

ORDINANCE NO. 2740

AN URGENCY INTERIM ORDINANCE OF THE CITY OF REDLANDS
ESTABLISHING AND EXTENDING A TEMPORARY MORATORIUM ON
THE APPROVAL OF SPECIFIED ENTITLEMENTS AND PERMITS FOR
THE INSTALLATION, AUGMENTATION AND RELOCATION OF
COMMERCIAL WIRELESS TELECOMMUNICATIONS FACILITIES
WITHIN CERTAIN SPECIFIED AREAS OF THE CITY OF REDLANDS

WHEREAS, the City of Redlands ("City") currently regulates the installation of wireless antenna and associated telecommunication facilities (collectively, "Wireless Facilities") on private and publicly-owned land in non-residential areas through Chapter 18.178 of the Redlands Municipal Code; and

WHEREAS, Chapter 18.178 of the Redlands Municipal Code was last updated in 2000 with regard to the to comprehensive regulation of Wireless Facilities; and

WHEREAS, the City has recently experienced a significant interest in the location of Wireless Facilities in public rights-of-way, residential, and other zones of the City; and

WHEREAS, changes in wireless communication technology, together with the desire of Wireless Facilities providers to increase communication services in the City and surrounding areas, will likely produce additional applications for the installation and modification of Wireless Facilities in the City; and

WHEREAS, the increased interest in the installation of Wireless Facilities, particularly in the public rights-of-way, sensitive neighborhoods and residential zones of the City, was not fully anticipated at the time the City established its existing regulatory structure for the approval of Wireless Facilities and, as a result, an immediate need exists to explore regulatory options for better managing and minimizing the safety, aesthetic, co-location, and rights-of-way management issues implicated by the increased interest in the location of Wireless Facilities in the City; and

WHEREAS, in *Sprint Telephony PCS, L.P. v. City of Diego* (2008) 543 F.3d 571 ("*Sprint*"), the Ninth Circuit Court of Appeals expressly overruled almost seven (7) prior 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 expansively interpreted in a manner that severely limited local authority to regulate the installation of Wireless Facilities; and

WHEREAS, the increased interest in the location of Wireless Facilities, together with the significant change in law created by *Sprint* and subsequent state and federal law, creates a need and an opportunity for the City to review and analyze its existing ordinances and the current state of the law so that, as far as legally possible, the City may safeguard public rights-of-way, residential areas, and other sensitive zones and areas within the City from the intrusion of incompatible and potentially disruptive uses through the development of a new ordinance relating to the placement, construction, and modification of Wireless Facilities; and

WHEREAS, the City Council of the City of Redlands ("this City Council") desires to provide for the health, safety and welfare of the residents of the City by exercising the police power provided for in the California Constitution that underlies the City's zoning powers, to provide that the installation and maintenance of Wireless Facilities in the City be conducted in such a manner as to be safe, compatible with existing and future uses, and consistent with the Redlands General Plan, and state and federal law; and

WHEREAS, in order that this may be accomplished, this City Council intends to extend, on an urgency basis, a temporary moratorium that was established by this City Council on September 7, 2010, on the issuance of discretionary or ministerial entitlements and permits for the installation, augmentation or relocation of Wireless Facilities within certain specified areas of the City so that City staff, this City Council, and the residents of the City will have sufficient time to consider a comprehensive ordinance lawfully regulating the installation, augmentation, relocation and maintenance of Wireless Facilities; and

WHEREAS, there is a current and immediate threat to public health, safety and welfare because, without this urgency interim ordinance, Wireless Facilities could be installed, constructed or modified in and adjacent to, public rights-of-way, residential areas, and other sensitive zones and areas of the City, without conforming to the City's full intention to minimize disruption to neighborhoods caused by an increase of Wireless Facilities; and

WHEREAS, without the extension of the moratorium as proposed by this urgency interim ordinance, Wireless Facilities could adversely affect the City as follows:

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 and meters;
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;
6. Deteriorate the quality of life in a particular neighborhood; and
7. Create the necessity to install large equipment cabinets or concrete vaults within or beneath the public rights-of-way to house equipment to operate the Wireless Facility; and

WHEREAS, pursuant to state law, on September 7, 2010 this City Council took action to establish, as an interim measure, a temporary moratorium on the approval of applications for Wireless Facilities while contemplated zoning and permitting proposals are being considered; and

WHEREAS, this City Council has held a noticed public hearing and has taken testimony regarding the proposed extension of the moratorium to regulate Wireless Facilities within certain specified areas of the City; and

WHEREAS, on September 23, 2010, as required by Government Code section 65858, the City issued a report describing the measures taken to alleviate the condition which led to the establishment of the temporary moratorium established on September 7, 2010;

THE CITY COUNCIL OF THE CITY OF REDLANDS DOES ORDAIN AS FOLLOWS:

SECTION 1. The above recitals are true and correct.

SECTION 2. The adoption of this urgency interim ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to (i) State CEQA Guidelines section 15060(c)(2) because the adoption of this ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment, and (ii) State CEQA Guidelines section 15061(b)(3) because there is no possibility that the adoption of this interim ordinance may have a significant adverse effect on the environment. This interim ordinance establishes a moratorium to study the laws under which the City may consider feasibility or planning studies for possible future actions which the City has not approved, adopted or funded, and does not involve adoption of a plan that will have a legally binding effect on later activities. A Notice of Exemption has been completed in compliance with CEQA and the State CEQA Guidelines.

SECTION 3. Notwithstanding any provision of the Redlands Municipal Code, including Title 18 thereof, or any other ordinance of the City of Redlands, this urgency interim ordinance shall apply to all applications for the installation and/or augmentation of Wireless Facilities within all areas of the City, except for City-owned land, land having the General Plan designation of "Parks/Golf Courses" and privately-owned land zoned with the City's M-1 (Light Industrial) District or the M-2 (General Industrial) District, and the EV/IR (Regional Industrial) District of the East Valley Corridor Specific Plan. Because this ordinance is necessary to protect the public health and safety, it shall operate retroactively as to all pending and active encroachment permits issued for the installation or augmentation of Wireless Facilities within the City, provided that the rights to construct such Wireless Facilities have not vested pursuant to *Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal. 3d 785.

SECTION 4. There shall be a temporary moratorium in effect, commencing on the effective date of this ordinance, applicable to all property within the City, except for City-owned land, land having the General Plan designation of "Parks/Golf Courses" and privately-owned land zoned with the City's M-1 (Light Industrial) District or the M-2 (General Industrial) District, and the EV/IR (Regional Industrial) District of the East Valley Corridor Specific Plan

prohibiting the approval of zone changes, variances, conditional use permits, encroachment permits, special use permits, building permits, electrical, mechanical, or plumbing permits, or use and occupancy permits for any installation, augmentation or relocation of any Wireless Facilities, except those described in Section 6 of this ordinance, notwithstanding other existing provisions of the Redlands Municipal Code or regulations of the City.

SECTION 5. 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 Wireless Facilities; rather, it is intended to, and does, prohibit only the issuance of approvals and permits for such Wireless Facilities. City staff shall continue to accept applications for Wireless Facility approvals, augmentations and relocations received after the effective date of this ordinance. At a Wireless Facility applicant's written request, during the term of this moratorium the City shall continue to process applications for permits or approvals relating to Wireless Facilities; 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 are tolled during the term of this moratorium.

SECTION 6. The provisions of this urgency interim ordinance shall not apply to:

- A. Privately owned and operated noncommercial communications facilities attendant to a residential use, including but not limited to television reception antennas, satellite dish antennas no greater than two (2) meters in diameter or amateur "ham" radio facilities.
- B. Existing and proposed government owned and operated communications facilities and/or existing or proposed emergency medical care provider owned and operated communications facilities.
- C. Any antenna facilities exempted from this ordinance by federal law.
- D. Communication facilities, existing or proposed, on City owned property.
- E. Communication facilities proposed on property having the M-1 (Light Industrial) District or the M-2 (General Industrial) District, and the EV/IR (Regional Industrial) District of the East Valley Corridor Specific Plan.
- F. Communication facilities proposed on property having the "Parks/Golf Courses" General Plan land use designation.

SECTION 7. This ordinance is an interim zoning ordinance, adopted as an urgency measure, pursuant to Government Code section 65858 to protect the public safety, health and welfare by prohibiting land uses which may, in the absence of reasonable, lawful, regulation, be in conflict with the City's General Plan, the Redlands Municipal Code, or the environmental and aesthetic welfare of the City and its residents. Specifically, this ordinance is necessitated by the filing of applications for Wireless Facilities within the City coupled with the additional enhanced

regulatory opportunities created by the *Sprint* decision and other recent state and federal law. The City Council hereby finds that the facts, circumstances, and opportunities described in the recitals for this ordinance, as adopted herein, demonstrate a current and immediate threat to the public health, safety and welfare because the existing regulatory structure for Wireless Facilities is not sufficient to adequately protect the City and its residents from the safety, aesthetic and other rights-of-way management-related considerations implicated by the installation of Wireless Facilities within the City. Based on the foregoing, and based on the judicial guidance provided by the *Sprint* decision and other state and federal law, this City Council finds and declares that the City must proceed thoughtfully and deliberately in the wireless communications area so that the installation and maintenance 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, protecting to the full extent feasible against the aforementioned safety and land use concerns. The preparation of such an ordinance, together with the necessary public outreach, legal research, and City processes for consideration of such enactments may require, at a minimum, ten (10) months and fifteen (15) days. In the interim, a moratorium as described in Section 4 of this ordinance is required to protect the public from threats to the public health, safety and welfare discussed above.

SECTION 8. The findings and determinations contained in the City Council staff reports dated September 7, 2010 and October 5, 2010, and Ordinance No. 2738, are hereby adopted and incorporated by reference as though fully set forth herein.

SECTION 9. 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 following a public hearing, as provided in Government Code section 65858.

SECTION 10. This ordinance is adopted under the authority of state law. If any section, subsection, clause or phrase is declared invalid or otherwise void by a court of competent jurisdiction, it shall not affect any remaining provision hereof. In this regard, this City Council finds and declares that it would have adopted this ordinance notwithstanding any partial invalidity hereof.

SECTION 11. City staff is directed and ordered to prepare 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.



Mayor of the City of Redlands

ATTEST:



City Clerk

I, Sam Irwin, City Clerk of the City of Redlands, hereby certify that the foregoing urgency ordinance was passed by a unanimous vote of the City Council of the City of Redlands at a regular meeting held on October 5, 2010, by the following vote:

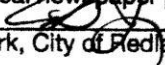
AYES: Councilmembers Bean, Harrison, Gallagher, Aguilar; Mayor Gilbreath
NOES: None
ABSENT: None
ABSTAIN: None



Sam Irwin, City Clerk
Redlands, California

CERTIFICATION

I, Sam Irwin, City Clerk of the City of Redlands, California, do hereby certify that this is a true and correct copy of Ordinance No. 2740 which has been published, or a summary thereof, in the local newspaper pursuant to law



City Clerk, City of Redlands, California