

**URGENCY ORDINANCE NUMBER 1382**

**AN URGENCY ORDINANCE OF THE CITY COUNCIL  
OF THE CITY OF PERRIS, CALIFORNIA, ENACTED  
PURSUANT TO GOVERNMENT CODE § 36934 AND  
36937, WHICH AMENDS CHAPTER 19.85 OF THE  
MUNICIPAL CODE IN ITS ENTIRETY TO UPDATE  
AND REVISES REGULATIONS FOR ALL WIRELESS  
TELECOMMUNICATION FACILITIES ON PUBLIC  
AND PRIVATE PROPERTY WITHIN THE CITY OF  
PERRIS**

*WHEREAS*, the City Council may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws; and

*WHEREAS*, significant changes in Federal and State law that affect local authority over wireless communications facilities ("WCFs") have occurred, including but not limited to the following:

- i. On November 18, 2009, the Federal Communications Commission ("FCC") adopted a declaratory ruling (the "2009 Shot Clock"), which established presumptively reasonable timeframes for State and local governments to act on applications for WCFs.
- ii. On February 22, 2012, Congress adopted Section 6409(a) of the Middle Class Tax Relief and Job Creation Act ("Section 6409(a)"), which mandated that State and local governments approve certain modifications and collocations to existing WCFs, known as eligible facilities requests.
- iii. On October 17, 2014, the FCC adopted a report and order that, among other things, implemented new limitations on how State and local governments review applications covered by Section 6409(a), established an automatic approval for such applications when the local reviewing authority fails to act within 60 days, and also further restricted generally applicable procedural rules under the 2009 Shot Clock.
- iv. On October 9, 2015, California adopted Assembly Bill No. 57 (Quirk), which deemed approved any WCF applications when the local reviewing authority fails to act within the 2009 Shot Clock timeframes.
- v. On August 2, 2018, the FCC adopted a declaratory ruling that formally prohibited express and de facto moratoria for all telecommunications services and facilities under 47 U.S.C. § 253(a).
- vi. On September 26, 2018, the FCC adopted a declaratory ruling and report and order that, among other things, creates a new regulatory classification for small wireless facilities ("SWFs"), requires State and local governments to process applications for small wireless facilities within 60 days or 90

days, establishes a national standard for an effective prohibition and provides that a failure to act within the applicable timeframe presumptively constitutes an effective prohibition; and

**WHEREAS**, in addition to the changes described above, new Federal laws and regulations that drastically alter local authority over WCFs are currently pending, including without limitation, the following:

- i. On March 30, 2017, the FCC issued a Notice of Proposed Rulemaking (WT Docket No. 17-79, WC Docket No. 17-84) and has acted on some of the noticed issues referenced above, but may adopt forthcoming rulings and/or orders that further limit local authority over wireless facilities deployment.
- ii. On June 28, 2018, United States Senator John Thune introduced and referred to the Senate Committee on Commerce, Science and Transportation the "STREAMLINE Small Cell Deployment Act" (S. 3157) that, among other things, would apply specifically to small cell WCFs and require local governments to review applications based on objective standards, shorten the 2009 Shot Clock timeframes, require all proceedings to occur within the 2009 Shot Clock timeframes, and provide a "deemed granted" remedy for failure to act within the applicable 2009 Shot Clock; and

**WHEREAS**, given the rapid and significant changes in Federal and State law, the actual and effective prohibition on moratoria to amend local policies in response to such changes and the significant adverse consequences for noncompliance with Federal and State law, the City Council desires to amend Chapter 19.85 of the Perris Municipal Code, entitled "Chapter 19.85 - WIRELESS TELECOMMUNICATIONS FACILITIES," in its entirety to allow greater flexibility and responsiveness to the new Federal and State laws while still preserving the City's traditional authority to the maximum extent practicable; and

**WHEREAS**, Government Code § 36934 and 36937 expressly authorizes the City Council to adopt an urgency ordinance for the immediate preservation of the public peace, health, or safety; and

**WHEREAS**, the City Council of the City of Perris deems it necessary to adopt an urgency ordinance pursuant to Government Code Section 36937(b) to add regulations to the Perris Municipal Code to regulate the placement of SWFs and WCFs in the public rights-of-way, finding the urgency to do so based upon the following facts:

- i. The global wireless telecommunications industry has developed and is starting to install SWFs primarily in public rights-of-way. SWFs are designed to accommodate "5G" technology. Wireless telecommunications providers have made inquiries with the City of Perris and other California cities about installing SWFs in municipal rights-of-way, and some other California cities are already receiving applications for such facilities.

- ii. The Federal Telecommunications Act of 1996 preempts and declares invalid all state and local rules that restrict entry or limit competition in both local and long-distance telephone service, and the FCC has adopted regulations for the implementation of that Act.
- iii. Section 7901 of the California Public Utilities Code authorizes telephone and telegraph corporations to construct telephone or telegraph lines along and upon any public road or highway, along or across any of the waters or lands within this state, and to erect poles, posts, piers, or abatements for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters.
- iv. Section 7901.1 of the California Public Utilities Code confirms the right of municipalities to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed, which control must be applied to all entities in an equivalent manner and may involve the imposition of fees.
- v. The FCC adopted its FCC Ruling expressly to "reduce regulatory barriers to the deployment of wireless infrastructure and to ensure that our nation remains the leader in advanced wireless services and wireless technology." (FCC Ruling, ¶29.) The FCC Ruling is intended to facilitate the spread, growth, and accumulation of SWFs over a short period of time in order to enable deployment of technology that the FCC Ruling claims will enable increased competition in healthcare, Internet of Things applications, lifesaving car technologies, and creation of jobs.
- vi. SWFs are primarily installed within public rights-of-way and as such create significant and far-reaching local concerns about traffic and pedestrian safety, land use conflicts and incompatibilities including excessive height of poles and towers; creation of visual and aesthetic blights arising from excessive size, heights, noise or lack of camouflaging of wireless facilities including the associated pedestals, meters, equipment and power generators, and protection and preservation of public property, all of which may negatively impact the unique quality and character of the City and the public health, safety and welfare thereof. Accordingly, regulating the installation of SWFs in the public right-of-way is necessary to protect and preserve the aesthetics in the community, as well as the values of properties within the City.
- vii. The FCC Ruling sets forth new standards for state and local government regulations of SWFs, which standards restrict the aesthetic requirements that localities can impose upon such facilities. Any aesthetic standard adopted by cities must be: (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance.

- viii. That portion of the FCC Ruling requiring aesthetic standards for SWFs to be reasonable, no more burdensome than on other infrastructure, and objective and pre-published, goes into effect April 15, 2019. Standards that are not published in advance of that date will not be enforceable as to any application incoming to the City until proper standards are published. Ad hoc aesthetic standards are not enforceable. Cities that have aesthetic, spacing, or undergrounding standards currently in place may continue to judge applications against their current standards. However, by April 15, cities may only enforce aesthetic, undergrounding and spacing standards that are reasonable, no more burdensome than those applied to other types of infrastructure deployments, and objective and published in advance.
- ix. Without the immediate implementation through an urgency ordinance of regulations specific to the siting of SWFs in the public right-of-way, the City Council will be unable to adopt and implement such regulations before the April 15, 2019 effective date for design standards. SWFs could therefore be approved that are inconsistent with the regulations being developed by the City as permitted by federal and state laws.

**WHEREAS**, on March 20, 2019, the Planning Commission held a duly noticed public hearing on proposed Ordinance Amendment No. 19-05041, which is attached hereto as Exhibit A, reviewed and considered the staff report, other written reports, public testimony and other information contained in the record and, at the conclusion of the public hearing, recommended that the City Council adopt the Ordinance; and

**WHEREAS**, on April 9, 2019, the City Council held a duly noticed public hearing on this Urgency Ordinance and Ordinance Amendment No. 19-05041, which is attached hereto as Exhibit A, (hereafter, this Urgency Ordinance and Ordinance Amendment No. 19-05041 shall collectively be referenced as “Urgency Ordinance”), 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 PERRIS DOES HEREBY ORDAIN AS FOLLOWS:**

**Section 1.** The facts set forth in the recitals in this Urgency Ordinance are true and correct and incorporated by 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 the Urgency Ordinance.

**Section 2.** This Urgency Ordinance is consistent with the City’s General Plan, Perris Municipal Code, Perris Zoning Code and applicable Federal and State law.

**Section 3.** This Urgency Ordinance will not be detrimental to the public interest, health, safety, convenience or welfare.

**Section 4.** This Urgency Ordinance is categorically exempt pursuant to Sections 15060(c)(2) and 15061(b)(3) of CEQA, as the proposal is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act (“CEQA”) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly.

**Section 5.** Based on the foregoing recitals and all facts of record stated before the City Council, the City Council finds and determines that the immediate preservation of the public health, safety and welfare requires that this Urgency Ordinance be enacted as an urgency ordinance pursuant to Government Code Section 36937(b), and take effect immediately upon adoption.

- i. SWFs are primarily installed within public rights-of-way and as such create significant and far-reaching local concerns about traffic and pedestrian safety, land use conflicts and incompatibilities including excessive height of poles and towers; creation of visual and aesthetic blights arising from excessive size, heights, noise or lack of camouflaging of wireless facilities including the associated pedestals, meters, equipment and power generators, and protection and preservation of public property, all of which may negatively impact the unique quality and character of the City and the public health, safety and welfare thereof.
- ii. Accordingly, regulating the installation of SWFs in the public right-of-way is necessary to protect and preserve the aesthetics in the community, as well as the values of properties within the City.
- iii. However, that portion of the FCC Ruling requiring aesthetic standards for SWFs to be reasonable, no more burdensome than on other infrastructure, and objective and pre-published, goes into effect April 15, 2019. Standards that are not published in advance of that date will not be enforceable as to any application incoming to the City until proper standards are published.
- iv. Furthermore, pursuant to the FCC Ruling, new shortened Shot-Clocks have already taken effect with respect to SWFs (either 60 or 90 days for full determination upon each application, including all notice periods, supplemental permits, and appeal periods). These shorter timeframes leave the City with inadequate time and resources to timely process incoming SWF applications under federal law absent significant streamlining of the City’s current practices and procedures. Therefore, it is of utmost need for the City to immediately establish a streamlined process for SWF application review.

Therefore, this Urgency Ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare and its urgency is hereby declared.

**Section 6.** This Urgency Ordinance is hereby adopted to amend Chapter 19.85, “WIRELESS TELECOMMUNICATION FACILITIES,” of the Perris Municipal Code to read in its entirety as shown in Exhibit A attached hereto and incorporated herein by this reference.

**Section 7.** If the provisions in this Urgency Ordinance conflict in whole or in part with any other City regulation or ordinance adopted prior to the effective date of this section, the provisions in this Urgency Ordinance will control.

**Section 8.** If any subsection, subdivision, paragraph, sentence, clause or phrase of this Urgency Ordinance or any part thereof is for any reason held to be unconstitutional or otherwise unenforceable, such decision shall not affect the validity of the remaining portion of this Urgency Ordinance or any part thereof. The City Council hereby declare that they would have passed each subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more subsection, subdivision, paragraph, sentence, clause, or phrase be declared unconstitutional or otherwise unenforceable.

**Section 9.** This Urgency Ordinance is enacted pursuant to Government Code §§ 36934 and 36937 and shall be in full force and effect immediately upon its adoption by the City Council.

**Section 10.** The City Clerk shall certify as to the passage and adoption of this Urgency Ordinance and shall cause the same to be posted at the designated locations in the City of Perris.

***ADOPTED, SIGNED and APPROVED*** this 9<sup>th</sup> day of April, 2019.

---

Michael M. Vargas, Mayor

ATTEST:

---

Nancy Salazar, City Clerk

STATE OF CALIFORNIA )  
COUNTY OF Riverside ) §  
CITY OF Perris )

I, Nancy Salazar, CITY CLERK OF THE CITY OF PERRIS, DO HEREBY CERTIFY that the foregoing Urgency Ordinance Number 1382 was duly adopted by the City Council of the City of Perris at a regular meeting of said Council on the 9<sup>th</sup> day of April, 2019, and that it was so adopted by the following vote:

AYES: RABB, ROGERS, MAGAÑA, CORONA, VARGAS

NOES: NONE

ABSENT: NONE

ABSTAIN: NONE

---

Nancy Salazar, City Clerk