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CITY OF OAKLAND

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REVISED

4/5 VOTE REQUIRED FOR PASSAGE

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBERS NANCY NADEL AND LARRY REID

Mark P. Wall for Farvankh Faiz
Oakland City Attorney's Office

ORDINANCE NO. 12750 C.M.S.

AN URGENCY ORDINANCE, PURSUANT TO GOVERNMENT CODE SECTION 65858, BY THE CITY OF OAKLAND, ESTABLISHING A TEMPORARY MORATORIUM ON THE APPROVAL OF APPLICATIONS TO CONSTRUCT, MODIFY OR PLACE WIRELESS COMMUNICATION FACILITIES

WHEREAS, Government Code § 65858 allows a city, including a charter city, without following the procedures otherwise required prior to the adoption of a zoning ordinance, to adopt, as an urgency measure, an interim ordinance prohibiting any uses which may be in conflict with a contemplated general plan, specific plan, or zoning proposal which the legislative body, planning commission, or planning department is intending to study within a reasonable time; and

WHEREAS, the City of Oakland's Community Economic Development Agency is in the process of studying proposed amendments to the City's zoning regulations, which amendments are expected to be enacted by the end of 2006 as part of the Agency's major initiative to update the Oakland Planning Code; and

WHEREAS, until such time that the City concludes its review and adopts and institutes new land use regulations governing permit applications for the construction, modification or placement of wireless communication facilities, the community is in jeopardy that wireless communication facilities could be constructed, modified or placed prior to the imposition of new regulations necessary for the protection of public health and welfare;

WHEREAS, the City Council finds and determines that the approval of pending or new applications for wireless communications facilities during the moratorium period, in which possible amendments to the Zoning Code are being studied, could result in conflicts with any proposed amendments and would undermine the purpose of studying such amendments, thereby reducing the quality of life within the community to the extent the overall public health, safety and welfare are detrimentally affected; and

WHEREAS, the City's current wireless communication facilities regulations, which were enacted in 1996 and have not been updated since 2000, are deficient in several areas, including but not limited to: they do not adequately address community concerns regarding

locational standards and design, and they allow permit applications to be handled through an administrative review process that requires public notification through notice but does not include a public hearing; and

WHEREAS, since 2000, the City of Oakland has received an increasing number of applications for the construction, modification, and/or placement of wireless telecommunication facilities throughout the City; and

WHEREAS, currently, the City of Oakland's Planning and Zoning Department approves, on average, one permit per week for the installation, construction, placement, and/or modification of wireless communication facilities; and

WHEREAS, changes in wireless communication technology, as well as projected increases in residential and commercial development throughout the City, coupled with the desire of wireless communication providers to increase wireless communication services in the City and surrounding areas will likely produce additional permit applications for the placement or modification of wireless communication facilities within the City of Oakland; and

WHEREAS, significant concerns have been raised in the community regarding the continuing adequacy of the current regulations to address the increased number of permit applications and new technologies of wireless communication facilities, and to ensure informed, consistent, uniform, and fair decisions on permit applications for new and/or modified wireless communications facilities throughout the City; and

WHEREAS, citizens of the City of Oakland have also expressed significant concerns regarding the impacts that a proliferation of wireless communication facilities within the City of Oakland, may have upon the community as a whole, including, but not limited to, safety, noise, maintenance, lighting, visibility, adverse visual impacts, and incompatibility of commercial uses in residential zones; and

WHEREAS, citizens of the City of Oakland have expressed a desire that the City receive adequate wireless telecommunication services provided that the facilities are designed and located to minimize the concerns described above; and

WHEREAS, it is the intent of the Oakland City Council to consider and adopt new zoning regulations pertaining to wireless telecommunication facilities in order to provide clear, consistent, and uniform guidance to wireless communication service providers regarding the siting and design of wireless communication facilities while also addressing the significant community concerns described above, and to better reflect the City's siting and regulatory objectives for wireless telecommunication facilities, all within the limitations specified in the Telecommunications Act of 1996; and

WHEREAS, the Oakland City Council has determined that a temporary moratorium on the approval of applications to construct, modify or place Wireless Communication Facilities will allow the City time to complete its review and revisions of its Telecommunications

Regulations while ensuring to the maximum extent feasible that the siting and other objectives of the revised ordinance may be achieved; and

WHEREAS, for the reasons set forth above, this ordinance is declared by the Oakland City Council to be necessary for preserving the public peace, health, or safety and to avoid a current, immediate and direct threat to the health, safety, or welfare or the community, and the “Whereas” clauses above taken together constitute the City Council’s statement of the reasons constituting such necessity and urgency.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND does ordain as follows:

SECTION 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this ordinance.

SECTION 2. The City Council finds and determines, for the reasons stated in the recitals, the adoption of this ordinance is exempt from CEQA under Sections 15061(b)(3), 15307, 15308, and 15183 of the State CEQA Guidelines.

SECTION 3. The City Council hereby directs the Community and Economic Development Agency to work on the preparation of amended zoning regulations governing the construction, modification, and placement of wireless telecommunications facilities within the City of Oakland, and to submit them for consideration by the Planning Commission and City Council.

SECTION 4. Until such time as the City concludes the review described above, and adopts new Telecommunications Regulations or otherwise amends Chapter 17.128 and/or Sections 17.10.860-17.10910 of the Planning Code, the City of Oakland hereby declares a moratorium on the approval of permit applications to construct, modify or place wireless communication facilities, as defined in section 5 below.

SECTION 5. For purposes of this Ordinance, the following definitions shall apply:

- a. “Wireless Communication Facility” means an unstaffed facility for the transmission and reception of low-power radio signals. (Planning Code §17.128, Ord. 11904 § 5.01 (part).)

SECTION 6. In accordance with Government Code Section 65858, this Ordinance shall be in full force and effect for a period of 45 days from the date of its adoption, i.e., **from June 27, 2006 through and including August 11, 2006**, prohibiting the approval of permits applications to construct, modify or place wireless communication facilities, except as provided in Section 7, below. This 45-day period may be extended by the City Council in accordance with the provisions of California Government Code Section 65858.

SECTION 7. Exceptions. Any proposed wireless telecommunication facility to be owned and operated by a public 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 Council shall determine, based on substantial evidence in the record, that the facility meets this requirement. In addition, the moratorium shall not apply to the following activities, as defined in Section 17.128.020 of the current Zoning Regulations:

- a. Ham radio operators;
- b. Microwave dishes;
- c. Minor modifications of existing wireless communications facilities and attached wireless communications facilities, whether emergency or routine, provided there is little or no change in the visual appearance. Minor modifications are those modifications, including the addition of antennas, to conforming wireless and attached wireless communications facilities that meet the performance standards set forth in this document;
- d. Antennas and equipment cabinets or rooms completely located inside of structures and whose purpose is to enhance communications within the structures. (Ord. 11904 § 5.01 (part), 1996: prior planning code § 8501.)

SECTION 8.

- a. During the term of this ordinance as set forth in Section 6 hereof, no use permit, building, zoning or other permit that has been issued for the construction, modification, or placement of any wireless communication facility, for which rights to proceed with the wireless communication facility have not vested pursuant to the provisions of State law, shall proceed; and no use permit, building, zoning or other permit for the construction, modification, or placement of any wireless communication facility shall be issued by any department, agency, employee, or agent of the City of Oakland. Only wireless communication facility use permits, development projects, facilities, or other activities which have vested, pursuant to the provisions of the State law, prior to the date of this Ordinance shall proceed in violation of the provisions of this Ordinance.
- b. An application for wireless facility may be processed during the moratorium, and any extension of the moratorium. However, the application shall be processed at the applicant's sole cost and expense and with the understanding that no permit shall be issued until the moratorium, including any extension of the moratorium, has expired and that, the permit may not be issued if it is inconsistent with any amendments to city laws, ordinances or regulations that are amended by reason of the review that occurs during the moratorium."

SECTION 9. Petition for Relief from Moratorium. Any person who has applied to construct, modify or place a Wireless Communication Facility which would be affected by this Moratorium, and who contends that the Moratorium as applied to him or her would be unlawful under Federal, State, or local law or regulation, may submit a written application to the Planning Director requesting relief from the Moratorium. The request for relief from moratorium shall identify the name and address of the applicant, the affected application number, and shall state how the Moratorium as applied to him or her would be unlawful under Federal, State, or local law or regulation. Within fourteen (14) calendar days of receipt of the completed request for relief, the City Administrator, or her designee, shall mail to the applicant a written determination accepting or rejecting the request for relief from Moratorium.

SECTION 10. The City Clerk shall certify to the passage and adoption of this Ordinance causing it to be posted, as required by the law, and it shall thereafter be in full force and effect. This Ordinance shall become effective immediately as an interim urgency ordinance, in order to protect the public health, safety, and welfare.

SECTION 11. For the term of this ordinance, as set forth in Section 5 hereof, the provisions of this ordinance shall govern, to the extent there is any conflict between the provisions of this ordinance and the provisions of any other City code, ordinance, resolution or policy, and all such conflicting provisions shall be suspended.

SECTION 12. This Ordinance is enacted pursuant to the City of Oakland's general police powers, Section 106 of the Charter of the City of Oakland, Article XI of the California Constitution and Government Code section 65858.

SECTION 13. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

IN COUNCIL, OAKLAND, CALIFORNIA, **JUN 27 2006**, 2006

PASSED BY THE FOLLOWING VOTE:


AYES - BRUNNER, KERNIGHAN, NADEL, QUAN, BROOKS, REID, CHANG, and
PRESIDENT DE LA FUENTE - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

Introduction Date:
JUN 27 2006

ATTEST: 
LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California