RESOLUTION NO. 2018-R109

A RESOLUTION OF THE CITY OF CULVER CITY, CALIFORNIA ESTABLISHING STANDARD CONDITIONS OF APPROVAL FOR WIRELESS ENCROACHMENT PERMITS TO INSTALL WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY PURSUANT TO CULVER CITY MUNICIPAL CODE SECTION 11.20.065.H.1.

WHEREAS, Section 11.20.065 of the Culver City Municipal Code (CCMC) governs the permitting, installation, and regulation of wireless facilities in the City's public rights-of-way (PROW); and

WHEREAS, CCMC Section 11.20.065.H requires that the City Council adopt standard conditions of approval applicable to all wireless facilities in the PROW, which may be modified by the approving authority on a case-by-case basis; and

WHEREAS, the City Council wishes to establish such standard conditions of approval; and

WHEREAS, on December 10, 2018, the City Council conducted a duly noticed public meeting and received testimony from City staff and all interested parties regarding the proposed conditions of approval; and

WHEREAS, all legal prerequisites to the adoption of the Resolution have occurred.

NOW, THEREFORE, the City Council of the City of Culver City, California, DOES HEREBY ORDAIN as follows:

SECTION 1. Findings. The foregoing Recitals are adopted as findings of the City Council as though fully set forth within the body of this Resolution.

SECTION 2. Definitions. The definitions set forth in CCMC Section 11.20.065 are incorporated by reference into this Resolution.
SECTION 3. Standard Conditions of Approval for all Wireless Facilities in the
Public Rights-of-Way. In addition to any supplemental conditions imposed by the approving
authority, all wireless encroachment permits shall be subject to the following conditions, unless
modified by the approving authority:

a. Code Compliance. The permittee shall at all times maintain
   compliance with all applicable federal, state and local laws, regulations and other
   rules, including, without limitation, those applying to use of public rights-of-way.

b. Permit Duration. A wireless encroachment permit shall be
   valid for a period of ten (10) years, unless pursuant to another provision of the
   Code or these conditions, it expires sooner or is terminated. At the end of ten
   (10) years from the date of issuance, such Permit shall automatically expire,
   unless an extension or renewal has been granted. A person holding a wireless
   encroachment permit must either (i) remove the facility within thirty (30) days
   following the permit's expiration (provided that any involved support structure that
   is not owned by the person holding the expiring permit need not be removed, but
   must be restored to its prior condition, except as specifically permitted by the
   City); or (ii) at least ninety (90) days prior to expiration, submit an application to
   renew the permit, which application must, among all other requirements,
   demonstrate that the wireless facility will comply with then-current wireless
   regulations. The wireless facility may remain in place until the renewal
   application is acted upon by the City and all appeals from the City's decision
   exhausted.

c. Timing of Installation. The installation and construction
   authorized by a wireless encroachment permit shall begin within one (1) year
   after its approval, or it will expire without further action by the City. The
   installation and construction authorized by a wireless encroachment permit shall
   conclude, including any necessary post-installation repairs and/or restoration to
   the public rights-of-way, within sixty (60) days following the day construction
   commenced, unless the Public Works Director / City Engineer grants an
   extension, which extension shall not be more than sixty (60) additional days.

d. Commencement of Operations. The operation of the
   approved facility shall commence no later than three (3) months after the
   completion of installation, or the wireless encroachment permit will expire without
   further action by the City.

e. As-Built Drawings. The Permittee shall submit an as-built
   drawing within ninety (90) days after installation of the facility. As-builts shall be
   in an electronic format acceptable to the City.
f. *Inspections; Emergencies.* The City or its designee may enter onto the facility area to inspect the facility upon 48 hours prior notice to the permittee. The permittee shall cooperate with all inspections and may be present for any inspection of its facility by the City. The City reserves the right to enter or direct its designee to enter the facility and support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property. Permittee shall reimburse the City for any costs the City incurs related to emergency support, repairs, disabling, or removal of permittee’s facilities. The City shall make an effort to contact the permittee prior to disabling or removing any facility elements, but in any case shall notify permittee within one (1) business day of doing so.

g. *Contact.* The permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person.

h. *Insurance.* Permittee shall obtain and maintain throughout the term of the permit commercial general liability insurance in the amounts and subject to terms set by the wireless regulations. The relevant policy(ies) shall name the City, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insureds. Permittee shall use its best efforts to provide thirty (30) days’ prior notice to the City of to the cancellation or material modification of any applicable insurance policy.

i. *Indemnities.* The permittee and, if applicable, the owner of the property upon which the wireless facility is installed shall defend, indemnify and hold harmless the City, its agents, officers, officials, and employees (i) from any and all damages, liabilities, injuries, losses, costs, and expenses, and from any and all claims, demands, law suits, writs of mandamus, and other actions or proceedings brought against the city or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void or annul the city’s approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs, and expenses, and any and all claims, demands, law suits, or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one’s agents, employees, licensees, contractors, subcontractors, or independent contractors. In the event the city becomes aware of any such actions or claims the city shall promptly notify the permittee and, if applicable, the private property owner and shall reasonably cooperate in the defense. The City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City’s defense, and the property owner and/or permittee (as applicable) shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense.
j. **Performance Bond.** Prior to issuance of a wireless encroachment permit, the permittee shall file with the City, and shall maintain in good standing throughout the term of the approval, a performance bond or other surety or another form of security for the removal of the facility in the event that the use is abandoned or the permit expires, or is revoked, or is otherwise terminated. The security shall be in the amount equal to 100% of the cost of physically removing the facility and all related facilities and equipment on the site and restoration of the public rights‐of‐way to its prior condition, based on the higher of two contractor’s quotes for removal that are provided by the permittee. The permittee shall reimburse the City for any and all costs the City incurs in relation to permittee’s facilities, including, but not limited to, staff time associated with the processing and tracking of the bond, based on the hourly rate adopted by Resolution of the City Council. Reimbursement shall be paid when the security is posted and during each administrative review.

k. **Adverse Impacts on Adjacent Properties.** Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, and removal of the facility.

l. **Noninterference.** Permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the City shall be moved to accommodate a permitted activity or encroachment, unless the City determines that such movement will not adversely affect the City or any surrounding businesses or residents, and the Permittee pays all costs and expenses related to the relocation of the City’s structure, improvement, or property. Prior to commencement of any work pursuant to a wireless encroachment permit, the Permittee shall provide the City with documentation establishing to the City’s satisfaction that the Permittee has the legal right to use or interfere with any other structure, improvement, or property within the public rights-of-way or City utility easement to be affected by Permittee’s facilities.

m. **No Right, Title, or Interest.** The permission granted by a wireless encroachment permit shall not in any event constitute an easement on or an encumbrance against the public rights-of-way. No right, title, or interest (including franchise interest) in the public rights-of-way, or any part thereof, shall vest or accrue in Permittee by reason of a wireless encroachment permit or the issuance of any other permit or exercise of any privilege given thereby.

n. **No Possessory Interest.** No possessory interest is created by a wireless encroachment permit. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, Permittee acknowledges that City has given to Permittee notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to a wireless encroachment permit may create a
possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interact taxes or other taxes, fees, and assessments levied against Permittee's right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by this permit.

o. General Maintenance. The site and the facility, including, but not limited to, all landscaping, fencing, and related transmission equipment, must be maintained in a neat and clean manner and in accordance with all approved plans. All graffiti on facilities must be removed at the sole expense of the Permittee within forty-eight (48) hours after notification from the City.

p. RF Exposure Compliance. All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards. After transmitter and antenna system optimization, but prior to unattended operations of the facility, permittee or its representative must conduct on-site post-installation RF emissions testing to demonstrate actual compliance with the FCC OET Bulletin 65 RF emissions safety rules for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit.

q. Testing. Testing of any equipment shall take place on weekdays only, and only between the hours of 8:00 a.m. and 5:00 p.m., except that testing is prohibited on holidays that fall on a weekday. Testing is prohibited on weekends.

r. Modifications. No changes shall be made to the approved plans without review and approval in accordance with this Section.

s. Agreement with City. If not already completed, Permittee shall enter into the appropriate agreement with the City, as determined by the City, prior to constructing, attaching, or operating a facility on Municipal Infrastructure. This permit is not a substitute for such agreement.

t. Conflicts with Improvements. For all facilities located within the public rights-of-way, the Permittee shall remove or relocate, at its expense and without expense to the City, any or all of its facilities when such removal or relocation is deemed necessary by the City by reason of any change of grade, alignment, or width of any public rights-of-way, for installation of services, water pipes, sewer pipes, drains, storm drains, power or signal lines, traffic control devices, public rights-of-way improvements, or for any other construction, repair, or improvement to the public rights-of-way.
u. **Abandonment.** If a facility is not operated for a continuous period of ninety (90) days (or, if good cause exists, a longer period of time that the Public Works Director / City Engineer sets in their sole discretion), the wireless encroachment permit and any other permit or approval therefor shall be deemed abandoned and terminated automatically, unless before the end of the ninety (90) day period the Public Works Director / City Engineer has received an application to transfer the permit to another service provider. No later than ninety (90) days from (i) the date the facility is determined to have ceased operation or (ii) the date the Permittee has notified the Public Works Director / City Engineer of its intent to vacate the site, the Permittee shall, unless otherwise directed by the Public Works Director / City Engineer, remove all equipment and improvements associated with the use and shall restore the site to its original condition to the satisfaction of the Public Works Director / City Engineer. The permittee shall provide written verification of the removal of the facilities within thirty (30) days of the date the removal is completed. If the facility is not removed within thirty (30) days after the permit has been discontinued pursuant to this subsection, the site shall be deemed to be a nuisance, and the City may cause the facility to be removed at permittee’s expense or by calling any bond or other financial assurance to pay for removal. If there are two (2) or more users of a single facility or support structure, then this provision shall apply to the specific elements or parts thereof that were abandoned, but will not be effective for the entirety thereof until all users cease use thereof.

v. **Records.** The Permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition or fails to produce true and complete copies of such records within a reasonable time after a written request from the City, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee.

w. **Attorney’s Fees.** In the event the City determines that it is necessary to take legal action to enforce any of these conditions, or to revoke a permit, and such legal action is taken, the Permittee shall be required to pay any and all costs of such legal action, including reasonable attorney’s fees, incurred by the City, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the City should otherwise agree with Permittee to waive said fees or any part thereof. The foregoing shall not apply if the Permittee prevails in the enforcement proceeding.

**SECTION 4. Eligible Facility Requests.** In addition to the conditions provided in Section 3 of this Resolution and any supplemental conditions
imposed by the approving authority, all wireless encroachment permits issued in response to an eligible facility request shall be subject to the following additional conditions, unless modified by the approving authority:

a. **Permit subject to conditions of underlying permit.** Any permit granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit.

b. **No permit term extension.** The City’s grant or grant by operation of law of an eligible facilities request permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. Notwithstanding any permit duration established in another permit condition, the City’s grant or grant by operation of law of a eligible facilities request permit will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station.

c. **No waiver of standing.** The City’s grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.

SECTION 5. Small Cell Facilities. In addition to the conditions provided in Section 3 of this Resolution and any supplemental conditions imposed by the approving authority, all wireless encroachment permits issued for a small cell facility shall be subject to the following additional conditions, unless modified by the approving authority:

a. **No waiver of standing.** The City’s grant of a permit for a small cell facility request does not waive, and shall not be construed to waive, any standing by the City to challenge any FCC orders or rules related to small cell facilities, or any modification to those FCC orders or rules.

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SECTION 6. Effective Date. This Resolution shall become effective on the effective date of CCMC Section 11.20.065.

APPROVED and ADOPTED this 10th day of December 2018.

THOMAS AUJERO SMALL, Mayor
City of Culver City, California

ATTEST:

JEREMY GREEN
City Clerk

APPROVED AS TO FORM:

CAROL A. SCHWAB
City Attorney

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