CITY COUNCIL AGENDA REPORT

MEETING DATE: AUGUST 21, 2012 **ITEM NUMBER:**

SUBJECT: ADOPT AN ORDINANCE TO AMEND TITLE 19, CHAPTER 1, ARTICLE 4, SECTIONS 19-14 AND 19-15 REGARDING WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

DATE: AUGUST 9, 2012

FROM: PUBLIC SERVICES DEPARTMENT/ENGINEERING DIVISION

PRESENTATION BY: ERNESTO MUNOZ, PUBLIC SERVICES DIRECTOR

FOR FURTHER INFORMATION CONTACT: FARIBA FAZELI, INTERIM CITY ENGINEER, (714) 754-5335

RECOMMENDATION:

Adopt an ordinance to amend Title 19, Chapter 1, Article 4, Sections 19-14 and 19-15 regarding wireless telecommunications facilities in the public right-of-way (Attachment 1).

BACKGROUND:

California Public Utilities Code

Under State and Federal law, the City has regulatory authority over both the placement and appearance of wireless equipment in public rights-of-way. However, this authority is limited. California Public Utilities Code section 79011 ("PUC 7901") grants a general statewide right to telephone companies (including wireless providers) to install wireless cell phone equipment in public rights-of-way.

These wireless telecommunications facility applications must be processed within 90 days of a completed application for a collocation or within 120 days for a brand new structure/facility.

Federal Telecommunications Act of 1996

The Federal Telecommunications Act of 1996 ("TCA") renders unlawful the "effective prohibition" of wireless services, through the denial of permits for telecommunications equipment. However – within the very limited sphere of authority under state and federal law - the City can require Conditional Use Permits (CUP) - and permits in general - for all wireless facilities proposed to be placed in the public right-of-way. Any regulation pursuant to State law must still be consistent with the Federal Telecommunications Act of 1996.

History of Approvals of Wireless Telecommunications Facilities in the City

Presently, Title 19 stipulates that telephone corporations, including telecommunication providers, apply and obtain a discretionary encroachment permit from the Public Services Department for installation of their facilities within the public right-of-way.

The permit applications are routed through other departments within the City for review and conditioning. Public Services Department staff compiles the comments from other departments and adds additional conditions/requirements to the permit. The Code does not require any public notification for these applications.

To date, the Public Services Department has issued the following three permits to telecommunication providers:

- Encroachment Permit No. PS10-00550 located at 1555 Santa Ana Avenue to NEXTG NETWORKS OF CALIFORNIA on 10-25-2010, Permit Fees: $935.00
- Encroachment Permit No. PS10-00503 located at 1996 Tustin Avenue/396 20th Street to T-MOBILE on 01-03-2011, Permit Fees: $935.00
- Encroachment Permit No. PS11-00507 located at 1598 Placentia Avenue to NEXTG NETWORKS OF CALIFORNIA on 11-29-2011, Permit Fees: $825.00

City Hearings

In October 2011, the Planning Commission requested staff to process a Code Amendment which was forwarded to the City Council for consideration.

On November 15, 2011, the City Council authorized work activity pursuant to the Planning Commission's direction to address telecommunication facilities in the public right-of-way.

On July 9, 2012, a report was presented to the Planning Commission outlining the proposed amendment to Title 19, Chapter I, Article 4, Sections 14 and 15, of the City of Costa Mesa Municipal Code. Subsequently, the Planning Commission recommended that City Council approve and give first reading to the proposed ordinance.

ANALYSIS:

Code Amendment CO-11-02

State law mandates that the City must generally allow wireless telecommunications equipment to be installed in any public right-of-way. Federal law prohibits the City from denying any permit application if by doing so the City is "effectively prohibiting" wireless service. Yet, the City may, within limits, regulate wireless communications equipment placed in the public right-of-way.

Wireless Telecommunications Permit Requirement

Currently, Code requires that all wireless telecommunication facilities in the public right-of-way be processed as "over-the-counter" type permits with no public notice. The proposed Code Amendment would require a public process and a "Wireless Telecommunications Use Permit" in addition to the Encroachment Permit for any antenna that meets any of the following criteria:

1. If the antenna is greater than 26 inches in length;
2. If the volume of the Radio Box exceeds 2 cubic feet;
3. If it requires an above ground cabinet/equipment.
4. If the antenna is located inside or within 500 feet of a residential zoning district.

Master Plan Document

Per the draft Ordinance, amendment of the City's Municipal Code, Title 19 will require wireless telecommunications providers intending to install antennas in the City to submit a "Master Plan Document" for review and approval by the Zoning Administrator providing the following information:

1. Design of different prototypes of antennas facilities
2. Proposed locations
3. Total number of antennas to be installed
4. Proposed screening and landscaping

Once the "Master Plan Document" has been approved, the telecommunications providers can obtain an Encroachment permit from the Public Services Department for each antenna per the approved Master Plan Document. No additional discretionary review is required if the installation involves the pre-approved design prototypes that are contained within the Master Plan. However, if the telecommunications provider decides to revise an existing design in the approved Master Plan Document or introduce a new design, it would have to go through the Zoning Administrator's review and approval process.

Zoning Administrator Action Required

Currently the code does not require Zoning Administrator's review of proposed applications. Per the draft ordinance, the Zoning Administrator is authorized to act on and grant approvals of a discretionary application for a "Wireless Telecommunications Use Permit" and "Master Plan Document". The Municipal Code provisions related to the Zoning Administrator's authority are found in Title 13 of the Municipal Code (Attachment 2).

The Zoning Administrator shall serve as the final decision authority or may forward any action to the Planning Commission for review. An appeal or review of the Zoning Administrator's decision shall be according to the procedures set forth in Title 2, Chapter IX Appeal, Rehearing and Review Procedure, of the Municipal Code (Attachment 3).

Valid for 10-year Period

The Code does not currently set an expiration date on the encroachment permit. Per the draft Ordinance, the Wireless Telecommunications Use Permits, Master Plan Documents and Encroachment Permits shall be valid for a maximum ten (10) year period from the date of approval, unless otherwise indicated in a condition imposed at the time of granting the application.

Height Limitation

The draft ordinance limits the height of antennas up to 30 feet unless an extension is required to meet the federal or state health and safety laws.

Summary of New Process and Regulations vs. the Existing Process and Regulations

For certain wireless telecom applications, the proposed Code amendment would create a new permit process and regulations as described below:

Comparison of Existing & New Procedures for Wireless Telecommunications Facilities in the Public Right-of-Way

Existing Application Process (Administrative Process)	Proposed New Procedures (Discretionary Process)
Public Services Director (or designee) is the decision maker.	Zoning Administrator shall be the final review authority, unless appealed to Planning Commission.
No Public Notice Required	Public Notification: • Newspaper • On-site posting • Mailed notice to property owners within 500-feet of site.
Encroachment Permit required	New "Telecommunications Use Permit" or "Master Plan Document" process and Encroachment Permit.
No time limit on approval	Sunset for approval period is 10 years.
No maximum height limit	Maximum height of 30 feet.

The redlined/strikeout exhibits are provided in Attachment 4.

SURVEY OF SURROUNDING CITIES

City of Newport Beach Wireless Telecommunication Permit Requirements

The Planning Director is the decision maker for all Wireless Telecommunication Antennas that meet the City of Newport Beach's guideline and standards. Approval by the City Council of Newport Beach is required for the following Antennas:

- If the height of Antennas exceeds thirty-five (35) feet.
- If the Antenna is located at
  a) New false tree
  b) New "Slim Jim" monopole (i.e. with no antenna elements other than the pole itself)
  c) New standard monopole attached antenna elements
  d) New lattice tower
  e) On common area lots or other non-residential lots within residential districts
  f) Within any required setback established in the Zoning Code
  g) On multi-family structure on lots zoned Multi-Family Residential

The City of Newport Beach is in the process of amending their Code regarding the Wireless Telecommunication requirements within the public ROW.

City of Irvine Wireless Telecommunication Permit Requirements

The City of Irvine issues the following three types of permits for Wireless Telecommunication Facilities:

1. Wireless Communication Facility Permit (administrative, staff level review)
2. Minor Conditional Use Permit reviewed by Zoning Administrator
3. Major Conditional Use Permit reviewed by the Planning Commission

Applications for a Wireless Communications Facility requiring either a Wireless Communication Facility Permit or a conditional use permit are subject to the following procedures as determined by the classification of the antenna installation and the location of the installation site as indicated in the table below:

Review Procedure Matrix for City of Irvine

	Location of Proposed Cell Site			
	Inside or Within 150 feet of any Residential District	**Inside or Within 150 feet of any Open Space District or Public Park**	**Non-Residential District Located Within 150 feet to 400 feet of a Residential or Open Space District or Public Park**	**Non-Residential District located Beyond 400 feet from Residential or Open Space District or Public Park**
Class 1 Antenna Building Mount, Screened	PC	ZA	ZA	WCFP
Class 2 Antenna Monorock/Monoshrub	PC	ZA	WCFP	WCFP
Class 3 Antenna Pole Mount, Visible (Streetlights/Traffic Signals/Utility Poles)	PC	ZA	WCFP	WCFP
Class 4 Antenna Co-location	PC	ZA / PC	WCFP /ZA /PC	WCFP / ZA /PC
Class 5 Antenna Cell on Wheels (COW)	X	ZA	ZA	WCFP
Class 6 Antenna Pole Mount (Visible Field Lights/Utility Towers)	PC	PC	ZA	WCFP
Class 7 Antenna Flagpole Mount	PC	PC	PC	ZA
Class 8 Antenna Building Mount, Visible	X	PC	PC	ZA
Class 9 Antenna Monopole, Interior Mount (Enclosed Camouflaged Tower)	PC	PC	ZA	ZA
Class 10 Antenna Monopole, Exterior Mount (Monopalms/Monopines	PC	PC	PC	PC
Class 11 Antenna Non-Camouflaged Monopole	X	X	X	PC

WCFP- Wireless Communication Facility Permit (administrative, staff level review)
ZA – Zoning Administrator
PC – Planning Commission
X – Not Permitted

It should be noted that at the discretion of the Director of Community Facility Permit, any WCFP application may be forwarded to the Zoning Administrator for review and action and at the discretion of the Zoning Administrator any minor conditional use permit may be forwarded to the Planning Commission for review and action.

ALTERNATIVES CONSIDERED:

The City Council may consider making changes to the proposed ordinance and requiring the Planning Commission as the final authority to approve all types of antennas within the public right-of-way.

Another alternative to the City Council is to not adopt the proposed ordinance. With this alternative there will be no changes to the existing regulations.

FISCAL REVIEW:

There is no fiscal impact relative to this code amendment.

LEGAL REVIEW:

The City Attorney has reviewed and approved the Ordinance as to form.

CONCLUSION:

Currently, The City's Municipal Code Title 19, only requires an Encroachment Permit from the Public Services Department for the installation of wireless telecommunications facilities in the public right-of-way. The proposed amendment will require wireless telecommunications providers to not only secure an Encroachment Permit from the Public Services Department, but to also acquire a "Wireless Telecommunications Use Permit" and/or to provide the Zoning Administrator with a "Master Plan Document" for review and approval for antennas meeting any of the following criteria:

1. If the antenna is greater than 26 inches in length;
2. If the volume of the Radio Box exceeds 2 cubic feet;
3. If it requires an above ground cabinet/equipment.
4. If the antenna is located inside or within 500 feet of a residential zoning district.

In addition, the proposed amendment will limit the height of antennas to 30 feet above ground and limits the permits to up to 10 years from the approval date.

At the regular Planning Commission meeting of July 9, 2012, the Planning Commissioners recommended that the City Council adopt the attached ordinance to amend Title 19, Chapter 1, Article 4, Sections 19-14 and 19-15 regarding wireless telecommunications facilities in the public right-of-way. Staff's recommendation is that the City Council adopts the ordinance to amend Title 19, Chapter 1, Article 4, Sections 19-14 and 19-15 regarding wireless telecommunications facilities in the public right-of-way (Attachment 1).

ERNESTO MUNOZ
Public Services Director

FARIBA FAZELI
Interim City Engineer

ATTACHMENTS:
1 - Ordinance
2 - Title 13 of the Municipal Code
3 - Title 2, Chapter IX of the Municipal Code
4 - Redlined/strikeout exhibits of the existing Title 19 of the Municipal Code

DISTRIBUTION:
Chief Executive Officer
City Attorney
Deputy CEO/Director of Economic and Development
Finance and IT Director
City Clerk Division

ATTACHMENT 1

ORDINANCE NO. 12-____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA TO AMEND TITLE 19, CHAPTER 1, ARTICLE 4, SECTIONS 19-14 AND 19-15 REGARDING TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT OF WAY.

THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: TITLE 19 CODE AMENDMENT. Title 19, Chapter 1, Article 4 of the Costa Mesa Municipal Code is hereby amended to read as follows:

A. Section 19-14 is amended to include to read as follows:

"Sec. 19-14. - Antennas for telecommunications services.

The city's zoning code sets forth the city's regulatory requirements relating to the siting and construction of various types of wireless telecommunications facilities commonly used in providing or receiving wireless telecommunications services on public and private property, excluding the public rights-of-way.

(Ord. No. 98-18, Â§ 1, 6-15-98)

Sec.19-15. – Wireless telecommunications services provided by telephone corporations in the public rights-of-way.

(A)
The city council finds and determines as follows:

(1)
The Federal Telecommunications Act of 1996 ("FTCA") preempts and declares invalid all state rules that restrict entry or limit competition in both local and long-distance telephone service.

(2)
The California legislature has delegated to the Public Utilities Commission ("CPUC") its primary authority to regulate local telephone competition, and to issue certificates of public convenience and necessity to new entrants that are qualified to provide competitive local telephone exchange services and related telecommunications service, whether using their own facilities or the facilities or services provided by other authorized telephone corporations. Section 7901 of the California Public Utilities Code applies equally to wireless carriers and wireless equipment. Wireless carriers have been determined by the courts to be included in the CPUC definition of "telephone corporation" in Section 7901, and the definition of "telephone line" in Section 7901 has been determined by the courts to be broad enough to include wireless equipment.

(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.

(6)
Section 7901 of the California Public Utilities Code ("Section 7901") authorizes telephone and wireless corporations to construct telephone or wireless telecommunication lines along and upon any public road or highway, along or across any of the waters or lands within this state, and to erect poles, posts, piers, or abatements for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters.

(7)
Section 7901.1 of the California Public Utilities Code confirms the right of municipalities to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed, which control must be applied to all entities in an equivalent manner, and may involve the imposition of fees. Specifically, it has been determined by the courts that a municipality has authority to regulate the placement and appearance of telecommunications equipment installed on its public rights-of-way, and that a municipality need not grant wireless providers blanket permission to install their equipment throughout a municipality, but may require wireless providers to go through a site-specific permitting process provided it is not so burdensome that it runs afoul of Section 7901.

(8)
Section 50030 of the California Government Code provides that any permit fee imposed by a city for the placement, installation, repair, or upgrading of telecommunications facilities, such as lines, poles, or antennas, by a telephone corporation that has obtained all required authorizations from the CPUC and the FCC to provide telecommunications services, must not exceed the reasonable costs of providing the service for which the fee is charged, and must not be levied for general revenue purposes.

(9)
Section 1455 of Title 47 of the United States Code mandate approval by local agencies of certain eligible facilities requests for modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such wireless tower or base station.

(B)
In recognition of and in compliance with the statutory authorizations and requirements set forth above in paragraph (A), the following regulatory provisions are applicable to users of telecommunications equipment in the public right-of-way ("PROW"), including but not limited to wireless telecommunications providers, which desire to provide telecommunications service by means of facilities that are proposed to be constructed within the city's public rights-of-way:

(1)
Users of telecommunications equipment in the PROW must apply for and obtain, the following, as deemed applicable by the City Engineer:

(a) A "Wireless Telecommunications Use Permit" is required for certain specified wireless telecommunications structures pursuant to the criteria set forth in Subsection (C) below;

(b) A Wireless Telecommunications "Master Plan" is required for the approval of certain specified design prototypes of wireless telecommunications structures;

(c) An excavation permit, an encroachment permit, and/or a building permit may be required as applicable.

(2)
In addition to the information required by this Code in connection with an application for any required permit, a telephone corporation must submit to the city the following supplemental information:

(a) A copy of the certificate of public convenience and necessity issued by the CPUC to the applicant, and a copy of the CPUC decision that authorizes the applicant to provide the telecommunications service for which the facilities are proposed to be constructed in the city's public rights-of-way; provided, however, that these requirements may be waived by the city where the applicant has submitted these documents in connection with a prior application, and there have been no amendments or supplements to these documents.

(b)
If the applicant has obtained from the CPUC a certificate of public convenience to operate as a "competitive local carrier," the following additional requirements are applicable:

(1)
As required by Decision No. 95-12-057 of the CPUC, the applicant must establish that it has timely filed with the city a quarterly report that describes the type of construction and the location of each construction project proposed to be undertaken in the city during the calendar quarter in which the application is filed, which information is sufficient to enable the city to coordinate multiple projects, as may be necessary.

(2)
If the applicant's proposed construction project will extend beyond the utility rights-of-way, the applicant must establish that it has filed a petition with the CPUC to amend its certificate of public convenience and necessity and that the proposed construction project has been

subjected to a full-scale environmental analysis by the CPUC, as required by Decision No. 95-12-057 of the CPUC.

(3)
The applicant must inform the city whether its proposed construction project will be subject to any of the mitigation measures specified in the Negative Declaration ["Competitive Local Carriers (CLCs) Projects for Local Exchange Communication Service throughout California"] or to the Mitigation Monitoring Plan adopted in connection with Decision No. 95-12-057 of the CPUC. The city's issuance of a ministerial permit will be conditioned upon the applicant's compliance with all applicable mitigation measures and monitoring requirements imposed by the CPUC upon telephone corporations that are designated as "competitive local carriers."

(C)
The purpose of this section is to establish the parameters for discretionary review of a "Wireless Telecommunications Use Permit" and "Master Plan" to identify processing procedures, regulations, review criteria, and findings for these requests.

(1) Any wireless telecommunications facility that is to be installed within the public right-of-way shall require a Public right-of-way encroachment permit.

(2) Except as provided in Subsection (D) and (G) any wireless telecommunication facility that is located in the city's public right-of-way and meets any of the following criteria shall require a Wireless Telecommunications Use Permit or Master Plan:

(a) If the antenna is greater than 26 inches in length;
(b) If the volume of the Radio Box exceeds 2 cubic feet;
(c) If the facility requires an above ground cabinet/equipment;
(d) If the facility is located within a 500-foot radius of a residential zone

(3) The Wireless Telecommunications Use Permit or Master Plan application shall be subject to the same planning application review process as for a Minor Conditional Use Permit as set forth in Title 13, Chapter III, Planning Applications, of the Municipal Code, except as otherwise indicated in this section. This application process includes, but is not limited to, a completed application, applicable processing fees, public notice, and appeals process. The application processing fee is a user fee that shall be adopted by City Council by resolution.

(4) The Zoning Administrator is authorized to act on and grant approvals of a discretionary application for a Wireless Telecommunications Use Permit or Master Plan. The Municipal Code provisions related to the Zoning Administrator's authority are found in Title 13 of the Municipal Code. The Zoning Administrator shall serve as the final decision authority or may forward any action to the Planning Commission for review. An appeal or review of the Zoning Administrator's decision shall be according to the procedures set forth in Title 2, Chapter IX Appeal, Rehearing and Review Procedure, of the Muncipal Code.

(5) The City Engineer is authorized to:

(a) Act on and grant approvals of ministerial permits related to wireless telecommunications facilities in the public right-of-way that do not meet the thresholds identified in Section (C) 2 (a), (b), (c), and (d).

(b) Forward any request related to a wireless telecommunications facility in the public right-of-way to the Zoning Administrator for review. These may include, but not be limited to, ministerial permits.

The application process for these referrals to the Zoning Administrator shall be subject to the same procedures, purpose, conditions, review criteria, and findings as described for a Wireless Telecommunications use Permit or Master Plan.

(6) Review criteria for the Wireless Telecommunications Use Permit or Master Plan application shall consist of the following:

(a) The final review authority shall limit their review to the factors allowed under federal and state law, including the following:

(1) Compatible and harmonious relationship between the proposed facility and site development or use(s), that exists or has been approved for the general neighborhood.

(2) Safety and compatibility of the design of the proposed facilities, relevant structures, landscaping, luminaries and other site features which may include functional aspects of the site development.

(3) Compliance with any performance standards for wireless telecommunications facilities as prescribed elsewhere in the Municipal Code, or by City policy;

(4) Consistency with the General Plan.

(b) The final authority may not consider any impact on the health, safety and welfare, or any information, evidence, or consideration which exceeds the authority allowed to it under federal or state law.

(7) Condition(s) of approval for the application shall assure compliance with the applicable provisions of state and federal laws, assure compatibility with surrounding properties and uses and protect the public health, safety and general welfare. These conditions shall be within the authority allowed to the City pursuant to federal and state law.

Prior to processing an application, the Applicant shall furnish documentation from the CPUC that the listed items below have been meet.

(a) When the applicant is leasing access to an existing facility that CPUC approval has been processed in accordance with Public Utilities Code Section 851.

(b) When the applicant plans deployment of their facility over existing utility Rights of Way, that they have completed the necessary CPUC review under the California Environmental Quality Act (CEQA) for any such proposed build-out.

(8) When granting an application, the final review authority shall find that the evidence presented in the administrative record substantially meets any required conditions listed below.

(a) The location and placement of wireless telecommunications facilities in the public right-of-way are reasonably considered along with the California Public Utilities Code provisions for right of access to the public right-of-way.

(b) The proposed wireless telecommunications facility is substantially compatible with developments and uses in the same general area and would not be substantially detrimental to developments or uses within the general area.

(c) The proposed wireless telecommunications facility will not be materially detrimental to the health, safety and general welfare of the public in so far as the local agency is authorized to determine under federal and state law.

(d) Antennas and any poles or other structures erected to support antennas shall be visually compatible with surrounding building and vegetation. The final review authority may require that the antenna be painted in a neutral color to complement the existing natural and built environment.

(9) The Wireless Telecommunication Use Permit or Master Plan shall be valid for a ten (10) year period from the date of approval, unless otherwise indicated in a condition imposed at the time of granting the application or unless otherwise exempted under federal or state law. Prior to the expiration of the permit, the applicant may apply for a ten-year extension of time. If notice was required for the original application, and a public hearing on the extension is allowed under federal and state law, notice of the public hearing for a time extension shall be given according to the procedures set forth in this section.

(10) The city reserves all rights that it now possesses or may later acquire with respect to the regulation of any cable or telecommunications service that is provided, or proposed to be provided, by a telephone corporation. These reserved rights may relate, without limitation, to the imposition of reasonable conditions in addition to or different from those set forth in this section, the exaction of a fee or other form of consideration or compensation for use of public rights-of-way, execution of a leasing agreement, and related matters; provided, however, that such regulatory rights and authority must be consistent with federal and state law that is applicable to cable or telecommunications services provided by telephone corporations.

(11) The maximum height of the telecommunication facilities allowed within the public right of way shall not exceed thirty (30) feet (above the nearest top of curb elevation grade level), unless such extension is required to comply with applicable federal or state health and safety laws. (i.e. CPUC General Order 95).

(D)
Pursuant to Title 47 United States Code Section 1455 and notwithstanding any provision of this Section to the contrary, a request for a modification of an existing wireless tower or base station for the collocation of new transmission equipment or removal or replacement of existing transmission equipment shall be approved ministerially without the processing of a discretionary use permit provided that such modification does not substantially change the physical dimensions of such tower or base station from the dimensions approved as part of the original discretionary permit for the tower or base station. However, any modification to a wireless tower or base station which substantially changes the physical dimensions of either the tower or base station, and any other modification to a wireless telecommunications facility that does not qualify as a wireless tower or base station (as defined in this section) shall be subject to the permits and authorizations required by this article.

(E)
For purposes of this section, the following definitions shall apply:

(1) "Wireless telecommunications facility" shall have the same meaning as that set forth in California Government Code 65850.6(d)(2) as may be amended from time to time.

(2) "Wireless tower" means any structure built for the sole purpose or primary purpose of supporting antennas and their associated facilities used to provide services licensed by the FCC. A Distributed Antenna System installed pursuant to a Certificate of Public Convenience and Necessity issued by the California Public Utilities Commission, a water tower, utility tower, street light, or other structure built primarily for a purpose other than supporting services licensed by the FCC, including any structure installed pursuant to California Public Utility Code Section 7901. is not a wireless tower for purposes of this definition.

(3) "Base station" means the power supplies, electronic equipment housed in cabinets and antennas at an existing wireless tower site that together comprise a wireless tower, Distributed Antenna System installed pursuant to a Certificate of Public Convenience and Necessity issued by the California Public Utilities Commission is not a base station for purposes of this definition.

(4) "Substantially change the physical dimensions" means any of the following, and refers to a single change, or a series of changes over time (whether made by the same or different entities) viewed against the initial approval for the tower or base station that individually or cumulatively have any of the effects described below:

(a) Changing any physical dimension of the wireless tower or base station in a manner that creates a safety hazard, whether from wind loading, stress on the wireless tower, or in any other manner.

(b) Changing the physical dimension of a wireless tower where the changes would be inconsistent with the design of the wireless tower, or make the wireless towers more visible

(c) Changing the physical dimensions would require work that would intrude upon the Public Right of Way, or any environmentally sensitive area.

(d) Increasing by more than 10% any of the following: the height or width in any direction of the wireless tower, or the area required for structures required to support the wireless tower, such as guy wires as approved and constructed through the discretionary permit process; provided that in no event shall the height exceed the maximum height permitted under the city's regulations.

(e) Increasing by more than 10% any of: the height or area encompassed within any structure or object enclosing the wireless tower, such as a fence or line of bushes.

(f) Increasing any of an existing antenna array's depth, circumference or horizontal radius from the wireless tower in any direction by more than 10%.

(g) Adding more than two antenna arrays to an existing wireless tower, or adding antenna arrays that, if the array were an existing array, would be of such depth, circumference or radius as to fall outside of subsection (F)(3)(f) unless such arrays were approved pursuant to Government Code Section 65850.6

(h) The mounting of the new or replacement transmission equipment would involve installing new equipment cabinet(s) not permitted under the initial approval and that will not fit within the existing enclosure for the wireless tower or base station or would require installation of a new cabinet or enclosure, excluding new equipment and cabinets that will be installed underground.

(5) A Wireless Telecommunications Master Plan contains design prototypes for wireless telecommunication antenna facilities, locational criteria for each prototype, number of facilities, and proposed screening and landscaping.

(6) A Wireless Telecommunications Use Permit is a discretionary request for the approval of a wireless telecommunications facility in the public right-of-way.

(F)
Each application submitted under Subsection (D) of this Section shall be accompanied by:

(1) a detailed description of the proposed modification to the existing facilities;

(2) a photograph or description of the wireless tower as originally constructed, if available, and, a photograph of the existing wireless tower and/or base station, and a graphic depiction of the wireless tower and/or base station after modification, showing all relevant dimensions;

(3) a description of all construction that will be performed in connection with the proposed modification; and

(4) a signed statement by a professional engineer licensed and qualified in California, attesting that the modifications to be performed will not trigger discretionary review under this section.

Any permit issued under Subsection (D) of this Section will be conditioned, and may be revoked and the wireless telecommunication facility required to be removed if (a) any statement made with respect to the WTF is not accurate; or (b) the City Engineer finds that the modifications necessitated discretionary review.

SECTION 2: ENVIRONMENTAL DETERMINATION. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061 (b) (3) (general rule) of the CEQA Guidelines, in that the City Council hereby finds that it can be seen with certainty that there is no possibility that the passage of this ordinance amending the Zoning Code will have a significant effect on the environment..

SECTION 3: INCONSISTENCIES. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this ordinance, to the extent of such inconsistencies and or further, is hereby repealed or modified to the extent necessary to affect the provisions of this ordinance.

SECTION 4: SEVERABILITY. If any provision or clause of this ordinance or the application thereof to any person or circumstances is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses or applications of this ordinance which can be implemented without the invalid provision, clause or application; and to this end, the provisions of this ordinance are declared to be severable.

SECTION 5: PUBLICATION. This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof, and prior to the expiration of fifteen (15) days from its passage shall be published once in the DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

PASSED AND ADOPTED this _____ day of _____ 2012.

_____
ERIC R. BEVER
Mayor of the City of Costa Mesa

ATTEST:

_____
Acting Deputy City Clerk of the City of Costa Mesa

APPROVED AS TO FORM:

_____
City Attorney

ARTICLE 3. - REVIEW AUTHORITIES

Sec. 13-7. - Purpose.
Sec. 13-8. - City council.
Sec. 13-9. - Redevelopment agency.
Sec. 13-10. - Planning commission.
Sec. 13-11. - Zoning administrator.
Sec. 13-12. - Planning division.

Sec. 13-7. - Purpose.

The purpose of this article is to establish the project review authority of the city council, the redevelopment agency, the planning commission, the zoning administrator and the planning division.

(Ord. No. 97-11, § 2, 5-5-97)

Sec. 13-8. - City council.

The city council shall have final decision authority for appeals, final maps, specific plans, master plans in the town center and planned development districts, rezones, general plan amendments, density bonuses with financial incentives, Zoning Code amendments, improvement and development agreements, annexations and any action specified in this Zoning Code. The city council shall also be responsible for the acceptance of lands and/or improvements as may be proposed for dedication to the city, except deeds of dedication and parcel maps of four (4) or fewer lots with no development agreements. The city council may impose conditions of approval.

(Ord. No. 97-11, § 2, 5-5-97)

Sec. 13-9. - Redevelopment agency.

(a) *Declaration of need of agency.* It is hereby found and declared, pursuant to State Health and Safety Code Section 33101, that there is a need for a redevelopment agency in the city, as such agency was created by Section 33100, to function in the city, and the agency is hereby authorized to transact business and exercise all of the powers granted to it under the Community Redevelopment Law.

(b) *Council declared agency.* The five (5) members of the city council are hereby declared to be the members of the redevelopment agency and are empowered to exercise all the rights, powers, duties, privileges and immunities vested by the Community Redevelopment Law in an agency.

(c) *Term of agency members.* Membership shall be for the period each councilmember serves in office, and shall automatically terminate at the time any councilmember no longer holds the

office of councilmember. Any vacancy existing on the redevelopment agency shall be filled only by a duly elected sworn and acting city councilmember.

(Ord. No. 97-11, § 2, 5-5-97)

Sec. 13-10. - Planning commission.

(a) *Commission created.* Pursuant to the provisions of Section 65101 of the Planning and Zoning Law of the State Government Code, there is hereby created a planning commission which shall consist of five (5) members.

(b) *Appointment of commission.* The planning commissioners shall be appointed, and may be removed, by a majority vote of the entire city council. Additional details for the appointment procedures and member qualifications, terms and compensation may be set by city council policy.

(c) *Ex-officio member of commission.* The city engineer and city attorney or his/her designee shall attend the meetings of the planning commission and assist the commission in an advisory capacity as needed.

(d) *Absence from commission meetings without cause.* If a planning commission member is absent from three (3) consecutive regular meetings of the commission, without cause, the office of the member shall be deemed to be vacant and the term of such member terminated. The secretary of the planning commission shall immediately inform the city council of such termination.

(e) *Absence from commission meetings for cause.* An absence due to illness or an unavoidable absence from the city and written notice thereof given to the secretary of the planning commission on or before the day of any regular meeting of the commission shall be deemed absence for cause.

(f) *Councilmember ineligibility.* No legislative body member of the city shall be eligible for membership on the planning commission.

(g) *Authority of the planning commission.*

(1) The planning commission shall have the power, except as otherwise provided by law, to act on plans for the regulation of the future growth, development and beautification of the city, in respect to:

a. Public and private buildings and works, streets, parks, grounds and vacant lots.

b. The future growth and development of the city in order to secure sanitation, proper service of all public utilities, shipping and transportation facilities.

c. The location of any proposed buildings, structures, or works.

(2) The planning commission is authorized to act upon the following discretionary actions:

a. Recommend to the city council approval, conditional approval or denial of general plan amendments, specific plans, rezones, Zoning Code amendments, development agreements, density bonuses with public financial incentives, preliminary and final master plans, and any other action specified in this Zoning Code.

b. Recommend to the redevelopment agency approval, conditional approval or denial of redevelopment actions, or adoption and/or amendments to a redevelopment plan.

c. Approve, conditionally approve or deny applications for conditional use permits, variances, tentative tract and parcel maps, density bonuses without public financial incentives, and any other action specified in this Zoning Code.

d.

Perform other duties necessary to carry out the provisions reserved to the planning commission in Title 10 of the Municipal Code, the provisions of this Zoning Code and the provisions of the Planning, Zoning and Development Law of the State Government Code.

(h) *Commission bylaws authorized.* The planning commission shall have the power, except as otherwise provided by law, to adopt such bylaws as it may deem necessary to provide for:

(1) The time and place of meeting.

(2) The time and method of electing officers.

(3) Such other matters relative to the organization of the planning commission and methods of administration of its duties which are not otherwise provided for by statute or ordinance.

(i) *Regular meeting of commission defined.* A regular meeting as provided by law or by rule of the planning commission or any regularly advertised public hearing shall be deemed a regular meeting.

(Ord. No. 97-11, § 2, 5-5-97; Ord. No. 01-12, § 1, 3-5-01; Ord. No. 02-4, § 1a, 3-18-02; Ord. No. 03-2, § 3, 3-3-03; Ord. No. 04-17, § 3, 1-3-05)

Sec. 13-11. - Zoning administrator.

(a) The development services director or his/her designee is authorized to act as the zoning administrator according to procedures set forth in the State Government Code.

(b) The zoning administrator is authorized to approve, conditionally approve, or deny the following discretionary planning applications. The zoning administrator may forward any action to the planning commission for review.

(1) Administrative adjustment;

(2) Minor conditional use permit;

(3) Lot line adjustment; and

(4) Any action specified in this Zoning Code.

(Ord. No. 97-11, § 2, 5-5-97)

Sec. 13-12. - Planning division.

The development services director or his/her designees constitute the planning division. The planning division is authorized to act on and grant approvals of development reviews and minor modifications as described in Chapter III, Planning Applications, and other duties as designated by the development services director, planning commission, city council and this Zoning Code.

(Ord. No. 97-11, § 2, 5-5-97)

CHAPTER IX. - APPEAL, REHEARING AND REVIEW PROCEDURE [9]

Sec. 2-300. - Purpose.
Sec. 2-301. - Definitions.
Sec. 2-302. - City council review requests.
Sec. 2-303. - Procedure for appeal.
Sec. 2-304. - Procedure for rehearing.
Sec. 2-305. - Time limitations for appeals, rehearings, and reviews.
Sec. 2-306. - Time limitation for issuance of permits.
Sec. 2-307. - Fees.
Sec. 2-308. - Notice of appeal, rehearing or review.
Sec. 2-309. - Person or body to hear an appeal or review a decision.
Sec. 2-310. - Exhaustion of administrative remedies.
Sec. 2-311. - Exclusive procedures.
Sec. 2-312. - Accrual of certain claims.
Sec. 2-313. - Limitations on judicial review.
Sec. 2-314. - Severability.
Secs. 2-315—2-400. - Reserved.

Sec. 2-300. - Purpose.

The purpose of this chapter is to provide an orderly and fair method of appeal, rehearing and review of decisions of the staff, committees, commissions and council of the city.

(Ord. No. 06-1, § 1, 1-17-06)

Sec. 2-301. - Definitions.

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

(1) *Affected person* means any person, including the applicant, any city staff member, committee, or commission who has an interest in the matter at issue or whose health, safety, or welfare may be affected by the decision.

(2) *Appeal* means reconsideration, by a higher authority, of the specific facts and circumstances of any final decision made by the city, any of its employees, committees or commissions or by the redevelopment agency.

(3) *Applicant* means the person who applied for or requested the decision or action which is the subject of the appeal, rehearing or review.

(4) *Council* means the Costa Mesa City Council.

(5) *Decision* means any final decision, finding, ruling, order or action.

(6) *Permit,* as used in section 2-306, means anything referred to elsewhere in this Code as being a "permit" or "license."

(7) *Person* shall have the meaning attributed in section 1-21 of this Code.

(8) *Rehearing* means reconsideration of a decision by the person or body having made the decision.

(9) *Review* means reconsideration of the decision of any city employee, committee, or commission requested by the city council, on its own motion, or upon request of any council member, in order to consider the decision and any broad legislative and policy factors involved.

(Ord. No. 06-1, § 1, 1-17-06)

Sec. 2-302. - City council review requests.

Within the time limits set forth in section 2-305, the city council or any council member may request that a decision of any city employee, committee, or commission be reviewed by filing an application with the city clerk stating the reasons for the requested review. Said review will be conducted according to the procedures specified in section 2-303 and 2-309. The person or body to hear the review will be designated in the application by the person or body seeking such review and shall be as specified in section 2-309, unless the council as a whole specifies a higher level of review in the first instance.

(Ord. No. 06-1, § 1, 1-17-06)

Sec. 2-303. - Procedure for appeal.

(1) Any affected person may, within the time limits set forth in section 2-305, file an application for appeal with the city clerk. Said application shall contain sufficient information to identify the party, its interest in the matter, and the reasons for requesting an appeal.

(2) If the appeal is to be heard by a person or body which conducts regularly scheduled meetings, the appeal shall be considered at the first regular meeting which follows receipt of the application by ten (10) or more days, and which allows sufficient time for the giving of notice as required by section 2-308

(3) If the appeal is to be heard by an individual or body which does not conduct regularly scheduled meetings, the appeal shall be considered not more than ten (10) days following receipt of the application; provided that the time period may be extended if necessary to allow the giving of notice as required by section 2-308

(4) An appeal hearing shall consist of a new (i.e., de novo) hearing on the matter by the person or body specified in section 2-309. The appeal hearing shall be based on the following evidence:

(a) Any relevant evidence, including staff reports, etc., submitted at the time of the prior decision and at the appeal hearing, and

(b) Findings, if any, and decision of the person or body whose decision is being appealed.

(5) Notwithstanding the provisions of this chapter, there shall be no right of appeal to the city council from a decision by a public officer designated by City Council Policy No. 100-7 on an application for a waiver of fees for use of a city owned public facility or show wagon. A decision pursuant to City Council Policy No. 100-7 shall be subject to California Code of Civil Procedure section 1094.6.

(6) If the original decision being appealed involved issuance of any permit, license, or other entitlement or approval or requested some action by the city, the applicant for the original decision shall have the burden of proof to support the granting of the requested issuance, approval, or action at the appeal.

(Ord. No. 06-1, § 1, 1-17-06)

Sec. 2-304. - Procedure for rehearing.

(1) Any affected person, or the city council or any council member, may within the time limits set forth in section 2-305 file an application for rehearing with the city clerk. The application shall contain sufficient information to identify the party, its interest in the matter, and the reasons for requesting a rehearing.

(2) The application shall be considered at the first regular meeting which follows filing of the application by ten (10) or more days, or shall be considered within ten (10) days if the person or body to whom the application is made does not hold regular meetings.

(3) To justify a rehearing the applicant must show in the application that there is new, relevant evidence which, in the exercise of reasonable diligence, could not have been produced, or which was improperly excluded, at the earlier hearing, or that the person or body failed to comply with the law, which contention was not asserted at the earlier hearing. The person or body may in its discretion decide whether to hear additional evidence than what is contained in the application. The decision whether to grant the rehearing is final and may not be appealed or reheard.

(4) If the person or body concludes the applicant has met the burden of justifying the rehearing, the rehearing will be scheduled for the next regular meeting which allows sufficient time for the giving of notice as required by section 2-308

(5) No application for rehearing is required to be filed by any member of the city council or the redevelopment agency to allow the council or agency to take any new or different action on an item of city policy, agency policy, or a purely legislative function or decision, which does not involve a specific property owner, application, license or permit. The city council or redevelopment agency, respectively, may establish reasonable rules to restrict the number of times a particular policy or legislative decision may be considered by the city council or the redevelopment agency.

(Ord. No. 06-1, § 1, 1-17-06)

Sec. 2-305. - Time limitations for appeals, rehearings, and reviews.

All applications for appeals, rehearings, and reviews must be filed, in writing, during regular business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, except holidays, and within the time limits hereinafter set forth:

(1) For all matters relating to the approval, disapproval or extension of tentative and parcel maps, within ten (10) days from the date of the final decision subject to appeal, rehearing or review.

(2) For all other items, within seven (7) days from the date of the final decision subject to appeal, rehearing or review.

(3) For all matters requiring approval by the city, its employees, committees, commissions or council and by the redevelopment agency, the time limits for all applications shall begin on the date of the later of the following:

(a) Final decision by the city, its employees, committees, commissions or council; or

(b) Final decision by the redevelopment agency.

If the final day for filing an application for appeal, rehearing or review falls on a holiday or weekend day when city hall is closed, the application shall be filed no later than the next business day.

(Ord. No. 06-1, § 1, 1-17-06)

Sec. 2-306. - Time limitation for issuance of permits.

Where a permit is sought and its issuance is contingent upon obtaining a prerequisite permit, the permit sought shall not be issued until the expiration of the time limit for seeking an appeal, rehearing, or review specified in section 2-305 applied to the prerequisite permit. Provided, however, that if an application for appeal, rehearing, or review of the prerequisite permit is filed within the specified time limits, the permit sought shall not be issued until seven (7) days following the final decision on the appeal, rehearing, or review. Any permit issued in violation of the provisions of this section shall be void.

(Ord. No. 06-1, § 1, 1-17-06)

Sec. 2-307. - Fees.

Each application for appeal or rehearing shall be accompanied by a processing fee in an amount determined by resolution of the city council.

(Ord. No. 06-1, § 1, 1-17-06)

Sec. 2-308. - Notice of appeal, rehearing or review.

Notice of the hearing for the appeal, rehearing, or review shall be given in the same manner as any required notice for the hearing at which the decision subject to the appeal, rehearing, or review was made. In all cases for the hearing for an appeal, rehearing, or review, written notice of the date, time, and place shall be given to the original applicant, if any, any prior applicant for appeal or rehearing regarding the same matter, and for appeals and rehearings the person requesting the current appeal or rehearing.

(Ord. No. 06-1, § 1, 1-17-06)

Sec. 2-309. - Person or body to hear an appeal or review a decision.

The person or body to hear an appeal or review a decision shall be the following:

(1) From a decision of the city staff to the department head; except that an appeal from a decision of the transportation services engineer regarding traffic matters pursuant to Title 10 of this Code, shall be made to the planning commission;

(2) From a decision of the department head to the city manager; except that (a) an appeal from a decision of the development services director on planning matters pursuant to Title 13 of this Code shall be made to the planning commission, and (b) an appeal from a decision of the building official on building matters pursuant to Title 5 of this Code shall be to the access, building, fire and housing board of appeals as required by section 5-3 of this Code;

(3) From a decision of the city manager to the city council;

(4) From a decision of any city committee or commission to the city council.

(Ord. No. 06-1, § 1, 1-17-06)

Sec. 2-310. - Exhaustion of administrative remedies.

Unless appealed, reheard, or reviewed as provided herein, any decision becomes final for all purposes when made. To constitute the exhaustion of administrative remedies and as a condition

precedent to filing any court action thereon, there must be filed and considered an application for rehearing of the council action in any case where any of the factors set forth in subsection 2-304(3) are contended to exist. If an application for rehearing a council decision is filed, the council's decision becomes final when either (1) the application is denied, or (2) a decision is made at the rehearing.

(Ord. No. 06-1, § 1, 1-17-06)

Sec. 2-311. - Exclusive procedures.

The procedures set forth in this chapter are the exclusive methods by which appeals, rehearings and reviews may be pursued and none of the steps set forth herein may be waived or omitted.

(Ord. No. 06-1, § 1, 1-17-06)

Sec. 2-312. - Accrual of certain claims.

No claim for violation of constitutional rights for deprivation of economic use of property shall arise until and unless a claimant has secured a final decision on a permit application for a plan of development and on a request for a variance or similar relief from the zone or other development standard for a plan of development as specified in Title 13 of this Code.

(Ord. No. 06-1, § 1, 1-17-06)

Sec. 2-313. - Limitations on judicial review.

Notwithstanding any provision in this Code to the contrary, no court action or proceeding to attack, review, set aside, void or annul any decision or procedure of the City of Costa Mesa, its council, commissions, boards or officers, which has become administratively final shall be maintained by any aggrieved person unless duly commenced in a court of competent jurisdiction within ninety (90) days, as provided in California Code of Civil Procedure, Section 1094.6, incorporated herein by reference, and/or as provided in California Government Code section 65009, or any shorter statute of limitations provided by law.

(Ord. No. 06-1, § 1, 1-17-06)

Sec. 2-314. - Severability.

If any provision of this chapter is found to be invalid or unconstitutional by interpretation or application to any person or circumstances, such invalidity or unconstitutionality shall not affect the other provisions or applications thereof which can be given valid effect.

(Ord. No. 06-1, § 1, 1-17-06)

Secs. 2-315—2-400. - Reserved.

FOOTNOTE(S):

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(9) ***Editor's note***— *Ord. No. 06-1, § 1, adopted January 17, 2006, amended chapter IX, in its entirety to read as herein set out. Former chapter IX, §§ 2-300—2-314, pertained to similar provisions, and derived from Ord. No. 80-*

19, § 3, 10-23-80; Ord. No. 87-29, § 2, 12-7-87; Ord. No. 93-8, § 6, 4-5-93; Ord. No. 97-25, § 2, 8-4-97; Ord. No. 98-24, § 1, 10-5-98; Ord. No. 99-11, § 1, 7-19-99; Ord. No. 00-8, § 1, 6-5-00; Ord. No. 05-6, §§ 4, 5, 4-19-05. *(Back)*

ATTACHMENT 4

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Title 19, Chapter 1, Article 4

Sec. 19-14. - Antennas for telecommunications services.

The city's zoning code sets forth the city's regulatory requirements relating to the siting and construction of various types of wireless telecommunications facilities ~~that are~~ commonly used in providing or receiving wireless telecommunications services on public and private property, excluding the public rights-of-way.

(Ord. No. 98-18, Â§ 1, 6-15-98)

Sec. 19-15. – Wireless telecommunications services provided by telephone corporations in the public rights-of-way.

(A)
The city council finds and determines as follows:

(1)
The Federal Telecommunications Act of 1996 ("FTCA") preempts and declares invalid all state rules that restrict entry or limit competition in both local and long-distance telephone service.

(2)
The California legislature has delegated to the Public Utilities Commission ("CPUC") is ~~primarily responsible for the implementation of~~ primary authority to regulate local telephone competition, and ~~it issues~~ to issue certificates of public convenience and necessity to new entrants that are qualified to provide competitive local telephone exchange services and related telecommunications service, whether using their own facilities or the facilities or services provided by other authorized telephone corporations. Section 7901 of the California Public Utilities Code applies equally to wireless carriers and wireless equipment. Wireless carriers have been determined by the courts to be included in the CPUC definition of "telephone corporation" in Section 7901, and the definition of "telephone line" in Section 7901 has been determined by the courts to be broad enough to include wireless equipment.

(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.

(6)
Section 7901 of the California Public Utilities Code ("Section 7901") authorizes telephone and wireless ~~telegraph~~ corporations to construct telephone ~~telegraph~~ or wireless telecommunication lines along and upon any public road or highway, along or across any of the waters or lands within this state, and to erect poles, posts, piers, or abatements for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters.

(7)
Section 7901.1 of the California Public Utilities Code confirms the right of municipalities to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed, which control must be applied to all entities in an equivalent manner, and may involve the imposition of fees. Specifically, it has been determined by the courts that a municipality has authority to regulate the placement and appearance of telecommunications equipment installed on its public rights-of-way, and that a municipality need not grant wireless providers blanket permission to install their equipment throughout a municipality, but may require wireless providers to go through a site-specific permitting process provided it is not so burdensome that it runs afoul of Section 7901.

(8)
Section 50030 of the California Government Code provides that any permit fee imposed by a city for the placement, installation, repair, or upgrading of telecommunications facilities, such as lines, poles, or antennas, by a telephone corporation that has obtained all required authorizations from the CPUC and the FCC to provide telecommunications services, must not exceed the reasonable costs of providing the service for which the fee is charged, and must not be levied for general revenue purposes.

(9)
Section 1455 of Title 47 of the United States Code mandate approval by local agencies of certain eligible facilities requests for modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such wireless tower or base station.

(B)
In recognition of and in compliance with the statutory authorizations and requirements set forth above in paragraph (A), the following regulatory provisions are applicable to users of telecommunications equipment in the public right-of-way ("PROW") ~~a telephone corporation~~, including but not limited to wireless telecommunications providers, which desire to provide telecommunications service by means of facilities that are proposed to be constructed within the city's public rights-of-way:

(1)
~~The telephone corporation~~ Users of telecommunications equipment in the PROW must apply for and obtain, the following , as deemed applicable by the City Engineer:
(a) A "Wireless Telecommunications Use Permit" is required for certain specified wireless telecommunications structures pursuant to the criteria set forth in Subsection (C) below;
(b) A Wireless Telecommunications "Master Plan" is required for the approval of certain specified design prototypes of wireless telecommunications structures;
(c) An excavation permit, an encroachment permit, and/or a building permit may be required as applicable.

(2)
In addition to the information required by this Code in connection with an application for any required ~~ministerial~~ permit, a telephone corporation must submit to the city the following supplemental information:

(a)
A copy of the certificate of public convenience and necessity issued by the CPUC to the applicant, and a copy of the CPUC decision that authorizes the applicant to provide the telecommunications service for which the facilities are proposed to be constructed in the city's public rights-of-way; provided, however, that these requirements may be waived by the city where the applicant has submitted these documents in connection with a prior application, and there have been no amendments or supplements to these documents.

(b)
If the applicant has obtained from the CPUC a certificate of public convenience to operate as a "competitive local carrier," the following additional requirements are applicable:

(1)
As required by Decision No. 95-12-057 of the CPUC, the applicant must establish that it has timely filed with the city a quarterly report that describes the type of construction and

the location of each construction project proposed to be undertaken in the city during the calendar quarter in which the application is filed, which information is sufficient to enable the city to coordinate multiple projects, as may be necessary.

(2)
If the applicant's proposed construction project will extend beyond the utility rights-of-way ~~into undisturbed areas or other rights-of-way~~, the applicant must establish that it has filed a petition with the CPUC to amend its certificate of public convenience and necessity and that the proposed construction project has been subjected to a full-scale environmental analysis by the CPUC, as required by Decision No. 95-12-057 of the CPUC.

(3)
The applicant must inform the city whether its proposed construction project will be subject to any of the mitigation measures specified in the Negative Declaration ["Competitive Local Carriers (CLCs) Projects for Local Exchange Communication Service throughout California"] or to the Mitigation Monitoring Plan adopted in connection with Decision No. 95-12-057 of the CPUC. The city's issuance of a ministerial permit will be conditioned upon the applicant's compliance with all applicable mitigation measures and monitoring requirements imposed by the CPUC upon telephone corporations that are designated as "competitive local carriers."

~~(C)~~
~~In recognition of the fact that numerous excavations in the public rights-of-way diminish the useful life of the surface pavement and for the purpose of mitigating the adverse impacts of numerous excavations on the quality and longevity of public street maintenance within the city, the following policies and procedures are adopted:~~

~~(1)~~
~~The city manager is directed to ensure that all public utilities, including telephone corporations, comply with all local design, construction, maintenance and safety standards that are contained within, or are related to, a ministerial permit that authorizes the construction of facilities within the public rights-of-way.~~

~~(2)~~

~~The city manager is directed to coordinate the construction and installation of facilities by public utilities, including telephone corporations, in order to minimize the number of excavations in the public rights-of-way. In this regard, based upon projected plans for street construction or renovation projects, the city manager is authorized to establish on a quarterly basis one (1) or more construction time periods or "windows" for the installation of facilities within the public rights-of-way. Telephone corporations and other public utilities that submit applications for ministerial permits to construct facilities after a predetermined date may be required to delay that construction until the next quarterly "window" that is established by the city.~~

(C)
The purpose of this section is to establish the parameters for discretionary review of a "Wireless Telecommunications Use Permit" and "Master Plan" to identify processing procedures, regulations, review criteria, and findings for these requests.

(1) Any wireless telecommunications facility that is to be installed within the public right-of-way shall require a Public right-of-way encroachment permit.

(2) Except as provided in Subsection (D) and (G) any wireless telecommunication facility that is located in the city's public right-of-way and meets any of the following criteria shall require a Wireless Telecommunications Use Permit or Master Plan:

(a) If the antenna is greater than 26 inches in length;
(b) If the volume of the Radio Box exceeds 2 cubic feet;
(c) If the facility requires an above ground cabinet/equipment;
(d) If the facility is located within a 500-foot radius of a residential zone

(3) The Wireless Telecommunications Use Permit or Master Plan application shall be subject to the same planning application review process as for a Minor Conditional Use Permit as set forth in Title 13, Chapter III, Planning Applications, of the Municipal Code, except as otherwise indicated in this section. This application process includes, but is not limited to, a completed application, applicable processing fees, public notice, and appeals process. The application processing fee is a user fee that shall be adopted by City Council by resolution.

(4) The Zoning Administrator is authorized to act on and grant approvals of a discretionary application for a Wireless Telecommunications Use Permit or Master Plan. The Municipal Code provisions related to the Zoning Administrator's authority are found in Title 13 of the Municipal Code. The Zoning Administrator shall serve as the final decision authority or may forward any action to the Planning Commission for review. An appeal or review of the Zoning Administrator's decision shall be according to the procedures set forth in Title 2, Chapter IX Appeal, Rehearing and Review Procedure, of the Muncipal Code.

(5) The City Engineer is authorized to:

(a) Act on and grant approvals of ministerial permits related to wireless telecommunications facilities in the public right-of-way that do not meet the thresholds identified in Section (C) 2 (a), (b), (c), and (d).

(b) Forward any request related to a wireless telecommunications facility in the public right-of-way to the Zoning Administrator for review. These may include, but not be limited to, ministerial permits.

The application process for these referrals to the Zoning Administrator shall be subject to the same procedures, purpose, conditions, review criteria, and findings as described for a Wireless Telecommunications use Permit or Master Plan.

(6) Review criteria for the Wireless Telecommunications Use Permit or Master Plan application shall consist of the following:

(a) The final review authority shall limit their review to the factors allowed under federal and state law, including the following:

(1) Compatible and harmonious relationship between the proposed facility and site development or use(s), that exists or has been approved for the general neighborhood.

(2) Safety and compatibility of the design of the proposed facilities, relevant structures, landscaping, luminaries and other site features which may include functional aspects of the site development.

(3) Compliance with any performance standards for wireless telecommunications facilities as prescribed elsewhere in the ~~this Zoning Code.~~ Municipal Code, or by City policy;

(4) Consistency with the General Plan.

(b) The final review authority may not consider any impact on the health, safety and welfare, or any information, evidence, or consideration which exceeds the authority allowed to it under federal or state law.

(7) Condition(s) of approval for the application shall assure compliance with the applicable provisions of state and federal laws, assure compatibility with surrounding properties and uses and protect the public health, safety and general welfare. These conditions shall be within the authority allowed to the City pursuant to federal and state law.

Prior to processing an application, the Applicant shall furnish documentation from the CPUC that the listed items below have been meet.

(a) When the applicant is leasing access to an existing facility that CPUC approval has been processed in accordance with Public Utilities Code Section 851.

(b) When the applicant plans deployment of their facility over existing utility Rights of Way, that they have completed the necessary CPUC review under the California Environmental Quality Act (CEQA) for any such proposed build-out.

(8) When granting an application, the final review authority shall find that the evidence presented in the administrative record substantially meets any required conditions listed below.

(a) The location and placement of wireless telecommunications facilities in the public right-of-way are reasonably considered along with the California Public Utilities Code provisions for right of access to the public right-of-way.

(b) The proposed wireless telecommunications facility is substantially compatible with developments and uses in the same general area and would not be substantially detrimental to developments or uses within the general area.

(c) The proposed wireless telecommunications facility will not be materially detrimental to the health, safety and general welfare of the public in so far as the local agency is authorized to determine under federal and state law.

(d) Antennas and any poles or other structures erected to support antennas shall be visually compatible with surrounding building and vegetation. The final review authority may require that the antenna be painted in a neutral color to complement the existing natural and built environment.

(9) The Wireless Telecommunication Use Permit or Master Plan shall be valid for a ten (10) year period from the date of approval, unless otherwise indicated in a condition imposed at the time of granting the application or unless otherwise exempted under federal or state law. Prior to the expiration of the permit, the applicant may apply for a ten-year extension of time. If notice was required for the original application, and a public hearing on the extension is allowed under federal and state law, notice of the public hearing for a time extension shall be given according to the procedures set forth in this section.

(10) The city reserves all rights that it now possesses or may later acquire with respect to the regulation of any cable or telecommunications service that is provided, or proposed to be provided, by a telephone corporation. These reserved rights may relate, without limitation, to the imposition of reasonable conditions in addition to or different from those set forth in this section, the exaction of a fee or other form of consideration or compensation for use of public rights-of-way, execution of a leasing agreement, and related matters; provided, however, that such regulatory rights and authority must be consistent with federal and state law that is applicable to cable or telecommunications services provided by telephone corporations.

(11) The maximum height of the telecommunication facilities allowed within the public right of way shall not exceed thirty (30) feet (above the nearest top of curb elevation grade level), unless such extension is required to comply with applicable federal or state health and safety laws. (i.e. CPUC General Order 95).

(D)
Pursuant to Title 47 United States Code Section 1455 and notwithstanding any provision of this Section to the contrary, a request for a modification of an existing wireless tower or base station for the collocation of new transmission equipment or removal or replacement of existing transmission equipment shall be approved ministerially without the processing of a discretionary use permit provided that such modification does not substantially change the physical dimensions of such tower or base station from the dimensions approved as part of the original discretionary permit for the tower or base station. However, any modification to a wireless tower or base station which substantially changes the physical dimensions of either the tower or base station, and any other modification to a wireless telecommunications facility that does not qualify as a wireless tower or base station (as defined in this section) shall be subject to the permits and authorizations required by this article.

(E)
For purposes of this section, the following definitions shall apply:

(1) "Wireless telecommunications facility" shall have the same meaning as that set forth in California Government Code 65850.6(d)(2) as may be amended from time to time.

(2) "Wireless tower" means any structure built for the sole purpose or primary purpose of supporting antennas and their associated facilities used to provide services licensed by the FCC. A Distributed Antenna System installed pursuant to a Certificate of Public Convenience and Necessity issued by the California Public Utilities Commission, a water tower, utility tower, street light, or other structure built primarily for a purpose other than supporting services licensed by the FCC, including any structure installed pursuant to California Public Utility Code Section 7901, is not a wireless tower for purposes of this definition.

(3) "Base station" means the power supplies, electronic equipment housed in cabinets and antennas at an existing wireless tower site that together comprise a wireless tower. Distributed Antenna System installed pursuant to a Certificate of Public Convenience and Necessity issued by the California Public Utilities Commission is not a base station for purposes of this definition.

(4) "Substantially change the physical dimensions" means any of the following, and refers to a single change, or a series of changes over time (whether made by the same or different entities) viewed against the initial approval for the tower or base station that individually or cumulatively have any of the effects described below:

(a) Changing any physical dimension of the wireless tower or base station in a manner that creates a safety hazard, whether from wind loading, stress on the wireless tower, or ain any other manner.

(b) Changing the physical dimension of a wireless tower where the changes would be inconsistent with the design of the wireless tower, or make the wireless towers more visible

(c) Changing the physical dimensions would require work that would intrude upon the Public Right of Way, or any environmentally sensitive area.

(d) Increasing by more than 10% any of the following: the height or width in any direction of the wireless tower, or the area required for structures required to support the wireless tower, such as guy wires as approved and constructed through the discretionary permit process; provided that in no event shall the height exceed the maximum height permitted under the city's regulations.

(e) Increasing by more than 10% any of: the height or area encompassed within any structure or object enclosing the wireless tower, such as a fence or line of bushes.

(f) Increasing any of an existing antenna array's depth, circumference or horizontal radius from the wireless tower in any direction by more than 10%.

(g) Adding more than two antenna arrays to an existing wireless tower, or adding antenna arrays that, if the array were an existing array, would be of such depth, circumference or radius as to fall outside of subsection (F)(3)(f) unless such arrays were approved pursuant to Government Code Section 65850.6

(h) The mounting of the new or replacement transmission equipment would involve installing new equipment cabinet(s) not permitted under the initial approval and that will not fit within the existing enclosure for the wireless tower or base station or would require installation of a new cabinet or enclosure, excluding new equipment and cabinets that will be installed underground.

(5) A Wireless Telecommunications Master Plan contains design prototypes for wireless telecommunication antenna facilities, locational criteria for each prototype, number of facilities, and proposed screening and landscaping.

(6) A Wireless Telecommunications Use Permit is a discretionary request for the approval of a wireless telecommunications facility in the public right-of-way.

(F)
Each application submitted under Subsection (D) of this Section shall be accompanied by:

(1) a detailed description of the proposed modification to the existing facilities;

(2) a photograph or description of the wireless tower as originally constructed, if available, and, a photograph of the existing wireless tower and/or base station, and a graphic depiction of the wireless tower and/or base station after modification, showing all relevant dimensions;

(3) a description of all construction that will be performed in connection with the proposed modification; and

(4) a signed statement by a professional engineer, licensed and qualified in California, attesting that the modifications to be performed will not trigger discretionary review under this section.

Any permit issued under Subsection (D) of this Section will be conditioned, and may be revoked and the wireless telecommunication facility required to be removed if (a) any statement made with respect to the wireless telecommunications facility is not accurate f; or (b) the City Engineer finds that the modifications necessitated discretionary review.