

ORDINANCE NO. 2018-__

AN ORDINANCE OF THE CITY OF CULVER CITY,
CALIFORNIA, AMENDING CHAPTER 11.20,
TELECOMMUNICATIONS REGULATORY
REQUIREMENTS, OF THE CULVER CITY
MUNICIPAL CODE TO ADD A NEW SECTION
11.20.065 ENTITLED "WIRELESS FACILITIES IN
THE PUBLIC RIGHTS-OF-WAY," ESTABLISHING A
PROCESS FOR MANAGING, AND UNIFORM
STANDARDS FOR ACTING UPON, REQUESTS
FOR PLACEMENT OF WIRELESS FACILITIES
WITHIN THE PUBLIC RIGHTS-OF-WAY.

WHEREAS, pursuant to the laws of the State of California, the City of Culver City
has the authority to adopt such ordinances as it deems necessary and appropriate to assure
good government in the City, to protect and preserve the City's rights, property and privileges,
and to preserve peace, safety and good order; and;

WHEREAS, the City deems it to be necessary and appropriate to provide for
certain standards and regulations relating to the location, placement, design, construction and
maintenance of telecommunications towers, antennas and other structures within the City's
public rights-of-way, and providing for the enforcement of said standards and regulations,
consistent with federal and state law limitations on that authority.

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

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

1 **SECTION 2.** Chapter 11.20, Telecommunications Regulatory Requirements, of
2 the Culver City Municipal Code is hereby amended to add a new Section 11.20.065, entitled
3 “Wireless Facilities in Public Rights-of-Way” as follows:

4 **§11.20.065 WIRELESS FACILITIES IN PUBLIC RIGHT-OF-WAY.**

5 **A. Purpose.**

6
7 1. The purpose of this Section is to establish a process for
8 managing, and uniform standards for acting upon, requests for the placement of
9 wireless facilities within the public rights-of-way of the City consistent with the
10 City’s obligation to promote the public health, safety, and welfare, to manage the
11 public rights-of-way, and to ensure that the public’s use of the public rights-of-
12 way is not incommoded by the placement of wireless facilities. The City
13 recognizes the importance of wireless facilities to provide high-quality
14 communications service to the residents and businesses within the City, and the
15 City also recognizes its obligation to comply with applicable Federal and State
16 law regarding the placement of personal wireless services facilities in its public
17 rights-of-way. This ordinance shall be interpreted consistent with those
18 provisions.

19 **B. Definitions.** The terms used in this Section shall have the
20 following meanings:

21 **Applicant:** A person filing an application for placement or
22 modification of a wireless facility in the rights-of-way.

23 **Application:** A formal request that includes all required and
24 requested documentation and information, submitted by an applicant to the City
25 for a wireless encroachment permit.

26 **Base Station:** shall have the meaning as set forth in 47 C.F.R.
27 Section 1.40001(b)(1), or any successor provision.

28 **Eligible Facilities Request:** shall have the meaning as set forth in
47 C.F.R. Section 1.40001(b)(3), or any successor provision.

FCC: The Federal Communications Commission or its lawful
successor.

Municipal Infrastructure: City-owned or controlled property
structures, objects, and equipment in the public rights-of-way, including, but not
limited to, street lights, traffic control structures, banners, street furniture, bus

1 stops, or other poles, lighting fixtures, or electroliers located within the public
rights-of-way.

2 **Permittee:** any person or entity granted a wireless encroachment
3 permit pursuant to this Section.

4 **Personal Wireless Services:** shall have the same meaning as set
5 forth in 47 U.S.C. Section 332(c)(7)(C)(i) (as may be amended), which currently
6 provides: commercial mobile services, unlicensed wireless services, and
common carrier wireless exchange access services.

7 **Personal Wireless Services Facility:** means a wireless facility
8 used for the provision of personal wireless services.

9 **Small Cell Facility:** shall have the same meaning as "small wireless
10 facility" in 47 C.F.R. 1.6002(i) (or any successor provision), which is a personal
11 wireless services facility that meets the following conditions that, solely for
convenience, have been set forth below:

12 1. The facility—

- 13 a. is mounted on a structure 50 feet or less in height,
including antennas, as defined in 47 C.F.R. Section 1.1320(d), or
14 b. are mounted on structures no more than 10 percent taller
than other adjacent structures, or
15 c. do not extend existing structures on which they are located
16 to a height of more than 50 feet or by more than 10 percent, whichever is
greater;

17 2. Each antenna associated with the deployment, excluding
18 associated antenna equipment (as defined in the definition of antenna in 47
C.F.R. Section 1.1320(d)), is no more than three cubic feet in volume;

19 3. All other wireless equipment associated with the structure,
20 including the wireless equipment associated with the antenna and any pre-
21 existing associated equipment on the structure, is no more than 28 cubic feet in
volume;

22 4. The facility does not require antenna structure registration under
23 47 C.F.R. Part 17;

24 5. The facility is not located on Tribal lands, as defined under 36
25 C.F.R. Section 800.16(x); and

26 6. The facility does not result in human exposure to radiofrequency
27 radiation in excess of the applicable safety standards specified in 47 C.F.R.
28 Section 1.1307(b).

1 **Support Structure:** Any structure capable of supporting a base
2 station.

3 **Tower:** Any structure built for the sole or primary purpose of
4 supporting any FCC-licensed or authorized antennas and their associated
5 facilities, including structures that are constructed for wireless communications
6 services including, but not limited to, private, broadcast, and public safety
7 services, as well as unlicensed wireless services and fixed wireless services
8 such as microwave backhaul, and the associated site. This definition does not
9 include utility poles.

10 **Underground Areas:** Those areas where there are no electrical
11 facilities or facilities of the incumbent local exchange carrier in the public rights-
12 of-way; or where the wires associated with the same are or are required to be
13 located underground; or where the same are scheduled to be converted from
14 overhead to underground. Electrical facilities are distribution facilities owned by
15 an electric utility and do not include transmission facilities used or intended to be
16 used to transmit electricity at nominal voltages in excess of 35,000 volts.

17 **Utility Pole:** A structure in the public rights-of-way designed to
18 support electric, telephone, cable television and similar utility lines. A tower is
19 not a utility pole.

20 **Wireless Encroachment Permit:** A permit issued pursuant to this
21 Section authorizing the placement or modification of a wireless facility of a
22 design specified in the permit at a particular location within the public rights-of-
23 way; and the modification of any existing support structure to which the wireless
24 facility is proposed to be attached.

25 **Wireless Facility, or Facility:** The radios, transmitters, antenna
26 structures, electric meters, batteries, conduit, fiber optic and coax cables, and
27 other types of installations used for the provision of wireless transmissions at a
28 fixed location, including, without limitation, any associated tower(s), support
structure(s), and base station(s).

Wireless Infrastructure Provider: A person that owns, controls,
operates or manages a wireless facility or portion thereof within the public rights-
of-way.

Wireless Regulations: Those regulations adopted pursuant to
Section 11.20.065 of this Code and implementing the provisions of this Chapter.

Wireless Service Provider: An entity that provides personal
wireless services to end users.

1
2 **C. Scope.**

3 **1. In general.** A "wireless encroachment permit" shall be
4 subject to all of the same requirements as an encroachment permit would under
5 Chapter 11.20, in addition to all of the requirements of this Section. Unless
6 exempted, every person who desires to place a wireless facility in the public
7 rights-of-way or modify an existing wireless facility in the public rights-of-way
8 must obtain a wireless encroachment permit authorizing the placement or
modification in accordance with this Section. Except for small cell facilities,
facilities qualifying as eligible facilities requests, or any other type of facility
expressly allowed in the public rights-of-way by state or federal law, no other
wireless facilities shall be permitted pursuant to this Section.

9 **2. Exemptions.** This Section does not apply to:

10 a. The placement or modification of facilities by the City or by
11 any other agency of the state solely for public safety purposes.

12 b. Installation of a "cell on wheels," "cell on truck" or a similar
13 structure for a temporary period in connection with an emergency or event, but
14 no longer than required for the emergency or event, provided that installation
does not involve excavation, movement, or removal of existing facilities.

15 **3. Other applicable requirements.** In addition to the wireless
16 encroachment permit required herein, the placement of a wireless facility in the
17 public rights-of-way requires the persons who will own or control those facilities
18 to obtain all permits required by applicable law, and to comply with applicable
law, including, but not limited, applicable law governing radio frequency (RF)
emissions.

19 **4. Pre-existing Facilities in the Public Rights-of-Way.** Any
20 wireless facility already lawfully existing in the public rights-of-way as of the date
21 of this Section's adoption shall remain, as long as the wireless facility continues
22 to comply with all conditions and requirements imposed upon its original
23 permitting. Upon expiration of any permit which pre-exists the adoption of this
Section, any renewal of such facility's permit shall have to comply with this
Section.

24 **5. Public use.** Except as otherwise provided by state law, any
25 use of the public rights-of-way authorized pursuant to this Section will be
26 subordinate to the City's use and use by the public.
27
28

1 **D. Administration.**

2 **1. Public Works Director/City Engineer.** Except as expressly
3 provided in this Section, the Public Works Director/City Engineer or their
4 designee is responsible for administering this Section. As part of the
administration of this Section, the Public Works Director/City Engineer may:

5 a. Interpret the provisions of this Section;

6 b. Develop and implement standards governing the
7 placement and modification of wireless facilities consistent with the requirements
8 of this Section, including regulations governing collocation and resolution of
conflicting applications for placement of wireless facilities;

9 c. Develop and implement acceptable designs and
10 development standards for wireless facilities in the public rights-of-way, taking
into account the zoning districts bounding the public rights-of-way;

11 d. Develop forms and procedures for submission of
12 applications for placement or modification of wireless facilities, and proposed
changes to any support structure consistent with this Section;

13 e. Collect, as a condition of the completeness of any
14 application, any fee established by this Section or by resolution of the City
15 Council;

16 f. Establish deadlines for submission of information
17 related to an application, and extend or shorten deadlines where appropriate and
consistent with state and federal laws and regulations;

18 g. Issue any notices of incompleteness, requests for
19 information, or conduct or commission such studies as may be required to
20 determine whether a permit should be issued;

21 h. Require, as part of, and as a condition of
22 completeness of any application, notice to members of the public that may be
23 affected by the placement or modification of the wireless facility and proposed
changes to any support structure;

24 i. Determine whether to approve, approve subject to
25 conditions, or deny an application, subject to appeal as provided herein; and

26 j. Take such other steps as may be required to timely
27 act upon applications for placement of wireless facilities, including issuing written
28 decisions and entering into agreements to mutually extend the time for action on
an application.

1 k. Refer applications proposing the installation of a new
2 pole to the City Council for review and decision, after the application is
determined to be complete by the Public Works Director/City Engineer.

3 **2. City Manager.** The City Manager or his/her designee(s)
4 shall be responsible for negotiating and entering into agreements for the
5 attachment of wireless facilities to municipal infrastructure required by this
Section.

6 **3. Appeals.**

7 a. Any person adversely affected by the decision of the
8 Public Works Director/City Engineer pursuant to this Section may appeal the
9 decision to the City Council, which may decide the issues *de novo*, and whose
10 written decision will be the final decision of the City. Any appeal shall be
conducted so that a timely written decision may be issued in compliance with any
legally-required deadline.

11 b. All appeals must be filed within two business days of
12 the written decision of the Public Works Director/City Engineer, unless the Public
Works Director/City Engineer extends the time therefore. An extension may not
13 be granted where extension would result in approval of the application by
operation of law.

14 c. An appeal by a wireless infrastructure provider must
be taken jointly with the wireless service provider that intends to use the personal
15 wireless services facility.

16 d. If the Public Works Director/City Engineer determines
that an application must be approved because a denial would result in a
17 prohibition or effective prohibition under applicable federal law, the Public Works
Director/City Engineer shall not render a decision on the application, but instead
18 shall refer the application directly to the City Council for review and decision,
whose review shall be conducted in accordance with paragraph (a) of this
19 subsection.

20 **E. General Standards for Wireless Facilities in the Public Rights-**
21 **of-Way.**

22 **1. Generally.** Wireless facilities in the public rights-of-way
shall meet the minimum requirements set forth in this ordinance and the wireless
23 regulations, in addition to the requirements of any other applicable law.

24 **2. Regulations.** The wireless regulations and decisions
25 regarding applications for placement of wireless facilities in the public rights-of-
way shall, at a minimum, ensure that the requirements of this Section are
26 satisfied, unless it is determined that applicant has established that denial of an
application would, within the meaning of federal law, prohibit or effectively
27 prohibit the provision of personal wireless services, or otherwise violate
28

1 applicable laws or regulations. If that determination is made, the requirements of
2 this Section may be waived, but only to the minimum extent required to avoid the
prohibition or violation.

3 **3. Minimum Standards.** Wireless facilities shall be installed
4 and modified in a manner that: minimizes risks to public safety; avoids
5 placement of aboveground facilities in Underground Areas; minimizes installation
6 of new support structures or equipment cabinets in the public rights-of-way;
7 maintains the integrity and character of the neighborhoods and corridors in which
8 the facilities are located; ensures that installations are subject to periodic review
9 to minimize the intrusion on the public rights-of-way; ensures that the City bears
10 no risk or liability as a result of the installations; does not inconvenience the
11 public; does not interfere with the primary uses of the rights-of-way; and, does
12 not hinder the ability of the City or other government agencies to improve,
13 modify, relocate, abandon, or vacate the public rights-of-way or any portion
14 thereof.

15 **4. Additional Standards.** All wireless facilities proposed to be
16 placed in the public rights-of-way shall comply with the design and locational
17 standards established by City Council Resolution.

18 **F. Applications.**

19 **1. Submission.** Unless the wireless regulations provide
20 otherwise, an applicant shall submit an application, amendments, or
21 supplements to an application, or responses to requests for information
22 regarding an application on the forms and in compliance with the standards
23 adopted by the Public Works Director/City Engineer. All applicant submissions
24 shall be made to the Public Works Director/City Engineer, at City Hall, 9770
25 Culver Boulevard, Culver City, California 90232.

26 **2. Pre-application meeting.** Prior to filing an application for a
27 wireless encroachment permit, an applicant is encouraged to schedule a pre-
28 application meeting with the Public Works Director/City Engineer to discuss the
proposed facility, the requirements of this Section, and any potential impacts of
the proposed facility.

29 **3. Content.**

30 **a.** An applicant shall submit an application on the form
31 approved by the Public Works Director/City Engineer, which may be updated
32 from time-to-time, but in any event shall require the submission of all required
33 fee(s), documents, information, and any other materials necessary to allow the
34 Public Works Director/City Engineer to make required findings and ensure that
35 the proposed facility will comply with applicable federal and state law, this Code,

1 and will not endanger the public health, safety, or welfare. If no form has been
2 approved, applications must contain all information necessary to show that the
3 applicant is entitled to the wireless encroachment permit requested, and must
specify whether the applicant believes state or federal law requires action on the
application within a specified time period.

4 b. No more than 30 days prior to submitting an
5 application, an applicant shall provide written notice of its intent to file an
6 application to all residents and businesses within 500 feet of any proposed
7 facility. The applicant shall provide a list of those residents and businesses so
notified in its application and attest that the notice required by this subsection
has been provided.

8 **4. Fees.** Application fee(s) shall be required to be submitted
9 with any application for a wireless encroachment permit. The City Council is
10 hereby authorized to determine, or cause to be determined, the amount, type,
11 and other terms of such fee(s) from time to time by means of resolution.
Notwithstanding the foregoing, no application fee shall be refundable, in whole or
in part, to an applicant for a wireless encroachment permit.

12 **5. Waivers.** Requests for waivers from any requirement of this
13 Section shall be made in writing to the Public Works Director/City Engineer or his
14 or her designee. The Public Works Director/City Engineer may grant or deny a
15 request for a waiver pursuant to this subsection. The Public Works Director/City
16 Engineer may grant a request for waiver if it is demonstrated that,
17 notwithstanding the issuance of a waiver, the City will be provided all information
18 necessary to understand the nature of the construction or other activity to be
conducted pursuant to the permit sought. All waivers approved pursuant to this
subsection shall be (i) granted only on a case-by-case basis, and (ii) narrowly-
tailored to minimize deviation from the requirements of this Code.

19 **6. Rejection for Incompleteness.** For personal wireless
20 facilities and eligible facilities requests, applications will be processed, and
21 notices of incompleteness provided, in conformity with state, local, and federal
22 law. If such an application is incomplete, it may be rejected by the Public Works
Director/City Engineer by notifying the applicant and specifying the material
omitted from the application.

23 **G. Findings; Decisions; Consultants.**

24 **1. Findings Required for Approval.**

25 a. Except for eligible facilities requests, the Public
26 Works Director/City Engineer or City Council, as the case may be, shall approve
27 an application if, on the basis of the application and other materials or evidence
provided in review thereof, it finds the following:

1 i. The facility is not detrimental to the public health,
2 safety, and welfare;

3 ii. The facility complies with this Section and all
4 applicable design and development standards; and

5 iii. The facility meets applicable requirements and
6 standards of state and federal law.

7 b. For eligible facilities requests, the Public Works
8 Director/City Engineer or City Council, as the case may be, shall approve an
9 application if, on the basis of the application and other materials or evidence
10 provided in review thereof, it finds the following:

11 i. That the application qualifies as an eligible facilities
12 request; and

13 ii. That the proposed facility will comply with all
14 generally-applicable laws.

15 **2. Decisions.** Decisions on an application by the Public Works
16 Director/City Engineer or City Council shall be in writing and include the reasons
17 for the decision.

18 **3. Independent Consultants.** The Public Works Director/City
19 Engineer or City Council, as the case may be, is authorized, in its discretion, to
20 select and retain independent consultant(s) with expertise in telecommunications
21 in connection with the review of any application under this Section. Such
22 independent consultant review may be retained on any issue that involves
23 specialized or expert knowledge in connection with an application, including, but
24 not limited to, application completeness or accuracy, structural engineering
25 analysis, or compliance with FCC radio frequency emissions standards.

26 **H. Conditions of Approval.**

27 **1. Adoption by Resolution.** The City Council shall adopt by
28 resolution standard conditions that shall apply to all wireless encroachment
permits approved under this Section. Such standard conditions shall also apply
to any wireless facility granted or approved by operation of law. The standard
conditions shall address, without limitation, the following: compliance with this
Code and applicable law; duration, renewal, and termination of wireless
encroachment permits; installation of facilities; commencement of operations; as-
built drawings; inspections; emergency procedures; maintaining updated contact
information of relevant persons; insurance, indemnification, and bond
requirements; minimizing impacts on adjacent properties; noninterference with

1 and relocation to accommodate other improvements or uses of the public rights-
2 of-way; no right, title, or interest (including possessory interest) created by a
3 permit; maintenance requirements; ongoing compliance with FCC radio
4 frequency emissions standards; facility access and testing; modifications to the
5 facility; requiring an agreement with the City for use of Municipal Infrastructure;
6 abandonment of facilities; records retention; attorney's fees; and any additional
7 conditions for eligible facility requests and small cell facilities.

8
9 **2. Modification.** The approving authority (Public Works
10 Director/City Engineer or City Council, as the case may be) may impose
11 additional conditions, remove conditions, or otherwise modify the standard
12 conditions applicable to a wireless encroachment permit in its sole discretion on
13 a case-by-case basis.

14
15 **I. Breach; Termination of Permit.**

16 **1. For breach.** A wireless encroachment permit may be
17 revoked for failure to comply with the conditions of the permit or applicable law.
18 Upon revocation, the wireless facility must be removed; provided that removal of
19 a support structure owned by City, a utility, or another entity authorized to
20 maintain a support structure in the public rights-of-way need not be removed, but
21 must be restored to its prior condition, except as specifically permitted by the
22 City. All costs incurred by the City in connection with the revocation and removal
23 shall be paid by entities who own or control any part of the wireless facility.

24 **2. For installation without a permit.** Any wireless facility
25 installed without a wireless encroachment permit (except for those exempted by
26 this Section) must be removed; provided that removal of support structure owned
27 by City, a utility, or another entity authorized to maintain a support structure in
28 the public rights-of-way need not be removed, but must be restored to its prior
condition, except as specifically permitted by the City. All costs incurred by the
City in connection with the revocation and removal shall be paid by entities who
own or control any part of the wireless facility.

3. Municipal Infraction. Any violation of this Section shall
constitute an infraction and shall be subject to the penalties and fines set forth in
Chapters 1.01 and 1.02 of this Code.

J. Infrastructure Controlled By City. The City, as a matter of
policy, will negotiate agreements for use of Municipal Infrastructure. The
placement of wireless facilities on those structures shall be subject to the
agreement. The agreement shall specify the compensation to the City for use of
the structures. The person seeking the agreement shall additionally reimburse
the City for all costs the City incurs in connection with its review of, and action
upon the person's request for, an agreement.

1
2 **K. Nondiscrimination.** In establishing the rights, obligations and
3 conditions set forth in this Section, it is the intent of the City to treat each
4 applicant or public rights-of-way user in a competitively neutral and
5 nondiscriminatory manner, to the extent required by law, and with considerations
6 that may be unique to the technologies, situation and legal status of each
7 particular applicant or request for use of the public rights-of-way.

8 **SECTION 3: CEQA.** This Ordinance is not a project within the meaning of
9 Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines,
10 because it would not have the potential for resulting in physical change in the environment,
11 directly or indirectly. The Ordinance does not authorize any specific development or installation
12 on any specific piece of property within the City's boundaries. Moreover, when and if an
13 application for installation is submitted, the City will at that time conduct preliminary review of the
14 application in accordance with CEQA. Alternatively, even if the Ordinance is a "project" within
15 the meaning of State CEQA Guidelines section 15378, the Ordinance is exempt from CEQA on
16 multiple grounds. First, the Ordinance is exempt from CEQA because the City Council's
17 adoption of the Ordinance is covered by the general rule that CEQA applies only to projects
18 which have the potential for causing a significant effect on the environment. (State CEQA
19 Guidelines, § 15061(b)(3)). Since approval of the Ordinance will not result in the actual
20 installation of any facilities in the City, its approval would not have the potential to result in a
21 significant effect on the environment. In order to install a facility in accordance with this
22 Ordinance, the wireless provider would have to submit an application for installation of the
23 wireless facility. At that time, the City will have specific and definite information regarding the
24 facility and the City will then conduct a preliminary CEQA review. Moreover, in the event that
25 the Ordinance is interpreted so as to permit installation of wireless facilities on a particular site,
26 the installation would be exempt from CEQA review in accordance with either State CEQA
27 Guidelines section 15302 (replacement or reconstruction), State CEQA Guidelines section
28 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines
section 15304 (minor alterations to land). The City Council, therefore, directs that a Notice of

1 Exemption be filed with the County Clerk of the County of Los Angeles within five working days
2 of the passage and adoption of the Ordinance.

3
4 **SECTION 4:** The City Council hereby declares that, if any provision, section,
5 subsection, paragraph, sentence, phrase or word of this Ordinance is rendered or declared
6 invalid or unconstitutional by any final action in a court of competent jurisdiction or by reason or
7 any preemptive legislation, then the City Council would have independently adopted the
8 remaining provisions, sections, subsections, paragraphs, sentences, phrases, or words of this
9 Ordinance, and as such they shall remain in full force and effect.

10
11 **SECTION 5:** Pursuant to Section 619 of the City Charter, this Ordinance shall
12 take effect thirty days after its adoption. Pursuant to Section 616 and 621 of the City Charter,
13 prior to the expiration of fifteen days after the adoption, the City Clerk shall cause this
14 Ordinance, or a summary thereof, to be published in the Culver City News and shall post this
15 Ordinance or a summary thereof in at least three places within the City.

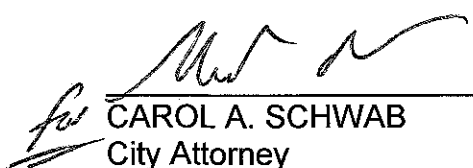
16 APPROVED and ADOPTED this _____ day of _____ 2018.

17
18
19 _____
20 THOMAS AUJERO SMALL, Mayor
City of Culver City, California

21
22 ATTEST:

23 APPROVED AS TO FORM:

24 _____
JEREMY GREEN
City Clerk

25  _____
CAROL A. SCHWAB
City Attorney

26 A18-00835