

URGENCY ORDINANCE NO. 1805

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDENA, CALIFORNIA, ADOPTING CHAPTER 18.70 TO REGULATE WIRELESS FACILITIES DEPLOYMENTS ON PRIVATE PROPERTY, PUBLIC PROPERTY, AND IN THE PUBLIC RIGHTS-OF-WAY, AND AMENDING CHAPTER 18.04, CHAPTER 18.22, CHAPTER 18.24, CHAPTER 18.26, CHAPTER 18.30, CHAPTER 18.32, CHAPTER 18.34, CHAPTER 18.36, and CHAPTER 18.44, ALL AS RELATED TO WIRELESS FACILITIES

WHEREAS, 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, sanitary, and other ordinances and regulations not in conflict with general laws; and

WHEREAS, the City of Gardena (the "City") has not previously adopted detailed design regulations applicable to wireless telecommunications facilities, but has generally required site plan review in accordance with the provisions in Gardena Municipal Code Chapter 18.44 for wireless facilities on public and private property within the City's territorial and jurisdictional boundaries; and

WHEREAS, significant changes in federal and State law that affect local authority over wireless facilities have occurred, including but not limited to the following:

1. On November 18, 2009, the Federal Communications Commission ("FCC") adopted a Declaratory Ruling on the proceeding titled *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review*, 24 FCC Rcd. 13994 (rel. Nov. 18, 2009) (the "2009 Declaratory Ruling"), which imposed procedural restrictions on state and local permit application reviews such as presumptively reasonable times for action. After a petition for judicial review, the U.S. Supreme Court in *City of Arlington v. FCC*, 569 U.S. 290 (2013), upheld the FCC's authority to issue these rules; and

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

3. On October 17, 2014, the FCC adopted a Report and Order in the rulemaking proceeding titled *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, 29 FCC Rcd. 12865 (rel. Oct. 21, 2014) (the "2014 Infrastructure Order"), which implemented regulations for "eligible facilities requests" and imposed new procedural restrictions on application reviews. The U.S. Court of Appeals for the Fourth Circuit in *Montgomery Cnty. V. FCC*, 811 F.3d 121 (4th Cir. 2015), denied petitions for review; and

4. On October 9, 2015, Governor Edmund Brown signed Assembly Bill No. 57 (Quirk) into law, which creates a “deemed-approved” remedy for when a local government fails to act on applications for certain wireless facilities within the presumptively reasonable times established in the 2009 Declaratory Ruling and 2014 Infrastructure Order; and

5. On August 2, 2018, the FCC adopted a Third Report and Order and Declaratory Ruling in the rulemaking proceeding titled *Accelerating Wireline and Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, 33 FCC Rcd. 7705 (rel. Aug. 3, 2018) (the “August Order”) 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; and

6. On September 26, 2018, the FCC adopted a Declaratory Ruling and Third Report and Order in the same rulemaking proceeding, --- FCC Rcd. ---, FCC 18-133 (rel. Sep. 27, 2018) (the “September Order”), which, among many other things, creates a new regulatory classification for small wireless facilities, alters existing “shot clock” regulations to require local public agencies to do more in less time, establishes a national standard for an effective prohibition that replaces the existing “significant gap” test adopted by the United States Court of Appeals for the Ninth Circuit and provides that a failure to act within the applicable timeframe presumptively constitutes an effective prohibition; and

WHEREAS, in addition to the changes described above, local authority may be further impacted by other pending legislative, judicial and regulatory proceedings, including but not limited to:

1. The “STREAMLINE Small Cell Deployment Act” (S. 3157) proposed by Senator John Thune that, among other things, would apply specifically to “small” wireless facilities and require local governments to review applications based on objective standards, shorten the shot clock timeframes, require all local undertakings to occur within the shot clock timeframes and provide a “deemed granted” remedy for failure to act within the applicable shot clock; and

2. Further orders and/or declaratory rulings by the FCC from the same rulemaking proceeding as the August Order and September Order; and

3. Multiple petitions for reconsideration and judicial review filed by state and local governments against the August Order and September Order, which could cause the rules in either order to change or be invalidated; and

WHEREAS, given the rapid and significant changes in federal and State law, the actual and effective prohibition on moratoria to amend local policies in response to such changes and the significant adverse consequences for noncompliance with federal and State law, the City Council desires to amend and add provisions to the Gardena Municipal

Code to allow greater flexibility and responsiveness to new federal and State laws in order to preserve the City's traditional authority to the maximum extent practicable (collectively, the "Amendments"); and

WHEREAS, pursuant to Government Code section 36937, an Ordinance may take effect immediately if it is needed for the immediate preservation of the public peace, health or safety, containing a declaration of facts constituting and emergency, and passed by a four-fifths vote; and

WHEREAS, on July 23, 2019, the City Council took public testimony, reviewed and considered the staff report, other written reports, public testimony and other information contained in the record.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDENA, CALIFORNIA, DOES HEREBY ORDAIN, AS FOLLOWS:

SECTION 1. FINDINGS.

The City Council finds as follows:

A. The facts set forth the recitals in this Ordinance are true and correct and incorporated into these findings by this 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 Ordinance.

B. The Amendments are consistent with the General Plan, Gardena Municipal Code and applicable federal and California law.

C. The Amendments will not be detrimental to the public interest, health, safety, convenience or welfare.

SECTION 2. URGENCY FINDINGS.

A. State and federal law have changed substantially since the City last adopted regulations for wireless facilities in the City.

B. State and federal law requires local governments to act on permit applications for wireless facilities within a prescribed time period. Failure to act within the prescribed shot clock timeframes may result in either an automatic approval or significant legal presumptions against the City that render legal defenses significantly more difficult and costly.

C. Federal law requires state and local agencies to cite their own local authority and substantial evidence for any denial. Failure to provide such authority or evidence may result in a reversal and/or mandates to approve applications by a federal court. On

April 15, 2019, further restrictions on local authority and regulations for “small wireless facilities” became effective.

D. The City lacks adequate regulations to process wireless facilities and the management of applicable “shot clocks” that govern the time in which the City must approve or deny a wireless facility application.

E. The expeditious adoption of wireless facilities regulations is necessary to protect the City’s visual character from potential adverse impacts or visual blight created or exacerbated by telecommunications infrastructure and promote access to high-quality, advanced telecommunication services for the City’s residents, businesses and visitors.

F. The adoption of this Ordinance is necessary to preserve the public health, safety, and welfare as, without such adoption, wireless facilities approved without updated regulations could create: (1) land use conflicts and incompatibilities between comparable facilities; (2) visual and aesthetic blight and public safety concerns arising from the excessive size, noise or lack of camouflaging of wireless facilities; and (3) traffic and pedestrian safety hazards due to the potentially unsafe nature of unregulated siting of wireless facilities in the public rights-of-way.

SECTION 3. ENVIRONMENTAL REVIEW.

Pursuant to California Environmental Quality Act (“CEQA”) Guidelines § 15378 and California Public Resources Code § 21065, the City Council finds that this 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 Ordinance is not subject to CEQA. Even if this 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 Ordinance merely amends the Gardena Municipal Code to authorize the adoption of regulations related to wireless facilities. This Ordinance does not directly or indirectly authorize or approve any actual changes in the physical environment. Accordingly, the City Council finds that this Ordinance would be exempt from CEQA under the general rule.

SECTION 4. ADOPTING CHAPTER 18.70.

Chapter 18.70, titled “WIRELESS FACILITIES,” is added to the Gardena Municipal Code and provides, as follows:

18.70 WIRELESS FACILITIES

18.70.010 Regulation of Wireless Facilities

All new wireless facilities, and any modifications, collocations, expansions or other changes to existing wireless facilities, whether located on private property, public

property, or within the public rights-of-way, shall be subject to the applicable permits, standards, procedures and other requirements as specified in the policy adopted by resolution of the City Council. Wireless facilities shall not be subject to the site plan review procedure of Chapter 18.44 of this Code.

18.70.020 Payment of Consultant Fees

All applicants for wireless facilities shall be required to reimburse the City for all reasonable consultant costs related to the processing of applications pursuant to this Chapter in addition to the application fee.

SECTION 5. AMENDMENTS TO CHAPTER 18.22.

Gardena Municipal Code section 18.22.020B which allowed wireless telecommunications facilities in the Parking zone subject to site plan approval is deleted in its entirety and not replaced.

SECTION 6. AMENDMENTS TO CHAPTER 18.24.

Gardena Municipal Code section 18.24.020F which allowed wireless telecommunications facilities in the Official zone subject to site plan approval is deleted in its entirety and not replaced.

SECTION 7. AMENDMENTS TO CHAPTER 18.26.

Gardena Municipal Code section 18.26.020C which allowed wireless telecommunications facilities in the Business and Professional Office zone subject to site plan approval is deleted in its entirety and not replaced.

SECTION 8. AMENDMENTS TO CHAPTER 18.30.

Gardena Municipal Code section 18.30.020I which allowed wireless telecommunications facilities in the Commercial zone subject to site plan approval is deleted in its entirety and not replaced.

SECTION 9. AMENDMENTS TO CHAPTER 18.32.

Gardena Municipal Code section 18.32.020H which allowed wireless telecommunications facilities in the General Commercial zone subject to site plan approval is deleted in its entirety and not replaced.

SECTION 10. AMENDMENTS TO CHAPTER 18.34.

Gardena Municipal Code section 18.34.020D which allowed wireless telecommunications facilities in the Heavy Commercial zone subject to site plan approval is deleted in its entirety and not replaced.

SECTION 11. AMENDMENTS TO CHAPTER 18.36.

Gardena Municipal Code section 18.36.020N which allowed wireless telecommunications facilities in the Industrial zone subject to site plan approval is deleted in its entirety and not replaced.

SECTION 12. AMENDMENTS TO CHAPTER 18.44.

Gardena Municipal Code section 18.44.010 is amended as follows:

Site plans are required to be submitted for:

A. Any development project for which a general plan amendment, zone change, conditional use permit, variance, tract map, or other discretionary permit is being sought in which case the site plan shall be processed concurrently with the other discretionary approvals;

B. Any development project, ~~including a wireless telecommunications facility,~~ on property, public or private, fronting on the westerly or easterly side of Western Avenue from 182nd Street on the south to El Segundo Boulevard on the north;

C. Any development project, ~~including a wireless telecommunications facility,~~ on property, public or private, fronting on the northerly or southerly side of Redondo Beach Boulevard from Crenshaw Boulevard on the west to Vermont Avenue on the east;

D. Any development project, ~~including a wireless telecommunications facility,~~ on property, public or private, fronting on the northerly or southerly side of Rosecrans Avenue from Crenshaw Boulevard on the west to Vermont Avenue on the east;

E. All new multifamily development of four units or more;

F. Those uses identified in the C-R zone as needing site plan review approval;

G. Any use allowed by right or by conditional use permit pursuant to the mixed-use overlay zone, but not including any use allowed by itself in the underlying zone;

H. Any development in the R-1 or R-2 zone where the proposed development is out of character with the surrounding residential properties as determined by the community development director, based on floor area ratio ("FAR");

I. Accessory uses in commercial parking lots; and

J. ~~Wireless telecommunications facilities for any location other than those specified in subsections B through D of this section; and~~

~~KJ.~~ Any other development for which a site plan review is required by this code.

In addition, Gardena Municipal Code section 18.44.020B is amended as follows:

B. The planning commission shall hold a noticed, public hearing and approve, conditionally approve, or deny site plans required by Section 18.44.010A through G or pursuant to any other provision of the Gardena Municipal Code.

~~1. Notwithstanding the above, the planning commission shall only review site plans for wireless facilities when they are located within the R-1 or R-2 zone or within three hundred feet of any such zone.~~

~~21.~~ Notice of hearings shall be given in accordance with Government Code Section 65091.

SECTION 13. CONFLICTS WITH PRIOR ORDINANCES.

If the provisions in this 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 Ordinance will control.

SECTION 14. SEVERABILITY.

The City Council declares that (1) the sections, paragraphs, sentences, clauses and phrases in this Ordinance are severable; and (2) if any sections, paragraphs, sentences, clauses and phrases in this Ordinance, or its application to any person, entity or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other sections, paragraphs, sentences, clauses and phrases in this Ordinance or the application of this Ordinance to any other person, entity or circumstance.

SECTION 15. EFFECTIVENESS.

This Ordinance shall take effect immediately. This Ordinance will remain effective until any repealing or superseding ordinance becomes effective.

SECTION 16. PUBLICATION.

The City Council directs the City Clerk to cause this Ordinance to be published in the manner required by law.

PASSED, APPROVED, and ADOPTED on July 23, 2019, at a regular meeting of the City Council of the City of Gardena.



Tasha Cerda, Mayor
City of Gardena, California

ATTEST:


Mina Semenza, City Clerk

APPROVED AS TO FORM:



Peter L. Wallin, City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss:
CITY OF GARDENA)

I, **MINA SEMENZA**, City Clerk of the City of Gardena, do hereby certify that the whole number of members of the City Council of said City is five; that the foregoing Ordinance being **Urgency Ordinance No. 1805** was duly passed and adopted by the City Council of said City of Gardena, approved and signed by the Mayor of said City, and attested by the City Clerk, all at a meeting of said City Council held on the **23rd** day of **July, 2019**, and that the same was so passed and adopted by the following roll call vote:

AYES: COUNCIL MEMBERS TANAKA AND MEDINA, MAYOR PRO TEM KASKANIAN,
 COUNCIL MEMBER HENDERSON AND MAYOR CERDA

NOES: NONE

ABSENT: NONE

Becky Romero
for _____
City Clerk of the City of Gardena, California

(SEAL)