

ORDINANCE NO. 9733 (N.S.)

AN ORDINANCE EXTENDING AND MODIFYING THE TEMPORARY MORATORIUM
CONCERNING WIRELESS TELECOMMUNICATION FACILITIES
ENACTED BY ORDINANCE NO. 9729 (N.S.), AND
DECLARING THE URGENCY THEREOF,
TO TAKE EFFECT IMMEDIATELY

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. Findings. The Board of Supervisors finds and declares as follows:

- a. On August 2, 2005, the Board of Supervisors adopted Ordinance No. 9729 (N.S.), entitled "An Interim Ordinance Establishing A Temporary Moratorium Concerning Wireless Telecommunications Facilities, And Declaring The Urgency Thereof, To Take Effect Immediately." In Section 1 of Ordinance No. 9729, the Board of Supervisors recited its Findings as to the reason and necessity for the adoption of a temporary moratorium on Wireless Telecommunications Facilities (WTFs).
- b. The Board of Supervisors on September 21, 2005, conducted a duly noticed public hearing on the question whether the temporary moratorium on WTFs established by Ordinance No. 9729 should be extended. The Board received and considered information from staff and all persons desiring to be heard. The Board has reviewed its Findings stated in Section 1 of Ordinance No. 9729, in view of all information presented, and hereby determines to reaffirm each and every one of those Findings.
- c. The County of San Diego is pursuing judicial proceedings in Case No. 03cv1398 BTM(BLM), *Sprint Telephony PCS, L.P., et al v. County of San Diego et al*, in the United States District Court for the Southern District of California, in which the district court issued an order enjoining the County from enforcing its existing WTF Ordinance. The County has filed a Motion for Reconsideration or, in the alternative, a Request for a Stay Pending Appeal. Briefing on that motion is complete, but the court has not yet responded. If that motion is denied, the County intends to request the Ninth Circuit Court of Appeal to stay enforcement of the Court Order pending appeal. The Board finds that it is necessary to complete these judicial proceedings in order to produce and adopt legal and appropriate WTF regulations.
- d. In the event that the above judicial proceedings are not successful in validating the County's existing WTF Ordinance, the County intends to prepare, process and adopt new or revised regulations. The County has begun investigating alternative courses of action to revise the WTF Ordinance. Contacts have been made with experts in the field, as to possible regulation strategies. The Board finds that it is

necessary to extend the temporary moratorium, to preserve the "status quo" while these efforts are under way.

Section 2. Extension of Moratorium. Section 5 of Ordinance No. 9729 (N.S.), entitled "Duration" is hereby amended to read as follows:

"Section 5. Duration. This ordinance shall remain in effect until the earliest of the following, and shall thereafter be of no further force or effect unless it is extended after notice and public hearing in accordance with the provisions of Section 65958:

- a. February 1, 2006;
- b. The date the district court in the action referenced in Section 1.c above grants reconsideration of its order; or
- c. The effective date of a Stay of the court order referenced in Section 1.c above, issued by a court of competent jurisdiction, which permits the County to return to enforcement and application of the WTF Ordinance."

Section 3. Modification of Moratorium. Section 6 is hereby added to Ordinance No. 9729 (N.S.), to read as follows:

"Section 6. Exceptions. The prohibitions of Section 3 shall not apply to any project which has already obtained all necessary discretionary permits and only requires a building permit."

Except for the above amendments to Section 5 and 6, all other provisions of Ordinance No. 9729 (N.S.) are hereby reaffirmed and extended in effect unaltered.

Section 4. Effective Date. This ordinance is adopted by the Board of Supervisors as an urgency measure to protect the public safety, health and welfare, in accordance with Government Code Section 65858. The reasons for such urgency are as follows: because Ordinance No. 9729 (N.S.) expires 45 days after its adoption, if a non-urgency ordinance extending the moratorium were adopted, the following potential effects could occur during the period of time between such expiration and the effective date of the extension: the potential negative effects resulting from installation, construction or modification of WTFs identified in paragraph c of Section 1 of Ordinance No. 9729, and the potential violations of the Court Order identified in paragraph d of Ordinance No. 9729. It is therefore necessary that this ordinance extending the moratorium become effective immediately.

Section 5. Publication. Before the expiration of fifteen days after its passage, this ordinance or a summary hereof shall be published once with the names of the members of this Board voting for and against it in the San Diego Commerce, a newspaper of general circulation published in the County of San Diego.

PASSED AND ADOPTED THIS 21st DAY OF SEPTEMBER 2005