

**URGENCY ORDINANCE NO. 3708**  
**AN UNCODIFIED URGENCY ORDINANCE OF THE MARIN COUNTY BOARD OF SUPERVISORS**  
**TO ESTABLISH REGULATIONS AND PROCEDURES RELATED TO**  
**SMALL CELL WIRELESS FACILITIES WITHIN PUBLIC ROADS AND DECLARING THE**  
**URGENCY THEREOF, IN ACCORDANCE WITH**  
**GOVERNMENT CODE SECTIONS 25123(D) AND 25131**

**SECTION I: FINDINGS**

The Board of Supervisors of the County of Marin ordains as follows:

1. **WHEREAS**, pursuant to Article XI, section 7 of the California Constitution, the County Board of Supervisors may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws; and
2. **WHEREAS**, the County currently regulates wireless telecommunications facilities pursuant to the Telecommunications Facilities Policy Plan (TFPP), which was first adopted in 1990 and comprehensively updated in 1998, and Marin County Development Code Section 22.32.165. Among other provisions, these regulations impose design, height, general locational and other standards for installation of wireless facilities primarily on private property, establish ministerial and discretionary review processes, and require compliance with Federal Communications Commission ("FCC") regulations with regard to radiofrequency emissions; and
3. **Whereas**, Federal law establishes specified limitations and preemptions in relation to the siting of wireless communications facilities as part of the Federal Telecommunications Act of 1996 (47 U.S.C. § 332); and
4. **WHEREAS**, 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 wireless communication facilities; and
5. **WHEREAS**, 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 wireless communications facilities; and
6. **WHEREAS**, 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. This report and order effectively preempted local moratoria on wireless communications facilities by finding that the 2009 Shot Clock continues to run even when a valid moratorium is adopted; and
7. **WHEREAS**, in October 2014, the Federal Communications Commission unanimously approved rules interpreting Section 6409 that took effect as of April 2015; and
8. **WHEREAS**, 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) and directed the Wireline Competition Bureau and the Wireless Telecommunications Bureau to hear and resolve all complaints on an expedited basis; and

9. **WHEREAS**, 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, 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

10. **WHEREAS**, the FCC Ruling, effective on January 14, 2019, sets forth new limitations on state and local government regulation of small cell wireless facilities that are placed on existing or new utility poles and street light standards located in the public right-of-way. Specifically, the FCC Ruling; a) limits the level of local permitting and discretion; b) establishes new shorter “shot clock” rules (e.g., time limits and deadlines) for processing and action on local permits; and c) limits the fees that can be charged for permitting small cell deployments; and

11. **WHEREAS**, under Government Code Section 65964, local governments are required to approve collocations through a ministerial process and are prohibited from limiting the duration of permits for wireless sites to less than 10 years, absent good reason; and

12. **WHEREAS**, under the state law, a wireless collocation facility must be a permitted use, not subject to a local discretionary permit, if it satisfies certain requirements (Gov. Code § 65850.6); and

13. **WHEREAS**, state law establishes a framework, process, and procedures governing the attachment of telecommunications facilities to investor-owned utility poles and municipal utility poles, providing the California Public Utilities Commission (CPUC) the authority to establish and enforce rates terms and conditions for pole attachment (Pub.Utl. Code, §7901); and

14. **WHEREAS**, local governments may not block utility pole attachments, but existing law authorizes to them to regulate the time, manner and place of pole attachments in the public roads (Pub.Utl. Code, §7901.1); and

15. **WHEREAS**, small cell wireless facilities are primarily installed within the public roads and in populated areas and as such create significant and far-reaching local concerns about traffic and pedestrian safety; 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 County and the public health, safety and welfare thereof. Accordingly, regulating the installation of small cell facilities in the County is necessary to protect and preserve the aesthetics in the community, as well as the values of properties within the County, and to ensure that all wireless telecommunications facilities are installed using the least intrusive means possible; and

16. **WHEREAS**, the Board of Supervisors finds that high demand sites such as schools are particularly prone to visual clutter of increased small cell infrastructure within nearby public roads; and

17. **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 Board of Supervisors desires to allow greater flexibility and responsiveness to new federal and State laws in order to preserve the County's traditional discretionary authority to the maximum extent practicable; and

18. **WHEREAS**, the county lacks updated regulations as to wireless facilities in the public roads and the management of applications under the new "shot clocks" that govern the time in which the County must approve or deny wireless facility applications; and

19. **WHEREAS**, the Board of Supervisors finds that the public health, safety and welfare is met by the immediate adoption of this Urgency Ordinance to regulate small cell wireless facilities since wireless facilities are aesthetically displeasing and out of harmony with the character of this community so as to constitute visual blight which reduces the quality of life within the community to the extent that the overall public health is detrimentally affected. Given the short time the County has to process applications for small cell wireless facilities, there is an immediate need for this Urgency Ordinance; and

20. **WHEREAS**, the expeditious adoption of small cell wireless facility regulations are necessary to protect the County's visual character from potential adverse impacts of visual impacts or visual blight created or exacerbated by telecommunications infrastructure and promote access to high-quality, advanced telecommunication services for the County's residents, businesses and visitors; and

21. **WHEREAS**, pursuant to California Government Code Section 65858 this urgency ordinance shall be effective for forty-five (45) days, and may be extended by further Board action for an additional ten (10) months and fifteen (15) days, and subsequently extend the ordinance for one year by a four-fifths (4/5) vote of the Board; and

22. **WHEREAS**, pursuant to Government Code section 25123, the County may enact an ordinance for the immediate preservation of the public peace, health, or safety, which contains a declaration of the facts constituting the urgency and which shall be effective immediately; and

23. **WHEREAS**, the urgency ordinance and amendments are consistent with Countywide Plan, the Telecommunication Facilities Policy Plan, and applicable Federal and State laws; and

24. **WHEREAS**, 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 actions taken in this Urgency Ordinance; and

25. **WHEREAS**, on July 9, 2019, the Board of Supervisors held a duly noticed public hearing on the amendments, reviewed and considered the staff report, other written reports, public testimony and other information contained on the record; and

26. **NOW, THEREFORE, BE IT RESOLVED** that the Marin County Board of Supervisors hereby adopts Urgency Ordinance No. 3708.

**SECTION II: EFFECTIVE DATE AND PUBLICATION**

This Urgency Ordinance is enacted pursuant to the authority conferred upon the Board of Supervisors by Government Code Sections 25123(d) and 25131 and shall be in full force and effect upon its adoption by a four-fifths (4/5) vote of the Board and shall be published once before the expiration of fifteen (15) days after its passage, with the names of the Supervisors voting for and against the same, in the *Marin Independent Journal*, a newspaper of general circulation published in the County of Marin.

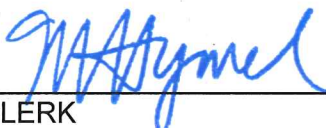
**SECTION III: VOTE**

**PASSED AND ADOPTED** at a regular meeting of the Board of Supervisors of the County of Marin, State of California, on this 9<sup>th</sup> day of July 2019 by the following vote:

AYES: SUPERVISORS Judy Arnold, Dennis Rodoni, Damon Connolly, Katie Rice,  
Kathrin Sears  
NOES: NONE  
ABSENT: NONE

  
\_\_\_\_\_  
PRESIDENT, BOARD OF SUPERVISORS

ATTEST:

  
\_\_\_\_\_  
CLERK