

ORDINANCE NO. 2007-12

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN JUAN BAUTISTA
ADDING SECTION 11.04.100 (“WIRELESS COMMUNICATION FACILITIES”)
TO CHAPTER 11.04 (“ADDITIONAL DEVELOPMENT STANDARDS”)
AND AMENDING CHAPTER 11.29 (“DEFINITIONS”)
OF TITLE 11 OF THE SAN JUAN BAUTISTA MUNICIPAL CODE**

WHEREAS, there exists a need in the City to establish regulations, guidelines and circumstances for the siting, design, construction, major modification and operation of wireless communications facilities; and

WHEREAS, public health, safety, and welfare dictate that all wireless communication facilities are located to minimize negative impacts and enhances the community benefits of wireless communication technology; and

WHEREAS, to assure that the regulations in this ordinance are consistent with state and federal law, particularly the Federal Telecommunications Act of 1996, this Council desires to put in place comprehensive regulations for antennas and wireless communications facilities,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN JUAN BAUTISTA HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Section 11.04.100 is hereby is added to Chapter 11.04 of the San Juan Bautista Municipal Code, to read as follows:

11.04.100 Wireless Communication Facilities.

A. Purpose and Intent. The purpose of this Section is to establish a comprehensive set of zoning requirements for antennas and wireless communication facilities. These regulations are intended to provide for the managed development of antennas and wireless communications facilities in a manner that recognizes and enhances the community benefits of wireless communication technology and reasonably accommodates the needs of citizens and wireless communication service providers in accordance with federal and State rules and regulations, while at the same time protects the neighbors from potential adverse impacts of such facilities; preserves the visual and historic character of the established community and the natural beauty of hillsides and ridgelines.

B. Exemptions. The requirements imposed by this Section shall not apply to antennas or antenna structures set forth in this subsection, unless noted otherwise below. Each such exempt facility above shall fully comply with any other applicable requirements of the Municipal Code to the extent not specially exempted in this Section, including but not limited to the California Building Code, California Electrical Code, California Plumbing Code, California Mechanical Code, California Fire Code.

1. Direct Broadcast Satellite (DBS) antennas and Multipoint Distribution Services (MDS) antennas measuring one (1) meter or less in diameter (or diagonal measurement); and Television Broadcast System (TVBS) antennas provided: a) the antenna is located entirely on and/or above the subject property; b) no antenna is more than 12 feet in height, and c) no portion of any ground mounted antenna is within a required front yard setback for the main building, in front of the main building, within a required side yard setback of a corner lot or adjacent to a street.

2. Satellite Earth Station (SES) antennas measuring two (2) meters or less in diameter (or diagonal measurement) located on a property within any commercial or industrial zoning district, provided: a) the antenna is located entirely on and/or above the subject property; and b) no portion of any ground mounted antenna is within a required front yard setback for the main building, in front of the main building, within a required side yard setback of a corner lot or adjacent to a street. All SES antennas shall require a building permit and Planning Commission review of placement to insure that maximum safety is maintained.

3. Antennas and antenna structures constructed by or for FCC licensed Amateur Radio operators that comply with the following provisions shall require a building permit and Planning Commission review of placement to insure that maximum safety is maintained:

i. The antenna structure, when fully extended, measures forty-five (45) feet or less in height, and measures twenty-four (24) inches or less in diameter or width;

ii. The antenna boom measures twenty (20) feet or less in length and is three (3) inches or less in diameter;

iii. No antenna element exceeds thirty-two (32) feet in length or two (2) inches in diameter or width, with the exception of mid-element tuning devices which shall not exceed six (6) inches in diameter or width;

iv. The turning radius of any antenna does not exceed twenty-six (26) feet; and

v. All antennas and antenna structures shall comply with the applicable provisions of Chapters 11.03 and 11.04 (Development Standards) of this Title and any other applicable provisions of the San Juan Bautista Municipal Code.

4. A proposed facility shall be exempt if, and to the extent that, rules and regulations of the Federal Communication Commission (FCC) or the provisions of a permit issued by the California Public Utilities Commission (CPUC) specifically provide that the facility is exempt from City regulation.

C. Review and Approval. Any person who proposes to install or operate a wireless communication facility shall first obtain approval of a conditional use permit and/or design review approval, as set forth below, unless the facility is exempt under Section 11.04.100.B.

1. Required Permits. Requests for approval of wireless communication facilities shall be reviewed as follows:

a. Conditional Use Permit. Antennas and antenna structures set forth in this subsection shall require a conditional use permit pursuant to the provisions of Chapter 11.20 of this Title and Section 11.04.100.C.2 & 3 of this Section:

1. An amateur radio antenna or antenna structure which, when fully extended, exceeds sixty (60) feet in height;

2. A service provider facility located in or within three hundred (300) feet of a residential zoning district (as defined in Chapter 11.02 of this Title); and

3. A monopole antenna structure constructed by or for a service provider.

b. Design Review Application. Antennas and antenna structures set forth in this subsection shall require a design review application pursuant to Chapter 11.18 and Sections 11.04.100.C.2 & 3. The Planning Commission may delegate its authority under this subsection to the City Manager, in which case approval may still only be granted after providing ten (10) days notice to property owners within a 300-foot radius of the proposed antenna location.

1. A monopole antenna structure constructed by or for an FCC licensed amateur radio operator which, when fully extended, is between forty-five (45) and sixty (60) feet in height, and/or has a turning radius exceeding 26 feet (i.e., when the antennas are rotated);

2. A service provider facility located anywhere other than in or within three hundred (300) feet of a residential zoning district (as defined in Chapter 11.02 of this Title); and

3. A monopole antenna structure constructed by or for a service provider.

c. Building Permit. All antennas and antenna structures, unless specifically exempted under Section 11.04.100.B, shall require a building permit.

2. Findings. The Planning Commission may approve a conditional use permit or design review application for a wireless communication facility only upon making the findings set forth in Chapter 11.20 (Use Permit) or Chapter 11.18 (Design Review) as well as the following finding: Every applicable requirement set forth in Sections 11.04.100.D, E. & F. is satisfied, or an exception has been granted to Section 11.04.100.C.3.

3. Exceptions. The Planning Commission may grant an exception to any requirement of this Section that is not met upon finding that: a) strict compliance preclude the reasonable accommodation of the communication needs of the operator as set forth in federal and/or State rules and regulations; and b) there are no other feasible alternatives. In order to grant an exception for a wireless communication facility located within a vertical distance of one hundred

(100) feet of a major ridge, the Planning Commission must also make one of the following findings: a) due to the proposed location and/or design of the facility, it will not be readily visible from surrounding properties, right-of-way or public property; or b) due to existing structures and/or landscaping, the facility will be substantially screened from view and will not have significant adverse visual impacts.

4. Length of Permit. A conditional use permit or design review approval for a wireless communication facility shall be valid for an initial maximum period of ten (10) years, unless a shorter period of time is required as a condition of approval by the Planning Commission. The permit may be administratively extended for a period no longer than the initial maximum period by the City Manager upon verification of continued compliance with the findings and conditions of approval under which the application was originally approved, as well as any other provisions provided for in the Municipal Code which are in effect at the time of permit renewal.

5. Submittal Requirements. In addition to the general requirements set forth in other subsections of this Section, each application shall include the following information:

a. Documentation demonstrating that the facility will comply with applicable radio frequency (RF) emission standards as set forth in Section 11.04.100.D.1.i. Such documentation may be satisfied by a written demonstration of compliance with FCC Bulletin OET-65, as amended;

b. Written description of the proposed method(s) of correcting any potential interference with consumer electronic products that may result from the operation of the facility as set forth in Section 11.04.100.D.2.i;

c. Written description of any noise generated by the facility, including but not limited to retractable monopole motors, antenna rotators, power generation and related

equipment. Such information shall include the estimated times, frequency, duration and decibel levels of the noise.

d. Any application for a facility that does not comply with all applicable standards in Sections 11.04.100.D, E & F shall include a written statement explaining why strict compliance with the standard would not reasonably accommodate the communication needs of the operator, any alternatives that were considered, and the reasons why there are no feasible alternatives that would meet the standard.

e. Based on the reasonable discretion of the City Manager, the City, at the applicant's sole expense, may also require the applicant to provide:

1. Visual impact analysis showing a silhouette or other visualization(s) of the proposed facility within the context of its surroundings; and/or

2. Written authorization for the City to hire an independent, qualified consultant to evaluate technical and other aspects of the proposal, including but not limited to, compliance with applicable emission standards, potential for interference with consumer electronic products and/or public safety communications and the appropriateness of granting any requested exceptions. Such authorization shall include a written agreement by the applicant to advance or promptly reimburse the City for all reasonable costs associated with the consultation.

f. The type(s) of wireless communication service(s) to be provided by the facility.

g. In addition to the information required in Sections 11.04.100.C.5.a-f, applications for approval of a service provider facility shall include the following:

1. Map showing all current and planned facility sites within and adjacent to the City that are owned and/or operated by the service operator;

2. Name(s), address(es) and telephone number(s) of the person(s) that own the facility and that will be responsible for its operation and maintenance;

3. Any proposed access roads or parking areas; and

4. Documentation that the operator has obtained any licenses and/or approvals that are required by federal and/or State agencies.

D. General Requirements. Unless specifically stated otherwise in this Section, all antennas and antenna structures shall be designed, installed and operated in compliance with the following provisions:

1. Development Standards.

a. All antenna, to the greatest degree possible, shall be located out of the public view and screened from public view.

b. No portion of an antenna, support structure or any related equipment shall be located on or within a vertical distance of one hundred (100) feet of a major ridge.

c. Unless otherwise required by city, county, state or federal rules or regulations, wireless communication facilities shall have a non-reflective finish and shall be painted a neutral color consistent with the predominant background color, as determined by the Planning Commission.

d. Unless otherwise required by applicable federal rules or regulations, no wireless communications facility shall have artificial lighting.

e. All facilities shall be designed so as to be resistant to and minimize

opportunities for unauthorized access, climbing, vandalism, graffiti, and other conditions, which would result in hazardous conditions, visual blight, or attractive nuisances.

f. No portion of any antenna, support structure or related equipment shall overhang a property line. This restriction shall apply to any portion of any antennas as they rotate or are in a fixed position.

g. All wireless communication facilities shall comply with the applicable provisions of this Section and Title 11 as well as the California Building Code, California Electrical Code, California Plumbing Code, California Mechanical Code, California Fire Code and rules and regulations imposed by state and federal agencies.

h. No antenna or antenna structure shall be located within the required front yard setback for the main building, in front of the main building, within the required side yard setback of a corner lot or adjacent to any street frontage. This requirement shall also apply to antennas as they rotate.

i. Not more than one (1) monopole antenna structure is permitted on any parcel in a residential zoning district.

j. No wireless communication facility shall be sited or operated in such a manner that it poses, either by itself or in combination with other such facilities, a potential threat to the public health. To that end, no facility or combination of facilities shall produce at any time power densities in any inhabited area that exceed the FCC's Maximum Permissible Exposure (MPE) limits for electric and magnetic field strength and power density for transmitters or any more restrictive standard subsequently adopted or promulgated by the city, county, state or federal government. Absolute compliance with FCC Office of Engineering Technology (OET) Bulletin 65, as amended, is mandatory, and any violation of this section shall be grounds for the City to immediately terminate any permit granted hereunder, or to order the immediate service termination of any non-permitted, non-complying facility constructed within the City.

k. Existing and new landscaping materials, especially trees, shall be used where possible to screen antenna and antenna towers from off-site views.

2. Design and Operational Standards

a. In order of preference, wireless communication facilities and ancillary equipment shall be located within a building, on a screened rooftop, on a building facade or within in a fenced yard area. Antennas, antenna structures and related equipment shall incorporate architectural, landscape, color and/or other treatments to minimize potential visual impacts to surrounding areas, including public property. Innovative design solutions that minimize visual impacts should be utilized. All hardware, such as brackets, turnbuckles, clips and similar items subject to rust or corrosion shall be protected by galvanizing or paint.

b. Building mounted antennas shall be in scale and architecturally integrated with the building design in such a manner as to be visually unobtrusive and to avoid blocking scenic resources. Facilities shall be as small as possible and the minimum height necessary without compromising reasonable reception or transmission. Screening may include locating the facility within attics, steeples, and towers or within a new architectural addition to a building or structure, which is architecturally compatible with the building.

c. All wireless communication facilities shall be:

i. Substantially screened from the view of surrounding properties, public right-of-way and other public property; or co-located with existing facilities or structures so as not to create substantial visual, noise or thermal impacts; or

ii. Located in areas with substantial existing screening by structures and/or landscaping; or

iii. Designed to appear as natural features found in the immediate area, such as trees or rocks, so as to be effectively unnoticeable.

d. Whenever reasonably feasible as may be determined by the City Manager, all facilities shall avoid any unreasonable obstruction of views from neighboring properties.

e. Whenever reasonably feasible as may be determined by the City Manager, wireless communication facilities shall be installed in a manner so as to preserve existing landscaping, whether or not it is utilized for screening. Additional landscaping may be required where such vegetation is deemed necessary and appropriate to provide screening.

f. The smallest and least visible antennas as possible should be installed which will reasonably accommodate the operator's communication needs. The applicant shall

disclose what antennas and support structures were evaluated, and the selection process used to select the antenna and support structure consistent with this section.

g. The City shall retain the authority to limit the number of antennas and related equipment at any site in order to minimize potential visual impacts.

h. Each facility shall be operated in such a manner so as to minimize any noise impacts.

i. To the extent allowed under applicable federal rules and regulations, the operator of a wireless communication facility shall correct interference problems experienced by any person or entity with respect to equipment such as television, radio, computer, and telephone reception or transmission that are caused by the facility. If a federal agency with jurisdiction over such matters finds that a facility is operating in violation of federal standards, the operator shall bring the facility into conformance with such standards within the conformance period

established by the federal agency. In the event that the federal agency does not establish a conformance period, the operator shall bring the facility into conformance within thirty (30) days of notification by the federal agency. The operator is under an affirmative duty to promptly provide the City Manager with a copy of any notice of such violation issued by any federal agency. Any violation of the provisions of this section shall be grounds for the City to terminate any permit granted hereunder and/or to order the immediate service termination of the facility. The operator shall be responsible for all labor and equipment costs for determining the source of the interference, all costs associated with eliminating the interference, (including but not limited to filtering, installing radio frequency cavities, installing directional antennas, powering down systems and engineering analysis), and all costs arising from third party claims against the City attributable to such interference.

E. Special Provisions for Amateur Radio Antennas and Antenna Structures. In addition to the General Requirements in Section 11.04.100.D, amateur radio antennas and antenna structures shall be the minimum height and size necessary to reasonably accommodate the operator's communication needs, in accordance with FCC regulations as set forth in FCC Order "PRB-1." Retractable monopoles may be required for antenna structures over 45 feet in height which are in or within three hundred (300) feet of any residential zoning district (as defined in Chapter 11.02 of this Title). At times when not in operation, the monopole may be required to be retracted to the lowest elevation possible in order to maintain a safe clearance above any nearby building, accessory structure, overhead utility, landscaping and/or any other site improvements.

F. Special Provisions for Service Provider Facilities. In addition to the General Requirements in Section 11.04.100.D, service provider facilities shall comply with the following requirements:

1. Whenever reasonably feasible, as determined by the City Manager, service provider facilities shall be encouraged to be located on City-owned property or public right-of-way.
2. Any service provider facilities that are developed on vacant sites shall be temporary. When such sites are developed, these facilities shall be removed. Such facilities may be replaced with building mounted antennas or other types of appropriate facilities, subject to review and approval by the City in accordance with Section 11.04.100.C. (Review and Approval).
3. Facilities shall be co-located with existing facilities, whenever reasonably feasible and aesthetically desirable. In order to facilitate future co-location of antennas for other service providers, the conditions of approval shall prohibit the applicant from entering into an exclusive lease for the use of the site.
4. Roof mounted antennas and antenna structures shall not exceed a height of twelve (12) feet above the maximum allowed height limit for the main building in the zoning district in which the facility is located. If there is no height limit for the main building, the antennas and support structures shall not exceed sixty (60) feet in height.

G. Discontinuance of Use. Antennas, support structures and related equipment shall be

removed within thirty (30) calendar days of the discontinuation of the use of a wireless communication facility and the site shall be restored to its previous condition. The service provider shall provide the City Manager with a notice of intent to vacate the site a minimum of thirty (30) calendar days prior to vacation. For facilities located on City property, this requirement shall be included in the terms of the lease. For facilities located on other sites, the property owner shall be responsible for removal of all antennas, structures and related equipment within thirty (30) calendar days of the discontinuation of the use.

H. Nonconforming Facilities. Any wireless communication facility in existence prior to the effective date of the Section which is nonconforming to the provisions of this Section may continue to be used. Such nonconforming facilities may be operated, repaired and maintained but shall not be enlarged, expanded, relocated or modified to increase the discrepancy between the existing conditions and the requirements of this Section.

SECTION 2. Chapter 11.29 of Title 11 of the San Juan Bautista Municipal Code, is hereby amended to add the following definitions:

Amateur Radio Operator: A person operating a radio used for two-way radio communications by private individuals as a leisure-time activity. Also known as a ham radio operator.

Antenna: Any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of electromagnetic signals, including but not limited to radio waves and microwaves.

Antenna Boom: A long pole extending upward at an angle from a mast or a derrick to support or guide objects being lifted or suspended.

Antenna Turning Radius: The widest radius required to turn the antenna 360 degrees when attached to a rotor.

Wireless Communication Facilities: A facility that transmits and/or receives electromagnetic signals, including antennas, monopole and/or accessory structures and related equipment.

Wireless Communication Service Providers: A wireless service provider is a company that offers transmission services to users of wireless devices through radio frequency signals rather than through end-to-end wire communication.

Wireless Communication Technology: Wireless communication technology is a term used to describe telecommunications in which electromagnetic waves (rather than some form of wire) carry the signal over part or all of the communication path.

SECTION 3. Severability. This ordinance and the various parts thereof are hereby declared to be severable. Should any section of this ordinance be declared by a court to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole,

or any portion thereof other than the section, or part thereof, so declared to be unconstitutional or invalid.

SECTION 4. Effective Date. This ordinance shall go into effect thirty (30) days after the date of its adoption.

THE FOREGOING ORDINANCE was first read at a regular meeting of the San Juan Bautista City County on the 20th day of February, 2007, and was adopted at a regular meeting of the San Juan Bautista City Council on the 20th day of March, 2007, by the following vote:

AYES: Hill, Dias, Paradice, Edge, Laverone

NOES: None

ABSENT: None

ABSTAIN: None

Priscilla J. Hill, Mayor

ATTEST:

Trish Paetz, Deputy City Clerk

APPROVED AS TO FORM:

George Thacher, City Attorney