

Ordinance Fact Sheet

TO: CITY COUNCIL **DATE:** JUNE 11, 2007
FROM: CITY ATTORNEY
SUBJECT: AN URGENCY ORDINANCE TEMPORARILY ADOPTING A
MORATORIUM ON PERMITS FOR GROUND-MOUNTED
COMMERCIAL WIRELESS FACILITIES IN RESIDENTIAL ZONES

TITLE OF PROPOSED ORDINANCE

**AN 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**

PURPOSE OF ORDINANCE

This ordinance responds to the Council's request at its April 30, 2007 meeting to report back to the Council on the possibility of a moratorium. The ordinance imposes a moratorium on permits for Ground-Mounted Commercial Wireless Facilities in residential zones.

REASON WHY LEGISLATION IS NEEDED

Because of the increasing use of devices relying on wireless services, the City expects an increasing number of requests to construct wireless facilities in residential zones. The City also expects some such facilities to be significantly larger than most similarly situated existing installations. Staff will explore possible amendments to the Zoning Code to regulate Ground-Mounted Commercial Wireless Facilities in residential zones during the time the ordinance is in effect. The moratorium exempts wireless providers that fully underground all equipment associated with their antennas. Also, wireless providers may continue to place facilities inside or on the sides or tops of existing structures during the moratorium.

MEETING OF 06/11/2007

AGENDA ITEM NO. 9.A.2.

PROGRAMS, DEPARTMENTS OR GROUPS AFFECTED

The Planning & Development Department, the Finance Department (Information Technology Services Division), and the Public Works Department will continue to process applications for permits for wireless facilities in residential zones as requests for permits subject to the moratorium are sought. Applications subject to the moratorium will be processed to the point of decision.

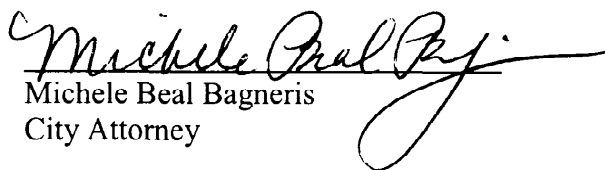
FISCAL IMPACT

There will not be an immediate fiscal impact as a result of this temporary moratorium.

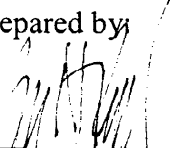
ENVIRONMENTAL DETERMINATION

This ordinance is exempt from the California Environmental Quality Act (“CEQA”) pursuant to State CEQA Guidelines § 15060(c)(2) because it will not result in a direct or reasonably foreseeable indirect physical change in the environment, and pursuant to State CEQA Guidelines § 15262, because the ordinance involves only 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.

Respectfully submitted,



Michele Beal Bagneris
City Attorney

Prepared by:



Javan N. Rad
Deputy City Attorney

Concurred by:



Cynthia J. Kurtz
City Manager

Introduced by: _____

ORDINANCE NO. _____

**AN 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, the City Council finds that there is a current and immediate threat to the public health, safety, and welfare because, without this 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 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 developed.

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

SECTION 1. The City Council finds that this ordinance is exempt from the California Environmental Quality Act (“CEQA”) pursuant to State CEQA Guidelines § 15060(c)(2) because it will not result in a direct or reasonably foreseeable indirect physical change in the environment, and pursuant to State CEQA Guidelines § 15262, because the ordinance involves only 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.

SECTION 2. The provisions of this ordinance temporarily prohibit 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 3. During the effectiveness of this ordinance, City staff is hereby directed 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 4. During the effectiveness of this ordinance, City staff is hereby directed to investigate the issue of Ground-Mounted Commercial Wireless Facilities in residential zones 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 5. 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 6. This ordinance is additional to and supplemental to, and shall not affect, except as specifically provided herein, any provision of the Pasadena Municipal Code, which shall be operative and remain in full force and effect without limitation with respect to all such businesses.

SECTION 7. 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 8. The City Clerk shall certify the adoption of this ordinance and shall cause this ordinance to be published.

SECTION 9. This ordinance shall be adopted and take effect upon publication, and shall remain in effect for a period of 45 days from the date of 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:

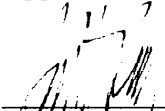
ABSENT:

ABSTAIN:

Date Published:

Jane L. Rodriguez, CMC
City Clerk

Approved as to form:



Javan N. Rad
Deputy City Attorney