



REPORT TO CITY COUNCIL

DATE: JUNE 12, 2019

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER 

BY: DAVE WARD, COMMUNITY DEVELOPMENT DIRECTOR 

SUBJECT: ADOPTION OF ORDINANCE NO. 19-443 TO AMEND MUNICIPAL CODE ARTICLE VII REGARDING SMALL WIRELESS FACILITIES AND MAKING FINDINGS OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CASE NO. ZOA-01624-2019) (CITY OF AGOURA HILLS, APPLICANT)

At the City Council meeting of May 22, 2019, on a 5-0 vote, the City Council introduced, read by title only, and waived further reading of Ordinance No. 19-443 amending Article VII (Streets) to create Chapter 7: Small Wireless Facilities.

The Ordinance will establish the small wireless facility category and authority of a new "City Wide Policy Regarding Permitting Requirements And Development Standards For Small Wireless Facilities." No person shall construct, install, attach, operate, collocate, modify, reconstruct, relocate, remove, or otherwise deploy any small wireless facility in violation of such policy.

RECOMMENDATION

Staff respectfully recommends the City Council adopt Ordinance No. 19-443.

Attachment: Ordinance No. 19-443

ORDINANCE NO. 19-443

**AN ORDINANCE OF THE CITY OF AGOURA HILLS,
CALIFORNIA, REGARDING SMALL WIRELESS FACILITIES
AND ADDING A NEW CHAPTER 7 TO ARTICLE VII OF THE
AGOURA HILLS MUNICIPAL CODE REGARDING THE
SAME**

WHEREAS, on September 26, 2018, the Federal Communications Commission (“FCC”) adopted its Declaratory Ruling and Third Report and Order (“Report and Order”) relating to placement of small wireless facilities in public rights-of-way, and the Report and Order went into effect on January 14, 2019; and

WHEREAS, the Report and Order purports to give providers of wireless services rights to utilize public rights-of-way and to attach so-called “small wireless facilities” to public infrastructure, including infrastructure of the City of Agoura Hills, subject to payment of “presumed reasonable”, non-recurring and recurring fees, and the ability of local agencies to regulate use of their rights-of-way is substantially limited under the Report and Order; and

WHEREAS, notwithstanding the limitations imposed on local regulation of small wireless facilities in public rights-of-way by the Report and Order, local agencies retain the ability to regulate the aesthetics of small wireless facilities, including location, compatibility with surrounding facilities, spacing, and overall size of the facility, provided the aesthetic requirements are: (i) “reasonable”, i.e., “technically feasible and reasonably directed to avoiding or remedying the intangible public harm or unsightly or out-of-character deployments”; (ii) “objective”, i.e., they “incorporate clearly-defined and ascertainable standards, applied in a principled manner”; are (iii) published in advance. Regulations that do not satisfy the foregoing requirements are likely to be subject to invalidation, as are any other regulations that “materially inhibit wireless service”, (e.g., overly restrictive spacing requirements); and

WHEREAS, local agencies also retain the ability to regulate small wireless facilities in the public rights-of-way in order to more fully protect the public health and safety, ensure continued quality of telecommunications services, and safeguard the rights of consumers; and

WHEREAS, it is the intent of the City Council in adopting this Ordinance to supersede regulations of the City that conflict with the Report and Order, and to establish consistent regulations governing deployment of small wireless facilities in order to more fully protect the public health, safety, and welfare, and the City Council declares that it adopts this Ordinance with the understanding that the City expressly reserves all rights to re-enact and/or establish new regulations consistent with State and federal law as it existed prior to adoption of the Report and Order in the event the Report and Order is invalidated, modified, or limited in any way;

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF AGOURA HILLS ORDAINS AS FOLLOWS:

Section 1. Findings. The City Council finds that each fact set forth in the preceding recitals are true.

Section 2. A new Chapter 7 entitled "Small Wireless Facilities" is hereby added to Article VII ("Streets") of the Agoura Hills Municipal Code to read as follows:

"Chapter 7 – SMALL WIRELESS FACILITIES

7701. – Small Wireless Facilities

Notwithstanding any other provision of the Agoura Hills Municipal Code to the contrary, all small wireless facilities as defined by the FCC in 47 C.F.R. § 1.6002(l), as may be amended or superseded, shall be subject only to and must comply with the "Citywide Policy Regarding Permitting Requirements And Development Standards For Small Wireless Facilities" adopted by City Council resolution. No person shall construct, install, attach, operate, collocate, modify, reconstruct, relocate, remove, or otherwise deploy any small wireless facility in violation of such policy."

Section 3. CEQA. The City of Agoura Hills has determined that the adoption of this Ordinance is exempt from review under the California Environmental Quality Act ("CEQA") (California Public Resources Code Section 21000, et seq.), pursuant to State CEQA Regulation §15061(b)(3) (14 Cal. Code Regs. § 15061(b)(3)) covering activities with no possibility of having a significant effect on the environment. In addition, the City of Agoura Hills has determined that the ordinance is categorically exempt pursuant to Section 15301 of the CEQA Regulations applicable to minor alterations of existing governmental and/or utility-owned structures.

Section 4. Future Modifications. The City Council finds and declares that it is adopting this Ordinance in order to more fully protect and preserve the public health and safety with respect to City rights-of-way in light of the adoption of the Report and Order. Notice is hereby given to any and all wireless providers obtaining a permit pursuant to the Agoura Hills Municipal Code as amended herein, that the City expressly reserves any and all rights it possessed prior to the adoption of the Report and Order concerning its authority to regulate its public rights-of-way. In the event the Report and Order is invalidated, modified, or limited in any way, the City Council reserves the right, subject to reasonable notice and due process, to modify the terms and conditions applicable to any permit issued hereunder including, but not limited to, the term, fees charged, and scope of any future wireless deployments within the City's rights-of-way.

Section 5. Severability. If any sections, subsections, sentence, clause, or phrase of the Chapter adopted by this Ordinance is for any reason held to be invalid or unconstitutional by the decision or legislation of any court of competent jurisdiction, or by reason of preemptive legislation, such decision or legislation shall not affect the validity of the remaining portions of the Chapter. The City Council declares that it would have

passed this Ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more of the sections, subsections, sentences, clauses, or phrases thereof is declared invalid or unconstitutional.

Section 6. Publication and Certification. The City Clerk shall certify the adoption of this Ordinance and cause it to be published in the manner required by law.

PASSED, APPROVED, AND ADOPTED, this 12th day of June, 2019, by the following vote to wit:

AYES: ()
NOES: ()
ABSENT: ()
ABSTAIN: ()

Linda L. Northrup, Mayor

ATTEST:

Kimberly M. Rodrigues, MMC, City Clerk

APPROVED AS TO FORM:

Candice K. Lee, City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS
CITY OF AGOURA HILLS)

I, Kimberly M. Rodrigues, City Clerk of the City of Agoura Hills, California, do hereby certify that the foregoing is a full, true, and correct copy of **Ordinance No. 19-443** approved and adopted by the City Council of the City of Agoura Hills at a Regular City Council Meeting thereof held on the ____ day of ____, 2019, and that said Ordinance was published or posted pursuant to law.

Kimberly M. Rodrigues, MPPA, MMC
City Clerk