

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 (45th) 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: (4) Koehler, Edelston, Kuperberg, Schwarz
NOES: (0)
ABSENT: (1) Weber
ABSTAIN: (0)

BY:

William D. Koehler, Mayor Pro Tem

ATTEST:

Kimberly M. Rodrigues, City Clerk

APPROVED AS TO FORM:

Craig A. Steele, City Attorney