

ORDINANCE NO. 06-11 N.S.

AN URGENCY ORDINANCE, PURSUANT TO GOVERNMENT CODE SECTION 65858, BY THE CITY OF RICHMOND, PLACING A TEMPORARY MORATORIUM ON THE ACCEPTANCE, PROCESSING, APPROVAL AND ISSUANCE OF APPLICATIONS AND PERMITS TO CONSTRUCT OR PLACE NEW WIRELESS COMMUNICATIONS FACILITIES IN THE CITY OF RICHMOND

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 any contemplated general plan, specific plan, or zoning ordinance amendment proposal which the legislative body, planning commission, or planning department is intending to study within a reasonable time; and

WHEREAS, the City of Richmond recently revised and updated its ordinance pertaining to the siting and appearance of wireless communications facilities (“Wireless Ordinance”); and

WHEREAS, in administering its revised Wireless Ordinance the City of Richmond has discovered that there remain certain aspects of aesthetics and other aspects of the public safety and welfare that are not adequately protected in the revised Wireless Ordinance; and

WHEREAS, the City of Richmond shall undertake an immediate review of its Wireless Ordinance in order to determine the revisions necessary to protect the public safety and welfare; and

WHEREAS, the City Council finds and determines that the acceptance, processing, approval and issuance of applications and permits to construct and place new wireless communications facilities while possible amendments to the Wireless 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 to the extent that overall public safety and welfare are detrimentally affected; and

WHEREAS, it is the intent of the City Council to consider and adopt an updated Wireless Ordinance within a reasonable period; and

WHEREAS, for reasons set forth above, this ordinance is declared by the City Council to be necessary for preserving the public welfare, health, or 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; and

WHEREAS, adoption of this ordinance is exempt from review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline 15183; and

WHEREAS, by the Agenda Report the City Council has been provided with additional information upon which the findings and actions set forth in this resolution are based.

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

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

SECTION 2. For the purposes of this ordinance, “wireless communications facility” shall have the meaning set forth at Richmond Municipal Code Section 15.04.020, and “permit” shall include all discretionary and ministerial permits issued by the City for new wireless communications facilities.

SECTION 3. Until **March 18, 2011**, or until such time as a revised Wireless Ordinance becomes effective, the City of Richmond declares a moratorium on the acceptance, processing,

approval and issuance of applications and permits to construct or place new wireless communications facilities in all zoning districts within the City.

SECTION 4. In accordance with Government Code Section 65858, this ordinance is effective immediately as an interim urgency measure and shall be in full force and effect until the earlier of (1) the effective date of legislation addressing land use criteria for wireless communication facilities, or (2) **March 18, 2011**. This moratorium may be extended by the City Council in accordance with the provisions of California Government Code Section 65858.

SECTION 5. 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 any facilities identified in Section 15.04.890.030, Exempt Facilities, of the Zoning Ordinance:

SECTION 6.

- a. During the term of this ordinance as set forth in Section 3 hereof, no use permit, building, zoning or other permit that has been issued for the construction or placement of any wireless communications facility, for which rights to proceed with the wireless communications 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 or placement of any wireless communications facility shall be issued by any department, agency, employee, or agent of the City of Richmond. Only wireless communications 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 communications facilities 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 7. Petition for Relief from Moratorium. Any person who has applied to construct or place a new wireless communications 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 8. 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 9. 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 joint meeting thereof held February 1, 2011, by the following vote:

AYES: Councilmembers Bates, Beckles, Booze, Ritterman, Rogers, Vice Mayor Butt, and Mayor McLaughlin

NOES: None

ABSTENTIONS: None

ABSENT: None.

DIANE HOLMES
Clerk of the City of Richmond

(SEAL)

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. 06-11 N.S., finally passed and adopted by the City Council of the City of Richmond at a joint meeting held on February 1, 2011.