

RESOLUTION NO. 19-072

RESOLUTION OF THE CITY OF CARSON, CALIFORNIA ADOPTING A CITY COUNCIL POLICY REGULATING SMALL WIRELESS FACILITIES

WHEREAS, pursuant to the California Constitution, Article XI, section 7; California Government Code section 37100 and other applicable law, the City of Carson City Council may make and enforce within its limits all local, police, sanitary and other ordinances, resolutions and other regulations not in conflict with general laws.

WHEREAS, within the last decade, significant changes in federal laws that affect local authority over personal wireless service facilities and other related infrastructure deployments have occurred, including, but not limited to, the following:

- 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), 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;
- On February 22, 2012, Congress adopted the Middle Class Tax Relief and Job Creation Act, which amended the Communications Act to mandate approval for certain “eligible facilities requests” to collocate and/or modify existing wireless towers and/or base stations;
- 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), 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;
- 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 FCC’s 2009 Declaratory Ruling and 2015 Infrastructure Order;
- On August 2, 2018, the Federal Communications Commission (“**FCC**”) adopted a Third Report & 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 personal wireless services, telecommunications services and their related facilities under 47 U.S.C. § 253(a) and directed the Wireless Telecommunications Bureau and Wireline Competition Bureau to hear and resolve all complaints on an expedited basis; and

- 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.

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:

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

WHEREAS, given the rapid and substantial changes in applicable law, the active and effective federal prohibition on reasonable moratorium ordinances to allow local public agencies to study these changes and develop appropriate responses and the significant adverse consequences for noncompliance with these changes in applicable law, the City Council finds that aesthetic and operational regulations adopted through a resolution that supplements the Carson Municipal Code and that may be quickly amended is a necessary and appropriate means to protect the public health, safety and welfare from the potential harm caused by unregulated small wireless facilities and other infrastructure deployments.

WHEREAS, Policy No. ____, attached hereto as **Exhibit “A”** and incorporated herein by this reference, establish reasonable, uniform and comprehensive standards and procedures for small wireless facilities and other infrastructure deployment, construction, installation, collocation, modification, operation, relocation and removal within the City of Carson’s territorial boundaries, consistent with and to the extent permitted under federal and California state law.

WHEREAS, on April 2, 2019, the City Council held a duly noticed public meeting to consider an urgency ordinance to amend Article VII of the Carson Municipal Code, at which the City Council received, reviewed and considered the staff report, written and oral testimony from the public and other information in the record and adopted the urgency ordinance.

WHEREAS, on April 2, 2019, the City Council held a duly noticed public meeting to consider this Resolution and Policy No. ____, at which the City Council received, reviewed and considered the staff report, written and oral testimony from the public and other information in the record.

NOW, THEREFORE, THE CITY OF CARSON CITY COUNCIL HEREBY FINDS, DETERMINES AND RESOLVES AS FOLLOWS:

1. **Findings.** The City Council finds that: (a) the facts set forth in the recitals in this Resolution are true and correct and incorporated by reference; (b) 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 Resolution; (c) the provisions in this Resolution and Policy No. ____ are consistent with the General Plan, Carson Municipal Code and applicable federal and state law; and (d) neither this Resolution nor Policy No. ____ will be detrimental to the public interest, health, safety, convenience or welfare.
2. **Policy No. ____.** The City Council approves and adopts Policy No. ____.
3. **Environmental Review.** Pursuant to California Environmental Quality Act (“**CEQA**”) Guidelines § 15378 and California Public Resources Code § 21065, the City Council finds that this Resolution 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. Even if this Resolution 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. The proposed Amendment merely amends the Carson Municipal Code to authorize the City Council to regulate small wireless facilities and other infrastructure deployments. This Resolution does not directly or indirectly authorize or approve any actual changes in the physical environment. Applications for any new small wireless facility or other infrastructure deployment, or change to an existing small wireless

facility or other infrastructure deployment, would be subject to additional environmental review on a case-by-case basis. Accordingly, the City Council finds that this Resolution is not subject to CEQA or, in the alternative, is exempt from CEQA under the general rule.

4. **Severability.** If any section, subsection, paragraph, sentence, clause, phrase or term (each a “**Provision**”) in this Resolution or Policy No. ____, or any Provision’s application to any person or circumstance, is held illegal, invalid or unconstitutional by a court of competent jurisdiction, all other Provisions not held illegal, invalid or unconstitutional, or such Provision’s application to other persons or circumstances, shall not be affected. The City Council declares that it would have passed this Resolution and Policy No. ____, and each Provision therein, whether any one or more Provisions be declared illegal, invalid or unconstitutional.
5. **Effective Date.** This Resolution and Policy No. ____ will become immediately effective upon adoption by the City Council and will remain effective until amended, superseded or repealed by a separate resolution adopted by the City Council.
6. **Publication.** The City Clerk shall cause this Resolution and Policy No. ____ to be published in electronic form on the City of Carson’s website, in physical form for public inspection at City of Carson City Hall and at least two other public places within the City of Carson and in any other manner required by law.

PASSED, APPROVED and ADOPTED on this ____nd day of _____, 2019.

Mayor Albert Robles

ATTEST:

City Clerk Donesia Gause-Aldana, MMC

EXHIBIT "A"

POLICY NO. ____

(appears behind this coversheet)