

**BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE
IN THE MATTER OF:**

An Interim Urgency Ordinance of the City Council of)
the City of Lafayette, California Making Findings and)
Extending the Temporary Moratorium on the)
Granting of Use Permits, Encroachment Permits,) Ordinance No. 604
Building Permits, or Other Applicable Entitlements)
for Use for Wireless Communication Facilities for)
Ten (10) Months and Fifteen (15) Days)

The City Council of the City of Lafayette does ordain as follows:

Section 1. Findings. The City Council finds the following:

1. **WHEREAS**, pursuant to Government Code §65858, the City may, in order to protect the public health, safety or welfare, enact an Interim Urgency Ordinance to prohibit certain uses which may be in conflict with a contemplated General Plan or Zoning proposal that the City Council or Planning Commission, or the Planning Services Division is studying or intends to study within a reasonable time; and
2. **WHEREAS**, the City of Lafayette does not have a wireless communications facilities (“WCF”) ordinance; Existing regulations are limited to the requirement for a land use permit for establishing or expanding wireless communications facilities and exempting radio towers, television towers, telephone poles, telegraph poles, devices for the transmission of telephone and telegraphic messages, and other similar facilities from height limitations; and
3. **WHEREAS**, the proliferation of new wireless communication facilities within the City presents a current and immediate threat to the public health, safety and welfare in that such facilities are often out of character with the design of existing residential, commercial or mixed-use development, contributing to aesthetic blight and reduced property values. They can also physically impact access to private and public rights-of-way within the City. The City has received numerous applications and inquiries regarding the development of new wireless communication facilities within the City and, given the strong desire of wireless telecommunication companies to continue expanding and enhancing their coverage, the City anticipates that it will receive additional applications and inquiries in the near future. The City must prohibit the further development of new wireless communication facilities until the City Council completes its analysis of how best to regulate these kinds of uses so that the City remains in compliance with Federal and State Law, while mitigating the negative secondary effects identified above to the greatest extent possible. Additionally, to allow the approval of land use entitlements for the development of new wireless communication facilities in the City at this time while the City considers amending its zoning regulations could result in the establishment of inconsistent land uses that would be harmful to the public health, safety and welfare; and
4. **WHEREAS**, on December 20, 2011, a complaint was filed in regards to an AT&T wireless communications facility, located within the public right-of-way, adjacent to 3844 Happy Valley Road and across the street from Happy Valley Elementary School. The facility consists of equipment located on a utility pole, a ground-mounted equipment rack with exposed components, and antennas mounted higher up on the pole. Based on reviewing City records, the facility does not appear to be in compliance with the conditions of approval for the original land use permit and the facility has been expanded beyond its approval and does not appear to be appropriately maintained. Of particular concern are the exposed wires which present a Health and Safety concern

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as well as creating a public nuisance and potential impact on property values of the surrounding properties. The City Engineer indicated that the facility also potentially has sight distance concerns. The Code Enforcement Officer initiated code enforcement proceedings by issuing a warning letter, addressing both the exposed wires and the non-permitted expansion of the facility. Staff believes that there are other WCFs in Lafayette with similar circumstances, such as the corner of Rimrock Road and Moraga Road, 1199 Dunsyre Drive, 3148 Lucas Drive, the 3600 block of Happy Valley Road within the public right-of-way, and the BART parking lot, that also pose an impact on the public safety and general welfare; and

5. **WHEREAS**, upon receipt of notification of proposed wireless communications facilities, a significant number of residents, by letter, telephone, email, and in-person, vehemently raised objections and concerns regarding the placement of the WCFs in residential neighborhoods, including aesthetic impacts, impacts on property values, and lack of a necessity for the facilities; and
6. **WHEREAS**, to address both community and statewide concerns regarding the establishment and expansion of WCFs, it is necessary for the City of Lafayette to study the potential impacts such facilities may have on the public health, safety, and welfare; and
7. **WHEREAS**, on December 19, 2011, the Planning Commission of the City of Lafayette conducted a duly noticed public hearing, at which time all persons wishing to testify in connection with the proposed moratorium were heard and the Commission forwarded a recommendation of approval to the City Council by a vote of 5:0:2 (ayes: Ateljevich, Chastain, Curtin-Tinley, Humann and Mitchell, noes: none, absent: Lovitt and Maggio), noting the growth in the number of applications and the proliferation in the number and scope of WCFs throughout the city, dramatic increase in the use of data and rapidly evolving technologies, and agreed that Lafayette needs an ordinance that governs the location, design, and appearance of WCFs.; and
8. **WHEREAS**, the City Council desires to review and study, and to also have the Planning Commission and Planning Services Division review and study design criteria, zoning regulations and building regulations relating to the placement of WCFs and appropriate design and suitable location for these facilities; and
9. **WHEREAS**, the limited controlled siting of WCFs may have potentially significant adverse effects and cause irreparable harm to the City's residential neighborhoods; and
10. **WHEREAS**, long delays and uncertainty of the permit process due to a lack of clear siting and development standards is an unreasonable limitation upon the wireless communications providers seeking to provide and improve wireless communication services to the residents, employees, and visitors of the City; and
11. **WHEREAS**, it is necessary for the City to act thoughtfully, carefully, and prudently in a field with rapidly evolving technology and to undertake a deliberative public process to establish policies, standards, and procedures related to the siting and design of WCFs in a fair, equitable and rational manner; and
12. **WHEREAS**, on January 23, 2012, after a duly noticed public hearing, the City Council found that issuing use permits, encroachment permits, building permits, or other applicable entitlements for the establishment and/or expansion of WCFs, prior to completion of the City's contemplated study of the potential impact of such facilities poses a current and immediate threat to the public health, safety, and welfare, and that a forty-five (45) day temporary moratorium on the issuance of such permits and entitlements is thus necessary; and

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13. **NOW THEREFORE**, on February 27, 2012, after a duly noticed public hearing the City Council adopted Urgency Ordinance 604, extending the temporary moratorium on the issuance of use permits, encroachment permits, building permits, or other applicable entitlements for the establishment and/or expansion of WCFs for ten (10) months and fifteen (15) days.

Section 2. Imposition of Moratorium.

1. In accordance with the authority granted the City of Lafayette under Government Code Section 65858, from and after the date of this Ordinance, no use permit, encroachment permit, building permit, or other applicable entitlement shall be approved or issued for a wireless communication facility for a period of forty-five (45) days.
2. For purposes of this Ordinance, "wireless communication facility" shall mean any device or system for the transmitting and/or receiving of electromagnetic signals, including but not limited to radio waves and microwaves, for cellular technology, personal wireless services, mobile services, paging systems and related technologies. Facilities include antennas, microwave dishes, parabolic antennas and all other types of equipment used in the transmission and reception of such signals; structures for the support of such facilities, associated buildings or cabinets to house support equipment, and other accessory development.
3. This Ordinance shall not apply to applications that have been deemed complete prior to the effective date of this interim urgency ordinance.
4. For purposes of this Ordinance, any proposed WCF to be owned and operated by a safety provider and reasonably necessary for the protection of life and public safety is exempt from the moratorium established under this urgency ordinance. The City shall determine, based on substantial evidence in the record, that the facility meets this requirement.
5. This moratorium shall not abridge those rights and privileges granted to wireless communication providers under the United States Telecommunications Act of 1996, (47 U.S.C. §332(c)(7)) (the "Act") nor shall it preclude a wireless communication provider from seeking administrative relief under the Act.

Section 3. CEQA. The City Council hereby finds and determines, that this Ordinance is not subject to the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15060(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) because it has no potential for resulting in physical change to the environment.

Section 4. Notice of Exemption. The City Council directs staff to prepare and file a Notice of Exemption no more than ten (10) working days after adoption of the Ordinance.

Section 5. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not effect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivision, paragraphs,

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sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

Section 6. Effective Date. This Ordinance shall become effective immediately following the initial forty-five (45) day moratorium if adopted by at least a four-fifths vote of the City Council and shall be in effect for ten (10) months and fifteen (15) days, concluding on January 23, 2013, unless extended by the City Council as provided for in the Government Code.

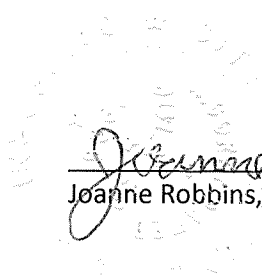
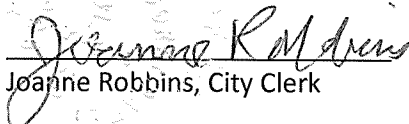
Section 7. Publication. The City Clerk shall either (a) have this Ordinance published in a newspaper of general circulation once within fifteen (15) days after its adoption, or (b) have a summary of this Ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption.

The foregoing Ordinance was passed and adopted at a meeting of the Lafayette City Council held on February 27, 2012 by the following vote:

AYES: Federighi, M. Anderson, B. Andersson, Anduri, Tatzin
NOES: None
ABSTAIN: None
ABSENT: None



Carol Federighi, Mayor



Joanne Robbins, City Clerk