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CITY ATTORNEY

REPORT NO. R 1 4 - 0 2 6 7

JUN 0 5 2014

REPORT RE:

**REVISED DRAFT ORDINANCE AMENDING SECTIONS 62.00, 62.08, 62.09 AND
62.10 OF THE LOS ANGELES MUNICIPAL CODE TO REVISE THE
SPECIFICATIONS AND PROCEDURES FOR THE INSTALLATION OF ABOVE
GROUND FACILITIES IN THE PUBLIC RIGHT-OF-WAY**

Honorable City Council
of the City of Los Angeles
Room 395 City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 09-2645

Honorable Members:

Pursuant to your request, this Office has prepared and now transmits for your consideration the enclosed revised draft ordinance, approved as to form and legality. The revised draft ordinance amends Sections 62.00, 62.08, 62.09 and 62.10 of the Los Angeles Municipal Code to revise the specifications and procedures for the installation of Above Ground Facilities in the Public Right-of-Way.

Background and Summary of Ordinance Provisions

Your Honorable Body requested that this Office draft an ordinance to revise the procedure and standards for the approval of Above Ground Facilities that are installed in the Public Right-of-Way. This Office has prepared a draft ordinance to remove the current exemption for antennas and wireless communication devices that are installed on utility poles, increase the notification pattern applicable to cell towers and AGF installations on utility poles, enhance the aesthetic requirements for AGF installations,

require that AGF applicants certify that all wireless communication devices operate within FCC requirements, and to require AGF applicants to submit maps showing how proposed AGF installations will improve coverage or capacity in the areas served by the AGF.

After this Office transmitted the draft ordinance, a special joint meeting of the Public Works and Gang Reduction Committee and the Planning and Land Use Management Committee requested this Office to revise the draft ordinance to:

1. Remove draft provisions requiring AGF applicants to provide a map showing existing gaps in coverage.
2. Allow a limited exemption to remain in place for utility poles located in “commercial or industrial” areas.
3. Allow a limited exemption for “very small antennas and wireless communication devices that are becoming more commercially available (small cell technology).”
4. Change the notification pattern in the ordinance from 250 linear feet in either direction to a 250 foot radius.

The enclosed revised draft ordinance incorporates the changes requested by the Public Works and Gang Reduction Committee and the Planning and Land Use Management Committee. The enclosed revised draft ordinance also includes other minor revisions requested by City departments intended to clarify the ordinance, including a provision intended to clarify the expiration date of an AGF approval if the applicant does not promptly commence installation of an AGF site. Under the enclosed revised draft ordinance, an AGF applicant must commence installation within two years of the AGF approval, unless a shorter time is provided, which in no event shall be less than 6 months following issuance of the applicable Utility, Revocable, and/or Excavation Permit. Failure to commence installation of an AGF within the time allowed will cause the AGF approval to expire.

CEQA Exemption

The enclosed draft ordinance is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Title 14, Chapter 3 of the California Code of Regulations Section 15308 (Class 8) – Actions by Regulatory Agencies for Protection of the Environment, which includes actions taken to assure the maintenance, restoration, enhancement or protection of the environment. If the Council chooses to adopt the draft ordinance, it should also find that it is exempt from the provisions of CEQA pursuant to the above-cited section.

Council Rule 38 Referral

A copy of the draft ordinance was sent, pursuant to Council Rule 38, to the Department of Water and Power, the Department of Cultural Affairs, the Planning Department, and the Department of Public Works with a request that all comments, if any, be presented directly to the City Council or its Committees when this matter is considered.

If you have any questions regarding this matter, please contact Assistant City Attorney Edward M. Jordan at (213) 978-8199. He or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By



DAVID MICHAELSON
Chief Assistant City Attorney

DM:EMJ:fa
Transmittal

ORDINANCE NO. _____

An ordinance amending Sections 62.00, 62.08, 62.09 and 62.10 of the Los Angeles Municipal Code to revise the specifications and procedures for the installation of Above Ground Facilities in the Public Right-of-Way.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. The following definitions are added to Section 62.00 of the Los Angeles Municipal Code in appropriate alphabetical order:

“Above Ground Facility” or “AGF” shall mean all structures, monopoles, antennas, cabinets, electric power meters, and any other appurtenances intended for wireless communications, video franchise, telecommunications, or utility purposes and that are to be installed above surrounding grade in the Public Right-of-Way. For the purposes of reviewing AGF installation applications, all structures, cabinets, electric power meters, and any other appurtenances that share a common structural foundation shall be defined as one AGF installation. All structures, cabinets, electric power meters, and any other appurtenances required to operate a facility, but that do not share a common structural foundation, shall be considered a separate AGF installation. The number of separate AGF installations shall be based on the number of separate structural foundations installed when the facility is fully operational.

“ADA” shall mean the Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990), as amended from time to time.

“Board” shall mean the Board of Public Works.

“City Block” shall mean the Public Right-of-Way area between two adjacent intersections of two sets of intersecting streets; provided that the end of a street that does not intersect with another street shall be considered an intersection for this purpose.

“Design Review Board” shall mean the board appointed to review proposed project plans in a City Specific Plan pursuant to Section 16.50 of the Los Angeles Municipal Code.

“Least Intrusive Means” shall mean the least amount of physical or aesthetic intrusion in the Public Right-of-Way, taking into account the physical characteristics of an AGF, including but not limited to, size, shape, height, volume, color, noise, camouflaging, and screening.

“Major Highway” shall mean any street designated as a major highway on the Highways and Freeways maps of the Transportation Element of the General Plan of the City.

“Public Right-of-Way” shall mean land that is dedicated for public use, including, but not limited to, improved public streets, sidewalks, curbs, gutters, public utility easements, and parkways, as well as dedicated unimproved areas.

“Secondary Highway” shall mean any street designated as a secondary highway on the Highways and Freeways maps of the Transportation Element of the General Plan.

“Small Cell” shall mean a Utility Pole-mounted antenna or wireless communication device with a total volume of less than 2.0 cubic feet excluding cable and conduit. The installation of a Small Cell shall utilize brackets or cross-arms that allow for no more than a six-inch extension (stand-off) from the Utility Pole, except when additional stand-off is required to comply with applicable health or safety regulations.

“Street” shall include all streets, highways, avenues, lanes, alleys, courts, places, squares, curbs or other public ways in this City which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this State.

“Utility Pole” A Utility Pole is defined as any pole which is used to support power, telephone, cable television, or other suspended telecommunications wires, and shall not include monopoles or antennas.

Sec. 2. Section 62.08 of the Los Angeles Municipal Code is hereby amended in its entirety to read as follows:

SEC. 62.08. SPECIFICATIONS AND PROCEDURES FOR ABOVE GROUND FACILITY INSTALLATIONS.

The following specifications and procedures shall govern the approval process for the installation of Above Ground Facilities in the Public Right-of-Way.

I. General Restrictions:

A. Below Grade Requirement: All AGFs shall be installed below surrounding grade in each of the following areas:

1. City Specific Plans (SP) as defined in LAMC Section 11.5.7 unless specifically exempted by the Board.
2. Historical Preservation Overlay Zones (HPOZ) as defined in LAMC Section 12.20.3.

3. Areas adjoining sites that have been designated as having historic significance as a Historic-Cultural Monument pursuant to LAMC Section 22.171.10, or have been listed in, or formally determined eligible for listing in, the California Register of Historical Resources, or have been listed in, or formally determined eligible for listing in, the National Register of Historic Places.

4. Areas adjoining Open Space (OS) Zones as defined in LAMC Section 12.04.05.

5. Along Scenic Highways as designated in the Transportation Element of the General Plan.

6. Pedestrian Oriented Districts (POD) as defined in LAMC Section 13.07.

7. Community Design Overlay Districts (CDO) as defined in LAMC Section 13.08.

8. Areas that have been designated by the Board, upon the recommendation of the City Council, as "underground AGF areas." The Board may make this designation only in areas where all existing AGFs are currently underground or are required to be installed underground by law or contract.

B. Camouflage Requirement: AGF installations shall be designed to be the Least Intrusive Means of providing service, including use of camouflaging, screening, or best available technology, in order to minimize the visual impact of the AGF in each of the following instances:

1. Public Right-of-Way locations along streets where the adjoining land use is primarily residential.

2. Any area subject to the below grade requirement of Subsection I.A for which the Board has granted a hardship waiver pursuant to this Section.

3. Any AGF installation for which the Board has granted a variance to the AGF volume and height limits pursuant to Subsection IV.C.

C. Hardship Waiver: The provisions of this Section requiring installation of AGFs below grade only may be waived if the Board finds that a hardship would result from the imposition of this requirement. A hardship occurs when placing the AGF below grade is technically or financially infeasible and all reasonable alternatives have been exhausted. The Bureau of Engineering shall process an application for an AGF hardship waiver within forty-five (45) days of

submission. The 45-day process deadline shall commence when the Bureau of Engineering verifies the AGF application and hardship waiver request is accurate and complete.

If the proposed AGF is located within an applicable SP, HPOZ, POD, or CDO, the AGF applicant shall first submit an application to the City of Los Angeles Planning Department for recommendation on the proposed AGF installation. The Planning Department recommendation shall be based on the recommendations or comments of the appropriate Design Review Board or HPOZ Board, if applicable, and must be obtained prior to submittal of the AGF application with a hardship waiver request to the Bureau of Engineering.

D. Written Report on Hardship Waiver Requests: The Bureau of Engineering shall prepare a written report regarding the application for a hardship waiver for consideration by the Board. The report shall include all of the following:

1. A report prepared by the AGF applicant detailing the technical infeasibility of complying with the below grade requirement of this Section, if the AGF applicant alleges technical infeasibility as a basis for a hardship waiver.
2. A report prepared by the AGF applicant detailing the financial infeasibility of complying with the below grade requirement of this Section, including details on the estimated comparative cost of constructing the AGF above ground and below grade, and the expected return on investment or cost recovery time for the AGF, if the AGF applicant alleges financial infeasibility as a basis for a hardship waiver.
3. A detailed summary documenting all comments received by the Bureau of Engineering from those parties notified about the AGF application pursuant to Subsection VII.D.
4. A report prepared by the AGF applicant containing evidence of the investigation of all reasonable technological or site alternatives, including locations on private property as well as other locations in the Public Right-of-Way, and justification for not selecting any of those alternatives. At least two private property alternatives must be documented to satisfy this requirement.
5. A report prepared by the AGF applicant demonstrating that the proposed AGF satisfies the camouflage requirement of Subsection I.B.
6. A statement by Bureau of Engineering that the AGF applicant has completed all other requirements of this Section, including copies of any reports or comments from the Planning Department.

E. Above Ground Allowance: The AGF may be located above surrounding grade in the Public Right-of-Way in all locations not falling under the restrictions of Subsection I.A. All AGF applications for locations outside the below grade areas in Subsection 1.A shall be subject to all other applicable requirements of this Section.

II. **Permit Requirements for AGF Installations:**

A. Permits for AGF Installations Required: All AGF installations in the Public Right-of-Way must be pursuant to a permit issued by the Bureau of Engineering in accordance with the requirements of this Section and all other applicable provisions of this Code.

B. Requirements for Utilities: All excavations in and adjacent to streets require an excavation permit per LAMC Section 62.02. Entities that have the authority to occupy the Public Right-of-Way by virtue of a state granted certificate of Public Convenience and Necessity shall comply with the requirements of this Section and shall obtain a Utility Permit prior to the start of any AGF installation work. Compliance with the requirements of this Section shall be a condition of approval of any Utility Permit that includes an AGF installation.

C. Requirements for Non-Utilities: Entities that do not have state authority to occupy the Public Right-of-Way shall comply with the requirements of this Section and shall obtain a Revocable Permit and Excavation Permit prior to the start of any AGF installation work. Compliance with the requirements of this Section shall be a condition of approval of any Revocable and Excavation Permit that includes an AGF installation.

D. AGF Application Requirements: An AGF applicant may apply for one AGF installation, including all appurtenances, per Utility, Revocable, and/or Excavation Permit application. An application for an AGF installation permit shall be deemed complete upon submission of all of the following by the AGF applicant:

1. Site and landscaping plans to scale, elevation drawings, before installation photographs showing the location of the proposed AGF installation, renderings of the installed AGF with appurtenances including but not limited to power meter boxes, vent stacks, utility poles and surrounding landscaping elements. Also required are specifications and dimensions pertaining to existing street improvements, parkway alignment, proximity to buildings, view corridors, potential noise levels of all AGF equipment, and details necessary to determine compliance with the aesthetic and public safety requirements of this Section.

2. Identification of all structures, cabinets, electric power meters, or any other appurtenance proposed to be installed above the existing surrounding grade.

3. Proof of mailing of notice of the AGF application to all persons and organizations listed in Subsection VII.D.

4. All applicable City zoning regulations of adjoining lots and the number of existing AGFs in the City Block in which the AGF installation is proposed.

5. Documentation showing that all AGF designs have been approved by the Cultural Affairs Commission pursuant to Subsection IV.A.

6. The name, address, and contact phone number of the AGF applicant as well as the address of the proposed AGF installation.

7. A Graffiti Mitigation Plan as defined in Subsection IV.F.

8. A certification from the AGF applicant that all wireless transmission facilities that are included in the AGF installation will operate within all applicable FCC requirements, as amended from time to time.

9. If the proposed AGF installation is along a street where the adjoining land use is primarily residential, or will require either a hardship waiver of the below grade requirement pursuant to Subsection I.C, or a variance from the AGF volume and height limitations pursuant to Subsection IV.C, then the AGF applicant must also demonstrate that the proposed AGF satisfies the camouflage requirement of Subsection I.B.

10. All applicable hardship waiver and variance requests if a hardship waiver or a variance will be necessary for the proposed AGF installation.

11. All applicable permit fee deposits and hardship waiver and variance request deposits.

III. Permit Fees:

A. Deposit: A deposit in the amount of \$1,000.00 per AGF application shall be made by the AGF applicant to cover the cost of processing AGF applications prior to the start of permit processing. If charges by the Bureau of Engineering exceed the deposit amount, the AGF applicant shall be required to deposit additional funds to continue permit processing.

B. Hardship Waiver and Variance Request Deposit: Due to the additional time and effort required to review hardship waiver requests and variance requests, an additional \$1,000.00 deposit shall be submitted for each hardship waiver or variance request.

C. Charges: City staff time used to process permit applications containing AGF installations, hardship waiver requests, variance requests, and AGF mapping shall be charged to the AGF applicant.

IV. Aesthetic Requirements:

A. Cultural Affairs Commission Approval of AGF design: All AGF exterior designs shall be approved by the Cultural Affairs Commission prior to submission of an AGF application to the Bureau of Engineering. Once an AGF exterior design has been approved by the Cultural Affairs Commission, that design shall be deemed approved for purposes of all new AGF applications unless the Cultural Affairs Commission later revokes its previously granted approval. Approval of the location and placement of AGF installations using Cultural Affairs Commission approved AGF designs shall remain with the Bureau of Engineering and the Board pursuant to the provisions of this Section.

B. Visual Impact: The AGF applicant shall demonstrate that the proposed AGF installation site meets the aesthetic requirements of this Section as well as the camouflage requirement of Subsection I.B, if applicable. The AGF installation may not unreasonably interfere with streetscape views, view corridors existing within the Public Right-of-Way, views from neighboring lots, views from residential lots, or views from the Public Right-of-Way.

C. AGF Volume Threshold and Height Limits: The AGF shall have a maximum volume of thirty-six (36) cubic feet. The AGF volume shall include the combined volume of all cabinet enclosures that share a common foundation or platform. The AGF volume shall not include the volume of the foundation or platform supporting the cabinet that is above the existing, surrounding grade. The maximum AGF height shall be five and one-half (5 1/2) feet. The minimum AGF height shall be two and one half (2 1/2) feet. The Board may grant a variance from the AGF volume and height limitation if both of the following conditions exist:

1. Suitable measures consistent with the aesthetic requirements of this Section and the camouflage requirement of Subsection I.B sufficient to mitigate the excessive AGF volume or height.

2. The AGF applicant demonstrates that no financially or technically acceptable alternative exists that complies with the height and volume limits of Subsection IV.C.

D. Written Report on Variance Requests: The Bureau of Engineering shall process an application for a variance request within forty-five (45) days of submission. The 45-day deadline shall commence when Bureau of Engineering verifies the AGF application and variance request is accurate and complete. In cases where multiple variances are requested, the Bureau of Engineering may take up to five additional calendar days for each additional variance request. The Bureau of Engineering shall prepare a written report regarding the application for a variance for consideration by the Board. The report shall include all of the following:

1. A report prepared by the AGF applicant detailing the technical infeasibility of complying with the height and volume limits of Subsection IV.C, if the AGF applicant alleges technical infeasibility as a basis for a variance.
2. A report prepared by the AGF applicant detailing the financial infeasibility of complying with the height and volume limits of Subsection IV.C, including details on the estimated comparative cost of complying with the height and volume limits, and the expected return on investment or cost recovery time for the AGF, if the AGF applicant alleges financial infeasibility as a basis for a variance.
3. A detailed summary documenting all comments received by the Bureau of Engineering from those parties notified about the AGF application pursuant to Subsection VII.D.
4. A report prepared by the AGF applicant demonstrating that the proposed AGF satisfies the camouflage requirement of Subsection I.B.
5. A statement by Bureau of Engineering that the AGF applicant has completed all other requirements of this Section.

E. Parkway Alignment: AGF installations should be placed in proximity to and in line with existing utility poles, street light poles, street signs and other structures within the parkway to minimize the obstruction of views. AGF installations should not be placed in such an alignment if the installation blocks the line of sight for vehicles exiting adjacent alley intersections or driveways.

F. Landscape Considerations: For AGFs installed in a parkway, the AGF owner shall install landscaping immediately surrounding the AGF installation or restore any landscaping disturbed by the AGF installation. The installed or restored landscaping shall be consistent with the existing landscaping in the parkway. For AGFs installed in an area where no sidewalk exists, the AGF owner shall install landscaping immediately surrounding the AGF installation, and shall restore any landscaping disturbed by the AGF installation. All new

landscaping shall be installed and maintained for the purpose of screening the AGF, and to create an aesthetically pleasing appearance to minimize the visual impact of the AGF installation. An automatic irrigation system shall be installed or modified to sustain landscaping, when necessary, at the AGF owner's expense. If an automatic irrigation system is not feasible, the AGF applicant may submit an irrigation plan with the AGF application. The irrigation plan shall include manual watering intervals and a requirement to replace any landscaping that does not survive. All landscaping shall be installed and maintained in conformance with pedestrian passage requirements of this Section. At the City's discretion, the landscaping requirement may be waived for AGF installations located in existing full-width sidewalks, or if landscaping would otherwise be inconsistent with the surrounding area.

G. AGF Treatment and Graffiti Mitigation: AGF cabinets shall be a color similar to the existing surrounding landscape. The exterior of all AGF installations shall resist graffiti or be painted with anti-graffiti paint and be maintained in a "like-new" condition at all times. The AGF applicant shall submit a Graffiti Mitigation Plan detailing how the AGF owner will maintain the AGF installation free from graffiti and other defacements (i.e., stickers, posters). The Graffiti Mitigation Plan shall require AGF inspection at a minimum of four times each year and include identification of the resources dedicated to mitigating graffiti. Additionally, the Graffiti Mitigation Plan shall provide the name, mailing address, phone number, and E-mail address for a single point of contact responsible to resolve graffiti issues. The Graffiti Mitigation Plan shall clearly state that AGF surfaces shall be restored to their original exterior appearance.

H. AGF Installation Identifiers: For the purpose of active monitoring by City personnel, residents, and other telecommunications companies, the following information shall be clearly indicated on all AGFs:

1. A toll-free telephone number for the AGF owner.
2. The AGF registration number issued by the Bureau of Engineering pursuant to Subsection IX.F.

I. AGF Cabinet Foundations: Concrete pads for AGF cabinet installations shall be a color that is consistent with adjacent surrounding sidewalks. Concrete pads installed in full-width sidewalks, shall be constructed pursuant to design plan and shall join to the nearest score line of the existing concrete pavement. For installations where there is no existing sidewalk, concrete pads shall be an earth-tone color that is consistent with existing surrounding earth. Any slough walls constructed to protect an AGF installation shall be an earth-tone color consistent with the existing surrounding soil.

J. Density Threshold: The maximum number of AGF installations in the Public Right-of-Way per City Block shall be as follows:

1. For City Blocks in which the two adjacent intersections are less than 1,000 feet apart, the threshold is three.

2. For City Blocks in which the two adjacent intersections are equal to or greater than 1,000 feet apart, the threshold is three, plus a maximum of one additional AGF installation for every additional 250 feet of adjacent intersection separation.

3. In Parking zones (LAMC 12.12.1) and Industrial zones (LAMC 12.17.5 - 12.20), there is no AGF threshold per City Block.

Facilities exempt from the requirements of this Section shall not be counted in the number of AGF installations per City Block. The Board may grant a variance from the AGF density threshold per City Block at its discretion when the threshold is reached and when measures consistent with this Section mitigate the excessive number of AGF installations. AGF co-location may be required as a mitigation measure.

The Bureau of Engineering shall prepare a variance report for consideration of the AGF applicant's variance request by the Board. The Bureau of Engineering shall process an application for the variance request within forty-five (45) days of submission. The 45-day deadline shall commence when Bureau of Engineering verifies that the AGF application and the variance request are accurate and complete. In cases where multiple variances are requested, the Bureau of Engineering may take up to five (5) additional calendar days for each additional variance request.

V. Public Safety Requirements:

A. Major and Secondary Highway Pedestrian Passage: All proposed AGFs to be installed at a location along a Major Highway or Secondary Highway that includes an existing sidewalk shall be installed in sidewalks or parkways such that there is a minimum six (6) feet unobstructed distance between the edge of the AGF and the edge of the sidewalk for pedestrian and wheelchair passage. If the paved sidewalk is less than six (6) feet wide, additional concrete sidewalk shall be constructed to provide a minimum six (6) feet wide paved sidewalk between the edge of the AGF and the edge of the sidewalk.

B. Non-Major and Non-Secondary Highway Pedestrian Passage: All proposed AGFs to be installed at a location along a street other than a Major Highway or Secondary Highway that includes an existing sidewalk shall be installed in sidewalks or parkways such that there is a minimum four feet unobstructed distance between the edge of the AGF and the edge of the sidewalk for pedestrian and wheelchair passage. If the paved sidewalk is less than four (4) feet wide, additional concrete sidewalk shall be constructed to

provide a minimum four (4) feet wide paved sidewalk between the edge of the AGF and the edge of the sidewalk.

C. Pedestrian Passage Distances: All proposed AGFs to be installed at locations with no existing sidewalk pavement shall be installed in the parkway such that a four (4) feet unobstructed distance is provided for pedestrian passage by one of the following:

1. When there is no curb face, a minimum four (4) feet unobstructed distance between the edge of the AGF and the edge of the roadway, or
2. When there is a curb face, a minimum four (4) feet unobstructed distance between the edge of the AGF and the curb face.

D. Minimum Curb Face Distances: AGF installations shall have a minimum eighteen (18) inches unobstructed distance between the edge of the AGF and the curb face. In areas where no curb face exists, the AGF shall have a minimum four (4) feet unobstructed distance between the edge of the AGF and the edge of the roadway.

E. Vehicular Line of Sight and Sight Distance: AGF installations shall not be located in the "visibility triangle," defined as that portion of both Public Right-of-Way and private property located at any corner and bounded by the curb line or edge of roadway of the intersecting streets and a line joining the points on the curb or edge of roadway forty-five (45) feet from the point of intersection of the extended curb lines or edges of roadway. The AGF shall not be located adjacent to driveways and alley intersections where the AGF would reduce the sight distance for exiting vehicular traffic to less than two hundred feet.

F. Proximity to Buildings, Houses, and Structures: AGF installations shall not be located immediately in front of buildings, houses, structures, or public stairs such that the AGF causes a violation of ADA guidelines for pedestrian passage. AGF installations shall not obstruct pedestrian passage from private property to the Public Right-of-Way.

VI. Future Street Improvement Requirements: All AGF owners shall be responsible for the cost of relocation of AGF installations and appurtenant facilities in conflict with any future street improvements, street lighting changes, or driveway installations initiated by the City, unless the improvements are required as a condition of a permit issued to a developer.

VII. Permit Processing Requirements and Procedures:

A. Field Investigation Requirement: The Bureau of Engineering shall conduct a field investigation of proposed AGF installations in the following cases:

1. If the AGF application includes a request for a hardship waiver.
2. If the AGF application includes a request for a variance from the AGF volume, height, and/or density threshold limits.
3. If opposition to the AGF application is received by the Bureau of Engineering from any person or organization notified pursuant to Subsection VII.D.

In all other cases, the Bureau of Engineering, in its discretion, may conduct a field investigation of any proposed AGF installation on a case-by-case basis. The purpose of the field investigation shall be to determine the best AGF location consistent with the requirements of this Section, to consider the feasibility of locating the proposed AGF on private property, and to consider the feasibility of locating the AGF below surrounding grade.

B. Joint-Trenching Review Requirement: All AGFs that require trenching for the installation of substructure components shall be subject to joint trenching following a Utility Permit Joint-Trenching Review process:

1. Where the City or the AGF applicant becomes aware that two or more applicants propose construction in the same street or general vicinity. This requirement will be reviewed and evaluated by the Bureau of Engineering and modified based on Public Right-of-Way conditions.
2. AGF installations that qualify for joint-trenching shall modify their substructure designs to accommodate the trench alignment selected by the Bureau of Engineering.

C. Bureau of Engineering Approval: The Bureau of Engineering shall approve the AGF installation permit if the following conditions have been met: The Field Investigation Requirement and the Joint Trenching Review Requirement have been satisfied; the Board has approved all appropriate variances; the Board has granted a hardship waiver, if applicable, and the AGF application is in compliance with all other provisions of the this Section.

D. Notification of AGF Installation: For each proposed AGF installation, the AGF applicant shall notify, by mail, the following persons and organizations:

1. For any AGF that exceeds the height limit set forth in Subsection IV.C.:
 - a. Owners of lots within a radius of 250 feet from the proposed AGF location.

b. Residents of lots within a radius of 250 feet from the proposed AGF location.

c. Neighborhood Councils that include any lots within 250 feet from the proposed AGF location.

d. City Council Offices for the Council Districts that include any lots within 250 feet from the proposed AGF location.

e. Homeowners' and residents' associations when, to the reasonable knowledge of the AGF applicant, the proposed location of the AGF installation falls within the boundary of the homeowners' or residents' association. In order to determine whether any homeowners' or residents' associations are entitled to receive notice hereunder, the AGF applicant shall request information regarding homeowners' and residents' associations from the applicable Council Office.

2. For all other AGFs:

a. Owners of adjoining lots and abutting lots, on both sides of the street, to where the AGF is proposed to be located.

b. Residents of adjoining lots and abutting lots, on both sides of the street, to where the AGF is proposed to be located.

c. Neighborhood Councils that include any adjoining lots and abutting lots, on both sides of the street, to where the AGF is proposed to be located.

d. City Council Offices for the Council Districts that include any adjoining lots and abutting lots, on both sides of the street, to where the AGF is proposed to be located.

e. Homeowners' and residents' associations when, to the reasonable knowledge of the AGF applicant, the proposed location of the AGF installation falls within the boundary of the homeowners' or residents' association. In order to determine whether any homeowners' or residents' associations are entitled to receive notice hereunder, the AGF applicant shall request information regarding homeowners' and residents' associations from the applicable Council Office.

The notification shall include the location of the proposed AGF installation, and shall identify any variance or hardship waiver the AGF applicant is requesting under this Section. The notification shall also include information

regarding the proposed AGF installation, including before and after photographs or renderings showing the proposed AGF installation. A contact person and phone number for the AGF applicant shall also be listed. If the AGF applicant is requesting a hardship waiver or a variance, the notification shall also include the name, phone number and address for the Bureau of Engineering.

Following consideration of the AGF applicant's permit request by the Bureau of Engineering, the AGF applicant shall notify all persons and organizations listed in Subsection VII.D of the status of the AGF application. This notice shall include the Bureau of Engineering approval or disapproval of the AGF application. This notice shall also provide information detailing the AGF appeal process.

E. Appeal of a Bureau of Engineering Determination to the Board:

The Bureau of Engineering determination shall be subject to appeal by the AGF applicant and by the persons and organizations specified in Subsection VII.D.1.a, b, and e, and VII.D.2.a, b, and e pursuant to the procedures established in LAMC Section 62.10. If no appeals are submitted to the Bureau of Engineering within 14 calendar days of the date of notification, the Bureau of Engineering determination shall be final. The appeal of a Bureau of Engineering determination shall be heard by the Board. The Board shall determine whether the AGF application complies with the requirements of this Section. Subject to the City Council's right of review under Charter Section 245, the determination by the Board shall be final.

F. AGF Mapping: To facilitate the goals of this Section, the City shall make available information on City Specific Plans, Historical Preservation Overlay Zones, Historic Sites, Open Space Zones, Pedestrian Oriented Districts, Community Design Overlay Districts, and Scenic Highways. The City shall also provide online information showing all AGF installations, the AGF registration number assigned to the AGF installation, and other pertinent data. The area of mapping shall be limited to the boundaries of the City of Los Angeles.

G. Removal of Facilities: Facilities which have not served a customer for 90 days shall be deemed unused and removed in a timely manner. The cost of removal of an AGF installation shall be the responsibility of the AGF owner.

H. Expiration of AGF Approval: AGFs should be installed promptly following approval under this Section. Installation of an AGF approved under this Section shall commence within 2 years of approval, unless a shorter time is provided, which in no event shall be less than 6 months following issuance of the applicable Utility, Revocable, and/or Excavation Permit. Failure to commence installation of an AGF within the time allowed shall cause the AGF approval to expire.

VIII. Exemptions from the AGF Application Requirement:

A. Installations on Private Property: Facilities that are not located in the Public Right-of-Way are not subject to the requirements of this Section.

B. Installations Below Existing Grade: Facilities installed in the Public Right-of-Way that do not have a structure, cabinet, electric power meter, or other appurtenance above the existing surrounding grade shall be exempt from the requirements of this Section. Facilities installed below existing surrounding grade in the Public Right-of-Way shall be subject to all other applicable Utility, Excavation, and/or Revocable permit requirements.

C. Pole-Mounted and Public Facilities: Street light poles and street light pole-mounted facilities, fire hydrants, air/vacuum valves, traffic and pedestrian control fixtures, Utility Poles and Utility Pole-mounted facilities other than antennas and wireless communication devices, Small Cells, and Utility Pole-mounted antennas and wireless communication devices located in a commercial (CR and higher) or manufacturing (MR1 and higher) zone unless the Utility-Pole is in an area subject to the below grade requirement of Subsection I.A or where the lot adjoining the Utility Pole is primarily residential, are not subject to the requirements of this Section, but shall be subject to all other applicable requirements of law. Except as provided herein, the installation of antennas and wireless communication devices on Utility Poles are not exempt and shall be subject to the requirements of this Section.

D. Other: Power utility service antennas integrated into electric power devices (including, but not limited to, switches, transformers, fault locators, capacitors, reactors, meters, re-closers, circuit breakers, and fuses), water service AGFs, sampling taps, dissipaters, water control appurtenances associated with water regulator stations, water flow meters of all types, water valves, and vent stacks related to maintenance holes and vaults shall not be subject to the requirements of this Section, except for the pedestrian passage retrofit requirements in Subsection IX.B. These facilities shall be subject to other City permit requirements.

E. The below grade requirements of Subsection I.A shall not apply to electric power meters and to telecommunications tie-in facilities installed to comply with the requirements of that Subsection.

IX. Applicability to Existing AGF Installations:

A. Upgrade or Repair of Existing AGFs: All existing AGFs installed prior to the adoption of this Section that need to be upgraded or repaired, shall be subject to the requirements of this Section if the upgrade or repair causes the AGF volume or height to increase by more than ten percent (10%).

B. Pedestrian Passage Retrofit Requirement: All existing AGFs which were installed prior to the adoption of this Section, shall be modified, retrofitted, or relocated to provide a minimum three (3) feet of unobstructed distance for pedestrian and wheelchair passage except in the following areas:

1. Public Right-of-Way areas adjacent to MR1, M1, MR2, M2, and M3, as defined in LAMC Section 12.04.
2. Public Right-of-Way areas with no existing sidewalk pavement, or where the slope of the existing sidewalk is five percent (5%) or greater.
3. Hillside Areas, as defined by LAMC Section 12.03.

C. Annual Retrofit Limits: All existing non-compliant AGFs shall comply with Subsection IX.B within five (5) years of July 1, 2013. During any 12-month period, each individual company shall relocate twenty percent (20%) of its initial total non-compliant AGFs or thirty (30) non-compliant AGFs, whichever is greater, to comply with the pedestrian passage provisions of this Section. The Bureau of Engineering shall be responsible for coordinating with Council offices and City departments for prioritizing AGF relocation needs, with preference given toward locations with higher pedestrian traffic density or near public facilities, and submitting these requests to the respective companies. Upon notification from the City, an AGF owner shall have 180 days to complete the relocation.

D. Pedestrian Passage Compliance: Owners of existing AGFs shall be considered in compliance with the requirements of Subsection IX.B when the conditions of Subsection IX.C are met. In the event an AGF owner is in default with the conditions in Subsection IX.C, compliance with the requirements of Subsection IX.B shall take effect immediately and all provisions of this Section shall apply.

E. Graffiti Mitigation and Cabinet Identification: Existing AGFs shall be subject to all requirements stated in Subsections IV.E and IV.F. Compliance with the requirements of this Subsection shall be required no later than December 31, 2013.

F. AGF Locations: Owners of existing AGFs shall submit to the Bureau of Engineering a geographic location identifier (geocode) for all existing AGF installations within the City of Los Angeles. The Bureau of Engineering will issue a registration number for each such AGF. Compliance with the requirements of this Subsection shall be required no later than December 31, 2014. New AGFs will be assigned a registration number at the time the AGF installation permit is issued. A registration fee, established by the Board of Public Works, may be assessed to implement the provisions of this Section.

Sec. 3. Section 62.09 of the Los Angeles Municipal Code is hereby amended in its entirety to read as follows:

SEC. 62.09. FINE FOR NONCOMPLIANCE.

A. Any person that violates the LAMC Section 62.08 shall be subject to the monetary fines established by this Section.

B. Failure to Comply: The AGF owner shall be provided written notice that contains the location of the AGF installation, a description of the noncompliance, and a demand to comply within fourteen (14) calendar days of the written notice.

Failure by an AGF owner to take corrective action or respond within fourteen (14) calendar days shall result in the imposition of the fine for noncompliance. The following specific requirements of LAMC Section 62.08 shall be subject to the fine:

1. Failure to obtain a valid permit prior to the installation of an AGF pursuant to LAMC Section 62.08.II.A.

2. Failure to properly maintain landscaping designed to screen the AGF installation pursuant to LAMC Section 62.08.IV.D.

3. Failure to remove graffiti and posters from AGF cabinets pursuant to LAMC Section 62.08.IV.F.

4. Failure to properly maintain AGF cabinet paint or surface treatment pursuant to LAMC Section 62.08.IV.F.

5. Failure to remove unused AGF installations pursuant to LAMC Section 62.08.VII.G.

6. Failure to modify, retrofit, or relocate AGF installations that violate pedestrian passage requirements pursuant to LAMC Section IX.B.

An AGF owner shall be subject to a fine of \$500.00 per day, every calendar day for each AGF installation found to be in noncompliance with LAMC Section 62.08. The maximum cumulative fine for noncompliance shall be \$10,000.00 per AGF installation.

C. Excessive Noncompliance: In cases where a specific AGF installation is found to be noncompliant more than three (3) times, the AGF installation will be deemed in excessive noncompliance. This determination shall result in the placement of a hold on all current and future Utility, Revocable, and Excavation Permits issued to the AGF owner until corrective action is taken and a revised mitigation plan is approved by the Board.

Sec. 4. Section 62.10 of the Los Angeles Municipal Code is hereby amended in its entirety to read as follows:

SEC. 62.10. APPEAL FOR VIOLATION OF LAMC SECTION 62.08.

A. Pursuant to LAMC Section 62.08.VII.E, AGF owners, applicants and the persons and organizations specified in Subsection VII.D.1, 2 and 5 may appeal a Bureau of Engineering recommendation or determination regarding a proposed AGF installation. Such an appeal shall be filed with Bureau of Engineering, in writing, within fourteen (14) calendar days of the mailing date of the notification pursuant to LAMC Section 62.08.VII.D regarding the installation of an AGF. A fee of \$100.00 will be assessed to pay for the administrative costs required by the filing of the appeal.

B. Noncompliance Appeal: AGF owners cited for noncompliance may appeal the determination to the Board. Such appeals shall be submitted in writing within ten (10) calendar days of the written notice of noncompliance. No fee shall be charged to appeal a notice of noncompliance. If the maximum \$10,000.00 noncompliance fine is imposed and the AGF owner fails to comply with the written notice of noncompliance, the noncompliant AGF installation shall be subject to further action. Further action may include the immediate removal of the noncompliant AGF installation by the City at the direction of the Board. All costs incurred by City for such removal shall be reimbursed by the noncompliant AGF owner.

Sec. 5. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of _____.

HOLLY L. WOLCOTT, Interim City Clerk

By _____ Deputy

Approved _____

Mayor

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By 
EDWARD M. JORDAN
Assistant City Attorney

Date 6/4/14

File No. CF 09-2645