



Agenda Item # _____

Staff Report

City of Manhattan Beach

TO: Honorable Mayor Fahey and Members of the City Council

THROUGH: Geoff Dolan, City Manager

FROM: Richard Thompson, Director of Community Development
Rosemary Lackow, Senior Planner

DATE: May 17, 2005

SUBJECT: Consideration of a Planning Commission Recommendation, as Revised, to Approve a Municipal Code Amendment and Local Coastal Program Amendment Pertaining to Regulation of Telecommunications Facilities on Public Right of Way, Public Property, and Private Property Citywide

RECOMMENDATION:

Staff recommends that the City Council: **CONDUCT** the Public Hearing; **WAIVE** further reading and introduce **ORDINANCES 2075 AND 2076**.

FISCAL IMPLICATION:

There are no fiscal implications directly related to the adoption of the proposed ordinances.

BACKGROUND:

Pursuant to the City Council 2004/2005 Work Plan, the City Attorney and Department of Community Development collaboratively prepared a draft Telecommunication Ordinance. The purpose of the ordinance is to bring the City's telecommunications regulations in line with legal requirements, while retaining appropriate local control.

The draft ordinance was the subject of several public hearings before the Planning Commission. On February 9, 2005 the Planning Commission adopted Resolution PC 05-04 (4 -1 vote) which recommends that the City Council repeal the existing telecommunications regulations and establishes new comprehensive regulations within Chapter 13 of the Municipal Code. The new telecommunications regulations would also be added to Chapter 3 of the Local Coastal Program as a separate ordinance.

On April 5, 2005 the City Council conducted a public hearing and considered two ordinances (2075 and 2076) which reflected the Planning Commission's recommendations. Ordinance 2075 will incorporate the new regulations within the Municipal Code and Ordinance 2076 will implement them within the City's Local Coastal Program (Exhibits A and B). Both ordinances repeal all existing telecommunication regulations. The City Council received public input and

directed Staff to make certain revisions. The Council also requested Staff to research whether the National League of Cities had any relevant information or any model ordinances that may assist the City. A copy of the April 5, 2005 City Council Staff Report on this subject is enclosed with this report without attachments. The attachments for the April Staff Report may be accessed through the City's website: www.citymb.info/agenda/2005 (agenda item number 10).

DISCUSSION:

The City Council directed that staff revise the draft ordinance with respect to permit procedures for telecommunication facilities in the public right of way. In particular the Council requested that Staff :

- incorporate an aesthetic standard for the public right of way
- provide a threshold for notice and appeal rights for right of way telecom facilities
- provide a height limit for telecom facilities proposed on walk streets and The Strand

Staff has revised Section 13.02.030 (pertaining to the right of way) as requested. Paragraph C, entitled "Standard Facilities" provides a list of criteria for a telecom facility that would enable that application to be administratively reviewed by staff, with no public notice. The Director of Community Development would have a final decision on such standard applications. As proposed, "Standard Facilities" with streamlined permit processing would be telecom facilities that:

- Would be constructed on an existing utility pole or light standard only;
- Have a maximum of four antennas up to 36 inches in height, 12 inches in width and 2 inches in depth.
- Have ancillary support equipment (which includes a power source and electric meter, emergency 9-1-1 tracking equipment and a tie in to a local phone company) that does not exceed 36-inches in any dimension.
- Have no exterior lighting or fencing unless required by federal regulations or the Director for safety purposes.
- Have all new facilities and equipment located below the highest existing public utility equipment or transmission lines.
- Be adequately integrated into the existing utility pole or light standard by methods such as (but not limited to) matching paint, landscaping, hardscape or other material that would blend the facility in with the existing utility components and/or adjoining area.

Paragraph D. of the same right of way regulations provides that public notice be provided for all other "Non-Standard" facilities, which are defined as any other proposed right of way facility that does not comply with the criteria for a Standard Facility such as proposing a new pole. The noticing procedures is equivalent to the same process that is provided for appealable and noticed telecom sites on private property, with notice to property owners required to be provided in a 500-foot radius both before and after the Director's decision. Paragraph H. of the same section entitled "Finality of Decision" provides that the Director's decision regarding a Non-Standard facility may be appealed to the City Council within ten days of the Director's decision, and the Council would be required to hear the appeal within 20 days of the date the City receives the appeal. The appeal hearing would also be advertised to surrounding owners within a 500-foot radius from the proposed site.

Staff has also added a fourth criteria for telecom facilities proposed on walk streets and The Strand, which requires that the height of telecom facilities in the right of way not exceed the applicable zoning building height limit that is adjoining on private property. This would be 30 feet on The Strand and for most walk streets, and to a limited degree within some portions of the Downtown Commercial District, 26 feet. As a comparison, the existing cell site on the utility pole on Valley Drive near Pacific Avenue is approximately 28 feet above the ground.

National League of Cities

Staff has contacted the National League of Cities in Washington D.C. for information regarding available model ordinances or issues relating to telecommunications. The League advised that they were not aware of a national model ordinance and directed Staff to its ITC (Information and Technology Communications) Policy Committee. The League's ITC Committee is currently focusing on municipal broadband issues and the need to amend the 1996 Telecommunications Act especially with respect to technology changes and related protocols regarding Internet data, especially voice and video transmissions. Information regarding the ITC Committee and its 2005 Advocacy Priority is attached for the Council's reference.

Public Notice/Public Input

Staff re-noticed the public hearing in the Beach Reporter on May 5th. No other input from citizens has been received as a result of the newspaper notification.

Input from Cingular Wireless

As the Council is aware, the City has one cell site in the public right of way installed in 2004 by AT&T Wireless on Valley Drive near Pacific Avenue. This site was approved upon settlement of legal action brought by AT&T and is now owned and operated by Cingular Wireless, which recently purchased AT&T Wireless. Since the last Council meeting Staff obtained as-built plans for this right of way site and met with Cingular on May 6, 2005 to discuss the Valley Drive site and possible permitting requirements and parameters for similar right of way facilities.

On May 10, Staff received correspondence from Cingular Wireless (copy attached) after Staff revised the draft Ordinance for presentation to the Council. As of the writing of this report Staff has not been able to fully evaluate this input but will provide comments at the hearing.

CONCLUSION :

Staff has revised the draft Telecommunications Ordinance to meet citizen concerns regarding standards, notice and appeal rights for applications on private and public property, public right of way and City property. The proposed ordinance provides for a comprehensive, updated and streamlined set of regulations to guide the permit process for a variety of telecommunications throughout the City. Staff believes that the proposed regulations strike a proper balance between citizens' desire for public participation and protection from adverse impacts, while addressing the telecommunication industry's concerns that the ordinance provide for timely local permitting and equitable decision making process.

It is recommended that the City Council conduct the public hearing and adopt the proposed ordinances.

Agenda Item #: _____

Attachments: Exhibit A - Ordinances 2075 and 2076
Exhibit B - Strike-out version of Ordinance 2075
Exhibit C - City Council Staff Report 4-05-05 (attachments not available)
and minutes
Exhibit D - National League of Cities information
Exhibit E - Letter submitted by Cingular Wireless 5/10/05

cc: Manhattan Beach Unified School District
Donald McPherson

ORDINANCE NO. 2075

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, AMENDING THE MANHATTAN BEACH MUNICIPAL CODE PERTAINING TO REGULATION OF TELECOMMUNICATIONS FACILITIES ON PUBLIC AND PRIVATE PROPERTIES AND THE PUBLIC RIGHT OF WAY CITY-WIDE

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby makes the following findings:

- A. The Planning Commission conducted duly noticed public hearings on October 27, December 8, 2004, January 12 and February 9, 2005 and public testimony was invited and received. On April 5 and May 17, 2005 the City Council conducted a public hearing to consider the recommendation of the Planning Commission contained in Resolution PC 05-04, adopted February 9, 2005 and public testimony was invited and received;
- B. The subject matter of the public hearing is the city-wide regulation of telecommunications facilities located on both public and private property consistent with legal requirements. The applicant is the City of Manhattan Beach;
- C. The City of Manhattan Beach is a community with a high quality of life, attractive neighborhoods and a non-urban "small town" ambience;
- D. Use of the public right of way for utilities and telecommunications requires authority for the City to protect and regulate use of the right of way by private parties for private purposes to reduce disruption to the public and degradation of public facilities;
- E. Use of private property for telecommunications installations requires approval from the City based upon its traditional authority over land use which should be used to protect neighborhood aesthetics;
- F. The walk streets and The Strand pedestrian walkway right of ways have a unique ambience in that they are public open spaces that provide visual and pedestrian access to the beach, with public visual corridors virtually unobstructed by overhead utility facilities. Alternative sites that are currently served by overhead utilities are close by and available within vehicular alleys and streets. Therefore use of the walk streets and The Strand right of way is discouraged for above ground telecommunication facilities;
- G. Permit requirements for use of the public right of way ensures that any work performed in the public right of way meets acceptable standards for public improvements and protects public property;
- H. Standards for telecommunications facilities on private property should protect the public interest and provide predictable standards for telecommunications companies who seek to install new facilities;
- I. Due to changes in technology and public regulations there has been a proliferation of telecommunications providers desiring to use the public right of way and private property for fiber optic systems intended to deliver a variety of telecommunications services to the public and private industry including high speed data transmission, high speed internet services, open video systems, and cable television as well as cellular sites and other wireless communication facilities;
- J. Federal law acknowledges local land use authority and that State law controls the use of the public right of way and California law gives control of local right of way to local government and for all purposes other than telephone, permits a local government entity to grant franchises for the use of the public right of way;

- K. In order to promote competition, protect the public right of way, protect neighborhoods within the City and to insure public safety, and encourage a level playing field for all competing service providers it is in the best interest of the public to set forth consistent and predictable rules and procedures for siting of telecommunications facilities to the extent permitted by Federal and State law;
- L. This ordinance is exempt from the requirements of the California Environmental Quality Act due to determination that it has no potential for causing a significant effect on the environment (per CEQA Guidelines Section 15061 (b) (3));
- M. The project will not individually nor cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.

SECTION 2. Section 10.60.130 of Chapter 10.60, Title 10, of the Manhattan Beach Municipal Code is hereby repealed in its entirety and new Chapter 13.02 is hereby added to Title 13 of the Manhattan Beach Municipal Code as follows:

“CHAPTER 13.02 REGULATION OF TELECOMMUNICATIONS FACILITIES

13.02.010 Scope

The provisions of this Chapter shall govern location of telecommunications facilities in the community whether on City property, public property not owned by the City, in the public right of way or on private property.

13.02.020 Definitions

APPLICANT means any person, firm, partnership, association, corporation, company, public utility, entity or organization of any kind who proposes to encroach upon a public place, right of way, sidewalk or street or construct a telecommunications facility on private or public property and who has applied for a telecom permit for the proposed encroachment or facility pursuant to the provisions of this Chapter.

CABLE TELEVISION means a television system by which sound and picture are received by a central reception system and transmitted by direct cable to subscribers of the system.

CITY means the City of Manhattan Beach.

CITY MANAGER means the City Manager of the City of Manhattan Beach or his or her designee.

CITY PROPERTY means any City owned, leased or occupied non right of way property, including but not limited to parks, civic centers, parking lots, maintenance yards, and others.

CO-LOCATION means the use of a common site or facility by two or more permittees, or use by one permittee of a single site for two or more technologies or facilities.

COUNCIL means the City Council of the City of Manhattan Beach.

DIRECTOR shall mean the Director of Community Development of the City of Manhattan Beach or his or her designee.

ENCROACHMENT AREA means the section of public right of way located between the property line and the edge of the walkway or roadway.

ENCROACHMENT means and includes any paving obstruction, tower, pole, pole line, pipe, fence, wire, cable, conduit, stand or building, mailbox, entry monument, or any structure or object of any kind or character which is placed on, in, along, under, over or across a public place, right of way, sidewalk or street, including any excavation on, in, along, under, over or across such a public place, right of way, sidewalk or street.

ENCROACHMENT WORK means the work of constructing, placing or installing an encroachment.

ENGINEER means the Manhattan Beach City Engineer or his or her designee.

EXCAVATION means any opening in the surface of a public place, right of way, sidewalk or street made in any manner whatsoever. The term shall also include any excavation on private property which removes or imperils the lateral support of a public place, right of way, sidewalk or street.

EXISTING/NON-CONFORMING means a previously legally constructed improvement which is not consistent with codes, guidelines or other land use regulations.

OCCUPY means owning or operating any facilities that are located in Rights-of-Way.

OVERHEAD STRUCTURES means any improvement extending over a public place, right of way or street.

PERSON means any living individual, any corporation, joint venture, partnership, or other business entity.

PUBLIC PROPERTY means any non right of way property that is owned, leased or occupied by a public agency other than the City. non right of way property including but not limited to parks, civic centers, parking lots, maintenance yards and others.

PUBLIC WALKWAY means the portion of the public right of way improved and designated by the City for pedestrian travel.

RIGHT OF WAY means the surface and space in, on, above, through and below any real property in which the City of Manhattan Beach has a legal or equitable interest whether held in fee or any other estate or interest, or as a trustee for the public, including, but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, curb, parkway, river, tunnel, viaduct, bridge, public easement, or dedicated easement.

STEALTH TECHNOLOGY means technology intended to significantly reduce the visual impacts of telecommunications facilities including but not limited to simulations of landscaping or architectural features.

TELECOMMUNICATIONS means the transmission of voice, video, data or other information between two or more points along wires, optical fibers or other transmission media, or using radio waves or other wireless media, including but not limited to cable television services, internet services, telephone services, cellular telephone services and other forms of communication.

TELECOMMUNICATIONS FACILITIES means facilities within the City used or related to the provision of telecommunications including but not limited to, wires, optical fiber, antennae, cabinets, pedestals, transmitters, repeaters, cellular transmission or relay sites and other telecommunications related equipment.

TELECOM PERMIT means a permit to locate a non-franchised telecommunications facility on City property, public property, private property, or the public right of way.

TELEPHONE COMPANY/TELEPHONE UTILITY means any telephone or telegraph corporation as defined by Sections 234-236 of the California Public Utilities Code (or any successor sections) which has obtained a Certificate of Public Convenience and Necessity ("CPCN") or Wireless Registration Identification ("WRI") from the California Public Utilities Commission.

TELEPHONE means an instrument or system for conveying speech or other communications over distances by converting sound, data or other information into electric impulses.

TELEPHONE SERVICE means provision of a system providing voice or other communication, between points.

13.02.030 Telephone Utilities' Telecommunications Facilities In The Public Right of Way

- A. Purpose. The purpose of this section is to establish procedures and regulations for processing requests to construct and maintain telecommunications facilities in the public right of way. In order to avoid installations on private property, telecommunication facilities are encouraged to be located on existing utility poles or facilities in the public right of way, with the exception of The Strand and walk streets which are closed for vehicular use. An entity holding a Certificate of Public Convenience and Necessity ("CPCN") or Wireless Registration Identification ("WRI") from the California Public Utilities Commission has the legal right to locate its facilities in the public right of way without having to obtain a franchise. City permission is required to locate and construct such a facility which cannot be allowed to interfere with public safety or other public use of the right of way, shall be coordinated with other utility installations, and constructed in conformity with standards for public rights of way.
- B. Telecom Permit Required. Any entity which has received a Certificate of Public Convenience and Necessity ("CPCN") or Wireless Registration Identification ("WRI") from the California Public Utilities Commission as a telephone company installing facilities in the public right of way to be used to provide telephone service shall obtain a telecom permit. The Director of Community Development ("Director") or his or her designee shall have the authority to issue such a permit provided that where alterations, fixtures or structures located within public walkways or roadways, other than temporary moveable structures, are to be placed in the public right of way, detailed plans for any such work shall be submitted to the City Engineer whose approval shall be required.
- C. Standard Facilities. A telecommunications permit for any "Standard Facility" may be approved by the Director of Community Development without notice. A Standard Facility is classified as any telecommunications facility proposed to be located in the right of way which complies with the following criteria:
- a. Only existing utility poles or light standards are used.
 - b. The proposed telecom facility's location on the utility pole or light standard is at a lower elevation than the highest existing public utility transmission lines, equipment or facility.
 - c. The size of an individual antenna is the smallest based on available technology and is no more than 36 inches in height, 12 inches in width and 2 inches in depth;
 - d. The total number of antennas does not exceed four.
 - e. The size of any vault, cabinet or other equipment associated with the facility does not exceed 36 inches in any dimension;
 - f. There is no exterior facility lighting or fencing unless required by federal regulations or by the Director for safety purposes.
 - g. The telecommunications facility is adequately integrated into the existing utility pole or light standard. Methods to integrate the telecommunications facility may include but not be limited to: matching paint color, planting landscaping materials, or installing a hardscape or other material that will blend the facility with the existing utility components and/or adjoining area.
- D. Non-Standard Facilities. A Non-Standard facility is any facility which does not comply with the criteria in "C" above. The Director of Community Development may issue a permit for a Non-Standard facility. Notice shall be given to all property owners located within five hundred (500) feet of the proposed location of a pending application both prior to and after a final decision of the Director.

The first notice of the pending application shall be given at least ten calendar days prior to the decision of the Director. The second notice, informing of the decision of the Director shall be given within five days of the decision. No published notice shall be required.

Notification materials, if determined to be required, shall be submitted by the applicant, and shall include a map showing the location and street address of the property that is the subject of the application and of all lots of record within 500 feet (500') of the boundaries of the property; and a list, drawn from the last equalized property tax assessment roll or the records of the County Assessor, Tax Collector, or the City's contractor for such records showing the names

and addresses of the owner of record of each lot within 500 feet (500') of the boundaries of the property. This list shall be keyed to the map.

- E. Facilities on Walk Streets and The Strand. No telecom permit shall be issued for a telecommunications facility to be placed within the right of way of a walk street or The Strand unless the following findings can be made:
- a. no feasible alternative site was available for the facility;
 - b. aesthetic impacts, including obstructions to ocean views, have been fully mitigated or avoided;
 - c. the facility is compatible with the neighborhood in which it is located.
 - d. the maximum height of the facility does not exceed the applicable zoning building height limit applicable to the closest adjoining private property.

- F. Submittal Requirements. The following material shall be submitted with an application request for a telecom permit under this section:

1. Site plan and vicinity map, which shall include distance from the proposed telecom facility and equipment to the nearest residential building(s) on any adjoining private property;
2. Elevation drawings and construction plans (survey may be required);
3. At staff discretion, color renderings, or photographs including simulations or computer generated images or on-site mock-ups showing the existing and proposed site conditions;
4. An updated wireless master plan, detailing the exact nature and location of all existing and proposed future facilities (anticipated build-out) within the city, if applicable;
5. Provide verification that the proposed facility complies with all applicable rules, regulations and licensing requirements of the FCC including a report prepared by an engineer, prepared at the applicant's expense, which quantifies the project's radio frequency (RF) exposures and compares them to FCC adopted standards. Following installation of the proposed facility, a subsequent field report shall be submitted detailing the project's cumulative field measurements of RF power densities and RF exposures, confirming that the facility complies with accepted FCC standards, if applicable;
6. Information demonstrating compliance with applicable building, electrical, mechanical and fire codes and other public safety regulations;
7. At the discretion of the Director or his or her designee the City may commission at the applicant's expense, a study evaluating the availability and feasibility, of alternate sites;
8. A construction schedule showing start and end dates, project milestones, and Emergency contact information to the satisfaction of the Director and prior to issuance of the Permit.
9. Public noticing materials as required for non-standard facility applications as provided in paragraph D of this section.

- G. Standard of Review.

1. Authority to limit or prohibit. The Director of Community Development ("Director") shall have the authority to prohibit or limit the placement of new or additional facilities within the rights of way to protect the public health and welfare if there is insufficient space to accommodate the requests of all permittees to occupy and use the rights-of-way. In reaching such decisions, the Director shall strive to the extent possible to accommodate all existing and potential users of the rights-of-way, and shall be guided primarily by: considerations of the public interest; the age and condition of the affected portions of the rights-of-way; the time of year and periods of economic interest including, but not limited to, holidays, special events, the protection of existing facilities in the rights of way; and future City plans for public improvements and development projects that have been determined to be in the public interest.
2. Discretionary Conditions. The Director reserves the right to require phasing of construction projects or limit the hours of construction to reduce the adverse impacts on the public health, safety and welfare. The City Engineer or his/her designee has the

authority to approve or reject a method of excavation or other construction methodology.

3. **Mandatory Conditions.** In granting a telecom permit under the provisions of this chapter, the following conditions, in addition to any other conditions deemed necessary or advisable, shall be imposed:

- a. That, should public necessity require, the permitted facility shall be removed or relocated by the permittee at no cost to the City upon thirty (30) days' written notice to the permittee from the City, and should any cost be incurred by the City in the removal of such facility the permittee shall reimburse it for said expense;
- b. That a certificate of insurance in amounts and form satisfactory to the City Risk Manager shall be filed with the City upon the granting of the telecom permit and shall be maintained in good standing at all times so long as the facility exists, releasing the City from any and all liability whatsoever in the granting of such permit;
- c. That the applicant shall expressly agree to each of the conditions imposed, including any which may be in addition to the foregoing, as a prerequisite to the granting of the telecom permit by the City;
- d. That to the extent possible, as determined by the Director, any facility to be located on the public right of way shall be co-located with similar facilities and all work done coordinated to coincide to the maximum extent possible with other work being done in the right of way to minimize disruption to the public;
- e. That to the extent possible applicant shall camouflage and make inconspicuous any facility permitted hereunder including but not limited to selections of colors and finishes to match and blend with its surroundings;
- f. That all antennas or telecom equipment shall be located a minimum of ten feet from a residential building;
- g. That upon the cessation of use or abandonment of the facility it shall be promptly removed at the expense of the applicant.

H. Fee. The City may charge a fee, to be set by resolution of the City Council, for such a permit providing, however, that the amount of any such fee shall not exceed the cost to the City of processing the permit.

I. Finality of Decision. Notwithstanding any other provision of this municipal code, the decision of the Director regarding the issuance or denial and conditions governing any telecom permit for a Standard Facility issued under this Chapter shall be final. The Director's decision regarding a Non-Standard facility may be appealed to the City Council. Any such appeal must be filed within ten (10) calendar days of the date of the Director's decision. The appeal shall be heard by the City Council within twenty (20) days of the City's receipt of the appeal. Notice of the appeal shall be given to all property owners within 500 feet of the proposed facility. The decision of the City Council shall be final.

J. Time Limit. Any telecom permit granted pursuant to the provisions of this Chapter shall be developed and utilized within a period not to exceed twelve (12) months from and after the date of the granting of such permit, and, if not so developed and utilized, such permit automatically shall become null and void at the expiration of such twelve (12) month period.

The permittee may apply in writing for one extension of time, not to exceed six (6) months, within which to develop and use such permit. The Director, in his or her sole discretion after due consideration, shall either grant or deny the extension of time for such development and use.

K. Abandonment. The owner of a permitted facility shall submit written verification annually that the facility is operative. Any antenna structure and related equipment regulated by this chapter that is inoperative or unused for a period of six (6) consecutive months shall be deemed abandoned and declared a public nuisance. Removal of the abandoned structure shall follow procedures set forth in Chapter 9.68, Public Nuisances--Premises, of this Code.

- L. Restoration of Right of Way. Upon completion of the work authorized by a permit granted hereunder, the permittee shall restore the right of way or street, including but not limited to bridges and any other structure thereon, by replacing, repairing or rebuilding it in accordance with the specifications or any special requirement included in the permit, but not less than to its original condition before the encroachment work was commenced and in all cases in good usable quality. The permittee shall remove all obstructions, materials and debris upon the right of way and street, and shall do any other work necessary to restore the right of way and street to a safe and usable condition, as directed by the City Engineer. Where excavation occurs within areas already paved, the engineer may require temporary paving to be installed within four hours after the excavation area is backfilled. In the event that the permittee fails to act promptly to restore the right of way and/or street as provided in this section, or should the nature of any damage to the right of way or street require restoration before the permittee can be notified or can respond to notification, the City Engineer may, at his or her option, make the necessary restoration and the permittee shall reimburse the City for the full cost of such work.

13.02.040 Non-Telephone Telecommunications Facilities In The Public Right of Way

Any entity which has not received a Certificate of Public Convenience and Necessity ("CPCN") or Wireless Registration Identification ("WRI") from the California Public Utilities Commission as a telephone company which desires to install telecommunications facilities of any kind in the public right of way must obtain a franchise for said purpose which must be approved by the Manhattan Beach City Council. A franchise fee as specified in Section 13.02.100 of this Chapter may be charged for said use.

13.02.050 Franchise Required for Other Utilities in the Public Right of Way

Placement of any utility in the public right of way, with the sole exception of telephone lines used for telephone service, shall require a franchise to be approved by the City Council. The annual franchise fee shall be the maximum amount permitted by State law for the type of utility to be placed in the public right of way. If there is no specific fee set by State law for the utility to be placed in the public right of way, the annual franchise fee shall be established by Resolution of the City Council. Any franchised utility shall require an encroachment or right of way construction permit, issued pursuant to this Chapter for any installation, alteration or maintenance of facilities in the public right of way and the standards set forth herein shall apply. Each utility of like kind shall receive equal and comparable treatment under the procedures set forth in this Chapter to ensure a level playing field for competing enterprises.

13.02.060 Telecommunications Facilities on City Property

- A. City Council authority. No telecommunications facility may be located on public property belonging to or in the possession of the City without the express consent of the City Council. The City Council may require rent or other compensation to be paid for location of any telecommunications facility on public property owned or in the possession of the City. Applications shall be submitted to the City Manager or his or her designee.
- B. Notice. The City Manager or his or her designee shall provide notice to all property owners located within five hundred (500) feet of the proposed telecommunication facility at least ten calendar days prior to the date on which the proposed telecommunication facility application is to be considered by the City Council. No published notice shall be required. Notification materials shall be submitted by the applicant, and shall include a map showing the location and street address of the City property that is the subject of the application and of all lots of record within the prescribed 500 foot (500') radius and a list, drawn from the last equalized property tax assessment roll or the records of the County Assessor, Tax Collector, or the City's contractor for such records showing the names and addresses of the owner of record of each lot within the prescribed 500 foot (500') radius. This list shall be keyed to the map. The City may charge a fee, to be set by resolution of the City Council, for processing the public notice, however the amount of any such fee shall not exceed the cost to the City of processing the permit.
- C. Finality of Decision. The decision of the City Council regarding the lease or use of City property approved under this subsection shall be final.

13.02.070 Provision of Telecommunications Services by Franchised Cable Operators

Cable television franchises granted by the City shall not be interpreted to permit any activity other than what is expressly authorized by the franchise agreement. Any entity which has not received a Certificate of Public Convenience and Necessity ("CPCN") or Wireless Registration Identification ("WRI") from the California Public Utilities Commission as a telephone company but is franchised to provide cable television service within the City and wishes to add other types of telecommunications services to offer to Manhattan Beach residents must amend its franchise agreement to include authorization to provide such service and may be required to pay an appropriate fee by the City Council for said privilege.

Any entity franchised to provide cable television services within the City which has received a Certificate of Public Convenience and Necessity ("CPCN") or Wireless Registration Identification ("WRI") from the California Public Utilities Commission as a telephone company which desires to provide additional telecommunications services within the City must obtain the permits required under Section 13.02.030 for any additional facilities it wishes to add to the public right of way related to said services.

13.02.080 Underground Utility Districts

Any telecommunications facility located in the public right of way may be required to locate new facilities underground or relocate if formation of an underground utility district for the location is pending. A district will be considered pending if a petition signed by the required majority of property owners had been filed with the City to initiate engineering studies for formation of a district. The Director of Public Works or his or her designee may require existing telecommunications facilities to be relocated, placed underground, or removed at the owner's expense upon formation of an underground utility district.

13.02.090 Telecommunications Facilities on Private Property and Public Property Not Owned by

City

- A. Purpose. The purpose of this section is to establish procedures and regulations for processing telecommunications facilities (including radio and satellite dish antenna) applications on private property and non-City owned public property and to create consistency between federal legislation and local ordinances. The intent of these regulations is to protect the public health, safety and general welfare while ensuring fairness and reasonable permit processing time.
- B. Telecom Permit Required. A telecom permit shall be required for the construction, modification and placement of all telecommunications facilities including Federal Communication Commission (FCC) regulated amateur radio and satellite dish antennas in all districts and all wireless service facilities, including but not limited to, common carrier wireless exchange access services, unlicensed wireless services and commercial mobile services (i.e., cellular, personal communication services (PCS), specialized mobile radio (SMR) and paging services). All telecom permits issued under this section shall be administrative permits to be issued by the Director of Community Development or his or her designee.
- C. Exceptions. A telecom permit shall not be required for the construction, modification and placement of any satellite dish antenna measuring one (1) meter or less in diameter designed to receive direct broadcast satellite service, including direct-to-home satellite service and multi-channel multi-point distribution services (MMDS) on masts not exceeding twelve feet (12') in height.
- D. Facilities on Non-commercially Zoned Property. No telecom permit shall be issued for a telecommunications facility to be placed on non-commercially zoned (RS, RM, RH, RPD, RSC, and PS zoning districts as per Title 10 of the Municipal Code) unless the following findings can be made:
 - a. no feasible alternative non-residential site was available for the facility;

- b. adverse aesthetic impacts have been fully mitigated;
- c. the facility is in compliance with all development standards of the base zone in which it is located, including height limits;
- d. the facility is compatible with the neighborhood in which it is located.

Amateur radio antennas, satellite dish antennas and home television antennas shall be exempt from the provisions of this section. See section 13.02.090 G of this chapter for amateur radio antennas regulations and Municipal Code section 10.60.060 for height restrictions applicable to other non-commercial radio and television antennas. A commercial telecom facility shall not be permitted to be located, constructed, or operated on or by means of any amateur radio antenna, satellite dish antenna and home television antenna facility or equipment that is exempted by this section.

- E. Submittal requirements. The following material shall be submitted with an application request for a permit under this section:
- a. Site plan and vicinity map;
 - b. Elevation drawings and floor plans (survey may be required);
 - c. An updated wireless master plan, detailing the exact nature and location of all existing and proposed future facilities (anticipated build-out) within the city, if applicable;
 - d. At staff discretion color renderings, or photographs including photo simulations or computer generated images or on-site mock-ups showing the existing and proposed site conditions;
 - e. Provide verification that the proposed facility complies with all applicable rules, regulations and licensing requirements of the FCC including a report prepared by an engineer, prepared at the applicant's expense, which quantifies the project's radio frequency (RF) exposures (including property accountability for nearby congregations of facilities) and compares them to FCC adopted standards. Following installation of the proposed facility, a subsequent field report shall be submitted detailing the project's cumulative field measurements of RF power densities and RF exposures compared to accepted FCC standards, if applicable;
 - f. Information demonstrating compliance with applicable building, electrical, mechanical and fire codes and other public safety regulations;
 - g. At the discretion of the Director or his or her designee the City may commission at the applicant's expense, a study evaluating the availability and feasibility of alternative sites;
 - h. Public noticing materials, if required pursuant to section 13.02.0 H of this Chapter.
- F. Standard of review. Permit applications under this section shall be processed administratively. Applications for satellite dish antennas and roof, wall or similarly mounted wireless service facilities including modification to existing monopole structures must be in compliance with the following applicable standards:
1. The proposed facility shall comply with all applicable development standards of the base district in which it is located.
 2. The facility shall only exceed applicable height limits or height of existing buildings in non-residential zones by a maximum height of 8 feet above the existing building measured to the highest point adjacent to the antenna(s).
 3. The impact on surrounding residential views shall be considered. Roof, wall or similarly mounted facilities and satellite dishes exceeding the existing structure height, or otherwise visible from the surrounding area, shall be screened or camouflaged on all sides to the satisfaction of the Director. Screening shall be architecturally integrated and compatible with the site on which it is located by incorporating appropriate use of color, texture, material and/or vegetation. Where screening potential is low, innovative designs or technology shall be incorporated to reduce the visual impact.
 4. The applicant shall demonstrate good faith effort to co-locate on existing facilities or sites and in non-residential zones. Requests for co-location on existing monopoles or other wireless service facilities that do not increase the height, bulk or otherwise adversely detract from the existing facility, shall be approved if aesthetically acceptable and structurally and technologically feasible.

5. All wires or cables necessary for operation shall be placed underground, except if attached flush to the building surface where not highly visible from surrounding uses.
6. No signage or advertisement shall be permitted except for required public safety signs.
7. Exterior facility lighting and fencing shall not be permitted unless required by federal regulations or by the Director for safety purposes.
8. The facility shall be in compliance with all applicable PUC and/or FCC standards.
9. The Director reserves the right to impose any other condition consistent with the purpose of this Chapter.

G. Amateur Radio Antennas. Amateur radio antennas associated with the authorized operations of an amateur radio station licensed by the FCC (i.e., "HAM" radio transmission) shall be permitted in any district and administratively reviewed provided the structure complies with the following requirements:

1. No portion of the antenna structure shall be located in any required yard and all portions must maintain at least five feet (5') clearance from any property line (including support cables).
2. No portion of the antenna structure may exceed a height of sixty feet (60') above finished ground level grade.
3. Construction of such antenna shall be subject to the provisions of Chapter 9.01 of this Municipal Code.

Upon demonstration by the applicant that the above requirements prevent the possibility of receiving a signal of acceptable quality, an applicant may, through the appeal procedure specified in Chapter 10.100 of this Municipal Code, request relief from the requirements of this section from the Planning Commission.

H. Notice. Notice shall be given to all property owners located within five hundred (500) feet of the proposed location of a pending application both prior to and after a final decision of the Director for any application that:

1. Does not employ "stealth" technology and design to substantially camouflage the facility to be installed or visually blend with the site and its surroundings and which does not conform to the standards of the zone in which it is located as per Title 10 of the Municipal Code, or;
2. Would be located on a non-commercially zoned site (RS, RM, RH, RPD, RSC, and PS zoning districts as per Title 10 of the Municipal Code).

The first notice of the pending application shall be given at least ten calendar days prior to the decision of the Director. The second notice, informing of the decision of the Director shall be given within five days of the decision. No published notice shall be required.

Notification materials, if determined to be required, shall be submitted by the applicant, and shall include a map showing the location and street address of the property that is the subject of the application and of all lots of record within 500 feet (500') of the boundaries of the property; and a list, drawn from the last equalized property tax assessment roll or the records of the County Assessor, Tax Collector, or the City's contractor for such records showing the names and addresses of the owner of record of each lot within 500 feet (500') of the boundaries of the property. This list shall be keyed to the map.

I. Finality of Decision. Notwithstanding any other provision of this municipal code, the decision of the Director regarding the issuance or denial and conditions governing any telecom permit issued under this Chapter shall be final with regard to any application which employs "stealth" technology and visually blends with its surroundings to the satisfaction of the Director and which is consistent with all development standards in the zone in which it is located as per Title 10 of the Municipal Code.

J. Appeal. The Director's decision may be appealed to the City Council for applications where the proposed telecom site:

1. Would be located on a non-commercially zoned site (RS, RM, RH, RPD, RSC, and PS zoning districts as per Title 10 of the Municipal Code); or
2. Does not employ “stealth” technology or does not visually blend with its surroundings to the satisfaction of the Director and is not consistent with all development standards in the zone in which it is located as per Title 10 of the Municipal Code.

Any such appeal must be filed within ten (10) calendar days of the date of the Director’s decision. The appeal shall be heard by the City Council within twenty (20) days of the City’s receipt of the appeal. Notice of the appeal shall be in accord with section “H” above. No published notice shall be required. This section shall not apply to amateur “HAM” radios (see Section 13.02.090 G of this chapter for appeal provisions for amateur radio antennas).

- K. Fee. The City may charge a fee, to be set by resolution of the City Council; however the amount of any such fee shall not exceed the cost to the City of processing the permit.
- L. Time Limit. Any telecom permit granted pursuant to the provisions of this Chapter shall be developed and utilized within a period not to exceed twelve (12) months from and after the date of the granting of such permit, and, if not so developed and utilized, such permit automatically shall become null and void at the expiration of such twelve (12) month period.
- M. Abandonment. The owner of a permitted facility shall submit written verification annually that the facility is operative. Any antenna structure and related equipment regulated by this chapter that is inoperative or unused for a period of six (6) consecutive months shall be deemed abandoned and declared a public nuisance. Removal of the abandoned structure shall follow procedures set forth in Chapter 9.68, Public Nuisances--Premises, of this Code.

13.02.100 Denial of Telecommunications Permit

The Director or, where applicable the City Council, shall grant a telecom permit for which a complete application has been submitted pursuant to this Chapter unless the decision maker can make the following findings:

- A. That installation of the facility will have significant negative impacts to the extent that it substantially interferes with the use of other properties;
- B. That a feasible alternative nonresidential site is available for the proposed facility;
- C. That denial of the proposed facility will not result in a competitive disadvantage to the applicant;
- D. That the denial does not discriminate against the applicant in favor of similarly situated competitors;
- E. That the denial shall not preclude the applicant from proposing an alternate location for the facility.

Each finding set forth above shall be supported by substantial evidence in the record of the administrative proceeding regarding the application and denial.

13.02.110 Other Permits

Nothing in this Chapter shall preclude a requirement for a Coastal Development Permit, Business License, Use Permit, Right of Way construction permit or other, City, State or County permit if otherwise required for the encroaching activity.

13.02.120 Revocation

The City Council may revoke any telecom permit for noncompliance with the conditions set forth in granting such permit or if it is determined that such facility creates a public nuisance or otherwise has negative impacts on surrounding properties. In doing so, the City Council shall make the findings required under Section 13.02.100 above. A written notice shall be mailed to the permittee of such revocation. The City Council’s decision regarding the revocation shall be final.

13.02.130 Non-Discrimination

No provision of this Chapter shall be applied or interpreted in any way which shall interfere with the ability of any telecommunications service provider from competing on a level playing field with all other such service providers in the City. The provisions of this Chapter shall be applied equally to all similarly situated telecommunications service providers or facility owners or operators.

13.02.140 Enforcement

Violation of this Chapter shall be punishable as a misdemeanor as set forth in Section 1.04.010(A) of this Code. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall constitute a separate violation of such provision. In addition to any other remedies provided in this section, any violation of this Chapter may be enforced by civil action brought by the City. In any such action, the City may seek, as appropriate, any or all of the following remedies: a temporary and/or permanent injunction; assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection; costs incurred in removing, correcting, or terminating the adverse effects resulting from violation; compensatory damages; attorney fees.”

SECTION 3. Section 10.08.040 of Title 10, of the Manhattan Beach Municipal Code entitled Public and semipublic use classifications is hereby amended as follows:

“P. Utilities, Major. Generating plants, electrical substations, above-ground electrical transmission lines, switching buildings, refuse collection, transfer, recycling or disposal facilities, flood control or drainage facilities, water or wastewater treatment plants, transportation or communications utilities (with the exception of telecommunications facilities regulated in MBMC Chapter 13.02), and similar facilities of public agencies or public utilities. A structure that may have a significant effect on surrounding uses shall be regulated under this classification.”

SECTION 4. Section 10.16.030 of Title 10, of the Manhattan Beach Municipal Code entitled CL, CC, CG, CD, and CNE districts: development regulations is hereby amended by adding a cross-reference to Chapter 13.02 of the Municipal Code to the list of Nonresidential Development standards (following Signs) as follows:

Telecommunications Facilities See Chapter 13.02 of MBMC

SECTION 5. Section 10.12.030 of Title 10, of the Manhattan Beach Municipal Code entitled Property development regulations: RS, RM and RH districts and, the matrix entitled Property Development Standards for all Area Districts is hereby amended by adding a cross-reference to Chapter 13.02 (following Minor Exceptions) as follows:

Telecommunications Facilities See Chapter 13.02 of MBMC

SECTION 6. Section 10.12.050 of Title 10, of the Manhattan Beach Municipal Code entitled RSC district development regulations is hereby amended by adding a cross-reference to Chapter 13.02 (following Minor Exceptions) as follows:

Telecommunications Facilities See Chapter 13.02 of MBMC

SECTION 7. Section 10.60.060 of Title 10, of the Manhattan Beach Municipal Code entitled Exceptions to height limits is hereby amended as follows:

“Vent pipes and radio and television antennas may exceed the maximum permitted height in the district in which the site is located by no more than 10 feet. Chimneys may exceed the maximum permitted height by no more than 5 feet, provided the length and the width of the chimney portion exceeding the height limit shall not exceed 3 feet in width and 5 feet in length.”

SECTION 8. Pursuant to Government Code Section 66499.37, any action or proceeding to attack, review, set aside, void or annul this decision, or concerning any of the proceedings, acts, or determinations taken, done or made prior to such decision or to determine the reasonableness, legality or validity of any condition attached to this decision shall not be maintained by any person unless the action or proceeding is commenced within 90 days of the date of this Ordinance and the City Council is served within 120 days of the date of this Ordinance.

SECTION 9. If any sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

SECTION 10. Any provisions of the Manhattan Beach Municipal Code, or appendices thereto, or any other ordinance or resolution of the City, to the extent that they are inconsistent with this resolution, and no further, are hereby repealed.

SECTION 11. This Ordinance shall go into effect and be in full force and operation from and after thirty days after its final passage and adoption.

SECTION 12. The City Clerk shall cause this Ordinance or a summary thereof to be published and, if appropriate posted, as provided by law. Any summary shall be published and a certified copy of the full text of this Ordinance posted in the Office of the City Clerk at least five (5) days prior to the City Council meeting at which this Ordinance is to be adopted. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall cause a summary to be published with the names of those City Council members voting for and against this Ordinance and shall post in the Office of the City Clerk a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against the Ordinance.

PASSED, APPROVED and ADOPTED this 7th day of June, 2005.

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor, City of Manhattan Beach, California

ATTEST:

City Clerk

ORDINANCE NO. 2076

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, AMENDING THE MANHATTAN BEACH LOCAL COASTAL PLAN IMPLEMENTATION PROGRAM PERTAINING TO REGULATION OF TELECOMMUNICATIONS FACILITIES ON PUBLIC AND PRIVATE PROPERTIES AND THE PUBLIC RIGHT OF WAY WITHIN THE COASTAL ZONE

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby makes the following findings:

- A. The Planning Commission conducted duly noticed public hearings on October 27, December 8, 2004, January 12 and February 9, 2005 and public testimony was invited and received. On April 5 and May 17, 2005 the City Council conducted a public hearing to consider the recommendation of the Planning Commission contained in Resolution PC 05-04, adopted February 9, 2005 and public testimony was invited and received;
- B. The subject matter of the public hearing is the city-wide regulation of telecommunications facilities located on both public and private property consistent with legal requirements. The applicant is the City of Manhattan Beach;
- C. The City of Manhattan Beach is a community with a high quality of life, attractive neighborhoods and a non-urban "small town" ambience;
- D. Use of the public right of way for utilities and telecommunications requires authority for the City to protect and regulate use of the right of way by private parties for private purposes to reduce disruption to the public and degradation of public facilities;
- E. Use of private property for telecommunications installations requires approval from the City based upon its traditional authority over land use which should be used to protect neighborhood aesthetics;
- F. The walk streets and The Strand pedestrian walkway right of ways have a unique ambience in that they are public open spaces that provide visual and pedestrian access to the beach, with public visual corridors virtually unobstructed by overhead utility facilities. Alternative sites that are currently served by overhead utilities are close by and available within vehicular alleys and streets. Therefore use of the walk streets and The Strand right of way is discouraged for above ground telecommunication facilities;
- G. Permit requirements for use of the public right of way ensures that any work performed in the public right of way meets acceptable standards for public improvements and protects public property;
- H. Standards for telecommunications facilities on private property should protect the public interest and provide predictable standards for telecommunications companies who seek to install new facilities;
- I. Due to changes in technology and public regulations there has been a proliferation of telecommunications providers desiring to use the public right of way and private property for fiber optic systems intended to deliver a variety of telecommunications services to the public and private industry including high speed data transmission, high speed internet services, open video systems, and cable television as well as cellular sites and other wireless communication facilities;
- J. Federal law acknowledges local land use authority and that State law controls the use of the public right of way and California law gives control of local right of way to local government and

for all purposes other than telephone, permits a local government entity to grant franchises for the use of the public right of way;

- K. In order to promote competition, protect the public right of way, protect neighborhoods within the City and to insure public safety, and encourage a level playing field for all competing service providers it is in the best interest of the public to set forth consistent and predictable rules and procedures for siting of telecommunications facilities to the extent permitted by Federal and State law;
- L. This ordinance is exempt from the requirements of the California Environmental Quality Act due to determination that it has no potential for causing a significant effect on the environment (per CEQA Guidelines Section 15061 (b) (3));
- M. The project will not individually nor cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.

SECTION 2. Chapter 13.02 of the Manhattan Beach Municipal Code, upon its effectiveness, is hereby inserted into Chapter 3 (Codes, Resolutions, and Ordinances) of the Manhattan Beach Local Coastal Plan Implementation Program.

SECTION 3. Section A.60.130 entitled “Antennae and microwave equipment” of the Manhattan Beach Local Coastal Plan Implementation Program is hereby amended to read as follows:

“A.60.130 Antennae and microwave equipment. See Chapter 13.02 of the Manhattan Beach Municipal Code entitled Regulation of Telecommunications Facilities in Chapter 3 (Codes, Resolutions, and Ordinances)”.

SECTION 4. Section A.08.040 of Title A of the Manhattan Beach Local Coastal Plan Implementation Program, entitled Public and semipublic use classifications, is hereby amended as follows:

“P. Utilities, Major. Generating plants, electrical substations, above-ground electrical transmission lines, switching buildings, refuse collection, transfer, recycling or disposal facilities, flood control or drainage facilities, water or wastewater treatment plants, transportation or communications utilities (with the exception of telecommunications facilities regulated in MBMC Chapter 13.02), and similar facilities of public agencies or public utilities. A structure that may have a significant effect on surrounding uses shall be regulated under this classification.”

SECTION 5. The land use matrix of Section A.16.020 of the Manhattan Beach Local Coastal Plan Implementation Program is hereby amended by changing P to U for the CNE zone as follows:

CL, CC, CG, CD, and CNE DISTRICTS: LAND USE REGULATIONS				P - Permitted U - Use Permit L - Limited, (See Additional Use Regulations) - - Not Permitted
	CL	CD	CNE	Additional Regulations
Utilities, Major	U	U	U	

SECTION 5. Section A.16.030 of the Manhattan Beach Local Coastal Plan Implementation Program entitled CL, CD, and CNE districts: development regulations is hereby amended by adding a new cross-reference to Chapter 13.02 of the Municipal Code to the list of Nonresidential Development standards (following Signs) as follows:

Telecommunications Facilities See Chapter 13.02 of MBMC

SECTION 6. Section A12.030 of the Manhattan Beach Local Coastal Plan Implementation Program entitled Property development regulations: RM and RH districts, in the matrix entitled Property Development Standards for all Area Districts is hereby amended to add a cross-reference to Chapter 13.02 (following Minor Exceptions) as follows:

Telecommunications Facilities See Chapter 13.02 of MBMC

SECTION 7. Section A.60.060 of the Manhattan Beach Local Coastal Plan Implementation Program entitled Exceptions to height limits is hereby amended as follows:

“Vent pipes and radio and television antennas may exceed the maximum permitted height in the district in which the site is located by no more than 10 feet. Chimneys may exceed the maximum permitted height by no more than 5 feet, provided the length and the width of the chimney portion exceeding the height limit shall not exceed 3 feet in width and 5 feet in length.”

SECTION 8. Pursuant to Government Code Section 66499.37, any action or proceeding to attack, review, set aside, void or annul this decision, or concerning any of the proceedings, acts, or determinations taken, done or made prior to such decision or to determine the reasonableness, legality or validity of any condition attached to this decision shall not be maintained by any person unless the action or proceeding is commenced within 90 days of the date of this resolution and the City Council is served within 120 days of the date of this resolution.

SECTION 9. If any sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this resolution. The City Council hereby declares that it would have passed this Ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

SECTION 10. Any provisions of the Manhattan Beach Local Coastal Program Code, or appendices thereto, or any other resolution of the City, to the extent that they are inconsistent with this resolution, and no further, are hereby repealed.

SECTION 11. This Ordinance shall go into effect and be in full force and operation from and after thirty days after its final passage and adoption.

SECTION 12. The City Clerk shall cause this Ordinance or a summary thereof to be published and, if appropriate posted, as provided by law. Any summary shall be published and a certified copy of the full text of this Ordinance posted in the Office of the City Clerk at least five (5) days prior to the City Council meeting at which this Ordinance is to be adopted. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall cause a summary to be published with the names of those City Council members voting for and against this Ordinance and shall post in the Office of the City Clerk a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against the Ordinance.

PASSED, APPROVED and ADOPTED this 7th day of June, 2005.

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

Mayor, City of Manhattan Beach, California

ATTEST:

City Clerk

ORDINANCE NO. 2075

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AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, AMENDING THE MANHATTAN BEACH MUNICIPAL CODE PERTAINING TO REGULATION OF TELECOMMUNICATIONS FACILITIES ON PUBLIC AND PRIVATE PROPERTIES AND THE PUBLIC RIGHT OF WAY CITY-WIDE

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

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SECTION 1. The City Council hereby makes the following findings:

- A. The Planning Commission conducted duly noticed public hearings on October 27, December 8, 2004, January 12 and February 9, 2005 and public testimony was invited and received. On April 5, and May 17, 2005 the City Council conducted a public hearing to consider the recommendation of the Planning Commission contained in Resolution PC 05-04, adopted February 9, 2005 and public testimony was invited and received;
- B. The subject matter of the public hearing is the city-wide regulation of telecommunications facilities located on both public and private property consistent with legal requirements. The applicant is the City of Manhattan Beach;
- C. The City of Manhattan Beach is a community with a high quality of life, attractive neighborhoods and a non-urban "small town" ambience;
- D. Use of the public right of way for utilities and telecommunications requires authority for the City to protect and regulate use of the right of way by private parties for private purposes to reduce disruption to the public and degradation of public facilities;
- E. Use of private property for telecommunications installations requires approval from the City based upon its traditional authority over land use which should be used to protect neighborhood aesthetics;
- F. The walk streets and The Strand pedestrian walkway right of ways have a unique ambience in that they are public open spaces that provide visual and pedestrian access to the beach, with public visual corridors virtually unobstructed by overhead utility facilities. Alternative sites that are currently served by overhead utilities are close by and available within vehicular alleys and streets. Therefore use of the walk streets and The Strand right of way is discouraged for above ground telecommunication facilities;
- G. Permit requirements for use of the public right of way ensures that any work performed in the public right of way meets acceptable standards for public improvements and protects public property;
- H. Standards for telecommunications facilities on private property should protect the public interest and provide predictable standards for telecommunications companies who seek to install new facilities;

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- I. Due to changes in technology and public regulations there has been a proliferation of telecommunications providers desiring to use the public right of way and private property for fiber optic systems intended to deliver a variety of telecommunications services to the public and private industry including high speed data transmission, high speed internet services, open video systems, and cable television as well as cellular sites and other wireless communication facilities;
- J. Federal law acknowledges local land use authority and that State law controls the use of the public right of way and California law gives control of local right of way to local government and for all purposes other than telephone, permits a local government entity to grant franchises for the use of the public right of way;
- K. In order to promote competition, protect the public right of way, protect neighborhoods within the City and to insure public safety, and encourage a level playing field for all competing service providers it is in the best interest of the public to set forth consistent and predictable rules and procedures for siting of telecommunications facilities to the extent permitted by Federal and State law;
- L. This ordinance is exempt from the requirements of the California Environmental Quality Act due to determination that it has no potential for causing a significant effect on the environment (per CEQA Guidelines Section 15061 (b) (3));
- M. The project will not individually nor cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.

SECTION 2. Section 10.60.130 of Chapter 10.60, Title 10, of the Manhattan Beach Municipal Code is hereby repealed in its entirety and new Chapter 13.02 is hereby added to Title 13 of the Manhattan Beach Municipal Code as follows:

“CHAPTER 13.02 REGULATION OF TELECOMMUNICATIONS FACILITIES

13.02.010 Scope

The provisions of this Chapter shall govern location of telecommunications facilities in the community whether on City property, public property not owned by the City, in the public right of way or on private property.

13.02.020 Definitions

APPLICANT means any person, firm, partnership, association, corporation, company, public utility, entity or organization of any kind who proposes to encroach upon a public place, right of way, sidewalk or street or construct a telecommunications facility on private or public property and who has applied for a telecom permit for the proposed encroachment or facility pursuant to the provisions of this Chapter.

CABLE TELEVISION means a television system by which sound and picture are received by a central reception system and transmitted by direct cable to subscribers of the system.

CITY means the City of Manhattan Beach.

CITY MANAGER means the City Manager of the City of Manhattan Beach or his or her designee.

CITY PROPERTY means any City owned, leased or occupied non right of way property, including but not limited to parks, civic centers, parking lots, maintenance yards, and others.

CO-LOCATION means the use of a common site or facility by two or more permittees, or use by one permittee of a single site for two or more technologies or facilities.

COUNCIL means the City Council of the City of Manhattan Beach.

DIRECTOR shall mean the Director of Community Development of the City of Manhattan Beach or his or her designee.

ENCROACHMENT AREA means the section of public right of way located between the property line and the edge of the walkway or roadway.

ENCROACHMENT means and includes any paving obstruction, tower, pole, pole line, pipe, fence, wire, cable, conduit, stand or building, mailbox, entry monument, or any structure or object of any kind or character which is placed on, in, along, under, over or across a public place, right of way, sidewalk or street, including any excavation on, in, along, under, over or across such a public place, right of way, sidewalk or street.

ENCROACHMENT WORK means the work of constructing, placing or installing an encroachment.

ENGINEER means the Manhattan Beach City Engineer or his or her designee.

EXCAVATION means any opening in the surface of a public place, right of way, sidewalk or street made in any manner whatsoever. The term shall also include any excavation on private property which removes or imperils the lateral support of a public place, right of way, sidewalk or street.

EXISTING/NON-CONFORMING means a previously legally constructed improvement which is not consistent with codes, guidelines or other land use regulations.

OCCUPY means owning or operating any facilities that are located in Rights-of-Way.

OVERHEAD STRUCTURES means any improvement extending over a public place, right of way or street.

PERSON means any living individual, any corporation, joint venture, partnership, or other business entity.

PUBLIC PROPERTY means any non right of way property that is owned, leased or occupied by a public agency other than the City. non right of way property including but not limited to parks, civic centers, parking lots, maintenance yards and others.

PUBLIC WALKWAY means the portion of the public right of way improved and designated by the City for pedestrian travel.

RIGHT OF WAY means the surface and space in, on, above, through and below any real property in which the City of Manhattan Beach has a legal or equitable interest whether held in fee or any other estate or interest, or as a trustee for the public, including, but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, curb, parkway, river, tunnel, viaduct, bridge, public easement, or dedicated easement.

STEALTH TECHNOLOGY means technology intended to significantly reduce the visual impacts of telecommunications facilities including but not limited to simulations of landscaping or architectural features.

TELECOMMUNICATIONS means the transmission of voice, video, data or other information between two or more points along wires, optical fibers or other transmission media, or using radio waves or other wireless media, including but not limited to cable television services, internet services, telephone services, cellular telephone services and other forms of communication.

TELECOMMUNICATIONS FACILITIES means facilities within the City used or related to the provision of telecommunications including but not limited to, wires, optical fiber, antennae, cabinets, pedestals, transmitters, repeaters, cellular transmission or relay sites and other telecommunications related equipment.

TELECOM PERMIT means a permit to locate a non-franchised telecommunications facility on City property, public property, private property, or the public right of way.

TELEPHONE COMPANY/TELEPHONE UTILITY means any telephone or telegraph corporation as defined by Sections 234-236 of the California Public Utilities Code (or any successor sections) which has obtained a Certificate of Public Convenience and Necessity ("CPCN") or Wireless Registration Identification ("WRI") from the California Public Utilities Commission.

TELEPHONE means an instrument or system for conveying speech or other communications over distances by converting sound, data or other information into electric impulses.

TELEPHONE SERVICE means provision of a system providing voice or other communication, between points.

13.02.030 Telephone Utilities' Telecommunications Facilities In The Public Right of Way

- A. Purpose. The purpose of this section is to establish procedures and regulations for processing requests to construct and maintain telecommunications facilities in the public right of way. In order to avoid installations on private property, telecommunication facilities are encouraged to be located on existing utility poles or facilities in the public right of way, with the exception of The Strand and walk streets which are closed for vehicular use. An entity holding a Certificate of Public Convenience and Necessity ("CPCN") or Wireless Registration Identification ("WRI") from the California Public Utilities Commission has the legal right to locate its facilities in the public right of way without having to obtain a franchise. City permission is required to locate and construct such a facility which cannot be allowed to interfere with public safety or other public use of the right of way, shall be coordinated with other utility installations, and constructed in

conformity with standards for public rights of way.

B. Telecom Permit Required. Any entity which has received a Certificate of Public Convenience and Necessity ("CPCN") or Wireless Registration Identification ("WRI") from the California Public Utilities Commission as a telephone company installing facilities in the public right of way to be used to provide telephone service shall obtain a telecom permit. The Director of Community Development ("Director") or his or her designee shall have the authority to issue such a permit provided that where alterations, fixtures or structures located within public walkways or roadways, other than temporary moveable structures, are to be placed in the public right of way, detailed plans for any such work shall be submitted to the City Engineer whose approval shall be required.

C. Standard Facilities. A telecommunications permit for any "Standard Facility" may be approved by the Director of Community Development without notice. A Standard Facility is classified as any telecommunications facility proposed to be located in the right of way which complies with the following criteria:

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- a. Only existing utility poles or light standards are used.
- b. The proposed telecom facility's location on the utility pole or light standard is at a lower elevation than the highest existing public utility transmission lines, equipment or facility.
- c. The size of an individual antenna is the smallest based on available technology and is no more than 36 inches in height, 12 inches in width and 2 inches in depth.
- d. The total number of antennas does not exceed four.
- e. The size of any vault, cabinet or other equipment associated with the facility does not exceed 36 inches in any dimension.
- f. There is no exterior facility lighting or fencing unless required by feral regulations or by the Director for safety purposes.
- g. The telecommunications facility is adequately integrated into the existing utility pole or light standard. Methods to integrate the telecommunications facility may include but not be limited to: matching paint color, planting landscaping materials, or installing a hardscape or other material that will blend the facility with the existing utility components and/or adjoining area.

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D. Non-Standard Facilities. A Non-Standard facility is any facility which does not comply with the criteria in "C" above. The Director of Community Development may issue a permit for a Non-Standard facility. Notice shall be given to all property owners located within five hundred (500) feet of the proposed location of a pending application both prior to and after a final decision of the Director.

The first notice of the pending application shall be given at least ten calendar days prior to the decision of the Director. The second notice, informing of the decision of the Director shall be given within five days of the decision. No published notice shall be required.

Notification materials, if determined to be required, shall be submitted by the applicant, and shall include a map showing the location and street address of the City property that is the subject of the application and of all lots of record within the prescribed 500 foot (500') radius

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and a list, drawn from the last equalized property tax assessment roll or the records of the County Assessor, Tax Collector, or the City's contractor for such records showing the names and addresses of the owner of record of each lot within the prescribed 500 foot (500') radius. This list shall be keyed to the map.

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F. Facilities on Walk Streets and The Strand. No telecom permit shall be issued for a telecommunications facility to be placed within the right of way of a walk street or The Strand unless the following findings can be made:

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- a. no feasible alternative site was available for the facility;
- b. aesthetic impacts, including obstructions to ocean views, have been fully mitigated or avoided;
- c. the facility is compatible with the neighborhood in which it is located.
- d. the maximum height of the facility does not exceed the applicable zoning building height limit applicable to the closest adjoining private property.

F. Submittal Requirements. The following material shall be submitted with an application request for a telecom permit under this section:

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- 1. Site plan and vicinity map, which shall include distance from the proposed telecom facility and equipment to the nearest residential building(s) on any adjoining private property;
- 2. Elevation drawings and construction plans (survey may be required);
- 3. At staff discretion, color renderings, or photographs including simulations or computer generated images or on-site mock-ups showing the existing and proposed site conditions;
- 4. An updated wireless master plan, detailing the exact nature and location of all existing and proposed future facilities (anticipated build-out) within the city, if applicable;
- 5. Provide verification that the proposed facility complies with all applicable rules, regulations and licensing requirements of the FCC including a report prepared by an engineer, prepared at the applicant's expense, which quantifies the project's radio frequency (RF) exposures and compares them to FCC adopted standards. Following installation of the proposed facility, a subsequent field report shall be submitted detailing the project's cumulative field measurements of RF power densities and RF exposures, confirming that the facility complies with accepted FCC standards, if applicable;
- 6. Information demonstrating compliance with applicable building, electrical, mechanical and fire codes and other public safety regulations;
- 7. At the discretion of the Director or his or her designee the City may commission at the applicant's expense, a study evaluating the availability and feasibility, of alternate sites;
- 8. A construction schedule showing start and end dates, project milestones, and Emergency contact information to the satisfaction of the Director and prior to issuance of the Permit.

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G. Standard of Review.

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- 1. Authority to limit or prohibit. The Director of Community Development ("Director") shall have the authority to prohibit or limit the placement of new or additional facilities within the rights of way to protect the public health and welfare if there is insufficient space to

accommodate the requests of all permittees to occupy and use the rights-of-way. In reaching such decisions, the Director shall strive to the extent possible to accommodate all existing and potential users of the rights-of-way, and shall be guided primarily by: considerations of the public interest; the age and condition of the affected portions of the rights-of-way; the time of year and periods of economic interest including, but not limited to, holidays, special events, the protection of existing facilities in the rights of way; and future City plans for public improvements and development projects that have been determined to be in the public interest.

2. Discretionary Conditions. The Director reserves the right to require phasing of construction projects or limit the hours of construction to reduce the adverse impacts on the public health, safety and welfare. The City Engineer or his/her designee has the authority to approve or reject a method of excavation or other construction methodology.
3. Mandatory Conditions. In granting a telecom permit under the provisions of this chapter, the following conditions, in addition to any other conditions deemed necessary or advisable, shall be imposed:
 - a. That, should public necessity require, the permitted facility shall be removed or relocated by the permittee at no cost to the City upon thirty (30) days' written notice to the permittee from the City, and should any cost be incurred by the City in the removal of such facility the permittee shall reimburse it for said expense;
 - b. That a certificate of insurance in amounts and form satisfactory to the City Risk Manager shall be filed with the City upon the granting of the telecom permit and shall be maintained in good standing at all times so long as the facility exists, releasing the City from any and all liability whatsoever in the granting of such permit;
 - c. That the applicant shall expressly agree to each of the conditions imposed, including any which may be in addition to the foregoing, as a prerequisite to the granting of the telecom permit by the City;
 - d. That to the extent possible, as determined by the Director, any facility to be located on the public right of way shall be co-located with similar facilities and all work done coordinated to coincide to the maximum extent possible with other work being done in the right of way to minimize disruption to the public;
 - e. That to the extent possible applicant shall camouflage and make inconspicuous any facility permitted hereunder including but not limited to selections of colors and finishes to match and blend with its surroundings;
 - f. That all antennas or telecom equipment shall be located a minimum of ten feet from a residential building;
 - g. That upon the cessation of use or abandonment of the facility it shall be promptly removed at the expense of the applicant.

~~H. Fee. The City may charge a fee, to be set by resolution of the City Council, for such a permit providing, however, that the amount of any such fee shall not exceed the cost to the City of processing the permit.~~

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L Finality of Decision. Notwithstanding any other provision of this municipal code, the decision of the Director regarding the issuance or denial and conditions governing any telecom permit for a Standard Facility issued under this Chapter shall be final. The Director's decision regarding a Non-Standard facility may be appealed to the City Council. Any such appeal must be filed within ten (10) calendar days of the date of the Director's decision. The appeal shall be heard by the City Council within twenty (20) days of the City's receipt of the appeal. Notice of the appeal shall be given to all property owners within 500 feet of the proposed facility. The decision of the City Council shall be final. Deleted: G

J Time Limit. Any telecom permit granted pursuant to the provisions of this Chapter shall be developed and utilized within a period not to exceed twelve (12) months from and after the date of the granting of such permit, and, if not so developed and utilized, such permit automatically shall become null and void at the expiration of such twelve (12) month period. Deleted: H

The permittee may apply in writing for one extension of time, not to exceed six (6) months, within which to develop and use such permit. The Director, in his or her sole discretion after due consideration, shall either grant or deny the extension of time for such development and use.

K Abandonment. The owner of a permitted facility shall submit written verification annually that the facility is operative. Any antenna structure and related equipment regulated by this chapter that is inoperative or unused for a period of six (6) consecutive months shall be deemed abandoned and declared a public nuisance. Removal of the abandoned structure shall follow procedures set forth in Chapter 9.68, Public Nuisances--Premises, of this Code. Deleted: I

L Restoration of Right of Way. Upon completion of the work authorized by a permit granted hereunder, the permittee shall restore the right of way or street, including but not limited to bridges and any other structure thereon, by replacing, repairing or rebuilding it in accordance with the specifications or any special requirement included in the permit, but not less than to its original condition before the encroachment work was commenced and in all cases in good usable quality. The permittee shall remove all obstructions, materials and debris upon the right of way and street, and shall do any other work necessary to restore the right of way and street to a safe and usable condition, as directed by the City Engineer. Where excavation occurs within areas already paved, the engineer may require temporary paving to be installed within four hours after the excavation area is backfilled. In the event that the permittee fails to act promptly to restore the right of way and/or street as provided in this section, or should the nature of any damage to the right of way or street require restoration before the permittee can be notified or can respond to notification, the City Engineer may, at his or her option, make the necessary restoration and the permittee shall reimburse the City for the full cost of such work. Deleted: J

13.02.040 Non-Telephone Telecommunications Facilities In The Public Right of Way

Any entity which has not received a Certificate of Public Convenience and Necessity ("CPCN") or Wireless Registration Identification ("WRI") from the California Public Utilities Commission as a telephone company which desires to install telecommunications facilities of any kind in the public right of way must obtain a franchise for said purpose which must be approved by the Manhattan Beach City Council. A franchise fee as specified in Section 13.02.100 of this Chapter may be charged for said use.

13.02.050 Franchise Required for Other Utilities in the Public Right of Way

Placement of any utility in the public right of way, with the sole exception of telephone lines used for telephone service, shall require a franchise to be approved by the City Council. The annual franchise fee shall be the maximum amount permitted by State law for the type of utility to be placed in the public right of way. If there is no specific fee set by State law for the utility to be placed in the public right of way, the annual franchise fee shall be established by Resolution of the City Council. Any franchised utility shall require an encroachment or right of way construction permit, issued pursuant to this Chapter for any installation, alteration or maintenance of facilities in the public right of way and the standards set forth herein shall apply. Each utility of like kind shall receive equal and comparable treatment under the procedures set forth in this Chapter to ensure a level playing field for competing enterprises.

13.02.060 Telecommunications Facilities on City Property

- A. City Council authority. No telecommunications facility may be located on public property belonging to or in the possession of the City without the express consent of the City Council. The City Council may require rent or other compensation to be paid for location of any telecommunications facility on public property owned or in the possession of the City. Applications shall be submitted to the City Manager or his or her designee.
- B. Notice. The City Manager or his or her designee shall provide notice to all property owners located within five hundred (500) feet of the proposed telecommunication facility at least ten calendar days prior to the date on which the proposed telecommunication facility application is to be considered by the City Council. No published notice shall be required. Notification materials shall be submitted by the applicant, and shall include a map showing the location and street address of the City property that is the subject of the application and of all lots of record within the prescribed 500 foot (500') radius and a list, drawn from the last equalized property tax assessment roll or the records of the County Assessor, Tax Collector, or the City's contractor for such records showing the names and addresses of the owner of record of each lot within the prescribed 500 foot (500') radius. This list shall be keyed to the map. The City may charge a fee, to be set by resolution of the City Council, for processing the public notice, however the amount of any such fee shall not exceed the cost to the City of processing the permit.
- C. Finality of Decision. The decision of the City Council regarding the lease or use of City property approved under this subsection shall be final.

13.02.070 Provision of Telecommunications Services by Franchised Cable Operators

Cable television franchises granted by the City shall not be interpreted to permit any activity other than what is expressly authorized by the franchise agreement. Any entity which has not received a Certificate of Public Convenience and Necessity ("CPCN") or Wireless Registration Identification ("WRI") from the California Public Utilities Commission as a telephone company but is franchised to provide cable television service within the City and wishes to add other types of telecommunications services to offer to Manhattan Beach residents must amend its franchise agreement to include authorization to provide such service and may be required to pay an appropriate fee by the City Council for said privilege.

Any entity franchised to provide cable television services within the City which has received a Certificate of Public Convenience and Necessity ("CPCN") or Wireless Registration Identification ("WRI") from the California Public Utilities Commission as a telephone company which desires to provide additional telecommunications services within the City must obtain the permits required under Section 13.02.030 for any additional facilities it wishes to add to the public right of way related to said services.

13.02.080 Underground Utility Districts

Any telecommunications facility located in the public right of way may be required to locate new facilities underground or relocate if formation of an underground utility district for the location is pending. A district will be considered pending if a petition signed by the required majority of property owners had been filed with the City to initiate engineering studies for formation of a district. The Director of Public Works or his or her designee may require existing telecommunications facilities to be relocated, placed underground, or removed at the owner's expense upon formation of an underground utility district.

13.02.090 Telecommunications Facilities on Private Property and Public Property Not Owned by City

- A. Purpose. The purpose of this section is to establish procedures and regulations for processing telecommunications facilities (including radio and satellite dish antenna) applications on private property and non-City owned public property and to create consistency between federal legislation and local ordinances. The intent of these regulations is to protect the public health, safety and general welfare while ensuring fairness and reasonable permit processing time.
- B. Telecom Permit Required. A telecom permit shall be required for the construction, modification and placement of all telecommunications facilities including Federal Communication Commission (FCC) regulated amateur radio and satellite dish antennas in all districts and all wireless service facilities, including but not limited to, common carrier wireless exchange access services, unlicensed wireless services and commercial mobile services (i.e., cellular, personal communication services (PCS), specialized mobile radio (SMR) and paging services). All telecom permits issued under this section shall be administrative permits to be issued by the Director of Community Development or his or her designee.
- C. Exceptions. A telecom permit shall not be required for the construction, modification and placement of any satellite dish antenna measuring one (1) meter or less in diameter designed to receive direct broadcast satellite service, including direct-to-home satellite service and multi-channel multi-point distribution services (MMDS) on masts not exceeding twelve feet (12') in height.
- D. Facilities on Non-commercially Zoned Property. No telecom permit shall be issued for a telecommunications facility to be placed on non-commercially zoned (RS, RM, RH, RPD, RSC, and PS zoning districts as per Title 10 of the Municipal Code) unless the following findings can be made:

- a. no feasible alternative non-residential site was available for the facility;
- b. adverse aesthetic impacts have been fully mitigated;
- c. the facility is in compliance with all development standards of the base zone in which it is located, including height limits;
- d. the facility is compatible with the neighborhood in which it is located.

Amateur radio antennas, satellite dish antennas and home television antennas shall be exempt from the provisions of this section. See section 13.02.090 G of this chapter for amateur radio antennas regulations and Municipal Code section 10.60.060 for height restrictions applicable to other non-commercial radio and television antennas. A commercial telecom facility shall not be permitted to be located, constructed, or operated on or by means of any amateur radio antenna, satellite dish antenna and home television antenna facility or equipment that is exempted by this section.

- E. Submittal requirements. The following material shall be submitted with an application request for a permit under this section:
- a. Site plan and vicinity map;
 - b. Elevation drawings and floor plans (survey may be required);
 - c. An updated wireless master plan, detailing the exact nature and location of all existing and proposed future facilities (anticipated build-out) within the city, if applicable;
 - d. At staff discretion color renderings, or photographs including photo simulations or computer generated images or on-site mock-ups showing the existing and proposed site conditions;
 - e. Provide verification that the proposed facility complies with all applicable rules, regulations and licensing requirements of the FCC including a report prepared by an engineer, prepared at the applicant's expense, which quantifies the project's radio frequency (RF) exposures (including property accountability for nearby congregations of facilities) and compares them to FCC adopted standards. Following installation of the proposed facility, a subsequent field report shall be submitted detailing the project's cumulative field measurements of RF power densities and RF exposures compared to accepted FCC standards, if applicable;
 - f. Information demonstrating compliance with applicable building, electrical, mechanical and fire codes and other public safety regulations;
 - g. At the discretion of the Director or his or her designee the City may commission at the applicant's expense, a study evaluating the availability and feasibility of alternative sites;
 - h. Public noticing materials, if required pursuant to section 13.02.0 H of this Chapter.
- F. Standard of review. Permit applications under this section shall be processed administratively. Applications for satellite dish antennas and roof, wall or similarly mounted wireless service facilities including modification to existing monopole structures must be in compliance with the following applicable standards:
- 1. The proposed facility shall comply with all applicable development standards of the base district in which it is located.
 - 2. The facility shall only exceed applicable height limits or height of existing buildings in non-residential zones by a maximum height of 8 feet above the existing building measured to the highest point adjacent to the antenna(s).

3. The impact on surrounding residential views shall be considered. Roof, wall or similarly mounted facilities and satellite dishes exceeding the existing structure height, or otherwise visible from the surrounding area, shall be screened or camouflaged on all sides to the satisfaction of the Director. Screening shall be architecturally integrated and compatible with the site on which it is located by incorporating appropriate use of color, texture, material and/or vegetation. Where screening potential is low, innovative designs or technology shall be incorporated to reduce the visual impact.
 4. The applicant shall demonstrate good faith effort to co-locate on existing facilities or sites and in non-residential zones. Requests for co-location on existing monopoles or other wireless service facilities that do not increase the height, bulk or otherwise adversely detract from the existing facility, shall be approved if aesthetically acceptable and structurally and technologically feasible.
 5. All wires or cables necessary for operation shall be placed underground, except if attached flush to the building surface where not highly visible from surrounding uses.
 6. No signage or advertisement shall be permitted except for required public safety signs.
 7. Exterior facility lighting and fencing shall not be permitted unless required by federal regulations or by the Director for safety purposes.
 8. The facility shall be in compliance with all applicable PUC and/or FCC standards.
 9. The Director reserves the right to impose any other condition consistent with the purpose of this Chapter.
- G. Amateur Radio Antennas. Amateur radio antennas associated with the authorized operations of an amateur radio station licensed by the FCC (i.e., "HAM" radio transmission) shall be permitted in any district and administratively reviewed provided the structure complies with the following requirements:
1. No portion of the antenna structure shall be located in any required yard and all portions must maintain at least five feet (5') clearance from any property line (including support cables).
 2. No portion of the antenna structure may exceed a height of sixty feet (60') above finished ground level grade.
 3. Construction of such antenna shall be subject to the provisions of Chapter 9.01 of this Municipal Code.

Upon demonstration by the applicant that the above requirements prevent the possibility of receiving a signal of acceptable quality, an applicant may, through the appeal procedure specified in Chapter 10.100 of this Municipal Code, request relief from the requirements of this section from the Planning Commission.

- H. Notice. Notice shall be given to all property owners located within five hundred (500) feet of the proposed location of a pending application both prior to and after a final decision of the Director for any application that:
1. Does not employ "stealth" technology and design to substantially camouflage the facility to be installed or visually blend with the site and its surroundings and which does not conform to the standards of the zone in which it is located as per Title 10 of the Municipal Code, or;
 2. Would be located on a non-commercially zoned site (RS, RM, RH, RPD, RSC, and PS zoning districts as per Title 10 of the Municipal Code).

The first notice of the pending application shall be given at least ten calendar days prior to the decision of the Director. The second notice, informing of the decision of the Director shall be given within five days of the decision. No published notice shall be required.

Notification materials, if determined to be required, shall be submitted by the applicant, and shall include a map showing the location and street address of the property that is the subject of the application and of all lots of record within 500 feet (500') of the boundaries of the property; and a list, drawn from the last equalized property tax assessment roll or the records of the County Assessor, Tax Collector, or the City's contractor for such records showing the names and addresses of the owner of record of each lot within 500 feet (500') of the boundaries of the property. This list shall be keyed to the map.

- I. Finality of Decision. Notwithstanding any other provision of this municipal code, the decision of the Director regarding the issuance or denial and conditions governing any telecom permit issued under this Chapter shall be final with regard to any application which employs "stealth" technology and visually blends with its surroundings to the satisfaction of the Director and which is consistent with all development standards in the zone in which it is located as per Title 10 of the Municipal Code.
- J. Appeal. The Director's decision may be appealed to the City Council for applications where the proposed telecom site:
 - 1. Would be located on a non-commercially zoned site (RS, RM, RH, RPD, RSC, and PS zoning districts as per Title 10 of the Municipal Code); or
 - 2. Does not employ "stealth" technology or does not visually blend with its surroundings to the satisfaction of the Director and is not consistent with all development standards in the zone in which it is located as per Title 10 of the Municipal Code.

Any such appeal must be filed within ten (10) calendar days of the date of the Director's decision. The appeal shall be heard by the City Council within twenty (20) days of the City's receipt of the appeal. Notice of the appeal shall be in accord with section "H" above. No published notice shall be required. This section shall not apply to amateur "HAM" radios (see Section 13.02.090 G of this chapter for appeal provisions for amateur radio antennas).

- K. Fee. The City may charge a fee, to be set by resolution of the City Council; however the amount of any such fee shall not exceed the cost to the City of processing the permit.
- L. Time Limit. Any telecom permit granted pursuant to the provisions of this Chapter shall be developed and utilized within a period not to exceed twelve (12) months from and after the date of the granting of such permit, and, if not so developed and utilized, such permit automatically shall become null and void at the expiration of such twelve (12) month period.
- M. Abandonment. The owner of a permitted facility shall submit written verification annually that the facility is operative. Any antenna structure and related equipment regulated by this chapter that is inoperative or unused for a period of six (6) consecutive months shall be deemed

abandoned and declared a public nuisance. Removal of the abandoned structure shall follow procedures set forth in Chapter 9.68, Public Nuisances--Premises, of this Code.

13.02.100 Denial of Telecommunications Permit

The Director or, where applicable the City Council, shall grant a telecom permit for which a complete application has been submitted pursuant to this Chapter unless the decision maker can make the following findings:

- A. That installation of the facility will have significant negative impacts to the extent that it substantially interferes with the use of other properties;
- B. That ~~a feasible alternative nonresidential site is available for the proposed facility;~~
- C. That denial of the proposed facility will not result in a competitive disadvantage to the applicant;
- D. That the denial does not discriminate against the applicant in favor of similarly situated competitors;
- E. That the denial shall not preclude the applicant from proposing an alternate location for the facility.

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Each finding set forth above shall be supported by substantial evidence in the record of the administrative proceeding regarding the application and denial.

13.02.110 Other Permits

Nothing in this Chapter shall preclude a requirement for a Coastal Development Permit, Business License, Use Permit, Right of Way construction permit or other, City, State or County permit if otherwise required for the encroaching activity.

13.02.120 Revocation

The City Council may revoke any telecom permit for noncompliance with the conditions set forth in granting such permit or if it is determined that such facility creates a public nuisance or otherwise has negative impacts on surrounding properties. In doing so, the City Council shall make the findings required under Section 13.02.100 above. A written notice shall be mailed to the permittee of such revocation. The City Council's decision regarding the revocation shall be final.

13.02.130 Non-Discrimination

No provision of this Chapter shall be applied or interpreted in any way which shall interfere with the ability of any telecommunications service provider from competing on a level playing field with all other such service providers in the City. The provisions of this Chapter shall be applied equally to all similarly situated telecommunications service providers or facility owners or operators.

13.02.140 Enforcement

Violation of this Chapter shall be punishable as a misdemeanor as set forth in Section 1.04.010(A) of this Code. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall constitute a separate violation of such provision. In addition to any other remedies provided in this section, any violation of this Chapter may be enforced by civil action brought by the City. In any such action, the City may seek, as appropriate, any or all of the following remedies: a temporary and/or permanent injunction; assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection; costs incurred in removing, correcting, or terminating the adverse effects resulting from violation; compensatory damages; attorney fees.”

SECTION 3. Section 10.08.040 of Title 10, of the Manhattan Beach Municipal Code entitled Public and semipublic use classifications is hereby amended as follows:

“P. Utilities, Major. Generating plants, electrical substations, above-ground electrical transmission lines, switching buildings, refuse collection, transfer, recycling or disposal facilities, flood control or drainage facilities, water or wastewater treatment plants, transportation or communications utilities (with the exception of telecommunications facilities regulated in MBMC Chapter 13.02), and similar facilities of public agencies or public utilities. A structure that may have a significant effect on surrounding uses shall be regulated under this classification.”

SECTION 4. Section 10.16.030 of Title 10, of the Manhattan Beach Municipal Code entitled CL, CC, CG, CD, and CNE districts: development regulations is hereby amended by adding a cross-reference to Chapter 13.02 of the Municipal Code to the list of Nonresidential Development standards (following Signs) as follows:

Telecommunications Facilities See Chapter 13.02 of MBMC

SECTION 5. Section 10.12.030 of Title 10, of the Manhattan Beach Municipal Code entitled Property development regulations: RS, RM and RH districts and, the matrix entitled Property Development Standards for all Area Districts is hereby amended by adding a cross-reference to Chapter 13.02 (following Minor Exceptions) as follows:

Telecommunications Facilities See Chapter 13.02 of MBMC

SECTION 6. Section 10.12.050 of Title 10, of the Manhattan Beach Municipal Code entitled RSC district development regulations is hereby amended by adding a cross-reference to Chapter 13.02 (following Minor Exceptions) as follows:

Telecommunications Facilities See Chapter 13.02 of MBMC

SECTION 7. Section 10.60.060 of Title 10, of the Manhattan Beach Municipal Code entitled Exceptions to height limits is hereby amended as follows:

“Vent pipes and radio and television antennas may exceed the maximum permitted height in the district in which the site is located by no more than 10 feet. Chimneys may exceed the maximum permitted height by no more than 5 feet, provided the length and the width of the chimney portion exceeding the height limit shall not exceed 3 feet in width and 5 feet in length.”

SECTION 8. Pursuant to Government Code Section 66499.37, any action or proceeding to attack, review, set aside, void or annul this decision, or concerning any of the proceedings, acts, or determinations taken, done or made prior to such decision or to determine the reasonableness, legality or validity of any condition attached to this decision shall not be maintained by any person unless the action or proceeding is commenced within 90 days of the date of this Ordinance and the City Council is served within 120 days of the date of this Ordinance.

SECTION 9. If any sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

SECTION 10. Any provisions of the Manhattan Beach Municipal Code, or appendices thereto, or any other ordinance or resolution of the City, to the extent that they are inconsistent with this resolution, and no further, are hereby repealed.

SECTION 11. This Ordinance shall go into effect and be in full force and operation from and after thirty days after its final passage and adoption.

SECTION 12. The City Clerk shall cause this Ordinance or a summary thereof to be published and, if appropriate posted, as provided by law. Any summary shall be published and a certified copy of the full text of this Ordinance posted in the Office of the City Clerk at least five (5) days prior to the City Council meeting at which this Ordinance is to be adopted. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall cause a summary to be published with the names of those City Council members voting for and against this Ordinance and shall post in the Office of the City Clerk a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against the Ordinance.

PASSED, APPROVED and ADOPTED this 7th day of June, 2005.

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Mayor, City of Manhattan Beach, California

ATTEST:

City Clerk



Agenda Item # _____

Staff Report

City of Manhattan Beach

TO: Honorable Mayor Fahey and Members of the City Council

THROUGH: Geoff Dolan, City Manager

FROM: Richard Thompson, Director of Community Development
Rosemary Lackow, Senior Planner

DATE: April 5, 2005

SUBJECT: Consideration of Planning Commission Recommendation to Approve Municipal Code Amendment and Local Coastal Program Amendment Pertaining to Regulation of Telecommunications Facilities on Public Right of Way, Public Property, and Private Property Citywide

RECOMMENDATION:

Staff recommends that the City Council: **CONDUCT** the Public Hearing; **WAIVE** further reading and introduce **ORDINANCES 2075 AND 2076**.

FISCAL IMPLICATION:

There are no fiscal implications directly related to the adoption of the proposed ordinances.

BACKGROUND:

In its 2004/2005 Work Plan the City Council directed staff to develop new process and procedures to address cell site applications and incorporate them into an ordinance, following legal action against the City's denial of a cell site application. The understood intent is to bring the City's telecommunications permitting framework in line with legal requirements, while retaining appropriate local control. Accordingly the City Attorney and Department of Community Development collaboratively prepared a draft ordinance which was presented to the Planning Commission in a series of public hearings that were held on October 27 and December 8, 2004 and January 12, and February 9, 2005.

The Planning Commission adopted Resolution PC 05-04 (4 -1 vote) which recommends that the City Council adopt an ordinance that would repeal all existing telecommunications permitting regulations in the zoning codes of the Municipal Code and Local Coastal Program (LCP) and establishes new comprehensive telecommunications regulations within Chapter 13 (Utilities) of the Municipal Code. The new telecommunications regulations would also be added to Chapter 3 of the LCP as a separate implementing ordinance.

Staff has therefore prepared two ordinances for consideration by the City Council that contain

the Planning Commission's recommendations. Ordinance 2075 will incorporate the new regulations within the Municipal Code and Ordinance 2076 will implement them within the City's Local Coastal Program (LCP) to enable enforcement within the City's coastal zone (Exhibits A and B). Both ordinances repeal all existing telecommunications regulations. Upon adoption of both ordinances by the City Council, Staff will process a separate application to the Coastal Commission for approval of the City's LCP.

DISCUSSION:

The Planning Commission received input from several citizens as well as representatives of the telecommunications industry. The City Attorney also attended two Planning Commission meetings and presented the legal implications and the degree that the City can exercise governmental control. The major issues that were discussed were:

- Desire for citizen participation in the permit process, including noticing and appeal rights
- Potential aesthetic degradation/commercial intrusion in residential neighborhoods
- Need to protect walk streets and The Strand.
- Need for a public review process for school sites and City owned property

Current and Proposed Regulations

The definition of "telecommunications" includes a variety of wireless media that transmit voice, video, data and other information. Therefore the proposed regulations cover a broad range of telecommunications activities including telephone utilities and non-telephone franchised and non-franchised activities or facilities such as cable television and internet data transmission. The regulations also address a variety of locations in which such activities or facilities may be located, including private property (commercial and non-commercial), the public street right of way (whether improved as roadway or walkway), city owned land or any other public land such as county or school district property that is not owned by the City. The City Council has a telecommunications franchise agreement for cable television which is covered in the proposed ordinance. By far, however, the most common types of telecom permit applications have been for cellular telephone facilities ("cell sites"), and therefore these types of applications were the main focus of the public hearings.

Currently private property cell site applications are regulated by Section 10.60.130 of the Zoning Ordinance in the Municipal Code and Section A.60.130 of the Coastal Zoning Code. Most of these applications have been reviewed by the Planning Commission or City Council upon appeal, and some, if meeting development standards and adequately concealed or camouflaged, have been approved by the Director of Community Development without public review. Applications on public right of way land are currently regulated as Encroachment Permits and currently are all subject to review by the PPIC (Parking and Public Improvements Commission) and City Council.

Cell sites have been permitted and operated in the City since the late 1980's. The majority of cell site applications have been approved on private commercially zoned property. The City currently has 22 cell sites on private commercial property, of which the majority have been approved by the Planning Commission under a Use Permit. The City Attorney has stated that Use Permits should not be required for cell sites. Of the existing 22 cell sites, five have been administratively approved by the Director of Community Development without any public notice

or review. Three cell sites have been approved on City Hall property (two rooftop and one monopole which has been relocated due to construction and will be discontinued). There are no cell sites located on any other city or public property, including land owned by the school district. The City has one cell site in the public right of way, which was approved upon settlement of the aforementioned lawsuit.

Currently the existing Municipal Code telecommunications regulations are not the same as those that are contained within the City’s LCP and apply in the coastal zone. The existing coastal cell site regulations are outdated and cumbersome to enforce. The proposed ordinance, if approved, will unify telecommunications permitting regulations throughout the entire city. Staff has attached some photos of existing cell sites and indicates how these sites would be processed if the proposed regulations are approved (Exhibit D).

As proposed, there would be four basic types of facilities that would have distinct permitting processes, depending on the type and location of a proposed telecommunications facility. The following tables briefly summarize each of these types of sites, with an example provided, whether there are any special requirements or standards imposed and the approval process. The related ordinance sections are also provided for reference.

1. Telecommunications facility in the public right of way. (Section 13.02.030)

Example:	Cell-site co-located on an existing telephone pole – treated like any other utility in the public ROW such as telephone and electrical lines, and gas facilities.
Special requirements standards:	10-foot minimum from a residential building; co-location where feasible, blend with surroundings
Special findings:	No feasible alternative sites; aesthetic impacts are fully mitigated; is compatible with neighborhood (applies to walk streets and The Strand)
Approving body:	Director of Community Development
Public notice:	Not required
Appeal:	Not appealable
Policy Change:	Yes – currently PPIC ¹ makes recommendation to City Council

2. Franchise utility in the public right of way (Sections 13.02.040, 13.02.050 and 13.02.070)

Example:	Cable television franchise
Special requirements/ standards:	None
Special findings:	None
Approving body:	City Council through negotiated agreement
Public notice:	Required (adopted by Ordinance)
Appeal:	Not appealable
Policy Change:	No

¹ Parking and Public Improvement Commission

3. Telecommunications facility proposed on City property (Section 13.02.060)

Example: Cell site antennas on City Hall roof or proposed at a park
Special requirements/standards: None
Special findings: None
Approving body: City Council
Public notice: Mailing to owners within 500-foot radius
Appeal: Not appealable.
Policy Change: Yes (under existing regulations, use permit is required with Planning Commission review and approval).

4. Telecommunications facility proposed on private property and non-City owned public property (Section 13.02.090)

Example: Cell site antennas
Special requirements/standards: In non-residential zones, limited to 8-feet above existing building height; must be screened or camouflaged/blend with site.
Special findings: No feasible alternative site on commercial property; full mitigation of adverse aesthetic impacts; compliance with base zoning standards; compatible with neighborhood (applies to residential cell-sites)
Approving body: Director of Community Development, or City Council upon appeal.
Public notice: For facilities that do not meet applicable zoning standards or are adequately concealed, or proposed on non-commercially zoned property: mailing to owners within 500-foot radius before and after Director's decision is made and for all appeals to City Council.
Appeal: Decisions may be appealed to City Council when proposed facilities do not meet applicable zoning standards, are not adequately concealed or are proposed on non-commercially zoned property.
Policy Change: Yes (under existing regulations, use permit is required for most applications with Planning Commission review and approval).

Right of way applications

The proposed regulations encourage telecommunications facilities to be co-located on utility poles in the right of way where they can easily blend with existing equipment instead of on private property. The authority to review and approve applications in the public right of way would be given to the Director of Community Development, with no prior public notice required, and no ability to appeal to the City Council. It is expected that such telecom sites would be approved if they blend with the existing utility pole and equipment and are located at least 10 feet away from a residential structure. Co-location is encouraged and it is required that all antennas that are abandoned must be promptly removed.

Communication technology is rapidly advancing, and it is anticipated that in the near future

communication companies may apply for permission to install fiber optic cable within the public right of way. Staff believes that if a franchise agreement is not required, then such applications would be handled the same as a telephone utility.

Private property applications

Applications for cell sites on non-residentially zoned private properties that comply with applicable standards and fully concealed so as to not be visible may be approved by the Director without public notice and such applications would not be able to be appealed to the City Council. This is consistent with the way such types of applications are currently processed. Conversely, applications on such sites that do not comply with applicable standards and are visually obtrusive, or would be located on a non-commercially zoned site would require public notice and are appealable to the City Council. Notice of such applications would be made both prior to and after the Director's decision to all owners of properties within a 500 foot radius and an appeal must be filed within 10 days of the Director's decision. An appeal, if filed, must be heard by the City Council within 20 days.

With respect to residential properties, staff believes it is improbable that such lots would be required as cell sites because right of ways are available nearby where such facilities can be added to existing utility poles. The Planning Commission addressed this concern by requiring that special findings be required for approval of cell sites on **non-commercially zoned** (includes residential and public/semi-public zones) land as follows:

- no feasible alternative non-residential site was available for the facility;
- adverse aesthetic impacts have been fully mitigated;
- the facility is in compliance with all development standards of the base zone in which it is located, including height limits;
- the facility is compatible with the neighborhood in which it is located.

Walk streets/Strand, parks and schools

In addition to residential neighborhoods, the Planning Commission received much public input and concern that the City should protect the walk streets and The Strand, parks and schools from obtrusive commercial cell site facilities. As with residential neighborhoods, the concern is that cell sites are inappropriate commercial activities in these areas which are in or near residential neighborhoods and have potential to visually degrade treasured community resources. Because of this, the permit process should require public notice and provide appeal rights.

Staff believes that, as with residential areas, it is unlikely that a cellular provider would propose a cell site on a walk street or The Strand right of way inasmuch as alternative sites are available on existing utility poles in nearby streets or alleys. The Planning Commission addressed this concern by requiring that special findings be required for approval of cell sites on **non-commercially zoned** (includes residential and public/semi-public zones) land as follows:

- no feasible alternative site was available for the facility;
- aesthetic impacts, including obstructions to ocean views, have been fully mitigated or avoided;
- the facility is compatible with the neighborhood in which it is located.

Cell site applications on all City owned sites such as civic buildings and parks would be reviewed and decided by the City Council. Notice would be given to all owners of property within a 500 foot radius a minimum of ten days before the City Council considers the application. Appeal rights are unnecessary, because such applications will automatically be heard by the City Council. All other applications on public agency owned property such as public schools are proposed to be considered the same as private property applications. However, it should be noted that the majority of such sites are on PS (Public and Semi-Public) zoned property. As such, the same special findings that are applicable to residentially zoned land would apply.

Permit fees

The current City Fee Resolution provides permit processing fees that could be applied to the telecom permits as provided in the proposed ordinance. The existing \$288.00 fee for a Staff approved telecommunications permit (referred to as an “Antenna Permit”) would be applied to all applications when filed. Additional fees would be required, depending on whether public noticing is required and if an appeal is filed. Staff would apply a \$65.00 public noticing fee for each notice mailing and if an appeal of the Director’s decision is filed, an additional \$465.00 would be charged for the appeal.

Public Input

A large display ad informing the public of this hearing was published in the Beach Reporter, as was done for the Planning Commission hearings. Staff has met with citizens and received communications regarding the proposed regulations and this input has been presented either orally or in written materials to the Planning Commission at each of its hearings. The ordinance proposed for adoption contains several revisions that address a majority of these citizen concerns. Staff has received input from three citizens who have been closely involved with this public review, including information regarding recent lawsuits, and this input is attached. The City Attorney has reviewed this material and does not recommend any further revisions to the ordinance.

Environmental review

The proposed ordinance is exempt from the requirements of CEQA (California Environmental Quality Act) in that it is determined to have no potential for causing a significant adverse effect on the environment, as per CEQA Guidelines, Section 15061 (b) (3).

CONCLUSION :

The Municipal Code (Zoning Ordinance) and Local Coastal Program currently provide regulations for reviewing telecommunications site applications on private property and no specific standards or procedures for such applications on the public right of way or City owned public properties. These regulations do not consistently apply in both inland and coastal areas, and are believed to be outdated and not consistent with legal requirements.

The proposed ordinance provides for a comprehensive, updated and streamlined set of regulations to guide the permit process for a variety of telecommunications throughout the City. Staff believes that the proposed regulations strike a proper balance between citizens’ desire for public participation and protection from adverse impacts, while addressing the telecommunication industry’s concerns that the ordinance provide for timely local permitting and equitable decision making process.

It is appropriate that the City Council conduct the public hearing and, subject to further public input, staff recommends that the Council adopt the proposed ordinances.

- Attachments:
- Exhibit A - Ordinances 2075 and 2076
 - Exhibit B - Summary table of Ordinance 2075
 - Exhibit C - Resolution PC 05-04
 - Exhibit D - Slides of existing cell sites
 - Exhibit E - Planning Commission Minutes: 2/09/05
 - Exhibit F - Staff reports from Planning Commission meetings with minutes: 10/27/04, 12/08/04, 1/12/05 and 2/09/05
 - Exhibit G - E-mails from Andreani, Partridge (attachments not available electronically)
 - Exhibit H - Packet from McPherson (attachments not available electronically)

cc: Manhattan Beach Unified School District
Donald McPherson

05/0405.20 Councilmember Aldinger Re 310 Area Code

Councilmember Aldinger announced that the Public Utilities Commission (PUC) will hold public hearings on April 26th at 2 p.m. in El Segundo and 6:30 p.m. in Redondo Beach regarding the 310 area code overlay and encouraged residents to attend and inform the PUC about the negative impact of the proposed overlay.

05/0405.21 Mayor Fahey Re Women in Business Conference

Mayor Fahey announced the Chamber of Commerce "Women in Business Conference" scheduled for Friday, April 8, at the Airport Marriott.

05/0405.22 Mayor Fahey Re Boards and Commissions

Mayor Fahey announced that Board and Commission applications are due to the City Clerk by Thursday, April 21, 2005 and that interviews will take place on Tuesday, April 26, 2005. She further announced the following vacancies: Board of Building Appeals (4 vacancies); Parks & Recreation Commission (2 vacancies); PPIC (1 vacancy); Cultural Arts Commission (2 vacancies); and Planning Commission (2 vacancies and 1 reappointment).

05/0405.23 Mayor Fahey Re Youth Services Award

Mayor Fahey announced that nominations are due April 15, 2005 for the Parks and Recreation Commission for the Annual Manhattan Beach Recreation Youth Service Award, an award presented to people who have made significant contributions to the youth in our community, and she encouraged everyone to turn in their nominees.

PUBLIC HEARINGS

05/0405.10 Consideration of Planning Commission Recommendation to Approve Municipal Code Amendment and Local Coastal Program Amendment Pertaining to Regulation of Telecommunication Facilities on Public Right-of-Way, Public Property, and Private Property Citywide

City Manager Geoff Dolan introduced Community Development Director Richard Thompson, who briefly summarized the highlights of the proposed ordinance, noting that all communications regulations will be consolidated in Chapter 13 of the Municipal Code. He further indicated that the City has limited authority to regulate cell sites and the ordinance meets that test; that the ordinance discourages cell sites where they are not wanted, such as residential areas, the Strand, and walk streets; that it encourages cell sites be located on existing telephone poles, similar to any other small utility throughout the City; and that the ordinance provides noticing and appeal rights to the City Council for cell sites that potentially can have a negative impact to adjacent properties.

Senior Planner Rosemary Lackow addressed Council with a PowerPoint presentation, reviewing who would have jurisdiction over the various locations for cell sites in the City, as identified in the staff report dated April 5, 2005, using photographs of existing cell sites in the City that provide a good example of cell sites that have been approved by staff because they are not visible, as well as some cell sites that would require public noticing because they are visible. She noted that the Planning Commission reviewed the ordinance at four public hearings and, on February 9, 2005 recommended that Council adopt an ordinance that would establish telecommunication regulations, presenting unanimous support with the exception of a 2-2 split vote with regard to whether or not to require public notice for cell sites to be located in the public right-of-way.

In response to Mayor Pro Tem Ward's inquiry regarding what happens to cell sites if the utilities City Council Meeting Minutes of April 5, 2005

cc 4/05/05

are undergrounded in the future, Senior Planner Lackow explained that there is a provision in the ordinance that requires they remove the cell sites in that case.

City Attorney Robert Wadden reported on two recent court cases: *The City of Rancho Palos Verdes vs. Abrams*, which dealt with the issue of the telecommunications provider damages if a municipality denies a permit, and *Metro PCS Inc. vs. City of San Francisco*, which involved a large antenna on a city parking garage. He noted the significance to the first case being that the City's exposure is lessened—with the only potential liability being compensatory damages, limiting the ability of the telecommunications provider to collect attorneys' fees. The key issue of the second case is the Court ruling that the request was subject to zoning codes because it was simply an upgrade in service, as the coverage was already adequate. He emphasized the primary value is that in cases where there are no coverage problems, and you can make solid arguments against the antenna on private property; you can make provisions to deny. He concluded by pointing out that the Court also placed the burden of proof on the applicant that this was the least obtrusive manner in providing the coverage.

Councilmember Tell pointed out the benefit to the City in that they will have the ability to set more burdensome standards.

In response to Councilmember Aldinger's recommendation that the City specify in the ordinance that the applicant provide maps and coverage data, thus requiring them to prove to the City that they already have coverage gaps, City Attorney Wadden conveyed that, while not that specific, the ordinance does address coverage issues by specifically requiring telecommunication providers to show that there are not alternative sites available. He added that the real issue would be whether or not the facility in question were aesthetically offensive and, if it were in some way offensive or not compatible with the neighborhood, the City would analyze whether or not it was necessary for coverage and, if not, could feel fairly comfortable denying the request.

In response to Mayor Pro Tem Ward's inquiry regarding the compensatory damages the City would be exposed to in an instance of denying a private property installation, City Attorney Wadden stated that by wrongfully denying a permit, the City could be liable for loss of business, loss of service, and the inability to provide service to their customers.

Mayor Fahey opened the Public Hearing at 7:20 p.m.

Don McPherson, 1000 Block of First Street, read into the record his concerns related to the proposed ordinance, including the lack of public hearing on antennas except at the discretion of the Director of Community Development; his belief that it drastically reduces zoning rights, sets no standards for antennas on city property, does not require FCC or state certification of applicants, the 9th Circuit Court decision preserves the local zoning authority everywhere and not just private property as the City Attorney stated; and requested that the matter be reviewed again by the Planning Commission because the 9th Circuit interpretation of the Telecommunications Act came after their four public hearings. He stated that the City can process current applications under the existing ordinance, which applies everywhere, and requested that the Council impose a permit moratorium up to 180 days or do nothing and wait for the new ordinance.

Patrick McBride, No Address Provided, stated that while he doesn't know much about the ordinance in question, he would ask the Council to come down in favor of the citizens as much as possible. He said the 1996 Federal Communications Act resulted in the media being obliterated and he doesn't think we should "roll over" for the federal government. He referred to several other federal laws, including NAFTA and Chapter 11, and stated that the country is not able to fight corporations and citizens should stand up for their rights and have a voice regarding what happens in their City.

Bill Victor, No Address Provided, stated that it would be great to take advantage of the "wiggle

room” that the federal court gave the City and have the best polished code, possible by having a second look. He pointed out that while the citizens are very fond of the current Community Development Director, the next one might not look at the matters in the same manner as Community Development Director Thompson. He said, in view of the two recent court decisions, he believes the time involved in allowing the Planning Commission to revisit the ordinance is a simple thing and a small factor in view of the overall beauty to the City. Noting that the City has taken a lot of time to eliminate overhead utilities, he said it seems strange to reduce all of the overhead wires and then allow a free right to put cell devices up in the air as long as, in the opinion of one particular official, it’s not a bad thing for the surrounding area. He said the determination should be less objective and consistent with the overall view of the people in the City who desire to have overhead wires removed.

Mayor Fahey closed the Public Hearing at 7:28 p.m.

In response to a comment by **Mr. McPherson** that the proposed ordinance ignores zoning, City Attorney Robert Wadden stated that the zoning and development standards are referenced in the ordinance and will be used to evaluate private property facilities, but the standards are somewhat different for the public right-of-way.

In response to Mayor Pro Tem Ward’s uncertainty regarding whether to return the matter to the Planning Commission for review in light of the Supreme Court ruling, which actually lessened the City’s exposure, Councilmember Aldinger said one reason to have the Planning Commission review it is because they haven’t been briefed by the City Attorney on the implications of the 9th Circuit Court decision, which has come down since their action. However, City Attorney Wadden pointed out that while he couldn’t speak for staff, having the Planning Commission review the matter again wouldn’t change his recommendation in the language of the ordinance.

Councilmember Tell pointed out that if you put more specific standards in the ordinance and define your values, then it’s the burden of the telecommunications companies that it’s least intrusive of your values, something you don’t have if the Director of Community Development makes the decision.

In response to Community Development Director Thompson’s comments, Mayor Fahey stated that she sees the issue being whether or not to notice and have public hearings, as well as whether the standards should be laid out in the ordinance or leaving it in more generic terms.

As a follow-up, Community Development Director Thompson pointed out that the ordinance does include the authority to limit or prohibit, as well as providing discretionary conditions for the right-of-way, and noted that it is not completely subjective in that it provides guidance in evaluating the cell sites and locations.

In response to Councilmember Aldinger’s request for clarification that the ordinance contains a provision that requires proof of need to provide coverage, City Manager Dolan referred to page 4, item D.7 which states “at the discretion of the Director or his designee the City may commission, at the applicant’s expense, a study evaluating the availability and feasibility, of alternate sites.”

City Attorney Wadden pointed out that Item 4 requires an updated wireless master plan detailing the location of all existing and proposed future facilities in the City, if the Director desires, which would give an idea of coverage issues.

In response to Mayor Fahey’s inquiry why the Strand can’t be eliminated as a potential location
City Council Meeting Minutes of April 5, 2005

for cell sites, City Attorney Wadden stated that the standards for the Strand and Walk Streets are more stringent but they can't legally be eliminated due to the fact that the California Public Utilities Code, which provides a state-wide franchise for telephone corporations, which grants them the statutory right to use the public right-of-way without extensive conditions or compensation, makes it more difficult to control the public right-of-way.

Mayor Fahey stated that she doesn't see anything in the recent cases that would cause this matter to go back to the Planning Commission, noting that the ordinance sufficiently protects our rights, providing leverage for negotiations if we end up in court, and it also protects the citizens.

Councilmember Aldinger said he would like to see some of the same aesthetic issues applied to the public right-of-way and disagrees that it doesn't apply and he is in favor of taking a step back in terms of the 9th Circuit Court decision, which gives the City more rights.

Councilmember Tell stated that there is a lot of uncertainty in the Telecommunications Act, but there isn't any certainty in terms of the public right-of-way, and our real challenge is that the ordinance is being formed as the change in law is being made and it may be appropriate to wait for 30-60 days to benefit from decisions of others like the National League of Cities. He said the 9th Circuit Court decision made it very clear that local regulations are now preferred and that the only way that they get pre-empted is under too fairly narrow standards that requires the burden of the telecom company, but that they didn't specifically say right-of-way or private.

Mayor Fahey stated that she believes this ordinance cleans up a lot and pointed out that the 9th Circuit is the most reversed in the country and no one knows what may happen; that the proposed ordinance serves the purpose and is a very good document; that she is in favor of moving forward and then if there is something else that can be added to strengthen the City's position, she recommended returning to Council with a clean up ordinance; that she is not inclined to send it back to the Planning Commission; that she believes there's some concern that we have to be afraid of the proposed ordinance because we are losing something, but she does not believe we're losing anything because we're addressing issues that have not been addressed.

In response to questions from Council regarding the City's exposure under the current policy and the City's options if the ordinance were put on hold, City Attorney Wadden stated that he believes the current public right-of-way applications can be treated as encroachment permits and the private property applications could be handled under the existing current ordinance. City Manager Dolan suggested that another alternative for Council's consideration, which addresses the timeliness as well as expediting the issue, would be to ask staff to work with the City Attorney to reconsider the ordinance, incorporating input received this evening without going back to the Planning Commission.

Mayor Pro Tem Ward stated that he is not in favor of sending it back to the Planning Commission, especially in light of the 9th Circuit Court opinion, noting that there is no certainty that it will become law. He suggested that staff could do some research and return to Council.

Councilmember Aldinger asked that Council be specific with what it is they would like staff to incorporate, including aesthetic issues addressed in the right-of-way.

Councilmember Tell said the City needs to talk to the law firms involved and obtain a better understanding of the decision. He reminded Council that the anti-discriminatory law, which prohibits the City denying a permit for one company if another company has already been granted, permits.

In response to Mayor Fahey's inquiry regarding the discriminatory case, City Attorney Wadden stated that if it were a legislative change it wouldn't apply, only if you apply the same set of standards in a discriminatory manner, but if you change the standards in a way that you are permitted to change the standards and begin to apply them to all new applicants, it's not discrimination.

In response to Councilmember Aldinger's concern regarding the wisdom of passing an ordinance with the knowledge that it may have to be amended because of a big change in direction, Mayor Pro Tem Ward said the proposed ordinance gives us a high level of local control, which we are trying to maintain, and he doesn't see that much more can be gained by waiting.

Mayor Fahey asked if the Council is in favor of having public hearings for the sake of allowing residents to come in and be heard, even regarding issues that are not allowed to impact the Council decision (such as the health issues), to which Councilmember Aldinger stated that he would be in favor of having public hearings for that reason; Councilmember Tell pointed out that the public notice appeal rights have an "element" to them because the telecommunication companies do not want to create a public relations problem; and Councilmember Montgomery stated that he is in favor of public input, and that whether or not it will change the outcome is a separate issue.

Mayor Fahey clarified that she is not opposed to public hearings, but it is up to Council to make it clear at the beginning of the item the limitations the Council is placed under so they don't have undue expectations.

Community Development Director Thompson reviewed some provisions of the ordinance, explaining that everything requires noticing except if it is proposed on commercial property and you can't see it or if it is proposed on an existing utility pole; however, if the applicant wishes to add another pole, it would require public noticing. He suggested that if Council would like the ordinance to be more specific with regard to establishing standards in the public right-of-way, staff would draft the wording. He noted that the Planning Department has been wrestling with this issue for the past ten years and, as the technology builds, cell sites are getting smaller. He said he strongly feels that the proposed ordinance is a model ordinance drafted following review of many ordinances in other California cities and he believes it is much better than those seen so far. He noted that staff is starting to see more stealth technology, as well as installation in the public right-of-way in the smaller unit size.

Mayor Fahey confirmed that Council has reached consensus on the need to notice some installation proposed on public property right-of-way; that public notice is not required if it is on commercial property and you can't see it or if it is on an existing utility pole; that an analysis is needed whether the aesthetic findings could be added to the public right-of-way; and that if there's more input from other organizations.

City Attorney Wadden pointed out that for city-owned property, the City as a landlord, as opposed to being a public agency, has the discretion as to whether or not to allow it and what conditions will be imposed.

Councilmember Aldinger asked whether aesthetic findings could be added to the requirements
City Council Meeting Minutes of April 5, 2005

for the public right-of-ways, such as height restrictions for the Strand and Walk Streets.

City Attorney Wadden summarized Council's requests for incorporation into the ordinance, and Council concurred with his summary, as follows: 1) incorporate an aesthetic standard for the public right-of-way; 2) establish a threshold for notice and appeal rights based on the size of the facility and whether or not it's on an existing pole or hidden; 3) incorporate a Walk Street and Strand height limit into the standards already in the ordinance; and 4) if the National League of Cities has information regarding a model ordinance or other issues, they will be reviewed and considered.

City Manager Dolan noted that staff will incorporate direction received from Council this evening, re-draft the ordinance and re-notice the public hearing for a future City Council meeting.

RECESS AND RECONVENE

At 8:07 p.m. the Council recessed and reconvened at 8:18 p.m. with all Councilmembers present.

GENERAL BUSINESS

04/0615.20-11 Review and Discussion of Strand Walkway and Lighting Improvements Project

- a) Review Trash Receptacles and Signage for the Strand
- b) Presentation Regarding Construction Schedule for the Project
- c) Presentation Regarding Public Outreach and Communication Plans
- d) Authorize the Cultural Arts Commission to Develop the Strand Bench and Alcove Donation Program

City Engineer Dana Greenwood addressed Council with a PowerPoint Presentation, reviewing existing trash receptacles on the Strand, pointing out that while they are acceptable in other areas of the City, the problems with the trash receptacles on the Strand include the rough exposed aggregate finish that retains stains; that the covers are plastic and removable; that there's very little in the way of decorative enhancements; and that they sit on the walkway, which obstructs the sweeper. He reviewed the various trash receptacles at other locations in the City, as well as several "standard stock" trash receptacles with a round or tapered design, some of which pose a problem with capacity. He reviewed the benefits of using flat-sided (square) receptacles, pointing out that mounting signage on round receptacles is difficult. He reviewed the features of the recommended receptacle, including that it is made out of concrete; that the cover is integral with the rest of the receptacle; that it has a smooth finish with fluting on the corners to mimic the fluting on the light pole; that it is a stock pattern that is easy to replace; that the square shape accommodates signage; and that the door makes it easy to service.

City Engineer Greenwood reviewed the current signage, which includes multiple signs on poles, painted signs on the walkway surface, and explained that the proposed signage would mount on the side of the trash receptacles, with no signs on lamp poles or walking surface. He noted that the verbiage would include universal symbols and code references for ease of enforcement; that the proposal includes two containers at each of the 45 intersections, with signs on one receptacle at each location replacing 85 signs on existing Strand light poles and 68 painted signs on the walkway; and that the receptacles would be located on a cement pad off to the side of the Strand to assist in street sweeping.

City Engineer Greenwood reviewed the construction schedule as identified in the staff report, which is expected to be completed in five phases over 18 months.

Strand Public Information Coordinator Rimga Viskanta addressed Council with a PowerPoint presentation regarding the public outreach plan, which is particularly important because of the



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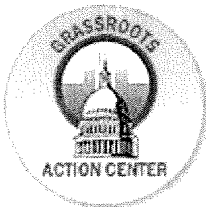
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[Go to NLC's issue page for more information on Telecommunications & Technology topics.](#)

Committee Purpose and Process

NLC policy is developed by seven committees of municipal officials. Each committee consists of two members:

- A larger policy and advocacy committee, which chooses the policy agenda for the year and reviews the proposed policy proposals and resolutions drafted on that agenda by the steering committee and
- A steering committee, which researches the agenda topics chosen and drafts policy positions for the policy and advocacy committee review.

Policy changes accepted by each policy and advocacy are subsequently forwarded to the entire membership for approval and inclusion in NLC's *National Municipal Policy (NMP)*. The *NMP* is a collection of positive statements on a variety of issues with immediate and long-term implications for the nation's cities and



towns. Developed through the deliberative, member-driven policy development process described at *NMP* states the policy positions that frame NLC's advocacy efforts.

Each of the seven committees has a specific set of issues under its jurisdiction, and policy development each committee is limited to these issues. The Information Technology and Communications (ITC) Committee has jurisdiction over issues related to telecommunications and information systems and public access to these systems, including privacy issues, cable TV, phone services, spectrum issues, communications tower siting, universal service, broadcasting, and defense of city rights-of-way from degradation caused by installation of communications facilities.

In March of 2005, the ITC Policy and Advocacy Committee chose the following two topics for policy development this year: Municipal broadband provision and policy restructuring with a focus on the re-authorized Telecommunications Act. The ITC Steering Committee will research and draft recommendations on these topics for full committee approval at the Congress of Cities in December.

For more information on the ITC Committee, please contact Nicole Young, Senior Policy Analyst, at young@nlc.org or 202-626-3175.

National League of Cities

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Privacy Policy



2005 Advocacy Priority

National League of Cities • 1301 Pennsylvania Avenue, NW • Washington, DC 20004 • www.nlc.org

The Issue: Rewrite of the Communications Act

Efforts to modernize the federal communications laws should not undermine the local authority to manage and receive compensation for use of public property on behalf of the public, to tax local telecommunications services, and to provide for essential public services. In addition, cities and towns must be able to provide for public safety, to promote competition, to ensure nondiscriminatory services and consumer protections, and to provide enhanced telecommunications services.

Message to Congress

- **Preserve local authority to manage public rights-of-way for the benefit of everyone.** Local governments must be allowed to continue to manage their rights-of-way and physical assets to the benefit of all of their residents. Cities and towns are uniquely positioned to ensure that communications companies' use of rights-of-way are managed in a manner that promotes safety and minimizes transit disruptions, and that cities receive reasonable compensation for use of public property on behalf of their citizens.
- **Protect local authority to establish taxes that are consistent with local needs and maintain adequate revenue.** Local governments recognize and support efforts to reform the collection and administration of local communications taxes, but in a manner that preserves the ability of local governments to impose and collect taxes to fund vital services for their citizens. Local elected officials are in the best position to decide tax policy that reflects the needs and desires of their citizens.
- **Protect and enhance local ability to provide for homeland and hometown security.** Local governments must have access to and use of effective and reliable emergency communications systems to protect their citizens. Public safety and first responders require access to spectrum and funding for interoperable communications equipment. As new services emerge, cities and towns must ensure full and effective deployment of E911 emergency response systems.
- **Recognize local roles in promoting nondiscriminatory access to the full range of communications services.** Local governments are helping to bring advanced services to individuals and small businesses. Cities need flexibility to offer services, develop public-private partnerships, and require the private sector to deploy services to everyone in a nondiscriminatory manner. Cities must have the autonomy necessary to encourage competition that will lower prices and improve service quality for their citizens.

Request to Congress

Any effort to modernize communications laws to address the convergence of technologies should:

- Preserve local authority to manage public rights-of-way for the benefit of everyone.
- Reform the collection and administration of communications taxes in a manner that preserves revenue and local authority to establish taxes consistent with local needs.
- Protect and enhance local ability to provide for homeland and hometown security by providing access to spectrum and funding for interoperable equipment, and requiring accelerated deployment of E911 in new generations of communications services.
- Protect local ability to facilitate or offer advanced communications services to their citizens.
- Preserve local powers to protect and promote the health, safety, and welfare of its citizens.

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May 10, 2005

Robert V. Wadden, Esq.
City Attorney
CITY OF MANHATTAN BEACH
1400 Highland Avenue
Manhattan Beach, CA 90266

Re: Ordinance No. 2075, Proposed City Telecommunications Ordinance

Dear Mr. Wadden:

I am writing to you on behalf of Cingular Wireless concerning the revised proposed Telecommunications Ordinance, which is tentatively scheduled for first reading on May 17, 2005 ("Ordinance"). Initially, Cingular wishes to thank Senior Planner Rosemary Lackow for taking the time to meet with us on May 6, 2005, to discuss the City Council's latest concerns with the Ordinance. As we agreed in that meeting, the purpose of this letter is to propose separate permitting processes for "standard" and "non-standard" installations in the public rights-of-way. Cingular also has a few comments concerning the Ordinance, as it is presently drafted, that we wish to place on the record before City Council.

As an initial matter, the City should be aware of a recent Central District decision that applies California Public Utilities Code §§ 7901 and 7901.1 to the placement of wireless antenna sites in the public rights of way. In a case called *Sprint PCS Assets, LLC v. City of Palos Verdes Estates*, Case No. SACV03-825 AHS (ANx), the court restricted the scope of evidence upon which a denial might be based under 47 U.S.C. § 332(c)(7)(B)(iii), the federal substantial evidence requirement. Specifically, the court ruled that §§ 7901 and 7901.1 prohibit a local agency from denying permits to place cell sites in the public rights-of-way on the basis of **aesthetics**. *Id.*, Order Granting Sprint PCS Assets, LLC, Motion for Summary Judgment, (C.D. Cal., filed Jan. 3, 2005). The court agreed with Sprint that local authority over the placement of sites in the public rights-of-way does not "as a matter of law – extend to...the appearance and configuration of the facilities." *Id.*, Plaintiff Sprint PCS Assets, LLC, Motion for Summary Judgment, at 13 (C.D. Cal., filed Oct. 1, 2004). The City's authority under §§ 7901 and 7901.1 is limited to managing construction activities and ensuring only that the facilities and their construction do not "incommode" the public's use of the public right-of-way. Under this new case, the City does not have the right to deny a right-of-way site based solely on its appearance. That said, and without waiving its rights under federal and state law, Cingular is willing to support revisions to the Ordinance that identify separate permitting processes for "standard" and "non-standard" right-of-way installations.

EXHIBIT
E

Letter to: Robert V. Wadden, Esq.

Date: May 10, 2005

Page 2

Cingular proposes the following arrangement. Standard Wireless Installations, as the term is defined in the Appendix to this letter, should be given expedited treatment by the Department of Community Development. Standard Wireless Installations will substantially conform to specific criteria to ensure uniformity of design and minimal impact for these right-of-way installations. Cingular proposes a one-week turnaround for these permits, which can be issued at the counter by staff, require no public notice and are not appealable. Nonstandard Wireless Installations, which by definition do not meet the criteria for Standard Wireless Installations, should be treated the same as other telecommunications facilities that are placed in the public rights-of-way, that is, as administrative permits issued by the Director with no notice, with the important exception that these right-of-way installations would be subject to appeal as outlined in the private property provisions. Cingular offers some language in the attached Appendix that might aid the Department in its revision of the Ordinance. However, these proposals are Cingular's alone and Cingular reserves its right to oppose these changes at any time and for any reason.

Cingular has a few comments about the latest draft of the Ordinance, which follow:

1. Section 13.020.030(D)(4); Section 13.02.090(E)(c). The application for a specific site should not require "an updated wireless master plan." Carriers do not identify specific sites as part of a proposed network buildout. They identify search rings that are developed using multiple factors including coverage and capacity needs, interference concerns, anticipated voice traffic, and topography, to name a few. These factors are largely dynamic, which means that build out plans are fluid and may be relevant only for a short period of time. This master plan requirement might be recast as a requirement to provide updated propagation maps, if applicable, which would address the City's interest in coverage needs generally.
2. Section 13.02.030(D)(7). Because telephone companies that are certified by the CPUC have the legal right to place facilities in the public rights-of-way, the availability and feasibility of alternative sites is not an issue pertinent to placement of sites in the public right-of-way. We request that this provision, under which the Director can commission studies at the expense of the applicant, be deleted.
3. Section 13.02.030(E)(1). The Director's authority to prohibit the placement of right-of-way sites needs to be more carefully specified. That authority should be limited to a facility's failure to comply with General Order 95 or other orders of the California Public Utility Commission governing right-of-way utility construction, failure to comply with the City's applicable Building Regulations, failure to comply with applicable federal and state laws, or failure to file a complete application. The Director does not have generalized "public interest" discretion over the use of the rights-of-way by telephone companies.

Letter to: Robert V. Wadden, Esq.

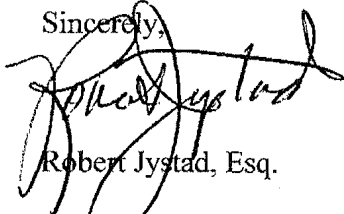
Date: May 10, 2005

Page 3

- 4. Section 13.02.080. The obligation to relocate or redesign a site because the City has formed an underground district should not be triggered until the district is actually formed in a manner consistent with state law, which is adequately stated in the last sentence of this provision. Cingular requests that the first two sentences of this provision be deleted.
- 5. Section 13.02.090(D). Cingular requests that the standard for "no feasible alternatives" governing placement of facilities on private property be qualified by the phrase "consistent with common industry practice." In the alternative, the requirement could be recast as a failure to demonstrate "good faith" in a carrier's review of alternatives using language that is similar to the good faith collocation requirement in Section 13.02.090(F)(4).
- 6. Section 13.02.100(B). Should say: "That a feasible alternative nonresidential site is available...."

If you have any questions about these comments, I can be reached by phone at (310) 209-8515 or by email at rjystad@sbcglobal.net.

Sincerely,



Robert Jystad, Esq.

Attorney for Cingular Wireless

c: Rosemary Lackow, Senior Planner, City of Manhattan Beach
Stephen Garcia, Cingular Wireless

attachments

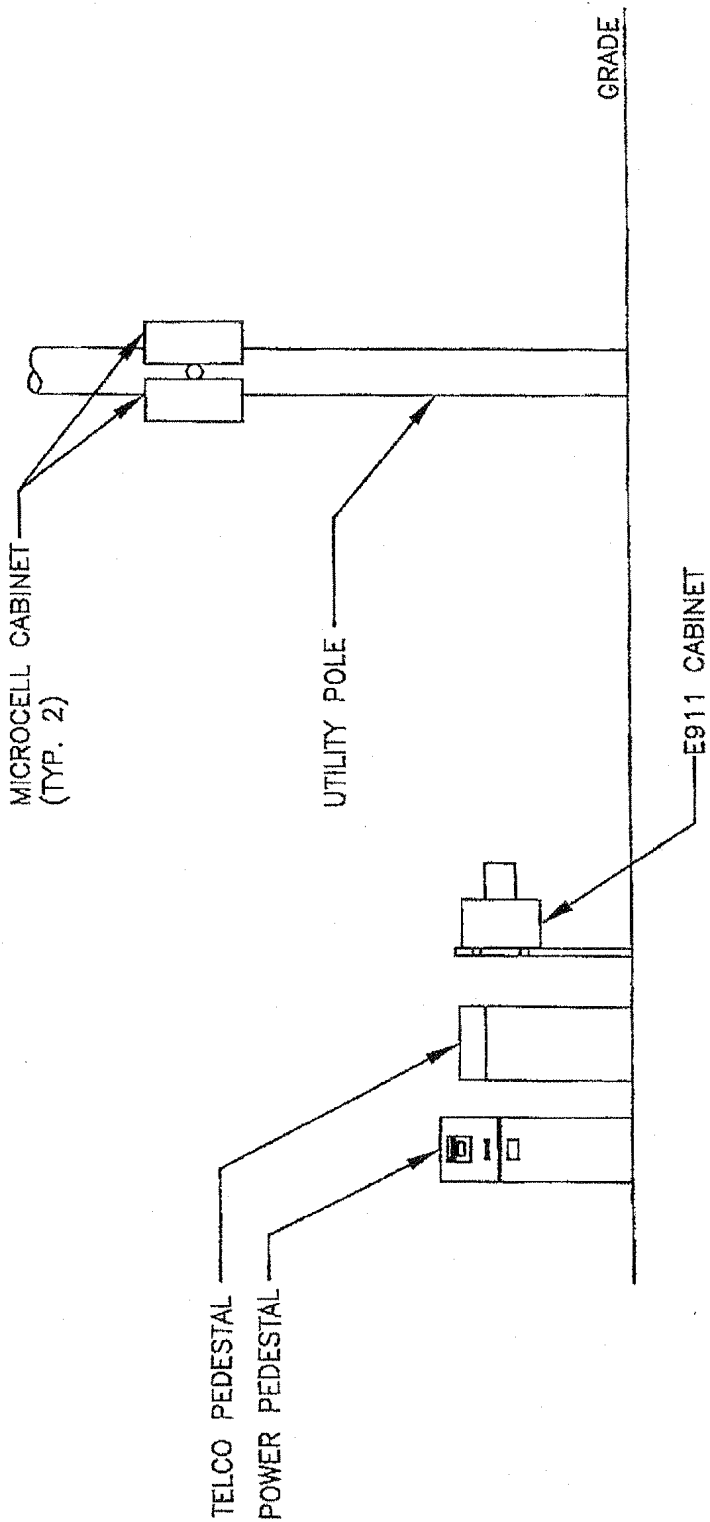
Letter to: Robert V. Wadden, Esq.

Date: May 10, 2005

Page 4

Appendix

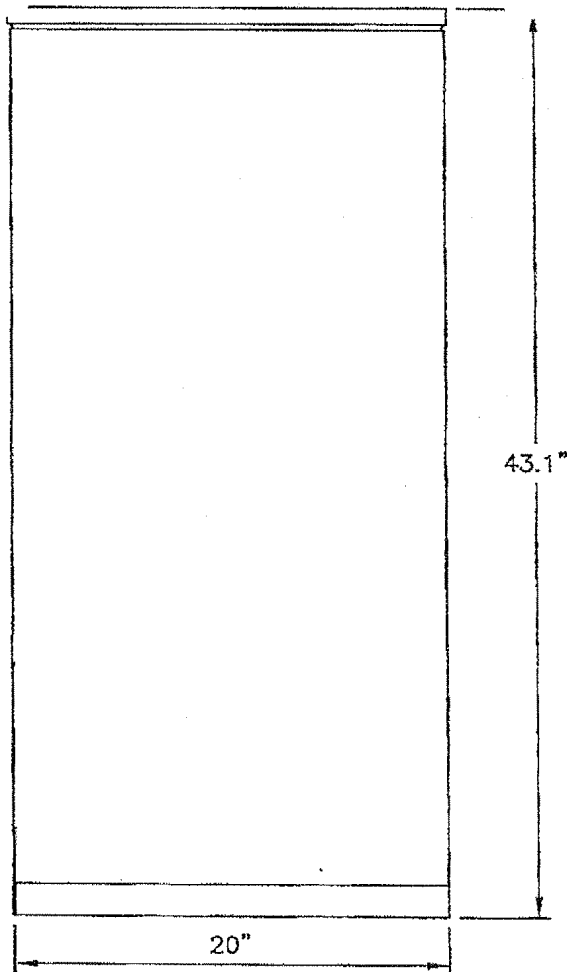
1. Add the following definitions to § 13.02.010:
 - a. Standard Wireless Installation means a wireless telecommunications facility proposed for placement in the public right-of-way on a new or existing utility pole, which substantially complies with the following criteria: (1) no more than four (4) panel antennas that do not exceed 48 inches in length; (2) a mast arm that does not exceed ten (10) feet in length and in any event does not extend from the pole center more than 5 feet; (3) a mast arm extension that does not exceed six (6) feet in length; (4) either one of two equipment configurations as follows: (a) a pole-mounted radio base station (RBS) unit that does not exceed 17" x 9" x 24" and no more than three ground-mounted utility boxes, none of which exceed 24" x 30" x 48"; or (b) no pole mounted RBS unit and no more than four (4) ground-mounted utility boxes, none of which exceed 42" x 30" x 48". (See attached drawings for more specific dimensions and configurations.)
 - b. Nonstandard Wireless Installation means a wireless telecommunications facility proposed for placement in the public right-of-way on a new or existing utility pole, which does not qualify as a Standard Wireless Installation.
2. Add new § 13.02.030(E)(4): Telecom permits for Standard Wireless Installations that meet the submittal requirements under § 13.02.030(D) will be expedited by the Department and the City Engineer and will issue no later than one week following submittal of a completed application.
3. Add new § 13.02.030(E)(5): Telecom permits for Nonstandard Wireless Installations that meet the submittal requirements under § 13.02.030(D) will be issued subject to § 13.02.030 (governing placement of telecommunications facilities in the public right of way) except that the Director's decision to grant a telecom permit for a Nonstandard Wireless Installations may be appealed under § 13.02.090(J).



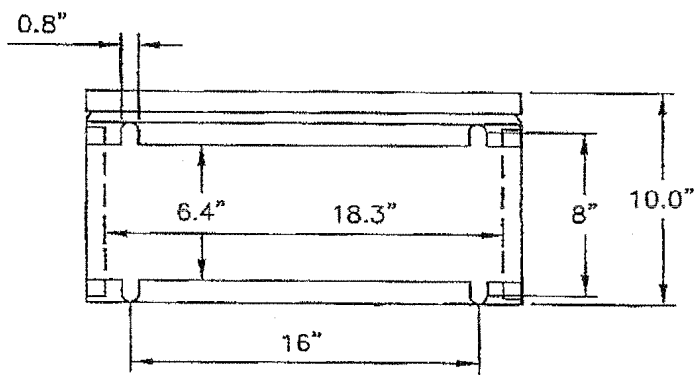
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				Site Name:	Project Manager:
				Site Location:	Draft Date:



cingular



FRONT VIEW



BOTTOM VIEW

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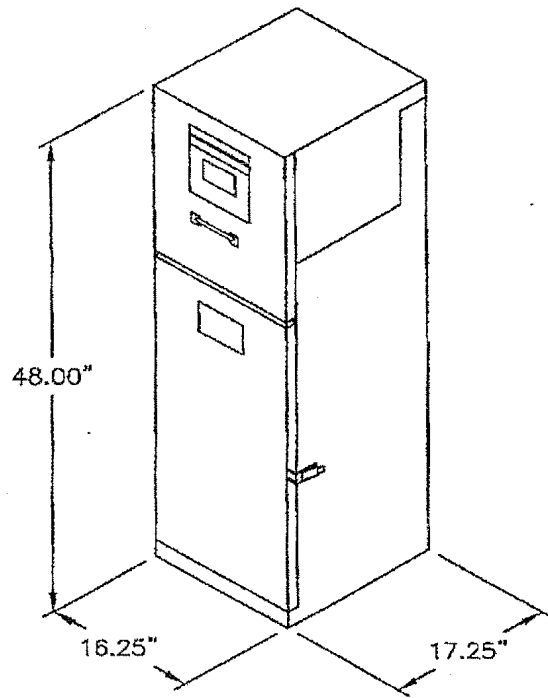


DATE: 4/7/05 APV: [Signature]

NOTES:
1. MANUFACTURER: TESCO CONTROLS (916)395-8800
PART # 22-000NR

DRAWING NAME
TESCO TELCO PEDESTAL

SCALE: NONE
DRAWING NUMBER
UM032



POWER PEDESTAL

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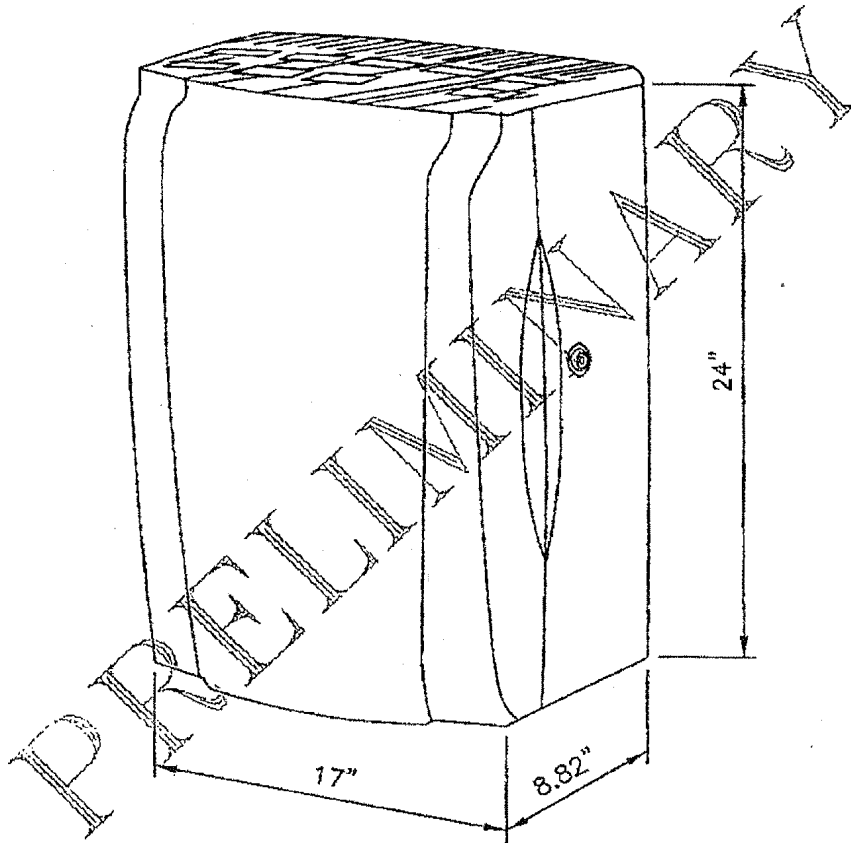


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CARRIER: NEXTG.

DATE: 9/22/03 APV:

DRAWING NAME
METER CABINET - MYERS MEUG16

SCALE: NONE
DRAWING NUMBER
UM002



MICROCELL

PARTS LIST

CALLOUT	QTY	DESCRIPTION	CALLOUT	QTY	DESCRIPTION
A	1	MORBO1 BI POWER REMOTE			
B	2	MOUNTING BRACKET			
C	8	9/16" x 1" BOLT - STAINLESS STEEL			
D	8	9/16" LOCK WASHER - STAINLESS STEEL			
E	4	9/16" NUT - STAINLESS STEEL			



Communications

NOTE:
PROVIDED BY CLIENT.

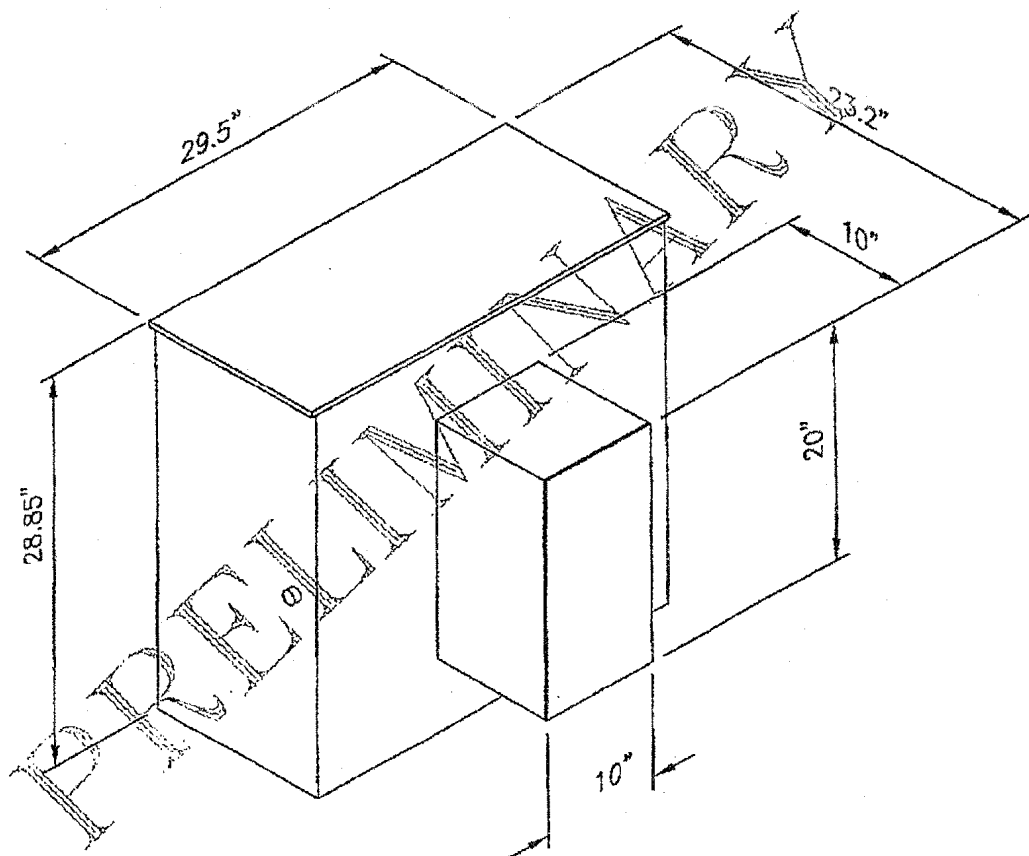
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CINGULAR-RBS 2109

SCALE: NONE

DRAWING NUMBER
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DATE: xx/xx/xx APV: [Signature]

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E911 CABINET

PARTS LIST

CALLOUT	QTY	DESCRIPTION	CALLOUT	QTY	DESCRIPTION
A	1	MORBO1 BI POWER REMOTE			
B	2	MOUNTING BRACKET			
C	8	9/16" x 1" BOLT -- STAINLESS STEEL			
D	8	9/16" LOCK WASHER -- STAINLESS STEEL			
E	4	9/16" NUT -- STAINLESS STEEL			



Communications

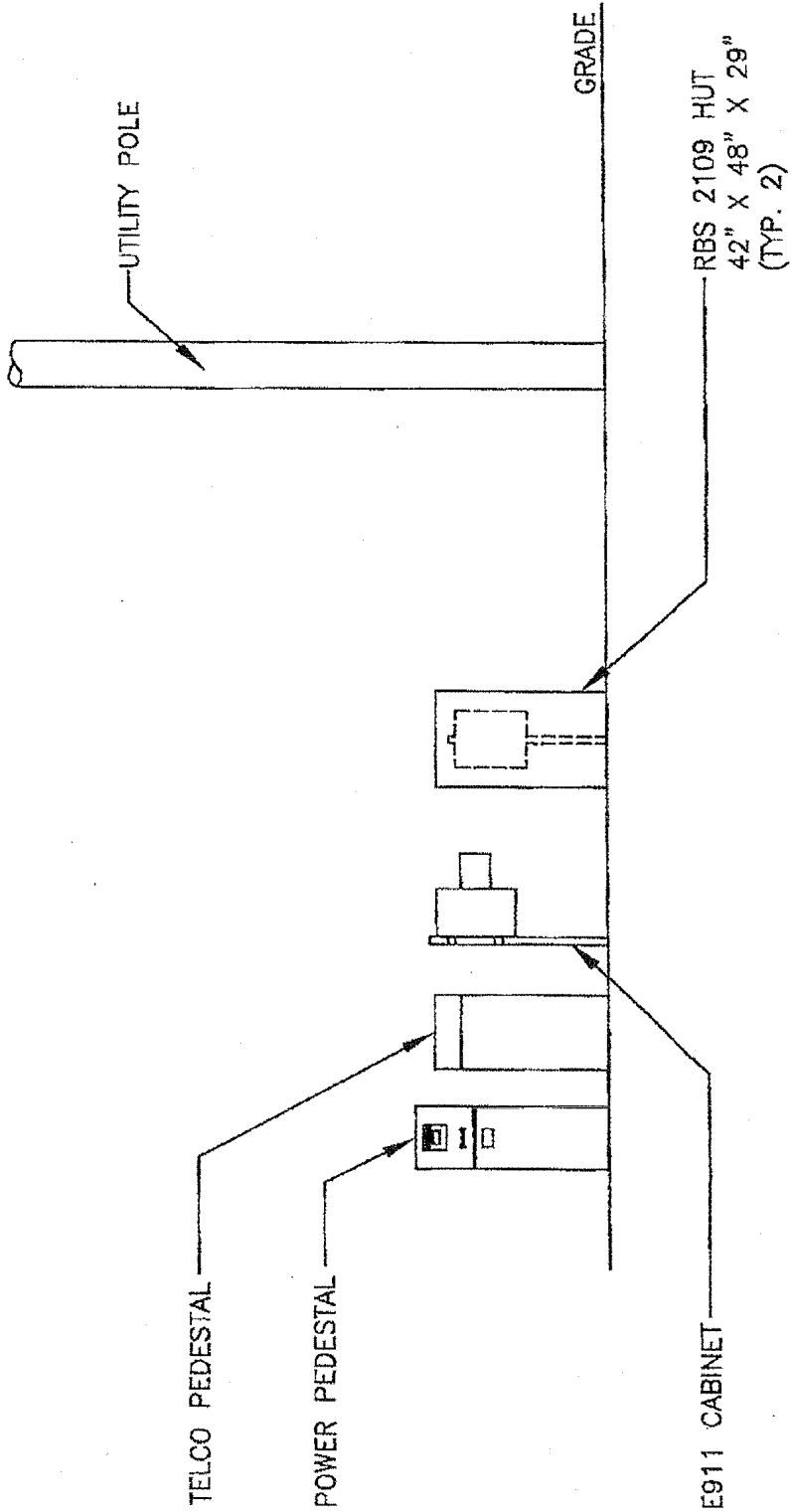
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SCALE: NONE
DRAWING NUMBER
CExXX

DATE xx/xx/xx | APV: [Signature]

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REV	DESCRIPTION	DATE	BY	Site Number:	Engineer:
				Site Name:	Project Manager:
				Site Location:	Draft Date:



xingular