

(O-99-60)

ORDINANCE NUMBER O- **18685** (NEW SERIES)

ADOPTED ON **SEP 27 1999**

AN ORDINANCE REPEALING ORDINANCE NOS. 8985 (NEW SERIES) AND 15975 (NEW SERIES), AND AMENDING THE SAN DIEGO MUNICIPAL CODE BY AMENDING CHAPTER V, ARTICLE 4, DIVISION 5, SECTION 54.0502, AND BY ADDING NEW DIVISION 6, RELATING TO PUBLIC PAY TELEPHONES IN THE PUBLIC RIGHT-OF-WAY

WHEREAS, the City of San Diego (City) has, through enactment of Ordinance Nos. O-8985 (New Series) in 1964 and O-15975 (New Series) in 1983, established a process for issuing permits for the placement of public pay telephones in the public right-of-way; and

WHEREAS, the City has determined that this process must be revised and codified to clarify the process and conform to changes in the telephone industry that have occurred since deregulation in 1985; and

WHEREAS, public pay telephones should be located so as to aid fire protection, reporting of accidents and other emergencies, and be a convenience to the public; and

WHEREAS, the City is also currently developing a comprehensive measure to address problems created or contributed to by the presence of public pay telephones in certain areas of the City; and

WHEREAS, this new public right-of-way permitting process should be coordinated with the City's other concerns for the effects of public pay telephones, so that any such permitted public pay telephones are installed in a manner which discourages illegal drug sales and other criminal activity that is sometimes associated with and facilitated by pay telephones in the public right-of-way; reduces the disturbances that public pay telephones may tend to promote in

residential areas; reduces visual clutter in the public right-of-way; reduces the unnecessary obstruction of pedestrian and vehicular traffic; ensures the availability of pay telephones where they are needed for lawful purposes; and provides adequate access to pay telephones by disabled persons; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Ordinance Nos. 8985 (New Series) and 15975 (New Series) relating to The City of San Diego empowering the City Manager to issue revocable permits authorizing the placement of public telephones on the public sidewalks of The City of San Diego and setting forth the conditions of approval of such permits, are hereby repealed.

Section 2. That Chapter V, Article 4, Division 5 of the San Diego Municipal Code be and the same is hereby amended by adding the following definition, in the correct alphabetical order, to Section 54.0502 to read as follows:

SEC. 54.0502 Definitions

For purposes of Divisions 5 and 6 of Article 4, Chapter V:

[No change in text of other definitions].

“Permittee” means the entity authorized to provide pay telephone service.

Section 3. That Chapter V, Article 4 of the San Diego Municipal Code be and the same is hereby amended by adding Division 6, sections 54.0601 -- 54.0615 to read as follows:

DIVISION 6

Public Pay Telephones in the Public Right-of-Way

SEC. 54.0601 Purpose and Intent

This division establishes a permitting process for installing and maintaining *public pay telephones* in the public right-of-way. The process is intended to be coordinated with the City’s

other laws and policies in regard to the effects of *public pay telephones*.

SEC. 54.0602 Definitions.

All defined terms appear in italics in this division. Defined terms are set forth in this section and Section 54.0502. For purposes of this Division:

Public pay telephone means only those public pay telephones that are located wholly or partially in the City's public right-of-way.

SEC. 54.0603 Permit Required to Install or Maintain Public Pay Telephone in the Public Right-of-Way

(a) The City Manager or his designee is authorized to issue permits from time to time for the installation of *public pay telephones* in the public right-of-way. The City Manager shall approve the number of *public pay telephones* so as to best serve the public interest.

(b) A permit issued in accordance with the provisions of this Division is required for the installation and maintenance of *public pay telephones* in the public right-of-way.

(c) A permit for a *public pay telephone* in a public right-of-way that is located in a "High Crime Area" or "Redevelopment Project Area" or "Redevelopment Study Area" shall only be issued after approval for installation has also been given by the Chief of Police pursuant to section 54.0505.

SEC. 54.0604 Location of Public Pay Telephone in Public Right of Way

(a) *Public pay telephones* will be located so as not to unreasonably interfere with the rights of the public to use the public sidewalks.

(b) *Permittees* shall install the *public pay telephones* at the *Permittee's* expense and to the satisfaction of the City Manager.

SEC. 54.0605 Permittee's Duty to Maintain Public Pay Telephone and Surrounding Area

(a) *Permittees* shall maintain the *public pay telephones* in good working order.

(b) *Permittees* shall maintain the *public pay telephones* and their enclosures, if any, in a clean and sanitary condition. This includes the removal of all graffiti and litter.

SEC. 54.0606 Permittee's Duty to Indemnify City

All *Permittees* shall indemnify and save the City of San Diego harmless from any and all losses, claims, expenses, or judgments to any person or property arising from the installation, maintenance, or presence of the *public pay telephones*.

SEC. 54.0607 Requirements of Division to be Conditions of Permit

Any permit issued by the City Manager shall contain all the conditions set forth in this Division or incorporate such conditions by reference to this section.

SEC. 54.0608 Time for Compliance

(a) From and after OCT 27 1999, any person wanting to own or control a *public pay telephone* located in the public right-of-way shall first comply with the provisions in this Division.

(b) Persons owning or controlling *public pay telephones* located in the public right-of-way as of OCT 27 1999 shall be required to obtain a permit in accordance with this Division. Such persons shall have six months from OCT 27 1999 to obtain such a permit.

(c) A person may apply to the City Manager for a ninety-day extension of time to obtain the permit. The City Manager may, at his discretion, grant or deny any request for extension. The City Manager's decision as to any such extension shall be put into writing and provided to the person seeking the extension.

SEC. 54.0609 Grace Period for Public Pay Telephones Subject to Existing Contracts

(a) If a person has installed and is maintaining a *public pay telephone* that is in the public right-of-way and that is the subject of a written contract between the person and another party, that person may maintain that *public pay telephone* in its present location for the remaining term of the contract, or for a period of five years from OCT 27 1999, whichever period is shorter (the Grace Period), on condition that:

(1) the *public pay telephone* only incidentally encroaches into the public right-of-way,

(2) the *public pay telephone* does not interfere with the use of the public right-of-way, and

(3) no other reason exists to remove or relocate the *public pay telephone* out of the right-of-way.

(b) The City Manager has the discretion to determine whether a *public pay telephone* "only incidentally" encroaches into the public right-of-way, on a case by case basis, but may consider whether the encroachment is minor, insubstantial or unintentional.

(c) Upon the expiration of the Grace Period, the person owning or controlling a *public pay telephone* subject to this Section 54.0609 must comply with all of the

requirements set forth in this Division, and shall have no further right to have the *public pay telephone* continue to encroach upon the public right-of-way.

SEC. 54.0610 Duty to Restore Sidewalk upon Removal of Public Pay Telephone

In the event the *Permittee* removes any *public pay telephone* without prior revocation by the City Manager, the *Permittee* shall restore the sidewalk as nearly as practicable to its condition prior to such installation.

SEC. 54.0611 Revocation of Permits

(a) Except as provided in Section 54.0611(b), on thirty calendar days' prior written notice to the *Permittee*, the City Manager may revoke any permit.

(b) Any failure of compliance with all requirements of this Code shall immediately and automatically revoke the permit without further action by the City being necessary. Notice of such revocation shall be delivered in accordance with this Section.

(c) Upon delivery of the notice of revocation, the *Permittee* shall, immediately and at its own expense, remove the *public pay telephone* or telephones installed pursuant to the permit and shall restore the sidewalk as nearly as practicable to its condition prior to such installation. Delivery of the notice of revocation will be effective upon mailing.

(d) If a *Permittee* fails to remove a *public pay telephone* within ten business days after the date of delivery of the notice of revocation, the City may remove the *public pay telephone* and recover the costs of removal and restoration of the sidewalk from the *Permittee*.

SEC. 54.0612 City Manager to Adopt Implementing Procedures

The City Manager shall adopt procedures implementing this Division, and shall make a copy of those procedures available to any person upon request.

SEC. 54.0613 Public Pay Telephone as Public Nuisance

In the event that any *public pay telephone* permitted according to this Division is determined to be a public nuisance, it shall be subject to the abatement procedures of section 54.0506, and the permit shall be revoked at the completion of the abatement process.

SEC. 54.0614 Enforcement Remedies

Any person who fails to comply with the provisions of this Division may be prosecuted in accordance with the provisions of Section 12.0201 of this Code. However, criminal charges may not be filed until thirty calendar days from the date the City Manager or designee sends a notice to the person requesting compliance. The City Manager may also seek injunctive relief and civil penalties as provided in Section 12.0202 of this Code, or pursue any administrative remedy provided in Chapter 1 of this Code.

Section 54.0615 Applicability of Other Laws and Ordinances

(a) Nothing in this Division shall be deemed or interpreted to exempt *public pay telephones* in the public right-of-way from being subject to any other applicable regulatory provisions and procedures contained in this Code.

(b) No permit issued pursuant to this Division is valid unless the *Permittee* has also complied, and remains in compliance, with all other requirements of this Code. Compliance with all other requirements of the Code is the sole responsibility of the *Permittee*; the City Manager has no obligation to ensure that the *Permittee* is in compliance with any other sections of the Code.

Section 4. The City Clerk is hereby directed to fill in the effective date of this ordinance,

once known, in the blanks provided in Sections 54.0608 and 54.0609.

Section 5. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 6. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By Theresa C. McAteer
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