

**ORDINANCE NO. 2011-286U**

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF CALABASAS, CALIFORNIA, DECLARING A  
MORATORIUM ON THE ISSUANCE OF PERMITS FOR  
WIRELESS COMMUNICATION FACILITIES.**

**THE CITY COUNCIL OF THE CITY OF CALABASAS DOES ORDAIN AS  
FOLLOWS:**

**SECTION 1. Findings.** The Calabasas City Council makes the following findings in support of the immediate adoption and application of this interim zoning ordinance regulating land use within the City, both within public rights-of-way and on other property.

A. The City has adopted a Land Use Element to its General Plan and a Land Use and Development Code (Chapter 17 of the Calabasas Municipal Code) pursuant to its police powers to protect the public health, safety and welfare. The Land Use Element sets forth policies and goals for the protection of the character of the City's residential and historic areas, and the promotion of high-quality urban design in commercial and industrial areas that are compatible with the City's unique character and in context with surrounding development. Section 17.12.050 of the Calabasas Municipal Code currently governs the City's regulation of antennas and related wireless telecommunications facilities ("Wireless Facilities").

B. State and federal law permitting local regulation of Wireless Facilities continues to develop. In *Sprint Telephone PCS, L.P. v. County of San Diego* (2008) 543 F.3d 571 ("*Sprint Telephone*"), the Ninth Circuit recently overruled seven years of Ninth Circuit jurisprudence relating to 47 U.S.C. § 253, a provision of Federal Telecommunications Act that, until *Sprint Telephone*, had been interpreted to severely limit local authority to regulate Wireless Facilities.

C. The City is in the course of preparing comprehensive new land use regulations with respect to Wireless Facilities and therefore anticipates applications from those who wish to evade these future regulations. To prevent this result, the City Council intends to impose, on an urgency basis, a temporary moratorium on the issuance of discretionary or ministerial permits for the installation, change or relocation of Wireless Facilities within the City. Such a moratorium will allow City staff, the City Council, and the City's residents sufficient time to consider a comprehensive ordinance lawfully regulating the installation, augmentation and relocation of Wireless Facilities in the City and maintain a level playing field for all participants in

that industry without rewarding those who can rush to the filing counter at the expense of competitors who may not. The preparation of such an ordinance, together with the necessary public outreach, legal research, and City processes for consideration of such enactments will require, at a minimum, forty-five days. The need for such a moratorium to conduct careful study in preparing regulation has been recognized by courts. *Sprint Spectrum, L.P. v. City of Medina* (1996) 924 F. Supp. 1036. The circumstances faced in *Sprint Spectrum, L.P. v. City of Medina* are identical to those currently presented to the City.

D. There is a current and immediate threat to public health, safety and welfare because, without this urgency ordinance, Wireless Facilities could be installed, constructed or modified in the City without conforming to the City's proposed standards to protect residential neighborhoods and the City's urban design and to minimize disruption to residential neighborhoods and other land uses caused by the proliferation of Wireless Facilities. Without this urgency ordinance, Wireless Facilities could:

- (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, 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 use or facilities authorized or existing on the same or neighboring sites; or
- (7) Erode the quality of life in a particular community or neighborhood.

E. Under California law, the City may adopt an interim ordinance that imposes a temporary moratorium prohibiting any uses that may be in conflict with the contemplated regulation of Wireless Facilities. Pursuant to Government Code § 65858(a), this urgency interim ordinance must be

adopted by not less than a four-fifths vote of this City Council and may be in effect only for forty-five (45) days from adoption. The City Council may consider extension of this interim ordinance, pursuant to statutory requirements, if necessary to allow completion of the legislative effort described above.

F. The City recognizes its responsibilities under the Federal Telecommunications Act of 1996 and California law, and concludes that it acts consistently 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. 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 adopted so that the installation, change and relocation of Wireless Facilities in the City occur so as to respect the rights of applicants while fully addressing the safety and land use concerns described herein.

G. Additional bases for this moratorium include:

- (1) The City has not previously funded enforcement of existing FCC and other legal standards applicable to the operation of wireless facilities and at least one facility is obviously out of repair and has been for many months since the operator was informed of the problem by the City.
- (2) The City needs time to train its Communications and Technology Commission members and staff to responsibly exercise the new authority to grant land use approvals to be established by the new ordinance.
- (3) The City needs time to develop new standards for wireless facilities with appropriate community input and consulting expertise and to implement a compliance regime to ensure safe and legal operation of existing and future wireless facilities.

**SECTION 2. Adoption as Urgency Interim Zoning Ordinance.** This ordinance is adopted as an urgency interim zoning ordinance pursuant to Government Code §§ 36934, 36937 and 65858(a), and shall be effective immediately upon its adoption. As detailed in Section 1 of this ordinance, the City Council finds and determines that the adoption of this urgency ordinance is necessary for the immediate preservation of the public peace, health or safety pursuant to the Government Code §§ 36934 and 36937, and is necessary to protect the public safety, health, and welfare pursuant to Government Code § 65858(a).

**SECTION 3. CEQA.** This Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines § 15061(b)(3) as a project that has no potential to cause a significant effect on the environment; CEQA Guidelines §15060(c)(2) as a project that will not result in a direct or reasonably foreseeable indirect physical change in the environment; CEQA Guidelines § 15302 as the replacement or reconstruction of existing structures or facilities; and CEQA Guidelines § 15303 as the construction or installation of small structures, facilities or equipment. These findings are premised on the fact that the adoption of this urgency interim ordinance will maintain the current environmental conditions arising from the current land use regulatory structure as adopted by the City without change or alteration. A Notice of Exemption has been completed in compliance with CEQA and the CEQA Guidelines.

**SECTION 4. Applicability.** Notwithstanding any provision of the Calabasas Municipal Code, including Section 17.12.050, or any other ordinance of the City, this ordinance shall apply to all new applications submitted to the City after the effective date of this Ordinance for the installation and/or augmentation of Wireless Facilities within the City, both within public rights-of-way and on other property. This ordinance is additional to and shall not affect, except as specifically provided herein, any provision of the Calabasas Municipal Code, which shall be operative and remain in full force and effect without limitation with respect to all other requests for installation, change or relocation of Wireless Facilities within the City that are not covered by this ordinance.

**SECTION 5. Temporary Moratorium.**

A. Except as described in Section 6 of this Ordinance, notwithstanding other existing Zoning or Municipal Code provisions and regulations of the City, there shall be a temporary moratorium in effect, commencing on the effective date of this ordinance, prohibiting any approval, including but not limited to zone clearances, variances, conditional use permits, encroachment permits, special use permits, planned development permits, building permits, electrical, mechanical, or plumbing permits, or use and occupancy permits as to a new or existing co-location site, for any:

1. installation of a Wireless Facility;
2. change to an existing Wireless Facility not necessary to maintain its current functionality as previously permitted by the City;
3. relocation of a Wireless Facilities; or
4. any combination thereof.

B. 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 any and all Wireless Facilities described in Section 5(A); rather, it is intended to, and does, prohibit only the issuance of approvals and permits for such Wireless Facilities. City staff is hereby directed to accept applications for Wireless Facility installations, augmentations or relocations, or combination thereof, received after the effective date of this ordinance. At a Wireless Facility applicant's written request, the City shall continue to process applications for permits or approvals relating to Wireless Facilities during the term of this moratorium; 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 described in Section 5(A) are tolled during the term of this moratorium. The City Council intends to terminate this moratorium as soon as reasonably feasible to adopt comprehensive new land use regulations with respect to Wireless Facilities.

**SECTION 6. Exceptions.** The provisions of this ordinance shall not apply to:

A. Wireless Facilities in the same location as existing Wireless Facilities, which are required to repair, replace, or maintain such facilities, provided that a new Wireless Facility is substantially the same in size, shape, color, and exterior material as the existing Wireless Facility it replaces.

B. Any Wireless Facilities exempted from this ordinance by federal or state law.

C. A change to an existing Wireless Facility necessary to maintain its current functionality as previously permitted by the City.

D. If a person can demonstrate that the application of this ordinance to his or her property would constitute a taking in violation of the federal or California Constitution or would otherwise be unlawful, an exception to this moratorium can be made pursuant to a variance approved by the Communications and Technology Commission under Section 17.62.080 of the Calabasas Municipal Code.

**SECTION 7. Planning Studies.** City staff shall promptly undertake such studies, reports and other actions as they deem necessary and appropriate to implement the direction provided by this City Council at its May 25, 2011 meeting as to revised zoning and other necessary regulatory controls over the installation, change, relocation and operation of Wireless Facilities in the City to address the concerns identified in this Ordinance. City staff shall prepare and submit for City Council adoption, 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.

**SECTION 8. Extension of Time.** The Community Development Director and the City Clerk shall undertake all actions legally necessary to extend this interim ordinance in the event the studies and reports desired by this City Council can not be concluded on or before expiration of this interim ordinance.

**SECTION 9. Severability.** Should any section, subsection, clause, or provision of this Ordinance be held to be invalid or unconstitutional for any reason, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, sentence, clause, and phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

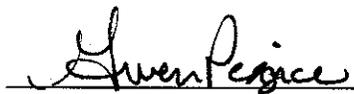
**SECTION 10. Effective Date.** This ordinance shall take effect immediately upon its passage. It shall be of no further force or effect 45 days from the date of adoption unless extended following a public hearing, as provided in Government Code § 65858.

**SECTION 11. Publication.** The City Clerk shall cause this Ordinance to be published or posted in the manner required by law, shall certify to the adoption of this Ordinance, and shall cause this Ordinance and its certification, together with proof of publication, to be entered in the Book of Ordinances of the City Council.

**PASSED, APPROVED AND ADOPTED** this 8<sup>th</sup> day of June 2011.

  
James R. Bozajian, Mayor

ATTEST:

  
Gwen Peirce, CMC, City Clerk

APPROVED AS TO FORM:

  
Michael G. Colantuono, City Attorney

STATE OF CALIFORNIA        )  
COUNTY OF LOS ANGELES    ) SS  
CITY OF CALABASAS         )

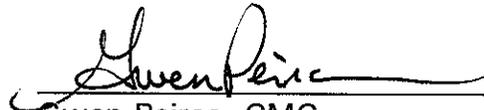
I, **GWEN PEIRCE**, City Clerk of the City of Calabasas, California, **DO**  
**HEREBY CERTIFY** that the foregoing ordinance, being **Ordinance No. 2011-286U**  
was duly adopted by the City Council of the City of Calabasas, at a regular meeting  
of the City Council held June 8, 2011 and that it was adopted by the following  
vote, to wit:

**AYES:** Mayor Bozajian, Mayor pro Tem Maurer, Councilmembers Martin and  
Wolfson.

**NOES:** Councilmember Gaines.

**ABSTAIN:** None.

**ABSENT:** None.

  
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Gwen Peirce, CMC  
City Clerk  
City of Calabasas, California