

CITY OF OAKLAND
AGENDA REPORT

OFFICE OF THE CITY CLERK
2007 MAR -1 PM 6:30

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: March 6, 2007

RE: A Supplemental Report on Surface Mounted Facility Placement Guidelines for Equipment in the Public Right-of-way and Screening Templates for AT&T Lightspeed Project Equipment in the Public Right-of-way

SUMMARY

At its December 19, 2006 meeting, the City Council directed staff to develop guidelines, modeled on San Francisco's adopted guidelines, for the siting of utility boxes in the public right-of-way. At its February 27, 2007 meeting, the Public Works Committee recommended forwarding those guidelines to the Council for approval with the supplemental report containing the following changes:

1. Details of the previously considered administrative review process for these facilities
2. Details of the previously considered public notice process for these facilities
3. Increase the landscape maintenance timeframe from 6 months to life of the facility.
4. Include owner name and contact number on each facility, to include contact number for graffiti removal if different from main contact number.

Staff has developed a set of written guidelines for the placement of these facilities in the City of Oakland right-of-way which will apply to all entities placing such facilities. This supplemental report includes the administrative review procedures the Community and Economic Development Agency (CEDA) will use to review these applications.

Currently, AT&T is applying for multiple encroachment permits to site new boxes in support of their project Lightspeed. Staff has developed a set of templates specifically for use with AT&T's equipment to detail the types of screening and landscape materials that the City may require to be installed.

FISCAL IMPACTS

Staff costs for processing the proposed encroachment permits will be covered by fees set by the Master Fee Schedule and paid by the developer and will be deposited in the special revenue Development Service Fund (2415), Engineering Services organization (88432), Encroachment Permits account (42314), Engineering and Architectural Plan Approval (PS30). The standard conditions of the encroachment permit require the property owner to maintain liability and property damage insurance and to include the City as a named insured. If the Council mandates that the placement guidelines apply to Public Works Agency utility boxes, such as traffic signal

Item _____
ORA / City Council
March 6, 2007

control boxes, there will be no fiscal impact due to graffiti maintenance. Public Works is not required to pay encroachment permit fees.

KEY ISSUES AND IMPACTS

Administrative Review Procedures

The procedure for review of applications for a minor encroachment permit for placement of surface mounted facilities in the public right-of-way consists of four basic steps:

1. Application and review of application for completeness (Public Notice occurs in this step)
2. CEDA review of complete application
3. Appeal (If necessary)
4. Issuance of permit with conditions

Attachment D contains the CEDA handouts showing application requirements, including the public notice procedures for these facilities and the standard conditions of approval for these facilities. The public notice procedure requires 30 day notice of the proposed location of a facility to owners and tenants within 300 feet of the proposed site. In addition to the mailing, a physical posting of properties within 300 feet of the proposed site is also required. This physical posting could be accomplished using door hangers, flyers, posters or other method of physically placing a notice on the property.

CEDA review of the application once it is deemed complete will use the placement guidelines in Attachment A. CEDA will also use templates, specific to each entity, to determine which screening option is appropriate for each proposed location. This may include a site visit, if necessary, to determine which materials, plants or configuration of screening materials is most appropriate for the individual characteristics of the neighborhood and location of the proposed facility.

If CEDA approves an application, there will be a ten day appeal period of that decision. All interested parties who request notification of a decision during the 30 day notice period will be mailed a copy of the notice of decision. Any party wishing to appeal the decision may do so by filing the appeal within 10 calendar days of the decision using the procedures in Section 17.132 (Administrative Appeal Procedure) of the Oakland Municipal Code (OMC).

If a minor encroachment permit is issued by CEDA, at a minimum, the conditions of approval in Attachment D will be attached to that permit. These conditions detail items such as insurance and indemnification requirements, landscape maintenance and graffiti removal requirements, general maintenance and repair requirements and the obligation to remove the facility if it is no longer in use or abandoned. These standard conditions may be added to as individual locations or installations warrant.

Placement Guidelines

Attachment A contains the Surface Mounted Facility Placement Guidelines for the City of Oakland. These are modeled on the City and County of San Francisco guidelines which are included for reference as Attachment B. The San Francisco guidelines have 22 items. Three of these items (SF items 9, 10, & 11) refer to districts or San Francisco specific areas or facilities that have no direct analog in the City of Oakland. These three items were eliminated leaving 19 items in the City of Oakland guidelines. Six items (SF items 14, 15, 16, 17, 19 & 22) were modified to correspond to the City of Oakland terminology for the analogous district designation. Finally, the numerical guidelines were modified to match City of Oakland standards which resulted in one item having a greater restriction than San Francisco, two items having reduced requirements and one item having a specific distance required where it was not specified in the San Francisco guidelines. We also note that only the relevant sections of the San Francisco Department of Public Works (SFDPW) Order have been included. The SFDPW Order covers all of San Francisco's encroachment procedures and administrative review procedures. The City of Oakland's administrative procedures and other right-of-way regulations are not further affected by the placement guidelines

These new placement guidelines are intended to apply Citywide to all entities including the City of Oakland Public Works Agency. Since the Public Works Agency is not required to obtain a minor encroachment permit for the placement of facilities, staff recommends the Council direct, by motion, the Public Works Agency to conform to these placement guidelines and public notice procedures. If the intent of the Council was to exempt the Public Works Agency from these procedures then no motion is needed.

Screening Requirements

Both the proposed City of Oakland guidelines and the San Francisco guidelines call for screening of these facilities, to address neighborhood concerns, where appropriate for the neighborhood and required by CEDA. Screening by fencing, landscaping or other options has to be individually tailored to a specific site. The number of variables involved precludes a standard screening solution. These variables include distance to existing equipment in the right-of-way, width of sidewalk, if any, at the location, proposed equipment size at this location, proximity of intersections or driveways at the location and relationship to structures in the vicinity among others. In order to bring some standardization to the selection of screening solutions, staff is proposing the Council consider the series of screening templates in Attachment C. These templates are tailored to AT&T's most used equipment types. The templates show a selection of the most frequently expected situations and a range of screening types from fences to landscaping only options. Staff proposes that Council adopt these templates for use with the AT&T Lightspeed project as the basis from which staff can tailor screening requirements for specific sites. Staff would determine, based on the configuration of a specific site, which template is appropriate for any screening required at that location. The emphasis in landscaping requirements will be for drought resistant species to reduce future maintenance requirements. AT&T will be responsible for maintenance and replacement of any landscape material for the life of the installation. Staff would further

determine if the specific location warrants a customization of the template to require specific materials or plants that may be appropriate for that location.

This template system could be used as a model if other entities wish to place facilities in the right-of-way. Staff anticipates that other entities will have different equipment configurations and sizes that would require templates specific to their equipment. The template approach for screening requirements allows Council to set expectations for screening while allowing the needed flexibility to respond to the design constraints of specific individual locations. If and when another entity wishes to locate facilities in the public right-of-way, staff will develop a set of templates specific to the dimensional requirements of the proposed equipment. The facility placement standards discussed above will apply to all entities across the board.

RECOMMENDATION AND RATIONALE

Staff requests that the City Council:

- Adopt the Surface Mounted Facility Placement Guidelines.
- Adopt the Screening Templates for the AT&T Lightspeed project.
- Direct staff to design screening templates, administratively, as required for other entities wishing to place facilities in the City of Oakland right-of-way.
- By motion direct the Public Works Agency to use the placement guidelines and public notice procedures.

SUSTAINABLE OPPORTUNITIES

Economic: Robust telecommunications infrastructure is becoming a necessity for business and a commodity demanded by residents. Communications infrastructure will be enhanced by maintaining a balanced approach to the use of the public right-of-way to provide such telecommunication services.

Environmental: The placement guidelines and screening templates will help protect the aesthetic environment of the City of Oakland by encouraging concealed facilities. The combined energy requirements for future expansion of the communication infrastructure are small.

Social Equity: The placement guidelines and screening templates will allow provision of communications infrastructure and utilities throughout the City of Oakland while providing equal protection of the aesthetic qualities of all City neighborhoods.

DISABILITY AND SENIOR CITIZEN ACCESS

Disability and senior citizen access will not be affected as the placement guidelines and encroachment permit procedures insure that all accessibility requirements are met in the public right-of-way and that the equipment and screening materials meet all requirements to not impede that access.

ACTION REQUESTED OF THE CITY COUNCIL

That the City Council, by motion:

- Adopt the Surface Mounted Facility Placement Guidelines.
- Adopt the Screening Templates for the AT&T Lightspeed project.
- Direct staff to design screening templates, administratively, as required for other entities wishing to place facilities in the City of Oakland right-of-way.
- By motion direct the Public Works Agency to use the placement guidelines and public notice procedures.

Respectfully submitted,



CLAUDIA CAPPIO
Development Director
Community and Economic Development Agency

Prepared by:
Eric Angstadt, Planner IV

**APPROVED AND FORWARDED TO
THE CITY COUNCIL:**



Office of the City Administrator

ATTACHMENTS:

- A. City of Oakland Surface Mounted Facility Placement Guidelines
- B. City and County of San Francisco Surface Mounted Facility Placement Guidelines
- C. AT&T Project Lightspeed screening templates
- D. Administrative Procedure Materials
- E. Previous Council Reports

ATTACHMENT A
City of Oakland
Surface Mounted Facility Placement Guidelines

The following are guidelines for the Community and Economic Development Agency (CEDA) to use during a site visit to determine acceptable locations for Surface-Mounted Facilities in the Public Rights-of-Way. The Agency is not required to apply any guideline that CEDA determines is not applicable to a particular installation of a Surface-Mounted Facility.

1. Surface-Mounted Facilities shall be no larger than is reasonably necessary to contain and protect the required equipment.
2. Surface-Mounted Facilities shall not obstruct pedestrians. A minimum of four feet (4') of pedestrian clearance (free of all obstacles for a clear path of travel, unobstructed pedestrian walkway) shall be maintained at all times.
3. Surface-Mounted Facilities shall not intrude on pedestrian "clear zones," minimum 25 feet, at street corners.
4. Surface-Mounted Facilities shall be set back a minimum of five feet (5') from edge of crosswalk areas.
5. Surface-Mounted Facilities shall be set back a minimum of twenty-four inches (24") from the face of the curb without bollards.
6. Surface-Mounted Facilities shall be set back a minimum of eight feet (8') from any fire escape and/or fire exit.
7. Surface-Mounted Facilities shall be set back a minimum of three feet (3') from any fire hydrant, driveway, curb ramp, or blue zone parking space.
8. Surface-Mounted Facilities shall be set back a minimum of thirty-six inches (36") from any other above-ground structure not otherwise specified herein including, but not limited to, street light poles, parking meters, trees, etc.
9. Surface-Mounted Facilities shall not be placed over any storm drain or other utility facility.
10. Surface-Mounted Facilities shall not obstruct the view of any traffic sign, wayfinding sign, traffic signal or any other existing facility.
11. Surface-Mounted Facilities shall not be placed on the property of, or adjacent to a designated Local, State or National Historic Landmark without first obtaining design review approval in accordance with the design review procedures in Section 17.101D of the Oakland Municipal Code. For the purposes of applying the limitations and conditions specified in this paragraph, in relation to any specific location, the word adjacent shall mean on the same side of the street and in front of the subject building or in front of the next building on either side.
12. Surface-Mounted Facilities shall not be placed in S-20 Historic Preservation District Combining Zones without first obtaining design review approval in accordance with the design review procedures in Section 17.101D of the Oakland Municipal Code.
13. Surface-Mounted Facilities shall not be placed in S-7 Preservation Combining Zones without first obtaining design review approval in accordance with the design review procedures in Section 17.84 of the Oakland Municipal Code.
14. Surface-Mounted Facilities shall not be placed in California Register Historic Districts, National Historic Districts, and National Register Historic Districts without first obtaining design review approval in accordance with the design review procedures in Section 17.101D of the Oakland Municipal Code.
15. Surface-Mounted Facilities shall not front the boundaries of a park, recreation area, or open space without first obtaining design review approval in accordance with the design review procedures in Section 17.135 of the Oakland Municipal Code.

16. Surface-Mounted Facilities shall be either stainless steel or painted to be consistent with the color of existing structures in the vicinity unless otherwise specified by CEDA and shall have graffiti-proof coating.
17. Surface-Mounted Facilities shall be screened by landscaping where appropriate for the neighborhood and required by CEDA.
18. Surface-Mounted Facilities shall not unreasonably affect the aesthetic character of neighborhoods or the natural character of regional open spaces in accordance with the City of Oakland General Plan.
19. Surface-Mounted Facilities may be placed near local, State or National Historic Landmarks as discussed in No. 11 above, S-20 Historic Preservation District Combining Zones, as discussed in No. 12 above, S-7 Preservation Combining Zones as discussed in No. 13 above, and California Register Historic Districts, National Historic Districts, National Register Historic Districts as discussed in No. 14 above, and parks, recreation areas, and open spaces as discussed in No. 15 above, if they are to be collocated with existing transit shelters, kiosks, or other street furniture, provided that the size and footprint of the existing facility is not unreasonably increased by the addition of the Surface-Mounted Facility and provided that design review approval is obtained as specified in the appropriate section.

ATTACHMENT B
City and County of San Francisco
Surface Mounted Facility Placement Guidelines

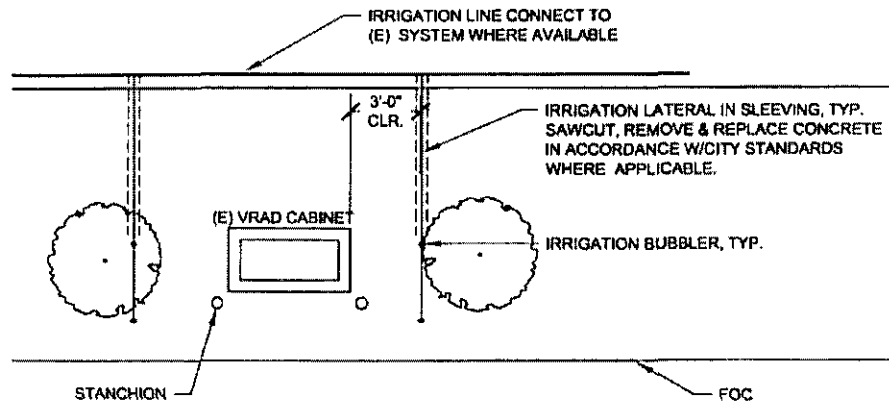
The following are guidelines for the Department to use during a site visit to determine acceptable locations for Surface-Mounted Facilities in the Public Rights-of-Way. The Department is not required to apply any guideline that the Department determines is not applicable to a particular installation of a Surface-Mounted Facility.

1. Surface-Mounted Facilities shall be no larger than is reasonably necessary to contain and protect the required equipment.
2. Surface-Mounted Facilities shall not obstruct pedestrians. A minimum of four feet (4') of pedestrian clearance (free of all obstacles for a clear path of travel, unobstructed pedestrian walkway) shall be maintained at all times.
3. Surface-Mounted Facilities shall not intrude on pedestrian "clear zones" at street corners.
4. Surface-Mounted Facilities shall be set back a minimum of five feet (5') from edge of crosswalk areas.
5. Surface-Mounted Facilities shall be set back a minimum of eighteen inches (18") from the face of the curb.
6. Surface-Mounted Facilities shall be set back a minimum of eight feet (8') from any fire escape and/or fire exit.
7. Surface-Mounted Facilities shall be set back a minimum of five feet (5') from any fire hydrant, driveway, curb ramp, or blue zone parking space.
8. Surface-Mounted Facilities shall be set back a minimum of forty inches (40") from any other above-ground structure not otherwise specified herein including, but not limited to, street light poles, parking meters, trees, etc.
9. Surface-Mounted Facilities shall be set back a minimum of sixty feet (60') from any Municipal Railway transit shelter and/or kiosk, unless the location of the Surface-Mounted Facility is coordinated with the transit shelter and/or kiosk.
10. Surface-Mounted Facilities shall be set back a minimum of five feet (5') from any certified street artist's designated area per list to be provided by the Department (which list is complete only as of the date of this order and will be updated when any new street artist's designated areas are established).
11. Surface-Mounted Facilities shall be set back a minimum of sixty feet (60') from any public art work under the jurisdiction of the Arts commission of San Francisco, except for public art on kiosks, per the San Francisco Civic Art Collection published by the Arts Commission of San Francisco (which book is complete only as of the date of this order and will be updated when any new public art works are established).
12. Surface-Mounted Facilities shall not be placed over any storm drain or other utility facility.
13. Surface-Mounted Facilities shall not obstruct the view of any traffic sign, wayfinding sign, traffic signal or any other existing facility.
14. Surface-Mounted Facilities shall not be placed on the property of, or adjacent to a designated Local, State or National Historic Landmark. For the purposes of applying the limitations and conditions specified in this paragraph, in relation to any specific location, the word adjacent shall mean on the same side of the street and in front of the subject building or in front of the next building on either side.
15. Surface-Mounted Facilities shall not be placed in Local Historic Districts listed in Appendices B-L of Article 10 of the San Francisco Planning Code.
16. Surface-Mounted Facilities shall not be placed in Conservation Districts designated in Appendices E-J of Article 11 of the San Francisco Planning Code.
17. Surface-Mounted Facilities shall not be placed in California Register Historic Districts,

National Historic Districts, and National Register Historic Districts.

18. Surface-Mounted Facilities shall not front the boundaries of a park, recreation area, or open space.
19. Surface-Mounted Facilities shall be either stainless steel or painted to match the color used for City structures in the vicinity (e.g. JCDecaux green, Embarcadero blue) unless otherwise specified by the Department and shall have graffiti-proof coating.
20. Surface-Mounted Facilities shall be screened by landscaping where appropriate for the neighborhood and required by the Department.
21. Surface-Mounted Facilities shall not unreasonably affect the aesthetic character of neighborhoods or the natural character of regional open spaces in accordance with the City and County of San Francisco General Plan.
22. Surface-Mounted Facilities may be placed in local, State or National Historic Landmarks as discussed in No. 14 above, Local Historic Districts as discussed in No. 15 above, Conservation districts as discussed in No. 16 above, and California Register Historic Districts, National Historic Districts, National Register Historic Districts as discussed in No. 17 above, and parks, recreation areas, and open spaces as discussed in No. 18 above, if they are to be collocated with existing transit shelters, kiosks, or other street furniture, provided that the size and footprint of the existing facility is not unreasonably increased by the addition of the Surface-Mounted Facility.

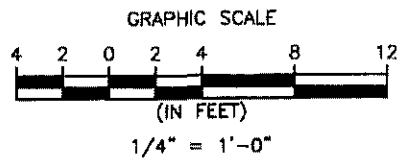
ATTACHMENT C



PLANT LEGEND

- TALL SHRUBS 5' - 8' HEIGHT
- | | |
|------------------------------------|----------------------|
| ESCALLONIA EXONIENSIS 'FRADES' | FRADES ESCALLONIA |
| LEPTOSPERMUM SCOPARIUM 'RUBY GLOW' | NEW ZEALAND TEA TREE |
| PHORMIUM TENEX 'MAORI QUEEN' | NEW ZEALAND FLAX |
| PITTOSPORUM TOBIRA | VARIEGATED TOBIRA |
| PODOPARPUS MACROPHYLLUS 'MAKI' | SHRUBBY YEW PINE |
| RHAPHIOLEPIS INDICA 'JACK EVANS' | INDIA HAWTHORN |

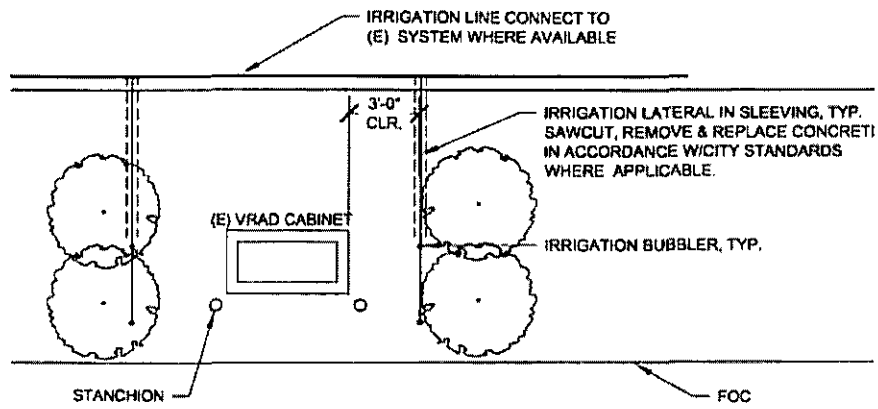
FOR ADDITIONAL INFORMATION, SEE PLANTING & IRRIGATION NOTES & DETAILS



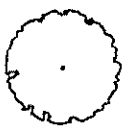
"PLANTING OPTION A-END PLANTING"

**AT&T
PRELIMINARY SCREENING PLAN "E"**

Date 01/12/2007	Scale AS SHOWN	Notes XXX	Project Number 00000	Sheet Number X-0
--------------------	-------------------	--------------	-------------------------	---------------------

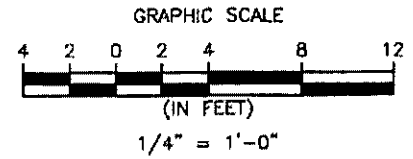


PLANT LEGEND



- TALL SHRUBS 5' - 6' HEIGHT
- | | |
|------------------------------------|----------------------|
| ESCALLONIA EXONIENSIS 'FRADES' | FRADES ESCALLONIA |
| LEPTOSPERMUM SCOPARIUM 'RUBY GLOW' | NEW ZEALAND TEA TREE |
| PHORMIUM TENEX 'MAORI QUEEN' | NEW ZEALAND FLAX |
| PITTOSPORUM TOBIRA | VARIEGATED TOBIRA |
| PODOCARPUS MACROPHYLLUS 'MAKI' | SHRUBBY YEW PINE |
| RHAPHIOLEPIS INDICA 'JACK EVANS' | INDIA HAWTHORN |

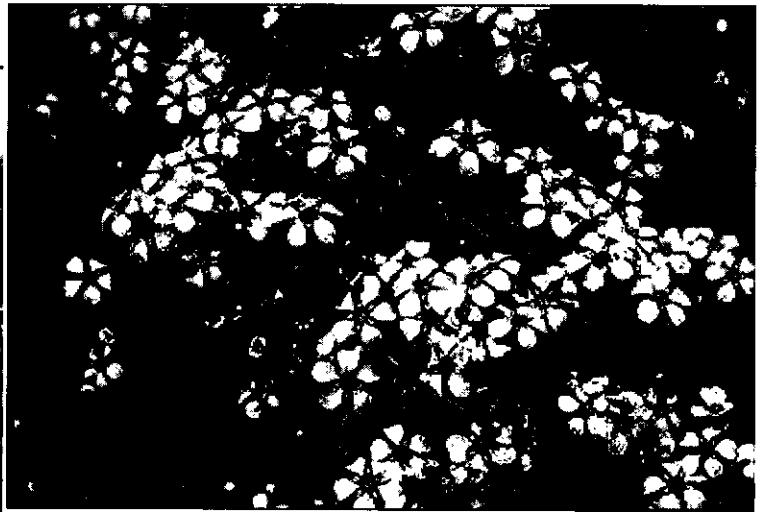
FOR ADDITIONAL INFORMATION, SEE PLANTING & IRRIGATION NOTES & DETAILS



"PLANTING OPTION B-CORNER PLANTING"

AT&T				
PRELIMINARY SCREENING PLAN "F"				
Date 01/12/2007	Scale AS SHOWN	Sheet XXX	Project Number 00000	Sheet Number X-0

City of Oakland
Plant Legend





ATTACHMENT D



CEDA - PERMIT CENTER
250 Frank H. Ogawa Plaza
2nd Fl., Suite 2114
Oakland, Ca 94612
(510) 238-3891

ENCROACHMENT PERMIT APPLICATION REQUIREMENTS

Oakland Municipal Code Chapter 12.08

1. A letter from the property owner requesting an encroachment permit is required. The letter shall be addressed to the City Engineer, and shall be sent to the following address:

City Engineer
Community & Economic Development Agency
250 Frank H. Ogawa Plaza, 2nd Floor
Oakland, CA 94612

2. A site plan on 8½” x 11” sheet is required that clearly delineates the proposed encroachments and their dimensions, nature of encroachment, north arrow, street name, right-of-way and sidewalk widths, building addresses, existing features including property lines, face of curb, sidewalks, edge of pavement, face of adjacent building, and existing sidewalk obstructions such as joint poles, utility boxes, hydrants, parking meters, signage etc.
3. Fees (non-refundable):
 - a. Minor encroachment permit
(for single family dwelling & duplex): \$ 590.96*
 - b. Minor encroachment permit
(for other types of occupancy): \$ 937.51*
 - c. Minor encroachment permit
(for legalizing illegal encroachment): \$ 1,738.46*
 - d. Major encroachment permit: \$ 1,534.21*
4. A Certificate of Insurance that complies with the City’s standard insurance requirement.
5. A copy of recorded Grant Deed.
6. Evidence of public notice for surface mounted facilities in the public right-of-way.

Applicant must submit evidence that all owners of record and tenants within 300 feet of the proposed location were mailed notice of the proposed installation 30 days prior to issuance of a minor encroachment permit. In addition, physical *notice of the proposed installation must be placed on the all properties* (doorhangers, posters, flyers, etc.) within 300 feet of the proposed installation for 30 days prior to the issuance of a minor encroachment permit.

* Effective 2/1/2007

(Fees include Permit Application Fee, Records Management Fee and Technology Enhancement Fee)

City of Oakland
CEDA
Building Services Division
Engineering Services Section

Minor Encroachment Location: _____
Minor Encroachment Permit No.: _____

**MINOR ENCROACHMENT PERMIT
SUBMITTAL REQUIREMENTS CHECKLIST
FOR TELECOMMUNICATION COMPANIES**

- Date Received:** _____ Received by: _____
- Telecommunication Company Contact Person: _____
- Company: _____
- Utility Company Phone: _____

The following Items must accompany each submittal:

First Submittal

Subsequent Submittal (if required)

- | | |
|---|--------------------------------------|
| <input type="checkbox"/> Plat showing encroachment
(on 8.5" x 11" size) | <input type="checkbox"/> As required |
| <input type="checkbox"/> Fees per structure in accordance with Current Fee Schedule
(currently \$550.00) | |
| <input type="checkbox"/> Letter requesting the encroachment | |
| <input type="checkbox"/> Certificate of Insurance | |
| <input type="checkbox"/> Signed and notarized Encroachment Agreement per project | |
| <input type="checkbox"/> Separate Application with proof of public notice per structure | |
| <input type="checkbox"/> Spreadsheet showing all encroachments with approximate addresses | |

Final Submittal for Recordation

After Recordation

- | | |
|--|--|
| <input type="checkbox"/> Signed and notarized encroachment Agreement | <input type="checkbox"/> 1 set of Recorded document
received from County Recorder |
|--|--|

Note: Encroachment permit is not good without excavation permit.

CITY OF OAKLAND
APPLICATION FOR TELECOMMUNICATION INSTALLATION
 MINOR ENCROACHMENT

Project Address		Date	PTS Number		
Permittee (Utility Company)			Utility Company Project Number		
Mailing Address	City	Zip	Permittee's Telephone Number	Office	Mobile
Contractor			Contractor's 24 hour Emergency Phone Number		
Address	City	Zip	City Business Tax #	State Contractor's License Number	Class
Start Date	Completion Date	Have plans for this work been reviewed and signed by City Engineering Service? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Type of Structure and Size		Number of Structures	Total Fees		
Description of Work					
General Conditions:					
<ol style="list-style-type: none"> 1. Call Public Works Agency at (510) 238-3651, 48 hours prior to starting work to schedule inspection. 2. Any person, firm or corporation encroaching into the public right-of-way with any structure is required to obtain an encroachment permit in accordance with Section 12.08.050 of the OMC. 3. State Law requires that the contractor/owner call Underground Service Alert (USA) two working days before excavation. This permit is not valid unless applicant has secured an inquiry identification number issued by USA. The USA telephone number is (800) 642-2444. Underground Service Alert (USA) # _____. 4. Structure in the public right-of-way shall be installed underground unless technologically or economically infeasible. 5. Required permits such as excavation, obstruction and use permits and any other required permits shall be obtained prior to commencement of work. 6. Encroachment Agreement No. _____ is incorporated and made a part of this permit. 7. Permittees shall remove the structure if determined by the Director of Building Services that the location of the structure constitutes a nuisance to the neighborhood and fringes on the public's ability to use the right-of-way. 					
Special Conditions:					
Issue Date	Limited duration Area? (7am-9am & 4pm-6pm) <input type="checkbox"/> Yes <input type="checkbox"/> No	Holiday (Nov 1 – Jan 1) Restriction? <input type="checkbox"/> Yes <input type="checkbox"/> No		Date street last resurfaced	
Certificate of Insurance Provided? <input type="checkbox"/> Yes <input type="checkbox"/> No					
Signature of Permittee			City Engineer Approval		Date

Standard Conditions For An Encroachment In the Public Right-Of-Way

Address _____

Parcel no. _____

Permittee(s) _____

Permit no. _____

• General conditions of the encroachment

1. This agreement may be voided and the associated permit for an encroachment may be revoked at any time and for any reason, at the sole discretion of the City Administrator or his or her designee, or the associated permit may be suspended at any time, at the sole discretion of the City Engineer, upon failure of the permittee to comply fully and continuously with each and all of the general and special conditions set forth herein and in the associated permit.
2. The property owners and permittee hereby disclaim any right, title, or interest in or to any portion of the public right-of-way, including the sidewalk and street, and agree that the encroachment is granted for indeterminate period of time and that the use and occupancy by the permittee of the public right-of-way is temporary and does not constitute an abandonment, whether expressed or implied, by the City of Oakland of any of its rights associated with the statutory and customary purpose and use of and operations in the public right-of-way.
3. The permittee agrees to indemnify and save harmless the City of Oakland, its officers, agents, employees, and volunteers, and each of them, from any suits, claims, or actions brought by any person or persons, corporations, or other entities for on account of any bodily injury, disease, or illness, including death, damage to property, real or personal, or damages of any nature, however caused, and regardless of responsibility for negligence, arising in any manner out of the construction of or installation of a private improvement itself or sustained as result of its construction or installation or resulting from the permittee's failure to maintain, repair, remove and/or reconstruct the private improvement.
4. *The permittee shall maintain fully in force and effect at all times that the encroachment occupies the public right-of-way good and sufficient public liability insurance in a face amount not less than \$300,000.00 for each occurrence, and property damage insurance in a face amount not less than \$50,000.00 for each occurrence, both including contractual liability, insuring the City of Oakland, its officers, agents, employees, and volunteers against any and all claims arising out of the existence of the encroachment in the public right-or-way, as respects liabilities assume under this permit, and that a certificate of such insurance and subsequent notices of the renewal thereof, shall be filed with the City Engineer of the City of Oakland, and that such certificate shall state that the insurance coverage shall not be canceled or be permitted to lapse without thirty calendar (30) days written notice to the City Engineer. The permittee also agree that the City of Oakland may review the type and amount of insurance required of the permittee annually and may require the permittee to increase the amount of and/or change the type of insurance coverage required.*
5. The permittee shall be solely and fully liable and responsible for the repair, replacement, removal, reconstruction, and maintenance of any portion or all of the private improvements, including any required screening or landscape materials, constructed or installed in the public right-of-way, whether by the cause, neglect, or negligence of the permittee or others and for the associated costs and expenses necessary to restore or remove the encroachment to the satisfaction of the City Engineer and shall not allow the encroachment to become a blight or a menace or a hazard to the health and safety of the general public. All graffiti must be removed within 48 hours of notification.
6. The permittee acknowledges and agrees that the encroachment is out of the ordinary and does not comply with City of Oakland standard installations. The permittee further acknowledge and agree that the City of Oakland and public utility agencies will periodically conduct work in the public

right-of-way, including excavation, trenching, and relocation of its facilities, all of which may damage the encroachment. Permittee further acknowledges and agrees that the City and public utility agencies take no responsibility for repair or replacement of the encroachment which may be damaged by the City or its contractors or public utility agencies or their contractors. Permittee further acknowledges and agrees that upon notification by and to the satisfaction of the City Engineer, permittee shall immediately repair, replace, or remove, at the sole expense of the permittee, all damages to the encroachment that are directly or indirectly attributable to work by the City or its contractors or public utility agencies or their contractors.

7. Permittee shall remain liable for and shall immediately reimburse the City of Oakland for all costs, fee assessments, penalties, and accruing interest associated with the City's notification and subsequent abatement action for required maintenance, repairs, or removal, whether in whole or in part, of the encroachment or of damaged City infrastructure made necessary by the failure, whether direct or indirect, of the permittee to monitor the encroachment effectively and accomplish preventative, remedial, or restorative work expeditiously. The City reserves the unqualified right to collect all monies unpaid through any combination of available statutory remedies, including recordation of Prospective Liens and Priority Liens / Special Assessments with the Alameda County Recorder, inclusion of non-reimbursed amounts by the Alameda County Assessor with the annual assessment of the general levy, and awards of judgments by a court of competent jurisdiction.
8. Upon revocation of the encroachment permit, permittee shall immediately, completely, and permanently remove the encroachment from the public right-of-way and restore the public right-of-way to its original conditions existing before the construction or installation of the encroachment, to the satisfaction of the City Engineer and all at the sole expense of the permittee.
9. This agreement and the associated permit for an encroachment shall become effective upon filing of this agreement with the Alameda County Recorder for recordation as an encumbrance of the property and its title.
10. The permittee shall install on each facility their name and a phone number(s) to contact for maintenance and graffiti removal. Such name and number(s) shall be maintained in a legible state for the life of the installation.

ATTACHMENT E

Prior Committee and Council Reports:

December 12, 2006 Public Works Committee Staff Report

Councilmember Brunner's Letter to the Public Works Committee, dated December 12, 2006

November 28, 2006 Public Works Committee Staff Report

Councilmember Brunner's Letter to the Public Works Committee, dated November 28, 2006

December 12, 2006 Public Works Committee Staff Report

CITY OF OAKLAND

AGENDA REPORT

OFFICE OF THE CITY CLERK

2006-050 -7 PM 5:53

TO: Office of the City Administrator
ATTN: Deborah A. Edgerly
FROM: Community & Economic Development Agency
DATE: December 12, 2006

RE: **A Supplemental Report and Recommendations Regarding the Design of Utility Boxes Installed In the Public Right Of Way in the City Of Oakland, Including the Consideration of Undergrounding and Designs Appropriate to Residential Neighborhoods**

SUMMARY

The Public Works Committee of November 28, 2006 received an initial report regarding current regulatory requirements and practices for placement of above ground utility boxes in the public right of way. At the November 28th Committee, Councilmember Brunner distributed a memo outlining specific issues for staff to return with recommendations for City Council approval. This staff report provides options for consideration.

FISCAL IMPACT

The fiscal impact of the recommendations presented in this report is neutral and will not have a direct fiscal impact on the City. The administration of existing policies and practices will not have a fiscal impact. However, should the Council choose to adopt different policies that impact the regulatory process for utility boxes in the public right of way, permit review and inspection costs will need to be increased accordingly to cover staff time and other processing costs.

BACKGROUND

The November 28th report to the Public Works Committee provided an analysis of current permitting and review process for Above Ground Utility boxes that are placed in the public right of way by public agencies (such as the City), quasi-public utilities (such as Pacific, Gas & Electric or East Bay Municipal Utility District), or private entities (such as phone or cable providers). Per direction from the Committee, staff continued its research in order to develop a set of recommendations to address the outstanding issues. Councilmember Brunner, whose district is the first being impacted by the deployment of a new set of Above Ground Utility boxes (AT&T's Project Lightspeed), presented a memo outlining several recommendations for installation of said boxes. Staff was directed not to issue any permits until the City Council has approved the revised design review standards and procedures.

Item: _____
Public Works Committee
December 12, 2006

KEY ISSUES AND IMPACTS

1) All Utility Boxes in the Public Right of Way Be Subject To Design Review With Regards to Exact Location, Orientation, Appearance, Color of Each Box, With Specific Attention to Pedestrian Right of Way, Disabled Access and Pedestrian Safety:

The placement of utility boxes in the public right of way is regulated in the City of Oakland through Oakland Municipal Code (OMC) Chapters 12.08 (Encroachment) and 12.12 (Excavation). The encroachment permit review process is intended to ensure that above ground utility boxes do not obstruct pathways (such as public sidewalks, especially for disabled access) or the line of vision required for safe pedestrian and vehicle traffic flow. For example, the width of a sidewalk is analyzed to maintain a minimum five (5) feet width after a box is placed on the sidewalk to ensure that disabled residents can operate their wheelchairs without obstruction. The excavation permit review process is intended to ensure that trenches being dug to place cables and other infrastructure do not harm existing infrastructure by other public utilities (such as gas or sewer lines).

As part of the encroachment and excavation review process, the City will implement an additional set of design review standards to analyze and review the orientation, appearance, concentration, and screening of all above ground utility boxes in the public right of way. Within technological limits, applicants will not be allowed to create a concentrated collection of boxes in residential areas in order to minimize the impact to the surrounding areas. As opposed to residential areas, in commercial areas, applicants will be encouraged to combine the location of facilities and pursue options in adjacent private commercial areas, such as loading docks or parking facilities. The design review process will also analyze and review screening requirements for each box to minimize their impact to the surrounding community (additional details are provided in No. 3 below).

2) Design Review Standards Shall Require Boxes in Residential Areas to Be Smaller Than Those Mentioned In the November 28th Staff Report

The November 28th staff report outlined the current policy of allowing the installation of above ground utility boxes up to a height of 78 inches. Current zoning regulations allow Oakland residents to place any fence, dense hedge, or barrier or similar freestanding wall, but excluding retaining walls, up to a height of 42 inches in their front yard or portions of the a parcel facing public right of ways.¹ The installation of above ground utility boxes require structural components (such as pedestals and frames) for safety purposes (i.e. avoiding electric shocks) and reducing the potential for public nuisances (anti-graffiti cabinet frames). Therefore, staff is proposing that above ground utility boxes in residential areas be limited to a height of 50 inches. In communication with utility firms, staff believes that it will be reasonable to expect utility

¹ OMC Chapter 17.108

boxes with a height of 48 inches to be available for residential areas. This 48 inch height represents a substantial reduction in the current policy used by the City (reducing the height of utility boxes in the residential areas from 78 inches down to 50 inches, a reduction of 28 inches or 36%).

3) The Owners Of The Box Shall Mask (Screen) Each Box, At Their Cost Exclusively, To Mitigate Or Minimize Any Negative Impacts Associated With Each Utility Box:

The screening requirements will include a combination of landscaping, painting, surface texture/materials to match the existing structures consistent with surrounding backdrop or placed behind screening fences. Screening is to be implemented by the owner of the box and they shall be responsible for future maintenance and upkeep, including but not limited to graffiti and other public nuisance regulations. Utility firms and the City will develop 5 to 6 proto-types (illustrating design standards and elements for hillside, flat lands, residential, commercial and other applicable categories) of their above ground boxes. These proto-types will accompany specific screening criteria as set forth by the City. Each application for a box submitted to the City will require a screening requirement pertaining to the applicable and adopted proto-types and other standards.

4) Design Review Procedures Shall Include Public Notice to Both Property Owners And Tenants Within A 300 Foot Radius of The Proposed Location And Owners And Tenants That Are Within Sight of The Box From The Street In Front of Their Residence, with a 30-day Comment Period.

Currently, utility companies provide a 30-day notice by letter to impacted property owners, tenants and community associations (if applicable). Impacted property owners are the addresses shown on the Assessor's Maps located within the visual field of the proposed above-ground structure. Waiver of the 30 day notice is granted if a company representative discusses construction plans with owners and obtains their acknowledgement of the plans via face-to-face discussion. Notice shall include clear language addressing the following:

- A drawing/schematic showing the type and size of the structure that will be placed and showing the relationship to the right-of-way.
- The location related to the neighborhood.
- A picture of the structure within the location – using an illustrated overlay.
- Contact name and phone number of City's CEDA representative and Company's representative knowledgeable of the site for questions and concerns prior to the 30 days.

This requirement will be modified to include property owners and tenants within a 300 foot radius of each proposed box.

5) There Will Be an Additional 10-Day Public Comment Period for Each Box Prior to Construction

In addition to the 30-day notice outlined in No. 4 above, utility firms will be asked to provide a 10-day notice to impacted property owners before construction activity begins, to provide an additional notice to the community. This additional noticing requirement will allow both the City and utility firms to work with impacted property owners to identify the most effective location, orientation, and screening options for each box.

6) The Owner Of The Box, When Feasible, Shall Underground The Box,

CEQA section 15364 defines “feasible” as capable of being accomplished in a successful manner within reasonable period of time, taking into account economic, environmental, legal, social, and technological factors. This is the definition the City will also use. If the owner of the box wants it above ground, they must submit supporting materials at the time of permit application which demonstrates that it is infeasible to place the utility box underground. At the November 28th Committee meeting, staff was asked to provide additional detail from the City of Newport Beach. The ordinance adopted by the City of Newport Beach “promotes” the use of undergrounding and specifically states that:

13.20.030 CITY POLICIES REGARDING USE OF THE PUBLIC RIGHT OF WAY.

A. Promotion of Undergrounding. It is the policy of City to promote undergrounding of Facilities whenever and wherever Feasible. Whenever 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 by a Public Utility Provider along a particular PROW, other 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 in areas where Facilities are undergrounded.

B. Limits on Above-Ground Facilities (AGF). It is the additional policy of the City to limit the number and control the location of AGF used in conjunction with underground Facilities consistent with the technical requirements for providing high quality utility service. Companies shall place all newly installed Facilities underground or flush mounted vaults, whenever Feasible. Companies shall coordinate with all

affected property owners to locate all newly installed AGF to minimize inconvenience and disruption to residents.

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

According to the City of Newport Beach, to date, no utility boxes have been undergrounded in their city. Utility boxes have been placed in the public right of way owned and operated by the State of California (Department of Transportation).

7) Application of CEQA

Impacts of discretionary actions, such as approval of utility boxes, which may have physical effects on the environment, are governed by the California Environmental Quality Act (CEQA). The proposed regulations presented to the Council are intended to minimize the project-specific and cumulative impacts of these facilities; therefore, staff does not believe that additional CEQA review of projects is required at this time. Accordingly, the Council could find that the installation of utility boxes are exempt from CEQA pursuant to CEQA Guidelines sections 15303(d) (New Construction or Conversion of Small Structures); 15304 (Minor Alterations to Land); and/or 15016(b)(3) (General Rule: No Possibility of Significant Effects).

SUSTAINABLE OPPORTUNITIES

Economic: Robust technology and utility infrastructure are necessary for the economic growth and vitality of Oakland.

Environmental: It is important to protect the use and access of the public right of way through appropriate regulations and requirements.

Social Equity: The programs and policies for utility boxes in the public right of way are intended to ensure all Oakland residents have access to new technologies and services.

DISABILITY AND SENIOR CITIZEN ACCESS

The placement of each utility box is regulated to require adequate pathways and access for disabled residents by maintaining the requirement of the American with Disabilities Act.

RECOMMENDATION(S) AND RATIONALE

The changing nature of new technologies and the required infrastructure to provide these new technologies to residents in Oakland necessitates the deployment of additional infrastructure components, such as utility boxes in the public right of way. These new or enhanced

technologies are vital to the economic growth and vitality of Oakland. However, the placement and nature of the infrastructure required to deliver these new technologies should not reduce the quality and accessibility of public rights of way. Therefore, staff recommends the following set of regulations for above ground utility boxes in the public right of way:

Residential Area²
<ul style="list-style-type: none">• Height of boxes be reduced from 78 inches to 50 inches;• Required permits for Encroachment and Excavation will analyze and consider pedestrian, disabled, and traffic flow areas, in addition to other issues.• Design Review analysis, as part of the encroachment and excavation review to provide screening, location, and orientation requirements• 30-day Public Notice property owners and tenants in line of site or within 300 foot radius• 10-day additional notice to impacted property owners prior to construction activity starting• Avoid concentration of boxes in a single location, within technological limits• Require undergrounding, when feasible

Commercial Area³
<ul style="list-style-type: none">• Height of boxes be reduced from 78 inches to 63 inches;• Required permits for Encroachment and Excavation will analyze and consider pedestrian, disabled, and traffic flow areas, in addition to other issues.• Design Review analysis, as part of the encroachment and excavation review to provide screening, location, and orientation requirements• 30-day Public Notice property owners and tenants in line of site or within 300 foot radius• 10-day additional notice to impacted business owners prior to construction activity starting• Encourage concentration of facilities, especially in available location in private property• Require undergrounding, when feasible

² Defined consistent with Zoning Ordinance

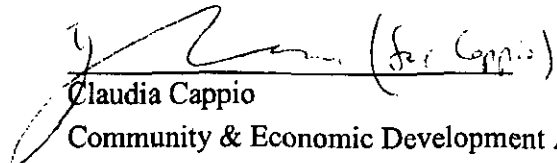
³ *Ibid*

The proposed regulations will minimize the impact to the City while not deterring the investment required to deploy infrastructure critical for delivery of new technology services to Oakland residents.

ACTION REQUESTED OF THE CITY COUNCIL

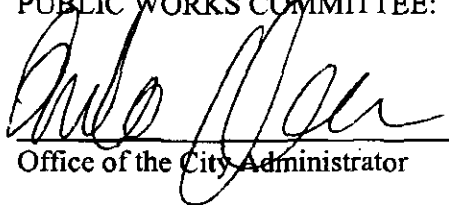
Staff is requesting Council to approve the proposed regulations for above ground utility boxes in public right of way.

Respectfully submitted,


Claudia Cappio
Community & Economic Development Agency

Prepared by:
Maziar Movassaghi
Community & Economic Development Agency/

APPROVED AND FORWARDED TO THE
PUBLIC WORKS COMMITTEE:


Office of the City Administrator

Item: _____
Public Works Committee
December 12, 2006

**Councilmember Brunner's Letter to the Public Works Committee,
dated December 12, 2006**

CITY OF OAKLAND



CITY HALL ONE FRANK H. OGAWA PLAZA OAKLAND, CALIFORNIA 94612

JANE BRUNNER
Councilmember
District 1

(510) 238-7001
FAX (510) 238-6910
TTD (510) 238-7413

To: Chair Nadel and Members of the Public Works Committee
From: Councilmember Jane Brunner
Date: December 12, 2006
Re: Public Works Committee, Item 4

After reviewing the minutes and the tape of your last meeting, I understand that the Committee's direction was for staff to draft a short-term moratorium on the issuance of permits for utility boxes pending your discussion of this issue and final action by the City Council.

Pursant to Oakland Municipal Code section 2.20.080.B3, enclosed is a proposed Moratorium that I would like the Committee to consider, as I understand one was not included in your packet. The moratorium is also scheduled for the December 19, 2006 City Council meeting.

Thank you very much for your consideration of this important issue.

PUBLIC WORKS

4

December 12th, 2006

4/5 VOTE REQUIRED FOR PASSAGE

APPROVED AS TO FORM AND LEGALITY

65858 - (1) 8:43

INTRODUCED BY COUNCILMEMBER BRUNNER:

Oakland City Attorney's Office

ORDINANCE NO. _____ C.M.S.

DRAFT

AN URGENCY ORDINANCE, PURSUANT TO GOVERNMENT CODE SECTION 65858, ESTABLISHING A TEMPORARY MORATORIUM ON THE CONSTRUCTION, MODIFICATION, PLACEMENT OR APPROVAL OF APPLICATIONS FOR ABOVE-GROUND UTILITY OR EQUIPMENT CABINETS WITHIN THE PUBLIC RIGHT OF WAY

WHEREAS, Government Code § 65858 allows a city, including a charter city, without following the procedures otherwise required prior to the adoption of a zoning ordinance, to adopt, as an urgency measure, an interim ordinance prohibiting any uses which may be in conflict with a contemplated general plan, specific plan, or zoning proposal which the legislative body, planning commission, or planning department is intending to study within a reasonable time; and

WHEREAS, the City of Oakland's Community Economic Development Agency is in the process of evaluating new amendments to the City's zoning regulations, or other controls, relating to design, location and size requirements for the construction, modification or placement of above-ground utility or equipment cabinets; and

WHEREAS, until such time that the City concludes its review and adopts and institutes new land use regulations governing design, location and size requirements for the construction, modification or placement of above-ground utility or equipment cabinets, the community is in jeopardy that above-ground utility or equipment cabinets could be constructed, modified or placed prior to the imposition of new regulations necessary for the protection of public health, safety and welfare;

WHEREAS, the City Council finds and determines that the construction, modification, placement, or approval of pending or new applications for above-ground utility or equipment cabinets during the moratorium period, in which possible amendments to the Zoning Regulations, or other controls, are being studied, could result in conflicts with any proposed amendments/controls and would undermine the purpose of studying such amendments/controls, thereby reducing the quality of life within the community to the extent the overall public health, safety and welfare are detrimentally affected; and

WHEREAS, the City's current utility or equipment cabinet regulations are administrative guidelines that are deficient in several areas, including but not limited to: they do not adequately address community concerns regarding locational standards and design,

handicapped access, and they allow permit applications to be handled through an administrative review process that requires public notification through notice by the utility company but does not include a public review process with direct involvement of the City; and

WHEREAS, since 2002, the City of Oakland has received an increasing number of applications for the construction, modification, and/or placement of above-ground utility or equipment cabinets throughout the City, in response to changing technology and the physical requirements required to connect this new technology to residential neighborhoods; and

WHEREAS, currently, the City of Oakland Community and Economic Development Agency approves, on average, three permits per week for the installation, construction, placement, and/or modification of utility or equipment cabinets, and there are currently pending applications on file; and

WHEREAS, changes in broadband, energy, transportation and telecommunications technology, as well as projected increases in residential and commercial development throughout the City, coupled with the desire of utility providers to increase their services in the City and surrounding areas are all projected to result in additional permit applications for the placement or modification of utility or equipment cabinets within the City of Oakland; and

WHEREAS, significant concerns have been raised in the community regarding the continuing adequacy of the current procedures and guidelines to address the increased number of permit applications and new technologies, and to ensure informed, consistent, uniform, and fair decisions on permit applications for new and/or modified utility or equipment cabinets throughout the City; and

WHEREAS, citizens of the City of Oakland have also expressed significant concerns regarding the impacts that a proliferation of above-ground utility or equipment cabinets within the City of Oakland may have upon the community as a whole, including, but not limited to, safe public access, noise, maintenance, adverse visual impacts, and incompatibility of such large installations in residential zones; and

WHEREAS, citizens of the City of Oakland have expressed a desire that the City receive adequate services provided that these larger facilities are designed and located to minimize the concerns described above; and

WHEREAS, it is the intent of the Oakland City Council to consider and adopt new zoning regulations, or other controls, pertaining to above-ground utility or equipment cabinets in order to provide clear, consistent, and uniform guidance to utility or equipment cabinet providers regarding the siting and design of above-ground utility or equipment cabinets while also addressing the significant community concerns described above, and to better reflect the City's siting and regulatory objectives for such facilities, all within the limitations specified in the; and

WHEREAS, the Oakland City Council has determined that a temporary moratorium on the construction, modification, placement or approval of applications for above-ground utility or equipment cabinets will allow the City time to complete its review and revisions of its design and

procedural review regulations while ensuring to the maximum extent feasible that the siting and other objectives of the revised ordinance/regulations may be achieved; and

WHEREAS, for the reasons set forth above, this ordinance is declared by the Oakland City Council to be necessary for preserving the public peace, health, or safety and to avoid a current, immediate and direct threat to the health, safety, or welfare of the community, and the “Whereas” clauses above taken together constitute the City Council’s statement of the reasons constituting such necessity and urgency.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this ordinance.

SECTION 2. The City Council finds and determines, for the reasons stated in the recitals, the adoption of this ordinance is exempt from CEQA under Sections 15061(b)(3), 15307, 15308, and 15183 of the State CEQA Guidelines.

SECTION 3. The City Council hereby directs the Community and Economic Development Agency to immediately work on the preparation of amended zoning regulations, or other appropriate controls, governing the construction, modification, and placement of above-ground utility or equipment cabinets within the City of Oakland right of way and to submit them for consideration by the Planning Commission and City Council, as may be appropriate.

SECTION 4. Until such time as the City concludes the review described above, and adopts new Regulations or otherwise establishes new design and siting criteria or amends Chapter 12 and/or 17 of the Municipal Code, the City of Oakland hereby declares a moratorium on the construction, modification, placement, or approval of permit applications for above-ground utility or equipment cabinets as defined in section 5 below. Nothing herein is intended to, nor does, prevent the submittal of such applications by utility or equipment cabinet providers, however, such applications are submitted at the sole cost, expense and risk of the providers.

SECTION 5. For purposes of this Ordinance, the following definition shall apply:

“Utility or Equipment Cabinet” means any above-ground structure, cabinet, electric meter, and any other appurtenance installed for or servicing telecommunication or utility purposes above surrounding grade in the public rights-of-way, excluding facilities which are regulated separately pursuant to Chapter 17.128 of the Oakland Zoning Regulations. For the purposes of reviewing allowable Utility or Equipment Cabinet Applications, all structures, cabinets, electric meters, and any other appurtenance that share a common structural foundation shall be defined as one Utility or Equipment Cabinet. All structures, cabinets, electric meters, and any other appurtenance required to operate a facility, but that do not share a common structural foundation, shall be considered a separate Utility or Equipment Cabinet installation. The number of separate Utility or Equipment Cabinet installations shall be based on the number of separate structural foundations installed when the facility is fully operational.

SECTION 6. In accordance with Government Code Section 65858, this Ordinance shall be in full force and effect for a period of 45 days from the date of its adoption, i.e., **from December 19, 2006 through and including February 28, 2007**, prohibiting the construction, modification, placement, or approval of permits for above-ground utility or equipment cabinet, except as provided in Sections 7, 8 and 9, below. This 45-day period may be extended by the City Council in accordance with the provisions of California Government Code Section 65858.

SECTION 7. Exceptions. Any proposed above-ground utility or equipment cabinets that are reasonably necessary for the protection of life and public safety (including traffic control devices) are exempt from the moratorium established under this urgency ordinance. The City Council shall determine, based on substantial evidence in the record, whether such utility or equipment cabinets meet these requirements. In addition, the moratorium shall not apply to the following activities, as defined in Section 17.128.020 of the current Zoning Regulations, and as determined by the Planning Director:

- a. Minor modifications of existing utility or equipment cabinets, whether emergency or routine, provided there is little or no change in the visual appearance and no increase in external dimensions. Minor modifications are those modifications, including the addition of or modification of internal equipment or access doors.

SECTION 8. During the term of this ordinance as set forth in Section 6 hereof, no building, encroachment, excavation, zoning or other permits that have been issued for the construction, modification, or placement of any above-ground utility or equipment cabinets but for which rights to proceed with the utility or equipment cabinets have not vested pursuant to the provisions of State law, shall proceed; and no building, encroachment, excavation, zoning or other permits for the construction, modification, or placement of any above-ground utility or equipment cabinets shall be issued by any department, agency, employee, or agent of the City of Oakland. Only utility or equipment cabinets which have vested rights, pursuant to the provisions of the State law, prior to the date of this Ordinance may proceed with construction, modification, or placement, unless expressly provided for herein .

SECTION 9. Petition for Relief from Moratorium. Any person who has applied to construct, modify or place a utility or equipment cabinet which would be affected by this Moratorium, and who contends that the Moratorium as applied to him or her would be unlawful under Federal, State, or local law or regulation, must submit a written Petition to the Planning Director requesting relief from the Moratorium. Failure to submit such a Petition will preclude such person from challenging the moratorium in court. The Petition shall identify the name and address of the applicant, the affected application number, and shall state specifically and completely how the Moratorium as applied to him or her would be unlawful under Federal, State, or local law or regulation. Failure to raise each and every issue that is contested in the Petition and provide appropriate supporting evidence will be grounds to deny the Petition and will also preclude the Petitioner from raising such issues in court. Within fifteen (15) working days of receipt of the Petition, the City Administrator, or her designee, shall mail to the Petitioner a written determination accepting or rejecting the Petition. The City Administrator's decision shall be final and not subject to administrative appeal.

SECTION 10. The City Clerk shall certify to the passage and adoption of this Ordinance causing it to be posted, as required by the law, and it shall thereafter be in full force and effect. This Ordinance shall become effective immediately as an interim urgency ordinance, in order to protect the public health, safety, and welfare.

SECTION 11. For the term of this ordinance, as set forth in Section 6 hereof, the provisions of this ordinance shall govern, to the extent there is any conflict between the provisions of this ordinance and the provisions of any other City code, ordinance, resolution or policy, and all such conflicting provisions shall be suspended.

SECTION 12. This Ordinance is enacted pursuant to the City of Oakland's general police powers, Section 106 of the Charter of the City of Oakland, Article XI of the California Constitution and Government Code section 65858.

SECTION 13. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2006

PASSED BY THE FOLLOWING VOTE:

AYES - BRUNNER, KERNIGHAN, NADEL, QUAN, BROOKS, REID, CHANG, and
PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California

DRAFT

November 28, 2006 Public Works Committee Staff Report

CITY OF OAKLAND

AGENDA REPORT

OFFICE OF THE CITY CLERK
1000 BAY STREET, SUITE 1000
OAKLAND, CA 94612
(415) 774-2000

2006 NOV 16 PM 5:31

TO: Office of the City Administrator
ATTN: Deborah A. Edgerly
FROM: Community & Economic Development Agency
DATE: November 28, 2006
RE: **A Report and Recommendations Regarding the Design of Utility Boxes Installed
In the Public Right Of Way in the City Of Oakland, Including the Consideration
of Undergrounding and Designs Appropriate to Residential Neighborhoods**

SUMMARY

The Rules Committee placed this item on the agenda in order to review and consider the current requirements and practices with regard to placement of utility boxes in the public right of way. All utilities fall under the same requirements. With recent changes in high speed internet service and changes in technology, more utility boxes are being constructed. This staff report summarizes the current requirements and practices and presents options for further action, should the Council believe it is appropriate. Note: Due to the short timeframe to prepare this report, some information is still being verified regarding the City's obligations to conform to any new regulations.

FISCAL IMPACT

The fiscal impacts of the recommendations presented in this report are unknown at this time. The administration of existing policies and practices will not have a fiscal impact. However, should the Council choose to adopt different policies that impact the regulatory process for utility boxes in the public right of way, permit costs would need to be evaluated accordingly to cover staff time and other processing costs.

BACKGROUND

Utility boxes are placed in the public right of way by public agencies (such as the City), quasi-public utilities (such as Pacific, Gas & Electric or East Bay Municipal Utility District), or private entities (such as phone or cable providers). Utility boxes are generally required to provide electrical power and/or provide housing for equipment needed to transmit data (telephony, digital or microwave). For example, the City places utility boxes in the public right of way to provide power and control the timing of traffic signals at intersections. PG&E places such boxes to provide adequate power required for the distribution of electricity to individual households. And finally, cable and phone companies place utility boxes to distribute their telephony, cable television, and internet/data services for individual housing units. Under existing federal and state statutes the City can not bar utility providers from placing such boxes in the public right of way. However, the City does have authority to control the "time, place, and manner" in which

Item: _____
Public Works Committee
November 28, 2006

the boxes are placed in Oakland (California Public Utilities Code § 7901). Policies regulating the placement of such utility boxes must be applied equitably among all owners of such boxes, including City owned and operated utility boxes.

Due to changes in technology and the need to upgrade aging infrastructure to meet increased demands by customers, cable and phone companies have initiated steps to place additional utility boxes in the public right of way. For example, when Comcast upgraded their cable services to also include high speed internet/data services, additional utility boxes were placed in the public right of way in Oakland. Currently, AT&T is expanding their traditional telephony service to also include high speed data services in order to be able to provide additional services such as cable television and on-demand video services. Therefore, the City needs to balance the need for new utility boxes, in order for residents to have access to competitive technologies, with the need for maintaining safe and accessible public rights of way. This issue is growing more critical as technology changes because there is difficulty in gaining access to individual homes from central points in the City. This issue is often referred to as the "problem of the last mile."

The placement of utility boxes in the public right of way is regulated in the City of Oakland through Oakland Municipal Code (OMC) Chapters 12.08 (Encroachment) and 12.12 (Excavation). The encroachment permit review process is intended to ensure that above ground utility boxes do not obstruct pathways (such as public sidewalks, especially for disabled access) or the line of vision required for safe pedestrian and vehicle traffic flow. The excavation permit review process is intended to ensure that trenches being dug to place cables and other infrastructure do not harm existing infrastructure by other public utilities (such as gas or sewer lines). The process is further defined in the flow chart in Exhibit A. However, these chapters do not adequately address the placement of telecommunication structures. Therefore, in 2003 the Public Works Agency (due to their authority to determine the standards for construction in the public right of way) provided guidance concerning the placement and size of telecommunication related utility boxes. The guidance from the Public Works Agency required that:

- Required each utility box apply for and receive an encroachment and excavation permit
- Required size limits of no greater than 110 cubic feet or 48"x 36"x 78" (length, width, height)
- Required small size boxes (18" x 24") to be placed underground
- Set standards for placement on streets with sidewalks and unimproved streets

In addition to the guidance provided by Public Works Agency on the size and location of utility boxes, the City also required a public notification process such that residents housed adjacent to each proposed utility box be notified prior to the installation of any utility box, along with an opportunity to comment. Specifically, companies are required to provide a 30 day notice by letter to impacted property owners, tenants and community associations (if applicable).

Impacted property owners are defined through addresses shown on the County Assessor's Maps that are located within the visual field of the proposed above-ground structure. A waiver of 30 days notice period is granted if a company representative discusses construction plans with owners and obtains their acknowledgement of the plans via face-to-face discussion. Notices to residents must include clear language addressing the following:

- A drawing/schematic showing the type and size of the structure that will be placed and showing the relationship to the right-of-way.
- The location related to the neighborhood.
- A picture of the structure within the location – an illustrated overlay of the structure within the location.
- Contact name and phone number of City's CEDA representative and Company's representative, who has knowledge of the site, for questions and concerns prior to the 30 days.

The above mentioned policies and guidelines were used successfully in the deployment of new services and installation of utility boxes by both Comcast and SBC (now AT&T) in 2003 and 2004 respectively. The public notification process allows for residents to provide input in the location of above ground utility boxes. For example, to date, the City has approved and issued 33 permits to AT&T as part of their Project Lightspeed. Each of the 33 permits issued required a notification to impacted property owners. Two (2) out of the 33 permits generated response from impacted property owners. One of the responses was related to the installation of a utility box on Vicente Avenue. After discussing possible options with the impacted property owner, AT&T agreed to relocate the box to a site that was acceptable to the impacted property owner. In the second case, related to boxes on Golden Gate Avenue, AT&T has worked with the property owner to provide landscaping to mask the installed boxes. The Golden Gate Avenue experience allowed the City to adjust its public notification process to include notification of both tenants and property owners (previously only tenants were notified) and to increase the notification period from 14 to 30 days. Any future permits for above ground utility boxes will require the revised public notification process.

In November 2005 the City was contacted by a large utility provider regarding an upcoming deployment of a new service. The delivery of this new service requires the installation of additional above ground utility boxes in the public right of way, adjacent to their existing installations. During discussions with the large utility provider, questions were raised about the limited effectiveness of the City's existing policies and guidelines. Specifically, several key issues were raised including:

- Should utility boxes be placed underground?
- Should utility boxes be subject to a design requirement?

- Should utility boxes in residential neighborhoods be regulated separately from utility boxes in commercial areas?
- What are the cumulative impacts if other utility or telecommunication providers also wish to expand or upgrade their services by placing or expanding their utility boxes in Oakland?

These issues are addressed in the next section of this report.

KEY ISSUES AND IMPACTS

1) Undergrounding of Utility Boxes: The City has adopted specific utility undergrounding districts and is generally promoting the undergrounding of all utility infrastructure in Oakland. Other cities in California have undergrounding districts as well. However, staff was only able to identify one city (Newport Beach) that had adopted specific language for undergrounding of utility boxes. In this case, the Newport Beach ordinance does not mandate undergrounding and instead asks that utility boxes be placed underground “whenever feasible.” The City did ask the utility provider whether it is feasible for them to underground utility boxes for their new project (Project Lightspeed). AT&T’s response was that due to physical, technological, and financial reasons undergrounding of utility boxes is not feasible (details of this response can be found in Exhibit B, pages 6-7). Heat build up, the need for human access, water penetration and cost are the key factors in their determination of infeasibility.

The benefits of undergrounding boxes is to limit the potential for public nuisances, limit the potential of complaints from property owners, and limit impacts to public accessibility in the right of way. However, if the City is to require undergrounding of utility boxes, then the “cost” to the City is that residents will not have access to new technologies if firms decide not to deploy their new services because of the technological difficulty or prohibitive costs.

2) Commercial vs. Residential Areas and the Requirement for Design Review: The placement of new utility boxes is often limited by the existing infrastructure related to a proposed utility box. For example, AT&T’s Project Lightspeed utility boxes are to be placed in above ground boxes adjacent to existing utility boxes called service area interfaces (SAI’s). The size of the Project Lightspeed box is 63” H x 20” W x 43.5” L (See Exhibit B for sample drawing). Currently there are 644 SAI’s located in Oakland providing telephone services to Oakland residents, and approximately 200 of the cabinets are located in primarily commercial districts. Therefore, AT&T is projecting the need to place utility boxes in both commercial and residential areas of Oakland in approximately 300-400 other locations. The number of installations will be driven by customer demand, the capacity of the existing SAI and other physical constraints on particular locations. Currently the City does not distinguish between commercial and residential areas for placement of utility boxes. In addition, there are no “design” requirements for boxes either in commercial or residential areas. Since AT&T is stating that undergrounding of the new

utility boxes is infeasible, the City might wish to establish clear design guidelines for boxes in commercial and/or residential areas. The design guidelines can require utility boxes to match the characteristics of the surrounding area by requiring "masking" techniques such as painting, texturing, or landscaping. Such design guidelines should also require the owners of the utility boxes to provide long term maintenance of boxes and masking techniques to avoid the possibility of public nuisances.

3) CEQA Concerns: Impacts of discretionary City activities which may have physical effects on the environment are governed by the California Environmental Quality Act (CEQA). From AT&T's standpoint, their new deployment (Project Lightspeed) is categorically exempt from CEQA pursuant to CEQA Guidelines sections 15303(d) (New Construction or Conversion of Small Structures) and/or 15304 (Minor Alteration to Land) and that there are no exceptions that would negate the use of an exemption. Specifically, AT&T states that there are no visual impacts or other impacts associated with the Cabinets (either with individual projects or city-wide, cumulative installations). Moreover, according to AT&T, these utility boxes are similar to traffic control boxes and should be afforded the same treatment. City staff is presently evaluating how utility boxes should be reviewed under CEQA.

Staff believes that the most effective approach at this point would be to develop more specific standards and requirements for the placement of utility boxes, particularly in residential areas. There have only been two complaints registered from the 33 permits issued to date. It is recommended that design and other physical standards be drafted and brought back to the City Council in January, 2007.

SUSTAINABLE OPPORTUNITIES

Economic: Robust technology and utility infrastructure is necessary for the economic growth and vitality of Oakland.

Environmental: It is important to protect the use and access of the public right of way through appropriate regulations and requirements.

Social Equity: The programs and policies for utility boxes in the public right of way are intended to insure all Oakland residents have access to new technologies and services.

DISABILITY AND SENIOR CITIZEN ACCESS

The placement of each utility box is regulated to require adequate pathways and access for disabled residents by maintaining the requirement of the American with Disabilities Act.

Item: _____
Public Works Committee
November 28, 2006

RECOMMENDATION(S) AND RATIONALE

The changing nature of new technologies and the required infrastructure to provide these new technologies to residents in Oakland necessitates the deployment of additional infrastructure components, such as utility boxes in the public right of way. These new or enhanced technologies are vital to the economic growth and vitality of Oakland. However, the placement and nature of the infrastructure required to deliver these new technologies should not reduce the quality and accessibility of public rights of way. At this time, staff believes that the requirement for undergrounding utility boxes is prohibitive and will deter investment in critical infrastructure. However, the impact to surrounding communities can be reduced by working with utility providers to insure that no more than one utility box is placed in area and that each box should be "masked" to match the surrounding environment. Therefore, staff recommends the Council require that all utility boxes be subject to design guidelines requiring masking of each box, and that long term maintenance of any masking requirement to be completed by the firm owning the utility box.

ACTION REQUESTED OF THE CITY COUNCIL

Staff is requesting Council to give direction to staff on their preferred policy option. In addition staff is requesting guidance from the Council regarding permits already submitted to the City regarding utility boxes.

Respectfully submitted,



Claudia Cappio

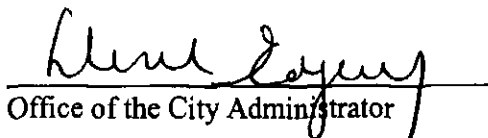
Community & Economic Development Agency

Prepared by:

Maziar Movassaghi

Community & Economic Development Agency/

APPROVED AND FORWARDED TO THE
PUBLIC WORKS COMMITTEE:



Office of the City Administrator

Item: _____
Public Works Committee
November 28, 2006

Routing Flowchart for Above Ground Utility Box Permit Application Review Process

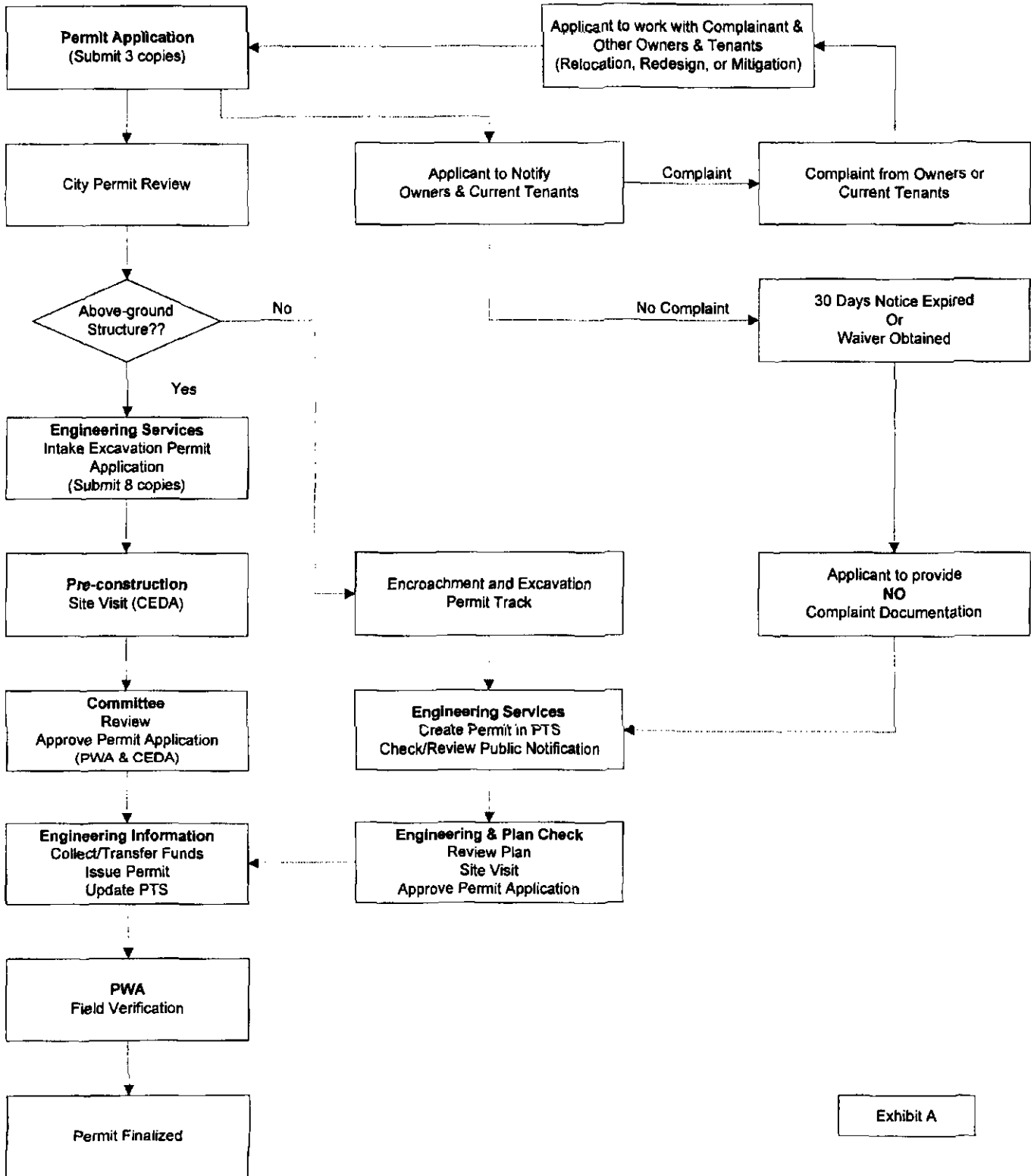


Exhibit A

Exhibit B

Information submitted to the City by AT&T regarding Project Lightspeed. AT&T requested that this information be shared with the City Council and the Oakland community.

Overview of light speed technology and build schedule

Project lightspeed is a three year, 4 billion dollar upgrade to AT&T 's existing fiber/copper network that will enable us to provide the next generation of telecommunications services to Oaklanders, including enhanced high speed DSL, Voice over Internet Protocol VOIP, and Internet Protocol Television.

The network upgrade requires us to place electronics in above ground cabinets near existing cabinets called service area interfaces (SAI's). Trenching and street disruptions will be minimal due to the fact that AT&T has existing conduit in Oakland necessary to accomplish this build. Trenching will occur however from the existing SAI's to the new lightspeed boxes as they communicate with each other. Because the new boxes need to be located near the existing structures, this too will be minimal.

Currently there are 644 SAI's located in Oakland providing telephone services to Oakland residents. Approximately 200 of those cabinets are located in primarily commercial districts providing services to Oakland businesses and will only minimally be included in the initial build. The commercial areas include: downtown Oakland, business district below 580, parts of International Blvd. and the Hegenberger corridor.

After installation our product offering will enable AT&T to provide the following:

- Faster Internet access speeds – initially with download speeds up to 6.0 Mbps
- Ultimately a competitive new choice to cable TV
- Innovative new services built on the latest technology – IP
- Consumer savings through competitive pricing (see attachment)
- Consumer benefits of improved customer service through competition

Overview of deployment discussions with the City of Oakland

In November 2005 AT&T staff met with City of Oakland Public Works and CEDA staff to provide a briefing on the company's upcoming project light speed deployment in Oakland. Attending the meeting were representatives from CEDA and PWA staff who customarily handle permitting for the city of Oakland and who are familiar with AT&T projects. AT&T provided information about the project including: project scope and general deployment schedule, size and schematics of cabinets and permit submission plans.(Meeting minutes Attachment A) Subsequent to the meeting the City asked AT&T to provide additional information included in a "Project Lightspeed Questionnaire." (Attachment B) AT&T provided the completed questionnaire to the City in late November 2005.

Below is a chronology of events over the past 13 months:

- **November 2005** - Based on conversations with City staff, AT&T begins to engineer jobs in Oakland. Each job, or new cabinet, requires approximately 40 hours of

engineering and planning before submission. Jobs are being engineered initially in Oakland Wire Center 11 which services parts of North and West Oakland.

- **February 2006** – AT&T staff meet with CEDA representatives to discuss two options to assist city in handling increased workload due to lightspeed permit submissions. Options are: 1) AT&T to subsidize additional city employee specifically charged with all light speed permit submissions and review, or 2) ATT to pay for additional overtime for CEDA review at approximately 2 hours per job. AT&T signs blanket overtime approval form after discussion with CEDA staff.
- **February 2006** – AT&T submits first three lightspeed permits in Oakland. AT&T immediately begins homeowner notification process. (See below for specifics on homeowner notification process)
- **April/May 2006** – AT&T submits approximately 34 permits for lightspeed cabinets in Oakland.
- **May 2006**- City has additional questions regarding lightspeed build so meeting is set to brief staff for second time on lightspeed project. This meeting is coordinated by the CEDA agency and attended by more CEDA and PWA agency staff as well as representatives from the City Attorney's office. AT&T provides similar briefing that was given in November 2005 and provides same cabinet information and deployment plans. AT&T presents proposal to city for additional staff to handle lightspeed permitting.
- **May/June 2006** – AT&T permits are working through the review and approval process with CEDA and PWA. AT&T representatives attend weekly meetings on permit status and provide any additional information needed. If there are additional questions on permits, these are "pulled" from submissions and all issues are rectified before approval occurs.
- **June/July 2006** – City asks AT&T for additional meeting with city staff. This meeting is coordinated by the City Manager's office and includes staff from Public Works and CEDA as well as the City Manager's and City Attorney's offices and City of Oakland Real Estate Department. AT&T provides similar briefing to the City of Oakland, again distributes cabinet information and shows the City a map of existing SAI's in Oakland. During this meeting there are many issues discussed including; process for homeowner notification, requirements on build criteria and a request by the city that the power pedestal required for each cabinet be incorporated into the lightspeed cabinet so that only one cabinet would need to be placed per site. The discussion was memorialized in a document titled, "City of Oakland Telecommunications project permit approval process." (Attachment C), This was the first written list of requirements by the City in the discussion about lightspeed and was sent to AT&T for consideration in late July 2006. AT&T proposed minor changes and resubmitted it to the city of Oakland in September 2006. **To date AT&T has received no feedback on the proposals although the company is incorporating all standards requested by the city and included in the process.**
- **July – October 2006** – AT&T submits 6 additional lightspeed permits and received to date 39 approved permits for lightspeed cabinets in Oakland. AT&T commences build in Oakland and continues to condition work for future permit submissions.
- **October 2006** – In late October, AT&T is notified by CEDA staff that CEDA Director has placed hold on AT&T permits due to additional issues that have arisen.

This is first indication to AT&T that CEQA is an issue. City committed to issuing 5 outstanding permits to AT&T from original submission.

- **November 2006-** AT&T meets with City of Oakland again and briefs city staff on build. AT&T provides city with list of all existing SAI's in Oakland, box specifics etc. AT&T continues to implement all city requirements outlined in the City of Oakland Telecommunications project permit approval process document including re-engineering lightspeed box with power pedestal included. This is the first meeting that CEQA is addressed by city. Attendance at this meeting includes Deputy PW Director, CEDA director, three City Attorney's as well as city staff.

Existing Homeowner notification process

The following outlines the current notification process on all lightspeed installations.

During our initial notification phase in February-July 2006 our agreed upon notification process with the City was two weeks. In August 2006 we agreed to the "City of Oakland Telecommunications project permit approval process," which required a 30-day notification waiting period. Ironically, due to the amount of time that it has taken to get through the permit process, all but the first three sites have received between a 30-day to 120-day waiting period.

Notification letters are mailed to residents and property owners using both of the two criteria shown:

- All properties within line-of-site per an actual field review that is provided by the AT&T engineer.
- All properties as shown on the official City Assessor's Maps that are within line-of-site

The notification letter states that AT&T plans to place a cabinet in the public right-of-way. The location of the cabinet is included along with a number to call at AT&T if there are questions or comments. City staff's name and number are also included if they choose to call CEDA rather than AT&T. **A diagram showing the dimensions of the cabinet along with the engineer's drawing are also attached. The drawings show footages that reference the proposed placement to the existing serving area interface, nearest corner, and property lines.**

An AT&T representative meets with a CEDA representative weekly to discuss outstanding issues. The CEDA representative reviews the addresses to ensure that notifications have been completed according to the Assessor's Maps. Drawings are reviewed to ensure City requirements are met. The CEDA representative also forwards the field drawings to the CEDA inspector, who visits the site using the submitted drawings to physically insure that the plan is workable according to City Codes.

At any time if a homeowner notifies either the City or AT&T and has questions or concerns about the box location OR the box location address AT&T has submitted varies at all from the assessors address, the permit is "pulled", concerns are addressed and/or re-notification process is triggered. AT&T endeavors to ensure complete homeowner

notification and compliance with the city standards as it is in our best interest to satisfy any concerns before we place a cabinet. In one instance where a cabinet was placed incorrectly, AT&T staff addressed the issue promptly and with complete home owner agreement, and moved the box to the proper location.

As an additional step, AT&T has agreed that a door-hanger would also be used to notify residents of the placement one week prior to the start of construction.

CEQA

AT&T believes that the new Lightspeed cabinets are categorically exempt from CEQA. CEQA generally is not implicated when there is no likelihood that a proposed project may cause a "significant" environmental effect. This, of course, is reflected in the categorical exemptions in the CEQA Guidelines which exempt a number of activities that by their nature are unlikely to cause a significant impact on the physical environment.

As you know, and as we have discussed, the encroachment permits request permission for the installation of cabinets that are approximately the same size as traffic control boxes. As such, these installations are minor in nature compared to the normal CEQA concerns. The concrete pads are only 46" by 81" and the cabinets are the type of fixture commonly placed in the public rights-of-way by utilities, traffic departments, and other similar users. The installations proposed by AT&T cannot fairly be said to cause a significant visual impact within the meaning of CEQA. Thus, AT&T believes that these installations are exempt from the CEQA process. The upgrades at issue here are each of the pad and cabinet placements not all the potential proposed projects together, and certainly not the larger Lightspeed installations over many years. The cabinets required under the Lightspeed initiative are being placed on an installation-by-installation basis at different times and in different places. As such, each installation should be considered on an individual basis.

AT&T is not aware of any substantial evidence or information to support a conclusion that these installations would cause a significant visual impact, on either an individual or a cumulative basis. These small facilities in the public rights-of-way will have a minimal visual impact and will go largely unnoticed. In fact, these cabinets are comparable in size to traffic control boxes, which are located near every intersection that has a traffic control light. We believe residents generally become accustomed to such utility-related structures over time, and consider them part of the general background conditions.

CEQA is inapplicable to each installation as they qualify for a categorical exemption, which eliminates the need to perform environmental review. Specifically, new construction or conversion of small structures, including such things as "[w]ater main, sewage, electrical, gas and other utility extensions" are exempt from CEQA. CEQA Guidelines § 15303(d). Please note that many of the examples of structures given in § 15303 as being exempt from CEQA are far larger than the installations involved here. In addition, minor land alterations are also exempt from CEQA. CEQA Guidelines § 15304.

We believe the installations at issue represent precisely the type of small structures and/or minor land alterations that the CEQA Guidelines exempt from CEQA environmental review. As envisioned by the Guidelines, minor projects that clearly have no significant environmental impacts, such as the installation of small, concrete pads and cabinets, should not be subjected to extensive environmental review.

In any event, even if the City considers all potential Lightspeed installations together, which would be exceedingly problematic given the discriminatory treatment toward AT&T, the potential "cumulative" visual impacts do not require extensive CEQA analysis. While the CEQA Guidelines include an exception to the categorical exemptions when "the cumulative impact of successive projects of the same type in the same place, over time is significant" (CEQA Guidelines 15300.2(b)), that exception (to the exemption) is plainly not applicable here. The "visual impacts" of the cabinets, as minor as they are, are entirely confined to the immediate vicinity of each structure. As you know, AT&T has submitted applications for a handful of permits at specific locations, and these locations are not "in the same place," but are located in different places throughout the City so that the services they provide are accessed everywhere. As you know, that is necessarily the case, because these cabinets are "paired" with existing SAI cabinets that are already placed throughout the City.

Their "impact" is entirely limited to the specific area in which they are sited, and their visual impacts, minor to begin with, cannot "cumulate" in any sense under CEQA. Thus, even when considered collectively, these projects, or even all of the cabinets that might eventually be sited under the Lightspeed initiative, could not pose the possibility of creating significant cumulative impacts that would subject them to this exception to the categorical exemptions.

Some cities have questioned whether the reference to CEQA in AB 2987 suggests some heightened, or different, review for the new lightspeed nodes than other utility boxes, including traffic control boxes. It does not. As the Assembly concurrence statement on August 30 states, "[AB 2987] [p]rovides that the local government shall control the time, place, and manner in which video service providers access the public right-of-way under the same terms and conditions as they control the telephone companies' access to the right-of-way today and that existing laws regarding the permitting process and compliance with the California Environmental Quality Act (CEQA) shall remain unchanged, except that the local government shall be the lead agency for CEQA purposes."

Finally, please recognize that AT&T would be concerned about the delay that would accompany an extended CEQA review, even if such analysis stops short of an EIR, and the adverse impact such a delay would have on AT&T's rights to access and use the public rights-of-way under the state-wide franchise granted to telephone companies in § 7901 of the Public Utilities Code, as well as under §253 of the federal Telecommunications Act (47 USC). During the past 13 months and all of the meetings that transpired between ATT and the City of Oakland, the issue of CEQA was never

brought to our attention. This is a relatively new issue and we do not know what the impetus was for the city to bring it up 16 months after our initial briefing. It will be even more troublesome to AT&T if the City finds the AT&T cabinets are not categorically exempt, but fails to do similar and comparable analyses for the placement of cabinets by the city or other utilities, including, but not limited to, traffic control boxes.

Under grounding

This information is provided in response to the City of Oakland's inquiry on why AT&T can not place underground CEV's (Controlled Environmental Vaults) around our Serving Area Interface (SAI) locations to house AT&T's Project Lightspeed technology. (VRAD) There are 3 main reasons: Physical, Technological, and Financial.

Physical:

CEV's consists of both an entrance hatch and an air conditioning unit. The unit sits approximately 36 to 48 inches off the ground when the hatch is closed and 90 inches when open. The lightspeed VRAD cabinet is 63 inches tall.

CEV's require a separate above ground power pedestal. The new VRAD cabinet has an attached power pedestal resulting in a smaller footprint.

The new VRAD cabinet is less likely to over encumber the public right of way.

VRAD cabinets placed in the City of Oakland will be relatively smaller in size when compared to existing traffic control cabinets, transformers and many other utility structures.

Technological:

The SAI and lightspeed VRAD cabinet work "hand in hand". Our existing copper infrastructure and new deployment of lightspeed interface to provide a new technology.

Technicians will access the VRAD cabinets to resolve maintenance and service issues.

Our successful deployment of Digital Subscriber Line (DSL) requires a loop length of no greater than approximately 12,000 feet. The new Lightspeed technology has a loop length significantly less.

Almost all of our current CEV's are at capacity and do not contain the needed floor space, rack space, power capacity and air conditioning requirements to house the technology needed for this project.

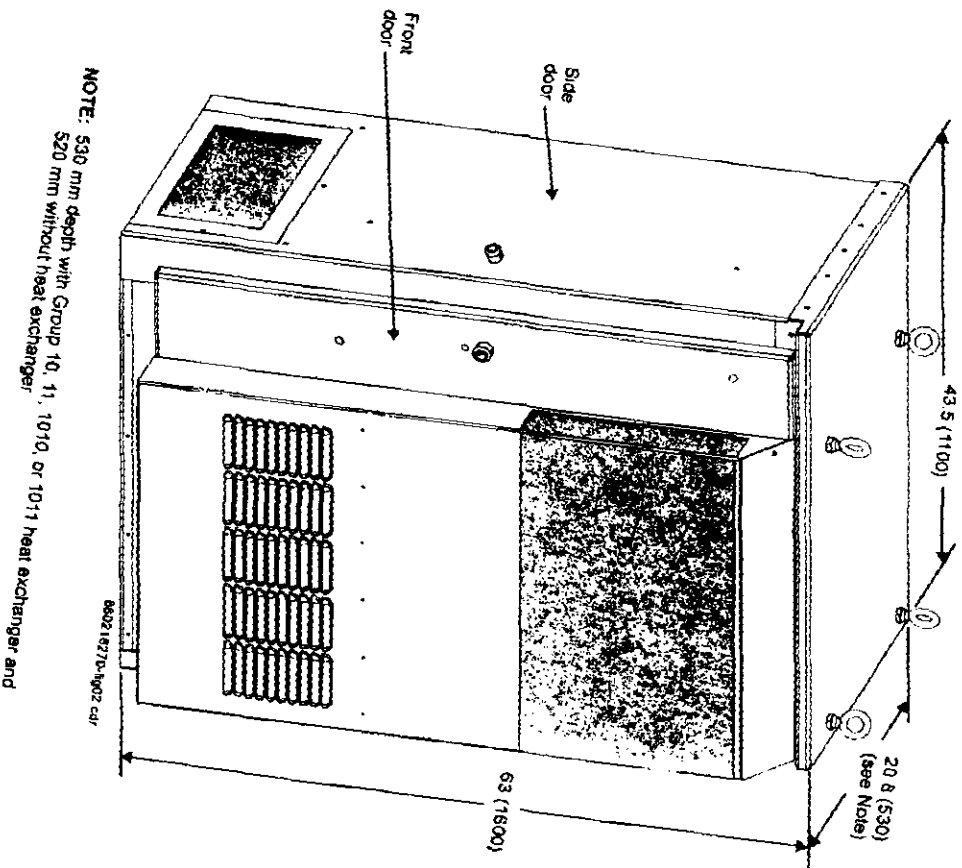
Financial:

Existing DSL systems can provide service to approximately 12 SAI's and thousands of customers. New Lightspeed technology can provide service to only one SAI, approximately 200-600 customers. This new technologies loop length requirement makes it impossible to provide to the same number of SAI's.

Placing underground vaults to house the VRAD cabinets would be a tremendous expense that will significantly drive up the cost per subscriber. This would negatively impact our customers(?) and the citizens of Oakland.

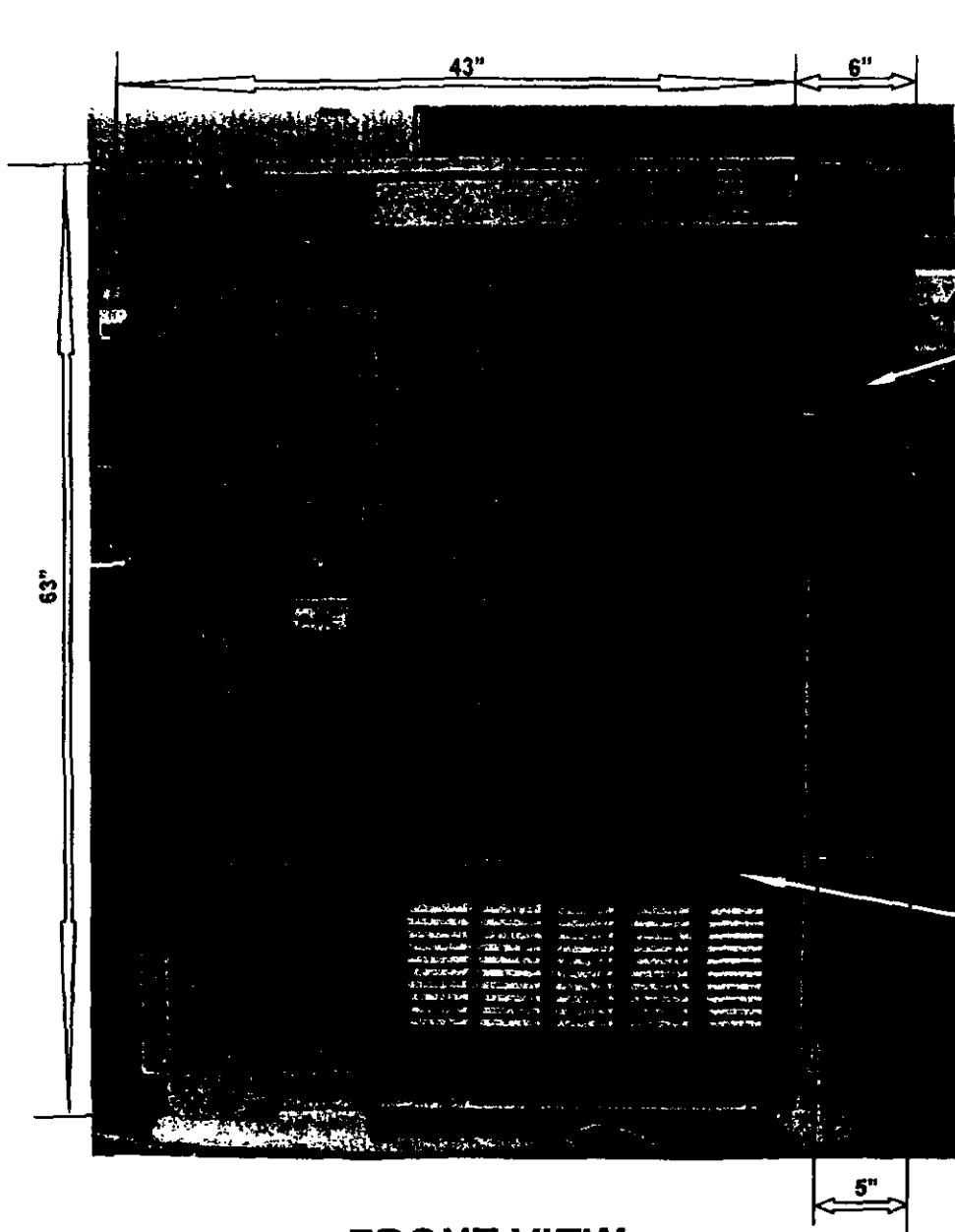
Lightspeed is a technological advancement, which will allow AT&T to provide competitive services to the citizens of Oakland.

The physical dimension of our Lightspeed cabinet is relatively smaller in size than existing cabinets, transformers and other utility structures currently in and around the City of Oakland. In addition, it requires less space in the public right of way than our current underground facilities. Our current network architecture requires the need for placement of Lightspeed cabinets in close proximity of existing SAI's due to loop length. This will allow our technicians quick access to our equipment to better serve the citizens of Oakland. In addition, placing underground facilities is not cost effective nor necessary. Finally, we will continue to place Lightspeed equipment in existing CEVs where possible.



NOTE: 530 mm depth with Group 10, 11, 1010, or 1011 heat exchanger and 520 mm without heat exchanger.

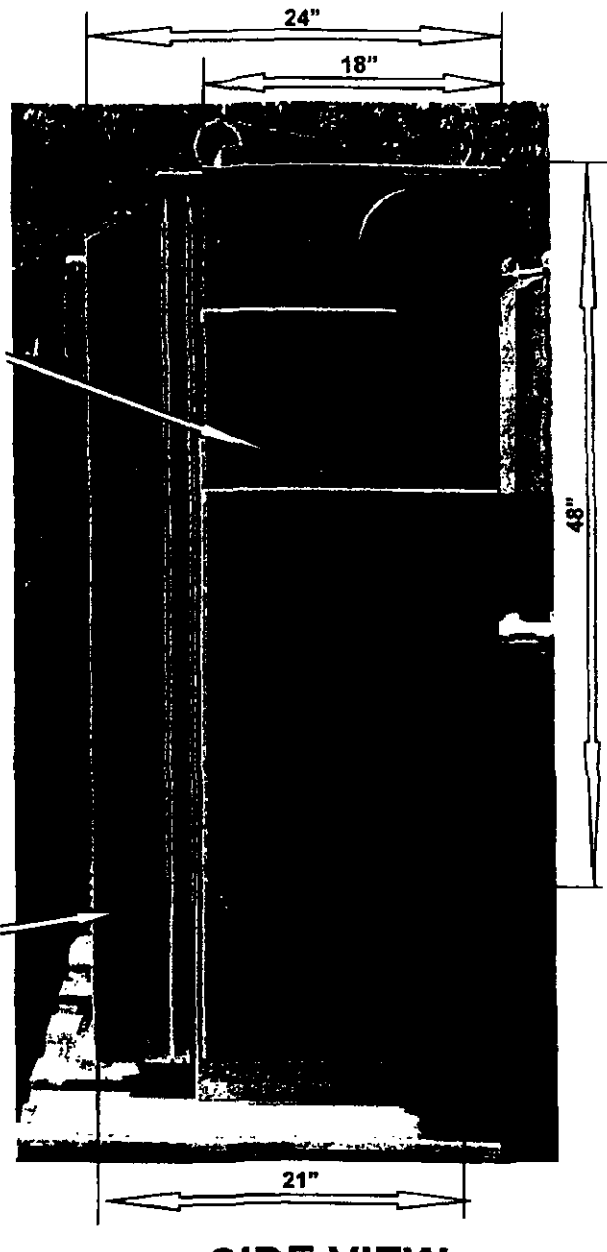
52B Cabinet with Integrated Power Pedestal



FRONT VIEW

Power Pedestal
(Dim: 18"Wx48"Hx6"D)

52B CABINET
(Dim: 43"Wx63"Hx21"D)



SIDE VIEW

ATTACHMENT A
Oakland City Lightspeed Meeting Minutes
November 4, 2005

Attendees:

City: Joe Levine, Carl Sibley, Tim Low, Wezlon Myles, Joe Watson

SBC: Karen Boles, Barbara Leslie, Michael Chang, Eric Gebhardt

Discussion Items:

- SBC's Project Lightspeed
- Permit application requirements for rodding and roping jobs
- Encroachment and Excavation permit process and impact
- Q & A

Follow-up Items:

- A standard Questionnaire Document must be completed to cover Lightspeed projects. Karen Boles will complete the Questionnaire and submit it to Joe Levine for review.
- The new code established for the Questionnaire will be noted on the Excavation application. "Digging" or "No Digging" will also be noted as usual.
- The Excavation permit application will be submitted at the same time as the Encroachment application. Both will be reviewed simultaneously, but the Excavation permit will not be issued until the Encroachment permit is approved. Cross reference the two permit numbers on the applications.
- The Encroachment permit drawing will require footage from the existing SAI to the new cabinets.
- Property owners in close proximity to the proposed new cabinets must be notified in writing with a two week timeframe for response. Tim Low will be notified after the two week interval with response status.
- Sample traffic plans should be supplemented on rodding and roping permits to include a work site set up for intersections.
- Lightspeed will be an agenda item in existing bi-weekly City/Utilities Project Meetings.

Overall, with the exception of the new questionnaire, there are no additional requirements for permit submittal.



Project Number AT&T PROJECT LIGHT SPEED

CITY OF OAKLAND, CALIFORNIA

Rights-of-Way Questionnaire

For joint trench, or lease conduit and/or fiber, a questionnaire must be filled out by each company separately.

A. Terms

"Agent" refers to a contractor or other agent filing on behalf of an applicant.

"Applicant" refers to the owner of the telecommunication facilities, including cable television facilities that will be installed in the rights-of-way if the permit application is granted.

"CAP" refers to a competitive access company authorized to do business in California.

"CLEC" refers to a company that has been certified as a competitive local exchange carrier by the California Public Utility Commission ("CPUC").

"LEC" refers to a local exchange carrier certified by the CPUC and includes GTE and SBC.

B. General Information

1. Name, address, phone and fax numbers of the applicant

A.T. & T. California
RM 7N450W 2600 CAMINO RAMON, SAN RAMON, CA 94583
TEL: 925 901-8520
FAX: 925 806-9307

2. Name, address, phone and fax numbers of the agent

NOT APPLICABLE

3. Name, address, phone and fax numbers of the contact person.

CONTACT PERSON SAME AS APPLICANT

4. Contractor license class: CONTRACTORS CARRY A CLASS A OR BETER LICENSE.

5. Contractor license number: _____

6. Explain the authority of the applicant to excavate the rights-of-way:

AS A TELEPHONE CORPORATION WITHIN THE MEANING OF PUBLIC UTILITY CODE § 234, AT&T CALIFORNIA HAS A FRANCHISE UNDER PUBLIC UTILITIES CODE § 7901 TO ACCESS THE PUBLIC RIGHTS OF WAY THROUGHOUT CALIFORNIA, INCLUDING THE STREETS AND HIGHWAYS OF THE CITY OF OAKLAND TO INSTALL AND OPERATE ITS LINES AND FACILITIES

7. a. Is the applicant a LEC?

Yes No Other

b. Is the applicant a CLEC in California?

Yes No Other

8. If the answer to Question 7a or b is "Yes" or "Other," provide the applicant's CPUC certificate number (be prepared to provide a copy of CPCN, Negative Declaration, and warrant compliance with CEQA mitigation requirements, if requested):

11001C

9. In an attachment hereto, the applicant should identify any and all parent companies, subsidiary companies, or sister companies to applicant. SEE ATTACHMENT A

10. Does the applicant have an open video system "OVS" license issued by the FCC (copy required, if requested)?

Yes No Other

11. Will the applicant use the telecommunications facilities to carry traffic or information for:

- a. An affiliated company Yes No
- b. Another certified telephone company Yes No
- c. A competitive access provider Yes No
- d. A cable television or other entertainment company Yes No
- e. An internet service provider Yes No
- f. Other (Identify in an attachment hereto) Yes No

EXCEPT TO THE EXTENT REQUIRED ON A COMMON CARRIER BASIS.

12. If the answer to any part of Question 11 was "Yes," please explain the nature of the traffic to be carried and identify the companies involved in an attachment hereto.

[Empty box for answer to Question 12]

13. If the applicant intends to provide services to persons, residences, businesses, or others within the political boundaries of the City of Oakland, please explain the nature of the services and provide a general description of the intended customers.

THE UPGRADED NETWORK WILL ALLOW AT&T TO PROVIDE ADDITIONAL SERVICES INCLUDING SUPER HIGH-SPEED DATA, IP VIDEO AND IP VOICE SERVICES. INTERNET PROTOCOL "IP" WILL BE THE UNIVERSAL PLATFORM FOR ALL SERVICES. INTENDED CUSTOMERS ARE RESIDENTS AND BUSINESSES IN OAKLAND.

14. Will the facilities proposed to be installed by the applicant be used for:

- a. Cable television or video entertainment services Yes No
- b. An Open Video System under FCC rules Yes No
- c. Any service not authorized by applicant's CPUC Certificate Yes No

SEE RESPONSE TO #13 ABOVE

15. If any part of Question 14 was answered "Yes," in an attachment hereto,

please provide a full explanation of the services to be carried, the companies involved and the intended customers.

PROVIDED IN #13 RESPONSE

16. List below the application or permit numbers of all applications and permits whether pending or issued by the City of Oakland that relate directly or indirectly to this application.

Application/ Permit No. Date Filed Date Issued

NONE PRESENTLY

17. If applicant intends to attach any part of the telecommunications facility or infrastructure to a pole, please describe the pole attachment plans below, including route, schedule, equipment to be used, etc.

NOT APPLICABLE

18. Attach an appropriate scale map to show the route that the telecommunications infrastructure will take through the City of Oakland. Using colors and a clear legend, show the following: (1) the infrastructure that is proposed in the application, (2) overhead plant that will be installed, even if it not subject to the application, (3) existing infrastructure owned by applicant (or its affiliate) to which the new plant will be attached or integrated, (4) to the extent known at the time of filing, the entire infrastructure that is planned for the City of Oakland. If the map scale is too small to show the information clearly, the applicant will be required to supply a larger map.

C. Proposed Telecommunications Infrastructure

Describe the conduit that will be installed as part of the construction proposed in the application. Include size, number, and depth of conduits, nature of inner duct (if any), material (HDPE, PVC, etc.), manufacturer, and the proposed location within the street.

(BOC) AT+T PLANS TO USE CONDUIT ALREADY EXISTING TO EXTEND FIBER EVEN CLOSER TO OUR CUSTOMERS. THERE WILL BE A SMALL AMOUNT OF CONDUIT PLACED AT THE SITE LOCATIONS IN ORDER TO CONNECT THE NEW CABINETS WITH EXISTING FACILITIES AND POWER. THIS WILL BE CLEARLY DELINEATED ON EACH PERMIT APPLICATION.

20. Indicate the number of conduits/ inner ducts that will be occupied initially by applicant's cable.

ONE

21. Provide the following information on any conduit that will be installed as part of the construction proposed in this application.

- Applicant use directional boring to install conduit Yes No
- Applicant direct bury (i.e., trench) the conduit Yes No
- Is applicant going to participate in joint trench? Yes No
- Is applicant willing to participate in joint trench? Yes No DOES NOT APPLY
- Will conduit be installed for other parties during this construction Yes No

If "YES" you must identify the parties below or upon a separate sheet attached to this questionnaire

NOT APPLICABLE

22. Provide the following information on any plans to sell or lease conduit, fiber.

Is applicant intending to lease or sell conduit and/or fiber now or at any time during the useful life of the conduit?

Yes No NOT GENERALLY APPLICABLE TO PROJECT LIGHTSPEED. SEE RESPONSE TO # 25.

If "YES" you must provide information that identifies the party that is sold or lease conduit. You must attach the relevant information to this questionnaire in order for the questionnaire to be considered complete.

NOTE: Applicant must notify City in advance of any future contract or agreement to sell or lease conduit and/or fiber to other parties.

23. Describe the pull boxes and the splice boxes to be installed by applicant (include size, model number, and manufacturer):

NOT APPLICABLE FOR THE LIGHTSPEED PROJECT.

24. Describe the type of cable (fiber-optic, twisted-pair, copper, coaxial, etc.) that will be installed by applicant as part of, or as a result of the construction proposed in this application.

FIBER-OPTIC WILL BE PLACED AND CLEARLY SHOWN ON EACH PERMIT APPLICATION.

D. Impact on City of Oakland Resources and Quality of Life

25. Assuming that a qualified party, such as a CLEC or a national CAP, approached the applicant about sharing facilities on economic terms that were reasonable, would the applicant be willing to share facilities:

- In general? [] Yes [X] No
Share available conduit or inner duct? [] Yes [] No
Share fiber strands in a fiber cable? [] Yes [X] No
Share splice boxes? [] Yes [X] No

IF APPLICABLE AND EXCESS CONDUIT IS AVAILABLE.

Share trenching costs in a joint construction project? Yes No *NOT APPLICABLE*

26. In order to minimize the impact of applicant's proposed construction, has the applicant:

Checked the pending applications and recently granted Permits in the City of Oakland to determine whether the opportunity to construct using joint trench, or the opportunity to share facilities, is available?

Yes No *NOT APPLICABLE*

Proposed to use directional boring where it would minimize the impact on residents and businesses?

Yes No *GENERALLY NOT APPLICABLE*

If no directional boring is proposed, please explain why below:

ONLY A SHORT DISTANCE OF EXCAVATION WILL BE REQUIRED IN AN AREA CLOSE TO EXISTING FACILITIES SO BORING IS NOT REQUIRED.

CONDITIONS FOR USE OF CITY OF OAKLAND'S RIGHT OF WAY

IF APPLICABLE,

a) Permittee agrees to comply with the City of Oakland's land use and planning process (including public notification) for the location of any structures or facilities to be placed in or adjacent to the City's public rights-of-way. The permittee further agrees to provide all necessary information requested by the City of Oakland including required documentation to conduct applicable CEQA review.

b. Installation of telephone lines and provision of telephone service shall be pursuant to Sec. 7901 of the California Public Utilities Code.

c. Permittee is not authorized to place any other facilities or provide any services over the facilities placed in the rights-of-way other than telephone lines as described above, without first obtaining authorizations from the City, including any necessary franchises, ~~except where state law preempts local authority to franchise.~~ *AS OTHERWISE PROVIDED* By way of example and not limitation, Permittee may not install cable system or open video system facilities without first obtaining a

DON'T STATE OR FEDERAL LAW.

franchise.

d. Permittee is not authorized to install facilities on any other public property other than rights-of-way, and any use of other public property shall require separate agreement.

a. Permittee shall comply with any provision that the City may adopt in the future requiring it to obtain a franchise or other authorization, and may be required to do so as a condition to the continued effectiveness of the permit, provided that nothing in this agreement shall be construed to prevent Permittee from claiming that a particular requirement is prohibited by applicable law.

b. If state or federal law does not prohibit municipality from charging for use of rights-of-way by Permittee, it may do so, and payment of any lawful compensation established by City shall be a condition of the continued effectiveness of the permit.

c. Permittee warrants that the services it will offer over the telephone lines ~~consist solely of telephone service within the meaning of Section 7901~~ *ARE AUTHORIZED UNDER*

LAWFUL AND REASONABLE

d. Permittee shall abide by ~~all~~ City requirements for indemnification and insurance.

e. Conditions do not create or vest in Permittee any property interest.

f. Permittee warrants that it will promptly notify the City of any company to which it is selling, leasing, or otherwise transferring facilities or capacity, and agrees not to sell, lease, or otherwise transfer facilities or capacity to any company that is required by state or federal law to obtain a franchise or other authorization from municipality without proof that such company has obtained the necessary authorization or franchise; *PROVIDED HOWEVER, THAT ATYT'S OBLIGATIONS HEREUNDER ARE LIMITED TO THESE, LEASE, OR TRANSFER OF FACILITIES OR CAPACITY THAT INVOLVES THE PHYSICAL USE OF THE CITY'S PUBLIC RIGHTS OF WAY, AND DOES NOT EXTEND TO ATYT'S OBLIGATIONS UNDER SECTION 251 OF THE TELECOMMUNICATIONS ACT OF 1996.*

g. The City retains police powers with respect to time, place and manner of placement and relocation of facilities within the public right-of-way. *THOSE AUTHORIZED UNDER SECTION 7901 OF*

h. Permittee agrees to comply with any future changes in State or Federal laws that pertain to the telephone, cable television and telecommunications industry and the City reserves the right to impose any changes in the law at such future time.

i. Permittee will submit Quarterly Construction reports ^{IF} as required by the Public Utilities Commission.

j. Permittee warrants that in the event any telephone facilities approved by the City pursuant to this permit are at any time during the usable life of the equipment or facilities utilized for purposes other than ~~providing telephone service as defined by the California Public Utilities Code, including but not limited to the transmission of a cable system equivalent or open video or data~~ *THOSE AUTHORIZED UNDER SECTION 7901 OF*
CABLE SERVICES OVER A SERVICES.

transmission. Permittee agrees to first obtain the necessary authorization or franchise for providing such service over said existing facilities.

k. In addition to Permittee processing fees associated with the issuance of the herein permit, Permittee is subject to inspectional fees for the cost of determining compliance with the herein permit requirements. Additional re-inspection fee charges may be assessed as necessary to assure ongoing compliance with permit requirements.

l. Permittee agrees to notify City of any changes to the plans submitted with the excavation and all related permit applications prior to constructing such change(s).

m. Permittee shall be a member of USA and shall be responsible for notifying USA prior to excavations.

n. At least 48 hours prior to excavation, Permittee shall notify the City's Electrical Division, at 615-5438 and Telecommunications Systems Engineer at 238-6900.

o. Permittee is required to adhere to all herein conditions as a condition of the continued effectiveness of the permit. Failure or refusal to comply shall subject the Permittee to all applicable civil penalty provisions.

p. Additional permit conditions may be required as a matter of policy at any time commencing from the issuance of the permit up until the permit is "finalized" by the City.

q. For as long as Permittee maintains facilities within the public right-of-way, Permittee is subject to any further licensing and/or leasing requirements imposed by the City for such use.


Applicant agrees to comply with the City of Oakland's land use and planning process (including public notification) for the location of any structures or facilities to be placed in or adjacent to the City's public rights-of-way. The applicant further agrees to provide all necessary information requested by the City of Oakland including required documentation to conduct applicable CEQA review.

Signed under penalty of perjury, this 20TH day of JANUARY, 2006

Applicant: AT & T CALIFORNIA

Date (example 06/22/00) 01/20/06

(Owner of the facilities to be installed in the public rights-of-way)

Authorized Representative's Name KAREN BOLES 

Please print the completed form, sign and physically submit a copy to the Cable Franchise Authority. This form is for notification purposes only. A hard copy must also be submitted.

For More Information Contact:

Brian "Tino" Granados
Cable Franchise Authority,
1 Frank H. Ogawa Plaza,
2nd Floor, Oakland, CA 94612,
Telephone number 510-238-3567,
Fax 510-238-6699
Email cablefranchise@oaklandnet.com

ATTACHMENT A

1/10/2005

~~Proprietary and Confidential~~
AT&T Inc. Affiliates

2001 Investment Fund, I.I.C
a2b Music Inc.
Abilene SMSA Tower Holdings, L.P.
ACC Corp.
ACC National Long Distance Corp.
ACC National Telecom Corp.
Alascom, Inc.
Alestra Telcomunicaciones Inalambricas, S. de R.L. de C.V.
Alestra, S. de R.L. de C.V.
Amarillo SMSA Tower Holdings, L.P.
American Bell Communications, Inc.
American Bell Information, Inc.
American Bell International, Inc.
American Bell Technologies, Inc.
American Bell, Inc.
American Information Technologies Corporation (Nevada)
American Movie Classics Investment, Inc.
American Ridge Insurance Company
American Telephone & Telegraph Company of Delaware
American Telephone & Telegraph Company of Indiana, Inc.
American Telephone & Telegraph Company of Michigan
American Telephone & Telegraph Company of New Jersey
American Telephone & Telegraph Company of Virginia
American Telephone & Telegraph Company of Wisconsin
American Telephone & Telegraph Company of Wyoming
American Telephone and Telegraph California Inc.
American Telephone and Telegraph Company
American Telephone and Telegraph Company of Arkansas
Ameritech Advanced Data Services of Illinois, Inc.
Ameritech Advanced Data Services of Indiana, Inc.
Ameritech Advanced Data Services of Michigan, Inc.
Ameritech Advanced Data Services of Ohio, Inc.
Ameritech Advanced Data Services of Wisconsin, Inc.
Ameritech Belgium Assets, L.L.C.
Ameritech Belgium Leasing, Inc.
Ameritech C777, Inc.
Ameritech Capital Funding Corporation
Ameritech Cayman Islands Investment, Inc.
Ameritech Center Phase I, Inc.
Ameritech CivicNet, LLC
Ameritech Communications Services, Inc.
Ameritech Corporation (Nevada)
Ameritech Credit Corporation
Ameritech CT Acquisition Corporation
Ameritech Denmark Funding Corporation
Ameritech Denmark Holdings, L.L.C.
Ameritech Denmark, Inc.
Ameritech Information Industry Services, Inc.

Ameritech Information Systems (Canada), Inc.
Ameritech International Belgium, LLC
Ameritech International Denmark Corporation
Ameritech International Spain, S.I.
Ameritech International, Inc.
Ameritech Managed Services, Inc.
Ameritech Management Corporation
Ameritech Management Services Company, L.L.C.
Ameritech Media Ventures, Inc.
Ameritech New Media, LLC
Ameritech New Zealand Funding Corporation
Ameritech New Zealand Investments, Inc.
Ameritech Payphone Services, Inc.
Ameritech Properties, Inc.
Ameritech Publishing of Illinois, Inc.
Ameritech Publishing, Inc.
Ameritech Services, Inc.
Ameritech Wireless Holdings, Inc.
Ameritech XV, Inc.
Ameritech XX, Inc.
Antares Satellite Corporation
Arkansas Bell Telephone Company
ASI Leasing (GP) Company
ASI Leasing (LP) Company
AT&T Communications Services Turkey Ltd.
AT&T Global Network Holdings LLC
AT&T (Australasia) Pty Limited
AT&T (Australia) Pty. Limited
AT&T (China) Co. Ltd.
AT&T (Hong Kong) Limited
AT&T (New Zealand) Company
AT&T (UK) Ltd.
AT&T ADC Corp.
AT&T Asia/Pacific Group Ltd.
AT&T Broadband Phone of Kentucky I, LLC
AT&T Broadband Phone of Kentucky II, LLC
AT&T Broadband Phone of Kentucky III, LLC
AT&T Broadband T-Holdings, Inc.
AT&T Broadband T-Services, Inc.
AT&T Business Receivables II LLC
AT&T Cable Merger Co.
AT&T Canada GP LLC
AT&T Canada Holdings Limited Partnership
AT&T Canada Investments Inc.
AT&T Canada L.D. Holdings Inc.
AT&T Capital Holdings International, Inc.
AT&T Capital Holdings, Inc.
AT&T Chile S.A.
AT&T China, Inc.

AT&T China, Inc. (Branch)
AT&T China, Inc. (Representative Offices)
AT&T CIS Ltd.
AT&T CIS Ltd.
AT&T Communication Services India Pvt. Ltd.
AT&T Communications (1998) Ltd.
AT&T Communications Americas, Inc.
AT&T Communications Corp.
AT&T Communications Holdings of Wisconsin, LLC
AT&T Communications of California, Inc.
AT&T Communications of Delaware, LLC
AT&T Communications of Hawaii, Inc.
AT&T Communications of Illinois, Inc.
AT&T Communications of Indiana GP
AT&T Communications of Indiana, Inc.
AT&T Communications of Maryland, LLC
AT&T Communications of Michigan, Inc.
AT&T Communications of Michigan, LLC
AT&T Communications of Nevada, Inc.
AT&T Communications of New England, Inc.
AT&T Communications of New England, LLC
AT&T Communications of New York, Inc.
AT&T Communications of NJ, LP
AT&T Communications of Ohio, Inc.
AT&T Communications of Ohio, LLC
AT&T Communications of Pennsylvania, LLC
AT&T Communications of Texas LLC
AT&T Communications of Texas, L.P.
AT&T Communications of Texas, LLC
AT&T Communications of the Midwest, Inc.
AT&T Communications of the Mountain States, Inc.
AT&T Communications of the Pacific Northwest, Inc.
AT&T Communications of the South Central States, LLC
AT&T Communications of the Southern States, LLC
AT&T Communications of the Southwest, Inc.
AT&T Communications of Virginia, LLC
AT&T Communications of Washington D.C., LLC
AT&T Communications of West Virginia, Inc.
AT&T Communications of Wisconsin, LP
AT&T Communications Services (Japan) Ltd.
AT&T Communications Services (Malaysia) Sdn. Bhd.
AT&T Communications Services Africa Inc. (Branch)
AT&T Communications Services Africa, Inc.
AT&T Communications Services Argentina S.R.L.
AT&T Communications Services Asia/Pacific Inc.
AT&T Communications Services Australia Pty. Limited
AT&T Communications Services Colombia S.A.
AT&T Communications Services Danmark A/S
AT&T Communications Services de El Salvador, S.A. de C.V.

AT&T Global Network CER Holdings LLC
 AT&T Global Network Enterprises LLC
 AT&T Global Network Holdings Brasil Ltda.
 AT&T Global Network Partners Inc.
 AT&T Global Network Services (Thailand) Co., Ltd.
 AT&T Global Network Services (UK) B.V.
 AT&T Global Network Services (UK) B.V. - UK Branch
 AT&T Global Network Services Australia Pty. Ltd.
 AT&T Global Network Services Austria GmbH
 AT&T Global Network Services Belgium Luxembourg S.P.R.L.
 AT&T Global Network Services Belgium Luxembourg S.P.R.L. - Luxembourg Branch Office
 AT&T Global Network Services Brasil Ltda.
 AT&T Global Network Services Bulgaria EOOD
 AT&T Global Network Services Canada Holdings LLC
 AT&T Global Network Services Colombia Ltda.
 AT&T Global Network Services Cyprus Limited
 AT&T Global Network Services Czech Republic s.r.o.
 AT&T Global Network Services Danmark ApS
 AT&T Global Network Services del Peru S.R.L.
 AT&T Global Network Services Deutschland GmbH
 AT&T Global Network Services Ecuador Cia. Ltda.
 AT&T Global Network Services Espana, S.L.
 AT&T Global Network Services Estonia OÜ
 AT&T Global Network Services Finland Oy
 AT&T Global Network Services France, SAS
 AT&T Global Network Services Group LLC
 AT&T Global Network Services Hellas Limited [E.P.E./Limited]
 AT&T Global Network Services Hong Kong Limited
 AT&T Global Network Services Hrvatska društvo s organičenom adgovernoscu (d.o.o.)
 AT&T Global Network Services Hungary Kft.
 AT&T Global Network Services International Inc.
 AT&T Global Network Services International Inc. - Israel Branch Office
 AT&T Global Network Services International Inc. - New Zealand Branch Office
 AT&T Global Network Services International Inc. - Philippines Branch Office
 AT&T Global Network Services International Inc. - Pakistan Branch
 AT&T Global Network Services Ireland Limited
 AT&T Global Network Services Italia S.r.l.
 AT&T Global Network Services Japan LLC
 AT&T Global Network Services Japan LLC - Japan Branch
 AT&T Global Network Services Korea Limited (Yuhan Hoesa)
 AT&T Global Network Services LLC
 AT&T Global Network Services Luxembourg S.a.r.l. (Deregistered)
 AT&T Global Network Services Mexico S. de R.L. de C.V.
 AT&T Global Network Services Nederland B.V.
 AT&T Global Network Services Netherlands Antilles N.V.
 AT&T Global Network Services Norge LLC
 AT&T Global Network Services Norge LLC - Norwegian Branch Office
 AT&T Global Network Services Polska Sp. z o.o.
 AT&T Global Network Services Puerto Rico Inc.

McAllen-Edinburg-Mission SMSA Tower Holdings, L.P.
 MediaOne Far East Telecommunications, Inc.
 Michigan Bell Telephone Company
 Midland/Odessa SMSA Tower Holdings, L.P.
 Milwaukee SMSA Tower Holdings LLC
 Missouri Bell Telephone Company
 Missouri RSA 11/12 Tower Holdings LLC
 Missouri RSA 8 Tower Holdings LLC
 Missouri RSA 9B1 Tower Holdings LLC
 MNS Acquisition Corp.
 Nantis, Inc.
 Nevada Bell Leasing Company
 Nevada Bell Telephone Company
 New SBC Wireless, Inc.
 New Southwestern Bell Mobile Systems, Inc.
 Novato MergerSub, Inc.
 Oklahoma Bell Telephone Company
 Oklahoma City SMSA Tower Holdings LLC
 Oklahoma RSA 3 Tower Holdings LLC
 Oklahoma RSA 9 Tower Holdings LLC
 P.T. AT&T Global Network Services Indonesia
 Pacific Bell Directory
 Pacific Bell Information Services
 Pacific Bell Leasing Company
 Pacific Bell Telephone Company
 Pacific Telephone & Telegraph Company
 Pacific Telesis Group
 Pacific Telesis, Inc.
 PacTel Finance
 PBD Holdings dba Digital Graphics ADvantage
 PBD Services, LLC
 PT Sistelindo Mitralintas
 PTF/FCLC Associates (80%)
 PTF/GECC (California) Associates (80%)
 PTG Properties, Inc.
 Pudong LLC
 Quentin International Sales, Inc.
 Ranger Acquisition Corp.
 Rewolf Holding N.V.
 RTDC Holdings, Inc.
 RWB Wireless Broadband, LLC
 S/A AT&T Global Network Services Latvia
 SBC Advanced Solutions, Inc.
 SBC Advertising, L.P.
 SBC Alloy Holdings, Inc.
 SBC ASI Purchasing & Leasing Limited Partnership
 SBC Asset Management, Inc.
 SBC Aviation Holdings, Inc.
 SBC CCPR Holdings, LLC

SBC Communications Inc. [Delaware name holder]
SBC DataComm Corporation
SBC DataComm, Inc.
SBC Directory Operations, Inc.
SBC Enterprise Services, Inc.
SBC Foundation
SBC General Leasing, LLC
SBC General TowerCo of Texas, LLC
SBC Global Management Support LLC
SBC Global Services, Inc.
SBC Hedging Management, LLC
SBC International Arabia, Inc.
SBC International B.V.
SBC International Development Corporation
SBC International Europe, Inc.
SBC International IP Holdings, Inc.
SBC International Operations, Inc.
SBC International Taiwan, Inc.
SBC International, ApS
SBC International, Inc.
SBC International-Management Services, Inc.
SBC Internet Services, Inc.
SBC Investment Portfolio, LLC
SBC Knowledge Ventures GP, Inc.
SBC Knowledge Ventures, L.P.
SBC Laboratories, Inc.
SBC Long Distance, LLC
SBC Management Services Holdings, Inc.
SBC Management Services, L.P.
SBC Media Solutions LLC
SBC Network Technologies, Inc.
SBC Northern Leasing GP Company
SBC Northern Leasing, LP
SBC Option Delivery, LLC
SBC Option Hedging, LLC
SBC Portfolio Holdings, Ltd.
SBC Telecom Properties, Inc.
SBC Telecom, Inc.
SBC Teleholdings, Inc.
SBC Texas Towers, L.P.
SBC Tower Holdings LLC
SBC Venture Capital Corporation
SBC Venture Holdings, LLC
SBC Ventures, Inc.
SBC-MSI, LLC
SBCSI Leasing (GP) Company
SBCSI Leasing (LP) Company
SBCSI Purchasing & Leasing Limited Partnership
Shanghai Symphony Telecommunications Co., Ltd.

Smart Card Systems and Solutions, Inc.
 SNET America, Inc.
 SNET Credit, Inc.
 SNET Diversified Group, Inc.
 SNET Information Services, Inc.
 SNET Properties, Inc.
 SNET Real Estate, Inc.
 Southern New England Telecommunications Corporation
 Southwestern Bell Advertising Group, Inc.
 Southwestern Bell International Development (Africa)(Proprietary) Limited
 Southwestern Bell International Holdings S.A. de C.V.
 Southwestern Bell Telecom (UK) Limited
 Southwestern Bell Telephone Company (Oklahoma)
 Southwestern Bell Telephone Company of Arkansas
 Southwestern Bell Telephone, L.P.
 Southwestern Bell Texas Holdings, Inc.
 Southwestern Bell Video Services, Inc.
 Southwestern Bell Yellow Pages Resources, Inc.
 Southwestern Bell Yellow Pages Services, Inc.
 Southwestern Bell Yellow Pages, Inc.
 Springwich Cellular Tower Holdings LLC
 St. Joseph SMSA Tower Holdings LLC
 Sterling Commerce (America), Inc.
 Sterling Commerce (EU), Inc.
 Sterling Commerce (North East), Inc.
 Sterling Commerce (UK) Limited (United Kingdom)
 Sterling Commerce (Xel) Pty. Ltd. (Australia)
 Sterling Commerce AB (Sweden)
 Sterling Commerce AG (Switzerland)
 Sterling Commerce B.V. (Netherlands)
 Sterling Commerce BVBA (Belgium)
 Sterling Commerce do Brasil Ltda. (Brazil)
 Sterling Commerce GmbH (Germany)
 Sterling Commerce II B.V.
 Sterling Commerce International, Inc.
 Sterling Commerce K.K. (Japan)
 Sterling Commerce Leasing, Inc.
 Sterling Commerce Limited (Hong Kong)
 Sterling Commerce Pte., Ltd. (Singapore)
 Sterling Commerce Pty, Limited (Australia)
 Sterling Commerce S.A. de C.V. (Mexico)
 Sterling Commerce S.L. (Spain)
 Sterling Commerce S.r.l. (Italy)
 Sterling Commerce, Inc.
 Sterling Commerce, SARL (France)
 Sterling Electronic Commerce, Inc. (Canada)
 SWBT Leasing (GP) Company
 SWBT Leasing (LP) Company
 SWBT Purchasing & Leasing Limited Partnership

SWBT Texas, LLC
TC New York Holdings I, Inc.
TC New York Holdings II, Inc.
TC Systems, Inc.
TCG America, Inc.
TCG Billing Services, Inc.
TCG Cerfnet, Inc.
TCG Charitable Foundation, Inc.
TCG Chicago
TCG Chicago Holdings, Inc.
TCG Colorado
TCG Connecticut
TCG Connecticut Holdings II, Inc.
TCG Connecticut Holdings III, Inc.
TCG Connecticut Holdings, Inc.
TCG Dallas
TCG Dallas Holdings I, Inc.
TCG Dallas Holdings II, Inc.
TCG Data - New York
TCG Delaware Valley, Inc.
TCG Detroit
TCG Detroit Holdings I, Inc.
TCG Detroit Holdings II, Inc.
TCG DV Holdings, Inc.
TCG Illinois
TCG Illinois Holdings, Inc.
TCG Indiana, Inc.
TCG Indianapolis
TCG Joint Venture Holdings, Inc.
TCG Kansas City, Inc.
TCG Los Angeles, Inc.
TCG Maryland
TCG Midsouth, Inc.
TCG Milwaukee, Inc.
TCG Minnesota, Inc.
TCG New Jersey
TCG New Jersey, Inc.
TCG New York, Inc.
TCG of the Carolinas, Inc.
TCG Ohio
TCG Omaha
TCG Omaha Holdings, Inc.
TCG Oregon
TCG Partners
TCG Partners Holdings I, Inc.
TCG Partners Holdings II, Inc.
TCG Partners Holdings III, Inc.
TCG Phoenix
TCG Phoenix Holdings I, Inc.

TCG Pittsburgh
 TCG Pittsburgh Holdings, Inc.
 TCG Rhode Island
 TCG San Diego
 TCG San Diego Holdings, Inc.
 TCG San Francisco
 TCG San Francisco Holdings I, Inc.
 TCG Seattle
 TCG Seattle Holdings I, Inc.
 TCG Seattle, Inc.
 TCG Services, Inc.
 TCG South Florida
 TCG South Florida Holdings I, Inc.
 TCG South Florida Holdings II, Inc.
 TCG Southwestern Holdings, Inc.
 TCG St. Louis
 TCG St. Louis Holdings, Inc.
 TCG Utah
 TCG Virginia, Inc.
 TCI LL, Inc.
 TCI NJFT, Inc.
 TCI Teleport Holdings, Inc.
 TCI Teleport, Inc.
 Telecable KCFN Holding Corp.
 Telehouse International Corporation of America
 Teleport Communications Atlanta, Inc.
 Teleport Communications Boston, Inc.
 Teleport Communications Chicago, Inc.
 Teleport Communications Dallas, Inc.
 Teleport Communications Group America, Inc.
 Teleport Communications Group Inc.
 Teleport Communications Houston, Inc.
 Teleport Communications New York
 Teleport Communications San Francisco, Inc.
 Teleport Communications Washington, D.C., Inc.
 Telesis, Inc. (CA)
 Telesis, Inc. (NV)
 Texas Bell Telephone Company
 Texas RSA 10B1 Tower Holdings, L.P.
 Texas RSA 18 Tower Holdings, L.P.
 Texas RSA 19 Tower Holdings, L.P.
 Texas RSA 20B1 Tower Holdings, L.P.
 Texas RSA 6 Tower Holdings, L.P.
 Texas RSA 7B1 Tower Holdings, L.P.
 Texas RSA 9B1 Tower Holdings LLC
 Texas RSA 9B4 Tower Holdings, L.P.
 Thai Global Network Services Holding Co., Ltd.
 The American Telegraph and Telephone Company of Pennsylvania
 The American Telephone & Telegraph Company of Illinois

The Ohio Bell Telephone Company
 The Ohio Telephone and Telegraph Company
 The Pacific Telephone Corporation
 The Southern New England Telephone Company
 The Woodbury Telephone Company
 TNV (Netherlands Antilles) N.V.
 Topoka SMSA Tower Holdings LLC
 UA Think, Inc.
 UAB AT&T Lietuva (Lithuania)
 UAI Merger Corp.
 UAI Sub No. 24, Inc.
 UCT Aircraft, Inc.
 UCT Video, Inc.
 United Advertising Network, Inc.
 United Artist Broadcast Properties, Inc.
 United Artists Investments Holding, LLC
 United Artists Investments, Inc.
 United Artists Investments, LLC
 United Artists K-1 Investments, Inc.
 United Artists Operator Services Corporation
 United Artists Payphone Corporation
 United Artists Preferred Investments, Inc.
 United Artists Republic Investments, Inc.
 United Artists Satellite, Inc.
 United Artists Telecommunications, Inc.
 United Cable AD-Link, Inc.
 United Cable Advertising, Inc.
 United Cable Productions, Inc.
 United Cable Shopping Channel, Inc.
 United Cable Television Acquisition Corporation
 United Cable Television Financing Corporation
 United Cable Television Investments, LTD.
 United Cable Video Investment, Inc.
 United Carphone Corporation
 United Corporate Communications Company
 United Entertainment Corporation, Inc.
 United Hockey, Inc.
 United Microwave Corporation
 United Paging Corporation
 United Tribune Paging Corporation
 United's Home Video Centers, Inc.
 VLT GP Holdco L.L.C.
 VLT US Holdco L.L.C.
 Washington/Baltimore Cellular Tower Holdings LLC
 Whitewolf Holding N.V.
 Wichita SMSA Tower Holdings LLC
 Wisconsin Bell, Inc.
 Worcester Tower Holdings, LLC
 World Partners Company

WorldPlus International Inc.
Worldwide Directory Products Sales, Inc.
www.yellowpages.com, Inc.
Yantra Corporation
Yantra Corporation U.K. Limited
Yantra GmbH
Yantra Solutions Private Limited
YellowPages Travel, Inc.
YellowPages.com LLC
YPC, LLC

ATTACHMENT C

City of Oakland Lightspeed Telecommunications Project Permit Approval Process

1. Company will provide 30 day notice by letter via U.S. mail or hand delivery to impacted property owners, tenants and community association (if applicable). Impacted property owners are addresses shown on the Assessor's Maps that are located within the visual field of the proposed above-ground structure. Waiver of 30 days granted if company representative discusses construction plans with owners and obtains their acknowledgement of the plans via face-to-face discussion. Notice shall include clear language addressing the following:
 - a. A drawing/schematic showing the type and size of the structure that will be placed and showing the relationship to the right-of-way.
 - b. The location related to the neighborhood.
 - c. A picture of the structure within the location – an illustrated overlay of the structure within the location.
 - d. Contact name and phone number of City's CEDA representative and Company's representative knowledgeable of the site for questions and concerns prior to the 30 days.
2. For each location, company must provide a list of addresses of record within visible site of the proposed cabinet and submit proof of notice in the form of a spreadsheet that includes dates mailed, addresses mailed, and all responses. City will not approve permits prior to 30 days from owners' and tenants' receipt of letter unless a pre-30 day face-to-face discussion with property owners takes place and is so documented. As an additional step, Company will place notification door hangers on impacted properties one week prior to construction.
3. Company will work with the impacted property owners expressing concerns in order to choose a location for the structure which will minimize impact on the surrounding area.
4. Company must only place one new structure per site. If Company needs to place more than one structure due to location or availability of equipment, City shall require a pre-site inspection with Company and CEDA inspectors to determine if an alternative solution is feasible. If an alternative solution is not agreed to, PWA and CEDA Directors must sign off or delegate the sign off on that particular encroachment permit. Company agrees to consolidate structures when possible.
5. Company must follow all lawful permit requirements for Minor Encroachment, Major Encroachment, Use and Excavation.

6. Company will continue their regular maintenance program of all facilities including but not limited to graffiti and damage.
7. Company shall notify the City when they are ready for the pre-construction and post-construction site visits by Public Works to ensure compliance with the approved plan.
8. Company must comply with all Local, State and Federal laws.
9. Company must provide, at minimum, the following:
 - a. Map that indicates the maximum number of structures to be placed throughout the City. For Lightspeed, a current map is located at 2150 Webster Street. Barbara Leslie can be contacted at 510 587-1930.
 - b. Construction schedule of entire project as determined by permit approvals
 - c. Types of construction that will need to be completed for the project
 - d. Types of service the project will provide to the community
 - e. Any other details that the City will need in order to process permits and conduct inspections.

**Councilmember Brunner's Letter to the Public Works Committee,
dated November 28, 2006**

CITY OF OAKLAND



CITY HALL • ONE FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

JANE BRUNNER
Councilmember
District 1

(510) 238-7001
FAX (510) 238-6910
TTD (510) 238-7413

To: Chair Nadel and Members of the Public Works Committee
Date: November 28, 2006
Re: Item 8, Utility Boxes

Upon reviewing the report, I would like to make the following recommendations regarding the installation of utility boxes:

1. That all utility boxes installed in the public right of way be subject to design review with regards to exact location, orientation, appearance and color of each box, with specific attention to pedestrian right of way, disabled access and pedestrian safety; and
2. The design review standards shall require boxes in residential areas to be smaller than those mentioned in the staff report; and
3. The owner of the box shall mask each box, at their cost exclusively, to mitigate or minimize any negative impact associated with each box; and
4. The design review procedure shall include public notice to both property owners and tenants within 300 feet of the proposed location and owners and tenants that are within sight of the box from the street in front of their residence; and
5. There will be a 30 day public comment period for each box; and
6. The design review standards and procedure shall come back to the City Council for our approval, and that no permits be approved unless and until the design review standards and procedure have been approved by the City Council; and
7. The owner of the box, whenever feasible, shall underground the box; and
8. That the above shall apply to all applications.

Thank you for your consideration.

DEC 19 2006

~~PUBLIC WORKS COM. STAFF~~

~~DEC 12 2006~~



2006 DEC 19 AM 9:19

CITY HALL • ONE FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

JANE BRUNNER
Councilmember
District 1(510) 238-7001
FAX (510) 238-6910
TTD (510) 238-7413

To: Chair Nadel and Members of the Public Works Committee
From: Councilmember Jane Brunner
Date: December 12, 2006
Re: Utility Boxes, Item 4

Thank you again for your taking on this very complicated issue. As part of my work on this issue, I have reviewed San Francisco's regulations for the placement of utility boxes. I believe that the Design Review Guidelines contained in the staff report are a beginning and would like to recommend a number of regulations San Francisco uses for adoption. Among them:

1. The regulations outline a number of requirements an applicant must meet before the City will consider placing a box at a location. I believe we should adopt the following:
 - Require an applicant to submit a 5-year plan for all boxes to be installed
 - Require an applicant to submit plans of all sizes and shapes of boxes that are available to them to install
 - Require an applicant to survey the area for at least 3 private property locations to site the box, and show proof of an attempt to place the box at one of the locations
 - Require an applicant to attempt to underground the box where it is technologically and economically feasible. The burden of proof to show infeasibility is on the applicant, and the applicant must demonstrate an attempt to underground the box
 - Require an applicant to show efforts to collocate the box with existing boxes
2. Attachment B to San Francisco's regulations, which I have attached, is a detailed list of placement and design guidelines. I would recommend the adoption of all of them.
3. I would also recommend that we adopt San Francisco's notification process. After a site visit by staff, there is a 20 day public notice period for comment on the application to all within 300 feet. Any protests are heard by a Hearing Officer. There is also a 30 day public notice of construction.
4. I also recommend that City staff bring to December 19th further detail on the Design Review process and examples of what boxes would look like with the new design guidelines and masking requirements.

22
CITY COUNCIL

DEC 19 2006

EXHIBIT B

SURFACE-MOUNTED FACILITY PLACEMENT GUIDELINES

The following are guidelines for the Department to use during a site visit to determine acceptable locations for Surface-Mounted Facilities in the Public Rights-of-Way. The Department is not required to apply any guideline that the Department determines is not applicable to a particular installation of a Surface-Mounted Facility.

1. Surface-Mounted Facilities shall be no larger than is reasonably necessary to contain and protect the required equipment.
2. Surface-Mounted Facilities shall not obstruct pedestrians. A minimum of four feet (4') of pedestrian clearance (free of all obstacles for a clear path of travel, unobstructed pedestrian walkway) shall be maintained at all times.
3. Surface-Mounted Facilities shall not intrude on pedestrian "clear zones" at street corners.
4. Surface-Mounted Facilities shall be set back a minimum of five feet (5') from edge of crosswalk areas.
5. Surface-Mounted Facilities shall be set back a minimum of eighteen inches (18") from the face of the curb.
6. Surface-Mounted Facilities shall be set back a minimum of eight feet (8') from any fire escape and/or fire exit.
7. Surface-Mounted Facilities shall be set back a minimum of five feet (5') from any fire hydrant, driveway, curb ramp, or blue zone parking space.
8. Surface-Mounted Facilities shall be set back a minimum of forty inches (40") from any other above-ground structure not otherwise specified herein including, but not limited to, street light poles, parking meters, trees, etc.
9. Surface-Mounted Facilities shall be set back a minimum of sixty feet (60') from any Municipal Railway transit shelter and/or kiosk, unless the location of the Surface-Mounted Facility is coordinated with the transit shelter and/or kiosk.
10. Surface-Mounted Facilities shall be set back a minimum of five feet (5') from any certified street artist's designated area per list to be provided by the Department (which list is complete only as of the date of this order and will be updated when any new street artist's designated areas are established).
11. Surface-Mounted Facilities shall be set back a minimum of sixty feet (60') from any public art work under the jurisdiction of the Arts Commission of San Francisco, except for public art on kiosks, per the San Francisco Civic Art Collection published by the Arts Commission of San Francisco (which book is complete only as of the date of this order and will be updated when any new public art works are established).
12. Surface-Mounted Facilities shall not be placed over any storm drain or other utility facility.
13. Surface-Mounted Facilities shall not obstruct the view of any traffic sign, wayfinding sign, traffic signal or any other existing facility.
14. Surface-Mounted Facilities shall not be placed on the property of, or adjacent to a designated local, State or National Historic Landmark. For the purposes of applying the limitations and conditions specified in this paragraph, in relation to any specific location, the word adjacent shall mean on the same side of the street and in front of the subject building or in front of the next building on either side.
15. Surface-Mounted Facilities shall not be placed in Local Historic Districts listed in Appendices B-L of Article 10 of the San Francisco Planning Code.

16. Surface-Mounted Facilities shall not be placed in Conservation Districts designated in Appendices E-J of Article 11 of the San Francisco Planning Code.
17. Surface-Mounted Facilities shall not be placed in California Register Historic Districts, National Historic Districts, and National Register Historic Districts.
18. Surface-Mounted Facilities shall not front the boundaries of a park, recreation area, or open space.
19. Surface-Mounted Facilities shall be either stainless steel or painted to match the color used for City structures in the vicinity (e.g., JCDecaux green, Embarcadero blue) unless otherwise specified by the Department and shall have graffiti-proof coating.
20. Surface-Mounted Facilities shall be screened by landscaping where appropriate for the neighborhood and required by the Department.
21. Surface-Mounted Facilities shall not unreasonably affect the aesthetic character of neighborhoods or the natural character of regional open spaces in accordance with the City and County of San Francisco General Plan.
22. Surface-Mounted Facilities may be placed in local, State or National Historic Landmarks as discussed in No. 14 above, Local Historic Districts as discussed in No. 15 above, Conservation Districts as discussed in No. 16 above, and California Register Historic Districts, National Historic Districts, National Register Historic Districts as discussed in No. 17 above, and parks, recreation areas, and open spaces as discussed in No. 18 above, if they are to be collocated with existing transit shelters, kiosks, or other street furniture, provided that the size and footprint of the existing facility is not unreasonably increased by the addition of the Surface Mounted Facility.

22

6310000001

OFFICE OF THE CITY CLERK
CITY OF OAKLAND

4/5 VOTE REQUIRED FOR PASSAGE

2006 DEC 14 AM 9:19

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBERS:

Oakland City Attorney's Office

ORDINANCE NO. _____ C.M.S.

DRAFT

AN URGENCY ORDINANCE, PURSUANT TO GOVERNMENT CODE SECTION 65858, ESTABLISHING A TEMPORARY MORATORIUM ON THE CONSTRUCTION, MODIFICATION, PLACEMENT OR APPROVAL OF APPLICATIONS FOR ISSUANCE OF PERMITS FOR THE CONSTRUCTION OF ABOVE-GROUND UTILITY OR EQUIPMENT CABINETS WITHIN THE PUBLIC RIGHT OF WAY

WHEREAS, Government Code § 65858 allows a city, including a charter city, without following the procedures otherwise required prior to the adoption of a zoning ordinance, to adopt, as an urgency measure, an interim ordinance prohibiting any uses which may be in conflict with a contemplated general plan, specific plan, or zoning proposal which the legislative body, planning commission, or planning department is intending to study within a reasonable time; and

WHEREAS, the City of Oakland's Community Economic Development Agency is in the process of evaluating new amendments to the City's zoning regulations, or other controls, relating to design, location and size requirements for the construction, modification or placement of above-ground utility or equipment cabinets; and

WHEREAS, until such time that the City concludes its review and adopts and institutes new land use regulations governing design, location and size requirements for the construction, modification or placement of above-ground utility or equipment cabinets, the community is in jeopardy that above-ground utility or equipment cabinets could be constructed, modified or placed prior to the imposition of new regulations necessary for the protection of public health, safety and welfare;

WHEREAS, the City Council finds and determines that the ~~construction, modification, placement, or approval of pending or new applications~~ issuance of permits for above-ground utility or equipment cabinets during the moratorium period, in which possible amendments to the Zoning Regulations, or other controls, are being studied, could result in conflicts with any proposed amendments/controls and would undermine the purpose of studying such amendments/controls, thereby reducing the quality of life within the community to the extent the overall public health, safety and welfare are detrimentally affected; and

WHEREAS, the City's current utility or equipment cabinet regulations are administrative guidelines that are deficient in several areas, including but not limited to: they do not adequately address community concerns regarding locational standards and design,

handicapped access, and they allow permit applications to be handled through an administrative review process that requires public notification through notice by the utility company but does not include a public review process with direct involvement of the City; and

WHEREAS, since 2002, the City of Oakland has received an increasing number of applications for the construction, modification, and/or placement of above-ground utility or equipment cabinets throughout the City, in response to changing technology and the physical requirements required to connect this new technology to residential neighborhoods; and

WHEREAS, currently, the City of Oakland Community and Economic Development Agency approves, on average, three permits per week for the installation, construction, placement, and/or modification of utility or equipment cabinets, and there are currently pending applications on file; and

WHEREAS, changes in broadband, energy, transportation and telecommunications technology, as well as projected increases in residential and commercial development throughout the City, coupled with the desire of utility providers to increase their services in the City and surrounding areas are all projected to result in additional permit applications for the placement or modification of utility or equipment cabinets within the City of Oakland; and

WHEREAS, significant concerns have been raised in the community regarding the continuing adequacy of the current procedures and guidelines to address the increased number of permit applications and new technologies, and to ensure informed, consistent, uniform, and fair decisions on permit applications for new and/or modified utility or equipment cabinets throughout the City; and

WHEREAS, citizens of the City of Oakland have also expressed significant concerns regarding the impacts that a proliferation of above-ground utility or equipment cabinets within the City of Oakland may have upon the community as a whole, including, but not limited to, safe public access, noise, maintenance, adverse visual impacts, and incompatibility of such large installations in residential zones; and

WHEREAS, citizens of the City of Oakland have expressed a desire that the City receive adequate services provided that these larger facilities are designed and located to minimize the concerns described above; and

WHEREAS, it is the intent of the Oakland City Council to consider and adopt new zoning regulations, or other controls, pertaining to above-ground utility or equipment cabinets in order to provide clear, consistent, and uniform guidance to utility or equipment cabinet providers regarding the siting and design of above-ground utility or equipment cabinets while also addressing the significant community concerns described above, and to better reflect the City's siting and regulatory objectives for such facilities, all within the limitations specified in the; and

WHEREAS, the Oakland City Council has determined that a temporary moratorium on ~~the construction, modification, placement or approval of applications~~ the issuance of permits for above-ground utility or equipment cabinets will allow the City time to complete its review and

revisions of its design and procedural review regulations while ensuring to the maximum extent feasible that the siting and other objectives of the revised ordinance/regulations may be achieved; and

WHEREAS, for the reasons set forth above, this ordinance is declared by the Oakland City Council to be necessary for preserving the public peace, health, or safety and to avoid a current, immediate and direct threat to the health, safety, or welfare of the community, and the “Whereas” clauses above taken together constitute the City Council’s statement of the reasons constituting such necessity and urgency.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this ordinance.

SECTION 2. The City Council finds and determines, for the reasons stated in the recitals, the adoption of this ordinance is exempt from CEQA under Sections 15061(b)(3), 15307, 15308, and 15183 of the State CEQA Guidelines.

SECTION 3. The City Council hereby directs the Community and Economic Development Agency to immediately work on the preparation of amended zoning regulations, or other appropriate controls, governing the construction, modification, and placement of above-ground utility or equipment cabinets within the City of Oakland right of way and to submit them for consideration by the Planning Commission and City Council, as may be appropriate.

SECTION 4. Until such time as the City concludes the review described above, and adopts new Regulations or otherwise establishes new design and siting criteria or amends Chapter 12 and/or 17 of the Municipal Code, the City of Oakland hereby declares a moratorium on the ~~construction, modification, placement, or approval of permit applications~~ issuance of permits for above-ground utility or equipment cabinets as defined in section 5 below. Nothing herein is intended to, nor does, prevent the submittal of such applications by utility or equipment cabinet providers, however, such applications are submitted at the sole cost, expense and risk of the providers.

SECTION 5. For purposes of this Ordinance, the following definition shall apply:

“Utility or Equipment Cabinet” means any above-ground structure, cabinet, electric meter, and any other appurtenance installed for or servicing telecommunication or utility purposes above surrounding grade in the public rights-of-way, excluding facilities which are regulated separately pursuant to Chapter 17.128 of the Oakland Zoning Regulations. For the purposes of reviewing allowable Utility or Equipment Cabinet Applications, all structures, cabinets, electric meters, and any other appurtenance that share a common structural foundation shall be defined as one Utility or Equipment Cabinet. All structures, cabinets, electric meters, and any other appurtenance required to operate a facility, but that do not share a common structural foundation, shall be considered a separate Utility or Equipment Cabinet installation. The number of separate Utility

or Equipment Cabinet installations shall be based on the number of separate structural foundations installed when the facility is fully operational.

SECTION 6. In accordance with Government Code Section 65858, this Ordinance shall be in full force and effect for a period of 45 days from the date of its adoption, i.e., **from December 19, 2006 through and including February 28, 2007**, prohibiting the ~~construction, modification, placement, or approval of permits~~ issuance of permits for above-ground utility or equipment cabinets, except as provided in Sections 7, 8 and 9, below. This 45-day period may be extended by the City Council in accordance with the provisions of California Government Code Section 65858.

SECTION 7. Exceptions. Any proposed above-ground utility or equipment cabinets that are reasonably necessary for the protection of life and public safety (including traffic control devices) are exempt from the moratorium established under this urgency ordinance. The City Council shall determine, based on substantial evidence in the record, whether such utility or equipment cabinets meet these requirements. In addition, the moratorium shall not apply to the following activities, as defined in Section 17.128.020 of the current Zoning Regulations, and as determined by the Planning Director:

- a. Minor modifications of existing utility or equipment cabinets, whether emergency or routine, provided there is little or no change in the visual appearance and no increase in external dimensions. Minor modifications are those modifications, including the addition of or modification of internal equipment or access doors.

SECTION 8. During the term of this ordinance as set forth in Section 6 hereof, no building, encroachment, excavation, zoning or other permits that have been issued for the construction, modification, or placement of any above-ground utility or equipment cabinets but for which rights to proceed with the utility or equipment cabinets have not vested pursuant to the provisions of State law, shall proceed; and no building, encroachment, excavation, zoning or other permits for the construction, modification, or placement of any above-ground utility or equipment cabinets shall be issued by any department, agency, employee, or agent of the City of Oakland. Only utility or equipment cabinets which have vested rights, pursuant to the provisions of the State law, prior to the date of this Ordinance may proceed with construction, modification, or placement, unless expressly provided for herein .

SECTION 9. Petition for Relief from Moratorium. Any person who has applied to construct, modify or place a utility or equipment cabinet which would be affected by this Moratorium, and who contends that the Moratorium as applied to him or her would be unlawful under Federal, State, or local law or regulation, must submit a written Petition to the Planning Director requesting relief from the Moratorium. Failure to submit such a Petition will preclude such person from challenging the moratorium in court. The Petition shall identify the name and address of the applicant, the affected application number, and shall state specifically and completely how the Moratorium as applied to him or her would be unlawful under Federal, State, or local law or regulation. Failure to raise each and every issue that is contested in the Petition and provide appropriate supporting evidence will be grounds to deny the Petition and will also preclude the Petitioner from raising such issues in court. Within fifteen (15) working days of

receipt of the Petition, the City Administrator, or her designee, shall mail to the Petitioner a written determination accepting or rejecting the Petition. The City Administrator's decision shall be final and not subject to administrative appeal.

SECTION 10. The City Clerk shall certify to the passage and adoption of this Ordinance causing it to be posted, as required by the law, and it shall thereafter be in full force and effect. This Ordinance shall become effective immediately as an interim urgency ordinance, in order to protect the public health, safety, and welfare.

SECTION 11. For the term of this ordinance, as set forth in Section 6 hereof, the provisions of this ordinance shall govern, to the extent there is any conflict between the provisions of this ordinance and the provisions of any other City code, ordinance, resolution or policy, and all such conflicting provisions shall be suspended.

SECTION 12. This Ordinance is enacted pursuant to the City of Oakland's general police powers, Section 106 of the Charter of the City of Oakland, Article XI of the California Constitution and Government Code section 65858.

SECTION 13. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2006

PASSED BY THE FOLLOWING VOTE:

AYES - BRUNNER, KERNIGHAN, NADEL, QUAN, BROOKS, REID, CHANG, and
PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California

22

CITY COUNCIL

DEC 19 2006 5