ORDINANCE NO. 1124

AN ORDINANCE OF THE TOWN COUNCIL OF THE
TOWN OF SAN ANSELMO REPLACING SAN ANSELMO
MUNICIPAL CODE TITLE 10 (PLANNING AND ZONING),
CHAPTER 3 (ZONING) ARTICLE 28 RELATED TO
WIRELESS TELECOMMUNICATIONS FACILITIES

WHEREAS, pursuant to Article XI, section 7 of the California Constitution and sections 36931 et seq. of the California Government Code, the Town Council may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws;

WHEREAS, on June 24, 1997, the Town Council of the Town of San Anselmo (the “Town Council”) adopted Urgency Interim Ordinance No. 985, which temporarily prohibited the processing and approval of use permits, variances, building permits and/or applicable uses and entitlements for wireless communications facilities (“WCFs”) within the Town of San Anselmo’s (the “Town’s”) territorial jurisdiction, except for applications that were currently pending before the Town at the time Ordinance No. 985 was adopted, for the purpose of conducting further study and prepare more permanent regulations to protect public health, safety and welfare;

WHEREAS, on August 5, 1997, the Town Council adopted Urgency Interim Ordinance No. 987, which extended Ordinance No. 985 based on the same findings and exempted facilities or equipment used by police, fire suppression and/or paramedic personnel to preserve public health, safety and welfare;

WHEREAS, on December 9, 1997, the Town Council adopted Urgency Interim Ordinance No. 989, which extended Ordinance No. 987 based on additional findings that advancements in wireless technologies would require more new WCFs than was previously envisioned by the Town at the time Ordinance No. 987 was adopted and that Marin County’s model standards and criteria, on which the Town intended to pattern its own, were not expected to be adopted until the early 1998;

WHEREAS, on January 1, 1998, the Town Council adopted Urgency Interim Ordinance No. 991, which extended Ordinance No. 989 based on the same findings;

WHEREAS, on December 22, 1998, the Town Council adopted Ordinance No. 1001, which adopted uniform and comprehensive standards for WCF deployment intended to balance the Town’s interests in preserving the visual and community character and facilitating deployments that would provide residents, businesses and visitors with access to high quality wireless services;

WHEREAS, on March 12, 2002, the Town Council adopted Ordinance No. 1023, which temporarily prohibited new WCF construction to allow the Town sufficient time to evaluate amendments to San Anselmo Municipal Code §§ 10-3.2810 through 10-3.2818, inclusive, and
which the Town Council extended on April 9, 2002 (Ordinance No. 1025) and further extended on August 27, 2002 (Ordinance No. 1028);

WHEREAS the extension of the temporary prohibition on WCF construction expired on March 12, 2004 and the regulations previously adopted in 1998 under Ordinance 1001 became effective again;

WHEREAS, since the Town Council last amended its WCF regulations in 1998, significant changes in federal and State law that affect local authority over WCFs have occurred, including but not limited to the following:

- On November 18, 2009, the Federal Communications Commission ("FCC") adopted a declaratory ruling (the "Shot Clock"), which established presumptively reasonable timeframes for State and local governments to act on applications for WCFs.

- 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.

- 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 Shot Clock. This report and order effectively preempted local moratoria on WCFs by finding that the Shot Clock continues to run even when a valid moratorium is adopted.

- On October 9, 2015, California adopted Assembly Bill No. 57 (Quirk), which deemed approved any WCF applications when the local reviewing authority fails to act within the Shot Clock timeframes;

WHEREAS, in addition to the changes described above, new federal and State laws that would drastically alter local authority over WCFs are currently pending, including without limitation, the following:

- On March 30, 2017, the FCC issued a Notice of Proposed Rulemaking (WT Docket No. 17-79) that, among other things, proposed to create automatic approvals for all WCF applications after a failure to act within a prescribed timeframe, shorten the Shot Clock timeframes for all WCFs, further restrict the information and other disclosures municipalities could require in their application review process, and create a new WCF classification for "small cells" that would be subject to additional exemptions from local review processes.
On September 14, 2017, the California Legislature passed Senate Bill No. 649 (Hueso), which would generally (1) create a new regulatory classification for “small cells” that would be defined as a permitted use exempt from local discretionary review; (2) mandate that cities and counties allow such “small cells” on their municipal infrastructure and private property on State-regulated rates, terms and conditions; and (3) create another regulatory classification for “micro wireless facilities” that would be completely exempt from all local permit or fee requirements. On October 15, 2017, Governor Brown vetoed SB 649, but similar bills have passed or are currently pending in approximately 18 other states, and another California bill is likely to be proposed in the near future.

WHEREAS, given the rapid and drastic changes in federal and State law, effective prohibition on moratoria to amend local policies in response to such changes and the significant adverse consequences for noncompliance, the Town Council desires to replace Title 10, Chapter 3, Article 28 of the Town Code to allow greater flexibility and responsiveness to new federal and State laws in order to preserve the Town’s traditional authority to maximum extent possible (collectively, the “Amendments”);

WHEREAS, the San Anselmo Town Council has a legitimate government interest in public health and safety and is concerned about adverse health effects associated with human exposure to radio frequency (“RF”) emissions, but recognizes the current federal and State restrictions on the Town’s ability to take these effects into account in local regulations and permitting decisions to the extent that such emissions are compliant with applicable FCC regulations;

WHEREAS, the FCC recognizes that biological effects can result from exposure to RF energy.¹ The FCC states that “[b]iological effects that result from heating of tissue by RF energy are often referred to as ‘thermal’ effects. It has been known for many years that exposure to high levels of RF radiation can be harmful due to the ability of RF energy to heat biological tissue rapidly”;²

WHEREAS, the FCC “recognize[s] that State and local governments have a legitimate interest in ascertaining that facilities will comply with the RF exposure limits” and found that municipalities and wireless providers should cooperatively establish compliance evaluations that protect local interests in land use and public health without unnecessary burdens on service providers;³

² See id.
WHEREAS, a 2017 study\textsuperscript{4} conducted among Kaiser Permanente Northern California pregnant members found evidence that women who were exposed to higher magnetic field non-ionizing radiation exposure levels had 2.72 times the risk of miscarriage than those with lower exposure levels and that magnetic field non-ionizing radiation could have adverse biological impacts on human health. The finding also demonstrated that accurate measurement of magnetic field exposure is vital for examining magnetic field health effects;

WHEREAS, the San Anselmo Town Council seeks to protect the general safety, welfare, and quality of life of the community, including protecting the community from the biological effects from RF energy and magnetic field non-ionizing radiation exposure levels;

WHEREAS, on October 6, 2017, the public notice required by San Anselmo Municipal Code Section 10-3.1602 was given;

WHEREAS, on October 16, 2017, the Town Planning Commission held a duly noticed public hearing on the proposed Amendments, reviewed and considered the staff report, other written reports, public testimony and other information contained in the record and recommended the Town Council adopt the proposed Amendments;

WHEREAS, on March 13, 2018, the Town Council held a duly noticed public hearing on the proposed Amendments, reviewed and considered the staff report, other written reports, public testimony and other information contained in the record and continued the matter for further consideration;

WHEREAS, on April 24, 2018, the Town Council held a duly noticed public hearing on the proposed Amendments, reviewed and considered the staff report, other written reports, public testimony and other information contained in the record.

NOW, THEREFORE, THE SAN ANSELMO TOWN COUNCIL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. FINDINGS.

The Town Council does hereby find that:

A. 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 this Ordinance.

B. The Amendments are consistent with the General Plan, San Anselmo Municipal Code and applicable federal and State law.

\textsuperscript{4} De-Kun Li, et al., Exposure to Magnetic Field Non-Ionizing Radiation and the Risk of Miscarriage: A Prospective Cohort Study, \textsc{Scientific Reps.} Article Number 17541 (Dec. 13, 2017), \textit{available at} \url{https://doi.org/10.1038/s41598-017-16623-8}. 
C. The Amendments will not be detrimental to the public interest, health, safety, convenience or welfare.

SECTION 2. ENVIRONMENTAL REVIEW.

Pursuant to CEQA Guidelines § 15378 and Public Resources Code § 21065, the Town 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. Accordingly, this Ordinance is not subject to CEQA.

Even if this Ordinance were considered to be a “project” subject to CEQA, the Town Council finds that, pursuant to CEQA Guidelines § 15061(b)(3), there is no possibility that this project will have a significant impact on the physical environment. This Ordinance merely amends existing provisions in the San Anselmo Municipal Code to allow the Town to be more responsive to changes in federal and State laws related to local authority over wireless facilities. This Ordinance does not directly or indirectly authorize or approve any actual changes in the physical environment. Although this Ordinance would allow the Town Council to adjust the permit(s) required for a particular wireless facility by amending to Town Council Policy No. 6-1, this Ordinance and Town Council Policy No. 6-1 do not change the existing requirements for a use permit. All applications for any new wireless facility or change to an existing wireless facility would be subject to additional environmental review on a case-by-case basis. Accordingly, the Town Council finds that this Ordinance would be exempt from CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment.

SECTION 3. REVISION TO SAMC TITLE 10, CHAPTER 3, ARTICLE 28

San Anselmo Municipal Code Title 10, Chapter 3, Article 28 (Wireless Telecommunications Facilities) is deleted in its entirety and amended to read as follows:

\[10-3.2810\] Wireless Communications Facilities.

All wireless communications facilities, and any modifications, collocations, expansions or other changes to existing wireless communications facilities, are subject to design review and a conditional use permit, or other permit as specified in Town Council Policy No. 6-1, which is adopted and amended by Town Council resolution. All wireless communications facilities shall comply with Town Council Policy No. 6-1.

SECTION 4. SEVERABILITY.

In the event that any court of competent jurisdiction holds any section, subsection, paragraph, sentence, clause or phrase in this Ordinance to be unconstitutional, preempted or otherwise invalid, the invalid portion shall be severed from this Ordinance and shall not affect the validity of the remaining portions of this Ordinance. The Town hereby declares that it would have adopted each section, subsection, paragraph, sentence, clause or phrase in this Ordinance irrespective of whether
any one or more sections, subsections, paragraphs, sentences, clauses or phrases in this Ordinance might be declared unconstitutional, preempted or otherwise invalid.

SECTION 5. CONFLICTS WITH PRIOR ORDINANCES.

In the event that any Town ordinance or regulation, in whole or in part, adopted prior to the effective date of this Ordinance, conflicts with any provisions in this Ordinance, the provisions in this Ordinance will control.

SECTION 6. EFFECTIVE DATE.

This Ordinance will become effective thirty (30) days after its final passage in accordance with California Government Code section 36937 and will remain effective until the effective date of a superseding ordinance.

SECTION 7. PUBLICATION.

Within fifteen (15) days after the Town Council adopts this Ordinance, the Town Clerk shall cause this Ordinance, or its title as a summary, to be published in the manner required by law.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the San Anselmo Town Council on June 12, 2018, and was adopted at a regular meeting of the San Anselmo Town Council on June 26, 2018, by the following vote:

Ayes: Wright, Brown, Coleman, Colbert
Noes: None
Absent: Greene

ATTEST:

Town Clerk, Carla Kacmar
Town of San Anselmo, California

Mayor, John Wright
Town of San Anselmo, California