



OFFICE OF THE CITY ATTORNEY
Long Beach, California

H-1

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May 18, 2010

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HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Recommendation to receive supporting documentation into the record, conclude the hearing, declare ordinance relating to the temporary limitation (moratorium) on the approval of permits for the installation of wireless telecommunications facilities in the City read the first time and laid over to the next regular meeting of the City Council for final reading; declaring the urgency thereof and declaring that this ordinance shall take effect immediately. (Citywide)

DISCUSSION

On April 20, 2010, the City Council adopted a minute order pursuant to an agenda request which initiated a moratorium on the approval of applications to construct, modify or place wireless communication facilities in the City of Long Beach; and requested the City Attorney, in cooperation with the Development Services Department, to prepare an interim zoning ordinance for notice and placement on the City Council agenda. The moratorium was initiated pursuant to the provisions of Chapter 21.50 of the Municipal Code, "Interim Prohibition of Uses".

The Ordinance establishes a one hundred twenty (120) day moratorium period. During this time, the Development Services Department and the Planning Commission will undertake a study regarding the propriety of amending the City's building or zoning regulations related to wireless communication facilities in the City of Long Beach. The one hundred twenty (120) day moratorium will apply to any application currently being processed as of April 20, 2010, and all applications received thereafter.


SUGGESTED ACTION:

Approve recommendation.

Very truly yours,

ROBERT E. SHANNON, City Attorney

By


MICHAEL J. MAIS
Assistant City Attorney

PRINCIPAL DEPUTIES

Dominic Holzhaus
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C. Geoffrey Allred
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ORDINANCE NO.

AN INTERIM ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF LONG BEACH 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; AND DECLARING
THAT THIS ORDINANCE SHALL TAKE EFFECT
IMMEDIATELY

The City Council of the City of Long Beach ordains as follows:

Section 1. Legislative Body Findings. The City Council of the City of Long Beach, 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 Long Beach.

A. The City of Long Beach ("City") has adopted a Land Use Element to its General Plan and a Zoning Code (Title 21 of the Long Beach 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 Long Beach's residential neighborhoods and historic areas, and the promotion of high quality urban design in commercial and industrial areas which are compatible with Long Beach's unique character and in context with surrounding development. Section 21.45.115 (Special Development Standards for attached/roof-mounted cellular and personal communications systems) and Section 21.52.210 (Cellular and personal communication services (with monopoles) of the Long Beach Municipal Code together with the relevant

1 "Use" Tables contained in the City's zoning code currently govern the City's regulation of
2 wireless telecommunications facilities.

3 B. State and federal law permitting land use regulation of Wireless
4 Facilities continues to evolve. In *Sprint Telephone PCS, L.P. v. County of San Diego*
5 (2008) 543 F.3d 571 ("*Sprint*"), the Ninth Circuit Court of Appeals expressly overruled
6 seven years of Ninth Circuit jurisprudence relating to 47 U.S.C. § 253, a key provision of
7 the Federal Telecommunications Act that, until the ruling in *Sprint*, had been interpreted
8 in a manner that severely limited local authority to regulate the installation of Wireless
9 Facilities. Under state law, wireless service providers claim that California Public Utilities
10 Code Sections 7901 and 7901.1 gives them the right to install wireless communication
11 facilities in the City even in residential zones.

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

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

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

25 E. The proliferation of applications for the installation of Wireless
26 Facilities in the City, particularly those in and adjacent to residential zones, was not fully
27 anticipated at the time the City established its existing regulatory structure for the
28 approval of Wireless Facilities. As a result, an immediate need exists to explore

1 regulatory options that are consistent with state and federal law, as well as the Long
2 Beach General Plan, for better managing and minimizing the safety, aesthetic, co-
3 location, and additional rights-of-way management issues implicated by the potential
4 proliferation of Wireless Facilities in the City and to safeguard against the intrusion of
5 incompatible and potentially disruptive uses that cause blight. Such regulatory controls
6 include, without limitation, restrictions on the placement of monopoles, height limitations
7 on wireless antenna, co-location requirements, equipment undergrounding requirements,
8 appropriate camouflaging, use of opportunities maps to highlight preferred locations,
9 justification study requirements, and the imposition of a performance bond to cover
10 equipment removal.

11 F. To accomplish this, the City Council intends to impose, on an
12 urgency basis, a temporary moratorium on the issuance of discretionary or ministerial
13 permits for the installation, modification or relocation of Wireless Facilities within the City
14 so that City staff, the City Council, and the citizens of the City will have sufficient time to
15 consider a comprehensive ordinance lawfully regulating the installation, modification and
16 relocation of Wireless Facilities in the City. The preparation of such an ordinance,
17 together with the necessary public outreach, legal research, and City processes for
18 consideration of such enactments will require, at a minimum, one hundred twenty (120)
19 days.

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

27 1. Create land use incompatibilities including excessive height of
28 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 uses 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 and the City's zoning regulations, 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. The City Council desires to provide for the health, safety and welfare of Long Beach citizens by exercising the police power provided for in the California Constitution that underlies the City's zoning powers, so that the installation and maintenance of Wireless Facilities in the City will be conducted in such a manner as to be a safe, compatible with existing and future uses, and consistent with the Long Beach General Plan, and state and federal law.

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

1 occur that would harm the public health, safety, or welfare. The City does not intend that
2 this ordinance prohibit or have the effect of prohibiting telecommunications service;
3 rather, it is a short-term suspension of new facilities until appropriate regulations can be
4 adopted so that the installation, modification and relocation of Wireless Facilities in the
5 City are conducted in such a manner as to lawfully balance the legal rights of applicants
6 under the Federal Telecommunications Act and the California Public Utilities Code while,
7 at the same time, protecting to the full extent feasible against the safety and land use
8 concerns described herein.

9 Section 2. Adoption as Urgency Interim Zoning Ordinance. This
10 ordinance is adopted as an urgency zoning ordinance pursuant to the provisions of
11 Section 211 of the Charter of the City of Long Beach, and shall be effective immediately
12 upon its adoption. Based on the findings set forth in Section 1 of this ordinance, the City
13 Council finds and determines that the adoption of this ordinance as an urgency ordinance
14 is necessary for the immediate preservation of the public peace, health or safety pursuant
15 to the requirements of Charter Section 211, and is necessary to protect the public safety,
16 health, and welfare of the residents and businesses within and operating within the City.

17 Section 3. CEQA. The City Council hereby finds, in the exercise of its
18 independent judgment and analysis, that this ordinance is exempt from the California
19 Environmental Quality Act of 1970 ("CEQA"), as amended, because it can be seen with
20 certainty that this urgency ordinance has no likelihood of causing a significant negative
21 effect on the environment and accordingly both the City Council's action of adopting this
22 ordinance and the effects derivative from that adoption are exempt from the application of
23 CEQA, pursuant to Section 15061(b)(3) of the State CEQA Guidelines (14 Cal. Code
24 Regs. § 15061(b)(3)). The City Council further finds, in the exercise of its independent
25 judgment and analysis, that the adoption of this urgency ordinance is exempt from
26 CEQA, pursuant to Section 15060(c)(2) of the State CEQA Guidelines (14 Cal. Code
27 Regs. § 15060(c)(2), because it will not result in a direct or reasonably foreseeable
28 indirect physical change in the environment. These findings are premised on the fact that

1 the adoption of this urgency interim ordinance will maintain the current environmental
2 conditions arising from the current land use regulatory structure as adopted by the City
3 without change or alteration. A Notice of Exemption has been completed in compliance
4 with CEQA and CEQA Guidelines.

5 Section 4. Applicability. Notwithstanding any provision of the Long
6 Beach Municipal Code, or any other ordinance of the City, this ordinance shall apply to all
7 pending and new applications submitted to the City on, before, or after April 20, 2010, for
8 the installation, modification or relocation of Wireless Facilities within the City.

9 Section 5. Temporary Moratorium.

10 A. Within all the City, there shall be a temporary moratorium in effect,
11 commencing on the effective date of this ordinance, prohibiting any approval, including
12 but not limited to Site Plan Review Committee approvals, variances, conditional use
13 permits, encroachment permits, special use permits, planned development permits,
14 building permits, electrical, mechanical, or plumbing permits, or use and occupancy
15 permits, for any installation, modification or relocation of any Wireless Facilities, or any
16 combination thereof, including, without limitation, new or existing co-location sites, except
17 those described in Section 6 of this Ordinance, notwithstanding other existing Zoning or
18 Municipal Code provisions and regulations of the City.

19 B. Except to the extent otherwise prohibited by law, this temporary
20 moratorium is not intended to, and does not, affect the acceptance and/or processing of
21 permit applications for any and all Wireless Facilities described in Section 5(A); rather, it
22 is intended to, and does, prohibit only the issuance of approvals and permits for such
23 Wireless Facilities. City staff is hereby directed to accept applications for Wireless
24 Facility installations, modifications or relocations, or any combination thereof, received
25 after the effective date of this ordinance. At a Wireless Facility applicant's written
26 request, the City shall continue to process applications for permits or approvals relating to
27 Wireless Facilities during the term of this moratorium; however, any new standards for
28 such Wireless Facilities and the permitting thereof which are adopted during the

1 moratorium and are effective at the expiration of the moratorium shall nevertheless apply
2 to such applications. Any time limits or mandatory approval time frames relative to the
3 processing and/or action upon permit applications for any and all Wireless Facilities
4 described in Section 5(A) are tolled during the term of this moratorium.

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

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

10 B. Residential Facilities. Privately owned and operated noncommercial
11 communications facilities attendant to a residential use or uses, including but not limited
12 to television reception antennas, satellite dish antennas no greater than two (2) meters in
13 diameter and/or amateur "ham" radio facilities.

14 C. Government and Emergency Medical Facilities. Existing
15 Government owned and operated communications facilities and/or existing emergency
16 medical care provider owned and operated communication facilities, or new facilities in
17 the same location as such existing facilities, which are required to repair, replace,
18 maintain or enhance such existing facilities, provided such new facilities are used
19 primarily to protect public health, safety and welfare, all as determined by the Director of
20 Development Services.

21 D. Facilities Exempted Under Federal Law. Any antenna facilities
22 exempted from this ordinance by federal law.

23 E. Broadcast Facilities. Properties with existing broadcast facilities
24 regulated pursuant to 47 C.F.R. Part 73 or 47 C.F.R. Part 74, or new or modified
25 broadcast facilities in the same location as existing broadcast facilities which are required
26 to repair, replace, maintain or enhance such existing broadcast facilities but only as such
27 facilities currently exist in the commercial or industrial zones of the City.

28 F. All facilities that have previously received a final entitlement permit or

1 approval from the City such as a Conditional Use Permit or Site Plan Review Permit,
2 provided such entitlement or approval is not currently under appeal to either the Planning
3 Commission or City Council.

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

13 Section 8. Planning Studies. City staff and the Planning Commission
14 shall promptly commence or continue the studies they may deem necessary and
15 appropriate to make a recommendation to the Planning Commission or City Council
16 regarding the structuring of zoning and other necessary regulatory controls over the
17 installation, modification, relocation or operation of Wireless Facilities in the City to cause
18 such land uses to be beneficial land uses rather than uses that are detrimental to or
19 cause blight to occur within the City of Long Beach.

20 Section 9. Extension of Time. The Director of Development Services
21 and the City Clerk's office shall undertake all actions legally necessary to extend this
22 interim ordinance in the event the studies and reports desired by this City Council will not
23 be concluded on or before the one hundred and twentieth (120th) day subsequent to the
24 adoption of this interim ordinance.

25 Section 10. Effective Date. This ordinance shall take effect immediately
26 upon its passage. It shall be of no further force or effect one hundred twenty (120) days
27 from the date of adoption unless extended following a public hearing, as provided for by
28 law.

1 Section 11. This ordinance is an emergency ordinance duly adopted by
2 the City Council on May 18, 2010, by a vote of at least five (5) of its members and shall
3 take effect immediately. The City Clerk shall certify to a separate roll call and vote on the
4 question of the emergency of this ordinance and to its passage by the vote of five
5 members of the City Council of the City of Long Beach, and cause the same to be posted
6 in three conspicuous places in the City of Long Beach.

7 Section 12. This ordinance shall also be adopted by the City Council as a
8 regular ordinance, to the end that in the event of any defect or invalidity in connection
9 with the adoption of this ordinance as an emergency ordinance, the same shall,
10 nevertheless, be and become effective on the thirty-first day after it is approved by the
11 Mayor.

12 Section 13. The City Clerk shall certify to the passage of this ordinance by
13 the City Council of the City of Long Beach and shall cause the same to be posted in three
14 (3) conspicuous places in the City of Long Beach.

15 I hereby certify that on a separate roll call and vote which was taken by the
16 City Council of the City of Long Beach upon the question of emergency of this ordinance
17 at its meeting of May 18, 2010, the ordinance was declared to be an emergency by the
18 following vote:

19 Ayes: Councilmembers: _____

20 _____

21 _____

22 Noes: Councilmembers: _____

23 _____

24 Absent: Councilmembers: _____

25 _____

26

27 I further certify that thereafter, at the same meeting, upon a roll call and
28 vote on adoption of the ordinance, it was adopted by the City Council of the City of Long

Beach by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

I further hereby certify that the foregoing ordinance was adopted on final reading by the City Council of the City of Long Beach at its meeting of June 1, 2010, by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

City Clerk

Approved: _____
(Date)

Mayor