

# **REPORT TO THE CITY COUNCIL**

## *City of Salinas, California*

DATE: April 28, 2015

FROM: Christopher A. Callihan, City Attorney

BY: Anais Martinez Aquino, Deputy City Attorney

SUBJECT: **INTERIM URGENCY ORDINANCE RELATED TO WIRELESS  
TELECOMMUNICATION FACILITIES**  
*[A 4/5 vote of the City Council is required]*

### **RECOMMENDATION**

Based on the current lack of specific regulations regarding the installation of wireless facilities in the public right of way in the Salinas City Code, the current guidance provided by federal law, and the health, safety and welfare of accompanying such uses, Staff recommends that the City Council accept the findings of Staff and adopt the urgency ordinance establishing a forty five (45) day moratorium on the establishment of telecommunication facilities in the public right of way. As a result of similar concerns, other cities across the state permit such uses in varying methods. City Staff will need the opportunity to research specifically what these and other jurisdictions have done and the effect on these communities.

### **DISCUSSION**

#### Background

Due to the increasing number of inquiries regarding the installation of wireless telecommunication facilities in the City, particularly in the public right-of-way, Staff recommends adoption of the proposed interim urgency ordinance establishing a temporary moratorium on new wireless telecommunication facilities located in the public right of way. Currently, wireless telecommunication facilities in the City are regulated through Chapter 37, Article V of the Salinas City Code, which was last updated in 2010. State and federal law regarding local regulation of such facilities has changed significantly since the City adopted its ordinance. The interim ordinance is needed in order to provide clear, consistent, and uniform guidance to wireless service providers in light of emerging new law. Staff has already received two inquiries from applicants attempting to place a wireless telecommunication facility in the public right of way, however does not have a process or procedure in place to properly review, process, and handle applications for such projects.

The City's regulations over facilities located in the public right of way are found in Chapter 30, Article V of the City's municipal code, and are generally regulated through an encroachment permit process.

This section establishes regulations to control encroachments onto public property and establishes measures for the protection of such public property, as well as for the health and safety of members of the public, with measures for traffic and pedestrian safety. The encroachment permit code allows for installation of a utility in the public right of way but does not specifically address wireless telecommunication facilities in the public right of way. Staff needs an opportunity to review this process and suggest modifications as allowed under state and federal law to allow for uniformity in such wireless projects.

### Legal Standards for Establishing a Moratorium

California Government Code section 65858(a) allows the City Council to adopt as an urgency measure an ordinance prohibiting uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City is studying or intends to study within a reasonable time. This section requires a four-fifths (4/5) vote of the City Council for approval of a moratorium and the urgency ordinance must contain findings that there is an immediate threat to the public health, safety, and welfare and that additional approvals of activity subject to the moratorium would result in a threat to the public health, safety, and welfare. Such proposals in the public right of way could have an adverse impact on pedestrian safety and vehicular safety, and must be considered in light of wheelchair accessibility requirements (for cabinets and pedestals placed on the sidewalk) and aviation standards (for pole-mounted equipment).

If approved by the Council, the moratorium would remain in effect for forty five (45) days from the date of adoption and would provide an opportunity for Staff to study and consider the matter, as well as possible amendments to the City's municipal code that will govern future permits, entitlements, or other approvals governing such uses. If, at the end of 45 days, the Council determines that further study or consideration of the item is appropriate, it may extend the moratorium for an additional ten months and fifteen days, and then an additional year. The practical effect of these time limitations is that a moratorium may be imposed for no longer than two (2) years.

### **ISSUE**

Shall the City Council accept the recommendation of Staff that the establishment of wireless telecommunication facilities in the public right of way absent specific local regulations represents a threat to the public health, safety, and welfare of the community and introduce and adopt an urgency interim ordinance establishing a forty five (45) day moratorium on the issuance of permits, licenses, entitlements and other approvals for such facilities pending the City's study and consideration of the matter?

### **FISCAL IMPACT**

There is no direct or immediate fiscal impact on the City with the adoption of this interim urgency ordinance prohibiting wireless telecommunication facilities in the public right of way.

## **TIME CONSIDERATIONS**

Council action on this item is requested immediately, as Staff has received applications for such facilities and requests time to review the current encroachment permit process to address public health, safety and welfare concerns.

## **CEQA CONSIDERATIONS**

The City Council finds this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15060(c)(2) and 15060(c)(3) because there is no potential for resulting in physical change to the environment, directly or indirectly.

## **COUNCIL GOALS**

Acceptance of Staff findings and adoption of an urgency ordinance to provide the City the opportunity to study and consider modifications to its City Code to address public health, safety and welfare concerns would support the Council's goal to promote a safe and livable community.

## **ALTERNATIVES**

Council may reject the proposed urgency ordinance and provide direction to Staff to process any wireless telecommunication facility applications received under the existing encroachment permit process.

## **CONCLUSION**

Based on the current lack of specific regulations in the City Code relating to telecommunications facilities in the public right of way and new state and federal regulations affecting the ability of local municipal regulation, as well as the health, safety, and welfare concerns accompanying such projects, there is a need to study the effect wireless telecommunication facilities have on public health, safety, and welfare when placed in the public right of way. Because staff expects to receive more application from wireless service providers, adoption of the urgency ordinance establishing the forty five (45) day moratorium will allow staff adequate time to address resident and applicant concerns in a consistent, fair, and uniform way.

Distribution:  
City Council  
City Manager  
City Attorney  
Department Directors

Attachments:  
Proposed Urgency Ordinance

**AN INTERIM ORDINANCE OF THE CITY OF SALINAS ESTABLISHING A TEMPORARY MORATORIUM ON THE APPROVAL OF PERMITS FOR THE INSTALLATION OF TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT OF WAY IN THE CITY OF SALINAS AND ADOPTING FINDINGS OF URGENCY**

The City Council of the City of Salinas hereby finds and declares as follows:

- A. Pursuant to Article XI of the California Constitution, the City of Salinas may adopt and enforce ordinances and regulations to protect and to promote the public health, safety, and welfare of its residents.
- B. The City of Salinas is charged with the responsibility of ensuring the orderly and equitable enforcement of local, state and federal law.
- C. The city of Salinas currently regulates certain wireless telecommunication facilities through Chapter 37-50.290 of the Salinas Municipal Code ("Telecommunication facilities").
- D. State and federal law with regard to local regulation of wireless facilities has significantly changed since the City adopted its telecommunications facilities regulations.
- E. Changes in wireless communication technology, as well as increases in residential and commercial development throughout the City, coupled with the desire of wireless communication providers to increase wireless communication services to City residents will likely produce additional permit applications for the placement of modification of wireless facilities in the public right of way.
- F. Significant concerns have been raised regarding the inadequacy of the current regulations to address the increasing number of permit applications and new technologies of wireless communication facilities, and the failure to ensure consistent, uniform, and fair decisions on permit applications throughout the City.
- G. The City's local regulations regarding telecommunication facilities are in need of revisions to provide clear, consistent, and uniform guidance to wireless service providers in light of new State and federal law.
- H. California Government Code section 65858 authorizes the City Council, by a four-fifths vote, to adopt an interim ordinance to prohibit uses the City is studying or intends to study within a reasonable time.
- I. The health, safety and welfare of pedestrians and vehicles traveling on the public right of way may be adversely impacted without a clear, consistent, and uniform procedure by which applications for telecommunication facilities in the public right of way are reviewed, processed, and approved.
- J. In order to promote and protect the public health, safety, and welfare of the City's residents, and to allow the City Council an opportunity to study the impacts of such facilities on the health, safety, and welfare of the community and residents of the City and to consider possible

amendments to the City's municipal code, it is necessary that this interim ordinance be enacted.

- K. This ordinance is intended to be of a limited duration of forty five (45) days and up to two years if extended pursuant to existing law, and accordingly, nothing in this Ordinance is intended to affect or to be construed to affect an unconstitutional taking of a property interest of any permitted use during its duration.
- L. In accordance with California Government Code section 65858(a), a public hearing was held concerning the adoption of this ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF SALINAS:

#### SECTION 1: APPLICABILITY

The regulations set forth in this Ordinance shall apply to the issuance of permits, licenses or other applicable entitlements providing for the establishment of wireless telecommunication facilities in the public right of way. For the purposes of this Ordinance, a "wireless telecommunication" shall mean all equipment and other improvements installed for the purpose of providing wireless transmission of voice, data, images or other information including but not limited to, cellular phone service, personal wireless services, and paging services, consisting of equipment and network components such as towers, transmitters, base stations, antennas, and other electric equipment associated with and necessary to their operation, including coaxial or fiber optic cable and back-up power supply.

#### SECTION 2: REGULATION

No applications for permits, licenses or other applicable entitlements for the establishment of a wireless telecommunications facility, as that term is defined herein, shall be considered or approved, and no such permits, licenses or other applicable entitlements shall be issued unless the application was deemed complete and approved prior to the adoption of the Ordinance. And, notwithstanding any other provision of the Salinas City code or any other regulations of the City to the contrary, no permit or other entitlement for use or environmental document which either directly or indirectly has as its result the approval or allows of a wireless telecommunication facility within the public right of way shall be approved or granted while this Ordinance is in effect.

#### SECTION 3: COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City Council finds this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) because there is no potential for resulting in physical change to the environment, directly or indirectly.

#### SECTION 4: ENFORCEMENT

- a.) It shall be the duty of the Chief of Police, the City Engineer, the Office of the City Attorney, and all other officers and employees of the City of Salinas herein charged by law with the enforcement of this Ordinance, to enforce all provisions of this Ordinance.

- b.) Any person, firm, or corporation, whether as principal or agent, employee or otherwise, violating or causing or permitting the violation of any of the provisions of this Ordinance shall be subject to enforcement as established in the Salinas City Code.

#### SECTION 5: EFFECTIVE DATE

This Ordinance shall become effective immediately upon the approval of four-fifths (4/5) of the City Council and shall be terminated in forty-five (45) days, on June 12, 2015, unless extended by the City Council in accordance with California Government Code section 65858.

#### SECTION 6: NO TAKING OF PROPERTY RIGHT INTENDED

Nothing in this Ordinance shall be interpreted to affect an unconstitutional taking of the property right of any person. If the City Council determined, based on specific evidence in the administrative record, that the applicability of one or more provisions of this Ordinance to a proposed project would affect an unconstitutional taking of a property right, the City Council shall disregard such provision or provisions to the extent necessary to avoid such unconstitutional taking.

#### SECTION 7: SEVERABILITY.

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

PASSED AND ADOPTED this 28<sup>th</sup> day of April, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Joe Gunter, Mayor

APPROVED AS TO FORM:

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Christopher A. Callihan, City Attorney

ATTEST:

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Patricia M. Barajas, City Clerk