

## REPORT TO CITY COUNCIL

**DATE:** AUGUST 25, 2010

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

**FROM:** GREG RAMIREZ, CITY MANAGER

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

**SUBJECT:** SECOND EXTENSION OF MORATORIUM ORDINANCE REGARDING WIRELESS TELECOMMUNICATIONS FACILITIES

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The purpose of this item is for the City Council to conduct a public hearing and consider adopting an ordinance for a second extension of the interim urgency Ordinance No. 09-369U adopted by the City Council on October 14, 2009. The October 2009 interim urgency ordinance establishes a temporary moratorium on the approval of specified permits that are required for the installation of wireless telecommunications facilities in the City for forty-five (45) days. It prohibits the installation of wireless telecommunications facilities throughout the City while the City undertakes studies to review the City's current codes and update them once it is determined what conditions and standards should be applicable to future permitting of such facilities.

On November 10, 2009, the City Council held a public hearing and adopted Ordinance No. 09-370U, approving an extension of Ordinance No. 09-369U. Pursuant to Government Code Section 65858, and as established by Section 9 of Ordinance No. 09-369U, the interim ordinance was extended for an additional period of ten (10) months and fifteen (15) days from October 14, 2009, and is therefore set to expire on September 25, 2010.

Over the past several months, with consultant assistance, staff has been working on the preparation of the Wireless Telecommunications Facilities (WTF) Ordinance. The particular tasks accomplished so far are listed further below in this report. While substantial preparation work has been completed in order to draft the WTF Ordinance, further coordination with the City Council appointed ad-hoc subcommittee is necessary to address the particular details of the WTF Ordinance. Staff would then write the WTF Ordinance; prepare and submit for public review the corresponding environmental document pursuant to the California Environmental Quality Act (CEQA); and present the ordinance to the Planning Commission for recommendation, followed by the City Council for consideration of the ordinance.

Staff anticipates that the remaining work would require approximately three months beyond the September 25, 2010 date the first extension of the moratorium is set to expire. Government Code Section 65858(a) provides for the extension of the interim urgency ordinance following a public hearing, and upon adoption of such an extension by not less than a four-fifths vote of the City Council. This Section also allows for a second extension with the same procedures and

requirements as that of the first extension. Therefore, staff requests that the City Council consider adopting Ordinance No. 10-378U, a second extension to interim urgency Ordinance No. 09-369U. The second extension would expire on September 25, 2011, which is one (1) year from the end date of the first extension's Ordinance No. 09-370U. While the extension under Government Code regulations is for a full year, staff anticipates completing the WTF Ordinance by the end of 2010. During the extension period, new applications for wireless facilities will continue to be accepted and processed, but not acted upon, and existing facilities could continue with repair, replacement and maintenance services.

The following serves as the required "written report," pursuant to Government Code Section 65858(d), and referenced in Section 8 of Ordinance No. 09-369U. The "written report" is required to describe the measures taken to alleviate the conditions that led to the adoption of the urgency ordinance.

Since adoption of Ordinance No. 09-369U, as well as the first extension with Ordinance No. 09-370U, staff has completed the studies it has determined to be necessary and appropriate to make a recommendation to the City Council about the structuring of zoning and other necessary regulatory controls over the installation, augmentation, relocation and operation of wireless telecommunications facilities in the City. This work has been accomplished 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 communications facilities in the City; and
- (3) Protect against the intrusion of incompatible and potentially disruptive uses that cause blight.

In particular, the following items have been completed:

- Comprehensive assessment of current wireless telecommunications facilities in the City – the particular types and locations
- Review of current and upcoming technology
- Review of federal and state laws and recent court legislation
- Survey of WTF regulations of other cities in California
- Review of options for approaches in developing the ordinance
- Presentation of discussion item, including staff report, at City Council on July 14, 2010
- City Council appointment of an ad-hoc subcommittee at its meeting on July 14, 2010
- Preparation of draft materials for the ad-hoc subcommittee meeting mid-August 2010
- Preparation of draft outline of the WTF Ordinance

Staff will next complete the following:

- Meet with the ad-hoc subcommittee to formulate the WTF Ordinance
- Write the WTF Ordinance
- Prepare the environmental document per CEQA, as well as public review coordination

The goal is to have a comprehensive wireless telecommunications ordinance containing standards for the permitting, placement, design and maintenance of wireless communications facilities. The ordinance would provide for preservation of land uses and neighborhood compatibility while allowing for the orderly development of wireless facilities in accordance with federal and state laws.

The Planning and Community Development Department is currently preparing the WTF Ordinance, with the help of the City Attorney's Office, as well as wireless facilities consultants, and other City departments, as necessary.

The attached second extension to the urgency ordinance has been reviewed and approved as to form by the City Attorney. Also attached for reference is the original interim urgency zoning ordinance (Ordinance No. 09-369U), the first extension to the ordinance (Ordinance No. 09-369U), as well as the associated staff reports to City Council.

## **RECOMMENDATION**

Staff recommends the City Council conduct a public hearing; receive and issue a written report; and adopt a second extension of the interim urgency 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 Ordinance No. 10-378U.

### **Attachments:**

1. Ordinance No. 10-378U
2. Ordinance No. 09-370U (adopted 11-10-09)
3. Ordinance No. 09-369U (adopted 10-14-09)
4. Report to City Council dated 11-10-09
5. Report to City Council dated 10-14-09

Attachment 1

## ORDINANCE NO. 10-378U

### A SECOND 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 extension of the 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, may require up to one additional year, as authorized by Government Code Section 65858.

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 second 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 one additional year from the expiration of the first extension of the interim ordinance.

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 remained in effect for a period of forty-five (45) days, pursuant to Government Code Sections 36934, 36937, and 65858(a).

K. At its meeting on November 10, 2009, the City Council adopted Ordinance 09-370U, adopting the first extension to 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. Ordinance 09-370U was effective immediately upon its adoption and remains in effect for a period of 10 months and 15 days, and expires on September 25, 2010, pursuant to Government Code Sections 36934, 36937, and 65858.

L. Pursuant to Government Code Section 65858, Section 9 of Ordinance 09-370U, 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 will not be concluded on or before the tenth (10th) month and fifteenth (15th) day after the adoption of Ordinance 09-370U, the first extension of interim urgency ordinance. Under state law, the interim ordinance may be extended one additional year by adoption by not less than a four-fifths vote of this City Council.

M. The Planning and Community Development Director and City Clerk find that the studies and reports desired by the City Council will not be concluded before the September 25, 2010 expiration date of Ordinance No. 09-370U. As such, 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.

N. Pursuant to Government Code Section 65090, a duly noticed public hearing was held on August 25, 2010 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.

O. 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 of Second Extension to Interim Zoning Ordinance.** This ordinance is adopted as an interim zoning ordinance, extending Ordinance 09-370U, pursuant to



the provisions of Government Code Section 65858, and shall be effective on September 25, 2010, which is the date Ordinance 09-370U expires. This ordinance shall be in effect for a period of one (1) year past the initial expiration date of September 25, 2010, and shall therefore expire on September 25, 2011, pursuant to Government Code Section 65858. 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 continue to 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 October 14, 2009, the effective date of Ordinance 09-369U, 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, a written report describing the measures taken to alleviate the conditions that led to the adoption of this ordinance.

**Section 9. Effective Date.** This ordinance shall take effect on September 25, 2010 and shall expire in one year on September 25, 2011, pursuant to 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 25th day of August, 2010 by the following vote:

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

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William D. Koehler, Mayor

ATTEST:

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Kimberly M. Rodrigues, MMC, City Clerk

APPROVED AS TO FORM:

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Craig A. Steele, City Attorney

Attachment 2

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 (45<sup>th</sup>) 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.

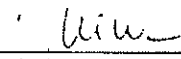
**Section 9. Extension of Time.** The City Attorney and the City Clerk shall undertake all actions legally necessary to extend for a second time this interim ordinance in the event the studies and reports desired by this City Council will not be concluded on or before the tenth (10<sup>th</sup>) month and fifteenth (15<sup>th</sup>) 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)

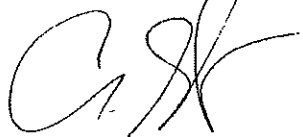
  
\_\_\_\_\_  
Denis Weber, Mayor

ATTEST:

  
\_\_\_\_\_  
Kimberly M. Rodrigues, MMC, City Clerk



APPROVED AS TO FORM:

  
\_\_\_\_\_  
Craig A. Steele, City Attorney

Attachment 3

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:

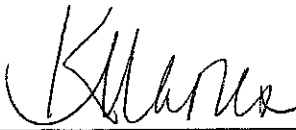
AYES: (4) Koehler, Edelston, Kuperberg, Schwarz  
NOES: (0)  
ABSENT: (1) Weber  
ABSTAIN: (0)

BY:



William D. Koehler, Mayor Pro Tem

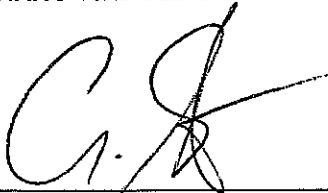
ATTEST:



Kimberly M. Rodrigues, City Clerk



APPROVED AS TO FORM:



Craig A. Steele, City Attorney

Attachment 4

## REPORT TO CITY COUNCIL

**DATE:** NOVEMBER 10, 2009

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

**FROM:** GREG RAMIREZ, CITY MANAGER

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

**SUBJECT:** EXTENSION OF MORATORIUM ORDINANCE REGARDING WIRELESS TELECOMMUNICATIONS FACILITIES; AND REQUEST FOR DIRECTION ON A RESOLUTION REGARDING FEDERAL WIRELESS TELECOMMUNICATIONS REGULATIONS

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The purpose of this item is for the City Council to conduct a public hearing and consider an ordinance extending the interim urgency zoning ordinance (Ordinance No. 09-369U) adopted by the City Council on October 14, 2009, pursuant to California Government Code Sections 36934, 36937, and 65858. The interim urgency ordinance established a temporary moratorium on the approval of specified permits that are required for the installation of wireless telecommunications facilities in the City for forty-five (45) days, prohibiting the installation of wireless facilities throughout the City while the City undertakes studies to review the City's current codes and update them once it is determined what conditions and standards should be applicable to future permitting of such facilities.

Pursuant to Government Code Section 65858, and as established by Section 9 of Ordinance No. 09-369U, the interim ordinance may be extended for an additional period of ten (10) months and fifteen (15) days in the event the studies desired by the City Council would not be concluded within the forty-five (45) day period. State law provides for the extension of the interim urgency ordinance following a public hearing, and upon adoption of such an extension by not less than a four-fifths vote of the City Council. State law also provides for a second extension, if needed.

The following serves as the required "written report," pursuant to Government Code Section 65858(d), and referenced in Section 8 of Ordinance No. 09-369U. Since adoption of Ordinance No. 09-369U, City staff has initiated the studies it has determined to be necessary and appropriate to make a recommendation to the City Council about the structuring of zoning and other necessary regulatory controls over the installation, augmentation, relocation and operation of wireless telecommunications facilities in the City. In particular, staff has started compiling a list of the locations of telecommunications facilities in the City and their characteristics. However, it is necessary for City staff 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 communications facilities in the City; and
- (3) Protect against the intrusion of incompatible and potentially disruptive uses that cause blight.

The continuation of studies would involve at the least the following:

- (1) Researching wireless telecommunications facilities regulations of other relevant cities and counties, and speaking with staff about the effectiveness of such regulations;
- (2) Continuing to survey existing wireless communications facilities in the City, determining the number of such facilities, and collecting data on the type of technologies and particular features of the facilities, as well as the locations, sizes, and aesthetics;
- (3) Researching issues of safety, aesthetics, camouflaging, co-location, and undergrounding requirements;
- (4) Researching current technologies and future trends in wireless communications facilities to anticipate potential changes;
- (5) Determining preferred locations in the City;
- (6) Determining appropriate costs and processing procedures for permitting; and
- (7) Reviewing applicable legislation and court cases.

The goal is to have a comprehensive wireless telecommunications ordinance containing standards for the permitting, placement, design and maintenance of wireless communications facilities. The ordinance would provide for preservation of land uses and neighborhood compatibility while allowing for the orderly development of wireless facilities in accordance with federal and state laws. The Planning and Community Development Department would be responsible for preparing this complex and significant ordinance with the help of other City departments and the City Attorney's Office, as well as a wireless facilities consultant. A request for proposals for the consultant is currently being created by staff. A future written report summarizing the studies and conclusions would be prepared by City staff for the consideration of the City Council prior to the expiration of the interim urgency ordinance extension. The report would recommend appropriate changes to the Municipal Code and possibly other regulations, guidelines and policies of the City pursuant to protecting the public health, safety and welfare of the City, while ensuring consistency with the California Public Utilities Code and the Federal Telecommunications Act.

To accomplish these additional studies and to prepare the ordinance updates, staff recommends that the City Council extend the moratorium on the issuance of permits for wireless communications facilities. The moratorium extension, which is applicable to any new applications submitted after the effective date of the interim urgency ordinance, would prevent the issuance of discretionary or ministerial permits for the installation, augmentation and relocation of wireless facilities in the City until that time. The City would still be able to accept and process applications for such facilities during the moratorium, and under certain conditions, existing facilities could continue with repair, replacement or maintenance activities. The ordinance to extend the moratorium may be extended a second time by the City Council for a total twenty-two (22) months and fifteen (15) days if further time is needed to complete ordinance. However, staff anticipates completion in six to nine months.

After discussion, at the City Council's pleasure, the City Council's options are to either make a motion to receive and issue the written report and adopt the ordinance by a four-fifths vote, or take no action. If adopted, the ordinance would take effect immediately for a period of ten (10) months and fifteen (15) days.

The attached ordinance has been reviewed and approved as to form by the City Attorney. Also attached for reference is the interim urgency zoning ordinance (Ordinance No. 09-369U), adopted October 14, 2009, as well as the associated Report to City Council and staff memo for the October 14, 2009 City Council meeting. Additionally, an updated map of approved and proposed wireless telecommunications facilities is attached.

Staff has also received a request from Ms. Rina Baraz Nehdar, an Agoura Hills resident, asking the City Council to consider adopting a resolution seeking federal legislation that would give greater local control to regulate wireless telecommunications facilities. Ms. Nehdar has provided the attached copies of sample resolutions from other local jurisdictions who have adopted such resolutions. If the consensus of the Council is to support such a resolution, staff respectfully requests that Council give direction to staff to return with a draft resolution at the next available meeting for Council consideration or to prepare a resolution for signature by the Mayor or the City Manager.

## **RECOMMENDATION**

Staff recommends the City Council conduct a public hearing, receive and issue a written report, and adopt the extension of the interim urgency 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 Ordinance No. 09-370U.

Staff also requests direction from the City Council regarding a resolution seeking federal legislation which would provide greater local control to regulate wireless telecommunication facilities. If the consensus of the Council is to support such a resolution, staff respectfully requests that Council give direction to staff to either return with a draft resolution at the next available meeting for Council consideration or to prepare a resolution for signature by the Mayor or the City Manager.

Attachments:

1. Ordinance No. 09-370U
2. Ordinance No. 09-369U (adopted 10-14-09)
3. Report to City Council dated 10-14-09
4. Memo from Mike Kamino to Greg Ramirez dated 10-14-09
5. Map of Approved and Proposed Wireless Telecommunications Facilities in the City
6. Resolutions from Other Local Jurisdictions (Santa Barbara County, Pima County, and Los Angeles County)



Attachment 5

## 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