

ORDINANCE NO. 2019-002

AN EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN BUENAVENTURA, CALIFORNIA, PROVIDING ADMINISTRATIVE AUTHORITY TO THE CITY MANAGER TO APPROVE SMALL WIRELESS FACILITIES CONSISTENT WITH THE ADMINISTRATIVE GUIDELINES TO BE PROMULGATED BY THE CITY MANAGER CONSISTENT WITH APPLICABLE FEDERAL LAWS

WHEREAS, Pursuant to Article XI, Sections 5 and 7 of the California Constitution and the City's Charter, the City may make and enforce within its limits, all local, police, and sanitary and other ordinances and regulations not in conflict the general laws or its charter; and,

WHEREAS, Pursuant to the San Buenaventura City Charter Section 706(c), the City Council may adopt any emergency ordinance when "declared by the Council to be necessary as an emergency measure for preserving the public peace, health or safety, and containing the reasons for its urgency, may be introduced and passed at one in the same meeting, regular or special"; and,

WHEREAS, Said provision of the City Charter has consistently been interpreted as requiring a 4-5th's vote of the City Council in order to adopt an emergency ordinance with six of seven affirmative votes required if all members are present; if less than seven members are in attendance, then the emergency ordinance must be adopted by the unanimous vote of those City Councilmembers present to be adopted; and,

WHEREAS, The City Council of the City of San Buenaventura deems it necessary to adopt an emergency ordinance to regulate the placement of small wireless facilities ("SWFs") in the public rights-of-way given recent and significant changes in federal law that affect local authority to regulate such facilities; and,

WHEREAS, On August 2, 2018, the Federal Communications

Commission ("FCC") adopted a Third Report and Order and Declaratory Ruling *In the Matter of Accelerating Wireline and Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*; WC Docket No. 17–84, WT Docket No. 17–79) that formally prohibits express and *de facto* moratoria for all telecommunications services and facilities under 47 U.S.C. Section 253 (a) and directed the Wireline Competition Bureau and the Wireless Telecommunications Bureau to hear and resolve all complaints on an expedited basis; and,

WHEREAS, On September 26, 2018, the FCC adopted a Declaratory Ruling and Third Report and Order *In the Matter of Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment* (WT Docket No. 17–79, WC Docket No. 17–84), effective January 14, 2019, that creates a new regulatory classification for SWFs, require State and local governments to process applications for SWFs 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, Existing local law pursuant to San Buenaventura Municipal Code Chapter 24.497, "Standards for Wireless Telecommunications Facilities, requires either one or more of the following types of permits: a Zone Clearance, a Director's Permit, a Use Permit, and/or Planned Development Permit or other development permits, including a Coastal Development Permit for properties in the Coastal Zone, for all wireless telecommunications facilities, the review and appeal procedures for such permits will routinely occur beyond the federal timelines for review and such failures to act within the applicable timeframe would expose the City to effective prohibition claims under federal law that provide injunctive relief to the wireless applicant for "shovel-ready" permits outside of the City's standard review and approval process; and,

WHEREAS, SWF installed within public rights-of-way that have not been appropriately reviewed and approved by the City 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, height, noise, or lack of camouflaging of wireless facilities including the associated pedestals, meters, equipment and backup power sources; and

protection and preservation of public property, all of which may negatively impact the unique character and quality of the City and the public health, safety and welfare; and,

WHEREAS, Given the rapid and significant changes in federal law, the actual and effective prohibition on moratoria to amend local policies in response to such changes, the January 14, 2019 effective date of the expedited federal shot clocks, and the significant adverse consequences for noncompliance with federal law, the City Council desires to provide administrative authority to the City Manager to adopt administrative regulations (“Administrative Policies and Procedures” or “AP&P’s”) to comply with such laws in order to preserve the public peace, health, safety and welfare to the maximum extent practicable; and,

WHEREAS, On April 8, 2019, City Council held a duly noticed public meeting on this Emergency Ordinance, reviewed and considered the staff report, other written reports, and other information contained in the record.

The Council of the City of San Buenaventura does ordain as follows:

SECTION 1. Findings.

The City Council finds that:

- A. The facts set forth in the recitals in this Emergency 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, and other information contained in the record, are an adequate and appropriate evidentiary basis for the actions taken in this ordinance.
- B. The provisions of this Emergency Ordinance are consistent with the General Plan, San Buenaventura Municipal Code, and applicable federal and State law.
- C. The provisions of this Emergency Ordinance will not be detrimental to the public interest, health, safety, convenience, or welfare, and are necessary for the immediate preservation of the public peace, health or safety for which the urgency declared.

SECTION 2. California Environmental Quality Act.

Pursuant to the California Environmental Quality Act ("CEQA") Guidelines Section 15378 and California Public Resources Code Section 21065, the City Council finds that this Ordinance is not a "project" because its adoption is not an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment. Accordingly, this Ordinance is not subject to CEQA.

Even if this Ordinance qualified as a "project" subject to CEQA, the City Council finds that, pursuant to CEQA Guidelines Section 15061(b)(3), there is no possibility that this project will have a significant impact on the physical environment. This Ordinance simply allows an administrative procedure to authorize the adoption of regulations related to SWFs and modifications to existing wireless facilities. This Ordinance does not directly or indirectly authorize or approve any actual changes in the physical environment. Applications for any new SWF or change to an existing wireless facility would be subject to additional environmental review on a case-by-case basis. Accordingly, the City Council finds that this Ordinance would be exempt from the CEQA under the general rule.

SECTION 3. Authorization to Adopt Administrative Policies and Procedures.

The City Council recognizes that the continuing development and evolution of technology, particularly in the telecommunications area, is rapidly changing and dynamic. In order to ensure, to the maximum extent practicable, that local control of the public rights-of-way in the City is maintained in light of Federal and State preemption and overreach, it is critical that the City be able to move quickly to adapt to a changing regulatory environment as well as the rapidly changing technological environment. As such, the traditional regulatory process of adopting and amending City Ordinances may not enable the City to keep pace with these changes as well as meet ever shortening deadlines for action by the City imposed by either or both the State of California or/and the FCC.

The City Manager is in the best position to evaluate the ability of the professional staff to balance developing and implementing regulations that protect the City's rights-of-way to the maximum extent practicable against

the other competing priorities and projects assigned by the City Council. The City Council charges the City Manager with running the day-to-day operations of the City consistent with the City Council's policy direction. For example, the City currently has numerous vacancies at both management and journey level positions presenting challenges in developing and implementing complex regulatory processes.

As such, the City Council hereby authorizes the City Manager to adopt Administrative Policies and Procedures to regulate, control, and authorize SWFs in the City. Such Administrative Policies and Procedures shall be adopted by the City Manager and implemented by City staff. In addition, as the Federal and State regulations change and develop in this area, these Administrative Policies and Procedures may be modified, updated, amended, or repealed by the City Manager as necessary to meet the needs of the City until such time as the City Council adopts a subsequent Ordinance on this subject.

SECTION 4. Application Fees and Right-of-Way Annual Use Fees.

The application processing fee, consistent with the FCC's ruling, is hereby set at \$500 for applications involving up to five SWF's, with an additional \$100 per SWFs included in a batched application, and \$1,000 for new or replacement poles.

The FCC's ruling also sets the sum of \$270 per SWF per year as compensation to the City for use of the public rights-of-way.

The fees established by this Ordinance may be amended or adjusted by Resolution of the City Council.

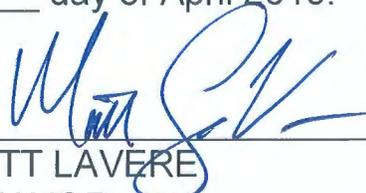
SECTION 5. Ordinance Summary.

Within five (5) days of this Ordinance's adoption, the City Clerk is directed to cause a summary of this Ordinance to be published weekly in a newspaper of general circulation within the City.

SECTION 6. Severability.

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the 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 adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

PASSED and ADOPTED this 8th day of April 2019.



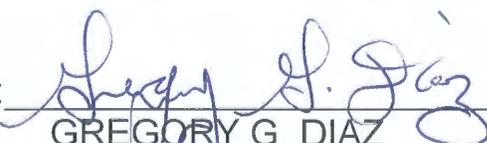
MATT LAVERRE
MAYOR

ATTEST:



ANTOINETTE M. MANN, MMC, CRM
CITY CLERK

APPROVED AS TO FORM
Gregory G. Diaz, City Attorney

By:  4/5/2019

GREGORY G. DIAZ Date
City Attorney

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF VENTURA) SS.
CITY OF SAN BUENAVENTURA)

I, ANTOINETTE M. MANN, City Clerk of the City of San Buenaventura, DO HEREBY CERTIFY that the foregoing is a full, true, and correct copy of Ordinance No. 2019-002 that was introduced and adopted by said City Council at a regular meeting held April 8, 2019, by the following vote:

AYES: Councilmembers Nasarenko, Brown, Friedman, Weir, Heitmann, Deputy Mayor Rubalcava and Mayor LaVere

NOES: None

ABSENT: None

I further certify that said Ordinance No. 2019-002 was published as required by law in the VENTURA COUNTY STAR, a newspaper of general circulation printed and published in said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Buenaventura, California.



Antoinette M. Mann, MMC, CRM
City Clerk
City of San Buenaventura, California

4/10/2019

Date Attested

