

ORDINANCE NO. 09-370U

AN EXTENSION OF THE INTERIM ZONING ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, ADOPTED AS AN URGENCY ORDINANCE ESTABLISHING A TEMPORARY MORATORIUM ON THE APPROVAL OF WIRELESS TELECOMMUNICATIONS FACILITIES IN ANY ZONING DISTRICT WITHIN THE CITY

The City Council of the City of Agoura Hills, California, hereby ordains 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 adoption and application of this interim urgency zoning ordinance extension regulating wireless telecommunications facilities 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’ residential neighborhoods and historic areas, and the promotion of high quality urban design in commercial and industrial areas that is compatible with Agoura Hills’ 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 telecommunications 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. Section 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 telecommunications 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 communications facilities”) in the City. The term wireless communications facilities, as used herein, shall include the following and any functionally equivalent telecommunications 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 businesses and personal devices relying on wireless communications facilities, the City expects to continue to receive applications for permits for wireless telecommunications facilities in the City: (1) in an increasing number; and (2) for which facilities are significantly larger than most similarly situated on existing installations.

E. The City staff has initiated studies it deems 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 telecommunications 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, but those studies have not yet been completed. The proliferation of applications for the installation of wireless telecommunications facilities in areas of 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 telecommunications facilities. It is necessary for the City of Agoura Hills to continue to study the potential impacts such facilities may have on the public health, safety and welfare in order to:

- (1) Fully understand the impact associated with the installation of wireless telecommunications facilities in the City;
- (2) 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 management issues implicated by the potential proliferation of wireless telecommunications facilities in those areas of the City; and
- (3) 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. In order that this may be accomplished, the City Council intends to extend the moratorium on the issuance of discretionary or ministerial permits for the installation, augmentation or relocation of wireless telecommunications 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 telecommunications 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, ten (10) months and fifteen (15) days.

G. Under state law, the City may twice extend an interim ordinance that imposes a temporary moratorium on the approval of applications while contemplated zoning and permitting proposals are being considered upon a finding that there is a current and immediate threat to the

public health, safety, or welfare. Pursuant to California Government Code Section 65858(a), this first extension of the interim ordinance must be adopted by not less than a four-fifths vote of this City Council and will be in effect for an additional ten (10) months and fifteen (15) days from its adoption. The City Council may consider one additional one-year extension of the interim ordinance, pursuant to all legal requirements, if necessary.

H. There is a current and immediate threat to public health, safety and welfare, because, without this interim ordinance extension, wireless communications 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 communications facilities. Without this interim ordinance extension, wireless communications facilities could have the following effects:

- (1) Create land use incompatibilities, including excessive height of poles and towers;
or
- (2) Create visual and aesthetic blight and potential safety concerns arising from excessive size, height, or lack of camouflaging of wireless communications facilities and their associated pedestals, meters and equipment boxes; or
- (3) Create visual and aesthetic blight and potential safety concerns by failing to capitalize on alternative technologies, co-location opportunities, and protocols for investigation the feasibility of alternative installation locations and configurations;
or
- (4) Create traffic and pedestrian safety hazards due to unsafe location of poles, towers, equipment boxes or other materials or construction related to wireless communications facilities; or
- (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.

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 this ordinance extension to 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 telecommunications 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.

J. At its meeting on October 14, 2009, the City Council adopted Ordinance 09-369U, an urgency measure establishing a temporary moratorium on the approval of permits for the installation of wireless telecommunications facilities in the City, and adopted associated findings of urgency. Said ordinance was adopted 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 communications facilities in the City. Said ordinance was effective immediately upon its adoption and remains in effect for a period of forty-five (45) days, pursuant to Government Code Sections 36934, 36937, and 65858(a).

K. Pursuant to Government Code Section 65858, Section 9 of Ordinance 09-369U, adopted by the City Council, directs the Director of Planning and Community Development and the City Clerk's office to undertake all actions legally necessary to extend the interim urgency ordinance in the event the studies and reports desired by the City Council would not be concluded on or before the forty-fifth (45th) day subsequent to the adoption of the interim urgency ordinance. Under state law, the interim ordinance may be extended by adoption by not less than a four-fifths vote of this City Council.

L. The Planning and Community Development Director and City Clerk find that additional time is needed to prepare the necessary studies and reports in order to consider a comprehensive ordinance lawfully regulating the placement, permitting process, design and maintenance of wireless communications facilities in the City, pursuant to Government Code Section 65858.

M. Pursuant to Government Code Section 65090, a duly noticed public hearing was held on November 10, 2009 at 7:00 p.m. in the City Hall Council Chambers, 30001 Ladyface Court, Agoura Hills, California. Notice of the time, date, place and purpose of the aforesaid hearing was duly given.

N. Evidence, both written and oral, was duly presented to and considered by the City Council of the City of Agoura Hills at the aforesaid public hearing.

Section 2. Adoption as Interim Zoning Ordinance. This ordinance is adopted as an interim zoning ordinance, extending Ordinance 09-369U, pursuant to the provisions of Government Code Section 65858, and shall be effective immediately upon adoption for a period of ten (10) months and fifteen (15) days. 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 interim urgency zoning ordinance is necessary for the immediate preservation of the public peace, health or safety pursuant to the requirements of Government Code Section 65858(a), and is necessary to provide additional time to prepare the necessary studies and reports in order to consider a comprehensive ordinance lawfully regulating the placement, permitting process, design and maintenance of wireless communications facilities in the City.

Section 3. CEQA Compliance. It can be seen with certainty that this interim urgency ordinance extension 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 found to be exempt from the application of the California Environmental Quality Act of 1970 (CEQA), as amended, pursuant to Section 15061(b)(3) of the State CEQA Guidelines (Title 14 CCR. 15061.(b)(3).) This finding is premised on the fact that the adoption of this interim urgency ordinance extension 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 communications 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 telecommunications 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, or use and occupancy permits, for any installation, augmentation, or relocation of any wireless telecommunications facility, 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 telecommunications facilities described in Section 5(A); rather, it is intended to, and does, prohibit only the issuance of approvals and permits for such wireless telecommunications facilities. City staff is hereby directed to accept applications for wireless telecommunications facilities installations, augmentations or relocations, or combination thereof, received after the effective date of this ordinance. At a wireless telecommunications facility applicant's written request, the City shall continue to process applications for permits or approvals relating to wireless telecommunications facilities during the term of this moratorium; however, any new standards for such wireless telecommunications 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 communications 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 telecommunications facilities in the same location as existing wireless communications facilities, which are required to repair, replace, or maintain such facilities, provided that the new wireless telecommunications facilities are substantially the same in size, shape, color, and exterior material.

B. Any wireless telecommunications 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 it 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 telecommunications 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 thereof, a written report describing the measures taken to alleviate the conditions that led to the adoption of this ordinance.

Section 9. Extension of Time. The City Attorney and the City Clerk shall undertake all actions legally necessary to extend for a second time this interim ordinance in the event the studies and reports desired by this City Council will not be concluded on or before the tenth (10th) month and fifteenth (15th) day subsequent to the adoption of this interim ordinance, pursuant to the provisions of Government Code Section 65858(b).

Section 10. Effective Date. This ordinance shall take effect immediately upon its passage. It shall be of no further force or effect ten (10) months and fifteen (15) days from the date of adoption, unless extended pursuant to Section 9 of this ordinance.

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 10th day of November, 2009 by the following vote:

AYES:	(5) Weber, Koehler, Edelston, Kuperberg, Schwarz
NOES:	(0)
ABSENT:	(0)
ABSTAIN:	(0)

Denis Weber, Mayor

ATTEST:

Kimberly M. Rodrigues, MMC, City Clerk

APPROVED AS TO FORM:

Craig A. Steele, City Attorney