

ORDINANCE NO. 1088

**TEN MONTH AND FIFTEEN DAY EXTENSION OF ORDINANCE NO. 1086
BEING AN INTERIM URGENCY ORDINANCE OF THE CITY OF
BEAUMONT, ENACTING A TEMPORARY MORATORIUM ON THE
ISSUANCE OF ANY PERMITS FOR NEW AND RELOCATED WIRELESS
TELECOMMUNICATIONS FACILITIES WITHIN PUBLIC RIGHT-OF-
WAYS, PURSUANT TO GOVERNMENT CODE SECTION 65858.**

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

SECTION 1. Findings.

The City Council finds and declares as follows:

A. Under Public Utilities Code § 7901.1, a municipality can adopt reasonable time, place and manner regulations with respect to the manner in which public rights-of-way may be accessed by telephone companies, including wireless communication companies which have been granted state authorization permitting the construction of facilities in public rights-of-way.

B. Title 47, United States Code § 332 appears to authorize municipalities to regulate the placement, construction and modification of wireless telecommunication facilities, subject to specified limitations.

C. As used in this ordinance, "Wireless Facilities" means all equipment installed for the purpose of providing wireless transmission of voice, data, images or other information including, but not limited to, cellular telephone service, personal communications services and paging services, consisting of equipment and network components such as towers, utility poles, transmitters, base stations and emergency power systems. "Wireless Facilities" shall not be deemed to include facilities constructed by and operated by suppliers of electric, gas or water utilities.

D. The BEAUMONT Municipal Code (BMC) is silent with respect to the development, siting, installation, and operation of Wireless Facilities within City rights-of-way.

E. State and federal law addressing the scope and manner of local regulation of Wireless Facilities continues to develop and evolve as evidenced by the following cases and rule changes:

i. In *Sprint Telephone PCS, L.P. v. County of San Diego* (2008) 543 F.3d 571 ("Sprint Telephone"), the Ninth Circuit Court of Appeals overruled seven years of Ninth Circuit jurisprudence relating to 47 U.S.C. § 253, a provision of Federal Telecommunications Act that, until this case was decided, had been interpreted to severely limit local authority to regulate Wireless Facilities.

ii. In *Sprint PCS Assets, LLC v. City of Palos Verdes Estates* (2009) 583 F.3d 716 ("Sprint PCS"), the Ninth Circuit Court of Appeals set out significant new standards establishing how municipalities may consider and decide applications for Wireless Facilities to be located within the public right-of-way.

iii. On February 22, 2012, section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 ("Act") was enacted and changed how co-located Wireless Facilities must be evaluated, and in some cases must be approved, changing more than a decade of national jurisprudence relating to 47 U.S.C. § 332 that, until the passage of the Act allowed local governments wide latitude and discretion in considering co-location of Wireless Facilities in the public right-of-way, and on public and private property.

iv. On October 17, 2014, the Federal Communications Commission ("FCC") issued a Report and Order updating its rules and procedures governing new and modified Wireless Facilities, which includes clarifications on local zoning powers with respect to Wireless Facilities and the procedures for the review of siting applications.

v. The case of *T-Mobile West, LLC et al. vs. City and County of San Francisco et al.* 3 Cal.App.5th 999 (2016) the court upheld the legal authority of municipalities to regulate timing, location and manner of construction of Wireless Facilities.

F. The City has recently received and anticipates receiving additional requests by telecommunications providers to establish new or expanded Wireless Facilities within the City rights of way. However, as noted above, the existing provisions of the BMC are inadequate and

time is needed to review, study and revise the BMC to fully take into account the impacts related to the timing, location and manner of construction of Wireless Facilities by multiple telecommunication providers within the public rights-of-way as well as other public and private property, including the public health, safety and welfare concerns of pedestrian and vehicular traffic.

G. In addition to detracting from public views and neighborhood character, unsightly Wireless Facilities and their related visual clutter can lead to or exacerbate public safety hazards such as distracted driving. This poses a safety concern in Beaumont where members of the public, including children, commonly walk along public right-of-ways. For these reasons, the City Council finds that it must consider regulating the appearance and location of Wireless Facilities within the public right-of-ways in order to promote the public health, safety and welfare.

H. The BMC must be updated in order to protect the public against the potential threats to the health, safety and welfare of the public arising from telecommunication providers constructing Wireless Facilities throughout the City in the rights of way. The City requires additional time to prepare, evaluate and adopt reasonable regulations regarding the use of the public rights-of-way and other public and private property within the City for Wireless Facilities.

I. The absence of this ordinance would impair the orderly and effective implementation of contemplated amendments to the BMC, and any further authorization to construct Wireless Facilities in the City's rights-of-way or other public or private property within the City during the period of this moratorium may be in conflict with or may frustrate the contemplated updates and revisions to the BMC.

J. Without the enactment of this ordinance, multiple telecommunication providers could quickly receive permits to install Wireless Facilities that pose a threat to the public health, safety and welfare. For example, without this ordinance, Wireless Facilities could:

- i. Create land use conflicts and incompatibilities including excessive height of poles and towers;
- ii. Create visual and aesthetic blight and potential safety concerns arising from excessive size, heights, noise or lack of camouflaging of Wireless Facilities including the associated pedestals, meters, equipment boxes and power generators;

- iii. Create unnecessary visual and aesthetic blight by failing to utilize alternative technologies or capitalize on collocation opportunities;
- iv. Cause substantial disturbances to rights-of-way through the installation and maintenance of Wireless Facilities;
- v. Create traffic and pedestrian safety hazards due to the unsafe location of Wireless Facilities; and
- vi. Negatively impact the unique quality and character of the City.

K. The City Council further finds that this moratorium is a matter of local and City-wide importance and is not directed towards any particular telecommunication provider that currently seeks to establish a Wireless Facility.

L. Government Code §§ 36937 and 65858 authorize the adoption of an urgency ordinance to protect the public health, safety and welfare, and to prohibit certain land uses that may conflict with land use regulations that the City's legislative bodies are considering or intend to study within a reasonable time.

M. On June 6th, 2017 the City Council adopted Ordinance No. 1086 whereby it imposed a moratorium on the issuance of new permits or approvals for new Wireless Facilities in public rights-of-way within the City which is valid until July 21st, 2017 under Government Code Section 65858.

N. On June 20th, 2017 the City Council issued a written report describing the measures taken at that time to alleviate the condition which led to the adoption of the ordinance and on July 9th the City Manager issued another such report.

O. On July ___, 2017 notice was published pursuant to Government Section 65090 and 6061 at least ten days before the date of the public hearing and adoption of this ordinance.

P. On July 18th, the City Council conducted a duly noticed public hearing regarding this ordinance. At the hearing, all interested persons were given an opportunity to be heard. The City Council received and considered the staff report and all information, evidence, and testimony presented in connection with this proposed ordinance; and

The City Council finds that there is a current and immediate threat to the public health, safety and welfare based on the above findings, and upon that basis has determined that an urgency ordinance prohibiting the issuance of new permits or approvals for new Wireless Facilities in public rights-of-way within the City is warranted.

SECTION 2. Applicability. This ordinance applies to all applications for the installation of new, and the relocation of existing, Wireless Facilities within any public right-of-way in any zone within the City of Beaumont.

SECTION 3. Extended Moratorium on New Wireless Facilities for Ten Months and Fifteen Days.

A. Except as provided in **Section 4** below, for a period of ten months and fifteen days from the date of adoption of this ordinance, permits or other approvals for any new or incomplete applications may not be issued for any:

- I. Installation of a new Wireless Facility in a public right-of-way; or
2. Relocation of an existing Wireless Facility in a public right-of-way.

B. For new applications for Wireless Facility installations and relocations received after the effective date of this ordinance, any time limits or mandatory approval time frames relative to the processing or action upon permit applications for any Wireless Facilities described in **Section 3(A)** are tolled during the term of this moratorium. The City Council intends to terminate this moratorium as soon as reasonably feasible within a timeframe to allow the adoption of new local regulations with respect to Wireless Facilities, to the extent reasonably advisable by staff following its study. Notwithstanding the foregoing, City staff may deny any application for a permit which prohibited from being issued under this ordinance.

SECTION 4. Exceptions. The provisions of this ordinance shall not be construed to prohibit the issuance of permits or approvals for the following:

A. The collocation of new antennas and other equipment on an existing Wireless Facility, provided that the exterior physical dimensions of the existing Wireless Facility are not substantially changed or increased;

B. The maintenance, updating, repair or improvement of an existing Wireless Facility, provided that the physical dimensions of the Wireless Facility are not substantially changed. The determination of whether the physical dimensions will be substantially changed shall be in accordance with criteria stated in the FCC Report and Order dated October 17, 2014.

SECTION 5. Report. The City Manager or his designee is authorized and directed to prepare and issue, on behalf of the City Council, a written report describing the measures taken by the City to alleviate the conditions which have led to the adoption of this ordinance, at least ten

(10) days prior to the expiration of this ordinance. A copy of the same shall be subsequently provided to the City Council for review.

SECTION 6. CEQA Review. The City Council hereby finds that this ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections **15060(c)(2)** [the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment], **15060(c)(3)** [the activity is not a project as defined by CEQA], and **15061(b)(3)** [there is no possibility the activity in question may have a significant effect on the environment]. These findings are premised on the fact that the adoption of this urgency interim ordinance will maintain existing environmental conditions arising from the City's current land use regulations without significant change or alteration. The City Manager is hereby directed to ensure that a Notice of Exemption is filed pursuant to CEQA Guidelines section 15062 [14 C.C.R. § 15062].

SECTION 7. No Liability. The provisions of this ordinance shall not in any way be construed as imposing any duty of care, liability or responsibility for damage to person or property upon the City of BEAUMONT , or any official, employee or agent thereof.

SECTION 8. Pending Actions. Nothing in this ordinance or in the codes hereby adopted shall be construed to affect any suit or proceeding pending or impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance or code repealed by this ordinance, nor shall any just or legal right or remedy of the City of any character be lost, impaired or affected by this ordinance.

SECTION 9. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this ordinance, or its application to any other person or circumstance. The City Council of the City of Beaumont hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION 10. Construction. The City Council intends this ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this ordinance shall be

construed in light of that intent. To the extent the provisions of the Beaumont Municipal Code as amended by this ordinance are substantially the same as provisions in the Beaumont Municipal Code existing prior to the effectiveness of this ordinance, then those amended provisions shall be construed as continuations of the earlier provisions and not as new enactments.

SECTION 11. Urgency; Effective Date; Duration and Publication.

This ordinance is adopted by the City Council pursuant to the California Constitution, article XI, section 7 and Government Code section 65858 by a four-fifths (4/5) or greater vote, as an urgency measure to protect the public health, safety and welfare, and shall take effect immediately. The reasons for such urgency are set forth in **Section 1** above. This ordinance shall expire and be of no further force or effect ten months and fifteen days after its adoption, unless it is extended pursuant to Government Code section 65858. Prior to the expiration of fifteen (15) days from the passage hereof a certified copy of this ordinance shall be posted in the office of the City Clerk pursuant to Government Code section 36933(c)(1) and a summary shall be published once in the Press Enterprise, a newspaper printed and published in the County of Riverside and distributed in the City of BEAUMONT, State of California, together with the names of the Council members voting for and against the same.

PASSED, APPROVED and ADOPTED this 21st day of February, 2017.



Lloyd White, Mayor


I, Nicole Wheelwright, Assistant City Clerk of the City of Beaumont, California, do hereby certify that the foregoing Ordinance was introduced and adopted at a regular meeting of the City Council of the City of Beaumont held on the 18th day of July, 2017, by the following roll call vote:

AYES: White, Lara, Martinez


NOES:

ABSENT: Orozco, Carroll

ABSTAINED:

ATTEST: 
Andreanna Pfeiffer, City Clerk

Approved as to form:


John O. Pinkney, City Attorney