

ORDINANCE NO. 19-

AN INTERIM URGENCY ORDINANCE EXTENDING THE TERM OF ORDINANCE NO. 19-03, AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMECULA, AMENDING CHAPTER 17.40 OF THE CITY OF TEMECULA DEVELOPMENT CODE (TELECOMMUNICATIONS FACILITY AND ANTENNA ORDINANCE) TO ADD A NEW SECTION 17.40.260, SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHT-OF-WAY, ENACTED PURSUANT TO GOVERNMENT CODE SECTIONS 36934, 36937, AND 65858, DECLARING THE URGENCY THEREOF, AND MAKING A DETERMINATION OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

THE CITY COUNCIL OF THE CITY OF TEMECULA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Purpose and Intent. Pursuant to Article XI, section 7 of the California Constitution and sections 36931 *et seq.* of the California Government Code, the City Council may make and enforce within its limits all local, police, and sanitary laws, and other ordinances and regulations not in conflict with general laws;

A. Significant changes in federal and state law that affect local authority over wireless communications facilities (“WCFs”) have occurred, including but not limited to the following:

1. On November 18, 2009, the Federal Communications Commission (“FCC”) adopted a declaratory ruling (the “2009 Shot Clock”), which established presumptively reasonable timeframes for state and local governments to act on applications for WCFs;

2. On February 22, 2012, Congress adopted Section 6409(a) of the Middle Class Tax Relief and Job Creation Act (“Section 6409(a)”), which mandated that state and local governments approve certain modifications and collocations to existing WCFs;

3. On October 17, 2014, the FCC adopted a report and order that, among other things, implemented new limitations on how state and local governments review applications covered by Section 6409(a), established an automatic approval for such applications when the local reviewing authority fails to act within 60 days, and also further restricted generally applicable procedural rules under the 2009 Shot Clock. This report and order effectively preempted local moratoria on WCFs by finding that the 2009 Shot Clock continues to run even when a valid moratorium is adopted;

4. On October 9, 2015, California adopted Assembly Bill No. 57 (Quirk), which deemed approved any WCF applications when the local reviewing authority fails to act within the 2009 Shot Clock timeframes;

5. On August 2, 2018, the FCC adopted a declaratory ruling that formally prohibited express and de facto moratoria for all telecommunications services and facilities under 47 U.S.C. § 253(a) and directed the Wireline Competition Bureau and the Wireless Telecommunications Bureau to hear and resolve all complaints on an expedited basis;

6. On September 27, 2018, the FCC adopted a Declaratory Ruling and Third Report and Order (“FCC Order”) that, among other things, creates a new regulatory classification for small wireless facilities, requires State and local governments to process applications for small wireless facilities within 60 days or 90 days, establishes a national standard for an effective prohibition and provides that a failure to act within the applicable timeframe presumptively constitutes an effective prohibition; and

7. The FCC Order establishes fee amounts that are deemed to be presumptively fair and reasonable recurring and non-recurring compensation to be paid by small wireless facility applicants and permittees with respect to small wireless facilities, including those attached to City infrastructure, located in the City rights-of-way.

B. Given the rapid and significant changes in Federal and State laws pertaining to small wireless facilities, and the significant adverse consequences for noncompliance with Federal and State laws, the City Council desires to amend City of Temecula Development Code Chapter 17.40, to allow greater flexibility and responsiveness to new Federal and State laws in order to preserve the City’s police powers to the maximum extent practicable (collectively, the “Amendments”).

Section 2. Legislative Findings.

A. On April 9, 2019, the City Council adopted Ordinance 19-03, an interim urgency ordinance of the City of Temecula that regulated small wireless facilities in the public right of way and established a moratorium on the issuance of permits for small wireless facilities unless they complied with the requirements set forth in the urgency ordinance. Ordinance 19-03 was effective immediately upon its adoption and remains in effect for a period of forty-five (45) days, pursuant to Government Code section 65858(a).

B. Pursuant to Government Code section 65858, a duly noticed public hearing was held on May 14, 2019 in the City Hall Council Chambers. Notice of the time, place and purpose of the aforesaid hearing was duly given as required by law. Evidence, both written and oral, was duly presented to, and considered by, the City Council at the aforesaid public hearing. At the duly noticed public hearing, and on the basis of the record thereof makes the following findings in support of the immediate adoption and application of this ordinance extending the term of Ordinance 19-03 for an additional 10 months and fifteen days.

C. At least ten (10) days prior to the expiration of Ordinance 19-03, the City Council issued a report as described in California Government Code section 65858(d).

D. The facts set forth in the recitals in this Urgency Ordinance are true and correct and incorporated by reference. The recitals constitute findings in this matter and, together with the staff report, other written reports, public testimony and other information contained in the record, are an adequate and appropriate evidentiary basis for the actions taken in this Urgency Ordinance.

E. The Amendments are consistent with the General Plan, Temecula Municipal Code, and applicable federal and state law.

1. The City of Temecula's General Plan Community Design Policy 2.1 states, *Establish and consistently apply design standards and guidelines for both residential and non-residential development.* Community Design Policy 4.2 states, *Establish a comprehensive streetscape program for the major streets in the City, including unified landscaping, lighting, paving patterns, and other public improvements.*

2. The City of Temecula's Municipal Code section 17.01.030.(B). states, *To promote the health, safety, welfare, and general prosperity with the aim of preserving a wholesome, serviceable and attractive community in accordance with the general plan for the city.*

F. The City Council finds that the public health need of the community is met by the immediate adoption of the Amendments since wireless communications facilities are aesthetically displeasing and out of harmony with the character of this community so as to constitute visual blight which reduces the quality of life within the community to the extent that the overall public health is detrimentally affected. Given the short time the City has to process applications for small wireless communication facilities, there is an immediate need to adopt procedures and policies for the processing of small cell wireless applications. Due to the foregoing circumstances, the City Council finds and determines that the immediate preservation of the public health, safety, and welfare requires that this Urgency Ordinance be enacted as an interim measure pursuant to Government Code sections 36934, 36937 and 65858, and that it take effect immediately upon adoption, and that its urgency is hereby declared.

G. The City Council finds that, as a result of the regulations adopted by the Federal Communications Commission effective as of January 14, 2019, as more fully described in the Recitals to this Ordinance, some City regulations governing third party use of its public rights-of-way will be invalidated which will result in an absence of standards designed to protect the public. Therefore, unless this Urgency Ordinance is effective and its regulations are immediately put in place, the public health, safety and welfare will be at risk. Therefore the immediate preservation of the public health, safety and welfare requires that this Urgency Ordinance be enacted as an urgency ordinance pursuant to Government Code Section 36937(b) and take effect immediately upon adoption, and its urgency is hereby declared.

Section 3. CEQA Finding. Pursuant to California Environmental Quality Act ("CEQA") Guidelines § 15378 and California Public Resources Code § 21065, the City Council finds that this Urgency Ordinance is not a "project" because its adoption is not an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment. Accordingly, this Urgency Ordinance is not subject to CEQA.

Even if this Urgency Ordinance qualified as a “project” subject to CEQA, the City Council finds that, pursuant to CEQA Guidelines § 15061(b)(3), there is no possibility that this project will have a significant impact on the physical environment. This Urgency Ordinance merely amends the Temecula Development Code to authorize the adoption of regulations related to small wireless facilities. This Urgency Ordinance does not directly or indirectly authorize or approve any actual changes in the physical environment. Applications for any new small wireless facilities or changes to an existing small wireless facility would be subject to additional environmental review on a case-by-case basis. Accordingly, the City Council finds that this Urgency Ordinance would be exempt from CEQA under the general rule.

In addition, the City Council has determined that this Urgency Ordinance is categorically exempt pursuant to CEQA Guidelines § 15301 applicable to minor alterations of existing governmental and/or utility-owned structures.

Staff is directed to file a Notice of Exemption in compliance with CEQA and the State CEQA Guidelines.

Section 4. Chapter 17.40 of Title 17 of the Development Code is hereby amended by adding a new Section 17.40.260, Small Wireless Facilities in the Public Right-of-Way, which reads as follows:

“Small Wireless Facilities in the Public Right-of-Way.

- A. Notwithstanding any other provision of this chapter as provided herein, all small wireless facilities as defined by the Federal Communications Commission (“FCC”) in 47 C.F.R. § 1.6002(1), as may be amended or superseded, must submit an application and obtain a permit as specified in the City Council Policy on Small Wireless Facilities in the Public Right-of-Way, which shall be adopted and may be amended by City Council Resolution. All small wireless facilities shall comply with the City Council Policy on Small Wireless Facilities in the Public Right-of-Way. A standard City encroachment permit may also be required as a condition of small wireless facility permit approval.
- B. Small wireless facilities shall pay the following fees, as applicable:
 - 1. \$500 for non-recurring fees, including a single up-front application fee that includes up to five small wireless facilities, with an additional \$100 for each small wireless facility beyond five, or \$1,000 for non-recurring fees for a new pole (i.e., not a collocation) intended to support one or more small wireless facilities; and
 - 2. \$270 per small wireless facility per year for all recurring fees, including any possible right-of-way access fee or fee for attachment to municipally-owned structures in the right-of-way.
- C. The establishment of the above-referenced fees does not in any way affect the right of the City to (1) adopt a resolution amending any of the fees adopted in subsection B above if the City finds that the fees are insufficient to compensate the City for its reasonable costs related to the permitting and administration of small wireless facilities; or (2) enter into an

agreement with any wireless provider with respect to the deployment of small wireless facilities, which provides for the payment of fees that exceed the amounts established in subsection B above; or (3) adopt an entirely different fee structure, including a market-based fee structure, in the event that any FCC Order is invalidated or modified in any way with respect to fees related to small wireless facilities.

- D. In the event that any FCC Order regarding small wireless facilities is invalidated by a court of competent jurisdiction or repealed and not replaced, the other provisions in this Chapter shall control over the Policy on Small Wireless Facilities in the Public Right-of-Way.”

Section 5. Conflicts with Prior Ordinances. If the provisions in this Urgency Ordinance conflict in whole or in part with any other City regulation or ordinance adopted prior to the effective date of this section, the provisions in this Urgency Ordinance will control. No permit for small wireless facilities shall be issued unless they comply with the requirements set forth in Section 4 above.

Section 6. Immediate Effect. This Urgency Ordinance is for the immediate preservation of the public peace, health, and safety within the meaning of Government Code sections 36934, 36937 and 65858, and therefore shall be passed immediately upon its introduction and shall become effective immediately upon its adoption, by a minimum four-fifths (4/5) vote of the City Council. This Ordinance shall become operative concurrent with the expiration of Ordinance and shall expire, and the prohibition established hereby shall terminate, ten (10) months and fifteen days (15) days after said effective date pursuant to, and subject to, California Government Code section 65858, unless further extended by the City Council pursuant to California Government Code section 65858.

Section 7. Publication and Posting. The City Clerk shall certify to the passage and adoption of this Urgency Ordinance and shall cause the same or a summary thereof, to be published and posted in the manner required by law.

Section 8. Severability. Should any sections, subsections, sentence, clause, or phrase of the Chapter adopted by this Ordinance is for any reason held to be invalid or unconstitutional by the decision or legislation of any court of competent jurisdiction, or by reason of preemptive legislation, such decision or legislation shall not affect the validity of the remaining portions of the Chapter. The City Council declares that it would have passed this Ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more of the sections, subsections, sentences, clauses, or phrases thereof is declared invalid or unconstitutional.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Temecula
this 14th day of May, 2019.

Michael S. Naggar, Mayor

ATTEST:

Randi Johl, City Clerk

[SEAL]

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss
CITY OF TEMECULA)

I, Randi Johl, City Clerk of the City of Temecula, do hereby certify that the foregoing Ordinance No. 19- was duly adopted and passed as an urgency ordinance at a meeting of the City Council of the City of Temecula on the 14th day of May, 2019, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

Randi Johl, City Clerk