

ORDINANCE NO. 2017-04

AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON, ENACTED PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858 APPROVING AN ADDITIONAL 6-MONTH MORATORIUM ON DEVELOPMENT, ESTABLISHMENT AND OPERATION OF NEW WIRELESS TELECOMMUNICATION FACILITIES IN THE PUBLIC RIGHT-OF-WAY IN THE CITY OF AMERICAN CANYON PENDING REVIEW AND POSSIBLE AMENDMENT OF MUNICIPAL CODE REGULATIONS APPLICABLE TO SUCH FACILITIES

WHEREAS, the City of American Canyon ("City") seeks to ensure that the City's zoning laws are consistent with the goals, policies, and standards set forth in the City General Plan; and

WHEREAS, the potential for wireless facilities in the public right-of-way within the City of American Canyon present unique challenges for local government, in that the American Canyon Municipal Code does not currently define or regulate said uses. In the absence of specific standards and zoning regulations pertaining to wireless facilities in the public right-of-way, it is difficult to regulate these facilities, and ensure that said facilities will not conflict with the City's aesthetics and public safety; and

WHEREAS, State and federal law permitting local regulation of all facets of Wireless telecommunication facilities continues to develop and evolve. In many cases, wireless providers were able to push forward their projects without the discretion of local authority; and

WHEREAS, the lack of City regulations on the development and/or establishment of wireless telecommunication facilities in the public right-of-way in the City at this time presents a current and immediate threat to the public health, safety, and welfare; and

WHEREAS, the City recognizes its responsibilities under the Federal Telecommunications Act of 1996, Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 and California law, and concludes that enactment of the subject moratorium is consistent with the current state of the law in ensuring that irreversible development activity does not occur that would harm the public health, safety, or welfare; and

WHEREAS, Senate Bill 649 (SB649) has been advancing through the State legislative approval process. The bill has been amended numerous times and it appears that a final bill will likely be signed by the governor sometime in the early fall. Given the changing regulatory environment, it is not practical at this time to adopt an ordinance because adoption of SB 649 would likely invalidate the City's ordinance; and

WHEREAS, the City does not intend that this ordinance prohibit or have the effect of prohibiting telecommunications service; rather, it is a short-term suspension on new facilities in the public right-of-way until appropriate regulations can be adopted so that the installation, alteration, co-location and/or relocation of Wireless Facilities in the City occur so as to respect the rights of applicants while fully addressing the health, safety and land use concerns described herein; and

WHEREAS, the current 10-month, 15 day Urgency Ordinance is effective until August 4, 2017. The City needs an additional 6 months' time from August 4, 2017 to February 4, 2018 to allow the state legislative process to conclude and for sufficient time be made available to develop an ordinance that adequately protects the aesthetic and safety concerns of the City's residents while balancing those concerns with the requirements for the provision of services from Wireless Facilities in a manner that does not unreasonably discriminate between providers of such services; and

WHEREAS, staff has public noticed this City Council meeting about this emergency ordinance ten (10) days prior to the meeting.

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Moratorium. In order to protect the public health, safety and welfare and pursuant to the provisions of Government Code section 65858, a moratorium is hereby placed on the following:

- a. Notwithstanding any provision of the American Canyon Municipal Code, this ordinance shall apply to all applications filed but not complete and new applications submitted to the City after the effective date of this ordinance for the installation, alteration, co-location and/or relocation of Wireless Facilities within the City, both within the public right-of-way and on other property. This ordinance is in addition to and shall not affect, except as specifically provided herein, any provision of the American Canyon Municipal Code, which shall be operative and remain in full force and effect without limitation with respect to all other requests for installation, alteration, co-location and/or relocation of wireless facilities in the public right-of-way within the City that are not covered by this ordinance.
- b. Notwithstanding any other existing American Canyon Municipal Code provisions and regulations of the City, there shall be a temporary moratorium in effect, commencing on the effective date of this ordinance, prohibiting the issuance of any permit or other approval, including but not limited to variances, conditional use permits, encroachment permits, special use permits, planned development permits, building permits, electrical, mechanical, or plumbing permits, or use and occupancy permits for any:
 - i. Installation of a new Wireless Facility in the public right-of-way;
 - ii. Change to an existing Wireless Facility in the public right-of-way not necessary to maintain its current functionality as previously permitted by the City;
 - iii. Modification to any existing Wireless Facility in the public right-of-way for co-location;
 - iv. Relocation of a Wireless Facility in the public right-of-way; or
 - v. Any combination thereof.
- c. The provisions of this ordinance shall not apply to wireless facilities in private or public property out of the public right-of-way.
- d. For the purposes of this ordinance, "Wireless telecommunications facility," "wireless facility," "facility", or "facilities" mean any facility that transmits and/or receives electromagnetic waves. It includes, but is not limited to, antennas and/or other types of equipment for the transmission or receipt of such signals, telecommunications towers

or similar structures supporting such equipment, related accessory equipment, equipment buildings, parking areas, and other accessory development.

- e. For the purposes of this ordinance and in accordance to section 4.06.020 of the Municipal Code, "right-of-way" shall mean any land, or interest therein, which has been reserved for or dedicated to the city by deed, conveyance, agreement, dedication, usage, or other process of law, for the use of the general public for public road purposes.

SECTION 2: Declaration of Urgency

- a. The purpose of this Ordinance is to protect the public safety, health and welfare from the current and immediate threats posed by the establishment of new wireless facilities in the public right-of-way within the City of American Canyon.
- b. Article XI, Section 7 of the California Constitution authorizes cities to adopt local police, sanitary, and other ordinances not in conflict with general laws.
- c. The lack of City regulations on the development and/or establishment of wireless telecommunication facilities in the public right-of-way in the City at this time presents a current and immediate threat to the public health, safety, and welfare. Without this urgency ordinance, wireless facilities could:
 - i. Create land use incompatibilities including excessive height of poles and towers;
 - ii. Create visual and aesthetic blight and potential safety concerns arising from excessive size, height, noise, or lack of camouflaging of Wireless Facilities and their associated pedestals, meters, equipment boxes, and standby power generators;
 - iii. Create nighttime illumination of wireless facilities in the City that has historically minimized such illumination;
 - iv. Cause substantial road work, road blockage, and road scarring associated with the installation and maintenance of Wireless Facilities within the public right-of-way;
 - v. Create visual and aesthetic blight and potential safety concerns by failing to capitalize on alternative technologies, co-location opportunities, and protocols for installation locations and configurations;
 - vi. Create traffic and pedestrian safety hazards due to unsafe location of cables, poles, towers, equipment boxes or other related to facilities within the public right-of-way;
 - vii. Create operational conflicts with other land uses, facilities, or utility systems authorized or existing on the same or adjacent sites; or
 - viii. Erode the quality of life in a city known for its unique small town character with residential character, preserved wetlands, and scenic hills that lacks towering poles and nighttime illumination.
- d. The City Council has concluded that the best method of protecting the public safety, health, and welfare is to explore regulations concerning the placement of wireless facilities in the public right-of-way within the City.

SECTION 3: Community Development Department. The Community Development Director is directed to provide a written report to the City Council at least ten days prior to the expiration of this ordinance, describing the study conducted of the local conditions that led to the adoption of this ordinance.

SECTION 4: Effective Date. This ordinance shall become effective on August 4, 2017 pursuant to Government Code section 65858.

SECTION 5: Expiration. This moratorium shall be of no further force or effect upon the expiration of six (6) months from the date the ordinance becomes effective, unless extended in accordance with the provisions Government Code section 65858.

SECTION 6: Severability. If any section, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 7: Compliance with California Environmental Quality Act. The City Council finds that this ordinance is exempt from the California Environmental Quality Act("CEQA") pursuant to CEQA Guidelines § 15061(b)(3) as a project that has no potential to cause a significant effect on the environment; CEQA Guidelines § 15060(c)(2) as a project that will not result in a direct or reasonably foreseeable indirect physical change in the environment; CEQA Guidelines § 15302 as the replacement or reconstruction of existing structures or facilities; and CEQA Guidelines § 15303 as the construction or installation of small structures, facilities or equipment. These findings are premised on the fact that the adoption of this urgency interim ordinance will maintain the current environmental conditions arising from the current land use regulatory structure as adopted by the City without significant change or alteration.

The foregoing Ordinance was adopted at a regular meeting of the City Council of the City of American Canyon, State of California, held on the 18th day of July, 2017, by the following vote:

AYES: Council Members Aboudamous, Leary, Oro, Vice Mayor Joseph, Mayor Garcia
NOES: None
ABSTAIN: None
ABSENT: None




Leon Garcia, Mayor

ATTEST:


Suellen Johnston, CMC, City Clerk

APPROVED AS TO FORM:


William D. Ross, City Attorney