



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

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, 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. 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. 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.

E. 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.

F. 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.

G. 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.

H. 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.

- I. 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.
- J. 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 no 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 19th day of April, 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, 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 19th day of April, 2005.

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

Mayor, City of Manhattan Beach, California

ATTEST:

City Clerk

**Proposed Telecommunications Ordinance
Planning Commission Review: February 9, 2005**

Ordinance Section	Type/Location of Telecom Facility	Approving Body	Public Notice Required	Right to Appeal	Change in Policy
13.02.030	Telephone/Telecom facilities in Public Right of Way (e.g. cell sites on existing utility poles)	Director of Community Development	No	No	Yes
13.02.040 13.02.050 13.02.070	Non-telephone Utility Operations in Public Right of Way (e.g. franchised Cable TV)	City Council	No	No	No
13.02.060	Telephone/Telecom Sites on City Property (e.g. cell sites)¹	City Council	No	No	Yes
13.02.090	Telecom Facilities: Private Property and Non-City Public Property	Director of Community Development or City Council	1) All non-commercial zones, and 2) If not meeting standards or criteria.²	1) All non-commercial zones, and 2) If not meeting standards or criteria³	Yes

¹ Includes any City owned land: parks, city buildings, parking lots, etc.

² Notice of pending application a minimum of 10 calendar days prior to Director's decision applied to: a) all non-commercially zoned sites and, b) all non-residential zones if project does not comply with height limit or other standards and not adequately visually blended with site or visible to surrounding area.

³ Applicable to: a) all non-commercially zoned sites and, b) projects in non-residential zones where not meeting height limit or other standards and not adequately visually blended with site or visible to surrounding area. Appeal must be filed within 10 days from date of decision and appeal to be heard by Council within 20 days of submittal of appeal.

RESOLUTION PC 05-04

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH RECOMMENDING AMENDMENT OF THE MANHATTAN BEACH MUNICIPAL CODE AND MANHATTAN BEACH LOCAL COASTAL PLAN IMPLEMENTATION PROGRAM PERTAINING TO REGULATION OF TELECOMMUNICATIONS FACILITIES ON PUBLIC AND PRIVATE PROPERTIES AND THE PUBLIC RIGHT OF WAY CITY-WIDE.

THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The Planning Commission 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.
- 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;

RESOLUTION NO. PC 05-04

- 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. The Planning Commission of the City of Manhattan Beach hereby recommends that Section 10.60.130 of Chapter 10.60, Title 10, of the Manhattan Beach Municipal Code be repealed in its entirety and that a new Chapter 13.02 be 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.

RESOLUTION NO. PC 05-04

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.

RESOLUTION NO. PC 05-04

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. Telecommunication facilities are discouraged from locating on The Strand and walk streets. 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. 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. 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);

RESOLUTION NO. PC 05-04

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.

E. 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;

RESOLUTION NO. PC 05-04

- 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.
- F. 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.
- G. 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.
- H. 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.
- I. 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.
- J. 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.

RESOLUTION NO. PC 05-04

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.
- C. Fee. 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.
- D. 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

RESOLUTION NO. PC 05-04

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:

RESOLUTION NO. PC 05-04

- 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 13.02.090 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,

RESOLUTION NO. PC 05-04

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 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 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 (except as provided in this Chapter) 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

RESOLUTION NO. PC 05-04

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.
- 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 (except as provided in this Chapter).

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 on appeal, 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 no 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;

RESOLUTION NO. PC 05-04

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 decision of the City Council 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. The Planning Commission of the City of Manhattan Beach hereby recommends that Chapter 13.02 of the Manhattan Beach Municipal Code, upon its effectiveness, be inserted into Chapter 3 (Codes, Resolutions, and Ordinances) of the Manhattan Beach Local Coastal Plan Implementation Program and that Section A.60.130 entitled “Antennae and microwave equipment” of the Manhattan Beach Local Coastal Plan Implementation Program be amended to include a cross reference 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. The Planning Commission of the City of Manhattan Beach hereby recommends that Section 10.08.040 of Title 10, of the Manhattan Beach Municipal Code and Section A.08.040 of Title A of the Manhattan Beach Local Coastal Plan Implementation Program, entitled Public and semipublic use classifications, be amended as follows:

RESOLUTION NO. PC 05-04

“**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 Planning Commission of the City of Manhattan Beach hereby recommends that the land use matrix of Section A.16.020 of the Manhattan Beach Local Coastal Plan Implementation Program be 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 6. The Planning Commission of the City of Manhattan Beach hereby recommends that Section 10.16.030 of Title 10, of the Manhattan Beach Municipal Code entitled CL, CC, CG, CD, and CNE districts: development regulations and Section A.16.030 of the Manhattan Beach Local Coastal Plan Implementation Program entitled CL, CD, and CNE districts: development regulations be 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 7. The Planning Commission of the City of Manhattan Beach hereby recommends that Section 10.12.030 of Title 10, of the Manhattan Beach Municipal Code entitled Property development regulations: RS, RM and RH districts and Section A.12.030 of the Manhattan Beach Local Coastal Plan Implementation Program entitled Property development regulations: RM and RH districts, the matrix entitled Property Development Standards for all Area Districts be amended to add a cross-reference to Chapter 13.02 (following Minor Exceptions) as follows:

Telecommunications Facilities See Chapter 13.02 of MBMC

SECTION 8. The Planning Commission of the City of Manhattan Beach hereby recommends that Section 10.12.050 of Title 10, of the Manhattan Beach Municipal Code entitled RSC district development regulations be amended to add a cross-reference to Chapter 13.02 (following Minor Exceptions) as follows:

Telecommunications Facilities See Chapter 13.02 of MBMC

SECTION 9. The Planning Commission of the City of Manhattan Beach hereby recommends that Section 10.60.060 of Title 10, of the Manhattan Beach Municipal Code and Section A.60.060 of the Manhattan Beach Local Coastal Plan Implementation Program entitled Exceptions to height limits be 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

RESOLUTION NO. PC 05-04

the width of the chimney portion exceeding the height limit shall not exceed 3 feet in width and 5 feet in length.”

SECTION 10. 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 11. If any sentence, clause, or phrase of this resolution 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 Planning Commission hereby declares that it would have passed this resolution 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 12. Any provisions of the Manhattan Beach Municipal 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.

I hereby certify that the foregoing is a full, true, and correct copy of the Resolution as adopted by the Planning Commission at its regular meeting of February 9, 2005 and that said Resolution was adopted by the following votes:

AYES: Kuch, Savikas, Simon, Chairman O’Connor
NOES: None
ABSENT: Montgomery
ABSTAIN: None

RICHARD THOMPSON
Secretary to the Planning Commission

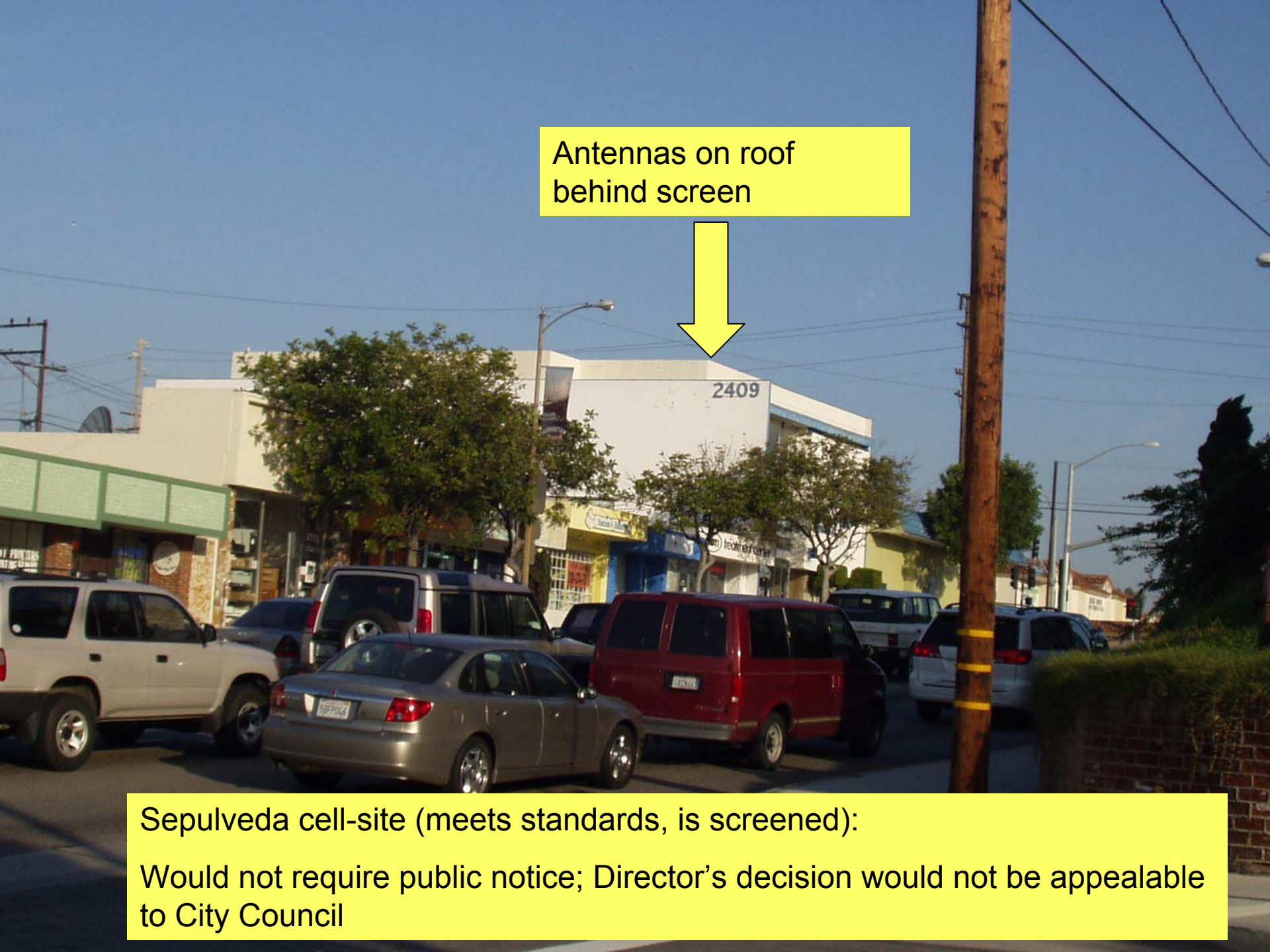
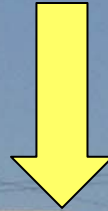
SARAH BOESCHEN
Recording Secretary

Examples of Telecommunication Sites

Manhattan Beach City Council
April 5, 2005

Prepared by Department of Community Development

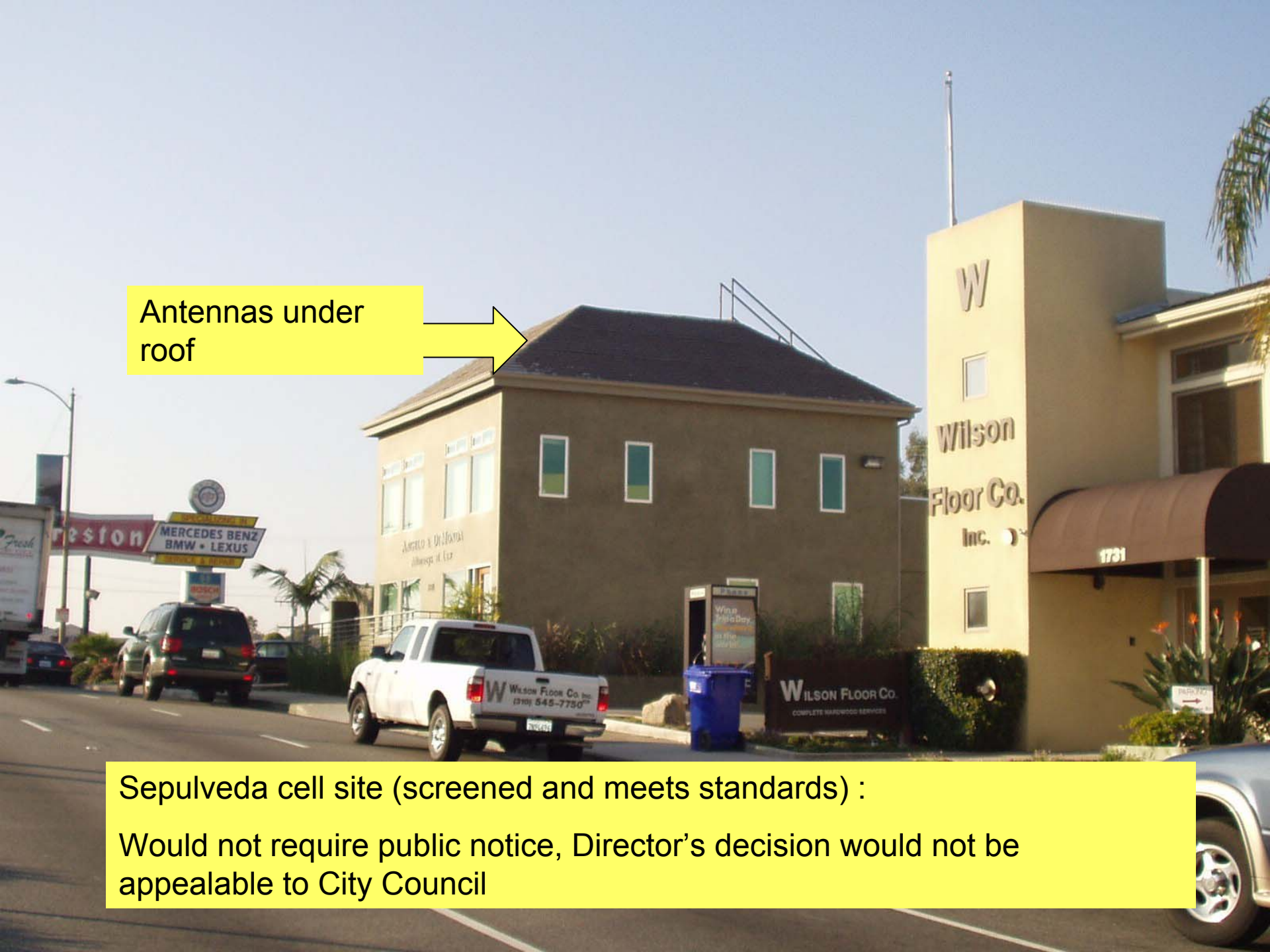
Antennas on roof
behind screen



Sepulveda cell-site (meets standards, is screened):

Would not require public notice; Director's decision would not be appealable to City Council

Antennas under roof



Sepulveda cell site (screened and meets standards) :

Would not require public notice, Director's decision would not be appealable to City Council

Antennas under roof

Antennas attached to corners of "tower"



Two co-located cell sites on mixed use coastal site:

Site under roof: would not require notice; not appealable to Council

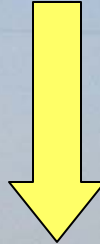
Site attached to building: would require notice and would be appealable to Council



Antennas behind building walls

Mixed use coastal cell site (screened and meets standards):
Would not require public notice; Director's decision would not be appealable to City Council

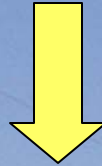
Unscreened antennas on roof



Commercial cell site on Sepulveda:

Would require public notice and Director's decision would be appealable to City Council

Antennas partially screened
on roof, exceeds height limit



Coastal commercial cell site:

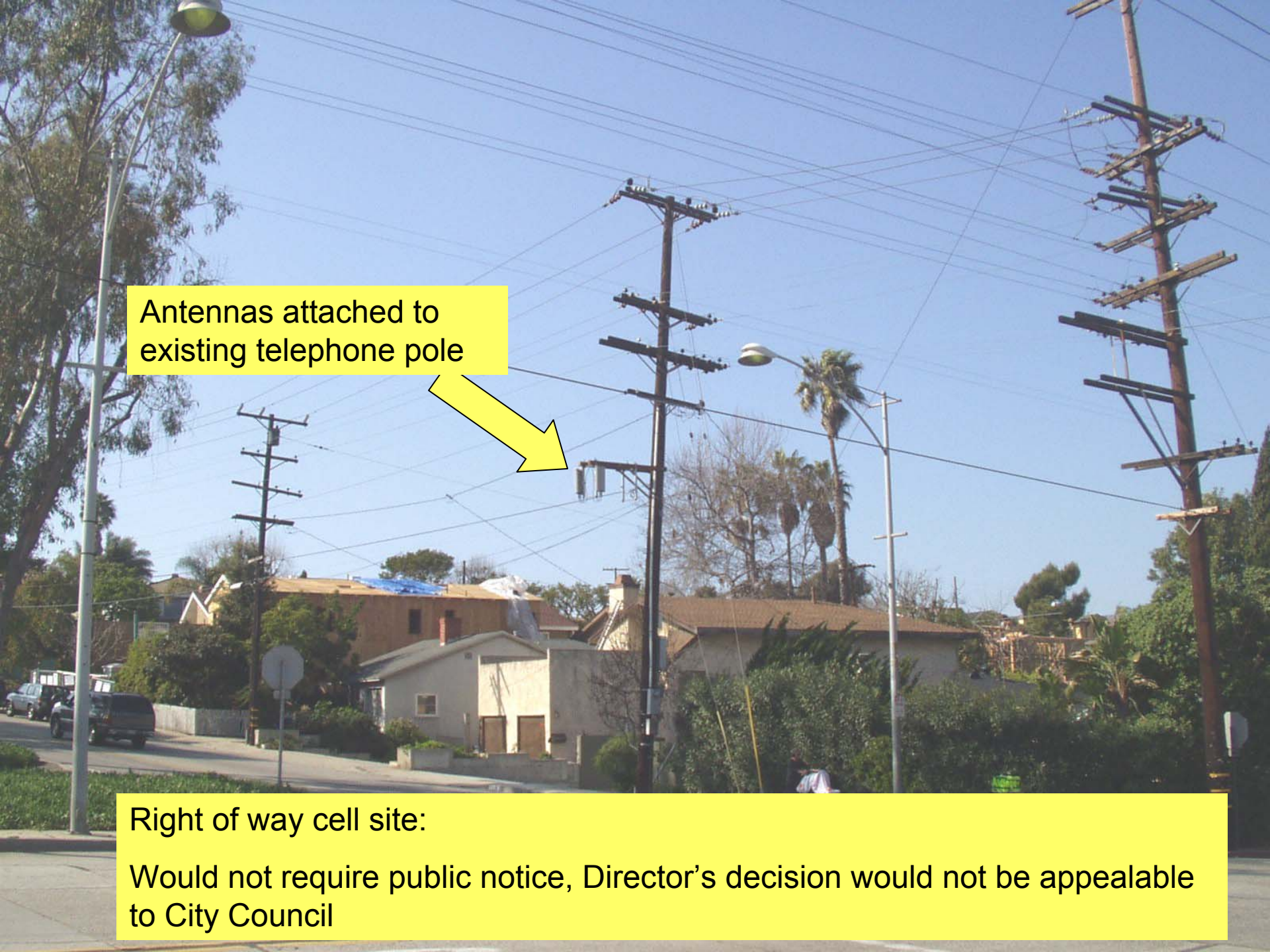
Would require public notice and Director's decision would be appealable
to City Council

Antennas unscreened on roof, exceed height limit



Commercial coastal cell site:

Would require public noticing and Director's decision would be appealable to City Council



Antennas attached to
existing telephone pole

Right of way cell site:

Would not require public notice, Director's decision would not be appealable to City Council

**CITY OF MANHATTAN BEACH
MINUTES OF THE REGULAR MEETING OF THE PLANNING COMMISSION
FEBRUARY 9, 2005**

1 A regular meeting of the Planning Commission of the City of Manhattan Beach was held on
2 Wednesday, February 9, 2005, at 6:40 p.m. in the City Council Chambers, City Hall, 1400
3 Highland Avenue.

4
5 **ROLL CALL**

6
7 Chairman O'Connor called the meeting to order.

8
9 Members Present: Kuch, Savikas, Simon, Chairman O'Connor
10 Members Absent: Montgomery
11 Staff: Richard Thompson, Director of Community Development
12 Rosemary Lackow, Senior Planner
13 Sarah Boesch, Recording Secretary
14

15 **APPROVAL OF MINUTES January 26, 2005**

16
17 Commissioner Simon requested that page 7 line 20 of the January 26 minutes be revised to read:
18 "He commented he would support providing for a maximum coverage of the lot . . . "

19
20 Commissioner Simon requested that page 8, line 25 be revised to read: "Commissioner Simon
21 asked whether it would be appropriate to provide for a procedure to allow the merger of more
22 than two lots if a determination were made that it would not have an adverse effect on the
23 neighborhood, i.e., could workable criteria be developed."

24
25 A motion was MADE and SECONDED (Savikas/Kuch) to **APPROVE** the minutes of January
26 26, 2005, as amended.

27
28 AYES: Kuch, Savikas, Simon, Chairman O'Connor
29 NOES: None
30 ABSENT: Montgomery
31 ABSTAIN: None
32

33 **AGENDA CHANGES** None

34
35 **AUDIENCE PARTICIPATION** None

36
37 **PUBLIC HEARINGS**

38
39 **04/1027.1-1 Municipal CODE AMENDMENT and Local Coastal Program**
40 **AMENDMENT Pertaining to Regulation of Telecommunication Facilities on**
41 **Public Right-of-Way, Public Property, and Private Property Citywide**
42

PLANNING COMMISSION MINUTES

February 9, 2005

Page 2

1 Senior Planner Lackow summarized the staff report. She commented that staff is recommending
2 approval of various changes to establish a separate Telecommunication Ordinance, which would
3 amend the Code and Local Coastal Program. She commented that the changes made to the draft
4 Ordinance since the last hearing are in Sections 2 and 3 pertaining to processing of cell site
5 applications on various types of public and private property and the public right-of-way. She
6 indicated that language has been added to the general finding (F) regarding discouraging the use
7 of wireless antennas along walk-streets and along The Strand due to the unique conditions of
8 those streets. She commented that language has also been included in section 13.020.30(c) of
9 the Code providing specific criteria for approval of telecommunication site permits along the
10 walk-streets or The Strand. She said that the term "impacts" has been changed to "adverse
11 impacts." She said that language has been added regarding HAM radios to prohibit from being
12 converted to a commercial use. She stated that the height limits of antennas on private property
13 has been changed to specify that the additional permitted height of 8 or 15 feet would be
14 measured from the height of the existing building. She commented that the noticing period of
15 applications for wireless facilities has been increased from 7 to 10 days. She stated that
16 Subsection I on page 10 of the draft Ordinance specifies that the permit procedures and
17 regulations for HAM radios are separate, and provisions for telecommunication facilities do not
18 apply. She stated that item B has been added on page 11 12.020-100(b) of the draft Ordinance to
19 require a determination for approval of wireless antennas that no feasible non residential site is
20 available for the proposed facility. She commented that the Commissioners have been provided
21 with a map of the City which shows the areas of public right-of-way as was requested at the
22 previous hearing. She showed the Commissioners pictures of several existing
23 telecommunication facilities within the City to demonstrate the types that would be noticed and
24 have the option for appeal and those that would be approved administratively without option for
25 appeal under the draft Ordinance.

26
27 Chairman O'Connor pointed out that the antennas on the building at 2409 Sepulveda are not
28 visible; however the screening adds height to the existing structure beyond what would
29 otherwise be the permitted building height.

30
31 In response to a question from Commissioner Simon, Director Thompson indicated that staff
32 would have the ability to deny a facility that exceeds the permitted building height but is within
33 the additional permitted height of 8 feet if staff felt the screening wall would create an issue
34 aesthetically.

35
36 Senior Planner Lackow commented that the location and shape of buildings varies, and
37 applications for cell sites on structures must each be considered individually to arrive at the best
38 outcome. She said that the goal is for the cell sites to not be at all noticeable on buildings.

39
40 Director Thompson indicated that applications would be noticed if the cell site is at all visible
41 from any angle within the surrounding area.

PLANNING COMMISSION MINUTES

February 9, 2005

Page 3

1

2 In response to a question from Chairman O'Connor, Director Thompson indicated that the
3 purpose of co-location is to allow other wireless facilities at the same location and same
4 configuration that has been approved for an existing site.

5

6 In response to a question from Commissioner Simon, Director Thompson said that there is a
7 condition in the proposed Ordinance that any cellular site located on a utility pole would be
8 required to be relocated if an underground utility district is formed. He indicated that there is an
9 opportunity with new technology to relocate existing wireless facilities on utility poles to nearby
10 light poles. He pointed out that wireless facilities proposed on utility poles within the public
11 right-of-way would be approved without noticing even if they are visible.

12

13 Chairman O'Connor pointed out that the need to relocate existing wireless facilities on utility
14 poles if an underground utility district is defined is addressed on page 8 under Section 13.02.080
15 of the draft Ordinance.

16

17 In response to a question from Chairman O'Connor, Director Thompson stated that a change in
18 policy as referred to in the summary chart provided to the Commissioners refers to either a
19 change in the Code or a change in the method by which applications are processed by staff. He
20 commented that the Code currently has no policy regarding regulating cell sites within the public
21 right-of-way, and adopting the draft Ordinance would provide language regarding wireless
22 antennas in such areas.

23

24 In response to a comment from Chairman O'Connor, Director Thompson said that
25 telecommunication sites on City property currently requires a Use Permit, and the proposed
26 change is to eliminate the need for a Use Permit and to administratively approve applications
27 with no public notice or right of appeal for certain uses.

28

29 Senior Planner Lackow stated cell sites on private property and any non-City owned public
30 property including school sites currently require a Use Permit if they exceed the height limit of
31 the zone, and the proposed Ordinance would provide for approval by the Director and/or City
32 Council and providing notice if it meets certain criteria.

33

34 Chairman O'Connor opened the public hearing.

35

36 **Martha Andreani** indicated that the draft Ordinance began with antennas being permitted on
37 residential property and with public noticing being prohibited, and it now bans antennas on
38 residential and school and provides for an avenue for appeal in those areas. She commented that
39 there is still a concern with the right of appeal for cellular site applications within the public
40 right-of-way, and there are no appeal rights if a determination is made by the Director that an
41 antenna is sufficiently camouflaged. She pointed out that screening used to camouflage antennas

PLANNING COMMISSION MINUTES

February 9, 2005

Page 4

1 is permitted to exceed the height limit. She said that they also are concerned with wireless
2 antennas located on City owned property including parks without noticing to nearby residences,
3 and there should be noticing for such applications. She suggested that a survey be conducted of
4 residents in lower lying areas of the City to ask their concerns and needs regarding any lack of
5 cellular reception.

6
7 Director Thompson pointed out that the draft Ordinance would not specifically ban antennas in
8 residential areas but would highly discourage placing them within sensitive areas of the City. He
9 commented that the Ordinance previously did not distinguish between the different types of
10 properties but now provides a distinction and identifies sensitive areas. He indicated that the
11 Ordinance does not ban wireless antennas in any particular area but highly discourages it in
12 certain areas and requires justification that there are no other alternative locations available for
13 areas such as along walk-streets and The Strand.

14
15 **Don McPherson**, a resident of the 1000 block of 1st Street, stated that great improvement has
16 been made with the draft Ordinance; however, the main issue of the prohibition of appeals and
17 public hearings remains unresolved. He commented that the draft Ordinance as worded would
18 allow no possibility of appeal for antennas located in the public right-of-way. He commented
19 that he does not believe the director should have the ability to make decisions that are not subject
20 to appeal, and any other decision that the Director has the ability to make can be appealed. He
21 indicated that parks are near residential areas, and the City has an ethical responsibility to allow
22 the public the right to participate in the approval of wireless facilities located near residences.
23 He commented that he is pleased with the language regarding wireless antennas along The
24 Strand and walk-streets. He commented that there is no requirement for antennas being located
25 within a specified proximity to homes. He indicated that the Ordinance would allow for a height
26 of 15 feet above the building height for antennas up to a diameter of 3 inches. He commented
27 that such antennas are used by paging companies to reach wide areas, which are not necessary
28 and the City should not support. He commented that the provision allowing administrative
29 approval for antennas up to 15 feet above the building height should be reduced to 8 feet. He
30 stated that he would recommend that the normal process of appeal to the Planning Commission
31 and then the City Council be applied to telecommunication facilities rather than appeals being
32 heard directly by the Council. He indicated that considering the technical details of wireless
33 facility proposals is more appropriately done by the Planning Commission rather than the City
34 Council.

35
36 Director Thompson pointed out that the administrative approval process in the proposed
37 Ordinance is similar to the process of approvals for Minor Exceptions, which allow for input
38 from the community before a decision is made by the Director. He indicated that once a decision
39 is made by the Director, a second notice regarding the decision is then sent which allows appeal
40 to the City Council. He commented that building permits are issued daily that are not appealable
41 to the Planning Commission or City Council, and the Ordinance would basically provide the

PLANNING COMMISSION MINUTES

February 9, 2005

Page 5

1 same process for the approval of cell sites on utility poles as other utilities. He indicated that any
2 proposals for cell sites on City property would not require noticing; however, they would be
3 approved by the City Council on a public agenda. He said that the issue of cell sites being
4 located in park areas adjacent to residences is a separate issue that the Commission may wish to
5 provide further discussion.

6
7 Chairman O'Connor closed the public hearing.

8
9 Commissioner Simon suggested that language be added regarding guidelines for locating
10 antennas adjacent to residences. He commented that he feels notice should be given of wireless
11 facility applications within park areas. He commented that he is appreciative of the public
12 testimony, and the participation has been excellent in shaping the parameters of the proposed
13 Ordinance. He also thanked the extra efforts of Chairman O'Connor, which has benefited the
14 outcome of the draft Ordinance. He indicated that he is pleased that restrictions have been added
15 regarding wireless antennas on The Strand and walk-streets, which are a valuable resource that
16 should be protected.

17
18 Commissioner Savikas also thanked everyone who worked on the draft Ordinance for all of their
19 efforts. She indicated that the noticing of cellular site applicants within park areas is important
20 and should be included in the draft Ordinance.

21
22 Chairman O'Connor indicated that he is also pleased with the restrictions included regarding
23 antennas along walk streets and The Strand. He also thanked the members of the public for their
24 participation. He stated that there must be more rather than fewer appeal options included where
25 there is any doubt regarding the right to appeal. He said that he is content with language in the
26 draft Ordinance regarding private property and non-City owned public property which are pretty
27 stringent and do include noticing and a right to appeal. He indicated, however, that he would
28 support adding noticing for cell site applications within the public right-of-way. He indicated
29 that a significant array of antennas would add more bulk than is typically seen on a standard
30 telephone pole in the right-of-way, and the potential for it to be objectionable to nearby residents
31 and allowing no ability for noticing or appeal is a concern. He commented that the screening put
32 in place in order to camouflage sites can add significant bulk and height to buildings. He said
33 that he would support including language addressing proximity of wireless antenna to residences
34 and providing for public noticing of wireless facilities in park areas.

35
36 Commissioner Kuch commented that he would support allowing appeals for wireless antenna
37 applications within the public right-of-way.

38
39 Director Thompson pointed out that the City Attorney strongly recommended against noticing of
40 wireless antennas within the public right-of-way because he believes it would result in the City
41 over regulating their enforcement power over wireless companies. He commented that the

PLANNING COMMISSION MINUTES

February 9, 2005

Page 6

1 Ordinance as revised includes much more opportunities for noticing than as originally proposed.
2 He indicated that the City Attorney spoke twice to the Commission regarding the legal aspects of
3 the Ordinance, and his opinion should be taken into consideration in making their
4 recommendation to the Council.

5
6 Chairman O'Connor indicated that his understanding of the City Attorney's objections is that
7 they were based on his interpretation of the Telecommunications Act of 1996, and the language
8 of the draft Ordinance has been changed a great deal from his original interpretation.

9
10 Senior Planner Lackow commented that the City Attorney did make a very clear distinction
11 between the public right-of-way and other locations of the City. She indicated that she
12 understands he believes the City does not have the same legal authority to apply its discretion
13 towards the aesthetics of cell sites within the public right-of-way; however, the City does have
14 some discretion on private land.

15
16 Chairman O'Connor said that he does not consider the requirement to take the risk of a lawsuit
17 into account a mandate that the opportunity for any appeal be eliminated.

18
19 Director Thompson said that the City did use their discretion in the past and was sued by a
20 wireless company because of their decision, which was the reasoning behind proposing the new
21 Ordinance. He said that the City Attorney would recommend against noticing requirement for
22 any cell site locations in the right-of-way. He commented, however, that there is a difference
23 between the right-of-way and public parks.

24
25 Commissioner Simon said that he would support requiring noticing for any wireless antennas
26 over 8 feet. He said he is comfortable with not imposing a noticing requirement for cell sites
27 within the right-of-way.

28
29 Chairman O'Connor said that there appears to be consensus of the Commissioners regarding
30 specifying a minimum proximity of antennas to residences; requiring noticing for wireless
31 facility applications on City property; and requiring noticing for any proposed wireless antennas
32 over 8 feet maximum above the building height. He indicated that the only remaining issue
33 would be noticing of wireless applications within the public right-of-way.

34
35 Commissioner Savikas said that she would support the first three changes as outlined by
36 Chairman O'Connor but would not support requiring noticing for applications within the right-
37 of-way.

38
39 Commissioner Kuch said that he would support the three suggested changes and also noticing
40 within the public right-of-way.

PLANNING COMMISSION MINUTES

February 9, 2005

Page 7

1 Chairman O’Connor said that he would be willing for the item to be forwarded to the City
2 Council with it being noted that there was a split opinion regarding noticing of wireless facility
3 applications within the public right-of- way.
4

5 Director Thompson suggested that the Commission adopt the draft Resolution with the three
6 proposed changes, and staff will include the Commission’s opinion regarding noticing within the
7 right-of-way in the staff report to the City Council.
8

9 A motion was MADE and SECONDED (Savikas/Simon) to recommend that the City Council
10 **ADOPT** Municipal Code Amendment and Local Coastal Program Amendment pertaining to
11 regulation of telecommunication facilities on public right-of-way, public property, and private
12 property Citywide with the addition of requiring a minimum proximity of wireless antennas to
13 residences; requiring public noticing on City property; and requiring noticing for wireless
14 antennas above 8 feet over the existing building height.
15

- 16 AYES: Kuch, Savikas, Simon, Chairman O’Connor
- 17 NOES: None
- 18 ABSENT: Montgomery
- 19 ABSTAIN: None

20
21 Director Thompson indicated that the item will be set for a public hearing before the City
22 Council on March 15, 2005, or at a later meeting. He commented that it has been decided for the
23 item to be considered by the City Council after the elections so that the first and second readings
24 can both be heard by the same Council members.
25

26 **DIRECTOR’S ITEMS** None

27
28 **PLANNING COMMISSION ITEMS** None

29
30 **TENTATIVE AGENDA: February 23, 2005**

- 31
- 32 A. Discussion of City Council 2004-2005 Work Plan item regarding residential Lot
- 33 Mergers, to review current regulations when two or more lots are combined
- 34
- 35 B. Hearing Regarding Notice of Lot Split Violation at 213 Rosecrans Avenue
- 36

37 **ADJOURNMENT**

38
39 The meeting of the Planning Commission was **ADJOURNED** at 8:50 p.m. in the City Council
40 Chambers, City Hall, 1400 Highland Avenue, to Wednesday, February 23, 2005, at 6:30 p.m. in
41 the same chambers.

PLANNING COMMISSION MINUTES

February 9, 2005

Page 8

1

2

3 _____
4 RICHARD THOMPSON
Secretary to the Planning Commission

SARAH BOESCHEN
Recording Secretary

**CITY OF MANHATTAN BEACH
COMMUNITY DEVELOPMENT DEPARTMENT**

TO: Planning Commission

THROUGH: Richard Thompson, Director of Community Development

FROM: Robert V. Wadden, City Attorney;
Rosemary Lackow, Senior Planner

DATE: October 27, 2004

SUBJECT: 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.

RECOMMENDATION

Staff recommends that the Planning Commission **CONDUCT THE PUBLIC HEARING, DISCUSS, and PROVIDE DIRECTION** to Staff.

BACKGROUND

The Current City Process

Presently Manhattan Beach Municipal Code Section 10.60.130 provides for an administrative procedure for processing wireless service facility permits. Use Permits with noticed public hearings are required only for facilities that do not comply with certain criteria which includes base district zoning development standards. . This section also was intended to be applied to cell sites on private property. At the time it was written the City had not received applications to locate cell sites in the public right of way. The only other arguably applicable sections in the Manhattan Beach Municipal Code are in Chapter 7.16 which allow the Director of Public Works to issue excavation permits for work in the public right of way.

There is no specific City process for applications to locate cell sites in the public right of way. This is a phenomenon which has only arisen in the last two years with the advent of smaller cellular antennas which can conveniently be located on the top of existing utility poles. In the absence of a specific procedure intended to deal with cell sites in the public right of way staff has required all such applications to be reviewed by both the Planning Commission and the City Council and for general notice to be given even though no local City ordinance provides authority for such a procedure.

Federal Law

The Federal Telecommunications Act (47 USC sections 201, et seq.) is the governing Federal law for cable television, wireless sites, open video, all-purpose fiber optic installations and all

associated antennae and lines. Each type of telecommunications use is treated somewhat differently. However, in practice these uses tend to overlap (e.g., cable television lines being used for internet and telephone service, wireless sites being used for telephone service and data transmission) causing a great deal of confusion among the regulators and the regulated .

As a general rule the Telecommunications Act weakens local power over all aspects of telecommunications services. However, the extent to which local authority is preempted is unclear. 47 U.S.C. section 253 provides both that “No State or local statute or regulation, or any other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service....” (47 U.S.C. section 253(a)) and “Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 of this title requirements necessary to . . .protect the public safety and welfare” (47 U.S.C. section 253(b).)

In 2001 the Ninth Circuit decided *City of Auburn v. Qwest* 260 F.3d 1160 (CA 9, 2001) in which ordinances of the City of Auburn, Washington and several other cities with similar ordinances were held preempted by the Telecommunications Act. The Auburn ordinance sought to regulate the use of public rights of way by telecommunications providers by requiring a franchise and payment of a franchise fee and gave the City the right to terminate the franchise for noncompliance. The Ninth Circuit held this ordinance to be preempted by the Telecommunications Act. The court noted that the application process was onerous:

“The ordinances at issue in the present case include several features that, in combination, have the effect of prohibiting the provision of telecommunications services. In order to obtain a franchise, telecommunications companies must submit a lengthy and detailed application form, including maps, corporate policies, documentation of licenses, certain specified items, and ‘[s]uch other and further information as may be requested by the City.’ AUBURN MUN. CODE § 20.06.020(J). After application, two of the cities (Auburn and Olympia) require a public hearing before granting or revoking a franchise. Each of the franchise systems authorizes the Cities to consider discretionary factors that have nothing to do with the management or use of the right-of-way. The ordinances all regulate transferability of ownership, even requiring franchises to report stock sales. Some non-tax fees charged under the franchise agreements are not based on the costs of maintaining the right of way, as required under the Telecom Act.” (*Auburn*, 260 F.3d at 1175.)

Based on the *Auburn* decision any substantial attempt to regulate cell sites could be interpreted as having the “effect of prohibiting” services leading one to wonder exactly what section 253(b) allows local agencies to regulate.

State Law

47 U.S.C. section 253(c), notwithstanding the holding in *Auburn*, permits a State or local government “. . .to require fair and reasonable compensation from telecommunications providers . . .” for use of the right of way. Indeed, at a national telecommunications conference several years ago many local agencies reported charging franchise fees for various communications users. However, none were in California. That is because Public Utilities code section 7901 grants a statewide franchise to all telephone utilities allowing such companies unfettered use of the public right of way for telephone utility use. During the telecommunications boom of the late nineties we saw many companies certify themselves with the Public Utilities Commission as telephone utilities and then attempt to place utilities in the public right of way which provided services in addition to telephone (and in some cases provided everything but telephone service). Most took the position that as telephone utilities they could do whatever they wanted in the public right of way without regulation by the local agency.

This position was confirmed by the case of *Williams Communications LLC v. City of Riverside* (2003) 114 Cal.App.4th 642. In this case the City of Riverside had required a communications company to pay a license fee of \$750,103 for placing a fiber optic line in the public right of way. The term of the license was 35 years. The telecommunications company entered into the license agreement under protest. It had been certified as a telephone company by the California Public Utilities Commission and asserted that it was entitled to the statutory franchise exemption for telephone utilities set forth in Public Utilities Code section 7901. The City argued that section 7901 was inapplicable because there was no evidence that the lines installed would actually be used to provide telephone services. The City noted that the plaintiff did not actually offer telephone services to the public. The court ruled that as a telephone corporation any data lines installed by the plaintiff, even if carrying signals other than for telephone service, were entitled to the statutory exemption from local franchise fees. As a result local agencies are no longer able to assert that franchise fees and local regulation are applicable to telephone company installations in the public right of way. One last increment of local authority over the use of the right of way has eroded away.

The AT&T Lawsuit

In March 2003 AT&T Wireless filed suit against the City challenging the denial of two proposed cellular telephone installations. The suit alleged that there was no authority for the procedure followed by the City, the denials violated the 1996 Federal Telecommunications Act and section 7901 of the California Public Utilities Code. While the lawsuit was ultimately settled it served to motivate staff to bring the local

telecommunications regulation into compliance with Federal and State law to avoid future litigation.

DISCUSSION

The proposed ordinance establishes a clear local procedure for requiring and processing permits for telecommunications facilities both in the public right of way and on private property. The proposed amendments permit the City to regulate for aesthetic concerns, encourage co-location of facilities, and to protect public safety without running afoul of preemption issues raised by Federal or State law.

Permit Processing

Currently telecom facilities on public (non right of way) property are leases that are processed administratively through the Finance Director and approved directly by the City Council. Such applications are not subject to zoning regulations, however to the degree possible, the City has addressed concerns of the appearance of the facilities.

The majority of facilities, however are located on private property and are processed through Community Development Department by the planning staff. The planning staff typically checks for consistency with zoning standards such as setbacks and structure height limits, and whether the facility is adequately concealed or architecturally blended with the site to address aesthetics. Staff typically issues an administrative "Antenna Permit" for those sites that are within the height limit and can be adequately concealed with a screen or some type of camouflaging. Staff applies conditions to ensure consistency with the code.

However, all applications that do not comply with zoning standards are currently subject to review and approval by the Planning Commission through the use permit process and the City Council, upon appeal. This discretionary review is usually activated when a roof top site or monopole exceed the prescribed height limit.

Whether an administrative or discretionary process, Staff works towards the goal of meeting both the aesthetic needs of the community and the telecommunication carrier's need for service. However sometimes a carrier's need cannot be met without compromising aesthetics or existing views. The expectation of a property owner that has been served a notice of a public hearing on a pending use permit, has been that by participating in the review, he or she will make a difference in the end result. However, based on recent legal cases, it is clear that the City does not have the authority to deny or heavily condition an application out of concern for aesthetics.

The proposed code amendments repeal the existing telecommunications regulations in the Zoning Ordinance and consolidate them and re-locate them within Title 13 of the Municipal Code, which covers Public Utilities. In a separate application to the Coastal Commission,

likewise, the existing provisions in the City's Local Coastal Program zoning regulations will also be repealed and replaced with the Title 13 provisions (requires separate application to .

The proposed regulations are very similar to the prior regulations. The significant differences are as follows:

- "Telecommunications" is broadly defined to include many types of wireless communications such as cable television services, internet services, telephone services, cellular telephone services and other forms
- Applies to facilities on both public and private property and public right of way.
- "Telecom Permit" required, instead of "Antenna Permit" or Use Permit.
- Telecom sites must comply with applicable development standards, however may exceed the height limit, upon showing that the additional height is necessary.
- Final decision is by the Director of Community Development - no appeal to City Council.
- The current zoning expressly permits telecom sites only in non-residential zones, while the proposed ordinance, reflecting the law, would permit in a residential zone, only upon a determination that the requested service cannot be achieved on non-residential property.

In reviewing a Telecom Permit, Staff will have the authority to consider impacts on surrounding views and to require screening and architectural or other techniques to blend and camouflage the facility. In considering options, Staff can require that the applicant document and prove that the facility is the minimum required to meet the applicants purpose. In doing so, the City will have the authority to commission an expert consultant who, at the expense of the applicant, would assist the City in reviewing technical information.

Public Notice

Notice was published in the Beach Reporter (Exhibit B) in addition staff contacted interested parties, including Telecom providers and citizens who had previously expressed interest in this subject matter. No input has been received by Staff.

ENVIRONMENTAL REVIEW

The Project is Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to Section 15061, (b) (3) based on staffs determination that the project will not have a significant impact on the environment.

CONCLUSION

At present the City lacks comprehensive regulations for siting telecommunications facilities which are consistent with State and Federal law. As a result any future decision of the City regarding siting such facilities will be vulnerable to litigation. Since the Telecommunications Act provides for recovery of monetary damages and attorney fees in addition to reversing local regulatory decisions, this vulnerability needs to be addressed. While most local authority has been effectively preempted by State and Federal law staff believes the proposed ordinance retains the maximum permissible local authority over telecommunications facilities.

The attached resolution contains the detailed code amendments recommended by Staff.

ATTACHMENTS

- Exhibit A: Draft Resolution No.PC 04-____
- Exhibit B: Public Notice
- Exhibit C: Existing Zoning Telecom Regulations

RESOLUTION PC 04-

(DRAFT)

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH RECOMMENDING AMENDMENT OF THE MANHATTAN BEACH MUNICIPAL CODE AND MANHATTAN BEACH LOCAL COASTAL PLAN IMPLEMENTATION PROGRAM PERTAINING TO REGULATION OF TELECOMMUNICATIONS FACILITIES ON PUBLIC AND PRIVATE PROPERTIES AND THE PUBLIC RIGHT OF WAY CITY-WIDE.

THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The Planning Commission hereby makes the following findings:

- A. The Planning Commission conducted a duly noticed public hearing on October 27, 2004 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. 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;
- G. 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;
- H. 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;
- I. 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;
- J. 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

**RESOLUTION NO. PC 04-
DRAFT**

public to set forth consistent and predictable rules and procedures for siting of telecommunications facilities to the extent permitted by Federal and State law;

- K. 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)).
- L. 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. The Planning Commission of the City of Manhattan Beach hereby recommends that Section 10.60.130 of Chapter 10.60, Title 10, of the Manhattan Beach Municipal Code be repealed in its entirety and that a new Chapter 13.02 be 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 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 MANAGER means the City Manager of the City of Manhattan Beach or his or her designee.

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.

**RESOLUTION NO. PC 04-
DRAFT**

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 City owned, leased or occupied 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.

TELECOMMUNICATIONS means the transmission or reception 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 telecommunications facility on 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 from the California Public Utilities Commission.

TELEPHONE means an instrument or system for conveying speech over distances by converting sound into electric impulses.

TELEPHONE SERVICE means provision of a system providing voice communication, with a dial tone 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

**RESOLUTION NO. PC 04-
DRAFT**

the public right of way. An entity holding a certificate of public convenience 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 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. 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;
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 compared to 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, an RF study documenting the need for the placement of the facility at the requested location and in the requested configuration.
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.

D. 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

**RESOLUTION NO. PC 04-
DRAFT**

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 limited to selections of colors and finishes to match and blend with its surroundings.
 - f. That upon the cessation of use or abandonment of the facility it shall be promptly removed at the expense of the applicant.

E. 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.

F. 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.

G. 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.

H. 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

**RESOLUTION NO. PC 04-
DRAFT**

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.

- I. 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 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 13.020.100 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 Public Property

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.

**RESOLUTION NO. PC 04-
DRAFT**

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 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 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 13.020.030 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 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 underground upon formation of an underground utility district.

13.02.090 Telecommunications Facilities On Private Property

- 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 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. Notwithstanding any other provision of this code the decision of the Director shall be final.

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.

**RESOLUTION NO. PC 04-
DRAFT**

- C. 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, an RF study documenting the need for the placement of the facility at the requested location and in the requested configuration.
- D. 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 except for height limits. However, facilities proposed for residential zones must also show that non-residential locations for the facility are either not available or not feasible and that the lack of the facility at the applied for location will result in a prohibition of service.
 2. The facility shall only exceed applicable height limits to the extent such elevation is necessary to facilitate the purpose of the installation.
 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. 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, structurally and technologically feasible.
 5. All wires or cables necessary for operation shall be placed underground, except if attached flush to the building surface and are not highly visible from surrounding uses.
 6. No signage or advertisement shall be permitted except for required public safety signs.

**RESOLUTION NO. PC 04-
DRAFT**

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 or FCC standards.
 9. The Director reserves the right to impose any other condition consistent with the purpose of this Chapter.
- E. Amateur Radio Antennas. Notwithstanding any other provisions of this Chapter, 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 by building permit application submittal, provided the structure complies with the following requirements:
1. No portion of the antenna structure shall be located in any required yard and must maintain at least five feet (5') clear 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 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 Code, request relief from the requirements of this section from the Planning Commission.
- F. 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.
- G. 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.
- H. 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.
- I. 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.

13.020.080 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 a telecom facility activity.

13.020.090 Revocation

The Director 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. A written notice shall be mailed to the permittee of such revocation.

**RESOLUTION NO. PC 04-
DRAFT**

Within ten (10) days of mailing of such notice of revocation to the permittee, a written appeal of such action may be filed. Any such appeal shall be heard by the City Manager or his or her designee and his or her determination of the revocation shall be final.

13.020.110 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.

13.020.120 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. The Planning Commission of the City of Manhattan Beach hereby recommends that Chapter 13.02 of the Manhattan Beach Municipal Code, upon its effectiveness, be inserted into Chapter 3 (Codes, Resolutions, and Ordinances) of the Manhattan Beach Local Coastal Plan Implementation Program and that Section A.60.130 entitled “Antennae and microwave equipment” of the Manhattan Beach Local Coastal Plan Implementation Program be replaced by a cross-reference reading 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. The Planning Commission of the City of Manhattan Beach hereby recommends that Section 10.08.040 (P) of Title 10, of the Manhattan Beach Municipal Code and Section A.08.040 (P) of Title A of the Manhattan Beach Local Coastal Plan Implementation Program, entitled Public and semipublic use classifications, be amended to read 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 Planning Commission of the City of Manhattan Beach hereby recommends that the land use matrix of Section A.16.020 of the Manhattan Beach Local Coastal Plan Implementation Program be amended by changing P to U for the CNE zone as follows:

**RESOLUTION NO. PC 04-
DRAFT**

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 6. 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 7. If any sentence, clause, or phrase of this resolution 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 Planning Commission hereby declares that it would have passed this resolution 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 8. Any provisions of the Manhattan Beach Municipal 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.

I hereby certify that the foregoing is a full, true, and correct copy of the Resolution as adopted by the Planning Commission at its regular meeting of October 27, 2004 and that said Resolution was adopted by the following votes:

AYES:
 NOES:
 ABSENT:
 ABSTAIN:

RICHARD THOMPSON
 Secretary to the Planning Commission

SARAH BOESCHEN
 Recording Secretary

NOTICE OF A PUBLIC HEARING TO CONSIDER A PROPOSED ORDINANCE PERTAINING TO REGULATION OF TELECOMMUNICATION FACILITIES CITY-WIDE. THE PROPOSED ORDINANCE WILL AMEND THE MANHATTAN BEACH MUNICIPAL CODE BY ADDING A NEW CHAPTER 13.02 TO TITLE 13 AND REPEALING SECTION 10.60.130 OF TITLE 10 (ZONING ORDINANCE). THE PROPOSED ORDINANCE WILL ALSO REPEAL SECTION A.60.130 OF THE MANHATTAN BEACH LOCAL COASTAL PLAN IMPLEMENTATION PROGRAM.

A public hearing will be held before the Planning Commission of the City of Manhattan Beach to consider proposed amendments to the Manhattan Beach Municipal Code and Local Coastal Program relating to the regulations of telecommunication facilities city-wide. The proposed ordinance will repeal Chapter 10.60.130 of Chapter 10.60 entitled “Wireless service facilities, amateur radio and satellite dish antennas” and add a new chapter 13.02, entitled “Regulation of Telecommunication Facilities” to Title 13 of the Manhattan Beach Municipal Code. The proposed ordinance will also repeal Section 10.60.130 of the City’s Local Coastal Plan Implementation Program, with the intent that it will apply within the coastal zone. The purpose of the proposed ordinance is to consolidate regulations City-wide pertaining to a wide variety of telecommunication facilities on both public and private property consistent with legal requirements. The proposed ordinance establishes standards for telecommunications facilities on both private and public property, including but not necessarily limited to cable television, telephone, cellular telephone and wireless radio service communications. The applicant is the City of Manhattan Beach.

The project as described is determined to be exempt from CEQA (California Environmental Quality Act) pursuant to State CEQA Guidelines, Section 15061 (b) (3), on the basis that it proposes minor changes in the code requirements, mainly to clarify existing regulations. Therefore the project is not expected to have a significant effect on the environment.

The hearing will be held: October 27, 2004 (Wed), 6:30 p.m., City Council Chambers at City Hall, 1400 Highland Avenue, Manhattan Beach

Proponents and opponents may be heard at that time. Further information may be obtained by contacting Rosemary Lackow, Senior Planner, 802-5515, rlackow@citymb.info. The project file is available for review at the Community Development Department at City Hall. A Staff Report will be available for public review at the Civic Center Library on Saturday, October 23, 2004 or at the Community Development Department on Monday, October 25, 2004.

Oral and written testimony will be received at the public hearing. Anyone wishing to provide written comments for inclusion in the staff report must do so on or before October 20, 2004. Written comments received after this date will be forwarded to the Planning Commission at or before the public hearing but will not be addressed in the staff report. Submit written comments to the Planning Commission, c/o Director of Community Development at the above City Hall address.

If you challenge the proposed actions in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in correspondence delivered to the Planning Commission at or prior to the public hearing.

RICHARD THOMPSON, Director of Community Development
Publish October 14, 2004 – Beach Reporter

CITY OF MANHATTAN BEACH

Home	Visitor Info	City Council & Treasurer	Boards & Commissions	Departments	Resources	Calendar	Municipal C
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Municipal Codes

Chapter 10.60 SITE REGULATIONS--ALL DISTRICTS

Section 10.60.130 Wireless service facilities, amateur radio and satellite dish antennas.

A. **Purpose.** To establish procedures and regulations for processing wireless service facility applications in all non-residential areas and to create consistency between federal legislation and local ordinances regarding amateur radio and satellite dish antennas. The intent of these regulations is to protect the public health, safety and general welfare while ensuring fairness and reasonable permit processing time.

B. **Permit Required.** An antenna permit shall be required for the construction, modification and placement of all 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). Wireless service facilities shall only be permitted in non-residential zoning districts.

Exceptions. An antenna 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.

C. **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 must maintain at least five feet (5') clear 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 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 Code, request relief from the requirements of this section from the Planning Commission.

D. **Wireless Service Facilities and Satellite Dish Antenna Regulations.** Antenna permit applications shall be processed either administratively or shall require a use permit as follows:

1. **Administrative Review.** Applications for satellite dish antennas and roof, wall or similarly mounted wireless service facilities including modification to existing monopole structures, successfully integrated with the natural or built environment, may be administratively approved if the proposal is in compliance with the following applicable standards:

- a. The proposed facility shall comply with all applicable development standards of the base district in which it is located.



b. Roof wall or similarly mounted facilities and satellite dishes exceeding the existing structure height, or otherwise visible from the surrounding area, shall be screened on all sides to the satisfaction of the Director of Community Development. Screening shall be architecturally integrated and compatible with the site on which it is located by incorporating appropriate use of color, texture, material and vegetation.

c. Requests for collocation on existing monopoles or other wireless service facilities that do not increase the height, bulk or otherwise adversely detract from the existing facility, may be administratively approved if aesthetically acceptable, structurally and technologically feasible.

d. All wires or cables necessary for operation shall be placed underground, except if attached flush to the building surface and are not highly visible from surrounding uses.

e. No signage or advertisement shall be permitted except for required public safety signs.

f. Exterior facility lighting and fencing shall not be permitted unless required by federal regulations or by the Director of Community Development for safety purposes.

2. **Use Permit Review.** A use permit shall be required pursuant to Chapter 10.84 for the construction, modification or placement of all satellite dish antennas and wireless service facilities not previously exempted or that fail to comply with the administrative standards listed above. In addition to Chapter 10.84, the Planning Commission must make the following findings to approve an antenna permit:

a. The proposed antenna and associated equipment blends into the surrounding environment, or provides adequate concealment through architecturally integrated elements.

b. Where screening potential is low, innovative designs have been incorporated to reduce the visual impact.

c. The applicant has demonstrated good faith to collocate on existing facilities or sites.

d. The impact on surrounding residential views has been considered.

3. **Submittal Requirements.** The following material shall be submitted with an application request for an antenna permit:

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. Color renderings, or photographs 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, 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 compared to accepted FCC standards, if applicable;

f. Information demonstrating compliance with applicable building, electrical, mechanical and fire codes and other public safety regulations.

For projects requiring a use permit, documentation demonstrating compliance with the findings in subsection (D)(2) of this section and additional submittal information and material identified in Chapter 10.84 (including an application form, notification packet environmental information form, etc.), shall also be provided.

E. **Abandonment.** 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.

(Ord. No. 1832, Amended, 01/17/91; Ord. No. 1838, Renumbered, 07/05/91; § 3, Ord. 1978,

**CITY OF MANHATTAN BEACH
COMMUNITY DEVELOPMENT DEPARTMENT**

TO: Planning Commission

THROUGH: Richard Thompson, Director of Community Development

FROM: Robert V. Wadden, City Attorney
Rosemary Lackow, Senior Planner

DATE: December 8, 2004

SUBJECT: 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.

RECOMMENDATION

Staff recommends that the Planning Commission **CONDUCT THE PUBLIC HEARING**, and **ADOPT** the attached Resolution, recommending changes to the Municipal Code regarding regulation of telecommunication facilities (Exhibit A).

BACKGROUND

The City Council, in its 2004/2005 Work Plan directed Staff to develop process and procedures to handle cell site applications and incorporate them into a telecommunications ordinance. On October 27, 2004, the City Attorney presented a draft ordinance to the Planning Commission recommending changes to City telecommunications permitting policy. The Planning Commission received public input and directed Staff to revise the draft ordinance to address the public's concerns (Exhibit B, minutes). The main concern expressed was that the ordinance did not provide opportunity for public notice and input in the permit process especially with regard to prominent telecom facilities or facilities in residential neighborhoods.

DISCUSSION

The proposed ordinance has been revised to include a notice provision for applications seeking to place telecommunications facilities on private properties (Section 13.02.090F). Notice is required for any application to place a facility on private property which does not employ "stealth technology" (a definition was added to section 13.02.020) and which does not comply with the standards of the zone in which it is located. Notice must be provided to every property owner within five hundred (500) feet of the proposed facility. Staff has prepared a sample notice, should this provision be adopted (Exhibit C).

Similarly appeal provisions have been added (Section 13.02.090G) which provide that any project which does not employ stealth technology and does not comply with the standard of the zone in which it is located may be appealed to the City Council. Because of the time constraints imposed by Federal law a short turn around time for appeals is specified.

A new section 13.020.100 has been added which establishes specific criteria for denial of a telecommunications permit in order to provide guidance to the decision maker based on the narrow grounds provided by courts for denial of such permits.

The section on underground districts has been revised to clarify the responsibility of site owners to move their facilities in the event surrounding utilities are placed underground.

Staff has incorporated a new recommendation in Section 6 of the draft Resolution to revise Section 10.60.060 of Title 10 (entitled "Exceptions to height limits"). The recommendation is to eliminate an existing provision that allows property owners to apply for a Use Permit to allow additional height (in addition to 10-feet above the prescribed structure height limit) for television and radio antennas and vent pipes. Staff believes that, although not directly related to commercial telecommunications this is a minor "housekeeping" issue that should be addressed at this time. This provision has never been utilized, nor has it proven to be necessary for homeowners. The existing code height seems to be more than adequate for such facilities, and the much larger amateur ham radio facilities have a special code section that addresses their need for height.

Other Cities

The Planning Commission requested information as to how other cities regulate telecommunication facilities. Staff has collected and reviewed several telecom ordinances and finds that most require either a Use Permit or other special approval process in some cases at the Staff level upon making certain findings. Many prohibit or discourage cell sites in residential zones. All ordinances address aesthetic issues and encourage co-location and stealth camouflaging and require the wireless facility be integrated into the site. Staff will provide a brief summary of ordinances at the public hearing.

Public Input

Staff published a large display ad in the Beach Reporter on November 4th notifying of the continued public hearing. Staff received one letter dated December 1st from a citizen regarding this matter, which contains suggestions for changes to the ordinance. A copy is attached for the Commission's review (Exhibit D). Staff will address any related questions or concerns that the Commission may have at the public hearing.

ENVIRONMENTAL REVIEW

The Project is Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to Section 15061, (b) (3) based on staffs determination that the project will not have a significant impact on the environment.

CONCLUSION

At present the City lacks comprehensive regulations for siting telecommunications facilities which are consistent with State and Federal law. As a result any future decision of the City regarding siting such facilities will be vulnerable to litigation. Since the Telecommunications

Act provides for recovery of monetary damages and attorney fees in addition to reversing local regulatory decisions, this vulnerability needs to be addressed. While most local authority has been effectively preempted by State and Federal law staff believes the proposed ordinance retains the maximum permissible local authority over telecommunications facilities.

The attached resolution contains the detailed code amendments recommended by Staff. (Changes are underlined and marked in the left-hand margin of the document).

ATTACHMENTS

Exhibit A: Draft Resolution No. PC 04 -

Exhibit B: PC Minutes (The 10/27/04 PC Staff Report may be accessed on the City website www.citymb.info – see Boards and Commissions)

Exhibit C: Sample Notice

Exhibit D: Citizen letter dated 12/1/04 with attachments

H:\Code Amendments\Telecom Ord-2004\PC Staff Report 12-08-04.doc

RESOLUTION PC 04-

(DRAFT PC 12-08-04)

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH RECOMMENDING AMENDMENT OF THE MANHATTAN BEACH MUNICIPAL CODE AND MANHATTAN BEACH LOCAL COASTAL PLAN IMPLEMENTATION PROGRAM PERTAINING TO REGULATION OF TELECOMMUNICATIONS FACILITIES ON PUBLIC AND PRIVATE PROPERTIES AND THE PUBLIC RIGHT OF WAY CITY-WIDE.

THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The Planning Commission hereby makes the following findings:

- A. The Planning Commission conducted duly noticed public hearings on October 27, and December 8, 2004 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. 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;
- G. 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;
- H. 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;
- I. 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;
- J. 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

**RESOLUTION NO. PC 04-
DRAFT**

public to set forth consistent and predictable rules and procedures for siting of telecommunications facilities to the extent permitted by Federal and State law;

- K. 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)).
- L. 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. The Planning Commission of the City of Manhattan Beach hereby recommends that Section 10.60.130 of Chapter 10.60, Title 10, of the Manhattan Beach Municipal Code be repealed in its entirety and that a new Chapter 13.02 be 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 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 MANAGER means the City Manager of the City of Manhattan Beach or his or her designee.

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.

**RESOLUTION NO. PC 04-
DRAFT**

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 City owned, leased or occupied 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 telecommunications facility on 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 from the California Public Utilities Commission.

TELEPHONE means an instrument or system for conveying speech over distances by converting sound into electric impulses.

TELEPHONE SERVICE means provision of a system providing voice communication, with a dial tone between points.

**RESOLUTION NO. PC 04-
DRAFT**

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. An entity holding a certificate of public convenience 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 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. 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;
 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 compared to 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, an RF or other study evaluating the need for the placement of the facility at the requested location and in the requested configuration.
 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.
- D. 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

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**RESOLUTION NO. PC 04-
DRAFT**

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 limited to selections of colors and finishes to match and blend with its surroundings.
 - f. That upon the cessation of use or abandonment of the facility it shall be promptly removed at the expense of the applicant.
- E. 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.
- F. 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.
- G. 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

**RESOLUTION NO. PC 04-
DRAFT**

her sole discretion after due consideration, shall either grant or deny the extension of time for such development and use.

- H. 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.
- I. 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 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 13.020.100 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 Public Property

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

**RESOLUTION NO. PC 04-
DRAFT**

the City. Applications shall be submitted to the City Manager or his or her designee.

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 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 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 13.020.030 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

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 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. Notwithstanding any other provision of this code the decision of the Director shall be final.

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

**RESOLUTION NO. PC 04-
DRAFT**

direct-to-home satellite service and multi-channel multi-point distribution services (MMDS) on masts not exceeding twelve feet (12') in height.

- C. 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, an RF ~~or other~~ study evaluating the need for the placement of the facility at the requested location and in the requested configuration.

Deleted: documenting

- D. 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 except for height limits. However, facilities proposed for residential zones must also show that non-residential locations for the facility are either not available or not feasible and that the lack of the facility at the applied for location will result in a prohibition of service.
2. The facility shall only exceed applicable height limits to the extent such elevation is necessary to facilitate the purpose of the installation.
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. 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, structurally and technologically feasible.
5. All wires or cables necessary for operation shall be placed underground, except if attached flush to the building surface and are not highly visible from surrounding uses.

**RESOLUTION NO. PC 04-
DRAFT**

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 or FCC standards.
 9. The Director reserves the right to impose any other condition consistent with the purpose of this Chapter.
- E. 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 must maintain at least five feet (5') clear 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 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 Code, request relief from the requirements of this section from the Planning Commission.

F. Notice. For any application which 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 notice shall be given to all property owners located within five hundred (500) feet of the proposed location of the installation at least seven calendar days prior to the final decision of the Director.

G. Appeal. 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. All other applications may have the Director's decision appealed to the City Council. Any such appeal must be filed within ten (10) calendar days of the date of the 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 "F" above. No published notice shall be required. The City Council may set an appeal fee by resolution.

Deleted: Finality of Decision

- G. 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.
- H. 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.
- I. 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

**RESOLUTION NO. PC 04-
DRAFT**

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.

13.020.100 Denial of Telecommunications Permit

The Director or, where applicable the City Council on appeal, 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 the proposed facility is not necessary for provision of service by the applicant;

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.

13.020.110 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.

13.020.120 Revocation

The Director 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 Director shall make the findings required under Section 13.020.100 above. A written notice shall be mailed to the permittee of such revocation. Within ten (10) days of mailing of such notice of revocation to the permittee, a written appeal of such action may be filed. Any such appeal shall be heard by the City Manager or his or her designee and his or her determination of the revocation shall be final.

13.020.130 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.

13.020.140 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

**RESOLUTION NO. PC 04-
DRAFT**

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. The Planning Commission of the City of Manhattan Beach hereby recommends that Chapter 13.02 of the Manhattan Beach Municipal Code, upon its effectiveness, be inserted into Chapter 3 (Codes, Resolutions, and Ordinances) of the Manhattan Beach Local Coastal Plan Implementation Program and that Section A.60.130 entitled “Antennae and microwave equipment” of the Manhattan Beach Local Coastal Plan Implementation Program be amended to include a cross reference 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. The Planning Commission of the City of Manhattan Beach hereby recommends that Section 10.08.040 of Title 10, of the Manhattan Beach Municipal Code and Section A.08.040 of Title A of the Manhattan Beach Local Coastal Plan Implementation Program, entitled Public and semipublic use classifications, be 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 Planning Commission of the City of Manhattan Beach hereby recommends that the land use matrix of Section A.16.020 of the Manhattan Beach Local Coastal Plan Implementation Program be 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 6. The Planning Commission of the City of Manhattan Beach hereby recommends that Section 10.60.060 of Title 10, of the Manhattan Beach Municipal Code the entitled Exceptions to height limits be 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 7. 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

**RESOLUTION NO. PC 04-
DRAFT**

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 7. If any sentence, clause, or phrase of this resolution 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 Planning Commission hereby declares that it would have passed this resolution 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 8. Any provisions of the Manhattan Beach Municipal 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.

I hereby certify that the foregoing is a full, true, and correct copy of the Resolution as adopted by the Planning Commission at its regular meeting of ----- and that said Resolution was adopted by the following votes:

AYES:
NOES:
ABSENT:
ABSTAIN:

RICHARD THOMPSON
Secretary to the Planning Commission

SARAH BOESCHEN
Recording Secretary

Planning Commission Meeting 10/27/04

Telecom minutes excerpt (draft)

04/1027.1 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 Attorney Wadden summarized the staff report. He said that the main purpose for the proposal is to comply with changes in Federal law and rulings of recent cases which have interpreted the law and have severely limited the City's authority over telecommunication installations. He commented that the City received proposals for several telecommunications facilities after the Federal Telecommunications Act was passed in 1996, and there was no language in the Code to address such projects. He indicated that only one of the original applicants actually installed cable within the City. He said that because of technological advances in the last couple of years, cell sites are now being proposed within the right-of-way, and there is no language in the Code to address such projects. He commented that the decision in the Auburn v. Quest case in 2001 clarified that the City's right to regulate cell sites is very limited. He indicated that AT&T sued the City in 2003 after the City denied two cell sites in the public right-of-way. He commented that AT&T has gotten a substantial judgment against the City of San Clemente after a cell site was denied for aesthetic reasons. He indicated that the City's case with AT&T was settled with a mutually agreeable arrangement and without the City having to pay damages. He said that a case involving the City of Riverside held that cell sites or other telecommunications facilities may be in the public right-of-way as long as they are installed by a company with a Certificate of Public Convenience and that such sites may not be regulated by local jurisdictions. He commented that the City has only limited authority to manage construction standards and times and quality of repair work.

City Attorney Wadden indicated that the proposed Ordinance ensures that logistics of installations are addressed; that co-location is used whenever possible; that reporting of greater frequency exposures is required so that the cumulative radiation of multiple facilities located in close proximity will not effect public health based upon Federal guidelines; and that regulations that generally protect the right-of-way are met. He said that approval for telecommunication facilities would be an administrative permit that would be managed by the Director of Community Development with input from the City Engineer. He indicated that the standards for telecommunication facilities included in Title 10 of the Code are included in the Ordinance. He commented that the proposed Ordinance would change the process from a Use Permit to an administrative review. He said that the permit process would not include a right of appeal. He commented that public hearings as part of the process for approving these types of installations are disapproved by the 9th Circuit Court. He commented that the City would prefer that the public be involved in the permit process. He stated, however, that the law has been clear that the City may only limit construction hours; require collocation; and request information regarding radio frequency strength. He commented that the City has the

ability to request screening provided that it does not interfere with the functionality of the antennas. He indicated that language is included in the proposed Ordinance that companies offering cable television or internet service would be required to obtain a franchise agreement if they are not a certified telephone corporation. He said that staff has attempted to retain as much control as possible in the proposed Ordinance while still adhering to Federal law.

In response to a question from Commissioner Kuch, City Attorney Wadden indicated that there is no allowance in the decision of the Auburn case for noticing of public hearings. He commented that there is nothing in the Federal law prohibiting the public from providing input, but hearings may not be held in front of the Commission or City Council. He stated that it is implied in the Auburn case decision that the process must be administrative and that any delay is essentially a denial of the right of the telecommunications companies to operate within a jurisdiction. He indicated that the City's discretion is so limited that noticing hearings would unrealistically raise the expectation of the public that regulations could be imposed which are actually beyond the City's jurisdiction.

Director Thompson commented that the process of approval for cellular sites in the proposed Ordinance would be similar to the current process of administrative approval for building permits that comply with Code requirements.

In response to a question from Commissioner O'Connor, City Attorney Wadden said that he is not aware of any other suits by telecommunication companies filed against the City other than the suit filed by AT&T; however he is not aware of any other facilities that have been denied by the City. He indicated that the settlement with AT&T involved agreeing on other locations for the cellular sites.

In response to a question from Commissioner O'Connor, Senior Planner Lackow indicated that staff received an e-mail from **Don McPherson** in response to the notice indicating that he was in the process of reviewing the staff report and that he would be attending the hearing. She said that staff also received a comment from an attorney representing one of the telecommunication companies. She indicated that staff contacted representatives of telecommunication companies who had previously indicated that they would like to be notified of any proposed changes to ordinances regarding telecommunication facilities. She indicated that the notice appeared in the Beach Reporter regarding the hearing on October 14, 2004.

In response to a question from Commissioner O'Connor, City Attorney Wadden indicated that the City values public opinion and would definitely allow decisions regarding approval of telecommunication facilities to be appealable if it were not for the laws as written. He commented that the Auburn decision has not been appealed or at least not accepted by the U.S. Supreme Court.

In response to a question from Commissioner Simon, City Attorney Wadden indicated that the City can condition based on aesthetic concerns to the extent that any regulations

do not interfere with the functionality of the installation. He commented that the City needs an expert consultant to determine the impacts to the functionality of sites in some cases.

In response to a question from Commissioner Simon, City Attorney Wadden said that other cities have recently enacted similar ordinances regarding telecommunication sites, including Torrance.

In response to a question from Commissioner Simon, City Attorney Wadden indicated that the City has a much greater ability to protect residential neighborhoods, and there is greater discretion when installations are placed on private property rather than in the right-of-way.

Chairman Montgomery opened the public hearing.

Don McPherson, a resident of the 1000 block of 1st Street, said that the proposed Ordinance change is a staggering overreaction to the lack of process included in the Code for permitting antennas in the public right-of-way. He indicated that the case law cited by the City Attorney involves projects in the public right-of-way; however, the proposed Ordinance would also apply the changes to private property and residential areas. He stated that the new Ordinance would not allow residents any participation in the approval process. He indicated that with the proposed Ordinance, residential and commercial properties could potentially be rented or sold to cell operators and neighbors would have no input. He commented that it would be much more profitable for property owners to lease or sell their homes to cellular companies rather than other potential buyers. He said that if the existing Ordinance had such legal vulnerability, more lawsuits would have already been filed. He indicated that the City has accomplished a great deal in scaling down projects with the help of public input. He said that the City has no expertise to argue with the cellular companies regarding technical requirements for cell sites. He commented that he has been impressed with the process on the consideration of previous wireless antenna applications. He indicated that the proposed Ordinance should only apply to the public right-of-way and not private property. He said that he does not believe that lawsuits from wireless companies are prevalent enough in Southern California to justify this dramatic change to existing regulations. He stated that it is important to determine the number of suits that have actually been filed. He suggested possibly establishing a work group to study the current regulations used by different cities regarding wireless facilities. He also suggested establishing a database between cities to coordinate information about their regulations. He commented that he does not believe the Ordinance includes a process to force the wireless companies to agree to the minimum that they are willing to accept.

Esther Besbris, a resident of 2nd Street, said that this is an alarming proposal to consider changing a Conditional Use Permit process to an administrative approval process for which the public will receive no notice. She said that staff's objectivity does not equal the subjectivity provided by residents. She stated that considering allowing any telecommunication facilities within the residential area without residents having an

opportunity to provide input is reprehensible. She commented that the proposed Ordinance includes a provision such that telecommunication facilities would be permitted in a residential zone if service cannot be achieved on nonresidential property; however the method by which that determination is made is not clear. She said that the residents must be allowed to have a voice in such decisions, and anything less does not meet the expectations of the residents. She said that citizens do have an expectation that they have a right for their opinions to be heard and needs met in the decisions made by the City.

Martha Andreani, a resident of the downtown area, said that she agrees with the comments of the other speakers. She indicated that she would like to be involved in more public testimony regarding the potential impact of wireless antenna proposals. She commented that she was present at the hearings when AT&T indicated originally that they could not make any changes to their proposal and then in the end agreed to alter their plans. She said that she agrees that the citizens need an opportunity to have a voice in where the antennas will be placed. She said that she did not see the notice for the subject hearing in the Beach Reporter and questions whether it is an official publication of the City. She suggested that the notification process for hearings be reviewed at some point in the future.

Chairman Montgomery closed the public hearing.

Commissioner Savikas commented that the representatives of several telecommunications companies who were present at a planning conference she recently attended indicated that there is a large business in representing companies against municipalities. She said that the City does need to take preventative measures to protect against lawsuits, which is the purpose of the proposed amendment.

Commissioner Simon stated that his support of the Ordinance would be based on the City Attorney being the most qualified to interpret the Federal law requirement that public input cannot be considered in such approvals.

In response to a comment from Commissioner Simon, City Attorney Wadden commented that the Telecommunications Act applies to all areas within the City and not only within the public right-of-way. He said that distinction between public and private property is not made to any great degree in the Telecommunications Act, and any distinctions between the two are made in State rather than Federal law. He indicated that City staff would prefer to have input from the public on such issues; however, it has become clearer through the law that cities have a limited and prescribed roll in the regulation of telecommunication facilities. He commented that frustration and anger of the residents who have spoken would be more appropriately directed to the federal government rather than the City.

Commissioner Kuch commented that he would not want the Commission's decision to leave the City vulnerable to lawsuits. He commented, however, that it seems a shame that the City does not have control over telecommunication companies placing antennas

throughout the City at the same time that thousands of dollars are being spent for the undergrounding of utilities.

City Attorney Wadden commented that the City can require that cell sites located on utility poles be relocated when the utility poles are removed for undergrounding.

Director Thompson said that there is a provision in the proposed Ordinance that existing wireless facilities on utility poles are required to relocate when the poles are removed for undergrounding. He commented that new methods are being developed for hiding wireless facilities such as placing them on light poles.

City Attorney Wadden commented that utility poles are owned by the utility companies, and the poles are required to be removed when an undergrounding district is established. He indicated that any conflict regarding relocating of existing cell antennas on utility poles would be between the utility company and the telecommunications company. He indicated that the City is not required to retain utility poles located within the right-of-way.

Commissioner O'Connor commented that he does not think the language of the first and last sentence of 13.02.080 in the Ordinance should imply that wireless antennas are required to be placed underground when a utility pole is removed.

In response to a comment by Commissioner O'Connor, City Attorney Wadden suggested adding the words "or relocated" to the first and last sentence of 13.02.080.

Commissioner O'Connor stated that he shares the sentiment expressed by the speakers and has difficulty accepting the conclusion that the City has no legal choice other than adopting the proposed Ordinance. He said that he is particularly troubled by a law that removes the public process from issues that have received a great deal of public input in the past. He said that he would like to have further information regarding Ordinances used by other cities, and he is not certain that Manhattan Beach should be first in adopting such an Ordinance. He said that he has concern with placing a great deal of authority on the Community Development Director in granting such applications with no oversight. He commented that while he does not mean to reflect on the judgment of the current Director, he feels there is a possibility that a future Community Development Director could potentially abuse such authority. He commented that he does not feel at this point that he would be able to support the proposed Ordinance. He suggested the possibility of including an appeal to a closed session of City Council or a subcommittee of the Council. He suggested that Page 4 Item C(7) of the Ordinance be revised to state: "At the discretion of the Director or his or her designee the City may commission at the applicant's expense, an RF or other study "evaluating" the need for the placement of the facility at the requested location and in the requested configuration." He also commented that the use of the results of such a study should be specified.

City Attorney Wadden commented that a closed session of the City Council would be illegal, and a Subcommittee of the Council would be illegal under the Brown Act.

Commissioner Savikas commented that it may be high risk to lead the charge in passing such an Ordinance, and perhaps more information from other cities would be beneficial. She stated, however, that she is concerned with the financial risk of additional lawsuits. She said that she would like the possibility of other alternatives to be explored further.

Commissioner O'Connor commented that the City is surviving for the time being with the current process of considering such applications. He indicated that he feels it is worth spending additional time to study the issue further and for more information to be gathered regarding the practice of other cities.

Director Thompson pointed out that the City Attorney has come forward with the proposal and presenting the reasons for adopting such an Ordinance. He indicated that staff would be willing to bring back further information from other cities.

Chairman Montgomery said that he is concerned regarding removing public input from the process of approval for an issue that has generated a great deal of public comment in the past. He commented that he also would like further information regarding the Ordinances used by other cities.

Director Thompson pointed out that staff can review and approve applications for wireless facilities administratively under the current Ordinance where the antennas are not visible from view.

Director Thompson suggested adding language to ensure that the cost of relocating a wireless facility on a utility pole that is removed as a result of undergrounding would not be placed on the undergrounding district.

Commissioner Kuch suggested possibly establishing an oversight committee that could serve to oversee the decision of the Director without delaying the process.

Commissioner O'Connor said that he would like information as to which cities are still retaining their old Ordinances.

City Attorney Wadden pointed out that there would not be an issue with keeping the existing Ordinance provided the telecommunication companies are granted their requests, and the legality of the Ordinance is only in question when applications are restricted or denied. He indicated that the proposed Ordinance would give the City a stronger legal position in regulating telecommunication companies than the existing Ordinance.

A motion was MADE and SECONDED (Kuch/Simon) to **REOPEN** and **CONTINUE** 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 to December 8, 2004.

In response to a comment from Commissioner O'Connor, Director Thompson indicated that staff would place a display add in the Daily Breeze to notice the continued hearing.

**CITY OF MANHATTAN BEACH
NOTICE OF APPLICATION FOR A TELECOM PERMIT**

(DRAFT/SAMPLE)

The Community Development Department is currently reviewing an application for a Telecom Permit for a proposed telecommunications facility. City staff has determined that the application does not meet applicable zoning standards with respect to *(fill in appropriate code section/provision)* and/or the installation does not adequately blend with the site or its surroundings. *(Indicate which criteria is met)* Therefore the public is hereby notified of the pending application.

Applicant: XXXXXXXXXX
Notice Date: XXXXXXXX *(sample date)*
Project File Number: XXXXX
Project Location: XXXXX
Project Description: *(Provide detailed description of project including any shielding or design elements intended to blend the project with the site)*

Environmental

Determination: *(provide CEQA determination)*
Project Planner: *(name/phone number/e-mail address of case planner)*
Further Information: Additional information can be obtained by reviewing the project file available at the Community Development Department, Manhattan Beach City Hall, Monday through Friday 8:00AM to 5:00PM, or by contacting the project planner (see above) during the same hours at the above phone number or e-mail address.

Public Comments: Written and oral comments may be submitted to the City, but must be received by (date to be 7 calendar days after date of notice). After this date the Community Development Department will render a decision on the application. Comments shall be sent to:

City of Manhattan Beach
Community Development Department
1400 Highland Avenue
Manhattan Beach, CA 90266

(No new notice informing of the decision regarding this application will be made by the Community Development Director – contact the Department for information regarding the decision.)

Appeals: The decision may be appealed to the City Council within ten (10) calendar days following the action by the Director. The necessary appeal forms and procedures will be provided upon request. Appeals shall be accompanied by a fee in the amount of \$XXX.

RICHARD THOMPSON
Director of Community Development

Mailing Date: *(provide date mailed out)*

1 December 2004

Planning Commission
City of Manhattan Beach
1400 Highland Ave
Manhattan Beach CA 90266

Subject: Testimony re Telcom Ordinance, 8 December 2004

Summary. The proposed telecommunication ordinance has three serious flaws that will lead to an unnecessary, if not disastrous, proliferation of unsightly antennas, referenced to draft resolution pages and proposed ordinance sections as follows:

- Prohibits public participation in the permit process and denies appeals to governing body, at pg. 3, §13.02.030 F and at pg. 9, §13.02.090 F
- Permits cell antennas on residential property, at pg. 8, §13.02.090 D1
- Allows wireless companies to build antennas as high as they can technically justify for their purpose, at pg. 8, §13.02.090 D2

The city erroneously claims that the Telecommunications Act of 1996 mandates that they must grant these extraordinary powers to wireless companies. Nothing can be further from the truth. The 1996 Act simply prohibits local governments from blocking implementation of wireless services. As Manhattan Beach has demonstrated for many years, each locality has discretion as to how it will permit telecommunications providers to operate within its bounds. In fact, obviously overlooked by staff, the 1996 Act specifically preserves local zoning authority “over decisions regarding the placement, construction, and modification of personal wireless service facilities.”

Conversely, once the city changes the ordinance and grants an antenna permit as per the three appalling rights listed above, they cannot go back and change the ordinance to fix these glaring errors. The 1996 Act does mandate that all providers must be treated equally, so the city must live with this ordinance ad infinitum!

I have previously emailed the planning commission a concept, Attachment A, that gives the public the right to appeal the city administrative decision, yet streamlines the approval process, while motivating the city and wireless companies to implement low-visibility antennas.

In the body of this paper, I argue that the ordinance must not permit antennas on residential properties or permit wireless companies to erect antennas as high as they want. The city has not provided any analysis justifying their claims that wireless companies need such rights to provide service in the city. I also provide a comment section on other necessary changes, such as ensuring that underground assessment districts do not bear the cost of relocating antennas in the public right of way.

Telecommunications Act of 1996. The city erroneously claims that in order to provide wireless services, the 1996 Act mandates permitting cell site antennas on residential property, letting wireless companies to build antennas as high as they can technically justify, and excluding the public from participating in the permit process. The 1996 Act specifies only two limitations on local authority, shown in Attachment B and summarized herein:

- Section 253(a) of the Act does not allow local authorities to block any entity from providing any telecommunications service. This section does not prohibit municipalities from determining how they will permit wireless services by common carriers. Manhattan Beach Municipal Code 10.60.130 represents our city's approach, and it has withstood the test of time for antennas on private property. It does lack a process for public right of way, however, a special situation identified in the 1996 Act, the next bullet.
- In Section 253 (c), the 1996 Act specifies use of public right of way by common carriers, and specifically, in the situation before the city, wireless companies. On this matter, I agree with the proposed ordinance at §13.02.030, although have subsequently listed a few modifications.

Most importantly, the 1996 Act specifically preserves the local zoning authority of the city “over decisions regarding the placement, construction, and modification of personal wireless service facilities,” shown in Attachment C, Section 704 (a) 7, Preservation of Local Zoning Authority. According to federal law, our antenna ordinance, MBMC 10.60.130, is alive and well!

City Failure to Justify Its Claims re Residential Property and Height. The 1996 Act prohibits local authorities from blocking telecommunication services, but does not legislate at all the means by which municipalities permit providers to operate within their bounds. In fact, the 1996 Act specifically validates the existing MBMC 10.60.130 code section regarding antennas that oddly has served us so well. The city claims in the new ordinance that to provide services, the wireless companies must build on residential properties and must permit antennas as high as technically can be justified. Where is the city's analyses proving these claims? Commissioners must ask staff that question: Where is your analysis?

What expertise does the city have to determine that without antennas on residential properties, wireless services cannot be provided? What analyses has the city done to prove, that instead of the existing distributed low-visibility antennas to provide coverage, wireless entities must have a few powerful massive towers strung along Sepulveda Blvd, Crest Dr in the Sand Section, and Aviation Blvd “to facilitate the purpose of the installation”, in the language of the ordinance? (These towers would also profitably provide signals to adjacent communities.)

Who among the city staff or their consultants can prove that distributed low-visibility antennas limited to public and commercial properties, as required by MBMC 10.60.130, cannot provide coverage? Wireless companies would love to do this analysis for the city at no charge. In fact, they would pay the city big bucks to justify staff's claims.

The city has failed to provide any analysis proving that wireless companies must have antennas on residential properties or “exceed the height limits to the extent such elevation is necessary to facilitate the purpose of the installation.” Attorneys for wireless companies will love to take the city to court over that legally fuzzy subjective clause.

Additional Comments. I request that the planning commission reject the proposed telecommunications ordinance in its entirety and send staff back to only incorporate into the existing MBMC 10.60.130 antenna ordinance a section dealing with public right of way, with standards similar to those existing low-profile, low-visibility requirements.

Barring that, I have three comments. First, this ordinance belongs under municipal code Title 10, Zoning, because most of it deals with land use.

Secondly, for the public right of way section, §13.02.030, the standards should correspond word for word with those of the existing municipal code regarding camouflage, screening and innovative technologies, such as found in the proposed ordinance, Reso pg 8, §13.02.090 D 3.

My third additional comment deals with concerns that underground assessment districts will bear the cost of relocating antennas. Although the planning commission identified this issue at the October 27 hearing, I include it for completeness.

Conclusions. Commissioners will do the city a gross injustice by approving this ordinance. Allowing antennas on residential properties, letting companies build as high as they want, and banning the public from participation constitute a formula for disaster that can turn Manhattan Beach into an antenna farm, which will also serve adjacent communities at our expense. Hard-won victories over existing antenna facilities will become void, because wireless companies can expand them as much as they want “to facilitate the purpose of the installation.”

If commissioners feel compelled to approve a modified version of this fatally flawed ordinance, then please follow the checklist below.

- Incorporate a version of the appeal process suggested in Attachment A and eliminate the final decision authority of the administrative decisions
- Specifically restrict antennas on private property to commercially zoned areas
- Delete Reso pg 8, §13.02.090 D 2, which allows wireless entities to build antennas as high as they can technically justify
- Incorporate the additional comments listed at the top of the page.

Thank you for consideration of my testimony.

Donald McPherson

Attachments A, B & C

Cy: Staff

**ATTACHMENT A
CONCEPT FOR APPEAL IN TELCOM ORDINANCE**

From: Don McPherson [dmcpersonla@earthlink.net]

Sent: Tuesday, November 09, 2004 2:33 PM

To: Robert Wadden (RWadden@citymb.info); Richard Thompson (rthompson@citymb.info); Rosemary Lackow (RLackow@citymb.info); Richard Montgomery (rmontgomery@citymb.info); Bruce Kuch (bkuch@citymb.info); David Simon (dsimon@citymb.info); Gerry O'Connor (goconnor@citymb.info); Muriel Savikas (msavikas@citymb.info)

Subject: Appeal Concept, Telcom Ordinance
Planning Commission & Staff
City of Manhattan Beach
Via Email

Subject: Concept for Appeal in Telcom Ordinance

INTRODUCTION

The telcom ordinance proposed by the city has the controversial feature of denying the public an opportunity to express their opinion regarding antenna installations. Consequently, I propose an appeal concept that has the following advantages:

- Streamlines the application process
- Authorizes the Community Development Director to administratively approve all antenna applications, with decisions subject to appeal only in two cases
- Motivates applicants and Community Development to avoid appeals by negotiating a low-profile, low-visibility compromises
- Conforms to the 1996 Telecommunications Act

Title 10, the Planning and Zoning Ordinance, contains at MBMC 10.100 a process for appealing administrative decisions by the Community Development Director to the planning commission, and subsequently, to the city council. The telcom ordinance deals mostly with antennas on commercial property, a land use issue, and rightfully should remain in Title 10. If the city has a valid reason to place the telcom ordinance in Title 13, Public Utilities, which has practically no content and under which Community Development currently has no authority, then an appeal process needs inclusion, similar to MBMC 10.100.

The appeal concept described herein does not acknowledge the validity of placing wireless antennas on residential properties. It also does not acknowledge the validity of the proposed section, 13.02.090 D. 2, which permits applicants to build as high as they can technically justify.

APPEAL CONCEPT

Similarly as described in the proposed new telcom ordinance, Community Development will administratively approve all antenna applications for public-right-of-way, city property and commercial private property locations. (Commercial transmitting antennas shall remain prohibited on residential property.) The standards used by the director to approve an installation will remain similar to the existing antenna ordinance, MBMC 10.60.130, or to the proposed ordinance without 13.02.090 D 2, which permits excessive heights. The time-tested and proven standards of the existing ordinance require that antennas have low-profile and low-visibility, consistent with the General Plan.

Two special cases will trigger the possibility of an appeal. If on private commercial property, the approved antenna does not conform with zoning requirements, such as height or setback, then Community Development will notice property owners within five hundred feet of the director's decision and publish an announcement. For purposes of establishing the 15-day appeal period specified in MBMC 10.100, the date of decision will correspond to the first weekday after the notice is mailed or the date the publication appears, whichever latest.

The second case subject to appeal corresponds to a new standalone antenna either on the public-right-of-way or city property, which have no zoning standards. This case would allow the public to appeal the director's approval for new antenna structures placed on public property, which may be substantial installations, such as the camouflaged tower next to Target on Sepulveda Blvd. This case gets noticed the same as nonconforming antennas on private property.

As a safety net for the two aforementioned special cases, if no one files an appeal of the director's decision, then the decision shall require approval as consent calendar items by the planning commission and the city council.

ADVANTAGES AND CONCLUSION

The concept described herein enables applicants to obtain speedy administrative approval for all antennas. Approvals by the Community Development Director for large new antennas on public property and nonconforming antennas on private property are subject to appeal. If the applicant designs an installation that blends in with the neighborhood, it may not be appealed. If someone does file an appeal for a well-designed facility, consistent with the low-profile, low-visibility standards, then the planning commission and city council will no doubt approve the application, as they have in the past.

Under this concept, consistent with the 1996 Telecommunications Act, no entity will be denied the opportunity to provide telecommunication services. They may have to install more antennas than the minimum technically possible, but adequate locations exist on public and private commercial property to access the entire city.

Additionally, desiring to avoid an appeal, both the applicant and Community Development will have strong motivation to negotiate a compromise acceptable to the public.

ATTACHMENT B
EXCERPT FROM TELECOMMUNICATIONS ACT OF 1996
CITY HAS DISCRETION TO SPECIFY MEANS FOR WIRELESS SERVICES

SEC. 253. REMOVAL OF BARRIERS TO ENTRY.

(a) IN GENERAL- No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

(b) STATE REGULATORY AUTHORITY- Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

(c) STATE AND LOCAL GOVERNMENT AUTHORITY- Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government

(d) PREEMPTION- If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

(e) COMMERCIAL MOBILE SERVICE PROVIDERS- Nothing in this section shall affect the application of section 332(c)(3) to commercial mobile service providers.

(f) RURAL MARKETS- It shall not be a violation of this section for a State to require a telecommunications carrier that seeks to provide telephone exchange service or exchange access in a service area served by a rural telephone company to meet the requirements in section 214(e)(1) for designation as an eligible telecommunications carrier for that area before being permitted to provide such service. This subsection shall not apply--

(1) to a service area served by a rural telephone company that has obtained an exemption, suspension, or modification of section 251(c)(4) that effectively prevents a competitor from meeting the requirements of section 214(e)(1); and

(2) to a provider of commercial mobile services.

Allows city discretion to specify means for providing wireless services within bounds.

See Attach C where 1996 Act specifically preserves city zoning authority.

Requires city to permit antennas in public right of way when safe.

Only two limitations imposed on city in 1996 Act

ATTACHMENT C
EXCERPT FROM TELECOMMUNICATIONS ACT OF 1996
1996 ACT SPECIFICALLY GIVES CITY ZONING AUTHORITY OVER SITING

SEC. 704. FACILITIES SITING; RADIO FREQUENCY EMISSION STANDARDS.

(a) NATIONAL WIRELESS TELECOMMUNICATIONS SITING POLICY- Section 332(c) (47 U.S.C. 332(c)) is amended by adding at the end the following new paragraph:

(7) PRESERVATION OF LOCAL ZONING AUTHORITY-

(A) GENERAL AUTHORITY- Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

(B) LIMITATIONS-

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof--

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

**CITY OF MANHATTAN BEACH
COMMUNITY DEVELOPMENT DEPARTMENT**

TO: Planning Commission

THROUGH: Richard Thompson, Director of Community Development

FROM: Robert V. Wadden, City Attorney
Rosemary Lackow, Senior Planner

DATE: January 12, 2005

SUBJECT: 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.

RECOMMENDATION

Staff recommends that the Planning Commission **CONDUCT THE PUBLIC HEARING**, and **ADOPT** the attached Resolution, recommending changes to the Municipal Code regarding regulation of telecommunication facilities (Exhibit A).

BACKGROUND

The City Council, in its 2004/2005 Work Plan directed Staff to develop process and procedures to handle cell site applications and incorporate them into a telecommunications ordinance. On October 27 and December 8, 2004 the City Attorney presented a draft ordinance to the Planning Commission recommending changes to City telecommunications permitting policy. The Planning Commission received public input and directed Staff to revise the draft ordinance to address the public's concerns and provide additional information regarding other cities. The major concerns expressed were:

- Desire for citizen participation in the permit process, including noticing and appeal rights
- Potential aesthetic degradation/commercial intrusion in residential neighborhoods
- Need for special treatment of walk streets and The Strand.
- Inclusion of school sites in the public review process (aesthetics/safety)
- Need to provide for cell-phone coverage in residential areas
- Need to address legal issues/avoid legal challenges

There were generally few concerns regarding the proposed ordinance, relative to the proposed regulations for cell sites in the public right of way, except regarding potential for cell sites to be approved within walk streets or The Strand.

DISCUSSION

The proposed ordinance has been revised to address all of the above concerns, in order to balance the community's desire to participate in the permit processes with the need to addressing legal requirements.

All of the significant changes since the last hearing have been made in Section 13.02.090 located on pages 7 through 10 of the draft Ordinance which relates to private property. The section has been expanded to address any public property that is not owned by the City, such as school sites and County property. Paragraph D in particular provides four new criteria for approval of any “non-commercially” zoned property, including finding that no other non-residential site is available, full mitigation of aesthetic impacts, compliance of all development standards including height, of the base zone, and finding of neighborhood compatibility. In paragraph E (submittal requirements), to address legal concerns, the discretion of the City to require an RF (radio frequency) study with an application has been eliminated. Paragraph E. (standard of review) has been modified, to establish specific limits by which the Director can administratively approve building mounted antennas, as was found to be common with several other cities surveyed. The suggested height limits are eight feet above the applicable height limit for bulky antennas and 15 feet (from the existing building) for slender antennas. These height limits apply only to non-residential properties.

Paragraphs H and I, pertaining to notice and appeals have been modified such that all cell sites on non-commercially zoned property would automatically require noticing to property owners within 500 feet prior to the decision by the Director of Community Development. The affected properties include school, county property and all residentially zoned sites. These same properties are given the right to appeal the Director’s decision to the City Council. As is typical with other planning applications, this process would be mentioned in the notice that each owner receives.

Issues not addressed

There are a few concerns that have not been addressed in the draft ordinance. The ordinance does not prohibit cell sites on walk streets or The Strand either on private or public property. The City Attorney has advised against this on legal grounds because it would be considered local government interference which would be prohibited by both state and federal laws.

Secondly, the ordinance does not include a minimum distance of a cell site from a residential building. Staff believes it would be desirable to impose a minimum distance of a cell site in a street right of way from a residential structure. Such a constraint was not advised by the City Attorney on legal grounds, again in that it would violate federal and state law. Federal law allows the City only the right to manage the public right of way, which does not include prohibition. Further, state law allows any public telephone utility a free state-wide franchise to use the public right of way and a prohibition would be considered an unlawful interference with this right.

Other Cities

At the last hearing, staff presented the Commission with a summary of how several other cities regulate telecommunication facilities. The Commission requested that Staff also contact some other cities to ascertain why they have not recently amended their telecom regulations. In this

endeavor Staff contacted the staff of Santa Barbara, Santa Monica, Rolling Hills Estates and El Segundo and Lawndale. Of these all but Santa Monica stated that they were not considering updating their ordinances regarding private property because they felt that their existing regulations worked well and in most cases were able to work with the carriers for acceptable conditions. Most noted that they were aware that the public right of way regulations might need to be amended but this was not a high priority. In the case of Santa Monica, a telecom code update is planned to coincide with an update of the Land Use Element of the General Plan.

All of these cities required special reviews for more prominent cell sites or which did not meet established criteria. At least two, Santa Barbara and El Segundo permit cell sites in residential areas, and Santa Barbara reported that they had no sites in a residential zone and were considering changing the code to prohibit it. El Segundo reported at least one approval on a multi-family site, where coverage was hampered by hilly topography. Some of the cities had had sites approved in the public right of way and at least one, El Segundo, reported that it had denied an application for a right of way site, due to the problems caused by above ground equipment.

Public Input

No further notice has been provided to the public. Staff has met with two residents and received letters from one resident, suggesting detailed suggestions for the proposed regulations. A copy of the most recent correspondence is attached for the Commission's review (Exhibit D). Staff will address any related questions or concerns that the Commission may have at the public hearing.

ENVIRONMENTAL REVIEW

The Project is Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to Section 15061, (b) (3) based on staff's determination that the project will not have a significant impact on the environment.

CONCLUSION

Staff reiterates that presently the City lacks comprehensive regulations for siting telecommunications facilities which are consistent with State and Federal law. As a result any future decision of the City regarding siting such facilities will be vulnerable to litigation. With further revisions to expand public noticing and appeal rights, more specific criteria for approval with respect to residential areas and schools, and limits for maximum height of facilities in non-residential areas, staff believes the proposed ordinance retains the maximum permissible local authority over telecommunications facilities.

There are at least two pending applications filed for telecom facilities within the public right of way. Staff urges that the Planning Commission take action at this time and make a recommendation to the City Council. The attached resolution contains the detailed code amendments recommended by staff. (The text revisions are underlined and marked in the left-hand margin of the document).

ALTERNATIVES

The Planning Commission's options include the following:

1. Adopt the attached Resolution as presented.
2. Adopt the attached Resolution with revisions to the proposed Telecom regulations.
3. Adopt the attached draft Resolution revisions and recommend that the City Council consider incorporating further changes as determined by the Commission.
4. Adopt the attached Resolution only with respect to the public right of way, with a recommendation that the remainder of the ordinance be tabled to a later date.

ATTACHMENTS

- Exhibit A: Draft Resolution No. PC 04 -
- Exhibit B: PC Minutes from 10/27/04 12./08/04
- Exhibit C: PC Minutes from 10/27/04 12./08/04
- Exhibit D: Citizen letter with attachments

RESOLUTION PC 04-

(DRAFT PC 1-12-05)

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RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH RECOMMENDING AMENDMENT OF THE MANHATTAN BEACH MUNICIPAL CODE AND MANHATTAN BEACH LOCAL COASTAL PLAN IMPLEMENTATION PROGRAM PERTAINING TO REGULATION OF TELECOMMUNICATIONS FACILITIES ON PUBLIC AND PRIVATE PROPERTIES AND THE PUBLIC RIGHT OF WAY CITY-WIDE.

THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The Planning Commission hereby makes the following findings:

- A. The Planning Commission conducted duly noticed public hearings on October 27, and December 8, 2004 and January 12, 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. 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;
- G. 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;
- H. 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;
- I. 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;
- J. 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

**RESOLUTION NO. PC 04-
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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;

- K. 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)).
- L. 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. The Planning Commission of the City of Manhattan Beach hereby recommends that Section 10.60.130 of Chapter 10.60, Title 10, of the Manhattan Beach Municipal Code be repealed in its entirety and that a new Chapter 13.02 be 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 private property, City property, public property not owned by the City, or in the public right of way.

Deleted: 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.

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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

**RESOLUTION NO. PC 04-
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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.

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Deleted: 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 telecommunications facility on City property, public property, private property, or the public right of way.

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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 “WRI”) and necessity from the California Public Utilities Commission.

Deleted: certificate of public convenience

**RESOLUTION NO. PC 04-
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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.

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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. An entity holding a certificate of public convenience and necessity ("CPCN") or "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 "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. 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;
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 compared to 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 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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**RESOLUTION NO. PC 04-
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D. 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 upon the cessation of use or abandonment of the facility it shall be promptly removed at the expense of the applicant.

E. 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.

F. 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.

**RESOLUTION NO. PC 04-
DRAFT**

- G. 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.

- H. 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.

- I. 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 “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 13.020.100 of this Chapter may be charged for said use.

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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

**RESOLUTION NO. PC 04-
DRAFT**

Chapter to ensure a level playing field for competing enterprises.

13.02.060 Telecommunications Facilities On City Property

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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.

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13.02.070 Provision of Telecommunications Services By Franchised Cable Operators

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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 “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.

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Any entity franchised to provide cable television services within the City which has received a certificate of public convenience and necessity (“CPCN” or “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 13.020.030 for any additional facilities it wishes to add to the public right of way related to said services.

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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,

**RESOLUTION NO. PC 04-
DRAFT**

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. Notwithstanding any other provision of this code the decision of the Director shall be final.

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 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) on private or public property unless the following findings can be made:

- a. no alternative non-residential site was available for the facility;
- b. 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.

E. Submittal requirements. The following material shall be submitted with an application request for a permit under this section:

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- 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 of alternative sites.

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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:

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- 1. The proposed facility shall comply with all applicable development standards of the base district in which it is located.

**RESOLUTION NO. PC 04-
DRAFT**

2. The facility shall only exceed applicable height limits or height of existing buildings in non-residential zones as follows:
 - a. A maximum of three building or roof mounted “whip” antennas not exceeding a diameter of 3-inches at a maximum height of 15 feet above the existing building measured adjacent to the antenna.
 - b. Antennas with diameter or width greater than 3-inches and related equipment: 8 feet higher than the applicable height limit per Title 10 of the Manhattan Beach Municipal Code (The Zoning Ordinance).
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. 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, structurally and technologically feasible.
5. All wires or cables necessary for operation shall be placed underground, except if attached flush to the building surface and are 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 or FCC standards.
9. The Director reserves the right to impose any other condition consistent with the purpose of this Chapter.

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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:

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1. No portion of the antenna structure shall be located in any required yard and must maintain at least five feet (5') clear 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 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 Code, request relief from the requirements of this section from the Planning Commission.

H. Notice. For any application which 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 notice or which 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) shall be given to all property owners located within five hundred (500) feet of the proposed location of the installation at least seven calendar days prior to the final decision of the Director.

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**RESOLUTION NO. PC 04-
DRAFT**

J. Appeal. 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. All other applications including those which 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) may have the Director’s decision appealed to the City Council. Any such appeal must be filed within ten (10) calendar days of the date of the 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 “F” above. No published notice shall be required. The City Council may set an appeal fee by resolution.

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L. 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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K. 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.

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L. 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.

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13.020.100 Denial of Telecommunications Permit

The Director or, where applicable the City Council on appeal, 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 the proposed facility is not necessary for provision of service by the applicant;
- 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.

13.020.110 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.

**RESOLUTION NO. PC 04-
DRAFT**

13.020.120 Revocation

The Director 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 Director shall make the findings required under Section 13.020.100 above. A written notice shall be mailed to the permittee of such revocation. Within ten (10) days of mailing of such notice of revocation to the permittee, a written appeal of such action may be filed. Any such appeal shall be heard by the City Manager or his or her designee and his or her determination of the revocation shall be final.

13.020.130 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.

13.020.140 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. The Planning Commission of the City of Manhattan Beach hereby recommends that Chapter 13.02 of the Manhattan Beach Municipal Code, upon its effectiveness, be inserted into Chapter 3 (Codes, Resolutions, and Ordinances) of the Manhattan Beach Local Coastal Plan Implementation Program and that Section A.60.130 entitled “Antennae and microwave equipment” of the Manhattan Beach Local Coastal Plan Implementation Program be amended to include a cross reference 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).”

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SECTION 4. The Planning Commission of the City of Manhattan Beach hereby recommends that Section 10.08.040 of Title 10, of the Manhattan Beach Municipal Code and Section A.08.040 of Title A of the Manhattan Beach Local Coastal Plan Implementation Program, entitled Public and semipublic use classifications, be 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.”

**RESOLUTION NO. PC 04-
DRAFT**

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

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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		

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SECTION 6. The Planning Commission of the City of Manhattan Beach hereby recommends that Section 10.16.030 of Title 10, of the Manhattan Beach Municipal Code entitled CL, CC, CG, CD, and CNE districts: development regulations and Section A.16.030 of the Manhattan Beach Local Coastal Plan Implementation Program entitled CL, CD, and CNE districts: development regulations be 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

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SECTION 7. The Planning Commission of the City of Manhattan Beach hereby recommends that Section 10.12.030 of Title 10, of the Manhattan Beach Municipal Code entitled Property development regulations: RS, RM and RH districts and Section A.12.030 of the Manhattan Beach Local Coastal Plan Implementation Program entitled Property development regulations: RM and RH districts, the matrix entitled Property Development Standards for all Area Districts be amended to add a cross-reference to Chapter 13.02 (following Minor Exceptions) as follows:

Telecommunications Facilities See Chapter 13.02

SECTION 8. The Planning Commission of the City of Manhattan Beach hereby recommends that Section 10.12.050 of Title 10, of the Manhattan Beach Municipal Code entitled RSC district development regulations be amended to add a cross-reference to Chapter 13.02 (following Minor Exceptions) as follows:

Telecommunications Facilities See Chapter 13.02

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SECTION 9. The Planning Commission of the City of Manhattan Beach hereby recommends that Section 10.60.060 of Title 10, of the Manhattan Beach Municipal Code and Section A.60.060 of the Manhattan Beach Local Coastal Plan Implementation Program entitled Exceptions to height limits be amended as follows:

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“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.”

**RESOLUTION NO. PC 04-
DRAFT**

SECTION 10. 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.

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SECTION 11. If any sentence, clause, or phrase of this resolution 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 Planning Commission hereby declares that it would have passed this resolution 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.

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SECTION 12. Any provisions of the Manhattan Beach Municipal 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.

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I hereby certify that the foregoing is a full, true, and correct copy of the Resolution as adopted by the Planning Commission at its regular meeting of ----- and that said Resolution was adopted by the following votes:

AYES:
NOES:
ABSENT:
ABSTAIN:

RICHARD THOMPSON
Secretary to the Planning Commission

SARAH BOESCHEN
Recording Secretary

**PLANNING COMMISSION MEETING MINUTES
TELECOM ORDINANCE PUBLIC HEARING**

December 08, 2004 (draft)

PUBLIC HEARINGS CONTINUED

04/1027.1-1 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

Senior Planner Lackow summarized the staff report. She said that staff has been collecting information regarding Ordinances of other cities that address wireless antennas. She indicated that all of the cities referenced in the staff report have ordinances that have been enacted recently. She commented that the Ordinances were all different but generally included screening and camouflaging as common goals. She stated that the permit processes vary from including a hearing process or committee review to administrative review.

Senior Planner Lackow indicated that Torrance allows antennas in the public right-of-way in residential zones with a finding of necessity, but prohibits them on private residential lots. She said that the permits that fall within the staff requirements of the Code can be approved by the director. She indicated that there is also a staff Telecom Committee established to handle the more difficult cases. She indicated that the review process includes public notification within a 500 foot radius and allows appeals to the City Council. She said that a new facility is not permitted within 1,000 feet of an existing facility, except in cases where there is interference of the signal. She indicated that Newport Beach also does not allow wireless facilities in residential zones. She commented that approval of facilities that comply with all zoning standards is by staff, and any special reviews can be heard by the Planning Commission with some special cases being heard directly by the City Council. She indicated that notice is required within a 300 foot radius and 10 days before the hearing. She said that the maximum height permitted is 26 feet, but a special use process can allow a height of up to 32 feet. She stated that Newport Beach encourages the use of existing structures, screening, and attractive elements; however they do not encourage the use of false trees. She indicated that Hermosa Beach does not allow wireless facilities in residential zones and requires Use Permits for all except for small antennas. She indicated that poles can exceed height limits under certain conditions, and screening can be required unless it blocks the signal from the antenna.

Senior Planner Lackow indicated that Rancho Palos Verdes (RPV) discourages antennas in single family residential zones but are more lenient in multifamily zones. She commented that RPV has issues regarding topography, and poles must sometimes be placed higher to provide an adequate signal. She commented that a Use Permit is required for all commercial cell sites with noticing and a public hearing. She said that

there is no height limit requirement but the height must be justified. She said that RPV encourages landscaping, stealth technology, and collocation are encouraged to provide screening. She stated that San Marino permits antennas in the general commercial zone, and projects are administratively approved if they comply with Code and are not visible from the street level. She said that projects visible at the street level may require design review that includes noticing within a 300 radius. She indicated that Aliso Viejo, Orange County, only permits water towers cell sites in residential zones, and they require an Antenna Site Development Permit. She indicated that some projects can be approved administratively and/or approval by the City Council. She indicated that they do have a Development Review Committee of staff and citizens appointed by the City Council that can make recommendations to the City Council. She said that height is not as much of an issue in Aliso Viejo provided that stealth technology is used.

In response to a question from Commissioner Kuch, Senior Planner Lackow said that antennas are prohibited on private property in residential zones in Torrance. She said that with the proposed Ordinance, antennas would be permitted on private property in residential zones under a special approval.

In response to a question from Commissioner O'Connor, Senior Planner Lackow stated that staff did not know the reasoning of cities as to whether or not they have consciously chosen to not change their Ordinances and to maintain old standards. She commented that staff looked at several cities that have retained old Ordinances, but that information was not included in the data outlined in the staff report.

City Attorney Wadden summarized revisions since the last hearing. He stated that a section was added to the proposed Ordinance to require notice within a 500 foot radius for sites located on private property that do not use stealth technology and do not meet Code standards. He indicated that a process was also added to allow for appeal to the City Council for sites on private property that do not use stealth technology and do not meet Code standards. He said that a definition of stealth technology has been added to the Ordinance, as well as findings necessary to make upon denial of a telecommunications permit.

In response to a question from Commissioner Kuch, City Attorney Wadden stated that it would be more appropriate for the City Council to consider proposals in an open forum as a public hearing rather than to establish a separate design oversight committee.

In response to a question from Commissioner Kuch, Director Thompson said that staff was not clear on the benefit of creating a separate design review committee and felt it would be more beneficial to provide a noticing provision for hearings before the Council. He commented that staff is very thorough in reviewing applications and in requesting information from applicants.

In response to a question from Commissioner Simon, City Attorney Wadden commented that the bulk of the area in Manhattan Beach is zoned residential, and there are gaps in cellular service within the City. He indicated that a ban in residential areas would

essentially be a ban on cellular sites that would result in gaps in coverage not permitted by Federal law. He commented that the noticing and appeal process would apply to any property within the City whether commercial or residential.

In response to a comment from Chairman Montgomery, City Attorney Wadden said that the City would not be sued as long all cell site applications are approved, and the purpose of having a legally valid ordinance is to have a solid legal basis for the denial of cell sites. He said that the including of a public process does not change the discretion that the City has in the approval of antennas but simply makes the process more public and open.

Chairman Montgomery opened the public hearing.

Don McPherson a resident of the 1000 block of 1st Street, said that the Ordinance would permit antennas on private residential lots, and providing service could be accomplished by permitting antennas only within the right-of-way in residential areas. He pointed out that Torrance prohibits antennas on private residential lots. He stated that the Ordinance would permit antennas as high as companies can justify for the intended purpose. He said that the Ordinance also discourages input through the public hearing process and prohibits any public input for projects on public property including within the right-of-way, parks, and schools. He stated that antennas on residential lots will reduce the value and quality of living for the adjoining lots. He commented that the Ordinance as proposed would result in staff negotiating with wireless companies without any public input, and very few residents would pay the \$500.00 fee to appeal a project to the City Council. He indicated that the staff report cites that there are no grounds for discretion in the approval of wireless facilities; however, it was also stated in the staff report that the extent to which local authority is preempted is unclear.

Mr. McPherson indicated that the court cases referenced by staff only apply to the public right of-way, he is not aware of any cases of the Courts limiting discretion on private property. He commented that eliminating public hearings eliminates the public and Commission from the review process. He indicated that the conference report accompanying the 1996 Telecommunications Act allows time for public hearings, and the City currently follows code specified general procedures. He pointed out that wireless companies would have sued the City many time within the past decade if the existing Ordinance did not comply with the law. He said that he would suggest retaining the existing Ordinance with minimum modifications to include sections regarding the right-of-way and other City owned property; to include sections for other areas including schools, churches, and major utility easements; and to allow for administrative approval, with right of appeal, for rooftop antennas no more than 8 feet over the height limit. He said that the other option would be to rewrite the proposed Ordinance to resolve the issues and correct errors.

Mary Schultz, a resident of the 3600 block of Crest Drive, stated that her impression is that wireless antennas are most prevalent in the North End of the City. She indicated that it is in the best interest of the residents for them to be able to address concerns with future requests, and the input of the residents helps to reach the best possible options for

wireless proposals. She stated that screening can add considerable bulk to a building beyond the equipment that is added for antennas. She commented that the term “camouflage” is subjective as used in the Ordinance, and it is not clear whether it includes the use of screening that can essentially consist of a wall.

Martha Andreani, representing the Manhattan Beach Residents Association is concerned that the public process for review of placement and aesthetic of antennas may be taken away from the residents. She commented that they feel the City is wrongly interpreting the Telecommunications Act by suggesting that public hearings should be eliminated. She said that her understanding of the proposed Ordinance is that the right of the public to express an opinion regarding the placement and design of antennas would be eliminated and without recourse, which is unacceptable. She said that they request that the Commissioners not concur with the City Attorney’s interpretation of the law and that they make it clear the public has the right to comment and appeal. She requested that the noticing area be increased from 500 feet. She said that a Committee should be organized to prepare an Ordinance that have experience with the technical issues involved in wireless facilities.

Bill Horn, a resident of the 1300 block of Manhattan Beach Boulevard, indicated that his concern is regarding future liability from a class action lawsuit brought by residents who feel the public process was compromised rather than future liability from telecommunication companies.

In response to a question from Commissioner O’Connor, **Mr. Horn** said that he feels the main concern is the possibility of lawsuits regarding the health effects that may be found to result from wireless facilities.

Director Thompson pointed out that local jurisdictions are legally precluded from considering health risks in approving wireless facilities.

Viet Ngo, stated that he believes there is case law in the 9th Circuit Court of Appeal in Rancho Palos Verdes that entitled the homeowner to receive a Conditional Use Permit under the Telecommunication Act of 1996 to allow commercial use on the property. He said that he sees a difference between residential rights and the rights of commercial companies, and he feels the City Attorney has interpreted the law and misleads the public. He said that the decision must be based on the law by the effect on the residents of the antennas. He requested that the City Attorney cite case law and opinion to not only protect the City being challenged by companies but also protect the City from liability of the lawsuits brought by citizens. He said he has a private civil action regarding the Commission following the incorrect advice of the City Attorney.

Elizabeth Srour, a resident of the 400 block of 30th Street, commented that the Commission should take into account in reviewing the Ordinance that there are parts of the City with very little service. She commented that it is very difficult to receive a signal in the residential areas of the North End, and flexibility should be included in the Ordinance to reflect different coverage requirements for different areas of the City. She

commented that she is not aware of many areas in the North End that are within the public right-of-way other than school sites or commercial areas.

Richard Thompson, Director, clarified that the public right-of-way includes streets and alleys.

Wendy Carson, a resident of the Grandview School area, said that the antenna on Grandview school was quite controversial, and the School District eventually decided not to go forward with the proposal. She indicated that residents are quite concerned regarding safety and aesthetics, and there is a strong desire to receive noticing of proposals for wireless antennas. She said that the possibility of an antenna at Grandview School has not been ruled out in the future, and the residents want the opportunity to know about any future proposals and provide input. She said that there are areas within the public right-of-way that are available for antenna, and there is no need for them to be placed on private property. She said that any proposal for a wireless antenna should be noticed regardless of whether stealth technology is used. She said that she is concerned that antennas be permitted to exceed the height limit just because the telecommunications company say it is necessary. She requested that the City work with the existing Ordinance, and the community is united on wanting input and notice.

Ana Hoy, a resident of the 1300 block of Manhattan Beach Boulevard, indicated that she agrees with the comments of **Ms. Carson**. She stated that a decision cannot be made for fear of liability from large corporations. She said that the residents must be aware when such decisions are made and that the public is involved and that the proper information is disclosed so that the best decision can be made.

Richard Lewis, a resident of Laurel Avenue, said that there is no definition of the terms “residential areas,” “private property” or “school property” in the Resolution. He pointed out that the Los Angeles Unified School District has prohibited antennas on school properties and adjacent properties, and he asked about the possibility of including such a provision in the City’s Ordinance. He commented that he is concerned that the City is removing safeguards to its citizens in favor of corporations.

Bill Eisen, a resident of the 3500 block of Crest Drive, said that there has not been an indication as to the number of permit applications that are received. He commented that a change to the Ordinance might be justified if there were an overwhelming number of wireless antenna applications; however it should be possible to retain the current Ordinance if there are only very few applications. He indicated that the proposed Ordinance places the burden on the resident to appeal rather than the telecommunication companies to demonstrate that nonresidential locations are not available or feasible. He said that any fee for appeal to the Commission or City Council should be more reasonable. He pointed out that Torrance prohibits antennas on private residential properties, and he feels that there is no need to allow antennas on residential properties. He stated that he would suggest requiring a noticing radius of 500 feet for any wireless proposals.

Jackie May, a resident of the downtown area, said that she does not feel notification within a 500 foot radius for wireless applications is sufficient considering the height that the towers that could be permitted. She said that it is not currently known whether or not radio signals are a health hazard, and it would be unconscionable for the public hearing process to be eliminated.

Kathy Clark, a resident of the 400 block of 7th Street, said that she is concerned that walk- streets would be considered as part of the right-of-way, and she feels residential property including the walk streets need protection. She said that the Commission should take the time necessary to study the complex issues relating to the proposed Ordinance.

Jeremy Stern, a resident of the Hill Section and representing Cingular Wireless, commented that the cellular coverage on his property has been very poor until recently when the new antenna was approved in the right-of-way on Valley/Ardmore. He said that it is important for the community to have access to the current communication technology in order to provide for telecommuters, economic and business development, and for public safety. He indicated that the City Attorney is correct in his view that there are risks to the City in right-of-way decisions and in decisions with respect to residential zoning on private property. He commented that the 9th Circuit Court of Appeal in the case against Rancho Palos Verdes approved the plaintiff's ability to obtain attorney's fees and damages under the civil rights statute, and RPV is facing \$1,000,000.00 in fees and potential damages. He commented that Carlsbad recently settled a case for \$250,000.00 in attorney's fees for denying a site in a residential area that was built inside a chimney and completely camouflaged. He indicated that steps should be taken to minimize the City's risk on the types of sites that ought to be approved by staff. He stated that the City only has administrative approval with respect to telephone facilities within the public right-of-way. He pointed out that the City is at risk of violating federal and state law for any actions that involve public hearings and discretionary approval. He commented that the litigation that AT&T Wireless brought against the City was regarding a right-of-way permit that went through an outrageous level of discretionary review that should have been approved at the staff level as any other permit for a utility company.

Mr. Stern commented that proposed Ordinance Section 13.02.030 (c)7 and 13.02.090 (c)(g) of the proposed Ordinance require a showing of need for a proposed antenna in the application; however, it is clear that the federal determination has already been made by the FCC and the California Public Utilities Commission regarding need whether private property or right-of-way. He commented that the FCC has preempted City consideration of technical and operational issues regarding wireless facilities. He commented that Section 13.02.090(d)(1) encroaches into federal and state law which purports to allow the Community Development Director the authority to deny a wireless permit on private property if it is determined that the applicant fails to show that nonresidential locations for the facilities are not available or not feasible and that the lack of the facility at the proposed location would result in a prohibition of service. He said that he would encourage the City to revise the provision to avoid potential liability. He commented that the wireless companies must have the ability to engineer their networks in a manner that permits them to service the community as required by federal law. He commented that

the definition of “telephone service” should be amended in the Resolution to incorporate the newer technology because it is not so narrowly defined by state law. He stated that the proposed Code should also be amended to recognize that there should be some other operating authority from the California Public Utilities Commission in addition to Certificates of Public Convenience and Necessity.

George Kohn, a resident of the 1400 block of 8th Street, stated that the City does have the right under the Auburn v. Quest case under the U.S. Code, to enforce local zoning regulations. He believes that the process needs to be streamlined for cell sites in commercial areas. He commented that such sites in commercial areas on the main thoroughfares will provide most of the cellular service required, and any gaps in coverage can be served by small technologically advanced cell sites and subcell sites. He commented that companies should be encouraged to use such small sites by making it easier for such sites to be approved. He said that the U.S. Code provides in the Telecommunications Act that a reasonable period of time for approval be allowed for noticing and public hearings. He indicated that other cities have fully noticed public hearings, and the citizens of Manhattan Beach are entitled to the same consideration.

Chairman Montgomery closed the public hearing.

Commissioner Simon stated that he feels there is more information than he can evaluate at this hearing, and he would support continuing the issue to allow further time to evaluate all of the material and testimony that has been provided.

Commissioner O’Connor said that there has been a great deal of information submitted comparing Ordinances of other cities and the legal opinion by **Mr. Stern**. He commented that he also has significant concerns with language in the Ordinance, which he would be happy to review separately from this hearing with the City Attorney. He indicated that he would like more time to study all of the material that has been submitted.

Commissioner Kuch said that he concurs with the other Commissioners. He indicated that he has concerns with the issue as to why the proposed Ordinance would permit antennas on private residential lots when they are prohibited by other cities. He commented that he also questions whether imposing height restrictions on antennas would make the City more vulnerable; and he has concerns regarding the required radius for noticing.

Chairman Montgomery said that his comments are similar to that of the other Commissioners. He commented that the decision has an effect on the entire city, and he cannot disregard the city being at risk of lawsuits. He said that he also is not ready to make a decision regarding the issue at this point.

Commissioner Simon indicated that the City Attorney mentioned that cell sites must be located in residential areas in order to provide adequate service, and he would like further

input regarding whether his statements are referring to all residential areas or only within the right-of-way.

City Attorney Wadden said that most antennas in residential areas would end up in the right-of-way because it is less expensive for the cellular companies. He indicated that staff does not know enough about the coverage in the City to determine with certainty that adequate coverage can be provided only within the right-of-way.

In response to a question from Commissioner Simon, City Attorney Wadden indicated that the City encourages the use of stealth technology by not requiring applications which include such technology to have a public hearing.

Director Thompson indicated that staff's understanding is that the Commissioners wish further information regarding the required noticing radius and the implications of not including residential areas in the Ordinance.

Commissioner O'Connor said that he has a concern regarding the justification of height for antennas based on technical requirements and the manner by which it is addressed. He reiterated his request from the previous hearing that staff look at cities working with their old ordinances and particularly cities that have consciously made that decision.

A motion was MADE/SECONDED (Simon/Kuch) to **REOPEN** the public hearing and **CONTINUE** 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 to January 12, 2005.

AYES: Kuch, O'Connor, Simon, Chairman Montgomery
NOES: None
ABSENT: Savikas
ABSTAIN: None

3 January 2005

Richard Thompson, Director Community Development
City of Manhattan Beach
Via Email

Subject: **Revised** Edit of Telecom Ordinance, as per **our Dec 16 Meeting**

This edit reflects results of our Dec 16 meeting. The Dec 8 draft telecommunications ordinance comprises elements for an overall policy, which if specifically articulated, gives the city amazing authority and flexibility to condition antenna installations, in compliance with federal and state law. No other city evaluated has this concept in their ordinance. The city attorney and staff can truly take credit for pioneering a new approach to the knotty problem of denying obtrusive antennas.

The draft ordinance contains a virtual concept, but not articulated, that can invoke a policy, or intent, that permits a provider to offer telecommunications services throughout the City, using an integrated **network** of distributed low-visibility antennas. Under this concept, the city **can** evaluate each application for compliance with this stated policy or intent. A huge tower may not comply, for example, if the provider can use multiple antennas to provide the same service in the City. Federal law gives the city authority over placement, constructions, and modifications, as long as providers can offer telecommunication services in all areas.

As seen in the attached **revised** edit of the communications ordinance, changes to various sections articulate this concept of evaluating each application in context of being an element in a provider's **network** of distributed low-visibility antennas.

Other principal changes, compliant with federal and state law, are as follows:

1. **Major** applications involving 'commercial' antennas get noticed in varying ways.
2. Director can administratively approve **without notice** complying projects, rooftop antennas 8 feet above height limit, and modifications to poles, **although subject to appeal.** **To enable the public to track antenna applications, the city must post the department secretary's log of applications on the city website.**
3. Over-height standalone antennas in right of way and non-complying antennas other than on right of way require use permit.
4. As before, Section 13.02.030 deals with right of way; I lumped all other applications into a single other section.
5. **Public schools exempted from ordinance.**
6. Commercial antennas prohibited on properties in residential zoning districts.
7. Cingular representative Jeremy Stern's Dec 8 comments addressed throughout.

The attachments provide the **revised** edit of the ordinance and an index to changes in pdf format. I have sent you MS Word versions in a separate email.

Don McPherson

Attachment: Index to Changes

Cy: Planning Commission, City Attorney, Martha Andreani

ATTACHMENT: INDEX TO DON MCPHERSON CHANGES
Revised 3Jan05

INDEX TO TELECOMMUNICATIONS ORDINANCE CHANGES
(Does not include corrections of numbering, typographical or grammar errors.)

Item	City Section	Revised	Comments
1	13.02.010	13.02.010	Excludes public schools from ordinance
2	13.02.010	13.02.010	Expands title 'Scope' to 'Scope and Intent'. Adds concept of evaluating antenna application in context of applicant's network of distributed low-visibility antennas.
3	13.02.010	13.02.010	Corrects scope to address all zoning districts in the city; uses 1996 Act Sec 704 language granting city zoning authority for 'placements, construction, and modification'.
4	13.02.020	13.02.020	Defines 'commercial antenna' as used for 'telecommunications services', also defined
5	13.02.020	13.02.020	Defines 'R zoning districts' as per code
6	13.02.020	13.02.020	Includes parking lots and parking structures in definition for right of way
7	13.02.020	13.02.020	Defines 'standalone antenna' to encompass many appellations
8	13.02.020	13.02.020	Defines 'telecommunications services', per U.S. code
9	13.02.020	13.02.020	Defines 'zoning district', per municipal code
10	13.02.030A	13.02.030A	Prohibits antennas on the Strand, walkstreets, and other similar public right of ways
11	13.02.030B	13.02.030B	Line 6: No administrative approval for telecommunications structures exceeding height limits
12	13.02.030B	13.02.030B	End: For over-height structures, specifies use permit, subject to appeal as per municipal code. See Note 1
13	13.02.030C.4	13.02.030C.4	Requires that wireless master plan demonstrates compliance with Chapter's intent for a network of distributed low-visibility antennas
14	13.02.030C.7	13.02.030C.7	Re J. Stern Dec 8 testimony, city cannot evaluate 'need'. City can evaluate other placements, constructions and modifications, per 47USC332(c)(7)
15	13.02.030D.3e	13.02.030D.3e	Discourages right of way antennas in front of houses, typical of other city ordinances; adds 'not' to fix serious typographical error
16	13.02.030F	13.02.030F	Provides for appeal of administrative approval for a commercial antenna in right of way. (For notification, requires city to post department secretary's log of applications on website.) Explicitly permitted by federal law, except on grounds of radiation hazard. See Note 1

ATTACHMENT: INDEX TO DON MCPHERSON CHANGES

Revised 3Jan05

Item	City Section	Revised	Comments
17	13.02.060	Deleted	This section is totally inadequate to regulate placement, construction and modification of telecommunications facilities on public and semi-public zoned property, such as parks, community centers, utility yards and other areas. Moved to Section 13.02.080.
18	13.02.090A	13.02.080A	Increases scope to include all zoning districts, except for public right of way. Reiterates city authority for placement, construction and modification of telecommunications facilities
19	13.02.090B	13.02.080B	Deletes statement that Director shall administratively approve all permits, with limited right to appeal
20	13.02.090B	13.02.080C	Exceptions. Excludes public schools from the ordinance and prohibits commercial antennas on residential properties. Adds numbered section
21	13.02.090C.a	13.02.080D.1	Original 13.02.090C. a thru g incorrectly numbered
22	13.02.090C.c	13.02.080D.3	Adds requirement that the master wireless plan must show compliance with Chapter intent that applicant's network comprises distributed low-visibility antennas
23	13.02.090C.g	13.02.080D.7	Re J. Stern Dec 8 testimony, city cannot evaluate 'need'. City can evaluate other placements, constructions and modifications, per 47USC332(c)(7)
24	13.02.090D	13.02.080E	Increases scope of telecom permit to include standalone antennas (poles, towers, etc), not in city version
25	13.02.090D.1	13.02.080E.1	<ul style="list-style-type: none"> ●Identifies scope for administrative approval ●Deletes reference to residential zones ●Deletes exclusion for administrative approval of over-height structures, except as noted herein ●Adds administrative approval of over-height antennas no more than eight feet above zoning limit
26	13.02.090D.2 and 13.02.090D.4	13.02.080E.2	<ul style="list-style-type: none"> ●Deletes statement that applicant can justify over-height antennas ●Includes collocation requirement of City Section 13.02.090D.4 ●Includes administrative approval of over-height facilities on existing telecommunication facilities
27	13.02.090D.3	13.02.080E.3	<ul style="list-style-type: none"> ●New requirement that all applications not within scope of administrative approval require use permit, per municipal code Chapter 10.84 and 10.100. See Note 1 ●City Sec 13.02.090D.3 renumbered to 13.02.080E.4

ATTACHMENT: INDEX TO DON MCPHERSON CHANGES

Revised 3Jan05

Item	City Section	Revised	Comments
28	13.02.090D.3	13.02.080E.4	<ul style="list-style-type: none"> ●Reference to residential views deleted ●Screening, etc required only if actually reduces visibility (some screens <u>increase</u> visibility!) ●Reference to ‘stealth technology’ added
29	13.02.090D.4	13.02.080E.2	City section on collocation incorporated into Revised Sec 13.02.080E.2 above
30	13.02.090D.9	13.02.080E.9	Reference to Director changed to City, because planning commission and council approve use permits
31	13.02.090F and 13.02.090G	13.02.080G	<ul style="list-style-type: none"> ●City sections on notice and appeal combined into one section on appeal of administrative decisions ●Adds rights of appeal to planning commission and city council, per municipal code, but not on grounds of radiation hazard. See Note 1 ●Antennas requiring use permit have noticing and rights of appeal, per Revised Sec 13.02.080 E.3 above. See Note 1
32	13.02.100	13.02.090	<ul style="list-style-type: none"> ●Decision authority changed from Director to person or body, Director, planning commission or council. (See language in municipal code 10.104.) ●Logic of city text contradictory and certainly vulnerable to litigation, as stated by Jeremy Stern ●All findings in city version deleted, except for impacts on uses of other property ●Added Finding: City can deny if application does not comply with ordinance policy or intent for an applicant to have a network of distributed low-visibility antennas, and if an alternative exists to provide the needed telecommunications service
33	13.02.120	13.02.110	<ul style="list-style-type: none"> ●City version of revocation procedure deleted and replace by existing process in municipal code 10.104 ●Findings for revocation either abandonment or findings required to deny, Revised Sec 13.02.090

Note 1:

Some confusion apparently exists regarding City authority to permit appeals and conduct public hearings. Section 704 of the 1996 Telecommunications Act, as implemented in 47 U.S.C. 332(c)(7)(B)(ii), states:

“A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.”

According to Fact Sheet #2 (17Sep96) published by the FCC Wireless Telecommunications Bureau, “The Conference Report (accompanying Section 704) explains that if a request for placement of a personal wireless facility involves a zoning variance or a public hearing or comment process, the time period for rendering a decision will be the usual period under such circumstances.” Consequently, public hearing and appeal processes in Manhattan Beach Municipal Code Chapter 10 remain valid under federal law for telecommunications applications.

RESOLUTION PC 04-
Don McPherson Edit, 16Dec04
Don McPherson Edit, 3 Jan 05

(DRAFT PC 12-08-04)

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF
MANHATTAN BEACH RECOMMENDING AMENDMENT OF THE
MANHATTAN BEACH MUNICIPAL CODE AND MANHATTAN BEACH
LOCAL COASTAL PLAN IMPLEMENTATION PROGRAM PERTAINING
TO REGULATION OF TELECOMMUNICATIONS FACILITIES ON
PUBLIC AND PRIVATE PROPERTIES AND THE PUBLIC RIGHT OF
WAY CITY-WIDE.**

THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH DOES
HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The Planning Commission hereby makes the following findings:

- A. The Planning Commission conducted duly noticed public hearings on October 27, and December 8, 2004 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. 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;
- G. 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;

RESOLUTION NO. PC 04-
Don McPherson Edit, 16Dec04 and 3Jan05

- H. 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;
- I. 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;
- J. 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;
- K. 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)).
- L. 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. The Planning Commission of the City of Manhattan Beach hereby recommends that Section 10.60.130 of Chapter 10.60, Title 10, of the Manhattan Beach Municipal Code be repealed in its entirety and that a new Chapter 13.02 be added to Title 13 of the Manhattan Beach Municipal Code as follows:

“CHAPTER 13.02 REGULATION OF TELECOMMUNICATIONS FACILITIES

13.02.010 Scope and Intent

The provisions of this Chapter shall govern placement, construction and modification of telecommunications facilities in the community, whether in the public right of way or on public, semi-public or private property, but not including public schools. The Manhattan Beach Unified School District has sole authority regarding placement, construction and modification of telecommunications facilities on public school properties. These regulations have the intent to permit telecommunications services in all zoning districts of Manhattan Beach (the City) by integrated networks of distributed low-visibility antennas.

13.02.020 Definitions

Items
1, 2, □
& 3

RESOLUTION NO. PC 04-
Don McPherson Edit, 16Dec04 and 3Jan05

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

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.

COMMERCIAL ANTENNA means any transmitting and receiving antenna used to provide telecommunications service (as defined herein.)

Item
4

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.

RESOLUTION NO. PC 04-
Don McPherson Edit, 16Dec04 and 3Jan05

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 City owned, leased or occupied 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.

R ZONING DISTRICTS means all residential base zoning districts in the City, as specified in Chapter 10 of the municipal code.

Item
5

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, **parking lot, parking structure**, river, tunnel, viaduct, bridge, public easement, or dedicated easement.

Item
6

STANDALONE ANTENNA means a separate antenna structure from grade to top, although possibly attached to a building, variously called pole, monopole, tree pole, camouflaged pole, artificial tree, fake tree, tower, lattice tower, and other similar appellations.

Item
7

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.

TELECOMMUNICATIONS SERVICE means the offering of telecommunications for a fee

Item
8

RESOLUTION NO. PC 04-
Don McPherson Edit, 16Dec04 and 3Jan05

directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of facilities used. (Verbatim from 47 U.S.C. 153)

Item
8

TELECOM PERMIT means a permit to locate a telecommunications facility on 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 from the California Public Utilities Commission.

TELEPHONE means an instrument or system for conveying speech over distances by converting sound into electric impulses.

TELEPHONE SERVICE means provision of a system providing voice communication, with a dial tone between points.

ZONING DISTRICT means a 'base zoning district' as defined in Chapter 10 of the municipal code having specific zoning regulations and development standards.

Item
9

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. An entity holding a certificate of public convenience 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. **Exception: Antennas are not permitted on the Strand, walkstreets, or other similar right of ways so designated by the city council**

Item
10

B. Telecom Permit Required. Any entity **that** has received a certificate of public convenience 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, **except for telecommunication structures exceeding zoning height limits**, 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. **New**

Item
11

**RESOLUTION NO. PC 04-
Don McPherson Edit, 16Dec04 and 3Jan05**

telecommunication structures, including standalone antennas, exceeding the height limit of the zoning district in which the right of way lies shall require a use permit in accordance with notice, public hearings, and other requirements specified by Chapter 10.84 of the municipal code. Use permits approved by the planning commission can be appealed to the city council, as specified in Chapter 10.100 of the municipal code.

Item
12

C. 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;
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. **The plan shall demonstrate compliance with intent of this Chapter to permit telecommunications services in all zoning districts of the City by integrated networks of distributed low-visibility antennas;**
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 compared to 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, an RF or other study evaluating **feasibility for other placements, constructions, or modifications of one or more facilities to provide the telecom service desired by the applicant's proposed** facility at the requested location and in the requested configuration.
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.

Item
13

Item
14

D. 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

RESOLUTION NO. PC 04-
Don McPherson Edit, 16Dec04 and 3Jan05

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. **The impact on residential views shall be considered. Antennas located between faces of residences and adjoining streets shall be avoided, defined as being on a line drawn to the adjoining street perpendicular from a substantial building side.** The 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 upon the cessation of use or abandonment of the facility it shall be promptly removed at the expense of the applicant.

Item
15

RESOLUTION NO. PC 04-
Don McPherson Edit, 16Dec04 and 3Jan05

E. 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.

~~F. 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.~~

F. Appeal of Administrative Decisions. Administrative approval of an antenna facility can be appealed to the planning commission, and subsequently to the city council, in accordance with Chapter 10.100 of the municipal code, but not on grounds related to environmental effects of radio frequency emissions or other grounds preempted by federal or state law.

Item
16

G. 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.

H. 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.

I. 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

RESOLUTION NO. PC 04-
Don McPherson Edit, 16Dec04 and 3Jan05

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 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 13.020.100 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 Public Property**~~

~~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.~~

Item
17

13.02.060 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 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.

RESOLUTION NO. PC 04-
Don McPherson Edit, 16Dec04 and 3Jan05

Any entity franchised to provide cable television services within the City which has received a certificate of public convenience 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 13.020.030 for any additional facilities it wishes to add to the public right of way related to said services.

13.02.070 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.

13.02.080 Telecommunications Facilities **Not on Public Right of Way**

- A. Purpose. This section establishes procedures and regulations to process applications for telecommunications facilities (including radio and satellite dish antenna) in all zoning districts, except for public right of way, which is specified in Section 13.02.030. This section specifies city authority over decisions regarding the placement, construction and modification of facilities to ensure public health, safety and general welfare, in accordance with the intent of this Chapter, consistent with federal and state law. Item
18

- 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 zoning 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. Notwithstanding any other provision of this code the decision of the Director shall be final.~~ Item
19

- C. Exceptions
 - 1. This ordinance does not apply to public school properties. The Manhattan Beach Unified School District has sole authority regarding placement, construction and modification of telecommunications facilities on school properties. Item
20

RESOLUTION NO. PC 04-
Don McPherson Edit, 16Dec04 and 3Jan05

- 2. Commercial antennas are prohibited on properties other than right of way in all residential (R) zoning districts | Item
- 3. 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. | 20

- D. Submittal requirements. The following material shall be submitted with an application request for a permit under this section: | Item

 - 1. Site plan and vicinity map; | 21
 - 2. Elevation drawings and floor plans (survey may be required);
 - 3. 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. **The plan shall demonstrate compliance with intent of this Chapter to permit telecommunications services in all zoning districts of the City by integrated networks of distributed low-visibility antennas;** | Item
 - 4. 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; | 22
 - 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 (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;
 - 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, an RF or other study evaluating **feasibility for other placements, constructions, or modifications of one or more facilities to provide the telecom service desired by the applicant's proposed facility** at the requested location and in the requested configuration. | Item

- E. Standard of review. Permit applications under this section for satellite dish antennas, **standalone antennas** and roof, wall or similarly mounted wireless service facilities, including modification to existing **telecommunications** structures must **comply** with the following applicable standards: | Item

 - 1. **For administrative approval by the Community Development Director, the proposed facility shall comply with all applicable development standards of the zoning district in which it is located, except as otherwise specified herein-except for height limits. However, facilities proposed for residential zones must also** | Item

RESOLUTION NO. PC 04-
Don McPherson Edit, 16Dec04 and 3Jan05

~~show that non-residential locations for the facility are either not available or not feasible and that the lack of the facility at the applied for location will result in a prohibition of service. The Director may administratively approve rooftop antennas that exceed the zoning height limitation by no more than eight (8) feet above the nearest parapet wall, provided the antennas are at least ten feet from the nearest parapet and centrally located away from adjoining streets.~~

Item
25

~~2. The facility shall only exceed applicable height limits to the extent such elevation is necessary to facilitate the purpose of the installation.~~

Item
26

2. The applicant shall demonstrate good faith effort to co-locate on existing facilities or sites. The Community Development Director may administratively approve requests for co-location on existing standalone antennas or other telecommunications service facilities that do not increase the height, bulk or otherwise adversely detract from the existing facility, if aesthetically acceptable and structurally and technologically feasible.

3. All applications that the Director may not administratively approve shall require a use permit in accordance with notice, public hearings, and other requirements specified by Chapter 10.84 of the municipal code. Use permits approved by the planning commission can be appealed to the city council, as specified in Chapter 10.100 of the municipal code.

Item
27

~~4. 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, provided that such measures reduce visual impact. 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 stealth technology shall be incorporated to reduce the visual impact.

Item
28

~~4. The applicant shall demonstrate good faith effort to co-locate on existing facilities or sites. Requests for co-location on existing standalone antennas or other wireless service facilities that do not increase the height, bulk or otherwise adversely detract from the existing facility, may be approved if aesthetically acceptable and structurally and technologically feasible.~~

Item
29

5. All wires or cables necessary for operation shall be placed underground, except if attached flush to the building surface and are 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 comply with all applicable PUC or FCC standards.

9. The City reserves the right to impose any other condition consistent with the purpose of this Chapter.

Item
30

F. Amateur Radio Antennas. Amateur radio antennas associated with the authorized operations of an amateur radio station licensed by the FCC (i.e., "HAM" radio

RESOLUTION NO. PC 04-
Don McPherson Edit, 16Dec04 and 3Jan05

transmission) shall be permitted in any zoning 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 must maintain at least five feet (5') clear 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 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 Code, request relief from the requirements of this section from the Planning Commission.

~~F. Notice. For any application which 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 notice shall be given to all property owners located within five hundred (500) feet of the proposed location of the installation at least seven calendar days prior to the final decision of the Director.~~

~~G. Appeal. 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. All other applications may have the Director's decision appealed to the City Council. Any such appeal must be filed within ten (10) calendar days of the date of the 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 "F" above. No published notice shall be required. The City Council may set an appeal fee by resolution.~~

G Appeal of Administrative Decisions. Administrative approval of a commercial antenna facility can be appealed to the planning commission, and subsequently to the city council, in accordance with Chapter 10.100 of the municipal code, but not on grounds related to environmental effects of radio frequency emissions or other grounds preempted by federal or state law.

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.

Item
31

RESOLUTION NO. PC 04-
Don McPherson Edit, 16Dec04 and 3Jan05

- I. 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.
- J. 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.

13.020.90 Denial of Telecommunications Permit

The City shall grant a telecom permit for which a complete application has been submitted pursuant to this Chapter, unless the person or body conducting the proceedings can make one or more of the following findings:

A. That the applicant's master plan, including the proposed facility, does not comply with intent of this Chapter to permit telecommunications services in all zoning districts of the City by integrated networks of distributed low-visibility antennas and that alternative placements, constructions or modifications of one or more facilities exist to provide the telecommunications service needed by the applicant;

B. That the facility will have significant adverse impacts on the use of other properties;

~~————— 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.

13.020.100 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.

13.020.110 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~~

Item □
32

Item □
33

RESOLUTION NO. PC 04-
Don McPherson Edit, 16Dec04 and 3Jan05

~~nuisance or otherwise has negative impacts on surrounding properties. In doing so, the City shall make the findings required under Section 13.020.100 above. A written notice shall be mailed to the permittee of such revocation. Within ten (10) days of mailing of such notice of revocation to the permittee, a written appeal of such action may be filed. Any such appeal shall be heard by the City Manager or his or her designee and his or her determination of the revocation shall be final.~~

The City may revoke any telecom permit in accordance with Chapter 10.104 of the municipal code, provided that the person or body conducting the required hearing can make any of the findings of Section 13.02.100 or that the facility has been abandoned, as identified in Sections 13.02.030 H and 13.02.080 J

Item
33

13.020.120 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.

13.020.130 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. The Planning Commission of the City of Manhattan Beach hereby recommends that Chapter 13.02 of the Manhattan Beach Municipal Code, upon its effectiveness, be inserted into Chapter 3 (Codes, Resolutions, and Ordinances) of the Manhattan Beach Local Coastal Plan Implementation Program and that Section A.60.130 entitled “Antennae and microwave equipment” of the Manhattan Beach Local Coastal Plan Implementation Program be amended to include a cross reference 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).”

RESOLUTION NO. PC 04-
Don McPherson Edit, 16Dec04 and 3Jan05

SECTION 4. The Planning Commission of the City of Manhattan Beach hereby recommends that Section 10.08.040 of Title 10, of the Manhattan Beach Municipal Code and Section A.08.040 of Title A of the Manhattan Beach Local Coastal Plan Implementation Program, entitled Public and semipublic use classifications, be 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 Planning Commission of the City of Manhattan Beach hereby recommends that the land use matrix of Section A.16.020 of the Manhattan Beach Local Coastal Plan Implementation Program be 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															
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;"></td> <td style="width: 10%;">CL</td> <td style="width: 10%;">CD</td> <td style="width: 10%;">CNE</td> <td style="width: 55%;">Additional Regulations</td> </tr> <tr> <td style="height: 20px;"></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Utilities, Major</td> <td>U</td> <td>U</td> <td>U</td> <td></td> </tr> </table>		CL	CD	CNE	Additional Regulations						Utilities, Major	U	U	U		
	CL	CD	CNE	Additional Regulations												
Utilities, Major	U	U	U													

SECTION 6. The Planning Commission of the City of Manhattan Beach hereby recommends that Section 10.60.060 of Title 10, of the Manhattan Beach Municipal Code the entitled Exceptions to height limits be 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 7. 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.

RESOLUTION NO. PC 04-
Don McPherson Edit, 16Dec04 and 3Jan05

SECTION 7. If any sentence, clause, or phrase of this resolution 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 Planning Commission hereby declares that it would have passed this resolution 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 8. Any provisions of the Manhattan Beach Municipal 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.

I hereby certify that the foregoing is a full, true, and correct copy of the Resolution as adopted by the Planning Commission at its regular meeting of ----- and that said Resolution was adopted by the following votes:

AYES:
NOES:
ABSENT:
ABSTAIN:

RICHARD THOMPSON
Secretary to the Planning Commission

SARAH BOESCHEN
Recording Secretary

Donald McPherson
1014 First Street
Manhattan Beach, CA 90266

Voice: 310.372.2774
FAX: 310.372.2539
E-mail: DMcPhersonLA@earthlink.net

5 January 2005

Rosemary Lackow, Senior Planner
Community Development Department
City of Manhattan Beach
Via Email

Subject: Review of City Attorney Revision to Telecom Ordinance

As you requested, I have reviewed the subject revision, termed herein BW12-30, in context of my suggested changes to the proposed telecommunications ordinance, dated Jan 3. I will wait until receiving the Friday staff report before providing written input addressed to commissioners.

Major comments regarding BW12-30 follow, with a comparison to my Jan 3 recommendations provided in a table at the end of this letter.

1. Residential Facilities. At Section 13.02.090D1, BW12-30 still permits antennas on residential properties, but adds criteria that require the city to make engineering judgments regarding whether facilities on residential or non-residential properties can or cannot provide service, evaluations that the city has no expertise or experience to make.

Furthermore, by opening the door for placements of commercial antennas on residential properties, the city invites litigation, such as experienced by Rancho Palos Verdes (RPV) and Carlsbad, cases that Mr. Jeremy Stern cited December 8. Review of relevant documents make it apparent that the courts based their decisions in part on RPV and Carlsbad allowing residential installations, a result we plan to present March 12.

Manhattan Beach has more than ample commercial properties, public and semi-public properties, and right-of-ways (streets, alleys, parking lots and structures) to service all parts of the city with a network of low-visibility antennas, without placing antennas on residential properties. Why make such an offer to wireless companies, when case law shows that leads to lawsuits? To sue over a residential prohibition in the ordinance, which MB currently has, a company would have to prove they could not provide city-wide coverage without antennas placed on homes and yards, an impossibility.

2. Notice, Appeals and Public Hearings. Without one shred of justification, BW12-30 continues to prohibit, or at most, preclude public participation. In 'Fact Sheet #2,' the FCC quotes the congressional conference report accompanying the Telecommunications Act that the 'reasonable period of time' stated in the Act for processing applications can involve 'a zoning variance or a public hearing or comment process, the time period for rendering a decision will be the usual period under such circumstances.'

For no apparent reason, BW12-30 denies the public their fundamental rights to hearings and appeal, such as on nonconforming antennas and on towers. Regarding the sole BW12-30 response to commissioners' requests regarding the public participation issue, please refer to the last item in the accompanying table. BW12-30 limits notice to cases only when city staff belatedly discovers they mistakenly approved an antenna not sufficiently camouflaged.

The city appears to have overlooked a unique factor regarding revision of the telecom ordinance. The Telecommunications Act prohibits giving one or more service providers a competitive advantage. As result, mistakes made now to pass the statute in haste can become permanent fixtures not reversible in the future. For example, if allowing antennas on residential properties proves erroneous, as apparently the situation in which RPV and Carlsbad find themselves, the council may not have the authority to correct the situation. Wireless companies will argue that if some providers receive permits for residential installations, then all must.

The same argument applies to BW12-30 unnecessarily eliminating or short-circuiting public participation. If the city shields one wireless company from public scrutiny, then they must provide the same courtesy to all others, forever.

Consequently, the planning commission must have the opportunity to thoroughly scrub the telecommunications ordinance before it goes to the city council. The commissioners are up to speed on the issues. Staff should let them do their job to minimize risk, so that in the limited time available with the council, nothing slips through that we will all regret.

The table below compares BW12-30 with the 33 items in my attached recommended revision. Because 26 of my items did not make the cut, even partially, the table is not very long.

Donald McPherson

Copy: Commissioners, Comm Dev Director, City Attorney, M. Andreani, W. Partridge

Correlation Between BW12-30 and Recommended Revisions to Telecom Ordinance

Note: See attached table for 'Item' references, provided previously on 3 Jan 05

Item	BW12-30 Reso	Dec 8 Reso	Comment
1 20	13.02.060 Adds sentence to end	13.02.060	Items 1 & 20 exclude MBUSD school properties from ordinance. BW 12-30 adds facility permit for non-city public properties, such as schools.
14	13.02.030C.7	13.02.030C.7	Consistent with Item 14 wording
25	13.02.090D	13.02.090D1	New section allows residential installations with criteria. See major point discussion in letter.
23	13.02.090E.g	13.02.090C.g	Consistent with Item 23 wording.
25 26	13.02.090F.2	13.02.090D.1, D.2 & D.4	Items 25 & 26 identify scope of administrative approval, including antennas 8' above limit. BW12-30 language confusing but increases allowed height to 15' above limit.
31	13.02.090F & G	13.02.090F & G	Item 31 provides for notice and appeal of major or non-conforming installations. BW12-30 limits notice to cases only when city staff decides they mistakenly approved an antenna not sufficiently camouflaged.

INDEX TO TELECOMMUNICATIONS ORDINANCE CHANGES
(Does not include corrections of numbering, typographical or grammar errors.)

Item	City Section	Revised	Comments
1	13.02.010	13.02.010	Excludes public schools from ordinance
2	13.02.010	13.02.010	Expands title 'Scope' to 'Scope and Intent'. Adds concept of evaluating antenna application in context of applicant's network of distributed low-visibility antennas.
3	13.02.010	13.02.010	Corrects scope to address all zoning districts in the city; uses 1996 Act Sec 704 language granting city zoning authority for 'placements, construction, and modification'.
4	13.02.020	13.02.020	Defines 'commercial antenna' as used for 'telecommunications services', also defined
5	13.02.020	13.02.020	Defines 'R zoning districts' as per code
6	13.02.020	13.02.020	Includes parking lots and parking structures in definition for right of way
7	13.02.020	13.02.020	Defines 'standalone antenna' to encompass many appellations
8	13.02.020	13.02.020	Defines 'telecommunications services', per U.S. code
9	13.02.020	13.02.020	Defines 'zoning district', per municipal code
10	13.02.030A	13.02.030A	Prohibits antennas on the Strand, walkstreets, and other similar public right of ways
11	13.02.030B	13.02.030B	Line 6: No administrative approval for telecommunications structures exceeding height limits
12	13.02.030B	13.02.030B	End: For over-height structures, specifies use permit, subject to appeal as per municipal code. See Note 1
13	13.02.030C.4	13.02.030C.4	Requires that wireless master plan demonstrates compliance with Chapter's intent for a network of distributed low-visibility antennas
14	13.02.030C.7	13.02.030C.7	Re J. Stern Dec 8 testimony, city cannot evaluate 'need'. City can evaluate other placements, constructions and modifications, per 47USC332(c)(7)
15	13.02.030D.3e	13.02.030D.3e	Discourages right of way antennas in front of houses, typical of other city ordinances; adds 'not' to fix serious typographical error
16	13.02.030F	13.02.030F	Provides for appeal of administrative approval for a commercial antenna in right of way. (For notification, requires city to post department secretary's log of applications on website.) Explicitly permitted by federal law, except on grounds of radiation hazard. See Note 1

Item	City Section	Revised	Comments
17	13.02.060	Deleted	This section is totally inadequate to regulate placement, construction and modification of telecommunications facilities on public and semi-public zoned property, such as parks, community centers, utility yards and other areas. Moved to Section 13.02.080.
18	13.02.090A	13.02.080A	Increases scope to include all zoning districts, except for public right of way. Reiterates city authority for placement, construction and modification of telecommunications facilities
19	13.02.090B	13.02.080B	Deletes statement that Director shall administratively approve all permits, with limited right to appeal
20	13.02.090B	13.02.080C	Exceptions. Excludes public schools from the ordinance and prohibits commercial antennas on residential properties. Adds numbered section
21	13.02.090C.a	13.02.080D.1	Original 13.02.090C. a thru g incorrectly numbered
22	13.02.090C.c	13.02.080D.3	Adds requirement that the master wireless plan must show compliance with Chapter intent that applicant's network comprises distributed low-visibility antennas
23	13.02.090C.g	13.02.080D.7	Re J. Stern Dec 8 testimony, city cannot evaluate 'need'. City can evaluate other placements, constructions and modifications, per 47USC332(c)(7)
24	13.02.090D	13.02.080E	Increases scope of telecom permit to include standalone antennas (poles, towers, etc), not in city version
25	13.02.090D.1	13.02.080E.1	<ul style="list-style-type: none"> ●Identifies scope for administrative approval ●Deletes reference to residential zones ●Deletes exclusion for administrative approval of over-height structures, except as noted herein ●Adds administrative approval of over-height antennas no more than eight feet above zoning limit
26	13.02.090D.2 and 13.02.090D.4	13.02.080E.2	<ul style="list-style-type: none"> ●Deletes statement that applicant can justify over-height antennas ●Includes collocation requirement of City Section 13.02.090D.4 ●Includes administrative approval of over-height facilities on existing telecommunication facilities
27	13.02.090D.3	13.02.080E.3	<ul style="list-style-type: none"> ●New requirement that all applications not within scope of administrative approval require use permit, per municipal code Chapter 10.84 and 10.100. See Note 1 ●City Sec 13.02.090D.3 renumbered to 13.02.080E.4

Item	City Section	Revised	Comments
28	13.02.090D.3	13.02.080E.4	<ul style="list-style-type: none"> ●Reference to residential views deleted ●Screening, etc required only if actually reduces visibility (some screens <u>increase</u> visibility!) ●Reference to ‘stealth technology’ added
29	13.02.090D.4	13.02.080E.2	City section on collocation incorporated into Revised Sec 13.02.080E.2 above
30	13.02.090D.9	13.02.080E.9	Reference to Director changed to City, because planning commission and council approve use permits
31	13.02.090F and 13.02.090G	13.02.080G	<ul style="list-style-type: none"> ●City sections on notice and appeal combined into one section on appeal of administrative decisions ●Adds rights of appeal to planning commission and city council, per municipal code, but not on grounds of radiation hazard. See Note 1 ●Antennas requiring use permit have noticing and rights of appeal, per Revised Sec 13.02.080 E.3 above. See Note 1
32	13.02.100	13.02.090	<ul style="list-style-type: none"> ●Decision authority changed from Director to person or body, Director, planning commission or council. (See language in municipal code 10.104.) ●Logic of city text contradictory and certainly vulnerable to litigation, as stated by Jeremy Stern ●All findings in city version deleted, except for impacts on uses of other property ●Added Finding: City can deny if application does not comply with ordinance policy or intent for an applicant to have a network of distributed low-visibility antennas, and if an alternative exists to provide the needed telecommunications service
33	13.02.120	13.02.110	<ul style="list-style-type: none"> ●City version of revocation procedure deleted and replace by existing process in municipal code 10.104 ●Findings for revocation either abandonment or findings required to deny, Revised Sec 13.02.090

Note 1:

Some confusion apparently exists regarding City authority to permit appeals and conduct public hearings. Section 704 of the 1996 Telecommunications Act, as implemented in 47 U.S.C. 332(c)(7)(B)(ii), states:

“A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.”

According to Fact Sheet #2 (17Sep96) published by the FCC Wireless Telecommunications Bureau, “The Conference Report (accompanying Section 704) explains that if a request for placement of a personal wireless facility involves a zoning variance or a public hearing or comment process, the time period for rendering a decision will be the usual period under such circumstances.” Consequently, public hearing and appeal processes in Manhattan Beach Municipal Code Chapter 10 remain valid under federal law for telecommunications applications.

**CITY OF MANHATTAN BEACH
COMMUNITY DEVELOPMENT DEPARTMENT**

TO: Planning Commission

THROUGH: Richard Thompson, Director of Community Development

FROM: Rosemary Lackow, Senior Planner

DATE: February 9, 2005

SUBJECT: 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.

RECOMMENDATION

Staff recommends that the Planning Commission **CONDUCT THE PUBLIC HEARING**, and **CONSIDER** the attached Resolution for adoption, recommending changes to the Municipal Code regarding regulation of telecommunication facilities (Exhibit A).

BACKGROUND

The City Council, in its 2004/2005 Work Plan directed Staff to develop process and procedures to handle cell site applications and incorporate them into a telecommunications ordinance. The City Attorney, with assistance from the Department of Community Development, prepared a draft ordinance which was initially presented to the Planning Commission in a public hearing on October 27, 2004. The Commission received public input and has held subsequent hearings on December 8, 2004 and January 12, 2005. The Planning Commission continued the public hearing to this date and requested that Staff make further changes to address continued concerns (Exhibits A, draft Resolution and B, Planning Commission minutes).

DISCUSSION

The enclosed draft Resolution, if approved, would recommend that the City Council adopt a new comprehensive telecommunications ordinance that would establish permit processing procedures and standards for all types of telecommunication activity applications, the majority of which relate to cell/mobile phone facilities. The Planning Commission has received input from the City Attorney regarding legal issues, The Department of Community Development regarding permitting and land use issues, and the public regarding its concerns regarding possible impacts to neighborhoods.

Draft Resolution – General Recommended Actions

As a review, the draft Resolution is organized into main Sections or actions to be taken by the Planning Commission:

Section 1 contains the broad findings supporting the Commission's recommendations. The findings provide a background in which the need to adopt new regulations arose, the City's

authority to regulate telecommunications, and the general purpose and intent in regulating private and public right of way telecom sites.

Section 2, the main body of new regulations, is a recommendation to repeal the existing telecom permitting regulations currently contained in Section 10.60.130 of the Municipal Code (within the Zoning Ordinance) and to create a new Chapter 13.02, to be entitled “Regulation of Telecommunication Facilities” within the Title 13 of the Municipal Code.

Section 3 is a recommendation to insert the new Chapter 13.02 of the Municipal Code into Chapter 3 of the City’s Local Coastal Plan Implementation Program, and to repeal existing outdated coastal regulations relating to telecommunication antennas (A.60.130). This action will, upon approval of the Coastal Commission, make telecommunication regulations in the coastal zone consistent with the rest of the City.

Section 4 is a recommendation to modify the use classification entitled “Major Utilities” in both the Zoning Ordinance and Local Coastal Plan (LCP) to provide a new reference to Chapter 13.02 in Title 13 of the Municipal Code. This action is needed for internal code consistency in that telecom regulations will no longer be located in the Zoning Ordinance.

Section 5 relates to a relatively minor “housekeeping” matter in that it is a recommendation to change the use regulations in the LCP to require a use permit for “Major utilities” (such as electrical generating plants, substations and switching buildings), which would make this specific provision of the LCP consistent with the Zoning Ordinance.

Sections 6, 7, and 8 are recommendations to change the commercial, residential, and residential senior citizen (RSC) zone development regulations by providing references to the new telecommunications regulations in Chapter 13.02 of the Municipal Code.

Section 9 is a recommendation to modify the Zoning Ordinance and LCP provisions that allow certain exceptions to height limits, by deleting a provision that currently allows owners (in all zoning districts) to request from the Planning Commission, additional height for an antenna beyond 10 feet above the applicable height limit. Staff believes that this section was originally intended for television roof antennas and is outdated and unnecessary and should be removed from the Zoning Ordinance and LCP at this time.

New Changes to Draft Resolution

A number of changes have already been made to the proposed code since it was initially presented to the Commission. The most significant changes relate to public notice, appeal rights permitted height limits, criteria for facilities in residential zones, and criteria for facilities on walk streets and The Strand. In the early drafts, telecom applications on private property had no provisions that required any public noticing or granted any appeal rights – the Director of Community Development had the final decision with no appeal to the City Council and in no

case was notice to surrounding property owners required prior to a decision being made. With respect to height, the original draft regulations permitted a telecom facility to exceed the allowed structure height limit, provided it can be demonstrated that additional height was necessary.

Under the current proposal all of these issues are addressed. Public notification and appeal rights are now provided, with criteria for approving any projects proposed in any residential zone, including a requirement for neighborhood compatibility. In the non-residential zones, projects that do not meet the allowed height limit or are not adequately visually blended or concealed from view are subject to public notification and decisions may be appealed to the City Council. In addition, criteria have been added for approving any telecommunication facility within the right of way of any walk street and The Strand.

The following is a list of specific changes that Staff has made to the draft Resolution since the last public hearing. Text changes are highlighted in the Resolution document in color and explanatory comments are provided for each change in the right-hand margins.

1. **Page 1, Finding “F”** has been added, to discourage the use of walk streets and The Strand, due to the unique ambience of these areas.
2. **Page 4, Section 13.02.030:** A new sub-section “C” has been added that contains specific criteria for approving a telecom permit in the right of way of a walk street or The Strand. This is similar to the criteria that were included for approving applications on residential private properties.
3. **Page 8, Section 13.02.090: sub-section “D.b.”** has been revised to include the word “adverse” regarding impacts that are to be mitigated. In addition, the subsequent paragraph relating to amateur radio antennas has been modified to ensure that such facilities are prohibited from being converted either by construction or operation, to use as a commercial telecommunications facility.
4. **Page 9, Section 13.02.090, sub-section “F.2”:** This section has been revised to clarify that a telecom facility is permitted to exceed the height of an existing building by eight feet, for panel type antennas, and 15 feet for “whip antennas” and these height limits are measured from the existing building.
5. **Page 10, Section 13.02.090, sub-section “H”** has been revised to require public notice at least ten days (instead of seven) before a Staff decision on a pending application. This applies to projects where Staff determines that the proposed facility either is not adequately visually camouflaged or blended with the surroundings of the site or is proposed on a non-commercially zoned property.
6. **Page 10, Section 13.02.090, sub-section “I”** has been revised to clarify that the appeal provisions of a telecom permit do not apply to amateur “HAM” radio facilities. It should be noted that the permit procedures and regulations for HAM radios in this ordinance are identical to current regulations. However, language has been added to clarify that such facilities, typically operated in homes, are not permitted to convert to a commercial use.
7. **Page 11, Section 13.020.100, sub-section “B”** has been revised in that the prior finding has been re-stated to read “That no feasible alternative nonresidential site is available for

the proposed facility.” This change is consistent with other findings contained in the draft regulations.

Staff has also prepared a chart entitled ‘Proposed Telecommunications Ordinance’ which lists the main components of proposed Chapter 13.02 by indicating the approving body (Staff or City Council), whether there are provisions for public notice or appeal of a Staff decision, and whether a policy change is being proposed (Exhibit C). The revised draft ordinance has been reviewed by the City Attorney who is prepared to provide further advice to the City Council when it conducts the public hearing and considers the Commission’s recommendation. The City Attorney has expressed legal concerns in the past with cities over-regulating telecommunication facilities.

CONCLUSION

Staff urges that the Planning Commission take final action at this time and make a recommendation to the City Council.

ALTERNATIVES

The Planning Commission’s options include the following:

1. Adopt the attached Resolution as presented.
2. Adopt the attached Resolution with further revisions.
3. Recommend that the City Council not adopt the recommended code changes and provide alternative policy recommendations.

ATTACHMENTS

- Exhibit A: Draft Resolution No. PC 05 -
- Exhibit B: PC Minutes: 1/12/05
- Exhibit C: Chart: Proposed Telecommunication Ordinance

RESOLUTION PC 05-

DRAFT PC 2-09-05
(reflects changes from 1-12-05 public hearing)

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH RECOMMENDING AMENDMENT OF THE MANHATTAN BEACH MUNICIPAL CODE AND MANHATTAN BEACH LOCAL COASTAL PLAN IMPLEMENTATION PROGRAM PERTAINING TO REGULATION OF TELECOMMUNICATIONS FACILITIES ON PUBLIC AND PRIVATE PROPERTIES AND THE PUBLIC RIGHT OF WAY CITY-WIDE.

THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The Planning Commission 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.
- 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

Comment: This finding provided to address public concerns to preserve walk streets and The Strand conditions.

**RESOLUTION NO. PC 05-
DRAFT PC 2-09-05**

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. The Planning Commission of the City of Manhattan Beach hereby recommends that Section 10.60.130 of Chapter 10.60, Title 10, of the Manhattan Beach Municipal Code be repealed in its entirety and that a new Chapter 13.02 be 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.

**RESOLUTION NO. PC 05-
DRAFT PC 2-09-05**

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

**RESOLUTION NO. PC 05-
DRAFT PC 2-09-05**

fiber, antennae, cabinets, pedestals, transmitters, repeaters, cellular transmission or relay sites and other telecommunications related equipment.

TELECOM PERMIT means a permit to locate a 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. Telecommunication facilities are discouraged from locating on The Strand and walk streets. 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.

Comment: New language inserted to support discouraging new facilities in ROW on walk streets and The Strand.

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. 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.

Comment: New criteria inserted to discourage new telecom facilities in walk street and The Strand ROW

**RESOLUTION NO. PC 05-
DRAFT PC 2-09-05**

D. 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;
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.

E. 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;

**RESOLUTION NO. PC 05-
DRAFT PC 2-09-05**

- 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 upon the cessation of use or abandonment of the facility it shall be promptly removed at the expense of the applicant.
- F. 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.
- G. 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.
- H. 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.
- I. 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.
- J. 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

**RESOLUTION NO. PC 05-
DRAFT PC 2-09-05**

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 13.020.100 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

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.

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

**RESOLUTION NO. PC 05-
DRAFT PC 2-09-05**

under Section 13.020.030 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.

Comment: "adverse" inserted per public comment from 1-12-05 public hearing

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

**RESOLUTION NO. PC 05-
DRAFT PC 2-09-05**

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.

Comment: Language inserted to preclude conversion of amateur use to commercial use, per public comment at 1-12-05 public hearing.

Deleted: or

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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.

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 as follows:
 - a. A maximum of three building or roof mounted "whip" antennas not exceeding a diameter of 3-inches at a maximum height of 15 feet above the existing building measured to the highest point of the building adjacent to the antenna.
 - b. Antennas with diameter or width greater than 3-inches and related equipment: 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,

Comment: This section changed to clarify that permitted additional height of 8 or 15 feet is measured from existing building.

Comment: Language added per PC at 1-12-05 public hearing.

**RESOLUTION NO. PC 05-
DRAFT PC 2-09-05**

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 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 Code, request relief from the requirements of this section from the Planning Commission.

H. Notice. For any application which 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 or which 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), conform to the standards of the zone in which it is located notice shall be given to all property owners located within five hundred (500) feet of the proposed location of the installation at least ten calendar days prior to the final decision of the Director.

Comment: This change per PC at 1-12-05 public hearing.

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I. Appeal. 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. All other applications including those which 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) may have the Director's decision appealed to the City Council. Any such appeal must be filed within ten (10) calendar days of the date of the 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. The City Council may set an appeal fee by resolution. 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).

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Comment: Based on comments from 1-12-05 public hearing, this language provides a reference to the appeal provisions for HAM radio antennas (as reflects current policy)

**RESOLUTION NO. PC 05-
DRAFT PC 2-09-05**

- J. 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.
- K. 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.
- L. 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.

13.020.100 Denial of Telecommunications Permit

The Director or, where applicable the City Council on appeal, 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 no 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.

Comment: This change suggested through public input 1-12-05

Deleted: is not necessary for provision of service by the applicant

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

13.020.110 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.

13.020.120 Revocation

The Director 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 Director shall make the findings required under Section 13.020.100 above. A written notice shall be mailed to the permittee of such revocation. Within ten (10) days of mailing of such notice of revocation to the permittee, a written appeal of such action may be filed. Any such appeal shall be heard by the City Manager or his or her designee and his or her determination of the revocation shall be final.

13.020.130 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

**RESOLUTION NO. PC 05-
DRAFT PC 2-09-05**

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.

13.020.140 Enforcement

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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. The Planning Commission of the City of Manhattan Beach hereby recommends that Chapter 13.02 of the Manhattan Beach Municipal Code, upon its effectiveness, be inserted into Chapter 3 (Codes, Resolutions, and Ordinances) of the Manhattan Beach Local Coastal Plan Implementation Program and that Section A.60.130 entitled “Antennae and microwave equipment” of the Manhattan Beach Local Coastal Plan Implementation Program be amended to include a cross reference 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)”.

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SECTION 4. The Planning Commission of the City of Manhattan Beach hereby recommends that Section 10.08.040 of Title 10, of the Manhattan Beach Municipal Code and Section A.08.040 of Title A of the Manhattan Beach Local Coastal Plan Implementation Program, entitled Public and semipublic use classifications, be 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 Planning Commission of the City of Manhattan Beach hereby recommends that the land use matrix of Section A.16.020 of the Manhattan Beach Local Coastal Plan Implementation Program be amended by changing P to U for the CNE zone as follows:

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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	

**RESOLUTION NO. PC 05-
DRAFT PC 2-09-05**

SECTION 6. The Planning Commission of the City of Manhattan Beach hereby recommends that Section 10.16.030 of Title 10, of the Manhattan Beach Municipal Code entitled CL, CC, CG, CD, and CNE districts: development regulations and Section A.16.030 of the Manhattan Beach Local Coastal Plan Implementation Program entitled CL, CD, and CNE districts: development regulations be 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

SECTION 7. The Planning Commission of the City of Manhattan Beach hereby recommends that Section 10.12.030 of Title 10, of the Manhattan Beach Municipal Code entitled Property development regulations: RS, RM and RH districts and Section A12.030 of the Manhattan Beach Local Coastal Plan Implementation Program entitled Property development regulations: RM and RH districts, the matrix entitled Property Development Standards for all Area Districts be amended to add a cross-reference to Chapter 13.02 (following Minor Exceptions) as follows:

Telecommunications Facilities See Chapter 13.02

SECTION 8. The Planning Commission of the City of Manhattan Beach hereby recommends that Section 10.12.050 of Title 10, of the Manhattan Beach Municipal Code entitled RSC district development regulations be amended to add a cross-reference to Chapter 13.02 (following Minor Exceptions) as follows:

Telecommunications Facilities See Chapter 13.02

SECTION 9. The Planning Commission of the City of Manhattan Beach hereby recommends that Section 10.60.060 of Title 10, of the Manhattan Beach Municipal Code and Section A.60.060 of the Manhattan Beach Local Coastal Plan Implementation Program entitled Exceptions to height limits be 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 10. 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 11. If any sentence, clause, or phrase of this resolution 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 Planning Commission hereby declares that it would have passed this resolution 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 12. Any provisions of the Manhattan Beach Municipal 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.

**RESOLUTION NO. PC 05-
DRAFT PC 2-09-05**

I hereby certify that the foregoing is a full, true, and correct copy of the Resolution as adopted by the Planning Commission at its regular meeting of February 9, 2005 and that said Resolution was adopted by the following votes:

AYES:
NOES:
ABSENT:
ABSTAIN:

RICHARD THOMPSON
Secretary to the Planning Commission

SARAH BOESCHEN
Recording Secretary

Planning Commission Meeting 1/12/05

Telecom minutes excerpt (draft)

04/412.1-2 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

Senior Planner Lackow summarized the staff report. She stated that issues that have been raised include citizen participation in the approval of proposals for wireless antennas, particularly regarding noticing and appeal rights; the potential for degradation of sites and particularly residential neighborhoods; the need for special treatment of walk-streets and The Strand; inclusion of school sites in the public review process; the need to provide cell coverage in general in residential areas; and the need to address legal issues. She indicated that all significant changes that have been made to the draft Ordinance relate to private property.

Senior Planner Lackow stated that most changes made by staff were to Section 13.02.090 relating to the regulation of antennas within private property, and the section has been expanded to address any public property not owned by the City such as schools and County sites. She reviewed the changes that have been made to the draft Ordinance. She said that the requirement for an RF study has been eliminated. She indicated that for non-residential properties staff suggests allowing antennas to extend 8 feet above the height limit for bulkier panel antennas and 15 feet above existing building height for the more slender “whip” antennas with a maximum diameter and number (of whip antennas). She commented that Section H and I on page 9 and 10 of the draft Resolution have been revised to provide that all cell sites on non-commercial properties would automatically require noticing to property owners within a radius of 500 feet prior to a decision being made by the Community Development Director. She indicated that appeals for such applications would be heard by the City Council, and an appeal process description would be included in the notice.

Senior Planner Lackow commented that the City Attorney has recommended that cellular antennas not be prohibited on walk-streets or The Strand to avoid a challenge that this would be considered local government interference that would be prohibited under state and federal law. She stated that the Ordinance does not include a minimum distance of an antenna within the public right-of-way from a residential building. She commented that the planning staff felt it might be appropriate to set a minimum distance; however, it is difficult to establish a standard because of the variations in the distance of zoning setbacks (between 1 foot and 20-feet). She stated that staff did contact a number of additional cities that have not made changes to their Ordinance regarding telecommunication facilities. She noted that most cities staff contacted which have not recently passed a new Ordinance have not made changes because they were not aware of any specific legislation requiring them to change their Ordinances and have no pending legal issues. She commented that at the writing of the report staff had met with two

residents, and there has been additional input on the most recent changes. She commented that a letter was also received by **Jeremy Stern** with suggested changes after the staff report was written. She reviewed the specific text changes to the draft Ordinance made since the staff report was written and noted that the most recent resolution is being presented tonight and is marked “PC 1-12-05 rev” in blue.

Chairman O’Connor stated that section G on page 9 of the draft Resolution that addresses the appeal process for amateur radio antennas seems to be redundant, as section I on page 10 addresses appeals for the entire section of the Code.

Senior Planner Lackow stated that the Code currently includes a policy regarding amateur HAM radios that allows appeals to be heard before the Commission, and staff did not feel comfortable changing the existing language. She stated that wording could be added to item I to state: “with the exception of amateur HAM radios.”

Senior Planner Lackow indicated that staff feels the need of citizens to participate in the permit process and the need to streamline the process have been addressed by the proposed Resolution. She commented that the proposed Resolution would give staff the authority to incorporate camouflage and the mitigation of aesthetic impacts.

In response to a question from Commissioner Simon, Associate Planner Lackow indicated that, while staff hadn’t been able to review this case in detail or with the City Attorney, the court decision in the case against Palos Verdes Estates encouraged staff that the proposed Resolution is moving the City in the right direction, especially with respect to the public right of way.

Commissioner Montgomery suggested adding wording to page 9, item F(4) to state: “The applicant shall demonstrate good faith effort to co-locate on existing facilities or sites and non-residential zones.”

Senior Planner Lackow indicated that staff’s reasoning in wording the condition is that there currently are no wireless facilities or sites that are on residential property. She said that the wording could be added as suggested by Commissioner Montgomery.

In response to a question from Commissioner Montgomery, Senior Planner Lackow indicated that applications in noncommercial sites would be noticed before a decision by the Community Development Director is made. She indicated that there would not be an automatic public hearing, and applications would be appealed only if a request was received.

In response to a question from Commissioner Savikas, Director Thompson indicated that appeals of wireless facilities would be heard by the City Council.

Commissioner Simon commented that with public hearings there is a definite point by which all information must be received before the item is considered for a decision. He indicated his concern that with the decision on wireless facility applications being made

by the Community Development Director, there might not be a mechanism to ensure that information is available to the public before a decision is reached.

Senior Planner Lackow said that in the notice that would automatically be given to surrounding property owners, it would note a date at which a decision will be made, and before which comments and concerns must be received by staff. Members of the public will have until that time to ask staff for further information or provide input.

Chairman O'Connor opened the public hearing.

Jeremy Stern, representing Cingular Wireless, commented that the revisions to page 8, section 13 are consistent with the remarks at the last hearing. He requested that item D (a) on page 8 be revised to state: “no feasible alternative nonresidential site was available for the facility.” He also requested that item D (b) be revised to state: “adverse aesthetic impacts have been substantially mitigated.”

Regarding **Mr. Stern's** proposed change to item D(b), Commissioner Simon commented that the word “substantially” has a different meaning than the word “fully,” which means totally.

Mr. Stern commented that their concern is that an argument could be made that an antenna be denied even if it is hidden within a structure such as a chimney because the screening itself would be visible. He indicated that the word “substantially” would provide flexibility to antennas where the screening is visible.

Mr. Stern also requested that page 10, section 13.02.100(B) eliminate the reference to “necessity” and instead read: “no feasible alternative nonresidential site is available for the facility.” He commented that they would request the change to maintain consistency because the determination of necessity has already been made.

In response to a question from Chairman O'Connor, Senior Planner Lackow indicated that staff has not had an opportunity to discuss the proposed change to section 13.02.100 (b) as suggested by **Mr. Stern** and is reluctant to support it at this time.

In response to a question from Commissioner Savikas, Director Thompson said that staff's analysis of projects would not change regardless of whether item D (a) included the word “fully” or “substantially.” He said, however, wording does sometimes become challenged in court.

Don McPherson, a resident of the 1000 block of 10th Street, stated that staff has made progress with the Ordinance; however, he would request that the Commission conduct a more thorough analysis of all of the issues. He commented that the decision in the recent case in Rancho Palos Verdes has indicated that cities do have discretion in the aesthetics of wireless antennas. He stated that once the Ordinance is enacted and applications are approved it will be difficult to make changes because companies can argue that they

should have the same consideration as previous applications. He stated that there is very limited opportunity to appeal applications on property outside of the public right-of-way and no opportunity to appeal applications on public property. He said that there are no substantial requirements or standards for antennas on public property. He commented that antennas would be permitted on walk-streets and The Strand, and there would not be a limit to proximity of antennas placed within the right-of-way to adjacent residential properties.

Mr. McPherson indicated that antennas would be permitted 15 feet above the height limit, and there is also a loophole regarding amateur antennas. He commented that projects should be evaluated in relation the carrier's entire network rather than being judged on a set of narrow merits. He said that members of the public would have to ask regarding projects in order to receive information, and the only way a project could be appealed is if the Director decides that the application does not have sufficient camouflage or is on a residential property. He commented that the Ordinance should allow appeals of the Director's decision according to standard practice of the Code, and applications should be placed on the City's website. He stated that he cannot find any requirement in federal law to shorten time for noticing and public hearings regarding wireless applications, and the language of the Telecommunications Act indicates that the standard amount of time for public hearings before the Commission and City Council is acceptable. He commented that there are no standards for City owned property including parks, and such areas should be treated the same as private property. He indicated that antennas on public property should not be permitted to be placed immediately adjacent to a residential property. He suggested that antennas should be allowed to extend 8 feet above the height limit with a clause that it can be higher if proved necessary. He suggested that the item be continued to allow more consideration of the issues.

Wayne Partridge a resident of the 3500 block of The Strand, said that aesthetic control must be taken regarding amateur arrays. He indicated that in two separate cases in Rancho Palos Verdes, individuals received administrative approval for wireless antennas and subsequently allowed them to be utilized for commercial purposes. He indicated that Conditional Use Permits for the antennas were subsequently denied by the City in both cases, and the district court determined that there was no justification in the city denying the antennas since the sites were originally permitted. He stated that the decisions suggest that the antennas could have been denied had the city addressed aesthetic concerns regarding the antennas originally. He indicated that amateur antennas are capable of changing to commercial by simply changing the frequency. He indicated that amateur arrays should be allowed; however, consideration regarding restricting commercial use in residential properties must be given in approving such arrays. He also commented that item D (b) should include the word "fully" rather than "substantially."

In response to a question from Chairman O'Connor, **Mr. Partridge** indicated that the case of AT&T v. Carlsbad as referenced in his submitted materials is regarding a stealth site proposed by the applicant within a faux chimney. He commented that in that case it was determined that the City did not have sufficient evidence in the record for grounds to deny the application. He commented that the cases demonstrate that the City should as

much as possible ensure that antennas are placed in the right-of-way away from residential property and leave a provision to ensure that the Telecommunications Act is not violated.

George Cohn, a resident of the 1400 block of 8th Street, stated that the goal is for it to become easier and more desirable for companies to locate antennas in commercial sites in order to avoid public opposition and hearings before the Council. He commented that his understanding is that there would be no difference in the proposed Ordinance whether wireless companies applied to place a facility in the right-of-way on Rosecrans Avenue or in the right-of-way on a residential walk-street. He suggested that separate categories be established for right-of-ways, as several are adjacent to exclusively residential areas. He said that it should be difficult for companies to install facilities in schools and next to residential areas. He suggested increasing fees for wireless antenna applications and posting applications on the City website. He commented that the City has worked to maintain a low profile without a huge number of antennas. He suggested that the Ordinance be reviewed by an outside professional consultant with no interest to cellular companies.

Dick Whilden, a resident of the 100 block of Poinsettia Avenue, indicated that the proposed Ordinance does not provide for an appeal process for antennas in the public right-of-way, and he feels there should be no circumstance without an opportunity for appeal. He commented that there are generally not many appeals, and the \$500.00 fee helps to prevent frivolous appeals. He commented that a method should be established by which the public is made aware of when decisions are to be made by the Director. He stated that he feels it would be appropriate to maintain the appeal process for wireless facilities of coming before the Planning Commission and the City Council.

Martha Andreani, a resident of the 100 block of 10th Street, also requested that the issue be continued. She commented that notification process becomes particularly critical if the appeal process is removed under any circumstance. She stated that noticing only within a 500 foot radius of a proposed site is inadequate, particularly when antennas would be permitted to extend above the height limit and would be visible for more than 500 feet. She suggested that any application for a wireless facility be posted on the website as soon as it is received to allow as much time as possible for residents to review the proposal. She also suggested that the areas of right-of-way be differentiated within the Ordinance as suggested by **Mr. Cohn**.

Mr. Stern commented that he cannot envision an engineering principle that would drive Cingular Wireless to locate an antenna on a walk-street. He indicated that there likely are telephone poles where an antenna can be located in the green belt adjacent to any walk-street.

Commissioner Kuch stated that he feels the hearing should be continued to further consider the additional issues that have been raised. He indicated that valuable input is still being received and agreement on the Resolution appears closer, but at some point

there has to be a conclusion. He indicated that there are items that have been brought up that should be included in the Ordinance.

Commissioner Montgomery indicated that he would like to hear the opinion of the City Attorney regarding adding wording to page 9, item F(4) to state: “The applicant shall demonstrate a good faith effort to co-locate on existing facilities or sites and non-residential zones.” He pointed out that the City Attorney indicated at the previous hearing that including a public process does not change the discretion that the City has in the approval of antennas but simply makes the process more public and open. He indicated that he would support continuing the issue.

Commissioner Simon said that he would support continuing the item because of the quantity of material and because the Commissioners have not had an opportunity to review all of the new information that has been submitted. He indicated that much progress has been made since the original proposal in making the process of approval more open, and additional time should be taken to ensure that the Ordinance is written correctly. He stated that he likes the approach regarding prohibiting antennas along The Strand and walk-streets unless there is no other alternative, and he would like input from the City Attorney regarding whether it is a good approach.

Commissioner Montgomery said that he appreciates **Mr. Stern**’s comment that Cingular would not have a situation in which they would propose an antenna adjacent to a walk-street.

Commissioner Savikas thanked the public and staff for their energy and time spent on the issue. She requested a map that depicts the areas of the public right-of-way within the City to have a clearer understanding of the areas. She suggested that guidelines be established regarding preferences along The Strand and walk streets rather than strictly prohibiting antennas. She said that she would support posting of the applications on the website. She commented that she has confidence in the opinion of the City Attorney and is not certain that it would be necessary to have an outside legal opinion of the Ordinance as suggested by **Mr. Cohn**.

Chairman O’Connor stated that he would support a continuance, as there is a great deal of new information and changes. He indicated that he has difficulty understanding why a process would be established that allows no appeal capability, which is an issue of checks and balances. He also agreed that companies should be encouraged to place antennas in the public right-of-way; however, that should not mean that the appeal process is removed within those areas. He indicated that there will be the occasional application within the right-of-way that does create issues, and it is necessary to have a specified process for everyone to be able to receive more information and appeal such projects. He said that he would like for antennas to be prohibited along The Strand and walk streets as much as is possible. He said that at a minimum he would like for an offset to be provided so that an antenna is not placed directly in front of a home along a walk-street. He commented that posting applications to the websites should be part of the process but does not necessarily need to be included in the Ordinance. He indicated that 7 days is too

short of a notice, and the Telecommunications Act allows for a standard noticing period of 10 to 15 days.

Commissioner Simon requested that more information be provided regarding the criteria of allowing the height of antennas 15 feet above the permitted height rather than 8 feet.

Director Thompson commented that it should be clarified in the Resolution that 15 feet permitted for antennas above the height limit would be from the existing building height rather than the permitted building height. He said that staff will consider the possibility of reducing the diameter from 3 inches for antennas that would be permitted to extend 15 feet.

Commissioner Savikas inquired regarding whether a definition should be provided regarding amateur as opposed to commercial antennas.

Director Thompson said that staff will consider the comments of **Mr. Partridge** regarding addressing amateur antennas in residential areas.

A motion was MADE/SECONDED (Kuch/Savikas) to **CONTINUE** the issue of 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 to February 9, 2005.

AYES: Kuch, Montgomery, Savikas, Simon, Chairman O'Connor
NOES: None
ABSENT: None
ABSTAIN: None

**Proposed Telecommunications Ordinance
Planning Commission Review: February 9, 2005**

Ordinance Section	Type/Location of Telecom Facility	Approving Body	Public Notice Required	Right to Appeal	Change in Policy
13.02.030	Telephone/Telecom facilities in Public Right of Way (e.g. cell sites on existing utility poles)	Director of Community Development	No	No	Yes
13.02.040 13.02.050 13.02.070	Non-telephone Utility Operations in Public Right of Way (e.g. franchised Cable TV)	City Council	No	No	No
13.02.060	Telephone/Telecom Sites on City Property (e.g. cell sites)¹	City Council	No	No	Yes
13.02.090	Telecom Facilities: Private Property and Non-City Public Property	Director of Community Development or City Council	1) All non-commercial zones, and 2) If not meeting standards or criteria.²	1) All non-commercial zones, and 2) If not meeting standards or criteria³	Yes

¹ Includes any City owned land: parks, city buildings, parking lots, etc.

² Notice of pending application a minimum of 10 calendar days prior to Director's decision applied to: a) all non-commercially zoned sites and, b) all non-residential zones if project does not comply with height limit or other standards and not adequately visually blended with site or visible to surrounding area.

³ Applicable to: a) all non-commercially zoned sites and, b) projects in non-residential zones where not meeting height limit or other standards and not adequately visually blended with site or visible to surrounding area. Appeal must be filed within 10 days from date of decision and appeal to be heard by Council within 20 days of submittal of appeal.

Rcvd by Depart. Community Development via e-mail 3-30-05

Mayor Fahey, Mayor Pro Tem Ward, Councilmembers Aldinger, Montgomery, and Tell:

RE: Revision of the Telecommunications Ordinance, PC Resolution 2-09-05

The Planning Commission has done an exemplary job in assisting Staff in their development of a Telecommunications Ordinance. As well, Don McPherson and Wayne Partridge have provided Staff and the Planning Commission with pertinent information that empowers the City to face up to telecommunications providers. Messrs. McPherson and Partridge have shown that the City does not have to acquiesce to telecommunications providers when they seek to place antennae throughout the City.

Initially, I became involved in review of the draft telecommunications ordinance as both a concerned resident, and then as president of the Manhattan Beach Residents Association (MBRA). On behalf of MBRA, I spoke before the Planning Commission to protest the initial draft ordinance which denied a public process for review of the placement and aesthetic of telecommunications antenna. City Attorney Robert Wadden interpreted the 1996 Telecommunications Act and certain case law such that public hearings would be eliminated, and City Staff would have approval for the placement of antennae, with no right of appeal to City Council. As interpreted by Wadden, the public's right to express an opinion regarding the placement and design of these antenna would be eliminated, and without recourse. As initially drafted, the ordinance allowed antenna on residential property, as well as many areas in the public right-of-way -- wherever utility companies believed best for their purposes. Naturally, residents were outraged that these decisions were taken from them, and without right of appeal.

The Telecommunications Ordinance coming before you on April 5, has many improvements -- providing guidance and authority to City Staff, and rights of noticing and appeal to residents. We started with an ordinance that permitted telecommunications antenna on residential property, but prohibited public input and rights to appeal. We now have a draft ordinance that bans antenna on residential property, bans them on school property, and there is an avenue for appeal. And as shown by McPherson and Partridge, the draft ordinance is within framework of the law. Still, there is work to be done before we can consider ourselves finished with this complex, important ordinance.

We still have concern about the right of appeal on public rights-of-way. There is no right of appeal if the Director of Community Development decides that an antenna is sufficiently camouflaged. And we still have concern about the placement of antenna on city-owned property...this includes all parks and public property. There is no requirement in the ordinance for noticing residents. When City-owned property adjoins residential properties, there should be a public noticing and public hearing process. If the Telecommunications Ordinance goes through without noticing of antenna on City-owned property, the City will not be communicating with, or listening to, its residents -- nor are you putting the City in compliance with the law regarding telecommunications antenna.

Decisions made just last month (on March 7 and March 22) by the Ninth Circuit Court and the Supreme Court, respectively, have shifted the regulatory landscape in favor of the City. It will be extremely regrettable if we do not take full advantage of these Court opinions, and amend our draft Telecommunications Ordinance. As stated in a letter to the City Council, dated 29 March 2005, from Donald McPherson, Wayne Partridge, and myself, it is requested that additional comprehensive review of this complex, important ordinance be made before the City takes final action to adopt the ordinance. You will note that action by Council on April 5 is not mandatory, as the FCC and at least two District Court cases support a 180-day moratorium on permits while local government revises its code to resolve telecommunications issues.

The drafting of this complex and important ordinance has truly been a cooperative effort between City Staff, Planning Commissioners, and several residents. We're close, but not quite there. Let's keep this collaborative effort going until we got the ordinance right.

Thank you.

Martha Andreani
117 – 10th Street

Received via e-mail 3-30-05 by Department of Community Development

Sent: Monday, March 28, 2005 7:10 PM

Subject: The Proposed Telecommunication Ordinance

Dear Council members:

I attach a letter for your consideration concerning the above, as well as some summaries of cases relevant to the proposed ordinance.

Thank You.

Wayne Partridge

WAYNE PARTRIDGE
3520 THE STRAND
MANHATTAN BEACH, CA 90266
Tel: (310) 545-3265 Fax: (310) 546-4383

BY EMAIL

March 28, 2005

Members of the City Council
Of the City of Manhattan Beach

Re: Proposed Telecommunications Ordinance

The Staff has made a good faith effort to prepare a draft ordinance in the difficult context of considerable confusion about the meaning and intent of the Telecommunications Act of 1996 (the "Act"). On March 7, 2005, since the last hearing of the Planning Commission concerning the draft ordinance, the Ninth Circuit handed down its decision in *MetroPCS, Inc. v The City and County of San Francisco* ("**MetroPCS**") definitively settling, at least for our purposes in California, some of those issues and casting important light on others.

In addition, the Supreme Court of the United States has recently made clear that the Act does not create a private right of action against a municipality for damages suffered by a provider from negative action by the municipality on the provider's request for the installation of radio or cell phone facilities.

These decisions have an important bearing on the proposed ordinance. For example, the Staff, based on its concerns about the Act, short circuited in the draft ordinance some of the city's normal processes, including the omission of public hearings in various circumstances. **MetroPCS** has made very clear that the Act clearly authorizes, and neither forbids nor discourages, the normal processes, including full public hearings.

In addition, Staff was properly concerned about avoiding damages from mistakes. It seems to have attempted to address this problem by making the ordinance as unobjectionable as possible to the cell phone industry, even perhaps at the cost of curtailing the ability of the city and its citizens to vindicate their values concerning installations within the city's borders. The decision of the Supreme Court on this subject, as referred to above, has set these concerns aside.

Rather than consider the ordinance, as drafted based on assumptions that have been overthrown by the recent cases, I strongly urge that the City Council instruct the Staff to give the ordinance a complete and thorough review based upon the guidance given by the recent decisions.

I also attach to me email summaries of various cases relevant to the proposed ordinance.

Sincerely yours

Wayne E. Partridge

MetroPCS, Inc. v. The City and County of San Francisco
Case Nos. 03-16759 and 03-16760

METROPCS, INC. V. THE CITY AND COUNTY OF SAN FRANCISCO

CONCLUSIONS:

1. **MetroPCS** sets forth clear guidance on a number of issues that had clouded consideration by the Planning Commission of the proposed Manhattan Beach Telecommunication ordinance. In its decision, the Court reviews the positions taken by other Circuit Courts in various cases and attempts to set forth the approach that best implements the intent of the Act. Until further rulings by the Ninth Circuit, or a ruling by the Supreme Court of the United States, this case should guide the City's consideration of this important ordinance.
2. It is important to note with respect to issues still open and contested in the draft ordinance forwarded to the City Council from the Planning Commission, that **public hearings are in no way forbidden or even discouraged** by the Act. The contention that the Act forbids or restricts the public hearing process is incorrect. The ordinary course of city decision making, if carried on appropriately and with reasonable expedition, is within the requirements of the ACT. In **MetroPCS**, the Ninth Circuit found no fault with a **process** involving full public hearings at the Planning Commission, an appeal to and full public hearing at the Board of Supervisors and a decision by the Board of Supervisors overturning the ruling of the Planning Commission.
3. This case makes clear that the ordinance should not only permit, but even require, consideration of those issues that are of importance to the community, such as aesthetics, preservation of views, observance of height limits, avoidance of noise etc. Wherever possible, standards should be set and observed. The communities standards govern, as long as they do not prevent service, discriminate among providers or refer to RF emissions.

THE METROPCS CASE

1. I apologize for the length of this "summary", but given the importance of this case to the process of considering the ordinance, and the clear guidance given on several relevant issues, a relatively full statement of the facts and circumstances, highlighting the time sequence and procedural steps, and a full statement of the Court's conclusions on each issue is copied or paraphrased from the decision of the Ninth Circuit in this summary.

On **January 15, 2002**, MetroPCS, a licensed provider of telecommunication services, submitted to the City of San Francisco's Planning Department an application for a CUP to install six panel antennas 53 feet above the sidewalk grade on an existing light pole located on the roof of a 42-foot-high parking garage at 5200 Geary Boulevard (the Geary site). The proposed installation was designed to improve MetroPCS's wireless service coverage in the Richmond District, where the Geary site is located. MetroPCS chose the Geary site after

evaluating the technical feasibility of several sites in the area and considering community objections to alternative site locations. Under the San Francisco Planning Code, the proposed installation was considered a public use that required a CUP from the City Planning Commission.

On **April 18, 2002**, the San Francisco Planning Commission held a public hearing to consider MetroPCS's application for a CUP at the Geary site. The Planning Commission voted to grant MetroPCS's application. The Planning Commission later adopted written findings and drafted a written decision. These findings included a determination that the proposed MetroPCS antenna facility is necessary to MetroPCS's service coverage in the Richmond District and "both necessary and desirable" for the community.

On **May 20, 2002**, residents filed an appeal of the Planning Commission's decision to the Board of Supervisors.

On **June 17, 2002**, "consistent with applicable local zoning procedures", the Board of Supervisors held a public hearing to consider the appeal. At the hearing, local residents asserted, among other things, that the antenna facility was not necessary for MetroPCS or the community since the Richmond District already enjoys excellent wireless service, that the facility would create a visual blight detrimental to the neighborhood character and that the facility would produce harmful RF emissions hazardous to public health. MetroPCS presented evidence to the contrary on all of these assertions.

At the conclusion of the hearing, the Board of Supervisors unanimously voted to overturn the decision of the Planning Commission and to deny MetroPCS the CUP. The Board's findings were later formally adopted in a five page written decision disseminated on June 24, 2002.

"In articulating the bases for its decision, the Board's written opinion formally found that (1) the proposed facility is not necessary to MetroPCS's ability to service the Richmond District around the Geary site, (2) the facility is not necessary for the community, since there is already adequate wireless service in the neighborhood around the Geary site, (3) the proposed facility would constitute a "visual and industrial blight" and would be detrimental to the character of the neighborhood and (4) the proposed antenna facility is not in conformity with and would not further the policies of the City's General Plan. The Board's decision asserted that its denial of the CUP application did not reflect unreasonable discrimination against MetroPCS, did not limit or prohibit access to wireless services and did not limit or prohibit the filling of a significant gap in MetroPCS's service coverage. The Board also maintained that the proposed facility was not the least intrusive way to provide wireless services in the Richmond District."

MetroPCS brought an action in the District Court alleging that the decision

by the Board of Supervisors violated several provisions of the ACT in that it (1) was not “in writing” as required by the TCA, (2) was not supported by substantial evidence, (3) constituted unreasonable discrimination among providers of functionally equivalent wireless services, (4) prohibited or had the effect of prohibiting the provision of wireless services and (5) was improperly based on environmental concerns about radio frequency (RF) emissions.

The District Court largely upheld the actions of the Board of Supervisors, finding that (1) the Board’s written denial of MetroPCS’s CUP application constituted a decision “in writing” as required by § 332(c)(7) of the TCA, (2) the Board’s decision was supported by “substantial evidence,” (3) the Board did not unreasonably discriminate among providers of functionally equivalent services and (4) the Board’s decision was not impermissibly based on concerns over RF emissions.

However, the district court also held that significant questions of material fact existed as to whether the Board’s denial of MetroPCS’s CUP application prohibited or had the effect of prohibiting the provision of wireless services in violation of Section 332(c)(7) of the TCA. Both parties appealed.

2. The Ninth Circuit decided the various issues as follows:

A. A Decision Denying Approval Must Be in Writing

The Court adopted the standard that local governments must “issue a written denial separate from the written record” which “contain[s] a sufficient explanation of the reasons for the . . . denial to allow a reviewing court to evaluate the evidence in the record supporting those reasons.” It found that the decision by the Board of Supervisors met this standard, saying:

“. . . the Board of Supervisors issued a five-page written decision, separate from the record, which summarized the facts of the dispute, recounted the proceedings it conducted, articulated its reasons for overturning the Commission’s grant of the CUP and explained the evidentiary basis for its ruling. Whatever else might be said about the decision or its reasoning, it does contain sufficient explanation to enable judicial evaluation of the evidentiary support for its rationale.”

B. Substantial Evidence

Citing another case, the Court held that the Act calls for the application of the “the traditional standard used for judicial review of agency decisions”, and that the substantial evidence requirement “does not affect or encroach upon the *substantive* standards to be applied under established principles of state and local

law.” It cited the same case in finding (i) that “substantial evidence” implies “less than a preponderance, but more than a scintilla of evidence. ‘It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion”, (ii) that the review defers to the decision of the town such that courts may “neither engage in [their] own fact finding nor supplant the Town Board’s reasonable determinations” and (iii) that the written record of the town’s proceedings must be viewed in its entirety, including all evidence supporting both parties, and “local and state zoning laws govern the weight to be given the evidence.”

The court points out that the San Francisco Planning Code explicitly authorizes the consideration of community need in evaluating conditional use permit applications, directing the City Planning Commission to consider whether “the proposed use . . . is *necessary or desirable for, and compatible with, the neighborhood or the community*”).

The Ninth Circuit affirmed the District Court’s ruling that the decision by the Board of Supervisors was founded on substantial evidence.

C. The Discrimination Claim

The Act provides that municipalities “*shall not unreasonably discriminate among providers of functionally equivalent services.*” The Court pointed out, referring to other cases, that by using this language “the Act explicitly contemplates that some discrimination among providers of functionally equivalent services is allowed. Any discrimination need only be reasonable.” The court pointed out that “most courts have held that discrimination based on ‘traditional bases of zoning regulation’ such as ‘preserving the character of the neighborhood and avoiding aesthetic blight’ are reasonable and thus permissible. The Court also found support for this position in the House Conference Report on the TCA explaining the Act’s nondiscrimination clause as follows:

The conferees also intend that the phrase “unreasonably discriminate among providers of functionally equivalent services” will *provide localities with the flexibility to treat facilities that create different visual, aesthetic, or safety concerns differently to the extent permitted under generally applicable zoning requirements even if those facilities provide functionally equivalent services.* For example, the conferees do not intend that if a State or local government grants a permit in a commercial district, it must also grant a permit for a competitor’s 50-foot tower in a residential district.

The Court refers with approval to the rulings of almost all federal courts considering such cases to the effect that providers alleging unreasonable discrimination must show that they have been treated differently from other providers whose facilities are “*similarly situated*” in terms of the “*structure, placement or cumulative impact*” as the facilities in question. The Court adopts the standard that, to show the forbidden discrimination, providers of functionally equivalent services must show that “other providers have been permitted to build *similar* structures on *similar* sites while it has been denied.”

The Court finds that there was no inquiry in the record comparing MetroPCS's proposed facility to others previously approved by the City in the same area. It therefore finds that MetroPCS raised an issue of fact for trial on this issue and sends the matter back for proceedings to resolve this issue at the District Court.

D. The Prohibition Claim

MetroPCS alleged that the City had (i) imposed a “general ban” on new service providers in the Richmond District and (ii) effectively prohibiting the provision of wireless services by preventing MetroPCS from filling a “significant gap” in its coverage. The District Court had ruled that there was no general ban on new service, but that an issue of fact existed concerning whether the City had effectively prohibited wireless services by preventing the filing of a significant coverage gap. The Ninth Circuit agreed.

Concerning the issue of a significant gap, the Ninth Circuit adopted the First Circuit’s rule that a significant gap in service (and thus an effective prohibition of service) exists whenever a provider is prevented from filling a significant gap in **its own** service coverage.

The Court stated that Under this rule, zoning decisions explicitly based on redundancy of service are not per se invalid, but they are subject to the crucial limitations that (1) they cannot discriminate between similarly situated facilities and (2) they cannot result in a significant gap in service for the provider in question.

In applying this rule, the Ninth Circuit quotes with approval the District Court's statement to the effect that "the relevant service gap must be truly “significant” and “not merely individual ‘dead spots’ within a greater service area”.

It also adopts the rule in the Second and Third Circuits requiring the provider to show that “the manner in which it proposes to fill the significant gap in service is the least intrusive on the values that the denial sought to serve.”

That is, if the denial is based on aesthetic grounds, the provider must first show that there is indeed a significant gap and then show that the proposal denied by

the municipality is the least intrusive on the aesthetic values on which the denial was based.

E. RF Emissions

MetroPCS contended that the City's decision was founded on RF emissions and was therefore void. It cited (i) the fact that “opponents of MetroPCS’s application made boisterous presentations before the Board regarding RF emissions, accompanied by argument, badges and t-shirts complaining about RF emissions.”, (ii) the fact that “the Board’s denial motion expressly states that it was based on ‘all of the public comments made in support of and opposed to the appeal.’, and (iii) that the Board’s decision stated the proposed facility would “not promote the health, safety and welfare of the city.”

The Court rejected the contentions of MetroPCS on this point.,

City of Auburn et al.
v.
U.S. West Communications, Inc. (Now Qwest)

U. S. District Court, Western District of Washington at Tacoma
Case No. C98-5595FDB

As Reviewed by U.S. Court of Appeals for the Ninth Circuit
Case Nos. 99-36173 and 99-36219

AUBURN V. QWEST

CONCLUSIONS:

1. **Auburn DOES NOT** stand for the proposition that the Federal Telecommunications Act of 1996 (the "Act") forbids municipalities to regulate the placement, construction, and modification of personal wireless service facilities **in the public right of way**. **Auburn** refers to newly passed Washington State legislation that could have preempted local regulation in the public right of way, but left the resolution of the issues under state law to the state courts. In any event, the Washington statute does not apply in California and is not at all similar to applicable California legislation.

Section 253 (a) of the Act prohibits state and local legislation, regulations or requirements that "may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." This provision is duplicated specifically concerning personal wireless services in paragraph (7) of Section 332 (c) and adds nothing to what is set forth in that paragraph with regard to such services.

Section 253 (c) then states: "Nothing **in this section** affects the authority of a State or local government to manage the public rights-of-way" (Emphasis added to note that this provision relates to Section 253 only)

Section 332 (c)(7), entitled "PRESERVATION OF LOCAL ZONING AUTHORITY", provides in Paragraph (A):

"Except as provided **in this paragraph**, nothing **in this Act** shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities." (Emphasis added to note that nothing in the whole Act, other than as set forth in paragraph (7) of Section 332 (c), alters or detracts from this broad authorization.)

Section 253(c) is a saving clause from Section 253(a). It neither states nor implies any limitation under the Act on the right of local authorities to manage the

public right of way within the limits set by paragraph (7) of Section 332 (c). In any event, no limitation from Section 253 could stand against the sweeping declaration in paragraph (7) that "(e)xcept as provided **in this paragraph**, nothing **in this Act** shall limit or affect the authority of a State or local government or instrumentality thereof" etc.

The **Auburn** court points out that the FCC has included in the meaning of "management" of the public right of way the "establishment and enforcement of building codes" and elements of the legislative history have included enforcement of "local zoning regulations".

Nothing in paragraph (7) of section 332 (c) purports to specially limit the power of municipalities with regard regulation of wireless services in the public right of way. The limitations on the power of municipalities to regulate wireless services set forth in paragraph (7) of Section 332(c) apply to such regulation whether within or outside of the public right of way. Those limitations are that such regulation (i) shall not unreasonably discriminate among providers of functionally equivalent services; (ii) shall not prohibit or have the effect of prohibiting the provision of personal wireless services; and (iii) shall not be based on the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

The limitations also include an affirmative obligation to act on a request for such services "within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request" and the requirement that any decision to deny a request to place, construct or modify personal wireless service facilities be in writing and supported by substantial evidence contained in a written record.

In short, the Act itself and both the FCC's stated views and the legislative history concerning the scope of permissible management of the right of way indicate that, under the federal law, municipalities have the same rights and obligations with regard to regulation of wireless services in the public right of way as anywhere else within their borders.

The **Auburn** case states nothing to the contrary.

2. The municipal ordinances addressed in **Auburn** went very far beyond anything reasonably appropriate to effect the regulation of the placement, construction, and modification of facilities, as clearly permitted by the Act, and very far beyond anything suggested by residents or proposed by staff for Manhattan Beach. The Ninth Circuit overturned these ordinances because of their excessive breadth and intrusiveness as prohibiting or having the effect of prohibiting telecommunication services, not because they purported to regulate within the public right of way.

3. **MetroPCS**, outlined separately, which was handed down on March 7, 2005, constitutes an attempt by the Ninth Circuit to address most of the issues related to the permissible scope and operation of municipal ordinances in light of the Act. The teachings of the earlier **Auburn** case have now been clarified and largely superseded by **MetroPCS**.

THE AUBURN CASE

1. The plaintiff cities brought an action seeking relief not relevant for our purposes under Washington law.

Qwest counterclaimed against some of the cities seeking, based upon federal and state preemption and the requirements of the Act, to invalidate telecommunications ordinances those cities had recently passed seeking to regulate the telecommunications industry.

2. The Ninth Circuit overruled the District Court's decision that Qwest's attack on the ordinances was not ripe for decision and invalidated the ordinances as prohibiting or having the effect of prohibiting Qwest and other from providing interstate or intrastate telecommunications service.

The Court found four significant features of the ordinances that went beyond the power reserved for local authorities in the Act.

First, the ordinances, which purported to grant "franchises", went far beyond anything appropriate to effect the regulation of the placement, construction, and modification of facilities. The application sought information, among other things, concerning the financial soundness, technical qualifications, and legal ability of the provider to provide telecommunications services, a description of all services provided currently or in the future etc. These issues are reserved to the FCC or the state public utilities regulators under the Act. The ordinances purported to put the cities in the position of municipal public utilities commissions considering broad issues of fitness etc.

Second, the ordinances imposed reporting requirements or other controls over matters not directly related to management of the rights-of-way. For example, they purported to regulate ownership and certain transfers of shares of telecommunications companies.

Third, the ordinances imposed conditions unrelated to management of the right of way, such as "most-favored-community" status--that is, the best available rates and terms, or that companies provide free or excess capacity for the use of the cities or other users.

Fourth, "and perhaps most problematic", the ordinances granted the cities unfettered discretion to insist on unspecified franchise terms and to grant, deny, or revoke a franchise based on unnamed factors.

The court stated that "As the FCC has explained, right-of-way management means control over the right-of-way itself, not control over companies with facilities in the right-of-way".

3. The ordinances struck down in **Auburn** were so extremely and obviously inappropriate, and went so far beyond what is permitted by the Act, and so far beyond anything suggested or proposed in Manhattan Beach, that the **Auburn** decision teaches us very little about what is permissible in the Manhattan Beach ordinance. Our guidance should be taken from **MetroPCS**, as discussed separately.

Mark J. Abrams vs. City of Rancho Palos Verdes
U. S. District Court, Central District of California
Case No. CV-00-09071-SVW (RNBx)

ORDER GRANTING PETITION TO VACATE DEFENDANTS' DECISION TO DENY PLAINTIFF A CONDITIONAL USE PERMIT

CONCLUSIONS:

1. Like Kay and ATT, this case **DOES NOT** stand to any degree for the proposition that cities must permit cell phone facilities on private residential properties. The Rancho Palos Verdes ("RPV") Ordinance **DID NOT** forbid antennas for commercial purposes on residential private properties. The case is not about an attempt to enforce any such prohibition in the code. This issue does not arise in the case and is not mentioned in the case. The case raises no implication to the effect that such a prohibition would be unenforceable.
1. **ON THE CONTRARY**, this case teaches that, if a community **DOES NOT** forbid commercial installations on residential private property, it will have great difficulty finding "substantial evidence" to support denial of conversions of amateur installations to commercial use. Had RPV had a provision in its ordinance forbidding commercial use of antennas on private residential property, it seems highly probable that the city's attempt to stop Abrams' commercial use would have been upheld.
2. This case also teaches that there is a major potential trap in the interface between **PRB-1** (an FCC rule) and any attempt to regulate commercial use on residential property on a case by case basis. PRB-1 provides that "State and local regulation of a station antenna structure must not preclude amateur service communications. Rather, it must reasonably accommodate such communications and must constitute the minimum practicable regulations to accomplish the state or local authority's legitimate purpose." 47 C.F.R. Sec. 97.15 (2001). The city granted Kay and Abrams the right to install and operate antenna arrays for amateur purposes. The courts in both Kay and Abrams then rejected "aesthetic" grounds for denying conversion of these pre-existing facilities to commercial use, although the court in Kay specifically stated that aesthetic grounds would have justified the denial of permission for the initial installation of the same commercial array in the first place "had Kay not already received permission to have the five mast structure" for amateur use and the court in Abrams stated that the city could reject future applications because of negative effects on the community.
3. The lessons are: (1) forbid all commercial use on private residential property and (2) do not give applicants for amateur installations a free pass. It is entirely possible to require amateur installations to meet appropriate aesthetically and environmentally based requirements without violating PRB-1.

THE CASE

1. On January 8, 1990, Plaintiff Abrams received approval for a 40 ft. antenna tower, to be used for amateur communications only. The actual permit, for reasons that are not explained, appears to have, by mistake, permitted a tower of 52.5 ft. Abrams broadcast commercial signals on this facility. In 1999, the city obtained an injunction against Abrams commercial use and he was directed to obtain a CUP for any commercial use. Abrams sought a CUP, which was denied, as were his subsequent appeals.
2. The denial stated the following reasons for the adverse action: (1) The original approval was for a structure not to exceed 40 ft. and not to be used for commercial purposes; (2) His current facility is 52.5 feet and broadcasts on commercial frequencies; (3) "although the approval of the proposed use would not create new adverse visual impacts, it would perpetuate existing adverse visual impacts in support of a use that disproportionately benefits the commercial interests of the applicant to the detriment of the immediately surrounding neighborhood"; and (4) approval of the CUP "would establish precedent for, and contribute to, adverse cumulative visual impacts due to future proposals for similar projects".
3. Again, the court found that aesthetic concerns were prominent in the record, but decides that, since the facility is already in existence, aesthetic concerns "would not constitute a valid reason for the denial of the CUP in this case." The court deals with two possible grounds for denial: (1) violation of the original permit; and (2) the city's concern that allowing the application will lead to proliferation of additional sites. The court dismisses the first of these as irrelevant and says the second is unfounded. **"While it is certainly possible that there will be additional applications if this CUP is granted, that does not mean that the City must grant permission for all additional antennas to be built. On the contrary, if additional applications propose new structures that will have adverse impacts on the neighborhood, then that would be a basis for denying the applications under the TCA."**
4. The court refers to the city's problem in having the applicant erect a tower, allegedly for amateur communication and then apply for commercial use after the tower is in place as a "loophole" in the licensing structure of the defendant city's own doing. Manhattan Beach should avoid this loophole

AT&T vs. Carlsbad
U. S. District Court, Southern District of California
Case No. 01 CV 2045 JM(LAB)

ORDER ON CROSS MOTIONS FOR SUMMARY ADJUDICATION

CONCLUSIONS:

1. This case **DOES NOT** stand to any degree for the proposition that cities must permit cell phone facilities on private residential properties. The issue does not arise in the case and is not mentioned in the case. The case raises no implication to this effect.
2. **ON THE CONTRARY**, this case and others teach that failure to forbid cell phone sites on residential private property, as the Act would permit, can put the city in an impossible muddle in trying to decide which applications to accept and which to reject.

THE CASE

1. The city code **DID NOT** forbid commercial radio sites on residential properties in the city. ATT filed an application for a CUP to put a cell site on private residential property (6 antennas and radio base station). The proposed site was designed to look like the existing house, with 4 antennas hidden from view in 2 existing chimneys and 2 in a third new fake chimney designed to look like the other two chimneys. The electronics were to be housed in a 400 sq. ft. addition to the existing 800 sq. ft. garage. The record indicated that any resident would have been allowed under the code to similarly expand its garage (for other purposes) as of right. It appears that the additional chimney for design or practical purposes of personal use would also have been approved without question. The city had approved an almost identical installation for Pac Bell about a block away from the proposed ATT site.
2. The Planning Commission and the City Council both denied the cup. Most of the testimony in both bodies was directly or indirectly related to RF emissions. Only one person testified that aesthetics were a real factor, although some objected to the intensification of commercial use and "philosophical aesthetics".
3. The Court found that the key issues on the motion were (1) whether city decided based on RF emissions and (2) whether city decision denying the cup was based on substantial evidence supporting a legally permissible grounds for denying the application.
4. Where public testimony on the record was "almost exclusively directed to the health effects of RF emissions" there must be substantial evidence on the record of some other legitimate grounds for the city's action to avoid the conclusion that it was based on the impermissible ground of RF health effects.

5. City argued its decision was supported by substantial evidence on the record of lack of compatibility with the surrounding neighborhood and lack of evidence presented to the council of "unavailability of alternative sites".
6. Court found that there was no substantial evidence in the written record to support either of these alternative grounds for the city's action. There was nothing in the code or any city policy requiring the applicant to demonstrate the lack of availability of alternative sites. Court finds city cannot impose such a requirement after the fact and says evidence on this issue is not substantial evidence supporting and independent ground for the city's decision.
7. Court found in favor of applicant ATT.

**James A. Kay, Jr. vs. City of Rancho Palos Verdes
U. S. District Court, Central District of California
Case No. CV-02-3922-DSF(RZx)**

OPINION AND ORDER AFTER COURT TRIAL

CONCLUSIONS:

1. This case **DOES NOT** stand to any degree for the proposition that cities must permit cell phone facilities on private residential properties. The Rancho Palos Verdes ("RPV") Ordinance **DID NOT** forbid antennas for commercial purposes on residential private properties. The case is not about an attempt to enforce any such prohibition in the code. This issue does not arise in the case and is not mentioned in the case. The case raises no implication to the effect that such a prohibition would be unenforceable.
2. **ON THE CONTRARY**, this case teaches that, if a community **DOES NOT** forbid commercial installations on residential private property, it will have great difficulty finding "substantial evidence" to support denial of conversions of amateur installations to commercial use. Had RPV had a provision in its ordinance forbidding commercial use of antennas on private residential property, it seems highly probable that the city's attempt to stop Kay's commercial use would have been upheld.
3. This case also teaches that there is a major potential trap in the interface between **PRB-1** (an FCC rule) and any attempt to regulate commercial use on residential property on a case by case basis. PRB-1 provides that "State and local regulation of a station antenna structure must not preclude amateur service communications. Rather, it must reasonably accommodate such communications and must constitute the minimum practicable regulations to accomplish the state or local authority's legitimate purpose." 47 C.F.R. Sec. 97.15 (2001). The city granted Kay and Abrams the right to install and operate antenna arrays for amateur purposes. The court in Kay then rejected "aesthetic" grounds for denying the commercial use CUP, although it specifically stated that those grounds would have justified the denial of permission for the initial installation of the same commercial array in the first place "had Kay not already received permission to have the five mast structure" for amateur use.

THE CASE

1. In 1994 Plaintiff, Kay, purchased a two story single family residence in a single family residential neighborhood of Rancho Palos Verdes. Neither Kay nor anyone else lived in the property from the time that he purchased it to the date of the court's decision. When purchased, the property had two roof top antennas. Kay contended that he used them for amateur transmission. The city contended that he used them for commercial purposes. Kay held licenses from the FCC for both amateur and commercial broadcasting and held licenses for certain commercial frequencies. After receiving a notice of violation from the city for commercial use of his facilities in January, 1997 (Kay denied commercial use), in April, 1998,

- he installed antennas in an upstairs bedroom for commercial use (he contended in his trial brief that he thought no approval was necessary because the antennas were inside and out of public view and had no effect on the surroundings). By August of 1998, Kay had installed three additional antennas on his roof, for a total of five rooftop antennas.
2. August 5, 1998, Kay sought approval of his existing antenna array for **non-commercial** use. The code apparently allowed staff approval of amateur antennas, subject to a 15 day period within which the city could object. Within the 15 day period, the city adopted an urgency ordinance placing a moratorium on approval of antenna applications, including Kay's. The city passed a new ordinance that went into effect on April 16, 1999, in which certain amateur antennas were exempted from approval. The city conceded to Mr. Kay that his support structures were permissible **if used for amateur purposes only**.
 3. On July 21, 2001, Kay applied for a CUP to use his existing antenna structure for commercial purposes. Staff recommended conditional approval. At an October 23, 2001, Planning Commission Meeting, the commissioners concluded from information in the staff report that Kay had lied in asserting that he had not previously used the array for commercial purposes. On November 7, 2001, Kay informed the staff that he had added 15 additional antenna elements, which he stated he believed were permissible for amateur purposes as of right, and by which he attempted to add the additional elements to his application for commercial use.
 4. The staff submitted a draft resolution approving Kay's request for commercial use of the 5 antenna array, on the condition that he remove the additional elements added after the original application. The Planning Commission approved commercial use of his indoor installation, thereby effectively denying commercial use of the outdoor antennas. On his appeal, the City Council effectively echoed the resolution approved by the Planning Commission, thereby denying commercial use of the exterior antennas and requiring him to reduce his array.
 5. Kay asked the court to determine that the city's decision to deny commercial use of a pre-existing amateur antenna structure was not supported by substantial evidence in the record. The court notes that Kay "does not contend that his antenna support structure is aesthetically pleasing or even that it conforms to the City's present regulations. He contends only that the City cannot justifiably raise the issue of aesthetics now, when Kay's only request is to change the frequency of his transmissions from an already existing lawful structure."
 6. The court agreed with Kay on this point. The Court merely found that there was no substantial evidence on the record of the Planning Commission or the City Council supporting the city's denial of Kay's request. The court states its belief that there was substantial evidence in the written record "of valid aesthetic reasons for denying Kay's request that would have been sufficient had Kay not

already received permission to have the five mast structure"(emphasis by the court). Court notes that the structure had been in place for at least three years, and that the city's purported concerns "are too little too late" to justify removal of some of the structures. Change of frequency from amateur to commercial does not affect the aesthetics.