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ORDINANCE NO. ____

**AN 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, 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,
2 among other things, creates a new regulatory classification for small wireless facilities
3 (“SWFs”), requires State and local governments to process applications for small wireless
4 facilities within 60 days or 90 days, establishes a national standard for an effective prohibition
5 and provides that a failure to act within the applicable timeframe presumptively constitutes an
6 effective prohibition; and

7 **WHEREAS**, in addition to the changes described above, new Federal laws and regulations
8 that 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-
11 79, WC Docket No. 17-84) and has acted on some of the noticed issues referenced above, but
12 may adopt forthcoming rulings and/or orders that further limit local authority over wireless
13 facilities 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”),
26 in its entirety, to allow greater flexibility and responsiveness to the new Federal and State laws while
27 still preserving the City's traditional authority to the maximum extent practicable; and
28

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

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

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

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

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

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

24 **SECTION 5.** The Ordinance is hereby added as Chapter 11.20, “WIRELESS
25 TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY” in Title 11 of the
26 Rialto Municipal Code to read in its entirety as shown in Exhibit “A” attached hereto and incorporated
27 herein by this reference.
28

SECTION 6. If the provisions in this Ordinance conflict in whole or in part with any other City regulation or ordinance adopted prior to the effective date of this Ordinance, the provisions in this Ordinance will control.

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

SECTION 8. The City Clerk shall cause this Ordinance to be printed and posted once, within fifteen (15) calendar days after its passage, at three (3) public locations in the City, and shall cause a copy of this Ordinance and its certification, together with proof of posting, to be entered in the Book of Ordinances of the City.

PASSED, APPROVED AND ADOPTED this ____th day of _____, 2019.

DEBORAH ROBERTSON, Mayor

ATTEST:

BARBARA McGEE, City Clerk

APPROVED AS TO FORM

FRED GALANTE, City Attorney

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