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Title:	CONSIDERATION OF AN ORDINANCE TO ALLOW AND REGULATE WIRELESS COMMUNICATION FACILITIES IN THE PUBLIC RIGHT-OF-WAY AND CORRESPONDING DESIGN STANDARDS, AND UPDATE ON AT&T'S PROPOSAL FOR MULTIPLE INSTALLATIONS OF SMALLER WIRELESS COMMUNICATION FACILITIES TO PROVIDE REPLACEMENT COVERAGE TO EXISTING SITES LOCATED AT 20TH AND 29TH COURT (Continued from meeting of September 25, 2018) (Assistant City Attorney Lauren Langer, Community Development Director Ken Robertson, and Public Works Director Glen Kau)		
Sponsors:			
Indexes:			
Code sections:			
Attachments:	1. 1. Draft Ordinance (Exhibit A), 2. 2. Draft Design Standards (Exhibit B), 3. 3. Photos of Sample Wireless Facility Designs- Prohibited and Allowed, 4. 4. Link to November 28, 2017, City Council staff report and attachments (Page 8 of Agenda, Municipal Matters Item c), 5. 5. Link to January 26, 2016, City Council staff report and attachments (Page 11 of Agenda, Municipal Matters Item d), 6. 6. Link to October 20, 2015, Planning Commission staff report and attachments (Section II Public Hearing Item 6), 7. 7. Link to July 21, 2015, Planning Commission staff report and attachments (Section II Public Hearing Item 6), 8. 8. Link to January 27, 2015, City Council staff report, 9. 9. SUPPLEMENTAL eComment from Jim Sullivan (submitted 1-4-19 at 12:49pm).pdf, 10. 10. SUPPLEMENTAL Email from Pam Tatreau (added 1-7-19 at 3pm).pdf, 11. 11. SUPPLEMENTAL Email from David Grethen (added 1-8-19 at 2pm).pdf, 12. 12. SUPPLEMENTAL Letter from AT&T (added 1-8-19 at 4pm).pdf, 13. 13. SUPPLEMENTAL Letter from Verizon Wireless (added 1-8-19 at 4:30pm).pdf, 14. 14. SUPPLEMENTAL Letter from Crown Castle (added 1-8-19 at 4:30pm).pdf, 15. 15. SUPPLEMENTAL PowerPoint Presentation (added 1-8-19 at 8pm).pdf, 16. 16. SUPPLEMENTAL Information submitted by Joe Imbriano at meeting.pdf		

Date	Ver.	Action By	Action	Result
1/8/2019	1	City Council		

Honorable Mayor and Members of the Hermosa Beach City Council
Regular Meeting of January 8, 2019

CONSIDERATION OF AN ORDINANCE TO ALLOW AND REGULATE WIRELESS COMMUNICATION FACILITIES IN THE PUBLIC RIGHT-OF-WAY AND CORRESPONDING DESIGN STANDARDS, AND UPDATE ON AT&T'S PROPOSAL FOR MULTIPLE INSTALLATIONS OF SMALLER WIRELESS COMMUNICATION FACILITIES TO PROVIDE REPLACEMENT COVERAGE TO EXISTING SITES LOCATED AT 20TH AND 29TH COURT

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(Continued from meeting of September 25, 2018)

(Assistant City Attorney Lauren Langer,
Community Development Director Ken Robertson,
and Public Works Director Glen Kau)

Recommended Action:

Staff recommends that the City Council:

1. Introduce for first reading the attached ordinance (Exhibit A) to amend Municipal Code, Title 12 to regulate wireless telecommunication facilities in the public right of way, and determine the project is not subject to the California Environmental Quality Act;
2. Adopt the attached Resolution to approve the corresponding Design Standards for wireless telecommunication facilities in the public right of way;
3. Direct staff to bring back a master license agreement with a standard lease rate for use of any public property for these facilities; and
4. Direct Public Works staff to bring back an amendment to the master fee schedule to establish application fees and penalty fees.

Executive Summary:

The demand for wireless broadband is expected to grow exponentially over the next several years. This growth is a result of the implementation of the tremendous amount of digital content such as streaming video, social media, Smart City applications, robots, drones, self-driving cars, artificial intelligence, and many more Internet of Things (IoT), applications.

Traditionally, wireless antennas and equipment were primarily installed on large towers on private land and on the rooftops of buildings. These deployments are subject to conditional use permit approval under the Zoning Code and are currently prohibited in residential zones.

In recent years, companies increasingly seek to install wireless facilities in the City's public right of way ("ROW") on utility poles, streetlights and new poles. To accommodate the ever-growing demand, the wireless broadband telecommunications industry is starting to look for small cell 5G (fifth generation of cellular mobile communications) technology, which is a tenfold improvement in capacity over existing broadband. 5G technology is distinguished from the present 4G based wireless service by use of low power transmitters with coverage radius of approximately 400 feet - 5G thus requires close spacing of antennas and more of them. Street light poles and other poles are, therefore, ideally suited for 5G antenna placement due to their sheer numbers and locations where they are deployed throughout municipalities. Current predictions indicate that the next wave of wireless facility deployment (5G) will involve $275 billion in investment over the next decade, with the vast majority of these new facilities anticipated to be placed in the ROW. Historically, telecommunications installations in the ROW are typically addressed through encroachment permits. However, the City's existing Municipal Code contains very minimal and outdated standards or regulations designed to address the unique aesthetic, safety, operational and locational issues in connection with the installation of wireless facilities in the ROW.

This report introduces an ordinance to provide the regulatory framework and standards for permitting the installation of small wireless facilities within the City's public right of way. Staff has been working with the City Attorney's office to draft an ordinance following City Council direction on November 28, 2017. As staff was finalizing the ordinance to present to the City Council over the summer, the

Federal Communications Commission issued an order concerning small wireless facilities in the ROW. The draft ordinance and corresponding design standards have been revised in response. The proposed ordinance provides two benefits: (1) it updates the City's outdated regulations allowing the City to respond to an increased interest in locating small wireless facilities in the ROW (as opposed to private property); and (2) it provides a mechanism to allow two existing wireless facilities to re-locate to other locations in the ROW, which will resolve longstanding issues surrounding the facilities located in narrow residential alleys at 29th Court and 20th Court.

Background:

City's Current Rules and Regulations:

The Hermosa Beach Municipal Code is outdated and ambiguous as to whether the ROW is subject to the prohibition of wireless communication facilities (WCFs) in residential zones. The regulations governing the ROW date back to 1994 and were originally drafted for traditional telephone corporations. It should be noted that the City's ROWs are not zoned and are considered "unclassified" property under the Zoning Ordinance. Yet to implement the intent of the City's wireless regulations in the Zoning Code, and because the Code is ambiguous, the prohibition against WCFs in the residential zones has typically been extended to the ROW adjacent to the residentially zoned areas. Since so much of the City is residential, it is becoming more challenging for wireless carriers to find feasible locations only in the City's commercial zones. The City has heard at least one argument from a carrier that not allowing any wireless in the ROW in residential zones effectively prohibits service, which could create problems under Federal and State law. The City must be careful not to "effectively prohibit" wireless service by preventing a carrier from closing a "significant gap" in service coverage. The effective prohibition inquiry involves a two-pronged analysis requiring (1) the showing of a 'significant gap' in service coverage and (2) some inquiry into the feasibility of alternative facilities or site locations.

Limits of City Authority and Regulatory Setting:

The City's role in the siting and design of WCFs is generally limited to aesthetics. Essentially, the Federal Telecommunications Act is intended to ensure that the public has sufficient access to telecommunication services. Based on this Federal law, a local government shall not prohibit or have the effect of prohibiting the provision of personal wireless services. Further, no State or local government may regulate cell tower placement based on "the environmental (health) effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions." A zoning authority's consideration of health effects, including potential effects on property values due to potential radio frequency emissions, may not serve as "substantial evidence" for purposes of denying a WCF.

As utilities, telephone companies, which include wireless telecommunications providers, may use the ROW to deploy facilities under their State franchise conferred in California Public Utilities Code Section 7901. That right does have some limitations. Specifically, Section 7901 provides that such use must be "in such manner and at such points as not to incommode the public use of the road…." The phrase "incommode the public use" in Section 7901 means "to unreasonably subject the public use to inconvenience or discomfort; to unreasonably trouble, annoy, molest, embarrass, inconvenience; to unreasonably hinder, impede, or obstruct the public use." "Incommode" is "broad enough 'to be inclusive of concerns related to the appearance of a facility'", and therefore, Section 7901 does not prohibit local governments from conditioning the approval of a particular permanent siting permit on aesthetic concerns.

In addition to Section 7901, Public Utilities Code Section 2902 also protects a local government's

right “to supervise and regulate the relationship between a public utility and the general public in matters affecting the health, convenience, and safety of the general public, including matters such as the use and repair of public streets by any public utility, the location of the poles, wires, mains, or conduits of any public utility, on, under, or above any public streets…within the limits of the municipal corporation.” This provision is a further basis for a local government to restrict the location of proposed facilities due to public safety reasons or other local concerns or even deny applications in appropriate circumstances.

Further, a local government has the right under Section 7901.1 “to exercise reasonable control as to the time, place, and manner in which roads…are accessed [by telephone companies].” The “time, place and manner” of temporary access refers to “when, where, and how telecommunications service providers gain entry to the public rights-of-way.” This includes a requirement for obtaining encroachment permits. There are other tangential constraints on local regulation from State and Federal law. At the State level, the CPUC may have authority to invoke the statewide interest in telecommunications services to take action to preempt a local ordinances for particular telecommunications projects.

Recent FCC Orders:

In addition, recent changes in Federal law place shortened time frames and other requirements on local review of wireless facility installations in the ROW. Under a Federal Communications Commission (“FCC”) declaratory order and regulations[1] that are expected to go into effect on January 14, 2019, if a city does not render a decision on a small wireless facility application within a specified time period (60 days for installations on existing structures, and 90 days for new structures), the failure to meet the deadline for action will be presumed to violate federal law (both a failure to act within a reasonable period of time and an effective prohibition of wireless services). On aesthetics and undergrounding, the FCC declares that such requirements will not be preempted if they are reasonable, no more burdensome than those applied to other types of infrastructure deployments, and objective and published in advance. Further, another FCC order that was released in August prohibits cities from imposing a moratorium on wireless installations, which means that there can be no pause in accepting or processing applications to allow a city to study and address potential issues.[2]

While the legal validity of both of these FCC orders is being litigated, the effectiveness of the orders has not been stayed pending the resolution of the litigation.[3] Staff therefore is taking steps discussed in this report to address wireless deployments in the ROW consistent with the new Federal regulations, and among them, recommends Council adopt an ordinance setting out the permitting procedures for these facilities in the ROW. Should the City Council approve the proposed ordinance, staff will bring back the Master License Agreement for use of City-owned infrastructure in the ROW and fee resolutions at a future meeting. Additionally, staff has prepared draft design standards that will provide the industry direction on the City’s aesthetic, location and design requirements. This draft document is provided as an attachment to this report and once approved by the Council, will be published by mid-January, as required by the FCC order.

Discussion:

Summary of Proposed Ordinance:

The ordinance would add a new Chapter 12.18 to the Municipal Code, Wireless Facilities in the Public Right of Way. For all wireless facility installations in the ROW, the ordinance provides, among other regulations, the permit and review procedures as well as the operation and maintenance standards. The ordinance treats wireless installations in the ROW similar to other installations in the

ROW by requiring an encroachment permit. Specifically, the ordinance sets additional standards and requirements for obtaining an encroachment permit to install wireless facilities. The ordinance balances the community's need for wireless services, the industry's need to deploy quickly, and the City's obligation to maintain safety and protect the aesthetic qualities of our neighborhoods. Finally, the ordinance allows for necessary adaptability, by allowing the Director to publish administrative regulations to help implement the ordinance. Once the encroachment permit is issued, the carrier may still need to obtain traffic control plans, construction permits and if necessary, a license to attach to City infrastructure.

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[1] *See In re Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Federal Communications Commission, FCC 18-133, WT Docket 17-79, WC Docket 17-84 (rel. Sept. 27, 2018).

[2] *See In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, FCC 18-111, WC Docket 17-84, WT Docket 17-79 (rel. Aug. 3, 2018).

[3] Local governments and associations filed a petition to the FCC to stay the effectiveness of the FCC order pending resolution of the appeals. As of the time of writing, the FCC had not acted on the petition.

Under the ordinance, wireless encroachment permits are approved by the Public Works Director and may be appealed to a hearing officer. Given the short time that the City has to act on these applications under Federal law, having two days to process appeals, staff recommends that the appeals be heard by an independent hearing officer, who can hold hearings on short notice within the short time frame. Doing so also provides an independent level of oversight over the decisions before they become final and subject to challenge in court.

The ordinance contains a comprehensive list of permit conditions that will apply to wireless encroachment permits, including insurance requirements, indemnity, performance bond for removal upon abandonment, and maintenance and inspection requirements. The permits are in effect for a term of 10 years, which stems from a State law that allows the City to limit the permits to 10 years; compared to utility poles, for example, which are erected in perpetuity.

During the November 28, 2017 City Council meeting, the Council agreed that the siting of WCFs within Open Space zones should be avoided due to their more intrusive height and bulk, use of ground space for support equipment and higher power output. Small cell sites in the ROW were favorable due to their less intrusive scale, lower output and distribution throughout the City. The ordinance responds to that direction and only covers small wireless facilities in the ROW.

The Council also stressed the importance of public awareness and involvement for WCFs. The ordinance also requires applicants to provide mailed notices to owners, occupants and multi-family building property managers within 300 feet of the proposed facility before they are approved.

Design Standards:

The ordinance provides that design and development standards will be established separately. Given how fast this technology is changing, staff recommends having these standards be adopted by separate resolution and not placing them in the Municipal Code. Given the frequent and often important changes to the law and technology of wireless installations, especially the pending litigation surrounding the FCC Order, administrative design standards affords the City the flexibility to readily

adapt and tailor its regulations to these changes and the concerns of the City. Many cities follow this format. The draft Design Standards are attached to this report for City Council approval. The FCC order also requires that cities have design standards published by mid-January. The intent of these design standards is to establish objective camouflage and concealment elements for small wireless facilities in the ROW. The Public Works Director may waive or impose additional standards if doing so is conducive to site being the least intrusive, maximally blending with the natural and built environment of the City, and protecting the aesthetic character of the City, or if a standard creates a prohibition on service.

Siting these facilities is a difficult task for the carriers, as they try to meet the City's goals while providing the coverage they need to serve their customers. The design standards require a pre-application meeting during which City staff can discuss the proposal with the carrier and confirm whether the proposal meets the standards. This also provides the carriers an opportunity to discuss location with staff and attempt to site the facilities in a way that best meets the City's aesthetic and safety goals. The standards also try to balance the unique land use characteristics in Hermosa Beach. For example, staff proposes that in the City's narrow alleys adjacent to residential properties, the facilities be placed above roof lines, to avoid facilities next to residential windows and decks. On walk streets, staff proposes that the facilities be located lower to avoid a major disruption in the aesthetics and views. Wireless facilities are generally required to be as small, short and unobtrusive as possible. The tradeoff of having smaller and shorter facilities is that it may result in more facilities in the ROW to achieve the coverage demands that the carriers desire. Staff believes that with required concealment elements this is an appropriate tradeoff. Staff also recommends that when there is a choice in location, carriers should choose to site on a pole or street light that is between structures and not immediately adjacent to a structure. The proposed standards include that WCFs be prohibited on The Strand and Pier Plaza, and that lighting be prohibited unless required by the Federal Aviation Administration. Staff recommends that the City Council adopt the design standards with the Ordinance.

Update on AT&T's Proposal:
Two WCFs located in narrow residential alleys at 29th Court and 20th Court have been the subject of longstanding complaints and concerns of nearby residents due to the proximity of these antennas next to and viewable from private homes. Federal law prevents the City from making regulatory decisions based on concerns from the residents of alleged health impacts from these facilities. Nevertheless, the City has been working closely and collaboratively with AT&T since July 2014 to find relocation sites.

For comprehensive background information on these two specific facilities, please refer to the attachment section which includes links to previous City Council and Planning Commission reports.

Relocation options for both sites have been limited based on topography of the area and the City's wireless regulations that currently prohibit wireless in the residential zones and in the ROW. Since November of 2017, AT&T has been working on preparing applications for a series of small cell sites in the ROW to provide replacement coverage for the removal and replacement of the existing 20th and 29th Court facilities and to address its growing coverage needs. AT&T expects to submit its applications shortly after ordinance adoption, but will need an ordinance to reference to ensure that their applications are complete prior to submittal. AT&T intends to submit applications for 16 sites. Twelve sites are required to provide replacement coverage for the 29th and 20th Court facilities and 4 additional sites to fill remaining gaps in coverage, which currently exist.

Next Steps:
Once the details of the ordinance are approved by the City Council, staff will bring to City Council a proposed Master License Agreement (MLA) for use of City infrastructure in the ROW and a fee resolution for any fees associated with these applications. Given the short timing to approve these applications, the MLA would be a template that once approved by the Council, could be issued by the Public Works Director with the wireless encroachment permit. Any material changes to the template would need to be approved by the Council and would not be approved at the Director level. In addition to the ordinance, design standards resolution, MLA and fee resolution, City staff is developing a standard application for wireless facility installations in the ROW, all of which together will serve as the City's framework for addressing applications for wireless facility installations in the ROW. As envisioned under Federal and State law, the framework promotes swift processing of simple and routine attachments of small wireless facilities in the ROW. Adoption of the proposed framework will help the City meet the strict requirements of Federal law with the necessary flexibility to adapt as the law and the technology changes.

General Plan Consistency:
This report and associated recommendations have been evaluated for their consistency with the City's General Plan. Chapter 7 of the City's General Plan Infrastructure element states that telecommunication systems support advanced and innovative communication methods between residents, businesses, visitors, and the City. Telecommunications infrastructure and services are critical to businesses for economic growth and job creation. Residents rely on telecommunications for quality of life, education, research, and access to health care and government services. Telecommunications services in Hermosa Beach include cable television, high speed Internet, and wireless and ground-line telephone services. A variety of private companies provides these services and have infrastructure located throughout the City to provide consistent and reliable telecommunication services to the community. In August 2015, Hermosa Beach had a total of 5 mobile providers.

The ordinance is consistent with General Plan Infrastructure Goal 1 which aims to ensure infrastructure systems are functional, safe, and well maintained through implementing the following policies:

Infrastructure, Goal 1 Policies

- **1.1 Infrastructure systems plan.** Establish and adopt an integrated, holistic systems approach to guide infrastructure development, improvement, maintenance, and resilience.
- **1.3 Right-of-way coordination.** Ensure infrastructure maintenance and repair projects within the public right-of-way are coordinated with utilities and agencies to minimize additional roadway repaving or accelerated deterioration.
- **1.4 Fair share assessments.** Require new development and redevelopment projects to pay their fair share of the cost of infrastructure improvements needed to serve the project, and ensure that needed infrastructure is available prior to or at the time of project completion.
- **1.5 New technologies.** When feasible, utilize emerging technologies and funding strategies that improve infrastructure efficiency, sustainability, and resiliency.
- **1.6 Utility Infrastructure Siting.** Ensure new infrastructure is sited in a manner to minimize negative impacts to the community and prioritize projects to address the greatest deficiencies.
- **1.7 Aesthetic and urban form.** Require infrastructure and infrastructure improvements that

are aesthetically pleasing and consistent with the scenic character of the surrounding area.

The Ordinance is also consistent with General Plan Infrastructure Goal 7 which aims to ensure a reliable and efficient telecommunications network is available to every resident, business, and institution through implementing the following policies:

Infrastructure, Goal 7 Policies

- **7.1 Accommodate future technologies.** Encourage telecommunications providers and building developments to size infrastructure and facilities to accommodate future expansion and changes in the need for technology.
- **7.2 Appropriate siting of telecommunications infrastructure.** Design and site all facilities to minimize their visibility, prevent visual clutter, and reduce conflicts with surrounding land uses while recognizing that the entire community can have access to communication infrastructure.
- **7.3 Co-location of facilities.** Encourage telecommunications facilities located adjacent to, on, or incorporated into existing or proposed buildings, towers, or other structures.
- **7.4 Emergency services technology.** Prioritize telecommunications services used for the safety and well-being of the community.
- **7.5 Access for all.** Encourage the installation and availability of facilities that provide free telecommunication access at key activity and business centers throughout the community.

Environmental Analysis:

The ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act (“CEQA”) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. Most of the terms and scope of city discretion are guided by existing State and Federal law. The ordinance creates an administrative process to process requests for wireless facilities in the ROW and the City’s discretion with these applications is limited. The ordinance does not authorize any specific development or installation on any specific piece of property within the City’s boundaries, most of which will be placed on existing infrastructure. Alternatively, even if the ordinance is a “project” within the meaning of State CEQA Guidelines Section 15378, the ordinance is exempt from CEQA on multiple grounds. First, the ordinance is exempt CEQA because the City Council’s adoption of the ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment (State CEQA Guidelines, § 15061(b)(3)). The ordinance creates an administrative procedure for wireless carriers to apply to place facilities in the ROW, often on existing infrastructure. Moreover, in the event that the ordinance is interpreted so as to permit installation of wireless facilities on a particular site, the installation would be exempt from CEQA review in accordance with either State CEQA Guidelines Section 15302 (replacement or reconstruction), State CEQA Guidelines Section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines Section 15304 (minor alterations to land), as these facilities are allowed under Federal and State law, are by their nature smaller when placed in the ROW and subject to various siting and design preferences to prevent aesthetic impact to the extent feasible. The design guidelines are required under Federal law and describe the design preferences and location priorities that the City desires. The guidelines are aesthetic in nature and help to conceal and make these facilities more compatible. They do not result in changes to the physical environment, as the authority to place these facilities in the ROW is governed by State and Federal law.

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Fiscal Impact:
No fiscal impacts are associated with the ordinance. However, installation of wireless facilities would be subject to fees and yield potential lease revenue. Staff will bring to City Council a proposed Master License Agreement for use of City infrastructure in the ROW and a fee resolution for any fees associated with these applications at a later date.

Summary:
Much of Hermosa Beach is zoned for residential use, where WCFs are prohibited, leaving fewer options for carriers to locate. Allowing and regulating WCFs in the ROW, subject to reasonable time, place and manner restrictions, will strike the balance between allowing carriers to improve their service in a manner that is less intrusive on the community, while balancing the wireless providers' and their customers' rights for coverage while taking into account Hermosa's unique characteristics.

Many carriers are considering smaller wireless facilities in the ROW in lieu of large macro facilities, which tend to generate significant public opposition. These facilities are small, unobtrusive and are often attached to light poles and utility poles. Other carriers and neutral hosts are currently waiting on adoption of an ordinance which allows and regulates wireless telecommunication facilities within the ROW.

Attachments:
1. Draft Ordinance (Exhibit A)
2. Draft Design Standards (Exhibit B)
3. Photos of sample wireless facility designs - prohibited and allowed
4. Link to November 28, 2017, City Council staff report and attachments (Page 8 of Agenda, Municipal Matters Item c)
5. Link to January 26, 2016, City Council staff report and attachments (Page 11 of Agenda, Municipal Matters Item d)
6. Link to October 20, 2015, Planning Commission staff report and attachments (Section II Public Hearing Item 6)
7. Link to July 21, 2015, Planning Commission staff report and attachments (Section II Public Hearing Item 6)
8. Link to January 27, 2015, City Council staff report

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