

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING CHAPTER 12.08 OF TITLE 12 OF THE  
GENERAL ORDINANCE CODE OF THE COUNTY OF ALAMEDA  
RELATING TO REGULATING WIRELESS FACILITY INSTALLATIONS IN THE  
PUBLIC RIGHT OF WAY**

The Board of Supervisors of the County of Alameda ordains as follows:

**SECTION I**

Section 12.08.020 of Title 12 of the General Ordinance Code of the County of Alameda is amended to read:

**12.08.020 - Definitions.**

"Applicant" means a person applying for a permit in accordance with the requirements of this chapter.

"Board" means the board of supervisors of the county of Alameda.

"Director" means the director of the public works agency of the county or his/her designee.

"Encroachment" means the act of going upon or using the right-of-way of a public roadway for any of the following purposes:

1. Excavating or disturbing the right-of-way;
2. Constructing, installing, or maintaining any post, sign, pole, fence, wall, sidewalk, driveway, curb, berm, swale, ditch, culvert, cable, conduit, pipe, street light, traffic signal, wiring, telecommunications facility, or other equipment, facility, or structure within the right-of-way, including the attachment of any telecommunications facility to an existing utility pole or other structure within the right-of-way;
3. Constructing, installing, or maintaining any personal wireless service facility within the right-of-way, including the attachment of such facilities to an existing utility pole or other utility-owned structure.
4. Planting, maintaining or removing any tree in the right-of-way or planting any shrub, lawn or other growing thing within the right-of-way;
5. Leaving any rubbish, brush, earth, or other material within the right-of-way, except for refuse intended to be disposed of by a trash pickup service;
6. Placing an address number or other number, figure, letter, carving, drawing, design, or other marking upon the paved surface of a roadway or upon a curb, berm or sidewalk, except for temporary survey or construction marks;

7. Moving of an extralegal vehicle and/or load over the right-of-way;
8. Moving of a legal vehicle and/or load which are in excess of designated weight or size limits over a right-of-way which is so marked.

"Extralegal vehicle" means a vehicle or combination of vehicles or special mobile equipment of a size or weight of vehicle or load which exceeds the maximum limits specified in the vehicle code of the California Department of Motor Vehicles.

"Facility" means any structure or device, such as a cable, conduit, wire, culvert, drain, inlet, duct, converter, antenna, cabinet, bollard, pole, guy wire, manhole, pipe, street light, traffic signal, sign, vault, marker, splice box, meter box, valve, valve box, pavement, curb, gutter, berm, swale, wall, ditch, irrigation system, sidewalk, walkway or other appurtenance that is located or is proposed to be located within the right-of-way. "Roadway facility" means any such facility that is or that will be considered part of the county-maintained roadway. "Utility facility" means any such facility that is or that will be owned, leased, operated, maintained or licensed by a utility. "Owner facility" means any such facility that is or that will be leased, operated, licensed or maintained by an owner. A "personal wireless service facility" or "PWSF" means any such facility that will be installed or maintained by a person so authorized in accordance with the provisions of Section 12.08.205 of this chapter 12.08.

"FCC" means the Federal Communications Commission.

"General Ordinance Code" means the General Ordinance Code of the county.

"Owner" means any person, other than a utility, who owns property adjacent to the right-of-way at the site of, or in proximity to, the proposed encroachment.

"Permit" means an encroachment permit issued by the public works agency of the county under the terms and conditions of this chapter.

"Permittee" means that person who, having been granted a permit, is responsible for the satisfactory completion of the encroachment described in the permit.

"Person" means any natural person, corporation, partnership, board, trustee or governmental agency.

"Personal wireless services" means commercial mobile services provided under a license issued by the FCC.

"Public roadway" means the full width of the right-of-way of any road, street, avenue, way, drive, lane, court, place, boulevard, parkway, throughway, or alley which is used by the public, whether or not that roadway has been accepted as

and declared to be a part of the roadway system of the county, except for roadways which are designated as state routes.

"Public service sign" means a permanent sign intended to provide a public service, such as a directional sign describing the location of a nonprofit organization/government agency or a crime prevention sign.

"Right-of-way" means land, which by deed, conveyance, agreement, dedication, usage or process of law is reserved for use as a public roadway. For the purpose of this chapter, the right-of-way shall include not only the surface of the roadway and the earth beneath the roadway, but also all facilities and natural features located across, along, beneath, in, on, over, under, upon and within the roadway.

"Roadway" means the full width of the right-of-way of any road, street, avenue, way, drive, lane, court, place, boulevard, parkway, throughway, circle, via, camino or alley which is used by the public, whether or not that roadway has been accepted as and declared to be a part of the roadway system of the county—except for roadways that are designated as state highways. For the purpose of this chapter, the roadway shall include travel lanes, parking lanes, facilities, embankments, slopes, plantings, and all other appurtenances necessary to provide support, protection, and drainage.

"Sheriff" means the sheriff of the county.

"Standard plans" means the latest version of the standard plans of the California Department of Transportation.

"Standard specifications" means the latest version of the standard specifications of the California Department of Transportation.

"Telecommunications facility" means any facility used to provide for or to facilitate the provision of telecommunications services, including personal wireless services.

"Utility" means any person who owns, leases, operates or licenses a facility in order to provide gas, water, electricity, sewer, telecommunications, cable television, or other customer services of this type regardless of whether such person is deemed a public utility by the California Public Utilities Commission. "Utility" does not mean persons responsible for personal wireless service facilities; see Section 12.08.205 of this chapter 12.08.

"Vehicle code" means the latest version of the vehicle code of the California Department of Motor Vehicles.

Section 12.08.040 of Title 12 of the General Ordinance Code of the County of Alameda is amended to read:

**12.08.040 - Unlawful to encroach without a permit.**

Except as authorized by a standing franchise agreement or other agreement with the county, it shall be unlawful for any person to encroach upon the right-of-way without first obtaining an encroachment permit. Moreover, no such permit shall be issued to any person lacking the legal authority to enter the right-of-way for the purpose described in the application. For the purposes of this chapter, this authority to enter shall be limited to the following persons:

- A. The owner of the property adjacent to the site of the encroachment, or his/her agent; except that the director may, with the acknowledgment of the affected parties, authorize an owner or his agent to encroach upon the right-of-way in other locations;
- B. The holder of a franchise or other agreement, wherein the right to encroach for the purpose described in the permit application is clearly delineated;
- C. A person that has the right to occupy the right-of-way pursuant to state or federal law, including California Public Utilities Code Section 7901.
- D. Others qualifying under the terms and conditions of this chapter

Title 12 of the General Ordinance Code of the County of Alameda is amended by adding the following new Section 12.08.205:

**12.08.205 – Additional requirements for Telecommunication Facilities**

The following additional procedures, requirements, and installation standards shall apply to applications for permits for the installation of telecommunications facilities

- A. Application. The director may require the submittal of following additional information, as may be applicable, with the permit application:
  - 1. Any application proposing to attach new telecommunications facilities to an existing utility pole must demonstrate compliance with the regulations, rules, and guidelines of the controlling utility or utilities.
  - 2. Photo simulations or equivalent renderings illustrating the existing and proposed appearances of the site of the proposed telecommunications facilities.
  - 3. Copy of, or other evidence of, a valid FCC license for any proposed personal wireless service facilities
  - 4. Radio-frequency emissions report (FCC) for any proposed personal wireless service facilities

B. Notice. Notice of the application submittal shall be provided by the applicant to all property owners located within three-hundred (300) feet of the proposed location. The notice shall be mailed within 10 days of the acceptance of the complete application by the director; and shall include a complete description of the proposed installation, a copy of Alameda County Code Chapter 12.08, Article II, and any rendering provided with the application pursuant to Section 12.08.205.

C. Referrals:

1. For an application for an installation in or adjacent to a residential zoning district, the director shall refer the application to the Planning Department of the County Community Development Agency if the director determines the installation may have an adverse visual or aesthetic impact on the residential area. The Planning Department staff shall review the proposed installation and may make recommendations based on the proposal's consistency with the general welfare of the public, the County General Plan, and the goals of the county to provide walkable, accessible, and livable communities. The Planning Department staff shall also review the proposal for general conformity with the applicable Visual Standards of the Alameda County Development Standards for Siting of Telecommunication Facilities.

2. The director may refer any application to the Planning Department staff or to another County department, commission, or advisory body for review and recommendation.

3. All referrals under this Section 12.08.205(C) shall be for an advisory recommendation only, and shall not be separately appealable from the decision of the Director under 12.08.210.

D. Fees and Payments:

1. The fees for the review, issuance and inspection of permits for the installation of telecommunications facilities shall include the fees required for the reimbursement of the costs of the any required reviews by the Planning Department or other County department, commission or advisory body.

2. The director shall have the authority to require that the review, issuance, and inspection of those permit application requiring extraordinary approval and/or acceptance efforts be charged on a time and material basis.

3. The director may require the permittee to enter into a long-term license agreement with the County to cover the costs of continuing use of the public roadway for any telecommunications facilities attached to a county-owned streetlight standard or other vertical facility owned by the county.

E. Installation Standards. Installation of telecommunications facilities shall conform to the following minimum design standards:

1. Telecommunications facilities shall be designed, installed and located so as to minimize adverse visual impacts;
2. No advertising material of any nature may be attached to any such telecommunications facilities.
3. Telecommunications facilities may not include any type of lighted signal, lights, or other illumination, except as required by federal or state law.
4. Personal wireless service facilities shall comply with all applicable FCC emission standards.
5. Telecommunications facilities that are proposed to be attached to a legally maintained utility pole or a county-owned streetlight standard must be in compliance with the following:
  - a. No such facilities may extend more than twenty (20) feet vertically above the highest point of the said pole or standard; and
  - b. All telecommunications facilities proposed to be attached to a utility pole must conform to the design and co-location restrictions of the pole owner or owners.
  - c. All telecommunications facilities proposed to be attached to a streetlight standard shall conform to design standards developed by the director for that purpose; however, under no circumstance shall any such facilities interfere with the operation and maintenance of the lighting system nor shall it block the required illumination provided by the streetlight.

F. Conditions and Maintenance

The director shall establish and include in each permit for installation of telecommunications facilities such conditions as may be required to control the construction, installation, maintenance, repair and removal of such facilities in a public roadway so as to protect and benefit the public health, safety, and welfare. The terms and conditions the permit shall be limited to those areas consistent with the County's authority under applicable law.

These conditions shall include, but not be limited to, the following:

1. All telecommunications facilities shall be kept clear of graffiti as much as possible.
2. Normal and routine access to, and use, operation, maintenance and repair of telecommunications facilities shall be considered as part of the permitted installation, and no new permit shall be required for any such access, use, operation, maintenance or repair.

3. A new permit shall be required for replacements, upgrades, relocations, or modifications of the installed facilities, unless the director determines that such replacement, upgrade, relocations, or modification is minor, insignificant, or insubstantial. A replacement shall be considered minor if it has a visual profile of no more than 125% of the existing facility.

#### G. Transfer of Permits for Telecommunication Facilities

Notwithstanding Section 12.08.250, a permit for the installation of telecommunication facilities may be transferred to a successor, assign, or affiliate of the permittee, provided that any transferee holds all required FCC and any other required governmental approvals or licenses necessary to provide telecommunication services.

Section 12.08.210 of Title 12 of the General Ordinance Code of the County of Alameda is amended to read:

#### **12.08.210 – Director may reject, deny or modify proposed encroachments.**

The director shall review all roadway encroachment permit applications for completeness and conformity to the requirements of this chapter. If the application is deemed to be incomplete, the director shall reject the application by means of a letter to the applicant identifying the specific reasons for the rejection.

If the application is deemed to be complete, the director may approve, deny or modify the proposed encroachment. All such approvals, denials, or modifications shall be done in a timely manner, with an understanding and acknowledgement of applicable time limitations on the processing of applications for installation of personal wireless service facilities imposed by state and federal law, including but not limited to 47 U.S.C. Section 332(c)(7)(B)(ii), which provides that the County must act within a reasonable period of time, taking into account the nature and scope of the request.

Any application required by the provisions of chapter 3.17 of the general ordinance code shall be acted upon within sixty (60) days of receiving the complete application from the state franchise holder.

All denials or conditional approvals of completed applications shall be based solely on considerations of the health, safety and welfare of the public and the maintenance of the integrity of the right-of-way. If the application is denied, the director shall indicate the specific reasons for the denial in a letter to the applicant and shall include the instructions for filing an appeal, as described in Section 12.08.218 of this chapter.

If the application is approved or conditionally approved, the director shall prepare a roadway encroachment permit for issuance to the applicant; if the application is conditionally approved, the conditions shall be specifically noted on the face of the permit.

Section 12.08.250 of Title 12 of the General Ordinance Code of the County of Alameda is amended to read:

**12.08.250 - Permits not transferable.**

Except as provided in Section 12.08.205(G), no permit issued pursuant to this chapter is transferable.

**SECTION II**

This ordinance shall take effect and be in force thirty (30) days from and after the date of passage and before the expiration of fifteen days after its passage it shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on \_\_\_\_\_, 2011 by the following called vote:

AYES:  
NOES:  
EXCUSED:

\_\_\_\_\_  
President of the Board of Supervisors  
County of Alameda, State of California

ATTEST: CRYSTAL K. HISHIDA-GRAFF, Clerk  
of the Board of Supervisors, County of Alameda

By \_\_\_\_\_

Approved as to form:  
RICHARD E. WINNIE, County Counsel

By: \_\_\_\_\_