

Council/Agency Meeting Held: _____	City Clerk's Signature
Deferred/Continued to: _____	
<input type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied	
Council Meeting Date: 9/17/07	Department ID Number: PL 07-27

**CITY OF HUNTINGTON BEACH  
REQUEST FOR CITY COUNCIL ACTION**

**SUBMITTED TO:** CITY COUNCIL

**SUBMITTED BY:** PENELOPE CULBRETH-GRAFT, CITY ADMINISTRATOR *[Signature]*

**PREPARED BY:** SCOTT HESS, Director of Planning *[Signature]*  
TRAVIS K. HOPKINS, P.E., Acting Director of Public Works *[Signature]*  
JENNIFER McGRATH, City Attorney *[Signature]*

**SUBJECT:** APPROVE ZONING TEXT AMENDMENT NO. 06-08 (AMENDING CHAPTER 230 OF THE ZONING ORDINANCE) AND ADOPT AMENDMENTS TO MUNICIPAL CODE CHAPTERS 12 AND 17 AS THEY PERTAIN TO WIRELESS COMMUNICATION FACILITIES

Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)

**Statement of Issue:** Submitted for your review is a request to amend Huntington Beach Zoning and Subdivision Ordinance (ZSO) Chapter 230 and several chapters of the Huntington Beach Municipal Code (HBMC) pertaining to Wireless Communication Facilities and work in the public right-of-way. The amendments allow the City to exercise reasonable control over the time, place, and manner of installation of wireless facilities including those in the public right-of-way. The amendments to the ZSO establish a Wireless Permit Application process that encourages co-location and the undergrounding of wireless facilities. The amendments to the HBMC encourage co-location where feasible and require all wireless facilities within the public right-of-way to be underground, except for antennae.

**Funding Source:** Not Applicable

**Recommended Action:**

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### PLANNING COMMISSION AND STAFF RECOMMENDATION:

Motion to:

1. "Approve Zoning Text Amendment No. 06-08 with findings for approval (ATTACHMENT NO. 1), and adopt Ordinance No. 3779 (ATTACHMENT NO. 2), an Ordinance amending Chapter 230.96 Wireless Communication Facilities of the Huntington Beach Zoning and Subdivision Ordinance."

### Planning Commission Action on April 10, 2007:

THE MOTION MADE BY HORGAN, SECONDED BY FARLEY TO APPROVE ZONING TEXT AMENDMENT NO. 06-08, WITH FINDINGS (ATTACHMENT NO. 1) AND FORWARD TO CITY COUNCIL CARRIED BY THE FOLLOWING VOTE:

AYES: SCANDURA, HORGAN, SHIER-BURNETT, DWYER, FARLEY, SPEAKER  
NOES: NONE  
ABSENT: LIVENGOOD  
ABSTAIN: NONE

### ***MOTION PASSED***

### ADDITIONAL STAFF RECOMMENDATION:

2. "Adopt Ordinance No. 3780, an ordinance of the City of Huntington Beach amending Huntington Beach Municipal Code Chapter 12.13 titled Street Work Generally." (ATTACHMENT NO. 2.)

3. "Adopt Ordinance No. 3781, an ordinance of the City of Huntington Beach amending Huntington Beach Municipal Code Chapter 12.38 titled Encroachments." (ATTACHMENT NO. 2.)

4. "Adopt Ordinance No. 3782, an ordinance of the City of Huntington Beach deleting Huntington Beach Municipal Code Chapter 12.48 titled Wireless Digital Communications Radio Networks." (ATTACHMENT NO. 2.)

5. "Adopt Ordinance No. 3783, an ordinance of the City of Huntington Beach amending Huntington Beach Municipal Code Chapter 17.64 titled Undergrounding of Utilities." (ATTACHMENT NO. 2.)

### Alternative Action(s):

The City Council may take the following alternative action(s):

A. "Deny Zoning Text Amendment No. 06-08."

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- B. "Continue Zoning Text Amendment No. 06-08 and direct staff accordingly."
- C. "Do not adopt Ordinance No. 3780 for HBMC Chapter 12.13 and direct staff on how to proceed."
- D. "Do not adopt Ordinance No. 3781 for HBMC Chapter 12.38 and direct staff on how to proceed."
- E. "Do not adopt Ordinance No. 3782 for HBMC Chapter 12.48 and direct staff on how to proceed."
- F. "Do not adopt Ordinance No. 3783 for HBMC Chapter 17.64 and direct staff on how to proceed."

### **Analysis:**

#### **A. PROJECT PROPOSAL:**

**Applicant:** City of Huntington Beach

**Location:** Citywide

Zoning Text Amendment No. 06-08 represents a request to amend Section 230.96 of the ZSO pertaining to Wireless Communication Facilities. The amendment allows the City to exercise reasonable control over the time, place, and manner of installation of wireless facilities including those in the public right-of-way and establishes a Wireless Permit Application process that encourages co-location and the undergrounding of wireless facilities.

Amendments to Sections 12.13 and 12.38 of the HBMC remedy several inconsistencies between the proposed ZTA No. 06-08 and the process by which Public Works currently issues encroachment permits. For instance, the City's current encroachment permit process does not distinguish between permanent and temporary encroachments in the public right-of-way. The amendments also address the utility companies that have franchise agreements with the City.

The deletion of Chapter 12.48 is appropriate because Chapter 12.48 was originally added to the code to incorporate the "Metrocom" wireless system that was to be a broadband network with antennae attached to light poles. The City entered into a franchise with Metrocom, which has since gone bankrupt. However, the chapter arguably authorizes cellular franchises, too. Given the absence of the Metrocom system, it seems appropriate that this chapter should now be deleted from the Code.

The amendments to Section 17.64.050 regarding locating utility facilities in the public right-of-way is being amended to clearly prohibit installation of new antennae structures such as boxes and cabinets above ground.

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### B. BACKGROUND

In August 2006 the City Council adopted a moratorium on the installation of wireless telecommunication facilities in the public right-of-way. This moratorium was extended on September 18, 2006 for a six-month period. On March 5, 2007 the City Council extended the moratorium for one year through March 18, 2008 and adopted interim regulations to allow for the processing of permits not withstanding the moratorium.

### C. PLANNING COMMISSION MEETING AND RECOMMENDATION:

On March 27, 2007 a study session was held with the Planning Commission to review and discuss the proposed ZTA. On April 10, 2007, a public hearing was held with the Planning Commission. The Planning Commission had several changes to the proposed ordinance. Their changes include minor clean-up and clarification of the modification process for existing facilities in an effort to protect the intent of the ordinance.

### D. STAFF ANALYSIS AND RECOMMENDATION:

With the adoption of the moratorium and the interim ordinance by the City Council, the City Attorney's Office was instructed to prepare updates to the ZSO and HBMC that are consistent with current state and federal law.

The courts have recognized the right of municipalities to exercise reasonable control over the time, place and manner by which telephone corporations use the public right-of-way to install and operate their facilities. A wireless ordinance that employs a permitting process to regulate the place including location of the equipment and the manner or the appearance and characteristics of the premises in which wireless providers use the right-of-way is authorized by the California Public Utilities Code.

The intent of the proposed ordinance is to encourage and facilitate wireless communication facilities where they are invisible to pedestrians, co-located with other facilities or installed underground to reduce visual clutter. The proposed changes include the requirements for a Wireless Permit application and clarification of requirements for wireless facilities in the public right-of-way, and on public and private sites.

Through the submittal of a Wireless Permit Application, the applicant must demonstrate that the wireless communication facility is located in the least obtrusive location feasible so as to eliminate any gap in service. Additionally, the applicant must respond to various questions addressing compatibility with surrounding environment, screening or camouflage, massing and location, proportion and potential interference issues. The Wireless Permit application is included in Attachment No. 5.

*Planning Commission's Recommended Changes from April 10, 2007 meeting*

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Staff agrees with the recommended changes of the Planning Commission as these changes provide clarification regarding modifications to existing facilities and are minor clean-up of the existing ordinance. The proposed substantive changes are illustrated in bold type or strike-out and are as follows:

230.96.C. Any facility, which is subject to a previously approved and a valid conditional use permit, may be modified within the scope of the applicable permit without complying with these regulations and guidelines. **Modifications outside the scope of the valid conditional use permit will require submittal of a Wireless Permit application.**

230.96.F. 13a. Facility Removal. Wireless communication facilities affecting the public view and/or located in areas designated Water Recreation, Conservation, Parks and Shoreline, **and Public Right of Ways** shall be removed within six (6) months of termination of use and the site restored to its natural state. The proposed amendment will further ensure that wireless facilities are located in the least obtrusive location while reducing visual clutter.

Staff recommends that City Council approve Zoning Text Amendment No. 06-08 and changes to the Municipal Code because they authorize wireless facilities citywide while locating them where they are invisible to pedestrians, such as underground or co-located with other facilities.

### Strategic Plan Goal:

Goal L-3 *Preserve the quality of our neighborhoods, maintain open space, and provide for the preservation of historic neighborhoods.*

The code amendments will require that the wireless facilities be underground when in the public right-of-way. The Wireless Permit process will require that the applicant demonstrate that the least obtrusive location has been proposed. The intent of the ordinance is to further reduce visual clutter thereby preserving the quality of life.

### Environmental Status:

The proposed ZTA No. 06-08 is categorically exempt pursuant to City Council Resolution No. 4501, Class 20, which supplements the California Environmental Quality Act.

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**Attachment(s):**

City Clerk's Page Number	No.	Description
1	1.	Findings of Approval
9	2.	Ordinance No. <u>3779</u> Amending Chapter 230.96 of the Huntington Beach Zoning and Subdivision Ordinance Titled Wireless Communication Facilities (ZTA No. 06-08); Ordinance No. <u>3780</u> Amending Chapter 12.13 of the Huntington Beach Municipal Code Titled Street Work Generally; Ordinance No. <u>3781</u> Amending Chapter 12.38 of the Huntington Beach Municipal Code Titled Encroachments; Ordinance No. <u>3782</u> Amending Chapter 12.48 Titled Wireless Digital Communications Radio Networks; Ordinance No. <u>3783</u> Amending Chapter 17.64 Titled Undergrounding of Utilities.
39	3.	Legislative Draft ZTA No. 06-08 (HBZSO Section 230.96) and HBMC Chapters 12.13, 12.38, 12.48 and 17.64)
83	4.	City Council minutes dated March 05, 2007
85	5.	Planning Commission Staff Report dated April 10, 2007
100	6.	Power Point Presentation

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# ATTACHMENT #1

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## **SUGGESTED FINDINGS**

### **ZONING TEXT AMENDMENT NO. 06-08**

#### **SUGGESTED FINDINGS FOR PROJECTS EXEMPT FROM CEQA:**

The City Council finds that the project will not have any significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to the City Council Resolution No. 4501, Class 20, which supplements the California Environmental Quality Act. The project is exempt because it involves minor amendments to Huntington Beach Zoning and Subdivision Ordinance, Chapter 230 (Wireless Communication Facilities) and the Huntington Beach Municipal Code Chapter 12 and 17 pertaining to wireless facilities.

#### **SUGGESTED FINDINGS FOR APPROVAL – ZONING TEXT AMENDMENT NO. 06-08:**

1. Zoning Text Amendment No. 06-08 to amend Chapter 230 Wireless Communication Facilities of the Zoning and Subdivision Ordinance is consistent with the objectives, policies, general land uses and programs specified in the General Plan because the amendment will encourage and facilitate wireless facilities throughout the city while preventing visual clutter thereby furthering the City's development goals.
2. In the case of a general land use provision, the zoning text amendment is compatible with the uses authorized in, and the standards prescribed for, the zoning districts for which it is proposed. The introduction of the Wireless Permit will ensure that wireless facilities will not have adverse impacts citywide nor within the public right-of-way.
3. A community need is demonstrated for the change proposed as directed by the City Council because the amendment will require that when possible wireless facilities are located in the least obtrusive site necessary in order to continue wireless coverage in the area.
4. Its adoption will be in conformity with public convenience, general welfare and good zoning practice by addressing wireless facilities in the public right-of-way, adopting a wireless permit procedure and creating a zoning and subdivision ordinance more reflective of City priorities.

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# ATTACHMENT #2

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AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH  
AMENDING CHAPTER 230.96 OF THE HUNTINGTON BEACH ZONING  
AND SUBDIVISION ORDINANCE TITLED  
WIRELESS COMMUNICATIONS FACILITIES

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. Section 230.96 Wireless Communications Facilities of the Huntington Beach Zoning and Subdivision Ordinance is hereby amended to read as follows:

230.96 Wireless Communication Facilities

- A. Purpose. The purpose of this Section is to encourage and facilitate wireless communications throughout the City, while preventing visual clutter by locating wireless communication facilities outside of residential zones and where they are invisible to pedestrians, and co-located with other facilities. All wireless communication facilities shall comply with these regulations with regard to their location, placement, construction, modification and design to protect the public safety, general welfare, and quality of life in the City of Huntington Beach.
- B. Definitions. For the purpose of this section, the following definitions for the following terms shall apply:
1. Accessory Structure. Any structure or equipment that is to be located ancillary to an antenna or antennas in the establishment and operation of a wireless communication facility.
  2. Co-Location or Co-Located. The location of multiple antennas which are either owned or operated by more than one service provider at a single location and mounted to a common supporting structure, wall or building.
  3. Completely Stealth Facility. Any stealth facility that has been designed to completely screen all aspects of the facility including appurtenances and equipment from public view. Examples of completely stealth facilities may include, but are not limited to architecturally screened roof-mounted antennas, façade mounted antennas treated as architectural elements to blend with the existing building, flagpoles, church steeples, fire towers, and light standards.
  4. Ground Mounted Facility. Any wireless antenna that is affixed to a pole, tower or other freestanding structure that is specifically constructed for the purpose of supporting an antenna.
  5. Microwave Communication. The transmission or reception of radio communication at frequencies of a microwave signal (generally, in the 3 GHz to 300 GHz frequency spectrum).

6. Pre-existing Wireless Facility. Any wireless communication facility for which a building permit or conditional use permit has been properly issued prior to the effective date of this ordinance, including permitted facilities that have not yet been constructed so long as such approval is current and not expired.
7. Roof Mounted. Any wireless antenna directly attached or affixed to the roof of an existing building, water tank, tower or structure other than a telecommunications tower.
8. Stealth Facility or Techniques. Any wireless communication facility, which is designed to blend into the surrounding environment, typically, one that is architecturally integrated into a building or other concealing structure. See also definition of completely stealth facility.
9. Utility Mounted. Any wireless antenna mounted to an existing above-ground structure specifically designed and originally installed to support utilities such as but not limited to electrical power lines, cable television lines, telephone lines, non-commercial wireless service antennas, radio antennas, street lighting but not traffic signals, recreational facility lighting, or any other utility which meets the purpose and intent of this definition.
10. Wall Mounted. Any wireless antenna mounted on any vertical or nearly vertical surface of a building or other existing structure that is not specifically constructed for the purpose of supporting an antenna (including the exterior walls of a building, an existing parapet, the side of a water tank, the face of a church steeple, or the side of a freestanding sign) such that the highest point of the antenna structure is at an elevation equal to or lower than the highest point of the surface on which it is mounted.
11. Wireless Communication Facility or Facility. An antenna structure and any appurtenant facilities or equipment that transmits electronic waves or is used for the transmission or receipt of signals that are used in connection with the provision of wireless communication service, including, but not limited to digital, cellular and radio service.

C. Applicability.

1. All wireless communication facilities which are erected, located, placed, constructed or modified within the City of Huntington Beach shall comply with these regulations provided that:
  - a. All facilities, for which permits were issued prior to the effective date of this section, shall be exempt from these regulations and guidelines.
  - b. All facilities for which Building and Safety issued permits prior to the effective date of section 230.96 shall be exempt from these regulations and guidelines, unless and until such time as subparagraph (2) of this section applies.
  - c. Any facility, which is subject to a previously approved and valid conditional use permit, may be modified within the scope of the applicable permit without complying with these regulations and guidelines. Modifications outside the scope of the valid conditional use permit will require submittal of a Wireless Permit application.

2. The following uses shall be exempt from the provisions of section 230.96 until pertinent federal regulations are amended or eliminated. See Section 230.96 (Antennae) for additional requirements:
  - a. Any antenna structure that is one meter (39.37 inches) or less in diameter and is designed to receive direct broadcast satellite service, including direct-to-home satellite service for television purposes, as defined by Section 207 of the Telecommunication Act of 1996, Title 47 of the Code of Federal Regulations, and any interpretive decisions thereof issued by the Federal Communications Commission (FCC).
  - b. Any antenna structure that is two meters (78.74 inches) or less in diameter located in commercial or industrial zones and is designed to transmit or receive radio communication by satellite antenna.
  - c. Any antenna structure that is one meter (39.37 inches) or less in diameter or diagonal measurement and is designed to receive Multipoint Distribution Service, provided that no part of the antenna structure extends more than five (5) feet above the principle building on the same lot.
  - d. Any antenna structure that is designed to receive radio broadcast transmission.
  - e. Any antenna structure used by authorized amateur radio stations licensed by the FCC.

D. Wireless Permit Required. No wireless communication facility shall be installed anywhere in the City without submission of a Wireless Permit Application that demonstrates that the antenna is located in the least obtrusive location feasible so as to eliminate any gap in service and also includes the following information:

1. Demonstrate existing gaps in coverage, and the radius of area from which an antenna may be located to eliminate the gap in coverage.
2. Compatibility with the surrounding environment or that the facilities are architecturally integrated into a structure.
3. Screening or camouflaging by existing or proposed topography, vegetation, buildings or other structures as measured from beyond the boundaries of the site at eye level (six feet).
4. Massing and location of the proposed facility are consistent with surrounding structures and zoning districts.
5. No portion of a wireless communication facility shall project over property lines.
6. Interference: To eliminate interference, the following provisions shall be required for all wireless communication facilities regardless of size:
  - a. Prior to issuance of a building permit, the applicant shall submit the following information to the Police Department for review:

- i. All transmit and receive frequencies;
  - ii. Effective Radiated Power (ERP);
  - iii. Antenna height above ground, and
  - iv. Antenna pattern, both horizontal and vertical (E Plane and H Plane).
- b. At all times, other than during the 24-hour cure period, the applicant shall comply with all FCC standards and regulations regarding interference and the assignment of the use of the radio frequency spectrum. The applicant shall not prevent the City of Huntington Beach or the countywide system from having adequate spectrum capacity on the City's 800 MHz voice and data radio frequency systems. The applicant shall cease operation of any facility causing interference with the City's facilities immediately upon the expiration of the 24-hour cure period until the cause of the interference is eliminated.
  - c. Before activating its facility, the applicant shall submit to the Police and Fire Departments a post-installation test to confirm that the facility does not interfere with the City of Huntington Beach Public Safety radio equipment. The Communications Division of the Orange County Sheriff's Department or Division-approved contractor at the expense of the applicant shall conduct this test. This post-installation testing process shall be repeated for every proposed frequency addition and/or change to confirm the intent of the "frequency planning" process has been met.
  - d. The applicant shall provide to the Planning Department a single point of contact (including name and telephone number) in its Engineering and Maintenance Departments to whom all interference problems may be reported to insure continuity on all interference issues. The contact person shall resolve all interference complaints within 24 hours of being notified.
  - e. The applicant shall insure that lessee or other user(s) shall comply with the terms and conditions of this permit, and shall be responsible for the failure of any lessee or other users under the control of the applicant to comply.

E. Additional Permit Required.

- 1. Administrative approval by the Director may be granted for proposed wireless communication facilities (including but not limited to ground mounted, co-located, wall, roof, or utility mounted) that are:
  - a. Co-located with approved facilities at existing heights or that comply with the base district height limit for modified facilities, and compatible with surrounding buildings and land uses by incorporating stealth techniques; or
  - b. Completely stealth facilities that comply with the base district height limit; or
  - c. Facilities in non-residential districts that are in compliance with the maximum building height permitted within the zoning district; and

- i. Screened from view and not visible from beyond the boundaries of the site at eye level (six feet); or
  - ii. Substantially integrated with the architecture of the existing building or structure to which it is to be mounted; or
  - iii. Designed to be architecturally compatible with surrounding buildings and land uses by incorporating stealth techniques.
2. Following submission of a Wireless Permit Application, a Conditional Use Permit approval by the Zoning Administrator shall be required for all proposed wireless communication facilities (including but not limited to ground mounted, co-located, wall, roof or utility mounted) that are:
- a. Exceeding the maximum building height permitted within the zoning district; or
  - b. Visible from beyond the boundaries of the site at eye level (six feet); or
  - c. Not substantially integrated with the architecture of the existing building or structure to which it is to be mounted; or
  - d. Not designed to be architecturally compatible with surrounding buildings and land uses.
  - e. As a condition of the Conditional Use Permit, the Zoning Administrator shall minimize significant adverse impacts to public visual resources by incorporating one or more of the following into project design and construction:
    - i. Stealth installations;
    - ii. Co-location and locating facilities within existing building envelopes;
    - iii. Minimizing visual prominence through colorization or landscaping;
    - iv. Removal or replacement of facilities that become obsolete.
3. Design review shall be required for any wireless communication facilities located in redevelopment areas, on public right-of-ways, in OS-PR and PS zones, in areas subject to specific plans, on or within 300 feet of a residential district, and in areas designated by the City Council. Design review is not required for wireless communication facilities that comply with subsection 1.

F. Facility Standards: The following standards apply to all wireless communication facilities:

1. Aesthetics:

- a. Facility: All screening used in conjunction with a wall or roof mounted facility shall be compatible with the architecture of the building or other structure to which it is mounted, including color, texture and materials. All ground mounted facilities shall

be designed to blend into the surrounding environment, or architecturally integrated into a building or other concealing structure.

- b. Equipment/Accessory Structures: All equipment associated with the operation of the facility, including but not limited to transmission cables, shall be screened in a manner that complies with the development standards of the zoning district in which such equipment is located. Screening materials and support structures housing equipment shall be architecturally compatible with surrounding structures by duplicating materials and design in a manner as practical as possible. If chain link is used, then it must be vinyl coated and not include barbed wire.
  - c. General Provisions: All Wireless Communication Facilities shall comply with the Huntington Beach Urban Design Guidelines.
2. Building Codes: To ensure the structural integrity of wireless communication facilities, the owners of a facility shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for facilities that are published by the Electronic Industries Association, as amended from time to time.
  3. Conditions of Approval: Acceptance of conditions by the applicant and property owner shall be ensured by recordation of the conditions on the property title.
  4. Federal Requirements: All Wireless Communication Facilities must meet or exceed current standards and regulations of the FCC, and any other agency of the state or federal government with the authority to regulate wireless communication facilities.
  5. Lighting: All outside lighting shall be directed to prevent "spillage" onto adjacent properties, unless required by the FAA or other applicable authority, and shall be shown on the site plan and elevations.
  6. Maintenance: All facilities and appurtenant equipment including landscaping shall be maintained to remain consistent with the original appearance of the facility. Ground mounted facilities shall be covered with anti-graffiti coating.
  7. Monitoring: For all wireless communication facilities, the applicant shall provide a copy of the lease agreement between the property owner and the applicant prior to the issuance of a building permit.
  8. Signs: The facility shall not bear any signs or advertising devices other than owner identification, certification, warning, or other required seals of signage.
  9. Facilities on Public Property: Any wireless communication facility to be placed over, within, on, or beneath City property shall obtain a lease or franchise from the City prior to applying for a Wireless Permit and an administrative or conditional use permit.
  10. Landscaping: Landscape planting, irrigation and hardscape improvements may be imposed depending on the location, the projected vehicular traffic, the impact on existing facilities and landscape areas, and the visibility of the proposed facility. Submittal of

complete landscape and architectural plans for review and approval by the Directors of Public Works and Planning may be required.

11. Utility Agreement: If the proposed facility will require electrical power or any other utility services to the site, the applicant will be required to furnish the City's Real Estate Services Manager either a drafted utility franchise agreement between the City of Huntington Beach and the applicant to place those lines in the public right-of-way, or a written statement from the utility company that will be supplying the power or other services, that they accept all responsibility for those lines in the public right-of-way.
12. Facilities in the Public Right-of-Way. Any wireless communication facility to be placed over, within, on or beneath the public right-of-way shall comply with the following standards:
  - a. Any wireless communication facilities to be constructed on or beneath the public right-of-way must obtain an encroachment permit from the City and the applicant must provide documentation demonstrating that the applicant is a state-franchised telephone corporation exempt from local franchise requirements.
  - b. All equipment associated with the operation of a facility, including but not limited to cabinets, transmission cables but excepting antennas, shall be placed underground in those portions of the street, sidewalks and public rights-of-way where cable television, telephone or electric lines are underground. At no time shall equipment be placed underground without appropriate conduit.
  - c. The City Engineer shall approve the location and method of construction of all facilities located within public rights-of-way and the installation of facilities within the public rights-of-way must comply with Title 12 of the Huntington Beach Municipal Code, as the same may be amended from time to time.
  - d. All wireless communication facilities shall be subject to applicable City permit and inspection fees, including, but not limited to, those pertaining to encroachment permits, administrative or conditional use permits, and all applicable fees.
  - e. Any wireless communication facility installed, used or maintained within the public rights-of-way shall be removed or relocated when made necessary by any "project." For purposes of this section, project shall mean any lawful change of grade, alignment or width of any public right-of-way, including but not limited to, the construction of any subway or viaduct that the City may initiate either through itself, or any redevelopment agency, community facility district, assessment district, area of benefit, reimbursement agreement or generally applicable impact fee program.
  - f. If the facility is attached to a utility pole, the facility shall be removed, at no cost to the City, if the utility pole is removed pursuant to an undergrounding project.
  - g. The service provider shall enter into a franchise agreement with the City. As of March 17, 2007, the California Supreme Court, in the case entitled Spring Telephony PCS v. County of San Diego, will determine whether California Public Utilities Code § 7901 grants a state-wide franchise to use the public rights-of-way for the purpose of

installation of wireless communications facilities. Pending resolution of this legal question, any applicant seeking to use the public right-of-way must enter into a City franchise to install wireless communications facilities. The franchise shall provide that the franchise fee payments shall be refunded to the applicant and the franchise become null and void if and when the California Supreme Court establishes that the provider has a state-wide franchise to install a wireless communications facility in the public right-of-way.

### 13. Facility Removal.

- a. Wireless communication facilities affecting the public view and/or located in areas designated Water Recreation, Conservation, Parks and Shoreline, and Public Right of Ways shall be removed in its entirety within six (6) months of termination of use and the site restored to its natural state.
- b. Cessation of Operation: Within thirty (30) calendar days of cessation of operations of any wireless communication facility approved under this section, the operator shall notify the Planning Department in writing. The facility shall be deemed abandoned pursuant to the following sections unless:
  1. The City has determined that the operator has resumed operation of the wireless communication facility within six (6) months of the notice; or
  2. The City has received written notification of a transfer of wireless communication operators.
- c. Abandonment: A facility that is inoperative or unused for a period of six (6) continuous months shall be deemed abandoned. Written notice of the City's determination of abandonment shall be provided to the operator of the facility and the owner(s) of the premises upon which the facility is located. Such notice may be delivered in person, or mailed to the address(es) stated on the facility permit application, and shall be deemed abandoned at the time delivered or placed in the mail.
- d. Removal of Abandoned Facility: The operator of the facility and the owner(s) of the property on which it is located, shall within thirty (30) calendar days after notice of abandonment is given either (1) remove the facility in its entirety and restore the premises, or (2) provide the Planning Department with written objection to the City's determination of abandonment.

Any such objection shall include evidence that the facility was in use during the relevant six- (6) month period and that it is presently operational. The Director shall review all evidence, determine whether or not the facility was properly deemed abandoned, and provide the operator notice of its determination.

- e. Removal by City: At any time after thirty-one (31) calendar days following the notice of abandonment, or immediately following a notice of determination by the Director, if applicable, the City may remove the abandoned facility and/or repair any and all damage to the premises as necessary to be in compliance with applicable

codes. The City may, but shall not be required to, store the removed facility (or any part thereof). The owner of the premises upon which the abandoned facility was located, and all prior operators of the facility, shall be jointly liable for the entire cost of such removal, repair, restoration and/or storage, and shall remit payment to the City promptly after demand thereof is made. The City may, in lieu of storing the removed facility, convert it to the City's use, sell it, or dispose of it in any manner deemed appropriate by the City.

SECTION 2. This ordinance shall become effective 30 days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

*Jennifer McGuire*  
9.12.07 \_\_\_\_\_  
City Attorney UM 9/12/07

REVIEWED AND APPROVED:

*Lynette Cullen-Croft*  
\_\_\_\_\_  
City Administrator

INITIATED AND APPROVED:

*[Signature]*  
\_\_\_\_\_  
Planning Director

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AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH  
AMENDING CHAPTER 12.13 OF THE HUNTINGTON BEACH MUNICIPAL  
CODE RELATING TO STREET WORK GENERALLY

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. Chapter 12.13 of the Huntington Beach Municipal Code is hereby amended to read as follows:

Chapter 12.13

STREET WORK GENERALLY

(3582-11/02)

Sections:

- 12.13.005 Purpose
- 12.13.010 Definitions
- 12.13.020 Erecting utility structures--Authority
- 12.13.030 Emergency situations
- 12.13.035 Underground Facilities
- 12.13.040 Obstructing or construction within public way—Permit required
- 12.13.050 Duration and validity
- 12.13.060 Penalty for exceeding time restrictions
- 12.13.070 Permit--Fees
- 12.13.080 Required information for permit
- 12.13.090 Permit Denial
- 12.13.091 Construction work--Permit denial—Appeal in general
- 12.13.100 Orders, regulations, and rules of City Departments
- 12.13.110 Construction work—Licensed contractor required
- 12.13.120 Street excavation moratorium—no permit shall be issued
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- 12.13.140 Stop work order, permit modification, and permit revocation
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- 12.13.190 Identification of visible facilities
- 12.13.200 City repaving plan
- 12.13.210 Coordination with City
- 12.13.220 Blanket Permits
- 12.13.230 Construction Status Report
- 12.13.240 Conditions of Use of Public Right-of-Way
- 12.13.250 Excavations

**12.13.005 Purpose.** The public rights-of-way are unique public resources held in trust by the City for the benefit of the public. Pursuant to the City Charter and applicable state and federal law, the City is empowered to control access to and use of its public rights-of-way, and unless pre-empted by state or federal law, to obtain reasonable and fair compensation for the use of its public rights-of-way. The purpose and intent of this Chapter is to provide a uniform and comprehensive set of standards and regulations for use of the public right-of-way. These regulations are intended to protect the public health, safety and welfare that permit the installation of utilities and communication facilities in the public right-of-way in such a manner and at such points so as not to incommode the public use of the public's right-of way.

**12.13.010 Definitions.**

- (a) "Applicant" shall mean any owner or duly authorized agent of such owner, who has submitted an application for a permit to excavate. (3582-11/02)
- (b) "City" shall mean the City of Huntington Beach. (3582-11/02)
- (c) "Department" shall mean the Department of Public Works. (3582-11/02)
- (d) "Director" shall mean the Director of the Department of Public Works or his/her designee, and shall include the term "Superintendent of Streets." (3582-11/02)
- (e) "Excavation" shall mean any opening in the surface or subsurface of the public right-of-way. (3582-11/02)
- (f) "Facility" or "facilities" shall mean any and all cables, wires, cabinets, ducts, conduits, converters, equipment, drains, handholds, manholes, pipes, pipelines, splice boxes, surface location markers, tunnels, utilities, vaults, and other appurtenances or tangible things owned, leased, operated, or licensed by an owner or person, that are located or are proposed to be located in the public right-of-way. (3582-11/02)
- (g) "Franchise" granted by the City of Huntington Beach or the state of California is a contract granting special privileges to use the public right-of-way. It is not intended that this chapter of the Municipal Code impose additional rules or regulations which are inconsistent with the rights or obligations under the franchise or confer authority to the City that conflicts with the State's Public Utilities Code or the jurisdiction of the California Public Utilities Commission. (3582-11/02)
- (h) "Owner" is defined as that person who is responsible for the project. (3582-11/02)
- (i) "Permit" or "permit to excavate" shall mean an encroachment permit to perform a project as it has been approved or may be amended or renewed by the Department. (3582-11/02)
- (j) "Permittee" shall mean the applicant to whom a permit has been granted by the Department in accordance with this chapter. (3582-11/02)

- (k) "Person" shall mean any natural person, owner, corporation, partnership, public utility franchise, or any governmental agency, including any agency other than the City of Huntington Beach, Department, the state of California, or United States of America. (3582-11/02)
- (l) "Project" for purposes of this chapter shall mean any activity permitted under this chapter, including but not limited to excavation, construction, demolition, obstruction of right-of-way, repair and building. (3582-11/02)
- (m) "Public right-of-way" shall mean the area across, along, beneath, in, on, over, under, upon, and within the dedicated public alleys, boulevards, courts, lanes, places, roads, sidewalks, streets, ways and City owned properties within the City, as they now exist or hereafter will exist and which are or will be under the permitting jurisdiction of the Department of Public Works. (3582-11/02)

12.13.020 Erecting utility structures--Authority. It is unlawful for any person, without a City franchise and/or City encroachment permit, or other authority from the Director, to erect any telegraph, telephone, electric light or, transmission poles, or facilities on or in any walk, street, alley or public place in this City, or to stretch any wires or cables along or across said streets; or to lay any gas, oil or water pipes, or other pipelines along or across any streets in the City. (3582-11/02)

As of March 17, 2007, the California Supreme Court, in the case entitled *Sprint Technology PCS v. County of San Diego*, will determine whether California Public Utilities Code Section 7901 grants a state-wide franchise to use the public rights-of-way for the purpose of installation of wireless communication facilities. Pending resolution of this legal question, any applicant seeking to use the public right-of-way must enter into a City franchise to install wireless communication facilities. The franchise shall provide that the franchise fee payments shall be refunded to the applicant and the franchise become null and void if and when the California Supreme Court establishes that the provider has a state-wide franchise to install a wireless communication facility in the public right-of-way.

12.13.030 Emergency situations. Nothing contained in this chapter shall be construed to prevent any person from taking any action necessary for the preservation of life or property when such necessity arises during days or times when the Department is closed. In the event that any person undertakes any project, as defined herein, in the public right-of-way made necessary by an immediate threat to health, safety, life or property, such person shall apply for an emergency permit within four hours after the Department's offices are first opened. The applicant for an emergency permit shall submit a written statement of the basis of the emergency action and describe the work performed. (3582-11/02)

12.13.035 Underground Facilities. All facilities constructed within the public right-of-way shall be undergrounded except for antennae and those exempt from undergrounding pursuant to section 17.64.050.

12.13.040 Obstructing or construction within public way--Permit required. It is unlawful for any person to construct, repair, use, or obstruct any street, alley, sidewalk or public property within this City by placing thereon or therein any utility, building, stand, counter, fence, lunch wagon, storage container, bandstand, structure, building material or tools, gravel, dirt, excavation or obstruction of any kind whatsoever or performing any demolition, without a permit having first been issued therefor as hereinafter provided. (3582-11/02)

12.13.050 Duration and validity.

- (a) Permits shall be void if the project, including restoration, has not been completed within sixty; provided, however, that the Director, in his or her discretion for good cause shown, may issue one thirty-day extension to the start date and one thirty-day extension to the duration of a permit upon written request from the permittee and payment of any applicable fees. The Director may issue additional extensions as may be deemed appropriate in his or her discretion. (3582-11/02)
- (b) Permits are not transferable without proof of current business license issued by the City of Huntington Beach for the assignee and any subcontractors who will be providing service under the permit and evidence of insurance as specified by Resolution of the City Council, and the written consent of the permittee and the Director.

12.13.060 Penalty for exceeding time restrictions. A penalty shall be imposed upon any person who does not complete work requiring road or lane closures within the established time frame. The penalty shall be in an amount set by resolution of the City Council and shall be based upon estimated costs to the traveling public due to delays and additional travel distance around roadway closures. (3582-11/02)

12.13.070 Permit--Fees. The Director shall not issue any permit except upon the payment of plan check, inspection and permit fees, set by resolution of the City Council. The State of California and the County of Orange, including entities such as special districts organized under state law, are fee exempt. At the discretion of the Director, and upon proven City history of prompt payment and company fiscal integrity, the Director may request and make arrangements for alternative methods of collecting payment such as monthly billings. (3582-11/02)

12.13.080 Required information for permit. Before any project mentioned in this chapter may be commenced, the person doing such work must provide the following information: (3582-11/02)

- (a) Applications for permits shall be submitted in the format and manner specified by the Director and shall contain: (3582-11/02)
  - 1. The name, address, telephone, and facsimile number of the applicant. Where an applicant is not the owner of the facility to be installed or maintained in the public right-of-way, the application also shall include the name, address, telephone, and facsimile number of the owner. If the application is submitted

by an authorized agent of the Applicant or Owner, written authorization from the Applicant or Owner of facility shall be provided. (3582-11/02)

2. A description of the location, purpose or use, method of construction, and surface and subsurface area of any proposed project. (3582-11/02)
3. Engineering plans, specifications and a network map of the facilities to be located within the public right-of-way, including a map in electronic and/or other form required by the City. The plans and specifications shall show:
  - a. The location of all existing and proposed facilities in the public right-of-way along proposed route including the type and location of existing and proposed pedestals and other above ground facilities.
  - b. Facility Information. Photographs or artist renderings of all proposed facilities for the work area as well as their locations, dimensions, and color. Any modifications to plans and specifications must be reviewed and approved by the Director before modifications can be implemented by Applicant. In addition, Applicant shall provide the Director with engineering base maps identifying Applicant's existing underground and aerial utility facilities, poles, trench routes, and locations for above-ground equipment in the work area in both electronic form (digital or otherwise as specified by the Director) to the extent available and hard-copy form.
  - c. Hours of Construction. All construction shall be accomplished and maintained between the hours specified by the Director. Construction shall not interfere with the existing or known future services of the City or private or public third parties.
  - d. Telephone Contact. Applicant shall provide the Director with a telephone contact number, answered twenty-four (24) hours a day during the construction period, to enable the Director to report any concerns regarding construction of the facilities. After business hours such calls will be routed to an on-call supervisor. In the event that the Director reports any concerns to Applicant, Applicant shall respond in a timely manner. Applicant shall immediately correct any adverse impact to the City's use or operations or the use or operations of a third party caused by Applicant's construction activities in the public right-of-way at no cost to the City. Safety violations will be cause for immediate project shut-down.
  - e. The specific trees, structures, improvements, facilities and obstructions, if any that Applicant proposes to temporarily or permanently remove or relocate.
4. Information regarding any excess capacity that will exist in such ducts or conduits after installation of Applicant's facilities.

5. A Traffic Control Plan. In accordance with such guidelines established by the City.
  6. The proposed start date of project. (3582-11/02)
  7. The proposed duration of the project, which shall include the duration of restoration of the public right-of-way physically disturbed by the project. (3582-11/02)
  8. A current business license issued by the City of Huntington Beach for the applicant and any subcontractors who will be providing services under the permit. (3582-11/02)
  9. Evidence of insurance for the applicant and owner as specified by Resolution of the City Council. (3582-11/02)
  10. Companies may also be required by the Director to provide reasonable advance notice to the public via a public notification plan of the proposed quantity, precise dimensions, design, color, type, potential noise and location of above-ground facilities pursuant to guidelines promulgated by the Director. The plan is subject to the prior approval of the Director. The guidelines shall take into account the area covered and impacts of the above-ground facilities.
  11. Certifications. Upon request, Applicant shall provide copies of certifications, licenses, permits, franchises or other applicable approvals to construct and operate the facilities and to offer or provide the services. Applicant shall also provide a certification that the Applicant will comply with all applicable local state and federal requirements in the installation, operation, maintenance, or removal of its facilities.
  12. Any other information that may reasonably be required by the Department. (3582-11/02)
- (b) Action on applications for permits as provided in this Chapter. (3582-11/02)
1. After receipt of an application for a permit, the Department shall determine whether an application is complete. If the application is deemed to be incomplete, the Department shall advise the applicant in writing of the reasons for rejecting the application as incomplete. (3582-11/02)
  2. If the application is deemed to be complete, the Department, in its discretion, shall deny, approve, or conditionally approve the application. In order to preserve and maintain the public health, safety, welfare, and convenience, the Department may condition a permit with specified requirements including, but not limited to, those that limit or modify the facilities to be installed or maintained, the location of the

facilities to be installed or maintained, and the time, place, and manner of work to be performed. (3582-11/02)

3. If the application is denied, the Department shall advise the applicant in writing of the basis for denial. (3582-11/02)
4. If the application is approved or conditionally approved, the Department shall issue a permit to the applicant. (3582-11/02)
5. It is unlawful for any permittee to make, to cause, or permit to be made, any project in the public right-of-way outside the boundaries, times, and description set forth in the permit.

12.13.090 Permit Denial. The determination to grant or deny a permit shall be based upon the criteria set forth in this section. The Director shall consider the following:

1. The capacity of the public right-of-way to accommodate Applicant's proposed facilities and facilities known to be needed in the future.
2. The capacity of the public right-of-way to accommodate known additional facilities if the permit is granted.
3. The damage or disruption, if any, to the public right-of-way or any public or private facilities, improvements, aesthetics, services, pedestrian or vehicle travel or landscaping if the permit is granted.
4. Visibility or sight distance impacts to other users of the public right-of-way.
5. The proposed facilities impact the design and construction of public streets, as well as intersections between City streets and roadways to ensure, to the maximum extent feasible, that streets and intersections are designed and constructed in a manner that will not adversely impact the health, safety and welfare of the citizens of the City of Huntington Beach and others.

12.13.091 Construction work--Permit denial—Appeal in general. In the event the Director refuses for any reason to issue a permit, the applicant may petition the Public Works Commission, in writing, for a hearing to consider said request. Any decision of the Commission, including but not limited to decisions to grant or deny permits, is appealable to the City Council who will consider the application de novo. (3582-11/02)

12.13.100 Orders, regulations, and rules of City Departments. All work in the public right-of-way pursuant to this chapter shall be performed in accordance with the standard plans and specifications of the Department, the design manual, and any Department orders, regulations, or rules, except where the Director grants, for good cause shown, prior

written approval to deviate from such standard plans and specifications, the design manual, orders, regulations, or rules. (3582-11/02)

12.13.110 Construction work--Licensed contractor required. No construction work of any kind shall be done or performed upon any public right-of-way, in the City unless done according to City orders, regulations, rules of standard plans and by a contractor licensed by the State of California to perform that class of work. (3582-11/02)

12.13.120 Street excavation moratorium - no permit shall be issued. In order to preserve the ride quality, structural integrity and appearance of newly constructed or renovated streets, permission to excavate in newly constructed or renovated streets will not be granted for three (3) years after completion of street renovation as shown by the filing of a Notice of Completion. Applicants shall determine alternate methods of installing utilities or making necessary repairs to avoid excavating in newly renovated streets. Exceptions to the above are as follows: (3582-11/02)

- (a) Emergency which endangers life or property. (3582-11/02)
- (b) Interruption of essential utility service. (3582-11/02)
- (c) Work that is mandated by legislation applicable to the City or person performing the excavation or ordered by any court or governmental entity with jurisdiction over the City of Huntington Beach. (3582-11/02)
- (d) Service lateral for buildings or facility where the applicant has no other means of providing service exists. (3582-11/02)
- (e) Other situations deemed by the City's Public Works Commission to be in the best interest of the general public. (3582-11/02)

All permits which are issued under (a) through (e) above shall be in accordance with the specified enhanced standards, details and specifications established by and on file in the Department, unless otherwise approved by the Director. (3582-11/02)

12.13.130 Underground service alert. Any person excavating in the public right-of-way shall comply with the requirements of the underground service alert regarding notification of excavation and marking of subsurface facilities. It shall be the responsibility of Applicant to mark its facilities with search wire if possible and to locate and mark or otherwise visibly indicate and alert others to the location of its underground facilities before employees, agents, of independent contractors of any entity perform work in the marked-off area. Applicant shall participate in and adhere to the practices of Underground Services Alert ("USA") or its successor notification system and provide at least forty-eight (48) hours prior notice to USA prior to any excavation.

12.13.140 Stop work order, permit modification, and permit revocation. When the Director has determined a person has violated this chapter, or any condition of the permit, or that an excavation poses a hazardous situation or constitutes a public nuisance, public

emergency, or other threat to the public health, safety, or welfare, or when the Director determines there is a paramount public purpose, the Director is authorized to issue a stop work order, to impose new conditions upon a permit, or to suspend or revoke a permit by notifying the permittee of such action in writing. (3582-11/02)

12.13.150 Restoration.

- (a) Like New Restoration. For all projects for which any permit under this Chapter has been issued, the permittee shall restore or cause to be restored any area upon which work has been performed to like new condition. Such restoration shall be done in the manner prescribed by the standard plans and specifications, the design manual, orders, regulations, and rules of the Department. (3582-11/02)
- (b) Modification to Requirements. Upon written request from the permittee, the Director, in his or her discretion and for good cause shown, may approve in writing modifications to the requirements of this section. (3582-11/02)

12.13.160 Repair by the Department.

- (a) In the event any person(s) fails, neglects, or refuses to repair or restore any condition pursuant to the Director's notice as set forth in this chapter, the Director shall repair or restore, or cause to be repaired or restored, such condition in such manner as the Director deems expedient and appropriate. The person(s) identified by the Director as the responsible party shall compensate the Department for any costs associated with the administration, construction, consultants, equipment, inspection, notification, remediation, repair, restoration, or any other actual costs incurred by the Department or other departments or agencies of the City made necessary by reason of the repair or restoration undertaken by the Department. (3582-11/02)
- (b) Repair or restoration by the Department in accordance with this chapter shall not relieve the person(s) from any and all liability at the site of the repair or restoration, including, but not limited to, future failures for any portions of work completed by permittee. (3582-11/02)

12.13.170 Emergency remediation by the Department.

- (a) If, in the judgment of the Director, the site of an excavation is considered hazardous, constitutes a public nuisance, public emergency, or other imminent threat to the public health, safety, or welfare that requires immediate action, the Director shall order the condition remedied by written, oral, telephonic or facsimile communication to the owner, applicant, or any agent thereof and shall designate the owner or applicant as the responsible party. (3582-11/02)
- (b) If the responsible party is inaccessible or fails, neglects, or refuses to take immediate action to remedy the condition as specified in said communication, the Director shall remedy the condition or cause the condition to be remedied in such manner as the Director deems expedient and appropriate. The person(s) identified by the Director as the responsible party shall compensate the Department for any reasonable costs associated

with the administration, construction, consultants, equipment, inspection, notification, remediation, repair, restoration, or any other actual costs incurred by the Department or other departments or agencies of the City made necessary by reason of the emergency remediation undertaken by the Department. (3582-11/02)

12.13.180 Suspension of applications and permits. No person subject to any outstanding violation of this chapter shall apply for nor be issued any permit hereunder. (3582-11/02)

12.13.190 Identification of visible facilities. All facilities installed pursuant to a permit that are visible from the surface of the public right-of-way shall be clearly identified with the name of the current owner of the facilities. Upon demand of the Director, within six months of change in ownership of a facility(ies), the identification required by this section shall indicate the new owner. (3582-11/02)

12.13.200 City Repaving Plan. The Director of Public Works shall prepare a two (2) year repaving plan showing the street surfacing planned by the City for the next two (2) years. The two year repaving plan will be made available to utilities at all times to assist them. (3582-11/02)

12.13.210 Coordination with City.

- (a) Prior to designing facilities and applying for an excavation permit in the City's public right-of-ways, applicants shall review other utilities' master plans and the City's two (2) year repaving plan on file with the Director. The applicant shall coordinate, to the extent practicable, with other planned utility and street work shown on such plans to minimize damage to, and avoid undue disruption and interference with the public use of such public rights-of-way. (3582-11/02)
- (b) To avoid future excavations and to reduce the number of street excavations, telecommunication companies shall be requested, when practical, to install spare conduits. (3582-11/02)
- (c) Permit Available On-Site. The permit or a photo duplicate shall be available for review at the site of the excavation for the duration of the excavation and shall be shown, upon request, to any police officer or any employee of a City agency, board, commission, or Department with jurisdictional responsibility over activities in the public right-of-way.

12.13.220 Blanket Permits. The Director may issue a blanket permit to an Applicant to make excavations for utility service connections, for the location of trouble in utility conduits or pipes and for making repairs thereto, or for emergency purposes. Blanket permits shall be issued on a yearly basis only, and shall authorize only excavations referred to in this section and shall comply with all requirements of this chapter not inconsistent with this section and all fees set by resolution of the City Council shall be paid.

12.13.230 Construction Status Report.

- (a) During construction, Applicant shall, at the request of the Director, submit to the Director regular progress reports describing in detail the status of construction in relation to the plans and specifications. The first report shall be submitted within seven days after commencement of construction and shall be updated every seven days thereafter, as may be required by the permit. Work plans shall be provided in advance to the Director for review and approval.
- (b) Notification. Applicant shall provide written notification to the Director of any construction and/or maintenance activities undertaken in public right-of-way, whether undertaken pursuant to permit or otherwise, within five business days of commencement of such activities unless the activities have been previously reported to the Director.

12.13.240 Conditions of Use of Public Right-of-Way.

- (a) All facilities of Applicant shall be so located, constructed, installed and maintained so as not to endanger, interfere with or limit the usual and customary use and/or traffic and travel upon the public right-of-way as well as adjacent private property pursuant to a traffic control plan to be approved by the Director.
- (b) In the event Applicant creates a hazardous or unsafe condition or an unreasonable interference with property, such Applicant shall remove or modify that part of the facility to eliminate such condition from the subject property.
- (c) Applicant shall not place equipment where it will interfere with existing and known future City uses of the public right-of-way, with the rights of private property owners as determined by the Director, with gas, electric, cable, telephone fixtures, water, sewer and storm drain lines and appurtenances, fire hydrants, traffic signal facilities, street light facilities, or any wastewater stations, with any traffic control system, or any other City facility.
- (d) Applicant, at its own expense and pursuant to a timeline approved by the Director, shall protect the public right-of-way and support or temporarily disconnect or relocate any of Applicant's facilities when necessitated by reason of:
  - 1. Traffic conditions;
  - 2. Public safety;
  - 3. Temporary or permanent street closure not for the benefit of a private party;
  - 4. Street construction or resurfacing;
  - 5. A change or establishment of street grade; and
  - 6. Installation of sewers, water and storm drain lines and appurtenances, lift stations, street light facilities, traffic signal facilities, tracks, or any other public use of the right-of-way.

12.13.250 Excavations.

- (a) **Applicability.** Each excavation in the public right-of-way pursuant to this chapter shall be performed in accordance with this chapter and with the standard plans and specifications of the Department and any Department orders, regulations or rules, except where the Director, at his or her discretion, grants prior written approval to deviate from the standard plans and specifications, orders, or regulations. The Director shall develop guidelines to implement the granting of waivers authorized pursuant to this chapter.
- (b) **Notices.** The Director may require reasonable notice from Applicant if Applicant excavates or causes an excavation in the public right-of-way in a manner that, due to duration or location of the excavation, has the potential to disrupt traffic flow or adjacent properties. All notices are subject to the prior review of the Director and shall include:
1. Post and maintain notice at the site of the excavation. The notice shall include the name, telephone number, and address of Applicant, a description of the excavation to be performed and the duration of the excavation. The notice shall be posted along any street where the excavation is to take place at least seventy-two (72) hours prior to commencement of the excavation.
  2. At least ten calendar days prior to commencement of the excavation, Applicant shall provide written notice delivered by United States mail to each property owner on the street affected by the excavation and each affected neighborhood and merchant organization that is listed in the latest Assessor's Roll for names and addresses of property owners shall be used for the mailed notice. This notice shall include the same information that is required for the posted notice pursuant to this subsection (b)(1) and the name, address, and twenty-four (24) hour telephone number of a person who will be available to provide information to and receive complaints from any member of the public concerning the excavation, or
  3. At least ten calendar days prior to commencement of the excavation, Applicant shall also deliver a written notice to each dwelling unit on the block(s) affected by the excavation. This written notice shall include the same information that is required for the written notice pursuant to subsection (b)(2) of this section.
- (c) **Notice for Emergency Excavation.** For emergency excavation, Applicant shall post and maintain notice at the site of the excavation during the construction period. The notice shall include the name, telephone number, and address of Applicant, a description of the excavation to be performed, and the duration of the excavation. The notice shall be posted along any street where the excavation is to take place.
- (d) **Marking of Subsurface Facilities.** If Applicant excavates in the public right-of-way, it shall comply with the requirements of the underground service location regarding notification of excavation and marking of subsurface facilities. Applicant shall provide underground service location with the assigned number of the permit to

excavate or other information as may be necessary to properly identify the proposed excavation.

SECTION 2. This ordinance shall become effective 30 days after its adoption.

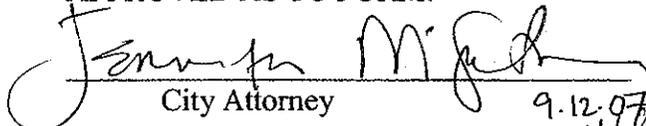
PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Mayor

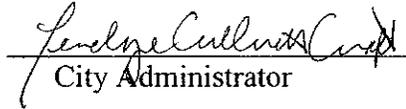
ATTEST:

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City Clerk

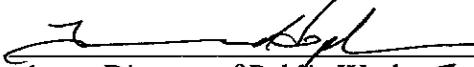
APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney 9.12.07  
WJH/12/07

REVIEWED AND APPROVED:

  
\_\_\_\_\_  
City Administrator

INITIATED AND APPROVED:

  
\_\_\_\_\_  
Acting Director of Public Works *ENX/NEE*

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AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH  
AMENDING CHAPTER 12.38 OF THE HUNTINGTON BEACH MUNICIPAL  
CODE RELATING TO ENCROACHMENTS

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. Section 12.38.010 of the Huntington Beach Municipal Code is hereby amended to read as follows:

12.38.010 Encroachment permit required. In addition to any agreement, license, permit or franchise required by this Code or the Zoning and Subdivision Ordinance or any permit or entitlement required by state and federal law, the following uses may temporarily encroach into the public right-of-way subject to the issuance of an encroachment permit by the Department of Public Works and the payment of all applicable fees as set by resolution of the City Council:

- (a) Structural Elements.
- (b) Signs.
- (c) Lighting.
- (d) Parkway modification including surfacing, tree or shrub removal and/or planting.
- (e) Unusual architectural treatment, appendages, or fixtures, such as awnings.
- (f) Shrub planting and removal.

SECTION 2. Section 12.38.045 is hereby added to the Huntington Beach Municipal Code, said section to read as follows:

12.38.045 Duration and validity.

- (a) Permits shall be void if the project, including restoration, has not been completed within sixty days; provided, however, that the Director, in his or her discretion for good cause shown, may issue one thirty-day extension to the start date and one thirty-day extension to the duration of a permit upon written request from the permittee and payment of any applicable fees. The Director may issue additional extensions as may be appropriate in his or her discretion.
- (b) Permits are not transferable without proof of current business license issued by the City of Huntington Beach for the assignee and any subcontractors who will be providing service under the permit and evidence of insurance as specified by Resolution of the City Council, and the written consent of the permittee and the Director.

SECTION 3. Section 12.38.050 of the Huntington Beach Municipal Code is hereby deleted in its entirety.

SECTION 4. This ordinance shall become effective 30 days after its adoption.

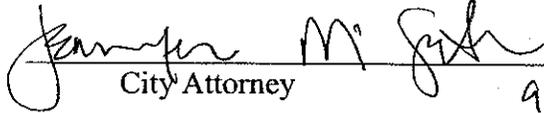
PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Mayor

ATTEST:

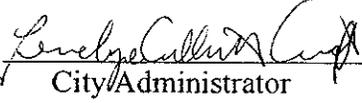
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

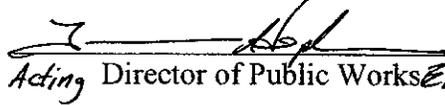
  
\_\_\_\_\_  
City Attorney

9.12.07  
LM 9/12/07

REVIEWED AND APPROVED:

  
\_\_\_\_\_  
City Administrator

INITIATED AND APPROVED:

  
\_\_\_\_\_  
Acting Director of Public Works *Engineering*

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH  
AMENDING CHAPTER 12.48 OF THE HUNTINGTON BEACH MUNICIPAL  
CODE RELATING TO WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORKS

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. Chapter 12.48 of the Huntington Beach Municipal Code is hereby amended to remove it in its entirety.

SECTION 2. This ordinance shall become effective 30 days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

*Jennifer McGrath*  
9.12.07 City Attorney *MM 9/12/07*

REVIEWED AND APPROVED:

*Pendye Cullum Craft*  
\_\_\_\_\_  
City Administrator

INITIATED AND APPROVED:

*[Signature]*  
\_\_\_\_\_  
Planning Director

INITIATED AND APPROVED:

*[Signature]*  
\_\_\_\_\_  
Acting Director of Public Works *ENG WARRING*

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AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH  
AMENDING CHAPTER 17.64 OF THE HUNTINGTON BEACH MUNICIPAL  
CODE RELATING TO UNDERGROUNDING OF UTILITIES

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. Section 17.64.020 of the Huntington Beach Municipal Code is hereby amended to read as follows:

17.64.020 Underground utilities coordinating committee--Established. There is hereby established an underground utilities coordinating committee, appointed by the City Council, which said committee shall consist of five (5) members as follows: (2222-12/77, 2382-7/79, 2975-12/88)

- (a) Director of Public Works;
- (b) Director of Planning;
- (c) One city employee appointed by the City Administrator;
- (d) District representative, Southern California Edison Company; and
- (e) Senior engineer, Public Improvements, Verizon.

SECTION 2. Section 17.64.030 of the Huntington Beach Municipal Code is hereby amended to read as follows:

17.64.030 Duties. It shall be the duty of the committee to advise the City Council with respect to all technical aspects of the undergrounding of public utilities within the city of Huntington Beach and in that regard the committee shall:

- (a) Determine the location and priority of conversion work within the city;
- (b) Recommend specific projects and methods of financing;
- (c) Recommend time limitation for completion of projects and extensions of time;
- (d) Develop a long-range plan for establishing underground utilities districts;
- (e) Perform such other duties as may be assigned to it by the City Council.

The Director of Public Works shall be chairperson of said committee. A majority of the members of the committee, or their authorized representatives, present at any meeting shall constitute a quorum. Said committee shall meet upon call of the chairperson. Members of the committee shall serve at the pleasure of the City Council and without compensation. (2222-12/77)

SECTION 3. Section 17.64.050 of the Huntington Beach Municipal Code is hereby amended to read as follows:

17.64.050 Underground public utilities facilities All new public and private utility lines and distribution facilities, including but not limited to electric, communications, street lighting, and cable television lines, shall be installed underground, except that surface-mounted transformers, pedestal-mounted terminal boxes, meter cabinets, concealed ducts in an underground system and other equipment appurtenant to underground facilities located on private property or installed pursuant to a franchise or other agreement need not be installed underground, and provided further that cable television lines may be installed on existing utility poles within subdivisions developed with overhead utility lines.

This section shall not apply to main feeder lines or transmission lines located within the public right-of-way of an arterial highway as shown in the circulation element of the general plan.

SECTION 4. Section 17.64.130, subsection (f) of the Huntington Beach Municipal Code is hereby amended to read as follows:

17.64.130 Exceptions to this chapter. The following shall be excluded from the provisions of this chapter unless otherwise provided in the resolution designating the underground utilities district:

- (a) Poles or electroliers used exclusively for street lighting.
- (b) Overhead wires (exclusive of supporting structures) crossing any portion of a district within which overhead wires have been prohibited, or connecting to buildings on the perimeter of a district, when such wires originate in an area from which poles, overhead wires and associated overhead structures are not prohibited.
- (c) Poles, overhead wires and associated overhead structures used for the transmission of electric energy at nominal voltages in excess of 34,500 volts.
- (d) Any municipal facilities or equipment installed under the supervision and to the satisfaction of the City Engineer.
- (e) Overhead wires attached to the exterior surface of a building by means of a bracket or other fixture and extending from one location on the building to another location on the same building or to an adjacent building without crossing any public street.
- (f) Antennas used by a utility for furnishing communication services.
- (g) Equipment appurtenant to underground facilities, such as surface-mounted transformers, pedestal-mounted terminal boxes and water cabinets and concealed ducts.
- (h) Temporary poles, overhead wires and associated overhead structures used or to be used in conjunction with construction projects. (2222-12/77)

- (i) Utilities with existing on-pole services as of the date of this ordinance, where the utility is not the sole user of the poles, and where the utility is replacing one single wire, cable, or line with another or adding an additional smaller wire, cable or line, provided that utility will be placed underground at the time the other utility utilizing the poles places its service underground. (3635-5/04)

SECTION 5. Section 17.64.150 of the Huntington Beach Municipal Code is hereby amended to read as follows:

17.64.150 Director of Public Works--Authority of. The Director of Public Works shall have the authority to waive the requirements of section 17.64.140 with respect to improvements within the public right-of-way when, in his or her judgment, it is determined to be in the best interest of the city so to do, based upon the following criteria:

- (a) Whenever engineering plans and specifications are not required.
- (b) Where existing improvements such as curbs and gutters, sidewalks, streets, etc. would have to be removed and replaced.
- (c) The location of existing overhead facilities.
- (d) The location of existing structures.
- (e) The condition of existing street improvements.
- (f) The amount of lineal footage of CATV facilities involved.

SECTION 6. Section 17.64.160 of the Huntington Beach Municipal Code is hereby amended to read as follows:

17.64.160 Director of Planning--Authority of. The Director of Planning shall have the authority to waive the on-site requirements, as set out in section 17.64.140, when, in his or her judgment, it is determined to be in the best interest of the city so to do, based upon the following criteria:

- (a) Where existing improvements would have to be removed and replaced.
- (b) The location of existing overhead facilities.
- (c) The location of existing structures.
- (d) The condition of existing improvements.
- (e) The amount of lineal footage of CATV facilities involved.
- (f) The interface of the new development to the existing development on the site.

(g) The interface to similar facilities required off site.

SECTION 7. Section 17.64.170 of the Huntington Beach Municipal Code is hereby amended to read as follows:

17.64.170 City Council--Appeal to. Any landowner or developer affected may appeal the determination of the Director of Public Works or the Director of Planning to the City Council.

SECTION 5. This ordinance shall become effective 30 days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk

*[Signature]*  
9.12.07 City Attorney *M 9/12/07*

REVIEWED AND APPROVED:

INITIATED AND APPROVED:

*[Signature]*  
City Administrator

*[Signature]*  
Acting Director of Public Works *ENGINEERING*

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**ATTACHMENT #3**

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## 230.96 Wireless Communication Facilities

- A. **Purpose.** **The purpose of this Section is to encourage and facilitate wireless communications throughout the City, while preventing visual clutter by locating wireless communication facilities outside of residential zones and where they are invisible to pedestrians, and co-located with other facilities.**

All wireless communication facilities shall comply with these **regulations with regard to their** requirements and guidelines in order to regulate the location, **placement, construction, modification** and design **to protect the** of wireless facilities for the protection of public safety, general welfare, and quality of life in the City of Huntington Beach.

### B. Permit Required.

1. ~~Administrative approval by the Director may be granted for proposed wireless communication facilities (including but not limited to ground mounted, co-located, wall, roof, or utility mounted) that are: (3568-9/02)~~
  - a. ~~Co-located to approved facilities at existing heights or complies with the base district height limit for modified facilities, and compatible with surrounding buildings and land uses by incorporating stealth techniques; or (3568-9/02)~~
  - b. ~~Completely stealth facilities and complies with the base district height limit; or (3568-9/02)~~
  - e. ~~Facilities in non-residential districts and in compliance with the maximum building height permitted within the zoning district; and (3568-9/02)~~
    1. ~~Screened from view and not visible from beyond the boundaries of the site at eye level (six feet); or (3568-9/02)~~
    2. ~~Substantially integrated with the architecture of the existing building or structure to which it is to be mounted; or (3568-9/02)~~
    3. ~~Designed to be architecturally compatible with surrounding buildings and land uses by incorporating stealth techniques. (3568-9/02)~~
2. ~~Conditional use permit approval by the Zoning Administrator shall be required for all proposed wireless communication facilities (including but not limited to ground mounted, co-located, wall, roof or utility mounted) that are: (3568-9/02)~~
  - a. ~~Exceeding the maximum building height permitted within the zoning district; or (3568-9/02)~~
  - b. ~~Visible from beyond the boundaries of the site at eye level (six feet); or (3568-9/02)~~
  - c. ~~Not substantially integrated with the architecture of the existing building or structure to which it is to be mounted; or (3568-9/02)~~
  - d. ~~Not designed to be architecturally compatible with surrounding buildings and land uses; or (3568-9/02)~~
  - e. ~~Facilities in residential districts that do not meet B.1.a or B.1.b. (3568-9/02)~~
3. ~~Design review shall be required for wireless communication facilities located in redevelopment areas, on public right of ways, in OS-PR and PS zones, in areas subject to~~

~~specific plans, on or within 300 feet of a residential district, and in areas designated by the City Council. Design review is not required for wireless communication facilities that comply with section B.1. (3568-9/02)~~

**BE.** Definitions. For the purpose of this section, the following definitions for the following terms shall apply: (3568-9/02)

1. Accessory Structure. Any structure or equipment that is to be located ancillary to an antenna or antennas in the establishment and operation of a wireless communication facility. (3568-9/02)
2. Co-Location or Co-Located. The location of multiple antennas which are either owned or operated by more than one service provider at a single location and mounted to a common supporting structure, wall or building. (3568-9/02)
3. Completely Stealth Facility. Any stealth facility that has been designed to completely screen all aspects of the facility including appurtenances and equipment from public view. Examples of completely stealth facilities may include, but are not limited to architecturally screened roof-mounted antennas, façade mounted antennas treated as architectural elements to blend with the existing building, flagpoles, church steeples, fire towers, and light standards. (3568-9/02)
4. Ground Mounted Facility. Any wireless antenna that ~~are~~ is affixed to a pole, tower or other freestanding structure that is specifically constructed for the purpose of supporting an antenna. (3568-9/02)
5. Microwave Communication. The transmission or reception of radio communication at frequencies of a microwave signal (generally, in the 3 GHz to 300 GHz frequency spectrum). (3568-9/02)
6. Pre-existing Wireless Facility. Any wireless communication facility for which a building permit or conditional use permit has been properly issued prior to the effective date of this ordinance, including permitted facilities that have not yet been constructed so long as such approval is current and not expired. (3568-9/02)
7. Roof Mounted. Any wireless antenna directly attached or affixed to the roof of an existing building, water tank, tower or structure other than a telecommunications tower. (3568-9/02)
8. Stealth Facility or Techniques. Any wireless communication facility, which is designed to blend into the surrounding environment, typically, one that is architecturally integrated into a building or other concealing structure. See also definition of completely stealth facility. (3568-9/02)
9. Telecommunication Facility. ~~A wireless communication facility that is either wall mounted, utility mounted, or roof mounted.~~ (3568-9/02)
109. Utility Mounted. Any wireless antenna mounted to an existing above-ground structure specifically designed and originally installed to support utilities such as but not limited to electrical power lines, cable television lines, telephone lines, non-commercial wireless service antennas, radio antennas, street lighting **but not traffic signals**, recreational facility lighting, ~~traffic signal equipment~~ or any other utility which meets the purpose and intent of this definition. (3568-9/02)
110. Wall Mounted. Any wireless antenna mounted on any vertical or nearly vertical surface of a building or other existing structure that is not specifically constructed for the purpose of supporting an antenna (including the exterior walls of a building, an existing

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parapet, the side of a water tank, the face of a church steeple, or the side of a freestanding sign) such that the highest point of the antenna structure is at an elevation equal to or lower than the highest point of the surface on which it is mounted. (3568-9/02)

~~11.1.~~ **Wireless Communication Facility or Facility.** An antenna structure and any appurtenant facilities or equipment that **transmits electronic waves or is** ~~are~~ used **for the transmission or receipt of signals that are used** in connection with the provision of wireless communication service, including, but not limited to digital, cellular and radio service. (3568-9/02)

**CD.** Applicability. (3568-9/02)

1. All wireless communication facilities which are erected, located, **placed, constructed** or modified within the City of Huntington Beach ~~on or following the effective date of section 230.96~~ shall comply with these **regulations** ~~guidelines, subject to the categorical exemptions under subparagraph (3) of this section,~~ provided that: (3568-9/02)

- a. All facilities, for which ~~applications~~ **permits** were **issued** ~~determined complete by the Planning Department~~ prior to the effective date of this section, shall be exempt from these regulations and guidelines. (3568-9/02)
- b. All facilities for which Building and Safety issued building permits prior to the effective date of section 230.96 shall be exempt from these regulations and guidelines, unless and until such time as subparagraph (2) of this section applies: (3568-9/02)
- c. Any facility, which is subject to a previously approved and valid conditional use permit, may be modified within the scope of the applicable permit without complying with these regulations and guidelines. **Modifications outside the scope of the valid conditional use permit will require submittal of a Wireless Permit application.** (3568-9/02)

~~2.~~ All facilities for which building permits and any extension thereof have expired shall ~~comply with the provisions of section 230.96.~~ (3568-9/02)

~~3.~~ 2. The following uses shall be exempt from the provisions of section 230.96 until pertinent federal regulations are amended or eliminated. See Section 230.80 (Antennae) for additional requirements. (3568-9/02)

~~A~~—**a.** Any antenna structure that is one meter (39.37 inches) or less in diameter and is designed to receive direct broadcast satellite service, including direct-to-home satellite service for television purposes, as defined by Section 207 of the Telecommunication Act of 1996, Title 47 of the Code of Federal Regulations, and any interpretive decisions thereof issued by the Federal Communications Commission (FCC). (3568-9/02)

~~B~~—**b.** Any antenna structure that is two meters (78.74 inches) or less in diameter located in commercial or industrial zones and is designed to transmit or receive radio communication by satellite antenna. (3568-9/02)

~~C~~—**c.** Any antenna structure that is one meter (39.37 inches) or less in diameter or diagonal measurement and is designed to receive Multipoint Distribution Service, provided that no part of the antenna structure extends more than five (5) feet above the principle building on the same lot. (3568-9/02)

~~D~~—**d.** Any antenna structure that is designed to receive radio broadcast transmission. (3568-9/02)

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- E—e.** Any antenna structure used by authorized amateur radio stations licensed by the FCC.  
(3568-9/02)

**D. Wireless Permit Required.** No wireless communication facility shall be installed anywhere in the City without submission of a Wireless Permit Application that demonstrates that the antenna is located in the least obtrusive location feasible so as to eliminate any gap in service and also includes the following information:

- 1. Demonstrate existing gaps in coverage, and the radius of area from which an antenna may be located to eliminate the gap in coverage.**
- 2. Compatibility with the surrounding environment or that the facilities are architecturally integrated into a structure.**
- 3. Screening or camouflaging by existing or proposed topography, vegetation, buildings or other structures as measured from beyond the boundaries of the site at eye level (six feet).**
- 4. Massing and location of the proposed facility are consistent with surrounding structures and zoning districts.**
- 5. No portion of a wireless communication facility shall project over property lines.**
- 6. Interference: To eliminate interference, the following provisions shall be required for all wireless communication facilities regardless of size:**
  - a. Prior to issuance of a building permit, the applicant shall submit the following information to the Police Department for review:**
    - i. All transmit and receive frequencies;**
    - ii. Effective Radiated Power (ERP);**
    - iii. Antenna height above ground, and**
    - iv. Antenna pattern, both horizontal and vertical (E Plane and H Plane).**
  - b. At all times, other than during the 24-hour cure period, the applicant shall comply with all FCC standards and regulations regarding interference and the assignment of the use of the radio frequency spectrum. The applicant shall not prevent the City of Huntington Beach or the countywide system from having adequate spectrum capacity on the City's 800 MHz voice and data radio frequency systems. The applicant shall cease operation of any facility causing interference with the City's facilities immediately upon the expiration of the 24-hour cure period until the cause of the interference is eliminated.**
  - c. Before activating its facility, the applicant shall submit to the Police and Fire Departments a post-installation test to confirm that the facility does not interfere with the City of Huntington Beach Public Safety radio equipment. The Communications Division of the Orange County Sheriff's Department or Division-approved contractor at the expense of the applicant shall conduct this test. This post-installation testing process shall be repeated for every**

**proposed frequency addition and/or change to confirm the intent of the "frequency planning" process has been met.**

- d. The applicant shall provide to the Planning Department a single point of contact (including name and telephone number) in its Engineering and Maintenance Departments to whom all interference problems may be reported to insure continuity on all interference issues. The contact person shall resolve all interference complaints within 24 hours of being notified.**
- e. The applicant shall insure that lessee or other user(s) shall comply with the terms and conditions of this permit, and shall be responsible for the failure of any lessee or other users under the control of the applicant to comply.**

**E. Additional Permit Required.**

- 1. Administrative approval by the Director may be granted for proposed wireless communication facilities (including but not limited to ground mounted, co-located, wall, roof, or utility mounted) that are:**
  - a. Co-located with approved facilities at existing heights or that comply with the base district height limit for modified facilities, and compatible with surrounding buildings and land uses by incorporating stealth techniques; or**
  - b. Completely stealth facilities that comply with the base district height limit; or**
  - c. Facilities in non-residential districts that are in compliance with the maximum building height permitted within the zoning district; and**
    - i. Screened from view and not visible from beyond the boundaries of the site at eye level (six feet); or**
    - ii. Substantially integrated with the architecture of the existing building or structure to which it is to be mounted; or**
    - iii. Designed to be architecturally compatible with surrounding buildings and land uses by incorporating stealth techniques.**
- 2. Following submission of a Wireless Permit Application, a Conditional Use Permit approval by the Zoning Administrator shall be required for all proposed wireless communication facilities (including but not limited to ground mounted, co-located, wall, roof or utility mounted) that are:**
  - a. Exceeding the maximum building height permitted within the zoning district; or**
  - b. Visible from beyond the boundaries of the site at eye level (six feet); or**
  - c. Not substantially integrated with the architecture of the existing building or structure to which it is to be mounted; or**
  - d. Not designed to be architecturally compatible with surrounding buildings and land uses; or**
  - e. ~~Facilities in residential districts that do not meet B.1.a or B.1.b.~~**

e. **As a condition of the Conditional Use Permit, the Zoning Administrator shall minimize significant adverse impacts to public visual resources by incorporating one or more of the following into project design and construction:**

i. **Stealth installations;**

ii. **Co-location and locating facilities within existing building envelopes;**

iii. **Minimizing visual prominence through colorization or landscaping;**

iv. **Removal or replacement of facilities that become obsolete.**

3. Design review shall be required for any wireless communication facilities located in redevelopment areas, on public right-of-ways, in OS-PR and PS zones, in areas subject to specific plans, on or within 300 feet of a residential district, and in areas designated by the City Council. Design review is not required for wireless communication facilities that comply with subsection 1.

**EF. Facility Standards: The following standards apply to all wireless communication facilities:**

1. Aesthetics:

a. Facility: All screening used in conjunction with a wall or roof mounted facility shall be compatible with the architecture of the building or other structure to which it is mounted, including color, texture and materials. All ground mounted facilities shall be designed to blend into the surrounding environment, or architecturally integrated into a building or other concealing structure. (3568-9/02)

b. Equipment/Accessory Structures: All equipment associated with the operation of the facility, including but not limited to transmission cables, shall be screened in a manner that complies with the development standards of the zoning district in which such equipment is located. Screening materials and support structures housing equipment shall be architecturally compatible with surrounding structures by duplicating materials and design in a manner as practical as possible. If chain link is used, then it must be vinyl coated and not include barbed wire. (3568-9/02)

c. General Provisions: All Wireless Communication Facilities shall comply with the Huntington Beach Urban Design Guidelines. (3568-9/02)

2. Building Codes: To ensure the structural integrity of wireless communication facilities, the owners of a facility shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for facilities that are published by the Electronic Industries Association, as amended from time to time. (3568-9/02)

3. Conditions of Approval: Acceptance of conditions by the applicant and property owner shall be ensured by recordation of the conditions on the property title. (3568-9/02)

4. Federal Requirements: All Wireless Communication Facilities must meet or exceed current standards and regulations of the FCC, and any other agency of the state or federal government with the authority to regulate wireless communication facilities. (3568-9/02)

~~5. **Interference:** To eliminate interference the following provisions shall be required for all wireless communication facilities regardless of size: (3568-9/02)~~

~~a. Prior to issuance of a building permit, the applicant must submit the following information to the Police Department for review: (3568-9/02)~~

~~1. All transmit and receive frequencies; (3568-9/02)~~

~~2. Effective Radiated Power (ERP); (3568-9/02)~~

~~3. Antenna height above ground, and (3568-9/02)~~

~~4. Antenna pattern, both horizontal and vertical (E Plane and H Plane). (3568-9/02)~~

~~b. At all times, other than during the 24-hour cure period, the applicant shall comply with all FCC standards and regulations regarding interference and the assignment of the use of the radio frequency spectrum. The applicant shall not prevent the City of Huntington Beach or the countywide system from having adequate spectrum capacity on the City's 800 MHz voice and data radio frequency systems. The applicant shall cease operation of any facility causing interference with the City's facilities immediately upon the expiration of the 24-hour cure period until the cause of the interference is eliminated. (3568-9/02)~~

~~c. Before activating its facility, the applicant shall submit to the Police and Fire Departments a post-installation test to confirm that the facility does not interfere with the City of Huntington Beach Public Safety radio equipment. The Communications Division of the Orange County Sheriff's Department or Division-approved contractor at the expense of the applicant shall conduct this test. This post-installation testing process shall be repeated for every proposed frequency addition and/or change to confirm the intent of the "frequency planning" process has been met. (3568-9/02)~~

~~d. The applicant shall provide to the Planning Department a single point of contact (including name and telephone number) in its Engineering and Maintenance Departments to whom all interference problems may be reported to insure continuity on all interference issues. The contact person shall resolve all interference complaints within 24 hours of being notified. (3568-9/02)~~

~~e. The applicant shall insure that lessee or other user(s) shall comply with the terms and conditions of this permit, and shall be responsible for the failure of any lessee or other users under the control of the applicant to comply. (3568-9/02)~~

**65. Lighting:** All outside lighting shall be directed to prevent "spillage" onto adjacent properties, unless required by the FAA or other applicable authority, and shall be shown on the site plan and elevations. (3568-9/02)

**76. Maintenance:** All facilities and appurtenant equipment **including landscaping** shall be maintained to remain consistent with the original appearance of the facility. Ground mounted facilities shall be covered with anti-graffiti coating. (3568-9/02)

**87. Monitoring:** For all wireless communication facilities, the applicant shall provide a copy of the lease agreement between the property owner and the applicant prior to the issuance of a building permit. (3568-9/02)

**98. Signs:** The facility shall not bear any signs or advertising devices other than **owner identification**, certification, warning, or other required seals of signage. (3568-9/02)

**9. Facilities on Public Property:** Any wireless communication facility to be placed over, within, on, or beneath City property shall obtain a lease or franchise from the City prior to applying for a Wireless Permit and an administrative or conditional use permit.

**10. Landscaping:** Landscape planting, irrigation and hardscape improvements may be imposed depending on the location, the projected vehicular traffic, the impact on existing facilities and landscape areas, and the visibility of the proposed facility. Submittal of complete landscape and architectural plans for review and approval by the Directors of Public Works and Planning may be required.

**11. Utility Agreement:** If the proposed facility will require electrical power or any other utility services to the site, the applicant will be required to furnish the City's Real Estate Services Manager either a drafted utility franchise agreement between the City of Huntington Beach and the applicant to place those lines in the public right-of-way, or a written statement from the utility company that will be supplying the power or other services, that they accept all responsibility for those lines in the public right-of-way.

~~F. Site Selection. For all wireless communication facilities, the applicant shall provide documentation that demonstrates the following: (3568-9/02)~~

- ~~1. Compatibility with the surrounding environment or architecturally integrated into a structure. (3568-9/02)~~
- ~~2. Screened or camouflaged by existing or proposed topography, vegetation, buildings or other structures as measured from beyond the boundaries of the site at eye level (six feet). (3568-9/02)~~
- ~~3. Massing and location of the proposed facility are consistent with surrounding structures and zoning districts. (3568-9/02)~~
- ~~4. No portion of a wireless communication facility shall project over property lines. (3568-9/02)~~
- ~~5. Significant adverse impacts to public visual resources shall be minimized by incorporating one or more of the following into project design and construction: (Res No. 2004-80-9/04)~~
  - ~~a. Co-locating antennas on one structure; (Res No. 2004-80-9/04)~~
  - ~~b. Stealth installations; (Res No. 2004-80-9/04)~~
  - ~~c. Locating facilities within existing building envelopes; (Res No. 2004-80-9/04)~~
  - ~~d. Minimizing visual prominence through colorization or landscaping; (Res No. 2004-80-9/04)~~
  - ~~e. Removal of facilities that become obsolete. (Res. No. 2004-80-9/04)~~
- ~~6. Wireless communication facilities affecting the public viewshed and/or located in areas designated water Recreation, Conservation, Parks and Shoreline shall be removed within six (6) months of termination of use and the site restored to its natural state. (Res No. 2004-80-9/04)~~

**G12. Facilities in the Public Right-of-Way.** Any wireless communication facility to be placed over, **within**, on or beneath the public right-of-way shall comply with the following standards: (3568-9/02)

- ~~1a. Any wireless communication facilities to be constructed on or beneath the public right-of-way must have a franchise agreement with **obtain an encroachment permit from** the City or the owner that has a wireless franchise agreement with the City, or **and** the applicant must provide documentation demonstrating that the applicant is a~~

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state-franchised telephone corporation exempt from local franchise requirements. (3568-9/02)

- 2b. All equipment associated with the operation of a facility, including but not limited to **cabinets**, transmission cables **but excepting antennas**, shall be placed underground in those portions of the street, sidewalks and public rights-of-way where cable television, telephone or electric lines are underground. At no time shall equipment be placed underground without appropriate conduit. (3568-9/02)
- 3c. The City Engineer shall approve the location and method of construction of all facilities located within public rights-of-way **and the installation of facilities within the public rights-of-way must comply with Title 12 of the Huntington Beach Municipal Code, as the same may be amended from time to time.** (3568-9/02)
- 4d. All wireless communication facilities shall be subject to applicable City permit and inspection fees, including, but not limited to, those pertaining to encroachment permits, **administrative or conditional use permits**, and all applicable fees. (3568-9/02)
- 5e. Any wireless communication facility installed, used or maintained within the public rights-of-way shall be removed or relocated when made necessary by any "project." For purposes of this section, project shall mean any lawful change of grade, alignment or width of any public right-of-way, including but not limited to, the construction of any subway or viaduct that the City may initiate either through itself, or any redevelopment agency, community facility district, assessment district, area of benefit, reimbursement agreement or generally applicable impact fee program. (3568-9/02)
- 6f. ~~Wireless communication facilities may be installed on existing utility poles, conduits and other facilities of a public utility, with the approval of the City Engineer, provided a franchise agreement exists allowing wireless installation. (3568-9/02)~~ **If the facility is attached to a utility pole, the facility shall be removed, at no cost to the City, if the utility pole is removed pursuant to an undergrounding project.**
- 7g. ~~Prior to the approval of any required building permits or entitlements (Conditional Use Permits, Variances, etc.) the applicant shall have a franchise agreement approved by the City Council. (3568-9/02)~~ **The service provider shall enter into a franchise agreement with the City. As of March 17, 2007, the California Supreme Court, in the case entitled Spring Telephony PCS v. County of San Diego, will determine whether California Public Utilities Code § 7901 grants a state-wide franchise to use the public rights-of-way for the purpose of installation of wireless communications facilities. Pending resolution of this legal question, any applicant seeking to use the public right-of-way must enter into a City franchise to install wireless communications facilities. The franchise shall provide that the franchise fee payments shall be refunded to the applicant and the franchise become null and void if and when the California Supreme Court establishes that the provider has a state-wide franchise to install a wireless communications facility in the public right-of-way.**

~~H. Facilities on Public Property. Any wireless communication facility to be placed over, on or beneath public property shall comply with the following standards: (3568-9/02)~~

- ~~1. Wireless communication facilities shall be installed in accordance with all applicable City codes and ordinances, including, but not limited to, standards for paving in the event that any undergrounding of utilities is required. (3568-9/02)~~

~~—2. Any wireless communication facilities to be constructed on or beneath public property must have a lease agreement with the city. (3568-9/02)~~

~~I. Additional Requirements.~~

~~—1. Landscaping: Landscape planting, irrigation and hardscape improvements may be imposed depending on the location, the projected vehicular traffic, the impact on existing facilities and landscape areas, and the visibility of the proposed facility. Submittal of complete landscape and architectural plans for review and approval by the Directors of Public Works and Planning may be required. Public Works inspectors may require additional improvements during installation based on facility impacts. (3568-9/02)~~

~~—2. Utility Agreement: If the proposed facility will require electrical power or any other utility services to the site, the applicant will be required to furnish the City's Real Estate Services Manager, either a drafted utility franchise agreement between the City of Huntington Beach and the applicant to place those lines in the public right-of-way, or a written statement from the utility company who will be supplying the power or other services, that they accept all responsibility for those lines in the public right-of-way. (3568-9/02)~~

**113. Facility Removal.**

**a. Wireless communication facilities affecting the public view and/or located in areas designated Water Recreation, Conservation, Parks and Shoreline, and Public Right of Ways shall be removed in its entirety within six (6) months of termination of use and the site restored to its natural state.**

**1b. Cessation of Operation: Within thirty (30) **calendar** days of cessation of operations of any wireless communication facility approved under this section, the operator shall notify the Planning Department in writing. The facility shall be deemed abandoned pursuant to the following sections unless: (3568-9/02)**

**A1. The City has determined that the operator has resumed operation of the wireless communication facility within six (6) months of the notice; or (3568-9/02)**

**B2. The City has received written notification of a transfer of wireless communication operators. (3568-9/02)**

**2c. Abandonment: A facility that is inoperative or unused for a period of six (6) continuous months shall be deemed abandoned. Written notice of the City's determination of abandonment shall be provided to the operator of the facility and the owner(s) of the premises upon which the facility is located. Such notice may be delivered in person, or mailed to the address(es) stated on the facility permit application, and shall be deemed abandoned at the time delivered or placed in the mail. (3568-9/02)**

**3d. Removal of Abandoned Facility: The operator of the facility and the owner(s) of the property on which it is located, shall within thirty (30) **calendar** days after notice of abandonment is given either (1) remove the facility **in its entirety** and restore the premises, or (2) provide the Planning Department with written objection to the City's determination of abandonment.**

Any such objection shall include evidence that the facility was in use during the relevant six- (6) month period and that it is presently operational. The Director shall review all evidence, determine whether or not the facility was properly deemed abandoned, and provide the operator notice of its determination. (3568-9/02)

4e. Removal by City: At any time after thirty-one (31) **calendar** days following the notice of abandonment, or immediately following a notice of determination by the Director, if applicable, the City may remove the abandoned facility and/or repair any and all damage to the premises as necessary to be in compliance with applicable codes. The City may, but shall not be required to, store the removed facility (or any part thereof). The owner of the premises upon which the abandoned facility was located, and all prior operators of the facility, shall be jointly liable for the entire cost of such removal, repair, restoration and/or storage, and shall remit payment to the City promptly after demand thereof is made. The City may, in lieu of storing the removed facility, convert it to the City's use, sell it, or dispose of it in any manner deemed appropriate by the City. (3568-9/02)

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**Chapter 12.13****STREET WORK GENERALLY**

(3582-11/02)

**Sections:****12.13.005 Purpose**

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**12.13.220 Blanket Permits****12.13.230 Construction Status Report****12.13.240 Conditions of Use of Public Right-of-Way****12.13.250 Excavations**

**12.13.005 Purpose.** The public rights-of-way are unique public resources held in trust by the City for the benefit of the public. Pursuant to the City Charter and applicable state and federal law, the City is empowered to control access to and use of its public rights-of-way, and unless pre-empted by state or federal law, to obtain reasonable and fair compensation for the use of its public rights-of-way. The purpose and intent of this Chapter is to provide a uniform and comprehensive set of standards and regulations for use of the public right-of-way. These regulations are intended to protect the public health, safety and welfare that permit the installation of utilities and

**communication facilities in the public right-of-way in such a manner and at such points so as not to incommode the public use of the public's right-of way.**

**12.13.010 Definitions.**

- (a) "Applicant" shall mean any owner or duly authorized agent of such owner, who has submitted an application for a permit to excavate. (3582-11/02)
- (b) "City" shall mean the City of Huntington Beach. (3582-11/02)
- (c) "Department" shall mean the Department of Public Works. (3582-11/02)
- (d) "Director" shall mean the Director of the Department of Public Works or his/her designee, and shall include the term "Superintendent of Streets." (3582-11/02)
- (e) "Excavation" shall mean any opening in the surface or subsurface of the public right-of-way. (3582-11/02)
- (f) "Facility" or "facilities" shall mean any and all cables, wires, cabinets, ducts, conduits, converters, equipment, drains, handholds, manholes, pipes, pipelines, splice boxes, surface location markers, tunnels, utilities, vaults, and other appurtenances or tangible things owned, leased, operated, or licensed by an owner or person, that are located or are proposed to be located in the public right-of-way. (3582-11/02)
- (g) "Franchise" granted by the City of Huntington Beach or the state of California is a contract granting special privileges to use the public right-of-way. It is not intended that this chapter of the Municipal Code impose additional rules or regulations which are inconsistent with the rights or obligations under the franchise or confer authority to the City that conflicts with the State's Public Utilities Code or the jurisdiction of the California Public Utilities Commission. (3582-11/02)
- (h) "Owner" is defined as that person who is responsible for the project. (3582-11/02)
- (i) "Permit" or "permit to excavate" shall mean an **encroachment** permit to perform a project as it has been approved or may be amended or renewed by the **Department**. (3582-11/02)
- (j) "Permittee" shall mean the applicant to whom a permit has been granted by the **Department** in accordance with this chapter. (3582-11/02)
- (k) "Person" shall mean any natural person, owner, corporation, partnership, public utility franchise, or any governmental agency, including any agency other than the City of Huntington Beach, **Department**, the state of California, or United States of America. (3582-11/02)
- (l) "Project" for purposes of this chapter shall mean any activity permitted under this chapter, including but not limited to excavation, construction, demolition, obstruction of right-of-way, repair and building. (3582-11/02)

- (m) "Public right-of-way" shall mean the area across, along, beneath, in, on, over, under, upon, and within the dedicated public alleys, boulevards, courts, lanes, places, roads, sidewalks, streets, ways and City owned properties within the City, as they now exist or hereafter will exist and which are or will be under the permitting jurisdiction of the Department of Public Works. (3582-11/02)

**12.13.020 Erecting utility structures--Authority.** It is unlawful for any person, without a City franchise and/or City **encroachment** permit, or other authority from the Director, to erect any telegraph, telephone, electric light or, transmission poles, or facilities on or in any walk, street, alley or public place in this City, or to stretch any wires or cables along or across said streets; or to lay any gas, oil or water pipes, or other pipelines along or across any streets in the City. (3582-11/02)

**As of March 17, 2007, the California Supreme Court, in the case entitled *Sprint Technology PCS v. County of San Diego*, will determine whether California Public Utilities Code Section 7901 grants a state-wide franchise to use the public rights-of-way for the purpose of installation of wireless communication facilities. Pending resolution of this legal question, any applicant seeking to use the public right-of-way must enter into a City franchise to install wireless communication facilities. The franchise shall provide that the franchise fee payments shall be refunded to the applicant and the franchise become null and void if and when the California Supreme Court establishes that the provider has a state-wide franchise to install a wireless communication facility in the public right-of-way.**

**12.13.030 Emergency situations.** Nothing contained in this chapter shall be construed to prevent any person from taking any action necessary for the preservation of life or property when such necessity arises during days or times when the dDepartment is closed. In the event that any person undertakes any project, as defined herein, in the public right-of-way made necessary by an immediate threat to health, safety, life or property, such person shall apply for an emergency permit within four hours after the dDepartment's offices are first opened. The applicant for an emergency permit shall submit a written statement of the basis of the emergency action and describe the work performed. (3582-11/02)

**12.13.035 Underground Facilities.** All facilities constructed within the public right-of-way shall be undergrounded except for antennae and those exempt from undergrounding pursuant to section 17.64.050.

**12.13.040 Obstructing or construction within public way--Permit required.** It is unlawful for any person to construct, repair, use, or obstruct any street, alley, sidewalk or public property within this City by placing thereon or therein any utility, building, stand, counter, fence, lunch wagon, storage container, bandstand, structure, building material or tools, gravel, dirt, excavation or obstruction of any kind whatsoever or performing any demolition, without a permit having first been issued therefor as hereinafter provided. (3582-11/02)

**12.13.050 Duration and validity.**

- (a) ~~Permits shall be void if the project has not begun within thirty days of the start date specified in the permit or if the project, including restoration, has not been completed within~~ **sixty days** ~~the specified duration; provided, however, that the Director, in his or her discretion for good cause shown, may issue one thirty-day extension to the start date and one thirty-day extension to the duration of a permit upon written request from the permittee~~ **and payment of any applicable fees. The Director may issue additional extensions as may be deemed appropriate in his or her discretion.** (3582-11/02)
  
- (b) ~~Permits are not transferable without the written consent of the permittee and the Director.~~ ~~(3582-11/02)~~ **Permits are not transferable without proof of current business license issued by the City of Huntington Beach for the assignee and any subcontractors who will be providing service under the permit and evidence of insurance as specified by Resolution of the City Council, and the written consent of the permittee and the Director.**

**12.13.060 Penalty for exceeding time restrictions.** A penalty shall be imposed upon any person who does not complete work requiring road or lane closures within the established time frame. The penalty shall be in an amount set by resolution of the City Council and shall be based upon estimated costs to the traveling public due to delays and additional travel distance around roadway closures. (3582-11/02)

**12.13.070 Permit--Fees.** The Director shall not issue any permit except upon the payment of plan check, inspection and permit fees, set by resolution of the City Council. The State of California and the County of Orange, including entities such as special districts organized under state law, are fee exempt. At the discretion of the Director, and upon proven City history of prompt payment and company fiscal integrity, the Director may request and make arrangements for alternative methods of collecting payment such as monthly billings. (3582-11/02)

**12.13.080 Required information for permit.** Before any project mentioned in this chapter may be commenced, the person doing such work must provide the following information: (3582-11/02)

- (a) Applications for permits shall be submitted in the format and manner specified by the Director and shall contain: (3582-11/02)
  - 1. The name, address, telephone, and facsimile number of the applicant. Where an applicant is not the owner of the facility to be installed or maintained in the public right-of-way, the application also shall include the name, address, telephone, and facsimile number of the owner. **If the application is submitted by an authorized agent of the Applicant or Owner, written authorization from the Applicant or Owner of facility shall be provided.** (3582-11/02)
  - 2. A description of the location, purpose or use, method of construction, and surface and subsurface area of any proposed project. (3582-11/02)

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- 3. Engineering plans, specifications and a network map of the facilities to be located within the public right-of-way, including a map in electronic and/or other form required by the City. The plans and specifications shall show:**
- a. The location of all existing and proposed facilities in the public right-of-way along proposed route including the type and location of existing and proposed pedestals and other above ground facilities.**
  - b. Facility Information. Photographs or artist renderings of all proposed facilities for the work area as well as their locations, dimensions, and color. Any modifications to plans and specifications must be reviewed and approved by the Director before modifications can be implemented by Applicant. In addition, Applicant shall provide the Director with engineering base maps identifying Applicant's existing underground and aerial utility facilities, poles, trench routes, and locations for above-ground equipment in the work area in both electronic form (digital or otherwise as specified by the Director) to the extent available and hard-copy form.**
  - c. Hours of Construction. All construction shall be accomplished and maintained between the hours specified by the Director. Construction shall not interfere with the existing or known future services of the City or private or public third parties.**
  - d. Telephone Contact. Applicant shall provide the Director with a telephone contact number, answered twenty-four (24) hours a day during the construction period, to enable the Director to report any concerns regarding construction of the facilities. After business hours such calls will be routed to an on-call supervisor. In the event that the Director reports any concerns to Applicant, Applicant shall respond in a timely manner. Applicant shall immediately correct any adverse impact to the City's use or operations or the use or operations of a third party caused by Applicant's construction activities in the public right-of-way at no cost to the City. Safety violations will be cause for immediate project shut-down.**

- e. **The specific trees, structures, improvements, facilities and obstructions, if any that Applicant proposes to temporarily or permanently remove or relocate.**
4. **Information regarding any excess capacity that will exist in such ducts or conduits after installation of Applicant's facilities.**
5. **A Traffic Control Plan. In accordance with such guidelines established by the City.**
65. The proposed start date of project. (3582-11/02)
76. The proposed duration of the project, which shall include the duration of restoration of the public right-of-way physically disturbed by the project. (3582-11/02)
87. A current business license issued by the City of Huntington Beach for the applicant and any subcontractors who will be providing services under the permit. (3582-11/02)
98. Evidence of insurance for the applicant and owner as specified by Resolution of the City Council. (3582-11/02)
10. **Companies may also be required by the Director to provide reasonable advance notice to the public via a public notification plan of the proposed quantity, precise dimensions, design, color, type, potential noise and location of above-ground facilities pursuant to guidelines promulgated by the Director. The plan is subject to the prior approval of the Director. The guidelines shall take into account the area covered and impacts of the above-ground facilities.**
11. **Certifications. Upon request, Applicant shall provide copies of certifications, licenses, permits, franchises or other applicable approvals to construct and operate the facilities and to offer or provide the services. Applicant shall also provide a certification that the Applicant will comply with all applicable local state and federal requirements in the installation, operation, maintenance, or removal of its facilities.**

3. ~~A plan showing the proposed location and dimensions of the proposed project excavation and the facilities to be installed, maintained, or repaired in connection with the project, and such other details as the department may require. (3582-11/02)~~
4. ~~Upon request, a copy of any documentation, easement, encroachment permit, license, or other legal instrument that authorizes the applicant or owner to use or occupy the public right of way for the purpose described in the application. Where the applicant is not the owner of the facility or facilities to be installed or maintained, the applicant must demonstrate in a form and manner specified by the department that the applicant is authorized to act on behalf of the owner. (3582-11/02)~~
5. ~~The proposed start date of project. (3582-11/02)~~
6. ~~The proposed duration of the project, which shall include the duration of restoration of the public right of way physically disturbed by the project. (3582-11/02)~~
7. ~~A current business license issued by the City of Huntington Beach for the applicant and any subcontractors who will be providing services under the permit. (3582-11/02)~~
8. ~~Evidence of insurance for the applicant and owner as specified by Resolution of the City Council. (3582-11/02)~~

129. Any other information that may reasonably be required by the **d**Department. (3582-11/02)

(b) Action on applications for permits as provided in this Chapter. (3582-11/02)

1. After receipt of an application for a permit, the **d**Department shall determine whether an application is complete. If the application is deemed to be incomplete, the **d**Department shall advise the applicant in writing of the reasons for rejecting the application as incomplete. (3582-11/02)
2. If the application is deemed to be complete, the **d**Department, in its discretion, shall deny, approve, or conditionally approve the application. In order to preserve and maintain the public health, safety, welfare, and convenience, the **d**Department may condition a permit with specified requirements including, but not limited to, those that limit or modify the facilities to be installed or maintained, the location of the facilities to be installed or maintained, and the time, place, and manner of work to be performed. (3582-11/02)
3. If the application is denied, the **d**Department shall advise the applicant in writing of the basis for denial. (3582-11/02)
4. If the application is approved or conditionally approved, the **d**Department shall issue a permit to the applicant. (3582-11/02)

5. **It is unlawful for any permittee to make, to cause, or permit to be made, any project in the public right-of-way outside the boundaries, times, and description set forth in the permit.**

**12.13.090 Permit Denial.** The determination to grant or deny a permit shall be based upon the criteria set forth in this section. The Director shall consider the following:

1. **The capacity of the public right-of-way to accommodate Applicant's proposed facilities and facilities known to be needed in the future.**
2. **The capacity of the public right-of-way to accommodate known additional facilities if the permit is granted.**
3. **The damage or disruption, if any, to the public right-of-way or any public or private facilities, improvements, aesthetics, services, pedestrian or vehicle travel or landscaping if the permit is granted.**
4. **Visibility or sight distance impacts to other users of the public right-of-way.**
5. **The proposed facilities impact the design and construction of public streets, as well as intersections between City streets and roadways to ensure, to the maximum extent feasible, that streets and intersections are designed and constructed in a manner that will not adversely impact the health, safety and welfare of the citizens of the City of Huntington Beach and others.**

~~It is unlawful for any permittee to make, to cause, or permit to be made, any project in the public right-of-way outside the boundaries, times, and description set forth in the permit. (3582-11/02)~~

**12.13.0901 Construction work--Permit denial—Appeal in general.** In the event the Director refuses for any reason to issue a permit, the applicant may petition the Public Works Commission, in writing, for a hearing to consider said request. Any decision of the Commission, including but not limited to decisions to grant or deny permits, is appealable to the City Council who will consider the application de novo. (3582-11/02)

**12.13.100 Orders, regulations, and rules of City dDepartments.** All work in the public right-of-way pursuant to this chapter shall be performed in accordance with the standard plans and specifications of the dDepartment, the design manual, and any dDepartment orders, regulations, or rules, except where the Director grants, for good cause shown, prior written approval to deviate from such standard plans and specifications, the design manual, orders, regulations, or rules. (3582-11/02)

**12.13.110 Construction work--Licensed contractor required.** No construction work of any kind shall be done or performed upon any public right-of-way, in the City unless done according to City orders, regulations, rules of standard plans and by a contractor licensed by the State of California to perform that class of work. (3582-11/02)

**12.13.120 Street excavation moratorium - no permit shall be issued.** In order to preserve the ride quality, structural integrity and appearance of newly constructed or renovated streets, permission to excavate in newly constructed or renovated streets will not be granted for three (3) years after completion of street renovation as shown by the filing of a Notice of Completion. Applicants shall determine alternate methods of installing utilities or making necessary repairs to avoid excavating in newly renovated streets. Exceptions to the above are as follows: (3582-11/02)

- (a) Emergency which endangers life or property. (3582-11/02)
- (b) Interruption of essential utility service. (3582-11/02)
- (c) Work that is mandated by legislation applicable to the City or person performing the excavation or ordered by any court or governmental entity with jurisdiction over the City of Huntington Beach. (3582-11/02)
- (d) Service lateral for buildings or facility where the applicant has no other means of providing service exists. (3582-11/02)
- (e) Other situations deemed by the City's Public Works Commission to be in the best interest of the general public. (3582-11/02)

All permits which are issued under A(a) through E (e) above shall be in accordance with the specified enhanced standards, details and specifications established by and on file in the Department, unless otherwise approved by the Director. (3582-11/02)

**12.13.130 Underground service alert.** Any person excavating in the public right-of-way shall comply with the requirements of the underground service alert regarding notification of excavation and marking of subsurface facilities. (3582-11/02) **It shall be the responsibility of Applicant to mark its facilities with search wire if possible and to locate and mark or otherwise visibly indicate and alert others to the location of its underground facilities before employees, agents, of independent contractors of any entity perform work in the marked-off area. Applicant shall participate in and adhere to the practices of Underground Services Alert ("USA") or its successor notification system and provide at least forty-eight (48) hours prior notice to USA prior to any excavation.**

**12.13.140 Stop work order, permit modification, and permit revocation.** When the Director has determined a person has violated this chapter, or any condition of the permit, or that an excavation poses a hazardous situation or constitutes a public nuisance, public emergency, or other threat to the public health, safety, or welfare, or when the Director determines there is a paramount public purpose, the Director is authorized to issue a stop

work order, to impose new conditions upon a permit, or to suspend or revoke a permit by notifying the permittee of such action in writing. (3582-11/02)

**12.13.150 Restoration.**

- (a) **Like New Restoration.** For all projects for which any permit under this Chapter has been issued, the permittee shall restore or cause to be restored any area upon which work has been performed to like new condition. Such restoration shall be done in the manner prescribed by the standard plans and specifications, the design manual, orders, regulations, and rules of the **eDepartment**. (3582-11/02)
- (b) **Modification to Requirements.** Upon written request from the permittee, the Director, in his or her discretion and for good cause shown, may approve in writing modifications to the requirements of this section. (3582-11/02)

**12.13.160 Repair by the Department.**

- (a) In the event any person(s) fails, neglects, or refuses to repair or restore any condition pursuant to the Director's notice as set forth in this chapter, the Director shall repair or restore, or cause to be repaired or restored, such condition in such manner as the Director deems expedient and appropriate. The person(s) identified by the Director as the responsible party shall compensate the **eDepartment** for any costs associated with the administration, construction, consultants, equipment, inspection, notification, remediation, repair, restoration, or any other actual costs incurred by the **eDepartment** or other departments or agencies of the City made necessary by reason of the repair or restoration undertaken by the **eDepartment**. (3582-11/02)
- (b) Repair or restoration by the **eDepartment** in accordance with this chapter shall not relieve the person(s) from any and all liability at the site of the repair or restoration, including, but not limited to, future failures for any portions of work completed by permittee. (3582-11/02)

**12.13.170 Emergency remediation by the Department.**

- (a) If, in the judgment of the Director, the site of an excavation is considered hazardous, constitutes a public nuisance, public emergency, or other imminent threat to the public health, safety, or welfare that requires immediate action, the Director shall order the condition remedied by written, oral, telephonic or facsimile communication to the owner, applicant, or any agent thereof and shall designate the owner or applicant as the responsible party. (3582-11/02)
- (b) If the responsible party is inaccessible or fails, neglects, or refuses to take immediate action to remedy the condition as specified in said communication, the Director shall remedy the condition or cause the condition to be remedied in such manner as the Director deems expedient and appropriate. The person(s) identified by the Director as the responsible party shall compensate the **eDepartment** for any reasonable costs associated with the administration, construction, consultants, equipment, inspection, notification, remediation, repair, restoration, or any other actual costs incurred by the **eDepartment** or other departments or agencies of the City made necessary by reason of the emergency remediation undertaken by the Department. (3582-11/02)

**12.13.180 Suspension of applications and permits.** No person subject to any outstanding violation of this chapter shall apply for nor be issued any permit hereunder. (3582-11/02)

**12.13.190 Identification of visible facilities.** All facilities installed pursuant to a permit that are visible from the surface of the public right-of-way shall be clearly identified with the name of the current owner of the facilities. Upon demand of the Director, within six months of change in ownership of a facility(ies), the identification required by this section shall indicate the new owner. (3582-11/02)

**12.13.200 City Repaving Plan.** The Director of Public Works shall prepare a two (2) year repaving plan showing the street surfacing planned by the City for the next two (2) years. The two year repaving plan will be made available to utilities at all times to assist them. (3582-11/02)

**12.13.210 Coordination with City.**

- (a) Prior to designing facilities and applying for an excavation permit in the City's public right-of-ways, applicants shall review other utilities' master plans and the City's two (2) year repaving plan on file with the Director. The applicant shall coordinate, to the extent practicable, with other planned utility and street work shown on such plans to minimize damage to, and avoid undue disruption and interference with the public use of such public rights-of-way. (3582-11/02)
- (b) To avoid future excavations and to reduce the number of street excavations, telecommunication companies shall be requested, when practical, to install spare conduits. (3582-11/02)
- (c) **Permit Available On-Site.** The permit or a photo duplicate shall be available for review at the site of the excavation for the duration of the excavation and shall be shown, upon request, to any police officer or any employee of a City agency, board, commission, or Department with jurisdictional responsibility over activities in the public right-of-way.

**12.13.220 Blanket Permits.** The Director may issue a blanket permit to an Applicant to make excavations for utility service connections, for the location of trouble in utility conduits or pipes and for making repairs thereto, or for emergency purposes. Blanket permits shall be issued on a yearly basis only, and shall authorize only excavations referred to in this section and shall comply with all requirements of this chapter not inconsistent with this section and all fees set by resolution of the City Council shall be paid.

**12.13.230 Construction Status Report.**

- (a) During construction, Applicant shall, at the request of the Director, submit to the Director regular progress reports describing in detail the status of construction in relation to the plans and specifications. The first

**report shall be submitted within seven days after commencement of construction and shall be updated every seven days thereafter, as may be required by the permit. Work plans shall be provided in advance to the Director for review and approval.**

- (b) Notification. Applicant shall provide written notification to the Director of any construction and/or maintenance activities undertaken in public right-of-way, whether undertaken pursuant to permit or otherwise, within five business days of commencement of such activities unless the activities have been previously reported to the Director.**

**12.13.240 Conditions of Use of Public Right-of-Way.**

- (a) All facilities of Applicant shall be so located, constructed, installed and maintained so as not to endanger, interfere with or limit the usual and customary use and/or traffic and travel upon the public right-of-way as well as adjacent private property pursuant to a traffic control plan to be approved by the Director.**
- (b) In the event Applicant creates a hazardous or unsafe condition or an unreasonable interference with property, such Applicant shall remove or modify that part of the facility to eliminate such condition from the subject property.**
- (c) Applicant shall not place equipment where it will interfere with existing and known future City uses of the public right-of-way, with the rights of private property owners as determined by the Director, with gas, electric, cable, telephone fixtures, water, sewer and storm drain lines and appurtenances, fire hydrants, traffic signal facilities, street light facilities, or any wastewater stations, with any traffic control system, or any other City facility.**
- (d) Applicant, at its own expense and pursuant to a timeline approved by the Director, shall protect the public right-of-way and support or temporarily disconnect or relocate any of Applicant's facilities when necessitated by reason of:**
- 1. Traffic conditions;**
  - 2. Public safety;**
  - 3. Temporary or permanent street closure not for the benefit of a private party;**
  - 4. Street construction or resurfacing;**
  - 5. A change or establishment of street grade; and**

6. **Installation of sewers, water and storm drain lines and appurtenances, lift stations, street light facilities, traffic signal facilities, tracks, or any other public use of the right-of-way.**

#### **12.13.250 Excavations.**

- (a) **Applicability.** Each excavation in the public right-of-way pursuant to this chapter shall be performed in accordance with this chapter and with the standard plans and specifications of the Department and any Department orders, regulations or rules, except where the Director, at his or her discretion, grants prior written approval to deviate from the standard plans and specifications, orders, or regulations. The Director shall develop guidelines to implement the granting of waivers authorized pursuant to this chapter.
- (b) **Notices.** The Director may require reasonable notice from Applicant if Applicant excavates or causes an excavation in the public right-of-way in a manner that, due to duration or location of the excavation, has the potential to disrupt traffic flow or adjacent properties. All notices are subject to the prior review of the Director and shall include:
  1. **Post and maintain notice at the site of the excavation.** The notice shall include the name, telephone number, and address of Applicant, a description of the excavation to be performed and the duration of the excavation. The notice shall be posted along any street where the excavation is to take place at least seventy-two (72) hours prior to commencement of the excavation.
  2. **At least ten calendar days prior to commencement of the excavation, Applicant shall provide written notice delivered by United States mail to each property owner on the street affected by the excavation and each affected neighborhood and merchant organization that is listed in the latest Assessor's Roll for names and addresses of property owners shall be used for the mailed notice. This notice shall include the same information that is required for the posted notice pursuant to this subsection (b)(1) and the name, address, and twenty-four (24) hour telephone number of a person who will be available to provide information to and receive complaints from any member of the public concerning the excavation, or**
  3. **At least ten calendar days prior to commencement of the excavation, Applicant shall also deliver a written notice to each dwelling unit on the block(s) affected by the excavation. This**

**written notice shall include the same information that is required for the written notice pursuant to subsection (b)(2) of this section.**

- (c) Notice for Emergency Excavation. For emergency excavation, Applicant shall post and maintain notice at the site of the excavation during the construction period. The notice shall include the name, telephone number, and address of Applicant, a description of the excavation to be performed, and the duration of the excavation. The notice shall be posted along any street where the excavation is to take place.**
  
- (d) Marking of Subsurface Facilities. If Applicant excavates in the public right-of-way, it shall comply with the requirements of the underground service location regarding notification of excavation and marking of subsurface facilities. Applicant shall provide underground service location with the assigned number of the permit to excavate or other information as may be necessary to properly identify the proposed excavation.**

11/02

**CHAPTER 12.38**

**ENCROACHMENTS**

(3016-10/89)

**Sections:**

- 12.38.010 Encroachment permit required
- 12.38.020 Permit not required
- 12.38.030 Prohibited encroachments
- 12.38.040 Application procedure
- 12.38.045 Duration and validity**
- ~~12.38.050 Violation: infraction~~
- 12.38.060 Hold harmless

**12.38.010 Encroachment permit required.** In addition to any agreement, license, permit or franchise required by this Code or the Zoning and Subdivision Ordinance or any permit or entitlement required by state and federal law, the following uses may temporarily encroach into the public right-of-way subject to the issuance of an encroachment permit by the Department of Public Works and the payment of all applicable fees as set by resolution of the City Council: (3016-10/89)

- (a) Structural Elements (3016-10/89)
- (b) Signs (3016-10/89)
- (c) Lighting (3016-10/89)
- (d) Parkway modification including surfacing, tree or shrub removal and/or planting. (3016-10/89)
- (e) Unusual architectural treatment, appendages, or fixtures, such as awnings. (3016-10/89)
- (f) Shrub planting and removal. (3016-10/89)

**12.38.020 Permit not required.** Private encroachments not requiring a permit. (3016-10/89)

- (a) Parkway lawn and ground cover. (3016-10/89)
- (b) Parkway sprinkling systems. (3016-10/89)
- (c) Use of public streets and projections over public property which are covered by the Uniform Building Code under a valid building permit issued by the City. (3016-10/89)

**12.38.030 Prohibited encroachments.**

- (a) Parkway surface of loose rock or gravel. (3016-10/89)
- (b) Private dwellings and appendages, except as provided for in the Uniform Building Code. (3016-10/89)

**12.38.040 Application procedure.** Application for any permit as required by this policy shall be filed with the Public Works Department on a form provided by the City and shall show the proposed planting or work and the nature thereof. Drawings for encroachment permits requiring Public Works review shall be prepared to scale. Plan and elevation drawings shall accurately depict location, height, and extent of the proposed encroachments. (3016-10/89)

**12.38.045 Duration and validity.**

- (a) **Permits shall be void if the project, including restoration, has not been completed within sixty days; provided, however, that the Director, in his or her discretion for good cause shown, may issue one thirty-day extension to the start date and one thirty-day extension to the duration of a permit upon written request from the permittee and payment of any applicable fees. The Director may issue additional extensions as may be appropriate in his or her discretion.**
- (b) **Permits are not transferable without proof of current business license issued by the City of Huntington Beach for the assignee and any subcontractors who will be providing service under the permit and evidence of insurance as specified by Resolution of the City Council, and the written consent of the permittee and the Director.**

~~**12.38.050 Violation: infraction.** Any act prohibited or declared unlawful or the doing of any act which is required, or the failure to do any act which is declared to be unlawful, shall be an infraction, and any person convicted of such infraction shall be punished by a fine not exceeding two hundred and fifty (\$250.00) dollars. (3016-10/89)~~

**12.38.060 Hold harmless.** Every person or other entity which encroaches on a public right-of-way shall enter into written agreement with the City and approved as to form by the City Attorney, whereby the person or entity agrees to indemnify and hold harmless the City, in compliance with the current requirements of the City. A permittee will be required to supply the City, prior to construction, proof of insurance in compliance with City's current requirements. (3016-10/89)

## Chapter 12.48

### WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORKS

(3348-4/97, 3381-2/98)

#### Sections:

- ~~— 12.48.010 Scope of Chapter~~
- ~~— 12.48.020 Definitions~~
- ~~— 12.48.030 Franchise Agreement~~
- ~~— 12.48.040 Grant of the Franchise~~
- ~~— 12.48.050 Franchise Processing Costs~~
- ~~— 12.48.060 Transfer of the Franchise~~
- ~~— 12.48.070 Breach of Franchise~~
- ~~— 12.48.080 Term of Franchise~~
- ~~— 12.48.090 Scope of Franchise~~
- ~~— 12.48.100 Fees and Taxes~~
- ~~— 12.48.110 Removal and Relocation of Radios~~
- ~~— 12.48.120 Construction Permits~~
- ~~— 12.48.130 Damage to Right-of-Way~~
- ~~— 12.48.140 Indemnification~~
- ~~— 12.48.150 Utilities~~
- ~~— 12.48.160 Insurance and Security Deposit~~
- ~~— 12.48.170 Enforcement~~
- ~~— 12.48.180 Severability~~

#### 12.48.010 Scope of Chapter.

- (a) ~~No person shall install or maintain any radio network or other similar wireless communications facility utilizing transmitters, receivers, amplifiers or other equipment located within the public right of way unless installed in accordance with a franchise agreement granted by the City Council pursuant to this Chapter. The provisions of this section shall not be construed to prohibit the installation and maintenance of cable, telephony or other communication facilities utilizing wires within the public right of way, provided that a franchise for each facility has been obtained pursuant to this Code or the Public Utilities Code. (3348-4/97)~~
- (b) ~~Any radio network or other similar type of wireless communication facility which is in violation of the provisions of this Chapter at the time of adoption of this Chapter shall be removed within thirty (30) days of the effective date of this ordinance. (3348-4/97)~~

12.48.020 Definitions. For the purpose of this Chapter, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given to them: (3348-4/97)

- (a) ~~"Agency" means any governmental agency or quasi-governmental agency other than the City, including the FCC and PUC. (3348-4/97)~~
- (b) ~~"PUC" means the California Public Utilities Commission. (3348-4/97)~~
- (c) ~~"City" means the City of Huntington Beach. (3348-4/97)~~
- (d) ~~"Effective Date" means the date a franchise agreement is accepted by the Franchisee. (3348-4/97)~~
- (e) ~~"FCC" means the Federal Communications Commission. (3348-4/97)~~
- (f) ~~"Fee" means any assessment, license, charge, fee, imposition, tax (but excluding any utility users' tax), or levy lawfully imposed by any governmental body. (3348-4/97)~~

- (g) ~~"Franchise" or "Franchise Agreement" means the terms under which a franchisee is permitted to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace the radio network in the public right of way as provided below. (3348-4/97)~~
- (h) ~~"Franchisee" means a person granted a franchise under this Chapter by City Council. (3348-4/97)~~
- (i) ~~"Laws" means any and all judicial decisions, statutes, constitutions, ordinances, resolutions, regulations, rules, tariffs, administrative orders, certificates, orders, or other requirements of the City or other agency having joint or several jurisdiction over the parties to the Franchise, in effect either at the time of execution of the Franchise or at any time during the presence of radios in the public right of way. (3348-4/97)~~
- (j) ~~"Person" means an individual, a corporation, a limited liability company, a general or limited partnership, a sole proprietorship, a joint venture, a business trust, and any other form of business association. (3348-4/97)~~
- (k) ~~"Provision" means any agreement, clause, conditions, covenant, qualifications, restriction, reservation, term, or other stipulation in the Franchise that defines or otherwise controls, establishes, or limits the performance required or permitted by any party to the Franchise. All provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions. (3348-4/97)~~
- (l) ~~"Public Right of Way" means in, upon, above, along, across, under, and over the public streets, roads, lanes, courts, ways, alleys, boulevards, and places, including, without limitation, all public utility easements and public service easements, as the same now or may thereafter exist that are under the jurisdiction of the City. This term shall not include any property owned by any person or agency other than the City except as provided by applicable laws or pursuant to an agreement between the City and any such person or agency. (3348-4/97)~~
- (m) ~~"Radio Month" means a calendar month during which a radio occupies space in the public right of way, even if such occupancy is less than the entire month. (3348-4/97, 3381-2/98)~~
- (n) ~~"Radio Network" or "Radios" means that wireless communication equipment including radios, transmitters, receivers, amplifiers, radio repeaters, microwaves and similar types of equipment certified by the Federal Communications Commission to be installed and operated by franchisee under this Chapter. (3348-4/97)~~
- (o) ~~"Services" means the wireless communications services provided through radios by a franchisee. (3348-4/97)~~

**12.48.030 Franchise Agreement.** (3348-4/97)

- (a) ~~The City Council may grant and enter into a non-exclusive franchise agreement to install, construct, operate, and maintain any radio network within the public right of way pursuant to the provisions of this Chapter. (3348-4/97)~~
- (b) ~~The franchisee shall comply with all applicable laws in the exercise and performance of its rights and obligations under the franchise. Nothing in the franchise agreement shall be deemed to waive the requirements of this Chapter and of the various codes and ordinances of the City, including those regarding encroachment permits, fees to be paid or the manner of construction. (3348-4/97)~~
- (c) ~~Any franchise granted pursuant to this Chapter shall be limited to those locations in the City specified in the franchise agreement. (3348-4/97)~~

- ~~(d) The grant of a franchise by the City is subject to whatever right, interest or privilege others may have in the use and occupation of sidewalks, curbs or streets where the radio network or similar facilities are located. (3348-4/97)~~
- ~~(e) The rights granted under a franchise pursuant to this Chapter are not exclusive, and during the term of a franchise, the City may grant to other persons the right to install radio networks within the public right-of-way. (3348-4/97)~~
- ~~(f) Any grant of a franchise shall be conditioned on the franchisee providing a performance bond, certificate of insurance and indemnification in a form and an amount approved by the City Attorney or Risk Manager and specified in the franchise agreement. (3348-4/97)~~

**12.48.040 Grant of the Franchise.** (3381-2/98)

- ~~(a) Any entity may apply for the grant of a new franchise. (3381-2/98)~~
- ~~(b) The City may, by advertisement or any other means, solicit applications for new franchises pursuant to a request for proposals. (3381-2/98)~~
- ~~(c) Upon receipt of an application, the City Administrator (or his designee) shall cause to be prepared a report, including his/her recommendations respecting such application, which shall be filed with the Council, each applicant, and any existing franchisees. Upon receipt of said report, a public hearing shall be noticed to consider the approval of the application. City shall give all existing franchisees notice of the public hearing. (3381-2/98)~~
- ~~(d) The City may, at any time prior to the close of the public hearing, require the applicant to provide supplementary information reasonably necessary to determine whether the application should be approved. (3381-2/98)~~
- ~~(e) Following the public hearing, the Council, at its discretion, shall determine whether to approve the application. In making its determination, the Council shall give due consideration to the quality of the service proposed, income to the City, experience, character, technical and financial responsibility of the applicant, and any other considerations deemed pertinent by the Council for safeguarding the interests of the City and public. (3381-2/98)~~

**12.48.050 Franchise Processing Costs.** (3381-2/98)

- ~~(a) Any application for a new franchise grant, a franchise renewal or a franchise transfer shall be made in a manner prescribed by the City Administrator, and shall include an application fee in the amount of \$3,000.00. Said fee is to defray the administrative and consulting costs to adequately analyze the application. In addition, the applicant shall reimburse the City for all administrative, consulting and legal costs not recovered through the application fee. (3381-2/98)~~
- ~~(b) These franchise processing costs are over and above any construction, inspection and permit fees, and the franchise fees specified in this Chapter or the franchise agreement. (3381-2/98)~~

**12.48.060 Transfer of the Franchise.** (3348-4/97, 3381-2/98)

- ~~(a) Any franchise granted under this Chapter shall be a privilege to be held for the benefit of the public. Such franchise cannot in any event be sold, transferred, leased, assigned or disposed of, including but not limited to, by stock sale, change of control forced or voluntary sale, merger, consolidation, receivership or other means without the prior consent of the City, except as provided in this Chapter. Such consent as required by the City shall, however, not be unreasonably withheld.~~

~~———— (3348-4/97)~~

~~(b) The franchisee shall give written notice at least thirty (30) days in advance of any actual or proposed change of control in, transfer of, or acquisition by any other party of the franchisee. The word "change of control" as used in this section is not limited to sales by major stockholders, but includes actual working control in whatever manner exercised. A rebuttable presumption that a change of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of fifty one percent (51%) of the voting shares of the franchisee, except where the transfer is to a parent, subsidiary or financially sound affiliate of the franchisee. Every change, transfer or acquisition of control of the franchisee shall make the franchise subject to cancellation unless and until the City shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the City may inquire into the qualifications of the prospective controlling party, and the franchisee shall assist the City in any such inquiry. This franchise shall not be assigned by franchisee without the express written consent of the City which consent shall not be unreasonably withheld. Any attempted assignment in violation of this section shall be void.~~  
~~(3348-4/97)~~

~~**12.48.070 Breach of Franchise.**~~ ~~(3348-4/97, 3381-2/98)~~

~~(a) The City reserves the right to terminate any franchise and/or assess fines and penalties in the following circumstances, each of which shall represent a default and breach under this Chapter and the franchise:~~ ~~(3348-4/97)~~

~~(1) If the franchisee defaults in the performance of any of its material obligations under this Chapter or the franchise agreement;~~ ~~(3348-4/97)~~

~~(2) If the franchisee fails to provide or maintain in full force and effect the liability and indemnification coverages or the performance bonds as required in this Chapter;~~ ~~(3348-4/97)~~

~~(3) If the franchisee ceases to provide services for any reason within the control of the franchisee. The franchisee shall not be declared in default or be subject to any sanction under any provision of this Chapter in any case in which performance of any such provision is prevented for reasons beyond the franchisee's control. A default shall not be deemed to be beyond the franchisee's control if committed by a corporation or other business entity through which the franchisee holds a controlling interest in the franchise, whether held directly or indirectly;~~ ~~(3348-4/97)~~

~~(4) If the franchisee attempts to evade any of the provisions of this Chapter or the franchise agreement or practices any fraud or deceit upon the City;~~ ~~(3348-4/97)~~

~~(5) The franchisee becomes insolvent, unable or unwilling to pay its debts.~~ ~~(3348-4/97)~~

~~(b) The following procedure applies prior to revocation of the franchise:~~ ~~(3348-4/97)~~

~~(1) The City may make written demand that the franchisee comply with any such requirement, limitation, term, condition, rule or regulation or correct any action deemed cause for penalty, fine or revocation. If the failure, refusal or neglect of the franchisee continues for a period of thirty (30) days following such written demand, the City Administrator may place his request for penalties, fines or termination of the franchise upon a regular City Council meeting agenda. The City shall cause to be served upon such franchisee, at least ten (10) days prior to the date of such Council meeting, a written notice of the intent to request such penalties, fines or termination, and the time and place of the meeting.~~ ~~(3348-4/97)~~

~~(2) The Council may hear any persons interested therein, and may determine, in its discretion, whether or not any failure, refusal or neglect by the franchisee was with just cause.~~ ~~(3348-4/97)~~

- (3) ~~If such failure, refusal or neglect by the franchisee was with just cause, the Council may direct the franchisee to comply within such time and manner and upon such terms and conditions as the Council determines. (3348-4/97)~~
- (4) ~~If the Council determines such failure, refusal or neglect by the franchisee was without just cause, then the Council may, by resolution, assess fines and penalties, and/or declare that the franchise of such franchisee shall be terminated. In the case of fines or penalties, the City may draw upon the franchisee's cash deposit in the amount of the fine or penalty. (3348-4/97)~~
- (c) ~~In the event a franchise expires, is revoked, or otherwise terminated, the City may order the removal of the radio network or require the original franchisee to maintain and operate the radio network until a subsequent franchisee is selected. (3348-4/97)~~
- (d) ~~The termination and forfeiture of any franchise shall in no way affect any of the rights of the City under the franchise or any provision of law. (3348-4/97)~~
- (e) ~~The waiver by the City of any breach or violation of any provision of the franchise agreement or this Chapter by franchisee shall not be deemed to be a waiver or a continuing waiver by the City of any subsequent breach or violation of the same or any other provision of the franchise agreement or this Chapter by franchisee. (3348-4/97)~~

~~**12.48.080 Term of Franchise.** (3348-4/97, 3381-2/98) A franchise granted under this Chapter shall be for a term of up to fifteen (15) years unless it is earlier terminated by the City in accordance with the provisions of this Chapter and shall commence on the effective date set by City Council in the franchise agreement. The franchisee may apply for renewal of a franchise in the same manner as an original application. Renewal applications shall be filed not less than ninety (90) nor more than one hundred eighty (180) days prior to expiration of the existing franchise. (3348-4/97)~~

~~**12.48.090 Scope of Franchise.** (3348-4/97, 3381-2/98)~~

- (a) ~~Any and all rights expressly granted to franchisee under the franchise, which shall be exercised at franchisee's sole cost and expense, shall be subject to the prior and continuing right of the City under applicable laws to use any and all parts of the public right of way only, exclusively or concurrently with any other person or persons and further shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances and claims of title which may affect the right of way. Nothing in the franchise shall be deemed to grant, convey, create, or vest a perpetual real property interest in land in franchisee including any fee or leasehold interest, easement, or any franchise rights inconsistent with this Chapter. (3348-4/97)~~
- (b) ~~Upon the grant of a franchise by City Council, the franchisee is authorized and permitted to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace radios in or on City street light poles, lighting fixtures, and electroliers, within the public right of way, or on other city property as designated in the franchise agreement for the purposes of providing services to persons located within or without the limits of the City. Any work performed pursuant to the rights granted under the franchise may, at the City's option, be subject to the prior review and approval of the City. During the term of this franchise, the location of each radio installed by franchisee or its designee shall be disclosed in writing to the City by franchisee within ten (10) days after its installation, removal, or relocation. (3348-4/97, 3381-2/98)~~
- (c) ~~Upon grant of a franchise by City Council, the franchisee is authorized and permitted to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace such number of radios in or on poles or other structures owned by public utility companies or other property owners located within the public right of way as may be permitted by the public utility company or property owner, as the case may be as designated in the franchise agreement. Franchisee shall furnish to the City documentation of said permission from the individual utility/property owner responsible prior to installation of the radios. (3348-4/97)~~

- (d) ~~Except as permitted by applicable laws or the franchise, in the performance and exercise of its rights and obligations under this franchise, franchisee shall not interfere in any manner with the existence and operation of any and all public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, electroliers, cable television, and other telecommunications, utility and municipal property without the express written approval of the owner or owners of the affected properties. (3348-4/97)~~
- (e) ~~Franchisee shall comply with all applicable laws in the exercise and performance of its rights and obligations under the franchise. If required by applicable laws, franchisee shall obtain the approval of the radios subject to the franchise, or any modifications or changes thereto, from any applicable governmental bodies, and secure any required assessment of the impact that the radios subject to the franchise may have upon the environment. (3348-4/97)~~

**12.48.100 Fees and Taxes.** (3348-4/97, 3384-2/98)

- (a) ~~Franchisee shall be solely responsible for the payment of all lawful fees and utility charges in connection with the exercise of franchisee's right, title, and interest in, and the attachment, installation, operation, and maintenance of radios, and the rendering of services under the franchise. (3348-4/97)~~
- (b) ~~As compensation for the franchise, franchisee shall pay to the City on a quarterly basis a franchise fee in an amount as established in the franchise agreement. The franchise fee required by this section shall be due on or before the 45th day after the end of each calendar quarter or fraction thereof. Within forty five (45) days after the termination of the franchise, compensation shall be paid for the period elapsing since the end of the last calendar quarter for which this compensation has been paid. Franchisee shall furnish to the City with each payment of compensation required by this section a statement executed by an authorized officer of franchisee or his or her designee showing the amount of gross revenues for the period covered by the payment. If the franchisee discovers that it has failed to pay the entire or correct amount of compensation due, the City shall be paid by franchisee within fifteen (15) days of discovery of the error or determination of the correct amount. Any overpayment to the City through error or otherwise shall be offset against the next payment due from franchisee, provided that the franchisee shall file a claim for the overpayment within one year of making the overpayment. Acceptance by the City of any payment due under this section shall not be deemed to be waiver by the City of any breach of the franchise occurring prior thereto, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due, or from collecting any balance due to the City. (3348-4/97, 3384-2/98)~~
- (c) ~~The franchisee shall keep accurate books of account. The City may inspect books of account at any time during regular business hours on five (5) days' prior written notice and may audit the books from time to time at City's sole expense, but in each case only to the extent necessary to confirm the accuracy of payments due under this section. The City may require quarterly or annual reports from franchisee relating to its operations and revenues within the City. City agrees to hold in confidence any non-public information it learns from franchisee to the extent permitted under the California Public Records Act and any other applicable law. (3348-4/97)~~
- (d) ~~As additional compensation for the franchise, franchisee shall pay to the City a pole fee ("Pole Fee") in the amount set by the franchise agreement approved by City Council for the use of each City-owned pole or other City-owned property upon which a radio has been installed pursuant to the franchise and designated in the franchise agreement. (3348-4/97)~~

**12.48.110 Removal and Relocation of Radios.** (3348-4/97, 3381-2/98)

- (a) ~~Upon seven (7) days' prior written notice, City may require franchisee to relocate at franchisee's sole cost and expense, a radio whenever City reasonably determines that the relocation is needed:~~

- ~~(1) To facilitate or accommodate the construction, completion, repair, relocation or maintenance of a City or Redevelopment Agency project. (3348-4/97)~~
- ~~(2) Because the radio is interfering with or adversely affecting proper operation of City light poles, traffic signals or other City facilities, including but not limited to the public safety 800 MHz radio system, or (3348-4/97)~~
- ~~(3) To protect or preserve the public health, safety or welfare. (3348-4/97)~~
- ~~(b) In the event franchisee desires to relocate any radio from one City-owned pole to another, franchisee shall notify City upon thirty (30) days' prior written notice. City will use its best efforts to accommodate franchisee by making another functionally equivalent City-owned pole available for use in accordance with and subject to the terms and conditions of the franchise. (3348-4/97)~~
- ~~(c) In the event that any radio subject to the franchise is abandoned and no longer placed in service for a period of six (6) months or more, franchisee promptly shall notify the City and the City, at its option, may promptly remove the abandoned radio at franchisee's sole cost and expense or dedicate the same to the City. The City shall not issue notice to franchisee that the City intends to exercise the option to require removal or dedication of the radio unless and until the City first gives five (5) days' prior written notice to franchisee to remove the radio. If franchisee should fail to remove the radio, the City shall be entitled to remove the radio at franchisee's sole cost and expense. The franchisee shall execute such documents of title as will convey all right, title and interest in the abandoned radio to the City. (3348-4/97)~~

**12.48.120 Construction Permits.** (3348-4/97, 3381-2/98)

- ~~(a) In the event that the attachment, installation, operation or maintenance of the radio network shall require any construction work in public right of way, franchisee shall apply for the appropriate permits required by law and pay any fee charged by the City for such permits. (3348-4/97)~~
- ~~(b) Any and all construction work performed pursuant to the rights granted under the franchise, including the installation, operation, maintenance, location, and attachment of the radio network in the public right of way, shall, if required under applicable City ordinances, be subject to the prior review and approval of City by means of submission of a permit application, payment of any applicable permitting fees, and the City's ordinary administrative review. The franchisee shall apply for and obtain all appropriate permits required by applicable law prior to the commencement of any work of construction in the public right of way. The locations of franchisee's planned initial installation of radio shall be incorporated in the franchise agreement. After the initial deployment of the radio network, new attachments, removals, and relocations of radios shall also be subject to the City's permitting process. If the location of any radio is different from that applied for in the applicable permit, the location of such radio installed by franchisee shall be disclosed in writing to the City by franchisee within ten (10) days after its installation, removal, or relocation. (3348-4/97)~~
- ~~(c) Upon the completion of construction work, franchisee shall furnish to the City, in hard copy and electronic format, suitable documentation showing the exact location of the radio network and connection points to electrical power and telephone lines within the public right of way and on public facilities. (3348-4/97)~~

**12.48.130 Damage to Right of Way.** (3348-4/97, 3381-2/98) Whenever the radio network shall cause the street light pole or other part of the public right of way to be damaged, either as a result of installation, removal or relocation of a radio, the weight, size or power of a radio, or otherwise, the franchisee, at its sole cost and expense, shall promptly repair and return the public right of way in which the radios are located to a safe and satisfactory condition to the satisfaction of the City's Director of Public Works. If the franchisee does not repair the site, then the City shall have the option, upon fifteen (15) days' prior written notice to the franchisee, to perform or cause to be performed such reasonable and

necessary work on behalf of the franchisee and to charge the franchisee for the proposed costs to be incurred or

~~12.48.130-12.48.160(b)(1)~~

Huntington Beach Municipal Code

~~the actual costs incurred by the City at City's standard rates. Upon the receipt of a demand for payment by the City, the franchisee shall reimburse the City for such costs. (3348-4/97)~~

~~**12.48.140 Indemnification.** (3348-4/97, 3381-2/98)~~

- ~~(a) The franchisee shall, as a condition of the franchise, agree to indemnify, protect, defend (with counsel acceptable to the City) and hold harmless the City, its council members, officers, employees and agents, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceeding and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense (collectively "Losses") arising directly or indirectly, in whole or in part, out of the activities or facilities described in the franchise, except to the extent arising from or caused by the active negligence of the City, its council members, officers, employees, agents or contractors. (3348-4/97)~~
- ~~(b) Franchisee shall, as a condition of the franchise, agree to waive any and all claims, demands, causes of action, and rights it may assert against the City on account of any loss, damage, or injury to any radio or any loss or degradation of the services as a result of a sudden or gradual loss or change of electrical power caused by, among other, an Act of God, an event or occurrence which is beyond the reasonable control of the City, a power outage, a lightning strike, or occasioned by the installation, maintenance, replacement or relocation of any City-owned facility to which such radio is attached. (3348-4/97)~~
- ~~(c) Subject to the California Government Code requirements for claims, the City may be responsible for the cost of repair to damaged radios arising from the City's active negligence, and the City shall not be responsible for any damages, losses or liability of any kind occurring by reason of anything done or omitted to be done by any third party or arising from the issuance or approval by the City of a permit to any third party or any interruption in services. (3348-4/97)~~

~~**12.48.150 Utilities.** (3348-4/97, 3381-2/98) Franchisee shall pay all costs that may become due for electrical energy supplies to the radio network and shall keep City indemnified against any and all such costs. (3348-4/97)~~

~~**12.48.160 Insurance and Security Deposit.** (3348-4/97, 3381-2/98)~~

- ~~(a) Franchisee shall obtain and maintain at all times during the term of the franchise comprehensive general liability insurance and comprehensive automotive liability insurance protecting franchisee in an amount of not less than one million dollars (\$1,000,000) per occurrence, combined single limit, including bodily injury and property damage and not less than one million dollars (\$1,000,000) aggregate for each personal injury liability, products-completed operations and each accident. Such insurance shall name the City, its council members, officers, employees, agents and contractors as additional insured as respects to any liability arising out of franchisee's performance of work under the franchise, or suitable additional insured endorsement acceptable to the City Attorney. Coverage shall be provided in accordance with the limits specified herein. Claims-made policies are not acceptable. When an umbrella or excess coverage is in effect, coverage shall be provided in following form. Such insurance shall not be canceled or materially altered to reduce coverage until the City has received at least thirty (30) days' advance written notice of such cancellation or change. Franchisee shall be responsible for notifying the City of such change or cancellation. (3348-4/97)~~
- ~~(b) Franchisee shall file the required original certificate(s) of insurance with endorsements with the City subject to the City Attorney's prior approval which shall clearly state:~~

- ~~(1) Policy number; name of insurance company; name, address and telephone number of the agent or authorized representative; name, address and telephone number of insured; project name and address; policy expiration date; and specific coverage amounts;~~

- ~~(2) That thirty (30) days prior notice of cancellation is unqualified as to the acceptance of liability for failure to notify the City; and~~
- ~~(3) That franchisee's insurance is primary and first dollar as respect to any other valid or collectible insurance that the City may possess, including any self insurance retentions the City may have and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. (3348-4/97)~~
- ~~(c) The franchisee shall comply with all applicable provisions of the Workers' Compensation Insurance and Safety Acts of the State of California; the applicable provisions of Divisions 4 and 5 of the California Labor Code and all amendments thereto; and all similar State or Federal acts or laws applicable; and shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings and judgments of every nature description, including attorney's fees and costs presented, brought, or recovered against City, for or on account of any liability for failure to obtain Workers' Compensation Insurance. Franchisee shall furnish evidence of workers' compensation and employer's liability insurance with limits of at least statutory coverage to City in such form as is acceptable to the City Attorney. (3348-4/97)~~
- ~~(d) Any insurance provider of franchisee shall be admitted and authorized to do business in California and shall be rated at least A:X in AM Best & Company's Insurance Guide. Insurance certificates issued by non-admitted insurance companies are not acceptable. (3348-4/97)~~
- ~~(e) Prior to the execution of the franchise, any deductibles or self-insured retentions must be stated on the certificate(s) of insurance which shall be sent to and approved by the City Attorney. "Cross-liability," "severability of interest" or "separation of insured" clauses shall be made a part of the comprehensive general liability and comprehensive automobile liability policies. (3348-4/97)~~
- ~~(f) Prior to the commencement of any work under the franchise, the franchisee shall furnish or cause to be furnished to City a good and sufficient security, securing the faithful performance by franchisee of all of the work, construction, installation, and removals required to be performed by the franchisee. (3348-4/97)~~

~~**12.48.170 Enforcement.** (3348-4/97, 3381-2/98) The City Administrator or his or her designee shall enforce the provisions of this Chapter, and may prescribe the forms and other regulations applicable to franchises granted under this Chapter. (3348-4/97)~~

~~**12.48.180 Severability.** (3348-4/97, 3381-2/98) If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Chapter, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Chapter or its application to other persons. The City Council hereby declares that it would have adopted this Chapter and each section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more section, subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. (3348-4/97)~~

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**Chapter 17.64**

**UNDERGROUNDING OF UTILITIES**

(2222-12/77, 2382-7/79, 2975-12/88, 3635-5/04)

**Sections:**

- 17.64.010 Definitions
- 17.64.020 Underground utilities coordinating committee established
- 17.64.030 Duties
- 17.64.040 Planning Commission review
- 17.64.050 Underground public utilities facilities
- 17.64.060 Overhead installation
- 17.64.070 Conversion of overhead facilities
- 17.64.080 Underground trenches
- 17.64.090 Public hearing by Council
- 17.64.100 Council may designate underground utility districts by resolution
- 17.64.110 Unlawful to erect or maintain overhead utilities within district
- 17.64.120 Exceptions--Emergency or unusual circumstance declared exception
- 17.64.130 Exceptions to this chapter
- 17.64.135 Abandoned/non-use – notice to City
- 17.64.140 Community antenna television service
- 17.64.150 Director of Public Works--Authority of
- 17.64.160 Director of ~~Community Development~~**Planning**--Authority of
- 17.64.170 City Council--Appeal to
- 17.64.180 Notice to property owners and utility companies
- 17.64.190 Responsibility of utility companies
- 17.64.200 Responsibility of property owners
- 17.64.210 Responsibility of city
- 17.64.220 Extension of time

**17.64.010 Definitions.** The following terms or phrases as used in this chapter shall, unless the context indicates otherwise, have the respective meanings herein set forth:

- (a) "Commission" shall mean the Public Utilities Commission of the state of California.
- (b) "Underground utility district" or "district" shall mean that area in the city within which poles, overhead wires and associated overhead structures are prohibited as such area is described in a resolution adopted pursuant to the provision of section 17.64.110 of this chapter.
- (c) "Poles, overhead wires and associated overhead structures;" shall mean poles, towers, supports, wires, conductors, guys, stubs, platforms, crossarms, braces, transformers, insulators, cutouts, switches, communication circuits, appliances, attachments and appurtenances located aboveground within a district and used, or useful, in supplying electric, communication or similar or associated service.
- (d) "Utility" shall include all persons or entities supplying electric, communication or similar or associated service by means of electrical materials or devices. (2222-12/77)

**17.64.020 Underground utilities coordinating committee--Established.** There is hereby established an underground utilities coordinating committee, appointed by the

City Council, which said committee shall consist of five (5) members as follows:  
(2222-12/77, 2382-7/79, 2975-12/88)

- (a) Director of Public Works;
- (b) Director of ~~Community Development~~ **Planning**;
- (c) One city employee appointed by the City Administrator;
- (d) District representative, Southern California Edison Company; and
- (e) Senior engineer, Public Improvements, ~~General Telephone Company~~ **Verizon**.

**17.64.030 Duties.** It shall be the duty of the committee to advise the City Council with respect to all technical aspects of the undergrounding of public utilities within the city of Huntington Beach and in that regard the committee shall:

- (a) Determine the location and priority of conversion work within the city;
- (b) Recommend specific projects and methods of financing;
- (c) Recommend time limitation for completion of projects and extensions of time;
- (d) Develop a long-range plan for establishing underground utilities districts;
- (e) Perform such other duties as may be assigned to it by the City Council.

The Director of Public Works shall be ~~chairman~~**person** of said committee. A majority of the members of the committee, or their authorized representatives, present at any meeting shall constitute a quorum. Said committee shall meet upon call of the ~~chairman~~**person**. Members of the committee shall serve at the pleasure of the City Council and without compensation. (2222-12/77)

**17.64.040 Planning Commission review.** Prior to submitting reports to the City Council, the committee shall submit all undergrounding plans to the Planning Commission in order to ascertain its recommendations with respect to comprehensive planning for the city, and the effect of such proposed undergrounding plans thereon. (2222-12/77)

**17.64.050 Underground public utilities facilities.** All new public and private utility lines and distribution facilities, including but not limited to electric, communications, street lighting, and cable television lines, shall be installed underground, except that surface-mounted transformers, pedestal-mounted terminal boxes, meter cabinets, concealed ducts in an underground system and other equipment appurtenant to underground facilities **located on private property or installed pursuant to a franchise or other agreement** need not be installed underground, and provided further that cable television lines may be installed on existing utility poles within subdivisions developed with overhead utility lines-.

This section shall not apply to main feeder lines or transmission lines located within the public right-of-way of an arterial highway as shown in the circulation element of the general plan. (2222-12/77)

**17.64.060 Overhead installation.** Installation of overhead utility lines is permitted for the following:

- (a) Relocation and/or the increase of the size of service on a lot when it does not necessitate any increase in the number of existing overhead lines and/or utility poles;

- (b) Any new service when utility poles exist along abutting property lines prior to February 15, 1967, and which are not separated by any alley or public right-of-way and no additional utility poles are required;
- (c) Temporary uses, including directional signs, temporary stands, construction poles, water pumps, and similar uses;
- (d) Oil well services. (2222-12/77)

**17.64.070 Conversion of overhead utilities.** Any new overhead service which is permitted by these provisions shall have installed a service panel to facilitate conversion to underground utilities at a future date. (2222-12/77)

**17.64.080 Underground trenches.** All underground utility lines in residential developments which are installed on private property shall be located along lot lines. However, the trench for service lines may curve from the lot line to the building at the nearest, most practical location.

This provision is intended to reduce conflicts which may occur in future construction because of existing underground utility lines. (2222-12/77)

**17.64.090 Public hearing by Council.** The Council may from time to time call public hearings to ascertain whether the public necessity, health, safety or welfare requires the removal of poles, overhead wires and associated overhead structures within designated areas of the city and the underground installation of wires and facilities for supplying electric, communication, or similar or associated service. Prior to holding such public hearing, the City Engineer shall consult with all affected utilities and shall prepare a report for submission at such hearing, containing, among other information, the extent of such utilities participation and estimates of the total costs to the city and affected property owners. Such report shall also contain an estimate of the time required to complete such underground installation and removal of overhead facilities. The City Clerk shall notify all affected property owners as shown on the last equalized assessment roll and utilities concerned by mail of the time and place of such hearings at least ten (10) days prior to the date thereof. Each such hearing shall be open to the public and may be continued from time to time. At each such hearing all persons affected shall be given an opportunity to be heard. The decision of the Council shall be final and conclusive. (2222-12/77)

**17.64.100 Council may designate underground utility districts by resolution.** If, after any such public hearing the Council finds that the public necessity, health, safety or welfare requires such removal and such underground installation within a designated area, the Council shall, by resolution adopted by affirmative vote of at least five (5) members of the City Council, declare such designated area an underground utility district and order such removal and underground installation. Such resolution shall include a description of the area comprising such district, the reason for placing public utilities underground (see Public Utilities Commission Rule 20), and shall fix the time within which such affected property owners must be ready to receive underground service. A reasonable time shall be allowed for such removal and underground installation, having due regard for the availability of labor, materials and equipment necessary for such removal and for the installation of such underground facilities as may be occasioned thereby. (2222-12/77)

**17.64.110 Unlawful to erect or maintain overhead utilities within district.** Whenever the Council creates an underground utility district and orders the removal of poles, overhead wires and associated structures therein, as provided in section 17.64.100 hereof, it shall be unlawful for any person or utility to erect, construct, place, keep, maintain, continue, employ or operate poles, overhead wires and associated overhead structures in the district after the date when said overhead facilities are required to be removed by such resolution, except as said overhead facilities may be required to furnish service to an owner or occupant of property prior to the performance by such owner or occupant of the underground work necessary for such owner or occupant to continue to receive utility service as provided in section 17.64.200 hereof, and for such reasonable time as may be required to remove said facilities after said work has been performed, and except as otherwise provided in this chapter. (2222-12/77)

**17.64.120 Exceptions--Emergency or unusual circumstance declared exception.** Notwithstanding the provisions of this chapter, overhead facilities may be installed and maintained for a period not to exceed ten (10) days without authority of the Council in order to provide emergency service. In such case, the Director of Public Works shall be notified in writing prior to the installation of the facilities. The Council may grant special permission on such terms as the Council may deem appropriate in cases of unusual circumstances, without discrimination as to any person or utility, to erect, construct, install, maintain, use or operate poles overhead wires and associated overhead structures. (2222-12/77)

**17.64.130 Exceptions to this chapter.** The following shall be excluded from the provisions of this chapter unless otherwise provided in the resolution designating the underground utilities district:

- (a) Poles or electroliers used exclusively for street lighting.
- (b) Overhead wires (exclusive of supporting structures) crossing any portion of a district within which overhead wires have been prohibited, or connecting to buildings on the perimeter of a district, when such wires originate in an area from which poles, overhead wires and associated overhead structures are not prohibited.
- (c) Poles, overhead wires and associated overhead structures used for the transmission of electric energy at nominal voltages in excess of 34,500 volts.
- (d) Any municipal facilities or equipment installed under the supervision and to the satisfaction of the City Engineer.
- (e) Overhead wires attached to the exterior surface of a building by means of a bracket or other fixture and extending from one location on the building to another location on the same building or to an adjacent building without crossing any public street.
- (f) ~~Antennas, associated equipment and supporting structures,~~ used by a utility for furnishing communication services.
- (g) Equipment appurtenant to underground facilities, such as surface-mounted transformers, pedestal-mounted terminal boxes and water cabinets and concealed ducts.
- (h) Temporary poles, overhead wires and associated overhead structures used or to be used in conjunction with construction projects. (2222-12/77)

- (i) Utilities with existing on-pole services as of the date of this ordinance, where the utility is not the sole user of the poles, and where the utility is replacing one single wire, cable, or line with another or adding an additional smaller wire, cable or line, provided that utility will be placed underground at the time the other utility utilizing the poles places its service underground. (3635-5/04)

**17.64.135 Lines not in use – notice to City.** At any time a line, cable or wire is taken out of service, or abandoned or is otherwise no longer used, the utility shall give notice of non-use to the City. Within six (6) months of the time upon which the line, cable or wire ceases to be used (the notice date) the utility shall remove the line, cable or wire from the poles. (3635-5/04)

**17.64.140 Community antenna television service.** Distribution lines and individual service lines for community antenna television (CATV) service shall be installed underground in all new developments within the city. All new CATV installations in said new developments shall be made in accordance with specifications adopted by City Council resolution. Said improvements within the public right-of-way, upon completion, shall be dedicated to the city of Huntington Beach. (2222-12/77)

**17.64.150 Director of Public Works--Authority of.** The Director of Public Works shall have the authority to waive the requirements of section 17.64.140 with respect to improvements within the public right-of-way when, in his **or her** judgment, it is determined to be in the best interest of the city so to do, based upon the following criteria:

- (a) Whenever engineering plans and specifications are not required.
- (b) Where existing improvements such as curbs and gutters, sidewalks, streets, etc. would have to be removed and replaced.
- (c) The location of existing overhead facilities.
- (d) The location of existing structures.
- (e) The condition of existing street improvements.
- (f) The amount of lineal footage of CATV facilities involved. (2222-12/77)

**17.64.160 Director of Community Development Planning--Authority of.** The Director of Community Development Planning shall have the authority to waive the on-site requirements, as set out in section 17.64.140, when, in his **or her** judgment, it is determined to be in the best interest of the city so to do, based upon the following criteria: (2975-12/88)

- (a) Where existing improvements would have to be removed and replaced.
- (b) The location of existing overhead facilities.
- (c) The location of existing structures.
- (d) The condition of existing improvements.
- (e) The amount of lineal footage of CATV facilities involved.
- (f) The interface of the new development to the existing development on the site.

(g) The interface to similar facilities required off site. (2222-12/77)

**17.64.170 City Council--Appeal to.** Any landowner or developer affected may appeal the determination of the Director of Public Works or the ~~d~~Director of ~~Community Development~~**Planning** to the City Council. (2222-12/77)

**17.64.180 Notice to property owners and utility companies.** Within ten (10) days after the effective date of a resolution adopted pursuant to section 17.64.110 hereof, the City Clerk shall notify all affected utilities and all person owning real property within the district created by said resolution, of the adoption thereof. Said City Clerk shall further notify such affected property owners of the necessity that if they or any person occupying such property desire to continue to receive electric, communication or similar or associated service, they or such occupant shall provide all necessary facility changes on their premises so as to receive such service from the lines of the supplying utility or utilities at a new location. (2222-12/77)

**17.64.190 Responsibility of utility companies.** If underground construction is necessary to provide utility service within a district created by any resolution adopted pursuant to section 17.64.110 hereof, the supplying utility shall furnish that portion of the conduits, conductors and associated equipment required to be furnished by it under its applicable rules, regulations and tariffs on file with the commission. (2222-12/77)

**17.64.200 Responsibility of property owners.**

(a) Every person owning, operating, leasing, occupying or renting a building or structure within a district shall construct and provide that portion of the service connection on his property between the facilities referred to in section 17.64.190, and the termination facility on or within said building or structure being served. If the above is not accomplished by any person within the time provided for in the resolution enacted pursuant to section 17.64.110 hereof, the City Engineer shall give notice in writing to the owner thereof as shown on the last equalized assessment roll, to provide the required underground facilities within thirty (30) days after receipt of such notice.

12/88

(b) The notice to provide the required underground facilities may be given either by personal service or by mail. In case of service by mail on either of such persons, the notice must be deposited in the United States mail in a sealed envelope with postage prepaid, addressed to the person in possession of such premises, and the notice must be addressed to such owner's last known address as the same appears on the last equalized assessment roll, and when no address appears, to General Delivery, city of Huntington Beach. If notice is given by mail, such notice shall be deemed to have been received by the person to whom it has been sent within forty-eight (48) hours after the mailing thereof. If notice is given by mail to either the owner or occupant of such premises, the City Engineer shall, within forty-eight (48) hours after the mailing thereof, cause a copy thereof, printed on a card not less than 8" x 10" in size, to be posted in a conspicuous place on said premises.

(c) The notice given by the City Engineer to provide the required under ground facilities shall particularly specify what work is required to be done, and shall state that if said work is not completed within thirty (30) days after receipt of such notice, the City Engineer will provide such required underground facilities, in which case the cost and

expense thereof will be assessed against the property benefited and become a lien upon such property.

- (d) If upon the expiration of the thirty (30) days, the said required underground facilities have not been provided, the City Engineer shall forthwith proceed to do the work, provided, however, if such premises are unoccupied and no electric or communications services are being furnished thereto, the City Engineer shall in lieu of providing the required undergrounding facilities, have the authority to order the disconnection and removal of any and all overhead service wires and associated facilities supplying utility service to said property. Upon completion of the work by the City Engineer, he shall file a written report with the City Council setting forth the fact that the required underground facilities have been provided and the cost thereof, together with a legal description of the property against which such cost is to be assessed. The Council shall thereupon fix a time and place for hearing protests against the assessment of the cost of such work upon such premises, which said time shall not be less than ten (10) days thereafter.
- (e) The City Clerk shall forthwith, upon the time for hearing such protests having been fixed, give a notice in writing to the person in possession of such premises, and a notice in writing thereof to the owner thereof, in the manner hereinabove provided for the giving of the notice to provide the required underground facilities, of the time and place that the Council will pass upon such report and will hear protests against such assessment. Such notice shall also set forth the amount of the proposed assessment.
- (f) Upon the date and hour set for the hearing of protests, the Council shall hear and consider the report and all protests, if there be any, and then proceed to affirm, modify or reject the assessment.
- (g) If any assessment is not paid within fifteen (15) days after its confirmation by the Council, the amount of the assessment shall become a lien upon the property against which the assessment is made by the City Engineer, and the City Engineer is directed to turn over to the assessor and tax collector a notice of lien on each of said properties on which the assessment has not been paid, and said assessor and tax collector shall add the amount of said assessment to the next regular bill for taxes levied against the premises upon which said assessment was not paid. Said assessment shall be due and payable at the same time as said property taxes are due and payable, and if not paid when due and payable, shall bear interest at the rate of 6 percent per annum.  
(2222-12/77)

**17.64.210 Responsibility of city.** City shall remove at its own expense all city-owned equipment from all poles required to be removed hereunder in ample time to enable the owner or user of such poles to remove the same within the time specified in the resolution enacted pursuant to section 17.64.110 hereof. (2222-12/77)

**17.64.220 Extension of time.** In the event that any act required by this chapter or by a resolution adopted pursuant to section 17.64.110 hereof cannot be performed within the time provided because of shortage of materials, war, restraint by public authorities, strikes, labor disturbances, civil disobedience, or any other circumstances beyond the control of the actor, then the time within which such act will be accomplished shall be extended for a period equivalent to the time of such limitation. (2222-12/77)

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**ATTACHMENT #4**

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**(City Council) Adopted Urgency Ordinance No. 3766, Conducted a Public Hearing and Approved Establishing a Temporary Moratorium on the Installation of Wireless Telecommunication Facilities Including Those in the Public Right-of-Way, Extended Interim Ordinance No. 3748 Through March 18, 2008, Adopted Specific Findings Regarding the Detriment to the Public Health, Welfare and Safety and Declaring the Urgency Thereof to Take Effect Immediately**

Mayor Coerper announced that this was the time noticed for a public hearing to consider the following **Statement of Issue**: Should the City adopt an extension to Interim Ordinance No. 3748, including interim regulations that will allow providers to apply for permits for wireless communications facilities throughout the City including the public right-of-way?

Legal notice as provided to the City Clerk's Office by staff had been published and posted.

Senior Deputy City Attorney Leonie Mulvihill presented a PowerPoint report titled *Moratorium on Wireless Facilities*, which was announced earlier as a Late Communication.

Mayor Coerper declared the public hearing open.

The Assistant City Clerk restated for the record the following Late Communication which pertains to this public hearing:

Communication submitted by City Attorney Jennifer McGrath dated March 5, 2007 and titled *Late Communication, City Council Meeting of March 5, 2007, Agenda Item Number D-1*, which includes the PowerPoint presentation for the hearing pertaining to the moratorium on wireless facilities.

**Leslie Daigle**, representing Verizon Wireless, stated that no other city in California charges a fee for a wireless communication franchise and opined that such a fee is not authorized by law. She reiterated for the record that Verizon Wireless is opposed to the fee. (1:35:54)

There being no persons present to speak further on the matter and there being no further protests filed, either written or oral, the Mayor declared the public hearing closed.

A motion was made by Hardy, second Cook to, after the City Clerk read by title, approve and adopt Urgency Ordinance No. 3766, *An Interim Ordinance of the City Council of the City of Huntington Beach Establishing a Temporary Moratorium on the Installation of Wireless Telecommunication Facilities Including Those in the Public Right-of-Way and Declaring the Urgency Thereof, To Take Effect Immediately* and adopt specific findings regarding the detriment to the public health, welfare and safety and extending Interim Ordinance No. 3748 for one year. The motion carried by the following roll call vote:

AYES: Bohr, Carchio, Cook, Coerper, Green, Hansen, and Hardy  
NOES: None

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# ATTACHMENT #5

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City of Huntington Beach Planning Department

**STAFF REPORT**

**TO:** Planning Commission  
**FROM:** Scott Hess, Director of Planning  
**BY:** Rosemary Medel, Associate Planner *RM*  
**DATE:** April 10, 2007

**SUBJECT:** ZONING TEXT AMENDMENT NO. 06-08 (AMENDING CHAPTER 230.96 WIRELESS COMMUNICATION FACILITIES)

**APPLICANT:** City of Huntington Beach, 2000 Main Street, Huntington Beach, CA 92648

**LOCATION:** Citywide

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**STATEMENT OF ISSUE:**

- ◆ Zoning Text Amendment No. 06-08 request:
  - Amend Chapter 230 (Site Standards), Section 230.96 (Wireless Communication Facilities) of the Huntington Beach Zoning and Subdivision Ordinance to allow the City to exercise reasonable control over the time, place, and manner of installation of wireless facilities including those in the public right-of-way.
  - Establish a Wireless Permit Application process that encourages co-location and the undergrounding of wireless facilities.
- ◆ Staff's Recommendation: Approve Zoning Text Amendment No. 06-08 based upon the following:
  - The amendment will encourage and facilitate wireless facilities throughout the city while preventing visual clutter.
  - The introduction of the Wireless Permit will ensure that wireless facilities will not have adverse impacts citywide nor within the public right-of-way.
  - The amendment will require that when possible wireless facilities are located in the least obtrusive site necessary in order to continue wireless coverage in the area.

**RECOMMENDATION:**

Motion to:

“Approve Zoning Text Amendment No. 06-08 with findings for approval (Attachment No. 1) and forward Draft Ordinance (Attachment No. 2), including the legislative draft to the City Council for adoption.”

**ALTERNATIVE ACTION(S):**

The Planning Commission may take alternative actions such as:

- A. "Deny Zoning Text Amendment No. 06-08 with findings for denial."
- B. "Continue Zoning Text Amendment No. 06-08 and direct staff accordingly."

**PROJECT PROPOSAL:**

Zoning Text Amendment No. 06-08 represents a request to amend Section 230.96 (Wireless Communication Facilities) of the Huntington Beach Zoning and Subdivision Ordinance pursuant to Chapter 247 (Amendments). The proposed ordinance allows the City to exercise reasonable control over the time, place, and manner of installation of wireless facilities including those in the public right-of-way.

**ISSUES:**

**Subject Property And Surrounding Land Use, Zoning And General Plan Designations:**

Zoning Text Amendment (ZTA) No. 06-08 impacts all wireless facilities citywide regardless of location.

LOCATION	GENERAL PLAN	ZONING	LAND USE
Citywide	All Land Use Categories	All Zoning Categories	All Land Uses

**General Plan Conformance:**

The proposed Zoning Text Amendment No. 06-08 is consistent with the goals, policies, and objectives of the City's General Plan as follows:

Utilities Element

Goal U 5: Maintain and expand service program to City of Huntington Beach residences and businesses.

Objective 5.1: Ensure that adequate natural gas, telecommunication and electrical systems are provided.

Policy U 5.1.1: Continue to work with service providers to maintain current levels of service and facilitate improved levels of service.

Policy U 5.1.3: Review requests for new utility facilities, relocations, or expansions to existing facilities.

Policy U 5.1.4: Require the review of new or expansions of existing industrial and utility facilities to ensure that such facilities will not visually impair the City's coastal corridors and entry nodes.

The amended ordinance will encourage and facilitate wireless communication facilities where they are invisible to pedestrians, and co-located with other facilities.

**Urban Design Guidelines Conformance:** Not applicable.

**Environmental Status:** The proposed ZTA No. 06-08 is categorically exempt pursuant to City Council Resolution No. 4501, Class 20, which supplements the California Environmental Quality Act.

**Coastal Status:** Not applicable.

**Redevelopment Status:** Not applicable.

**Design Review Board:** Not applicable.

**Subdivision Committee:** Not applicable.

**Other Departments Concerns and Requirements:** The City Attorney's Office drafted the proposed ordinance to be current with state and federal law. The Department of Public Works reviewed the wireless facilities ordinance and determined that the encroachment permit process regulated by the Municipal Code will need to be amended by their department.

**Public Notification:**

A 1/8 page legal notice was published in the Huntington Beach/Fountain Valley Independent on March 29, 2007, and notices were sent to individuals/organizations requesting notification (Planning Department's Notification Matrix), as well as other interested parties. As of April 3, 2007 no communication supporting or opposing the request has been received.

**Application Processing Dates:**

**DATE OF COMPLETE APPLICATION:**                      **MANDATORY PROCESSING DATE(S):**

Not Applicable

Legislative Action – Not Applicable

Legislative actions are not subject to mandatory processing dates. However, ZTA No. 06-08 must be in effect prior to the expiration of the moratorium on March 19, 2008.

**BACKGROUND:**

In August 2006 the City Council adopted a moratorium on the installation of wireless telecommunication facilities in the public right-of-way. This moratorium was extended on September 18, 2006 for a six-month period. On March 5, 2007 the City Council extended the moratorium for one year through March 18, 2008 and adopted interim regulations to allow for the processing of permits notwithstanding the moratorium. On March 27, 2007 a study session was held with the Planning Commission to review and discuss the proposed amendment.

**ANALYSIS:**

With the adoption of the moratorium and the interim ordinance by the City Council, the City Attorney's Office was instructed to prepare updates to the Huntington Beach Zoning and Subdivision Ordinance that are consistent with current state and federal law.

The court recognized the right of municipalities to exercise reasonable control over the time, place and manner by which telephone corporations use the public right-of-way to install and operate their facilities. The Court of Appeals concluded that a wireless ordinance that employs a permitting process to regulate the place including location of the equipment and the manner or the appearance and characteristics of the premises in which wireless providers use the right-of-way was authorized by the California Public Utilities Code.

The intent of the proposed ordinance is to encourage and facilitate wireless communication facilities where they are invisible to pedestrians, co-located with other facilities or installed underground to reduce visual clutter. The proposed changes include the requirements for a Wireless Permit application and clarification of requirements for wireless facilities in the public right-of-way, and on public and private sites.

Through the submittal of a Wireless Permit Application, the applicant must demonstrate that the wireless communication facility is located in the least obtrusive location feasible so as to eliminate any gap in service. Additionally, the applicant must respond to various questions addressing compatibility with surrounding environment, screening or camouflage, massing and location, proportion and potential interference issues. With the Wireless Permit process, certain subsections or line items are either deleted or relocated within the permit process. The Planning Commission directed staff to illustrate the amendment in a table format. These changes are illustrated in Table 1.

**TABLE 1: WIRELESS ORDINANCE AMENDMENT -- SECTION 230.96**

<b>SUBSECTIONS-LEGISLATIVE DRAFT</b>	<b>AMENDMENTS</b>
230.96 A	Modified or Added Language
230.96 B. 9, 10, 11	Language Relocated/Added Language
230.96 C	Modified or Added Language
230.96 D	New Process and Relocated Language
230.96 E. 1	Relocated Existing Language
230.96 E. 2	Modified or Added Language
230.96 E. 3	Relocated Existing Language
230.96 F. 9, 10, 11	Relocated Existing Language
230.96 F.12	Modified or Added Language
230.96 F.13	Modified or Added Language

The City Attorney's Office is also in the process of conferring with the Department of Public Works on proposed amendments to the encroachment permit process.

**ATTACHMENTS:**

1. ~~Suggested Findings for Approval - ZTA No. 06-08~~
2. ~~Draft Ordinance for ZTA No. 06-08~~
3. ~~Legislative Draft for ZTA No. 06-08~~
4. Wireless Permit Application
5. City Council Report dated March 5, 2007

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**CITY OF HUNTINGTON BEACH  
WIRELESS PERMIT APPLICATION FORM**

This form is designed to elicit required technical information in support of an application for a new or modified permit (generally, the "Permit") for a wireless site within the City of Huntington Beach.

This application is a mandatory element of the application process. No application for a new wireless site Permit or for a modification of an existing wireless site Permit shall be considered for determination of completeness until this form and required attachments are provided to the City of Huntington Beach.

Every page of this form, including this page, must be completed and submitted to the City of Huntington Beach, and each page must be signed and/or initialed where indicated.

Questions about this form or the required information to be provided should be directed to the City Planner assigned to your project or to the Director of Planning at (714) 536-5271 for the City of Huntington Beach.

You are advised to be familiar with the City's Municipal Code and Zoning and Subdivision Ordinance, which establishes standards and guidelines for the installation of wireless communications facilities in the City of Huntington Beach.

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06-595 / 9174 3/30/07

Page 1 of 9

Applicant Must Initial Here: \_\_\_\_\_

**ATTACHMENT NO. 4.1**

1.00: **Applicant Information**

- 1.01: Project Address: \_\_\_\_\_
- 1.02: Project Assessors Parcel  
Number: \_\_\_\_\_
- 1.03: Name of Applicant: \_\_\_\_\_
- 1.04: Name of Property Owner: \_\_\_\_\_
- 1.05: Applicant is:  Owner  Owner's representative   
Other
- 1.06: Applicant's Address Line 1: \_\_\_\_\_
- 1.07: Applicant's Address Line 2: \_\_\_\_\_
- 1.08: Applicant's Address Line 3: \_\_\_\_\_
- 1.09: Applicants Address Line 4: \_\_\_\_\_
- 1.10: Applicant's Phone number: \_\_\_\_\_
- 1.11: Applicant's Mobile number: \_\_\_\_\_
- 1.12: Applicant's Fax number: \_\_\_\_\_
- 1.13: Applicant's Email address: \_\_\_\_\_

If Applicant is the Property Owner and the name and contact information above is the same, initial here \_\_\_\_\_ and proceed to 3.01.

<Continue to next page>

**2.00: Project Owner Information**

2.01: Disclose the Names, Addresses, contact persons, and telephone numbers for all Project Owners (use additional sheets if required and mark as "Attachment 2.01"):

2.02: Project Owner Name (i.e., carrier or licensee): \_\_\_\_\_

2.03: Address (line 1): \_\_\_\_\_

2.04: Address (line 2): \_\_\_\_\_

2.05: City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

2.06: Contact Person Name: \_\_\_\_\_

2.07: Contact Person's telephone number/extension: \_\_\_\_\_

2.08: If the Applicant is not the project owner, attach a letter of agency appointing the Applicant as representative of the Project Owner(s) in connection with this application. Designate the letter of agency as "Attachment 2.08".

Initial here \_\_\_\_\_ if Attachment 2.08 is attached to this application, and continue to 3.00.

2.09: If the Applicant is not the property owner, attach a letter of agency appointing the Applicant as representative of the Property Owner in connection with this application. Designate the letter of agency as "Attachment 2.09".

Initial here \_\_\_\_\_ if Attachment 2.09 is attached to this application, and continue to 3.00.

<Continue to next page>

**3.00: Project Purpose**

**3.01: Justification.** Provide a non-technical narrative, accompanied by written documentation where appropriate, which explains the purpose(s) of the proposed Project.

**3.02:** Indicate whether the dominant purpose of the Project is to add additional network capacity, to increase existing signal level, or to provide new radio frequency coverage (check only one).

Add network capacity without adding significant new RF coverage area

Increase the existing RF signal level in an existing coverage area

Provide new radio frequency coverage in a significant area not already served by existing radio frequency coverage by the same Owner or affiliated entity (such as a roaming agreement with an affiliated entity for a cellular or PCS carrier).

Other

**3.03** If the answer in 4.02 is not "Other" proceed to 5.00.

**3.04** Attach a statement fully and expansively describing the "Other" dominant purpose of this project. Designate this attachment, "Attachment 4.04".

Initial here \_\_\_\_\_ to indicate that Attachment 4.04 is attached to this application.

<Continue to next page>

4.00: **Radio Frequency Coverage Maps**

4.01: Where a licensee intends to provide radio frequency geographic coverage to a defined area from the Project (including applicants in the cellular, PCS, broadcast, ESMR/SMR categories), the coverage maps and information requested below are required attachments. All others proceed to 7.00.

For the coverage maps required here, the following mandatory requirements apply:

1. The size of each submitted map must be no smaller than 8.5" by 11", and all maps must be of the same physical size, scale, and depict the same geographic area. Include major streets and street names on each map. All maps must share a common color scheme.
2. If the FCC rules for any proposed radio service define a minimum radio frequency signal strength level, that level must be shown on the map in a color easily distinguishable from the base paper or transparency layer, and adequately identified by RF level and map color or gradient in the map legend. If no minimum signal level is defined by the FCC rules you must indicate that in the legend of each RF coverage map. You may show other RF signal level(s) on the map so long as they are adequately identified by objective RF level and map color or gradient in the map legend.
3. RF coverage maps with labels such as, "In-Building" "In-Car" and "Outdoor" or referencing a link budget without corresponding signal strengths in units of "dBm" will be rejected.
4. Where the City of Huntington Beach determines that one or more submitted maps are inadequate, it reserves the right to require that one or more supplemental maps with greater or different detail be submitted.

4.02: Map of existing RF coverage within the City of Huntington Beach on the same network, if any (if none, so state). This map should not depict any RF signal coverage to be provided by the Project. Designate this map "Attachment 6.02".

Initial here \_\_\_\_\_ to indicate that Attachment 6.02 is attached to this application.

4.03: Map of RF coverage to be provided only by the Project. This map should not depict any RF coverage provided by any other existing or proposed wireless sites. Designate this map "Attachment 6.03".

Initial here \_\_\_\_\_ to indicate that Attachment 6.03 is attached to this application.

4.04: Map of RF coverage to be provided by the Project and by other wireless sites on the same network should the Project be approved. Designate this map "Attachment 6.04".

Initial here \_\_\_\_\_ to indicate that Attachment 6.04 is attached to this application.

<Continue to next page>

**5.00: Project Photographs and Photo Simulations**

5.01: Where an Applicant proposes to construct or modify a wireless site, the Applicant shall submit pre-project photographs, and photo simulations showing the project after completion of construction, all consistent with the following standards:

1. Minimum size of each photograph and photo simulation must be 8.5" by 11" (portrait or landscape orientation);
2. All elements of the project as proposed by the Applicant must be shown in one or more close-in photo simulations.
3. The overall project as proposed by the Applicant must be shown in five or more area photos and photo simulations. Photos and photo simulation views must, at a minimum, be taken from widely scattered positions separated by an angle of no greater than 72 degrees from any other photo location.
4. For each photograph and photo simulation, show on an area map the location and perspective angle of each photograph and photo simulation in relationship to the Project location.
5. All 'before' and after photos and photo simulations must be of the same scale. For example, do not place a smaller 'before' photo in a box on the same page as a large 'after' photo simulation.

The number of site photos, and photo simulations, and the actual or simulated camera location of these photos and photo simulations are subject to City of Huntington Beach determination. The Applicant must submit photos and photo simulations consistent with these instructions, and be prepared to provide additional photos and photo simulations should they be requested by the City of Huntington Beach.

<Continue to next page>

6.00: **Candidate Sites**

6.01: For applicants in the cellular, PCS, broadcast, ESMR/SMR categories, and others as requested by the City of Huntington Beach, the information requested in Section 8 is required. All others proceed to 9.00.

6.02: Has the Applicant or Owner or anyone working on behalf of the Applicant or Owner secured or attempted to secure any leases or lease-options or similar formal or informal agreements in connection with this project for any sites other than the candidate site identified at 1.01 and 1.02?  Yes  No

6.03: If the answer to 8.02 is NO, proceed to 8.05.

6.04: Provide the physical address of each such other location, and provide an expansive technical explanation as to why each such other site was disfavored over the Project Site. Designate this attachment "Attachment 8.04".

Initial here \_\_\_\_\_ to indicate that Attachment 8.04 is attached to this application.

6.05: Considering this proposed site, is it the one and only one location within or without the City of Huntington Beach that can possibly meet the objectives of the project?  
 Yes  No

6.06: If the answer to 8.05 is NO, proceed to 9.00.

6.07: Provide a technically expansive and detailed explanation supported as required by comprehensive radio frequency data fully describing why the proposed site is the one and only one location within or without the City of Huntington Beach that can possibly meet the radio frequency objectives of the project. Explain, in exact and expansive technical detail, all of the objectives of this project. Designate this attachment, "Attachment 8.07".

Initial here \_\_\_\_\_ to indicate that Attachment 8.07 is attached to this application.

<Continue to next page>

**7.00: Identification of Key Persons**

7.01: Identify by name, title, company affiliation, work address, telephone number and extension, and email address the key person or persons most knowledgeable regarding:

7.10 (1) The site selection for the proposed project, including alternatives;  
7.11 Name: \_\_\_\_\_  
7.12 Title: \_\_\_\_\_  
7.13 Company Affiliation: \_\_\_\_\_  
7.14 Work Address: \_\_\_\_\_  
7.15 Telephone / Ext.: \_\_\_\_\_  
7.16 Email Address: \_\_\_\_\_

7.20 (2) The radio frequency engineering of the proposed project;  
7.21 Name: \_\_\_\_\_  
7.22 Title: \_\_\_\_\_  
7.23 Company Affiliation: \_\_\_\_\_  
7.24 Work Address: \_\_\_\_\_  
7.25 Telephone / Ext.: \_\_\_\_\_  
7.26 Email Address: \_\_\_\_\_

7.30 (3) Rejection of other candidate sites evaluated, if any;  
7.31 Name: \_\_\_\_\_  
7.32 Title: \_\_\_\_\_  
7.33 Company Affiliation: \_\_\_\_\_  
7.34 Work Address: \_\_\_\_\_  
7.35 Telephone / Ext.: \_\_\_\_\_  
7.36 Email Address: \_\_\_\_\_

7.40 (4) Approval of the selection of the proposed site identified in this project.  
7.41 Name: \_\_\_\_\_  
7.42 Title: \_\_\_\_\_  
7.43 Company Affiliation: \_\_\_\_\_  
7.44 Work Address: \_\_\_\_\_  
7.45 Telephone / Ext.: \_\_\_\_\_  
7.46 Email Address: \_\_\_\_\_

7.5 If more than one person is/was involved in any of the four functions identified in this section, attach a separate sheet providing the same information for each additional person, and identifying which function or functions are/were performed by each additional person. Designate this attachment "Attachment 7.5".

Initial here \_\_\_\_\_ to indicate that the information above is complete and there is no Attachment 7.5, or initial here \_\_\_\_\_ to indicate that Attachment 7.5 is attached to this application.

<Continue to next page>

**8.00: Form Certification**

8.01: The undersigned certifies on behalf of itself and the Applicant that the answers provided here are true and complete to the best of the undersigned's knowledge.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Print Company Name

\_\_\_\_\_  
Telephone Number/extension

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Date Signed

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**ATTACHMENT NO. 6**

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# ZONING TEXT AMENDMENT NO. 06-08 and AMENDMENTS TO HBMC CHAPTERS 12 AND 17

Amending Chapter 230 of Zoning and Subdivision  
Ordinance and Adopt Amendments to Municipal Code  
Chapters 12 and 17 as they pertain to Wireless  
Communication Facilities and the Public Right-of-Way

September 4, 2007

## REQUEST

Amendments to Chapter 230 (Site Standards) of  
the Huntington Beach Zoning and Subdivision  
Ordinance and Amendments to Chapters 12 and  
17 of the Municipal Code pertaining to Wireless  
Communication Facilities and the Public Right-of-  
Way.

- Allows the City to exercise reasonable control over the time, place, and manner for the installation of wireless facilities including those in the public right-of-way.
- Establishes a Wireless Permit application process.
- Modifies, relocates, or adds language for better clarification of existing criteria.

## BACKGROUND

- In August 2006 City Council adopted a moratorium on the installation of wireless communication facilities in the public right-of-way.
- On September 18, 2006, the moratorium was extended for six months.
- On March 5, 2007, City Council extended the Interim moratorium for a period of one year and included interim regulations.
- On March 27, 2007, a study session was held with the Planning Commission to review and discuss the proposed amendment.

## BACKGROUND (cont'd)

- On April 10, 2007 the Planning Commission recommended approval with some modifications to the ordinance language.

## ANALYSIS

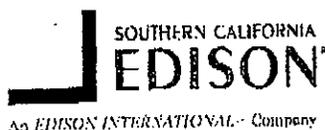
- The City Attorney's Office was instructed to prepare updates to HBZSO that are consistent with current state and federal law.
- The court recognized the right of municipalities to exercise control over wireless facilities with respect to time, place, and location.
- The draft ordinance is consistent with the interim ordinance adopted by the City Council.

## ANALYSIS (cont'd)

- The draft ordinances require that all facilities installed in the public right-of-way be underground except for antennas.
- The ordinances encourage the co-location with other wireless facilities in an effort to minimize visual clutter.
- The Wireless Permit process is applicable to all wireless facility proposals regardless of location.
- Amendments to the ordinances either relocate existing criteria or merely adds text for clarification.

## RECOMMENDATION

- Staff recommends that City Council approve Zoning Text Amendment No. 06-08 and the amendments to HBMC Chapters 12 and 17 with findings.



Tami Bui  
Region Manager  
Local Public Affairs

September 12, 2007

Travis Hopkins  
Acting Director of Engineering and Transportation  
PO Box 190  
2000 Main Street  
Huntington Beach, CA 92648

Dear Mr. Travis Hopkins:

The Southern California Edison Company (SCE) appreciates the opportunity to review and comment on the subject amendments. SCE also recognizes the city staff's spirit of cooperation in its efforts to accommodate SCE's concerns in the amendments.

**City of Huntington Beach Ordinance Amendments  
Wireless Facilities**

**Legislative Draft Ordinance 3780  
Comments**

**Requirement:** Section 12.13.035 requires all facilities constructed within the public right-of way shall be underground except for antennae.

**Comment:** SCE designs and constructs its electric facilities in accordance to the California Public Utilities Commission (CPUC) General Orders 95 and 128, overhead construction and underground standards respectively. SCE also converts its overhead facilities to underground in accordance to the CPUC's Rule 20 Tariff requirements.

**Recommendation:** State requirements govern the conversion of overhead to underground electrical facilities. Exempt SCE from this requirement.

**Requirement:** Section 12.13.080.3b requires the provision of digital maps, photos or artist renderings of facilities.

**Comment:** This requirement would add an undue cost burden on SCE's ratepayers.

**Recommendation:** Normal installation of poles or equipment approved by the CPUC required in the public right-of-way as a necessity for utility operations should not require plans for improvements, photographs, or artist renderings. Furthermore, the Federal Energy Regulatory Commission (FERC) has recognized that the electric system facilities

7355 Bolsa Ave.  
Westminster, CA 92683-5210  
714-895-0271/PAX 54271  
Fax 714-895-0188

D-2 COMMUNICATION

are a key component of American infrastructure, and would be an inviting target for terrorists. FERC has taken the position that restricting access to this vital infrastructure is in the best interests of national security. As a result, SCE has adopted procedures to take FERC's lead on this issue to not provide this information unnecessarily into the public domain. Exempt SCE from this requirement.

**Requirement:** Section 12.13.080.10 refers to above ground cabinet guidelines.

**Comment:** SCE does not have the Above Ground Facilities (AGF) Guidelines as defined in that section and SCE would need to review those guidelines to ensure it can comply with the requirement.

**Recommendation:** City provides its AGF Guidelines to SCE for review and comment.

**Requirement:** Section 12.13.080.10 requires advance notice to the public on the above ground facilities pursuant to the guidelines of the proposed quantity, precise dimensions, design, color, type, potential noise and location of above ground facilities.

**Comment:** SCE does not have the Above Ground Facilities Guidelines and SCE would have to review the guidelines to ensure it can comply with the requirement. Furthermore, the type, color, design, size, etc. are governed by the CPUC General Order 128.

**Recommendation:** City provides its AGF Guidelines to SCE for review and comment.

**Requirement:** Section 12.13.240.b.1 requires a 72 hour advance notice when excavating and posting at the site.

**Comment:** SCE currently provides 24 to 48 hour advance notice when excavating and has had a long history of good coordination with the city and posting notice at the site adds an undue burden, unless the project is expected to take impact the area for a long period of time.

**Recommendation:** Exempt SCE from this requirement.

**Requirement:** Section 12.13.240.b2 requires 10 calendar days prior notice to commencement of the excavation.

**Comment:** SCE has had a long history of good coordination with the city and has submitted plans well in advance of most projects requiring excavation. In addition, SCE has a postcard notification process for neighborhoods affected by planned power outages or projects affecting neighborhoods with inconveniences for prolonged periods of time.

**Recommendation:** Exempt SCE from this requirement.

**Requirement:** Section 12.38.060 requires a hold harmless agreement.

**Comment:** SCE's electric franchise agreement with the city has a hold harmless clause and SCE will not enter into another agreement that may conflict, exceed or restrict the existing hold harmless agreement. Furthermore, SCE is self insured and meets the city requirements.

**Recommendation:** Exempt SCE from this requirement.

Again, thank you for the opportunity to review and comment on the subject amendments. I can be reached at 714-895-0271 with any questions.

Sincerely,

Tami Bui  
Region Manager, Local Public Affairs  
Southern California Edison

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