

INTRODUCED BY COUNCIL MEMBER _____


CITY ATTORNEY

Ordinance No. 12 303 C.M.S.

ORDINANCE AMENDING ORDINANCE NO. 11945 C.M.S., AUTHORIZING THE CITY MANAGER TO LICENSE, LEASE, OR CONVEY INTERESTS IN CITY REAL PROPERTY AND IN CITY RIGHTS-OF-WAY FOR "TELECOMMUNICATIONS FACILITIES", BY EXPANDING THE DEFINITION OF "TELECOMMUNICATIONS FACILITIES" TO INCLUDE INSTALLATION AND USE OF PEDESTALS, VAULTS, UTILITY POLES, CABLE, FIBER, CONDUIT AND RELATED EQUIPMENT

WHEREAS, section 219(6) of the City Charter requires a Council ordinance in order to convey or lease, or authorize the conveyance or lease for longer than one year, of any real property of the City; and

WHEREAS, the City Council adopted Ordinance No. 11945 C.M.S. on November 12, 1996; and

WHEREAS, Ordinance No. 11945 C.M.S. delegates to the City Manager the power to license, lease or convey easements in City real property for use as telecommunications facilities; and

WHEREAS, the City has since 1995 seen an unprecedented demand for access to city rights-of-way for the purpose of installing utility poles, cable, fiber, conduit and other infrastructure for telecommunications purposes; and

WHEREAS, the installation of technology infrastructure on City property and in City rights-of-ways by multiple providers has diminished the longevity and quality of City streets and sidewalks, has a negative impact on vehicular and pedestrian traffic, and affects the city's ability to manage and access utility substructures; and

WHEREAS, telecommunications and utilities providers should pay the City fair and reasonable compensation for the use of city property and rights-of-way to the extent consistent with applicable federal and state law; and

WHEREAS, the City Council, in approving the passage of Ordinance 11945 C.M.S. on November 12, 1996, previously authorized the City Manager to license, lease or convey easements for "telecommunications facilities" within the City; and

WHEREAS, the definition of "telecommunications facilities" in Ordinance No. 11945 is limited to the installation of equipment for transmitting and receiving radio frequencies; and

WHEREAS, expanding the definition of "telecommunications facilities" in Ordinance No. 11945 C.M.S. to include the installation and placement of equipment and materials used for video, voice and data transmission, including but not limited to utility poles, conduits, cables, fibers, pedestals and vaults, will allow the City to receive fair compensation for telecommunications infrastructure placed in City rights-of-way by utility and telecommunications companies; and

WHEREAS, further amending Ordinance No. 11945 C.M.S. to specify that the authority provided the City Manager or his designee to license, lease or convey easements applies to the use of City real property and city interests in any public rights-of-ways will clarify the scope of the City Manager's authority.

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

Ordinance No. 11945 C.M.S. is hereby amended to read as follows:

Section 1. The City Council, pursuant to Section 219(6) of the City Charter, hereby authorizes the City Manager or his designee, in his discretion, to grant licenses, enter into leases, or convey easements with respect to any real property owned by the City of Oakland, or any real property in which the City of Oakland holds a property interest, or any public right-of-way within the City of Oakland, to be utilized for the placement of telecommunications facilities. Said use must be consistent with the standards and requirements set forth in Ordinance No. 11904 C.M.S. and the Oakland Planning Code with respect to telecommunications facilities, as well as state and federal law governing these uses. The Council hereby delegates to the City Manager or his designee the full and complete authority to enter into agreements, without further specific Council action, as needed to lease, convey easements, or grant licenses with respect to City property or City rights-of-way for the placement of telecommunications facilities consistent with this Ordinance, and to conduct related activities consistent with the purposes of this Ordinance. Any lease, license or grant of

easement of City property **or City right-of-way** for a telecommunications facility must be for an amount at least equal to the fair market value of the interest conveyed, as determined by the City Manager or his designee. **A lease, license or grant of easement of City property authorized by this Ordinance is in addition to any permit and/or inspection fees otherwise applicable to the project.**

Section 2. The City Manager or his designee shall submit annual reports to the City Council on **City real property and City rights-of-way** that have been leased, licensed, or conveyed for telecommunications facilities pursuant to this Ordinance.

Section 3. The Council finds and determines that, because of the unique nature of the siting of telecommunications facilities and the need to expedite the process for approving the use of City real property **and City rights-of-way** in order to encourage the growth of the telecommunications industry in Oakland, and because the Oakland Planning Code includes detailed standards regulating this use to protect public health, safety, and welfare, it is in the best interests of the City not to require competitive bidding for the use of City property **and City rights-of-way** for telecommunications facilities. Therefore, neither Ordinance No. 11602 C.M.S., related to the sale of City surplus real property, Ordinance No. 11603 C.M.S., related to the lease of City real property, nor Ordinance No. 10142 C.M.S., related to the sale and lease of City non-surplus real property, shall be applicable to the lease, license or conveyance of easements with respect to City real property (whether surplus or non-surplus) **or City rights-of-way** for telecommunications facilities. All procedural requirements in said Ordinances and successor ordinances, including but not limited to Planning Commission review and competitive bidding, are hereby superseded in favor of the requirements of this Ordinance.

Section 4. All leases, licenses, deeds, and other agreements entered into pursuant to this Ordinance shall be reviewed and approved by the Office of the City Attorney prior to City execution.

Section 5. For purposes of this Ordinance, "telecommunications facility" shall mean the installation of equipment for the transmitting and receiving of radio frequencies, including the attachment of antennas to buildings and other structures and the construction of ancillary support structures for such equipment and **the placement of any vaults, pedestals, fiber, conduit and other equipment, structures or facilities for voice, video or data transmission within the City rights-of-way or on or under any City street.** The term "telecommunications facility" shall include any "micro facility," "mini facility," "macro facility," "monopole," or "tower," as these terms are defined in Section 2700, et seq., of the Oakland Planning Code. The scope of this Ordinance shall be limited solely to the use of City property **and City rights-of-way** for the siting of telecommunications equipment **and infrastructure**, and shall not govern the

use of City property and City rights-of-way for office or other uses, even if those uses may be associated with telecommunications activities.

Section 6: **Effective Date.**

The provisions of this ordinance shall become operative immediately upon final passage.

Introduced - 12/12/00

IN COUNCIL, OAKLAND, CALIFORNIA, JAN 9 2001, 2000

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, CHANG, ~~MEY~~, NADEL, REID, SPEES, WAN AND
PRESIDENT DE LA FUENTE - 7

NOES- *None*
ABSENT- *None*
ABSTENTION- *None*

ATTEST:



CEDA FLOYD
CITY CLERK AND CLERK
OF THE COUNCIL OF
THE CITY OF OAKLAND,
CALIFORNIA