

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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(562) 590-5071

**W13a**

June 22, 2006

TO: Commissioners and Interested Persons

FROM: Deborah Lee, Senior Deputy Director
Pam Emerson, Los Angeles County Area Supervisor
Charles Posner, Coastal Program Analyst

SUBJECT: Major Amendment Request No. 2-05 (MNB-MAJ-2-5) to the City of Manhattan Beach Certified Local Coastal Program. For public hearing and action at the Commission's July 12, 2006 meeting in San Diego.

SUMMARY OF LCP AMENDMENT REQUEST NO. 2-05

The Coastal Commission certified the City of Manhattan Beach Local Coastal Program (LCP) on May 12, 1994. The current LCP amendment request, submitted for Commission certification by City Council Resolution No. 5981, is the City's eighth major LCP amendment request since certification and its final *major* LCP amendment request for 2005.

The LCP amendment would amend the certified City of Manhattan Beach LCP by adopting Utilities Code Chapter 13.02 (Regulation of Telecommunications Facilities) as part of the LCP Implementing Ordinances. Utilities Code Chapter 13.02 establishes a permitting process for telecommunication projects on private property, public property and public rights-of-way (e.g., streets, walk streets and The Strand) that is independent of, and in addition to, the local coastal development permit process. Once certified, Utilities Code Chapter 13.02 would replace the current section of the LIP (Chapter A.60.130) that regulates telecommunications facilities. The certified LIP would also be amended in various other sections to replace the references to the old regulations with new cross-references to Utilities Code Chapter 13.02. Only the Implementing Ordinances (LIP) portion of the certified LCP is affected.

SUMMARY OF STAFF RECOMMENDATION

The LCP amendment request conforms with, and is adequate to carry out, the provisions of the certified LUP. Therefore, staff is recommending that the Commission, after public hearing, **CERTIFY** the LIP amendment request as submitted. **The motion to accomplish this recommendation is on Page Three.**

CONTENTS OF THE LCP AMENDMENT REQUEST

Local Coastal Program Amendment Request No. 2-05 affects only the Implementing Ordinances (LIP) portion of the City's certified LCP. City Council Resolution No. 5981 submits the proposed LIP amendment for certification by the Commission (Exhibit #1). The proposed LIP amendment is contained in City Council Ordinance Nos. 2075 and 2076 (Exhibits #2&3). City Council Ordinance No. 2075 adopts Utilities Code Chapter 13.02 into the Municipal Code, and City Council Ordinance No. 2076 insert Utilities Code Chapter 13.02 into the LIP.

The City Planning Commission held public hearings for the proposed ordinances and LCP amendment on October 27, 2004, December 8, 2004, January 12, 2005 and February 9, 2005. The City Council held public hearings on the matter on April 5, 2005, May 17, 2005 and June 7, 2005. The City Council adopted Ordinance Nos. 2075 and 2076 on June 7, 2005.

On August 15, 2005, the Commission's South Coast District office received the materials to complete the City's submittal of LCP Amendment Request No. 2-05 and deemed it submitted for Commission review consistent with the submittal requirements of the Coastal Act and the regulations which govern such proposals (Sections 30501, 30510, 30514 and 30605 of the Coastal Act, and Sections 13551, 13552 and 13553 of the California Code of Regulations). On October 13, 2005, the Commission extended for one year the time limit for its review of the LCP amendment request.

STANDARD OF REVIEW

The standard of review for the proposed amendment to the LCP Implementing Ordinances (LIP), pursuant to Sections 30513 and 30514 of the Coastal Act, is that the Commission can only reject the proposed LIP amendment if it is not in conformance with, or renders the LIP inadequate to carry out, the provisions of the certified Land Use Plan (LUP).

ADDITIONAL INFORMATION

Copies of the staff report are available at the Commission's South Coast District office located in the ARCO Center Towers, 200 Oceangate, Suite 1000, Long Beach, 90802. To obtain copies of the staff report by mail, or for additional information, contact *Charles Posner* or *Pam Emerson* in the Long Beach office at (562) 590-5071.

I. STAFF RECOMMENDATION

Staff recommends adoption of the following motion and resolution:

Certify the Implementing Ordinances (LIP) Amendment as Submitted

MOTION: *"I move that the Commission reject Amendment Request No. 2-05 to the City of Manhattan Beach Implementing Ordinances as submitted by the City."*

Staff recommends a **NO** vote. Failure of this motion will result in certification of the amendment to the LCP Implementing Ordinances as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Resolution to Certify the Implementing Ordinances (LIP) Amendment as Submitted

The Commission hereby certifies Amendment Request No. 2-05 to the LCP Implementing Ordinances for the City of Manhattan Beach as submitted and adopts the findings set forth below on grounds that the Implementing Ordinances conform with and are adequate to carry out the provisions of the certified Land Use Plan, and certification of the Implementing Ordinances will meet the requirements of the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Implementation Program.

II. FINDINGS

The Commission hereby finds and declares as follows:

A. Description of LCP Amendment Request

The LCP amendment request, contained in City Council Ordinance Nos. 2075 and 2076, would amend the certified City of Manhattan Beach LCP by adopting Utilities Code Chapter 13.02 (Regulation of Telecommunications Facilities) as part of the LCP Implementing Ordinances (LIP). City Council Ordinance No. 2075 adopts Utilities Code Chapter 13.02 into the Municipal Code, and City Council Ordinance No. 2076 adopts Utilities Code Chapter 13.02 as part of the LCP.

On June 7, 2005, the Manhattan Beach City Council adopted Utilities Code Chapter 13.02 (Ordinance No. 2075) in order to update the City's telecommunications regulations consistent with Federal Law and the community's aesthetic concerns. The City held several public hearings during which residents expressed their concerns and representatives of the telecommunications industry emphasized their need to provide services to the public with minimal government constraints, especially in regards to the use of the public rights-of-way.

The City states that the new ordinances reflect a consensus of the participants and properly address legal requirements.

Telecommunications facilities in the City of Manhattan Beach typically consist of one or more antenna panels or arrays of panels installed on a rooftop or side of a building, or attached to or integrated into a public utility pole.

Currently, Chapter A.60.130 of the LIP regulates telecommunications facilities (Exhibit # 4). As proposed by the City, the provisions of Chapter A.60.130 would be deleted and replaced (via cross-reference) by the provisions of Utilities Code Chapter 13.02. Utilities Code Chapter 13.02 establishes a permitting process for reviewing telecommunication projects on private property, public lands and public rights-of-way (e.g., streets, walk streets and The Strand) that is independent of, and in addition to, the local coastal development permit process. Section 13.02.110 (Other Permits) of Utilities Code Chapter 13.02 states that, “ Nothing in this Chapter shall preclude a requirement for a Coastal Development Permit” (Exhibit #2, p.11).

The new telecommunications regulations, contained in Utilities Code Chapter 13.02 (Ordinance No. 2075), differ from the currently certified provisions of Chapter A.60.130 as follows:

- The new regulations are contained in the Utilities Code, instead of the Zoning Code.
- The new regulations define “telecommunications facilities” more broadly and apply to antennae and facilities for cable television, Internet, mobile telephone service and other telecommunication media (Exhibit #2, p.3). The old regulations being replaced applied only to amateur radio antennas and satellite and microwave dish antennae (Exhibit #4).
- The new regulations apply to all types of property, including private property (Section 13.02.090), City-owned property (Section 13.02.060), and public rights-of-way including walk streets and The Strand (Section 13.02.030). The old regulations being replaced applied only to private property (Exhibit #4).

The new telecommunications regulations set forth by Utilities Code Chapter 13.02 (Ordinance No. 2075) are organized by sections as follows (Exhibit #2):

Section 13.02.010: Scope

Section 13.02.020: Definitions

Section 13.02.030: Telephone Utilities' Telecommunications Facilities in the Public Right-of-Way

Section 13.02.040: Non-Telephone Telecommunications Facilities in the Public Right-of-Way

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

Section 13.02.060: Telecommunications Facilities on City Property

Section 13.02.070: Provision of Telecommunications Services by Franchised Cable Operators

Section 13.02.080: Underground Utility Districts

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

Section 13.02.100: Denial of Telecommunications Permit

Section 13.02.110: Other Permits

Section 13.02.120: Revocation

Section 13.02.130: Non-Discrimination

Section 13.02.140: Enforcement

The proposed changes to the certified LIP set forth by Ordinance No. 2076 simply insert new cross-references (to Utilities Code Chapter 13.02) into the relevant sections of the LIP.

B. Certify the Amendment to the LCP Implementing Ordinances as Submitted

Pursuant to Sections 30513 and 30514 of the Coastal Act, the proposed amendment to the LIP must conform with, and be adequate to carry out, the provisions of the certified Land Use Plan (LUP). The certified LUP sets forth the following relevant policies to control development and to protect public access and recreational opportunities in the Manhattan Beach coastal zone:

POLICY I.A.1: The City shall maintain the existing vertical and horizontal accessways in the Manhattan Beach Coastal Zone.

POLICY I.A.4: The City shall maintain the use of commercial alleys as secondary pedestrian accessways.

POLICY I.A.5: The City shall preserve its walk-street resources, shall prohibit non-complying walk-street encroachments, including decks, shall enforce measures to eliminate walk-street noncompliance with existing guidelines and shall provide expedited appeal procedures related thereto.

POLICY II.1: Control development within the Manhattan Beach coastal zone.

POLICY I.B.6: The Strand shall be maintained for non-vehicular beach access.

POLICY II.B.4: The beach shall be preserved for public beach recreation. No permanent structures, with the exception of bikeways, walkways, and restrooms shall be permitted on the beach.

Coastal resources in Manhattan Beach are protected by the above-stated LUP policies (among others) and the standards of the certified LIP. The proposed LCP amendment simply adds another level of City regulation for new telecommunication facilities. The proposed LCP amendment would not change the process or standards for obtaining a local coastal

development permit for new telecommunication facilities or any other development in the coastal zone that requires a coastal development permit. Section 13.02.110 (Other Permits) of Utilities Code Chapter 13.02 states that, “ Nothing in this Chapter shall preclude a requirement for a Coastal Development Permit” (Exhibit #2, p.11). The City can only issue a coastal development permit for a new telecommunication facility if the development complies with the certified LCP, including the height limits and other building standards.

Section A.96.150 (Findings) of the certified LIP states that:

All decisions on Coastal Development Permits shall be accompanied by written findings:

- A. That the project, as described in the application and accompanying materials, as modified by any conditions of approval, conforms with the certified Manhattan Beach Local Coastal Program; and
- B. If the project is located between the first public road and the sea, that the project is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (Commencing with Section 30200 of the Public Resources Code).

Therefore, the LCP amendment request conforms with, and is adequate to carry out, the provisions of the certified LUP, as it does not allow for any exceptions or exemptions from the currently certified local coastal development permit process.

Utilities Code Chapter 13.02 also sets forth additional protections for the walk streets and The Strand. Section 13.02.030.E of proposed Utilities Code Chapter 13.02 does set forth additional protections for walk streets and The Strand, consistent with certified LUP Policies II.1, I.A.5 and I.B.6, requiring that no telecommunication permit shall be issued unless the following findings can be made (Exhibit #2, p.5):

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

Other mandatory conditions require co-location of telecommunication facilities to the maximum extent possible (Section 13.02.030.G.3.d), and that the facility shall be camouflaged and made inconspicuous so it blends in with its surroundings in a way that results in the least intrusive aesthetic impact (Section 13.02.030.G.3.e). Similar provisions apply to telecommunication facilities on non-commercial private property and public property (Section 13.02.090). Therefore, the LCP amendment request conforms with, and is adequate to carry out, the provisions of the certified LUP as required by Sections 30513 and 30514 of the Coastal Act.

C. California Environmental Quality Act (CEQA)

Pursuant to the California Environmental Quality Act (CEQA) and the California Code of Regulations [Title 14, Sections 13540(f), 13542(a), 13555(b)] the Commission's certification of this LCP amendment must be based in part on a finding that it is consistent with CEQA Section 21080.5(d)(2)(A). That section of the Public Resources Code requires that the Commission not approve or adopt an LCP:

...if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Commission finds that for the reasons discussed in this report there are no additional feasible alternatives or feasible mitigation measures available that could substantially reduce any adverse environmental impacts of the LCP amendment. The Commission further finds that the proposed LCP amendment, as submitted, is consistent with Section 21080.5(d)(2)(A) of the Public Resources Code.

City of Manhattan Beach



LCP AMENDMENT NO. 2-05

Exhibits

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RESOLUTION NO. 5981

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, SUBMITTING ORDINANCE NO. 2076 TO THE CALIFORNIA COASTAL COMMISSION TO ADD ORDINANCE NO. 2075 TO CHAPTER 3 (IMPLEMENTING ORDINANCES) AND AMEND SECTIONS A.08.130, A.12.030, A.16.020, A.16.030, A.60.060 AND A.60.130 OF THE CITY OF MANHATTAN BEACH LOCAL COASTAL PROGRAM (LCP) - IMPLEMENTATION PROGRAM, RELATING TO TELECOMMUNICATIONS FACILITIES

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

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

- A. The City Council of the City of Manhattan Beach, conducted a public hearing, pursuant to applicable law, on April 5 and May 17th, 2005 to consider the proposed amendment to the City of Manhattan Beach Local Coastal Program (LCP) - Implementation Plan; and,
- B. The City Council adopted Ordinance No. 2076 at the regular meeting of June 7, 2005; and,
- C. The Manhattan Beach Planning Commission had conducted public hearings considering the proposed amendment at their regular meetings of October 27, 2004, December 8, 2004, January 12, 2005 and February 9, 2005 and adopted Resolution PC 05-04, recommending the subject amendment; and,
- D. The subject amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines 15061 (b)(3) in that it can be seen with certainty that the proposed project does not have the potential for causing a significant effect on the environment; and
- E. The City Council certifies that the subject amendment will be implemented in a manner fully in conformity with the California Coastal Act of 1976, as amended, and the City of Manhattan Beach Local Coastal Program.

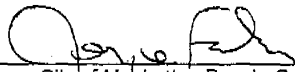
SECTION 2. Pursuant to Government Code Section 65009 and Code of Civil Procedure Section 1094.6, any action or proceeding to attack, review, set aside, void or annul this decision, or concerning any of the proceedings, acts, or determinations taken, done or made prior to such decision or to determine the reasonableness, legality or validity of any condition attached to this decision shall not be maintained by any person unless the action or proceeding is commenced within 90 days of the date of this resolution and the City Council is served within 120 days of the date of this resolution. The City Clerk shall send a certified copy of this resolution to the applicant, and if any, the appellant at the address of said person set forth in the record of the proceedings and such mailing shall constitute the notice required by Code of Civil Procedure Section 1094.6.

SECTION 3. The City Clerk shall make this Resolution reasonably available for public inspection within thirty (30) days of the date this Resolution is adopted.


SECTION 4. The City Clerk shall certify to the adoption of this Resolution and thenceforth and thereafter the same shall be in full force and effect.

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


Ayes: Tell, Aldinger, Montgomery, Ward and Mayor Fahey.
 Noes: None.
 Absent: None.
 Abstain: None.



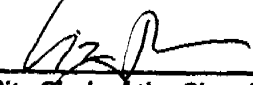
 Mayor, City of Manhattan Beach, California

ATTEST:


 City Clerk



Certified to be a true copy of the original of said document on file in my office.



 City Clerk of the City of Manhattan Beach, California

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 EXHIBIT # 1
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ORDINANCE NO. 2075

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

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

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

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

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

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

***CHAPTER 13.02 REGULATION OF TELECOMMUNICATIONS FACILITIES**

13.02.010 Scope

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

13.02.020 Definitions

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

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

CITY means the City of Manhattan Beach.

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

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

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

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

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

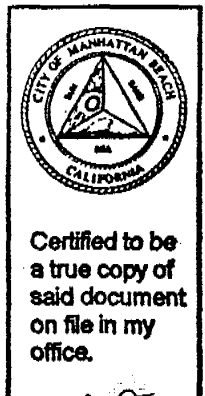
ENCROACHMENT AREA means the section of public right of way located between the property line and the edge of the walkway or roadway.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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DA

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

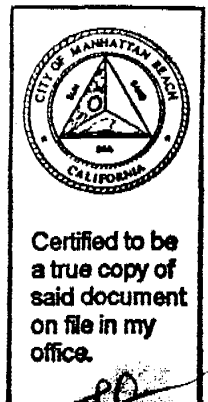
- A. Purpose. The purpose of this section is to establish procedures and regulations for processing requests to construct and maintain telecommunications facilities in the public right of way. In order to avoid installations on private property, telecommunication facilities are encouraged to be located on existing utility poles or facilities in the public right of way, with the exception of The Strand and walk streets which are closed for vehicular use. An entity holding a Certificate of Public Convenience and Necessity ("CPCN") or Wireless Registration Identification ("WRI") from the California Public Utilities Commission has the legal right to locate its facilities in the public right of way without having to obtain a franchise. City permission is required to locate and construct such a facility which cannot be allowed to interfere with public safety or other public use of the right of way, shall be coordinated with other utility installations, and constructed in conformity with standards for public rights of way.
- B. Telecom Permit Required. Any entity which has received a Certificate of Public Convenience and Necessity ("CPCN") or Wireless Registration Identification ("WRI") from the California Public Utilities Commission as a telephone company installing facilities in the public right of way to be used to provide telephone service shall obtain a telecom permit. The Director of Community Development ("Director") or his or her designee shall have the authority to issue such a permit provided that where alterations, fixtures or structures located within public walkways or roadways, other than temporary moveable structures, are to be placed in the public right of way, detailed plans for any such work shall be submitted to the City Engineer whose approval shall be required.
- C. Standard Facilities. A telecommunications permit for any "Standard Facility" may be approved by the Director of Community Development without notice. A Standard Facility is classified as any telecommunications facility proposed to be located in the right of way which complies with the following criteria:
 - a. Only existing utility poles or light standards are used.
 - b. The proposed telecom facility's location on the utility pole or light standard is at a lower elevation than the highest existing public utility transmission lines, equipment or facility.
 - c. The size of an individual antenna is the smallest based on available technology and is no more than 36 inches in height, 12 inches in width and 2 inches in depth;
 - d. The total number of antennas does not exceed four.
 - e. The size of any vault, cabinet or other equipment associated with the facility shall be the smallest or least amount based on existing available technology, and in any case shall not exceed 48 inches in any dimension;
 - f. There is no exterior facility lighting or fencing unless required by federal regulations or by the Director for safety purposes.
 - g. The telecommunications facility is adequately integrated into the existing utility pole or light standard. Methods to integrate the telecommunications facility may include but not be limited to: matching paint color, planting landscaping materials, or installing a hardscape or other material that will blend the facility with the existing utility components and/or adjoining area.
- D. Non-Standard Facilities. A Non-Standard facility is any facility which does not comply with the criteria in "C" above. The Director of Community Development may issue a permit for a Non-Standard facility. Notice shall be given to all property owners located within five hundred (500) feet of the proposed location of a pending application both prior to and after a final decision of the Director.

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

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

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1 County Assessor, Tax Collector, or the City's contractor for such records showing the names
2 and addresses of the owner of record of each lot within 500 feet (500') of the boundaries of the
3 property. This list shall be keyed to the map.

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

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

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

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

G. Standard of Review.

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

COASTAL COMMISSION

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the public health, safety and welfare. The City Engineer or his/her designee has the authority to approve or reject a method of excavation or other construction methodology.

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

- a. That, should public necessity require, the permitted facility shall be removed or relocated by the permittee at no cost to the City upon thirty (30) days' written notice to the permittee from the City, and should any cost be incurred by the City in the removal of such facility the permittee shall reimburse it for said expense;
- b. That a certificate of insurance in amounts and form satisfactory to the City Risk Manager shall be filed with the City upon the granting of the telecom permit and shall be maintained in good standing at all times so long as the facility exists, releasing the City from any and all liability whatsoever in the granting of such permit;
- c. That the applicant shall expressly agree to each of the conditions imposed, including any which may be in addition to the foregoing, as a prerequisite to the granting of the telecom permit by the City;
- d. That to the extent possible, as determined by the Director, any facility to be located on the public right of way shall be co-located with similar facilities and all work done coordinated to coincide to the maximum extent possible with other work being done in the right of way to minimize disruption to the public;
- e. That the applicant shall be required by the Director to camouflage and make inconspicuous any facility permitted hereunder by having the size, location of facilities and selection of colors and finishes specified to match and blend the facility with its surroundings in ways that would result in the least intrusive aesthetic impact on the surrounding neighborhood;
- f. That all antennas or telecom equipment shall be located a minimum of ten feet from a residential building;
- g. That upon the cessation of use or abandonment of the facility it shall be promptly removed at the expense of the applicant.

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

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

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

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

K. **Abandonment.** The owner of a permitted facility shall submit written verification annually that the facility is operative. Any antenna structure and related equipment regulated by this chapter that is inoperative or unused for a period of six (6) consecutive months shall be deemed

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

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

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

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

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

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

13.02.060 Telecommunications Facilities on City Property

A. City Council authority. No telecommunications facility may be located on public property belonging to or in the possession of the City without the express consent of the City Council. The City Council may require rent or other compensation to be paid for location of any telecommunications facility on public property owned or in the possession of the City. Applications shall be submitted to the City Manager or his or her designee.

B. Notice. The City Manager or his or her designee shall provide notice to all property owners located within five hundred (500) feet of the proposed telecommunication facility at least ten calendar days prior to the date on which the proposed telecommunication facility application is to be considered by the City Council. No published notice shall be required. Notification materials shall be submitted by the applicant, and shall include a map showing the location and street address of the City property that is the subject of the application and of all lots of record within the prescribed 500 foot (500') radius and a list, drawn from the last equalized property tax assessment roll or the records of the County Assessor, Tax Collector, or the City's contractor for such records showing the names and addresses of the owner of record of each lot within the prescribed 500 foot (500') radius. This list shall be keyed to the map. The City may charge a fee, to be set by resolution of the City Council, for processing the public notice, however the amount of any such fee shall not exceed the cost to the City of processing the permit.

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- C. Finality of Decision. The decision of the City Council regarding the lease or use of City property approved under this subsection shall be final.

13.02.070 Provision of Telecommunications Services by Franchised Cable Operators

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

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

13.02.080 Underground Utility Districts

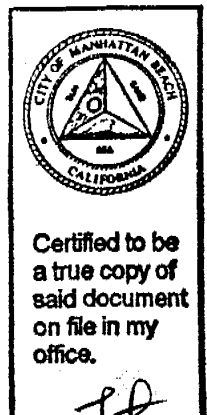
Any telecommunications facility located in the public right of way may be required to locate new facilities underground or relocate if formation of an underground utility district for the location is pending. A district will be considered pending if a petition signed by the required majority of property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

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

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

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

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

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

- a. Site plan and vicinity map;
- b. Elevation drawings and floor plans (survey may be required);
- c. An updated wireless master plan, detailing the exact nature and location of all existing and proposed future facilities (anticipated build-out) within the city, if applicable;
- d. At staff discretion color renderings, or photographs including photo simulations or computer generated images or on-site mock-ups showing the existing and proposed site conditions;
- e. Provide verification that the proposed facility complies with all applicable rules, regulations and licensing requirements of the FCC including a report prepared by an engineer, prepared at the applicant's expense, which quantifies the project's radio frequency (RF) exposures (including property accountability for nearby congregations of facilities) and compares them to FCC adopted standards. Following installation of the proposed facility, a subsequent field report shall be submitted detailing the project's cumulative field measurements of RF power densities and RF exposures compared to accepted FCC standards, if applicable;
- f. Information demonstrating compliance with applicable building, electrical, mechanical and fire codes and other public safety regulations;
- g. At the discretion of the Director or his or her designee the City may commission at the applicant's expense, a study evaluating the availability and feasibility of alternative sites;
- h. Public noticing materials, if required pursuant to section 13.02.0 H of this Chapter.

F. Standard of review. Permit applications under this section shall be processed administratively. Applications for satellite dish antennas and roof, wall or similarly mounted wireless service facilities including modification to existing monopole structures must be in compliance with the following applicable standards:

1. The proposed facility shall comply with all applicable development standards of the base district in which it is located.
2. The facility shall only exceed applicable height limits or height of existing buildings in non-residential zones by a maximum height of 8 feet above the existing building measured to the highest point adjacent to the antenna(s).
3. The impact on surrounding residential views shall be considered. Roof, wall or similarly mounted facilities and satellite dishes exceeding the existing structure height, or otherwise visible from the surrounding area, shall be screened or camouflaged on all sides to the satisfaction of the Director. Screening shall be architecturally integrated and compatible with the site on which it is located by incorporating appropriate use of color, texture, material and/or vegetation. Where screening potential is low, innovative designs or technology shall be incorporated to reduce the visual impact.
4. The applicant shall demonstrate good faith effort to co-locate on existing facilities or sites and in non-residential zones. Requests for co-location on existing monopoles or other wireless service facilities that do not increase the height, bulk or otherwise adversely detract from the existing facility, shall be approved if aesthetically acceptable and structurally and technologically feasible.

COASTAL COMMISSION

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

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

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

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

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

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

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

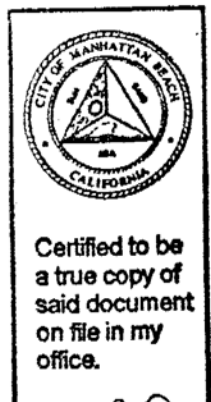
Notification materials, if determined to be required, shall be submitted by the applicant, and shall include a map showing the location and street address of the property that is the subject of the application and of all lots of record within 500 feet (500') of the boundaries of the property; and a list,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

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

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

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

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

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

13.02.100 Denial of Telecommunications Permit

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

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

Each finding set forth above shall be supported by substantial evidence in the record of the administrative proceeding regarding the application and denial. In requiring these findings, this Section is not intended to alter any burdens of proof for such findings, or otherwise as set by law.

13.02.110 Other Permits

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

13.02.120 Revocation

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

COASTAL COMMISSION

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the permittee of such revocation. The City Council's decision regarding the revocation shall be final.

13.02.130 Non-Discrimination

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

13.02.140 Enforcement

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

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

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

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

Telecommunications Facilities See Chapter 13.02 of MBMC

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

Telecommunications Facilities See Chapter 13.02 of MBMC

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

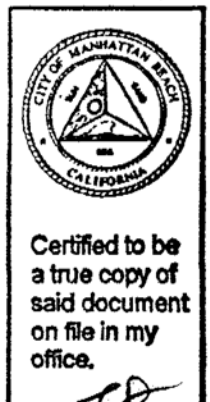
Telecommunications Facilities See Chapter 13.02 of MBMC

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

"Vent pipes and radio and television antennas may exceed the maximum permitted height in the district in which the site is located by no more than 10 feet. Chimneys may exceed the maximum permitted

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height by no more than 5 feet, provided the length and the width of the chimney portion exceeding the height limit shall not exceed 3 feet in width and 5 feet in length."

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

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

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

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

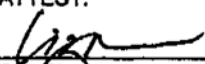
SECTION 12. The City Clerk shall cause this Ordinance or a summary thereof to be published and, if appropriate posted, as provided by law. Any summary shall be published and a certified copy of the full text of this Ordinance posted in the Office of the City Clerk at least five (5) days prior to the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

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

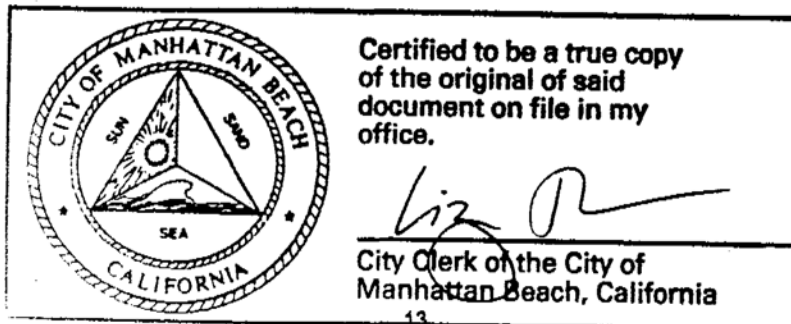
Ayes: Tell, Aldinger, Montgomery, Ward and Mayor Fahey.
Noes: None.
Absent: None.
Abstain: None.



Mayor, City of Manhattan Beach, California

ATTEST:


City Clerk



COASTAL COMMISSION

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CITY OF MANHATTAN BEACH
MEMORANDUM

1 TO: Richard Thompson, Community Development Director
 2 Liza Tamura, City Clerk

3 FROM: Rosemary Lackow, Senior Planner

4 THROUGH: Geoff Dolan, City Manager
 5 Robert V. Wadden, Jr., City Attorney

6 DATE: July 5, 2005

7 SUBJECT: Ordinance No. 2075 (Telecommunications Regulations)
 8 Errata Memorandum

9 It was brought to my attention that Section 6 of Ordinance No. 2075 (adopted at the June 7,
 10 2005 City Council Meeting) has a "typo". Section 6 inserts a cross reference in Manhattan
 11 Beach Municipal Code Section 10.12.050 (RSC District development regulations) referring to
 12 the new Telecommunications Regulations, in Chapter 13.02 of the Municipal Code. This is a
 13 typo in that the cross reference should be inserted after the existing "Paragraph N" and not after
 14 "Minor Exceptions", simply because the RSC regulations do not have a "Minor Exception"
 15 provision. The correct way to insert the cross reference is to name it new "Paragraph O" that
 16 comes after "Paragraph N". The cross reference otherwise reads exactly the same, and the
 17 Telecommunications Regulations that were adopted as well as Title 10 (Zoning) are not
 18 substantively altered in any way.

19 The following is the current wording for Ordinance No. 2075, Section 6:

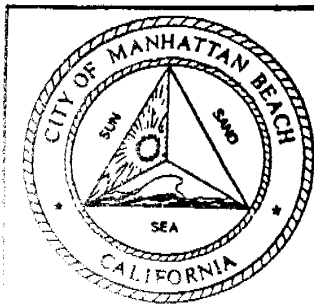
20 SECTION 6. Section 10.12.050 of Title 10, of the Manhattan Beach Municipal
 21 Code entitled RSC district development regulations is hereby amended by adding a cross-
 22 reference to Chapter 13.02 (following Minor Exceptions) as follows:

23 Telecommunications Facilities See Chapter 13.02 of MBMC

24 After reviewing the situation with City Attorney Robert Wadden, the following language is
25 being proposed for Ordinance No. 2075, Section 6, to read as follows:

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

29 O. Telecommunications Facilities: See Chapter 13.02 of MBMC



Certified to be a true copy
of the original of said
document on file in my
office.

30 *Liza Tamura*
 31 City Clerk of the City of
 32 Manhattan Beach, California

COASTAL COMMISSION

EXHIBIT # 2
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ORDINANCE NO. 2076

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

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

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

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

COASTAL COMMISSION

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EXHIBIT # 3

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Certified to be a true copy of said document on file in my office.

[Signature]
City Clerk of the City of

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

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

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

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

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

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

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

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

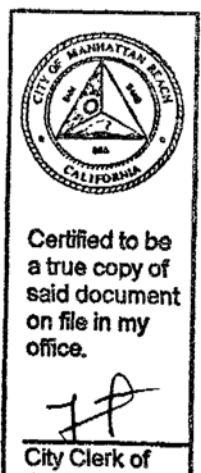
CL, CC, CG, CD, and CNE DISTRICTS: LAND USE REGULATIONS				P - Permitted U - Use Permit L - Limited, (See Additional Use Regulations) - - Not Permitted
	CL	CD	CNE	Additional Regulations
Utilities, Major	U	U	U	

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

Telecommunications Facilities See Chapter 13.02 of MBMC

COASTAL COMMISSION

EXHIBIT # 3
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SECTION 6. Section A12.030 of the Manhattan Beach Local Coastal Plan Implementation Program entitled Property development regulations: RM and RH districts, in the matrix entitled Property Development Standards for all Area Districts is hereby amended to add a cross-reference to Chapter 13.02 (following Minor Exceptions) as follows:

Telecommunications Facilities See Chapter 13.02 of MBMC

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

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

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

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

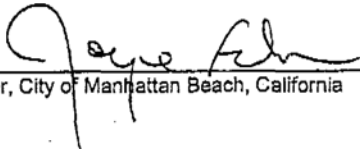
SECTION 10. Any provisions of the Manhattan Beach Local Coastal Program Code, or appendices thereto, or any other resolution of the City, to the extent that they are inconsistent with this resolution, and no further, are hereby repealed.

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

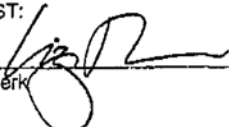
SECTION 12. The City Clerk shall cause this Ordinance or a summary thereof to be published and, if appropriate posted, as provided by law. Any summary shall be published and a certified copy of the full text of this Ordinance posted in the Office of the City Clerk at least five (5) days prior to the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

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



Ayes: Tell, Aldinger, Montgomery, Ward and Mayor Fahey.
Noes: None.
Absent: None.
Abstain: None.



Mayor, City of Manhattan Beach, California

ATTEST:


City Clerk

 Certified to be a true copy of the original of said document on file in my office.


City Clerk of the City of Manhattan Beach, California

Chapter A.60. Site Regulations - All Districts

This chapter contains supplemental land use and development regulations, other than parking, loading, and sign regulations, that are applicable to sites in all or several districts. These regulations shall be applied as specified in Part II: Base District Regulations, Part III: Overlay District Regulations, and as presented in this chapter.

A.60.130. Antennae and microwave equipment. (Repealed by Ordinance No. 2075)

- A. Purpose. To ensure that amateur radio antennae and satellite and microwave dish antennae and equipment do not have an adverse impact on aesthetic values and public safety in residential, commercial, and industrial areas, installation of these antennae and equipment is governed by the following controls. The intent of these regulations is only to locate such antennae and equipment where they are least visible from public rights-of-way in the vicinity, while not burdening adjacent property owners with adverse visual impacts. The intent is not to discriminate against dish antennae in favor of other communications facilities.
- B. Permit Required. An Antenna Permit, issued by the Community Development Director shall be required for the installation of amateur radio antennae, a satellite or microwave receiving antenna, and a use permit shall be required for the installation of microwave transmitting and relay equipment.
- C. Locational Criteria: Amateur Radio Antennae. An amateur radio antenna may be installed on a lot in any district if it complies with the following criteria:
1. Setbacks. No part of such antenna shall be constructed within the required yards.
 2. Maximum Height. No antenna shall be constructed so as to exceed a height of 60 feet above finished ground level grade.
 3. Construction of such antenna shall be subject to the provisions of Chapter 1 of Title 9 of this Code.
- D. Locational Criteria: Satellite Antennae. A satellite antenna may be installed on a lot in any zoning district if it complies with the following criteria:
1. Setbacks: Interior side and rear property lines, 10 feet, except that no setback shall be required in interior side and rear setback areas if the antenna does not exceed 6 feet in height. No antenna shall be located in a required front yard.
 2. Maximum Height: 15 feet, measured from ground level immediately under the antenna to the highest point of the antenna or any appurtenance attached to it, provided that the Community Development Director may

approve mounting an antenna on the rear half of a roof if no other feasible location exists, the antenna does not exceed the height limit for the district in which it is located and it meets all other criteria of this subsection. The justification for a rooftop mounting shall be submitted with an application for an antenna permit.

3. Maximum Dimension: 8 feet all districts with the exception that the diameter may be increased in non-residential districts if CUP approval is granted.
 4. Screening: The structural base of a satellite antenna, including all bracing and appurtenances, but excluding the dish itself, shall be screened from public view and adjoining properties by walls, fences, buildings, landscape, or combinations thereof not less than 4 feet high so that the base and support structure are not visible from beyond the boundaries of the site at a height-of-eye 6 feet or below.
 5. Undergrounding: All wires and/or cables necessary for operation of the antenna or reception of the signal shall be placed underground, except for wires or cables attached flush with the surface of a building or the structure of the antenna.
 6. Surface Materials and Finishes: Highly reflective surfaces shall not be permitted.
- E. Locational Criteria Microwave Receiving Antennae. Microwave receiving antennae may be installed if they comply with the following criteria:
1. CL, CD, and CNE Districts. Installation is permitted only if the antenna is attached to the rear half of a roof.
- F. Locational Criteria: Microwave Transmitting and Relay Equipment. Microwave transmitting and relay equipment may be installed in any zoning district subject to the requirements of a use permit and the criteria of subsection (D) above.