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**ORDINANCE NO. \_\_\_\_**

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
RIALTO, CALIFORNIA, ADDING CHAPTER 11.20 OF THE RIALTO  
MUNICIPAL CODE RELATING TO WIRELESS  
TELECOMMUNICATIONS FACILITIES WITHIN THE RIGHT-OF-WAY**

**WHEREAS**, the City Council may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws; and

**WHEREAS**, Government Code Section 36937(b) authorizes the adoption of an urgency ordinance for the immediate preservation of the public peace, health or safety; and

**WHEREAS**, significant changes in Federal and State law that affect local authority over wireless communications facilities ("WCFs") have occurred, including but not limited to the following:

- i. On November 18, 2009, the Federal Communications Commission ("FCC") adopted a declaratory ruling (the "2009 Shot Clock"), which established presumptively reasonable timeframes for State and local governments to act on applications for WCFs;
- ii. On February 22, 2012, Congress adopted Section 6409(a) of the Middle Class Tax Relief and Job Creation Act ("Section 6409(a)"), which mandated that State and local governments approve certain modifications and collocations to existing WCFs, known as eligible facilities requests;
- iii. On October 17, 2014, the FCC adopted a report and order that, among other things, implemented new limitations on how State and local governments review applications covered by Section 6409(a), established an automatic approval for such applications when the local reviewing authority fails to act within 60 days, and also further restricted generally applicable procedural rules under the 2009 Shot Clock;
- iv. On October 9, 2015, the State of California adopted Assembly Bill No. 57 (Quirk), which deemed approved any WCF applications when the local reviewing authority fails to act within the 2009 Shot Clock timeframes;
- v. On August 2, 2018, the FCC adopted a declaratory ruling that formally prohibited express and de facto moratoria for all telecommunications services and facilities under 47 U.S.C. § 253(a);

1 vi. On September 26, 2018, the FCC adopted a declaratory ruling and report and order that, among  
2 other things, creates a new regulatory classification for small wireless facilities (“SWFs”),  
3 requires State and local governments to process applications for small wireless facilities within  
4 60 days or 90 days, establishes a national standard for an effective prohibition and provides that  
5 a failure to act within the applicable timeframe presumptively constitutes an effective  
6 prohibition; and

7 **WHEREAS**, in addition to the changes described above, new Federal laws and regulations that  
8 drastically alter local authority over WCFs are currently pending, including without limitation, the  
9 following:

10 i. On March 30, 2017, the FCC issued a Notice of Proposed Rulemaking (WT Docket No. 17-79,  
11 WC Docket No. 17-84) and has acted on some of the noticed issues referenced above, but may  
12 adopt forthcoming rulings and/or orders that further limit local authority over wireless facilities  
13 deployment;

14 ii. On June 28, 2018, United States Senator John Thune introduced and referred to the Senate  
15 Committee on Commerce, Science and Transportation the "STREAMLINE Small Cell  
16 Deployment Act" (S. 3157) that, among other things, would apply specifically to small cell  
17 WCFs and require local governments to review applications based on objective standards,  
18 shorten the 2009 Shot Clock timeframes, require all proceedings to occur within the 2009 Shot  
19 Clock timeframes, and provide a "deemed granted" remedy for failure to act within the  
20 applicable 2009 Shot Clock;

21 **WHEREAS**, given the rapid and significant changes in Federal and State law, the actual and  
22 effective prohibition on moratoria to amend local policies in response to such changes and the  
23 significant adverse consequences for noncompliance with Federal and State law, the City Council  
24 desires to add Chapter 11.20 of the Rialto Municipal Code, entitled “WIRELESS  
25 TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY” (the “Ordinance”), in  
26 its entirety, to allow greater flexibility and responsiveness to the new Federal and State laws while still  
27 preserving the City's traditional authority to the maximum extent practicable; and

1       **WHEREAS**, the City Council deems it necessary to adopt an urgency ordinance pursuant to  
2 Government Code Section 36937(b) to add regulations to the Rialto Municipal Code to regulate the  
3 placement of SWFs and WCFs in the public rights-of-way, finding the urgency to do so based upon the  
4 following facts:

- 5       i.     The global wireless telecommunications industry has developed and is starting to install SWFs  
6             primarily in public rights-of-way. SWFs are designed to accommodate "5G" technology.  
7             Wireless telecommunications providers have made inquiries with the City and other California  
8             cities about installing SWFs in municipal rights-of-way, and some other California cities are  
9             already receiving applications for such facilities.
- 10       ii.    The Federal Telecommunications Act of 1996 preempts and declares invalid all state and local  
11             rules that restrict entry or limit competition in both local and long-distance telephone service,  
12             and the FCC has adopted regulations for the implementation of that Act.
- 13       iii.   Section 7901 of the California Public Utilities Code authorizes telephone and telegraph  
14             corporations to construct telephone or telegraph lines along and upon any public road or  
15             highway, along or across any of the waters or lands within this state, and to erect poles, posts,  
16             piers, or abatements for supporting the insulators, wires, and other necessary fixtures of their  
17             lines, in such manner and at such points as not to incommode the public use of the road or  
18             highway or interrupt the navigation of the waters.
- 19       iv.    Section 7901.1 of the California Public Utilities Code confirms the right of municipalities to  
20             exercise reasonable control as to the time, place, and manner in which roads, highways, and  
21             waterways are accessed, which control must be applied to all entities in an equivalent manner  
22             and may involve the imposition of fees.
- 23       v.     The FCC adopted its FCC Ruling expressly to "reduce regulatory barriers to the deployment of  
24             wireless infrastructure and to ensure that our nation remains the leader in advanced wireless  
25             services and wireless technology." (FCC Ruling, ¶29.) The FCC Ruling is intended to  
26             facilitate the spread, growth, and accumulation of SWFs over a short period of time in order to  
27             enable deployment of technology that the FCC Ruling claims will enable increased  
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- 1 competition in healthcare, Internet of Things applications, lifesaving car technologies, and  
2 creation of jobs.
- 3 vi. SWFs are primarily installed within public rights-of-way and as such create significant and  
4 far-reaching local concerns about traffic and pedestrian safety, land use conflicts and  
5 incompatibilities including excessive height of poles and towers; creation of visual and  
6 aesthetic blights arising from excessive size, heights, noise or lack of camouflaging of wireless  
7 facilities including the associated pedestals, meters, equipment and power generators, and  
8 protection and preservation of public property, all of which may negatively impact the unique  
9 quality and character of the City and the public health, safety and welfare thereof.  
10 Accordingly, regulating the installation of SWFs in the public right-of-way is necessary to  
11 protect and preserve the aesthetics in the community, as well as the values of properties within  
12 the City.
- 13 vii. The FCC Ruling sets forth new standards for state and local government regulations of SWFs,  
14 which standards restrict the aesthetic requirements that localities can imposed upon such  
15 facilities. Any aesthetic standard adopted by cities must be: (1) reasonable, (2) no more  
16 burdensome than those applied to other types of infrastructure deployments, and (3) objective  
17 and published in advance.
- 18 viii. That portion of the FCC Ruling requiring aesthetic standards for SWFs to be reasonable, no  
19 more burdensome than on other infrastructure, and objective and pre-published, goes into  
20 effect April 15, 2019. Standards that are not published in advance of that date will not be  
21 enforceable as to any application incoming to the City until proper standards are published.  
22 Ad hoc aesthetic standards are not enforceable. Cities that have aesthetic, spacing, or  
23 undergrounding standards currently in place may continue to judge applications against their  
24 current standards. However, by April 15, cities may only enforce aesthetic, undergrounding  
25 and spacing standards that are reasonable, no more burdensome than those applied to other  
26 types of infrastructure deployments, and objective and published in advance.
- 27 ix. Without the immediate implementation through an urgency ordinance of regulations specific  
28 to the siting of SWFs in the public right-of-way, the City Council will be unable to adopt and

1 implement such regulations before the April 15, 2019 effective date for design standards.  
2 SWFs could therefore be approved that are inconsistent with the regulations being developed  
3 by the City as permitted by federal and state laws.

4 **WHEREAS,** On April 9, 2019 the City Council held a duly noticed public hearing on the  
5 Ordinance, reviewed and considered the staff report, other written reports, public testimony and other  
6 information contained in the record.

7 **NOW, THEREFORE,** the City Council of the City of Rialto hereby ordains as follows:

8 **SECTION 1.** The facts set forth in the recitals in this Ordinance are true and correct and  
9 incorporated by reference. The recitals constitute findings in this matter and, together with the staff  
10 report, other written reports, public testimony and other information contained in the record, are an  
11 adequate and appropriate evidentiary basis for the actions taken in the Ordinance.

12 **SECTION 2..** The Ordinance is consistent with the City's General Plan, Rialto Municipal Code,  
13 Rialto Zoning Code and applicable Federal and State law

14 **SECTION 3.** The Ordinance will not be detrimental to the public interest, health, safety,  
15 convenience or welfare.

16 **SECTION 4.** The Ordinance is not a project within the meaning of Section 15378 of the State  
17 of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting  
18 in physical change in the environment, directly or indirectly. The Ordinance does not authorize any  
19 specific development or installation on any specific piece of property within the City's boundaries. The  
20 Ordinance is further exempt from CEQA because the City Council's adoption of the Ordinance is  
21 covered by the general rule that CEQA applies only to projects which have the potential for causing a  
22 significant effect on the environment (State CEQA Guidelines, § 15061(b)(3)). Installations, if any,  
23 would be exempt from CEQA review in accordance with either State CEQA Guidelines Section 15302  
24 (replacement or reconstruction), State CEQA Guidelines Section 15303 (new construction or conversion  
25 of small structures), and/or State CEQA Guidelines Section 15304 (minor alterations to land)..

26 **SECTION 5.** The Ordinance is hereby added as Chapter 11.20, "WIRELESS  
27 TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY" in Title 11 of the  
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1 Rialto Municipal Code to read in its entirety as shown in Exhibit “A” attached hereto and incorporated  
2 herein by this reference.

3       **SECTION 6.** Based on the foregoing recitals and all facts of record stated before the City  
4 Council, the City Council finds and determines that the immediate preservation of the public health,  
5 safety and welfare requires that this Ordinance be enacted as an urgency ordinance pursuant to  
6 Government Code Section 36937(b), and take effect immediately upon adoption.

- 7       i. SWFs are primarily installed within public rights-of-way and as such create significant and far-  
8 reaching local concerns about traffic and pedestrian safety, land use conflicts and  
9 incompatibilities including excessive height of poles and towers; creation of visual and aesthetic  
10 blights arising from excessive size, heights, noise or lack of camouflaging of wireless facilities  
11 including the associated pedestals, meters, equipment and power generators, and protection and  
12 preservation of public property, all of which may negatively impact the unique quality and  
13 character of the City and the public health, safety and welfare thereof.
- 14       ii. Accordingly, regulating the installation of SWFs in the public right-of-way is necessary to  
15 protect and preserve the aesthetics in the community, as well as the values of properties within  
16 the City.
- 17       iii. However, that portion of the FCC Ruling requiring aesthetic standards for SWFs to be  
18 reasonable, no more burdensome than on other infrastructure, and objective and pre-published,  
19 goes into effect April 15, 2019. Standards that are not published in advance of that date will not  
20 be enforceable as to any application incoming to the City until proper standards are published.
- 21       iv. Furthermore, pursuant to the FCC Ruling, new shortened Shot-Clocks have already taken effect  
22 with respect to SWFs (either 60 or 90 days for full determination upon each application,  
23 including all notice periods, supplemental permits, and appeal periods). These shorter  
24 timeframes leave the City with inadequate time and resources to timely process incoming SWF  
25 applications under federal law absent significant streamlining of the City’s current practices and  
26 procedures. Therefore, it is of utmost need for the City to immediately establish a streamlined  
27 process for SWF application review.

1 Therefore, this Ordinance is necessary for the immediate preservation of the public peace,  
2 health, safety and welfare and its urgency is hereby declared.

3 **SECTION 7.** If the provisions in this Ordinance conflict in whole or in part with any other City  
4 regulation or ordinance adopted prior to the effective date of this Ordinance, the provisions in this  
5 Ordinance will control.

6 **SECTION 8.** If any subsection, subdivision, paragraph, sentence, clause or phrase of this  
7 Ordinance or any part thereof is for any reason held to be unconstitutional or otherwise unenforceable,  
8 such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof.  
9 The City Council hereby declares that they would have passed each subsection, subdivision, paragraph,  
10 sentence, clause, or phrase thereof, irrespective of the fact that any one or more subsection, subdivision,  
11 paragraph, sentence, clause, or phrase be declared unconstitutional or otherwise unenforceable.

12 **SECTION 9.** This Ordinance is hereby declared to be an urgency measure and shall become  
13 effective immediately upon adoption by at least a four-fifths (4/5) vote of the City Council pursuant to  
14 Government Code section 36937(b).

15 **SECTION 10.** The City Clerk shall cause this Ordinance to be posted once, within fifteen (15)  
16 calendar days after its passage, at three (3) public locations in the City, and shall cause a copy of this  
17 Ordinance and its certification, together with proof of posting, to be entered in the Book of Ordinances  
18 of the City.

19 **PASSED, APPROVED AND ADOPTED** this 9th day of April, 2019.

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22 ATTEST:

\_\_\_\_\_  
DEBORAH ROBERTSON, Mayor

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24 \_\_\_\_\_  
BARBARA McGEE, City Clerk

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26 APPROVED AS TO FORM

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FRED GALANTE, City Attorney

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STATE OF CALIFORNIA )  
COUNTY OF SAN BERNARDINO ) ss  
CITY OF RIALTO )

I, Barbara McGee, City Clerk of the City of Rialto, do hereby certify that the foregoing Ordinance No. \_\_\_\_\_ was duly passed and adopted at a regular meeting of the City Council of the City of Rialto held on the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Upon motion of Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_, the foregoing Ordinance No. \_\_\_\_\_ was duly passed and adopted.

Vote on the Motion:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and the Official Seal of the City of Rialto, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Barbara A. McGee, City Clerk