

ORDINANCE NO. 26-09 N.S.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND
AMENDING RICHMOND MUNICIPAL CODE SECTION 15.04.020
(DEFINITIONS), REPEALING SECTIONS 15.04.820.030 THROUGH
15.04.820.035 OF AND ADDING NEW SUBSECTION 15.04.890 (WIRELESS
COMMUNICATIONS FACILITIES)**

WHEREAS, the City of Richmond has adopted a Zoning Ordinance in the form of Chapter 15.04 of the Richmond Municipal Code, Zoning; and

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 communications 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, on November 19, 2007 and November 29, 2007, the Planning and Building Services Department hosted two workshops to hear all public comments and concerns regarding the regulation of wireless communications facilities; and

WHEREAS, on June 24, 2008, the 9th Circuit Court of Appeals 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, 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 communications facilities in the city of Richmond; and

WHEREAS, on September 2, 2008, the City Council extended the moratorium to March 12, 2009 to allow for sufficient time to for the Court of Appeals to issue an opinion in *Sprint v. San Diego* and to allow staff to research and propose amendments to the existing regulations pertaining to wireless communications facilities; and

WHEREAS, on September 11, 2008, the Court of Appeals issued an opinion in *Sprint v. San Diego*; and

WHEREAS, on March 3, 2009, the City Council adopted a first extension to the extended moratorium to September 12, 2009; and

WHEREAS, on June 29, 2009, the United States Supreme denied certiorari in Sprint's petition seeking review of the decision in *Sprint v. San Diego*.

WHEREAS, an Initial Study for the proposed zoning text amendments was prepared in accordance with the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15063 to assess potential environmental impacts of such amendments.

SECTION I. Municipal Code Amendments.

The City Council of the City of Richmond does ordain as follows:

Section 15.04.020 of the City of Richmond Municipal Code is hereby amended as follows (~~strikeout text~~ indicates deletion; underline text indicates insertion):

Antenna means any system of wires, panels, poles, rods, reflecting discs or similar devices used for the transmission and/or reception of electromagnetic signals waves external to or attached to the exterior of any building. Does not include any support structure upon which an antenna is mounted.

Antenna Structure means any structure, including a pole, mast, or tower, whether free-standing or mounted on another building or structure, that supports an antenna or an array of antennas. The height of an antenna structure is measured to the highest point of any antenna mounted thereon, or the antenna structure supporting the antenna, whichever is higher.

Applicant (or Project Applicant) means any entity or person who applies for a discretionary land use permit as provided in Chapter 15.04.

Approved Radio Frequency Expert means a person or firm specializing in radio frequency wireless telecommunications technology, including wireless site design, retained by the City at the applicant's sole expense to perform work as provided herein.

Available Space means the space on a tower or structure to which antennas of a personal wireless provider are both structurally able and electromagnetically able to be attached.

Base Station Facility means the primary sending and receiving site in a wireless telecommunications network, including all radio-frequency generating equipment connected to antennas. More than one base station and/or more than one variety of personal wireless service provider can be located on a single tower or structure.

California Public Utilities Commission (“CPUC”) means the government agency responsible for regulating utilities in California.

Camouflaged Facility means a wireless communications facility located so as to be of minimal visibility, such as being incorporated within an architectural feature such as a steeple or parapet, or in the open but disguised as a tree or other natural feature.

Carrier on Wheels or Cell on Wheels (“COW”) means a portable self-contained wireless communications facility that can be moved to a location and set up to provide personal wireless services on a temporary or emergency basis. A COW may be vehicle-mounted, self propelled, or towed. COWs do not include mobile news vehicles operated by news gathering organizations accredited by any local government.

Certification means a certificate by an approved radio frequency expert that a facility will be designed, and at all times operated, in full compliance with current FCC guidelines for human exposure to radio frequency emission, considering both the controlled/occupational and uncontrolled/general population limits.

Co-Location means the use of a wireless communications facility by more than one (1) personal wireless service provider.

Equipment Shelter means a structure designed principally to enclose equipment used in connection with a wireless communications facility.

Federal Communication Commission (“FCC”) means the government agency responsible for regulating telecommunications in the United States.

Microcell Site means a small radio transceiver facility comprised of an unmanned equipment cabinet with a total volume of one hundred (100) cubic feet or less that is either under or aboveground, and one omni-directional whip antenna with a maximum length of five feet (5’), or up to three (3) small (approximately 1’x 2’ or 1’x 4’) directional panel antennas, mounted on a single existing pole, an existing conventional utility pole, or some other similar support structure.

Monopole means a type of free-standing antenna structure that is seventeen feet (17’) or more in height and is designed to be self-supporting without the use of guy wires.

Permittee means a person or entity who has procured a lawfully issued City permit to construct and/or operate a wireless communications facility.

Personal Communications Services (“PCS”) means those services provided pursuant to 47 C.F.R. § 24 et seq.

Personal Wireless Services means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services. The services include: cellular services, PCS, specialized mobile radio services, and paging services.

Personal Wireless Service Provider (or Provider) means an entity licensed by the FCC to provide personal wireless services to individuals or institutions and who has been issued a permit under Section 15.04.890.

Radio-frequency Emissions Evaluation means the calculation of radio-frequency emission levels from antennas utilizing the FCC’s OET Bulletin 65.

Radio-Frequency Emission means electromagnetic emission in the frequency range of 300 kHz - 300 gigahertz (GHz).

Satellite Dish-antenna means a device incorporating a reflective surface that is solid, open, mesh or bar configured and in the shape of a shallow dish, cone, horn or cornucopia. Such device shall be used to transmit and/or receive radio or electromagnetic signals waves between terrestrially and/or orbitally based uses to and from an orbiting satellite. This definition is meant to include but is not limited to what are commonly referred to as satellite earth stations, TVROs (television reception only satellite dish antennas) and satellite microwave antennas. ~~Noncommercial dish antennas are defined as being less than four meters in diameter, while commercial dish antennas are usually those larger than four meters.~~

Significant Gap means a geographic area of the City of Richmond of at least one acre in which the existing radio frequency signal level of a particular wireless carrier applying for a permit under Section 15.04.890 of this Code is less than the minimum signal strength required by the FCC. A significant gap must be truly significant and not merely individual dead spots within a greater service area. The burden of objectively demonstrating a significant gap rests with the applicant for a permit under Section 15.04.890.

Structurally Able means the determination that a tower or structure is capable of carrying the load imposed by the proposed antennas under all reasonably predictable conditions as determined by professional structural analysis.

Video Receive-Only Antenna means an antenna for the reception of television signals, without transmitting capabilities; may include pole or dish types of antennas.

Wireless Communications Facility facilities means any device or system for the transmitting and/or receiving of electromagnetic signals, including but not limited to radio waves and microwaves, for cellular technology, personal wireless services, mobile services, paging systems and related technologies. Facilities include antennas, microwave dishes, parabolic antennas and all other types of equipment used in the transmission and reception of such signals; structures for the support of such facilities, associated buildings or cabinets to house support equipment, and other accessory development. ~~towers, antennas, and the necessary accessory appurtenances for transmitting or receiving electromagnetic communications signals. Used primarily for two-way radiotelephone communications services 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.~~

Wireless communications site means the defined area subject to review under any land use permit application request for communications facilities.

Wireless communications tower (or Tower) means any structure which is used intended to support one or more antennas used to transmit and/or receive electromagnetic communications signals, including monopoles, guyed and lattice construction steel structures. or which supports such a device.

SECTION II. Sections 15.04.820.030 through 15.04.820.035 of the City of Richmond Municipal Code are hereby repealed and a new subsection 15.04.890 titled Wireless Communications Facilities is created with the following text:

15.04.890 Wireless Communications Facilities.

- 15.04.890.010 Purpose.**
- 15.04.890.020 Definitions.**
- 15.04.890.030 Exempt Facilities.**
- 15.04.890.040 Conditional Use Permit Required.**
- 15.04.890.050 Development Requirements and Standards.**
- 15.04.890.060 Permit Approval Process.**
- 15.04.890.070 Operation and Maintenance Standards.**
- 15.04.890.080 Certification of Facilities.**
- 15.04.890.090 Duration, Revocation and Discontinuance.**
- 15.04.890.100 Required Findings for Variance.**

15.04.890.010 Purpose.

The purpose and intent of this Section are to:

- A. Enact appropriate regulations, consistent with the Telecommunications Act of 1996 (Pub. L. No. 104-104, 110 Stat. 56 (1996)), for the provision of personal wireless service for the benefit of the Richmond community.
- B. Establish standards to regulate the placement and design of antennas and wireless communications facilities so as to protect property values and scenic, historic, natural or cultural resources of the City; to assure land use compatibility with properties adjacent to such facilities; to minimize negative visual, noise and aesthetic impacts; and to protect the general safety, welfare, and quality of life of the community.
- C. Establish development standards that are consistent with federal law related to the development of wireless communications facilities.
- D. Allow antennas to provide for the closure of a significant gap in wireless coverage using the least intrusive means available to close that gap; encourage the use of existing wireless communications facilities, including co-location by multiple companies when located in preferred siting areas; encourage the placement of lesser intrusive facilities where there are feasible alternatives to base station facilities; encourage the placement of antennas on existing structures; and encourage the use of smaller, less-obtrusive facilities, to mitigate adverse visual, noise and aesthetic impacts.
- E. Encourage but not restrict placement of antennas on publicly-used or owned sites, and in commercial and industrial zones.
- F. Require all wireless communications facilities to be consistent with all other applicable City of Richmond Municipal Code provisions, and applicable regulations and standards of other governmental agencies.

15.04.890.020 Definitions.

Unless otherwise specifically provided, the terms used in this Section shall have the meanings stated in the Definitions, Section 15.04.020 of the City of Richmond Municipal Code.

15.04.890.030 Exempt Facilities.

Except as specifically noted, the following types of facilities shall be exempt from the permit requirements of this Section.

- A. **Exempted by State and/or Federal Regulations.** An antenna or wireless communications facility shall be exempt from the provisions of this Section if and to the extent that a permit issued by the CPUC or the rules and

regulations of the FCC specifically provides that the antenna and/or wireless communications facility is exempt from local regulation.

- B. Exempted Subject to Location Requirements.** The following types of antennas are exempted provided that installations are entirely on-site and are not located within required front yard or side yard setback areas. One exempt antenna type per residential unit or commercial tenant is permitted. Installations may be located in that portion of a rear yard where accessory buildings are permitted to be located. Such location requirements are necessary to ensure that such antenna installations do not become public or private nuisances adversely impacting adjacent properties, and/or result in safety hazards if located adjacent to a street or other public right of way.
1. **Video Receive-Only Antenna.** A single ground-mounted or building-mounted receive-only television antenna for the sole use of occupants of the parcel on which such antenna is located, with a height including any mast not exceeding twelve feet (12') over the existing building height.
 2. **Satellite Dish Antenna.** A ground-mounted or building-mounted receive-only radio or television satellite dish antenna not exceeding one (1) meter (39.37" inches) in diameter for the sole use of occupants of the parcel on which such antenna is located, provided that the highest point of such dish does not exceed the height of the highest roof ridge or parapet line of the primary structure on said parcel.
 3. **Citizens Band Antenna.** A ground-mounted or building-mounted citizens band radio antenna not exceeding the height limit prescribed by the regulations for the zoning district in which the site is located, including the mast supporting the antenna, if any.
 4. **Amateur Radio Antenna.** An antenna, including the mast supporting the antenna, if any, operated by a federally licensed amateur radio operator as part of the Amateur Radio Service (47 C.F.R. § 97). Such antennas shall require building permit approval and approval of placement by the Building Official to ensure structural safety is maintained.
- C. Pre-existing Citizens Band and Amateur Radio Antennas.** All citizens band radio antennas, and antennas operated by a federally-licensed amateur radio operator as part of the Amateur Radio Service that existed at the time of adoption of this Section.
- D. Mobile Services Other than COWs.** Mobile services (other than COWs) providing temporary fixed wireless communication in the cellular and PCS services.

- E. **Hand-Held Devices.** Hand-held devices such as cell phones, business-band mobile radios, hand-held amateur radios, family service band radios, walkie-talkies, cordless telephones, garage door openers, and similar devices.
- F. **Government Antennas.** Receive and/or transmit station antennas and antenna supports of any height owned and operated by the City of Richmond; and other public agencies including federal, state, county and special district entities for antenna and antenna support heights not exceeding sixty (60) feet.

15.04.890.040 Conditional Use Permit Required.

A conditional use permit is required for any wireless communications facility, including COWs, that does not meet the requirements for exemption as set forth in Section 15.04.890.030.

15.04.890.050 Development Requirements and Standards.

- A. **Basic Development Requirements.** All new or modified wireless communications facilities shall comply with all of the following:
 - 1. Applicable Goals, Objectives, and Policies of the Richmond General Plan, as the same may be amended.
 - 2. Permit requirements of any agencies having jurisdiction over the wireless communication facility and the property upon which such facility is located.
 - 3. Requirements established by the Richmond Municipal Code, as the same may be amended.
 - 4. California Environmental Quality Act and California Building Standards Code, as the same may be amended.
 - 5. Applicable easements or similar restrictions on the property upon which wireless communications facilities are to be located.
 - 6. Applicable development standards or conditions of approval for those properties developed under a Planned Area zoning.
 - 7. Applicable FCC rules, regulations, and standards, as the same may be amended.
 - 8. All providers shall cooperate in the locating of equipment and antennas to accommodate the maximum number of providers at a given site where feasible and aesthetically desirable. This will facilitate the co-location of wireless communications facilities. The applicant and provider shall agree

to allow future co-location of additional antennas and shall not enter into an exclusive lease for the use of the wireless communications facility site.

9. All equipment shall be situated or sufficiently buffered to minimize interference with the quiet enjoyment, including adverse visual, noise and aesthetic impacts, of adjacent properties.
10. All equipment, antennas, poles, cables, hardware, and towers shall have a non-reflective finish and shall be painted or otherwise treated to minimize visual and aesthetic impacts.
11. Faux tree structures shall include appropriate antenna camouflaging elements, as well as three dimensional bark cladding from the base to the top of the 'trunk' and along all portions of each branch, and branch coverage shall be dense and natural, and no portion of any antennas shall protrude beyond the branches.
12. All wireless communications facilities shall provide sufficient security measures and anti-climbing measures in the design of the facility to reduce the potential for damage, theft, trespass, and injury.
13. In the event that a wireless communications facility is vandalized or burglarized, the permittee shall notify the Richmond Police Department and the Planning and Building Services Department upon discovery thereof.
14. All wireless communications facilities shall be located on a site that provides for the maximum achievable setback from any child care facilities or schools, residential uses, hospitals, and mixed use areas to mitigate adverse visual, noise and aesthetic impacts.
15. In commercial zones, any wireless communications facility that abuts a residential zone shall be setback from a property line that is contiguous to the residential zone a minimum distance of one hundred feet (100') or one hundred ten percent (110%) of the maximum height of the antenna and free-standing support structure, whichever is greater, provided that such distance may be reduced by the Planning Commission based on a determination that the lesser distance will not have perceptibly greater noise, visual or aesthetic impacts with respect to properties in the abutting residential zone, and further provided that there be no less than ten feet (10') of separation between a property line that is contiguous to the residential zone and the proposed wireless communications facility (with the exception of such elements as transmission cables and meter boxes).

B. General Development Standards. The following general development standards shall be met by all new wireless communications facilities:

1. New wireless communications facilities shall be co-located with existing facilities that are consistent with the siting priorities indicated in paragraph 17 of this Section and with other planned new facilities whenever feasible and aesthetically desirable to minimize overall visual impact. Service providers are encouraged to co-locate antennas with other facilities such as water tanks, light standards, and other utility structures where the co-location is found to minimize the overall visual and aesthetic impact.
2. Where feasible and aesthetically desirable, the location of wireless communications facilities shall be encouraged to be located on City-owned or controlled property.
3. New proposed facilities shall be designed and built, to the extent feasible, to facilitate co-location by all the providers which might reasonably be expected to desire to be located at the proposed site. A monopole or other tower facility shall be designed to allow co-location of additional providers' facilities, unless deemed undesirable by the Planning Commission.
4. Wireless communications facilities, including major antennas and communication equipment shelters shall be located below the ridgeline on any of the major ridges identified in the "Open Space Conservation" map of the Richmond General Plan, as the same may be amended.
5. All radio frequency, data, telephone, fiber optics, and power lines to, from, and within a wireless communications facility, where feasible, shall be installed under ground within conduits of size large enough to accommodate at least one additional provider without violating the maximum conduit fill requirements as specified in the City's Electrical Code at Chapter 6.16 referencing the most current version of the National Electrical Code. Such lines should follow the corridor of least visual and aesthetic impact and least environmental impact.
6. All camouflaged facilities including, but not limited to, "faux trees or rocks" that emit radio frequency emissions shall be posted with warning signs to the public. Such signs shall be posted as legally required by the FCC on and around antennas and equipment shelters, and at all access points to the property upon which such facility is located.
7. Wireless communications facilities placed on vacant lots shall be considered temporary, and the Planning Commission may impose a condition that when the site is developed, these facilities shall be removed and if appropriate replaced with building-mounted or camouflaged antennas.

8. All wireless communications facilities shall be designed, screened and/or camouflaged in one of the following ways:
 - a. Substantially screened from the view of surrounding properties and the public view or co-located with existing facilities or structures so as not to create substantial visual, noise, or aesthetic impacts;
 - b. Sited within areas with substantial screening by existing vegetation;
 - c. Designed to appear as natural features found in the immediate area, such as trees or rocks, so as to be unnoticeable (camouflaged facilities); or
 - d. Screened with additional trees and other native or adapted vegetation which shall be planted and maintained around the wireless communications facility, in the vicinity of the project site, and along access roads, where such vegetation is appropriate and deemed necessary to screen the facilities. Such landscaping, including irrigation, shall be installed and maintained by the applicant, as long as the permit is in effect.
9. Where the Planning and Building Services Director finds that proposed wireless communications facilities have the potential to create a significant interference with the quiet enjoyment of the surrounding area or neighborhood, including adverse visual, noise and aesthetic impacts, the Director may require an independent, third-party review, at the expense of the applicant, to identify such considerations as potential impacts on the surrounding area or neighborhood, to assess the radio frequency coverage needs of the project applicant and to identify potential alternative solutions, and to identify any lesser intrusive means of providing coverage by the project applicant.
10. All wireless communications facilities shall be designed, located and operated to avoid interference with the quiet enjoyment of the surrounding area or neighborhood, including interference from adverse visual, noise and aesthetic impacts, and at a minimum shall be subject to the City-adopted noise standards contained in Section 15.04.840 of the Richmond Zoning Ordinance as may be amended. Failure to comply with the City's adopted noise standard after written notice and opportunity to cure have been given shall be grounds for the City to conduct a revocation hearing regarding the permit granted pursuant to this Section.
11. The height of a wireless communications facility (building or ground mounted) shall not exceed ten feet (10') above the basic maximum building height prescribed by the regulations for the zoning district in which the site is located. The dimensions (height and footprint) of antennas,

equipment shelters, and power and communications lines shall be the minimum size possible.

12. For properties developed under a Planned Area zoning, the maximum height for a proposed wireless communications facility shall be determined by the Planning Commission based on the maximum approved heights for buildings in the area and adjacent to the property upon which such facility is located and considering the radio frequency transmission needs disclosed by the applicant.
13. Unless required by federal or state regulations, the use of barbed wire, razor wire, electrified fence, or any other type of hazardous fence as a security precaution shall be prohibited.
14. Any equipment shelter shall be designed to be architecturally compatible with existing structures on the site or found in the immediate area. Such equipment shelters shall be limited to the housing of radio, electronic, and related power equipment.
15. No advertising or signs, other than necessary provider identification signs and warning signs, shall be allowed on or at the location of a wireless communications facility.
16. If the majority of radio frequency coverage from the proposed facility is outside the City limits, the applicant must demonstrate to the satisfaction of the Planning Commission that the applicant is unable to locate legally within the locale or locales that will receive primary coverage from the proposed wireless communications facility.
17. Parameters of appropriate site selection in order of preference to mitigate against adverse visual, noise and aesthetic impacts are as follows. For all zones, the setback of the proposed facility shall be at least equal to the noticing distance provided in Section 15.04.930.100.B of this Code.
 - a. Shared use of existing towers, facilities and sites that are consistent with the siting priorities indicated below. Co-location of antennas, equipment shelters, power and internetworking lines in all zones that are consistent with the siting priorities indicated below.
 - b. Use of industrial zones.
 - c. Use of public property.
 - d. Use of commercial zones.
 - e. Use of sites within mixed-use zoning zones is disfavored, but may be allowed only if it is technically and economically proven that no alternate site or design can feasibly close a significant gap in the radio frequency coverage of the project applicant using any less intrusive means to close that gap from an industrial or commercial zone.

- f. Use of sites within any residential zone is strongly disfavored in order to protect residential aesthetics. Siting within residential zones is allowed only if it is technically and economically proven that no alternate site or design can feasibly close a significant gap in the radio frequency coverage of the project applicant using any less intrusive means to close that gap from any other zone.
- g. The following chart indicates the priority system of siting in various zones in the City:

| Zoning Districts | Requirements to Locate Wireless Communication Facilities in Zoning Districts |
|---|--|
| Industrial (M-1 through M-4) | Available for all wireless siting uses. |
| Public and Civic (PC) and Community and Regional Recreation (CRR) | Available for all wireless siting uses. |
| Commercial (C-1 through C-3, C-C,C-B) | Allowed only if it is technically and economically proven that no alternate site or design can feasibly close a significant gap in the radio frequency coverage of the project applicant using any less intrusive means to close that gap from a PC, CCR or an industrial zone. |
| Planned Area (as approved by the City Council) | Allowed only if it is technically and economically proven that no alternate site or design can feasibly close a significant gap in the radio frequency coverage of the project applicant using any less intrusive means to close that gap from a PC, CCR, or industrial or commercial zones. |
| Residential (SFR1-3 and MFR1-3): | Allowed only if it is technically and economically proven that no alternate site or design can feasibly close a significant gap in the radio frequency coverage of the project applicant using any less intrusive means to close that |

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|--|--|
| | gap from a PC, CCR, or industrial, commercial, or planned area zones. |
| All Zones, but where the majority of radio frequency coverage from the proposed Wireless Communications Facility is outside the City limits: | Allowed only if applicant demonstrates to the satisfaction of the Planning Commission that the applicant is unable to locate legally within the locale or locales that will receive primary coverage from the proposed wireless communications facility. |

C. **Development Standards for Building and Roof-Mounted Antennas.** In addition to all other applicable development standards, wireless communications facilities to be mounted on or attached to existing or proposed buildings shall comply with the following:

1. Building-mounted antennas and any ancillary equipment shall be in scale and architecturally integrated with the building design in such a manner as to be visually unobtrusive and to mitigate adverse aesthetic impacts. Screening may include designs such as locating the facility within attics, steeples, towers, behind and below parapets, or concealed within a new architectural addition to a building or structure which is architecturally compatible with the building;
2. When antennas or other equipment are viewed directly against a building wall, colors and materials of the equipment shall be painted or otherwise treated to match the exterior of the building;
3. Roof-mounted equipment and antennas shall be located as far away as feasible from the edge of the building;
4. Antennas mounted on such structures as utility poles, light standards or flagpoles shall be placed on the structure in a way to reduce visibility, and shall be painted to blend into the structure; and
5. The Planning and Building Services Department may develop or update design guidelines for wireless communications facilities consistent with the stated purpose and goals of this Section. Such changes are herein incorporated by reference.

D. **Additional Development Standards for Monopoles.** In addition to all other applicable development standards, monopoles shall comply with the following:

1. The applicant shall demonstrate that the proposed facility cannot be placed on an existing building or co-located on an existing monopole or other tower. Where the Planning and Building Services Director finds that such demonstration has not been made, the Director may require an independent, third-party review, at the expense of the applicant, to identify the obstacles to co-location or building placement, to confirm the electromagnetic frequency needs of the project applicant, and to identify alternative solutions.
2. The maximum height of the proposed monopole or other tower shall be no higher than ten feet (10') above the height limit for the main structure allowed by the zoning district within which the facility is located.
3. Guy wires or support structures shall not be allowed without technical documentation of a compelling need; monopoles shall be self-supporting structures. Design and safety considerations are subject to approval by the Planning and Building Services Director and Building Official.
4. Exterior lighting shall not be allowed on wireless communications facilities except for that required for use of authorized persons on-site during hours of darkness or where antenna structure owner or registrant is required to light the antenna structure by the terms of the FAA Antenna Structure Registration applicable to the facility.
5. The Planning and Building Services Department may update design guidelines for wireless communications facilities consistent with the stated purpose and goals of this Section. Such changes are herein incorporated by reference.

E. **Construction Standards.** All wireless communications facilities providing service to the government or the general public shall be designed and constructed to meet the following requirements:

1. The exterior walls and roof covering of all aboveground equipment shelters and cabinets shall be constructed of materials rated as nonflammable in the California Building Code.
2. All structures shall meet wind load standards as specified by the California Building Code.

3. Openings in all aboveground equipment shelters and cabinets shall be protected against penetration by fire and windblown embers to the extent feasible.
4. Material used as supports for antennas shall be fire resistant, termite proof, and subject to all applicable requirements of the California Building Code.
5. Wireless communications antenna towers shall be designed to comply with all federal, state and local laws, rules and regulations, including the California Building Code and the Richmond Municipal Code.
6. To the maximum extent possible, vehicle and personnel access to wireless communication facility sites for maintenance and repairs shall not be from residential streets or adjacent residential properties.

15.04.890.060 Permit Approval Process.

A. **Types of Permits.** Except as specifically exempted in Section 15.04.890.030 above, all wireless communications facilities, and facility modifications that involve any change in the specifications or conditions stipulated in the approved conditional use permit, including but not limited to, increases in power output, repositioning of antennas, increase in proposed dimensions of tower or support structure, or any other facility upgrades, shall be subject to the following permit requirements:

1. **Conditional Use Permit.** Applications for facilities in industrial, public and civic, and community and regional zones shall be considered by the Zoning Administrator at a public hearing noticed and held in accordance with Section 15.04.945 of this Code and may be approved subject to conditions set forth below and other conditions deemed appropriate by the Zoning Administrator. All other applications shall be considered by the Planning Commission at a public hearing noticed in accordance with Section 15.04.910 of this Code and may be approved subject to conditions set forth below and other conditions deemed appropriate by the Planning Commission. All project approvals are appealable as provided in Section 15.04.980 of this Code.
2. **Design Review.** All wireless communications facilities shall be subject to design review and approval. The reviewing body (Zoning Administrator or Design Review Board) shall consider all structures, materials, colors, and landscaping associated with any proposal to establish a wireless communications facility.

3. **Building Permit.** Unless otherwise specifically exempted by this Section, a Building Permit shall be required for all wireless communications facilities.
- B. **Permit Fees:** Fees for permits shall be listed in the City's Master Fee Schedule.
 - C. **Business License:** The applicant shall procure and maintain in force a City business license and abide by Chapter 7.04 of the Code as may be amended during the authorized period of any permit granted pursuant to this Section. Failure to and maintain in force a City business license and abide by Chapter 7.04 of the Code shall be a material breach of any permit granted pursuant to this Section, and may be the basis for permit revocation after notice and opportunity to cure.
 - D. **Notice Requirements.** Public notice shall be provided for any public hearings on applications or appeals, pursuant to procedures stated in Section 15.04.970 of this Code.
 - E. **Application Submittal.**
 1. **General Submittal Requirements.** Applications for a conditional use permit and design review of wireless communications facilities shall be submitted and processed in accordance with Sections 15.04.910, 15.04.930 or 15.04.945 of this Code. The applicant shall provide project information and plans as required by forms and checklists established by the Planning and Building Services Director. The Planning and Building Services Director may establish and maintain a list of additional information that is reasonably necessary to process an application and which must accompany each application for a wireless communications facility. Said information may include but on good showing need not be limited to the additional submittal requirements listed in paragraph 2, below. Any required study or report, performed at the request of the City or by an approved radio frequency expert or other expert retained by the City, shall be at the expense of the applicant, which may be required to deposit funds in advance to cover the cost of such study or report. All applications for approval of wireless communications facilities shall include, at a minimum, the items listed below:
 - a. Identification of the proposed provider of the facility, if a different entity from the applicant, and the identification of and contact information for the person to whom communications from the City should be delivered.
 - b. A map depicting coverage at maximum power and design capacity identifying any significant gaps in coverage. The scale of the map shall be as determined by the Planning and Building Services Director

- c. A map showing the proposed location and the area within two (2) miles from the proposed site.
- d. Site plan for the location of the facility showing all existing and proposed features, in compliance with the checklist submittal requirements, and in the level of detail and scale as established by the Planning and Building Services Director. At a minimum, the site plan shall include all material elements of the proposed facility including equipment, cabinets, cable, antenna, and antenna support layout, as well as camouflage elements (if provided); colors, setbacks, grading, dimensions, and utilities and utility connections.
- e. Plans and elevations, drawn to scale, for façade- or roof-mounted antennas, including plans and elevations of the existing building. (See paragraph 3 below for specific requirements for new towers and modifications to towers.)
- f. Description of proposed approach for screening all facilities from public view including plans for installation and maintenance of landscaping, sample exterior materials and colors. Where applicable, a plan showing existing surrounding landscaping, proposed landscaping, a landscape protection plan for construction, a maintenance plan and an irrigation plan.
- g. A narrative description and map showing the coverage area and location of the provider's existing facilities and the proposed coverage area of the specific site that is the subject of the application.
- h. Technical information explaining all of the reasons that a permit is being sought (for example, whether a new antenna is necessary to accommodate increased demand or to fill a significant gap in the provider's radio frequency coverage area); the reasons that the subject site is necessary to accomplish the provider's coverage objectives; and the reasons that the proposed site is the most appropriate location under existing circumstances.
- i. Copies of all submittals and showings pertaining to: FCC licensing, all relevant environmental impact studies and statements; FAA notice of construction or alteration; aeronautical studies; and all data, assumptions, and calculations relating to service coverage and power levels, regardless of whether categorical exemption from routine environmental evaluation under the FCC rule is claimed.
- j. A visual analysis to assess the effects on views and aesthetics from public areas and from private residences, and to address cumulative

impacts of the proposed facility and other existing and foreseeable wireless communications facilities, including foreseeable co-location facilities. As required by the Planning and Building Services Director, the analysis may utilize a photomontage, field mock-up or other techniques. The analysis shall include feasible mitigations for any effects identified. If the proposed tower or structure is visible from a public right-of-way, then the applicant shall submit either a photo simulation of the proposed tower or structure from one or more locations along the public right-of-way, the locations of which shall be indicated on a map of suitable scale.

- k. Evidence that the fee owner has secured the required business license pursuant to Chapter 7.04 of this Code.

2. Additional Submittal Requirements. The Planning and Building Services Director shall have the authority, at the applicant's expense, to require additional information reasonably necessary to process a permit application, including but not limited to the following:

- a. A report by an approved radio frequency expert estimating the cumulative radio frequency emissions and compliance with FCC OET Bulletin 65 that would result if the proposed facility is approved.
- b. An alternative site analysis, submitted by the applicant and subject to independent expert review by the City, shall at a minimum:
 - i. Identify and indicate on a map, at a minimum, two (2) viable technically and economically feasible or superior alternative locations outside the disfavored areas which could eliminate or substantially reduce the need to locate in a restricted area. If there are fewer than two such alternative locations, the applicant must provide evidence establishing that fact. The map shall also identify all locations where an unimpaired signal can be received to eliminate or substantially reduce the need for such a location. Radio frequency plots of all alternative facilities considered for use in conjunction with these facility sites shall be provided as part of the alternatives analysis. For each alternative location so identified, the applicant shall describe the type of facility and design measures that could be used at that location so as to minimize negative visual, noise and aesthetic impacts (e.g., the use of camouflaging techniques).
 - ii. Evaluate the potential for co-location with existing wireless communications facilities as an alternative to the proposed facility.
 - iii. Compare, across the same set of evaluation criteria and to similar levels of description and detail, the relative merits of the proposed wireless communications facility site with those of each of the identified technically feasible alternative locations and facility

designs, and all technically feasible inter-carrier roaming agreements. Such comparison analysis shall rank each of the alternatives (i.e., the proposed location/facility and each of the technically feasible location/design alternatives) in terms of impacts (i.e., from least to most impacts on visual, noise and aesthetic concerns), and shall support such ranking with analysis.

- iv. Include photo-simulations of each of the alternatives (i.e., the proposed location/facility and each of the technically feasible location/design alternatives).

3. Specific Submittal Requirements for Towers. All applications for new tower construction, or modification of an existing tower shall include:

- a. A professional structural engineer's certification of the tower structure's capacity to safely sustain all projected loads as well as such structure's compliance with the Telecommunication Industry Association Structural Standard for Antenna Supporting Structures and Antennas (the later of TIA-222-G or the most recently revision to TIA-222), and all federal, state and local laws, rules, and regulations.
- b. A description of available space on the tower, providing illustrations of the wireless communications facilities that will be mounted on the structure now or in the future as shown on the project plans.

4. Technical Review. The Planning and Building Services Director shall employ, on behalf of the City, an approved radio frequency expert to review the application submittal and provide determinations and recommendations on such issues as project design, radio frequency coverage, compliance with radio frequency emissions standards, the identification of alternative locations, and the justifications for installation of monopoles or for any requested exceptions to City standards. The costs of said review and any administrative costs, to be determined by the Director, shall be deposited with the City in advance by the applicant. Any unexpended deposited funds shall be promptly returned to the applicant after the conclusion of the final appeal period for action taken by the Planning Commission, or after an appeal to the City Council, or upon withdrawal of the application by the applicant. The applicant shall promptly reimburse the City for such costs paid by City that exceed the deposited amount. No applicant shall be issued a permit while still owing the City reimbursement pursuant to this Section.

F. Findings for Approval.

The approving body may approve a conditional use permit for a wireless communications facility only upon making written findings based on substantial evidence in the record.

1. All of the following findings are required for the approval of a conditional use permit for a wireless communications facility:
 - a. Findings otherwise required for conditional use permits by Section 15.04.910.050 of this Code.
 - b. The establishment or expansion of the facility demonstrates a reasonable attempt by the applicant to minimize stand-alone facilities.
 - c. All applicable development standards in Section 15.04.890.050 have been met; or, if the application includes a request for an exception to those standards, then the approving body must find that compliance with the development standards would not close a claimed significant gap in coverage and that no other reasonable alternative solutions which would comply with the development standards are feasible.
 - d. The placement, construction, or modification of a wireless communications facility in the proposed location is necessary for the provision of wireless communications services to close a claimed significant gap in coverage within the City.
2. Findings required, in addition to those in paragraph a. above, for specific situations:
 - a. Finding for establishment of a dish or parabolic antenna for satellite communications exceeding one meter in diameter: (i) No antenna of any common design that is no larger than one (1) meter in diameter can feasibly accomplish the provider's technical objectives, or (ii) that the facility will not be readily visible to the public off of the property supporting the antenna.
 - b. Findings for the establishment of a wireless communications facility that is not co-located with other existing or proposed facilities or a new freestanding pole or tower (at least one finding required):
 - i. Co-location is not reasonably feasible;
 - ii. Co-location would have greater adverse effects on views, noise or aesthetics as compared with a stand-alone installation;
 - iii. Co-location is not permitted by the property owner; or
 - iv. Co-location would materially and unreasonably impair the quality of service to the existing facility or to the proposed facility.

G. Standard Conditions of Approval.

In addition to any other conditions the approving body deems necessary to preserve the public health, safety and welfare, all permits issued pursuant to this Section shall be subject to the following conditions:

1. The permittee shall obtain all other permits and agreements necessary to install and operate the wireless communications facilities in conformance with federal, state, and local laws, rules and regulations.
2. Wireless communications facilities and related equipment, including lighting, fences, shields, cabinets, and poles, shall be maintained in good condition and repair, free from trash, debris, litter and graffiti and other forms of vandalism, and any damage from any cause shall be repaired as soon as practicable, and in no instance more than forty-eight (48) hours from the time of notification by the City or after discovery by the permittee.
3. When no longer in service for a continuous period of ninety (90) days, the permittee shall within ninety (90) days thereafter remove the wireless communications facility and restore the site to a condition substantially the same as its condition before the wireless communications facility was installed as provided in 15.04.890.090(B) of this Section, and the permit shall be subject to revocation as provided in 15.04.990 of this Code.
4. The permittee shall reimburse the City on demand for all costs incurred for work the applicant has failed to perform within thirty (30) days upon notice that the work is required to comply with conditions of permit approval.
5. In the case of a freestanding tower, as a condition of permit approval the permittee agrees to rent or lease available space on the tower, under the terms of a fair-market lease, to other personal wireless service providers without discrimination.
6. The City reserves the right of its employees and agents to inspect permitted facilities upon reasonable notice to the permittee during normal business hours. In case of an emergency or risk of imminent harm to persons or property in the vicinity of permitted facilities, the City reserves the right to enter upon the site of such facilities and to support, disable, or remove those elements of the facilities posing a public nuisance as necessary to preserve the public health or safety.
7. The permit issued hereunder shall expire within one (1) year of the date of issuance if the applicant fails to commence construction within that period; provided, however the Planning and Building Services Director may renew any such permit for a single one-year period if a request to renew is received by the City at least thirty (30) calendar days before the approvals lapse.

8. Permits issued pursuant to this Section shall expire at 12:00 p.m. local time ten (10) years from the date the permit is issued.

15.04.890.070 Operation and Maintenance Standards.

All wireless communications facilities shall at all times comply with the following operation and maintenance standards. Failure to comply shall be considered a violation of conditions of approval subject to enforcement pursuant to provisions of this Section, revocation or modification pursuant to Section 15.04.990 of this Code, or any other applicable provision of law:

- A. Any physical modification of a facility permitted pursuant to this Section, shall require the applicant to apply for a conditional use permit for such modification. The City shall not grant the permit unless the facility is installed with all required permits, or if the facility has been altered from that originally permitted without all subsequent required permits.
- B. Each owner or operator of a wireless communications facility shall provide signage identifying the name, site number or other unique identifier, and local or toll-free phone number of a party to contact at any time regarding the facility. Such signage shall be placed at a location where it can be readily viewed without entering any fenced or secured area of the facility. Where a utility pole or light standard is utilized as a support structure, the signage shall comply with the rules of the CPUC. The City may specify additional signage as required by state and federal law and regulations.
- C. Wireless communications facilities and related equipment, including lighting, fences, shields, cabinets, and poles, shall be maintained in good condition and repair, free from trash, debris, litter and graffiti and other forms of vandalism, and any damage from any cause shall be repaired as soon as practicable, and in no instance more than forty-eight (48) hours from the time of notification by the City.
- D. The provider of a wireless communications facility shall be responsible for maintaining landscaping in accordance with the approved landscape plan and for replacing any damaged or dead trees, foliage, or other landscaping elements shown on the approved plan. Amendments or modifications to the landscape plan shall be submitted to the Planning and Building Services Director for review and approval.
- E. Except for emergency repairs, testing and maintenance, activities that will be audible beyond the property line shall only occur between the hours of 8:00 a.m. and 7:00 p.m. on Monday through Friday, excluding legal holidays. Backup power generators shall only be operated during periods

of power outages or for testing. At no time shall equipment noise from any source exceed the standards specified in Section 15.04.840 of this Code.

15.04.890.080 Certification of Facilities.

- A. Every wireless communications facility shall at any and all times comply with the FCC's Office of Engineering and Technology Bulletin 65, and all other FCC rules. In order to ensure continuing compliance with the conditions of permit approval, all wireless communications facilities shall be reviewed by a City approved radio frequency expert in accord with the schedule and procedures set forth below. All costs of such inspections and expert review shall be borne by the permittee. The permittee shall promptly reimburse the City for the cost of such expert inspection and review. The City may require, at the permittee's expense, independent verification of the results of any analysis. If a permittee fails to supply the required reports or fails to correct a violation of any condition of permit approval following notification, the conditional use permit is subject to modification or revocation by the Planning Commission pursuant to Section 15.04.990 of this Code.
1. Within forty-five (45) days of initial operation, and all modifications thereafter, of a wireless communications facility, the permittee shall submit written certification of compliance with the approved application, any applicable FCC radio-frequency requirements, and all conditions of permit approval to the Planning and Building Services Director.
 2. For every wireless communication facility site that is not constructed on a stand-alone antenna support structure (such as a monopole, lattice tower, or mono-tree), once each year the City shall retain, at the permittee's expense, a City approved radio frequency expert to conduct an unannounced radio frequency emissions evaluation of the wireless communications facility's compliance with the approved application, any required radio frequency emissions conditions and all conditions of permit approval.
 3. The City may reasonably require inspection of a tower (including all facilities attached to the tower) by a licensed structural engineer following significant storms, seismic events, or other events which may jeopardize the structural integrity of the towers (or the facilities attached to the towers). Such inspections shall be at the applicant's cost, and the original "wet stamped" engineer's written report shall be provided to the City within the time specified by the Planning and Building Services Director.
 4. If the Planning and Building Services Director at any time finds that there is good cause to believe that a wireless communications facility is not in compliance with applicable FCC radio-frequency standards, the Director may require the provider to submit written certification that the facility is in

compliance with such FCC standards, supported by technically adequate documentation.

- B. The provider of any wireless communications facility that was approved by the City before the effective date of this Section, shall submit within six (6) months from the date of notification, to the Planning and Building Services Director, written certification that the facility is in compliance with the approved application, any required conditions of permit approval and applicable FCC radio-frequency requirements, to be reviewed by the City's approved radio frequency expert. Permittee shall promptly reimburse the City for the cost of such expert review. If the facility does not comply with the conditions of permit approval or applicable FCC requirements, the provider shall cease operation of the facility until the facility is brought into compliance. In order to assure the objectivity of the analysis, the City may require, at the applicant's expense, independent verification of the results of the analysis.
- C. Any wireless communications facility that was approved by the City prior to the effective date of this Section and which does not comply with this Section on the date of its adoption shall be considered a lawful non-conforming use provided that the provider of such facility submits the information required in subsection B of this Section. A lawful non-conforming wireless communications service facility shall be subject to the requirements of Section 15.04.940 except to the extent that they are modified herein.
- D. Failure to submit the information required in this Section will be considered a violation of the Zoning Ordinance. Any facility found in violation is subject to revocation or modification pursuant to Section 15.04.990 of this Code.
- E. The City shall maintain a map, accessible on its website, showing the location of all existing wireless communications facilities, which shall be updated within ninety (90) days of approval or complete removal of a facility.
- F. Radiofrequency emissions evaluations filed by wireless service providers shall be retained by the City for a period of five (5) years and shall be available to the public upon request.

15.04.890.090 Duration, Revocation and Discontinuance.

A. Duration of Permits and Approvals.

- 1. Actual construction of a wireless communications facility pursuant to an approved conditional use permit must be initiated within one (1) year from the date of final approval. If actual construction has not begun within one (1) year from the date of final approval, the permit shall be deemed expired, and all rights granted pursuant to the permit shall be revoked; provided, however the Planning and Building Services Director may renew

any such permit for a single one-year period if a request to renew is received by the City at least thirty (30) calendar days before the approvals lapse.

2. An approved wireless communications facility must be fully constructed and activated within two (2) years from the date of final approval. If not fully constructed and activated within two (2) years from the date of final approval, the permit shall be deemed expired, and all rights granted pursuant to the permit shall be revoked.
3. Permit approvals may be administratively extended by the Planning and Building Services Director without a public hearing for no more than ninety (90) days upon receipt of an application for permit renewal and verification of continued compliance with the conditions of approval under which the application was originally approved.
4. In the event that the Planning and Building Services Director finds that the applicant has not maintained the facility in compliance with all applicable federal, state or Richmond Municipal Code requirements and conditions of approval, the Director will recommend that the Planning Commission initiate a revocation procedure as provided by Chapter 15.04.990 of this Code.
5. Costs associated with the process of monitoring compliance, reevaluation of a conditional use permit, and extension, revocation or modification of approval shall be borne by the permittee.

B. Discontinuance of Use. All equipment and improvements associated with a wireless communications facility shall be removed within ninety (90) days of the discontinuation of the use and the site shall be restored to its original, pre-construction condition, or as approved by the Planning and Building Services Director. Written verification of the removal of wireless communications facilities on private property shall be provided to the Planning and Building Services Director within ninety (90) days of the discontinuation of the use.

1. If the provider fails to remove the wireless communications facilities from the site as required herein, the property owner shall be responsible for removal. If such facilities are not removed, the site shall be deemed to be a public nuisance and the City may take such action as is it deems appropriate to abate the public nuisance in accordance with Chapter 9.22 of this Code and any other applicable provision of law.
2. Failure to inform the Planning and Building Services Director of cessation of operations of any existing facility shall constitute a violation of the Zoning Ordinance and be grounds for:

- a. Civil prosecution;
 - b. Revocation or modification of the permit pursuant to Section 15.04.990 of this Code; and/or
 - c. Removal of the facilities by the City at the property owner's expense, which may result in a lien on the property.
- C. **Existing Uses.** All equipment and improvements associated with a wireless communications facility permitted as of the date of passage of this Section shall be allowed to continue as they presently exist, but will be considered legal nonconforming uses insofar as they do not comply with standards stated in this Section. Routine maintenance shall be permitted on existing, operational equipment and facilities. However, all alterations or new construction, other than routine maintenance on existing towers, antennas, buildings, or other facilities shall comply with the requirements of this Section.

15.04.890.100 Required Findings for Variance.

The applicant for a variance from any provision of this Section shall have the burden of proof of showing that:

1. There are special radio frequency related technology-based circumstances or conditions applicable to the property or antenna structure in question that do not exist for any other properties or antenna structures within a radius of 2,000 feet from the proposed site; and
2. The special radio frequency related technology-based circumstances or conditions are such that strict application of the provisions of this Chapter would deprive the applicant of its ability to meet an FCC required license build-out obligation and that no other means are available to meet the FCC license build-out obligation; and
3. That strict application of the provisions of this Chapter would deprive the applicant of its ability to close a significant gap in its own radio frequency network coverage using the least intrusive means to close that gap; and
4. Granting the variance will be consistent with the intent and purpose of this Section.

SECTION III. Any provisions of the Richmond Municipal Code, or appendices thereto, or any other ordinances of the City inconsistent herewith, to the extent of such inconsistencies and no further, are hereby repealed.

SECTION IV. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid, the remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed each section, subsection, paragraph,

sentence, clause or phrase of this Ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, paragraph, sentence, clause or phrase.

SECTION V. Effective Date. All applications filed after or pending upon the date of final passage and adoption of this Ordinance shall be subject to this Ordinance. This Ordinance becomes effective thirty (30) days after its final passage and adoption.

First introduced at a regular meeting of the City Council of the City of Richmond held July 21, 2009, and finally passed and adopted at a regular meeting held July 28, 2009 by the following vote:

| | |
|--------------|--|
| AYES: | Councilmembers Butt, Ritterman, Rogers, Viramontes, Vice Mayor Lopez, and Mayor McLaughlin |
| NOES: | None |
| ABSTENTIONS: | Councilmember Bates |
| 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. 26-09, finally passed and adopted by the Council of the City of Richmond at a meeting held on July 28, 2009.