) In addition to a Temporary Use Permit, a coastal development permit must be obtained for those temporary uses that involve development that requires a coastal development permit as described in Chapter 25.07 Coastal Development Permits. The procedure to obtain a coastal development permit shall be as described in Chapter 25.07.

(3) The Planning Commission shall approve, approve in part, conditionally approve or deny all other applications for Temporary Use Permit Permits. The Commission shall make written findings that the project is consistent with applicable General Plan policies.

(4) Written notice of determination shall be mailed to the applicant or authorized agent within 10 business days of the decision of the Director of Community Development or the Planning Commission.

(G) Conditions of Approval. Conditions of approval may include, but are not limited to:

- (1) Regulations of hours;
- (2) Requirement of bonds or other guarantees for cleanup or removal of structures or equipment;
- (3) Return of temporary use site to its original state within a specified period of time;
- (4) Regulation of permit duration;

- (5) Regulation of signs and advertising;
- (6) Regulation of lighting;
- (7) Regulation of public-address or sound system;
- (8) Regulation of gas, smoke, noise, fumes, vibrations or other nuisances;
- (9) Referral to Design Review;
- (10) Such other conditions as are deemed necessary to protect the health, safety and welfare of the community and to assure compliance with the intent and purpose of this section.

(H) Appeals. Appeals are subject to the provisions of Section 25.05.070.

(I) Effective Date/Expiration Date. Planning Commission decisions on Temporary Use Permit applications shall become effective fourteen calendar days after the date of the decision, unless appealed to the City Council. Temporary Use Permits may be authorized for a maximum three year time period.

(J) Revocation. Revocations are subject to the provisions of Section 25.05.075.

SECTION 6. Section 25.05.040 ("Design Review") of the Laguna Beach Municipal Code is hereby amended to read in its entirety as follows:

- (A) Intent and Purpose. The design review process consists of a review of a proposed development by the approval authority of either the Design Review Board or Planning Commission as specified herein. The Director of Community Development is the approval authority for Administrative Design Review as specified

in Section 25.05.040(B)(3). The design review process is intended to achieve the following goals:

- (1) That development projects comply with the applicable standards and design guidelines and criteria;
- (2) That development projects focus on quality designs, within a neighborhood context that results in creative design solutions for the City;
- (3) That development occurs with an orderly and harmonious appearance, including associated facilities, such as signs, landscaping and parking areas;
- (4) That the development review process minimizes contentiousness;
- (5) That the development review process considers public and private views;
- (6) That public health, safety and general welfare throughout the City is paramount;
- (7) That there is effective implementation of the applicable general and specific plan policies, which encourage the preservation and enhancement of the particular character and unique assets of the city; and
- (8) That development projects comply with the policies of the certified Local Coastal Program Land Use Plan, including, but not limited to, the shoreline access, open space, environmentally sensitive habitat, hillside protection and visual resource policies.

(B) Development Subject to Design Review.

(1) All new buildings, structures and physical improvements and relocations, additions, extensions and exterior changes of or to existing buildings, structural and non-structural improvements, including landscaping and grading, shall be subject to design review, except as otherwise provided in Section 25.05.040(B)(2) and 25.05.040(B)(3). Examples of physical improvements and site developments subject to a design review hearing with the Design Review Board or Planning Commission include, but are not limited to, the following:

- (a) Commercial or industrial parking and loading areas;
- (b) New vehicular access to streets or alleys;
- (c) Retaining walls in excess of five feet in exposed height;
- (d) Signs, as specified in Chapter 25.54 ("Sign Regulations");
- (e) Permanent chain link or similar type of woven metal fences, and vinyl fences that do not simulate natural material;
- (f) Telecommunication facilities subject to the provisions of Chapters 11.06 and 25.55;
- (g) Trash enclosures associated with a commercial use;
- (h) Public street and sidewalk improvements;
- (i) Above-ground utility structures;
- (j) Total aggregate additions that are 50 percent or more of the existing gross floor area as of January 13, 1993, additions that create a new upper story,

and additions that exceed a height of 15 feet above the adjacent ground elevation;

(k) Shore protective devices;

(l) All buildings, structures and physical improvements in environmentally sensitive areas and on lots with a slope greater than 30 percent, except as otherwise provided in Section 25.05.040(B)(2)(a)(iv);

(m) Grading in excess of 20 cubic yards outside the building footprint, except as specified in Section 22.10.010(e);

(n) Clearing of native vegetation on undeveloped parcels and undeveloped portions of developed parcels, and native vegetation restoration plans, except for City required annual weed abatement;

(o) All City projects within the scope of this section, except if the City Council waives the requirement of design review if it determines that there are special circumstances applicable to such project which require that the project proceed without delay;

(p) Landscaping review for new development or additions that are 50 percent or more of the original gross floor area, additions that create a new upper story or additions that exceed a height of fifteen feet above the adjacent ground elevation, and for structural improvements within environmentally sensitive habitat areas;

- (q) Modifications of previously approved design review plans, including approved landscape plans, except as otherwise provided in Sections 25.05.040(B)(2) and 25.05.040(B)(3);
 - (r) Swimming pools, permanent spas (unless eligible for administrative design review) and their associated pool or spa equipment;
 - (s) Outlining of the outside of buildings or portions thereof with lights. (If such outlining with lights is proposed on a building listed on the register, then the Heritage Committee shall make a recommendation to the approval authority prior to its design review); and
 - (t) A hedge or hedges located within front, side and/or rear yards that is/are proposed to exceed the maximum allowable fence height, as set forth in Chapter 25.50.
- (2) Exceptions. The following improvements shall be exempt from the design review process. The Director of Community Development has the discretion to refer applications to the appropriate design review authority for consideration and final action. The City Council may, by resolution, require that certain project types normally eligible for an exception be referred to either the design review or administrative design review process. Exceptions shall be reviewed through the plan check process to ensure compliance with zoning standards.
- (a) Additions to a single-family residences with no prior design review plans that:

- (i) Result in aggregate additions that are less than 50 percent of the existing gross floor area cumulative over time since January 13, 1993;
 - (ii) Do not create a new upper story and do not exceed a height of 15 feet above the adjacent ground elevation;
 - (iii) Are in conformance with the zoning regulations; and
 - (iv) Are not within an environmentally sensitive area or where a licensed professional has determined that the proposed improvements do not impact the environmentally sensitive area subject to peer review.
- (b) Minor modifications to approved design review plans, including, but not limited to:
- (i) Hardscape reconfigurations that do not reduce the existing open space and landscape open space;
 - (ii) Landscape plans with no increased height, width, and spacing of vegetation; and
 - (iii) Additions or relocations of windows and glass doors with adjacent neighbor consent;
- (c) Interior modifications to existing structures or approved plans, including those structures and plans approved by the approval authority, except interior alterations to historic structures as outlined in Chapter 25.45 ("Historic Preservation");

- (d) Exterior modifications to less than 50 percent area of any street facing façade of a building in a residential zone that do not result in a style change of the building;
- (e) Repainting existing structures in residential zones provided that the paint color was not required to specifically address a design-related issue such as consistency with the architectural style and surrounding neighborhood;
- (f) Re-roofing buildings and structures with Class A roofing that is consistent with the architectural style and surrounding neighborhood, provided there are no changes to the dimensions, square footage, or roof pitch;
- (g) Retaining walls five feet or less in exposed height;
- (h) Slabs and patios at or below natural grade
- (i) Modifications to existing driveways or other hardscape that does not increase impervious surfaces and complies with all other applicable provisions of this chapter;
- (j) Fences, walls and hedges that comply with the zoning regulations, except permanent chain link or similar type of woven metal fences. In residential areas, other decorative fences and walls, including but not limited to wood, vinyl simulating natural materials, fiberglass, steel, wrought iron, etc., which are determined to be compatible with the neighborhood and consistent with Section 25.50.012 (“Fences, walls, hedges, lattice work and screens”) are permitted;
- (k) Window or exterior door replacements or insignificant changes in final design, such as moldings and windowpane material;

- (l) Elevated decks three feet or less above adjacent existing grade;
- (m) Railing changes;
- (n) Skylights with operable automatic night shades;
- (o) Conversion of existing landscaping to drought tolerant landscaping up to six feet at mature growth height and provided that the existing landscaping was not required to specifically address a design-related issue such as view equity or privacy;
- (p) Artwork approved through the procedures outlined in Chapter 1.09 (“Art in Public Places”);
- (q) Signs, in conformance with an approved sign program subject to review and approval by the Director of Community Development; and
- (r) Temporary on-grade removable accessory structures used as play sets, swing sets, other similar unenclosed recreation equipment, and storage sheds provided that: (i) the structure does not exceed 120 square feet in size, (ii) the height is less than 12 feet above adjacent ground elevation, and (iii) minimum required setbacks of the underlying zone are met unless it receives administrative design review approval;
- (s) Accessory dwelling units, only as set forth in Chapter 25.17;
- (t) Grading of 20 cubic yards or less outside the building footprint, except as specified in Section 22.10.010(e);

(u) Fuel modification programs. Projects consisting solely of a new or modified fuel modification program shall be reviewed and approved by the Director of Community Development or his or her designee to evaluate landscape design, and by the Fire Chief or his or her designee for compliance with fuel modification regulations;

(v) Trash storage within the side yard when screened from public view by a wall or fence at least four (4) feet in height and does not impact required access for the property;

(w) Exterior wildfire resistant construction materials and methods in accordance with Chapter 7A of the California Building Code, including but not limited to replacement of natural wood siding with fire resistant materials that simulate the appearance of wood, enclosing of roof eaves and wrapping of decks; and

(x) Seismic upgrades that do not affect the exterior appearance of the structure are eligible for an exception to design review.

(3) Administrative Design Review Process. An administrative design review hearing may be conducted by the director of community development or his or her designee for development projects that: are considered to be minor or incidental as specified below, require neighbor notification including, but not limited to, those listed below.

(a) Examples of Administrative Design Review Development projects may include but are not limited to:

- (i) Those projects normally exempt under subsection (B)(2) that are determined by the Director of Community Development or his or her designee to pose potential impacts to neighboring properties;
- (ii) Elevated decks more than three feet above adjacent existing grade and structural additions within existing residential rooflines;
- (iii) Portable and in-ground spas not exceeding a maximum of 600 gallons, and water features;
- (iv) Pedestrian entry features that are outside the public right of way and do no impact line of sight and are in conformance with Section 25.50.012(B)(6);
- (v) Mechanical equipment, including, but not limited to, air conditioners and pool/spa equipment that do not meet the requirements of Section 7.25.130(C);
- (vi) City public works projects which are limited to replacement-in-kind or maintenance and which are not located in environmentally sensitive or open space areas, the Downtown Specific Plan Area, oceanfront properties or public buildings or parks;
- (vii) Extensions of time as specified in Section 25.05.040(J)(3);
- (viii) Additional covered or tandem parking as specified in Section 25.52.012 (G);
- (ix) Decorative features such as fence posts, brick or stone columns

may extend up to twelve inches above the maximum allowable height within the front yard;

(x) Revocable Encroachment Permits when not associated with a project requiring a Design Review Board or Planning Commission decision; and

(xi) Modifications to single- and multi-family structures in residential zones. The Director of Community Development has the discretion to refer any application to the Design Review Board and shall do so when the proposed modifications to a prior design review approval conflict with conditions of approval or a decision made by the Design Review Board. The following modifications shall be allowed through administrative design review:

(1) Architectural modifications that are consistent with the Residential Design Guidelines;

(2) Minor roof alterations that do not adversely impact view equity;

(3) New or relocated windows and doors that do not obtain adjacent neighbor consent;

(4) Additions to single-family residences with prior design review approved plans that:

(a) Result in additions that are less than 50 percent of the prior design review approved floor area when not a major remodel;

(b) Do not create a new upper story or do not exceed a height of 15 feet above the adjacent ground elevation;

(c) Are not within an environmentally sensitive area or where a licensed professional has determined that the proposed improvements do not impact the environmentally sensitive area subject to peer review;

(d) Are not within 5 years from the date of prior project approval or while the project is under construction if the aggregate additions are larger than 50 square feet; and

(e) Additions are not allowed through the administrative design review process in combination with an application for an accessory dwelling unit or on sites with an existing accessory dwelling unit.

(b) Public Notice for Administrative Design Review. Public notice shall be subject to the provisions of Section 25.05.065, except that if a Coastal Development Permit is required pursuant to Chapter 25.07, noticing for that type of permit shall instead be carried out through the public notice provisions of Section 25.07.014.

(c) Staking Requirements for Administrative Design Review. All floor area additions and roof alterations shall be staked. If the Director of Community Development or his or her designee determines that the minor project should be staked, the staking requirements of subsections (C)(2)(a) and (b) of this section shall be followed, except that the construction and certification of the staking shall be completed at least 14 calendar days prior to the public hearing.

(d) Deliberation and Action on Administrative Design Review

Applications. The Director of Community Development or his or her designee shall conduct a public hearing for designated administrative design review projects. After consideration of all testimony and evidence presented at the public hearing and the Design Review Criteria specified in subsection H of this section, the Director of Community Development or his or her designee shall either approve, conditionally approve or deny the application in writing. An appeal of a decision on an administrative design review application is subject to the provisions of Section 25.05.070, and Section 25.07.016 when a coastal development permit is required.

(e) Approval Authority Referral. Prior to deliberation and action on an administrative design review application, the Director of Community Development or his or her designee may (at his or her discretion) refer the project application to the approval authority for hearing and consideration in accordance with subsections E and F. The City Council may, by resolution, require that certain project types normally eligible for administrative design review be referred to a design review hearing with either the Design Review Board or Planning Commission.

(C) Application. Application for design review shall be made by a property owner or authorized agent. Applications shall contain such information as prescribed by the Director of Community Development.

(1) Early Neighbor Communication. The applicant shall communicate with owners of property within 300 feet of the applicant's property notifying them of the proposed project. Such communication should take place prior to deciding on a final design to help resolve potential conflicts. Communication efforts shall include notification mailed to all property owners within 300 feet of the applicant's property. The noticing must be prepared and mailed by a professional listing service. Certification to the accuracy, completeness of the list, and date the notice was mailed is required to be provided by the company, along with a copy of the materials sent. Early neighbor communication must be completed prior to being scheduled for a hearing date. The following information shall be included in the early neighbor notification notice:

- (a) Applicant contact information.
- (b) Location of the proposed project.
- (c) A description of the proposed project.
- (d) Information on how to participate in the design review process.

(2) Staking Requirements.

- (a) A staking plan shall be prepared as specified on the most current zoning and design review submittal checklist. Staking poles and connecting ribbons, which accurately represent the full extent of the proposed structure, including decks and eaves, shall be constructed at least 21 calendar days prior to the first public hearing. At least 21 calendar days prior to the first public hearing, the location and height of the staking poles must be certified as accurate by a

registered land surveyor or registered civil engineer licensed to conduct land surveys in the State of California. If complete and certified project staking is not in place at least 21 calendar days prior to the first Design Review Board public hearing date or 14 calendar days prior to the administrative design review public hearing, the project shall be continued to a later date . Neither the applicant, a relative of the applicant, nor any other person possessing a financial interest in the property or the project may certify the location and height accuracy of the staking poles. If the project is modified during the design review process because of a view consideration, privacy or other concerns that the Board determines is necessary to restake, the project shall be re-staked and re-certified at least 14 calendar days prior to any subsequent public hearing,

(b) A deposit for the removal of staking poles, in an amount approved by the City Council shall be made prior to the time the project is scheduled for public hearing. Staking poles shall be removed by the applicant within 20 calendar days after the final project decision . Upon timely removal of the staking poles, the deposit shall be returned to the applicant. The applicant's failure to remove the staking poles within the prescribed time period shall result in the automatic forfeiture of the deposit, and the City shall remove the poles from the site.

(3) Biological Report Requirements. Prior to deliberation and action on a design review application, the applicant shall submit a biological report that is prepared by a professional in the fields of wildlife biology or botany for any proposal to clear native

vegetation on undeveloped parcels that are located within or adjacent to areas designated high or very high value on the city's biological values maps and any other areas that contain environmentally sensitive habitat resources except for annual weed abatement and approved fuel modification programs.

(4) Fire Department Review and Approval. Prior to deliberation and action on a design review application for new construction and alterations involving 50 percent or more of an existing structure, the Fire Department shall review and approve or conditionally approve applications, including proposed fuel modification programs. Fuel modification programs or Alternative Materials and Methods (AM&Ms) requests, when determined necessary by the Fire Department, are required for any parcel having an "FM"—Fuel Modification designation or Very High Fire Hazard Severity Zone on the City's Geographic Information Mapping system. The Fire Department conditions of approval relating to public safety may not subsequently be modified by the approval authority without the Fire Department's review and approval.

(D) Filing Fee. Prior to accepting an application, the Department of Community Development shall charge and collect a filing fee as determined by resolution of the City Council.

(E) Public Notice. Public notice shall be subject to the provisions of Section 25.05.065, except that if a Coastal Development Permit is required pursuant to Section 25.07, noticing for that type of permit shall instead be carried out through the public notice provisions of Section 25.07.014.

(F) Deliberation and Action on Applications.

(1) The authorities responsible for reviewing and making decisions on design review applications are as follows:

(a) The design review board shall conduct a noticed public hearing on design review applications for all single-family or two-family developments, including associated public right-of-way improvements.

(b) The planning commission shall conduct a noticed public hearing on all other design review applications, including but not limited to: residential development of three-families or more, all projects located in the downtown specific plan area, all non-residential development, all public works projects including Capital Improvements Projects (CIP) and development in the right-of-way, and projects for which the planning commission is the primary discretionary review authority, such as approval of a conditional use permit.

(2) Upon the conclusion of the public hearing on a design review application, and the consideration of all testimony and evidence presented at the public hearing, the approval authority shall approve, conditionally approve or deny the application. Determinations of design review applications shall be by majority vote of the voting members of the approval authority present.

(3) The approval, conditional approval, or denial of design review applications by the approval authority shall be based upon the design review criteria set forth in subsection H Section 25.05.040(H). Additional review criteria are specified in Section 25.07.012(F) when an associated Coastal Development Permit is required. Additional

review criteria contained in specific plans and/or zoning overlays shall apply to projects located in areas covered by any such specific plans and/or zoning overlays.

(4) The approval, conditional approval or denial of design review applications by the approval authority shall be accompanied by findings correlated with the design review criteria set forth in subsection H. Section 25.07.012(G) requires written findings to be made when approving or conditionally approving an associated Coastal Development Permit.

(5) Design review hearings on a proposed residential development project shall usually be limited to a maximum of two hearings. A third hearing may be permitted if the approval authority makes a finding that the applicant followed the authority's direction(s) from the initial hearing in good faith and further design work on the project is in the best interest of the community. The approval authority may allow up to two continuances of hearings at which no substantive discussion of the application occurs. Concept review hearings for residential dwelling units of three units or less are not allowed, except where required by current City ordinance. If required, concept review shall be limited to one hearing and shall count as one of the above limited hearings.

(6) Written notice of the approval, conditional approval or denial of design review applications shall be mailed to the applicant or authorized agent within 14 calendar days of the date of the decision of the approval authority.

(7) Landscaping Conditions. The approval authority shall condition all landscaping approvals with mature growth height limits and maintenance schedules (type and frequency of pruning) for all vegetation that potentially impacts views. The

landscaping shall be installed in accordance with the approved landscape plans.

Thereafter, the landscaping shall be continuously maintained (including replanting, as necessary) in compliance with the approved landscaping plans, unless such plans are subsequently revised pursuant to subsection (B)(1)(v) of this section. Minor landscaping changes may be exempt from design review pursuant to subsection (B)(2)(b) of this section.

(8) Applications for design review approval constitute applications for a “permit” as that term currently is used in California Government Code Section 65009(c)(1), and as hereafter may be amended.

(G) Design Guidelines. “Design Guidelines” is a publication that has been developed by the City to assist designers in understanding the Design Review criteria. These guidelines complement the zoning regulations provided for in this Title by providing conceptual examples of potential design solutions and design interpretations. The guidelines are general and may be utilized with flexibility in their application to specific projects.

(H) Design Review Criteria. Physical improvements and site developments subject to design review shall be designed and located in a manner which best satisfies the intent and purpose of design review, the City’s village atmosphere and the design review criteria specified in this section. Village atmosphere shall be characterized by appropriately scaled development, diverse and unique architectural designs, pedestrian orientation and sensitivity to the natural conditions of the site. The property development standards as delineated in each zone are intended to provide the City with maximum flexibility and discretion in the decision making process, based upon the particular issues and circumstances in effect at the

time development is proposed. These standards shall represent the maximum allowable building envelope for a given property. The actual development allowed after the application of the design review criteria will typically be less than the maximum designated by the general standards for the zone because of localized conditions identified during the design review process. A proposed development that has no variances from the Zoning Code does not have any presumptive development right or “entitlement.” The design review criteria are as follows:

- (1) Access. Conflicts between vehicles, pedestrians and other modes of transportation should be minimized by specifically providing for each applicable mode of transportation. Handicapped access shall be provided as required by applicable statutes.
- (2) Design Articulation. Within the allowable building envelope, the appearance of building and retaining wall mass should be minimized. Articulation techniques including, but not limited to, separation, offsets, terracing and reducing the size of any one element in the structure may be used to reduce the appearance of mass.
- (3) Design Integrity. Consistency with the applicant’s chosen style of architecture should be achieved by the use of appropriate materials and details. Remodels should be harmonious with the remaining existing architecture.
- (4) Environmental Context. Development should preserve and, where possible, enhance the City’s scenic natural setting. Natural features, such as existing heritage trees, rock out-cropping, ridgelines and significant watercourses should be protected. Existing terrain should be utilized in the design and grading should be minimized.

- (5) General Plan Compliance. The development shall comply with all applicable policies of the general plan, including all of its elements, applicable specific plans, and the certified local coastal program.
- (6) Historic Preservation. Destruction or alteration to historic resources should be avoided whenever possible. See Section 25.45 for more information.
- (7) Landscaping. Landscaping shall be incorporated as an integrated part of the structure's design and relate harmoniously to neighborhood and community landscaping themes. View equity shall be an important consideration in the landscape design. The relevant landscaping guidelines contained in the City's "Landscape and Scenic Highways Resource Document" should be incorporated, as appropriate, in the design and planned maintenance of proposed landscaping.
- (8) Lighting and Glare. Adequate lighting for individual and public safety shall be provided in a manner which does not significantly impact neighboring properties. Reflective materials and appurtenances that cause glare or a negative visual impact (e.g. skylights, white rock roofs, high-gloss ceramic tile roofs, reflective glass, etc.) should be avoided or mitigated to a level of insignificance in those locations where those surfaces are visible from neighboring properties.
- (9) Neighborhood Compatibility. Development shall be compatible with the existing development in the neighborhood and respect neighborhood character. Neighborhood character is the sum of the qualities that distinguish areas within the City, including historical patterns of development (e.g., structural heights, mass, scale or size), village atmosphere, landscaping themes and architectural styles.

- (10) Pedestrian Orientation. Commercial development design shall enhance and encourage pedestrian uses. Incorporation of articulated building masses, compact open spaces and courtyards, mixed use developments, use of landscaping as part of design, and orientation to pedestrian access should be maximized.
- (11) Privacy. The placement of activity areas (e.g., decks, picture windows and ceremonial or entertainment rooms) in locations that would result in a substantial invasion of privacy of neighboring properties should be minimized.
- (12) Public Art. Public art is encouraged and shall be displayed where feasible or required by the Art in Public Places Ordinance.
- (13) Sign Quality. Signs shall be incorporated into the architecture of the structure and shall be made of high quality materials, be simple in design and be visually compatible with the surrounding physical environment in terms of color, scale and size. Use of natural materials in the construction of signs is encouraged.
- (14) Sustainability. New development should consider architecture and building practices which minimize environmental impacts and enhance energy efficiency by: (a) reducing energy needs of buildings by proper site and structural design; (b) increasing the building's ability to capture or generate energy; (c) using low-impact, sustainable and recycled building materials; (d) using the latest Best Management Practices regarding waste and water management; and (e) reducing site emissions.
- (15) Swimming Pools, Spas and Water Features. Swimming pools, spas and water features shall be located, designed and constructed where:
- (a) geology conditions allow;

(b) noise produced by circulatory mechanical pumps and equipment is mitigated;
and

(c) any associated fencing or other site improvements are compatible with
neighboring properties.

(16) View Equity. The development, including its landscaping, shall be designed
to protect existing views from neighboring properties without denying the subject
property the reasonable opportunity to develop as described and illustrated in the City's
"Design Guidelines." The "Design Guidelines" are intended to balance preservation of
views with the right to develop property.

(I) Design Review Findings. Physical improvements and site developments
subject to Administrative or Design Review Board authority shall be designed and
located in a manner in overall consistency with the design review criteria specified in
Section 25.05.040(H), and all other applicable design guidelines and characterized by
appropriately scaled development, diverse and unique architectural designs, pedestrian
orientation, and sensitivity to the natural conditions of the site. Any deviations from the
design review criteria and other applicable design guidelines must be considered minor
and reasonably related to good design principles and specific site conditions.

(J) Appeals. Appeals of the design review authority are subject to the provisions
of Section 25.05.070, and Section 25.07.016 when a Coastal Development Permit is
required.

(K) Effective Date/Expiration Date.

- (1) A Design Review decision shall become effective 14 calendar days after the date of the decision, unless appealed to the City Council.
- (2) Design Review approval shall lapse and become void two years following the effective date if the privileges authorized by design review are not executed or utilized or, if construction work is involved, such work is not commenced within such two-year period and diligently pursued to completion.
- (3) The Director of Community Development or his or her designee may grant approval, through the administrative design review process, a two-year extension of time and, after that initial extension of time, a final one-year extension of time. Such time extensions shall be requested in writing by the applicant or authorized agent prior to the expiration of the beginning two-year approval period or a subsequently approved extension of time.
- (4) Extension of Time Findings. An extension of time of the beginning two-year approval period may be granted by through the administrative design review process , if each of the following findings can be made:
 - (a) The zoning codes or standards applicable to the circumstances of the originally approved design review have not materially changed; and
 - (b) The neighborhood character has not changed so as to be materially inconsistent with the findings made when design review was originally approved.
- (L) Reapplication Waiting Period. After denial of a project, no application for a project located on the same parcel or building site may be filed or accepted for filing for two months.

SECTION 7. Section 25.50.008 (“Permitted projections into required yards”) of the Laguna Beach Municipal Code is hereby amended to read in its entirety as follows:

- (A) Cornices, eaves, belt courses, balconies, greenhouse and bay windows (as defined in Section 25.50.008(E) below) or similar architectural features may cantilever into a required front or rear yard a distance equal to twenty percent of the required front or rear yard. Architectural features (exclusive of balconies) may cantilever into a required side yard a distance equal to forty percent of the required side yard; however, in no event shall any eave, belt course, be constructed less than two and one-half feet, or four feet in the case of green house or bay windows, including the window in an open position, from the side property line, or less than five feet from any other cornice, eave, belt course, greenhouse or bay windows or similar architectural feature on the same lot.
- (B) A chimney or fireplace may extend or project into a required front, side or rear yard for a total distance of not to exceed twelve inches, provided that such projection does not extend along the length of such yard a total distance of more than six feet and does not extend closer than three feet to a side property line.
- (C) Uncovered porches, patios, graded (fill) terraces, landing places or unenclosed and uncovered outside stairways which do not extend above the level of the first or ground floor of the building and not more than three feet above the natural grade of the ground may extend or project into any required minimum yard for a total distance of not more than six feet, but in no case closer than three feet to an interior side lot line.

Note: Porches, patios, graded (fill) terraces, landings or stairways which are covered or enclosed shall be considered as part of the building and shall not be permitted to extend into the required yards.

SECTION 8. Section 25.50.012 (“Fences, walls, hedges, latticework and screens”) of the Laguna Beach Municipal Code is hereby amended to read in its entirety as follows:

(B) Permitted Fences, Walls, Hedges, Latticework and Screens.

(3) Fences, walls, hedges, latticework or screens not more than six feet in height may be erected, installed or maintained within the side and rear yards of any lot, provided such fences, walls, hedges, latticework or screens do not project into the front yard. The fence height of this paragraph shall apply to the height of a retaining wall consistent with the permitted projection requirements in Section 25.50.008, the purpose of which is to create a graded (fill) terrace. Fence height shall be determined as the height of the top of the fence above the natural grade immediately adjacent to the location of the fence. Hedges may exceed the maximum allowable fence heights in the side and/or rear yards, unless a hedge height claim has been filed against the property containing the hedges and such hedges have been found by the city to create a safety hazard and/or obstruct views from or sunlight to an adjacent property, as set forth in Chapter 12.14.

SECTION 9. The provisions in Section 6 amending Sections 25.05.030(B)(2), and 25.05.040(B)(3)(e) of the Laguna Beach Municipal Code, allowing the City Council to adopt a referral list of exceptions by resolution, are adopted as a pilot measure and shall remain in effect for two years following the effective date of Coastal Commission Certification of LCP

Amendment 20-6663. Upon the expiration of the two-year period, these provisions shall have no further force and effect and shall be deemed repealed from the Municipal Code.

SECTION 10. The City Council finds that this Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Sections 15060(c)(2) and 15061(b)(3) in that the proposed amendments are not anticipated to result in a direct or reasonable foreseeable indirect physical change in the environment, nor will the proposed streamline provision changes have the potential for causing a significant effect on the environment. Additionally, Public Resources Code Section 21080.5, a provision of the California Environmental Act (CEQA), and Section 15265(c) of the State CEQA Guidelines shift the burden of CEQA compliance to the California Coastal Commission in connection with preparation or amendment to a Local Coastal Program (LCP). The Coastal Commission's LCP review and approval procedures have been found to be functionally equivalent to the environmental review process.

SECTION 11. If any portion of this Ordinance, or the application of any such provision to any person or circumstance, shall be held invalid, the remainder of this Ordinance to the extent it can be given effect, of the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this Ordinance are severable.

SECTION 12. This Ordinance is intended to be of Citywide effect and application. All ordinances and provisions of the Laguna Beach Municipal Code and Sections thereof inconsistent shall be and the same are hereby repealed to the extent of such inconsistency and no further.

SECTION 13. The City Clerk of the City of Laguna Beach shall certify to the passage

and adoption of this Ordinance, and shall cause the same to be published in the manner required by law in the City of Laguna Beach. This Ordinance shall become effective not less than thirty (30) days from and after the date of its adoption by the City Council and upon certification of a corresponding Local Coastal Program Amendment by the California Coastal Commission.

ADOPTED this 18th day of May, 2021.



Bob Whalen Mayor

ATTEST:



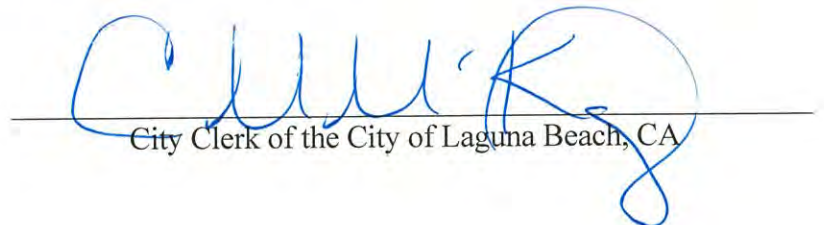
City Clerk

I, Ann Marie McKay, City Clerk of the City of Laguna Beach, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council on May 4, 2021, and was finally adopted at a regular meeting of the City Council of said City held on May 18, 2021, by the following vote:

AYES: COUNCILMEMBER(S): Blake, Iseman, Weiss, Kempf, Whalen

NOES: COUNCILMEMBER(S): None

ABSENT: COUNCILMEMBER(S): None



City Clerk of the City of Laguna Beach, CA

RESOLUTION NO. 21.011

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH, CALIFORNIA, APPROVING LOCAL COASTAL PROGRAM AMENDMENT 20-6663 TO AMEND PORTIONS OF CHAPTERS 25.05 (ADMINISTRATION) AND 25.15 (R/HP RESIDENTIAL/HILLSIDE PROTECTION ZONE) OF THE LAGUNA BEACH MUNICIPAL CODE, AND REQUESTING ITS CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION

WHEREAS, California continues to experiences large and destructive wildland fires with over 4 million acres burned in 2020; and

WHEREAS, the City of Laguna Beach is especially vulnerable to wildfires with approximately 87% of the City designated by Cal Fire as a Very High Fire Hazard Severity Zone; and

WHEREAS, the City of Laguna Beach prioritizes fire protection along with maintaining community character and aesthetics, and the intent of the subject Local Coastal Program (LCP) amendments is to enhance fire prevention throughout the City; and

WHEREAS, the subject amendments are consistent with the City's General Plan and LCP; and

WHEREAS, on November 4, 2020, the City's Planning Commission held a duly noticed public hearing and voted to recommend that the City Council approve LCP Amendment 20-6663 to amend portions of Chapters 25.05 (Administration) and 25.15 (R/HP Residential/Hillside Protection Zone) of the Laguna Beach Municipal Code; and

WHEREAS, on February 23, 2021, the City Council held a duly noticed public hearing and introduced Ordinance No. 1654 and LCP Amendment 20-6663 to amend portions of Chapters 25.05 (Administration) and 25.15 (R/HP Residential/Hillside Protection Zone) of the Laguna Beach Municipal Code and passed it to a second reading with modifications; and

WHEREAS, on March 9, 2021, the City Council approved the second reading of and adopted Ordinance No. 1654 to amend portions of Chapters 25.05 (Administration) and 25.15 (R/HP Residential/Hillside Protection Zone) of the Laguna Beach Municipal Code;

1 NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH
2 DOES RESOLVE AND ORDER as follows:

3 SECTION 1. LCP Amendment 20-6663 is hereby approved, amending portions of
4 Chapters 25.05 (Administration) and 25.15 (R/HP Residential/Hillside Protection Zone) of the
5 Laguna Beach Municipal Code, attached hereto as Exhibit "A" and incorporated herein by reference.

6 SECTION 2. The California Coastal Commission is hereby requested to consider,
7 approve and certify LCP Amendment 20-6663.

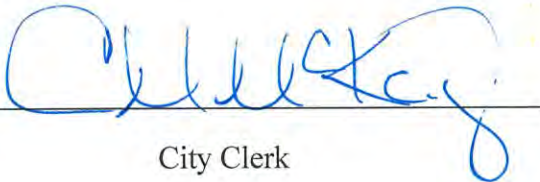
8 SECTION 3. Pursuant to Section 13551(b) of the Coastal Commission Regulations in Title
9 14 of the California Code of Regulations, Laguna Beach LCP Amendment 20-6663 will take effect
10 automatically upon Coastal Commission approval, as provided in Public Resources Code Sections
11 30512, 30513, and 30519.

12 ADOPTED this 9th day of March 2021.

13
14 

15 Bob Whalen, Mayor

16 ATTEST:

17 
18
19 City Clerk

1 I, ANN MARIE McKAY, City Clerk of the City of Laguna Beach, California, do hereby certify that
2 the foregoing Resolution No. 20.011 was duly adopted at a Regular Meeting of the City Council of
3 said City held on March 9, 2021 by the following vote:

4
5 AYES: COUNCILMEMBER(S) Blake, Iseman, Weiss, Kempf, Whalen

6 NOES: COUNCILMEMBER(S) None

7 ABSENT: COUNCILMEMBER(S) None

8
9
10 

11 City Clerk, City of Laguna Beach, CA

Exhibit A

LCP Amendment 20-6663

Existing Municipal Code language is shown in regular font, new text in **bold/underline** font and deleted text in ~~strikethrough~~ font.

25.05.040(B)(1) Development Subject to Design Review

(B) Development Subject to Design Review.

(1) All new buildings, structures and physical improvements and relocations, additions, extensions, and exterior changes of or to existing buildings, structural and nonstructural improvements, including landscaping and grading, shall be subject to design review, except as otherwise provided in Section 25.05.040(B)(2). Examples of physical improvements and site developments subject to design review include, but are not limited to, the following:

- (a) Commercial or industrial parking and loading areas;
- (b) New vehicular access to streets or alleys;
- (c) Retaining walls in excess of five feet in exposed height;
- (d) Signs, as specified in Chapter 25.54, Sign Regulations;
- (e) Permanent chain link or similar type metal fences;
- (f) Telecommunication facilities subject to the provisions of Chapter 25.55;
- (g) Trash enclosures associated with a commercial use;
- (h) Public street and sidewalk improvements;
- (i) Above-ground utility structures;
- (j) Additions that are 50% or more of the original gross floor area, additions that create a new upper story, additions that exceed a height of 15 feet above the adjacent ground elevation or additions that exceed 10% of the original gross floor area of an existing legal nonconforming structure;
- (k) Shore protective devices;

- (l) All buildings, structures and physical improvements in environmentally sensitive areas and on lots with a slope greater than thirty percent;
- (m) Grading in excess of twenty cubic yards, except as specified in Section 22.10.010(e);
- (n) Clearing of native vegetation on undeveloped parcels and undeveloped portions of developed parcels, and native vegetation restoration plans, except for City required annual weed abatement;
- ~~(o) Fuel modification programs subject to the provisions of 25.05.040(C)(3) and (4); provided, that once a program has received approval, subsequent approval for maintenance of the fuel modification will be granted by the Director of Community Development, if that maintenance is in conformance with the intent and objectives of the originally approved program;~~
- ~~(p)~~ (o) All City projects within the scope of this section, except if the City Council waives the requirement of design review if it determines that there are special circumstances applicable to such project which require that the project proceed without delay;
- ~~(q)~~ (p) Landscaping review for new development or additions that are fifty percent or more of the original gross floor area, additions that create a new upper story or additions that exceed a height of fifteen feet above the adjacent ground elevation, and for structural improvements within environmentally sensitive areas;
- ~~(r)~~ (q) Exterior alterations or additions to structures listed on the historic register per Chapter 25.45, Historic Preservation;
- ~~(s)~~ (r) Proposed demolition of structures listed on the historic resources list pursuant to Chapter 25.45 ("Historic Preservation");
- ~~(t)~~ (s) Modifications of previously approved design review plans, including approved landscape plans;
- ~~(u)~~ (t) Swimming pools, permanent spas and their associated pool or spa

equipment;

(v) (u) Outlining of the outside of buildings or portions thereof with lights. (If such outlining with lights is proposed on a building listed on the City's Historic Resources Inventory and/or City's Historic Register, then the Heritage Committee shall make a recommendation to the approval authority prior to its design review); and

(w)(v) A hedge or hedges located within front, side and/or rear yards that is/are proposed to exceed the maximum allowable fence height, as set forth in Chapter 25.50.

25.05.040(B)(2) Exemptions

(2) Exceptions. The following shall be exempt from the design review process, unless they are changes associated with approved design review plans, including approved landscape plans:

(a) Additions to a single-family residence in residential zones that:

(i) Are less than fifty percent of the original gross floor area,

(ii) Do not create a new upper story and do not exceed a height of fifteen feet above the adjacent ground elevation,

(iii) Are in conformance with the zoning regulations, and

(iv) Are not within an environmentally sensitive area;

(b) Interior modifications to existing structures or approved plans, including those structures and plans approved by the approval authority, except interior alterations to historic structures as outlined in Chapter 25.45, Historic Preservation;

(c) Repainting existing structures;

(d) Re-roofing buildings and structures with similar materials;

(e) Retaining walls five feet or less in exposed height;

(f) Slabs and patios at or below natural grade and modifications to existing driveways or similar structures that comply with all other applicable provisions of this chapter;

- (g) Wood or metal fences that comply with the zoning regulations, except permanent chain link or similar type metal fences;
- (h) Window or exterior door replacements or insignificant changes in final design, such as moldings and window pane material;
- (i) Minor landscaping which does not have the potential to impact views at mature growth height;
- (j) Elevated decks three feet or less above adjacent existing grade;
- (k) Railing changes;
- (l) Artwork approved through the procedures outlined in Chapter 1.09, Art in Public Places;
- (m) Signs, in conformance with an approved sign program subject to review and approval by the director of community development;
- (n) Temporary on-grade removable accessory structures used as play sets, swing sets and other similar unenclosed recreation equipment provided that: (i) the ground area of the structure does not exceed one hundred twenty square feet, (ii) the structure is less than twelve feet above adjacent ground elevation, and (iii) the structure is not located in a required setback area unless it receives administrative design review approval; and
- (o) Second residential units, only as set forth in Chapter 25.17.

(p) Fuel modification programs. Projects consisting solely of a new or modified fuel modification program shall be reviewed and approved by the Director of Community Development or his or her designee to evaluate landscape design, and by the Fire Chief or his or her designee for compliance with fuel modification regulations.

25.15.004(A)(7) Fuel Modification

- (7) Fuel Modification. The development proposal should address the required fuel modification as part of the initial application and should integrate fuel modification provisions into the site plan in such a way as to minimize impact on existing native

1 vegetation and areas of visual prominence. Alternative means to thinning and/or removal
2 of native vegetation for fire hazard management such as minimizing the building envelope,
3 and/or siting of the structure(s) away from hazard areas, and/or use of fire retardant design
4 and materials are preferred where feasible. **The fuel modification plan shall be in**
5 **compliance with all Fire Department fuel modification requirements.**
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ORDINANCE NO. 1654

**AN ORDINANCE OF THE CITY OF LAGUNA BEACH, CALIFORNIA,
AMENDING PORTIONS OF SECTIONS 25.05.040(B)1, 25.05.040(B)(2)
AND 25.15.004(A)(7) OF THE LAGUNA BEACH MUNICIPAL CODE,
RELATING TO FUEL MODIFICATION PROGRAMS AND FIRE
SAFETY**

WHEREAS, California continues to experiences large and destructive wildland fires with over 4 million acres burned in 2020; and

WHEREAS, the City of Laguna Beach is especially vulnerable to wildfires with approximately 87% of the City designated by Cal Fire as a Very High Fire Hazard Severity Zone; and

WHEREAS, the City of Laguna Beach prioritizes fire protection along with maintaining community character and aesthetics and the intent of the subject amendments is to enhance fire prevention throughout the City; and

WHEREAS, the subject Zoning Ordinance and Local Coastal Program (LCP) amendment is consistent with the City's General Plan and LCP; and

WHEREAS, on November 4, 2020, the City's Planning Commission held a duly noticed public hearing and voted to recommend that the City Council approve LCP Amendment 20-6663 and Zoning Ordinance Amendment 20-6662 to amend portions of Chapters 25.05 (Administration) and 25.15 (R/HP Residential/Hillside Protection Zone) of the Laguna Beach Municipal Code; and

WHEREAS, on February 23, 2021, the City Council held a duly noticed public hearing to consider the Planning Commission's recommendation;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH DOES ORDAIN as follows:

SECTION 1. Section 25.05.040(B)(1) (“Development Subject to Design Review”) of the Laguna Beach Municipal Code is hereby amended to read in its entirety as follows:

(B) Development Subject to Design Review.

(1) All new buildings, structures and physical improvements and relocations, additions, extensions and exterior changes of or to existing buildings, structural and nonstructural improvements, including landscaping and grading, shall be subject to design review, except as otherwise provided in Section 25.05.040(B)(2). Examples of physical improvements and site developments subject to design review include, but are not limited to, the following:

- (a) Commercial or industrial parking and loading areas;
- (b) New vehicular access to streets or alleys;
- (c) Retaining walls in excess of five feet in exposed height;
- (d) Signs, as specified in Chapter 25.54, Sign Regulations;
- (e) Permanent chain link or similar type metal fences;
- (f) Telecommunication facilities subject to the provisions of Chapter 25.55;
- (g) Trash enclosures associated with a commercial use;

- (h) Public street and sidewalk improvements;
- (i) Above-ground utility structures;
- (j) Additions that are 50% or more of the original gross floor area, additions that create a new upper story, additions that exceed a height of 15 feet above the adjacent ground elevation or additions that exceed 10% of the original gross floor area of an existing legal nonconforming structure;
- (k) Shore protective devices;
- (l) All buildings, structures and physical improvements in environmentally sensitive areas and on lots with a slope greater than thirty percent;
- (m) Grading in excess of twenty cubic yards, except as specified in Section 22.10.010(e);
- (n) Clearing of native vegetation on undeveloped parcels and undeveloped portions of developed parcels, and native vegetation restoration plans, except for City required annual weed abatement;
- (o) All City projects within the scope of this section, except if the City Council waives the requirement of design review if it determines that there are special circumstances applicable to such project which require that the project proceed without delay;
- (p) Landscaping review for new development or additions that are fifty percent or more of the original gross floor area, additions that create a new upper story or additions that exceed a height of fifteen feet above the adjacent

ground elevation, and for structural improvements within environmentally sensitive areas;

q) Exterior alterations or additions to structures listed on the historic register per Chapter 25.45, Historic Preservation;

r) Proposed demolition of structures listed on the historic resources list pursuant to Chapter 25.45 (“Historic Preservation”);

s) Modifications of previously approved design review plans, including approved landscape plans;

t) Swimming pools, permanent spas and their associated pool or spa equipment;

u) Outlining of the outside of buildings or portions thereof with lights. (If such outlining with lights is proposed on a building listed on the City’s Historic Resources Inventory and/or City’s Historic Register, then the Heritage Committee shall make a recommendation to the approval authority prior to its design review); and

v) A hedge or hedges located within front, side and/or rear yards that is/are proposed to exceed the maximum allowable fence height, as set forth in Chapter 25.50.

SECTION 2. Section 25.05.040(B)(2) (“Exemptions”) of the Laguna Beach Municipal Code is hereby amended to read in its entirety as follows:

(2) Exceptions. The following shall be exempt from the design review process, unless they are changes associated with approved design review plans, including approved landscape plans:

- (a) Additions to a single-family residence in residential zones that:
 - (i) Are less than fifty percent of the original gross floor area,
 - (ii) Do not create a new upper story and do not exceed a height of fifteen feet above the adjacent ground elevation,
 - (iii) Are in conformance with the zoning regulations, and
 - (iv) Are not within an environmentally sensitive area;
- (b) Interior modifications to existing structures or approved plans, including those structures and plans approved by the approval authority, except interior alterations to historic structures as outlined in Chapter 25.45, Historic Preservation;
- (c) Repainting existing structures;
- (d) Re-roofing buildings and structures with similar materials;
- (e) Retaining walls five feet or less in exposed height;
- (f) Slabs and patios at or below natural grade and modifications to existing driveways or similar structures that comply with all other applicable provisions of this chapter;
- (g) Wood or metal fences that comply with the zoning regulations, except permanent chain link or similar type metal fences;

- (h) Window or exterior door replacements or insignificant changes in final design, such as moldings and window pane material;
- (i) Minor landscaping which does not have the potential to impact views at mature growth height;
- (j) Elevated decks three feet or less above adjacent existing grade;
- (k) Railing changes;
- (l) Artwork approved through the procedures outlined in Chapter 1.09, Art in Public Places;
- (m) Signs, in conformance with an approved sign program subject to review and approval by the director of community development;
- (n) Temporary on-grade removable accessory structures used as play sets, swing sets and other similar unenclosed recreation equipment provided that: (i) the ground area of the structure does not exceed one hundred twenty square feet, (ii) the structure is less than twelve feet above adjacent ground elevation, and (iii) the structure is not located in a required setback area unless it receives administrative design review approval; and
- (o) Second residential units, only as set forth in Chapter 25.17.
- (p) Fuel modification programs. Projects consisting solely of a new or modified fuel modification program shall be reviewed and approved by the Director of Community Development or his or her designee to evaluate landscape design, and by the Fire Chief or his or her designee for compliance with fuel modification regulations.

SECTION 3. Section 25.15.004(A)(7) (“Fuel Modification”) of the Laguna Beach Municipal Code is hereby amended to read in its entirety as follows:

(7) Fuel Modification. The development proposal should address the required fuel modification as part of the initial application and should integrate fuel modification provisions into the site plan in such a way as to minimize impact on existing native vegetation and areas of visual prominence. Alternative means to thinning and/or removal of native vegetation for fire hazard management such as minimizing the building envelope, and/or siting of the structure(s) away from hazard areas, and/or use of fire retardant design and materials are preferred where feasible. The fuel modification plan shall be in compliance with all Fire Department fuel modification requirements.

SECTION 4. The City Council finds that this Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15061(b)(3) of the State CEQA Guidelines in that the proposed amendments are not anticipated to result in a direct or reasonably foreseeable indirect physical change causing a significant effect on the environment. The subject amendments bring the City into better alignment with the State's wildland-urban interface fire prevention regulations and current Fire Department review practices, will not substantially affect, potentially substantially affect, or change the City's land, air, water, minerals, flora, fauna, ambient noise, and objects of historical or aesthetic resources as all potential changes have been thoroughly considered and will protect the environment by minimizing potential spread of wildfire. The City Council further finds that this Ordinance is exempt from CEQA pursuant to Sections 15269(c) and 15308 of the State CEQA Guidelines and Public Resources Code Section 21080(b)(4) in that the proposed amendments are intended to be

and have the effect of being specific actions necessary to prevent or mitigate a wildfire emergency, which has a high probability of occurring in the short-term, and in that the proposed amendments are actions taken by a regulatory agency, as authorized by state law or local ordinance, to assure the maintenance and protection of the environment by facilitating the prevention and containment of wildfires that would be destructive to the environment. Additionally, Public Resources Code Section 21080.5 and Section 15265(c) of the State CEQA Guidelines shift the burden of CEQA compliance to the California Coastal Commission in connection with the preparation of or amendment to a Local Coastal Program (LCP). The Coastal Commission's LCP review and approval procedures have been found to be functionally equivalent to the environmental review process.

SECTION 5. In interpreting and applying this Ordinance, the City Council finds and declares its intent that the provisions of this Ordinance shall not be construed to mandate that owners of property submit fuel modification plans; rather, the streamlining program established by this Ordinance shall be purely voluntary in nature. The City Council further finds and declares its intent that the provisions of this Ordinance shall not be construed to constitute a local defensible space or vegetation management ordinance for the purposes of California Assembly Bill 38 (codified as Government Code Sections 51182 and 51189).

SECTION 6. If any portion of this Ordinance, or the application of any such provision to any person or circumstance, shall be held invalid, the remainder of this Ordinance to the extent it can be given effect, of the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this Ordinance are severable.

SECTION 7. This Ordinance is intended to be of Citywide effect and application.

All ordinances and provisions of the Laguna Beach Municipal Code and Sections thereof inconsistent shall be and the same are hereby repealed to the extent of such inconsistency and no further.

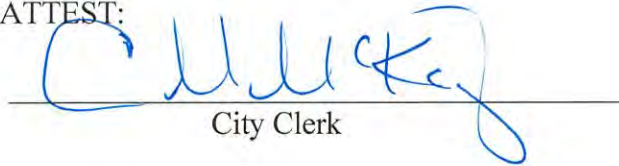
SECTION 8. The City Clerk of the City of Laguna Beach shall certify to the passage and adoption of this Ordinance, and shall cause the same to be published in the manner required by law in the City of Laguna Beach. This Ordinance shall become effective not less than thirty (30) days from and after the date of its adoption by the City Council and upon certification of a corresponding Local Coastal Program Amendment by the California Coastal Commission.

ADOPTED this 9th day of March, 2021.



Bob Whalen Mayor

ATTEST:

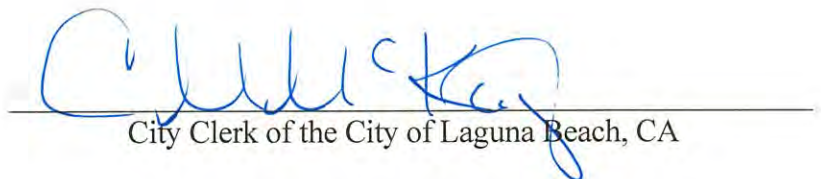

City Clerk

I, Ann Marie McKay, City Clerk of the City of Laguna Beach, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council on February 23, 2021, and was finally adopted at a regular meeting of the City Council of said City held on March 9, 2021, by the following vote:

AYES: COUNCILMEMBER(S): Blake, Iseman, Weiss, Kempf, Whalen

NOES: COUNCILMEMBER(S): None

ABSENT: COUNCILMEMBER(S): None


City Clerk of the City of Laguna Beach, CA

RESOLUTION NO. 21.007

A RESOLUTION OF THE CITY COUNCIL OF LAGUNA BEACH, CALIFORNIA, ADOPTING LOCAL COASTAL PROGRAM AMENDMENT 20-7714 REGARDING THE REGULATION OF WIRELESS TELECOMMUNICATIONS FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY AND AMENDMENTS TO CHAPTERS 11.06, 25.07, AND 25.55 OF THE LAGUNA BEACH MUNICIPAL CODE, AND REQUESTING ITS CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.

WHEREAS, after notice duly given pursuant to Government Code Section 65090 and Public Resources Code Sections 30503 and 30510, the Planning Commission conducted legally noticed public hearings to consider the adoption of Local Coastal Program Amendment 20-7714 and an Ordinance amending Chapters 11.06, 25.07, and 25.55 of the Laguna Beach Municipal Code, and associated revisions to the *Guidelines for Site Selection and Visual Impact and Screening of Wireless Telecommunication Facilities* (the "Guidelines"), relating to the regulation of wireless telecommunications facilities within the public rights-of-way; and

WHEREAS, the City Council, after giving notice as prescribed by law, held a public meeting on January 26, 2021 regarding Local Coastal Program Amendment 20-7714 and an Ordinance amending Chapters 11.06, 25.07, and 25.55 of the Laguna Beach Municipal Code, and associated revisions to the Guidelines relating to the regulation of wireless telecommunications facilities within the public rights-of-way, and finds that the proposed amendment is consistent with the Certified Laguna Beach Coastal Land Use Plan and Chapter 6 of the California Coastal Act;

WHEREAS, the City Council intends to implement the Local Coastal Program in a manner fully consistent with the California Coastal Act;


NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH DOES RESOLVE AND ORDER as follows:

1 **SECTION 1.** Laguna Beach Local Coastal Program Amendment No. 20-7714 is hereby
2 approved, consisting of amendments to Chapters 11.06, 25.07, and 25.55 of the Laguna Beach
3 Municipal Code relating to the regulation of wireless telecommunications facilities within the
4 public rights-of-way. A copy of Ordinance No. 1653 adopting such amendments is attached
5 hereto as Exhibit "A" and is incorporated by reference as though fully set forth herein.
6

7 **SECTION 2.** The California Coastal Commission is hereby requested to consider,
8 approve, and certify Local Coastal Program Amendment 20-7714.
9

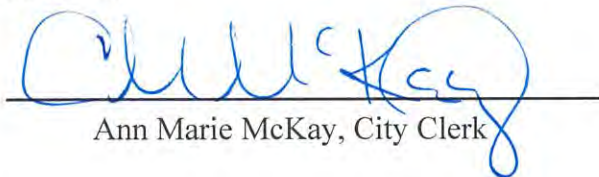
10 **SECTION 3.** Pursuant to Section 13551(b) of the California Coastal Commission
11 Regulations, Laguna Beach Local Coastal Program Amendment No. 20-7714 will take effect
12 automatically upon Coastal Commission certification, as provided in Public Resources Code
13 Sections 30512, 30513, and 30519.
14

15 ADOPTED this 23rd day of February, 2021.

16 

17 Bob Whalen, Mayor

18 ATTEST:

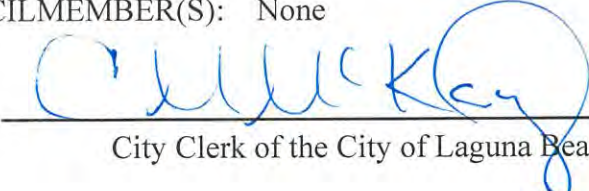
19 
20 Ann Marie McKay, City Clerk

21 I, ANN MARIE MCKAY, City Clerk of the City of Laguna Beach, California, do
22 hereby certify that the foregoing Resolution No. 21.007 was duly adopted at a Regular Meeting
23 of the City Council of said City held on February 23, 2021, by the following vote:

24 AYES: COUNCILMEMBER(S): Blake, Weiss, Kempf, Whalen

25 NOES: COUNCILMEMBER(S): Iseman

26 ABSENT: COUNCILMEMBER(S): None

27 
28 City Clerk of the City of Laguna Beach, CA

ORDINANCE NO. 1653

AN ORDINANCE OF THE CITY COUNCIL OF LAGUNA BEACH, CALIFORNIA, REGULATING WIRELESS TELECOMMUNICATIONS FACILITIES CITY-WIDE, AMENDING CHAPTER 11.06 (TELECOMMUNICATION FACILITIES WITHIN RIGHT-OF-WAY) OF TITLE 11 (STREETS AND SIDEWALKS) TO THE LAGUNA BEACH MUNICIPAL CODE, AND AMENDING CHAPTERS 25.07 (COASTAL DEVELOPMENT PERMITS) AND 25.55 (WIRELESS COMMUNICATIONS FACILITIES) OF TITLE 25 (ZONING) TO PROVIDE UNIFORM AND COMPREHENSIVE REGULATIONS AND STANDARDS, ALONG WITH PERMIT REQUIREMENTS, FOR THE INSTALLATION OF WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY, AND MAKING A FINDING OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

A. Recitals.

(i) The purpose of this Ordinance is to amend the City's Municipal Code to provide the City the greatest amount of authority provided by law, and provide uniform and comprehensive standards and regulations, along with permit requirements, consistent with State and federal law, including, but not limited to recent guidance from the FCC, for the installation or modification of wireless telecommunications or wireless utility facilities in the public rights-of-way ("ROW").

(ii) The public ROW in the City is a uniquely valuable public resource, closely linked with the City's residential character, civic identity, and natural beauty. Whereas the reasonably regulated and orderly deployment of wireless facilities in the ROW is desirable, unregulated or disorderly deployment represents an ever-increasing and true threat to the health, welfare and safety of the community.

(iii) The City finds and declares that the regulation of wireless facilities in the public ROW is necessary to protect and preserve the aesthetics in the community, as well as property values within the City, and to ensure that all wireless facilities are installed using the least intrusive means possible.

(iv) The City Council finds and determines as follows:

1. The Federal Telecommunications Act of 1996 preempts and declares invalid all State rules that restrict market entry to or limit competition in both local and long-distance telephone service.

2. The California Public Utilities Commission ("CPUC") is primarily responsible for the implementation of local telephone competition and it issues certificates of public convenience and necessity ("CPCN") 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.

3. 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.”

4. 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.”

5. 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.

B. Ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH DOES ORDAIN AS FOLLOWS:

SECTION 1. The facts set forth in the Recitals, Part A of this Ordinance, are true and correct.

SECTION 2. Environmental Review.

A. The City Council finds that, pursuant to the CEQA Guidelines, the proposed Municipal Code and Local Coastal Program amendments have been determined to be subject to exemptions pursuant to State CEQA Guideline Sections 15060(c)(2) and 15061(b)(3) in that the proposed amendments are not anticipated to result in a direct or reasonably foreseeable indirect physical change in the environment, nor will the proposed wireless facility regulations have the potential for causing a significant effect on the environment. Pursuant to CEQA Guidelines Section 15382, “significant effect on the environment” means *“a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant.”* Primary objectives of the proposed regulations include: (1) keeping pace with evolutions in wireless technology and the federal and State regulatory framework by removing the regulation of wireless facilities located within the public rights-of-way from the Zoning Code in favor of Title 11, Streets and Sidewalks, where such regulations can be amended on a more frequent and timely basis as the circumstances necessitate; (2) creating incentives for providers of wireless telecommunications services to design and locate facilities in a manner that minimizes impacts; and (3) establishing a comprehensive set of application submittal requirements to ensure that both the Planning Commission and Director are provided a factual basis for rendering informed decisions. These regulations would heighten and clarify design standards and thereby minimize the impacts of wireless facilities on public rights-of-way, public infrastructure, and private property. Moreover, the City’s existing regulations

already provide a pathway for the installation and operation of wireless facilities within public rights-of-way in accordance with federal and State requirements, and similar requests would continue to be made pursuant to the regulations proposed herein. For these reasons, the proposed Title 11 amendments (Streets and Sidewalks), Zoning Ordinance Amendment, and Local Coastal Program Amendment would not substantially affect, have a potentially substantial effect, or change the City's environment. Additionally, Public Resources Code Section 21080.5 and Section 15265(c) of the State CEQA Guidelines shift the burden of CEQA compliance to the California Coastal Commission in connection with the preparation of or amendment to a Local Coastal Program (LCP). The Coastal Commission's LCP review and approval procedures have been found to be functionally equivalent to the environmental review process.

SECTION 3. Chapter 11.06. "Telecommunication Facilities Within Right-Of-Way" of the Laguna Beach Municipal Code is hereby amended to read in its entirety as follows:

11.06.010 ~~Telecommunication facilities located within right-of-way.~~ **Purpose and Intent.**

~~All telecommunication facilities, as defined in Chapter 25.55, which are proposed within any public or private right of way or easement shall be subject to the provisions and requirements of Chapter 25.55. (Ord. 1320 § 5, 1996).~~

The City Council of the City of Laguna Beach expressly finds that the installation of small wireless facilities, the supporting fiber backbone, and their accessory equipment throughout the City's rights-of-way, requires City regulation, consistent with State and federal law, in order to more fully protect the public health and safety, preserve and protect the City's aesthetic interests, protect City infrastructure and other public facilities, and to provide for the orderly deployment of wireless telecommunications and wireless utility facilities in order to ensure the continued quality of telecommunications services to the public.

The City further places great emphasis on undergrounding facilities and protecting undergrounded districts. For over four decades, the City has facilitated and supported undergrounding efforts in neighborhoods and along major scenic corridors and it is the intent of this ordinance to protect this investment.

This ordinance is intended to reflect and promote community interest by (1) ensuring that the balance between public and private interests is maintained; (2) protecting the City's visual character from potential adverse impacts and/or visual blight created or exacerbated by small wireless facilities and accessory equipment; (3) protecting and preserving the City's environmental resources; (4) protecting and preserving the City's public rights-of-way; (5) protecting and preserving the City's commitment and investment in undergrounding districts; (6) promoting access to high-quality, advanced wireless services for the City's residents, businesses and visitors; and (7) ensuring that providers of telecommunications, and other similar wireless services, are treated in a fair and equal manner throughout the City.

The City Council further finds that regulations established herein are not intended to, nor shall they be interpreted or applied to:

- (a) Prohibit or effectively prohibit any provider's ability to provide personal wireless services, or other similar wireless service;
- (b) Prohibit or effectively prohibit any personal wireless service provider's ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules or regulations;
- (c) Unreasonably discriminate among providers of functionally equivalent services;
- (d) Deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such facilities comply with the Federal Communications Commission's regulations concerning such emissions;
- (e) Prohibit any collocation or modification that the City may not deny under federal or State law;
- (f) Impose any unfair, unreasonable, discriminatory or arbitrary fees that exceed the reasonable cost to provide the services for which the fee is charged;
- (g) Otherwise authorize the City to act in conflict with any applicable federal or State law or regulation.

11.06.020 Definitions.

Unless the particular provisions or applicable law or the context otherwise requires, the definitions contained in this Section shall govern the construction, meaning and application of words and phrases used in this Chapter.

"Accessory equipment" means any and all on-site equipment associated with the installation of a wireless telecommunications facility, including but not limited to cabling, generators, back-up generators and power supply units, wiring, coaxial and fiber optic cables, connections, fans, air conditioning units, electrical panels, equipment shelters, equipment cabinets, equipment buildings, pedestals, meters, vaults, splice boxes, radio transceivers, transmitters, fencing, shielding, and surface location markers. Accessory equipment does not include the support structure or pole on which the wireless facility is attached to.

"Administrative review" means the Director's discretionary review of an application relating to the review and issuance of a Wireless Facility Permit, including review by the approval authority to determine whether the issuance of a permit is in conformity with the applicable provisions of this Chapter, the Policy adopted by resolution pursuant to this Chapter, and this Code.

"Antenna" means that part of a wireless telecommunications facility designed to radiate or receive radio frequency signals.

"Applicant" means any natural person, firm, partnership, association, joint venture, corporation, or other entity (or combination of entities), and the agents, employees, and contractors of such person or entity that seeks City permits or other authorizations under this Chapter.

“Application” means a written request, on a form provided by the City, for a Wireless Facility Permit under the authority of this Chapter.

“Approval authority” means the City official(s) designated to review and issue a decision on a proposed permit or other authorization under this Chapter.

“Base station” shall have the meaning as set forth in Title 47 Code of Federal Regulations C.F.R.) Section 1.40001(b)(1), or any successor provision. This means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network (regardless of the technological configuration, and encompassing DAS and small cells). “Base station” does not encompass a tower or any equipment associated with a tower. Base station includes, without limitation:

1. 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.
2. 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 cells).
3. Any structure other than a tower that, at the time the relevant application is filed with the City under this Chapter, supports or houses equipment described in paragraphs 1 and 2 of this definition that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.
4. “Base station” does not include any structure that, at the time the relevant application is filed under this Chapter, does not support or house equipment described in paragraphs 1 and 2 of this definition. Other structures that do not host wireless telecommunications facilities are not “base stations.”

As an illustration and not a limitation, the FCC’s definition of “base station” refers to any structure that actually supports wireless equipment even though it was not originally intended for that purpose. Examples include, but are not limited to, wireless facilities mounted on buildings, utility poles, light standards or traffic signals. A structure without wireless equipment replaced with a new structure designed to bear the additional weight from wireless equipment constitutes a base station.

“Cellular” means an analog or digital wireless telecommunications technology that is based on a system of interconnected neighboring cell sites.

“C.F.R.” means the Code of Federal Regulations.

“City” means the City of Laguna Beach.

“City-owned street light” means a stand-alone street light pole owned by the City of Laguna Beach. These poles do not carry, hold, or support other utilities such as electric, telephone

or cable. The street light may be powered by overhead conductors (the conductors are usually owned by the City), underground direct connection to the electric utility, or underground connection from an electric meter.

“Code” means the Laguna Beach Municipal Code.

“Collocation” means the mounting or installing of 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.

“COW” means a “cell on wheels,” which is a wireless telecommunications facility temporarily rolled in or temporarily installed. Under no circumstances may a COW exist in the ROW for more than one month, absent written approval of the Director.

“CPUC” means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or its duly appointed successor agency.

“Day” means a calendar day, except as otherwise set forth in this Chapter.

“Decorative pole” means any pole that includes decorative or ornamental features, design elements and/or materials for aesthetic purposes.

“Department” means the Public Works Department or Community Development Department of the City of Laguna Beach, as specified in this Chapter.

“Deployment” means the installation, placement, construction, collocation or modification of a small wireless facility, eligible facility, or other wireless telecommunications facility.

“Director” means the Director of Public Works or Community Development, or his or her designee.

“Eligible facility request” means a request for approval of an eligible facility pursuant to Section 6409(a), and as defined by the FCC in 47 C.F.R. § 1.6100(b)(3), or any successor regulation, which defines that term as any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (1) collocation of new transmission equipment, (2) removal of transmission equipment, or (3) replacement of transmission equipment.

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

“Ground-mounted” means mounted to a pole, tower, or other freestanding structure which is specifically constructed for the purpose of supporting an antenna or wireless facility and placed directly on the ground at grade level.

“Guidelines for Site Selection and Visual Impact and Screening of Telecommunication Facilities” means the supplemental regulations established to exercise reasonable local zoning

control over wireless telecommunications facilities, as may be amended from time to time by the Director or City Council.

“Infrastructure” means any City-owned or operated facility, equipment, pole, pipe, cabinet, or other structure located in the public right-of-way or in or on any other City-owned or operated property outside of the public right-of-way.

“Located within the public right-of-way” includes any facility which in whole or in part, itself or as part of another structure, rests upon, in, over or under the public right-of-way.

“Modification” means a change to an existing wireless telecommunications facility that involves any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation, including, but not limited to, changes 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 existing facility involving any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation.

“Monopole” means a structure composed of a single pole used to support antennas or related equipment. A monopole also includes a monopine, monopalm and similar monopoles camouflaged to resemble faux trees or other faux objects attached on a monopole.

“Mounted” means attached or supported.

“Municipal Code” or “Code” means the Laguna Beach Municipal Code, as amended from time to time.

“Ordinance” means this Chapter 11.06 of Title 11 of the Laguna Beach Municipal Code, as may be amended from time to time.

“Permit” means a written authorization (in electronic or hard copy format) to install a wireless telecommunications facility at a specified location(s) in the City, including but not limited to, in public right-of-way, on any other City-owned or operated property, facility, or other building or structure outside the PROW, or in or on any other public or private property, facility, building or other structure located anywhere else in the City. A permit may also consist of a master agreement between the applicant and the City to install and maintain one or more wireless telecommunications facilities in or on any property, building, facility or other structure in the City.

“Permittee” means an applicant that has received a permit issued by the City under this Chapter, and all successors-in-interest.

“Person” means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including a governmental entity.

“Personal wireless services” means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded.

“Personal wireless service facilities” means the same as defined in 47 U.S.C. § 332(c)(7)(C)(ii), as may be amended or superseded.

“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 “PROW” means a strip of land acquired by reservation, dedication, prescription, condemnation, or easement that allows for the passage of people and goods. The PROW includes, but is not necessarily limited to, streets, curbs, gutters, sidewalks, roadway medians, parkways, and parking strips. The PROW does not include land owned, controlled or operated by the City for uses unrelated to streets or the passage of people and goods, such as, without limitation, parks, City Hall and community center lands, City yards, and lands supporting reservoirs, water towers, police or fire facilities and non-publicly accessible utilities.

“Right-of-Way Work Permit” means a permit issued ministerially to an appropriately licensed contractor to perform work in the public right-of-way for the installation, removal and replacement, and connections of utility infrastructure. Permits are subject to time and place restrictions due to traffic impacts and special noticing requirements. Permit issuance is often dependent on prior discretionary review and approval by the Planning Commission and/or prior permits issued by the Community Development Department.

“Section 6409(a)” means Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a) (also known as the “Spectrum Act”), as may be amended or superseded.

“Small wireless facility” or “small wireless facilities” means a wireless facility that provides telecommunications, or other related services that meets each of the following conditions:

(a) The facility:

- (1) Is mounted on structures 50 feet or less in height including its antennas as defined in this Section; or
- (2) Is mounted on structures no more than 10 percent taller than other adjacent structures; or
- (3) 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;

(b) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in this Section), is no more than three cubic feet in volume;

(c) 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;

(d) The facility does not require antenna structure registration under Part 17 of Subchapter A of Chapter 1 of Title 47 C.F.R., or its successor regulations;

(e) The facility is not located on Tribal lands, as defined under 36 C.F.R. § 800.16(x), or its successor regulation; and

(f) The facility does not result in human exposure to radio frequency radiation in excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b), or its successor regulation.

“State” means the State of California.

“Substantial change” means, with respect to an eligible facility request, the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(7), or any successor regulation, which defines that term differently based on the type of eligible support structure (tower or base station) and location (in or outside the PROW). For clarity, this definition organizes the FCC’s criteria and thresholds for determining if a collocation or modification substantially changes the physical dimensions of a wireless tower or base station based on the type and location.

(a) For towers outside the PROW, a substantial change occurs when:

(1) The proposed collocation or modification increases the overall height of the tower by more than 10% or the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet (whichever is greater); or

(2) The proposed collocation or modification adds an appurtenance to the body of the tower that would protrude from the edge of the tower more than 20 feet, or more than the width of the tower structure at the level of the appurtenance (whichever is greater); or

(3) The proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, but not to exceed four; or

(4) The proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site.

(b) For towers in the PROW and for all base stations, a substantial change occurs when:

(1) The proposed collocation or modification increases the overall height of the tower more than 10% or 10 feet (whichever is greater); or

(2) The proposed collocation or modification involves adding an appurtenance to the body of the structure that would protrude from the edge of the tower or base station by more than six feet; or

(3) The proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets when there are no pre-existing ground-mounted equipment cabinets associated with the structure; or

- (4) The proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are more than 10% larger in height or overall volume than any other existing ground-mounted equipment cabinets; or
 - (5) The proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.
- (c) In addition, for all towers and base stations wherever located, a substantial change occurs when:
- (1) The proposed collocation or modification would defeat the existing concealment elements of the eligible support structure (wireless tower or base station) as reasonably determined by the Director; or
 - (2) The proposed collocation or modification violates a prior condition of approval; provided, however, that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change described in this Section.
- (d) For purposes of this definition, changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on building rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.

“Telecommunications tower” means a freestanding mast, pole, monopole, guyed tower, lattice tower, freestanding tower or other structure designed and primarily used to support wireless telecommunications facility antennas.

“Technically infeasible” means a circumstance in which compliance with a specific requirement within this Code is physically impossible and not merely more difficult or expensive than a noncompliant alternative.

“Underground utility district” means any area in the City within which overhead wires, cables, associated overhead equipment, appurtenances and other improvements are either (1) prohibited by ordinance, resolution or other applicable law; (2) scheduled to be relocated underground within 18 months from the time an application is submitted; (3) planned to be relocated underground with the City Council’s acceptance of a proposed assessment district boundary and petition signed by no less than sixty percent (60%) of the property owners within said boundary; or (4) primarily located underground at the time an application is submitted.

“Utility pole” means any pole or tower owned by any utility company that is primarily used to support wires or cables necessary to the provision of electrical or other utility services regulated by the California Public Utilities Commission.

“Wireless facility” or “Wireless telecommunications facility” (“WF”) means the equipment at a fixed location or locations in the City that enables wireless telecommunications or wireless utility services. The term does not include: (1) the support structure, tower or pole on, under, or within which the equipment is located or collocated; or (2) coaxial, fiber-optic or other cabling that is between telecommunications facilities or poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna. Examples of wireless facilities include small wireless facilities and eligible facilities.

Exceptions: The term “wireless facility” does not apply to the following:

- (a) Government-owned and operated telecommunications facilities.
- (b) Emergency medical care provider-owned and operated telecommunications facilities.
- (c) Mobile services providing public information coverage of news events of a temporary nature.
- (d) Any wireless telecommunications facilities exempted from this Code by federal or State law.

“Wireless Facility Permit” or “WFP” means either a Planning Commission Wireless Facility Permit or Administrative Wireless Facility Permit issued by the City pursuant to this Chapter, and including the following categories:

- (a) “Planning Commission Wireless Facility Permit” or “PCWFP” means a permit issued by the Planning Commission for a new wireless facility, collocation, or modification to an existing wireless facility.
- (b) “Small Wireless Facility Permit” or “SWFP” means a permit issued by the approval authority pursuant to the requirements of this Chapter for: (a) the deployment of a new small wireless facility; or (b) the replacement of, collocation on, or modification of an existing small wireless facility.
- (c) “Eligible Facility Permit” or “EFP” means a permit issued by the approval authority for an eligible facility as defined in Section 6409(a) and subject to the requirements of this Chapter.

11.06.030 Applicability.

- A. This Chapter applies to the siting, construction, installation, attachment, operation, collocation, reconstruction, relocation, modification or removal of any and all wireless facilities within the public right-of-way within the City’s jurisdictional and territorial boundaries as follows:
 - 1. All facilities for which applications were not approved prior to the adoption date shall be subject to and comply with all provisions of this Chapter.

2. All facilities for which applications were approved by the City prior to the adoption date shall not be required to obtain a new or amended permit until such time as a provision of this Code so requires. Any wireless telecommunication facility that was lawfully constructed prior to adoption date that does not comply with the standards, regulations and/or requirements of this Chapter, shall be deemed a nonconforming use and shall also be subject to the provisions of this chapter.
3. All facilities, notwithstanding the date approved, shall be subject immediately to the provisions of this chapter governing the operation and maintenance (Section 11.06.130), radio frequency emissions monitoring (Section 11.06.140), cessation of use and abandonment (Section 11.06.170), removal and restoration (Section 11.06.180) of wireless telecommunications facilities and the prohibition of dangerous conditions or obstructions by such facilities (Section 11.06.150); provided, however, that in the event a condition of approval conflicts with a provision of this Chapter, the condition of approval shall control until the permit is amended or revoked.

B. This Chapter does not apply to the following:

1. Amateur radio facilities;
2. Over the Air Reception Devices (“OTARD”) antennas;
3. Facilities owned and operated by the City for its use;
4. Any entity legally entitled to an exemption pursuant to State or federal law.

11.06.040 Wireless Facility Permit Requirements.

Notwithstanding any provision of the Code to the contrary, a wireless facility shall not be deployed in the PROW within the City, except upon approval of a Wireless Facility Permit issued in accordance with the requirements of this Chapter and the rules, regulations, procedures and policies adopted from time to time by resolution of the City Council pursuant to Chapter 11.06 of this Code, and upon approval of any other related discretionary or ministerial permits. When required, the Planning Commission Wireless Facility Permit or Administrative Permit, in conjunction with a Coastal Development Permit as may also be required, shall constitute the City’s discretionary entitlement governing the use, location, aesthetics, and other characteristics. Once the discretionary permit is issued and recorded, the project is considered entitled, and the permittee may then enter the construction phase to process any required ministerial approvals associated with the project, including a Right-of-Way Work Permit.

A. Planning Commission Wireless Facility Permit.

All new wireless facilities, collocations or modifications to existing wireless facilities, and any associated aerial strands of fiber or coaxial cable within City limits, shall require a Planning Commission Wireless Facility Permit unless otherwise provided for in this Chapter.

B. *Administrative Wireless Facility Permit.*

1. **Small Wireless Facility Permit.** A Small Wireless Facility Permit, subject to the Director's approval, may be issued for new small wireless facilities that meet all the following criteria:
 - a. All aspects of the proposed improvements and equipment qualify the project as a "small wireless facility" as defined by this Chapter.
 - b. The proposal is not located in any location identified in Section 11.06.200.
 - c. New segments of fiber or coaxial cable serving the small wireless facility and located beyond the support structure footprint are designed as a below-grade network.
2. **Eligible Facility Permit.** An Eligible Facility Permit, subject to the Director's approval, may be issued for modifications that meet the following criteria:
 - a. The proposal qualifies as an eligible facilities request as defined by 47 C.F.R. § 1.6002 and 47 U.S.C § 1455, as those provisions may be amended from time to time. In addition to the other factors discussed therein, the Director shall make an explicit finding demonstrating that the proposed modification does not result in a substantial change to the eligible support structure because it does not defeat the existing concealment elements, which is to be defined as broadly as possible in accordance with the law.
 - b. The applicant has provided sufficient information either showing it owns the property on which the facility is located, or that the property owner has provided its consent to locating the facility where proposed.
3. In order for the Director to approve a permit under this Subpart B (Administrative Wireless Facility Permit), the Director must make the following findings in writing:
 - a. The requirements of Subsections (B)(1) – (B)(2) have been met.
 - b. All notices required for the proposed installation have been given.
 - c. The proposed facility has been designed and located in compliance with all applicable provisions of this Chapter and the City's Guidelines for Site Selection and Visual Impact and Screening of Telecommunication Facilities.
 - d. If applicable, the applicant has demonstrated its inability to locate on existing or replacement infrastructure.
 - e. The applicant has provided sufficient evidence supporting the applicant's claim that it has the right to enter the public right-of-way pursuant to State

or federal law, or the applicant has entered into a franchise agreement with the City permitting them to use the public right-of-way.

- f. The applicant has demonstrated the proposed installation is designed such that the proposed installation represents the least intrusive means possible as supported by factual evidence and a meaningful comparative analysis to show that all preferred alternative locations and designs identified in the application review process were technically infeasible or not available.
 4. The Director may, in the Director's discretion, refer any application for an Administrative Wireless Facility Permit to the Planning Commission for approval.
 5. In the event the Director determines that any application submitted for an Administrative Wireless Facility Permit does not meet the criteria of this Code, the Director shall deny the application and make the required written findings.
- C. *Right-of-Way Work Permit.* A Right-of-Way Work Permit may be issued by the Public Works Director subject to time and place restrictions and only once all necessary discretionary entitlements have been approved and recorded. This permit shall allow the appropriately licensed contractor to perform work within the public right-of-way subject to appropriate traffic control methods and associated public notification as determined necessary by the Director.
- D. *Other Permits Required.* In addition to any permit that may be required under this Chapter, the applicant must obtain all other required permits or other approvals from other City departments, or State or federal agencies. Any permit granted under this Chapter is subject to the conditions and/or requirements of other required permits or other approvals from other City departments, or State or federal agencies. Any improvements within the coastal zone that constitute development as defined in Section 25.07.006(D) and is neither exempt from the requirements of that Chapter (Section 25.07.008) nor issued a waiver for de minimis development (Section 25.07.009) requires approval of a Coastal Development Permit.
- E. *Eligible Applicants.* Only applicants who have been granted the right to enter the public right-of-way pursuant to State or federal law, or who have entered into a franchise agreement with the City permitting them to use the public right-of-way, shall be eligible for a permit to install or modify a wireless telecommunications facility or a wireless telecommunications collocation facility in the public right-of-way.

11.06.050 Application for Planning Commission and Administrative Wireless Facility Permits.

A. Application.

1. In addition to the information required of an applicant for a Wireless Facility Permit or Right-of-Way Work Permit required by this Code, each applicant requesting approval of the installation or modification of a wireless telecommunications

facility in the public right-of-way shall fully and completely submit to the City a written application on a form prepared by the Director.

2. No applicant seeking to install wireless antennas shall seek an encroachment permit for fiber or coaxial cable only. Applicants shall simultaneously request fiber installation or other cable/utility installation when seeking to install wireless installations in the right-of-way.

B. *Application Contents for Wireless Installations.* In addition to all other information determined by the Director to be necessary as may published in a written application form, an application for a wireless installation in the right-of-way shall contain the following information:

1. The name, address and telephone number of the applicant, owner, and operator of the proposed facility.
2. The name, telephone number, and email address of a single point of contact in the wireless facility operator's engineering and maintenance departments to ensure timely resolution of all interference issues.
3. If the applicant is an agent of the owner of the proposed facility, the applicant shall provide a duly executed letter of authorization from the owner of the facility. If the applicant and/or owner will not directly provide wireless services, the applicant shall provide a duly executed letter of authorization from the person(s) or entity(ies) that will provide those services at the time in which the facilities are completed.
4. If the facility will be located on or in the property of someone other than the owner of the facility (such as a street light pole, street signal pole, utility pole, utility cabinet, vault, cable conduit, or real property), the applicant shall provide a duly executed written authorization from the property owner(s) authorizing the submission of an entitlement application for the placement of the facility on or in the property owner's property.
5. A full written description of the proposed facility and its purpose.
6. Detailed engineering plans of the proposed facility and related report prepared by a professional engineer registered in the State documenting the following:
 - a. Height, diameter and design of the facility, including technical engineering specifications, and economic and other pertinent factors governing selection of the proposed design, together with evidence that demonstrates the proposed facility has been designed to the minimum height and diameter required from a technological standpoint for the proposed site. A layout plan, section and elevation of the support structure shall be included.
 - b. For all equipment that would be visible to the public once the facility has been constructed and activated, a photograph and model name and number of each piece of equipment.

- c. Power output and operating frequency for the proposed antenna.
 - d. Total anticipated capacity of the structure, indicating the number and types of antennas and power and frequency ranges which can be accommodated.
 - e. Sufficient evidence of the structural integrity of the pole or other supporting structure as required by the City.
7. A comprehensive justification study which includes the rationale for selecting the proposed location, design, and equipment; if applicable, a detailed explanation of the coverage gap or deficiency that the proposed use would resolve; and how the proposed location and configuration is the least intrusive means for the applicant to provide wireless service. Said study shall include all existing structures and/or alternative sites evaluated for potential installation of the proposed facility and why said alternatives are not a viable option or more intrusive.
 8. Scaled site plans, elevations, electrical and structural plans, and all relevant details (e.g. antennas, accessory equipment including fiber and coaxial cable, and signage) specifying and depicting the exact proposed location of the pole, antennas, accessory equipment, screening, pole and equipment heights and widths, access or utility easements, landscaped areas, existing utilities, and adjacent land uses, and demonstrating compliance with Section 11.06.080 and the Guidelines for Site Selection and Visual Impact and Screening of Telecommunication Facilities.
 9. An accurate visual impact analysis showing the maximum silhouette, viewshed analysis, color and finish palette and proposed screening for the facility, including scaled photo simulations from at least 3 different angles. Unless unique circumstances dictate otherwise, photo simulations should be taken from pedestrian level along surrounding sidewalks or other public spaces, including the motorist's perspective. Note that photo simulations with excessive cropping or inadequate aspect ratios will be rejected until a wider field of view is provided to fully anticipate the visual impact on the surrounding environment.
 10. Completion of the radio frequency (RF) emissions exposure guidelines checklist contained in Appendix A to the Federal Communications Commission's (FCC) "Local Government Official's Guide to Transmitting Antenna RF Emission Safety" to determine whether the facility will be "categorically excluded" as that term is used by the FCC.
 11. For a facility that is not categorically excluded under the FCC regulations for RF emissions, or if an applicant does not wish to provide a copy of the checklist from Appendix A of the Federal Communications Commission's *A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guide for Categorical Exclusion*, the applicant shall submit an RF exposure compliance report prepared and certified by an RF engineer acceptable to the City that certifies that the proposed facility, as well as any facilities that contribute to the cumulative exposure in the subject area, 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 Radiated Power “ERP”) for all existing and proposed antennas at the site and exhibits that 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) and also the boundaries of areas with RF exposures in excess of the controlled/occupational 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. The projected exposure shall be provided at ground level and shall also model the exposure conditions at any nearby building(s) located within 30 feet of the antenna(s).

- a. The RF report shall be accompanied by an executive summary prepared and certified by a qualified RF engineer summarizing the following information: (a) the existing base level radio frequency radiation, (b) the maximum radio frequency radiation, (c) the effective radiated power per channel, and (d) the total number of channels for an omnidirectional antenna or the maximum number of channels in any sector for a sectorized antenna at the proposed site.

12. Copies of any documents that the applicant is required to file pursuant to Federal Aviation Administration regulations for the facility.
13. A noise study prepared by a qualified acoustic engineer documenting that the level of noise to be emitted by the proposed wireless telecommunications facility will comply with this Code including Section 11.06.080(A)(14)(B), unless all equipment is proposed to remain passively cooled.
14. A traffic control plan when the proposed installation, including power, fiber, or coaxial cable, is located within any street.
15. When landscaping is proposed to mitigate the visual impact of a wireless facility, a scaled conceptual landscape plan showing existing trees and vegetation and all proposed landscaping, concealment, screening, and proposed irrigation with a discussion of how the chosen material at maturity will screen the site.
16. A written description identifying the geographic service area for the subject installation, including geographic and propagation maps that identify the location of the proposed facility in relation to all existing and planned facilities maintained within the City by the wireless service provider(s).
 - a. In the event the applicant seeks to install a wireless telecommunications facility to address service coverage concerns, full-color signal propagation maps with objective units of signal strength measurement that show the applicant’s current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site,

and predicted service coverage levels from the proposed site without all adjacent sites.

- b. In the event the applicant seeks to address service capacity concerns, a written explanation identifying the existing facilities with service capacity issues together with competent evidence to demonstrate the inability of those facilities to meet capacity demands.
17. Should the applicant maintain that they have a right to access the public right-of-way under either State or federal law, the applicant shall provide the necessary proof to show that the applicant has the right to install the project in question. By way of example, an applicant can meet this requirement by the following examples:
 - a. Franchise agreement;
 - b. DIVCA designation;
 - c. Certification that the applicant is a telephone corporation or a statement providing the basis for its claimed right to enter the right-of-way;
 - d. If the applicant has a certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission, it shall provide a copy of its CPCN for the facility in question.
18. An application fee and a deposit for post-construction radio frequency testing as set forth in paragraph E of this section in an amount set by resolution by the City Council and in accordance with California Government Code Section 50030. A separate deposit in accordance with paragraph D of this Section may be required at the Director's sole and absolute discretion.
19. For applications subject to Planning Commission review and involving a wireless facility mounted to a new support structure – unless said structure constitutes a one-for-one replacement within five feet of the existing structure footprint – proof that a temporary mock-up of the facility and sign has been installed at the proposed location for a period of at least twenty-one (21) calendar days.
 - a. Applicant shall obtain an encroachment permit before installing the temporary mock-up, and must remove the temporary mock-up within five (5) calendar days of receiving a written notice to remove from the Director.
 - b. When seeking the encroachment permit, the applicant shall provide address labels for use by the City in noticing all property owners within 300 feet and tenants within 100 feet of the proposed installation. The City shall mail a notice regarding installation of the mock-up at least five (5) business days prior to the installation.
 - c. The mock-up shall demonstrate the height and mass of the facility. The applicant shall not be entitled to install the facility it intends to install

permanently. The mock-up may consist of a wood utility pole topped to the propose facility height, with PVC used to outline all pole-mounted equipment, or the like.

- d. The mock-up shall include a weather-proofed sign (11" x 17" required format) that displays photo simulations depicting before and after images, including any accessory equipment cabinet, and the contact information of the assigned project planner.
- e. The applicant shall be required to follow any other City practices or processes relevant to the installation of a mock-up as may be provided in a publicly accessible form or document.
- f. After installation of the mock-up, the applicant shall certify that the mock-up accurately represents the height and width of the proposed installation and has been installed consistent with this Code.

20. A list of all other applications that either have been, or will be, submitted in furtherance of the Project, including, but not limited to applications to the California Coastal Commission, encroachment permits, Caltrans permits, etc.

21. Any other information and/or studies reasonably determined necessary by the Director may be required, provided it is published before an application is submitted to the City.

C. *Application Contents – Modification of Existing Facility.* The content of the application form for a modification to an existing facility shall be determined by the Director, and shall include but not be limited to the requirements listed in Section 11.06.050(B) unless prohibited by State or federal law.

D. *Independent Expert.* The Director is authorized to retain on behalf of the City an independent, qualified consultant to review and process any discretionary entitlement application for a wireless telecommunications facility. The review and processing may include an evaluation of the accuracy and completeness of the items submitted with the application and all subsequent application completeness determinations, presentations, preparation of staff reports, and associated administrative tasks, or the consultant review may be focused to a review of technical aspects of the proposed wireless telecommunications facility addressing any or all of the following:

- 1. Compliance with applicable radio frequency emission standards;
- 2. Whether any requested exception is necessary to close a significant gap in coverage and is the least intrusive means of doing so;
- 3. The accuracy and completeness of submissions;
- 4. Technical demonstration of the unavailability of alternative sites or configurations and/or coverage analysis;

5. The applicability of analysis techniques and methodologies;
6. The validity of conclusions reached or claims made by the applicant;
7. The viability of alternative sites and alternative designs; and
8. Any other specific technical issues identified by the consultant or the City.

The cost of this review shall be paid by the applicant through a deposit pursuant to an adopted fee schedule resolution. No permit shall be issued to any applicant which has not fully reimbursed the City for the consultant's cost.

- E. *Radio Frequency (RF) Radiation Standard.* Within three months after construction of a wireless facility which contains transmitting antenna(s), except in relation to amateur ham radio antenna(s) and transmitting antenna(s) with an effective radiated power (ERP) of five watts or less per channel, the maximum radio frequency (RF) radiation shall be measured and documented in a written report submitted to the City. The measurement and report shall be performed and prepared by a qualified, independent testing service/consultant retained by the City at the applicant's expense. The measurement shall be made utilizing the most current testing protocol established by the Federal Communications Commission (FCC). The maximum RF radiation shall not exceed the most current FCC safety standards.

11.06.060 Review Procedure

- A. *Pre-Submittal Conference.* Prior to application submittal, the City strongly encourages, but does not require, all applicants to schedule and attend a pre-submittal conference with Community Development Department staff to receive informal feedback on the proposed location, design and application materials. The pre-submittal conference is intended to identify potential concerns and streamline the formal application review process after submittal. Community Development Department staff will endeavor to provide applicants with an appointment within approximately ten (10) business days after receipt of a written request.
- B. *Application Submittal Appointment.* All applications must be submitted to the City at a pre-scheduled appointment. City staff will endeavor to provide applicants with an appointment within ten (10) business days after receipt of a written request. This appointment will be considered the City's initial receipt of any application materials for the purposes of assessing the time in which the City has reviewed the application.
- C. *Notice; Decisions.* The provisions in this Section describe the procedures for approval and any required notice and public hearings for an application, except that if a Coastal Development Permit is required pursuant to Chapter 25.07, noticing for that type of permit shall instead be carried out through the public notice provisions of Section 25.07.014. *Exception:* when a Coastal Development Permit is necessary and subject to ten-day public noticing, but the application otherwise requires 21-day noticing, the longer noticing period shall prevail.

1. *Planning Commission Hearings.* Any permit application under this Chapter subject to Planning Commission approval shall require notice and a public hearing. Notice of such hearing shall be sent by mail not less than twenty-one (21) calendar days prior to the date of the hearing and in accordance with Code Section 25.05.065. The Planning Commission may approve or conditionally approve an application only after it makes the findings required in Section 11.06.090.
 2. *Director's Decision Notice.* The Director may approve or conditionally approve an application only after it makes the findings required in Section 11.06.040(B)(3). Within five days after the Director approves or conditionally approves an application under this Chapter, the Director shall provide notice in accordance with Section 25.05.065.
 3. *Notice of Shot Clock Expiration.* The City acknowledges there are presumptive federal and State shot clocks, which certain applicants may argue are applicable to a proposed project covered under this Chapter. As such, the applicant is required to provide the City written notice of the expiration of any shot clock, which the applicant shall ensure is received by the director (e.g., overnight mail) no later than twenty (20) days prior to the expiration.
 4. *Written Decision Required.* All entitlement decisions made pursuant to this Chapter shall be in writing and based on substantial evidence in the written administrative record. The written decision shall include the reasons for the decision.
- D. *Appeals.* All decisions regarding Planning Commission Wireless Facility Permits may be appealed to the City Council, or to the Planning Commission for any decision rendered by the Director regarding an Administrative Wireless Facility Permit, by the applicant or any owner of property within three hundred (300) feet of the subject wireless facility. An Administrative Wireless Facility Permit appealed to the Planning Commission cannot also be appealed to the City Council. Appeals of any determinations and requirements regarding Coastal Development Permit processing, including exemptions, determinations relative to appealable development, etc. shall be as described in Chapter 25.07.
1. Any appeal by the applicant or owner of property within three hundred feet of the subject wireless facility shall be in written form specifically stating the grounds for the appeal and shall be filed with the City Clerk within fourteen calendar days of the decision or determination.
 2. The filing of any appeal shall be accompanied by payment of the appeal fee as determined by resolution of the City Council, and no appeal shall be accepted or deemed filed unless such payment is made. Where more than one appeal is allowed, and if more than one appeal is filed, then following the filing expiration date for appeals, the City Clerk shall prorate the required appeal fee among the total number of appeals and refund the excess amount paid by each appellant.

3. Notwithstanding any provision of this Section, any decision or determination of the Planning Commission shall be automatically appealed to the City Council where a member of the Commission has an ownership, leasehold or consulting interest in the property or project that is the subject of the decision or determination.
4. City Council Review of Decisions.
 - i. Any member of the City Council may obtain review of any decision or determination of the Planning Commission or Director by a written request for review to the City Clerk, directly or through the City Manager, within fourteen (14) calendar days of the decision or determination. Where the City is the applicant or an aggrieved property owner, the City Manager may initiate proceedings for review of the decision or determination by written request to the City Clerk within fourteen (14) calendar days of the decision or determination.
 - ii. A request for review shall not require any statement of reasons, and therefore shall not represent support of or opposition to an application. No fee shall be required for a request for review. There shall be a presumption that the reason for the request is that the application may be of significant concern to the community or significant importance to the quality of life within the community and/or applicable land use policies and regulations. There shall be no inference or implication of bias or prejudgment due to a request for review being filed.
5. Processing of Appeals and Requests for Review.
 - i. Upon the City Clerk's receipt of a timely and otherwise proper appeal, no appeal may thereafter be withdrawn except upon a majority vote of the City Council allowing a withdrawal of the appeal.
 - ii. The City Clerk shall set the appeal or request for review for a public hearing before the City Council no less than fourteen (14) calendar days nor more than sixty (60) calendar days after receipt of the appeal or request for review. Public notice of the hearing for the appeal or request for review shall be subject to the provisions of Section 25.05.065, except that the public notice for appeals of Coastal Development Permits shall be instead carried out through the public notice provisions of Section 25.07.014.
6. Hearing and Decision on Appeals and Requests for Review.
 - i. Upon the hearing of the appeal or request for review, the City Council shall conduct a de novo review of the underlying application and shall not be limited to the grounds stated for the appeal, if an appeal was filed, and shall not be limited to the evidence that was presented to the approval authority. The City Council shall exercise its independent judgment and discretion as to the evidence presented at its hearing. Nevertheless, there shall be a presumption that the decision or determination made by the approval

authority was reasonable, valid, and not an abuse of discretion; and the appellant, if there is one, shall have the burden of proof of demonstrating otherwise by a preponderance of the evidence presented.

- ii. The City Council may uphold, reverse, wholly or partly, modify or remand any appealed or reviewed decision or determination in the following manner.
- iii. Three or more affirmative votes shall be required to reverse a decision or determination. A reversal shall be approved by the City Council upon the adoption of a resolution that sets forth in writing the findings relied on to conclude that the appealed or reviewed decision or determination was in error or an abuse of discretion.
- iv. In the event the City Council upholds an appealed or reviewed decision or determination approving the application, the City Council may modify the proposed project or conditions of project approval, by making them more restrictive, or may add more restrictive conditions of approval upon the adoption of a resolution and without the need for a finding of error or an abuse of discretion. "More restrictive" for purposes of this subdivision shall include without limitation an incorporation of view protection measures, enhanced equipment screening, and other similar time, place, and manner considerations.

11.06.080 Requirements for Small Wireless Facilities within the Public Right-of-Way

- A. *Design and Development Standards.* All small wireless facilities that are located within the public right-of-way shall be designed and maintained as to minimize visual, noise and other impacts on the surrounding community and shall be planned, designed, located, and erected in accordance with the following:
1. The City's "Guidelines for Site Selection and Visual Impact and Screening of Telecommunication Facilities" shall be utilized to reduce the visual impact of the wireless facility. Guideline compliance is required; however, the approval authority may waive some of these requirements if: (1) the applicant demonstrates that the imposition of certain requirements would effectively prohibit the provision of personal wireless services, as supported by clear and convincing evidence in the written record; or (2) the approval authority in her/his/its sole and absolute discretion determines that guideline compliance would result in a more visually obtrusive facility.
 2. General Guidelines.
 - a. The applicant shall employ screening, undergrounding, and camouflage design techniques in the design and placement of wireless telecommunications facilities in order to ensure that the facility is as visually screened as possible, to prevent the facility from dominating the surrounding area, and to minimize significant view impacts from surrounding properties all in a manner that

achieves compatibility with the community and in compliance with the applicable sections of this Code. Collocations involving two or more wireless service providers are encouraged insofar as the wireless facility is designed to best meet the City's design and location criteria.

- b. Screening shall be designed to be architecturally compatible with surrounding structures using appropriate techniques to camouflage, disguise, and/or blend into the environment, including landscaping, color, and other techniques to minimize the facility's visual impact, as well as be compatible with the architectural character of the surrounding buildings or structures in terms of color, size, proportion, style, and quality.
 - c. Facilities shall be located such that views from a residential structure are not significantly impaired. Facilities shall also be located in a manner that protects public views across view corridors so that no significant view impairment, where technically feasible, results in accordance with this Code. This provision shall be applied consistent with local, State and federal law.
3. Traffic Safety. All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety.
4. Equipment. The applicant shall use the least visible equipment possible. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or carriers.
5. Poles.
 - a. Facilities shall be located consistent with Section 11.06.200.
 - b. Utility Poles. Any portion of the antenna or equipment mounted on a pole shall be no less than twenty (20) feet above any drivable road surface. All installations on utility poles shall fully comply with the California Public Utilities Commission general orders, including, but not limited to, General Order 95, as may be revised or superseded.
 - c. Light Poles. Any portion of the antenna or equipment mounted on a pole shall be no less than seventeen (17) feet above any drivable road surface.
 - d. Replacement Poles. If an applicant proposes to replace a pole in order to accommodate a proposed facility, the pole shall be designed to resemble the appearance and dimensions of existing poles near the proposed location, including size, height, color, materials, and style.
 - e. New Poles. New poles shall be designed to resemble existing poles in the right-of-way near that location, including size, height, color, materials and style, with the exception of any existing pole designs that are scheduled to be removed and not replaced.

- i. Such new poles that are not replacement poles shall be located at least one-hundred (100) feet from any existing pole to the extent feasible to be consistent with the City's pre-established street-lighting plan.
 - ii. Such new poles shall not significantly impact public view corridors, and shall be located to the extent feasible in an area where there is an existing natural or other feature that obscures the view of the pole. The applicant shall further employ concealment techniques to blend the pole with said features.
6. Space. Each facility shall be designed to occupy the least amount of space in the right-of-way that is technically feasible.
7. Wind Loads. Each facility shall be properly engineered to withstand wind loads as required by this Code or any duly adopted or incorporated code. An evaluation of high wind load capacity shall include the impact of modification of an existing facility.
8. Obstructions. Each component part of a facility shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, incommode the public's use of the right-of-way, or safety hazards to pedestrians and motorists and in compliance with Chapter 11.30 so as not to obstruct the intersection visibility triangle. No facility shall be permitted to be installed in the drip line of any tree in the right-of-way.
9. Public Facilities. A facility shall not be located within any portion of the public right-of-way interfering with access to a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure, emergency access route, or emergency escape routes, or any other public health or safety facility or route.
10. Proximity to Curb. Except for equipment and facilities, and portions thereof installed underground, no facilities and equipment approved under this Chapter shall be installed within eighteen (18) inches from the face of the curb or edge of pavement if no curb exists. If equipment and facilities are proposed for this area, such improvements must provide no less than 17 feet of clearance above any drivable road surface.
11. Landscaping. Where appropriate, each facility shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage and shrubs. Additional landscaping shall be planted, irrigated and maintained by applicant where such landscaping is deemed necessary by the City to provide screening or to conceal the facility.
12. Signage. No facility shall bear any signs or advertising devices other than certification, warning or other signage required by law or permitted by the City.

13. Beacon/Warning Lighting.

- a. No facility may be illuminated unless specifically required by the Federal Aviation Administration or other government agency. Beacon lights are not permitted unless required by the Federal Aviation Administration or other government agency.
- b. Legally required lightning arresters and beacons shall be included when calculating the height of facilities such as towers, lattice towers and monopoles.
- c. Any required lighting shall be shielded to eliminate, to the extent feasible, impacts on the surrounding neighborhood.
- d. Unless otherwise required under FAA or FCC regulations, applicants may install only timed or motion-sensitive light controllers and lights, and must install such lights so as to avoid glare and light trespass impacts to adjacent properties to the extent feasible. The City may, in its discretion, exempt an applicant from the foregoing requirement when the applicant demonstrates a substantial public safety need.
- e. The applicant shall submit a lighting study which shall be prepared by a qualified lighting professional to evaluate potential impacts to adjacent properties.

14. 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 7:00 PM and 7:00 AM.
- b. At no time shall equipment noise from any facility exceed an exterior noise level of fifty-five (55) dBA three (3) feet from the source of the noise if the facility is located in the public right-of-way adjacent to a business, commercial, manufacturing, utility or school zone; provided, however, that for any such facility located within five hundred (500) feet of any property zoned residential or improved with a residential use, such equipment noise shall not exceed forty-five (45) dBA.

15. Security. Each facility shall be designed to be resistant to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti, and other conditions that would result in hazardous situations, visual blight or attractive nuisances. The Director may require the provision of warning signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and vandalism when, because of their location and/or accessibility, a facility has the potential to become an attractive nuisance. Additionally, no lethal devices or elements shall be installed as a security device.

16. Modification. Consistent with current State and federal laws and if permissible under the same, at the time of modification of a wireless telecommunications facility, existing equipment shall, to the extent feasible, be replaced with equipment that reduces visual, noise and other impacts, including, but not limited to, undergrounding the equipment and replacing larger, more visually intrusive facilities with smaller, less visually intrusive facilities.
 17. The installation and construction approved by a wireless facility permit shall begin within one (1) year after all necessary discretionary approvals have been obtained or it will expire without further action by the City. Development, once timely commenced, shall be pursued in a diligent manner and completed in a reasonable period of time. If the project is appealed to the California Coastal Commission, this expiration period shall not begin until the appeal process is completed.
 18. The aesthetic requirements imposed under this Section and the City's "Guidelines for Site Selection and Visual Impact and Screening of Telecommunication Facilities" shall also be considered the necessary "concealment elements" as defined by federal law, as it shall further conceal the facilities to make them to be a part of the existing right-of-way infrastructure.
- B. *Conditions of Approval.* In addition to compliance with the design and development standards outlined in this Section, all facilities shall be subject to the following conditions of approval (approval may be by operation of law), as well as any modification of these conditions or additional conditions of approval deemed necessary by the approval authority:
1. The permittee shall submit as-built drawings within ninety (90) days after installation of the facility. As-builts shall be in an electronic format acceptable to the City.
 2. The permittee shall submit and maintain current at all times basic contact and site information. The permittee shall notify the City of any changes to the information submitted within thirty (30) days of any change, including change of the name or 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 facility.
 - b. The legal status of the owner of the wireless facility.
 3. The permittee shall notify the City in writing at least ninety (90) days prior to any transfer or assignment of the permit. The written notice required in this Section must include: (1) the transferee's legal name; (2) the transferee's full contact information, including a primary contact person, mailing address, telephone number and email address; and (3) a statement signed by the transferee that the transferee shall accept all permit terms and conditions. The Director may require

the transferor and/or the transferee to submit any materials or documentation necessary to determine that the proposed transfer complies with the existing permit and all its conditions of approval, if any. Such materials or documentation may include, but shall not be limited to: federal, State and/or local approvals, licenses, certificates or franchise agreements; statements; photographs; site plans and/or as-built drawings; and/or an analysis by a qualified radio frequency engineer demonstrating compliance with all applicable regulations and standards of the Federal Communications Commission. Noncompliance with the permit and all its conditions of approval, if any, or failure to submit the materials required by the Director shall be a cause for the City to revoke the applicable permits pursuant to and following the procedure set forth in Section 11.06.180.

4. At all times, all required notices and/or signs shall be posted on the site as required by the Federal Communications Commission, California Public Utilities Commission, any applicable licenses or laws, 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. The permittee shall utilize the smallest and lowest visibility signage required by government or electric utility regulations. The sign background shall be a muted color selected to minimize contrast with the support structure.
5. The permittee shall pay for and provide a performance bond or other form of security approved by the City Attorney's office, which shall be in effect until the facilities are fully and completely removed and the site reasonably returned to its original condition, to cover permittee's obligations under these conditions of approval and this Code. The security instrument coverage shall include, but not be limited to, removal of the facility. (The amount of the security instrument shall be calculated by the applicant in its ministerial permit submittal documents in an amount rationally related to the obligations covered by the bond and shall be specified in the conditions of approval.) Before issuance of any construction permit, permittee must submit said security instrument. At its option, the permittee may satisfy this requirement by submitting one performance bond for a bundle of small wireless facilities projected to be installed within the City.
6. If a nearby property owner registers a noise complaint, the City shall forward the same to the permittee to be reviewed and evaluated. The permittee shall have ten (10) business days to file a written response regarding the complaint which shall include any applicable remedial measures. If the City determines the complaint is valid and the applicant has not taken any steps to minimize the noise, the City may hire a consultant to study, examine, and evaluate the noise complaint and the permittee shall pay the fee for the consultant if the site is found in violation of this Chapter. The matter shall be reviewed by the Director. If the Director determines sound proofing or other sound attenuation measures should be required to bring the project into compliance with the Code, the Director may impose conditions on the project to achieve said objective.

7. A condition setting forth the permit expiration date in accordance with Section 11.06.160 shall be included in the conditions of approval.
8. The wireless telecommunications facility shall be subject to such conditions, changes, or limitations as are from time to time deemed necessary by the Director for the purpose of: (a) protecting the public health, safety, and welfare; (b) preventing interference with pedestrian and vehicular traffic; and/or (c) preventing damage to the public right-of-way or any adjacent property. The City may modify the permit to reflect such conditions, changes, or limitations by following the same notice and public hearing procedures as are applicable to the underlying permit for similarly located facilities, except the permittee shall be given notice by personal service or by registered or certified mail at the last address provided to the City by the permittee.
9. The permittee shall not transfer the permit to any person prior to the completion of the construction of the facility covered by the permit, unless and until the transferee of the permit has submitted the security instrument required by Section 11.06.080(B)(5).
10. The permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement or property without the prior 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 wireless telecommunications facility unless the City 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 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 the applicant's facilities.
11. The permittee shall assume full liability for damage or injury caused or alleged to have been caused to any property or person by the operation of the facility, or the City's approval of a permit under this Chapter.
12. 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, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems, or sewer systems and sewer lines that result from any activities performed in connection with the installation and/or maintenance of a wireless facility, and/or any related infrastructure, 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. Such time period for correction shall be based on the facts

and circumstances, danger to the community, and severity of the disrepair. Should the permittee not make said correction within the time period allotted, the City Engineer shall cause such repair to be completed at permittee's sole cost and expense.

13. Insurance. The permittee shall obtain, pay for, and maintain, in full force and effect until the facility approved by the permit is removed in its entirety from the public right-of-way, an insurance policy or policies of public liability insurance, with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence and Four Million Dollars (\$4,000,000) in the aggregate, that fully protects the City from claims and suits for bodily injury and property damage. The insurance must name the City and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers as additional named insureds, be issued by an insurer admitted in the State of California with a rating of at least a A:VII in the latest edition of A.M. Best's Insurance Guide, and include an endorsement providing that the policies cannot be canceled or reduced except with thirty (30) days prior written notice to the City, except for cancellation due to nonpayment of premium. The insurance provided by permittee shall be primary to any coverage available to the City, and any insurance or self-insurance maintained by the City and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers shall be excess of permittee's insurance and shall not contribute with it. The policies of insurance required by this permit shall include provisions for waiver of subrogation. In accepting the benefits of this permit, permittee hereby waives all rights of subrogation against the City and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers. The insurance must afford coverage for the permittee's and the wireless provider's use, operation and activity, vehicles, equipment, facility, representatives, agents, and employees, as determined by the City's Risk Manager. Before issuance of any building or encroachment permit for the facility, the permittee shall furnish the City Risk Manager certificates of insurance and endorsements, in the form satisfactory to the City Attorney or the Risk Manager, evidencing the coverage required by the City.
14. The permittee shall defend, hold harmless, and indemnify, at his/her/its expense, the City, the City Council and other City bodies and members thereof, officials, officers, employees, agents, and representatives (collectively, the City) from and against any and all third-party claims, actions, or proceedings to attack, set aside, void, or annul the approval of this permit, or any associated determination made pursuant to the California Environmental Quality Act. This obligation shall encompass all costs and expenses incurred by the City in defending against any claim, action, or proceeding, as well as costs, expenses, or damages the City may pay as a result of such claim, action, or proceeding. In the event an action or proceeding is filed in court against the City, the permit, or any associated determination, the permittee shall promptly be required to file a formal indemnification agreement with the City, which shall include, among other things, that the City will be defended by the counsel of its choice, and that the permittee

shall deposit with the City sufficient funding, and thereafter replenish the funding, to ensure that the City's defense is fully funded, by the permittee. The deposit amount and replenishment schedule shall be established by the City.

15. The permittee, and every permittee and person in a shared permit, jointly and severally, shall defend, indemnify, protect, and hold the City and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers harmless from and against all claims, suits, demands, actions, losses, liabilities, judgments, settlements, costs (including, but not limited to, attorney's fees, interest, and expert witness fees), or damages claimed by third parties against the City for any injury claim, and for property damage sustained by any person, arising out of, resulting from, or are in any way related to or alleged to be related to the wireless telecommunications facility, or to any work done by or use of the public right-of-way by the permittee, owner, or operator of the wireless telecommunications facility, or their agents, excepting only liability arising out of the sole negligence or willful misconduct of the City and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers.
16. Should the facility require electrical service but not require the use of an above-ground meter cabinet, the permittee shall at its sole cost and expense remove the meter cabinet and any related foundation within ninety (90) days of such service being offered and reasonably restore the area to its prior condition. An extension may be granted if circumstances arise outside of the control of the permittee.
17. Relocation. The permittee shall modify, remove, or relocate its facility, or portion thereof, without cost or expense to the City, if and when made necessary by (i) any public improvement project, including, but not limited to, the construction, maintenance, or operation of any underground or above-ground facilities including but not limited to street lights, sewers, storm drains, conduits, gas, water, electric or other utility systems, or pipes owned by the City or any other public agency; (ii) any abandonment of any street, sidewalk or other public facility; (iii) any change of grade, alignment or width of any street, sidewalk, or other public facility; (iv) a determination by the director that the wireless telecommunications facility has become incompatible with public health, safety or welfare or the public's use of the public right-of-way; or (v) any modifications, changes, or improvements to the streetlights themselves. Such modification, removal, or relocation of the facility shall be completed within ninety (90) days of notification by the City unless exigencies dictate a shorter period for removal or relocation, or as may be reasonably extended provided that the permittee is diligently working to complete the modification, removal, or relocation. Modification or relocation of the facility shall require submittal, review and approval of a modified permit pursuant to the Code including applicable notice and hearing procedures. 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 the Code allow. In the event the 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. Further, due to exigent circumstances including those of immediate or imminent threat to the public's health and safety, the City may modify, remove, or relocate wireless telecommunications facilities without prior notice to permittee provided permittee is notified within a reasonable period thereafter.

18. No additions or enlargements to the use of structures for which this Wireless Facility Permit has been granted shall be allowed except pursuant to subsequent entitlement as might otherwise be required or granted pursuant to the terms of the Laguna Beach Municipal Code.
19. All development must occur in compliance with the approved plans and elevations. Any deviation from these plans must be reviewed by the Director of Community Development and may require Planning Commission review and approval.
20. The approved facilities shall be designed and operated in a manner that complies with all of the most current Federal Communications Commission (FCC) permits, requirements and conditions to prevent neighborhood electrical interference.
21. The telecommunication facility's operator shall notify the City three (3) months after the construction completion and operation start-up of the approved telecommunication facilities. The City will then retain a qualified independent consultant to measure the maximum radio frequency (RF) radiation at the site and prepare a written report documenting the results of the independent test. The cost of obtaining these measurements and preparing the report shall be fully paid for by the telecommunication facility's operator. The measurements shall be made utilizing the most current testing protocol established by the Federal Communications Commission (FCC). The maximum RF radiation shall not exceed the most current FCC safety standards. This condition is not applicable to amateur ham radio antenna(s) or transmitting antenna(s) with an effective radiated power (ERP) of five (5) watts or less per channel.
22. In order to guarantee long-term compliance with conditions of approval that power levels remain as specified, and that the equipment is operating as designed, the operator of the approved transmitting antenna shall submit an affidavit indicating that the telecommunication facility is operating as approved, and that the facility complies with the most current FCC safety standards. The affidavit shall be submitted on a yearly basis prior to the anniversary date of the facility approval for as long as the facility remains in operation and shall incorporate a separate affidavit of a qualified, independent testing service/consultant demonstrating and verifying compliance with the most current FCC safety standards and approved power levels. In addition, the City may conduct further independent tests, which must be paid for by the facility's operator to verify compliance with the most current FCC safety standards.
23. The maximum RF radiation shall not exceed the most current FCC safety standards.

24. Because the frequencies used by the proposed cellular facilities are close to the frequencies used by the City of Laguna Beach for public safety, extraordinary “comprehensive advanced planning and frequency coordination” engineering measures to prevent interference shall be utilized, especially in the choice of frequencies and radio ancillary hardware. This is encouraged in the “Best Practices Guide” established by the Association of Public-Safety Communications Officials-International, Inc. (APCO), and as endorsed by the Federal Communications Commission (FCC). Prior to the issuance of any building permits to install the wireless communications facility, the permittee shall meet in good faith to coordinate the use of frequencies and equipment with the Communications Division of the Orange County Sheriff-Coroner Department to minimize, to the greatest extent possible, any interference with the Public Safety 800 MHz Countywide Coordinated Communications System (CCCS). Similar consideration shall be given to any other existing or proposed wireless communications facility that may be located on the subject property.
25. At all times the permittee shall not prevent the City of Laguna Beach from having adequate spectrum capacity on the City’s 800 MHz radio frequency.
26. Before activating the permitted wireless communications facility, the permittee shall submit to a post-installation test to confirm that “advanced planning and frequency coordination” of the facility was successful in not interfering with the City of Laguna Beach Public Safety radio equipment. The Communications Division of the Orange County Sheriff-Coroner Department or a Division-approved contractor at the expense of the permittee will conduct this test. This post-installation testing process shall be repeated at the expense of the permittee for every proposed frequency addition and/or change to confirm the intent of the “frequency planning” process has been met.
27. The permittee shall cease operation of any facility causing interference with City facilities immediately upon notification from the City or Orange County to cease operations until the interference is eliminated. Failure to cease such operation shall result in the immediate automatic revocation of this permit.
28. The permittee and the City shall enter into a Memorandum of Understanding for the purposes of relocating the facility onto a City-owned decorative light pole, once such a standard is developed and deployed in the vicinity of the facility location. The location and attachment height of the replacement pole shall permit the permittee to continue to meet its coverage objective for the area. The permittee shall agree to relocate the facility within 180 days of the City’s written notice to the permittee.
29. An informational sign shall be posted at eye level and oriented toward nearby pedestrian traffic. This sign shall inform the general public that the structure supports wireless telecommunications equipment, identify the wireless service provider by its trade name, and provide a contact phone number for a representative

of the telecommunications service provider. The sign copy, design, and placement shall be subject to City approval.

11.06.090 Planning Commission Wireless Facility Permit Findings.

No Planning Commission Wireless Facility Permit shall be granted for a wireless facility unless all of the following findings are made by the Planning Commission, in addition to any findings required by Chapter 25.07 (Coastal Development Permits):

- A. All notices required for the proposed installation have been given.
- B. The proposed facility has been designed and located in compliance with all applicable provisions of this Chapter and the City's Guidelines for Site Selection and Visual Impact and Screening of Telecommunication Facilities.
- C. If applicable, the applicant has demonstrated its inability to locate on existing or replacement infrastructure.
- D. The applicant has provided sufficient evidence supporting the applicant's claim that it has the right to enter the public right-of-way pursuant to State or federal law, or the applicant has entered into a franchise agreement with the City permitting them to use the public right-of-way.
- E. The applicant has demonstrated the proposed installation is designed such that the proposed installation represents the least intrusive means possible as supported by factual evidence and a meaningful comparative analysis to show that all preferred alternative locations and designs identified in the application review process were technically infeasible or not available.

11.06.100 [Section Reserved]

11.06.110 Nonexclusive grant.

No permit or approval granted under this chapter shall confer any exclusive right, privilege, license, or franchise to occupy or use the public right-of-way of the City for any purpose whatsoever. Further, no approval shall be construed as any warranty of title.

11.06.120 Emergency Deployment.

A COW shall be permitted for the duration of an emergency declared by the City or at the discretion of the Director.

11.06.130 Operation and Maintenance Standards.

All wireless telecommunications facilities must comply at all times with the following operation and maintenance standards.

- A. Unless otherwise provided herein, all necessary repairs and restoration shall be completed by the permittee, owner, operator, or any designated maintenance agent within forty-eight (48) hours – or such longer period as may reasonably be required provided that the permittee is diligently working to repair and restore the same – of the sooner between:
 - 1. After discovery of the need by the permittee, owner, operator, or any designated maintenance agent; or
 - 2. After permittee, owner, operator, or any designated maintenance agent receives notification from the City.
- B. Each permittee of a wireless telecommunications facility shall provide the Director with the name, address, and 24-hour local or toll free contact phone number of the permittee, the owner, the operator, and the agent responsible for the maintenance of the facility. Contact information shall be updated within seven (7) days of any change.
- C. All facilities, including, but not limited to, telecommunication towers, poles, accessory equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the facility site shall be maintained in good condition, including ensuring the facilities are reasonably free of:
 - 1. General dirt and grease;
 - 2. Chipped, faded, peeling, and cracked paint;
 - 3. Rust and corrosion;
 - 4. Cracks, dents, and discoloration;
 - 5. Missing, discolored or damaged artificial foliage or other camouflage;
 - 6. Graffiti, bills, stickers, advertisements, litter, and debris;
 - 7. Broken and misshapen structural parts; and
 - 8. Any damage from any cause.
- D. All trees, foliage or other landscaping elements approved as part of the facility shall be maintained in good condition at all times, and the permittee, owner, and operator of the facility shall be responsible for replacing any damaged, dead, or decayed landscaping. No amendment to any approved landscaping plan may be made until it is submitted to and approved by the Director.
- E. The permittee shall replace its facilities, after obtaining all required permits, if maintenance or repair is not sufficient to return the facility to the condition it was in at the time of installation.

- F. Each facility shall be operated and maintained to comply with all conditions of approval. Each owner or operator of a facility shall routinely inspect each site to ensure compliance with the same and the standards set forth in this Chapter.

11.06.140 RF Emissions and Other Monitoring Requirements.

The owner and operator of a facility shall submit within ninety (90) days of beginning operations under a new or amended permit, and every one year from the date the facility began operations, a technically sufficient report ("monitoring report") prepared under penalty of perjury with the information below. The annual report provided by the owner and operator of the facility shall submit one, collated monitoring report for each of their facilities operating within the City at the time the report is prepared. This annual report shall be submitted to the Administrative Services Department no later than January 1st when the annual lease payment is due.

- A. The facility is in compliance with applicable federal regulations, including Federal Communications Commission RF emissions standards, as certified by a qualified radio frequency emissions engineer;
- B. The facility is in compliance with all provisions of this Chapter and its conditions of approval.

11.06.150 No Dangerous Condition or Obstructions Allowed

No person shall install, use or maintain any facility which in whole or in part rests upon, in, or over any public right-of-way, when such installation, use, or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes, or other governmental use, or when such facility unreasonably interferes with or unreasonably impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location.

11.06.160 Permit Expiration.

- A. Unless Government Code Section 65964, as may be amended, authorizes the City to issue an entitlement with a shorter term, a discretionary permit for any wireless telecommunications facility shall be valid for a period of ten (10) years from the date of Director, Planning Commission, or City Council approval. At the end of the term, the Director may extend the entitlement for an additional ten (10) year term. The Director's determination will become effective fourteen (14) calendar days from the date of the decision unless a member of the City Council initiates proceedings to review the decision. A permit that has been renewed once may not be renewed a second time. Instead, the Permittee may file a new entitlement application for the permitted facility at the same location. Notwithstanding any other applicable law, if the Permittee submits an entitlement application no later than six (6) months prior to the expiration date of a previously issued permit, the Director shall not require the applicant to remove the

permitted wireless facility unless and until there is a final determination denying the application.

- B. A permittee may apply for a new permit no sooner than one hundred and eighty (180) days prior to expiration. Said application and proposal shall comply with the City's current Code requirements for wireless facilities, as it may exist at that time.

11.06.170 Cessation of Use or Abandonment

- A. Determination. A wireless telecommunications facility is considered abandoned and shall be promptly removed as provided herein if it ceases to provide wireless telecommunications services for ninety (90) or more consecutive days unless the permittee has obtained prior written approval from the Director which shall not be unreasonably denied. If there are two (2) or more users of a single facility, then this provision shall not become effective until all users cease using the facility.
- B. Notification. The operator of a facility shall notify the City in writing of its intent to abandon or cease use of a permitted site or a nonconforming site (including unpermitted sites) within ten (10) days of ceasing or abandoning use. Notwithstanding any other provision herein, the operator of the facility shall provide written notice to the Director of any discontinuation of operations of thirty (30) days or more.
- C. Violation. Failure to inform the Director of cessation or discontinuation of operations of any existing facility as required by this Section shall constitute a violation of any approvals and be grounds for:
 - 1. Litigation;
 - 2. Revocation or modification of the permit;
 - 3. Acting on any bond or other assurance required by this article or conditions of approval of the permit;
 - 4. Removal of the facilities by the City in accordance with the procedures established under this Code for abatement of a public nuisance at the owner's expense; and/or
 - 5. Any other remedies permitted under this Code.

11.06.180 Removal and Restoration – Permit Expiration, Revocation or Abandonment

- A. Upon the expiration date of the permit, including any extensions, earlier termination or revocation of the permit, or abandonment of the facility, the permittee, owner, or operator shall remove its wireless telecommunications facility and restore the site to its natural condition except for retaining the landscaping improvements and any other improvements at the discretion of the City. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the City. The facility shall be removed from the property at no cost or expense to the City.

- B. Failure of the permittee, owner or operator to promptly remove its facility and restore the property within ninety (90) days after expiration, earlier termination or revocation of the permit, or abandonment of the facility, shall be a violation of this Code. Upon a showing of good cause, an extension may be granted by the Director where circumstances are beyond the control of the permittee after expiration. Further failure to abide by the timeline provided in this Section shall be grounds for:
1. Litigation/prosecution;
 2. Acting on any security instrument required by this chapter or the conditions of approval of the permit;
 3. Removal of the facilities by the City in accordance with the procedures established under this Code for abatement of a public nuisance at the owner's expense; and/or
 4. Any other remedies permitted under this Code.
- C. *Summary Removal.* In the event the Director or City Engineer determines that the condition or placement of a wireless telecommunications facility located in the public right-of-way constitutes a dangerous condition, obstruction of the public right-of-way, or an imminent threat to public safety, or determines other exigent circumstances require immediate corrective action (collectively, "exigent circumstances"), the Director or City Engineer may cause the facility to be removed summarily and immediately without advance notice or a hearing. Written notice of the removal shall include the basis for the removal and shall be served upon the permittee and person who owns the facility within five (5) business days of removal and all property removed shall be preserved for the owner's pick-up as feasible. If the owner cannot be identified following reasonable effort or if the owner fails to pick up the property within sixty (60) days, the facility shall be treated as abandoned property.
- D. *Removal of Facilities by City.* In the event the City removes a facility in accordance with nuisance abatement procedures or summary removal, any such removal shall be without any liability to the City for any damage to such facility that may result from reasonable efforts of removal. In addition to the procedures for recovering costs of nuisance abatement, the City may collect such costs from the performance bond posted and to the extent such costs exceed the amount of the performance bond, collect those excess costs in accordance with this Code. Unless otherwise provided herein, the City has no obligation to store such facility. Neither the permittee, owner, nor operator shall have any claim if the City destroys any such facility not timely removed by the permittee, owner, or operator after notice, or removed by the City due to exigent circumstances.

11.06.200 Location Restrictions – Director Review Authority.

Locations Requiring an Exception. Wireless telecommunications facilities are strongly disfavored in certain areas. All locations can be reviewed by the Director with the exception of the following:

- A. Within 100 feet of a residential building within a residential zone. Residential zone shall mean and refer to R-1, R-2, R-3, R/HP, LAG, VC, TAB, DCSP, and any other zone primarily intended to accommodate residential development at any density.
- B. Public right-of-way if mounted to a new pole that is not replacing an existing pole in an otherwise permitted location.
- C. Within 100 feet of a school property.
- D. Within 100 feet of a public park.
- E. Within 100 feet of a medical facility.

11.06.210 Effect on Other Ordinances.

Compliance with the provisions of this Chapter shall not relieve a person from complying with any other applicable provision of this Code. In the event of a conflict between any provision of this division and other sections of this Code, this Chapter shall control.

11.06.220 State or Federal Law.

- A. In the event it is determined by the decision-maker that State or federal law prohibits discretionary permitting requirements for certain wireless telecommunications facilities, such requirement shall be deemed severable and all remaining regulations shall remain in full force and effect. Such a determination by the City Attorney shall be in writing with citations to legal authority and shall be a public record. For those facilities, in lieu of a Wireless Facility Permit, a ministerial permit shall be required prior to installation or modification of a wireless telecommunications facility, and all provisions of this Division shall be applicable to any such facility with the exception that the required permit shall be reviewed and administered as a ministerial permit by the Director rather than as a discretionary permit. Any conditions of approval set forth in this provision or deemed necessary by the Director shall be imposed and administered as reasonable time, place, and manner rules.
- B. If subsequent to the issuance of the City Attorney's written determination pursuant to (A) above, the City Attorney determines that the law has changed and that discretionary permitting is permissible, the City Attorney shall issue such determination in writing with citations to legal authority and all discretionary permitting requirements shall be reinstated. The City Attorney's written determination shall be a public record.
- C. All installations permitted pursuant to this Chapter shall comply with all federal and State laws including but not limited to the Americans with Disabilities Act.

11.06.230 Nonconforming Wireless Telecommunications Facilities in the Right-of-Way

- A. Nonconforming wireless telecommunications facilities are those facilities that do not conform to this Chapter.

- B. Nonconforming wireless telecommunications facilities shall, within ten (10) years from the date such facility becomes nonconforming, be brought into conformity with all requirements of this article; provided, however, that should the owner desire to expand or modify the facility, intensify the use, or make some other change in a conditional use, the owner shall comply with all applicable provisions of this Code at such time, to the extent the City can require such compliance under federal and State law.
- C. An aggrieved person may file an appeal to the City Council of any decision of the Director made pursuant to this Section. In the event of an appeal alleging that the ten (10) year amortization period is not reasonable as applied to a particular property, the City Council may consider the amount of investment or original cost, present actual or depreciated value, dates of construction, amortization for tax purposes, salvage value, remaining useful life, the length and remaining term of the lease under which it is maintained (if any), and the harm to the public if the structure remains standing beyond the prescribed amortization period, and set an amortization period accordingly for the specific property.

SECTION 4. Section 25.07.008 (pertaining to Coastal Development Permit exemptions) of the Laguna Beach Municipal Code is hereby modified and amended to insert subsection (A)(7) so as to read as follows:

- (A) Certain types of development, described as follows, are considered to be without risk of adverse environmental effect on coastal resources, including public access, and therefore do not require a coastal development permit unless indicated otherwise.
 - (7) The placement and operation of any wireless telecommunications facility within the public right-of-way is exempt, provided that the facility is mounted to an existing structure or a replacement structure sited within three feet of the existing location, and provided further that the City may require reasonable conditions to mitigate any impacts on coastal resources, including scenic resources.

SECTION 5. Chapter 25.55 (Wireless Communications Facilities) of the Laguna Beach Municipal Code is hereby amended to read in its entirety as follows:

25.55.002 Intent and purpose.

The following regulations shall apply throughout the city. These regulations are intended to establish comprehensive guidelines for the permitting, placement, design and maintenance of wireless communications facilities in all areas within the city, excluding the public rights-of-way. These regulations are intended to prescribe clear, reasonable and predictable criteria to assess and process applications in a consistent and expeditious manner, while reducing impacts associated with wireless communications facilities. These regulations are intended to protect the health, safety and welfare of persons living and working in the city, preserve the aesthetic values and scenic qualities of the city, and allow for the orderly and efficient deployment of wireless communications facilities in accordance with state and federal laws. (Ord. 1627 § 1, 2017; Ord. 1579 § 1, 2013; Ord. 1386 § 1, 2001; Ord. 1320 § 1, 1996).

25.55.004 Definitions.

“Agent” means a person entity in matters pertaining to the processing of a wireless communications facility as outlined in this Chapter.

“Amateur (ham) radio antenna” means an antenna constructed and operated for transmitting and receiving radio signals for noncommercial purposes, usually in relation to a person’s hobby.

“Antenna” means any system of wires, poles, rods, reflecting discs, panels, microwave dishes, whip antennas or similar devices used for the transmission or reception of electromagnetic waves, including antennas relating to personal wireless services as defined by the Federal Telecommunications Act of 1996, when such system is either external to or attached to the exterior of a structure (building-mounted or roof-mounted), or ground-mounted. Antennas shall include devices having active elements extending in any direction, and directional beam-type arrays mounted upon and rotated through a vertical mast or tower interconnecting the beam and antenna support, all of which elements are deemed to be a part of the antenna.

“Antenna support” means any pole, telescoping mast, tower, tripod or any other structure that supports an Antenna.

“Array” means a group of antennas located on the same structure.

“Base level radio frequency (RF) radiation” means the existing background power density radiation from a proposed telecommunication transmitting antenna site including all existing telecommunication transmitting in operation.

“Cable” means any wire typically consisting of copper, coax or fiber used for utility service purposes.

“Cellular” refers to wireless telephone communication transmitted by electromagnetic waves.

“Co-location” refers to multiple wireless communications devices sharing the same site and as more specifically defined in 47 CFR § 1.40001(b)(7) for purposes of implementing Section 6409 of the Spectrum Act.

“Directional antenna” typically means a panel antenna used to achieve transmission or reception in a specified direction.

“Effective radiated power (ERP)” means the operative amount of power leaving the transmitting antenna. The ERP is determined by multiple factors, including, but not limited to, transmitter output power, coaxial line loss between the transmitter and the antenna, and the “gain” (focusing effect) of the antenna.

“Federal Communications Commission (FCC)” means the independent U.S. governmental agency charged with regulating interstate and international communications by radio, television, wire, satellite and cable.

“Hazardous material” means any gas, material, substance or waste which, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local government to pose a present or potential hazard to human health, safety, property or to the environment.

“Height” means the vertical distance from any point at the top of an antenna and/or ancillary wireless communication structure to the finished or natural surface, whichever is more restrictive or lower, measured directly adjacent to the existing building or new structure.

“Maximum radio frequency (RF) radiation” means the base level radio frequency (RF) radiation and the power density radiation from the proposed telecommunication transmitting antennas at a particular site where all the antennas’ channels are simultaneously operating or projected to operate at their maximum design effective radiated power (ERP).

“Monopole tower” means an antenna support structure typically made of steel, wood or concrete.

“Monorock” means a wireless communications facility camouflaged to resemble one or a grouping of rocks.

“Monoshrub/monotree” means a wireless communications facility camouflaged to resemble one or a grouping of shrubs, bushes or trees.

“Omnidirectional antenna” means an antenna used to achieve transmission or reception in all directions.

“Parabolic antenna” means a specialized antenna that has a curved surface which transmits or receives signals in the microwave area of the radio frequency spectrum, used to link different types of wireless facilities.

“Permittee” means any person, persons or entity, including the city, who owns any wireless communication facility or facilities, ~~including, but not limited to, those that are or are proposed to be installed or maintained in the public right-of-way, or propose to conduct an excavation in, along or under the surface or subsurface of the public right-of-way.~~

“Power density radiation” means the magnitude of the flow of electromagnetic energy at a point in space, measured in power, usually milliwatts (10⁻³ watts) or microwatts (10⁻⁶ watts), per unit area, usually centimeters squared.

“Preferred location” means sites with no or minimal impacts to sensitive habitat, public views, and public access and recreation; commercial and industrial zones locations are preferred over locations in other zones except when such location would result in greater impacts.

“Public right-of-way” means any public highway, street, alley, sidewalk, parkway which is either owned, operated or controlled by the city, county or state or is subject to an easement or dedication to the city, county or state or is a privately owned area within the city’s, county’s or state’s jurisdiction which is not yet, but is designated as a proposed public right-of-way on a tentative subdivision map approved by the city.

“Radio frequency (RF) radiation” consists of electromagnetic waves moving together through space radiating from a transmitting device to a receiving device to achieve wireless communications typically operating in a frequency range of three kilohertz to three hundred gigahertz.

“Safety standards” means the most current adopted rules for human exposure limits for radio frequency (RF) radiation adopted by the Federal Communications Commission (FCC).

“Satellite antenna” means a parabolic antenna used to receive and/or transmit radio or television signals from orbiting communications satellites.

“Substantial change in physical dimensions” as that term is defined in 47 CFR § 1.40001(b)(7) for purposes of implementing Section 6409 of the Spectrum Act.

“Testing protocol” means the most current method of radio frequency (RF) radiation measurement adopted by the Federal Communications Commission (FCC).

“Wireless communications facility” means any facility that transmits and/or receives electromagnetic waves, including, but not limited to, commercial wireless communications antennas and other types of equipment for the transmission or receipt of such signals, communication towers or similar structures supporting said equipment, equipment cabinets, pedestals, meters, tunnels, vaults, splice boxes, surface location markers, equipment, equipment buildings, parking areas and other accessory developments. (Ord. 1627 § 1, 2017; Ord. 1579 § 1, 2013; Ord. 1386 § 1, 2001; Ord. 1320 § 1, 1996).

25.55.006 Permits required.

In addition to the permit requirements described below, the permit requirements of Chapter 25.07 Coastal Development Permits remain applicable except when inconsistent with federal law.

(A) Wireless Communications Facilities Subject to Design Review. All wireless communications facilities, unless specifically exempted, are subject to design review, as provided for in Section 25.05.040. Wireless communications facilities shall comply with the review criteria/standard conditions of Section 25.55.008.

The following wireless communications facilities are exempt from design review requirements:

- (1) A receiving satellite antenna that is one meter (39.37 inches) or less in diameter;
- (2) A receiving satellite antenna that is two meters (78.74 inches) or less in diameter and is located in any commercial or industrial land use zoning district;
- (3) An antenna and all supporting equipment constructed in an existing structure, if the installation is located entirely within the structure’s physical limits or “envelope” and the structure’s exterior appears to remain unchanged, or if the installation is located below and within the upper limits of an existing roof parapet;

- (4) Eligible facilities requests that do not result in a substantial change in physical dimensions to a wireless communications facility as specified in 47 U.S.C. 1455(a), 47 C.F.R. 1.40001, or any other subsequent applicable federal law; and
- (5) Any wireless communications facilities exempted from design review by federal or state law; and;
- (6) Any wireless communications facilities located within the public right-of-way, which shall instead be subject to the provisions of Chapter 11.06.

(B) Wireless Communications Facilities Subject to a Conditional Use Permit. Unless specifically exempted, all wireless communications facilities are subject to the granting of a conditional use permit as provided for in Section 25.05.030. Wireless communications facilities shall comply with the review criteria/standard conditions of Section 25.55.008. The following wireless communications facilities are exempt from conditional use permit requirements:

- (1) A receiving satellite antenna that is one meter (39.37 inches) or less in diameter;
- (2) A receiving satellite antenna that is two meters (78.74 inches) or less in diameter and is located in any commercial or industrial land use zoning district;
- (3) An antenna and all supporting equipment constructed in an existing structure, if the installation is located entirely within the structure's physical limits or "envelope" and the structure's exterior appears to remain unchanged, or if the installation is located below and within the upper limits of an existing roof parapet;
- (4) Eligible facilities requests that do not result in a substantial change in physical dimensions to a wireless communications facility as specified in 47 U.S.C. 1455(a), 47 C.F.R. 1.40001, or any other subsequent applicable federal law; and
- (5) Any wireless communications facilities exempted from conditional use permit review by federal or state law; and
- (6) Any wireless communications facilities located within the public right-of-way, which shall instead be subject to the provisions of Chapter 11.06.

(C) Wireless Communications Facilities Subject To Administrative Use Permit. Unless specifically exempted by federal or state law, all eligible facilities requests that do not result in a substantial change in physical dimensions of a wireless communications facility as specified in 47 U.S.C. 1455(a), 47 C.F.R. 1.40001, or any other subsequent applicable federal law, are subject to the granting of an administrative use permit provided for in Section 25.55.007, unless the facility is located within the public right-of-way, in which case the provisions of Chapter 11.06 shall apply.

(D) Submittal Requirements. In addition to the standard submittal requirements, all applications for design review, and/or conditional use permits pursuant to this Chapter 25.55, except in relation to amateur ham radio antenna(s), shall include the following information:

- (1) An accurate map, in such physical or electronic format as may be directed by the director of community development or designee, indicating the proposed site and detailing existing wireless communications facility locations owned and operated by the applicant within the city on the date of application submittal;
- (2) An engineering certification demonstrating planned compliance with all existing federal radio frequency emissions standards, and indicating: (i) existing base level radio frequency radiation, (ii) the maximum radio frequency radiation, (iii) the effective radiated power per channel, and (iv) the total number of channels for an omnidirectional antenna or the maximum number of channels in any sector for a sectorized antenna at the proposed site;
- (3) An engineering analysis providing technical data sufficient to justify the proposed height of the wireless communications facility;
- (4) An alternative configuration analysis, assessing the feasibility of alternative wireless communications facility construction configurations, both at the proposed site and in the surrounding vicinity, which would result in a more visually compatible antenna(s), as deemed necessary by the director of community development. This analysis shall include an explanation of why other wireless communications facility construction configurations were not selected;
- (5) A projection of the applicant's anticipated future wireless communications facility siting needs within the city, which information may be used by the city as part of a master planning effort designed to ensure a planned, integrated and organized approach to wireless communications facility siting;
- (6) An identification of the geographic service area for the subject installation, including a map showing all of the applicant's existing sites in the local service network associated with the coverage gap the wireless communications facility is meant to close, and describing how the coverage gap will be filled by the proposed installation;
- (7) An accurate visual impact analysis showing the maximum silhouette, viewshed analysis, color and finish palette and proposed screening for the wireless communications facility. The analysis shall include photo simulations and other information as necessary to determine visual impact of the wireless communications facility. A map depicting where the photos were taken shall be included. The analysis shall include a written description of efforts to blend the wireless communications facility with the surrounding area;
- (8) The height and mass of the facility, together with evidence that demonstrates that the proposed wireless communications facility has been designed to the minimum height and mass required from a technological standpoint for the proposed site;
- (9) A description of the maintenance and monitoring program for the wireless communications facility and associated landscaping;

- (10) Noise and acoustical information derived from the manufacturer's specifications for all equipment such as air conditioning units and back-up generators, and a depiction of the equipment location in relation to adjoining properties;
- (11) A concept landscape plan showing all proposed landscaping, concealment, screening and proposed irrigation with a discussion of how the chosen material at maturity will screen the site;
- (12) A written description of any good faith efforts to co-locate the proposed wireless communications facility on another site or building, including a map of the sites and engineering information or letters from the owners of the site describing why co-location is not a possibility;
- (13) A written description of all accessory wireless equipment for the wireless communications facility, including an explanation of the function of this ancillary equipment and the need to locate same on or near the wireless communications facility;
- (14) All other information as required by the city's wireless communications facility supplemental application form, which may be modified from time to time in the discretion of the director of the community development; and
- (15) All telecommunications sites subject to this ordinance that will utilize an emergency backup generator must adhere to all South Coast Air Quality Management District rules governing the operation of that equipment, including Rule 1470.

(E) Noticing Requirements. Public notice for telecommunication facility projects subject to design review or conditional use permit application processing shall comply with the noticing provisions of Section 25.05.065.

(F) Expert Review. In the event that the city, at the discretion of the director of community development or designee, determines the need to hire a qualified consultant to evaluate technical and other aspects of the application, the applicant shall provide the city a deposit for the estimated cost of such consultation, and to replenish said deposit if consumed by reasonable costs associated with such consultation, except to the extent as preempted by federal law. Such consultation is intended to be a site-specific review of technical aspects of the proposed wireless communications facility and shall address all of the following:

- (1) Compliance with applicable radio frequency emission standards;
- (2) Height analysis;
- (3) Configuration;
- (4) The appropriateness of granting any requested exceptions;
- (5) The accuracy and completeness of submissions;

- (6) The applicability of analysis techniques and methodologies;
- (7) The validity of conclusions reached; and
- (8) Any specific technical issues designated by the city.

(G) Development Standards. The following development standards shall apply to all design review, and conditional use permit applications for the installation of wireless communications facilities:

- (1) Permittee shall install and maintain permitted wireless communications facilities in compliance with the requirements of the Uniform Building Code, National Electrical Code, city noise standards and other applicable codes, as well as other restrictions specified in this Chapter and/or in a design review approval, or conditional use permit;
- (2) Visual Impact and Screening Standards. All wireless communications facilities shall employ and maintain camouflage design and appropriate screening to minimize visual impacts. Such techniques shall be employed to make the installation, operation and appearance of the facility as visually inconspicuous as possible, to prevent the facility from visually dominating the surrounding area, and to hide the installation from predominant views from surrounding properties. Depending on the proposed site and surroundings, certain camouflage design techniques may be deemed by the city as ineffective or inappropriate and alternative techniques may be required. The following is a menu of potential camouflage design techniques that should be considered based on different installation situations:

(a) For Structure-Mounted Installations (Excluding Monopole Installations).

- (i) All antenna panels and accessory wireless equipment components mounted on the exterior of the structure shall be painted or otherwise coated to match the predominant color of the mounting structure; and
- (ii) When required by the director of community development or designee, antenna panels shall be located and arranged on the structure so as to replicate the installation and appearance of the equipment already mounted to the structure; and
- ~~(iii) Wireless communications facility installations located above the surface grade in the public right of way including, but not limited to, those on certain streetlights or traffic signal standards, shall consist of components that are compatible in scale and proportion to the streetlights and traffic signals they are mounted on. Equipment shall be painted or otherwise coated to be visually compatible with lighting and signal equipment. Underground vaults shall employ flush-to-grade access portals and vents.~~

(b) For Monopole Tower Installations.

- (i) Monopole installations shall be situated so as to utilize existing natural or man-made features including topography, vegetation, buildings or other structures to provide the greatest amount of visual screening;
 - (ii) All antenna components and accessory wireless equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background and/or adjacent architecture so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used;
 - (iii) In those circumstances where an installation is within or easily visible from a zone that is not a preferred location, the director of community development or designee may require additional measures designed to camouflage a wireless communications facility, including, but not limited to, enclosing the monopole entirely within a vertical screening structure (suitable architectural feature such as a clock tower, bell tower, icon sign, lighthouse, windmill, etc.) may be required through the permit process. All facility components, including the antennas, shall be mounted inside said structure; and
 - (iv) The camouflage design techniques employed shall result in an installation that either will blend in with the predominant visual backdrop or will disguise the facility so it appears to be a decorative or attractive architectural feature.
- (c) For Miscellaneous Installations: Although generally not appropriate, a monorock and or monoshrub/monotree installation will be considered properly screened provided that it is located in a setting that is compatible with the proposed screening method. For a monoshrub/monotree, other vegetation comparable to that replicated in the proposed screen shall be prevalent in the immediate vicinity of the wireless communications facility site and the addition of new comparable living vegetation may be necessary to enhance the monoshrub/monotree screen. For a monorock, the proposed screen shall match in scale and color other rock outcroppings in the general vicinity of the proposed site. A monorock screen may not be considered appropriate in areas that do not have natural rock outcroppings.
- (d) For Co-Locations. Co-locations shall use screening methods similar to those used on the existing wireless communications facilities, or such other and additional screening methods as may be required by the director of community development or designee.
- (e) For Accessory Wireless Equipment. No accessory wireless equipment associated with the operation of any wireless communications facilities shall impair pedestrian use of sidewalks or other pedestrian pathways, nor inhibit equestrian activities on designated public or private trail systems. Accessory

wireless equipment shall be screened from the sidewalk by landscaping, undergrounding or other means. The following is a menu of potential screening techniques that should be utilized based on the type of installation:

- (i) Accessory wireless equipment for freestanding wireless communications facilities, not mounted on a building, shall be placed in an underground vault if reasonably feasible. Where placing such wireless communications facilities in an underground vault is not reasonably feasible, such wireless communications facilities shall comply with Public Utilities Commission General Order 95/128 and shall be visually screened through the use of walls, landscaping or walls combined with landscaping. All wall and landscaping materials shall be selected so that the resulting screening will be visually integrated with the architecture and landscape architecture of the surroundings;
- (ii) All accessory wireless equipment shall be placed and mounted in the least visually obtrusive feasible location; and
- (iii) All accessory wireless equipment shall be painted or textured using colors to match or blend with the primary background. All equipment cabinets visible to the public shall be treated with a graffiti-resistant coating. (Ord. 1627 § 1, 2017; Ord. 1579 § 1, 2013; Ord. 1577 § 14, 2013; Ord. 1555 § 14, 2011; Ord. 1485 § 10, 2008; Ord. 1386 § 1, 2001; Ord. 1320 § 1, 1996).

25.55.007 Administrative use permit for wireless communications facilities.

(A) Intent and Purpose. It is the intent and purpose of this section to establish a procedure whereby an administrative use permit can be granted for eligible facilities requests that do not involve a substantial change in physical dimensions of a wireless communications facility. Approval of such facilities requests is required by Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, otherwise known as the Spectrum Act, Pub. L. 112-96, H.R. 3630, 126 Stat 156 (enacted Feb. 22, 2012) and subsequently adopted FCC rules intended to implement Section 6409 of the Spectrum Act, specifically including 47 C.F.R. Section 1.40001.

(B) Procedure. Granting of administrative use permits for eligible facilities requests that do not involve a substantial change in physical dimensions of a wireless communications facilities shall be subject to the procedures specified in 47 C.F.R. 1.40001.

(C) Conditions of Approval. Conditions of approval on wireless communications facilities approved by an administrative use permit shall be limited to those conditions reasonably related to non-discretionary codes such as Health and Safety, Building, and Structural codes.

(D) Modifications. Additions, enlargements or modifications of uses or structures upon property for which an administrative use permit has been granted shall not be allowed except pursuant to a subsequent permit as might otherwise be required or granted pursuant to the terms of this chapter. (Ord. 1627 § 1, 2017; Ord. 1579 § 1, 2013).

25.55.008 Review criteria/standard conditions.

(A) Zoning Compliance. Wireless communications facilities may be permitted in any zone, right-of-way or easement, except the open space/conservation (OS/C) zone. Transmitting wireless communications facilities are strongly discouraged in residential zones or adjacent to schools.

(B) Height. Wireless communications facilities shall be limited to a maximum height of thirty-six feet as defined in Section 25.55.004 - Definitions "Height." The height of a non-exempt parabolic antenna shall be measured from its most vertical position and extent. ~~The maximum height permitted in any right-of-way or easement shall be thirty-six feet or the height of the closest existing utility pole, whichever is lower.~~ Wireless communications facilities may be constructed in an existing legal, conforming or nonconforming structure at any height, if the installation is located entirely within the structure's physical limits or "envelope" and the structure's exterior appears to remain unchanged. Wireless communications facilities may be installed on the outside of an existing legal, conforming or nonconforming structure at any height, if such installation adds no more than ten inches of horizontal width to a structure's vertical surface, or if the facilities are located below and within the upper limits of an existing roof parapet.

(C) Safety. Access to wireless communications facilities shall be restricted to maximize public safety. Security measures should include fencing, screening and signage, as deemed appropriate by the design review board.

(D) Aesthetics. The city's "Guidelines for Site Selection and Visual Impact and Screening of Telecommunication Facilities," which is on file with the community development department for review and copying, shall be utilized to reduce visual impact. In an effort to reduce a proposed wireless communications facility's aesthetic visual impact, ~~the design review board~~ Planning Commission or director of community development or designee may request that alternative designs be developed and submitted for consideration. Aesthetic visual impact review shall include consideration of public views, including, but not limited to, views to and along the coast, inland to and from the hillsides, as well as from public parks, trails and open spaces. Co-location of wireless communications facilities is desirable, but there shall not be an unsightly proliferation of wireless communications facilities on one site, which adversely affects community scenic and aesthetic values.

(E) Environmentally Sensitive Area (ESA) Protection. Placement of wireless communications facilities shall not be allowed to cause adverse impacts on environmentally sensitive areas (ESAs as defined in Open Space/Conservation Policy 8-1). Placement within ESAs shall be prohibited.

(F) Radio Frequency (RF) Radiation Standard. Within three months after construction of a wireless communications facility, which contains transmitting antenna(s), except in relation to amateur ham radio antenna(s) and transmitting antenna(s) with an effective radiated power (ERP) of five watts or less per channel, the maximum radio frequency (RF) radiation shall be measured and documented in a written report submitted to the city. The measurement and report shall be performed and prepared by a qualified, independent testing service/consultant retained by the city at the applicant's expense. The measurement shall be made utilizing the most current testing

protocol established by the Federal Communications Commission (FCC). The maximum radio frequency (RF) radiation shall not exceed the most current FCC safety standards.

(G) Long-Term Compliance. In order to guarantee long-term compliance with conditions of approval, that power levels remain as specified, and that the equipment is operating as designed, the operator of an approved transmitting antenna shall submit an affidavit indicating that the wireless communications facility is operating as approved and that the facility complies with the most current FCC Safety Standards. The affidavit shall be submitted on a yearly basis prior to the anniversary date of the facility approval for as long as the facility remains in operation and shall incorporate a separate affidavit of a qualified, independent testing service/consultant demonstrating and verifying compliance with the most current FCC Safety Standards and approved power levels. In addition, the city may conduct independent tests to verify compliance with the most current FCC Safety Standards and approved power levels. The director of community development or designee shall periodically review the approved wireless communications facility sites and determine if testing is necessary. Approved wireless communications facility providers shall be notified of all such director's determinations. The operator(s) of the approved wireless communications facility shall be responsible for the full cost of such tests.

(H) Setbacks. The setback of all wireless communications facilities shall meet the development standards and setback requirements of the applicable zoning district.

(I) Lighting. Any exterior lighting for wireless communications facilities shall be fully shielded.

(J) Identification. Each wireless communications facility shall be identified by a permanently installed plaque or marker, no larger than four inches by six inches, clearly identifying the addresses, email contact information, and twenty-four-hour local or toll-free contact telephone numbers for a live contact person for both the permittee and the agent responsible for the maintenance of the wireless communications facility. Emergency contact information shall be included for immediate responses. Such information shall be updated in the event of a change in the permittee, the agent responsible for maintenance of the wireless communications facility, or both.

(K) Maintenance.

- (1) All graffiti on any components of the wireless communications facility shall be removed promptly in accordance with city regulations. Graffiti on any facility accessory equipment in the public right-of-way must be removed within forty-eight hours of notification.
- (2) All landscaping attendant to the wireless communications facility shall be maintained at all times and shall be promptly replaced if not successful.
- (3) If a flagpole is used for camouflaging a wireless communications facility, flags shall be flown and shall be properly maintained at all times. The use of the United States flag is subject to the provisions of the United States Flag Code, 4 U.S.C. § 6 et seq.

- (4) All wireless communications facility sites shall be kept clean and free of litter.
- (5) All equipment cabinets shall display a legible sign clearly identifying the address, email contact information, and twenty-four-hour local or toll-free contact telephone numbers for both the permittee and the agent responsible for the maintenance of the wireless communications facility. Such information shall be updated in the event of a change in the permittee, the agent responsible for maintenance of the wireless communications facility, or both.

(L) Compliance. The permittee and the wireless communications facility shall adhere to and comply with all applicable requirements of federal, state and local laws, ordinances, rules, and regulations.

(M) Abandonment or Discontinuance of Use.

- (1) All permittees or operators who intend to abandon, discontinue, and/or terminate the use of any wireless communications facility, or co-located portion thereof, shall notify the city of such intentions no less than sixty days prior to the final day of use. Said notification shall be in writing, shall specify the date of termination and shall include reference to the applicable permit number.
- (2) All wireless communications facilities, or co-located portion thereof, not in use for ninety days shall be considered abandoned.

~~(3) For wireless communications facilities in the public right of way, or co-located portion thereof, where operations have been abandoned, discontinued and/or terminated such facilities shall be physically removed no more than ninety days following the final day of use or of determination that the facility has been abandoned, discontinued and/or terminated whichever occurs first. By that same time, at permittee's sole expense and responsibility, all component elements of an abandoned, discontinued and/or terminated wireless communications facilities, or co-located portion thereof, shall be removed in accordance with applicable health and safety requirements. The site upon which the wireless communications facility is located shall be restored to the condition that existed prior to the installation of the wireless communications facility, or co-located portion thereof.~~

~~(4) For wireless communications facilities in the public right of way, at any time after ninety days following the abandonment, discontinuation, and/or termination of the use and/or operation of a wireless communications facility, or co-located portion thereof, the city may remove the wireless communications facility, repair any and all damage to the premises caused by such removal, and otherwise restore the premises as he/she deems appropriate. The city may, but shall not be required to, store the removed wireless communications facility (or any part thereof). The permittee of the wireless communications facility, or co-located portion thereof, and all prior owners and operators of the wireless communications facility, shall be jointly and severally liable for the entire cost of such removal, repair, restoration, and storage, and shall remit payment to the city promptly after demand therefor is made. If payment is not made in a reasonable amount of time, the city may pursue abatement cost recovery in compliance with Municipal Code Section 7.24.130. The city may, in lieu of storing the removed wireless communications facility, or co-~~

~~located portion thereof, convert it to the city's use, sell it, or dispose of it in any manner deemed appropriate by the city.~~

(N) Relocation. Permittee shall modify, remove or relocate its wireless communications facility, or portion thereof, without cost or expense to city, if and when made necessary by any abandonment, change of grade, alignment or width of any street, sidewalk or other public facility, including the construction, maintenance or operation of any other city or service utility providers underground or aboveground facilities including, but not limited to, sewers, storm drains, conduits, gas, water, electric or other utility systems, or pipes owned by city or any other public agency. Said modification, removal, or relocation of a wireless communications facility shall be completed within ninety days of notification by city unless exigencies dictate a shorter period for removal or relocation. In the event a wireless communications facility is not modified, removed, or relocated within said period of time, city may cause the same to be done at the sole expense of permittee in compliance with Municipal Code Section 7.24.130 "Abatement cost recovery." Further, in the event of an emergency, the city may modify, remove, or relocate wireless communications facilities without prior notice to permittee provided permittee is notified within a reasonable period thereafter. (Ord. 1627 § 1, 2017; Ord. 1579 § 1, 2013; Ord. 1485 § 10, 2008; Ord. 1386 § 1, 2001; Ord. 1320 § 1, 1996).

SECTION 6. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, 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 remainder of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 7. Effective Date. This ordinance shall be effective on the thirtieth (30th) day after the day of its adoption.

SECTION 9. Certification. The City Clerk of the City of Laguna Beach shall certify the passage and adoption of this Ordinance, and shall cause the same to be published and posted in the manner required by law in the City of Laguna Beach. This Ordinance shall become effective February 23, 2021.

ADOPTED this 23 day of February, 2021.

Bob Whalen, Mayor

ATTEST:

City Clerk

I, Ann Marie McKay, City Clerk of the City of Laguna Beach, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council on January 26, 2021, and was finally adopted at a regular meeting of the City Council of said City held on February 23, 2021, by the following vote:

AYES: COUNCILMEMBER(S): Blake, Weiss, Kempf, Whalen

NOES: COUNCILMEMBER(S): Iseman

ABSENT: COUNCILMEMBER(S): None

City Clerk of the City of Laguna Beach, CA

ORDINANCE NO. 1653

AN ORDINANCE OF THE CITY COUNCIL OF LAGUNA BEACH, CALIFORNIA, REGULATING WIRELESS TELECOMMUNICATIONS FACILITIES CITY-WIDE, AMENDING CHAPTER 11.06 (TELECOMMUNICATION FACILITIES WITHIN RIGHT-OF-WAY) OF TITLE 11 (STREETS AND SIDEWALKS) TO THE LAGUNA BEACH MUNICIPAL CODE, AND AMENDING CHAPTERS 25.07 (COASTAL DEVELOPMENT PERMITS) AND 25.55 (WIRELESS COMMUNICATIONS FACILITIES) OF TITLE 25 (ZONING) TO PROVIDE UNIFORM AND COMPREHENSIVE REGULATIONS AND STANDARDS, ALONG WITH PERMIT REQUIREMENTS, FOR THE INSTALLATION OF WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY, AND MAKING A FINDING OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

A. Recitals.

(i) The purpose of this Ordinance is to amend the City's Municipal Code to provide the City the greatest amount of authority provided by law, and provide uniform and comprehensive standards and regulations, along with permit requirements, consistent with State and federal law, including, but not limited to recent guidance from the FCC, for the installation or modification of wireless telecommunications or wireless utility facilities in the public rights-of-way ("ROW").

(ii) The public ROW in the City is a uniquely valuable public resource, closely linked with the City's residential character, civic identity, and natural beauty. Whereas the reasonably regulated and orderly deployment of wireless facilities in the ROW is desirable, unregulated or disorderly deployment represents an ever-increasing and true threat to the health, welfare and safety of the community.

(iii) The City finds and declares that the regulation of wireless facilities in the public ROW is necessary to protect and preserve the aesthetics in the community, as well as property values within the City, and to ensure that all wireless facilities are installed using the least intrusive means possible.

(iv) The City Council finds and determines as follows:

1. The Federal Telecommunications Act of 1996 preempts and declares invalid all State rules that restrict market entry to or limit competition in both local and long-distance telephone service.

2. The California Public Utilities Commission ("CPUC") is primarily responsible for the implementation of local telephone competition and it issues certificates of public convenience and necessity ("CPCN") 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.

3. 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."

4. 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."

5. 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.

B. Ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH DOES ORDAIN AS FOLLOWS:

SECTION 1. The facts set forth in the Recitals, Part A of this Ordinance, are true and correct.

SECTION 2. Environmental Review.

A. The City Council finds that, pursuant to the CEQA Guidelines, the proposed Municipal Code and Local Coastal Program amendments have been determined to be subject to exemptions pursuant to State CEQA Guideline Sections 15060(c)(2) and 15061(b)(3) in that the proposed amendments are not anticipated to result in a direct or reasonably foreseeable indirect physical change in the environment, nor will the proposed wireless facility regulations have the potential for causing a significant effect on the environment. Pursuant to CEQA Guidelines Section 15382, "significant effect on the environment" means *"a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant."* Primary objectives of the proposed regulations include: (1) keeping pace with evolutions in wireless technology and the federal and State regulatory framework by removing the regulation of wireless facilities located within the public rights-of-way from the Zoning Code in favor of Title 11, Streets and Sidewalks, where such regulations can be amended on a more frequent and timely basis as the circumstances necessitate; (2) creating incentives for providers of wireless telecommunications services to design and locate facilities in a manner that minimizes impacts; and (3) establishing a comprehensive set of application submittal requirements to ensure that both the Planning Commission and Director are provided a factual basis for rendering informed decisions. These regulations would heighten and clarify design standards and thereby minimize the impacts of wireless facilities on public rights-of-way, public infrastructure, and private property. Moreover, the City's existing regulations

already provide a pathway for the installation and operation of wireless facilities within public rights-of-way in accordance with federal and State requirements, and similar requests would continue to be made pursuant to the regulations proposed herein. For these reasons, the proposed Title 11 amendments (Streets and Sidewalks), Zoning Ordinance Amendment, and Local Coastal Program Amendment would not substantially affect, have a potentially substantial effect, or change the City's environment. Additionally, Public Resources Code Section 21080.5 and Section 15265(c) of the State CEQA Guidelines shift the burden of CEQA compliance to the California Coastal Commission in connection with the preparation of or amendment to a Local Coastal Program (LCP). The Coastal Commission's LCP review and approval procedures have been found to be functionally equivalent to the environmental review process.

SECTION 3. Chapter 11.06. "Telecommunication Facilities Within Right-Of-Way" of the Laguna Beach Municipal Code is hereby amended to read in its entirety as follows:

11.06.010 Telecommunication facilities located within right-of-way. Purpose and Intent.

~~All telecommunication facilities, as defined in Chapter 25.55, which are proposed within any public or private right-of-way or easement shall be subject to the provisions and requirements of Chapter 25.55. (Ord. 1320 § 5, 1996).~~

The City Council of the City of Laguna Beach expressly finds that the installation of small wireless facilities, the supporting fiber backbone, and their accessory equipment throughout the City's rights-of-way, requires City regulation, consistent with State and federal law, in order to more fully protect the public health and safety, preserve and protect the City's aesthetic interests, protect City infrastructure and other public facilities, and to provide for the orderly deployment of wireless telecommunications and wireless utility facilities in order to ensure the continued quality of telecommunications services to the public.

The City further places great emphasis on undergrounding facilities and protecting undergrounded districts. For over four decades, the City has facilitated and supported undergrounding efforts in neighborhoods and along major scenic corridors and it is the intent of this ordinance to protect this investment.

This ordinance is intended to reflect and promote community interest by (1) ensuring that the balance between public and private interests is maintained; (2) protecting the City's visual character from potential adverse impacts and/or visual blight created or exacerbated by small wireless facilities and accessory equipment; (3) protecting and preserving the City's environmental resources; (4) protecting and preserving the City's public rights-of-way; (5) protecting and preserving the City's commitment and investment in undergrounding districts; (6) promoting access to high-quality, advanced wireless services for the City's residents, businesses and visitors; and (7) ensuring that providers of telecommunications, and other similar wireless services, are treated in a fair and equal manner throughout the City.

The City Council further finds that regulations established herein are not intended to, nor shall they be interpreted or applied to:

- (a) Prohibit or effectively prohibit any provider's ability to provide personal wireless services, or other similar wireless service;
- (b) Prohibit or effectively prohibit any personal wireless service provider's ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules or regulations;
- (c) Unreasonably discriminate among providers of functionally equivalent services;
- (d) Deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such facilities comply with the Federal Communications Commission's regulations concerning such emissions;
- (e) Prohibit any collocation or modification that the City may not deny under federal or State law;
- (f) Impose any unfair, unreasonable, discriminatory or arbitrary fees that exceed the reasonable cost to provide the services for which the fee is charged;
- (g) Otherwise authorize the City to act in conflict with any applicable federal or State law or regulation.

11.06.020 Definitions.

Unless the particular provisions or applicable law or the context otherwise requires, the definitions contained in this Section shall govern the construction, meaning and application of words and phrases used in this Chapter.

"Accessory equipment" means any and all on-site equipment associated with the installation of a wireless telecommunications facility, including but not limited to cabling, generators, back-up generators and power supply units, wiring, coaxial and fiber optic cables, connections, fans, air conditioning units, electrical panels, equipment shelters, equipment cabinets, equipment buildings, pedestals, meters, vaults, splice boxes, radio transceivers, transmitters, fencing, shielding, and surface location markers. Accessory equipment does not include the support structure or pole on which the wireless facility is attached to.

"Administrative review" means the Director's discretionary review of an application relating to the review and issuance of a Wireless Facility Permit, including review by the approval authority to determine whether the issuance of a permit is in conformity with the applicable provisions of this Chapter, the Policy adopted by resolution pursuant to this Chapter, and this Code.

"Antenna" means that part of a wireless telecommunications facility designed to radiate or receive radio frequency signals.

"Applicant" means any natural person, firm, partnership, association, joint venture, corporation, or other entity (or combination of entities), and the agents, employees, and contractors of such person or entity that seeks City permits or other authorizations under this Chapter.

“Application” means a written request, on a form provided by the City, for a Wireless Facility Permit under the authority of this Chapter.

“Approval authority” means the City official(s) designated to review and issue a decision on a proposed permit or other authorization under this Chapter.

“Base station” shall have the meaning as set forth in Title 47 Code of Federal Regulations C.F.R.) Section 1.40001(b)(1), or any successor provision. This means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network (regardless of the technological configuration, and encompassing DAS and small cells). “Base station” does not encompass a tower or any equipment associated with a tower. Base station includes, without limitation:

1. 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.
2. 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 cells).
3. Any structure other than a tower that, at the time the relevant application is filed with the City under this Chapter, supports or houses equipment described in paragraphs 1 and 2 of this definition that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.
4. “Base station” does not include any structure that, at the time the relevant application is filed under this Chapter, does not support or house equipment described in paragraphs 1 and 2 of this definition. Other structures that do not host wireless telecommunications facilities are not “base stations.”

As an illustration and not a limitation, the FCC’s definition of “base station” refers to any structure that actually supports wireless equipment even though it was not originally intended for that purpose. Examples include, but are not limited to, wireless facilities mounted on buildings, utility poles, light standards or traffic signals. A structure without wireless equipment replaced with a new structure designed to bear the additional weight from wireless equipment constitutes a base station.

“Cellular” means an analog or digital wireless telecommunications technology that is based on a system of interconnected neighboring cell sites.

“C.F.R.” means the Code of Federal Regulations.

“City” means the City of Laguna Beach.

“City-owned street light” means a stand-alone street light pole owned by the City of Laguna Beach. These poles do not carry, hold, or support other utilities such as electric, telephone

or cable. The street light may be powered by overhead conductors (the conductors are usually owned by the City), underground direct connection to the electric utility, or underground connection from an electric meter.

“Code” means the Laguna Beach Municipal Code.

“Collocation” means the mounting or installing of 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.

“COW” means a “cell on wheels,” which is a wireless telecommunications facility temporarily rolled in or temporarily installed. Under no circumstances may a COW exist in the ROW for more than one month, absent written approval of the Director.

“CPUC” means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or its duly appointed successor agency.

“Day” means a calendar day, except as otherwise set forth in this Chapter.

“Decorative pole” means any pole that includes decorative or ornamental features, design elements and/or materials for aesthetic purposes.

“Department” means the Public Works Department or Community Development Department of the City of Laguna Beach, as specified in this Chapter.

“Deployment” means the installation, placement, construction, collocation or modification of a small wireless facility, eligible facility, or other wireless telecommunications facility.

“Director” means the Director of Public Works or Community Development, or his or her designee.

“Eligible facility request” means a request for approval of an eligible facility pursuant to Section 6409(a), and as defined by the FCC in 47 C.F.R. § 1.6100(b)(3), or any successor regulation, which defines that term as any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (1) collocation of new transmission equipment, (2) removal of transmission equipment, or (3) replacement of transmission equipment.

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

“Ground-mounted” means mounted to a pole, tower, or other freestanding structure which is specifically constructed for the purpose of supporting an antenna or wireless facility and placed directly on the ground at grade level.

“Guidelines for Site Selection and Visual Impact and Screening of Telecommunication Facilities” means the supplemental regulations established to exercise reasonable local zoning

control over wireless telecommunications facilities, as may be amended from time to time by the Director or City Council.

“Infrastructure” means any City-owned or operated facility, equipment, pole, pipe, cabinet, or other structure located in the public right-of-way or in or on any other City-owned or operated property outside of the public right-of-way.

“Located within the public right-of-way” includes any facility which in whole or in part, itself or as part of another structure, rests upon, in, over or under the public right-of-way.

“Modification” means a change to an existing wireless telecommunications facility that involves any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation, including, but not limited to, changes 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 existing facility involving any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation.

“Monopole” means a structure composed of a single pole used to support antennas or related equipment. A monopole also includes a monopine, monopalm and similar monopoles camouflaged to resemble faux trees or other faux objects attached on a monopole.

“Mounted” means attached or supported.

“Municipal Code” or “Code” means the Laguna Beach Municipal Code, as amended from time to time.

“Ordinance” means this Chapter 11.06 of Title 11 of the Laguna Beach Municipal Code, as may be amended from time to time.

“Permit” means a written authorization (in electronic or hard copy format) to install a wireless telecommunications facility at a specified location(s) in the City, including but not limited to, in public right-of-way, on any other City-owned or operated property, facility, or other building or structure outside the PROW, or in or on any other public or private property, facility, building or other structure located anywhere else in the City. A permit may also consist of a master agreement between the applicant and the City to install and maintain one or more wireless telecommunications facilities in or on any property, building, facility or other structure in the City.

“Permittee” means an applicant that has received a permit issued by the City under this Chapter, and all successors-in-interest.

“Person” means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including a governmental entity.

“Personal wireless services” means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded.

“Personal wireless service facilities” means the same as defined in 47 U.S.C. § 332(c)(7)(C)(ii), as may be amended or superseded.

“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 “PROW” means a strip of land acquired by reservation, dedication, prescription, condemnation, or easement that allows for the passage of people and goods. The PROW includes, but is not necessarily limited to, streets, curbs, gutters, sidewalks, roadway medians, parkways, and parking strips. The PROW does not include land owned, controlled or operated by the City for uses unrelated to streets or the passage of people and goods, such as, without limitation, parks, City Hall and community center lands, City yards, and lands supporting reservoirs, water towers, police or fire facilities and non-publicly accessible utilities.

“Right-of-Way Work Permit” means a permit issued ministerially to an appropriately licensed contractor to perform work in the public right-of-way for the installation, removal and replacement, and connections of utility infrastructure. Permits are subject to time and place restrictions due to traffic impacts and special noticing requirements. Permit issuance is often dependent on prior discretionary review and approval by the Planning Commission and/or prior permits issued by the Community Development Department.

“Section 6409(a)” means Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a) (also known as the “Spectrum Act”), as may be amended or superseded.

“Small wireless facility” or “small wireless facilities” means a wireless facility that provides telecommunications, or other related services that meets each of the following conditions:

- (a) The facility:
 - (1) Is mounted on structures 50 feet or less in height including its antennas as defined in this Section; or
 - (2) Is mounted on structures no more than 10 percent taller than other adjacent structures; or
 - (3) 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;
- (b) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in this Section), is no more than three cubic feet in volume;
- (c) 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;
- (d) The facility does not require antenna structure registration under Part 17 of Subchapter A of Chapter 1 of Title 47 C.F.R., or its successor regulations;

- (e) The facility is not located on Tribal lands, as defined under 36 C.F.R. § 800.16(x), or its successor regulation; and
- (f) The facility does not result in human exposure to radio frequency radiation in excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b), or its successor regulation.

“State” means the State of California.

“Substantial change” means, with respect to an eligible facility request, the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(7), or any successor regulation, which defines that term differently based on the type of eligible support structure (tower or base station) and location (in or outside the PROW). For clarity, this definition organizes the FCC’s criteria and thresholds for determining if a collocation or modification substantially changes the physical dimensions of a wireless tower or base station based on the type and location.

(a) For towers outside the PROW, a substantial change occurs when:

- (1) The proposed collocation or modification increases the overall height of the tower by more than 10% or the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet (whichever is greater); or
- (2) The proposed collocation or modification adds an appurtenance to the body of the tower that would protrude from the edge of the tower more than 20 feet, or more than the width of the tower structure at the level of the appurtenance (whichever is greater); or
- (3) The proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, but not to exceed four; or
- (4) The proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site.

(b) For towers in the PROW and for all base stations, a substantial change occurs when:

- (1) The proposed collocation or modification increases the overall height of the tower more than 10% or 10 feet (whichever is greater); or
- (2) The proposed collocation or modification involves adding an appurtenance to the body of the structure that would protrude from the edge of the tower or base station by more than six feet; or
- (3) The proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets when there are no pre-existing ground-mounted equipment cabinets associated with the structure; or

(4) The proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are more than 10% larger in height or overall volume than any other existing ground-mounted equipment cabinets; or

(5) The proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.

(c) In addition, for all towers and base stations wherever located, a substantial change occurs when:

(1) The proposed collocation or modification would defeat the existing concealment elements of the eligible support structure (wireless tower or base station) as reasonably determined by the Director; or

(2) The proposed collocation or modification violates a prior condition of approval; provided, however, that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change described in this Section.

(d) For purposes of this definition, changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on building rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.

“Telecommunications tower” means a freestanding mast, pole, monopole, guyed tower, lattice tower, freestanding tower or other structure designed and primarily used to support wireless telecommunications facility antennas.

“Technically infeasible” means a circumstance in which compliance with a specific requirement within this Code is physically impossible and not merely more difficult or expensive than a noncompliant alternative.

“Underground utility district” means any area in the City within which overhead wires, cables, associated overhead equipment, appurtenances and other improvements are either (1) prohibited by ordinance, resolution or other applicable law; (2) scheduled to be relocated underground within 18 months from the time an application is submitted; (3) planned to be relocated underground with the City Council’s acceptance of a proposed assessment district boundary and petition signed by no less than sixty percent (60%) of the property owners within said boundary; or (4) primarily located underground at the time an application is submitted.

“Utility pole” means any pole or tower owned by any utility company that is primarily used to support wires or cables necessary to the provision of electrical or other utility services regulated by the California Public Utilities Commission.

“Wireless facility” or “Wireless telecommunications facility” (“WF”) means the equipment at a fixed location or locations in the City that enables wireless telecommunications or wireless utility services. The term does not include: (1) the support structure, tower or pole on, under, or within which the equipment is located or collocated; or (2) coaxial, fiber-optic or other cabling that is between telecommunications facilities or poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna. Examples of wireless facilities include small wireless facilities and eligible facilities.

Exceptions: The term “wireless facility” does not apply to the following:

- (a) Government-owned and operated telecommunications facilities.
- (b) Emergency medical care provider-owned and operated telecommunications facilities.
- (c) Mobile services providing public information coverage of news events of a temporary nature.
- (d) Any wireless telecommunications facilities exempted from this Code by federal or State law.

“Wireless Facility Permit” or “WFP” means either a Planning Commission Wireless Facility Permit or Administrative Wireless Facility Permit issued by the City pursuant to this Chapter, and including the following categories:

- (a) “Planning Commission Wireless Facility Permit” or “PCWFP” means a permit issued by the Planning Commission for a new wireless facility, collocation, or modification to an existing wireless facility.
- (b) “Small Wireless Facility Permit” or “SWFP” means a permit issued by the approval authority pursuant to the requirements of this Chapter for: (a) the deployment of a new small wireless facility; or (b) the replacement of, collocation on, or modification of an existing small wireless facility.
- (c) “Eligible Facility Permit” or “EFP” means a permit issued by the approval authority for an eligible facility as defined in Section 6409(a) and subject to the requirements of this Chapter.

11.06.030 Applicability.

- A. This Chapter applies to the siting, construction, installation, attachment, operation, collocation, reconstruction, relocation, modification or removal of any and all wireless facilities within the public right-of-way within the City’s jurisdictional and territorial boundaries as follows:
 - 1. All facilities for which applications were not approved prior to the adoption date shall be subject to and comply with all provisions of this Chapter.

2. All facilities for which applications were approved by the City prior to the adoption date shall not be required to obtain a new or amended permit until such time as a provision of this Code so requires. Any wireless telecommunication facility that was lawfully constructed prior to adoption date that does not comply with the standards, regulations and/or requirements of this Chapter, shall be deemed a nonconforming use and shall also be subject to the provisions of this chapter.
3. All facilities, notwithstanding the date approved, shall be subject immediately to the provisions of this chapter governing the operation and maintenance (Section 11.06.130), radio frequency emissions monitoring (Section 11.06.140), cessation of use and abandonment (Section 11.06.170), removal and restoration (Section 11.06.180) of wireless telecommunications facilities and the prohibition of dangerous conditions or obstructions by such facilities (Section 11.06.150); provided, however, that in the event a condition of approval conflicts with a provision of this Chapter, the condition of approval shall control until the permit is amended or revoked.

B. This Chapter does not apply to the following:

1. Amateur radio facilities;
2. Over the Air Reception Devices (“OTARD”) antennas;
3. Facilities owned and operated by the City for its use;
4. Any entity legally entitled to an exemption pursuant to State or federal law.

11.06.040 Wireless Facility Permit Requirements.

Notwithstanding any provision of the Code to the contrary, a wireless facility shall not be deployed in the PROW within the City, except upon approval of a Wireless Facility Permit issued in accordance with the requirements of this Chapter and the rules, regulations, procedures and policies adopted from time to time by resolution of the City Council pursuant to Chapter 11.06 of this Code, and upon approval of any other related discretionary or ministerial permits. When required, the Planning Commission Wireless Facility Permit or Administrative Permit, in conjunction with a Coastal Development Permit as may also be required, shall constitute the City’s discretionary entitlement governing the use, location, aesthetics, and other characteristics. Once the discretionary permit is issued and recorded, the project is considered entitled, and the permittee may then enter the construction phase to process any required ministerial approvals associated with the project, including a Right-of-Way Work Permit.

A. Planning Commission Wireless Facility Permit.

All new wireless facilities, collocations or modifications to existing wireless facilities, and any associated aerial strands of fiber or coaxial cable within City limits, shall require a Planning Commission Wireless Facility Permit unless otherwise provided for in this Chapter.

B. *Administrative Wireless Facility Permit.*

1. Small Wireless Facility Permit. A Small Wireless Facility Permit, subject to the Director's approval, may be issued for new small wireless facilities that meet all the following criteria:
 - a. All aspects of the proposed improvements and equipment qualify the project as a "small wireless facility" as defined by this Chapter.
 - b. The proposal is not located in any location identified in Section 11.06.200.
 - c. New segments of fiber or coaxial cable serving the small wireless facility and located beyond the support structure footprint are designed as a below-grade network.
2. Eligible Facility Permit. An Eligible Facility Permit, subject to the Director's approval, may be issued for modifications that meet the following criteria:
 - a. The proposal qualifies as an eligible facilities request as defined by 47 C.F.R. § 1.6002 and 47 U.S.C § 1455, as those provisions may be amended from time to time. In addition to the other factors discussed therein, the Director shall make an explicit finding demonstrating that the proposed modification does not result in a substantial change to the eligible support structure because it does not defeat the existing concealment elements, which is to be defined as broadly as possible in accordance with the law.
 - b. The applicant has provided sufficient information either showing it owns the property on which the facility is located, or that the property owner has provided its consent to locating the facility where proposed.
3. In order for the Director to approve a permit under this Subpart B (Administrative Wireless Facility Permit), the Director must make the following findings in writing:
 - a. The requirements of Subsections (B)(1) – (B)(2) have been met.
 - b. All notices required for the proposed installation have been given.
 - c. The proposed facility has been designed and located in compliance with all applicable provisions of this Chapter and the City's Guidelines for Site Selection and Visual Impact and Screening of Telecommunication Facilities.
 - d. If applicable, the applicant has demonstrated its inability to locate on existing or replacement infrastructure.
 - e. The applicant has provided sufficient evidence supporting the applicant's claim that it has the right to enter the public right-of-way pursuant to State

or federal law, or the applicant has entered into a franchise agreement with the City permitting them to use the public right-of-way.

- f. The applicant has demonstrated the proposed installation is designed such that the proposed installation represents the least intrusive means possible as supported by factual evidence and a meaningful comparative analysis to show that all preferred alternative locations and designs identified in the application review process were technically infeasible or not available.
 4. The Director may, in the Director's discretion, refer any application for an Administrative Wireless Facility Permit to the Planning Commission for approval.
 5. In the event the Director determines that any application submitted for an Administrative Wireless Facility Permit does not meet the criteria of this Code, the Director shall deny the application and make the required written findings.
- C. *Right-of-Way Work Permit.* A Right-of-Way Work Permit may be issued by the Public Works Director subject to time and place restrictions and only once all necessary discretionary entitlements have been approved and recorded. This permit shall allow the appropriately licensed contractor to perform work within the public right-of-way subject to appropriate traffic control methods and associated public notification as determined necessary by the Director.
- D. *Other Permits Required.* In addition to any permit that may be required under this Chapter, the applicant must obtain all other required permits or other approvals from other City departments, or State or federal agencies. Any permit granted under this Chapter is subject to the conditions and/or requirements of other required permits or other approvals from other City departments, or State or federal agencies. Any improvements within the coastal zone that constitute development as defined in Section 25.07.006(D) and is neither exempt from the requirements of that Chapter (Section 25.07.008) nor issued a waiver for de minimis development (Section 25.07.009) requires approval of a Coastal Development Permit.
- E. *Eligible Applicants.* Only applicants who have been granted the right to enter the public right-of-way pursuant to State or federal law, or who have entered into a franchise agreement with the City permitting them to use the public right-of-way, shall be eligible for a permit to install or modify a wireless telecommunications facility or a wireless telecommunications collocation facility in the public right-of-way.

11.06.050 Application for Planning Commission and Administrative Wireless Facility Permits.

A. Application.

1. In addition to the information required of an applicant for a Wireless Facility Permit or Right-of-Way Work Permit required by this Code, each applicant requesting approval of the installation or modification of a wireless telecommunications

facility in the public right-of-way shall fully and completely submit to the City a written application on a form prepared by the Director.

2. No applicant seeking to install wireless antennas shall seek an encroachment permit for fiber or coaxial cable only. Applicants shall simultaneously request fiber installation or other cable/utility installation when seeking to install wireless installations in the right-of-way.

B. *Application Contents for Wireless Installations.* In addition to all other information determined by the Director to be necessary as may published in a written application form, an application for a wireless installation in the right-of-way shall contain the following information:

1. The name, address and telephone number of the applicant, owner, and operator of the proposed facility.
2. The name, telephone number, and email address of a single point of contact in the wireless facility operator's engineering and maintenance departments to ensure timely resolution of all interference issues.
3. If the applicant is an agent of the owner of the proposed facility, the applicant shall provide a duly executed letter of authorization from the owner of the facility. If the applicant and/or owner will not directly provide wireless services, the applicant shall provide a duly executed letter of authorization from the person(s) or entity(ies) that will provide those services at the time in which the facilities are completed.
4. If the facility will be located on or in the property of someone other than the owner of the facility (such as a street light pole, street signal pole, utility pole, utility cabinet, vault, cable conduit, or real property), the applicant shall provide a duly executed written authorization from the property owner(s) authorizing the submission of an entitlement application for the placement of the facility on or in the property owner's property.
5. A full written description of the proposed facility and its purpose.
6. Detailed engineering plans of the proposed facility and related report prepared by a professional engineer registered in the State documenting the following:
 - a. Height, diameter and design of the facility, including technical engineering specifications, and economic and other pertinent factors governing selection of the proposed design, together with evidence that demonstrates the proposed facility has been designed to the minimum height and diameter required from a technological standpoint for the proposed site. A layout plan, section and elevation of the support structure shall be included.
 - b. For all equipment that would be visible to the public once the facility has been constructed and activated, a photograph and model name and number of each piece of equipment.

- c. Power output and operating frequency for the proposed antenna.
 - d. Total anticipated capacity of the structure, indicating the number and types of antennas and power and frequency ranges which can be accommodated.
 - e. Sufficient evidence of the structural integrity of the pole or other supporting structure as required by the City.
7. A comprehensive justification study which includes the rationale for selecting the proposed location, design, and equipment; if applicable, a detailed explanation of the coverage gap or deficiency that the proposed use would resolve; and how the proposed location and configuration is the least intrusive means for the applicant to provide wireless service. Said study shall include all existing structures and/or alternative sites evaluated for potential installation of the proposed facility and why said alternatives are not a viable option or more intrusive.
 8. Scaled site plans, elevations, electrical and structural plans, and all relevant details (e.g. antennas, accessory equipment including fiber and coaxial cable, and signage) specifying and depicting the exact proposed location of the pole, antennas, accessory equipment, screening, pole and equipment heights and widths, access or utility easements, landscaped areas, existing utilities, and adjacent land uses, and demonstrating compliance with Section 11.06.080 and the Guidelines for Site Selection and Visual Impact and Screening of Telecommunication Facilities.
 9. An accurate visual impact analysis showing the maximum silhouette, viewshed analysis, color and finish palette and proposed screening for the facility, including scaled photo simulations from at least 3 different angles. Unless unique circumstances dictate otherwise, photo simulations should be taken from pedestrian level along surrounding sidewalks or other public spaces, including the motorist's perspective. Note that photo simulations with excessive cropping or inadequate aspect ratios will be rejected until a wider field of view is provided to fully anticipate the visual impact on the surrounding environment.
 10. Completion of the radio frequency (RF) emissions exposure guidelines checklist contained in Appendix A to the Federal Communications Commission's (FCC) "Local Government Official's Guide to Transmitting Antenna RF Emission Safety" to determine whether the facility will be "categorically excluded" as that term is used by the FCC.
 11. For a facility that is not categorically excluded under the FCC regulations for RF emissions, or if an applicant does not wish to provide a copy of the checklist from Appendix A of the Federal Communications Commission's *A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guide for Categorical Exclusion*, the applicant shall submit an RF exposure compliance report prepared and certified by an RF engineer acceptable to the City that certifies that the proposed facility, as well as any facilities that contribute to the cumulative exposure in the subject area, 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 Radiated Power “ERP”) for all existing and proposed antennas at the site and exhibits that 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) and also the boundaries of areas with RF exposures in excess of the controlled/occupational 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. The projected exposure shall be provided at ground level and shall also model the exposure conditions at any nearby building(s) located within 30 feet of the antenna(s).

- a. The RF report shall be accompanied by an executive summary prepared and certified by a qualified RF engineer summarizing the following information: (a) the existing base level radio frequency radiation, (b) the maximum radio frequency radiation, (c) the effective radiated power per channel, and (d) the total number of channels for an omnidirectional antenna or the maximum number of channels in any sector for a sectorized antenna at the proposed site.

12. Copies of any documents that the applicant is required to file pursuant to Federal Aviation Administration regulations for the facility.
13. A noise study prepared by a qualified acoustic engineer documenting that the level of noise to be emitted by the proposed wireless telecommunications facility will comply with this Code including Section 11.06.080(A)(14)(B), unless all equipment is proposed to remain passively cooled.
14. A traffic control plan when the proposed installation, including power, fiber, or coaxial cable, is located within any street.
15. When landscaping is proposed to mitigate the visual impact of a wireless facility, a scaled conceptual landscape plan showing existing trees and vegetation and all proposed landscaping, concealment, screening, and proposed irrigation with a discussion of how the chosen material at maturity will screen the site.
16. A written description identifying the geographic service area for the subject installation, including geographic and propagation maps that identify the location of the proposed facility in relation to all existing and planned facilities maintained within the City by the wireless service provider(s).
 - a. In the event the applicant seeks to install a wireless telecommunications facility to address service coverage concerns, full-color signal propagation maps with objective units of signal strength measurement that show the applicant’s current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site,

and predicted service coverage levels from the proposed site without all adjacent sites.

- b. In the event the applicant seeks to address service capacity concerns, a written explanation identifying the existing facilities with service capacity issues together with competent evidence to demonstrate the inability of those facilities to meet capacity demands.
17. Should the applicant maintain that they have a right to access the public right-of-way under either State or federal law, the applicant shall provide the necessary proof to show that the applicant has the right to install the project in question. By way of example, an applicant can meet this requirement by the following examples:
 - a. Franchise agreement;
 - b. DIVCA designation;
 - c. Certification that the applicant is a telephone corporation or a statement providing the basis for its claimed right to enter the right-of-way;
 - d. If the applicant has a certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission, it shall provide a copy of its CPCN for the facility in question.
18. An application fee and a deposit for post-construction radio frequency testing as set forth in paragraph E of this section in an amount set by resolution by the City Council and in accordance with California Government Code Section 50030. A separate deposit in accordance with paragraph D of this Section may be required at the Director's sole and absolute discretion.
19. For applications subject to Planning Commission review and involving a wireless facility mounted to a new support structure – unless said structure constitutes a one-for-one replacement within five feet of the existing structure footprint – proof that a temporary mock-up of the facility and sign has been installed at the proposed location for a period of at least twenty-one (21) calendar days.
 - a. Applicant shall obtain an encroachment permit before installing the temporary mock-up, and must remove the temporary mock-up within five (5) calendar days of receiving a written notice to remove from the Director.
 - b. When seeking the encroachment permit, the applicant shall provide address labels for use by the City in noticing all property owners within 300 feet and tenants within 100 feet of the proposed installation. The City shall mail a notice regarding installation of the mock-up at least five (5) business days prior to the installation.
 - c. The mock-up shall demonstrate the height and mass of the facility. The applicant shall not be entitled to install the facility it intends to install

permanently. The mock-up may consist of a wood utility pole topped to the propose facility height, with PVC used to outline all pole-mounted equipment, or the like.

- d. The mock-up shall include a weather-proofed sign (11" x 17" required format) that displays photo simulations depicting before and after images, including any accessory equipment cabinet, and the contact information of the assigned project planner.
- e. The applicant shall be required to follow any other City practices or processes relevant to the installation of a mock-up as may be provided in a publicly accessible form or document.
- f. After installation of the mock-up, the applicant shall certify that the mock-up accurately represents the height and width of the proposed installation and has been installed consistent with this Code.

20. A list of all other applications that either have been, or will be, submitted in furtherance of the Project, including, but not limited to applications to the California Coastal Commission, encroachment permits, Caltrans permits, etc.

21. Any other information and/or studies reasonably determined necessary by the Director may be required, provided it is published before an application is submitted to the City.

C. *Application Contents – Modification of Existing Facility.* The content of the application form for a modification to an existing facility shall be determined by the Director, and shall include but not be limited to the requirements listed in Section 11.06.050(B) unless prohibited by State or federal law.

D. *Independent Expert.* The Director is authorized to retain on behalf of the City an independent, qualified consultant to review and process any discretionary entitlement application for a wireless telecommunications facility. The review and processing may include an evaluation of the accuracy and completeness of the items submitted with the application and all subsequent application completeness determinations, presentations, preparation of staff reports, and associated administrative tasks, or the consultant review may be focused to a review of technical aspects of the proposed wireless telecommunications facility addressing any or all of the following:

- 1. Compliance with applicable radio frequency emission standards;
- 2. Whether any requested exception is necessary to close a significant gap in coverage and is the least intrusive means of doing so;
- 3. The accuracy and completeness of submissions;
- 4. Technical demonstration of the unavailability of alternative sites or configurations and/or coverage analysis;

5. The applicability of analysis techniques and methodologies;
6. The validity of conclusions reached or claims made by the applicant;
7. The viability of alternative sites and alternative designs; and
8. Any other specific technical issues identified by the consultant or the City.

The cost of this review shall be paid by the applicant through a deposit pursuant to an adopted fee schedule resolution. No permit shall be issued to any applicant which has not fully reimbursed the City for the consultant's cost.

- E. *Radio Frequency (RF) Radiation Standard.* Within three months after construction of a wireless facility which contains transmitting antenna(s), except in relation to amateur ham radio antenna(s) and transmitting antenna(s) with an effective radiated power (ERP) of five watts or less per channel, the maximum radio frequency (RF) radiation shall be measured and documented in a written report submitted to the City. The measurement and report shall be performed and prepared by a qualified, independent testing service/consultant retained by the City at the applicant's expense. The measurement shall be made utilizing the most current testing protocol established by the Federal Communications Commission (FCC). The maximum RF radiation shall not exceed the most current FCC safety standards.

11.06.060 Review Procedure

- A. *Pre-Submittal Conference.* Prior to application submittal, the City strongly encourages, but does not require, all applicants to schedule and attend a pre-submittal conference with Community Development Department staff to receive informal feedback on the proposed location, design and application materials. The pre-submittal conference is intended to identify potential concerns and streamline the formal application review process after submittal. Community Development Department staff will endeavor to provide applicants with an appointment within approximately ten (10) business days after receipt of a written request.
- B. *Application Submittal Appointment.* All applications must be submitted to the City at a pre-scheduled appointment. City staff will endeavor to provide applicants with an appointment within ten (10) business days after receipt of a written request. This appointment will be considered the City's initial receipt of any application materials for the purposes of assessing the time in which the City has reviewed the application.
- C. *Notice; Decisions.* The provisions in this Section describe the procedures for approval and any required notice and public hearings for an application, except that if a Coastal Development Permit is required pursuant to Chapter 25.07, noticing for that type of permit shall instead be carried out through the public notice provisions of Section 25.07.014. *Exception:* when a Coastal Development Permit is necessary and subject to ten-day public noticing, but the application otherwise requires 21-day noticing, the longer noticing period shall prevail.

1. *Planning Commission Hearings.* Any permit application under this Chapter subject to Planning Commission approval shall require notice and a public hearing. Notice of such hearing shall be sent by mail not less than twenty-one (21) calendar days prior to the date of the hearing and in accordance with Code Section 25.05.065. The Planning Commission may approve or conditionally approve an application only after it makes the findings required in Section 11.06.090.
 2. *Director's Decision Notice.* The Director may approve or conditionally approve an application only after it makes the findings required in Section 11.06.040(B)(3). Within five days after the Director approves or conditionally approves an application under this Chapter, the Director shall provide notice in accordance with Section 25.05.065.
 3. *Notice of Shot Clock Expiration.* The City acknowledges there are presumptive federal and State shot clocks, which certain applicants may argue are applicable to a proposed project covered under this Chapter. As such, the applicant is required to provide the City written notice of the expiration of any shot clock, which the applicant shall ensure is received by the director (e.g., overnight mail) no later than twenty (20) days prior to the expiration.
 4. *Written Decision Required.* All entitlement decisions made pursuant to this Chapter shall be in writing and based on substantial evidence in the written administrative record. The written decision shall include the reasons for the decision.
- D. *Appeals.* All decisions regarding Planning Commission Wireless Facility Permits may be appealed to the City Council, or to the Planning Commission for any decision rendered by the Director regarding an Administrative Wireless Facility Permit, by the applicant or any owner of property within three hundred (300) feet of the subject wireless facility. An Administrative Wireless Facility Permit appealed to the Planning Commission cannot also be appealed to the City Council. Appeals of any determinations and requirements regarding Coastal Development Permit processing, including exemptions, determinations relative to appealable development, etc. shall be as described in Chapter 25.07.
1. Any appeal by the applicant or owner of property within three hundred feet of the subject wireless facility shall be in written form specifically stating the grounds for the appeal and shall be filed with the City Clerk within fourteen calendar days of the decision or determination.
 2. The filing of any appeal shall be accompanied by payment of the appeal fee as determined by resolution of the City Council, and no appeal shall be accepted or deemed filed unless such payment is made. Where more than one appeal is allowed, and if more than one appeal is filed, then following the filing expiration date for appeals, the City Clerk shall prorate the required appeal fee among the total number of appeals and refund the excess amount paid by each appellant.

3. Notwithstanding any provision of this Section, any decision or determination of the Planning Commission shall be automatically appealed to the City Council where a member of the Commission has an ownership, leasehold or consulting interest in the property or project that is the subject of the decision or determination.
4. City Council Review of Decisions.
 - i. Any member of the City Council may obtain review of any decision or determination of the Planning Commission or Director by a written request for review to the City Clerk, directly or through the City Manager, within fourteen (14) calendar days of the decision or determination. Where the City is the applicant or an aggrieved property owner, the City Manager may initiate proceedings for review of the decision or determination by written request to the City Clerk within fourteen (14) calendar days of the decision or determination.
 - ii. A request for review shall not require any statement of reasons, and therefore shall not represent support of or opposition to an application. No fee shall be required for a request for review. There shall be a presumption that the reason for the request is that the application may be of significant concern to the community or significant importance to the quality of life within the community and/or applicable land use policies and regulations. There shall be no inference or implication of bias or prejudgment due to a request for review being filed.
5. Processing of Appeals and Requests for Review.
 - i. Upon the City Clerk's receipt of a timely and otherwise proper appeal, no appeal may thereafter be withdrawn except upon a majority vote of the City Council allowing a withdrawal of the appeal.
 - ii. The City Clerk shall set the appeal or request for review for a public hearing before the City Council no less than fourteen (14) calendar days nor more than sixty (60) calendar days after receipt of the appeal or request for review. Public notice of the hearing for the appeal or request for review shall be subject to the provisions of Section 25.05.065, except that the public notice for appeals of Coastal Development Permits shall be instead carried out through the public notice provisions of Section 25.07.014.
6. Hearing and Decision on Appeals and Requests for Review.
 - i. Upon the hearing of the appeal or request for review, the City Council shall conduct a de novo review of the underlying application and shall not be limited to the grounds stated for the appeal, if an appeal was filed, and shall not be limited to the evidence that was presented to the approval authority. The City Council shall exercise its independent judgment and discretion as to the evidence presented at its hearing. Nevertheless, there shall be a presumption that the decision or determination made by the approval

authority was reasonable, valid, and not an abuse of discretion; and the appellant, if there is one, shall have the burden of proof of demonstrating otherwise by a preponderance of the evidence presented.

- ii. The City Council may uphold, reverse, wholly or partly, modify or remand any appealed or reviewed decision or determination in the following manner.
- iii. Three or more affirmative votes shall be required to reverse a decision or determination. A reversal shall be approved by the City Council upon the adoption of a resolution that sets forth in writing the findings relied on to conclude that the appealed or reviewed decision or determination was in error or an abuse of discretion.
- iv. In the event the City Council upholds an appealed or reviewed decision or determination approving the application, the City Council may modify the proposed project or conditions of project approval, by making them more restrictive, or may add more restrictive conditions of approval upon the adoption of a resolution and without the need for a finding of error or an abuse of discretion. "More restrictive" for purposes of this subdivision shall include without limitation an incorporation of view protection measures, enhanced equipment screening, and other similar time, place, and manner considerations.

11.06.080 Requirements for Small Wireless Facilities within the Public Right-of-Way

- A. *Design and Development Standards.* All small wireless facilities that are located within the public right-of-way shall be designed and maintained as to minimize visual, noise and other impacts on the surrounding community and shall be planned, designed, located, and erected in accordance with the following:
 1. The City's "Guidelines for Site Selection and Visual Impact and Screening of Telecommunication Facilities" shall be utilized to reduce the visual impact of the wireless facility. Guideline compliance is required; however, the approval authority may waive some of these requirements if: (1) the applicant demonstrates that the imposition of certain requirements would effectively prohibit the provision of personal wireless services, as supported by clear and convincing evidence in the written record; or (2) the approval authority in her/his/its sole and absolute discretion determines that guideline compliance would result in a more visually obtrusive facility.
 2. General Guidelines.
 - a. The applicant shall employ screening, undergrounding, and camouflage design techniques in the design and placement of wireless telecommunications facilities in order to ensure that the facility is as visually screened as possible, to prevent the facility from dominating the surrounding area, and to minimize significant view impacts from surrounding properties all in a manner that

achieves compatibility with the community and in compliance with the applicable sections of this Code. Collocations involving two or more wireless service providers are encouraged insofar as the wireless facility is designed to best meet the City's design and location criteria.

- b. Screening shall be designed to be architecturally compatible with surrounding structures using appropriate techniques to camouflage, disguise, and/or blend into the environment, including landscaping, color, and other techniques to minimize the facility's visual impact, as well as be compatible with the architectural character of the surrounding buildings or structures in terms of color, size, proportion, style, and quality.
 - c. Facilities shall be located such that views from a residential structure are not significantly impaired. Facilities shall also be located in a manner that protects public views across view corridors so that no significant view impairment, where technically feasible, results in accordance with this Code. This provision shall be applied consistent with local, State and federal law.
3. Traffic Safety. All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety.
4. Equipment. The applicant shall use the least visible equipment possible. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or carriers.
5. Poles.
 - a. Facilities shall be located consistent with Section 11.06.200.
 - b. Utility Poles. Any portion of the antenna or equipment mounted on a pole shall be no less than twenty (20) feet above any drivable road surface. All installations on utility poles shall fully comply with the California Public Utilities Commission general orders, including, but not limited to, General Order 95, as may be revised or superseded.
 - c. Light Poles. Any portion of the antenna or equipment mounted on a pole shall be no less than seventeen (17) feet above any drivable road surface.
 - d. Replacement Poles. If an applicant proposes to replace a pole in order to accommodate a proposed facility, the pole shall be designed to resemble the appearance and dimensions of existing poles near the proposed location, including size, height, color, materials, and style.
 - e. New Poles. New poles shall be designed to resemble existing poles in the right-of-way near that location, including size, height, color, materials and style, with the exception of any existing pole designs that are scheduled to be removed and not replaced.

- i. Such new poles that are not replacement poles shall be located at least one-hundred (100) feet from any existing pole to the extent feasible to be consistent with the City's pre-established street-lighting plan.
 - ii. Such new poles shall not significantly impact public view corridors, and shall be located to the extent feasible in an area where there is an existing natural or other feature that obscures the view of the pole. The applicant shall further employ concealment techniques to blend the pole with said features.
6. Space. Each facility shall be designed to occupy the least amount of space in the right-of-way that is technically feasible.
7. Wind Loads. Each facility shall be properly engineered to withstand wind loads as required by this Code or any duly adopted or incorporated code. An evaluation of high wind load capacity shall include the impact of modification of an existing facility.
8. Obstructions. Each component part of a facility shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, incommode the public's use of the right-of-way, or safety hazards to pedestrians and motorists and in compliance with Chapter 11.30 so as not to obstruct the intersection visibility triangle. No facility shall be permitted to be installed in the drip line of any tree in the right-of-way.
9. Public Facilities. A facility shall not be located within any portion of the public right-of-way interfering with access to a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure, emergency access route, or emergency escape routes, or any other public health or safety facility or route.
10. Proximity to Curb. Except for equipment and facilities, and portions thereof installed underground, no facilities and equipment approved under this Chapter shall be installed within eighteen (18) inches from the face of the curb or edge of pavement if no curb exists. If equipment and facilities are proposed for this area, such improvements must provide no less than 17 feet of clearance above any drivable road surface.
11. Landscaping. Where appropriate, each facility shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage and shrubs. Additional landscaping shall be planted, irrigated and maintained by applicant where such landscaping is deemed necessary by the City to provide screening or to conceal the facility.
12. Signage. No facility shall bear any signs or advertising devices other than certification, warning or other signage required by law or permitted by the City.

13. Beacon/Warning Lighting.

- a. No facility may be illuminated unless specifically required by the Federal Aviation Administration or other government agency. Beacon lights are not permitted unless required by the Federal Aviation Administration or other government agency.
- b. Legally required lightning arresters and beacons shall be included when calculating the height of facilities such as towers, lattice towers and monopoles.
- c. Any required lighting shall be shielded to eliminate, to the extent feasible, impacts on the surrounding neighborhood.
- d. Unless otherwise required under FAA or FCC regulations, applicants may install only timed or motion-sensitive light controllers and lights, and must install such lights so as to avoid glare and light trespass impacts to adjacent properties to the extent feasible. The City may, in its discretion, exempt an applicant from the foregoing requirement when the applicant demonstrates a substantial public safety need.
- e. The applicant shall submit a lighting study which shall be prepared by a qualified lighting professional to evaluate potential impacts to adjacent properties.

14. 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 7:00 PM and 7:00 AM.
- b. At no time shall equipment noise from any facility exceed an exterior noise level of fifty-five (55) dBA three (3) feet from the source of the noise if the facility is located in the public right-of-way adjacent to a business, commercial, manufacturing, utility or school zone; provided, however, that for any such facility located within five hundred (500) feet of any property zoned residential or improved with a residential use, such equipment noise shall not exceed forty-five (45) dBA.

15. Security. Each facility shall be designed to be resistant to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti, and other conditions that would result in hazardous situations, visual blight or attractive nuisances. The Director may require the provision of warning signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and vandalism when, because of their location and/or accessibility, a facility has the potential to become an attractive nuisance. Additionally, no lethal devices or elements shall be installed as a security device.

16. Modification. Consistent with current State and federal laws and if permissible under the same, at the time of modification of a wireless telecommunications facility, existing equipment shall, to the extent feasible, be replaced with equipment that reduces visual, noise and other impacts, including, but not limited to, undergrounding the equipment and replacing larger, more visually intrusive facilities with smaller, less visually intrusive facilities.
 17. The installation and construction approved by a wireless facility permit shall begin within one (1) year after all necessary discretionary approvals have been obtained or it will expire without further action by the City. Development, once timely commenced, shall be pursued in a diligent manner and completed in a reasonable period of time. If the project is appealed to the California Coastal Commission, this expiration period shall not begin until the appeal process is completed.
 18. The aesthetic requirements imposed under this Section and the City's "Guidelines for Site Selection and Visual Impact and Screening of Telecommunication Facilities" shall also be considered the necessary "concealment elements" as defined by federal law, as it shall further conceal the facilities to make them to be a part of the existing right-of-way infrastructure.
- B. *Conditions of Approval.* In addition to compliance with the design and development standards outlined in this Section, all facilities shall be subject to the following conditions of approval (approval may be by operation of law), as well as any modification of these conditions or additional conditions of approval deemed necessary by the approval authority:
1. The permittee shall submit as-built drawings within ninety (90) days after installation of the facility. As-builts shall be in an electronic format acceptable to the City.
 2. The permittee shall submit and maintain current at all times basic contact and site information. The permittee shall notify the City of any changes to the information submitted within thirty (30) days of any change, including change of the name or 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 facility.
 - b. The legal status of the owner of the wireless facility.
 3. The permittee shall notify the City in writing at least ninety (90) days prior to any transfer or assignment of the permit. The written notice required in this Section must include: (1) the transferee's legal name; (2) the transferee's full contact information, including a primary contact person, mailing address, telephone number and email address; and (3) a statement signed by the transferee that the transferee shall accept all permit terms and conditions. The Director may require

the transferor and/or the transferee to submit any materials or documentation necessary to determine that the proposed transfer complies with the existing permit and all its conditions of approval, if any. Such materials or documentation may include, but shall not be limited to: federal, State and/or local approvals, licenses, certificates or franchise agreements; statements; photographs; site plans and/or as-built drawings; and/or an analysis by a qualified radio frequency engineer demonstrating compliance with all applicable regulations and standards of the Federal Communications Commission. Noncompliance with the permit and all its conditions of approval, if any, or failure to submit the materials required by the Director shall be a cause for the City to revoke the applicable permits pursuant to and following the procedure set forth in Section 11.06.180.

4. At all times, all required notices and/or signs shall be posted on the site as required by the Federal Communications Commission, California Public Utilities Commission, any applicable licenses or laws, 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. The permittee shall utilize the smallest and lowest visibility signage required by government or electric utility regulations. The sign background shall be a muted color selected to minimize contrast with the support structure.
5. The permittee shall pay for and provide a performance bond or other form of security approved by the City Attorney's office, which shall be in effect until the facilities are fully and completely removed and the site reasonably returned to its original condition, to cover permittee's obligations under these conditions of approval and this Code. The security instrument coverage shall include, but not be limited to, removal of the facility. (The amount of the security instrument shall be calculated by the applicant in its ministerial permit submittal documents in an amount rationally related to the obligations covered by the bond and shall be specified in the conditions of approval.) Before issuance of any construction permit, permittee must submit said security instrument. At its option, the permittee may satisfy this requirement by submitting one performance bond for a bundle of small wireless facilities projected to be installed within the City.
6. If a nearby property owner registers a noise complaint, the City shall forward the same to the permittee to be reviewed and evaluated. The permittee shall have ten (10) business days to file a written response regarding the complaint which shall include any applicable remedial measures. If the City determines the complaint is valid and the applicant has not taken any steps to minimize the noise, the City may hire a consultant to study, examine, and evaluate the noise complaint and the permittee shall pay the fee for the consultant if the site is found in violation of this Chapter. The matter shall be reviewed by the Director. If the Director determines sound proofing or other sound attenuation measures should be required to bring the project into compliance with the Code, the Director may impose conditions on the project to achieve said objective.

7. A condition setting forth the permit expiration date in accordance with Section 11.06.160 shall be included in the conditions of approval.
8. The wireless telecommunications facility shall be subject to such conditions, changes, or limitations as are from time to time deemed necessary by the Director for the purpose of: (a) protecting the public health, safety, and welfare; (b) preventing interference with pedestrian and vehicular traffic; and/or (c) preventing damage to the public right-of-way or any adjacent property. The City may modify the permit to reflect such conditions, changes, or limitations by following the same notice and public hearing procedures as are applicable to the underlying permit for similarly located facilities, except the permittee shall be given notice by personal service or by registered or certified mail at the last address provided to the City by the permittee.
9. The permittee shall not transfer the permit to any person prior to the completion of the construction of the facility covered by the permit, unless and until the transferee of the permit has submitted the security instrument required by Section 11.06.080(B)(5).
10. The permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement or property without the prior 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 wireless telecommunications facility unless the City 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 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 the applicant's facilities.
11. The permittee shall assume full liability for damage or injury caused or alleged to have been caused to any property or person by the operation of the facility, or the City's approval of a permit under this Chapter.
12. 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, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems, or sewer systems and sewer lines that result from any activities performed in connection with the installation and/or maintenance of a wireless facility, and/or any related infrastructure, 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. Such time period for correction shall be based on the facts

and circumstances, danger to the community, and severity of the disrepair. Should the permittee not make said correction within the time period allotted, the City Engineer shall cause such repair to be completed at permittee's sole cost and expense.

13. Insurance. The permittee shall obtain, pay for, and maintain, in full force and effect until the facility approved by the permit is removed in its entirety from the public right-of-way, an insurance policy or policies of public liability insurance, with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence and Four Million Dollars (\$4,000,000) in the aggregate, that fully protects the City from claims and suits for bodily injury and property damage. The insurance must name the City and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers as additional named insureds, be issued by an insurer admitted in the State of California with a rating of at least a A:VII in the latest edition of A.M. Best's Insurance Guide, and include an endorsement providing that the policies cannot be canceled or reduced except with thirty (30) days prior written notice to the City, except for cancellation due to nonpayment of premium. The insurance provided by permittee shall be primary to any coverage available to the City, and any insurance or self-insurance maintained by the City and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers shall be excess of permittee's insurance and shall not contribute with it. The policies of insurance required by this permit shall include provisions for waiver of subrogation. In accepting the benefits of this permit, permittee hereby waives all rights of subrogation against the City and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers. The insurance must afford coverage for the permittee's and the wireless provider's use, operation and activity, vehicles, equipment, facility, representatives, agents, and employees, as determined by the City's Risk Manager. Before issuance of any building or encroachment permit for the facility, the permittee shall furnish the City Risk Manager certificates of insurance and endorsements, in the form satisfactory to the City Attorney or the Risk Manager, evidencing the coverage required by the City.
14. The permittee shall defend, hold harmless, and indemnify, at his/her/its expense, the City, the City Council and other City bodies and members thereof, officials, officers, employees, agents, and representatives (collectively, the City) from and against any and all third-party claims, actions, or proceedings to attack, set aside, void, or annul the approval of this permit, or any associated determination made pursuant to the California Environmental Quality Act. This obligation shall encompass all costs and expenses incurred by the City in defending against any claim, action, or proceeding, as well as costs, expenses, or damages the City may pay as a result of such claim, action, or proceeding. In the event an action or proceeding is filed in court against the City, the permit, or any associated determination, the permittee shall promptly be required to file a formal indemnification agreement with the City, which shall include, among other things, that the City will be defended by the counsel of its choice, and that the permittee

shall deposit with the City sufficient funding, and thereafter replenish the funding, to ensure that the City's defense is fully funded, by the permittee. The deposit amount and replenishment schedule shall be established by the City.

15. The permittee, and every permittee and person in a shared permit, jointly and severally, shall defend, indemnify, protect, and hold the City and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers harmless from and against all claims, suits, demands, actions, losses, liabilities, judgments, settlements, costs (including, but not limited to, attorney's fees, interest, and expert witness fees), or damages claimed by third parties against the City for any injury claim, and for property damage sustained by any person, arising out of, resulting from, or are in any way related to or alleged to be related to the wireless telecommunications facility, or to any work done by or use of the public right-of-way by the permittee, owner, or operator of the wireless telecommunications facility, or their agents, excepting only liability arising out of the sole negligence or willful misconduct of the City and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers.
16. Should the facility require electrical service but not require the use of an above-ground meter cabinet, the permittee shall at its sole cost and expense remove the meter cabinet and any related foundation within ninety (90) days of such service being offered and reasonably restore the area to its prior condition. An extension may be granted if circumstances arise outside of the control of the permittee.
17. Relocation. The permittee shall modify, remove, or relocate its facility, or portion thereof, without cost or expense to the City, if and when made necessary by (i) any public improvement project, including, but not limited to, the construction, maintenance, or operation of any underground or above-ground facilities including but not limited to street lights, sewers, storm drains, conduits, gas, water, electric or other utility systems, or pipes owned by the City or any other public agency; (ii) any abandonment of any street, sidewalk or other public facility; (iii) any change of grade, alignment or width of any street, sidewalk, or other public facility; (iv) a determination by the director that the wireless telecommunications facility has become incompatible with public health, safety or welfare or the public's use of the public right-of-way; or (v) any modifications, changes, or improvements to the streetlights themselves. Such modification, removal, or relocation of the facility shall be completed within ninety (90) days of notification by the City unless exigencies dictate a shorter period for removal or relocation, or as may be reasonably extended provided that the permittee is diligently working to complete the modification, removal, or relocation. Modification or relocation of the facility shall require submittal, review and approval of a modified permit pursuant to the Code including applicable notice and hearing procedures. 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 the Code allow. In the event the 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. Further, due to exigent circumstances including those of immediate or imminent threat to the public's health and safety, the City may modify, remove, or relocate wireless telecommunications facilities without prior notice to permittee provided permittee is notified within a reasonable period thereafter.

18. No additions or enlargements to the use of structures for which this Wireless Facility Permit has been granted shall be allowed except pursuant to subsequent entitlement as might otherwise be required or granted pursuant to the terms of the Laguna Beach Municipal Code.
19. All development must occur in compliance with the approved plans and elevations. Any deviation from these plans must be reviewed by the Director of Community Development and may require Planning Commission review and approval.
20. The approved facilities shall be designed and operated in a manner that complies with all of the most current Federal Communications Commission (FCC) permits, requirements and conditions to prevent neighborhood electrical interference.
21. The telecommunication facility's operator shall notify the City three (3) months after the construction completion and operation start-up of the approved telecommunication facilities. The City will then retain a qualified independent consultant to measure the maximum radio frequency (RF) radiation at the site and prepare a written report documenting the results of the independent test. The cost of obtaining these measurements and preparing the report shall be fully paid for by the telecommunication facility's operator. The measurements shall be made utilizing the most current testing protocol established by the Federal Communications Commission (FCC). The maximum RF radiation shall not exceed the most current FCC safety standards. This condition is not applicable to amateur ham radio antenna(s) or transmitting antenna(s) with an effective radiated power (ERP) of five (5) watts or less per channel.
22. In order to guarantee long-term compliance with conditions of approval that power levels remain as specified, and that the equipment is operating as designed, the operator of the approved transmitting antenna shall submit an affidavit indicating that the telecommunication facility is operating as approved, and that the facility complies with the most current FCC safety standards. The affidavit shall be submitted on a yearly basis prior to the anniversary date of the facility approval for as long as the facility remains in operation and shall incorporate a separate affidavit of a qualified, independent testing service/consultant demonstrating and verifying compliance with the most current FCC safety standards and approved power levels. In addition, the City may conduct further independent tests, which must be paid for by the facility's operator to verify compliance with the most current FCC safety standards.
23. The maximum RF radiation shall not exceed the most current FCC safety standards.

24. Because the frequencies used by the proposed cellular facilities are close to the frequencies used by the City of Laguna Beach for public safety, extraordinary “comprehensive advanced planning and frequency coordination” engineering measures to prevent interference shall be utilized, especially in the choice of frequencies and radio ancillary hardware. This is encouraged in the “Best Practices Guide” established by the Association of Public-Safety Communications Officials-International, Inc. (APCO), and as endorsed by the Federal Communications Commission (FCC). Prior to the issuance of any building permits to install the wireless communications facility, the permittee shall meet in good faith to coordinate the use of frequencies and equipment with the Communications Division of the Orange County Sheriff-Coroner Department to minimize, to the greatest extent possible, any interference with the Public Safety 800 MHz Countywide Coordinated Communications System (CCCS). Similar consideration shall be given to any other existing or proposed wireless communications facility that may be located on the subject property.
25. At all times the permittee shall not prevent the City of Laguna Beach from having adequate spectrum capacity on the City’s 800 MHz radio frequency.
26. Before activating the permitted wireless communications facility, the permittee shall submit to a post-installation test to confirm that “advanced planning and frequency coordination” of the facility was successful in not interfering with the City of Laguna Beach Public Safety radio equipment. The Communications Division of the Orange County Sheriff-Coroner Department or a Division-approved contractor at the expense of the permittee will conduct this test. This post-installation testing process shall be repeated at the expense of the permittee for every proposed frequency addition and/or change to confirm the intent of the “frequency planning” process has been met.
27. The permittee shall cease operation of any facility causing interference with City facilities immediately upon notification from the City or Orange County to cease operations until the interference is eliminated. Failure to cease such operation shall result in the immediate automatic revocation of this permit.
28. The permittee and the City shall enter into a Memorandum of Understanding for the purposes of relocating the facility onto a City-owned decorative light pole, once such a standard is developed and deployed in the vicinity of the facility location. The location and attachment height of the replacement pole shall permit the permittee to continue to meet its coverage objective for the area. The permittee shall agree to relocate the facility within 180 days of the City’s written notice to the permittee.
29. An informational sign shall be posted at eye level and oriented toward nearby pedestrian traffic. This sign shall inform the general public that the structure supports wireless telecommunications equipment, identify the wireless service provider by its trade name, and provide a contact phone number for a representative

of the telecommunications service provider. The sign copy, design, and placement shall be subject to City approval.

11.06.090 Planning Commission Wireless Facility Permit Findings.

No Planning Commission Wireless Facility Permit shall be granted for a wireless facility unless all of the following findings are made by the Planning Commission, in addition to any findings required by Chapter 25.07 (Coastal Development Permits):

- A. All notices required for the proposed installation have been given.
- B. The proposed facility has been designed and located in compliance with all applicable provisions of this Chapter and the City's Guidelines for Site Selection and Visual Impact and Screening of Telecommunication Facilities.
- C. If applicable, the applicant has demonstrated its inability to locate on existing or replacement infrastructure.
- D. The applicant has provided sufficient evidence supporting the applicant's claim that it has the right to enter the public right-of-way pursuant to State or federal law, or the applicant has entered into a franchise agreement with the City permitting them to use the public right-of-way.
- E. The applicant has demonstrated the proposed installation is designed such that the proposed installation represents the least intrusive means possible as supported by factual evidence and a meaningful comparative analysis to show that all preferred alternative locations and designs identified in the application review process were technically infeasible or not available.

11.06.100 [Section Reserved]

11.06.110 Nonexclusive grant.

No permit or approval granted under this chapter shall confer any exclusive right, privilege, license, or franchise to occupy or use the public right-of-way of the City for any purpose whatsoever. Further, no approval shall be construed as any warranty of title.

11.06.120 Emergency Deployment.

A COW shall be permitted for the duration of an emergency declared by the City or at the discretion of the Director.

11.06.130 Operation and Maintenance Standards.

All wireless telecommunications facilities must comply at all times with the following operation and maintenance standards.

- A. Unless otherwise provided herein, all necessary repairs and restoration shall be completed by the permittee, owner, operator, or any designated maintenance agent within forty-eight (48) hours – or such longer period as may reasonably be required provided that the permittee is diligently working to repair and restore the same – of the sooner between:
1. After discovery of the need by the permittee, owner, operator, or any designated maintenance agent; or
 2. After permittee, owner, operator, or any designated maintenance agent receives notification from the City.
- B. Each permittee of a wireless telecommunications facility shall provide the Director with the name, address, and 24-hour local or toll free contact phone number of the permittee, the owner, the operator, and the agent responsible for the maintenance of the facility. Contact information shall be updated within seven (7) days of any change.
- C. All facilities, including, but not limited to, telecommunication towers, poles, accessory equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the facility site shall be maintained in good condition, including ensuring the facilities are reasonably free of:
1. General dirt and grease;
 2. Chipped, faded, peeling, and cracked paint;
 3. Rust and corrosion;
 4. Cracks, dents, and discoloration;
 5. Missing, discolored or damaged artificial foliage or other camouflage;
 6. Graffiti, bills, stickers, advertisements, litter, and debris;
 7. Broken and misshapen structural parts; and
 8. Any damage from any cause.
- D. All trees, foliage or other landscaping elements approved as part of the facility shall be maintained in good condition at all times, and the permittee, owner, and operator of the facility shall be responsible for replacing any damaged, dead, or decayed landscaping. No amendment to any approved landscaping plan may be made until it is submitted to and approved by the Director.
- E. The permittee shall replace its facilities, after obtaining all required permits, if maintenance or repair is not sufficient to return the facility to the condition it was in at the time of installation.

- F. Each facility shall be operated and maintained to comply with all conditions of approval. Each owner or operator of a facility shall routinely inspect each site to ensure compliance with the same and the standards set forth in this Chapter.

11.06.140 RF Emissions and Other Monitoring Requirements.

The owner and operator of a facility shall submit within ninety (90) days of beginning operations under a new or amended permit, and every one year from the date the facility began operations, a technically sufficient report ("monitoring report") prepared under penalty of perjury with the information below. The annual report provided by the owner and operator of the facility shall submit one, collated monitoring report for each of their facilities operating within the City at the time the report is prepared. This annual report shall be submitted to the Administrative Services Department no later than January 1st when the annual lease payment is due.

- A. The facility is in compliance with applicable federal regulations, including Federal Communications Commission RF emissions standards, as certified by a qualified radio frequency emissions engineer;
- B. The facility is in compliance with all provisions of this Chapter and its conditions of approval.

11.06.150 No Dangerous Condition or Obstructions Allowed

No person shall install, use or maintain any facility which in whole or in part rests upon, in, or over any public right-of-way, when such installation, use, or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes, or other governmental use, or when such facility unreasonably interferes with or unreasonably impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location.

11.06.160 Permit Expiration.

- A. Unless Government Code Section 65964, as may be amended, authorizes the City to issue an entitlement with a shorter term, a discretionary permit for any wireless telecommunications facility shall be valid for a period of ten (10) years from the date of Director, Planning Commission, or City Council approval. At the end of the term, the Director may extend the entitlement for an additional ten (10) year term. The Director's determination will become effective fourteen (14) calendar days from the date of the decision unless a member of the City Council initiates proceedings to review the decision. A permit that has been renewed once may not be renewed a second time. Instead, the Permittee may file a new entitlement application for the permitted facility at the same location. Notwithstanding any other applicable law, if the Permittee submits an entitlement application no later than six (6) months prior to the expiration date of a previously issued permit, the Director shall not require the applicant to remove the

permitted wireless facility unless and until there is a final determination denying the application.

- B. A permittee may apply for a new permit no sooner than one hundred and eighty (180) days prior to expiration. Said application and proposal shall comply with the City's current Code requirements for wireless facilities, as it may exist at that time.

11.06.170 Cessation of Use or Abandonment

- A. Determination. A wireless telecommunications facility is considered abandoned and shall be promptly removed as provided herein if it ceases to provide wireless telecommunications services for ninety (90) or more consecutive days unless the permittee has obtained prior written approval from the Director which shall not be unreasonably denied. If there are two (2) or more users of a single facility, then this provision shall not become effective until all users cease using the facility.
- B. Notification. The operator of a facility shall notify the City in writing of its intent to abandon or cease use of a permitted site or a nonconforming site (including unpermitted sites) within ten (10) days of ceasing or abandoning use. Notwithstanding any other provision herein, the operator of the facility shall provide written notice to the Director of any discontinuation of operations of thirty (30) days or more.
- C. Violation. Failure to inform the Director of cessation or discontinuation of operations of any existing facility as required by this Section shall constitute a violation of any approvals and be grounds for:
 - 1. Litigation;
 - 2. Revocation or modification of the permit;
 - 3. Acting on any bond or other assurance required by this article or conditions of approval of the permit;
 - 4. Removal of the facilities by the City in accordance with the procedures established under this Code for abatement of a public nuisance at the owner's expense; and/or
 - 5. Any other remedies permitted under this Code.

11.06.180 Removal and Restoration – Permit Expiration, Revocation or Abandonment

- A. Upon the expiration date of the permit, including any extensions, earlier termination or revocation of the permit, or abandonment of the facility, the permittee, owner, or operator shall remove its wireless telecommunications facility and restore the site to its natural condition except for retaining the landscaping improvements and any other improvements at the discretion of the City. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the City. The facility shall be removed from the property at no cost or expense to the City.

- B. Failure of the permittee, owner or operator to promptly remove its facility and restore the property within ninety (90) days after expiration, earlier termination or revocation of the permit, or abandonment of the facility, shall be a violation of this Code. Upon a showing of good cause, an extension may be granted by the Director where circumstances are beyond the control of the permittee after expiration. Further failure to abide by the timeline provided in this Section shall be grounds for:
1. Litigation/prosecution;
 2. Acting on any security instrument required by this chapter or the conditions of approval of the permit;
 3. Removal of the facilities by the City in accordance with the procedures established under this Code for abatement of a public nuisance at the owner's expense; and/or
 4. Any other remedies permitted under this Code.
- C. *Summary Removal.* In the event the Director or City Engineer determines that the condition or placement of a wireless telecommunications facility located in the public right-of-way constitutes a dangerous condition, obstruction of the public right-of-way, or an imminent threat to public safety, or determines other exigent circumstances require immediate corrective action (collectively, "exigent circumstances"), the Director or City Engineer may cause the facility to be removed summarily and immediately without advance notice or a hearing. Written notice of the removal shall include the basis for the removal and shall be served upon the permittee and person who owns the facility within five (5) business days of removal and all property removed shall be preserved for the owner's pick-up as feasible. If the owner cannot be identified following reasonable effort or if the owner fails to pick up the property within sixty (60) days, the facility shall be treated as abandoned property.
- D. *Removal of Facilities by City.* In the event the City removes a facility in accordance with nuisance abatement procedures or summary removal, any such removal shall be without any liability to the City for any damage to such facility that may result from reasonable efforts of removal. In addition to the procedures for recovering costs of nuisance abatement, the City may collect such costs from the performance bond posted and to the extent such costs exceed the amount of the performance bond, collect those excess costs in accordance with this Code. Unless otherwise provided herein, the City has no obligation to store such facility. Neither the permittee, owner, nor operator shall have any claim if the City destroys any such facility not timely removed by the permittee, owner, or operator after notice, or removed by the City due to exigent circumstances.

11.06.200 Location Restrictions – Director Review Authority.

Locations Requiring an Exception. Wireless telecommunications facilities are strongly disfavored in certain areas. All locations can be reviewed by the Director with the exception of the following:

- A. Within 100 feet of a residential building within a residential zone. Residential zone shall mean and refer to R-1, R-2, R-3, R/HP, LAG, VC, TAB, DCSP, and any other zone primarily intended to accommodate residential development at any density.
- B. Public right-of-way if mounted to a new pole that is not replacing an existing pole in an otherwise permitted location.
- C. Within 100 feet of a school property.
- D. Within 100 feet of a public park.
- E. Within 100 feet of a medical facility.

11.06.210 Effect on Other Ordinances.

Compliance with the provisions of this Chapter shall not relieve a person from complying with any other applicable provision of this Code. In the event of a conflict between any provision of this division and other sections of this Code, this Chapter shall control.

11.06.220 State or Federal Law.

- A. In the event it is determined by the decision-maker that State or federal law prohibits discretionary permitting requirements for certain wireless telecommunications facilities, such requirement shall be deemed severable and all remaining regulations shall remain in full force and effect. Such a determination by the City Attorney shall be in writing with citations to legal authority and shall be a public record. For those facilities, in lieu of a Wireless Facility Permit, a ministerial permit shall be required prior to installation or modification of a wireless telecommunications facility, and all provisions of this Division shall be applicable to any such facility with the exception that the required permit shall be reviewed and administered as a ministerial permit by the Director rather than as a discretionary permit. Any conditions of approval set forth in this provision or deemed necessary by the Director shall be imposed and administered as reasonable time, place, and manner rules.
- B. If subsequent to the issuance of the City Attorney's written determination pursuant to (A) above, the City Attorney determines that the law has changed and that discretionary permitting is permissible, the City Attorney shall issue such determination in writing with citations to legal authority and all discretionary permitting requirements shall be reinstated. The City Attorney's written determination shall be a public record.
- C. All installations permitted pursuant to this Chapter shall comply with all federal and State laws including but not limited to the Americans with Disabilities Act.

11.06.230 Nonconforming Wireless Telecommunications Facilities in the Right-of-Way

- A. Nonconforming wireless telecommunications facilities are those facilities that do not conform to this Chapter.

- B. Nonconforming wireless telecommunications facilities shall, within ten (10) years from the date such facility becomes nonconforming, be brought into conformity with all requirements of this article; provided, however, that should the owner desire to expand or modify the facility, intensify the use, or make some other change in a conditional use, the owner shall comply with all applicable provisions of this Code at such time, to the extent the City can require such compliance under federal and State law.
- C. An aggrieved person may file an appeal to the City Council of any decision of the Director made pursuant to this Section. In the event of an appeal alleging that the ten (10) year amortization period is not reasonable as applied to a particular property, the City Council may consider the amount of investment or original cost, present actual or depreciated value, dates of construction, amortization for tax purposes, salvage value, remaining useful life, the length and remaining term of the lease under which it is maintained (if any), and the harm to the public if the structure remains standing beyond the prescribed amortization period, and set an amortization period accordingly for the specific property.

SECTION 4. Section 25.07.008 (pertaining to Coastal Development Permit exemptions) of the Laguna Beach Municipal Code is hereby modified and amended to insert subsection (A)(7) so as to read as follows:

- (A) Certain types of development, described as follows, are considered to be without risk of adverse environmental effect on coastal resources, including public access, and therefore do not require a coastal development permit unless indicated otherwise.
- (7) The placement and operation of any wireless telecommunications facility within the public right-of-way is exempt, provided that the facility is mounted to an existing structure or a replacement structure sited within three feet of the existing location, and provided further that the City may require reasonable conditions to mitigate any impacts on coastal resources, including scenic resources.

SECTION 5. Chapter 25.55 (Wireless Communications Facilities) of the Laguna Beach Municipal Code is hereby amended to read in its entirety as follows:

25.55.002 Intent and purpose.

The following regulations shall apply throughout the city. These regulations are intended to establish comprehensive guidelines for the permitting, placement, design and maintenance of wireless communications facilities in all areas within the city, excluding the public rights-of-way. These regulations are intended to prescribe clear, reasonable and predictable criteria to assess and process applications in a consistent and expeditious manner, while reducing impacts associated with wireless communications facilities. These regulations are intended to protect the health, safety and welfare of persons living and working in the city, preserve the aesthetic values and scenic qualities of the city, and allow for the orderly and efficient deployment of wireless communications facilities in accordance with state and federal laws. (Ord. 1627 § 1, 2017; Ord. 1579 § 1, 2013; Ord. 1386 § 1, 2001; Ord. 1320 § 1, 1996).

25.55.004 Definitions.

“Agent” means a person entity in matters pertaining to the processing of a wireless communications facility as outlined in this Chapter.

“Amateur (ham) radio antenna” means an antenna constructed and operated for transmitting and receiving radio signals for noncommercial purposes, usually in relation to a person’s hobby.

“Antenna” means any system of wires, poles, rods, reflecting discs, panels, microwave dishes, whip antennas or similar devices used for the transmission or reception of electromagnetic waves, including antennas relating to personal wireless services as defined by the Federal Telecommunications Act of 1996, when such system is either external to or attached to the exterior of a structure (building-mounted or roof-mounted), or ground-mounted. Antennas shall include devices having active elements extending in any direction, and directional beam-type arrays mounted upon and rotated through a vertical mast or tower interconnecting the beam and antenna support, all of which elements are deemed to be a part of the antenna.

“Antenna support” means any pole, telescoping mast, tower, tripod or any other structure that supports an Antenna.

“Array” means a group of antennas located on the same structure.

“Base level radio frequency (RF) radiation” means the existing background power density radiation from a proposed telecommunication transmitting antenna site including all existing telecommunication transmitting in operation.

“Cable” means any wire typically consisting of copper, coax or fiber used for utility service purposes.

“Cellular” refers to wireless telephone communication transmitted by electromagnetic waves.

“Co-location” refers to multiple wireless communications devices sharing the same site and as more specifically defined in 47 CFR § 1.40001(b)(7) for purposes of implementing Section 6409 of the Spectrum Act.

“Directional antenna” typically means a panel antenna used to achieve transmission or reception in a specified direction.

“Effective radiated power (ERP)” means the operative amount of power leaving the transmitting antenna. The ERP is determined by multiple factors, including, but not limited to, transmitter output power, coaxial line loss between the transmitter and the antenna, and the “gain” (focusing effect) of the antenna.

“Federal Communications Commission (FCC)” means the independent U.S. governmental agency charged with regulating interstate and international communications by radio, television, wire, satellite and cable.

“Hazardous material” means any gas, material, substance or waste which, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local government to pose a present or potential hazard to human health, safety, property or to the environment.

“Height” means the vertical distance from any point at the top of an antenna and/or ancillary wireless communication structure to the finished or natural surface, whichever is more restrictive or lower, measured directly adjacent to the existing building or new structure.

“Maximum radio frequency (RF) radiation” means the base level radio frequency (RF) radiation and the power density radiation from the proposed telecommunication transmitting antennas at a particular site where all the antennas’ channels are simultaneously operating or projected to operate at their maximum design effective radiated power (ERP).

“Monopole tower” means an antenna support structure typically made of steel, wood or concrete.

“Monorock” means a wireless communications facility camouflaged to resemble one or a grouping of rocks.

“Monoshrub/monotree” means a wireless communications facility camouflaged to resemble one or a grouping of shrubs, bushes or trees.

“Omnidirectional antenna” means an antenna used to achieve transmission or reception in all directions.

“Parabolic antenna” means a specialized antenna that has a curved surface which transmits or receives signals in the microwave area of the radio frequency spectrum, used to link different types of wireless facilities.

“Permittee” means any person, persons or entity, including the city, who owns any wireless communication facility or facilities, ~~including, but not limited to, those that are or are proposed to be installed or maintained in the public right-of-way, or propose to conduct an excavation in, along or under the surface or subsurface of the public right-of-way.~~

“Power density radiation” means the magnitude of the flow of electromagnetic energy at a point in space, measured in power, usually milliwatts (10⁻³ watts) or microwatts (10⁻⁶ watts), per unit area, usually centimeters squared.

“Preferred location” means sites with no or minimal impacts to sensitive habitat, public views, and public access and recreation; commercial and industrial zones locations are preferred over locations in other zones except when such location would result in greater impacts.

“Public right-of-way” means any public highway, street, alley, sidewalk, parkway which is either owned, operated or controlled by the city, county or state or is subject to an easement or dedication to the city, county or state or is a privately owned area within the city’s, county’s or state’s jurisdiction which is not yet, but is designated as a proposed public right-of-way on a tentative subdivision map approved by the city.

“Radio frequency (RF) radiation” consists of electromagnetic waves moving together through space radiating from a transmitting device to a receiving device to achieve wireless communications typically operating in a frequency range of three kilohertz to three hundred gigahertz.

“Safety standards” means the most current adopted rules for human exposure limits for radio frequency (RF) radiation adopted by the Federal Communications Commission (FCC).

“Satellite antenna” means a parabolic antenna used to receive and/or transmit radio or television signals from orbiting communications satellites.

“Substantial change in physical dimensions” as that term is defined in 47 CFR § 1.40001(b)(7) for purposes of implementing Section 6409 of the Spectrum Act.

“Testing protocol” means the most current method of radio frequency (RF) radiation measurement adopted by the Federal Communications Commission (FCC).

“Wireless communications facility” means any facility that transmits and/or receives electromagnetic waves, including, but not limited to, commercial wireless communications antennas and other types of equipment for the transmission or receipt of such signals, communication towers or similar structures supporting said equipment, equipment cabinets, pedestals, meters, tunnels, vaults, splice boxes, surface location markers, equipment, equipment buildings, parking areas and other accessory developments. (Ord. 1627 § 1, 2017; Ord. 1579 § 1, 2013; Ord. 1386 § 1, 2001; Ord. 1320 § 1, 1996).

25.55.006 Permits required.

In addition to the permit requirements described below, the permit requirements of Chapter 25.07 Coastal Development Permits remain applicable except when inconsistent with federal law.

(A) Wireless Communications Facilities Subject to Design Review. All wireless communications facilities, unless specifically exempted, are subject to design review, as provided for in Section 25.05.040. Wireless communications facilities shall comply with the review criteria/standard conditions of Section 25.55.008.

The following wireless communications facilities are exempt from design review requirements:

- (1) A receiving satellite antenna that is one meter (39.37 inches) or less in diameter;
- (2) A receiving satellite antenna that is two meters (78.74 inches) or less in diameter and is located in any commercial or industrial land use zoning district;
- (3) An antenna and all supporting equipment constructed in an existing structure, if the installation is located entirely within the structure’s physical limits or “envelope” and the structure’s exterior appears to remain unchanged, or if the installation is located below and within the upper limits of an existing roof parapet;

- (4) Eligible facilities requests that do not result in a substantial change in physical dimensions to a wireless communications facility as specified in 47 U.S.C. 1455(a), 47 C.F.R. 1.40001, or any other subsequent applicable federal law; ~~and~~
- (5) Any wireless communications facilities exempted from design review by federal or state law; and-
- ~~(6) Any wireless communications facilities located within the public right-of-way, which shall instead be subject to the provisions of Chapter 11.06.~~

(B) Wireless Communications Facilities Subject to a Conditional Use Permit. Unless specifically exempted, all wireless communications facilities are subject to the granting of a conditional use permit as provided for in Section 25.05.030. Wireless communications facilities shall comply with the review criteria/standard conditions of Section 25.55.008. The following wireless communications facilities are exempt from conditional use permit requirements:

- (1) A receiving satellite antenna that is one meter (39.37 inches) or less in diameter;
- (2) A receiving satellite antenna that is two meters (78.74 inches) or less in diameter and is located in any commercial or industrial land use zoning district;
- (3) An antenna and all supporting equipment constructed in an existing structure, if the installation is located entirely within the structure's physical limits or "envelope" and the structure's exterior appears to remain unchanged, or if the installation is located below and within the upper limits of an existing roof parapet;
- (4) Eligible facilities requests that do not result in a substantial change in physical dimensions to a wireless communications facility as specified in 47 U.S.C. 1455(a), 47 C.F.R. 1.40001, or any other subsequent applicable federal law; ~~and~~
- (5) Any wireless communications facilities exempted from conditional use permit review by federal or state law; and
- ~~(6) Any wireless communications facilities located within the public right-of-way, which shall instead be subject to the provisions of Chapter 11.06.~~

(C) Wireless Communications Facilities Subject To Administrative Use Permit. Unless specifically exempted by federal or state law, all eligible facilities requests that do not result in a substantial change in physical dimensions of a wireless communications facility as specified in 47 U.S.C. 1455(a), 47 C.F.R. 1.40001, or any other subsequent applicable federal law, are subject to the granting of an administrative use permit provided for in Section 25.55.007, unless the facility is located within the public right-of-way, in which case the provisions of Chapter 11.06 shall apply.

(D) Submittal Requirements. In addition to the standard submittal requirements, all applications for design review, and/or conditional use permits pursuant to this Chapter 25.55, except in relation to amateur ham radio antenna(s), shall include the following information:

- (1) An accurate map, in such physical or electronic format as may be directed by the director of community development or designee, indicating the proposed site and detailing existing wireless communications facility locations owned and operated by the applicant within the city on the date of application submittal;
- (2) An engineering certification demonstrating planned compliance with all existing federal radio frequency emissions standards, and indicating: (i) existing base level radio frequency radiation, (ii) the maximum radio frequency radiation, (iii) the effective radiated power per channel, and (iv) the total number of channels for an omnidirectional antenna or the maximum number of channels in any sector for a sectorized antenna at the proposed site;
- (3) An engineering analysis providing technical data sufficient to justify the proposed height of the wireless communications facility;
- (4) An alternative configuration analysis, assessing the feasibility of alternative wireless communications facility construction configurations, both at the proposed site and in the surrounding vicinity, which would result in a more visually compatible antenna(s), as deemed necessary by the director of community development. This analysis shall include an explanation of why other wireless communications facility construction configurations were not selected;
- (5) A projection of the applicant's anticipated future wireless communications facility siting needs within the city, which information may be used by the city as part of a master planning effort designed to ensure a planned, integrated and organized approach to wireless communications facility siting;
- (6) An identification of the geographic service area for the subject installation, including a map showing all of the applicant's existing sites in the local service network associated with the coverage gap the wireless communications facility is meant to close, and describing how the coverage gap will be filled by the proposed installation;
- (7) An accurate visual impact analysis showing the maximum silhouette, viewshed analysis, color and finish palette and proposed screening for the wireless communications facility. The analysis shall include photo simulations and other information as necessary to determine visual impact of the wireless communications facility. A map depicting where the photos were taken shall be included. The analysis shall include a written description of efforts to blend the wireless communications facility with the surrounding area;
- (8) The height and mass of the facility, together with evidence that demonstrates that the proposed wireless communications facility has been designed to the minimum height and mass required from a technological standpoint for the proposed site;
- (9) A description of the maintenance and monitoring program for the wireless communications facility and associated landscaping;

- (10) Noise and acoustical information derived from the manufacturer's specifications for all equipment such as air conditioning units and back-up generators, and a depiction of the equipment location in relation to adjoining properties;
- (11) A concept landscape plan showing all proposed landscaping, concealment, screening and proposed irrigation with a discussion of how the chosen material at maturity will screen the site;
- (12) A written description of any good faith efforts to co-locate the proposed wireless communications facility on another site or building, including a map of the sites and engineering information or letters from the owners of the site describing why co-location is not a possibility;
- (13) A written description of all accessory wireless equipment for the wireless communications facility, including an explanation of the function of this ancillary equipment and the need to locate same on or near the wireless communications facility;
- (14) All other information as required by the city's wireless communications facility supplemental application form, which may be modified from time to time in the discretion of the director of the community development; and
- (15) All telecommunications sites subject to this ordinance that will utilize an emergency backup generator must adhere to all South Coast Air Quality Management District rules governing the operation of that equipment, including Rule 1470.

(E) Noticing Requirements. Public notice for telecommunication facility projects subject to design review or conditional use permit application processing shall comply with the noticing provisions of Section 25.05.065.

(F) Expert Review. In the event that the city, at the discretion of the director of community development or designee, determines the need to hire a qualified consultant to evaluate technical and other aspects of the application, the applicant shall provide the city a deposit for the estimated cost of such consultation, and to replenish said deposit if consumed by reasonable costs associated with such consultation, except to the extent as preempted by federal law. Such consultation is intended to be a site-specific review of technical aspects of the proposed wireless communications facility and shall address all of the following:

- (1) Compliance with applicable radio frequency emission standards;
- (2) Height analysis;
- (3) Configuration;
- (4) The appropriateness of granting any requested exceptions;
- (5) The accuracy and completeness of submissions;

- (6) The applicability of analysis techniques and methodologies;
- (7) The validity of conclusions reached; and
- (8) Any specific technical issues designated by the city.

(G) Development Standards. The following development standards shall apply to all design review, and conditional use permit applications for the installation of wireless communications facilities:

- (1) Permittee shall install and maintain permitted wireless communications facilities in compliance with the requirements of the Uniform Building Code, National Electrical Code, city noise standards and other applicable codes, as well as other restrictions specified in this Chapter and/or in a design review approval, or conditional use permit;
- (2) Visual Impact and Screening Standards. All wireless communications facilities shall employ and maintain camouflage design and appropriate screening to minimize visual impacts. Such techniques shall be employed to make the installation, operation and appearance of the facility as visually inconspicuous as possible, to prevent the facility from visually dominating the surrounding area, and to hide the installation from predominant views from surrounding properties. Depending on the proposed site and surroundings, certain camouflage design techniques may be deemed by the city as ineffective or inappropriate and alternative techniques may be required. The following is a menu of potential camouflage design techniques that should be considered based on different installation situations:

(a) For Structure-Mounted Installations (Excluding Monopole Installations).

- (i) All antenna panels and accessory wireless equipment components mounted on the exterior of the structure shall be painted or otherwise coated to match the predominant color of the mounting structure; and
- (ii) When required by the director of community development or designee, antenna panels shall be located and arranged on the structure so as to replicate the installation and appearance of the equipment already mounted to the structure; and

~~(iii) — Wireless communications facility installations located above the surface grade in the public right-of-way including, but not limited to, those on certain streetlights or traffic signal standards, shall consist of components that are compatible in scale and proportion to the streetlights and traffic signals they are mounted on. Equipment shall be painted or otherwise coated to be visually compatible with lighting and signal equipment. Underground vaults shall employ flush-to-grade access portals and vents.~~

(b) For Monopole Tower Installations.

- (i) Monopole installations shall be situated so as to utilize existing natural or man-made features including topography, vegetation, buildings or other structures to provide the greatest amount of visual screening;
 - (ii) All antenna components and accessory wireless equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background and/or adjacent architecture so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used;
 - (iii) In those circumstances where an installation is within or easily visible from a zone that is not a preferred location, the director of community development or designee may require additional measures designed to camouflage a wireless communications facility, including, but not limited to, enclosing the monopole entirely within a vertical screening structure (suitable architectural feature such as a clock tower, bell tower, icon sign, lighthouse, windmill, etc.) may be required through the permit process. All facility components, including the antennas, shall be mounted inside said structure; and
 - (iv) The camouflage design techniques employed shall result in an installation that either will blend in with the predominant visual backdrop or will disguise the facility so it appears to be a decorative or attractive architectural feature.
- (c) For Miscellaneous Installations: Although generally not appropriate, a monorock and or monoshrub/monotree installation will be considered properly screened provided that it is located in a setting that is compatible with the proposed screening method. For a monoshrub/monotree, other vegetation comparable to that replicated in the proposed screen shall be prevalent in the immediate vicinity of the wireless communications facility site and the addition of new comparable living vegetation may be necessary to enhance the monoshrub/monotree screen. For a monorock, the proposed screen shall match in scale and color other rock outcroppings in the general vicinity of the proposed site. A monorock screen may not be considered appropriate in areas that do not have natural rock outcroppings.
- (d) For Co-Locations. Co-locations shall use screening methods similar to those used on the existing wireless communications facilities, or such other and additional screening methods as may be required by the director of community development or designee.
- (e) For Accessory Wireless Equipment. No accessory wireless equipment associated with the operation of any wireless communications facilities shall impair pedestrian use of sidewalks or other pedestrian pathways, nor inhibit equestrian activities on designated public or private trail systems. Accessory

wireless equipment shall be screened from the sidewalk by landscaping, undergrounding or other means. The following is a menu of potential screening techniques that should be utilized based on the type of installation:

- (i) Accessory wireless equipment for freestanding wireless communications facilities, not mounted on a building, shall be placed in an underground vault if reasonably feasible. Where placing such wireless communications facilities in an underground vault is not reasonably feasible, such wireless communications facilities shall comply with Public Utilities Commission General Order 95/128 and shall be visually screened through the use of walls, landscaping or walls combined with landscaping. All wall and landscaping materials shall be selected so that the resulting screening will be visually integrated with the architecture and landscape architecture of the surroundings;
- (ii) All accessory wireless equipment shall be placed and mounted in the least visually obtrusive feasible location; and
- (iii) All accessory wireless equipment shall be painted or textured using colors to match or blend with the primary background. All equipment cabinets visible to the public shall be treated with a graffiti-resistant coating. (Ord. 1627 § 1, 2017; Ord. 1579 § 1, 2013; Ord. 1577 § 14, 2013; Ord. 1555 § 14, 2011; Ord. 1485 § 10, 2008; Ord. 1386 § 1, 2001; Ord. 1320 § 1, 1996).

25.55.007 Administrative use permit for wireless communications facilities.

(A) Intent and Purpose. It is the intent and purpose of this section to establish a procedure whereby an administrative use permit can be granted for eligible facilities requests that do not involve a substantial change in physical dimensions of a wireless communications facility. Approval of such facilities requests is required by Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, otherwise known as the Spectrum Act, Pub. L. 112-96, H.R. 3630, 126 Stat 156 (enacted Feb. 22, 2012) and subsequently adopted FCC rules intended to implement Section 6409 of the Spectrum Act, specifically including 47 C.F.R. Section 1.40001.

(B) Procedure. Granting of administrative use permits for eligible facilities requests that do not involve a substantial change in physical dimensions of a wireless communications facilities shall be subject to the procedures specified in 47 C.F.R. 1.40001.

(C) Conditions of Approval. Conditions of approval on wireless communications facilities approved by an administrative use permit shall be limited to those conditions reasonably related to non-discretionary codes such as Health and Safety, Building, and Structural codes.

(D) Modifications. Additions, enlargements or modifications of uses or structures upon property for which an administrative use permit has been granted shall not be allowed except pursuant to a subsequent permit as might otherwise be required or granted pursuant to the terms of this chapter. (Ord. 1627 § 1, 2017; Ord. 1579 § 1, 2013).

25.55.008 Review criteria/standard conditions.

(A) Zoning Compliance. Wireless communications facilities may be permitted in any zone, right-of-way or easement, except the open space/conservation (OS/C) zone. Transmitting wireless communications facilities are strongly discouraged in residential zones or adjacent to schools.

(B) Height. Wireless communications facilities shall be limited to a maximum height of thirty-six feet as defined in Section 25.55.004 - Definitions "Height." The height of a non-exempt parabolic antenna shall be measured from its most vertical position and extent. ~~The maximum height permitted in any right-of-way or easement shall be thirty-six feet or the height of the closest existing utility pole, whichever is lower.~~ Wireless communications facilities may be constructed in an existing legal, conforming or nonconforming structure at any height, if the installation is located entirely within the structure's physical limits or "envelope" and the structure's exterior appears to remain unchanged. Wireless communications facilities may be installed on the outside of an existing legal, conforming or nonconforming structure at any height, if such installation adds no more than ten inches of horizontal width to a structure's vertical surface, or if the facilities are located below and within the upper limits of an existing roof parapet.

(C) Safety. Access to wireless communications facilities shall be restricted to maximize public safety. Security measures should include fencing, screening and signage, as deemed appropriate by the design review board.

(D) Aesthetics. The city's "Guidelines for Site Selection and Visual Impact and Screening of Telecommunication Facilities," which is on file with the community development department for review and copying, shall be utilized to reduce visual impact. In an effort to reduce a proposed wireless communications facility's aesthetic visual impact, the ~~design review board~~ Planning Commission or director of community development or designee may request that alternative designs be developed and submitted for consideration. Aesthetic visual impact review shall include consideration of public views, including, but not limited to, views to and along the coast, inland to and from the hillsides, as well as from public parks, trails and open spaces. Co-location of wireless communications facilities is desirable, but there shall not be an unsightly proliferation of wireless communications facilities on one site, which adversely affects community scenic and aesthetic values.

(E) Environmentally Sensitive Area (ESA) Protection. Placement of wireless communications facilities shall not be allowed to cause adverse impacts on environmentally sensitive areas (ESAs as defined in Open Space/Conservation Policy 8-1). Placement within ESAs shall be prohibited.

(F) Radio Frequency (RF) Radiation Standard. Within three months after construction of a wireless communications facility, which contains transmitting antenna(s), except in relation to amateur ham radio antenna(s) and transmitting antenna(s) with an effective radiated power (ERP) of five watts or less per channel, the maximum radio frequency (RF) radiation shall be measured and documented in a written report submitted to the city. The measurement and report shall be performed and prepared by a qualified, independent testing service/consultant retained by the city at the applicant's expense. The measurement shall be made utilizing the most current testing

protocol established by the Federal Communications Commission (FCC). The maximum radio frequency (RF) radiation shall not exceed the most current FCC safety standards.

(G) Long-Term Compliance. In order to guarantee long-term compliance with conditions of approval, that power levels remain as specified, and that the equipment is operating as designed, the operator of an approved transmitting antenna shall submit an affidavit indicating that the wireless communications facility is operating as approved and that the facility complies with the most current FCC Safety Standards. The affidavit shall be submitted on a yearly basis prior to the anniversary date of the facility approval for as long as the facility remains in operation and shall incorporate a separate affidavit of a qualified, independent testing service/consultant demonstrating and verifying compliance with the most current FCC Safety Standards and approved power levels. In addition, the city may conduct independent tests to verify compliance with the most current FCC Safety Standards and approved power levels. The director of community development or designee shall periodically review the approved wireless communications facility sites and determine if testing is necessary. Approved wireless communications facility providers shall be notified of all such director's determinations. The operator(s) of the approved wireless communications facility shall be responsible for the full cost of such tests.

(H) Setbacks. The setback of all wireless communications facilities shall meet the development standards and setback requirements of the applicable zoning district.

(I) Lighting. Any exterior lighting for wireless communications facilities shall be fully shielded.

(J) Identification. Each wireless communications facility shall be identified by a permanently installed plaque or marker, no larger than four inches by six inches, clearly identifying the addresses, email contact information, and twenty-four-hour local or toll-free contact telephone numbers for a live contact person for both the permittee and the agent responsible for the maintenance of the wireless communications facility. Emergency contact information shall be included for immediate responses. Such information shall be updated in the event of a change in the permittee, the agent responsible for maintenance of the wireless communications facility, or both.

(K) Maintenance.

- (1) All graffiti on any components of the wireless communications facility shall be removed promptly in accordance with city regulations. Graffiti on any facility accessory equipment in the public right-of-way must be removed within fourty-eight hours of notification.
- (2) All landscaping attendant to the wireless communications facility shall be maintained at all times and shall be promptly replaced if not successful.
- (3) If a flagpole is used for camouflaging a wireless communications facility, flags shall be flown and shall be properly maintained at all times. The use of the United States flag is subject to the provisions of the United States Flag Code, 4 U.S.C. § 6 et seq.

- (4) All wireless communications facility sites shall be kept clean and free of litter.
- (5) All equipment cabinets shall display a legible sign clearly identifying the address, email contact information, and twenty-four-hour local or toll-free contact telephone numbers for both the permittee and the agent responsible for the maintenance of the wireless communications facility. Such information shall be updated in the event of a change in the permittee, the agent responsible for maintenance of the wireless communications facility, or both.

(L) Compliance. The permittee and the wireless communications facility shall adhere to and comply with all applicable requirements of federal, state and local laws, ordinances, rules, and regulations.

(M) Abandonment or Discontinuance of Use.

- (1) All permittees or operators who intend to abandon, discontinue, and/or terminate the use of any wireless communications facility, or co-located portion thereof, shall notify the city of such intentions no less than sixty days prior to the final day of use. Said notification shall be in writing, shall specify the date of termination and shall include reference to the applicable permit number.
- (2) All wireless communications facilities, or co-located portion thereof, not in use for ninety days shall be considered abandoned.

~~(3) — For wireless communications facilities in the public right-of-way, or co-located portion thereof, where operations have been abandoned, discontinued and/or terminated such facilities shall be physically removed no more than ninety days following the final day of use or of determination that the facility has been abandoned, discontinued and/or terminated whichever occurs first. By that same time, at permittee's sole expense and responsibility, all component elements of an abandoned, discontinued and/or terminated wireless communications facilities, or co-located portion thereof, shall be removed in accordance with applicable health and safety requirements. The site upon which the wireless communications facility is located shall be restored to the condition that existed prior to the installation of the wireless communications facility, or co-located portion thereof.~~

~~(4) — For wireless communications facilities in the public right-of-way, at any time after ninety days following the abandonment, discontinuation, and/or termination of the use and/or operation of a wireless communications facility, or co-located portion thereof, the city may remove the wireless communications facility, repair any and all damage to the premises caused by such removal, and otherwise restore the premises as he/she deems appropriate. The city may, but shall not be required to, store the removed wireless communications facility (or any part thereof). The permittee of the wireless communications facility, or co-located portion thereof, and all prior owners and operators of the wireless communications facility, shall be jointly and severally liable for the entire cost of such removal, repair, restoration, and storage, and shall remit payment to the city promptly after demand therefor is made. If payment is not made in a reasonable amount of time, the city may pursue abatement cost recovery in compliance with Municipal Code Section 7.24.130. The city may, in lieu of storing the removed wireless communications facility, or co-~~

~~located portion thereof, convert it to the city's use, sell it, or dispose of it in any manner deemed appropriate by the city.~~


(N) Relocation. Permittee shall modify, remove or relocate its wireless communications facility, or portion thereof, without cost or expense to city, if and when made necessary by any abandonment, change of grade, alignment or width of any street, sidewalk or other public facility, including the construction, maintenance or operation of any other city or service utility providers underground or aboveground facilities including, but not limited to, sewers, storm drains, conduits, gas, water, electric or other utility systems, or pipes owned by city or any other public agency. Said modification, removal, or relocation of a wireless communications facility shall be completed within ninety days of notification by city unless exigencies dictate a shorter period for removal or relocation. In the event a wireless communications facility is not modified, removed, or relocated within said period of time, city may cause the same to be done at the sole expense of permittee in compliance with Municipal Code Section 7.24.130 "Abatement cost recovery." Further, in the event of an emergency, the city may modify, remove, or relocate wireless communications facilities without prior notice to permittee provided permittee is notified within a reasonable period thereafter. (Ord. 1627 § 1, 2017; Ord. 1579 § 1, 2013; Ord. 1485 § 10, 2008; Ord. 1386 § 1, 2001; Ord. 1320 § 1, 1996).

SECTION 6. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, 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 remainder of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 7. Effective Date. This ordinance shall be effective on the thirtieth (30th) day after the day of its adoption.

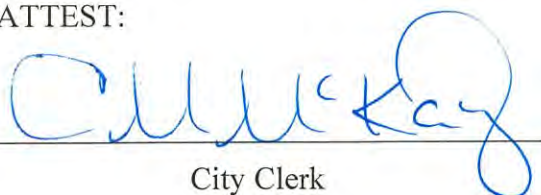
SECTION 9. Certification. The City Clerk of the City of Laguna Beach shall certify the passage and adoption of this Ordinance, and shall cause the same to be published and posted in the manner required by law in the City of Laguna Beach. This Ordinance shall become effective February 23, 2021.

ADOPTED this 23 day of February, 2021.



Bob Whalen, Mayor

ATTEST:



City Clerk

I, Ann Marie McKay, City Clerk of the City of Laguna Beach, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council on January 26, 2021, and was finally adopted at a regular meeting of the City Council of said City held on February 23, 2021, by the following vote:

AYES: COUNCILMEMBER(S): Blake, Weiss, Kempf, Whalen

NOES: COUNCILMEMBER(S): Iseman

ABSENT: COUNCILMEMBER(S): None



City Clerk of the City of Laguna Beach, CA

25.05.010 Intent and purpose.

It is the intent and purpose of this chapter to establish procedures necessary for the efficient processing of planning and development applications and requests.

25.05.015 Form of application, fees, and permit compliance.

(A) Prescribed by the Director of Community Development.

(1) The Director of Community Development shall prescribe the form and scope of all variances, changes of district boundaries or reclassifications, general plan amendments and all other planning or development applications as identified in Chapter 25.05, and of accompanying data to be furnished so as to assure the fullest practicable presentation of facts for proper consideration of the matter and for the permanent record. Forms for such purposes may be provided.

(2) Each planning and development application shall include verification by at least one of the owners of property involved or their authorized agent attesting to the truth and correctness of all facts and maps presented with such application.

(3) Applications filed pursuant to this Title shall be numbered consecutively in the order of their filing and shall become a part of the permanent official records of the Department of Community Development and shall be attached thereto and permanently filed therewith copies of all notices and actions pertaining thereto.

(B) Complete Planning and Development Applications.

(1) No later than ~~thirty~~ 30 calendar days after receipt of a planning or development application, the Department of Community Development shall determine whether the application is complete or incomplete.

(2) In the event an application is determined to be incomplete, the applicant shall be notified as to additional materials required to continue processing the application.

(3) Within ~~thirty~~ 30 calendar ~~business~~ days of receipt of supplemental materials requested

1 for applications previously determined incomplete, the Department of Community
2 Development shall determine whether the application is complete.

3 (4) A decision determining an application to be incomplete may be appealed to the City
4 Council by the applicant. The fee for such appeal is to be determined by City Council
5 resolution.

6 (C) Signatures. If signatures of persons other than the applicant are required, or offered in
7 support of or in opposition to the application, they may be received as evidence of notice
8 having been served upon them of the pending application or as evidence of their opinion
9 on the pending issue, but they shall in no case infringe upon or govern in the free exercise
10 of the powers vested in the City of Laguna Beach.

11 (D) Filing Fee Collection. Before accepting for filing any request or application submitted
12 relative to Title 25 of this Code, ~~processing of items under the auspices of the California~~
13 ~~Environmental Quality Act, continuations of public hearings, encroachment permits into~~
14 ~~the public right of way, General Plan amendments, vacation or relinquishment of the~~
15 ~~public interest in land, rights of way or easements, and other requests requiring Planning~~
16 ~~Commission or Board of Adjustment Review, hearing or approval,~~ the Department of
17 Community Development shall charge and collect a filing fee for each such request or
18 application as determined by resolution of the City Council to cover the cost of making
19 maps, sending out notices, and other incidental administrative expenses involved in the
20 handling of the matter, including written staff reports.

21 (E) Refund of Filing Fees. Refund of all or any portion of the filing fees may be ordered by the
22 Director of Community Development.

23 (F) Conformance by Officials. All officials or public employees vested with the duty or
24 authority to issue permits or licenses where required by law shall conform to the provisions
25 of this Title.

26 (G) Application. The provisions of this Title shall apply to all buildings, improvements, lots
27 and premises, or portions thereof, owned, leased, operated or controlled by the City or any
28 Department or officer thereof, or by any other municipal or quasi-municipal corporation or

government, or any Department, Board or officer thereof.

25.05.025 Variances.

(A) Intent and Purpose. The intent and purpose of this section is to establish procedures whereby parcels or development projects may vary from the provisions of Title 25. Variances may be granted when there are special circumstances applicable to the property involved, including size, shape, topography, location and surroundings, that would cause the strict application of the zoning ordinance to deprive the property of the privileges enjoyed by other property in the vicinity and zone.

(B) Application.

(1) Application for a variance shall be made by a property owner or authorized agent. Applications shall contain such information as prescribed by the Director of Community Development ~~including but not limited to, a plot plan drawn to scale showing accurate dimensions of the lot and building site, the proposed location of the building(s) on the lot and accurate dimensions of the building(s), yards and setbacks.~~

~~(2) Concept review shall be a prerequisite for design review variance applications, except those involving existing legal nonconformities.~~

(C) Filing Fee. Prior to accepting an application, the Director of Community Development shall collect a filing fee as determined by resolution of the City Council.

(D) Public Notice. Public notice shall be subject to the provisions of Section 25.05.065, except that if a Coastal Development Permit is required pursuant to Section 25.07, noticing for that type of permit shall instead be carried out through the public notice provisions of Section 25.07.014.

(E) Approval.

(1) The Board of Adjustment or Planning Commission as applicable, shall approve, approve in part, conditionally approve or deny at a noticed public hearing a Variance based upon the findings set forth in Section 25.05.025(F).

(2) Board of Adjustment or Planning Commission determinations, including findings, shall

1 be by resolution adopted by a majority of its membership.

2 (3) Written notice of determination, including findings, shall be mailed to the applicant or
3 authorized agent within ten business days of the date of the Board's or Planning
4 Commission's decision.

5 (4) The Board of Adjustment or Planning Commission, as applicable, in approving a
6 Variance, may set forth in its decision reasonable terms and conditions necessary to
7 protect the health, safety and welfare of the community and to assure the intent and
8 purpose of these regulations. It may also require such bonds and guarantees as
9 necessary to ~~insure~~ ensure that compliance with such terms and conditions is being or
10 will be achieved.

11 ~~(5) Any Variance granted shall be subject to such conditions that will assure that the~~
12 ~~adjustment authorized shall not constitute a grant of special privilege inconsistent with~~
13 ~~the limitations upon other properties in the vicinity and identical zoning classification.~~

14 (F) Findings.

15 (1) There are special circumstances applicable to the property involved, including size,
16 shape, topography, location or surroundings which cause the strict application of the
17 zoning ordinance to deprive such property of privileges enjoyed by other property in
18 the vicinity and under identical zoning classification.

19 (2) Such variance is necessary for the preservation and enjoyment of a substantial property
20 right of the applicant, which right is possessed by other property owners under like
21 conditions in the same vicinity and zone.

22 (3) The granting of the Variance will not be detrimental to the public health, safety,
23 convenience and welfare or injurious to property or improvements in the vicinity in
24 which the property is located.

25 (4) The granting of such a Variance will not be contrary to the objectives of the zoning
26 ordinance or the General Plan.

27 (G) Appeals. Appeals are subject to the provisions of Section 25.05.070.

28 (H) Effective Date/Expiration Date.

- 1 (1) Decisions on Variance applications by the Board of Adjustment or Planning
2 Commission, as applicable, shall become effective ten business days after the date of
3 the decision, unless appealed to the City Council.
- 4 (2) A Variance shall lapse and become void two years following the effective date unless a
5 shorter approval period is specified for the project or unless:
- 6 (a) A Building Permit is issued, and construction is begun and diligently pursued to
7 completion; or
- 8 (b) The Planning Commission or Board of Adjustment, as applicable, grants a two-year
9 extension of time or, after that initial extension of time, a final one-year extension
10 of time. Such time extensions shall be requested in writing by the applicant or
11 authorized agent prior to the expiration of the beginning two-year approval period
12 or any subsequently approved extensions of time.
- 13 (3) Extension of Time Findings. An extension of time of the beginning two-year approval
14 period may be granted by the Planning Commission or Board of Adjustment, as
15 applicable, if each of the following findings can be made:
- 16 (i) The zoning codes or standards applicable to the circumstances of the originally
17 approved variance have not materially changed; and
- 18 (ii) The neighborhood character has not changed so as to be materially inconsistent
19 with the findings made when the Variance was originally approved.
- 20 (I) Revocation. Revocations are subject to the provisions of Section 25.05.075.
- 21 (J) Planning Commission Variances.
- 22 (1) The Planning Commission shall act as the Board of Adjustment in hearing and
23 determining the following Variances, subject to the procedures and findings established
24 in Sections 25.05.025, 25.05.065(C) and (D), 25.05.070 and 25.05.075:
- 25 (a) Variance requests in conjunction with any matter pending before the Planning
26 Commission for which the Commission has the primary discretionary
27 responsibility;
- 28 (b) Variance requests in conjunction with subdivisions relating to lot dimension, area

1 and yard requirements and access requirements may be granted when such
2 requirements are deemed impractical, unreasonable or unnecessary for the proper
3 design of such subdivision;

4 (c) Variance requests for indirect access; and

5 (d) Variance requests for construction of new residential units on lots taking access from
6 streets with less than standard width.

7 ~~(2) Administrative Approval for Certain Variances. The Director of Community Development~~
8 ~~shall approve or deny a Variance application for existing nonconforming conditions,~~
9 ~~except for nonconforming parking Variances, only when such project application does not~~
10 ~~require other Variances or is not otherwise subject to Design Review.~~

11 ~~(a) The Variance application shall be made by a property owner or authorized agent.~~
12 ~~Applications shall contain such information, as prescribed by the Director of~~
13 ~~Community Development.~~

14 ~~(b) The Variance application shall be subject to the same procedures set forth in~~
15 ~~Section 25.05.020(B) through (D), Administrative Use Permit Procedure.~~

16 ~~(c) Findings. The determination of the Director of Community Development shall be~~
17 ~~based on the findings set forth in Section 25.05.025(F). Written notice of the~~
18 ~~determination including findings shall be mailed to the applicant or authorized~~
19 ~~agent within ten business days of the date of decision.~~

20 ~~(d) Appeal. Appeal is subject to the provisions of Section 25.05.070.~~

21 ~~(K) Modifications. Additions or enlargements of structures upon property for which a~~
22 ~~Variance has been granted shall not be allowed except pursuant to a subsequent Variance as~~
23 ~~might otherwise be required or granted pursuant to the tenths of this Title.~~

24
25 **25.05.030 Conditional Use Permits.**

26 (A) Intent and Purpose. It is the intent and purpose of this section to establish a procedure
27 whereby a Conditional Use Permit may be granted for those uses wherein Title 25
28 expressly requires such a permit. Uses subject to a Conditional Use Permit are those uses

1 necessary for the development of the community having inherent qualities or
2 characteristics which, unless provided for, would cause such uses to be incompatible or
3 inharmonious with adjacent or nearby permitted uses. Such uses may be modified to the
4 extent that they can be made compatible and harmonious with adjacent uses. This
5 flexibility is intended to provide a necessary means by which certain land uses can be
6 designed and arranged in accord with existing conditions of the neighborhood site,
7 topographic and street conditions, as well as the utilization of various design concepts, and
8 to allow denial of such uses where the required findings cannot be made.

9 (B) Application. Application for a Conditional Use Permit shall be made by a property owner
10 or authorized agent. Applications shall contain such information as prescribed by the
11 Director of Community Development.

12 (C) Filing Fee. Prior to accepting an application, the Department of Community Development
13 shall collect a filing fee as determined by resolution of the City Council.

14 (D) Public Notice. Public notice shall be subject to the provisions of Section 25.05.065, except
15 that if a Coastal Development Permit is required pursuant to ~~Section~~ Chapter 25.07,
16 noticing for that type of permit shall instead be carried out through the public notice
17 provisions of Section 25.07.014.

18 (E) Timing of Approvals. The Planning Commission shall review all Conditional Use Permit
19 applications ~~within 20 business days following the date upon which the applications are~~
20 ~~accepted as complete~~. If a project requires approval by both the Planning Commission and
21 Board of Adjustment, the Conditional Use Permit shall be reviewed and approved first.

22 (F) Findings.

23 (1) The site for the proposed use is adequate in size and topography to accommodate said
24 use, and all yards, spaces, walls and fences, parking, loading and landscaping are
25 adequate to properly adjust such use with the land and uses in the vicinity.

26 (2) The site for the proposed use has access to streets and highways adequate in width and
27 pavement type to carry the quantity and kind of traffic generated by the proposed use.

28 (3) The proposed use will have no substantial adverse effect upon abutting property.

1 (4) The proposed use is consistent with the objectives and policies of the City's General
2 Plan.

3 (5) The conditions stated in the decision are deemed necessary to protect the public health,
4 safety and general welfare.

5 (G) Conditions of Approval.

6 (1) Conditions of approval may include, but are not limited to:

7 (a) Regulation of use;

8 (b) Special yards, spaces and buffers;

9 (c) Special fences, solid fences and walls;

10 (d) Surfacing of parking areas;

11 (e) Street, service road or alley dedications and improvements or appropriate bonds;

12 (f) Regulation of points of vehicular ingress and egress;

13 (g) Regulation of signs;

14 (h) Landscaping plan, to be reviewed and approved by the Department of Community
15 Development;

16 (i) Maintenance of the grounds;

17 (j) Regulation of noise, vibration and odors;

18 (k) Regulation of hours for certain activities;

19 (l) Time period within which the proposed use shall be developed;

20 (m) Duration of use;

21 (n) Posting of a bond or bonds sufficient to guarantee the removal of any
22 nonconforming structures or uses of the land upon the expiration of the period of
23 the Conditional Use Permit; and

24 (o) Dedication of access rights.

25 (2) In addition to special conditions of approval, the following general conditions of
26 approval shall be imposed upon each Conditional Use Permit:

27 (a) The right to a use and occupancy permit shall be contingent upon the fulfillment of
28 all general and special conditions imposed by the Conditional Use Permit;

- 1 (b) All of the special conditions shall constitute restrictions running with the land, and
2 shall be binding upon the owner of the land, and the successors or assigns;
- 3 (c) All of the special conditions shall be consented to in writing by the applicants and
4 all owners of interests and lien holders;
- 5 (d) The resolution granting the application, together with all consent forms, shall be
6 recorded by the recorder of Orange County;
- 7 (e) The permit shall be subject to review at any time upon receipt of written complaint.
- 8 (H) Appeals. Appeals are subject to the provisions of Section 25.05.070.
- 9 (I) Effective Date/Expiration Date.
- 10 (1) Decisions on Conditional Use Permit applications by the Planning Commission shall
11 become effective ten business days after the date of the decision, unless appealed to the
12 City Council.
- 13 (2) If an established time limit for development expires, or if a time limit for the duration
14 of the use has been established as one of the conditions of approval, then the permit
15 shall be considered to be revoked upon such date of expiration without any notification
16 to the owner thereof.
- 17 (3) A Conditional Use Permit shall lapse and become void two years following the
18 effective date unless a shorter approval period is specified for the project or unless:
- 19 (a) The privileges authorized are established; or
- 20 (b) A Building Permit is issued and construction is begun and diligently pursued to
21 completion; or
- 22 (c) The Planning Commission grants a two-year extension of time or, after that initial
23 extension of time, a final one-year extension of time. Such time extensions shall be
24 requested in writing by the applicant or authorized agent prior to the expiration of
25 the beginning two-year approval period or any subsequently approved extensions
26 of time.
- 27 (4) Extension of Time Findings. An extension of time of the beginning two-year approval
28 period may be granted by the Planning Commission, if each of the following findings

1 can be made:

2 (i) The zoning codes or standards applicable to the circumstances of the originally
3 approved Conditional Use Permit have not materially changed; and

4 (ii) The neighborhood character has not changed so as to be materially inconsistent
5 with the findings made when the Conditional Use Permit was originally approved.

6 (5) If a Conditional Use Permit has been abandoned or terminated for any reason~~for a~~
7 period of at least one year, the permit shall expire and become void. Abandonment
8 shall depend on the concurrence of (1) an intention to abandon and (2) an overt
9 act, or failure to act, which carries the implication the owner does not claim or
10 retain any interest in the right to the use.

11 (J) Revocation. Revocations are subject to the provisions of Municipal Code Section
12 25.05.075.

13 (K) Modifications. Additions, enlargements or modifications of uses or structures upon
14 property for which a Conditional Use Permit has been granted shall not be allowed except
15 pursuant to a subsequent Conditional Use Permit as might otherwise be required or granted
16 pursuant to the terms of this Title.

17
18 **25.05.035 Temporary Use Permits.**

19 (A) Intent and Purpose. The intent of this section is to accommodate reasonable requests for
20 interim or temporary uses when such activities are desirable for the community, or are
21 temporarily required in the process of establishing a permitted use or constructing a public
22 facility. Temporary uses allowed under this section shall be consistent with the health,
23 safety and general welfare of persons residing and working in the community, shall be
24 conducted so as not to cause any detrimental effects on surrounding properties and the
25 community, and shall not violate any other ordinance or regulation of the City.

26 (B) Uses Permitted Subject to Temporary Use Permit.

27 (1) The following uses may be permitted in residential zones:

28 (a) Construction. Temporary structures, garages or sheds;

- (b) Parking and storage of earthmoving or construction equipment, when that parking or storage is incidental to an ongoing construction activity;
- (c) Storage of materials incidental to a Public Works project, subdivision or construction activity;
- (d) Tract home or lot sales office;
- (e) Events which require closure of public streets to traffic;
- (f) Temporary parking lots other than existing lots;
- (g) Such other uses as the Planning Commission may by resolution deem to be within the intent and purpose of this section.

(2) The following uses may be permitted in non-residential zones. Uses permitted in the industrial zones shall require special consideration to assure that those uses are compatible with the intent of those zones:

- (a) Art and handicraft shows (out of doors);
- (b) Carnivals;
- (c) Christmas tree sales;
- (d) Concerts;
- (e) Farmers market;
- (f) Horse shows and animal exhibitions;
- (g) Outdoor merchandise and display stands;
- (h) Sporting events;
- (i) Street vendors, temporary sales booths, sidewalk sales or enterprises of a similar nature;
- (j) Tents or canvas/plastic enclosures;
- (k) Those temporary uses permitted in Section 25.05.035(B)(1);
- (l) Such other uses as the planning commission may by resolution deem to be within the intent and purpose of this section.

(C) Applications. Applications for a Temporary Use Permit shall be made by the property owner or an authorized agent. Applications shall contain such information as prescribed by the

Director of Community Development.

(D) Filing Fee. Prior to accepting an application for a Temporary Use Permit, the Department of Community Development shall collect a filing fee, as determined by resolution of the City Council.

(E) Public Notice. All Temporary Use Permit applications referred to the Planning Commission shall be subject to the public notice provisions of Section 25.05.065, except that if a Coastal Development Permit is required pursuant to ~~Section~~Chapter 25.07, noticing for that type of permit shall instead be carried out through the public notice provisions of Section 25.07.014.

(F) Approvals.

(1) The Director of Community Development shall approve, approve in part, conditionally approve or deny applications for Temporary Use Permits in the R-1 zone and for short-term events (five days or less) deemed minor by the Director of Community Development in any zone. Applications for temporary parking lots are excluded. At the discretion of the Director of Community Development, Temporary Use Permit applications may be referred to the Planning Commission. Determination shall be made within ~~twenty~~20 business days of receipt of the application unless the matter is referred to public hearing.

(2) In addition to a Temporary Use Permit, a coastal development permit must be obtained for those temporary uses that involve development that requires a coastal development permit as described in Chapter 25.07 Coastal Development Permits. The procedure to obtain a coastal development permit shall be as described in Chapter 25.07.

(3) The Planning Commission shall approve, approve in part, conditionally approve or deny all other applications for Temporary Use Permits. The Commission shall make written findings that the project is consistent with applicable General Plan policies. ~~Public hearing for Temporary Use Permits shall be scheduled not more than twenty business days following acceptance of a complete application.~~

(4) Written notice of determination shall be mailed to the applicant or authorized agent

1 within ~~ten~~ 10 business days of the decision of the Director of Community Development
2 or the Planning Commission.

3 (G) Conditions of Approval. Conditions of approval may include, but are not limited to:

4 (1) Regulations of hours;

5 (2) Requirement of bonds or other guarantees for cleanup or removal of structures or
6 equipment;

7 (3) Return of temporary use site to its original state within a specified period of time;

8 (4) Regulation of permit duration;

9 (5) Regulation of signs and advertising;

10 (6) Regulation of lighting;

11 (7) Regulation of public-address or sound system;

12 (8) Regulation of gas, smoke, noise, fumes, vibrations or other nuisances;

13 (9) Referral to Design Review;

14 (10) Such other conditions as are deemed necessary to protect the health, safety and
15 welfare of the community and to assure compliance with the intent and purpose of this
16 section.

17 (H) Appeals. Appeals are subject to the provisions of Section 25.05.070.

18 (I) Effective Date/Expiration Date. Planning Commission decisions on Temporary Use Permit
19 applications shall become effective fourteen calendar days after the date of the decision, unless
20 appealed to the City Council. Temporary Use Permits may be authorized for a maximum three
21 year time period.

22 (J) Revocation. Revocations are subject to the provisions of Section 25.05.075.

23
24 **25.05.040 Design ~~review~~Review.**

25 (A) Intent and Purpose. The design review process consists of a review of a proposed
26 development by the approval authority of either the Design Review Board or Planning
27 ~~commission~~Commission as specified herein~~and is intended to provide the following:.~~ The
28 Director of Community Development is the approval authority for Administrative

Design Review as specified in Section 25.05.040(B)(3). as specified herein and The design review process is intended to achieve the following goals:

- (1) That development projects comply with the applicable standards and design guidelines and criteria;
- (2) That development projects focus on quality designs, within a neighborhood context that results in creative design solutions for the City;
- (3) That development occurs with an orderly and harmonious appearance, including associated facilities, such as signs, landscaping and parking areas;
- (4) That the development review process minimizes contentiousness;
- (5) That the development review process considers public and private views;
- (6) That public health, safety and general welfare throughout the City is paramount;
- (7) That there is effective implementation of the applicable general and specific plan policies, which encourage the preservation and enhancement of the particular character and unique assets of the city; and
- (8) That development projects comply with the policies of the certified Local Coastal Program Land Use Plan, including, but not limited to, the shoreline access, open space, environmentally sensitive habitat, hillside protection and visual resource policies.

(B) Development Subject to Design Review.

- (1) All new buildings, structures and physical improvements and relocations, additions, extensions and exterior changes of or to existing buildings, structural and non-structural improvements, including landscaping and grading, shall be subject to design review, except as otherwise provided in Section 25.05.040(B)(2) **and 25.05.040(B)(3).** Examples of physical improvements and site developments subject to **a** design review **hearing with the Design Review Board or Planning Commission** include, but are not limited to, the following:
 - (a) Commercial or industrial parking and loading areas;
 - (b) New vehicular access to streets or alleys;
 - (c) Retaining walls in excess of five feet in exposed height;

- (d) Signs, as specified in Chapter 25.54, “Sign Regulations”;
- (e) Permanent chain link or similar type of woven metal fences, and vinyl fences that do not simulate natural material;
- (f) Telecommunication facilities subject to the provisions of Chapters 11.06 and 25.55;
- (g) Trash enclosures associated with a commercial use;
- (h) Public street and sidewalk improvements;
- (i) Above-ground utility structures;
- (j) Total aggregate additions that are 50 percent or more of the existing gross floor area as of January 13, 1993, ~~Additions that are 50% or more of the original gross floor area~~, additions that create a new upper story, and additions that exceed a height of 15 feet above the adjacent ground elevation ~~or additions that exceed 10% of the original gross floor area of an existing legal nonconforming structure~~;
- (k) Shore protective devices;
- (l) All buildings, structures and physical improvements in environmentally sensitive areas and on lots with a slope greater than ~~thirty~~ 30 percent, except as otherwise provided in Section 25.05.040(B)(2)(a)(iv);
- (m) Grading in excess of ~~twenty~~ 20 cubic yards outside the building footprint, except as specified in Section 22.10.010(e);
- (n) Clearing of native vegetation on undeveloped parcels and undeveloped portions of developed parcels, and native vegetation restoration plans, except for City required annual weed abatement;
- ~~(o) Fuel Modification program subject to the provisions of 25.05.040(C)(3) and (4); provided, that once a program has received approval, subsequent approval for maintenance of the fuel modification will be granted by the Director of Community Director, if that maintenance is in conformance with the intent and objectives of the originally approved program;~~

- 1 (o) All City projects within the scope of this section, except if the City Council
2 waives the requirement of design review if it determines that there are special
3 circumstances applicable to such project which require that the project proceed
4 without delay;
- 5 (p) Landscaping review for new development or additions that are ~~fifty~~ 50 percent
6 or more of the original gross floor area, additions that create a new upper story
7 or additions that exceed a height of fifteen feet above the adjacent ground
8 elevation, and for structural improvements within environmentally sensitive
9 habitat areas;
- 10 (q) Modifications of previously approved design review plans, including approved
11 landscape plans, except as otherwise provided in Sections 25.05.040(B)(2)
12 and 25.05.040(B)(3);
- 13 (r) Swimming pools, permanent spas (unless eligible for administrative design
14 review) and their associated pool or spa equipment;
- 15 (s) Outlining of the outside of buildings or portions thereof with lights. (If such
16 outlining with lights is proposed on a building listed on the register, then the
17 Heritage Committee shall make a recommendation to the approval authority
18 prior to its design review); and
- 19 (t) A hedge or hedges located within front, side and/or rear yards that is/are
20 proposed to exceed the maximum allowable fence height, as set forth in
21 Chapter 25.50.

22 (2) Exceptions. The following improvements shall be exempt from the design review
23 process, ~~unless they are changes associated with approved design review plans,~~
24 ~~including landscape plans.~~ The Director of Community Development has the
25 discretion to refer applications to the appropriate design review authority for
26 consideration and final action. The City Council may, by resolution, require that
27 certain project types normally eligible for an exception be referred to either the
28 design review or administrative design review process. Exceptions shall be

reviewed through the plan check process to ensure compliance with zoning standards.

(a) Additions to a single family residences ~~in residential zones~~ with no prior design review plans that:

(i) Result in aggregate additions that ~~Are~~ are less than ~~fifty~~ 50 percent of the ~~original~~ existing gross floor area cumulative over time since January 13, 1993;

(ii) Do not create a new upper story and do not exceed a height of ~~fifteen~~ 15 feet above the adjacent ground elevation;

(iii) Are in conformance with the zoning regulations; and

(iv) Are not within an environmentally sensitive area or where a licensed professional has determined that the proposed improvements do not impact the environmentally sensitive area subject to peer review.

(b) Minor modifications to approved design review plans, including, but not limited to:

(i) Hardscape reconfigurations that do not reduce the existing open space and landscape open space;

(ii) Landscape plans with no increased height, width, and spacing of vegetation; and

(iii) Additions or relocations of windows and glass doors with adjacent neighbor consent;

~~(bc)~~ Interior modifications to existing structures or approved plans, including those structures and plans approved by the approval authority, except interior alterations to historic structures as outlined in Chapter 25.45, (“Historic Preservation”);

(d) Exterior modifications to less than 50 percent area of any street facing facade of a building in a residential zone that do not result in a style change of the building;

- (ee) Repainting existing structures in residential zones provided that the paint color was not required to specifically address a design-related issue such as consistency with the architectural style and surrounding neighborhood;
- (ef) Re-roofing buildings and structures ~~with similar materials~~ with Class A roofing that is consistent with the architectural style and surrounding neighborhood, provided there are no changes to the dimensions, square footage, or roof pitch;
- (eg) Retaining walls five feet or less in exposed height;
- (fh) Slabs and patios at or below natural grade ~~and modifications to existing driveways or similar structures that comply with all other applicable provisions of this chapter; and~~
- ~~(i) Minor landscaping that does not have the potential to impact views at mature height;~~
- (i) m Modifications to existing driveways or ~~similar structures~~ other hardscape that does not increase impervious surfaces and that complies with all other applicable provisions of this chapter;
- (gj) ~~Wood or metal fences,~~ fences, walls and hedges that comply with the zoning regulations, except permanent chain link or similar type of woven metal fences. In residential areas, other decorative fences and walls, including but not limited to wood, vinyl simulating natural materials, fiberglass, steel, wrought iron, etc., which are determined to be compatible with the neighborhood and consistent with Section 25.50.012 ("Fences, walls, hedges, lattice work and screens") are permitted;
- (hk) Window or exterior door replacements or insignificant changes in final design, such as moldings and windowpane material;
- (jl) Elevated decks three feet or less above adjacent existing grade;
- (km) Railing changes;
- (n) Skylights with operable automatic night shades;

1 (o) Conversion of existing landscaping to drought tolerant landscaping up to
2 six feet at mature growth height and provided that the existing landscaping
3 was not required to specifically address a design-related issue such as view
4 equity or privacy;

5 (p) ~~Art work~~Artwork approved through the procedures outlined in Chapter 1.09;
6 (“Art in Public Places”);

7 (q) Signs, in conformance with an approved sign program subject to review and
8 approval by the director of community development; and

9 (r) Temporary on-grade removable accessory structures used as play sets,
10 swing sets, ~~and~~ other similar unenclosed recreation equipment, and storage
11 sheds provided that: (i) the ~~ground area of the~~ structure does not exceed ~~one~~
12 ~~hundred twenty~~120 square feet in size, (ii) the ~~structure~~ height is less than
13 ~~twelve~~12 feet above adjacent ground elevation, and (iii) ~~the structure is not~~
14 ~~located in a required setback area~~minimum required setbacks of the
15 underlying zone are met unless it receives administrative design review
16 approval;

17 (s) ~~Second residential units~~Accessory dwelling units, only as set forth in Chapter
18 25.17;

19 (t) Grading of 20 cubic yards or less outside the building footprint, except as
20 specified in Section 22.10.010(e);

21 (u) Fuel modification programs. Projects consisting solely of a new or modified
22 fuel modification program shall be reviewed and approved by the Director
23 of Community Development or his or her designee to evaluate landscape
24 design, and by the Fire Chief or his or her designee for compliance with
25 fuel modification regulations;

26 (v) Trash storage within the side yard when screened from public view by a
27 wall or fence at least four (4) feet in height and does not impact required
28 access for the property;

(w) Exterior wildfire resistant construction materials and methods in accordance with Chapter 7A of the California Building Code, including but not limited to replacement of natural wood siding with fire resistant materials that simulate the appearance of wood, enclosing of roof eaves and wrapping of decks; and
(x) Seismic upgrades that do not affect the exterior appearance of the structure are eligible for an exception to design review.

(3) Administrative Design Review Process. An administrative design review ~~process~~ hearing may be conducted by the director of community development or his or her designee for development projects that: are considered to be minor or incidental as specified below, require neighbor notification, ~~and do not involve a new, other than for existing nonconforming conditions,~~ including, but not limited to, those listed below.

(a) Examples of Administrative Design Review Development ~~p~~Projects may include but are not limited to:-

(i) Those projects normally exempt under subsection (B)(2) that are determined by the Director of Community Development or his or her designee to pose potential impacts to neighboring properties;

(ii) Elevated decks more than ~~3~~ three feet above adjacent existing grade and structural additions within existing residential rooflines;

(iii) Portable and in-ground spas not exceeding a maximum of 600 gallons, and water features;

(iv) Pedestrian entry features that are outside the public right of way and do no impact line of sight and are in conformance with Section 25.50.012(B)(6);

(v) Mechanical equipment, including, but not limited to, air conditioners and pool/spa equipment that do not meet the requirements of Section 7.25.130(C);

~~(vi) Variance for existing nonconforming conditions, excluding parking;~~

(vi) City public works projects which are limited to replacement-in-kind or maintenance and which are not located in environmentally sensitive or open space areas, the Downtown Specific Plan Area, oceanfront properties or public buildings or parks; ~~and~~

(vii) Extensions of time as specified in Section 25.05.040(J)(3);

(viii) Additional covered or tandem parking as specified in Section 25.52.012 (G);

(ix) Decorative features such as fence posts, brick or stone columns may extend up to twelve inches above the maximum allowable height within the front yard;

(x) Revocable Encroachment Permits when not associated with a project requiring a Design Review Board or Planning Commission decision; and

~~(viii) Minor modifications to approved design review plans, but which in no case involve:~~

~~(1) An addition of more than twenty-five square feet;~~

~~(2) Grading in excess of ten cubic yards; or~~

~~(3) A relocation of windows or doors by more than one foot or where the approved location was determined because of privacy considerations;~~

(xi) Modifications to single- and multi-family structures in residential zones. The Director of Community Development has the discretion to refer any application to the Design Review Board and shall do so when the proposed modifications to a prior design review approval conflict with conditions of approval or a decision made by the Design Review Board. The following modifications shall be allowed through administrative design review:

(1) Architectural modifications that are consistent with the Residential Design Guidelines;

- 1 (2) Minor roof alterations that do not adversely impact view equity;
2 (3) New or relocated windows and doors that do not obtain adjacent
3 neighbor consent;
4 (4) Additions to single-family residences with prior design review
5 approved plans that:
6 (a) Result in additions that are less than 50 percent of the prior
7 design review approved floor area when not a major remodel;
8 (b) Do not create a new upper story or do not exceed a height of 15
9 feet above the adjacent ground elevation;
10 (c) Are not within an environmentally sensitive area or where a
11 licensed professional has determined that the proposed
12 improvements do not impact the environmentally sensitive area
13 subject to peer review;
14 (d) Are not within 5 years from the date of prior project approval
15 or while the project is under construction if the aggregate
16 additions are larger than 50 square feet; and
17 (e) Additions are not allowed through the administrative design
18 review process in combination with an application for an
19 accessory dwelling unit or on sites with an existing accessory
20 dwelling unit.

- 21 (b) Public Notice for Administrative Design Review. Public notice shall be subject to
22 the provisions of Section 25.05.065, except that if a Coastal Development Permit is
23 required pursuant to ~~Section~~Chapter 25.07, noticing for that type of permit shall
24 instead be carried out through the public notice provisions of Section 25.07.014.
25 (c) Staking Requirements for Administrative Design Review. All floor area additions
26 and roof alterations shall be staked. If the Director of Community Development
27 or his or her designee determines that the minor project should be staked, the
28 staking requirements of subsections (C)(2)(a) and (b) of this section shall be

1 followed, except that the construction and certification of the staking shall be
2 completed at least 14 calendar days prior to the public hearing.

3 (d) Deliberation and Action on Administrative Design Review Applications. The
4 Director of Community Development or his or her designee shall conduct a public
5 hearing for designated administrative design review projects. After consideration of
6 all testimony and evidence presented at the public hearing and the Design Review
7 Criteria specified in subsection H of this section, the Director of Community
8 Development or his or her designee shall either approve, conditionally approve or
9 deny the application in writing. An appeal of a decision on an administrative design
10 review application is subject to the provisions of Section 25.05.070, and Section
11 25.07.016 when a coastal development permit is required.

12 (e) Approval Authority Referral. Prior to deliberation and action on an administrative
13 design review application, the director of community development or his or her
14 designee may (at his or her discretion) refer the project application to the approval
15 authority for hearing and consideration in accordance with subsections E and F.
16 The City Council may, by resolution, require that certain project types
17 normally eligible for administrative design review be referred to a design
18 review hearing with either the Design Review Board or Planning Commission.

19 (C) Application. Application for design review shall be made by a property owner or
20 authorized agent. Applications shall contain such information as prescribed by the Director of
21 Community Development.

22 (1) Early Neighbor Communication. The applicant shall communicate with owners of
23 property within 300 ~~three hundred~~ feet of the applicant's property notifying them of the
24 proposed project. Such communication should take place prior to deciding on a final
25 design to help resolve potential conflicts. Communication efforts shall include
26 notification mailed to all property owners within 300 feet of the applicant's property.
27 The noticing must be prepared and mailed by a professional listing service.
28 Certification to the accuracy, completeness of the list, and date the notice was mailed is

1 required to be provided by the company, along with a copy of the materials sent. Early
2 neighbor communication must be completed prior to being scheduled for a hearing
3 date. The following information shall be included in the early neighbor notification
4 notice:

- 5 (a) Applicant contact information.
- 6 (b) Location of the proposed project.
- 7 (c) A description of the proposed project.
- 8 (d) Information on how to participate in the design review process.

9 (2) Staking Requirements.

- 10 (a) A staking plan shall be prepared as specified on the most current zoning and
11 design review submittal checklist. Staking poles and connecting ribbons, which
12 accurately represent the full extent of the proposed structure, including decks
13 and eaves, shall be constructed at least 21 calendar days prior to the first public
14 hearing. At least 21 calendar days prior to the first public hearing, the location
15 and height of the staking poles must be certified as accurate by a registered land
16 surveyor or registered civil engineer licensed to conduct land surveys in the
17 State of California. If complete and certified project staking is not in place at
18 least 21 calendar days prior to the first Design Review Board public hearing
19 date or 14 calendar days prior to the administrative design review public
20 hearing, the project shall be continued to a later date, ~~with re-noticing required~~.

21 Neither the applicant, a relative of the applicant, nor any other
22 person possessing a financial interest in the property or the project may certify
23 the location and height accuracy of the staking poles. If the project is modified
24 during the design review process because of a view consideration, privacy or
25 other concerns that the Board determines is necessary to restake, the
26 project shall be re-staked and re-certified at least 14 calendar days prior to any
27 subsequent public hearing,

- 28 (b) A deposit for the removal of staking poles, in an amount approved by the City

1 Council shall be made prior to the time the project is scheduled for public
2 hearing. Staking poles shall be removed by the applicant within 20 calendar
3 days after the final project decision ~~at the administrative or municipal level.~~
4 Upon timely removal of the staking poles, the deposit shall be returned to the
5 applicant. The applicant's failure to remove the staking poles within the
6 prescribed time period shall result in the automatic forfeiture of the deposit, and
7 the City shall remove the poles from the site.

8 (3) Biological Report Requirements. Prior to deliberation and action on a design review
9 application, the applicant shall submit a biological report that is prepared by a
10 professional in the fields of wildlife biology or botany for any proposal to clear native
11 vegetation on undeveloped parcels that are located within or adjacent to areas
12 designated high or very high value on the city's biological values maps and any other
13 areas that contain environmentally sensitive habitat resources except for annual weed
14 abatement and approved fuel modification programs.

15 (4) Fire Department Review and Approval. Prior to deliberation and action on a design
16 review application for new construction and alterations involving 50% percent or
17 more of an existing structure, the Fire Department shall review and approve or
18 conditionally approve applications, including proposed fuel modification programs.
19 Fuel modification programs or Alternative Materials and Methods (AM&Ms) requests,
20 when determined necessary by the Fire Department, are required for any parcel
21 having an "FM"—Fuel Modification designation or Very High Fire Hazard Severity
22 Zone on the City's Geographic Information Mapping system. The Fire Department
23 conditions of approval relating to public safety may not subsequently be modified by
24 the approval authority without the Fire Department's review and approval.

25 (D) Filing Fee. Prior to accepting an application, the Department of Community
26 Development shall charge and collect a filing fee as determined by resolution of the City
27 Council.

28 (E) Public Notice. Public notice shall be subject to the provisions of Section 25.05.065,

1 except that if a Coastal Development Permit is required pursuant to Section 25.07, noticing for
2 that type of permit shall instead be carried out through the public notice provisions of Section
3 25.07.014.

4 (F) Deliberation and Action on Applications.

5 (1) The authorities responsible for reviewing and making decisions on design review
6 applications are as follows:

7 (a) The design review board shall conduct a noticed public hearing on design
8 review applications for all single-family or two-family developments, including
9 associated public right-of-way improvements.

10 (b) The planning commission shall conduct a noticed public hearing on all other
11 design review applications, including but not limited to: residential
12 development of three-families or more, all projects located in the downtown
13 specific plan area, all non-residential development, all public works projects
14 including Capital Improvements Projects (CIP) and development in the right-
15 of-way, and projects for which the planning commission is the primary
16 discretionary review authority, such as approval of a conditional use permit.

17 (2) Upon the conclusion of the public hearing on a design review application, and
18 the consideration of all testimony and evidence presented at the public hearing, the
19 approval authority shall approve, conditionally approve or deny the application.
20 Determinations of design review applications shall be by majority vote of the voting
21 members of the approval authority present.

22 (3) The approval, conditional approval, or denial of design review applications by the
23 approval authority shall be based upon the design review criteria set forth in subsection
24 H Section 25.05.040(H). Additional review criteria are specified in Section
25 25.07.012(F) when an associated Coastal Development Permit is required. Additional
26 review criteria contained in specific plans and/or zoning overlays shall apply to
27 projects located in areas covered by any such specific plans and/or zoning overlays.

28 (4) The approval, conditional approval or denial of design review applications by the

1 approval authority shall be accompanied by findings correlated with the design review
2 criteria set forth in subsection H. Section 25.07.012(G) requires written findings to be
3 made when approving or conditionally approving an associated Coastal Development
4 Permit.

5 (5) Design review hearings on a proposed residential development project—~~of three~~
6 ~~dwelling units or less~~ shall usually be limited to a maximum of two hearings. A third
7 hearing may be permitted if the approval authority makes a finding that the applicant
8 followed the authority’s direction(s) from the initial hearing in good faith and further
9 design work on the project is in the best interest of the community. The approval
10 authority may allow up to two continuances of hearings at which no substantive
11 discussion of the application occurs. Concept review hearings for residential dwelling
12 units of three units or less are not allowed, except where required by current City
13 ordinance. If required, concept review shall be limited to one hearing and shall count as
14 one of the above limited hearings.

15 (6) Written notice of the approval, conditional approval or denial of design review
16 applications shall be mailed to the applicant or authorized agent within 14 calendar
17 days of the date of the decision of the approval authority.

18 (7) Landscaping Conditions. The approval authority shall condition all landscaping
19 approvals with mature growth height limits and maintenance schedules (type and
20 frequency of pruning) for all vegetation that potentially impacts views. The
21 landscaping shall be installed in accordance with the approved landscape plans.
22 Thereafter, the landscaping shall be continuously maintained (including replanting, as
23 necessary) in compliance with the approved landscaping plans, unless such plans are
24 subsequently revised pursuant to subsection (B)(1)(~~ya~~) of this section. Minor
25 landscaping changes may be exempt from design review pursuant to subsection
26 (B)(2)(~~ib~~) of this section.

27 (8) Applications for design review approval constitute applications for a “permit” as that
28 term currently is used in California Government Code Section 65009(c)(1), and as

hereafter may be amended.

(G) Design Guidelines. “Design Guidelines” is a publication that has been developed by the City to assist designers in understanding the Design Review criteria. These guidelines complement the zoning regulations provided for in this Title by providing conceptual examples of potential design solutions and design interpretations. The guidelines are general and may be utilized with flexibility in their application to specific projects.

(H) Design Review Criteria. Physical improvements and site developments subject to design review shall be designed and located in a manner which best satisfies the intent and purpose of design review, the City’s village atmosphere and the design review criteria specified in this section. Village atmosphere shall be characterized by appropriately scaled development, diverse and unique architectural designs, pedestrian orientation and sensitivity to the natural conditions of the site. The property development standards as delineated in each zone are intended to provide the City with maximum flexibility and discretion in the decision making process, based upon the particular issues and circumstances in effect at the time development is proposed. These standards shall represent the maximum allowable building envelope for a given property. The actual development allowed after the application of the design review criteria will typically be less than the maximum designated by the general standards for the zone because of localized conditions identified during the design review process. A proposed development that has no variances from the Zoning Code does not have any presumptive development right or “entitlement.” The design review criteria are as follows:

- (1) Access. Conflicts between vehicles, pedestrians and other modes of transportation should be minimized by specifically providing for each applicable mode of transportation. Handicapped access shall be provided as required by applicable statutes.
- (2) Design Articulation. Within the allowable building envelope, the appearance of building and retaining wall mass should be minimized. Articulation techniques including, but not limited to, separation, offsets, terracing and reducing the size of any one element in the structure may be used to reduce the appearance of mass.

- 1 (3) Design Integrity. Consistency with the applicant’s chosen style of architecture should
2 be achieved by the use of appropriate materials and details. Remodels should be
3 harmonious with the remaining existing architecture.
- 4 (4) Environmental Context. Development should preserve and, where possible, enhance
5 the City’s scenic natural setting. Natural features, such as existing heritage trees, rock
6 out-cropping, ridgelines and significant watercourses should be protected. Existing
7 terrain should be utilized in the design and grading should be minimized.
- 8 (5) General Plan Compliance. The development shall comply with all applicable policies
9 of the general plan, including all of its elements, applicable specific plans, and the
10 certified local coastal program.
- 11 (6) Historic Preservation. Destruction or alteration to historic resources should be avoided
12 whenever possible. See sSection 25.45 for more information.
- 13 (7) Landscaping. Landscaping shall be incorporated as an integrated part of the structure’s
14 design and relate harmoniously to neighborhood and community landscaping themes.
15 View equity shall be an important consideration in the landscape design. The relevant
16 landscaping guidelines contained in the City’s “Landscape and Scenic Highways
17 Resource Document” should be incorporated, as appropriate, in the design and planned
18 maintenance of proposed landscaping.
- 19 (8) Lighting and Glare. Adequate lighting for individual and public safety shall be
20 provided in a manner which does not significantly impact neighboring properties.
21 Reflective materials and appurtenances that cause glare or a negative visual impact
22 (e.g. skylights, white rock roofs, high-gloss ceramic tile roofs, reflective glass, etc.)
23 should be avoided or mitigated to a level of insignificance in those locations where
24 those surfaces are visible from neighboring properties.
- 25 (9) Neighborhood Compatibility. Development shall be compatible with the existing
26 development in the neighborhood and respect neighborhood character. Neighborhood
27 character is the sum of the qualities that distinguish areas within the City, including
28 historical patterns of development (e.g., structural heights, mass, scale or size), village

1 atmosphere, landscaping themes and architectural styles.

2 (10) Pedestrian Orientation. Commercial development design shall enhance and encourage
3 pedestrian uses. Incorporation of articulated building masses, compact open spaces and
4 courtyards, mixed use developments, use of landscaping as part of design, and
5 orientation to pedestrian access should be maximized.

6 (11) Privacy. The placement of activity areas (e.g., decks, picture windows and ceremonial
7 or entertainment rooms) in locations that would result in a substantial invasion of
8 privacy of neighboring properties should be minimized.

9 (12) Public Art. Public art is encouraged and shall be displayed where feasible or required
10 by the Art in Public Places Ordinance.

11 (13) Sign Quality. Signs shall be incorporated into the architecture of the structure and
12 shall be made of high quality materials, be simple in design and be visually compatible
13 with the surrounding physical environment in terms of color, scale and size. Use of
14 natural materials in the construction of signs is encouraged.

15 (14) Sustainability. New development should consider architecture and building practices
16 which minimize environmental impacts and enhance energy efficiency by: (a) reducing
17 energy needs of buildings by proper site and structural design; (b) increasing the
18 building's ability to capture or generate energy; (c) using low-impact, sustainable and
19 recycled building materials; (d) using the latest Best Management Practices regarding
20 waste and water management; and (e) reducing site emissions.

21 (15) Swimming Pools, Spas and Water Features. Swimming pools, spas and water features
22 shall be located, designed and constructed where:

23 (a) geology conditions allow;

24 (b) noise produced by circulatory mechanical pumps and equipment is mitigated; and

25 (c) any associated fencing or other site improvements are compatible with neighboring
26 properties.

27 (16) View Equity. The development, including its landscaping, shall be designed to protect
28 existing views from neighboring properties without denying the subject property the

reasonable opportunity to develop as described and illustrated in the City’s “Design Guidelines.” The “Design Guidelines” are intended to balance preservation of views with the right to develop property.

(I) Design Review Findings. Physical improvements and site developments subject to Administrative or Design Review Board authority shall be designed and located in a manner in overall consistency with the design review criteria specified in Section 25.05.040(H), and all other applicable design guidelines and characterized by appropriately scaled development, diverse and unique architectural designs, pedestrian orientation, and sensitivity to the natural conditions of the site. Any deviations from the design review criteria and other applicable design guidelines must be considered minor and reasonably related to good design principles and specific site conditions.

(J) Appeals. Appeals of the design review authority are subject to the provisions of Section 25.05.070, and Section 25.07.016 when a Coastal Development Permit is required.

(K) Effective Date/Expiration Date.

(1) A Design Review decision shall become effective 14 calendar days after the date of the decision, unless appealed to the City Council.

(2) Design Review approval shall lapse and become void two years following the effective date if the privileges authorized by design review are not executed or utilized or, if construction work is involved, such work is not commenced within such two-year period and diligently pursued to completion.

(3) ~~The approval authority may grant~~ **The Director of Community Development or his or her designee may grant approval, through the administrative design review process,** a two-year extension of time and, after that initial extension of time, a final one-year extension of time. Such time extensions shall be requested in writing by the applicant or authorized agent prior to the expiration of the beginning two-year approval period or a subsequently approved extension of time.

(4) Extension of Time Findings. An extension of time of the beginning two-year approval

period may be granted by through the administrative design review process the approval authority, if each of the following findings can be made:

(a) The zoning codes or standards applicable to the circumstances of the originally approved design review have not materially changed; and

(b) The neighborhood character has not changed so as to be materially inconsistent with the findings made when design review was originally approved.

(KL) Reapplication Waiting Period. After denial of a project, no application for a project located on the same parcel or building site may be filed or accepted for filing for two months.

Chapter 25.50 GENERAL YARD AND OPEN SPACE PROVISIONS

25.50.008 Permitted projections into required yards.

(A) Cornices, eaves, belt courses, balconies, greenhouse and bay windows (as defined in Section 25.50.008(E) below) or similar architectural features may cantilever into a required front or rear yard a distance equal to twenty percent of the required front or rear yard. Architectural features (exclusive of balconies) may cantilever into a required side yard a distance equal to forty percent of the required side yard; however, in no event shall any eave, belt course, be constructed less than two and one-half feet, or four feet in the case of green house or bay windows, including the window in an open position, from the side property line, or less than five feet from any other cornice, eave, belt course, greenhouse or bay windows or similar architectural feature on the same lot.

(B) A chimney or fireplace may extend or project into a required front, side or rear yard for a total distance of not to exceed twelve inches, provided that such projection does not extend along the length of such yard a total distance of more than six feet and does not extend closer than three feet to a side property line.

(C) Uncovered porches, patios, graded (fill) terraces, landing places or unenclosed and uncovered outside stairways which do not extend above the level of the first or ground floor of the building and not more than three feet above the natural grade of the ground

1 may extend or project into any required minimum yard for a total distance of not more than
2 six feet, but in no case closer than three feet to an interior side lot line.

3 Note: Porches, patios, graded (fill) terraces, landings or stairways which are covered
4 or enclosed shall be considered as part of the building and shall not be permitted to
5 extend into the required yards.

6
7 **25.50.012 Fences, walls, hedges, latticework and screens.**

8 (B) Permitted Fences, Walls, Hedges, Latticework and Screens.

9 (3) Fences, walls, hedges, latticework or screens not more than four~~six~~ feet in height may
10 be erected, installed or maintained within the front yardside and rear yards of any
11 lot, except that on a corner lot a fence or wall no higher than three feet shall be
12 permitted within the front yard provided such fences, walls, hedges, latticework or
13 screens do not project into the front yard. The fence height of this paragraph shall
14 apply to the height of a retaining wall consistent with the permitted projection
15 requirements in Section 25.50.008, the purpose of which is to create an artificial
16 yard elevation~~graded (fill) terrace~~. Fence height shall be determined as the height of
17 the top of the fence above the natural grade immediately adjacent to the location of the
18 fence. Hedges may exceed the maximum allowable fence heights in the front yardside
19 and/or rear yards, unless a hedge height claim has been filed against the property
20 containing the hedges and such hedges have been found by the city to create a safety
21 hazard and/or obstruct views from or sunlight to an adjacent property, as set forth in
22 Chapter 12.14.

25.05.040(B)(1) Development Subject to Design Review

(B) Development Subject to Design Review.

(1) All new buildings, structures and physical improvements and relocations, additions, extensions, and exterior changes of or to existing buildings, structural and nonstructural improvements, including landscaping and grading, shall be subject to design review, except as otherwise provided in Section 25.05.040(B)(2). Examples of physical improvements and site developments subject to design review include, but are not limited to, the following:

- (a) Commercial or industrial parking and loading areas;
- (b) New vehicular access to streets or alleys;
- (c) Retaining walls in excess of five feet in exposed height;
- (d) Signs, as specified in Chapter 25.54, Sign Regulations;
- (e) Permanent chain link or similar type metal fences;
- (f) Telecommunication facilities subject to the provisions of Chapter 25.55;
- (g) Trash enclosures associated with a commercial use;
- (h) Public street and sidewalk improvements;
- (i) Above-ground utility structures;
- (j) Additions that are 50% or more of the original gross floor area, additions that create a new upper story, additions that exceed a height of 15 feet above the adjacent ground elevation or additions that exceed 10% of the original gross floor area of an existing legal nonconforming structure;
- (k) Shore protective devices;
- (l) All buildings, structures and physical improvements in environmentally sensitive areas and on lots with a slope greater than thirty percent;
- (m) Grading in excess of twenty cubic yards, except as specified in Section 22.10.010(e);

(n) Clearing of native vegetation on undeveloped parcels and undeveloped portions of developed parcels, and native vegetation restoration plans, except for City required annual weed abatement;

~~(o) Fuel modification programs subject to the provisions of 25.05.040(C)(3) and (4); provided, that once a program has received approval, subsequent approval for maintenance of the fuel modification will be granted by the Director of Community Development, if that maintenance is in conformance with the intent and objectives of the originally approved program;~~

~~(p)~~ (o) All City projects within the scope of this section, except if the City Council waives the requirement of design review if it determines that there are special circumstances applicable to such project which require that the project proceed without delay;

~~(q)~~ (p) Landscaping review for new development or additions that are fifty percent or more of the original gross floor area, additions that create a new upper story or additions that exceed a height of fifteen feet above the adjacent ground elevation, and for structural improvements within environmentally sensitive areas;

~~(r)~~ (q) Exterior alterations or additions to structures listed on the historic register per Chapter 25.45, Historic Preservation;

~~(s)~~ (r) Proposed demolition of structures listed on the historic resources list pursuant to Chapter 25.45 ("Historic Preservation");

~~(t)~~ (s) Modifications of previously approved design review plans, including approved landscape plans;

~~(u)~~ (t) Swimming pools, permanent spas and their associated pool or spa equipment;

~~(v)~~ (u) Outlining of the outside of buildings or portions thereof with lights. (If such outlining with lights is proposed on a building listed on the City's Historic Register, then the Heritage Committee shall make a recommendation to the

approval authority prior to its design review); and

~~(w)~~ (v) A hedge or hedges located within front, side and/or rear yards that is/are proposed to exceed the maximum allowable fence height, as set forth in Chapter 25.50.

25.05.040(B)(2) Exemptions

(2) Exceptions. The following shall be exempt from the design review process, unless they are changes associated with approved design review plans, including approved landscape plans:

(a) Additions to a single-family residence in residential zones that:

(i) Are less than fifty percent of the original gross floor area,

(ii) Do not create a new upper story and do not exceed a height of fifteen feet above the adjacent ground elevation,

(iii) Are in conformance with the zoning regulations, and

(iv) Are not within an environmentally sensitive area;

(b) Interior modifications to existing structures or approved plans, including those structures and plans approved by the approval authority, except interior alterations to historic structures as outlined in Chapter 25.45, Historic Preservation;

(c) Repainting existing structures;

(d) Re-roofing buildings and structures with similar materials;

(e) Retaining walls five feet or less in exposed height;

(f) Slabs and patios at or below natural grade and modifications to existing driveways or similar structures that comply with all other applicable provisions of this chapter;

(g) Wood or metal fences that comply with the zoning regulations, except permanent chain link or similar type metal fences;

(h) Window or exterior door replacements or insignificant changes in final design, such as moldings and window pane material;

(i) Minor landscaping which does not have the potential to impact views at mature growth

- 1 height;
- 2 (j) Elevated decks three feet or less above adjacent existing grade;
- 3 (k) Railing changes;
- 4 (I) Artwork approved through the procedures outlined in Chapter 1.09, Art in Public
- 5 Places;
- 6 (m) Signs, in conformance with an approved sign program subject to review and approval
- 7 by the director of community development;
- 8 (n) Temporary on-grade removable accessory structures used as play sets, swing sets and
- 9 other similar unenclosed recreation equipment provided that: (i) the ground area of the
- 10 structure does not exceed one hundred twenty square feet, (ii) the structure is less than
- 11 twelve feet above adjacent ground elevation, and (iii) the structure is not located in a
- 12 required setback area unless it receives administrative design review approval; and
- 13 (o) Second residential units, only as set forth in Chapter 25.17.

14 **(p) Fuel modification programs. Projects consisting solely of a new or modified fuel**

15 **modification program shall be reviewed and approved by the Director of**

16 **Community Development or his or her designee to evaluate landscape design, and**

17 **by the Fire Chief or his or her designee for compliance with fuel modification**

18 **regulations.**

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21 25.15.004(A)(7) Fuel Modification

- 22 (7) Fuel Modification. The development proposal should address the required fuel
- 23 modification as part of the initial application and should integrate fuel modification
- 24 provisions into the site plan in such a way as to minimize impact on existing native
- 25 vegetation and areas of visual prominence. Alternative means to thinning and/or removal
- 26 of native vegetation for fire hazard management such as minimizing the building envelope,
- 27 and/or siting of the structure(s) away from hazard areas, and/or use of fire retardant design
- 28 and materials are preferred where feasible. **The fuel modification plan shall be in**

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compliance with all Fire Department fuel modification requirements.

Amendment Request No. LCP-5-LGB-21-0042-1, Part C
City proposed changes to Title 25 (Municipal Code) of the certified Implementation Plan (Strikethrough-Insert Version); City additions are blue underlined. City deletions are blue struckthrough.

SECTION 4. Section 25.07.008 (pertaining to Coastal Development Permit exemptions) of the Laguna Beach Municipal Code is hereby modified and amended to insert subsection (A)(7) so as to read as follows:

- (A) Certain types of development, described as follows, are considered to be without risk of adverse environmental effect on coastal resources, including public access, and therefore do not require a coastal development permit unless indicated otherwise.

(7) The placement and operation of any wireless telecommunications facility within the public right-of-way is exempt, provided that the facility is mounted to an existing structure or a replacement structure sited within three feet of the existing location, and provided further that the City may require reasonable conditions to mitigate any impacts on coastal resources, including scenic resources.

SECTION 5. Chapter 25.55 (Wireless Communications Facilities) of the Laguna Beach Municipal Code is hereby amended to read in its entirety as follows:

25.55.002 Intent and purpose.

The following regulations shall apply throughout the city. These regulations are intended to establish comprehensive guidelines for the permitting, placement, design and maintenance of wireless communications facilities in all areas within the city, excluding the public rights-of-way. These regulations are intended to prescribe clear, reasonable and predictable criteria to assess and process applications in a consistent and expeditious manner, while reducing impacts associated with wireless communications facilities. These regulations are intended to protect the health, safety and welfare of persons living and working in the city, preserve the aesthetic values and scenic qualities of the city, and allow for the orderly and efficient deployment of wireless communications facilities in accordance with state and federal laws.

25.55.004 Definitions.

“Agent” means a person entity in matters pertaining to the processing of a wireless communications facility as outlined in this Chapter.

“Amateur (ham) radio antenna” means an antenna constructed and operated for transmitting and receiving radio signals for noncommercial purposes, usually in relation to a person’s hobby.

“Antenna” means any system of wires, poles, rods, reflecting discs, panels, microwave dishes, whip antennas or similar devices used for the transmission or reception of electromagnetic waves, including antennas relating to personal wireless services as defined by the Federal Telecommunications Act of 1996, when such system is either external to or attached to the exterior of a structure (building-mounted or roof-mounted), or ground-mounted. Antennas shall include devices having active elements extending in any direction, and directional beam-type arrays mounted upon and rotated through a vertical mast or tower interconnecting the beam and antenna support, all of which elements are deemed to be a part of the antenna.

“Antenna support” means any pole, telescoping mast, tower, tripod or any other structure that supports an Antenna.

“Array” means a group of antennas located on the same structure.

“Base level radio frequency (RF) radiation” means the existing background power density radiation from a proposed telecommunication transmitting antenna site including all existing telecommunication transmitting in operation.

“Cable” means any wire typically consisting of copper, coax or fiber used for utility service purposes.

“Cellular” refers to wireless telephone communication transmitted by electromagnetic waves.

“Co-location” refers to multiple wireless communications devices sharing the same site and as more specifically defined in 47 CFR § 1.40001(b)(7) for purposes of implementing Section 6409 of the Spectrum Act.

“Directional antenna” typically means a panel antenna used to achieve transmission or reception in a specified direction.

“Effective radiated power (ERP)” means the operative amount of power leaving the transmitting antenna. The ERP is determined by multiple factors, including, but not limited to, transmitter output power, coaxial line loss between the transmitter and the antenna, and the “gain” (focusing effect) of the antenna.

“Federal Communications Commission (FCC)” means the independent U.S. governmental agency charged with regulating interstate and international communications by radio, television, wire, satellite and cable.

“Hazardous material” means any gas, material, substance or waste which, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local government to pose a present or potential hazard to human health, safety, property or to the environment.

“Height” means the vertical distance from any point at the top of an antenna and/or ancillary wireless communication structure to the finished or natural surface, whichever is more restrictive or lower, measured directly adjacent to the existing building or new structure.

“Maximum radio frequency (RF) radiation” means the base level radio frequency (RF) radiation and the power density radiation from the proposed telecommunication transmitting antennas at a particular site where all the antennas’ channels are simultaneously operating or projected to operate at their maximum design effective radiated power (ERP).

“Monopole tower” means an antenna support structure typically made of steel, wood or concrete.

“Monorock” means a wireless communications facility camouflaged to resemble one or a grouping of rocks.

“Monoshrub/monotree” means a wireless communications facility camouflaged to resemble one or a grouping of shrubs, bushes or trees.

“Omnidirectional antenna” means an antenna used to achieve transmission or reception in all directions.

“Parabolic antenna” means a specialized antenna that has a curved surface which transmits or receives signals in the microwave area of the radio frequency spectrum, used to link different types of wireless facilities.

“Permittee” means any person, persons or entity, including the city, who owns any wireless communication facility or facilities ~~including, but not limited to, those that are or are proposed to be installed or maintained in the public right of way, or propose to conduct an excavation in, along or under the surface or subsurface of the public right of way.~~

“Power density radiation” means the magnitude of the flow of electromagnetic energy at a point in space, measured in power, usually milliwatts (10^{-3} watts) or microwatts (10^{-6} watts), per unit area, usually centimeters squared.

“Preferred location” means sites with no or minimal impacts to sensitive habitat, public views, and public access and recreation; commercial and industrial zones locations are preferred over locations in other zones except when such location would result in greater impacts.

“Public right-of-way” means any public highway, street, alley, sidewalk, parkway which is either owned, operated or controlled by the city, county or state or is subject to an easement or dedication to the city, county or state or is a privately owned area within the city’s, county’s or state’s jurisdiction which is not yet, but is designated as a proposed public right-of-way on a tentative subdivision map approved by the city.

“Radio frequency (RF) radiation” consists of electromagnetic waves moving together through space radiating from a transmitting device to a receiving device to achieve wireless communications typically operating in a frequency range of three kilohertz to three hundred gigahertz.

“Safety standards” means the most current adopted rules for human exposure limits for radio frequency (RF) radiation adopted by the Federal Communications Commission (FCC).

“Satellite antenna” means a parabolic antenna used to receive and/or transmit radio or television signals from orbiting communications satellites.

“Substantial change in physical dimensions” as that term is defined in 47 CFR § 1.40001(b)(7) for purposes of implementing Section 6409 of the Spectrum Act.

“Testing protocol” means the most current method of radio frequency (RF) radiation measurement adopted by the Federal Communications Commission (FCC).

“Wireless communications facility” means any facility that transmits and/or receives electromagnetic waves, including, but not limited to, commercial wireless communications antennas and other types of equipment for the transmission or receipt of such signals, communication towers or similar structures supporting said equipment, equipment cabinets, pedestals, meters, tunnels, vaults, splice boxes, surface location markers, equipment, equipment buildings, parking areas and other accessory developments.

25.55.006 Permits required.

In addition to the permit requirements described below, the permit requirements of Chapter 25.07 Coastal Development Permits remain applicable except when inconsistent with federal law.

(A) Wireless Communications Facilities Subject to Design Review. All wireless communications facilities, unless specifically exempted, are subject to design review, as provided for in Section 25.05.040. Wireless communications facilities shall comply with the review criteria/standard conditions of Section 25.55.008.

The following wireless communications facilities are exempt from design review requirements:

- (1) A receiving satellite antenna that is one meter (39.37 inches) or less in diameter;
- (2) A receiving satellite antenna that is two meters (78.74 inches) or less in diameter and is located in any commercial or industrial land use zoning district;
- (3) An antenna and all supporting equipment constructed in an existing structure, if the installation is located entirely within the structure’s physical limits or “envelope” and the structure’s exterior appears to remain unchanged, or if the installation is located below and within the upper limits of an existing roof parapet;
- (4) Eligible facilities requests that do not result in a substantial change in physical dimensions to a wireless communications facility as specified in 47 U.S.C. 1455(a), 47 C.F.R. 1.40001, or any other subsequent applicable federal law; ~~and~~
- (5) Any wireless communications facilities exempted from design review by federal or state law; ~~and-~~
- (6) Any wireless communications facilities located within the public right-of-way, which shall instead be subject to the provisions of Chapter 11.06.

(B) Wireless Communications Facilities Subject to a Conditional Use Permit. Unless specifically exempted, all wireless communications facilities are subject to the granting of a conditional use permit as provided for in Section 25.05.030. Wireless communications facilities shall comply with the review criteria/standard conditions of Section 25.55.008. The following wireless communications facilities are exempt from conditional use permit requirements:

- (1) A receiving satellite antenna that is one meter (39.37 inches) or less in diameter;

- (2) A receiving satellite antenna that is two meters (78.74 inches) or less in diameter and is located in any commercial or industrial land use zoning district;
- (3) An antenna and all supporting equipment constructed in an existing structure, if the installation is located entirely within the structure's physical limits or "envelope" and the structure's exterior appears to remain unchanged, or if the installation is located below and within the upper limits of an existing roof parapet;
- (4) Eligible facilities requests that do not result in a substantial change in physical dimensions to a wireless communications facility as specified in 47 U.S.C. 1455(a), 47 C.F.R. 1.40001, or any other subsequent applicable federal law; ~~and~~
- (5) Any wireless communications facilities exempted from conditional use permit review by federal or state law; ~~and~~

(6) Any wireless communications facilities located within the public right-of-way, which shall instead be subject to the provisions of Chapter 11.06.

(C) Wireless Communications Facilities Subject To Administrative Use Permit. Unless specifically exempted by federal or state law, all eligible facilities requests that do not result in a substantial change in physical dimensions of a wireless communications facility as specified in 47 U.S.C. 1455(a), 47 C.F.R. 1.40001, or any other subsequent applicable federal law, are subject to the granting of an administrative use permit provided for in Section 25.55.007, unless the facility is located within the public right-of-way, in which case the provisions of Chapter 11.06 shall apply.

(D) Submittal Requirements. In addition to the standard submittal requirements, all applications for design review, and/or conditional use permits pursuant to this Chapter 25.55, except in relation to amateur ham radio antenna(s), shall include the following information:

- (1) An accurate map, in such physical or electronic format as may be directed by the director of community development or designee, indicating the proposed site and detailing existing wireless communications facility locations owned and operated by the applicant within the city on the date of application submittal;
- (2) An engineering certification demonstrating planned compliance with all existing federal radio frequency emissions standards, and indicating: (i) existing base level radio frequency radiation, (ii) the maximum radio frequency radiation, (iii) the effective radiated power per channel, and (iv) the total number of channels for an omnidirectional antenna or the maximum number of channels in any sector for a sectorized antenna at the proposed site;
- (3) An engineering analysis providing technical data sufficient to justify the proposed height of the wireless communications facility;
- (4) An alternative configuration analysis, assessing the feasibility of alternative wireless communications facility construction configurations, both at the proposed site and in the surrounding vicinity, which would result in a more visually compatible antenna(s), as deemed necessary by the director of community development. This

analysis shall include an explanation of why other wireless communications facility construction configurations were not selected;

- (5) A projection of the applicant's anticipated future wireless communications facility siting needs within the city, which information may be used by the city as part of a master planning effort designed to ensure a planned, integrated and organized approach to wireless communications facility siting;
- (6) An identification of the geographic service area for the subject installation, including a map showing all of the applicant's existing sites in the local service network associated with the coverage gap the wireless communications facility is meant to close, and describing how the coverage gap will be filled by the proposed installation;
- (7) An accurate visual impact analysis showing the maximum silhouette, viewshed analysis, color and finish palette and proposed screening for the wireless communications facility. The analysis shall include photo simulations and other information as necessary to determine visual impact of the wireless communications facility. A map depicting where the photos were taken shall be included. The analysis shall include a written description of efforts to blend the wireless communications facility with the surrounding area;
- (8) The height and mass of the facility, together with evidence that demonstrates that the proposed wireless communications facility has been designed to the minimum height and mass required from a technological standpoint for the proposed site;
- (9) A description of the maintenance and monitoring program for the wireless communications facility and associated landscaping;
- (10) Noise and acoustical information derived from the manufacturer's specifications for all equipment such as air conditioning units and back-up generators, and a depiction of the equipment location in relation to adjoining properties;
- (11) A concept landscape plan showing all proposed landscaping, concealment, screening and proposed irrigation with a discussion of how the chosen material at maturity will screen the site;
- (12) A written description of any good faith efforts to co-locate the proposed wireless communications facility on another site or building, including a map of the sites and engineering information or letters from the owners of the site describing why co-location is not a possibility;
- (13) A written description of all accessory wireless equipment for the wireless communications facility, including an explanation of the function of this ancillary equipment and the need to locate same on or near the wireless communications facility;

- (14) All other information as required by the city's wireless communications facility supplemental application form, which may be modified from time to time in the discretion of the director of the community development; and
- (15) All telecommunications sites subject to this ordinance that will utilize an emergency backup generator must adhere to all South Coast Air Quality Management District rules governing the operation of that equipment, including Rule 1470.

(E) Noticing Requirements. Public notice for telecommunication facility projects subject to design review or conditional use permit application processing shall comply with the noticing provisions of Section 25.05.065.

(F) Expert Review. In the event that the city, at the discretion of the director of community development or designee, determines the need to hire a qualified consultant to evaluate technical and other aspects of the application, the applicant shall provide the city a deposit for the estimated cost of such consultation, and to replenish said deposit if consumed by reasonable costs associated with such consultation, except to the extent as preempted by federal law. Such consultation is intended to be a site-specific review of technical aspects of the proposed wireless communications facility and shall address all of the following:

- (1) Compliance with applicable radio frequency emission standards;
- (2) Height analysis;
- (3) Configuration;
- (4) The appropriateness of granting any requested exceptions;
- (5) The accuracy and completeness of submissions;
- (6) The applicability of analysis techniques and methodologies;
- (7) The validity of conclusions reached; and
- (8) Any specific technical issues designated by the city.

(G) Development Standards. The following development standards shall apply to all design review, and conditional use permit applications for the installation of wireless communications facilities:

- (1) Permittee shall install and maintain permitted wireless communications facilities in compliance with the requirements of the Uniform Building Code, National Electrical Code, city noise standards and other applicable codes, as well as other restrictions specified in this Chapter and/or in a design review approval, or conditional use permit;
- (2) Visual Impact and Screening Standards. All wireless communications facilities shall employ and maintain camouflage design and appropriate screening to minimize

visual impacts. Such techniques shall be employed to make the installation, operation and appearance of the facility as visually inconspicuous as possible, to prevent the facility from visually dominating the surrounding area, and to hide the installation from predominant views from surrounding properties. Depending on the proposed site and surroundings, certain camouflage design techniques may be deemed by the city as ineffective or inappropriate and alternative techniques may be required. The following is a menu of potential camouflage design techniques that should be considered based on different installation situations:

- (a) For Structure-Mounted Installations (Excluding Monopole Installations).
 - (i) All antenna panels and accessory wireless equipment components mounted on the exterior of the structure shall be painted or otherwise coated to match the predominant color of the mounting structure; and
 - (ii) When required by the director of community development or designee, antenna panels shall be located and arranged on the structure so as to replicate the installation and appearance of the equipment already mounted to the structure.; and
 - ~~(iii) — Wireless communications facility installations located above the surface grade in the public right-of-way including, but not limited to, those on certain streetlights or traffic signal standards, shall consist of components that are compatible in scale and proportion to the streetlights and traffic signals they are mounted on. Equipment shall be painted or otherwise coated to be visually compatible with lighting and signal equipment. Underground vaults shall employ flush-to-grade access portals and vents.~~
- (b) For Monopole Tower Installations.
 - (i) Monopole installations shall be situated so as to utilize existing natural or man-made features including topography, vegetation, buildings or other structures to provide the greatest amount of visual screening;
 - (ii) All antenna components and accessory wireless equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background and/or adjacent architecture so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used;
 - (iii) In those circumstances where an installation is within or easily visible from a zone that is not a preferred location, the director of community development or designee may require additional measures designed to camouflage a wireless communications facility, including, but not limited to, enclosing the monopole entirely within a vertical screening structure (suitable architectural feature such as a clock tower, bell tower, icon sign, lighthouse, windmill, etc.) may be required through the permit process.

All facility components, including the antennas, shall be mounted inside said structure; and

- (iv) The camouflage design techniques employed shall result in an installation that either will blend in with the predominant visual backdrop or will disguise the facility so it appears to be a decorative or attractive architectural feature.
- (c) For Miscellaneous Installations: Although generally not appropriate, a monorock and or monoshrub/monotree installation will be considered properly screened provided that it is located in a setting that is compatible with the proposed screening method. For a monoshrub/monotree, other vegetation comparable to that replicated in the proposed screen shall be prevalent in the immediate vicinity of the wireless communications facility site and the addition of new comparable living vegetation may be necessary to enhance the monoshrub/monotree screen. For a monorock, the proposed screen shall match in scale and color other rock outcroppings in the general vicinity of the proposed site. A monorock screen may not be considered appropriate in areas that do not have natural rock outcroppings.
- (d) For Co-Locations. Co-locations shall use screening methods similar to those used on the existing wireless communications facilities, or such other and additional screening methods as may be required by the director of community development or designee.
- (e) For Accessory Wireless Equipment. No accessory wireless equipment associated with the operation of any wireless communications facilities shall impair pedestrian use of sidewalks or other pedestrian pathways, nor inhibit equestrian activities on designated public or private trail systems. Accessory wireless equipment shall be screened from the sidewalk by landscaping, undergrounding or other means. The following is a menu of potential screening techniques that should be utilized based on the type of installation:
 - (i) Accessory wireless equipment for freestanding wireless communications facilities, not mounted on a building, shall be placed in an underground vault if reasonably feasible. Where placing such wireless communications facilities in an underground vault is not reasonably feasible, such wireless communications facilities shall comply with Public Utilities Commission General Order 95/128 and shall be visually screened through the use of walls, landscaping or walls combined with landscaping. All wall and landscaping materials shall be selected so that the resulting screening will be visually integrated with the architecture and landscape architecture of the surroundings;
 - (ii) All accessory wireless equipment shall be placed and mounted in the least visually obtrusive feasible location; and

- (iii) All accessory wireless equipment shall be painted or textured using colors to match or blend with the primary background. All equipment cabinets visible to the public shall be treated with a graffiti-resistant coating.

25.55.007 Administrative use permit for wireless communications facilities.

(A) Intent and Purpose. It is the intent and purpose of this section to establish a procedure whereby an administrative use permit can be granted for eligible facilities requests that do not involve a substantial change in physical dimensions of a wireless communications facility. Approval of such facilities requests is required by Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, otherwise known as the Spectrum Act, Pub. L. 112-96, H.R. 3630, 126 Stat 156 (enacted Feb. 22, 2012) and subsequently adopted FCC rules intended to implement Section 6409 of the Spectrum Act, specifically including 47 C.F.R. Section 1.40001.

(B) Procedure. Granting of administrative use permits for eligible facilities requests that do not involve a substantial change in physical dimensions of a wireless communications facilities shall be subject to the procedures specified in 47 C.F.R. 1.40001.

(C) Conditions of Approval. Conditions of approval on wireless communications facilities approved by an administrative use permit shall be limited to those conditions reasonably related to non-discretionary codes such as Health and Safety, Building, and Structural codes.

(D) Modifications. Additions, enlargements or modifications of uses or structures upon property for which an administrative use permit has been granted shall not be allowed except pursuant to a subsequent permit as might otherwise be required or granted pursuant to the terms of this chapter.

25.55.008 Review criteria/standard conditions.

(A) Zoning Compliance. Wireless communications facilities may be permitted in any zone, right-of-way or easement, except the open space/conservation (OS/C) zone. Transmitting wireless communications facilities are strongly discouraged in residential zones or adjacent to schools.

(B) Height. Wireless communications facilities shall be limited to a maximum height of thirty-six feet as defined in Section 25.55.004 - Definitions "Height." The height of a non-exempt parabolic antenna shall be measured from its most vertical position and extent. ~~The maximum height permitted in any right-of-way or easement shall be thirty-six feet or the height of the closest existing utility pole, whichever is lower.~~ Wireless communications facilities may be constructed in an existing legal, conforming or nonconforming structure at any height, if the installation is located entirely within the structure's physical limits or "envelope" and the structure's exterior appears to remain unchanged. Wireless communications facilities may be installed on the outside of an existing legal, conforming or nonconforming structure at any height, if such installation adds no more than ten inches of horizontal width to a structure's vertical surface, or if the facilities are located below and within the upper limits of an existing roof parapet.

(C) Safety. Access to wireless communications facilities shall be restricted to maximize public safety. Security measures should include fencing, screening and signage, as deemed appropriate by the design review board.

(D) Aesthetics. The city's "Guidelines for Site Selection and Visual Impact and Screening of Telecommunication Facilities," which is on file with the community development department for review and copying, shall be utilized to reduce visual impact. In an effort to reduce a proposed wireless communications facility's aesthetic visual impact, the ~~design review board~~Planning Commission or director of community development or designee may request that alternative designs be developed and submitted for consideration. Aesthetic visual impact review shall include consideration of public views, including, but not limited to, views to and along the coast, inland to and from the hillsides, as well as from public parks, trails and open spaces. Co-location of wireless communications facilities is desirable, but there shall not be an unsightly proliferation of wireless communications facilities on one site, which adversely affects community scenic and aesthetic values.

(E) Environmentally Sensitive Area (ESA) Protection. Placement of wireless communications facilities shall not be allowed to cause adverse impacts on environmentally sensitive areas (ESAs as defined in Open Space/Conservation Policy 8-1). Placement within ESAs shall be prohibited.

(F) Radio Frequency (RF) Radiation Standard. Within three months after construction of a wireless communications facility, which contains transmitting antenna(s), except in relation to amateur ham radio antenna(s) and transmitting antenna(s) with an effective radiated power (ERP) of five watts or less per channel, the maximum radio frequency (RF) radiation shall be measured and documented in a written report submitted to the city. The measurement and report shall be performed and prepared by a qualified, independent testing service/consultant retained by the city at the applicant's expense. The measurement shall be made utilizing the most current testing protocol established by the Federal Communications Commission (FCC). The maximum radio frequency (RF) radiation shall not exceed the most current FCC safety standards.

(G) Long-Term Compliance. In order to guarantee long-term compliance with conditions of approval, that power levels remain as specified, and that the equipment is operating as designed, the operator of an approved transmitting antenna shall submit an affidavit indicating that the wireless communications facility is operating as approved and that the facility complies with the most current FCC Safety Standards. The affidavit shall be submitted on a yearly basis prior to the anniversary date of the facility approval for as long as the facility remains in operation and shall incorporate a separate affidavit of a qualified, independent testing service/consultant demonstrating and verifying compliance with the most current FCC Safety Standards and approved power levels. In addition, the city may conduct independent tests to verify compliance with the most current FCC Safety Standards and approved power levels. The director of community development or designee shall periodically review the approved wireless communications facility sites and determine if testing is necessary. Approved wireless communications facility providers shall be notified of all such director's determinations. The operator(s) of the approved wireless communications facility shall be responsible for the full cost of such tests.

(H) Setbacks. The setback of all wireless communications facilities shall meet the development standards and setback requirements of the applicable zoning district.

(I) Lighting. Any exterior lighting for wireless communications facilities shall be fully shielded.

(J) Identification. Each wireless communications facility shall be identified by a permanently installed plaque or marker, no larger than four inches by six inches, clearly identifying the addresses, email contact information, and twenty-four-hour local or toll-free contact telephone numbers for a live contact person for both the permittee and the agent responsible for the maintenance of the wireless communications facility. Emergency contact information shall be included for immediate responses. Such information shall be updated in the event of a change in the permittee, the agent responsible for maintenance of the wireless communications facility, or both.

(K) Maintenance.

(1) All graffiti on any components of the wireless communications facility shall be removed promptly in accordance with city regulations. Graffiti on any [facility accessory equipment](#) in the public right-of-way must be removed within forty-eight hours of notification.

(2) All landscaping attendant to the wireless communications facility shall be maintained at all times and shall be promptly replaced if not successful.

(3) If a flagpole is used for camouflaging a wireless communications facility, flags shall be flown and shall be properly maintained at all times. The use of the United States flag is subject to the provisions of the United States Flag Code, 4 U.S.C. § 6 et seq.

(4) All wireless communications facility sites shall be kept clean and free of litter.

(5) All equipment cabinets shall display a legible sign clearly identifying the address, email contact information, and twenty-four-hour local or toll-free contact telephone numbers for both the permittee and the agent responsible for the maintenance of the wireless communications facility. Such information shall be updated in the event of a change in the permittee, the agent responsible for maintenance of the wireless communications facility, or both.

(L) Compliance. The permittee and the wireless communications facility shall adhere to and comply with all applicable requirements of federal, state and local laws, ordinances, rules, and regulations.

(M) Abandonment or Discontinuance of Use.

(1) All permittees or operators who intend to abandon, discontinue, and/or terminate the use of any wireless communications facility, or co-located portion thereof, shall notify the city of such intentions no less than sixty days prior to the final day of use.

Said notification shall be in writing, shall specify the date of termination and shall include reference to the applicable permit number.

- (2) All wireless communications facilities, or co-located portion thereof, not in use for ninety days shall be considered abandoned.

~~(3) For wireless communications facilities in the public right of way, or co-located portion thereof, where operations have been abandoned, discontinued and/or terminated such facilities shall be physically removed no more than ninety days following the final day of use or of determination that the facility has been abandoned, discontinued and/or terminated whichever occurs first. By that same time, at permittee's sole expense and responsibility, all component elements of an abandoned, discontinued and/or terminated wireless communications facilities, or co-located portion thereof, shall be removed in accordance with applicable health and safety requirements. The site upon which the wireless communications facility is located shall be restored to the condition that existed prior to the installation of the wireless communications facility, or co-located portion thereof.~~

~~(4) For wireless communications facilities in the public right of way, at any time after ninety days following the abandonment, discontinuation, and/or termination of the use and/or operation of a wireless communications facility, or co-located portion thereof, the city may remove the wireless communications facility, repair any and all damage to the premises caused by such removal, and otherwise restore the premises as he/she deems appropriate. The city may, but shall not be required to, store the removed wireless communications facility (or any part thereof). The permittee of the wireless communications facility, or co-located portion thereof, and all prior owners and operators of the wireless communications facility, shall be jointly and severally liable for the entire cost of such removal, repair, restoration, and storage, and shall remit payment to the city promptly after demand therefor is made. If payment is not made in a reasonable amount of time, the city may pursue abatement cost recovery in compliance with Municipal Code Section 7.24.130. The city may, in lieu of storing the removed wireless communications facility, or co-located portion thereof, convert it to the city's use, sell it, or dispose of it in any manner deemed appropriate by the city.~~

(N) Relocation. Permittee shall modify, remove or relocate its wireless communications facility, or portion thereof, without cost or expense to city, if and when made necessary by any abandonment, change of grade, alignment or width of any street, sidewalk or other public facility, including the construction, maintenance or operation of any other city or service utility providers underground or aboveground facilities including, but not limited to, sewers, storm drains, conduits, gas, water, electric or other utility systems, or pipes owned by city or any other public agency. Said modification, removal, or relocation of a wireless communications facility shall be completed within ninety days of notification by city unless exigencies dictate a shorter period for removal or relocation. In the event a wireless communications facility is not modified, removed, or relocated within said period of time, city may cause the same to be done at the sole expense of permittee in compliance with Municipal Code Section 7.24.130 "Abatement cost recovery." Further, in the event of an emergency, the city may modify, remove, or relocate wireless communications facilities without prior notice to permittee provided permittee is notified within a reasonable period thereafter.