

ORDINANCE NO. 10 – 17

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF DUBLIN**

**AMENDING CHAPTER 7.04 OF THE DUBLIN MUNICIPAL CODE
RELATING TO DEVELOPMENT AND ENCROACHMENT PERMITS FOR WIRELESS
COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT OF WAY**

The City Council of the City of Dublin does hereby ordain as follows:

Section 1. Chapter 7.04 (Encroachments) of the Dublin Municipal Code is hereby amended to read as follows:

Article I. General Provisions

7.04.010 Definitions.

Unless the context otherwise requires, the definitions contained in this section shall govern the construction of this chapter:

"Antenna" shall have the meaning given that term in Section 8.92.030 of this Code.

"City Engineer" means the City Engineer or his designee.

"Encroach" or "encroachment" means and includes going upon, over, under, or using any street in such a manner as to prevent, obstruct, or interfere with its normal use, including but not limited to the performance thereon of any of the following acts:

- A. Excavating, filling or disturbing the street;
- B. Erecting or maintaining any post, pole, fence, guard rail, wall, loading platform, or other structure on, over, or under the street;
- C. Planting any tree, shrub, or other growing thing within the street;
- D. Placing or leaving on the street any rubbish, brush, earth, or other material of any nature whatever;
- E. Constructing, placing, or maintaining on, over, under, or within the street any pathway, sidewalk, driveway, or other surfacing, any culvert or other surface drainage, or subsurface drainage facility, any pipe, conduit, wire, or cable;
- F. Lighting or building a fire;
- G. Constructing, placing, planting, or maintaining any structure, embankment, excavation, tree, or other object adjacent to the street which causes or will cause an encroachment; or
- H. Placing or causing to be placed any material, machinery, or apparatus on the street for building, paving, or other purposes for over twenty-four (24) hours.

"Permittee" means any person that proposes to do work or encroach upon a street as herein defined and has been issued a permit for said encroachment by the City Engineer.

"Person" means any individual, firm, partnership, association, or corporation, including any public agency or utility, or any agent or representative thereof and includes successors in interest.

"Personal Wireless Service" means commercial mobile telecommunications services provided by a telephone or telegraph corporation under a certificate of public convenience and necessity issued by the California Public Utilities Commission.

"Personal Wireless Service Facility" means a facility that transmits and/or receives telephonic or other wireless signals, including antennas, equipment, related facilities and appurtenances thereof used to provide or facilitate the provision of Personal Wireless Service.

"Personal Wireless Service Facility Permit" means a permit issued pursuant to this Chapter authorizing a Permittee to construct, install, and maintain a Personal Wireless Service Facility within the full width of the right-of-way of any street, as defined in the California Vehicle Code.

"Street" means the full width of the right-of-way of any street, as defined in the California Vehicle Code, used by the general public, whether or not such street has been accepted as and declared to be part of the city system of streets including streets forming a part of the state highway system. "Street" also includes easements where the city is the grantee of the easement and property owned by the city.

7.04.020 Applicability.

A. This chapter shall not apply to any officer or employee of the city acting in the discharge of his official duties to any work being performed by any person or persons, firm or corporation under contract with the city; when permission to encroach has been expressly granted by the City Council; to a permanent projection from buildings as permitted by Section 7.32.340 and Section 7.32.370 or to temporary pedestrian protection permitted by Section 7.32.290.

B. This chapter shall not prevent any person from maintaining any pipe or conduit lawfully on or under the street, or from making excavation, as may be necessary, for the preservation of life or property when an urgent necessity therefor arises provided that such person shall notify the City Engineer by telephone the day such work is performed or the day the offices of the city are again opened. Such person shall then apply on the proper form within five (5) working days confirming the work performed.

7.04.030 Streets—Right of lawful use.

Any permit granted under this chapter shall be subject to the right of the city or any other person entitled thereto to use that part of the street for any purpose for which it may be lawfully used, and no part of the street shall be unduly obstructed at any time. All work or use shall be planned and executed in a manner that will least interfere with the safe and convenient travel of the general public.

7.04.040 Prohibited encroachments.

No application will be approved nor permit issued for constructing or maintaining a loading platform upon or in any street or for erecting or maintaining therein or thereon a post, pole, column, or structure for support for advertising signs except as provided in Section 7.04.080.

7.04.050 Liability for damages—Insurance required.

A. Permittee shall be responsible for all liability for personal injury or property damage which may result from work permitted and done by permittee under the permit, or proximately caused by failure on permittee's part to perform his obligations under said permit in respect to maintenance. If any claim of such liability is made against the city, its officers, or employees permittee shall defend, indemnify, and hold them and each of them, harmless from such claim including any claim based on the active or passive negligence of the city, its officers or employees, insofar as permitted by law.

B. Permittee shall be required to show evidence of public liability insurance in such form and amount as may be required by the City Engineer to protect the city, its officials, officers, directors, employees, and agents from claims which may arise from permittee's operations under the permit.

7.04.060 Completion of work by city.

If the work or use authorized by a permit is unsafe, in violation of this chapter, or is unduly delayed by the permittee, the City Engineer may, upon written notice, revoke the permit and complete the work or any portion thereof, or make the site safe or return it to the same condition existing prior thereto. The actual cost of performing such work by the city plus overhead shall be charged to and paid for by the permittee.

7.04.070 Signs on public property.

A. No person, except a duly authorized public officer or employee, shall paint, mark, or write on, or post or otherwise affix, any handbill or sign to or upon any public property including, but not limited to any sidewalk, crosswalk, curb, curbstone, street, hydrant, tree, shrub, tree stake or guard, railroad trestle, electric light pole, telephone pole, or power pole, traffic signal pole, public bridge, drinking fountain, street sign, or traffic sign.

B. Any handbill or sign found posted or otherwise affixed upon any public property contrary to the provisions of this section may be removed by the city. The person responsible for any such illegal posting shall be liable for the cost incurred in the removal thereof and the City Manager or his designee is authorized to effect the collection of said cost.

C. Nothing in this section shall apply to the installation of a metal plaque or plate in a sidewalk commemorating an historical cultural or artistic event location or person for which the City Manager or his designee has granted approval.

D. Nothing in this section shall apply to the painting of house numbers upon curbs done in accordance with the provisions of Section 7.04.110.

E. Nothing in this section shall apply to the temporary markings placed by the owners of subsurface installations pursuant to Government Code Section 4216.

7.04.080 Public service banners.

A. Notwithstanding the provisions of Section 7.04.070 hereof, public service banners may be placed within any public street, alley, or other public property upon issuance of an encroachment permit by the City Engineer. In issuing such an encroachment permit, the City Engineer shall consider the safety of vehicular and pedestrian traffic, the prevention of damage to public property, the aesthetic conditions of a particular neighborhood and the public health, safety, and welfare.

B. As used herein, "public service banner" shall mean temporary banners of nonprofit public welfare organizations and public service groups which advertise events of community interest.

C. The City Manager may, in his discretion, adopt a policy regulating the installation, maintenance, and removal of public service banners.

7.04.090 Maintenance of records.

All permittees and other persons maintaining permanent facilities within a street shall keep up-to-date records of the location and description of all such facilities which records shall be furnished to the City Engineer upon request. As used herein, "facilities" means both above-ground and below-ground facilities, including, but not be limited to, pipes, wires, and tanks.

7.04.100 Mailbox placement.

All mail boxes shall be placed in accordance with the rules and regulations of the United States Post Office Department, but no box shall be so placed within the street as to endanger the life or safety of the traveling public.

7.04.110 Markings on streets and curbs.

It is unlawful for any person, without first obtaining a permit under this chapter, to solicit on a commercial or donation basis, to place or maintain any number, figure, letter, carving, drawing, design, or other marking upon any street; except that markings for the purpose of identifying survey, utility, or construction locations shall not be subject to this chapter. A permit for placing or maintaining numbers, figures, letters, carvings, drawings, designs or other markings under this chapter may be issued only to nonprofit organizations which have their principal and permitted meeting place within city limits and have been organized and established within the city for a minimum of one (1) year continuously preceding application for a permit.

7.04.120 Monuments.

Any monument of granite, concrete, iron, or other lasting material set for the purpose of locating or preserving the lines and/or elevation of any street, property subdivision, or a precise survey point or reference point shall not be removed or disturbed or caused to be removed or disturbed without first obtaining permission from the City Engineer to do so. Replacement of removed or disturbed monuments will be at the expense of the permittee.

7.04.130 Hedges, fences, shrubbery and lawns.

A. No tree, fence, or similar structure, shall be planted, erected, or maintained in a street without a permit. No encroachment of any nature will be permitted or maintained which impedes, obstructs, or denies such pedestrian or other lawful travel, or which impairs adequate sight distance for safe pedestrian or vehicular traffic.

B. Maintenance. The permittee or property owner shall maintain all hedges, shrubs, walls, fences, or similar structures erected for landscaping purposes in a neat and orderly condition; if such structures are not so maintained, the City Engineer may direct that permittee or property owner to remove the same and restore the street to its former condition, at the expense of the permittee or property owner.

C. Lawns. Any person otherwise entitled to may maintain a lawn of any grass or type not prohibited by other law, within the street without a permit. The lawn shall not extend into the roadway or walkway nor into the drainage ditches, gutter, or other drainage facilities.

7.04.140 Trees.

The applicant for a permit to plant trees in the right-of-way of a public highway shall show in his application the exact location of and the kind of tree to be planted. If trees are planted within the public right-of-way and within five (5) feet of a public sidewalk and/or curb, the City Engineer may require a root barrier to be installed with the tree(s). No change shall be made in either location of trees or in kinds of trees without the approval of the City Engineer. The trees shall remain the property of the permittee who shall pay the cost of planting the trees and shall bear the cost of their maintenance. The City Engineer, at his sole discretion, may require the permittee to remove the trees at his sole expense if necessary for public safety or convenience.

7.04.150 Storage on street or sidewalk prohibited.

No person shall store any item of business inventory, including vehicles, upon any street or sidewalk.

Article II. Permit Requirements

7.04.160 Permit—Required.

A. No person shall encroach or cause to be made any encroachment of any nature whatever within, upon, over, or under the limits of any street in the city, or make or cause to be made any alteration of any nature within, upon, over, or under such street; or construct, put upon, maintain or leave thereon, or cause to be constructed, put upon, maintained, or left thereon, any obstruction or impediment of any nature whatever; or remove, cut or trim trees thereon; or set a fire thereon; or place on, over or under such street any pipe line, conduit, or other fixture; or place any structure, wall, culvert, or similar encroachment, or make any excavation or embankment in such a way as to endanger the normal usage of the street without having first obtained a permit as required in this chapter.

B. No person shall construct, install, or maintain a Personal Wireless Service Facility within, upon, over, or under the limits of any street in the city without first obtaining a Personal Wireless Service Facility Permit. Unless expressly set forth herein, all provisions of this chapter shall apply to Personal Wireless Service Facility Permits and applications therefor.

7.04.170 Permit—Application—Generally.

The City Engineer shall provide an application form which shall contain such information as in the judgment of the City Engineer is necessary, including information to establish the exact location, nature, dimensions, duration, and purpose of the proposed use or encroachment. The application shall be filed with the City Engineer.

7.04.180 Permit—Application—Required documents.

A. The application shall be accompanied by maps, plats, sketches, diagrams or similar exhibits to the size and in the quantity as the City Engineer shall prescribe on which shall be plainly shown any and all information necessary to locate, delineate, illustrate, or identify the proposed use or encroachment and the right of the applicant to so use or encroach thereon.

B. The applicant shall be accompanied by the written order or consent to any work thereunder which may be required by law or any other public agency or body.

7.04.190 Action on application.

Applications may be approved, conditionally approved, or denied. The City Engineer shall act on the application within thirty (30) working days. Where the City Engineer finds that the requirements of this chapter have been met and the required fees and charges have been paid, he shall issue a permit for the use or encroachment attaching such conditions as he may deem necessary for the health, safety, and welfare of the public and for the protection of the city. If the City Engineer finds the requirements of this chapter have not been met, he shall deny the permit, giving the reasons therefor in writing. The City Engineer may deny a permit where trenching or cutting a street is required where the street overlay or preventative maintenance treatment, such as a slurry seal, or equivalent was completed within five years or three years, respectively.

7.04.200 Permit issuance—Fees and charges.

A. Fees for issuance of the permit and charges shall be established by the City Council from time to time by resolution upon recommendation of the City Engineer.

B. A public agency which is authorized by law to establish or maintain any works or facilities in, under, or over any public street shall not be subject to a fee for issuance of a permit but shall be required to pay all other charges. A public agency or utility may at the option of the City Engineer arrange to be billed for the required fees and charges.

7.04.210 Bond—Required.

A. Prior to issuance of a permit, unless waived by the City Engineer, the permittee shall deposit with the city cash, a certified or cashier's check, or an approved surety bond in a sum to be fixed by the City Engineer as sufficient to reimburse the city for costs of restoring the street to its former condition. If the permittee anticipates applying for a number of permits throughout the year, he may file a cash deposit or approved surety bond in a sum estimated by the City Engineer as sufficient to cover the permittee's activities during any twelve (12) month period.

B. The City Engineer may require an additional bond or cash deposit at any time when in his opinion the amount of the bond or cash deposit previously made is insufficient.

7.04.220 Bond—Condition.

The condition of any bond or cash deposit made pursuant to this Article shall be that the permittee will diligently and with good faith comply with this chapter and the terms and conditions of the permit.

7.04.230 Bond—Payable to city—Term.

Any bond or cash deposit required by the City Engineer pursuant to this chapter shall be payable to the city. Upon satisfactory completion of all work authorized in the permit, and fulfillment of all conditions of the permit, including the guaranty period set forth in Section 7.04.370 the bond or cash deposit will be released, provided that the City Engineer may, in his discretion, allow the earlier release of the bond or cash deposit.

7.04.240 Bond—Exclusions.

Cash deposits or bonds will not be required of any public utility holding a franchise with the City or public agency which is authorized by law to establish or maintain any works or facilities in, under, or over any street.

7.04.250 Permit—Term.

The permittee shall complete the work or use authorized by a permit issued pursuant to this chapter within ninety (90) days from date of issuance, unless a different period is stated in the permit. If the work or use is not completed within ninety (90) days or within the time stated in the permit, then the permit shall become void, and the City Engineer may restore the street in accordance with Section 7.04.060. An extension of time for good cause may be granted by the City Engineer when requested in writing.

7.04.260 Permit—Display required.

The permittee shall keep any permit at the work site, and the permit must be shown to any authorized representative of the City Engineer or law enforcement officer on demand.

7.04.270 Changes in permit.

No changes may be made in the location, dimension, character, or duration of the encroachment or use as granted by the permit except upon written authorization of the City Engineer.

7.04.280 Permit—Nontransferable.

No permit issued pursuant to this chapter shall be transferable or assignable to any other person.

7.04.290 Other permit issuance—Not compliance with this chapter.

Issuance of a building permit, electrical permit, plumbing permit, demolition permit, or any other permit which may be required by law at the same location and in connection with the same activity for which a permit would be issued hereunder shall not constitute authorization to encroach on any street.

Article III. Performance of Work

7.04.300 Standards and specifications.

The City Engineer shall from time to time establish such standards and specifications as he deems necessary for the proper construction, use, and maintenance of encroachments and for the safety, protection and convenience of the public, which standards and specifications shall be applicable to all permittees. Any work or use done under all permits shall conform to the city's standard plans and specifications unless otherwise required by the City Engineer. If inadequate provision is made for the safety, protection and convenience of the public by the permittee, the City Engineer may take such action as he deems necessary for the protection of the public and shall charge the permittee therefor.

7.04.310 Safety laws—Compliance required.

The permittee shall comply with all applicable federal, state, and local laws and regulations, including Department of Industrial Relations of the state of California (CAL-OSHA) rules and regulations.

7.04.320 Inspections.

The permittee shall allow the City Engineer to inspect any or all work done pursuant to the permit at reasonable times.

7.04.330 Commencement of work—Notification required.

A. The permittee shall notify the City Engineer at least twenty-four (24) hours in advance of beginning work. If appropriate, the permittee shall give such advance notice as may be required by the City Engineer to the Police Department and/or Fire Department of the location and nature of the proposed work.

B. In addition to subsection A, the permittee of Personal Wireless Service Facility Permit shall comply with the public notification requirements of Section 7.04.450.

7.04.340 Restoration of street.

Upon completion of the work, acts, or things for which the permit was issued, or when required by the City Engineer, the permittee shall replace, repair, or restore the street at the place of work to the same condition existing prior there to, unless otherwise provided in the permit. The permittee shall remove all obstructions, impediments, material or rubbish caused to be or placed upon the street under the permit, and shall do any other work or perform any act necessary to restore the street to a safe and usable condition.

7.04.350 Drainage requirements.

If the work, use or encroachment authorized in the permit shall interfere with the established drainage, the permittee shall provide for proper drainage as directed by the City Engineer.

7.04.360 Completion of work—Notification required.

Upon completion of all work authorized in the permit, the permittee shall notify the City Engineer in writing. No work shall be deemed to be completed until such notification of completion is given and final inspection has been made by the City Engineer unless such final inspection is waived by the City Engineer in writing.

7.04.370 Guaranty period.

A. After completion of all work, the permittee shall exercise reasonable care in monitoring and maintaining the area affected by the encroachment. For a period of two (2) years after final inspection of the work by the City Engineer or the date of waiver of final inspection, the permittee shall repair any

injury or damage to any portion of the street which occurs as the result of work done under the permit, including any and all injury or damage to the street which would not have occurred had such work not been done. Any public utility, public agency, franchisee, or Personal Wireless Service Facility permittee which is authorized by law or contract to establish or maintain any works or facilities in, under, or over any street shall monitor, maintain, and/or repair the street or any portion of it where the public utility, public agency, permittee, or franchisee has made any excavation for the life of any works or facilities contained in or under the street.

B. The permittee shall repair any injury or damage in any portion of the street, resulting from the work done under the permit within the period of time required by the City Engineer. In the event that the permittee fails to act timely or should repair or replacement be required before the permittee can be notified or can respond to notification, the city may make or cause to be made the necessary repairs or replacements or perform the necessary work and the permittee shall be charged with all the expenses incurred in the performance of said work, including overhead.

7.04.380 Relocation or removal of encroachments.

If any future construction, reconstruction, or maintenance work by the city or required by the city on a street requires the relocation, removal, or abandonment of installations or encroachments in, on, over, or under a street, the permittee owning, controlling, or maintaining such installations or encroachments shall relocate, remove, or abandon the same at his sole expense unless otherwise required by law. When removal, relocation, or abandonment is required, the City Engineer shall give such permittee a written demand specifying the place of relocation, or that the installations or encroachment must be removed or abandoned. If said permittee fails to comply with said instructions, the city may cause the removal, relocation, or abandonment of the encroachment at the expense of the permittee.

Article IV. Sidewalks, Driveways, Curbs

7.04.390 Permit—Required.

It is declared to be unlawful for any person to repair or construct, or cause to be repaired or constructed by private contract in the city any sidewalk, driveway, curb, gutter, or paving, or to cut any curb for the purpose of constructing a driveway, or to begin excavation for the purpose of constructing a sidewalk, driveway, curb, gutter, or paving within any street without first obtaining a permit as required in Article II of this chapter.

7.04.400 Removal of driveway.

When a driveway shall permanently cease to be used, the curb cut therefor, and all or a portion of the driveway, as determined by the City Engineer, shall be removed and standard curb, gutter, and sidewalk shall be constructed. The property owner shall remove the curb cut and driveway and construct curb, gutter, and sidewalk, or cause same to be removed or constructed, within thirty (30) days of receiving written notice from the City Engineer to do so. Should the property owner fail to perform such work or cause it to be performed within said thirty (30) days, the City Engineer shall have such work done at the expense of the property owner. The provisions of this section shall apply to all existing driveways whether or not the use thereof was heretofore abandoned, as well as to all such driveways which are constructed after the effective date of the ordinance codified in this chapter.

7.04.405 Closure of hazardous driveways.

When a driveway is determined by the City Council to cause a hazardous condition, the curb cut therefor, and all or a portion of the driveway as determined by the City Council, shall be removed and standard curb, gutter and sidewalk shall be constructed. Prior to any action being taken on closure of a driveway under this section, the following conditions shall be met:

- A. The City Council shall conduct a public hearing for the purpose of reviewing the recommendation for closure and shall determine whether the closure is appropriate.
- B. An alternate source of access to the property shall be available or shall be provided by the city.
- C. The city shall bear the expense of closure of the hazardous driveway and of providing any alternate access that is necessary. The city shall approve any plans, specifications and estimates prior to work being performed or shall contract for the work according to the terms of Chapter 2.36 of this code (purchasing regulations).

7.04.410 Denial of building permit while sidewalk incomplete.

No building permit shall be issued under the terms of this code for construction, additions or remodeling on any lot, tract, or parcel of land on the street frontage of which the sidewalk, curb, or gutter is not complete, unless said building permit is accompanied by the issuance of a permit under the terms of this chapter for the completion of such improvements on the street frontage; except that if the City Engineer determines that it is in the public interest, he may waive all or a portion of the improvements required by the provisions of this section.

7.04.420 Repair of sidewalks.

A. Definitions.

1. "Maintenance and repair of sidewalk area" includes, but is not limited to, maintenance and repair of surfaces including grinding; removal and replacement of sidewalks; repair and maintenance of sidewalks; repair and maintenance of curbs and gutters; removal of impervious paving materials from street tree planting strips, or other right-of-way landscape planters; removal of weeds and/or debris; tree root pruning and installing root barriers; trimming of shrubs and/or groundcover and trimming shrubs within the area between the property line of the adjacent property and the street pavement line, including planting strips and curbs.
2. "Sidewalk" shall have the same meaning as in Section 5600 of the California Streets and Highways Code, as it may hereafter be amended.

B. Maintenance and Repair of Sidewalks.

1. **Obligation to Repair and Maintain.** The owners of lots or portions of lots adjacent to or fronting on any portion of a sidewalk area between the property line of the lots and the street line, including landscape planting strips, sidewalks, retaining walls, curbs and gutters, and persons in possession of such lots by virtue of any permit or right, shall repair and maintain such sidewalk areas in a condition that is not dangerous to property or to persons using the sidewalk in a reasonable manner and will not interfere with the public convenience of said sidewalk area. The owners shall also pay the costs and expenses therefor. All work performed within the public right-of-way requires an encroachment permit pursuant to Section [7.04.390](#) of the Dublin Municipal Code.

When, during the course of a development project's lifetime, it is necessary to remove or reconstruct public street improvements (i.e., curb, gutter, sidewalk), such improvements shall be reconstructed to preserve or reestablish any previously existing landscape planter, when certain landscape improvements have been included in the planned development (PD) properties subject to PD restrictions shall preserve existing street trees and other landscaping to the extent possible, or shall install new landscaping subject to the review and approval of the City Engineer.

Subsequent to adoption of the ordinance codified in this article, any unauthorized work conducted within the public right-of-way landscape areas shall be brought into conformance with the intent and provisions of this article, and other applicable provisions of the Dublin Municipal Code pertaining to

encroachments on city property. Such unauthorized work shall constitute a violation of this article and is punishable as an infraction.

C. **Recovery of City's Costs of Sidewalk Maintenance and Repair.** Anything in this article to the contrary notwithstanding, with respect to maintenance and repair of sidewalk areas and the making, confirming and collecting of assessment for the costs and expenses of said maintenance and repair, the city may proceed under the provisions of Chapter 22 of Division 7, Part 3 of the Streets and Highways Code of the state as the same is now in effect or may hereinafter be amended to recover costs it incurs in maintaining and repairing sidewalks. The required maintenance and repairs of sidewalk area must commence within thirty (30) days of notification. Costs recoverable by the city may include a charge for the city's costs of inspection and administration whenever the city awards a contract for such maintenance and repair and including the costs of collection of assessment for the costs of maintenance and repair or the handling of any lien placed on the property due to the failure of the property owner to promptly pay such assessments.

While maintenance and repair costs ultimately remain the property owner's responsibility, a portion of the city's annual budget is allocated for sidewalk repair and the city may choose to permanently repair certain sidewalks with such money.

D. **Liability for Injuries to Public.** The property owners of lots or portions of lots fronting on or adjacent to any portion of a street or any portion of a sidewalk area between the property line of the lots and the street line, and any persons in possession of such lots by virtue of any permit or right shall owe a duty to members of the public to keep and maintain the sidewalk area in a safe and nondangerous condition. The failure of any property owner or possessor of property to maintain the sidewalk areas in a nondangerous condition is negligence. If any person suffers injury or damage to person or property as a result of the property owner's or possessor's failure to maintain or repair the sidewalk areas as required by this article, the property owner or possessor of property shall be liable to such person for the resulting damages or injury.

E. **Notice of Repair.** Whenever a portion of the sidewalk needs repair or endangers the public's use of such sidewalk, the person whose job it is to maintain streets shall notify the owner and person in possession that such sidewalk needs repair in the manner provided in Health and Safety Code Sections 5611 through 5614. If the owner does not fix the sidewalk within thirty (30) days, the city will fix the property and all costs may become a lien upon the property, pursuant to Dublin Municipal Code 7.04.470.

Article IV. Wireless Telecommunication Facilities

7.04.430 Permit—Required.

A. No person shall construct, install, modify, or maintain a Personal Wireless Service Facility within, upon, over, or under the limits of any street in the city without first obtaining a Personal Wireless Service Facility Permit as required in Article II of this chapter, and Chapter 8.92 of the Zoning Ordinance as it relates to Section 6409(a) of the Middle Class Tax Relief Act of 2012.

B. In addition to the requirements of Section 7.04.190, a Personal Wireless Service Facility Permit shall not be issued if the applicant seeks to:

1. Install a new utility, transit, or street light pole on a street where there presently are no overhead utility facilities, other than street lights, unless it can be demonstrated to the satisfaction of the City Engineer that utilization of an existing street light pole is not technically feasible for the applicant's coverage objective;

2. Install a Personal Wireless Service Facility that fails to comply with applicable building, structural, electrical, or safety codes or other laws, including, but not limited to, the Americans with Disabilities Act; or
3. Add a Personal Wireless Service Facility on a city owned street light pole or other traffic control and safety pole for which the city has not given its permission.

7.04.440 Development Standards.

Due to the potential visual impacts associated with right-of-way installations, the following is required for all Personal Wireless Service Facility installations within the street:

- A. Installations must use all design techniques to minimize visual impacts, as determined by the City Engineer.
- B. New or replacement poles supporting a Personal Wireless Service Facility shall match style, color and material of the original or adjacent poles.
- C. The maximum height of a pole supporting a Personal Wireless Service Facility shall be equal to the average height of all existing utility or street light poles within 100 feet; provided, however, that an antenna located within a shroud on top of the pole may extend the height of the pole by a maximum of 5 feet, or up to 12 feet on a joint pole as may be necessary to comply with the clearance requirements established by California Public Utilities Commission General Order 95 or other applicable law or regulation. The height of any street light or utility pole shall not be modified unless approved by the City Engineer.
- D. No exposed cables. All cables shall be concealed within a sleeve between the bottom of the antenna and the mounting bracket. For wooden poles, cables shall be concealed with the use of shrouds, risers or conduit.
- E. Minimum height clearance regulations shall be observed by all components of the installation.
- F. No signs, other than those required by government or electrical utility notifications shall be located on the poles. All signage shall be designed with the lowest visibility, utilize a muted color and located as close to the antenna as possible. This does not pertain to identification badges, as may be required by the City Engineer. No facility may include any advertising material.
- G. The facility, including the antennas, cabling and related equipment shall be constructed out of non-reflective materials, painted and/or textured to match the existing support structure, and shall not produce any noticeable artificial light.
- H. The facility must be located so that it does not block the required illumination provided by the street light.
- I. Above-ground cabinets are discouraged. The City Engineer shall not approve an above-ground cabinet to serve a Personal Wireless Service Facility unless the applicant demonstrates that placement underground or pole mounting of equipment is not technically feasible or that the undergrounding or pole mounting will have more significant impacts on the public than the above-ground cabinet. Where technically feasible, equipment shall be placed underground, unless it would have more significant impacts on the public than pole mounted equipment. Aboveground cabinets shall be designed and located in an area with minimal visual impact, as determined by the City Engineer. Pole mounted equipment is subject to the following:

1. Equipment shall be mounted in a manner to reduce its visibility and not obstruct the visibility of any road signs.
2. Equipment cabinets may not exceed 7 cubic feet in volume.
3. All equipment shall be limited to a maximum noise level of 45 dB measured at the nearest property line.

J. All disturbed landscape shall be replaced in-kind and areas of bare or disturbed soil shall be vegetated or landscaped to prevent erosion to the satisfaction of the City Engineer.

K. All new installations shall utilize brackets that allow antennas and associated facilities to be mounted at a standoff of no more than 4 inches measured horizontally from the pole, unless it can be demonstrated to the satisfaction of the City Engineer that a greater distance is required for clearance purposes.

7.04.450 Public Notification.

A. Notice Required. Prior to commencement of installation of a Personal Wireless Service Facility, the permittee shall notify the public of the proposed installation as specified in this section. The notice shall be mailed and posted at least 10 days prior to installation as specified below. The permittee shall provide evidence of compliance with this requirement.

B. Types of Notice Required.

1. Notice by Mail. The permittee shall send, via first class U.S. mail, a copy of the notice to the owner(s) and occupant of each parcel that: (1) fronts the street on which the proposed Personal Wireless Service Facility is located or fronts a street that intersects such street and (2) is within 150 linear feet of the proposed Personal Wireless Service Facility. For example, if the distance from a proposed Personal Wireless Service Facility to a nearby street corner is 50 feet, the permittee is required to notify owners of parcels on that intersecting street whose properties are located within 100 feet or less.

2. Notice by Posting. The permittee shall post a copy of the notice at the location of the pole where the Personal Wireless Service Facility is to be installed and in three other conspicuous locations that are within 100 feet in each direction from the pole.

3. Contents and Form of Notice. The notice shall contain such information, and be in such form, as the City Engineer reasonably requires in order to inform the general public as to the nature of the installation of a Personal Wireless Service Facility. At a minimum, the notice shall:

- a. Provide a description and a photo-simulation of the proposed Personal Wireless Service Facility; and
- b. Explain how any interested person may obtain additional information and documents related to the permit.

Article VI. Enforcement

7.04.460 Permit—Revocation.

Any permit issued hereunder may be revoked by the City Engineer for violation of the provisions of this chapter or if the permitted activity poses an imminent threat to the public health, safety, or welfare.

7.04.470 Appeals.

An applicant or permittee may appeal the decision of the City Engineer concerning the denial or revocation of a permit to the City Manager pursuant to the provisions of Section 1.04.050. The City

Manager may deny the appeal or grant the appeal with terms and conditions necessary to protect the public health and safety.

7.04.480 Enforcement officer designated.

The City Engineer is designated as the enforcement authority for purposes of enforcing the provisions of this chapter.

7.04.490 Nuisance summary abatement.

Violation of the provisions of this chapter are declared to constitute a nuisance. The City Engineer may summarily abate any such nuisance in accordance with California Government Code Section 38773. The costs of such abatement shall be a personal obligation of the property owner and may be made a lien against the property in accordance with the provisions of Section 7.04.470.

7.04.500 Lien procedure.

A. Record of Cost. The City Engineer shall keep an account of the cost of performing the abatement, including reasonable administrative costs, on each separate lot or parcel of land, and the name of the owner thereof. Such costs shall become, when confirmed, a special assessment against the property.

B. Council Appeal. Between the first and fifteenth day of July of each year, the City Manager shall cause to be published a notice to the effect that any owner upon whose property the City Engineer has performed any work hereunder during the preceding fiscal year may appeal therefrom to the Council. Such notice shall be published once in accordance with Government Code Section 6061. Any appeal shall state the grounds for appealing. At the next regular meeting of the City Council after the first day of August, it shall hold a hearing to confirm the costs and any appeals, and its determination thereupon shall be final.

C. Lien. After confirmation of the costs by the City Council a certified copy of the confirmed report shall be filed with the County Auditor who shall enter each assessment on the tax roll against the respective premises. Such assessment shall be collected at the same time in the manner as ordinary municipal ad valorem taxes and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for such taxes. All laws applicable to the levy, collection, and enforcement of municipal ad valorem property taxes shall be applicable to such assessments. The lien created attaches upon recordation of a certified copy of the confirmed report in the office of the County Recorder and shall continue until the charges and fees are fully paid.

Section 2. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Dublin hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 3. Effective Date. This ordinance shall take effect thirty (30) days after its adoption.

Section 4. Posting. The City Clerk of the City of Dublin shall cause this Ordinance to be posted in at least three (3) public places in the City of Dublin in accordance with Section 36933 of the Government Code of the State of California.

PASSED, APPROVED AND ADOPTED this 19th day of December, 2017, by the following vote:

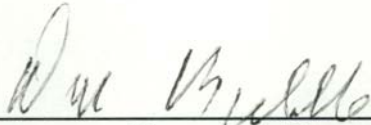
AYES: Councilmembers Biddle, Gupta and Hernandez

NOES:

ABSENT: Mayor Haubert


ABSTAIN:

RECUSED: Councilmember Goel



Mayor Pro Tempore

ATTEST:



City Clerk