

ORDINANCE NUMBER O- 21417 (NEW SERIES)

DATE OF FINAL PASSAGE JAN 27 2022

AN ORDINANCE AMENDING CHAPTER 12, ARTICLE 9, DIVISION 7 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 129.0710; AND AMENDING CHAPTER 14, ARTICLE 1, DIVISION 4, BY AMENDING SECTION 141.0420, RELATING TO MINISTERIAL APPROVAL OF INSTALLATION OF EQUIPMENT IN PUBLIC RIGHT-OF-WAY.

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 for fiber optic and wireless communication facilities in the public right-of-way; and

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

WHEREAS, creating a process that allows the fiber optic and wireless communication facility industries to supply and manage the increased telecommuting, telehealth, and distance learning necessary to prevent transmission of the novel coronavirus, COVID-19, using the ministerial approval process benefits our community; and

WHEREAS, without a ministerial approval process for construction in the public right-of-way, the fiber optic and wireless communication facility industries are unable to keep up with the growing demand in internet usage; and

WHEREAS, this Ordinance allows a ministerial process (or a Process One under the San Diego Municipal Code (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, as verified by the City Engineer or designee; and

WHEREAS, this Ordinance applies only to equipment that does not exceed three feet in height and four feet in diameter; and

WHEREAS, on April 27, 2021, the Council of the City of San Diego (Council) adopted Emergency Ordinance O-21315 which temporarily amended the Municipal Code to allow fiber optic and wireless communication facility industries to construct and use certain equipment in the public right-of-way; and

WHEREAS, the temporary amendment to the Municipal Code has since expired and Council desires to make permanent the ministerial approval process so that fiber optic and wireless communication facility industries may construct and use certain equipment in the public right-of-way as set out herein; 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 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 necessary for fiber optic development or a *wireless communication facility* into the *public right-of-way* by *applicants* for the fiber optic or *wireless communication facility* industries that can demonstrate that installation of the 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 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 necessary for fiber optic development or a *wireless communication facility* into the *public right-of-way* by *applicants* for the fiber optic or *wireless communication facility* industries that can demonstrate that installation of the 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 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 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 required for a *wireless communication facility*, other than a pole to which *wireless communication facility* is attached, that meets the requirements in Sections 129.0710(a)(10) and 129.0710(b)(6).

(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 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.

Section 4. That prior to becoming effective, this Ordinance shall be submitted to the San Diego County Regional Airport Authority acting as the Airport Land Use Commission (ALUC) for a consistency determination.

That if the ALUC finds this Ordinance consistent with the Airport Land Use Compatibility Plans (ALUCP) for San Diego International Airport, Marine Corps Air Station Miramar, Gillespie Field, Montgomery Field, and Brown Field Airport (collectively, Airports), this Ordinance shall take effect and be in force on the thirtieth day from and after the finding of consistency, or on the thirtieth day from and after its final passage, whichever is later, except that the provisions of this Ordinance inside the Coastal Overlay Zone, which are subject to California Coastal Commission jurisdiction as a City of San Diego Local Coastal Program amendment, shall not take effect until the date the California Coastal Commission unconditionally certifies those provisions as a local coastal program amendment.

That if the ALUC determines that this Ordinance is inconsistent or conditionally consistent, subject to proposed modifications, with the ALUCPs for the Airports, the Ordinance shall be submitted to the Council for reconsideration.

That if the ALUC determines that this Ordinance is conditionally consistent with the ALUCPs for the Airports, but that consistency is subject to proposed modifications, with the ALUCPs for the Airports, the Ordinance shall be submitted to the Council for reconsideration.

That if the ALUC determines that this Ordinance is conditionally consistent with the ALUCPs for the Airports, but that consistency is subject to proposed modifications, the Council may amend this Ordinance to accept the proposed modifications, and this Ordinance as amended shall take effect and be in force on the thirtieth day from and after its final passage, except that the provisions of this Ordinance as amended inside the Coastal Overlay Zone, which are subject to California Coastal Commission jurisdiction as a City of San Diego Local Coastal Program amendment, shall not take effect until the date the California Coastal Commission unconditionally certifies those provisions as a local coastal program amendment.

That a proposed decision by the Council to overrule a determination of inconsistency or to reject the proposed modifications for a finding of conditional consistency shall include the findings required pursuant to Public Utilities Code section 21670 and require a two-thirds vote. The proposed decision and findings shall be forwarded to the ALUC, the California Department of Transportation, Division of Aeronautics, and the airport operators for the Airports. The Council shall hold a second hearing not less than 45 days from the date the proposed decision and findings were provided, at which hearing any comments submitted by the public agencies shall be considered and a final decision to overrule a determination of inconsistency shall require a two-thirds vote.

That if the Council makes a final decision to overrule a determination of inconsistency, this Ordinance shall take effect and be in force on the thirtieth day from and after that final decision, except that the provisions of this Ordinance inside the Coastal Overlay Zone, which are subject to California Coastal Commission jurisdiction as a City of San Diego Local Coastal Program amendment, shall not take effect until the date the California Coastal Commission unconditionally certifies those provisions as a local coastal program amendment.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Lauren N. Hendrickson
Lauren N. Hendrickson
Deputy City Attorney

LNH:cm
September 15, 2021
Or.Dept: Planning
Doc. No.: 2782990_2

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of JAN 11 2022.

ELIZABETH S. MALAND
City Clerk

By [Signature]
Deputy City Clerk

Approved: 1/27/22
(date)

[Signature]
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck-Out~~

NEW LANGUAGE: Double Underline

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(1) through (9) [No change in text.]

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(2) [No change in text.]

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

LNH:cm
September 15, 2021
Or.Dept: Planning
Doc. No.: 2781210_2

Passed by the Council of The City of San Diego on JAN 11 2022, 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 JAN 27 2022.

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 [Signature], Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on DEC 13 2021, and on JAN 27 2022.

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 [Signature], Deputy

Office of the City Clerk, San Diego, California
Ordinance Number O- 21417