

ORDINANCE NUMBER O- 21315 (NEW SERIES)DATE OF FINAL PASSAGE APR 27 2021

AN EMERGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO PURSUANT TO CHARTER SECTION 295 AND THE URGENCY ORDINANCE PROVISIONS IN CALIFORNIA GOVERNMENT CODE SECTION 65858 AUTHORIZING TEMPORARY AMENDMENTS TO SAN DIEGO MUNICIPAL CODE CHAPTER 12, ARTICLE 9, DIVISION 7, SECTION 129.0710 AND CHAPTER 14, ARTICLE 1, DIVISION 4, SECTION 141.0420 RELATING TO MINISTERIAL APPROVAL OF CONSTRUCTION OF CERTAIN EQUIPMENT IN PUBLIC RIGHT-OF-WAY.

WHEREAS, the Centers for Disease Control and Prevention considers COVID-19 to be a very serious public health threat and the World Health Organization declared the COVID-19 outbreak to be a pandemic; and

WHEREAS, on February 19, 2020, the County Board of Supervisors ratified a declaration of local health emergency related to COVID-19; and

WHEREAS, on March 4, 2020, Governor Gavin Newsom proclaimed a State of Emergency in California as a result of the threat of COVID-19; and

WHEREAS, on March 12, 2020, Mayor Kevin Faulconer proclaimed the existence of a local emergency in the City of San Diego (City) as a result of COVID-19, which was ratified by the Council of the City of San Diego (Council) on March 17, 2020; and

WHEREAS, COVID-19 is causing, and is expected to continue to cause, severe negative impacts on the local economy and serious financial impacts to local residents and businesses, including substantial loss of income due to the loss of compensable work hours or wages, layoffs, and business closures; and

WHEREAS, in the interest of protecting the public health and preventing transmission of the novel coronavirus, COVID-19, it is essential to avoid unnecessary public exposure and has required an increase in telecommuting, telehealth, and distance learning for students; and

WHEREAS, this increase in telecommuting, telehealth, and distance learning for students has necessitated a rapid increase in the network capacity for the fiber optic and wireless community facilities industries, including the need to construct additional facilities in the public right-of-way to keep up with the increased demand and capacity; and

WHEREAS, the San Diego Municipal Code currently requires approval of a discretionary permit in accordance with a Process Three or Four in order to construct additional facilities in the public right-of-way; and

WHEREAS, a discretionary permit may take between four to six months for the City to process and for the appropriate decision-maker to consider and potentially approve; and

WHEREAS, allowing the ministerial approval for construction in the public right-of-way is necessary for the fiber optic and wireless communication facility industries to supply and manage the increased capacity needs to support increased telecommuting, telehealth, and distance learning necessary to prevent transmission of COVID-19; and

WHEREAS, without a ministerial approval process for construction in the public right-of-way, the fiber optic and wireless communication facility industries will be severely impacted in their abilities to provide services and keep pace to the growing demand in internet usage; and

WHEREAS, the inability to provide the necessary services and growing demand for internet usage will negatively impact the public health, safety, and welfare of the community by limiting telecommuting, telehealth, and distance learning, which is necessary to prevent further transmission of COVID-19; and

WHEREAS, this Ordinance temporarily allows a ministerial process (or a Process One under the San Diego Municipal Code) for construction in a City-owned public right-of-way if the applicant is able to demonstrate that installation of equipment cannot be undergrounded and verified by the City Engineer or designee; and

WHEREAS, this Ordinance allows equipment that must fit into dimensions that do not exceed three feet in height and four feet in diameter; and

WHEREAS, San Diego Charter, Article III, section 11 vests all legislative authority for the City in the Council; and

WHEREAS, California Government Code Section 65858 expressly authorizes the Council to adopt by four-fifths (4/5) vote, without following the procedures otherwise required for the adoption of a zoning ordinance, an interim urgency ordinance, which is necessary for the immediate protection of the public health, safety, and welfare; and

WHEREAS, by allowing a temporary amendment of the San Diego Municipal Code, fiber optic and wireless communication facility industries will be able to construct and use certain equipment in the public right-of-way, which pursuant to Government Code section 65858 may only be effective for 45 days, unless extended; and

WHEREAS, the Council finds that there is an emergency necessitating immediate adoption of this Ordinance pursuant to Government Code section 65858; and

WHEREAS, the Council finds that, pursuant to Charter section 295(e), this Ordinance is necessary to provide for the immediate preservation of the public peace, property, health, or safety; and

WHEREAS, under San Diego Charter section 280(a)(3), this Ordinance is not subject to veto by the Mayor because it is an emergency ordinance; NOW, THEREFORE,

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

Section 1. That Chapter 12, Article 9, Division 7 of the San Diego Municipal Code is temporarily amended by amending section 129.0710, to read as follows:

§129.0710 How to Apply for a Public Right-of-Way Permit

An application for a Public Right-of-Way Permit shall be submitted in accordance with Sections 112.0102 and 129.0105. The submittal requirements for Public Right-of-Way Permits are listed in the Land Development Manual. A *development permit* is required prior to issuance of a Public Right-of-Way Permit for the following:

- (a) If the proposed *encroachment* involves construction of a privately-owned *structure* or facility into the *public right-of-way* dedicated for a *street* or an *alley*, and where the *applicant* is the *record owner* of the underlying fee title, a Neighborhood Development Permit is required in accordance with Section 126.0402(j) except for the following, which are subject to approval by the City Engineer in accordance with Process One:
 - (1) through (9) [No change in text.]
 - (10) Encroachment of equipment into the *public right-of-way* by *applicants* for the fiber optic or *wireless communication facility* industries that can demonstrate installation of equipment cannot be undergrounded, as verified by the City Engineer or designee. The equipment shall not exceed 3 feet above the finished *grade* of the curb line and greater than 4 feet in diameter.

(b) If the proposed *encroachment* is erected, placed, constructed, established or maintained in the *public right-of-way* when the *applicant* is not the *record owner* of the property on which the *encroachment* will be located, a Site Development Permit is required in accordance with Section 126.0502(d)(6), except for the following:

(1) through (5) [No change in text.]

(6) Encroachment of equipment into the *public right-of-way* by *applicants* for the fiber optic or *wireless communication facility* industries that can demonstrate installation of equipment cannot be undergrounded, as verified by the City Engineer or designee. The equipment shall not exceed 3 feet above the finished *grade* of the curb line and greater than 4 feet in diameter.

(c) through (d) [No change in text.]

Section 2. That Chapter 14, Article 1, Division 4 of the San Diego Municipal Code is temporarily amended by amending section 141.0420, to read as follows:

§141.0420 Wireless Communication Facilities

Wireless communication facilities shall comply with the approval process set forth in Section 141.0420(a) through (c) as applicable to the *development*. All *wireless communication facilities* are subject to the general regulations in Section 141.0420(d), the general design requirements in Section 141.0420(e) and the *Wireless Communication Facilities* Guidelines in the Land Development Manual. Section 141.0420 does not apply to amateur (HAM) radio communication facilities.

(a) Limited Use Regulations

Wireless communication facilities are permitted as a limited use decided in accordance with Process One as follows:

(1) through (4) [No change in text.]

(5) Ground-mounted equipment other than a pole to which *wireless communication facility* is attached meeting the requirements in sections 129.0710(a)(10) and 129.0710(b)(6) located in the *public right-of-way*.

(b) [No change in text.]

(c) Conditional Use Permit Regulations

Wireless communication facilities may be permitted with a Conditional Use Permit as follows:

(1) Decided in accordance with Process Three, where the *development* meets the following locational criteria:

(A) [No change in text.]

(B) In the *public right-of-way* with ground-mounted equipment exceeding 3 feet above the finished *grade* of the curb line and greater than 4 feet in diameter; other than a pole to which the *wireless communication facility* is attached.

(2) [No change in text.]

(d) through (g) [No change in text.]

Section 3. That there is a current and immediate threat to the public health, safety, and welfare of the City and its communities caused by COVID-19, thereby necessitating the immediate enactment of this interim urgency Ordinance. This Ordinance is being considered concurrently with San Diego Ordinance O-2021-119 also making temporary amendments to San Diego Municipal Code section 129.0710 for construction of equipment in the public right-of-way; therefore, the City Clerk, with the written approval and concurrence of the City Attorney, is authorized to reconcile the numbering of sections and placement of text within these sections upon the final passage of the Ordinances, without further action by the City Council, pursuant to San Diego Charter section 275.

Section 4. That the recitals above are incorporated herein.

Section 5. That this Ordinance, being an urgency Ordinance, is effective upon the day of its passage by the affirmative vote of at least eight members of the City Council pursuant to California Government Code section 65858. This Ordinance is only effective inside the Coastal Overlay Zone, which is subject to California Coastal Commission jurisdiction as a City of San Diego Local Coastal Program amendment, when the City has received a waiver of certification of the local coastal program amendment, justification as to why a waiver is not necessary, or upon the date the California Coastal Commission unconditionally certifies those provisions as a local coastal program amendment. The Ordinance is effective for 45 days from the effective date, unless extended pursuant to California Government Code section 65858.

Section 6. That a full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Shannon C. Eckmeyer
Shannon C. Eckmeyer
Deputy City Attorney

SCE:sc
04/12/2021
04/20/2021 COR. COPY
Or.Dept:DSD
Doc. No.: 2628762

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~

NEW LANGUAGE: Double Underline

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(2) [No change in text.]

(d) through (g) [No change in text.]

SCE:sc
04/12/2021
Or.Dept:DSD
Doc. No.: 2629717

Passed by the Council of The City of San Diego on APR 27 2021, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage APR 27 2021.

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Connie Patterson Deputy

I HEREBY CERTIFY that the foregoing ordinance was passed on the day of its introduction, to wit, on APR 27 2021, said ordinance being of the kind and character authorized for passage on its introduction by Section 275 of the Charter.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Connie Patterson Deputy

Office of the City Clerk, San Diego, California
Ordinance Number O- 21315