

RESOLUTION NO. 66-22

**RESOLUTION OF THE COUNCIL OF THE CITY OF RICHMOND, CALIFORNIA,
APPROVING A TEMPLATE POLE LICENSE AGREEMENT WITH NEW CINGULAR
WIRELESS PCS, LLC AND AUTHORIZING THE CITY MANAGER TO EXECUTE
POLE LICENSE AGREEMENTS FOR THE INSTALLATION OF SMALL WIRELESS
FACILITIES IN THE PUBLIC RIGHTS-OF-WAY**

WHEREAS, Section 253 of the Telecommunications Act of 1996 preserves the City's authority to control access to and use the rights-of-way within the City's jurisdictional boundaries, and to require reasonable compensation for such use on a competitively-neutral and nondiscriminatory basis so long as such compensation is disclosed; and

WHEREAS, California Public Utilities Code §§ 7901 and 7901.1 authorizes telephone corporations to construct "telephone lines along and upon any public road or highway" within the City and "erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway" subject to the City's reasonable time, place and manner control; and

WHEREAS, on September 27, 2018, the Federal Communications Commission released a Declaratory Ruling and Third Report and Order (FCC 18-133) in the rulemaking proceeding entitled *Accelerating Wireless Broadband by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, which interpreted various provisions in the Telecommunications Act in a manner that, *inter alia*, limited the compensation that state and local governments may receive from wireless providers for access to government-owned infrastructure, including City-owned streetlights for the deployment of small wireless facilities;

WHEREAS, the City owns and controls infrastructure within the public right-of-way that are potentially suitable for installing small wireless facilities and wireless providers desire to install, maintain and operate such facilities on the City's infrastructure and are willing to compensate the City in conformance with applicable laws;

WHEREAS, New Cingular Wireless PCS, LLC is requesting that the City enter into a Pole License Agreement to attach small wireless facilities to attach to City-owned infrastructure;

WHEREAS, consistent with applicable laws, the City does not intend the Pole License Agreement to grant New Cingular Wireless PCS, LLC or any particular wireless provider the exclusive right to use or occupy the public rights-of-way within the City's territorial and/or jurisdictional boundaries, and the City may enter into similar or identical agreements with other entities, which include without limitation to any business competitors of a wireless provider who has entered into a Pole License Agreement;

WHEREAS, on May 3, 2022, the City Council, after consideration of all pertinent documents and testimony, declared its intent to approve the template Pole License Agreement and delegate authority to the City Manager (or the City Manager's designee) to enter into Pole License Agreements in a form materially similar to Exhibit A with authorized providers, including New Cingular Wireless PCS, LLC, subject to all the applicable permits issued by the City to protect public health, safety and welfare.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RICHMOND
HEREBY RESOLVES AS FOLLOWS:**

Section 1. The City Council finds that: (a) the facts set forth in the recitals in this Resolution are true and correct and incorporated by reference; (b) 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 the actions taken in this Resolution; (c) the provisions in this Resolution are consistent with the General Plan, Richmond Municipal Code and applicable federal and state law; and (d) this Resolution will not be detrimental to the public interest, health, safety, convenience or welfare.

Section 2. Pursuant to the CEQA Guidelines Sections 15060(c)(2) and 15378 and Public Resources Code Section 21065, the approval of a Pole License Agreement template does not constitute a “project” because there is no potential these activities will result in a direct or reasonably foreseeable indirect physical change in the environment. Approval of the proposed Pole License Agreement template and the associated authorization for the City Manager to enter into individual agreements are organizational and/or administrative activities of the City that establish attachment rights, procedures and mechanisms for small cell deployments on City-owned infrastructure that may be proposed in the future. If such proposals are received, the City would conduct an appropriate environmental evaluation as may be required by law before any such proposals or associated permits would be approved.

Moreover, even if the adoption of the Pole License Agreement template is a project for CEQA purposes, it would qualify for the “commonsense” exemption under CEQA Guidelines Section 15061(b)(3) or a Class 3 exemption under CEQA Guidelines Section 15303. The “commonsense” exemption applies because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Small wireless facilities on existing poles involve limited construction activities within streets, sidewalks and other rights-of-way previously developed with transportation, communications, utility or municipal infrastructure. Small wireless facilities are unattended facilities that would not cause any change in traffic patterns, population density or intensification of use at locations where the facilities are located. No unusual circumstances exist. The Class 3 exemption also applies because small wireless facilities on existing streetlights involve construction and location of limited numbers of new, small facilities or structures and installation of small new equipment and facilities in small structures including electrical, gas and other utility extensions. Accordingly, no further environmental review is required. This determination reflects the City’s independent judgment and analysis.

Section 3. The City Council hereby approves the template Pole License Agreement (attached as Exhibit A) for the installation, operation and maintenance of small wireless facilities by wireless providers, including New Cingular Wireless PCS, LLC, on certain City-owned infrastructure and authorizes the City Manager (or the City Manager’s designee), subject to the City Attorney’s prior review and approval, to execute Pole License Agreements in materially similar form, or with other changes that may be required by applicable laws, with such wireless providers.

Section 4. If any section, subsection, paragraph, sentence, clause, phrase or term (each a “Provision”) in this Resolution, or any Provision’s application to any person or circumstance, is held illegal, invalid or unconstitutional by a court of competent jurisdiction, all other Provisions not held illegal, invalid or unconstitutional, or such Provision’s application to other persons or circumstances, shall not be affected. The City Council declares that it would have passed and adopted this Resolution, and each Provision therein, whether any one or more Provisions be declared illegal, invalid or unconstitutional.

Section 5. This Resolution shall become effective immediately upon its passage and adoption and shall remain effective until amended, superseded or repealed by a separate Resolution adopted by the City Council.

I certify that the foregoing resolution was passed and adopted by the City Council of the City of Richmond at a regular meeting thereof held May 17, 2022, by the following vote:

AYES: Councilmembers Bates, Jimenez, McLaughlin, Willis, Vice Mayor Martinez, and Mayor Butt.
NOES: None.
ABSTENTIONS: None.
ABSENT: Councilmember Johnson III.

PAMELA CHRISTIAN
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:

THOMAS K. BUTT
Mayor

Approved as to form:

DAVE ALESHIRE
Interim City Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Resolution No. 66-22**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on May 17, 2022.



Pamela Christian, Clerk of the City of Richmond

EXHIBIT A

POLE LICENSE AGREEMENT

(appears behind this coversheet)