

CITY OF DANA POINT
MEMORANDUM

Reviewed By:	
DH	X
CM	X
CA	X

DATE: MAY 6, 2008

TO: CITY COUNCIL

FROM: BRAD FOWLER, DIRECTOR OF PUBLIC WORKS AND ENGINEERING SERVICES

SUBJECT: SECOND READING AND ADOPTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA ADDING ARTICLE 9 TO THE DANA POINT MUNICIPAL CODE INCLUDING SECTIONS 14.01.780 THROUGH 14.01.950, ENTITLED "CONSTRUCTION OF CABLE COMMUNICATIONS SYSTEMS"

RECOMMENDED ACTION

That the City Council 1) adopt an Ordinance of the City of Dana Point (Action Document A) entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, ADDING ARTICLE 9, INCLUDING SECTIONS 14.01.780 THROUGH 14.01.950, ENTITLED "CONSTRUCTION OF CABLE COMMUNICATIONS SYSTEMS"

BACKGROUND:

The City has been approached by our franchised communications cable service providers AT&T and Cox regarding plans for additional cable system facilities, requesting public right-of-way encroachment permits. Staff has conducted a number of meetings with these providers to ascertain their construction plans. Given the sensitivity in the community for the proliferation of new utility boxes in the public view, Staff has provided an ordinance for City Council consideration in detailing the Encroachment Permit process, tailored to communications cable facilities construction.

DISCUSSION:

The recommended Ordinance, attached as Action Document A, recognizes the heightened sensitivity to these utility boxes and provides a strong preference for underground facilities where feasible. The Ordinance provides for safe, timely construction or replacement of facilities, placement, right-of-way repair, and maintenance, as well as Public Notice for material public right-of-way construction. The

proposed Ordinance is similar to Ordinances adopted by the cities of Irvine and Newport Beach.

The introduction and first reading of this Ordinance was held at the City Council Meeting on April 15, 2008.

NOTIFICATION/FOLLOW-UP:

AT&T
Cox

FISCAL IMPACT:

No Fiscal Impact

ACTION DOCUMENT:

PAGE#:

A. Ordinance	3
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Action Document A – Ordinance**ORDINANCE NO. _____****AN ORDINANCE OF THE CITY OF DANA POINT RELATING TO
CONSTRUCTION AND REPLACEMENT OF CABLE COMMUNICATIONS
SYSTEMS**

THE CITY COUNCIL OF DANA POINT DOES ORDAIN AS FOLLOWS:

A NEW ARTICLE OF CHAPTER 14, STREETS AND SIDEWALKS, OF THE DANA POINT MUNICIPAL CODE ENTITLED “CONSTRUCTION OF CABLE COMMUNICATIONS SYSTEMS” IS HEREBY ADDED TO READ AS FOLLOWS:

**ARTICLE 9 CONSTRUCTION OF CABLE COMMUNICATIONS
SYSTEMS****Sections:**

14.01.780	Title
14.01.790	Definitions
14.01.800	Design, Installation, and Construction of Cable System
14.01.810	Encroachment Permit-Applicability
14.01.820	Encroachment Permit Application
14.01.830	Issuance of an Encroachment Permit
14.01.840	Notification Plan
14.01.850	Construction Plan
14.01.860	Conditions of Utilization of PROW
14.01.870	Conditions of Construction.
14.01.880	Post-Excavation Obligations
14.01.890	Duty to Remove Facilities from PROW and Public Property
14.01.900	Maintenance of Facilities
14.01.910	City Vacation or Abandonment
14.01.920	System Location Data
14.01.930	Appeals from Action of the Director
14.01.940	Financial Security
14.01.950	Indemnity and Liability Insurance

14.01.780 Title.

This Article is known and may be cited as the “Construction of Cable Communications Systems Article” of the City of Dana Point, California.

14.01.790 Definitions.

A. For the purposes of this Chapter, the following words, terms, phrases, and their derivations have the meanings given herein. Terms defined in the Cable Act shall have the same meanings herein unless expressly defined otherwise. When not inconsistent with the context, words used in the present tense include the future tense, and words in the singular number include the plural number.

“Above Ground Facility” or “AGF” means all structures, poles, pedestals, cabinets, and any other Facility installed above surrounding grade in the PROW (Defined Herein) excluding antennas.

“1984 Cable Act” means the Cable Communications Policy Act of 1984.

“1992 Cable Act” means the Cable Television Subscriber Protection and Competition Act of 1992.

“Cable Act” means the 1984 Cable Act, as amended by the 1992 Cable Act and by the Telecommunications Act.

“Cable Operator” means any Person or group of Persons (i) who provides Cable Service over a Cable System in the City and, directly or through one or more affiliates, owns a significant interest in that Cable System; or (ii) who otherwise controls or is responsible for, through any arrangement, the management and operation of a Cable System in the City.

“Cable service” means (i) the one-way transmission to subscribers of video programming or other programming service; and (ii) subscriber interaction which is required for the selection of or use of video programming or other programming service.

“Cable System” or “Cable Communications System” or “System” means a Facility, consisting of a set of closed transmission paths and associated signal generation reception, and control equipment that is designed to provide Cable Service, and which is provided to multiple subscribers within the City; but this term does not include: (i) a Facility that serves one or more television broadcast stations; (ii) a Facility that serves subscribers without using any PROW; (iii) a Facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934 (47 U.S.C. § 201 et seq.), except that the Facility shall be considered a Cable System (other than for purposes of section 621(c) of the Cable Act) to the extent the Facility is used in the transmission of video programming directly to subscribers, unless the extent of the use is solely to provide interactive on-demand services; (iv) an open video system that complies with Section 653 of the Cable Act; or (v) any Facilities of any electric utility used solely for operating its electric utility systems.

“California Public Utilities Commission” or “CPUC” means the California Public Utilities Commission.

“City” means the City of Dana Point, California, acting by and through its City Council, or a representative as the governing body may designate to act on cable matters on its behalf.

“Company” means the Person granted a Franchise by any governmental entity to install, operate, maintain, or reconstruct a Cable System, and the lawful successors, transferees, or assignees of that Person.

“Company Manager” means an employee of the Company who is designated by the Company in writing to the City to be the contact Person for the Company in accordance with the provisions of this Chapter.

“Construction Plan” means a plan that describes in detail the designs, locations, and an estimated time schedule for construction of the Facilities.

“Department” means the Department of Public Works.

“Director” means the Director of the City’s Department of Public Works or his or her designee.

“Encroachment Permit” means a permit for work on City owned property including, but not limited to, parks, rights-of-way, facilities, buildings, or other property.

“Excess Capacity” means the volume or capacity in any existing or future duct, conduit, manhole, hand hole or Facility that is or will be available for use by third party Facilities.

“Facility” or “Facilities” means any cable or other wire or line, pipeline, pipes, duct, conduit, converter, cabinet, pedestal, meter, tunnel, vault, equipment, drain, manhole, splice box, surface location marker, pole, structure, utility, or other appurtenance, structure, property, or tangible thing owned, leased, operated, or licensed by Company to provide, in whole or in part, Cable Services, that are located or are proposed to be located on the PROW which constitute, in whole or in part, a Cable System.

“FCC” means the Federal Communications Commission.

“Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account appropriate environmental, physical, legal, economical and technological factors.

“Franchise” means a written legal undertaking or action issued by any level of government, which authorizes a specific Person to utilize the City’s PROW for the purpose of installing, operating, maintaining, or reconstructing a Cable System to provide Cable Service.

“Person” means any person, corporation, partnership, proprietorship, individual, or organization.

“Public Property” means all real property and improvements owned, operated or controlled by City, other than PROW, within the City’s jurisdiction. Public Property includes, but is not limited to, City owned buildings/facilities, recreational facilities, parks, libraries, street trees, signs, medians and traffic signal facilities.

“Public Right-of-Way” or “Right of Way” or “PROW” means any public Street, public way, public place or rights-of-way, now laid out or dedicated, and the space on, above or below it, and all extensions thereof, and additions thereto, under the jurisdiction of City.

“Service Area” means all or a portion of the City of Dana Point, as further defined in a Franchise.

“Street” or “Streets” means any street, road, highway, alley, lane, court, boulevard, or other similar PROW, including related facilities such as medians, parkways, sidewalks, traffic signals and signs.

“Standard Encroachment Permit Conditions”, hereafter described as SEPC, means the conditions imposed by the City pursuant to existing ordinance, local and State regulations, or City policies.

“Telecommunications Act” means the Telecommunications Act of 1996.

“Traffic Control Plan” means a plan describing the manner in which Company will manage vehicle, bicycle, and pedestrian traffic along affected Streets when installing or maintaining Facilities.

B. Terms Not Defined. Words, terms, or phrases not defined herein shall first have the meaning as defined in the Cable Act, and then the special meanings or connotations used in any industry, business, trade, or profession where they commonly carry special meanings. If those special meanings are not common, they will have the standard definitions as set forth in commonly used and accepted dictionaries of the English language.

14.01.800 Design, Installation, and Construction of Cable System.

A. Promotion of Undergrounding. It is the policy of City to promote undergrounding of Facilities whenever and wherever Feasible. When existing Facilities are located underground along a particular PROW, new Facilities must be installed, at Company’s sole expense, underground along that PROW. Further, whenever any Above Ground Facilities are located or relocated underground along a particular PROW, all Companies shall concurrently relocate Company’s Facilities underground on a cost-sharing basis for all Companies involved in a manner consistent with applicable law. No new Above Ground Facilities will be allowed except as provided in subsections (B) and (C).

B. Exceptions to Limits on Above Ground Facilities. The limitations on Above Ground Facilities shall not apply to (1) an insubstantial modification, as determined by the Director, to an existing Above Ground Facility; (2) to any new Above Ground Facility which, as determined by the Director, does not produce a significant impact upon the PROW and/or Public Property and the environment surrounding it; and (3) to any installation specifically authorized pursuant to a pre-existing and valid local franchise agreement.

C. Limits on Above Ground Facilities. Except as provided in subsection B above, Companies shall place all newly installed Facilities underground or in flush mounted vaults unless said underground installation is not Feasible, as determined by the Director. Companies

shall coordinate with all affected property owners to locate all newly installed Above Ground Facilities to minimize inconvenience and disruption to residents in a manner approved in writing by the Director.

D. Excess Capacity. Facilities shall be installed within existing underground ducts or conduits whenever Excess Capacity is available on reasonable terms.

14.01.810 Encroachment Permit--Applicability.

A. Except as provided in subsection (B), in addition to any agreement, license, permit or Franchise required by this Chapter or any other Chapter of this Code, and in addition to any other permit or entitlement required by local, state or federal law, any Person or Company which is a Cable Operator shall obtain an Encroachment Permit prior to performing any work in the PROW relating to, in whole or in part, the construction, installation, or repair of a Cable System, or a portion thereof, and shall pay all fees required by this Code.

B. Notwithstanding anything stated herein, an Encroachment Permit shall not be required if, in the determination of the Director, the proposed project relates solely to work on the inside of the Facility without alteration to the enclosure itself. In lieu of the necessity of an Encroachment Permit, the Company shall obtain all otherwise necessary City permits including, without limitation building permits, electrical permits, and other permits which may be required by the Municipal Code and shall comply with the undergrounding requirements of Section 14.01.800. Further, the Company shall be responsible to coordinate with the Director in regard to needed permits or determinations.

C. Annual Encroachment Permits. The Director in his/her discretion may issue an annual Encroachment Permit to Company to make extensions, routine maintenance and emergency repairs. Annual Encroachment Permits shall be issued on a yearly basis. Except as specifically provided otherwise in this Chapter, excavations authorized by this section shall be subject to all fees and requirements of this Chapter.

14.01.820 Encroachment Permit Application.

An application for an Encroachment Permit, along with payment of any fees or deposit required by the City, shall be filed with the Director, in the form and manner required by the Director and shall contain, at a minimum, all of the following: in accordance with the City's Encroachment Permit application requirements, as determined by the Director.

A. The Identity of Company. If the application is made by an authorized agent of Company, written authorization shall be provided.

B. Engineering plans, specifications and a network map of the Facilities to be located within the PROW, including a map in electronic and/or other form required by the City. The plans and specifications shall show:

1. The location of all existing and proposed Facilities in the PROW or Public Property along proposed route including the type and location of existing and proposed pedestals and other Above Ground Facilities, along with, if required by the Director, photographs or artists

renderings, of all above-ground visible equipment, from which their fully-dimensioned size must be apparent. The submission may be required to include a detailed description of the equipment included within the above-ground installation including the electronic components, natural gas generator, electrical fans, anticipated noise levels during winter and summer months, the emergency backup operations and the proposed maintenance schedule for the Facilities.

2. The specific trees, structures, improvements, Facilities and obstructions, if any that Company proposes to temporarily or permanently remove or relocate.

3. Existing improvements and appurtenances, including but not limited to, sidewalk, asphalt pavement, trees, landscaping, traffic signs and pavement markings, traffic signals, and any other improvement that is in the vicinity of the planned work.

4. Detailed information to clearly show how all existing improvements shall be protected or restored to their original condition during the planned work. In addition, dimensions showing exact locations as to where new Facilities are to be constructed.

5. Specifically how all City ordinances and the SEPC are planned to be addressed with any proposed project.

C. Excess Capacity. If Company is proposing an underground installation within new Facilities to be constructed within the PROW, it shall agree to provide, upon request, information regarding any Excess Capacity that will exist in such ducts or conduits after installation of Company's Facilities, to the City or a subsequent permit applicant.

D. A Construction Plan. A Construction Plan disclosing, at a minimum, construction schedule, final completion date, and specific construction benchmark dates as to identify portions of the project.

E. A Traffic Control Plan. A Traffic Control Plan in accordance with such guidelines established by the Director.

F. A Public Notification Plan. Companies may be required by the Director to provide reasonable advance notice to the public via a public notification plan of the proposed quantity, precise dimensions, design, color, type, potential noise and location of Above Ground Facilities pursuant to guidelines promulgated by the Director. The Plan is subject to the prior written approval of the Director.

14.01.830 Issuance of an Encroachment Permit.

A. Each Encroachment Permit shall be subject to the criteria and provisions of this Chapter. The Encroachment Permit shall be issued upon review of a completed application and a determination by the Director that Company has complied with all applicable requirements of this Chapter.

B. Criteria. The determination to grant or deny an Encroachment Permit shall be exclusively based upon the criteria set forth in this subsection. The Director shall consider the following:

1. The capacity of the PROW to accommodate Company's proposed Facilities and Facilities known to be needed in the future.
2. The capacity of the PROW to accommodate known additional Facilities if the permit is granted.
3. The damage or disruption, if any, to the PROW or any public or private facilities, improvements, pedestrian or vehicle travel, landscaping, or any other existing improvement if the permit is granted.
4. The availability of technically compatible existing Facilities or Excess Capacity, or alternate routes and/or locations for the proposed Facilities, which would be less disruptive or which better protects the PROW for its dedicated use.
5. The adverse aesthetic or blighting effect of any Above Ground Facilities by virtue of their design, color, dimensions, locations, new obstructions and quantity.
6. Completion of any necessary environmental review under the California Environmental Quality Act (CEQA).
7. Agreement for compliance with all City ordinances, regulations, policies, and the SEPC related to the issuance of an Encroachment Permit.

C. Modifications. Any approval of an Encroachment Permit may require modifications to the proposed activities pursuant thereto as a result of the Director's consideration of the factors set forth above, including by limiting or changing the number, size, color and location of the Above Ground Facilities proposed to be installed and/or requiring the installation of landscape or other camouflaging techniques, screening, relocation or requiring undergrounding to minimize adverse visual impacts and obstructions.

D. Fees. As a condition of the issuance of any Encroachment Permit, Company shall pay and submit all applicable cost-based fees assessed by resolution of the City Council.

E. Right to Inspect. Upon the provision of reasonable written notice by the Director, Company shall allow the City the right to inspect Company's work at any reasonable time the City deems appropriate.

F. Duration and Validity. Encroachment Permits shall be void if the permitted work has not commenced within sixty (60) calendar days of the permit issuance date, if the permitted work is not prosecuted diligently to its conclusion, or if the permitted work, including restoration, has not been completed within the duration limits of the permit. The Director may, upon good cause, issue extensions to the time of commencement of work, the duration of the Encroachment Permit, or both upon request from Company.

14.01.840 Notification Plan

Companies may be required by the Director to provide reasonable advance notice to the public via a public notification plan of the proposed quantity, precise dimensions, design, color,

type, potential noise and location of Above Ground Facilities pursuant to guidelines promulgated by the Director and/or meet with the public as determined by the Director. The plan is subject to the prior written approval of the Director.

14.01.850 Construction Plan.

A. Initial Submittal Requirements. Not less than thirty (30) days prior to proposed commencement of any work in the PROW and only after an Encroachment Permit is secured, Company shall submit to the Director for his or her review a Construction Plan containing the following information:

1. Dates for Work Start and Completion. Company shall identify a start and completion date for the work and shall complete the Cable System construction authorized by the Encroachment Permit no later than the date specified in the permit. If Company requires additional time to complete work, it shall so notify Director and Director may grant a work completion extension.

2. Telephone Contact. Company shall provide the Director with a telephone contact number, answered twenty-four (24) hours a day during the construction period, to enable the Director to report any concerns regarding construction of the Facilities.

B. Construction Status Report. During construction, Company shall, at the request of the Director, submit to the Director regular progress reports describing in detail the status of construction in relation to the Construction Plan. The first report shall be submitted within seven days after commencement of construction and shall be updated days thereafter, as may be required by the Encroachment Permit. Work plans shall be provided in advance to the Director for review and approval.

C. Notification. Company shall provide written notification to the Director of any construction and/or maintenance activities undertaken in the PROW, whether undertaken pursuant to permit or otherwise, prior to the commencement of such activities unless the activities have been previously reported to the Director, or a valid emergency due to system failure.

14.01.860 Conditions of Utilization of PROW.

A. All Facilities of Company shall be so located, constructed, installed and maintained so as not to endanger, interfere with or limit the usual and customary use and/or traffic and travel upon the PROW as well as adjacent private property pursuant to a routing plan to be approved by the Director.

B. In the event Company creates a hazardous or unsafe condition or an unreasonable interference with the PROW or adjacent private property, such Company shall remove or modify that part of the Facility to eliminate such condition.

C. Company shall not place equipment where it will interfere with existing and known future City uses of the PROW, with the rights of private property owners as determined

by the Director, with gas, electric, sewer or telephone fixtures, with water hydrants and mains, with sewers, storm drains or v-ditches, or any wastewater stations, with any traffic control system, or any other City facility.

D. Company, at its own expense and pursuant to a timeline approved by the Director, shall protect the PROW and support or temporarily disconnect or relocate any of Company's Facilities when necessitated by reason of:

1. Traffic conditions;
2. Public safety;
3. Temporary or permanent Street closing not for the benefit of a private party;
4. Street construction or resurfacing;
5. A change or establishment of Street grade; and
6. Installation of sewers, drains, water pipes, storm drains, lift stations, force mains, street light facilities, traffic signal facilities, tracks, or any other public use of the PROW.
7. Any other City approved construction activity.

E. It shall be the responsibility of Company to mark its Facilities with search wire and to locate and mark or otherwise visibly indicate and alert others to the location of its underground Facilities before employees, agents, of independent contractors of any entity perform work in the marked-off area. Company shall participate in and adhere to the practices of Underground Services Alert ("USA") or its successor notification system and provide at least forty-eight (48) hours prior notice to USA prior to any excavation.

14.01.870 Conditions of Construction.

A. Applicability. Each excavation and/or installation of Above Ground Facilities in the PROW pursuant to this Chapter shall be performed in accordance with this Chapter, with the City's SEPC, with the standard plans and specifications of the Department and with any Department orders or regulations, except where the Director, at his or her discretion, grants prior written approval to deviate from the standard plans and specifications, orders, or regulations.

B. Notice for Emergency Excavation or installation. For emergency excavation or installation, Company shall post and maintain notice at the site of the excavation or installation during the construction period. The notice shall include the name, telephone number, and address of Company, a description of the excavation or installation to be performed, and the duration of the excavation or installation. The notice shall be posted along any Street where the excavation or installation is taking place. The Director shall be advised immediately during normal weekday working hours.

C. Marking of Subsurface Facilities. If Company excavates in the PROW, it shall comply with the requirements of Government Code 4216 (Underground Service Alert of its successor notification system) regarding notification of excavation or installation and marking of subsurface Facilities.

D. Limits on Excavation in the Public Right-of-Way.

1. Scope. It is unlawful for Company to make, cause, or permit to be made, any excavation in the PROW outside the boundaries, times, and description set forth in the Encroachment Permit.

2. Trenchless Technology. Use of trenchless equipment to excavate in the PROW is allowed with prior written approval of the Director.

3. Single excavation maximum of one thousand two hundred (1,200) feet. No single excavation site shall be longer than one thousand two hundred (1,200) feet in length at any time except with the prior written approval of the Director.

4. Moratorium on new or newly repaved streets. Municipal Code, Section 14.01.540 shall expressly apply.

5. Company shall adhere to all requirements listed in the SEPC.

E. Company assumes all responsibility for damage or injury resulting from the construction of any Above Ground Facility. If Company fails to comply with any written Director's demand relating thereto, the City may perform said work at Company's expense and may withdraw its costs and expenses from the security deposit or other security provided by Company, or charge Company.

F. Modification to Requirements. Upon written request, and for good cause as determined by the Director, the Director may grant written approval for modifications to the requirements of this section.

G. Incomplete Excavation--Completion by the City. In any case where an excavation is not completed or restored in the time and manner specified in the Encroachment Permit, this Chapter, or the orders, regulations, conditions, and standard plans and specifications of the Department, the Director shall order Company to complete the excavation as directed within twenty-four (24) hours. If Company should fail, neglect, or refuse to comply with the order, the Director may complete or cause to be completed such excavation to temporarily cover or mitigate hazards in such manner as the Director deems expedient and appropriate. The Company shall compensate the City for any costs associated with the administration, construction, consultants, equipment, inspection, notification, remediation, repair, restoration, or any other actual costs incurred by the City or other agencies, boards, commissions, departments of the City that were made necessary by such excavation. The cost of such work also may be deducted from Company's security fund.

H. Subject to the limitation set forth in this Chapter, completion of an excavation or restoration by the Department in accordance with this Chapter shall not relieve the owner or Company from liability for future pavement failures at the excavation site.

14.01.880 Post-Excavation Obligations.

A. Repair and Maintenance Obligations of Company. Each Company that excavates or causes to be made an excavation in the PROW shall be responsible to maintain, repair, or reconstruct the site of the excavation so as to maintain a condition acceptable to the Director, and in compliance with the City's SEPC, until such time as the site of the excavation is repaved or resurfaced by the Department, or pursuant to a subsequently issued PROW permit. The Director may also withhold issuance of new Encroachment Permits or rescind approval of previously approved Encroachment Permits for Company failure to remediate or repair excavation or to maintain Facility to the satisfaction of the Director or for lack of payment to the City for City's repair of excavation or maintenance of Facility to the satisfaction of Director.

B. Subsurface or Pavement Failures. In the event that subsurface material or pavement over or immediately adjacent to any excavation should become depressed, broken, or fail in any way at any time after the work has been completed, the Director shall exercise his or her best judgment to determine the Person(s) responsible, if any, for the failure in the subsurface or surface of the PROW and shall designate such Person as the responsible party. The Director shall notify such Person(s) of the condition, its location, and the required remedy, and such Person(s) shall repair or restore, or cause to be repaired or restored, such condition to the satisfaction of the Director within seventy-two (72) hours of the notification, unless, considering the interest of public safety, the Director extends the time for the responsible party to repair or restore the affected PROW.

C. Repairs by the City. Municipal Code, Sections 14.01.550 and 14.01.560 shall expressly apply.

D. Emergency Remediation by City.

1. If, in the judgment of the Director, the site of an excavation is considered hazardous or if it constitutes a public nuisance, public emergency, or other imminent threat to the public health, safety, or welfare that requires immediate action, the Director may order the condition remedied by a written, electronic, or facsimile communication to the Person(s) responsible, if any, for remedying the condition and shall designate such Person as the responsible party.

2. If the responsible party is inaccessible or fails, neglects, or refuses to take immediate action to remedy the condition as specified in the communication, the Director may remedy the condition or cause the condition to be remedied in such manner as the Director deems expedient and appropriate. The Person(s) identified by the Director as the responsible party shall compensate the City for any reasonable costs associated with the administration, construction, consultants, equipment, inspection, notification, remediation, repair, restoration, or any other actual costs incurred by the Department or other agencies, boards, commissions, departments of the City that were made necessary by reason of the emergency remediation

undertaken by the Department. The cost of such work also may be deducted from Company's security deposit.

3. Remediation by the Department in accordance with this section shall not relieve the Person(s) from liability for future pavement failures at the site of the remediation.

14.01.890 Duty to Remove Facilities from PROW and Public Property.

A. The Director may order Company to remove its Facilities from public property or PROW at its own expense whenever Company ceases and fails to complete construction of the Facility outlined in the PROW Permit within the term or duration of the PROW Permit.

B. If not removed voluntarily by Company, then the Director may notify Company that should removal of the property not be accomplished within a reasonable time specified by the Director, the Director may order the removal of the Facilities at that Company's expense. The Company's security deposit shall be available to pay for such work.

C. If officials or representatives of the City remove Facilities, and if Company does not claim the property within thirty (30) days of its removal, then the City may take whatever steps are available under State law to declare the property surplus, and sell it, with the proceeds of such sale going to the City.

D. When such Company removes its Facilities from the PROW, Company shall, at its own expense, and in a manner approved by the Director, replace and restore such PROW to a condition comparable to that which existed before the work causing the disturbance was done.

14.01.900 Maintenance of Facilities.

A. Construction, installation, maintenance and repair of any Facilities shall comply with the most current editions of the Zoning Codes, Building Codes, Excavation Codes, Construction Codes, Plumbing Codes, National Electrical Safety Code, the National Electric Code, the City-adopted Public Works Construction Standards, Specifications and Plans, the Municipal Code, as they are modified from time to time, and any applicable Federal, State or local statutes, regulations, guidelines, or requirements.

B. To the extent permitted to remain above ground, Company shall place all Above Ground Facilities in flush mounted or low profile waterproof pedestals whose design, size, location, color within manufacturer's specifications, appearance, and placement have been previously approved by the Director in writing and shall be in conformity with all applicable City ordinances, codes, regulations, rules, and guidelines.

C. Cabinet Treatment, Graffiti Mitigation and Landscaping. The exterior of Above Ground Facilities shall resist graffiti or be painted with anti-graffiti paint and be maintained in a "like-new" condition. Applications for Above Ground Facilities must include a Graffiti Mitigation Plan detailing how Company will maintain the Above Ground Facilities free from graffiti and other defacements (i.e. stickers, posters, decals, and other markings), and a landscaping plan detailing how the landscape installation will minimize visual impact, and how

said landscaping will be maintained. The Graffiti Mitigation Plan and Landscaping Plan shall commit to inspection at least four (4) times a year and shall include identification of the resources dedicated to mitigating graffiti. Additionally, the Graffiti Mitigation Plan shall provide the name, mailing address, phone number, and e-mail address of a single point of contact responsible to resolve graffiti issues should they occur. The Graffiti Mitigation Plan shall clearly state that graffiti shall be removed within forty-eight (48) hours of the time at which Company is notified of graffiti and that the Above Ground Facility's surfaces shall be restored to their original exterior appearance. Director at his/her discretion may require a bond or other security to insure compliance with this section.

D. Each Above Ground Facility installed in the PROW shall be discretely, yet clearly identified with the name of the owner of the Above Ground Facility and a toll-free telephone number for Company. The Department shall adopt orders or regulations to specify other appropriate methods for identification.

E. During construction and maintenance, Company shall identify its construction sites, vehicles and equipment, by name and category with sufficient clarity so that traffic flowing in both directions can determine the nature of the project and the entity upon whose behalf the construction is being undertaken.

F. Company assumes all responsibility for damage or injury resulting from the maintenance of any Above Ground Facility. If Company fails to comply with any written Director's demand relating thereto, the City may perform said work at Company's expense and withdraw its costs and expenses from the security deposit or other security provided by Company, or charge Company.

14.01.910 City Vacation or Abandonment.

In the event any PROW or portion thereof used by Company shall be vacated by the City for a governmental purpose, upon reasonable notice Company shall forthwith remove its Facilities from the PROW unless specifically permitted to continue. As a part of the removal, Company shall restore, repair or reconstruct the area where the removal has occurred, to a condition as may be required by the Director, but not in excess of the original condition. In the event of any failure, neglect or refusal of Company, after thirty (30) days notice by the Director, to do such work, Director may cause it to be done, and Company shall, within forty-five (45) days of billing, pay to City the actual costs incurred.

14.01.920 System Location Data.

To the extent reasonably available, Company shall provide the Director with data in a digital or other format specified by the Director which details and documents all the geographic locations of Facilities located in PROW. The computer disk or other record shall be updated whenever there have been significant changes in the location of the Facilities at the Director's discretion. In addition, Company shall maintain in its local office a complete, fully-dimensioned, and up-to-date set of as-built system maps and drawings upon completion of construction. As-built drawings shall show all Facilities. The scale of maps and drawings shall be sufficient to show the required details in easily readable form and size.

14.01.930 Appeals from Action of the Director.

If Company is aggrieved by any decision of the Director under this Chapter, Company may appeal the decision to the City Manager by filing with the City Clerk a statement addressed to the City Manager setting forth the facts and circumstances regarding the Director's decision and the basis for the appeal. The appeal shall be accompanied by a fee as established by resolution of the City Council. The City Manager, not less than ten (10) business days from the date on which the appeal was filed with the City Clerk, shall hear the appeal and all relevant evidence, and shall determine the merits of the appeal. The City Clerk shall provide written notification of the time and place set for hearing the appeal. The City Manager may sustain, overrule or modify the action of the Director, and decision of the City Manager shall be final.

The right to appeal to the City Manager shall terminate upon the expiration of ten (10) business days following personal delivery to Company or the deposit of a letter in the United States mail advising Company of the action of the Director and of the right to appeal such action to the City Manager.

14.01.940 Financial Security.

The Encroachment Permit may require that the Company provide financial security pursuant to this section. The Director shall determine the appropriate level of financial security, which may include all of the following protections for the City against Company default or failure to comply with this Chapter.

14.01.950 Indemnity and Liability Insurance.

A. To the maximum extent permitted by applicable law, Company shall at all times defend, indemnify, protect, hold harmless, and exempt the City, the City Council, its officers, agents, servants, attorneys and employees, from any and all penalties, damages or charges arising out of claims, suits, demands, causes of action, award of damages, imposition of fines and penalties, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which arise out of, or are caused by, the construction, erection, location, performance, operation, maintenance, repair, installation, replacement, removal or restoration of Facilities within the City based upon any act or omission of a Company, its agents or employees, contractors, subcontractors, independent contractors, or representatives except for that which is attributable to the sole negligence or willful misconduct of the City, the City Council, its officers, agents, servants, attorneys and employees. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included as those costs which shall be recovered by the City.

B. Except as provided in or as supplemented by any Encroachment Permit, a Company shall secure and maintain, public liability, property damage insurance, and umbrella coverage in at least the following amounts:

1. Public Liability. Two million dollars (\$2,000,000.00) per Person/per occurrence;

2. Property Damage. Two million dollars (\$2,000,000.00) per any one claim;
or

3. Umbrella Liability. Five million dollars (\$5,000,000.00).

C. The public and Personal liability and property damage insurance policy shall specifically include the City, the City Council, its employees, and agents as additional insureds.

D. The public and Personal liability and property damage insurance policies shall be issued by an agent or representative of an insurance Company licensed to do business in the State and which has one of the three highest or best ratings from the Alfred M. Best Company.

E. The public liability and property damage insurance policies shall contain an endorsement obligating the insurance Company to furnish the Director with at least thirty (30) days written notice in advance of the cancellation of the policy.

F. Renewal or replacement policies or certificates shall be delivered to the Director at least fifteen (15) days before the expiration of the insurance which such policies are to renew or be replaced.

G. Before a Company commences any construction, the Company shall deliver the policies or certificates representing the insurance to the Director as required herein.

H. The Director may adjust the coverage amounts specified in subsection B of this section provided that the adjustments result in the Company meeting or exceeding the coverage specified in this section.

PASSED, APPROVED and ADOPTED this ___ day of _____, 2008.

Joel Bishop, Mayor

ATTEST:

Kathy M. Ward, City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF DANA POINT)

I, Kathy M. Ward, City Clerk of the City of Dana Point, do hereby certify that the foregoing Ordinance No. _____ was introduced at a regular meeting of the City Council of the City of Dana Point held on the 15th day of April, 2008, and was thereafter duly and regularly passed and adopted by the Council of the City of Dana Point at its regular meeting held on the _____ day of _____, 2008, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Said Ordinance has been published or posted pursuant to law. Witness my hand and official seal of the City of Dana Point this 15th day of April 2008.

Kathy M. Ward, City Clerk