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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;

- 1 v. On August 2, 2018, the FCC adopted a declaratory ruling that formally prohibited express and
2 de facto moratoria for all telecommunications services and facilities under 47 U.S.C. § 253(a);
3 vi. On September 26, 2018, the FCC adopted a declaratory ruling and report and order that, among
4 other things, creates a new regulatory classification for small wireless facilities (“SWFs”),
5 requires State and local governments to process applications for small wireless facilities within
6 60 days or 90 days, establishes a national standard for an effective prohibition and provides
7 that a failure to act within the applicable timeframe presumptively constitutes an effective
8 prohibition; and

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

- 12 i. On March 30, 2017, the FCC issued a Notice of Proposed Rulemaking (WT Docket No. 17-
13 79, WC Docket No. 17-84) and has acted on some of the noticed issues referenced above, but
14 may adopt forthcoming rulings and/or orders that further limit local authority over wireless
15 facilities deployment;
16 ii. On June 28, 2018, United States Senator John Thune introduced and referred to the Senate
17 Committee on Commerce, Science and Transportation the "STREAMLINE Small Cell
18 Deployment Act" (S. 3157) that, among other things, would apply specifically to small cell
19 WCFs and require local governments to review applications based on objective standards,
20 shorten the 2009 Shot Clock timeframes, require all proceedings to occur within the 2009 Shot
21 Clock timeframes, and provide a "deemed granted" remedy for failure to act within the
22 applicable 2009 Shot Clock;

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

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

- 7 i. The global wireless telecommunications industry has developed and is starting to install
8 SWFs primarily in public rights-of-way. SWFs are designed to accommodate "5G"
9 technology. Wireless telecommunications providers have made inquiries with the City and
10 other California cities about installing SWFs in municipal rights-of-way, and some other
11 California cities are already receiving applications for such facilities.
- 12 ii. The Federal Telecommunications Act of 1996 preempts and declares invalid all state and
13 local rules that restrict entry or limit competition in both local and long-distance telephone
14 service, and the FCC has adopted regulations for the implementation of that Act.
- 15 iii. Section 7901 of the California Public Utilities Code authorizes telephone and telegraph
16 corporations to construct telephone or telegraph lines along and upon any public road or
17 highway, along or across any of the waters or lands within this state, and to erect poles, posts,
18 piers, or abatements for supporting the insulators, wires, and other necessary fixtures of their
19 lines, in such manner and at such points as not to incommode the public use of the road or
20 highway or interrupt the navigation of the waters.
- 21 iv. Section 7901.1 of the California Public Utilities Code confirms the right of municipalities to
22 exercise reasonable control as to the time, place, and manner in which roads, highways, and
23 waterways are accessed, which control must be applied to all entities in an equivalent manner
24 and may involve the imposition of fees.
- 25 v. The FCC adopted its FCC Ruling expressly to "reduce regulatory barriers to the deployment
26 of wireless infrastructure and to ensure that our nation remains the leader in advanced
27 wireless services and wireless technology." (FCC Ruling, ¶29.) The FCC Ruling is intended
28 to facilitate the spread, growth, and accumulation of SWFs over a short period of time in

1 order to enable deployment of technology that the FCC Ruling claims will enable increased
2 competition in healthcare, Internet of Things applications, lifesaving car technologies, and
3 creation of jobs.

4 vi. SWFs are primarily installed within public rights-of-way and as such create significant and
5 far-reaching local concerns about traffic and pedestrian safety, land use conflicts and
6 incompatibilities including excessive height of poles and towers; creation of visual and
7 aesthetic blights arising from excessive size, heights, noise or lack of camouflaging of
8 wireless facilities including the associated pedestals, meters, equipment and power
9 generators, and protection and preservation of public property, all of which may negatively
10 impact the unique quality and character of the City and the public health, safety and welfare
11 thereof. Accordingly, regulating the installation of SWFs in the public right-of-way is
12 necessary to protect and preserve the aesthetics in the community, as well as the values of
13 properties within the City.

14 vii. The FCC Ruling sets forth new standards for state and local government regulations of
15 SWFs, which standards restrict the aesthetic requirements that localities can imposed upon
16 such facilities. Any aesthetic standard adopted by cities must be: (1) reasonable, (2) no
17 more burdensome than those applied to other types of infrastructure deployments, and (3)
18 objective and published in advance.

19 viii. That portion of the FCC Ruling requiring aesthetic standards for SWFs to be reasonable, no
20 more burdensome than on other infrastructure, and objective and pre-published, goes into
21 effect April 15, 2019. Standards that are not published in advance of that date will not be
22 enforceable as to any application incoming to the City until proper standards are published.
23 Ad hoc aesthetic standards are not enforceable. Cities that have aesthetic, spacing, or
24 undergrounding standards currently in place may continue to judge applications against their
25 current standards. However, by April 15, cities may only enforce aesthetic, undergrounding
26 and spacing standards that are reasonable, no more burdensome than those applied to other
27 types of infrastructure deployments, and objective and published in advance.

ix. Without the immediate implementation through an urgency ordinance of regulations specific to the siting of SWFs in the public right-of-way, the City Council will be unable to adopt and implement such regulations before the April 15, 2019 effective date for design standards. SWFs could therefore be approved that are inconsistent with the regulations being developed by the City as permitted by federal and state laws.

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

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

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

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

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

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

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

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

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

1 and procedures. Therefore, it is of utmost need for the City to immediately establish a
2 streamlined process for SWF application review.

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

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

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

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

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

22 **PASSED, APPROVED AND ADOPTED** this 23rd day of April, 2019.

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25 ATTEST:

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27 BARBARA McGEE, City Clerk

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DEBORAH ROBERTSON, Mayor

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APPROVED AS TO FORM

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

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Exhibit “A”
Chapter 11.20, entitled
“WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY”