

**ORDINANCE NO. 17-09**

**AN URGENCY ORDINANCE, PURSUANT TO GOVERNMENT CODE SECTION 65858, EXTENDING UNTIL SEPTEMBER 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 approve another interim ordinance provided that the new interim ordinance is 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 9<sup>th</sup> 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 which fact constituted a circumstance different from those that led to the adoption of Ordinance No. 35-07 N.S.; and

**WHEREAS**, on July 29, 2008, in response to the Appellate Court's action, the City Council approved Ordinance No. 17-08 N.S., establishing a new 45-day moratorium on the acceptance and approval of permit applications for the construction, modification, or placements of wireless communication facilities in Richmond, California; and

**WHEREAS**, the Appellate Court reached its decision in *Sprint v. County of San Diego*, resulting in an expanded scope of permissible regulation of wireless communications; and

**WHEREAS**, the 45-day moratorium established by Ordinance No. 17-08 N.S. was set to expire on September 12, 2008; and

**WHEREAS**, Government Code Section 65858(a) provides that after notice pursuant to Government Code 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; and

**WHEREAS**, Government Code Section 65858(a) further provides that no more than two extensions may be adopted by the legislative body; and

**WHEREAS**, the City Council has determined the approval of this Ordinance is exempt from CEQA under Sections 15061(b)(3), 15307, 15308, and 15183 of the State CEQA Guidelines; and

**WHEREAS**, on September 2, 2008, the City Council approved a first extension of the moratorium to March 12, 2009; and

**WHEREAS**, due notice of the hearing requesting this second 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.

**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 approval 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, September 12, 2009, unless a permanent ordinance establishing new regulations governing wireless communication facilities covered by this moratorium is adopted earlier.

**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.

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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 March 3, 2009, by the following vote:

AYES: Councilmembers Bates, Butt, Ritterman, Rogers,  
Viramontes, Vice Mayor Lopez and Mayor McLaughlin.

NOES: None.

ABSTENTIONS: None.

ABSENT: None.

**DIANE HOLMES**  
CLERK OF THE CITY OF RICHMOND

Approved:

**GAYLE McLAUGHLIN**  
Mayor

Approved as to form:

**RANDY RIDDLE**  
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. 17-09 N.S., finally passed and adopted by the Council of the City of Richmond at a regular meeting on March 3, 2009.