Council Agenda Report

City Council Meeting
06-22-26
Item 5.C.

To: Mayor Silverstein and Honorable Members of the City Council

Prepared by: Gail A. Karish, City Attorney's Office
Tyler Eaton, Assistant Community Development Director

Approved by: Joseph D. Irvin, City Manager
Trevor Rusin, Interim City Attorney

Date prepared: June 17, 2026 Meeting date: June 22, 2026

Subject: Proposed Wireless Moratorium and Federal/State Law

RECOMMENDED ACTION: Receive and file this report regarding wireless moratoria and federal and state law relevant to the matter. Per the Council's direction, a draft urgency ordinance to impose a moratorium on approval of additional use permits, variances, building permits, or any other applicable entitlement for wireless telecommunication facilities has been provided as Attachment 1. Adoption of the ordinance is not recommended so that the City can remain in compliance with federal law and avoid the risk of applications being deemed granted.

ALTERNATIVE ACTION: After the City Attorney reads the title of the ordinance, adopt Urgency Ordinance No. 536U, establishing a 45-day moratorium prohibiting approval of permits for wireless telecommunication facilities, declaring the urgency thereof, and finding the action exempt from CEQA.

FISCAL IMPACT: This item was funded via regular operations and City Attorney services paid through the General Fund.

STRATEGIC PRIORITY: This item is prepared pursuant to direction from the City Council at the June 8, 2026 meeting to bring back an item to consider a moratorium on wireless telecommunication facility applications within the City of Malibu.

DISCUSSION:

On June 8, 2026, City Council directed City staff to return with a report and draft moratorium that would bar wireless facility applications. Attachment 1 contains an urgency ordinance for the proposed moratorium.

However, adoption of the urgency ordinance is not recommended for the reasons discussed below.

1. Federal law prohibits state and local governments from imposing express or de facto moratoria on the deployment of wired and wireline telecommunications facilities. On August 2, 2018, the Federal Communications Commission (FCC) adopted a Third Report & Order and Declaratory Ruling (Moratoria Order), that, among other things, prohibited state and local governments from imposing express and de facto moratoria that delay, suspend, or prevent the acceptance, processing, or approval of applications for telecommunications services and their related facilities, determining that moratoria violate Section 253(a) of the Communications Act.[1]

The FCC defines each moratorium as follows:

- Express moratoria are "…state or local statutes, regulations, or other written legal requirements that expressly, by their very terms, prevent or suspend the acceptance, processing, or approval of applications or permits necessary for deploying telecommunications services and/or facilities."[2]
- De facto moratoria are "…state or local actions that are not express moratoria, but that effectively halt or suspend the acceptance, processing, or approval of applications or permits for telecommunications services or facilities in a manner akin to an express moratorium."[3]

In August 2020, the Ninth Circuit Court of Appeals upheld the FCC's Moratoria Order in the *City of Portland v. United States*.[4]

2. Federal "shot clocks" would continue to run during the moratorium, putting the City at risk that wireless applications would be deemed granted.

The FCC has established various "shot clocks" or timelines for the processing and decisions on wireless applications. These "shot clocks" range from 60 days to 150 days.[5] The FCC has also determined that state and local moratoria do not toll the "shot clocks"

[1] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Third Report and Order and Declaratory Ruling,* WC Docket No. 17-84, WT Docket No. 17-79, 33 FCC Rcd. 7705 (2018) ("*Moratorium Order*").
[2] *Moratoria Order*, Para. 145.
[3] *Moratoria Order*, Para. 149.
[4] 969 F.3d 1020 (9th Cir. 2020).
[5] See 47 C.F.R. Sections 1.6001 to 1.6100.

for state or municipal review of wireless siting applications and that these "shot clocks continue to run" regardless of whether state or local governments purport to impose moratoria that suspend the acceptance or processing of siting applications for some period of time.[6] Further, federal and state law provide applicants with a deemed granted remedy that can be invoked if the locality fails to act within the applicable "shot clock" period.[7]

3. State law limits the available reasons for adopting moratoria on development permits. Pursuant to Government Code section 65858, to protect the public safety, health and welfare a City may adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City is considering or studying, or intends to study within a reasonable time (a moratorium).

State law imposes a number of requirements on the notice, processing, and adoption of changes to a general plan or zoning code. Government Code section 65858 allows City's to temporarily prohibit a use without going through this process by implementing a moratorium. The moratorium can only be imposed if it is needed to protect the public safety, health and welfare while the City is considering or studying changes to its general plan, a specific plan or zoning proposal that would conflict with the current allowed use.

While the Council provided direction that it was considering changes to Malibu Municipal Code Chapter 17.46 (Wireless Communications Facilities) and may consider additional changes in light of recent developments related to wireless facilities at the June 8 meeting, it did not specify reasons why a moratorium would be needed to protect the public safety, health and welfare while it is studying/considering changes to the wireless ordinance. Staff has included draft findings in the attached ordinance, but the Council must make these findings (or others) and explain the need for the moratorium should it choose to adopt the proposed urgency ordinance/moratorium.

A moratorium must be adopted by a four-fifths vote of the City Council, and if adopted it would be effective for 45 days. The moratorium could be extended for an additional 10 months and 15 days after a future public hearing and additional four-fifths vote. A second extension could extend the moratorium for an additional year after a similar process. No more than two extensions may be adopted.

Conclusion

Because the City's proposed moratorium would directly conflict with the FCC's Moratoria Order and would put the City at risk of deemed granted approvals, it is recommended that the City refrain from moving forward with adopting the urgency ordinance in Attachment

[6] *Moratoria Order*, Para. 165, FN 606.

[7] See 47 C.F.R. Section 1.6100(c)(4); Cal. Gov. Code Section 65964.1. The only exception where a deemed granted remedy is not available is for a collocation or siting application for a wireless telecommunications facility where the project is proposed for placement on fire department facilities.

1, or any proposed moratorium, to avoid falling out of compliance with federal and state law, related likely industry legal challenges and claims, and making the City susceptible to wireless facilities becoming “deemed granted” without City review and conditions.

ATTACHMENT
Urgency Ordinance No. 536U

ORDINANCE NO. 536U

AN URGENCY ORDINANCE OF THE CITY OF MALIBU PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858 ESTABLISHING A 45-DAY MORATORIUM PROHIBITING APPROVAL OF PERMITS FOR WIRELESS TELECOMMUNICATION FACILITIES, DECLARING THE URGENCY THEREOF, AND FINDING THE ACTION EXEMPT FROM CEQA

The City Council of the City of Malibu does find and ordain as follows:

SECTION 1. Moratorium Established.

A 45-day moratorium is hereby enacted (1) prohibiting the approval of additional use permits, variances, building permits, or any other applicable entitlement for wireless telecommunication facilities required in order to comply with Chapter 17.46, and (2) suspending the exemption in Chapter 17.46 for wireless communication facilities in the public right-of-way and barring the related approval of permits variances, building permits, or any other applicable entitlement for wireless telecommunication facilities required in order to comply with Chapter 12.02.

Notwithstanding any provision of the Malibu Municipal Code (MMC), no application for a use permit, variance, building permit, or any other applicable entitlements required for a wireless telecommunication facility will be approved by the City during the pendency of this ordinance or any extension thereof.

SECTION 2. Findings.

The City Council finds that there is a current and immediate threat to the public health, safety, and welfare from wireless telecommunications facilities, and that the approval of additional use permits, variances, building permits, or any other applicable entitlement for wireless telecommunications facilities which is required in order to comply with Chapter 17.46 and Chapter 12.02 would result in that threat to public health, safety, or welfare, based on the following facts:

- The City of Malibu is within a very high fire hazard severity zone (VHFHSZ) as identified by the California State Fire Marshal.
- The City recently lost over 700 structures in the 2025 Palisades Fire and one third of the City was affected geographically. Coupled with the impacts from the 2018 Woolsey Fire, just 8 years before, two thirds of the City has been impacted geographically within the decade.
- The 2018 Woolsey Fire was confirmed to be caused by electrical utility lines similar to wireless telecommunication facilities. Previously, after the 2007 Malibu Canyon Fire, NextG (an installer/operator of wireless facilities) was ordered by the CPUC to pay fines for overloading poles that contributed to the fire.

- In February and March 2026, 24 wireless telecommunication facility applications for upgrades to existing sites were approved by the City. Eleven of the Wireless Right-of-Way Permits and one Wireless Permit were appealed by concerned residents, citing, among other grounds, concerns about fire safety related to the upgrades.

- On June 8, 2026, the City Council, concerned with fire safety related to wireless telecommunications facilities and upgrades being in a VHFHSZ directed staff to come back with an moratorium to temporarily stop further wireless telecommunication facilities uses.

Due to the potential for wireless telecommunication facilities to contribute to dangerous fire conditions and the City being within a VHFHSZ, the City Council hereby finds that an emergency exists and immediate action must be taken to avoid a threat to the public health, safety and welfare.

This moratorium is necessary while the City considers changes to Malibu Municipal Code Chapter 17.46 (Wireless Communications Facilities) as directed at the June 8, 2026, City Council meeting, and is considering additional changes in light of recent developments related to wireless facilities.

SECTION 3. Penalties.

Violation of any provision of this Ordinance shall constitute a misdemeanor and shall be punishable by a fine not to exceed $1,000 per day that the violation exists. Each and every day such a violation exists shall constitute a separate and distinct violation of this Ordinance. In addition to the foregoing, any violation of this Ordinance shall constitute a public nuisance and shall be subject to abatement as provided by all applicable provisions of law.

SECTION 4. Environmental Review.

Pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15308, actions can be taken by regulatory agencies, as authorized by local ordinance, to assure the protection of the environment where the regulatory process involves procedures for protection of the environment. Due to the immediate threat that wireless telecommunication facilities pose on the environment described herein, the City Council hereby finds that CEQA is categorically exempt pursuant to this section in order to protect the environment.

Additionally, pursuant to CEQA Guidelines Section 15061(b)(3), where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The City Council determined that there is no possibility the ordinance will have a significant effect on the environment and accordingly, the exemption set forth in Section 15061(b)(3) applies.

SECTION 5. Urgency Finding.

The City Council finds and declares that the adoption of this Urgency Ordinance is necessary for the immediate preservation of the public peace, health, and safety. The 2025 Palisades Fire,

2024 Franklin Fire and 2024 Broad Fire destroyed hundreds of properties causing a declaration of emergency from the President of the United States as well as the Governor of California and the Mayor of Malibu. The City, being within a VHFHSZ as identified by the California State Fire Marshal, has determined that wireless facilities exacerbate fire hazards. The City suffered from the 2025 Palisades Fire and the 2018 Woolsey Fire, whereabouts 2/3rds of the City has been impacted geographically within the decade. The 2018 Woolsey Fire was confirmed to be caused by electrical utility lines similar to wireless telecommunication facilities. The Council therefore finds and determines that the immediate preservation of the public peace, health and safety requires that this Ordinance be enacted as an urgency ordinance pursuant to Government Code Sections 36937 and 65858 and take effect immediately upon adoption by four-fifths of the City Council.

SECTION 6. Effective Date.

This Ordinance shall be effective immediately upon its adoption by four-fifths of the City Council on June 22, 2026.

SECTION 7. Severability.

Should any section, subsection, clause, or provision of this Ordinance for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality or the remaining portions of this Ordinance; it being hereby expressly declared and this Ordinance, and each section, subsection, sentence, clause, and phrase hereof would have been prepared, proposed, approved, and ratified irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phases be declared invalid or unconstitutional.

SECTION 8. Conflicting Laws

For the term of this Ordinance, or any extension thereof, the provisions of this Ordinance shall govern over any conflicting provisions of any other City code, ordinance, resolution or policy.

SECTION 9. Certification.

The City Clerk shall certify to the passage and adoption of this Ordinance.

PASSED, APPROVED, and ADOPTED this 22nd day of June 2026.

_____
BRUCE SILVERSTEIN, Mayor

ATTEST:

_____
KELSEY PETTIJOHN, City Clerk
(seal)

APPROVED AS TO FORM:
THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE

TREVOR RUSIN, Interim City Attorney