

RESOLUTION NO. 2018-R__

A RESOLUTION OF THE CITY OF CULVER CITY,
CALIFORNIA ESTABLISHING STANDARD CONDITIONS
OF APPROVAL FOR WIRELESS ENCROACHMENT
PERMITS TO INSTALL WIRELESS FACILITIES IN THE
PUBLIC RIGHTS-OF-WAY PURSUANT TO CULVER CITY
MUNICIPAL CODE SECTION 11.20.065.H.1.

WHEREAS, Section 11.20.065 of the Culver City Municipal Code (CCMC) governs
the permitting, installation, and regulation of wireless facilities in the City's public rights-of-way
(PROW); and

WHEREAS, CCMC Section 11.20.065.H requires that the City Council adopt
standard conditions of approval applicable to all wireless facilities in the PROW, which may be
modified by the approving authority on a case-by-case basis; and

WHEREAS, the City Council wishes to establish such standard conditions of approval;
and

WHEREAS, on December 10, 2018, the City Council conducted a duly noticed public
meeting and received testimony from City staff and all interested parties regarding the proposed
conditions of approval; and

WHEREAS, all legal prerequisites to the adoption of the Resolution have occurred.

NOW, THEREFORE, the City Council of the City of Culver City, California, DOES
HEREBY ORDAIN as follows:

SECTION 1. Findings. The foregoing Recitals are adopted as findings of the City
Council as though fully set forth within the body of this Resolution.

SECTION 2. Definitions. The definitions set forth in CCMC Section 11.20.065
are incorporated by reference into this Resolution.

1 **SECTION 3. Standard Conditions of Approval for all Wireless Facilities in the**
2 **Public Rights-of-Way.** In addition to any supplemental conditions imposed by the approving
3 authority, all wireless encroachment permits shall be subject to the following conditions, unless
4 modified by the approving authority:

5 a. *Code Compliance.* The permittee shall at all times maintain
6 compliance with all applicable federal, state and local laws, regulations and other
7 rules, including, without limitation, those applying to use of public rights-of-way.

8 b. *Permit Duration.* A wireless encroachment permit shall be
9 valid for a period of ten (10) years, unless pursuant to another provision of the
10 Code or these conditions, it expires sooner or is terminated. At the end of ten
11 (10) years from the date of issuance, such Permit shall automatically expire,
12 unless an extension or renewal has been granted. A person holding a wireless
13 encroachment permit must either (i) remove the facility within thirty (30) days
14 following the permit's expiration (provided that any involved support structure that
15 is not owned by the person holding the expiring permit need not be removed, but
16 must be restored to its prior condition, except as specifically permitted by the
City); or (ii) at least ninety (90) days prior to expiration, submit an application to
renew the permit, which application must, among all other requirements,
demonstrate that the wireless facility will comply with then-current wireless
regulations. The wireless facility may remain in place until the renewal
application is acted upon by the City and all appeals from the City's decision
exhausted.

17 c. *Timing of Installation.* The installation and construction
18 authorized by a wireless encroachment permit shall begin within one (1) year
19 after its approval, or it will expire without further action by the City. The
20 installation and construction authorized by a wireless encroachment permit shall
21 conclude, including any necessary post-installation repairs and/or restoration to
the public rights-of-way, within sixty (60) days following the day construction
commenced, unless the Public Works Director / City Engineer grants an
extension, which extension shall not be more than sixty (60) additional days.

22 d. *Commencement of Operations.* The operation of the
23 approved facility shall commence no later than three (3) months after the
24 completion of installation, or the wireless encroachment permit will expire without
further action by the City.

25 e. *As-Built Drawings.* The Permittee shall submit an as-built
26 drawing within ninety (90) days after installation of the facility. As-builts shall be
27 in an electronic format acceptable to the City.
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1 f. *Inspections; Emergencies.* The City or its designee may
2 enter onto the facility area to inspect the facility upon 48 hours prior notice to the
3 permittee. The permittee shall cooperate with all inspections and may be present
4 for any inspection of its facility by the City. The City reserves the right to enter or
5 direct its designee to enter the facility and support, repair, disable, or remove any
6 elements of the facility in emergencies or when the facility threatens imminent
7 harm to persons or property. Permittee shall reimburse the City for any costs the
8 City incurs related to emergency support, repairs, disabling, or removal of
9 permittee's facilities. The City shall make an effort to contact the permittee prior
10 to disabling or removing any facility elements, but in any case shall notify
11 permittee within one (1) business day of doing so.

12 g. *Contact.* The permittee shall at all times maintain accurate
13 contact information for all parties responsible for the facility, which shall include a
14 phone number, street mailing address and email address for at least one natural
15 person.

16 h. *Insurance.* Permittee shall obtain and maintain throughout
17 the term of the permit commercial general liability insurance in the amounts and
18 subject to terms set by the wireless regulations. The relevant policy(ies) shall
19 name the City, its elected/appointed officials, commission members, officers,
20 representatives, agents, and employees as additional insureds. Permittee shall
21 use its best efforts to provide thirty (30) days' prior notice to the City of to the
22 cancellation or material modification of any applicable insurance policy.

23 i. *Indemnities.* The permittee and, if applicable, the owner of
24 the property upon which the wireless facility is installed shall defend, indemnify
25 and hold harmless the City, its agents, officers, officials, and employees (i) from
26 any and all damages, liabilities, injuries, losses, costs, and expenses, and from
27 any and all claims, demands, law suits, writs of mandamus, and other actions or
28 proceedings brought against the city or its agents, officers, officials, or
employees to challenge, attack, seek to modify, set aside, void or annul the city's
approval of the permit, and (ii) from any and all damages, liabilities, injuries,
losses, costs, and expenses, and any and all claims, demands, law suits, or
causes of action and other actions or proceedings of any kind or form, whether
for personal injury, death or property damage, arising out of or in connection with
the activities or performance of the permittee or, if applicable, the private
property owner or any of each one's agents, employees, licensees, contractors,
subcontractors, or independent contractors. . In the event the city becomes
aware of any such actions or claims the city shall promptly notify the permittee
and, if applicable, the private property owner and shall reasonably cooperate in
the defense. The City shall have the right to approve, which approval shall not be
unreasonably withheld, the legal counsel providing the City's defense, and the
property owner and/or permittee (as applicable) shall reimburse City for any
costs and expenses directly and necessarily incurred by the City in the course of
the defense.

1 j. *Performance Bond.* Prior to issuance of a wireless
2 encroachment permit, the permittee shall file with the City, and shall maintain in
3 good standing throughout the term of the approval, a performance bond or other
4 surety or another form of security for the removal of the facility in the event that
5 the use is abandoned or the permit expires, or is revoked, or is otherwise
6 terminated. The security shall be in the amount equal to 100% of the cost of
7 physically removing the facility and all related facilities and equipment on the site
8 and restoration of the public rights-of-way to its prior condition, based on the
9 higher of two contractor's quotes for removal that are provided by the permittee.
10 The permittee shall reimburse the City for any and all costs the City incurs in
11 relation to permittee's facilities, including, but not limited to, staff time associated
12 with the processing and tracking of the bond, based on the hourly rate adopted
13 by Resolution of the City Council. Reimbursement shall be paid when the
14 security is posted and during each administrative review.

15 k. *Adverse Impacts on Adjacent Properties.* Permittee shall
16 undertake all reasonable efforts to avoid undue adverse impacts to adjacent
17 properties and/or uses that may arise from the construction, operation,
18 maintenance, modification, and removal of the facility.

19 l. *Noninterference.* Permittee shall not move, alter,
20 temporarily relocate, change, or interfere with any existing structure,
21 improvement, or property without the prior consent of the owner of that structure,
22 improvement, or property. No structure, improvement, or property owned by the
23 City shall be moved to accommodate a permitted activity or encroachment,
24 unless the City determines that such movement will not adversely affect the City
25 or any surrounding businesses or residents, and the Permittee pays all costs and
26 expenses related to the relocation of the City's structure, improvement, or
27 property. Prior to commencement of any work pursuant to a wireless
28 encroachment permit, the Permittee shall provide the City with documentation
establishing to the City's satisfaction that the Permittee has the legal right to use
or interfere with any other structure, improvement, or property within the public
rights-of-way or City utility easement to be affected by Permittee's facilities.

 m. *No Right, Title, or Interest.* The permission granted by a
wireless encroachment permit shall not in any event constitute an easement on
or an encumbrance against the public rights-of-way. No right, title, or interest
(including franchise interest) in the public rights-of-way, or any part thereof, shall
vest or accrue in Permittee by reason of a wireless encroachment permit or the
issuance of any other permit or exercise of any privilege given thereby.

 n. *No Possessory Interest.* No possessory interest is created
by a wireless encroachment permit. However, to the extent that a possessory
interest is deemed created by a governmental entity with taxation authority,
Permittee acknowledges that City has given to Permittee notice pursuant to
California Revenue and Taxation Code Section 107.6 that the use or occupancy
of any public property pursuant to a wireless encroachment permit may create a

1 possessory interest which may be subject to the payment of property taxes
2 levied upon such interest. Permittee shall be solely liable for, and shall pay and
3 discharge prior to delinquency, any and all possessory interact taxes or other
4 taxes, fees, and assessments levied against Permittee's right to possession,
occupancy, or use of any public property pursuant to any right of possession,
occupancy, or use created by this permit.

5 o. *General Maintenance.* The site and the facility, including, but
6 not limited to, all landscaping, fencing, and related transmission equipment, must
7 be maintained in a neat and clean manner and in accordance with all approved
plans. All graffiti on facilities must be removed at the sole expense of the
Permittee within forty eight (48) hours after notification from the City.

8 p. *RF Exposure Compliance.* All facilities must comply with all
9 standards and regulations of the FCC and any other state or federal government
10 agency with the authority to regulate RF exposure standards. After transmitter
11 and antenna system optimization, but prior to unattended operations of the
12 facility, permittee or its representative must conduct on-site post-installation RF
13 emissions testing to demonstrate actual compliance with the FCC OET Bulletin
65 RF emissions safety rules for general population/uncontrolled RF exposure in
all sectors. For this testing, the transmitter shall be operating at maximum
operating power, and the testing shall occur outwards to a distance where the
RF emissions no longer exceed the uncontrolled/general population limit.

14 q. *Testing.* Testing of any equipment shall take place on
15 weekdays only, and only between the hours of 8:00 a.m. and 5:00 p.m., except
16 that testing is prohibited on holidays that fall on a weekday. Testing is prohibited
on weekends.

17 r. *Modifications.* No changes shall be made to the approved
18 plans without review and approval in accordance with this Section.

19 s. *Agreement with City.* If not already completed, Permittee
20 shall enter into the appropriate agreement with the City, as determined by the
21 City, prior to constructing, attaching, or operating a facility on Municipal
Infrastructure. This permit is not a substitute for such agreement.

22 t. *Conflicts with Improvements.* For all facilities located within
23 the public rights-of-way, the Permittee shall remove or relocate, at its expense
24 and without expense to the City, any or all of its facilities when such removal or
25 relocation is deemed necessary by the City by reason of any change of grade,
26 alignment, or width of any public rights-of-way, for installation of services, water
27 pipes, sewer pipes, drains, storm drains, power or signal lines, traffic control
28 devices, public rights-of-way improvements, or for any other construction, repair,
or improvement to the public rights-of-way.

1 u. *Abandonment.* If a facility is not operated for a continuous
2 period of ninety (90) days (or, if good cause exists, a longer period of time that
3 the Public Works Director / City Engineer sets in their sole discretion), the
4 wireless encroachment permit and any other permit or approval therefor shall be
5 deemed abandoned and terminated automatically, unless before the end of the
6 ninety (90) day period the Public Works Director / City Engineer has received an
7 application to transfer the permit to another service provider. No later than
8 ninety (90) days from (i) the date the facility is determined to have ceased
9 operation or (ii) the date the Permittee has notified the Public Works Director /
10 City Engineer of its intent to vacate the site, the Permittee shall, unless otherwise
11 directed by the Public Works Director / City Engineer, remove all equipment and
12 improvements associated with the use and shall restore the site to its original
13 condition to the satisfaction of the Public Works Director / City Engineer. The
14 permittee shall provide written verification of the removal of the facilities within
15 thirty (30) days of the date the removal is completed. If the facility is not
16 removed within thirty (30) days after the permit has been discontinued pursuant
17 to this subsection, the site shall be deemed to be a nuisance, and the City may
18 cause the facility to be removed at permittee's expense or by calling any bond or
19 other financial assurance to pay for removal. If there are two (2) or more users
20 of a single facility or support structure, then this provision shall apply to the
21 specific elements or parts thereof that were abandoned, but will not be effective
22 for the entirety thereof until all users cease use thereof.

23 v. *Records.* The Permittee must maintain complete and
24 accurate copies of all permits and other regulatory approvals issued in
25 connection with the facility, which includes without limitation this approval, the
26 approved plans and photo simulations incorporated into this approval, all
27 conditions associated with this approval and any ministerial permits or approvals
28 issued in connection with this approval. In the event that the permittee does not
maintain such records as required in this condition or fails to produce true and
complete copies of such records within a reasonable time after a written request
from the City, any ambiguities or uncertainties that would be resolved through an
inspection of the missing records will be construed against the permittee.

 w. *Attorney's Fees.* In the event the City determines that it is
necessary to take legal action to enforce any of these conditions, or to revoke a
permit, and such legal action is taken, the Permittee shall be required to pay any
and all costs of such legal action, including reasonable attorney's fees, incurred
by the City, even if the matter is not prosecuted to a final judgment or is amicably
resolved, unless the City should otherwise agree with Permittee to waive said
fees or any part thereof. The foregoing shall not apply if the Permittee prevails in
the enforcement proceeding.

SECTION 4. Eligible Facility Requests. In addition to the conditions
provided in Section 3 of this Resolution and any supplemental conditions

1 imposed by the approving authority, all wireless encroachment permits issued in
2 response to an eligible facility request shall be subject to the following additional
conditions, unless modified by the approving authority:

3 a. *Permit subject to conditions of underlying permit.* Any permit
4 granted in response to an application qualifying as an eligible facilities request
shall be subject to the terms and conditions of the underlying permit.

5 b. *No permit term extension.* The City's grant or grant by
6 operation of law of an eligible facilities request permit constitutes a federally-
7 mandated modification to the underlying permit or approval for the subject tower
8 or base station. Notwithstanding any permit duration established in another
9 permit condition, the City's grant or grant by operation of law of a eligible facilities
10 request permit will not extend the permit term for the underlying permit or any
other underlying regulatory approval, and its term shall be coterminous with the
underlying permit or other regulatory approval for the subject tower or base
station.

11 c. *No waiver of standing.* The City's grant or grant by operation
12 of law of an eligible facilities request does not waive, and shall not be construed
13 to waive, any standing by the City to challenge Section 6409(a) of the Spectrum
Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any
modification to Section 6409(a) of the Spectrum Act.

14 **SECTION 5. Small Cell Facilities.** In addition to the conditions provided in
15 Section 3 of this Resolution and any supplemental conditions imposed by the approving
16 authority, all wireless encroachment permits issued for a small cell facility shall be subject to the
17 following additional conditions, unless modified by the approving authority:
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19 a. *No waiver of standing.* The City's grant of a permit for a
20 small cell facility request does not waive, and shall not be construed to waive,
21 any standing by the City to challenge any FCC orders or rules related to small
cell facilities, or any modification to those FCC orders or rules.

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SECTION 6. Effective Date. This Resolution shall become effective on the effective date of CCMC Section 11.20.065.

APPROVED and ADOPTED this _____ day of _____ 2018.

THOMAS AUJERO SMALL, Mayor
City of Culver City, California

ATTEST:

APPROVED AS TO FORM:

JEREMY GREEN
City Clerk

CAROL A. SCHWAB
City Attorney

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