

ORDINANCE NO. 35-07 N.S.

AN URGENCY ORDINANCE, PURSUANT TO GOVERNMENT CODE SECTION 65858, BY THE CITY OF RICHMOND, ESTABLISHING A TEMPORARY MORATORIUM ON THE ACCEPTANCE, PROCESSING AND APPROVAL OF APPLICATIONS AND PERMITS TO CONSTRUCT, MODIFY OR PLACE WIRELESS COMMUNICATION FACILITIES

WHEREAS, Government Code Section 65858 allows a City, including a charter city, without following the procedures otherwise required prior to adoption of a zoning ordinance, to adopt, as an urgency measure, an interim ordinance prohibiting any uses which may be in conflict with contemplated general plan, specific plan, or zoning proposal which the legislative body, planning commission, or planning department is intending to study within a reasonable time; and

WHEREAS, the City of Richmond Planning and Building Services Department is in the process of studying proposed amendments to the City's Zoning Ordinance, which amendments are expected to be enacted by the end of 2007; and

WHEREAS, until such time that the City concludes its review and adopts and institutes new land use regulations governing permit applications for the construction, modification, or placement of wireless communication facilities, the community is in jeopardy that wireless communication facilities could be constructed, modified, or placed prior to the imposition of new regulations necessary for the protection of public health and welfare;

WHEREAS, the City Council finds and determines that the approval of pending or new applications for wireless communication facilities during moratorium period, in which possible amendments to the Zoning Ordinance are being studied, could result in conflicts with any proposed amendments and would undermine the purpose of studying such amendments, thereby reducing the quality of life within the community to the extent that overall public health, safety and welfare area detrimentally affected; and

WHEREAS, the City's current wireless communication facilities regulations, which were enacted in 1994 and have not been updated since 2003, are deficient in several areas, including, but not limited to the following: a) they do not adequately address community concerns regarding location standards and design, and b) they allow permit applications to be handled through a ministerial process that does not require public notification or a public hearing; and

WHEREAS, since 2003, the City of Richmond has received an increasing number of applications for the construction, modification, and/or placements of wireless communications facilities throughout the City; and

WHEREAS, changes in wireless communication technology, as well as project increases in residential and commercial development throughout the City, coupled with the desire of wireless communication providers to increase wireless communication services in the City and surrounding area will likely produce additional permit applications for the placement or modification of wireless communication facilities within the City of Richmond; and

WHEREAS, significant concerns have been raised in the community regarding the inadequacy of the current regulations to address the increasing number of permit applications and new technologies of wireless communication facilities, and their failure to ensure informed, consistent, uniform, and fair decisions on permit applications for new and/or modified wireless communication facilities throughout the City; and

WHEREAS, citizens of the City of Richmond have expressed concerns regarding the impact that a proliferation of wireless communication facilities within the City may have on the community as a whole, including, safety, noise, lighting, visibility, adverse visual impacts, and the incompatibility of commercial uses in residential zones; and

WHEREAS, citizens of the City of Richmond have a desire that the City receive adequate wireless telecommunication service provided that the facilities are designed and located to minimize the concerns described above; and

WHEREAS, it is the intent of the Richmond City Council to consider and adopt new zoning regulations pertaining to wireless communication facilities in order to provide clear, consistent, and uniform guidance to wireless communication service providers regarding the siting and design of wireless communication facilities while also addressing the significant community concerns described above, and to better reflect the City's siting and regulatory objectives for wireless communication facilities, all within the limitations specified within the Telecommunications Act of 1996; and

WHEREAS, the Richmond City Council has determined that a temporary moratorium on the approval of applications to construct, modify or place Wireless Communication Facilities will allow the City time to complete its review and recommend revisions to its Wireless Communication Facility Regulations while ensuring to the maximum extent feasible that the siting and other objectives of the revised ordinance may be achieved; and

WHEREAS, for reasons set forth above, this ordinance is declared by the Richmond City Council to be necessary for preserving the public peace, health, or safety and to avoid a current, immediate and direct threat to the health, safety, or welfare of the community, and the “Whereas” clauses above taken together constitute the City Council’s statements of the reasons constituting such necessity and urgency.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RICHMOND does ordain as follows:

SECTION 1. The City Council finds and determines the foregoing recital to be true and correct and hereby makes them part of this ordinance.

SECTION 2. The City Council finds and determines for the reasons stated in the recitals, the adoption of this ordinance is exempt from CEQA under Section 15061(b)(3), 15307, 15308, and 15183 of the State CEQA Guidelines.

SECTION 3. The City Council hereby directs the Planning and Building Services Department to work on the preparation of amended zoning regulations governing the construction, modification, and placement of wireless communication facilities within the City of Richmond, and submit them for consideration by the Planning Commission and City Council.

SECTION 4. Until such time as the City concludes the review described above, and adopts new Wireless Communication Facility regulations or other amends Chapter 15.04 and/or Section 15.04.8200.030 of the Zoning Ordinance, the City of Richmond hereby declares a moratorium on the approval of permit applications to construct, modify or place wireless communication facilities, as defined in Section 5 below.

SECTION 5. For purposes of this Ordinance, the following definitions shall apply:

a. “Wireless communications facilities” means towers, antennas, and the necessary accessory appurtenances for transmitting or receiving electromagnetic communications signals. Used primarily for two-way radio telephone communications service such as cellular telephone services. Includes telephone paging and beeper services and establishments engaged in leasing telephone lines (or other means of telephone transmission such as optical fiber lines, microwave or satellite facilities) and reselling the use to others.

SECTION 6. In accordance with Government Code Section 65858, this Ordinance shall be in full force and effect for a period of 45 days from the date of its adoption, i.e., from **September 18, 2007 through and including November 2, 2007**, prohibiting the approval of permits application to construct, modify, or

place wireless communication facilities, except as provided in Section 7, below. This 45-day period may be extended by the City Council in accordance with the provisions of California Government Code Section 65858.

SECTION 7. Exceptions. Any proposed wireless communication facility to be owned and operated by a public safety provider and reasonably necessary for the protection of life and public safety is exempt from the moratorium established under this urgency ordinance. The City Council shall determine, based on substantial evidence in the record, that the facility meets this requirement. In addition, the moratorium shall not apply to the following activities, as defined in Section 15.04.820.030 of the Zoning Ordinance:

- a. Noncommercial antennas, including dish antennas, television and radio antennas, and antennas used in amateur radio.

SECTION 8.

- a. During the term of this ordinance as set forth in Section 6 hereof, no use permit, building, zoning or other permit that has been issued for the construction, modification, or placement of any wireless communication facility, for which rights to proceed with the wireless communication facility have not vested pursuant to the provisions of State law, shall proceed; and no use permit, building, zoning or other permit for the construction, modification, or placement of any wireless communication facility shall be issued by any department, agency, employee, or agent of the City of Richmond. Only wireless communication facility use permits, development projects, facilities, or other activities which have vested, pursuant to the provisions of the State law, prior to the date of this Ordinance shall proceed in violation of the provisions of this Ordinance.
- b. An application for wireless facility may be processed during the moratorium and any extension of the moratorium. However, the application shall be processed at the applicant's sole cost and expense and with the understanding that no permit shall be issued until the moratorium, including any extension of the moratorium, has expired and that, the permit may not be issued if it is inconsistent with any amendments to city laws, ordinances or regulations that are amended by reason of the review that occurs during the moratorium.

SECTION 9. Petition for Relief from Moratorium. Any person who has applied to construct, modify or place a Wireless Communication Facility which would be affected by this Moratorium, and who contends that the Moratorium as applied to him or her would be unlawful under Federal, State, or local law or regulation, may submit a written application to the Planning Commission requesting relief from the Moratorium. The request for relief from moratorium shall identify the name and address of the applicant, the affected application number, and shall state how the Moratorium as applied to him or her would be

unlawful under Federal, State or local law or regulation. The Planning Commission, or his/her designee, shall mail to the applicant a written determination accepting or rejecting the request for relief from Moratorium.

SECTION 10. The City Clerk shall certify to the passage and adoption of this Ordinance causing it to be posted, as required by the law, and it shall thereafter be in full force and effect. This Ordinance shall become effective immediately as an interim urgency ordinance, in order to protect the public health, safety, and welfare.

SECTION 11. For the term of this ordinance, as set forth in Section 5 hereof, the provisions of this ordinance shall govern, to the extent there is any conflict between the provisions of this ordinance and the provisions of any other City Code, ordinance, resolution or policy, and all such conflicting provisions shall be suspended.

SECTION 12. This Ordinance is enacted pursuant to the City of Richmond's general police powers, Article II of the Charter of the City of Richmond, Article XI of the California Constitution, and Government Code Section 65858.

SECTION 13. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

I certify that the foregoing Ordinance was passed and adopted by the City Council of the City of Richmond at a regular meeting thereof held September 18, 2007, by the following vote:

AYES: Councilmembers Bates, Butt, Lopez, Marquez, Rogers, Sandhu, Thurmond, and Mayor McLaughlin

NOES: None

ABSTENTIONS: None

ABSENT: Councilmember Viramontes

DIANE HOLMES
CLERK OF THE CITY OF RICHMOND
[seal]

Approved:

GAYLE McLAUGHLIN
Mayor

Approved as to form:

LOUISE RENNE, Interim
City Attorney

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

I certify that the foregoing is a true copy of Ordinance No. 35-07 N.S., finally passed and adopted by the Council of the City of Richmond at a meeting held on September 18, 2007, published in accordance with law.