Special City Council Meeting

Staff Report

TO: Honorable Mayor and City Council

FROM: Moses Diaz, Esq., Deputy City Attorney
Joseph Berry, Esq., Deputy City Attorney

THROUGH: John Jansons, City Manager

DATE: September 20, 2016

SUBJECT: Interim Urgency Ordinance (draft Ordinance # 479) establishing a 45 day moratorium on the establishment or operation of tall strucuters or improvement in the Right of Way

RECOMMENDED ACTION:

Adopt the attached urgency ordinance 479 which contains a declaration of urgency, and which will establish a forty-five (45) day moratorium on approval of tall improvements in the public right-of-ways, to take effect immediately. (4/5 vote required)

SUMMARY:

Due to the prevalence of aircraft in nearby agricultural fields, extremely tall obstructions on private property and/or the public right-of-way have the potential to endanger the life and property within the City Farmersville (City) and local safety regulations may be necessary in the interest of the public health, public safety, and general welfare, provided they are not preempted by federal law and regulations;

The Farmersville Municipal Code (FMC) is generally silent with respect to zoning standards for privately owned improvements within public rights-of-way. That the regulation of these improvements should be accomplished, to the extent legally possible by the exercise of the police power without compensation, but further time is needed to review, study, and revise the FMC.

Due to the need for permissible local regulation, time is needed to review, study and revise the FMC to fully take into account the impacts related to local lighting requirements on excessively tall improvements, zoning of privately owned improvements built on public rights-of-way as well as on private property, setting setback requirements on privately owned improvements on public rights-of-ways and imposition of zoning theme standards on privately owned improvements on public right-of-ways, all to promote the public health, safety and welfare of pedestrian, vehicular and aviation traffic.

The City requires additional time to prepare, evaluate and adopt reasonable regulations regarding the use of the public rights-of-way and other public and private property within the City for such obstructions.

The absence of this ordinance would impair the orderly and effective implementation of contemplated amendments to the FMC, and any further authorization to construct tall improvements or privately owned improvements within the a public right-of-way or tall improvements on private property within the City during the period of this moratorium may be in conflict with or may frustrate the contemplated updates and revisions to the FMC.

Without the enactment of this ordinance, multiple persons and/or entities could quickly receive permits to install structures constituting obstructions that pose a threat to the public health, safety and welfare.

The City Council further finds that this moratorium is a matter of local and City-wide importance and is not directed towards any particular builder or industry.

Government Code §§ 36937 and 65858 authorize the adoption of an urgency ordinance to protect the public health, safety and welfare, and to prohibit certain land uses that may conflict with land use regulations that the City's legislative bodies are considering or intend to study within a reasonable time.

The City Council finds that there is a current and immediate threat to the public health, safety and welfare based on the above findings, and upon that basis has determined that an urgency ordinance prohibiting the issuance of new permits or approvals for new structures constituting obstructions in public rights-of-way within the City is warranted.

Applicability.

This ordinance applies to all applications for the installation of new structures with a height greater than or equal to sixty feet. It also applies to any privately owned improvement to be built upon any un-zoned public right-of-way in within the City of Farmersville.

Moratorium on Privately Owned Improvements Upon Public Rights-Of-Ways and Certain New Tall Improvements.

A. Except as provided in Section 4 below, for a period of forty-five (45) days from the date of adoption of this ordinance, the following land uses are prohibited and no permits or other approvals may be issued for any of the following:

1. New structure in excess of sixty (60) feet in height within in a public right-of-way or on private property; and

2. Any privately owned improvement upon the surface of any publicly owned right-of-way.

Exceptions. The provisions of this ordinance shall not be construed to prohibit the issuance of permits or approvals for the following:

A. Any publicly owned improvement necessary to protect life or safety of any member of the public. Government Code § 65858 allows a city to adopt an urgency ordinance to establish a temporary moratorium on any specified land use, either to allow the city to study how to

appropriately regulate it or when that land use may be inconsistent with zoning regulations being considered by the City Council, Planning Commission or City Planning staff:

> "(a) Without following the procedures otherwise required prior to the adoption of a zoning ordinance, the legislative body of a county, city, including a charter city, or city and county, to protect the public safety, health and welfare, 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 legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time. That urgency measure shall require a four-fifths vote of the legislative body for adoption. The interim ordinance shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative body may extend the interim ordinance for 10 months and 15 days and subsequently extend the interim ordinance for one year. Any extension shall also require a four-fifths vote for adoption. Not more than two extensions may be adopted." [Government Code § 65858(a).]

The City Council would have the option to further extend the ordinance, though staff believes that one year may be adequate to study and develop regulations for Planning Commission and City Council consideration.

COORDINATION & REVIEW:
The recommendation to enact this interim urgency ordinance #479 was coordinated and reviewed with the City's planning consultant and the City Attorney.

FISCAL IMPACT:
None

CONCLUSION:
It is respectfully recommended that the City Council:

> Adopt the attached urgency ordinance 479 which contains a declaration of urgency, and which will establish a forty-five (45) day moratorium on approval of tall improvements in the public right-of-ways, to take effect immediately. (4/5 vote required)

Attachment(s): 1 – draft Urgency Ordinance #479

Submitted By:

John Jansons,
City Manager

DRAFT
ORDINANCE NO. 479

AN INTERIM URGENCY ORDINANCE OF THE CITY OF FARMERSVILLE, ENACTING A TEMPORARY MORATORIUM ON PRIVATELY OWNED IMPROVEMENTS UPON PUBLIC RIGHTS-OF-WAYS AND CERTAIN TALL IMPROVEMENTS, PURSUANT TO GOVERNMENT CODE SECTION 65858.

THE CITY COUNCIL OF THE CITY OF FARMERSVILLE DOES ORDAIN AS FOLLOWS:

SECTION 1. Findings.

The City Council finds and declares as follows:

A. Due to the prevalence of aircraft in nearby agricultural fields, extremely tall obstructions on private property and/or the public right-of-way have the potential to endanger the life and property within the City Farmersville (**City**) and local safety regulations may be necessary in the interest of the public health, public safety, and general welfare, provided they are not preempted by federal law and regulations;

B. The Farmersville Municipal Code (**FMC**) is generally silent with respect to zoning standards for privately owned improvements within public rights-of-way. That the regulation of these improvements should be accomplished, to the extent legally possible by the exercise of the police power without compensation, but further time is needed to review, study, and revise the FMC.

C. Due to the need for permissible local regulation, time is needed to review, study and revise the FMC to fully take into account the impacts related to local lighting requirements on excessively tall improvements, zoning of privately owned improvements built on public rights-of-way as well as on private property, setting setback requirements on privately owned improvements on public rights-of-ways and imposition of zoning theme standards on privately owned improvements on public right-of-ways, all to promote the public health, safety and welfare of pedestrian, vehicular and aviation traffic.

D. The City requires additional time to prepare, evaluate and adopt reasonable regulations regarding the use of the public rights-of-way and other public and private property within the City for such obstructions.

E. The absence of this ordinance would impair the orderly and effective implementation of contemplated amendments to the FMC, and any further authorization to construct tall improvements or privately owned improvements within the a public right-of-way or tall improvements on private property within the City during the period of this moratorium may be in conflict with or may frustrate the contemplated updates and revisions to the FMC.

F. Without the enactment of this ordinance, multiple persons and/or entities could quickly receive permits to install structures constituting obstructions that pose a threat to the public health, safety and welfare.

G. The City Council further finds that this moratorium is a matter of local and City-wide importance and is not directed towards any particular builder or industry.

H. Government Code §§ 36937 and 65858 authorize the adoption of an urgency ordinance to protect the public health, safety and welfare, and to prohibit certain land uses that may conflict with land use regulations that the City's legislative bodies are considering or intend to study within a reasonable time.

I. The City Council finds that there is a current and immediate threat to the public health, safety and welfare based on the above findings, and upon that basis has determined that an urgency ordinance prohibiting the issuance of new permits or approvals for new structures constituting obstructions in public rights-of-way within the City is warranted.

SECTION 2. Applicability. This ordinance applies to all applications for the installation of new structures with a height greater than or equal to sixty feet. It also applies to any privately owned improvement to be built upon any un-zoned public right-of-way in within the City of Farmersville.

SECTION 3. Moratorium on Privately Owned Improvements Upon Public Rights-Of-Ways and Certain New Tall Improvements.

A. Except as provided in Section 4 below, for a period of forty-five (45) days from the date of adoption of this ordinance, the following land uses are prohibited and no permits or other approvals may be issued for any of the following:

1. New structure in excess of sixty (60) feet in height within in a public right-of-way or on private property; and

2. Any privately owned improvement upon the surface of any publicly owned right-of-way.

SECTION 4. Exceptions. The provisions of this ordinance shall not be construed to prohibit the issuance of permits or approvals for the following:

A. Any publicly owned improvement necessary to protect life or safety of any member of the public.

SECTION 5. Report.

The City Manager or the same's designee is authorized and directed to prepare and issue, on behalf of the City Council, a written report describing the measures taken by the City to alleviate the conditions which have led to the adoption of this ordinance, at least ten (10) days prior to the expiration of this ordinance. A copy of the same shall be subsequently provided to the City Council for review.

SECTION 6. CEQA Review. The City Council hereby finds that this ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060(c)(2) [the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment], 15060(c)(3) [the activity is not a project as defined by CEQA], and 15061(b)(3) [there is no possibility the activity in question may have a significant effect on the environment]. These findings are premised on the fact that the adoption of this urgency interim ordinance will maintain existing environmental conditions arising from the City's current land use regulations without significant change or alteration. The City Manager is hereby directed to ensure

that a Notice of Exemption is filed pursuant to CEQA Guidelines section 15062 [14 C.C.R. § 15062].

SECTION 7. No Liability. The provisions of this ordinance shall not in any way be construed as imposing any duty of care, liability or responsibility for damage to person or property upon the City of Farmersville, or any official, employee or agent thereof.

SECTION 8. Pending Actions. Nothing in this ordinance or in the codes hereby adopted shall be construed to affect any suit or proceeding pending or impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance or code repealed by this ordinance, nor shall any just or legal right or remedy of the City of any character be lost, impaired or affected by this ordinance.

SECTION 9. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this ordinance, or its application to any other person or circumstance. The City Council of the City of Farmersville hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION 10. Construction. The City Council intends this ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this ordinance shall be construed in light of that intent. To the extent the provisions of the Farmersville Municipal Code as amended by this ordinance are substantially the same as provisions in the Farmersville Municipal Code existing prior to the effectiveness of this ordinance, then those amended provisions shall be construed as continuations of the earlier provisions and not as new enactments.

SECTION 11. Urgency; Effective Date; Duration and Publication.

This ordinance is adopted by the City Council pursuant to the California Constitution, article XI, section 7 and Government Code section 65858 by a four-fifths (4/5) or greater vote, as an urgency measure to protect the public health, safety and welfare, and shall take effect immediately. The reasons for such urgency are set forth in Section 1 above. This ordinance shall expire and be of no further force or effect forty-five (45) days after its adoption, unless it is extended pursuant to Government Code section 65858. Prior to the expiration of fifteen (15) days from the passage hereof a certified copy of this ordinance shall be posted in the office of the City Clerk pursuant to Government Code section 36933(c)(1) and a summary shall be published once in the _____, a newspaper printed and published in the City of Farmersville, State of California, together with the names of the Council members voting for and against the same.

THE FOREGOING ORDINANCE was passed and adopted by the City Council of the City of Farmersville, State of California, on the _____ day of _____, 2016, at a regular meeting of said Council duly and regularly convened on said day by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

_____
PAUL BOYER, Mayor
CITY OF FARMERSVILLE

ATTEST: _____
Acting City Clerk,
[Gov. Code § 36804]