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NANCY J. NADEL
Councilmember
District # 3

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TO: Council President Ignacio de la Fuente and Members of the City Council
FROM: Councilmembers Nancy J. Nadel, District 3, and Larry Reid, District 7
DATE: July 18, 2006
RE: An Urgency Ordinance, Pursuant To Government Code Section 65858, Extending Until October 5, 2006 A Moratorium On The Approval Of Permit Applications To Construct, Modify Or Place Wireless Communication Facilities Which Was Adopted On June 27, 2006 (Ordinance No. 12750 C.M.S.)

SUMMARY

This ordinance will extend until October 5, 2006 the temporary moratorium adopted by the City Council on June 27, 2006, on the granting of any permits for the construction, modification, or placement of cell phone towers and antennae in the City of Oakland.

FISCAL IMPACT

None. This is a policy and regulatory matter with no direct fiscal impact.

BACKGROUND

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, a 45-day 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.

In response to community concerns over unsafe or unsightly cellular antennae and towers, on June 27, 2006, the Oakland City Council unanimously approved a 45-day moratorium (Ordinance No. 12750 C.M.S.) on permits for wireless communication facilities until the City can craft new zoning codes to consistently regulate the design and location of cell phone towers and antennae throughout the City. A copy of Ordinance No. 12750 C.M.S. is attached as Exhibit A.

During the City Council meeting on June 27th, the Council noted that the 45-day moratorium would expire on August 11, 2006, at which time the Council will be on Summer Recess. Therefore, the City Council directed Councilmembers Nadel and Reid to return to Council on July 18, 2006 an Ordinance extending the moratorium to no later than its second meeting after the Recess, in October, to allow for final passage of the permanent legislation.

KEY ISSUES AND IMPACTS

Government Code § 65858 permits an initial 45-day moratorium, which can then be extended if necessary. In light of the fact that the City Council will remain on Summer Recess until September 12, 2006, it is necessary to extend the moratorium, currently set to expire on August 11, 2006. While the City Council and City Staff wish to complete the wireless regulation zoning code update as quickly as possible, certain scheduling realities require an extension of the moratorium to October 5, 2006.

The legislative process by which any proposed permanent amendments to the wireless regulations in the Oakland Planning Code can be adopted requires public hearings before the Planning Commission and the Community & Economic Development Committee, as well as two readings before the full City Council, the completion of which cannot occur until October 3, 2006, at the earliest.

The City of Oakland's Community and Economic Development Agency (CEDA) is in the process of studying proposed amendments to the City's wireless zoning regulations. With the assistance of Councilmembers Nadel and Reid, CEDA has scheduled four public meetings for the purpose of receiving public testimony and comment on the proposed amendments, as follows:

- Thursday, July 6, 4:00 pm to 6:00 pm, Hearing Room 3, City Hall: Speakers from the wireless industry will present their concerns and questions. Anyone can attend this public meeting, but the agenda will focus primarily on speakers from the wireless industry.
- Thursday, July 13, 4:00 pm to 6:00 pm, Hearing Room 4, City Hall: Speakers from the community and neighborhood groups will present their concerns and questions. Anyone can attend this public meeting, but the agenda will focus primarily on speakers from the community and neighborhood groups.
- Thursday, July 20, 7:00 pm to 9:00 pm, Hearing Room 2, City Hall: Presentation of the First/Preliminary Draft of the proposed amendments to the wireless regulations. All interested parties are invited to this meeting to review and comment on the Preliminary Draft. Comments from this meeting will be considered in preparing the Second Draft of the amendments.
- Thursday, July 27, 7:00 pm to 9:00 pm, Hearing Room 2, City Hall: Presentation of the Second/Semi-Final Draft of the proposed amendments to the wireless regulations. All interested parties are invited to this meeting to review and comment on the Second Draft.

Notice of the four public meetings in July has been distributed to interested parties, as well as publicized to the general public.

The proposed amendments will then have to be presented at a public hearing of the Planning Commission, on August 16, 2006. The proposed amendments will then have to proceed before the Community & Economic Development Committee on September 12, 2006. Finally, the proposed amendments will then have to proceed to a First Reading before the City Council on September 19, 2006, with a Second Reading on October 3, 2006.

Therefore, the earliest date on which the new regulations may be adopted by the City Council is October 3, 2006.

RECOMMENDATIONS AND RATIONALE

It is the recommendation of this report that the City Council adopt this Urgency Ordinance, extending the temporary moratorium in order to provide sufficient time for the City to draft new zoning codes to consistently regulate the design and location of cell phone towers and antennae throughout the City.

Respectfully submitted,

Nancy J. Nadel
City Councilmember, District 3

Larry E. Reid
City Councilmember, District 7

Prepared by:
Marisa Arrona
Policy Analyst
Councilmember Nancy J. Nadel
District 3

EXHIBIT A

4/5 VOTE REQUIRED FOR PASSAGE

APPROVED AS TO FORM AND LEGALITY

05/01/11 11:00


City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

INTRODUCED BY COUNCILMEMBERS NANCY NADEL AND LARRY REID

**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; and

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 continued 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 the 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 of 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 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 make 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 6, 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. 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.

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 6 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, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
Council of the City of Oakland, California

OFFICE OF THE CITY CLERK
OAKLAND

2006 JUL -6 PM 3:43

INTRODUCED BY COUNCILMEMBERS NANCY NADEL AND LARRY REID

4/5 VOTE REQUIRED FOR PASSAGE

APPROVED AS TO FORM AND LEGALITY

Mark P. Wadd
Oakland City Attorney's Office

ORDINANCE NO. _____ C.M.S.

**AN URGENCY ORDINANCE, PURSUANT TO GOVERNMENT CODE SECTION
65858, EXTENDING UNTIL OCTOBER 5, 2006 A MORATORIUM
ON THE APPROVAL OF PERMIT APPLICATIONS TO CONSTRUCT, MODIFY OR
PLACE WIRELESS COMMUNICATION FACILITIES
WHICH WAS ADOPTED ON JUNE 27, 2006 (ORDINANCE NO. 12750 C.M.S.)**

WHEREAS, on June 27, 2006, the City Council adopted Urgency Ordinance No. 12750 C.M.S., establishing an emergency 45-day moratorium on the approval of permit applications for the construction, modification, or placement of wireless communication facilities; and

WHEREAS, the 45-day moratorium will expire on August 11, 2006, at which time the City Council will be on Summer Recess, and it will remain on Recess until September 12, 2006; and

WHEREAS, the legislative process by which any proposed permanent amendments to the wireless regulations in the Oakland Planning Code can be adopted requires public hearings before the Planning Commission and the Community & Economic Development Committee, as well as two readings before the full City Council, the completion of which cannot occur until no earlier than October 3, 2006;

WHEREAS, the City of Oakland's Community Economic Development Agency is in the process of studying proposed amendments to the City's wireless zoning regulations, and it is expected that the proposed amendments will be presented at a hearing of the Planning Commission on August 16, 2006, before proceeding to the City Council for consideration; and

WHEREAS, due notice of the hearing requesting this extension of the moratorium has been given as required by law; and

WHEREAS, for the reasons set forth above and in Ordinance No. 12750 C.M.S., 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 recitals set forth in this Ordinance and Ordinance 12750 C.M.S. to be true and correct and hereby makes them a part of this ordinance.

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

SECTION 3. All provisions of Ordinance No. 12750 C.M.S, except for Section 6, shall remain in full force and effect during the extended term of the moratorium. Section 6 of Ordinance No. 12750 C.M.S. is revised to reflect that the extended moratorium shall expire, and be of no further force and effect, on midnight, October 5, 2006, unless a permanent ordinance establishing new regulations governing wireless communication facilities covered by this moratorium is adopted earlier, in which case, the moratorium shall expire upon the effective date of the permanent regulations.

SECTION 4. 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.

SECTION 5. This Ordinance shall take effect and be in full force immediately upon its passage.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2006

PASSED BY THE FOLLOWING VOTE:

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

NOES –

ABSENT –

ABSTENTION –

ATTEST:

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