

ORDINANCE NO. 19-1930

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA AMENDING CARSON MUNICIPAL CODE ARTICLE VII FOR THE REGULATION OF SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHTS OF WAY

WHEREAS, pursuant to the California Constitution, Article XI, section 7; California Government Code section 37100 and other applicable law, the City Council of 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, during 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 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 desires to amend the Carson 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 (the “**Amendment**”).

WHEREAS, on April 2, 2019, the City Council held a duly noticed public meeting on the proposed Amendment, 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 CARSON HEREBY FINDS, DETERMINES AND ORDAINS AS FOLLOWS:

SECTION 1. FINDINGS.

The City Council finds that:

- A. The facts set forth in the recitals are true and correct and incorporated herein 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 Amendment is consistent with the General Plan, Carson Municipal Code and applicable federal and state law.
- C. The Amendment will not be detrimental to the public interest, health, safety, convenience or welfare.

SECTION 2. ENVIRONMENTAL REVIEW.

Pursuant to California Public Resources Code § 21065 and the California Environmental Quality Act (“**CEQA**”) Guidelines § 15378, 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 Carson Municipal Code to authorize the City Council to regulate small wireless facilities and other infrastructure deployments. This Ordinance 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, and/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 Ordinance would be exempt from CEQA under the general rule.

SECTION 4. AMENDMENT TO ARTICLE VII

Section 7300 is added to the Carson Municipal Code as follows:

7300 Small Wireless Facilities.

Notwithstanding any other provision of this Code, all “small wireless facilities” as defined by the FCC in 47 C.F.R. § 1.6002(l), as may be amended or superseded, are subject to a permit as specified in a City Council policy, which may be adopted, amended and/or repealed by a resolution of the City Council. All small wireless facilities shall comply with such policy. If the policy is repealed and not replaced, an application for a small wireless facility shall be processed pursuant to Article IX.

SECTION 5. 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, the provisions in this Ordinance will control.

SECTION 6. SEVERABILITY.

If any section, subsection, paragraph, sentence, clause, phrase or term (each a “**Provision**”) in this Ordinance, 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 Ordinance, and each Provision therein, whether any one or more Provisions be declared illegal, invalid or unconstitutional.

SECTION 7. EFFECTIVE DATE.

This Ordinance shall become effective 30 days after its passage and adoption.

SECTION 8. PUBLICATION.

No later than 15 days after its adoption, this Ordinance (or a summary) together with the names of each City Council members who voted for or against this Ordinance shall be published in the manner required by law.

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FIRST INTRODUCED by the City of Carson City Council at a regular meeting on April 2, 2019.

PASSED and ADOPTED by the City of Carson City Council at a regular meeting on this ____nd day of _____, 2019.

Mayor Albert Robles

ATTEST:

City Clerk Donesia Gause-Aldana, MMC

APPROVED AS TO FORM:

City Attorney Sunny Soltani

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF CARSON

I, Donesia Gause-Aldana, City Clerk of the City of Carson, hereby certify that the foregoing Ordinance No. 19-1930 was passed and adopted by the City Council of the City of Carson signed by the Mayor and attested by the City Clerk at a regular meeting of said Council held on the April 2, 2019 and that said Ordinance was adopted by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT: