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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIALTO, CALIFORNIA AMENDING SECTION 11.22.090 OF CHAPTER 11.22 AND ADDING SECTION 18.11.100 TO CHAPTER 18.111 OF THE RIALTO MUNICIPAL CODE TO STRENGTHEN THE CITY'S ABILITY TO REGULATE WIRELESS TELECOMMUNICATIONS FACILITIES

WHEREAS, Chapter 11.22 (Wireless Telecommunications Facilities in the Public Right-of-Way) and Chapter 18.111 (Wireless Telecommunications Facilities) of the Rialto Municipal Code regulate wireless telecommunications facilities in the City; and

WHEREAS, the City Council desires to add Section 11.22.090.S of the Rialto Municipal Code to address situations where new owners or operators acquire a wireless telecommunications facility so that the City is aware of who to contact regarding maintenance issues and emergencies; and

WHEREAS, Section 11.22.090.K of the Rialto Municipal Code grants the City the authority to revoke a permit for a wireless telecommunication facility if the operator has not corrected any identified maintenance issues included in the conditions of approval after 30 days' notice; and

WHEREAS, Section 11.22.090.N of the Rialto Municipal Code grants the City the authority to revoke a permit for a wireless telecommunication facility if the operator fails to comply with the City's noise standards after written notice and the opportunity to cure; and

WHEREAS, the City Council desires to amend Section 11.22.090.N of the Rialto Municipal Code to give the City the authority to revoke permits for a wireless telecommunications facility for failing to comply with health and safety regulations issued by the Federal Communications Commission; and

WHEREAS, the City's Municipal Code does not address applications which are deemed approved under state or federal law; and

WHEREAS, the City Council desires to add Section 11.22.090.T to the Rialto Municipal Code to clarify that the City has the ability to impose lawful conditions on permits which are deemed approved by state or federal law; and

1 **WHEREAS**, the City Council desires to add a new Section 18.11.100 to Chapter 18.111 of
2 the Rialto Municipal Code to set forth operation and maintenance standards for wireless
3 telecommunications facilities permitted on private property within the City.

4 **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RIALTO DOES**
5 **HEREBY ORDAIN AS FOLLOWS:**

6 **SECTION 1. INCORPORATION BY REFERENCE**

7 The above recitals are true and correct and material to this ordinance. In making its findings,
8 the City Council relied upon and hereby incorporates by reference all staff reports, presentations,
9 and other documentation presented to the Council in the meeting.

10 **SECTION 2. ADDITION OF SECTION 11.22.090.S OF CHAPTER 11.22 OF THE**
11 **CITY OF RIALTO MUNICIPAL CODE.**

12 Section 11.22.090.S of Chapter 11.22 of the Rialto Municipal Code is hereby added:

13 11.22.090 – Operation and maintenance standards.

14 S. Transfer of Ownership. Upon transfer of facility or any rights under the applicable permit
15 or approval, the permittee of the facility must within thirty days of such transfer provide written
16 notification to the Development Services Director of the date of the transfer and the identity and
17 contact information of the transferee.

18 1. The assignee must provide written acknowledgement and assumption of all duties,
19 requirements, restrictions and responsibilities applicable to the use, operation and
20 maintenance of the subject facility as provided under this chapter or any permit or other
21 approval issued under this chapter.

22 2. The Director of Community Development may require submission of any
23 supporting materials or documentation necessary to determine that the facility is in
24 compliance with the existing permit or approval and all of its conditions including, but not
25 limited to, statements, photographs, plans, drawings, and analysis by a qualified engineer
26 demonstrating compliance with all applicable regulations and standards of the City, FCC,
27 and CPUC.

28 **SECTION 3. AMENDMENT OF SECTION 11.22.090.N OF CHAPTER 11.22 OF**

1 **THE CITY OF RIALTO MUNICIPAL CODE.**

2 Section 11.22.090.N of Chapter 11.22 of the Rialto Municipal Code is hereby amended to
3 read as follows with additions denoted by underline and deletions by strikethrough.

4 11.22.090 – Operation and maintenance standards.

5 N. The Director of Community Development may revoke a permit issued pursuant to this
6 chapter if the makes the following findings.

7 1. Permittee fails ~~Failure~~ to comply with the City's adopted noise standard after
8 written notice and reasonable opportunity to cure ~~have been given shall be grounds for the~~
9 ~~city to revoke the permit.;~~

10 2. Permittee abandons or ceases to use a wireless telecommunications facility
11 pursuant to Section 11.22.130; or

12 3. Wireless telecommunications facility fails to comply with applicable health and
13 safety regulations promulgated by the FCC or the Federal Aviation Administration and the
14 permittee fails to bring the wireless telecommunication facility into compliance after written
15 notice and reasonable opportunity to cure.

16 **SECTION 4. AMENDMENT OF SECTION 11.22.090.D OF CHAPTER 11.22 OF**
17 **THE CITY OF RIALTO MUNICIPAL CODE.**

18 Section 11.22.090.D of Chapter 11.22 of the Rialto Municipal Code is hereby amended to
19 read as follows with additions denoted by underline and deletions by strikethrough.

20 11.22.090 – Operation and maintenance standards.

21 D. Indemnities. The permittee and, if applicable, the owner of the property upon
22 which the wireless facility is installed shall defend, indemnify and hold harmless the city, its
23 agents, officers, officials, and employees (i) from any and all damages, liabilities, injuries,
24 losses, costs, and expenses, and from any and all claims, demands, law suits, writs of
25 mandamus, and other actions or proceedings brought against the city or its agents, officers,
26 officials, or employees to challenge, attack, seek to modify, set aside, void or annul the city's
27 approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs,
28 and expenses, and any and all claims, demands, law suits, or causes of action and other

1 actions or proceedings of any kind or form, whether for personal injury, death or property
2 damage, arising out of or in connection with the activities or performance of the permittee
3 or, if applicable, the private property owner or any of each one's agents, employees,
4 licensees, contractors, subcontractors, or independent contractors. In the event the city
5 becomes aware of any such actions or claims the city shall promptly notify the permittee
6 and, if applicable, the private property owner and shall reasonably cooperate in the defense.
7 The city shall have the right to approve, which approval shall not be unreasonably withheld,
8 the legal counsel providing the city's defense, and the property owner and/or permittee (as
9 applicable) shall reimburse the city for any costs and expenses directly and necessarily
10 incurred by the city in the course ~~[sic]~~ of litigation.

11 **SECTION 5. ADDITION OF SECTION 11.22.090.T OF CHAPTER 11.22 OF THE**
12 **CITY OF RIALTO MUNICIPAL CODE.**

13 Section 11.22.090.T of Chapter 11.22 of the Rialto Municipal Code is hereby added:

14 11.22.090 – Operation and maintenance standards.

15 T. Deemed Approved. Any permit or approval granted under this chapter or deemed
16 granted or deemed approved by law shall remain subject to any and all lawful conditions
17 and/or legal requirements associated with such other permits or regulatory approvals.

18 **SECTION 6. ADDITION OF SECTION 18.11.100 OF CHAPTER 18.111 OF THE**
19 **CITY OF RIALTO MUNICIPAL CODE.**

20 Section 18.111.100 of Chapter 18.111 of the Rialto Municipal Code is hereby added:

21 18.111.100 – Operation and maintenance standards.

22 All wireless telecommunications facilities must comply at all times with the
23 following operation and maintenance standards:

24 A. The permittee must at all times maintain compliance with all applicable federal,
25 state and local laws, regulations and other rules. The permittee must ensure that all
26 equipment and other improvements related to the approved wireless telecommunications
27 facilities are maintained in a manner that is not detrimental or injurious to the public health,
28 safety, and general welfare and that the aesthetic appearance is continuously preserved, and

1 substantially the same as shown in the approved plans at all times relevant to the wireless
2 telecommunications facilities.

3 B. Unless otherwise provided herein, all necessary repairs and restoration shall be
4 completed by the permittee, owner, operator or any designated maintenance agent at its sole
5 cost within forty-eight hours after receipt of notice from the city or discovery of the need by
6 the permittee, owner, operator or any designated maintenance agent.

7 C. Adverse Impacts on Adjacent Properties. Permittee shall undertake all reasonable
8 efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from
9 the construction, operation, maintenance, modification, and removal of the facility.

10 D. Contact Information. Each permittee of a wireless telecommunications facility
11 shall provide the city engineer with the name, address and twenty-four-hour local or toll free
12 contact phone number of the permittee, the owner, the operator and the agent responsible for
13 the maintenance of the facility ("contact information"). Contact information shall be updated
14 within seven days of any change.

15 E. All facilities shall be maintained in good condition, including ensuring the
16 facilities are reasonably free of:

17 1. Subsidence, cracking, erosion, collapse, weakening, or loss of lateral support
18 to city streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals,
19 improvements of any kind or nature, or above or underground utility lines and systems that
20 result from any activities performed in connection with the installation and/or maintenance
21 of a wireless facility.

22 2. General dirt and grease;

23 3. Chipped, faded, peeling, and cracked paint;

24 4. Rust and corrosion;

25 5. Cracks, dents, and discoloration;

26 6. Missing, discolored or damaged artificial foliage or other camouflage;

27 7. Graffiti, bills, stickers, advertisements, litter and debris. All graffiti on
28 facilities must be removed at the sole expense of the permittee within forty-eight hours after

1 notification from the city.

2 8. Broken and misshapen structural parts; and

3 9. Any damage from any cause.

4 F. All trees, foliage or other landscaping elements approved as part of the facility
5 shall be maintained in neat, safe and good condition at all times, and the permittee, owner
6 and operator of the facility shall be responsible for replacing any damaged, dead or decayed
7 landscaping.

8 G. The permittee shall replace its facilities, after obtaining all required permits, if
9 maintenance or repair is not sufficient to return the facility to the condition it was in at the
10 time of installation.

11 H. Each facility shall be operated and maintained to comply at all conditions of
12 approval. The city shall give the permittee thirty days to correct any identified maintenance
13 concerns after which the city reserves the right to take any action it deems necessary, which
14 could include revocation of the permit. The burden is on the permittee to demonstrate that it
15 complies with the requirements herein. Prior to issuance of a permit under this chapter, the
16 owner of the facility shall sign an affidavit attesting to understanding the city's requirement
17 for performance of annual inspections and reporting.

18 I. Failure to comply with the city's adopted noise standard after written notice and
19 reasonable opportunity to cure have been given shall be grounds for the city to revoke the
20 permit.

21 J. Interference.

22 1. The permittee shall not move, alter, temporarily relocate, change, or interfere
23 with any existing structure, improvement, or property without the prior consent of the owner
24 of that structure, improvement, or property.

25 2. The facility shall not damage or interfere in any way with city property, the
26 city's operations or the operations of prior-existing, third party installations. The city will
27 reasonably cooperate with the permittee and/or carrier to carry out such activities as are
28 necessary to correct the interference.

1 a. Signal Interference. The permittee shall correct any such interference
2 within twenty-four hours of written notification of the interference. Upon the expiration of
3 the twenty-four-hour cure period, the permittee shall cease operation of any facility causing
4 such interference until such interference is cured.

5 b. Physical Interference. The city shall give the permittee thirty days to
6 correct the interference after which the city reserves the right to take any action it deems
7 necessary, which could include revocation of the permit.

8 K. RF Exposure Compliance. All facilities must comply with all standards and
9 regulations of the FCC and any other state or federal government agency with the authority
10 to regulate RF exposure standards. After transmitter and antenna system optimization, but
11 prior to unattended operations of the facility, the permittee or its representative must conduct
12 on-site post-installation RF emissions testing to demonstrate actual compliance with the
13 FCC Office of Engineering and Technology Bulletin 65 RF emissions safety rules for
14 general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter
15 shall be operating at maximum operating power, and the testing shall occur outwards to a
16 distance where the RF emissions no longer exceed the uncontrolled/general population limit.
17 Testing of any equipment shall take place on weekdays only, and only between the hours of
18 eight-thirty a.m. and four-thirty p.m., except that testing is prohibited on holidays that fall
19 on a weekday. In addition, testing is prohibited on weekend days.

20 L. Records. The permittee must maintain complete and accurate copies of all permits
21 and other regulatory approvals issued in connection with the facility, which includes without
22 limitation this approval, the approved plans and photo simulations, all conditions associated
23 with this approval and any ministerial permits issued in connection with this approval. In the
24 event that the permittee does not maintain such records or fails to produce true and complete
25 copies of such records within a reasonable time, any ambiguities or uncertainties that would
26 be resolved through an inspection of the missing records will be construed against the
27 permittee.

28 M. Attorney's Fees. In the event the city determines that it is necessary to take legal

1 action, the permittee shall be required to pay any and all costs of such legal action, including
2 reasonable attorney's fees, incurred by the city, even if the matter is not prosecuted to a final
3 judgment or is amicably resolved, unless the city should otherwise agree with permittee to
4 waive said fees or any part thereof. The foregoing shall not apply if the permittee prevails in
5 the proceeding.

6 **SECTION 7. CEQA.**

7 The proposed action is not a project under CEQA pursuant to CEQA Guidelines
8 section 15061(b)(3) (the activity is covered by the general rule that CEQA applies only to
9 projects which have the potential for causing a significant effect on the environment), in that
10 it can be seen with certainty that there is no possibility that the adoption of this ordinance
11 will result in a significant effect on the environment, because the proposed ordinance would
12 make revisions to a comprehensive permitting scheme and does not authorize any specific
13 development or installation, and in the alternative, pursuant to Sections 15301 (Existing
14 Facilities, which allows alteration of existing public or private structures, facilities,
15 mechanical equipment, or topographical features, involving negligible or no expansion of
16 use), and 15304 (Minor alterations to land) and 15305 (Minor alterations in Land Use
17 Limitations) of the CEQA Guidelines.

18 **SECTION 8. SEVERABILITY.**

19 If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason
20 held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such
21 decision will not affect the validity of the remaining portions of this ordinance. The City Council
22 hereby declares that it would have passed this ordinance and each and every section, subsection,
23 sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any
24 portion of the ordinance would be subsequently declared invalid or unconstitutional.

25 **SECTION 9. EFFECTIVE DATE**

26 This ordinance shall be in full force and effect thirty (30) days following its approval and
27 second reading, and shall be published and posted as required by law.

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SECTION 10. CERTIFICATION

The City Clerk shall certify to the adoption of this ordinance and cause the same to be published in the local newspaper.

PASSED, APPROVED AND ADOPTED this __ day of November 2024.

DEBORAH ROBERTSON, Mayor

ATTEST:

BARBARA MCGEE, City Clerk

APPROVED AS TO FORM:

ERIC VAIL, City Attorney
Burke, Williams & Sorensen, LLP