



PLANNING COMMISSION AGENDA REPORT

VI. 2

MEETING DATE: JANUARY 9, 2012

ITEM NUMBER:

SUBJECT: ZONING CODE AMENDMENT CO-12-01 TO AMEND TITLE 19 OF THE COSTA MESA MUNICIPAL CODE RELATED TO WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

DATE: DECEMBER 23, 2012

FOR FURTHER INFORMATION CONTACT: FARIBA FAZELI, INT. CITY ENGINEER

DESCRIPTION

Code Amendment CO-12-01 is an amendment to Title 19, Chapter I, Article 4, Sections 14 and 15, of the City of Costa Mesa Municipal Code to include requirements for telephone corporations, including wireless telecommunication providers, to obtain a "**Wireless Telecommunications Use Permit**" for certain wireless telecommunications facilities located within the public right-of-way.

The permitting process and additional regulations are specified in the draft Ordinance.

RECOMMENDATION

Recommend that City Council approve and give first reading to the ordinance.

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 colocation 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 CUPs - and permits in general - for all wireless facilities proposed to be placed in the public ROWs. Any regulation pursuant to State law must still be consistent with the Federal Telecommunications Act of 1996.

City Hearings

In October 2011, Planning Commission requested staff to process a Code Amendment which was forwarded to 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, including discretionary review by the Planning Commission.

History of Approvals of Wireless Telecommunications Facilities in the City

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. PS 10-00503 located at 1996 Tustin Avenue to T-MOBILE on 01-03-2011, Permit Fees: \$935.00
- Encroachment Permit No. PS 11-00507 located at 1950 Placentia Avenue to NEXTG NETWORKS OF CALIFORNIA on 11-29-2011, Permit Fees: \$825.00

ANALYSIS

Code Amendment CO-11-02

State law mandates that the City must generally allow wireless telecommunications equipment to be installed in any public rights-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 communication equipment placed in public rights-of-way.

New Process and Regulations

The proposed Code amendment would create a new permit process and regulations as described below:

- Require public noticing to solicit public input on a proposed telecom facility in the public right-of-way.
- Establish a new discretionary review process for a Wireless Telecommunications Use Permit.
- Establish the Planning Commission as the final decision authority.
- Require a leasing agreement between the provider and the City.
- Limit the permit approval for an 8-year period with one-year extensions to be requested.
- Establish screening requirements for the antenna facility

The redlined/strikeout exhibits are provided in Attachment 1 and the Draft Ordinance as Attachment 2.

Wireless Telecommunication Permit Requirement

Currently, Code requires that all wireless telecom facilities in the ROW be processed as "over-the-counter" type permits with no public notice. The Code Amendment would require a public process.

Any wireless telecommunication facility that meets any two of the following criteria shall require a Wireless Telecommunications Use Permit:

- (a) **Public Right-of-Way.** The facility is located in the city's public right-of-way.
- (b) **Height.** The facility cannot be installed underground, excluding overhead wire and fiber, due to technology limitations and an aboveground structure is required that is greater than 48 inches in height, as measured from the grade level from the nearest top of curb elevation to the highest point of the structure.
- (c) **Width.** The facility cannot be installed underground, excluding overhead wire and fiber, due to technology limitations and an aboveground structure is required that is greater than 48 inches in width as measured from the farthest projection of the structure from one side to the other.
- (d) **Depth.** The facility cannot be installed underground, excluding overhead wire and fiber, due to technology limitations and an aboveground structure is required that is greater than 24 inches in depth as measured from the farthest projection of the structure from one side to the other.
- (e) **Siting.** The facility which cannot be placed underground, excluding overhead wire and fiber, and is installed greater than 48 inches above the nearest top of curb elevation grade level. This includes the area of colocation of the telecommunications structure on an existing facility.

Planning Commission Action Required

Code does not currently require Planning Commission review of proposed applications.

Per the draft ordinance, the Planning Commission is authorized to act on and grant approvals of a discretionary application for a Wireless Telecommunications Facility Permit. The Municipal Code provisions related to the Planning Commission's authority are found in Title 10 and Title 13 of the Municipal Code.

The Planning Commission shall serve as the final decision authority for Wireless Telecommunications Facility Permits. An appeal or review of the Planning Commission's decision shall be according to the procedures set forth in Title 2, Chapter IX Appeal, Rehearing and Review Procedure, of the Municipal Code.

Valid for 8-year Period

Code does not currently set an expiration date on the encroachment permit.

Per the draft Ordinance, the Wireless Telecommunication Use Permit shall be valid for a maximum eight (8) year period from the date of approval, unless otherwise indicated in a condition imposed at the time of granting the application.

Prior to the expiration of the permit, the applicant may apply for a one-year extension of time. The City Engineer may approve a one-year extension of time if just cause is demonstrated. A public hearing shall only be held if the extension request is greater than one year. If notice was required for the original application, notice of the public hearing for a time extension greater than one year shall be given according to the procedures set forth in this section.

Public Notice

A display ad for this public hearing was published in the newspaper. Additionally, a mailer was sent to the following:

- 500 foot radius of property owners around the three permitted facilities
- Major telecommunications providers
- HOAs
- Utility providers

LEGAL REVIEW

The City Attorney's office has reviewed and approved the attached Ordinance as to form.

ALTERNATIVES

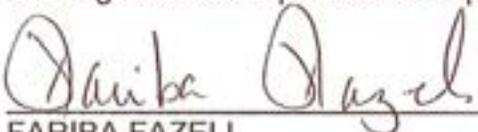
1. Recommend that City Council approve the Ordinance. The Ordinance will establish new regulations for telecommunications facilities in the public ROW.
2. Recommend that City Council receive and file the draft Ordinance. There will be no changes to the existing regulations.

ENVIRONMENTAL DETERMINATION

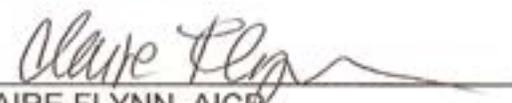
The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061 (b) (3) (general rule) of the CEQA Guidelines, in that it can be seen with certainty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

CONCLUSION

Code Amendment CO-12-01 is an amendment to Title 19 of the Costa Mesa Municipal Code to establish processing procedures and regulations for wireless telecommunications facilities in the public right-of-way. For example, the Code amendment would establish a public hearing and notice procedure to process these types of applications.



FARIBA FAZELI
City Engineer (INTERIM)



CLAIRE FLYNN, AICP
Acting Asst. Development Svs. Director

Attachments: 1. Redlined/Strikeout Exhibits
 2. Draft Ordinance

cc: Interim Development Services Director
 Public Services Director
 Deputy City Attorney
 Transportation Svs. Mgr.
 Fire Protection Analyst
 Staff (4)
 File (2)

ATTACHMENT 1

Redlined/Strike-out Text

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 antennas 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 preempts and declares invalid all state rules that restrict entry or limit competition in both local and long-distance telephone service.

(2)

The California Public Utilities Commission ("CPUC") is primarily responsible for the implementation of local telephone competition, and it issues certificates of public convenience and necessity 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 are included in the PUC definition of "telephone corporation" in § 7901, and the definition of "telephone line" in § 7901 is 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 authorizes telephone and wireless telegraph corporations to construct telephone or telegraph-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.

(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.

(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 a telephone corporation, including wireless telecommunications provider, that desires 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 must apply for and obtain, the following required permits:

(a) A "Wireless Telecommunications Use Permit" is a required discretionary permit for certain specified wireless telecommunications structure located greater than 8 feet above grade. See Title 19, Section 19-15(D), for more information ; and

(b) ~~As may be~~ applicable, an excavation permit, an encroachment permit, or a building permit ("ministerial permit.")

(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:

(i)

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.

(ii)

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.

(iii)

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.

(D)

The purpose of this section is to establish the parameters for discretionary review of a "Wireless Telecommunications Use Permit" and to identify processing procedures and regulations for this permit.

(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) Any wireless telecommunication facility that meets any two of the following criteria shall require a Wireless Telecommunications Use Permit:

(a) Public Right-of-Way. The facility is located in the city's public right-of-way.

(b) Height. The facility cannot be installed underground, excluding overhead wire and fiber, due to technology limitations and an aboveground structure is required that is greater than 48 inches in height, as measured from the grade level from the nearest top of curb elevation to the highest point of the structure.

- (c) Width. The facility cannot be installed underground, excluding overhead wire and fiber, due to technology limitations and an aboveground structure is required that is greater than 48 inches in width as measured from the farthest projection of the structure from one side to the other.
- (d) Depth. The facility cannot be installed underground, excluding overhead wire and fiber, due to technology limitations and an aboveground structure is required that is greater than 24 inches in depth as measured from the farthest projection of the structure from one side to the other.
- (e) Siting. The facility which cannot be placed underground, excluding overhead wire and fiber, and is installed greater than 48 inches above the nearest top of curb elevation grade level. This includes the area of colocation of the telecommunications structure on an existing facility.
- (3) The Wireless Telecommunications Use Permit application shall be subject to the planning application review process as set forth in Title 13, Section 13-29, 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 hearing, public notice, and appeals process. The application processing fee is a user fee that shall be adopted by City Council by resolution.
- (4) The Planning Commission is authorized to act on and grant approvals of a discretionary application for a Wireless Telecommunications Facility Permit. The Municipal Code provisions related to the Planning Commission's authority are found in Title 10 and Title 13 of the Municipal Code. The Planning Commission shall serve as the final decision authority for Wireless Telecommunications Facility Permits. An appeal or review of the Planning Commission's decision shall be according to the procedures set forth in Title 2, Chapter IX Appeal, Rehearing and Review Procedure, of the Municipal Code.
- (5) The City Engineer is authorized to act on and grant approvals of ministerial permits related to wireless telecommunications facilities. The City Engineer is also authorized to determine the eligibility of proposed telecommunications facilities with regard to the imposition of the Wireless Telecommunication Use Permit requirement. The City Engineer may exempt proposed facilities from the discretionary review process if the height, width, and depth of the aboveground structure is within six inches of the specified thresholds in 2 (b), (c), and (d). Appeals of the City Engineer's decisions on wireless telecommunications applications shall be considered by the Planning Commission.
- (6) Review criteria for the Wireless Telecommunications Use Permit application shall consist of the following:
- (a) Compatible and harmonious relationship between the proposed building and site development, and use(s), and the building and site developments, and uses that exist or have been approved for the general neighborhood.

- (b) Safety and compatibility of the design of buildings, relevant structures, landscaping, luminaries and other site features which may include functional aspects of the site development such as automobile and pedestrian circulation.
- (c) Compliance with any performance standards for wireless telecommunications facilities as prescribed elsewhere in this Zoning Code, Municipal Code or by City policy;
- (d) Consistency with the General Plan.

(7) Condition of approval for the Wireless Telecommunications Use Permit 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, including those related to screening requirements, shall be within the authority allowed to the City pursuant to the California Public Utilities Code.

Prior to processing an application for a Wireless Telecommunications Use Permit, the Applicant shall furnish documentation from the CPUC that the listed items below have been meet.

- (a) When the wireless telecommunication provider is leasing access to an existing facility that CPUC approval has been processed in accordance with Public Utilities Code Section 851.
- (b) When the wireless telecommunication provider 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 for a Wireless Telecommunications Use Permit, the final decision authority shall find that the evidence presented in the administrative record substantially meets any required conditions listed below.

- (a) The location, placement, and screening of wireless telecommunications facilities in the public right-of-way is 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 in the same general area and would not be materially detrimental to other properties within the area.
- (c) The proposed wireless telecommunications facility will not be materially detrimental to the health, safety and general welfare of

the public or otherwise injurious to property or improvements within the immediate neighborhood.

(d) The proposed wireless telecommunications facility will be "blinded" in accordance with the latest standards set forth by the Public Services Department.

(9) The Wireless Telecommunication Use Permit shall be valid for a maximum eight (8) year period from the date of approval, unless otherwise indicated in a condition imposed at the time of granting the application. Prior to the expiration of the permit, the applicant may apply for a one-year extension of time. The City Engineer may approve a one-year extension of time if just cause is demonstrated. A public hearing shall only be held if the extension request is greater than one year. If notice was required for the original application, notice of the public hearing for a time extension greater than one year 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) No aboveground telecommunications facilities shall be allowed in an underground district.

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 antennas that are commonly used in providing or receiving wireless telecommunications services on public and private property, excluding the public rights-of-way."

B. Section 19-15 is amended to read as follows:

"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 preempts and declares invalid all state rules that restrict entry or limit competition in both local and long-distance telephone service.

(2)

The California Public Utilities Commission ("CPUC") is primarily responsible for the implementation of local telephone competition, and it issues certificates of public convenience and necessity 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 are included in the PUC definition of "telephone corporation" in § 7901, and the definition of "telephone line" in § 7901 is 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 authorizes telephone and wireless telegraph corporations to construct telephone or telegraph 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.

(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.

(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 a telephone corporation, including wireless telecommunications provider, that desires 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 must apply for and obtain, the following required permits:

- (a) A "Wireless Telecommunications Use Permit" is a required discretionary permit for certain specified wireless telecommunications structure located greater than 8 feet above grade. See Title 19, Section 19-15(D), for more information ; and
- (b) Aas may be applicable, an excavation permit, an encroachment permit, or a building permit ("ministerial permit.")

(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:

(i)

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.

(ii)

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.

(iii)

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.

(D)

The purpose of this section is to establish the parameters for discretionary review of a "Wireless Telecommunications Use Permit" and to identify processing procedures and regulations for this permit.

- (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) Any wireless telecommunication facility that meets any two of the following criteria shall require a Wireless Telecommunications Use Permit:
 - (a) Public Right-of-Way. The facility is located in the city's public right-of-way.
 - (b) Height. The facility cannot be installed underground, excluding overhead wire and fiber, due to technology limitations and an aboveground structure is required that is greater than 48 inches in height, as measured from the grade level from the nearest top of curb elevation to the highest point of the structure.
 - (c) Width. The facility cannot be installed underground, excluding overhead wire and fiber, due to technology limitations and an aboveground structure is required that is greater than 48 inches in width as measured from the farthest projection of the structure from one side to the other.
 - (d) Depth. The facility cannot be installed underground, excluding overhead wire and fiber, due to technology limitations and an aboveground structure is required that is greater than 24 inches in depth as measured from the farthest projection of the structure from one side to the other.
 - (e) Siting. The facility which cannot be placed underground, excluding overhead wire and fiber, and is installed greater than 48 inches above the nearest top of curb elevation grade level. This includes the area of colocation of the telecommunications structure on an existing facility.

- (3) The Wireless Telecommunications Use Permit application shall be subject to the planning application review process as set forth in Title 13, Section 13-29, 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 hearing, public notice, and appeals process. The application processing fee is a user fee that shall be adopted by City Council by resolution.
- (4) The Planning Commission is authorized to act on and grant approvals of a discretionary application for a Wireless Telecommunications Facility Permit. The Municipal Code provisions related to the Planning Commission's authority are found in Title 10 and Title 13 of the Municipal Code. The Planning Commission shall serve as the final decision authority for Wireless Telecommunications Facility Permits. An appeal or review of the Planning Commission's decision shall be according to the procedures set forth in Title 2, Chapter IX Appeal, Rehearing and Review Procedure, of the Municipal Code.
- (5) The City Engineer is authorized to act on and grant approvals of ministerial permits related to wireless telecommunications facilities. The City Engineer is also authorized to determine the eligibility of proposed telecommunications facilities with regard to the imposition of the Wireless Telecommunication Use Permit requirement. The City Engineer may exempt proposed facilities from the discretionary review process if the height, width, and depth of the aboveground structure is within six inches of the specified thresholds in 2 (b), (c), and (d). Appeals of the City Engineer's decisions on wireless telecommunications applications shall be considered by the Planning Commission.
- (6) Review criteria for the Wireless Telecommunications Use Permit application shall consist of the following:
 - (a) Compatible and harmonious relationship between the proposed building and site development, and use(s), and the building and site developments, and uses that exist or have been approved for the general neighborhood.
 - (b) Safety and compatibility of the design of buildings, relevant structures, landscaping, luminaries and other site features which may include functional aspects of the site development such as automobile and pedestrian circulation.
 - (c) Compliance with any performance standards for wireless telecommunications facilities as prescribed elsewhere in this Zoning Code.Municipal Code or by City policy;
 - (d) Consistency with the General Plan.
- (7) Condition of approval for the Wireless Telecommunications Use Permit 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, including those related to screening requirements, shall be within the authority allowed to the City pursuant to the California Public Utilities Code.

Prior to processing an application for a Wireless Telecommunications Use Permit, the Applicant shall furnish documentation from the CPUC that the listed items below have been met.

- (a) When the wireless telecommunication provider is leasing access to an existing facility that CPUC approval has been processed in accordance with Public Utilities Code Section 851.
 - (b) When the wireless telecommunication provider 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 for a Wireless Telecommunications Use Permit, the final decision authority shall find that the evidence presented in the administrative record substantially meets any required conditions listed below.
- (a) The location, placement, and screening of wireless telecommunications facilities in the public right-of-way is 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 in the same general area and would not be materially detrimental to other properties within the area.
 - (c) The proposed wireless telecommunications facility will not be materially detrimental to the health, safety and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood.
 - (d) The proposed wireless telecommunications facility will be "blinded" in accordance with the latest standards set forth by the Public Services Department.
- (9) The Wireless Telecommunication Use Permit shall be valid for a maximum eight (8) year period from the date of approval, unless otherwise indicated in a condition imposed at the time of granting the application. Prior to the expiration of the permit, the applicant may apply for a one-year extension of time. The City Engineer may approve a one-year extension of time if just cause is demonstrated. A public hearing shall only be held if the extension request is greater than one year. If notice was required for the original application, notice of the public hearing for a time extension greater than one year 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) No aboveground telecommunications facilities shall be allowed in an underground district.

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.

GARY MONAHAN
Mayor of the City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

City Clerk of the City of Costa Mesa

City Attorney