

ORDINANCE NO. 1967

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL,
PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 36937(b),
AMENDING TITLE 14 ("ZONING") OF THE SAN RAFAEL MUNICIPAL CODE**

THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES ORDAIN AS FOLLOWS:

DIVISION 1. FINDINGS

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, the City Council of the City of San Rafael deems it necessary to adopt an urgency ordinance pursuant to Government Code Section 36937(b) to add regulations to the San Rafael Municipal Code to regulate the placement of small wireless facilities in the public rights-of-way, finding the urgency to do so based upon the following facts:

1. The global wireless telecommunications industry has developed and is starting to install "small wireless facilities" primarily in public rights-of-way. Small wireless facilities are designed to accommodate "5G" technology. Wireless telecommunications providers have made inquiries with the City of San Rafael and other California cities about installing small wireless facilities in San Rafael's rights-of-way, and some other California cities are already receiving applications for such facilities.
2. The Federal Telecommunications Act of 1996 preempts and declares invalid all state and local rules that restrict entry or limit competition in both local and long-distance telephone service, and the Federal Communications Commission has adopted regulations for the implementation of that Act.
3. The City of San Rafael currently regulates wireless telecommunications facilities pursuant to San Rafael Municipal Code ("SRMC") Title 14 ("Zoning"), Section 14.16.360, which was last revised in 2014. Among other provisions, these regulations impose design, height, general location and other standards for installation of wireless facilities primarily on private property, establish ministerial and discretionary review processes, and require submittal of reports regarding radiofrequency emissions and alternative sites.
4. Section 7901 of the California Public Utilities Code authorizes telephone and telegraph corporations to construct telephone or telegraph lines along and upon any public road or highway, along or across any of the waters or lands within this state, and to erect poles, posts, piers, or abatements for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters.
5. Section 7901.1 of the California Public Utilities Code confirms the right of municipalities to exercise reasonable control as to the time, place, and manner in which roads, highways,

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and waterways are accessed, which control must be applied to all entities in an equivalent manner and may involve the imposition of fees.

6. On September 26, 2018, the Federal Communications Commission adopted its "Declaratory Ruling and Third Report and Order" (hereafter, the "FCC Ruling") expressly to "*reduce regulatory barriers to the deployment of wireless infrastructure and to ensure that our nation remains the leader in advanced wireless services and wireless technology.*" (FCC Ruling, ¶29.) The FCC Ruling is intended to facilitate the spread, growth, and accumulation of small wireless facilities over a short period of time in order to enable deployment of technology that the FCC Ruling claims will enable increased competition in healthcare, Internet of Things applications, lifesaving car technologies, and creation of jobs.
7. Small wireless facilities are primarily installed within public rights-of-way and as such create significant and far-reaching local concerns about traffic and pedestrian safety, land use conflicts and incompatibilities including excessive height of poles and towers; creation of visual and aesthetic blights arising from excessive size, heights, noise or lack of camouflaging of wireless facilities including the associated pedestals, meters, equipment and power generators, and protection and preservation of public property, all of which may negatively impact the unique quality and character of the City and the public health, safety and welfare thereof. Accordingly, regulating the installation of small wireless facilities in the public right-of-way is necessary to protect and preserve the aesthetics in the community, as well as the values of properties within the City, and to ensure that all wireless telecommunications facilities are installed using the least intrusive means possible.
8. The FCC Ruling, which will go into effect on January 14, 2019, sets forth new limitations on state and local government regulation of small wireless facilities that are placed on existing or new utility poles and street light standards located in the public right-of-way. Specifically, the FCC Ruling: a) limits the level of local permitting and discretion; b) establishes new shorter "shot clock" rules (e.g., time limits and deadlines) for processing and action on local permits; and c) limits the fees that can be charged for the facilities.
9. The current regulations in SRMC Section 14.16.360 are primarily focused on wireless telecommunications facilities located on private property, and the existing Code provisions were not specifically designed to address the unique legal and practical issues that arise in connection with deployment of small wireless facilities in the public right-of-way pursuant to the new limitations established in the FCC Ruling.
10. Without the immediate implementation through an urgency ordinance of regulations specific to the siting of small wireless facilities in the public right-of-way, the City Council will be unable to adopt and implement such regulations before the January 14, 2019 effective date of the FCC Ruling. The consequence will be that under the new "shot clock" rules, applications submitted at that time will need to be approved within either 60 or 90 days of the application being submitted and will not be subject to the City's regulations of

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the right-of-way; small wireless facilities could therefore be approved that are inconsistent with the regulations being developed by the City as permitted by federal and state laws.

WHEREAS, adoption of this Ordinance is consistent with the City's General Plan policies; and

WHEREAS, pursuant to California Environmental Quality Act ("CEQA") Guidelines § 15378 and California Public Resources Code § 21065, the Council finds that this ordinance is not a "project" because its adoption is not an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment; and that, even if this ordinance qualified as a "project" subject to CEQA, and pursuant to CEQA Guidelines § 15061(b)(3), there is no possibility that this project will have a significant impact on the physical environment; and

WHEREAS, for all the foregoing reasons, the City Council finds and declares that adoption of this Ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare and its urgency is hereby declared;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES HEREBY ORDAIN AS FOLLOWS:

DIVISION 2. MUNICIPAL CODE AMENDMENTS.

Title 14 of the San Rafael Municipal Code, entitled "Zoning," is hereby amended as follows:

1. Section 14.03.030 is hereby amended to add a new definition of "Small Wireless Facility", to read in its entirety as follows (as shown below by ~~strikethroughs~~ for deletions and underline/italics for insertions):

14.03.030 - Definitions.

"Small Wireless Facility" means a small wireless facility as defined by the FCC and that meets the following requirements:

1. Meet one of the following mounting requirements:
 - a. are mounted on structures 50 feet or less in height including their antennas as defined in section 1.1320(d), or
 - b. are mounted on structures no more than 10 percent taller than other adjacent structures, or
 - c. do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
2. Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in section 1.1320(d)), is no more than three cubic feet in volume;

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3. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume

Antenna equipment, means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.

2. Section 14.03.030 is hereby amended to amend the definition of "Wireless communication facilities" to read in its entirety as follows:

"Wireless communication facilities" means facilities regulated by the FCC that transmit and/or receive electromagnetic signals for cellular technology, personal communication services, enhanced specialized mobile services, paging systems, and radio and television broadcast transmission facilities. Facilities include antennas, microwave dishes, parabolic antennas, and all other types of equipment (*but does not include small wireless facility, which is defined separately under "Small Wireless Facility"*) used in the transmission or reception of such signals; telecommunication towers or similar structures supporting said equipment; associated equipment cabinets and/or buildings; and all other accessory development. These facilities include amateur radio antenna structures that exceed thirty feet (30') in height but do not include government-operated public safety networks.

3. Section 14.16.360(A) is hereby amended to read in its entirety as follows:

14.16.360 - Wireless communication facilities.

A. Purpose. This section establishes standards to regulate the design and placement of towers, antennas, and other wireless communication transmission and/or reception facilities (hereinafter called wireless communication facilities) on public and private property, including facilities within the public right-of-way to minimize the potential safety and aesthetic impacts on neighboring property owners and the community, and to comply with applicable state and federal laws, including the Federal Telecommunications Act of 1996. This section does not apply to small wireless facilities as defined under Section 14.03.030, which are regulated by Section 14.16.361. To fulfill this its purpose, this section is intended to:

1. Establish review and approval requirements, application submittal requirements, and development standards to regulate the design and placement of wireless communication facilities so as to preserve the visual character of the city and to ensure public health and safety, consistent with federal law and Federal Communications Commission (FCC) regulations.
2. Acknowledge the community benefit associated with the provision of wireless communication services within the city.
3. Encourage the joint use of new and existing ground mounted facility monopole/tower sites as a primary option rather than construction of additional single-use towers.

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4. Allow the community development director, or delegated staff, to make certain determinations under the provisions of this section.
4. Section 14.16.360(H)(1) is hereby amended to read in its entirety as follows:
 - H. Design Requirements.
 1. Co-Location. All new wireless communication facilities service providers shall co-locate with other existing and/or planned new wireless communication facilities whenever feasible. Service providers are encouraged to co-locate with other existing facilities such as water tanks, ~~light standards~~ and other utility structures where the co-location is found to minimize the overall visual impact of the new facility. Co-location of small wireless facilities on light standards/poles, traffic lights, or other structures located within the public right-of-way shall be subject to requirements of Section 14.16.361.
5. Section 14.16.360(N)(1) is hereby amended to read in its entirety as follows:
 - N. Definitions.
 1. Ground Mounted Facility" means a monopole, tower or any structure built for the sole or primary purpose of supporting FCC-licensed wireless communications facility antenna and their associated facilities. Wireless antenna facilities and equipment that are mounted onto an existing structure, including existing utility poles, on private property shall be considered building mounted co-located on an existing structure. Mounting of wireless facilities on light standards/poles, traffic lights, or utility poles within the public right-of-way shall be governed by Section 14.16.361.
6. New Section 14.16.361, entitled "Small Wireless Facilities", is hereby added to read in its entirety as follows:

14.16.361 – Small wireless facilities.

Notwithstanding any other provision of this Title as provided herein, all small wireless facilities as defined by the FCC in 47 C.F.R. § 1.6002(l), as may be amended or superseded, are subject to a permit as specified in the San Rafael City Council's "Policies, Procedures, Standards and Limitations for Submittal and Review of Small Wireless Facilities Within the Public Right-Of-Way as Set Forth in the San Rafael Municipal Code Section 14.16.361" ("Policy"), as adopted and amended from time to time by City Council resolution, and all small wireless facilities shall comply with such Policy. If the City Council Policy is repealed, an application for a small wireless facility shall be processed pursuant to Section 14.16.360.

DIVISION 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT

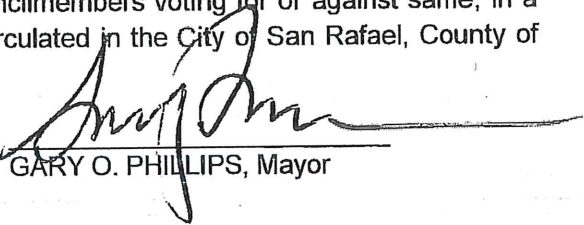
This Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to the State CEQA Guidelines, since it can be seen with certainty that there is no possibility that this Ordinance or its implementation would have a significant effect on the environment (14 Cal. Code Regs. Section 15061(b)(3), 'general rule' provision).

DIVISION 4. SEVERABILITY


If any provision of this Ordinance or the application of any such provision to any person or circumstance, shall be held invalid, the remainder of this Ordinance, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Ordinance are severable.

DIVISION 5. EFFECTIVE DATE OF ORDINANCE.

This Ordinance is hereby declared to be an urgency measure and shall become effective immediately upon adoption by at least a four-fifths (4/5) vote of the City Council pursuant to Government Code section 36937(b). The City Clerk is directed to publish forthwith a copy of this Ordinance, together with the names of those Councilmembers voting for or against same, in a newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of California.



GARY O. PHILLIPS, Mayor

ATTEST:


LINDSAY LARA, City Clerk

I, LINDSAY LARA, City Clerk of the City of San Rafael, certify that the foregoing Ordinance was passed by the City Council of the City of San Rafael, California, by a vote of at least four-fifths (4/5) of the members thereof, at a regular meeting held on Monday, the 17th day of December 2018, by the following vote, to wit:

AYES: COUNCILMEMBERS: Bushey, Colin, Gamblin, McCullough & Mayor Phillips
NOES: COUNCILMEMBERS: None
ABSENT: COUNCILMEMBERS: None


LINDSAY LARA, City Clerk