

ORDINANCE NO. 9729 (NEW SERIES)

AN INTERIM ORDINANCE ESTABLISHING A TEMPORARY MORATORIUM  
CONCERNING WIRELESS TELECOMMUNICATION FACILITIES, 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 April 30, 2003, the Board of Supervisors adopted Ordinance No. 9549 (N.S.), entitled "An Ordinance Amending the San Diego County Zoning Ordinance Relating To Wireless Telecommunications Facilities" (hereinafter, the "WTF Ordinance"). The purposes of the WTF Ordinance included:
  - (1) to establish comprehensive guidelines for the placement, design and processing of Wireless Telecommunications Facilities (hereinafter "WTFs") in all zones within the County of San Diego,
  - (2) to prescribe clear, reasonable and predictable criteria to assess and process applications for WTFs in a consistent manner,
  - (3) to reduce visual and land use impacts associated with WTFs, and
  - (4) to allow for the orderly and efficient progression of wireless networks to develop in accordance with Federal Communication Commission rules and regulations and the Telecommunications Act of 1996.
- b. On July 8, 2005, the United States District Court for the Southern District of California, issued an order in Case No. 03cv1398 BTM(BLM), Sprint Telephony PCS, L.P., et al v. County of San Diego et al, in which the WTF Ordinance was challenged. The Court found that the WTF Ordinance is preempted by federal law and enjoined the County from enforcing it. The County is actively seeking rehearing and intends to pursue all available judicial procedures so that it will be able to enforce the WTF Ordinance. However, at this time, the Court's Order may be interpreted as prohibiting the County from applying or enforcing the WTF Ordinance or any of its provisions, including further receiving, processing, approving, conditionally approving or denying any applications for WTFs. Further, the nature of the defects in the WTF Ordinance identified in the Court Order is such that the validity of the WTF regulations which the County applied before the enactment of the WTF Ordinance was enacted, is also questionable. Therefore, the County cannot simply revert to such previous regulations.
- c. If a temporary moratorium is not established, then for the period of time the County is prohibited from applying or enforcing the WTF Ordinance and cannot without risk return to enforcement of WTF regulations previously in effect, WTFs could be installed, constructed or modified without conforming to any of the

protections afforded by the WTF Ordinance or previous regulations. This could lead to WTFs which:

- (1) create land use incompatibilities, such as a large lattice tower located in a residential zone;
- (2) create visual and aesthetic blight or view interference due to excessive size, height, or absence of camouflaging;
- (3) create traffic and pedestrian safety hazards due to unsafe location of poles, towers, equipment cabinets or other materials or construction, particularly in right of way locations;
- (4) reduce property values;
- (5) create operational conflicts with other land uses or facilities authorized or existing on the same or neighboring sites; or
- (6) deteriorate the quality of life in a particular community or neighborhood.

The Board of Supervisors finds that these potential effects from the installation, construction or modification of additional WTFs constitute a current and immediate threat to the public health, safety and welfare.

- d. There are presently approximately 119 applications on file with the County, for the installation of WTFs pursuant to the WTF Ordinance. Appropriate County staff were, as of the date of the Court's Order, processing these applications and applying WTF provisions to them. Many applications are ready for public review and further processing; some have substantially completed processing and are imminently ready to be considered by the appropriate decision maker, who would apply the standards, criteria and procedures of the WTF Ordinance to them. Such action by County staff in processing said applications, and action on the applications by decision makers, could constitute a violation of the Court Order, subjecting the County and said staff and decision makers to sanctions and liabilities. The Board of Supervisors finds that this potential constitutes a current and immediate threat to the public health, safety and welfare, which this ordinance is necessary to prevent.
- e. The Board of Supervisors declares that it is the County's intent to pursue certain judicial procedures available to it in response to the Court Order, and if the final resolution of the case is a determination that the WTF Ordinance is legally defective, then it is the County's intention to prepare and adopt, within a reasonable time, revised zoning regulations of WTFs which will comply with the Court Order.

Section 2. Definitions.

- a. The term "person" as used herein shall have the meaning given in "DEFINITIONS P" following Section 1110 of the Zoning Ordinance.
- b. The term "Wireless Telecommunications Facility" or "WTF" as used herein shall have the meaning given in Section 6983.W of the Zoning Ordinance of the County of San Diego.

Section 3. Prohibitions. Immediately upon adoption of this Ordinance, and throughout the duration of its effect, the following provisions shall apply:

- a. No person shall locate, install, construct or modify a WTF, or file with the County any application for a WTF.
- b. No decision making authority of the County of San Diego shall approve, conditionally approve, or deny any application for a WTF, nor shall County staff receive or process WTF applications or in any other way apply or enforce the provisions of the WTF Ordinance.

Section 4. Effective Date. This is an interim ordinance adopted by a four-fifths vote of this Board as an urgency measure to protect the public safety, health and welfare, in accordance with Government Code Section 65858. The reasons for the urgency are set forth in Section 1 above. This ordinance shall take effect immediately upon its adoption.

Section 5. Duration. This ordinance shall remain in effect until the earlier 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. Forty-five days from the date of adoption of this ordinance; or
- b. The effective date of a Stay of the Court Order, issued by a court of competent jurisdiction, which permits the County to return to enforcement and application of the WTF Ordinance.

Section 6. 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 2<sup>nd</sup> DAY OF AUGUST, 2005