

ORDINANCE NO. 20-08 N.S.

AN URGENCY ORDINANCE, PURSUANT TO GOVERNMENT CODE SECTION 65858, EXTENDING UNTIL MARCH 12, 2009 A TEMPORARY MORATORIUM ON THE ACCEPTANCE AND APPROVAL OF PERMIT APPLICATIONS TO CONSTRUCT, MODIFY OR PLACE WIRELESS COMMUNICATION FACILITIES WHICH WAS ADOPTED ON JULY 29, 2008 (ORDINANCE NO. 17-08 N.S.)

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, through several extensions, the City Council extended the moratorium to July 31, 2008; 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, on June 24, 2008, 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, on July 29, 2008, in response to *Sprint v. San Diego*, the City Council adopted new Urgency Ordinance No. 17-08 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 the city of Richmond; and

WHEREAS, the 45-day moratorium will expire on September 12, 2008; and,

WHEREAS, Government Code Section 65858 provides that a legislative body can extend an urgency ordinance up to two times for up to 10 months and 15 days; and

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

WHEREAS, for reasons set forth above and in Ordinance No. 17-08 N.S., this ordinance is declared by the Richmond 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. 17-08 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. All provisions of Ordinance No. 17-08 N.S., except for Section 6, shall remain in full force and effect during the extended term of the moratorium. Section 6 of Ordinance No. 17-08 N.S. is revised to reflect that the extended moratorium shall expire, and be of no further force and effect, on midnight, March 12, 2009, unless a permanent ordinance establishing new regulations governing wireless communication facilities covered by this moratorium is adopted earlier, or, this Ordinance is extended, in which case, the moratorium shall expire upon effective date of the permanent regulations or termination of any extension.

SECTION 4. 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.

SECTION 5. This Ordinance shall take effect and be in full force immediately upon its passage.

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 2, 2008, by the following vote:

- AYES: Councilmembers Bates, Butt, Rogers, Sandhu, Thurmond, Viramontes, and Mayor McLaughlin
- NOES: None
- ABSTENTIONS: None
- ABSENT: Councilmember Lopez and Marquez

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. 20-08 N.S., finally passed and adopted by the Council of the City of Richmond at a meeting held on September 2, 2008, published in accordance with law.