
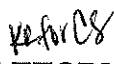
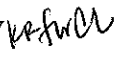


## REPORT TO CITY COUNCIL

**DATE:** OCTOBER 14, 2009

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** GREG RAMIREZ, CITY MANAGER 

**BY:** CRAIG A. STEELE, CITY ATTORNEY   
CANDICE K. LEE, ASSISTANT CITY ATTORNEY 

**SUBJECT:** MORATORIUM ORDINANCE – WIRELESS TELECOMMUNICATIONS FACILITIES

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The purpose of this item is for the City Council to consider an interim urgency zoning Ordinance of the City of Agoura Hills, enacted pursuant to California Government Code Sections 36934, 36937, and 65858, establishing a temporary moratorium on the approval of specified permits for the installation of wireless facilities in the City. This urgency Ordinance would adopt an interim moratorium for 45 days prohibiting the installation of wireless facilities throughout the City while the City undertakes a study to review the City's current codes and update them once it is determined what conditions and standards are applicable.

The City has received inquiries regarding the installation of wireless facilities in the City. At present, wireless communication facilities are only permitted on private property in the City's Business Park zoned areas subject to the issuance of a Conditional Use Permit.

State and Federal law continues to evolve regarding the installation of wireless facilities and the City must now consider a comprehensive ordinance to lawfully regulate the installations. Prior to a recent 9th Circuit decision, (*Sprint Telephone PCS, L.P. v. County of San Diego* (2008) 543 F.3d 571), a key provision of the Federal Telecommunications Act had been interpreted in a manner that severely limited local authority in regulating the installation of wireless facilities. The 9th Circuit decision has overturned those prior court interpretations, making it harder for wireless companies to challenge local regulations in federal court. Legal challenges to local regulation of wireless facilities based on state law are currently pending.

Based on increasing requests for placement of wireless facilities in the City, it has become apparent that more time is needed to consider regulation of wireless communication facilities. Proliferation of wireless facilities in the City, without proper controls, pose a current and immediate threat to public health, safety and welfare. While Staff studies potential regulatory controls for installations in parkways and to allow Staff time to prepare a comprehensive ordinance, a moratorium is urgently needed to preserve the public health, safety and welfare.

The proposed moratorium ordinance is a way to preserve the *status quo* for a brief period while the City studies ways to protect public health, safety and welfare. Without this urgency ordinance, installation of wireless facilities in the City could have the following adverse public health, safety and welfare affects:

- Create land use incompatibilities including excessive height of poles and towers;
- Create visual and aesthetic blight and potential safety concerns arising from excessive size, height, or lack of camouflaging of Wireless Facilities and their associated pedestals, meters and equipment boxes;
- Create visual and aesthetic blight and potential safety concerns by failing to capitalize on alternative technologies, co-location opportunities, and protocols for investigating the feasibility of alternative installation locations and configurations;
- Create traffic and pedestrian safety hazards due to unsafe location of poles, towers, equipment boxes or other materials or construction related to Wireless Facilities;
- Create operational conflicts with other land uses, facilities, or utility systems authorized or existing on the same or adjacent sites; or
- Create operational conflicts with other land use or facilities authorized or existing on the same or neighboring sites; or
- Deteriorate the quality of life in a particular community or neighborhood.

State law specifically allows cities to adopt interim moratoria in situations exactly like this one. The purpose of a moratorium is to ensure that installation of wireless facilities that would be inconsistent with the actions and programs the City is considering do not occur before the City is able to complete its planning process. As prospective wireless providers become aware that the City is contemplating different ways of regulating such installations, they may decide to secure approvals and encroachment permits in the interim to avoid being subject to the new rules. A moratorium will avoid that potential conflict. The proposed moratorium will apply to any new applications that are submitted during the moratorium period, but not to currently pending applications that are not yet complete for review by the Planning Commission

This moratorium, which is applicable to any new applications submitted after the effective date of the urgency ordinance, would prevent the issuance of discretionary or ministerial permits for the installation, augmentation and relocation of wireless facilities in the City for a period of 45 days. During that 45-day period, the City Council will hold a public hearing to determine whether to extend the moratorium or allow it to expire. Ultimately, the moratorium has a maximum life of up to two years after adoption. The proposed moratorium is presented as an urgency ordinance, to take effect immediately upon adoption.

After discussion, at the Council's pleasure, your options are to either adopt the ordinance by 4/5 vote or take no action. The ordinance will take effect immediately, if adopted, for a period of 45 days. A public hearing and further consideration of this matter will occur before the expiration of 45 days.

## **RECOMMENDATION**

Staff recommends the City Council adopt the urgency interim moratorium ordinance. If the City Council concurs with the staff recommendation, the appropriate action would be to make a motion to read by title only and adopt urgency Ordinance No. 09-369U.

Attachments: Ordinance No. 09-369U  
Memorandum dated October 2009 – Wireless Telecommunications Ordinance

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**ORDINANCE NO. 09-369U**

**AN INTERIM ZONING ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF AGOURA HILLS ADOPTED AS AN URGENCY  
MEASURE ESTABLISHING A TEMPORARY MORATORIUM ON  
THE APPROVAL OF PERMITS FOR THE INSTALLATION OF  
WIRELESS TELECOMMUNICATIONS FACILITIES IN THE CITY  
AND ADOPTING FINDINGS OF URGENCY**

**THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA,  
DOES ORDAIN AS FOLLOWS:**

**Section 1. Legislative Body Findings.** The City Council of the City of Agoura Hills, as the legislative body of the City, makes the following findings in support of the immediate adoption and application of this interim zoning ordinance as an urgency ordinance regulating land use within the City of Agoura Hills.

A. The City of Agoura Hills ("City") has adopted a Land Use Element to its General Plan and a Zoning Code (Chapter 17 of the Agoura Hills Municipal Code) pursuant to its police powers to protect the public health, safety and welfare. The Land Use Element sets forth policies and goals toward the protection of the character of Agoura Hills's residential neighborhoods and historic areas, and the promotion of high quality urban design in commercial and industrial areas which is compatible with Agoura Hills's unique character and in context with surrounding development. Section 9312.2 of the Agoura Hills Municipal Code currently governs the City's regulation of wireless telecommunications facilities.

B. State and federal law permitting land regulation of Wireless Facilities continues to evolve. In *Sprint Telephone PCS, L.P. v. County of San Diego* (2008) 543 F.3d 571 ("*Sprint*"), the Ninth Circuit Court of Appeals recently overruled the last seven years of Ninth Circuit jurisprudence relating to 47 U.S.C. § 253, a key provision of Federal Telecommunications Act that, until the ruling in *Sprint*, had been interpreted in a manner that severely limited local authority to regulate the installation of Wireless Facilities. Under state law, wireless service providers claim that California Public Utilities Code Sections 7901 and 7901.1 gives them the right to install wireless communication facilities in the City even in residential zones.

C. In recent months the City has experienced a significant increase in the number of inquiries and applications for the installation of wireless antenna and associated facilities (collectively "Wireless Facilities") in the City. The term Wireless Facilities, as used herein, shall include the following and any functionally equivalent telecommunication services:

- (1) Cellular radiotelephone services (47 C.F.R. Part 22);
- (2) Personal communication services (47 C.F.R. Part 24); and
- (3) Private land mobile radio services-specialized mobile radio services (47 C.F.R. Part 90).

D. Given the increasing use of business and personal devices relying on Wireless Facilities in society today, the City expects to continue to receive applications for permits for Wireless Facilities in the City: (1) in an increasing number; and (2) which facilities are significantly larger than most similarly situated on existing installations.

E. The proliferation of applications for the installation of Wireless Facilities in the City, particularly those in and adjacent to residential zones, was not fully anticipated at the time the City established its existing regulatory structure for the approval of Wireless Facilities. As a result, an immediate need exists to explore regulatory options that are consistent with state and federal law, as well as the Agoura Hills General Plan, for better managing and minimizing the safety, aesthetic, co-location, and additional rights-of-way management issues implicated by the potential proliferation of Wireless Facilities in those areas of the City and to safeguard against the intrusion of incompatible and potentially disruptive uses that cause blight. Such regulatory controls include, without limitation, restrictions on the placement of monopoles, height limitations on wireless antenna, co-location requirements, equipment undergrounding requirements, appropriate camouflaging, use of opportunities maps to highlight preferred locations, justification study requirements, and the imposition of a performance bond to cover equipment removal.

F. To accomplish this, the City Council intends to impose, on an urgency basis, a temporary moratorium on the issuance of discretionary or ministerial permits for the installation, augmentation or relocation of Wireless Facilities within the City so that City staff, the City Council, and the citizens of the City will have sufficient time to consider a comprehensive ordinance lawfully regulating the installation, augmentation and relocation of Wireless Facilities in the City. The preparation of such an ordinance, together with the necessary public outreach, legal research, and City processes for consideration of such enactments will require, at a minimum, forty-five (45) days.

G. There is a current and immediate threat to public health, safety and welfare because, without this urgency ordinance, Wireless Facilities could be installed, constructed or modified in the City without conforming to the City's full intention to protect residential neighborhoods and the City's urban design and minimize disruption to residential neighborhoods and other land uses caused by the proliferation of Wireless Facilities. Without this urgency ordinance, Wireless Facilities could have the following effects:

- (1) Create land use incompatibilities including excessive height of poles and towers;
- (2) Create visual and aesthetic blight and potential safety concerns arising from excessive size, height, or lack of camouflaging of Wireless Facilities and their associated pedestals, meters and equipment boxes;
- (3) Create visual and aesthetic blight and potential safety concerns by failing to capitalize on alternative technologies, co-location opportunities, and protocols for investigating the feasibility of alternative installation locations and configurations;

- (4) Create traffic and pedestrian safety hazards due to unsafe location of poles, towers, equipment boxes or other materials or construction related to Wireless Facilities;
- (5) Create operational conflicts with other land uses, facilities, or utility systems authorized or existing on the same or adjacent sites; or
- (6) Create operational conflicts with other land use or facilities authorized or existing on the same or neighboring sites; or
- (7) Deteriorate the quality of life in a particular community or neighborhood.

H. Under state law, the City may adopt an interim ordinance that imposes a temporary moratorium on the approval of applications while contemplated zoning and permitting proposals are being considered. Pursuant to California Government Code Section 65858(a), this urgency interim ordinance must be adopted by not less than a four-fifths vote of this City Council and will be in effect for forty-five (45) days from its adoption. The City Council may consider extension of this interim ordinance, pursuant to all legal requirements, if necessary.

I. The City recognizes its responsibilities under the Federal Telecommunications Act of 1996 and state law, and believes that it is acting consistent with the current state of the law in ensuring that irreversible development activity does not occur that would harm the public health, safety, or welfare. The City does not intend that this ordinance prohibit or have the effect of prohibiting telecommunications service; rather, it is a short-term suspension on new facilities until appropriate regulations can be adopted so that the installation, augmentation and relocation of Wireless Facilities in the City are conducted in such a manner as to lawfully balance the legal rights of applicants under the Federal Telecommunications Act and the California Public Utilities Code while, at the same time, protect to the full extent feasible against the safety and land use concerns described herein.

**Section 2. Adoption as Urgency Interim Zoning Ordinance.** This ordinance is adopted as an urgency interim zoning ordinance pursuant to the provisions of Government Code Sections 36934, 36937 and 65858(a), and shall be effective immediately upon its adoption. Based upon the findings set forth in Section 1 of this ordinance, the City Council finds and determines that the adoption of this ordinance as an urgency ordinance is necessary for the immediate preservation of the public peace, health or safety pursuant to the requirements of Government Code Sections 36934 and 36937, and is necessary to protect the public safety, health, and welfare pursuant to the requirements of Government Code Section 65858(a).

**Section 3. CEQA.** The City Council hereby finds, in the exercise of its independent judgment and analysis, that this ordinance is exempt from the California Environmental Quality Act of 1970 ("CEQA"), as amended, because it can be seen with certainty that this urgency ordinance has no likelihood of causing a significant negative effect on the environment and accordingly both the City Council's action of adopting this ordinance and the effects derivative from that adoption are exempt from the application of the CEQA, pursuant to Section 15061(b)(3) of the State CEQA Guidelines (14 Cal. Code Regs. § 15061(b)(3)). The City Council further finds, in the exercise of its independent judgment and analysis, that the adoption

of this urgency ordinance is exempt from CEQA, pursuant to Section 15060(c)(2) of the State CEQA Guidelines (14 Cal. Code Regs. § 15060(c)(2)), because it will not result in a direct or reasonably foreseeable indirect physical change in the environment. These findings are premised on the fact that the adoption of this urgency interim ordinance will maintain the current environmental conditions arising from the current land use regulatory structure as adopted by the City without change or alteration. A Notice of Exemption has been completed in compliance with CEQA and CEQA Guidelines.

**Section 4. Applicability.** Notwithstanding any provision of the Agoura Hills Municipal Code, including Section 9312.3, or any other ordinance of the City, this ordinance shall apply to all new applications submitted to the City after the effective date of this Ordinance for the installation and/or augmentation of Wireless Facilities within the City. This ordinance is additional to and supplemental to, and shall not affect, except as specifically provided herein, any provision of the Agoura Hills Municipal Code, which shall be operative and remain in full force and effect without limitation with respect to all other requests for installation, augmentation or relocation of Wireless Facilities that are not within the City covered by this ordinance.

**Section 5. Temporary Moratorium.**

A. Within all the City, there shall be a temporary moratorium in effect, commencing on the effective date of this ordinance, prohibiting any approval, including but not limited to zone clearances, variances, conditional use permits, encroachment permits, special use permits, planned development permits, building permits, electrical, mechanical, or plumbing permits, or use and occupancy permits, for any installation, augmentation or relocation of any Wireless Facilities, or any combination thereof, including, without limitation, new or existing co-location sites, except those described in Section 6 of this Ordinance, notwithstanding other existing Zoning or Municipal Code provisions and regulations of the City. This temporary moratorium shall not apply to Conditional Use Permit applications that were submitted prior to the effective date of this Ordinance and any subsequent ministerial approvals associated with each of these Conditional Use Permit applications.

B. Except to the extent otherwise prohibited by law, this temporary moratorium is not intended to, and does not, affect the acceptance and/or processing of permit applications for any and all Wireless Facilities described in Section 5(A); rather, it is intended to, and does, prohibit only the issuance of approvals and permits for such Wireless Facilities. City staff is hereby directed to accept applications for Wireless Facility installations, augmentations or relocations, or combination thereof, received after the effective date of this ordinance. At a Wireless Facility applicant's written request, the City shall continue to process applications for permits or approvals relating to Wireless Facilities during the term of this moratorium; however, any new standards for such Wireless Facilities and the permitting thereof which are adopted during the moratorium and are effective at the expiration of the moratorium shall nevertheless apply to such applications. Any time limits or mandatory approval time frames relative to the processing and/or action upon permit applications for any and all Wireless Facilities described in Section 5(A) are tolled during the term of this moratorium.



**Section 6.** The provisions of this ordinance shall not apply to:

A. Wireless Facilities in the same location as existing Wireless Facilities, which are required to repair, replace, or maintain such facilities, provided that the new Wireless Facilities are substantially the same in size, shape, color, and exterior material.

B. Any Wireless Facilities exempted from this ordinance by federal or state law.

**Section 7. Severability.** If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

**Section 8. Planning Studies.** City staff shall promptly commence the studies they may deem necessary and appropriate to make a recommendation to this City Council regarding the structuring of zoning and other necessary regulatory controls over the installation, augmentation, relocation and operation of Wireless Facilities in the City to cause such land uses to be beneficial land uses rather than uses that are detrimental to or cause blight to occur within the City of Agoura Hills. City staff shall prepare and submit for City Council adoption, at least ten (10) days prior to the expiration of this ordinance, or any extension hereof, a written report describing the measures taken to alleviate the conditions which led to the adoption of this ordinance.

**Section 9. Extension of Time.** The Director of Community Development and the City Clerk's office shall undertake all actions legally necessary to extend this interim ordinance in the event the studies and reports desired by this City Council will not be concluded on or before the forty-fifth (45<sup>th</sup>) day subsequent to the adoption of this interim ordinance.

**Section 10. Effective Date.** This ordinance shall take effect immediately upon its passage. It shall be of no further force or effect 45 days from the date of adoption unless extended following a public hearing, as provided in Government Code Section 65858.

**Section 11. Certification.** The City Clerk of the City of Agoura Hills shall certify to the passage and adoption of this ordinance and shall cause the same or a summary thereof to be published and posted in the manner required by law.

**PASSED, APPROVED, and ADOPTED** this 14th day of October 2009, by the following vote to wit:

AYES: (0)  
NOES: (0)  
ABSTAIN: (0)  
ABSENT: (0)

BY: ✓

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Denis Weber, Mayor

ATTEST:

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Kimberly M. Rodrigues, City Clerk

APPROVED AS TO FORM:

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Craig A. Steele, City Attorney

## MEMORANDUM

**DATE:** OCTOBER 14, 2009

**TO:** GREG RAMIREZ, CITY MANAGER

**FROM:** MIKE KAMINO, DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT

**SUBJECT:** WIRELESS TELECOMMUNICATION ORDINANCE

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On October 14, 2009, the City Council will be considering an urgency measure regarding a moratorium on wireless telecommunications facilities in the City of Agoura Hills. The moratorium would allow time for staff to conduct a comprehensive analysis of the issues surrounding wireless telecommunications facilities. The City's current ordinance provisions addressing wireless telecommunications facilities was adopted in 1995 and allows such facilities basically in the City's Business Park zoned area subject to the issuance of a Conditional Use Permit. The proliferation of such facilities, the advancements in wireless technology and services, the increasing demand for wireless telecommunication services and devices, changes to state and federal laws, and the need for staff to make interpretations in the past, has led to a situation where it is timely and appropriate to conduct a comprehensive re-evaluation of the City's current regulations at this time. The goal is to have an ordinance in place that establishes comprehensive and objective criteria for placement, permitting process, design, and maintenance of wireless telecommunications facilities in the City of Agoura Hills.

On September 23, 2009, the City Council conducted a continued public hearing on T-Mobile's CUP application for a wireless telecommunication facility at Lindero Canyon Middle School. The proposed moratorium will apply to any new applications that are submitted during the moratorium period, but will not apply to T-Mobile's application or to currently pending applications that are not yet complete for review by the Planning Commission. At the September 23 meeting, the Council continued the T-Mobile item to October 28 in order for staff to conduct a technical analysis of the propagation maps and to provide a planning analysis of the alternative sites presented by T-Mobile. Staff is working towards having the requested information for the October 28 City Council meeting.

T-Mobile's alternative site analysis consisted of eight locations. These options can be categorized into three basic groups for potential entitlement purposes as listed below. At this time, staff would like to provide the Council with the following information limited solely to possible legislative and administrative changes that would be necessary regarding these alternative sites. As stated earlier, the technical analysis associated with the feasibility of T-Mobile's alternative sites will be brought back at the October 28 meeting.

Open Space Areas – Properties currently zoned open space would require a 2/3 majority of the public vote in order to add wireless telecommunications facility as an allowed or conditionally permitted use in those areas. The same public vote process would hold true for a General Plan Amendment and Zone Change to Business Park where wireless telecommunications facilities are currently allowed through a CUP. The City Council would call for such ballot measure to be placed either as a special election or as part of a regularly scheduled election. If such a measure is approved, it is likely that a CUP could be required for the review and entitlement of each wireless telecommunications facility.

Areas Not Allowed – T-Mobile's alternatives analysis listed a number of locations in areas currently not zoned for wireless telecommunications facilities. In order to allow wireless telecommunications facilities in these areas, the approval of a Zoning Ordinance Amendment to expand the list of conditionally permitted uses to include wireless telecommunications facilities in the respective underlying zones would be necessary. The process would entail a public hearing by the Planning Commission for recommendation to the City Council. The Council will hold another public hearing for adoption. CEQA analysis would be part of this legislative action. The process for the legislative changes alone could take three to six months. Upon adoption of the legislative change, separate entitlement permits would be reviewed through the CUP process. Visual impacts could be considered as part of the CUP process. Any increases in request for height beyond what is allowed by the ordinance would require a variance, unless the underlying legislative changes include an amendment to the current height limitation.

Rights-of-Way – Wireless providers, as a public utility, have the right to attach antennas to existing poles in the public right-of-way without a CUP. They would need to obtain permission of the owner of the poles, such as Edison or the phone company. T-Mobile's representative indicated at the last Council meeting that antennas are typically attached to the top of such poles which would add to the visual mass and height to the pole. Typically more poles are needed to achieve similar coverage as a stand alone facility. It is not known where the accessory mechanical equipment on existing poles will be placed. NextG Networks of California, Inc. (NextG) is a wireless communication infrastructure company which provides communications infrastructure for wireless service providers. The City entered into an agreement with NextG in 2005 for use of the City's public rights-of-way. A CUP is not necessary for a wireless provider to use NextG's infrastructure. It is not known at this time whether T-Mobile has explored NextG as a viable option from a coverage standpoint or if NextG's infrastructure is compatible with T-Mobile's technical requirements.

The questions that were brought forth by Council as part of T-Mobile's alternatives analysis are examples of the issues that will be addressed as part of the new wireless telecommunication ordinance. During the moratorium period, staff will be conducting a more comprehensive, City-wide analysis of the wireless telecommunications ordinance. Development of the new ordinance would involve input from various city departments, the City Attorney, and outside technical consultants. While there will be various components of the ordinance addressing such criteria as type, location, process, height,

design, and maintenance, the new ordinance will be prepared and adopted in a comprehensive fashion.

The initial urgency measure for consideration by the City Council on October 14 is for 45 days. If approved, the moratorium would begin on October 14, 2009. Pursuant to the provisions of the Government Code, staff will be returning to the Council on November 10, 2009, at a noticed public hearing, to request an additional extension of up to one year in order to provide the time necessary to complete the new wireless telecommunications ordinance. Staff anticipates the new ordinance to be completed in less than one year.