

Introduced by: _____

ORDINANCE NO. _____

AN EXTENSION OF THE INTERIM URGENCY ORDINANCE OF THE CITY OF PASADENA TEMPORARILY PROHIBITING THE ISSUANCE OF PERMITS FOR THE PLACEMENT, CONSTRUCTION, AND MODIFICATION OF GROUND-MOUNTED COMMERCIAL WIRELESS FACILITIES IN RESIDENTIAL ZONING DISTRICTS

WHEREAS, the City of Pasadena (“City”) has adopted a Land Use Element to its General Plan and a Zoning Code (Chapter 17 of the Pasadena Municipal Code (“PMC”)) pursuant to its police powers to protect the public health, safety and welfare; and

WHEREAS, the Land Use Element sets forth policies and goals toward the protection of the residential character of Pasadena’s residential neighborhoods and the promotion of urban design which is compatible with Pasadena’s unique character and in context with surrounding development; and

WHEREAS, PMC § 17.50.310 currently governs the City’s regulation of wireless telecommunications facilities; and

WHEREAS, disputes have recently developed between the City and wireless providers, where the providers have asserted that they have legal authority to locate wireless facilities in the public rights-of-way pursuant to Public Utilities Code § 7901, free from land use regulation. The City disputes this interpretation of Public Utilities Code § 7901; and

WHEREAS, given the increasing use of business and personal devices relying on wireless facilities in society today, the City expects to receive applications for permits for “Ground-Mounted Commercial Wireless Facilities” (which include ground-mounted and partially above-ground fixtures, devices, and appurtenances for commercial wireless antennas) within residential zoning districts (1) in an increasing number; and (2) which facilities are significantly larger than most similarly situated existing installations; and

WHEREAS, given the rapidly evolving nature of the technology underlying wireless facilities, the increasing size of such facilities, and the expected encroachment of such facilities into the City's residential neighborhoods, the City must review and analyze its ability to implement the goals and objectives of its Land Use Element, potentially through development of new regulations relating to the placement, construction, and modification of Ground-Mounted Commercial Wireless Facilities in residential zoning districts; and

WHEREAS, 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; and

WHEREAS, on June 21, 2007, Ordinance No. 7104, AN INTERIM URGENCY ORDINANCE TEMPORARILY PROHIBITING THE ISSUANCE OF PERMITS FOR THE PLACEMENT, CONSTRUCTION, AND MODIFICATION OF GROUND-MOUNTED COMMERCIAL WIRELESS FACILITIES IN RESIDENTIAL ZONING DISTRICTS ("Interim Urgency Ordinance") was published and took effect; and

WHEREAS, during the initial effective period of the Interim Urgency Ordinance, City staff undertook a study of the City's land use regulations and means by which Ground-Mounted Commercial Wireless Facilities could be installed, constructed, or modified in residential zoning districts while conforming to the full intention to protect residential neighborhoods as set forth in the City's Land Use Element. City staff is also in the process of drafting standards for the placement of Ground-Mounted Commercial Wireless Facilities in residential zoning districts. However, City staff concluded that it needs additional time to complete its study, and to select and implement a solution; and

WHEREAS, the City Council continues to find that there is a current and immediate threat to the public health, safety, and welfare because, without an extension to this Interim Urgency Ordinance, Ground-Mounted Commercial Wireless Facilities could be installed, constructed, or modified in residential zoning districts without conforming to the full intention to protect residential neighborhoods as set forth in the City's Land Use Element. This could lead to wireless facilities which:

1. Create land use incompatibilities, such as large lattice towers located in residential zoning districts;
2. Create visual and aesthetic blight or view interference due to excessive size, height, or absence of camouflaging;
3. Create traffic and pedestrian safety hazards due to unsafe location of poles, towers, equipment boxes, or other materials or construction;
4. Reduce property values;
5. Create operational conflicts with other land use or facilities authorized or existing on the same or neighboring sites; or
6. Deteriorate the quality of life in a particular community or neighborhood; and

WHEREAS, the City does not intend that an extension of the Interim Urgency Ordinance prohibits or has the effect of prohibiting telecommunications service; rather, it is a short-term suspension on new facilities until appropriate regulations can be developed.

NOW THEREFORE, the People of the City of Pasadena ordain as follows:

SECTION 1. The provisions of this ordinance extend the temporary prohibition on the issuance of permits for the placement, construction, and modification of "Ground-Mounted Commercial Wireless Facilities" in residential zoning districts pursuant to Title 17 of the Pasadena Municipal Code. "Ground-Mounted Commercial Wireless Facilities" is defined as ground-mounted and partially above-ground

commercial wireless facilities, including, but not limited to, fixtures, devices, and appurtenances necessary to support wireless antennas.

SECTION 2. The provisions of this ordinance shall not apply to:

1. New Ground-Mounted Commercial Wireless Facilities in the same location as existing facilities, which are required to repair, replace, or maintain such facilities, provided that the new facilities are substantially similar in size, shape, color, and exterior material.
2. Processing or approval of Ground-Mounted Commercial Wireless Facilities that are located outside residential zoning districts.

SECTION 3. This ordinance shall remain in effect for a period of 10 months and 15 days from the date of publication. The City may cause this ordinance to expire at an earlier time if possible.

SECTION 4. During the effectiveness of this ordinance, the City will continue to accept and process applications for permits for the placement, construction, and modification of Ground-Mounted Commercial Wireless Facilities in residential zoning districts to the point of decision on such pending applications.

SECTION 5. During the effectiveness of this ordinance, City staff will continue to study the issue of Ground-Mounted Commercial Wireless Facilities in residential zoning districts in consideration of the possible adoption of ordinances reasonably regulating such facilities in the interest of the public health, safety, and welfare, and existing legal requirements.

SECTION 6. The City Council hereby declares that, should any section, paragraph, sentence, phrase, term or word of this ordinance, hereby adopted, be declared for any reason to be invalid, it is the intent of the City Council that it would have adopted all other portions of this ordinance irrespective of any such portion declared invalid.

SECTION 7. The City Clerk shall certify the adoption of this ordinance and shall cause this ordinance to be published.

SECTION 8. This ordinance shall be adopted and take effect upon publication.

Signed and approved this _____ day of _____, 2007.

Bill Bogaard
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was approved for adoption upon publication by the City Council of the City of Pasadena at its meeting held this _____ day of _____ 2007, by the following vote:

AYES:

NOES:

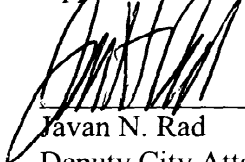
ABSENT:

ABSTAIN:

Date Published:

Jane L. Rodriguez, CMC
City Clerk

Approved as to form:



Javan N. Rad
Deputy City Attorney