

ORDINANCE NO. 17-08 N.S.

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

WHEREAS, on September 18, 2007, the City Council adopted Urgency Ordinance No. 35-07 N.S., establishing a 45-day moratorium on the acceptance and approval of permit applications for the construction, modification, or placements of wireless communication facilities in order to prepare a revised Wireless Communications Facilities Ordinance; and

WHEREAS, on October 30, 2007, the City Council extended the moratorium to March 11, 2008; and

WHEREAS, on March 4, 2008, the City Council extended the moratorium to April 25, 2008; and

WHEREAS, on April 15, 2008, the City Council extended the moratorium to July 31, 2008; and

WHEREAS, the City of Richmond Planning and Building Services Department has conducted several public meetings to discuss proposed changes to the Wireless Communications Facilities Ordinance; and

WHEREAS, in response to comments received at public meetings, staff is preparing extensive revisions to the Wireless Communications Facilities Ordinance that cannot be presented to Council for consideration before the original moratorium expires; and

WHEREAS, on June 24, 2008, after the adoption and extensions of Ordinance No. 35-07 N.S., the 9th Circuit Court of Appeal reheard en banc *Sprint Telephony PCS, L.P. v. County of San Diego*, 490 F.3d 700, (C.A.9 2007), the Appellate Court's most recent articulation of the scope of permissible zoning authority over wireless communications facilities; and

WHEREAS, the scope of permissible regulation of wireless communications facilities may be expanded or narrowed as a result of the rehearing for *Sprint v. San Diego*, which case therefore constitutes a circumstance different from the event, occurrence, or set of circumstances that led to the adoption of Ordinance No. 35-07 N.S.; and

WHEREAS, Government Code Section 65858(f) provides that where a prior interim ordinance is set to expire, the legislative body may adopt another interim ordinance provided that the new interim ordinance is adopted to protect the public safety, health, and welfare from an event, occurrence, or set of circumstances different from the event, occurrence, or set of circumstances that led to the adoption of the prior ordinance; and

WHEREAS, due notice of the hearing requesting this temporary moratorium has been given as required by law; and

WHEREAS, for reasons set forth above and in Ordinance No. 35-07 N.S., this ordinance is declared by the City Council to be necessary for preserving the public peace, health, safety, and to avoid a current, immediate and direct threat to the health, safety, or welfare of the community, and the recitals above taken together constitute the City Council's statements of the reasons constituting such necessity and urgency.

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

SECTION 1. The City Council finds and determines the recitals set forth in this ordinance and Ordinance No. 37-05 to be true and correct and hereby makes them a part of this ordinance.

SECTION 2. The City Council finds and determines the adoption of this ordinance is exempt from CEQA under Sections 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 continue working on the preparation of amended zoning regulations governing the construction, modification, and placement of wireless communication facilities within the City of Richmond upon the Appellate Court's decision in *Sprint v. San Diego*, and submit them for consideration by the City Council.

SECTION 4. Until such time as the City concludes the review described above, and adopts new wireless communication facility regulations or otherwise 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 **July 29, 2008 through and including September 12, 2008**, 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 communication 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 6 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 July 29, 2008, by the following vote:

AYES: Councilmembers Bates, Butt, Marquez, Rogers, Sandhu, Thurmond, and Viramontes

NOES: None

ABSTENTIONS: None

ABSENT: Councilmember Lopez and Mayor McLaughlin

DIANE HOLMES
CLERK OF THE CITY OF RICHMOND

[SEAL]

Approved:

GAYLE McLAUGHLIN
Mayor

Approved as to form:

LOUISE RENNE
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. 17-08 N.S., finally passed and adopted by the Council of the City of Richmond at a meeting held on July 29, 2008, published in accordance with law.