CLERK’S CERTIFICATE

I, JEANNE M. LEONCINI, Clerk of the City of San Rafael, and Ex-officio Clerk of the Council of said City, do hereby certify that the foregoing Charter Ordinance No. 1823 entitled:

“AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL AMENDING TITLE 14 OF THE SAN RAFAEL MUNICIPAL CODE TO ESTABLISH STANDARDS FOR DEVELOPMENT OF NEW WIRELESS COMMUNICATION FACILITIES (ZO03-006)”

is a true and correct copy of an Ordinance of said City and was introduced at a REGULAR meeting of the City Council of the City of San Rafael, held on the 5th day of April, 2004, a SUMMARY of Ordinance No. 1823 was published as required by City Charter in the MARIN INDEPENDENT JOURNAL, a newspaper published in the City of San Rafael, and passed and adopted as an Ordinance of said City at a REGULAR meeting of the City Council of said City held on the 19th day of April, 2004, by the following vote, to wit:

AYES:       COUNCILMEMBERS: Cohen, Heller, Phillips and Vice-Mayor Miller

NOES:       COUNCILMEMBERS: None

ABSENT:     COUNCILMEMBERS: None

ABSTAINING/ DISQUALIFIED: COUNCILMEMBERS: Mayor Boro (due to potential conflict of interest)

WITNESS my hand and the official seal of the City of San Rafael this 26th day of April, 2004

Jeanne M. Leoncini
JEANNE M. LEONCINI, City Clerk
ORDINANCE NO. 1823

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL AMENDING TITLE 14 OF THE SAN RAFAEL MUNICIPAL CODE TO ESTABLISH STANDARDS FOR DEVELOPMENT OF NEW WIRELESS COMMUNICATION FACILITIES (ZO03-006)

WHEREAS, in 2001, the City Council directed staff to prepare a telecommunications ordinance for inclusion in the San Rafael Zoning Ordinance (Title 14) which is referred to herein as the Wireless Communication Facilities Ordinance; and

WHEREAS, an Initial Study/Negative Declaration was prepared for the proposed Wireless Communication Facilities Ordinance consistent with the requirements of the California Environmental Quality Act (CEQA) and was circulated for a 20-day public review period; and

WHEREAS, the City Council has adopted the Negative Declaration by adoption of a separate resolution; and

WHEREAS, a notice describing the proposed Wireless Communication Facilities Ordinance was: a) published in a local newspaper of general circulation in the area; and b) mailed to homeowners associations, citizens, and special interest groups; and

WHEREAS, on March 17, 2004, the Planning Commission held a public hearing, accepted all oral and written public testimony and the written report of the Community Development Department staff, and voted 5-0-2 (Commissioners Paul and Whipple absent) to recommend to the City Council approval of the proposed Ordinance with suggested modifications; and

WHEREAS, on April 5, 2004, the City Council held a public hearing and accepted all oral and written public testimony and the written report of the Community Development Department staff.

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

DIVISION 1. Title 14 of the San Rafael Municipal Code is hereby amended by the addition of Section 14.16.360, and the addition of definitions to Section 14.03.030 as specifically presented in Exhibit A attached hereto and incorporated herein. This Ordinance is based upon the following findings:

1. The proposed Ordinance would be consistent with the intent of the San Rafael General Plan 2000, which encourages excellence in project design and protection of community character and environmental quality, and would not conflict with any provisions contained in the
Zoning Ordinance. The adoption of a Wireless Communication Facilities Ordinance would provide clear standards for the location and design of future wireless communication facilities that will minimize visual impacts and assure that public health exposures from all such facilities are consistent with federal standards established by the Federal Communication Commission (FCC) through initial and ongoing testing of radio frequency radiation (RFR) emissions.

2. The proposed revisions would also be consistent with the limitations imposed upon local government regulation by the Telecommunications Act of 1996 given that cities may provide reasonable regulations for the design and placement of wireless communication facilities on private property and within the public right-of-way.

DIVISION 2. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more section, subsection, sentence, clause or phrase may be declared invalid.

DIVISION 3. A summary of this Ordinance shall be published and a certified copy of the full text of this Ordinance shall be posted in the office of the City Clerk at least five (5) days prior to the City Council meeting at which it is adopted.

This Ordinance shall be in full force and effect thirty (30) days after its final passage, and the summary of this Ordinance shall be published within fifteen (15) days after the adoption, together with the names of those Councilmembers voting for or against same, in the Marin Independent Journal, a newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of California.

Within fifteen (15) days after adoption, the City Clerk shall also post in the office of the City Clerk, a certified copy of the full text of this Ordinance along with the names of those Councilmembers voting for or against the Ordinance.

\[Signature\]

CYR N. MILLER, Vice Mayor

ATTEST:

\[Signature\]

JEANNE M. LEONCINI, City Clerk

The foregoing Ordinance No. 1823 was read and introduced at a regular meeting of the City Council of the City of San Rafael on April 5, 2004, and was ordered passed to print by the following vote, to wit:
AYES: Councilmembers: Cohen, Heller, Phillips and Vice Mayor Miller

NOES: Councilmembers: None

ABSENT/ DISQUALIFIED: Councilmembers: Mayor Boro (due to potential conflict of interest)

and will come up for adoption as an Ordinance of the City of San Rafael at a regular meeting of the Council to be held on Monday, April 19, 2004.

JEANNE M. LEONCINI, City Clerk

Attachment:
Exhibit A
EXHIBIT A:

WIRELESS COMMUNICATION FACILITIES ORDINANCE

Section 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 to minimize the potential safety and aesthetic impacts on neighboring property owners and the community. To fulfill this purpose, this Section is intended to:

1. Establish 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 Communication Commissions (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 tower sites as a primary option rather than construction of additional single-use towers.

B. **Permits Required.** A Use Permit and an Environmental and Design Review Permit shall be required for new wireless communication facilities pursuant to the requirements of Chapter 14.22 *Use Permits* and Chapter 14.25 *Environmental and Design Review Permits* of this Title, consistent with the provisions of this Section. Minor additions or modifications to existing permitted facilities that will not
significantly affect radio frequency radiation (RFR) emissions nor cause increased visual impacts may be exempted from the requirements of a Use Permit by the Community Development Director. In such case, the minor addition or modification shall be subject to an administrative-level Environmental and Design Review Permit.

C. Application Requirements. Applications for a Use Permit and an Environmental and Design Review Permit shall be initiated by submitting the following information:

1. A completed application form, signed by the property owner or authorized agent, accompanied by the required fee. Application procedures and processing timeframes shall be in accordance with state law requirements and the procedural guidelines established by the Community Development Director.

2. Six (6) sets of materials and plans showing the following information:
   a. Project Description. A complete project description, including the following information on the proposed wireless communication facility:
      1) Number and sizes of antennas and approximate orientation;
      2) Other technical information regarding transmission equipment such as maximum power output and frequencies;
      3) Copy of FCC license;
      4) Heights of proposed facilities;
      5) Equipment enclosure type and size;
      6) Materials and colors of antennas and any equipment enclosure;
7) Description of towers or other structures necessary to support the proposed facilities; and

8) Description of lighting, signage and landscaping proposed.

b. Site Plan. A site plan on a 24 inch-by-36-inch sheet of paper and an 11-inch by 17-inch reduction, including the following information:

1) Vicinity map;

2) Parcel lines of the subject parcel;

3) Contextual map showing structures on adjacent properties;

4) Location and names of adjacent streets and drives proposed to serve as access to the facility;

5) Topography of the subject parcel and location of any drainages within or adjacent to the site;

6) Location of all existing buildings, structures, utilities, parking areas, significant trees and other natural forms, or other features which might affect the proposed use of the property;

7) Setbacks of proposed structures and improvements from the property lines;

8) Location and height of required cuts and fills for the grading of land and any retaining walls proposed;

9) Location of proposed development including all towers, structures, buildings, utility line extensions, driveways/roads, and parking areas;

10) Schematic drainage and grading plan; and
11) North arrow, graphic scale, the applicant’s name, Assessor’s Parcel Number and date prepared.

c. Elevations. Elevations set forth on a 24-inch-by-36-inch sheet of paper, and an 11-inch by 17-inch reduction, including the following information:

1) Elevations and sections of the site displaying site topography, proposed facilities including towers, equipment shelter, and existing buildings;

2) Wall, roof, tower and antenna materials;

3) Fencing, air conditioning units and outdoor lighting, if any;

4) Rooftop or building features such as vents, chimneys, and antennas; and

5) Building or tower height as measured from natural grade.

d. Photo-simulations. Photo-simulations of the proposed facility from key public viewpoints based upon consultation with City staff. Photo-simulations shall display existing and proposed views in an 11-inch by 17-inch, or larger, format, with the dates shown when the base photo was taken.

e. Landscape Plan. A landscape and irrigation plan, showing all existing and proposed improvements, location of proposed plantings and type of landscape material, for proposed ground-mounted facilities including equipment cabinets.

3. Alternative Site Analysis. An alternative site analysis is required if the proposed facility is:
a. Located within any district other than a Commercial or Industrial District; or

b. Located within fifty (50) feet of a “Less Preferred Location,” as defined in Section 14.16.360 G.2; or

c. Lacking stealth design; or

d. Not co-located with an existing approved facility.

The alternative site analysis shall be presented in a narrative form with supporting maps and other graphics that identify the other site locations considered and rejected in favor of the proposed site. The applicant shall provide supporting reasons why the alternate sites were infeasible and rejected and why the proposed site is superior from a technical or other standpoint to the others considered.

4. **Future Co-Location.** For new towers/monopoles, a signed statement that the applicant, or its future successors, will cooperate with the City to allow future co-location of antennas at the proposed site if it is approved.

5. **Story poles.** Story poles or mock-ups may be required if deemed necessary by the Community Development Director.

6. **RFR Study.** For the sole purpose of verifying compliance with the FCC radio frequency emission standards, an emissions report which measures the predicted and actual, if available, levels of electromagnetic field radiation emitted by the proposed facility operating alone and in combination with radiation emitted from other existing or approved facilities that can be detected at the proposed facility site. Radiation measurements shall be based
on all proposed (applications filed and pending), approved, and existing facilities operating at maximum power densities and frequencies. It is the responsibility of the applicant to determine the location and power of existing facilities.

7. **Noise Analysis.** A noise analysis for emergency generators or other noise-producing facilities.

D. **Review Authority.** Authority over the provisions and requirements of this Section shall lie with the following official bodies or officials:

1. **Community Development Director.** The Community Development Director or his/her designee has the authority to:
   
   (a) Exempt applications for minor additions or modifications to existing permitted facilities that will not significantly affect RFR emissions nor cause increased visual impacts from the requirement for a Use Permit, and take action to approve, conditionally approve or deny an administrative-level Environmental and Design Review Permit;

   (b) Refer applications to the Design Review Board for advisory review and recommendation; and

   (c) Refer applications to the Planning Commission for review and action.

2. **Design Review Board.** The Design Review Board shall serve as an advisory body to the Planning Commission, Zoning Administrator or Community Development Director on all Use Permit and Environmental and Design
Review Permit applications with the exception of applications for minor additions or modifications to existing permitted facilities, as described in Section 14.16.360 D.1, which are subject to an administrative level Environmental and Design Review Permit.

3. **Planning Commission.** The Planning Commission has the authority to approve, conditionally approve or deny Use Permit and Environmental and Design Review Permit applications for the following:
   
   (a) New ground-mounted facilities (towers/monopoles);
   
   (b) Any facility, which in conjunction with existing facilities in the area, exceeds 75% of the FCC standard for public exposure; and
   
   (c) Any application referred to them by the Community Development Director.

4. **Zoning Administrator.** The Zoning Administrator has the authority to approve, conditionally approve or deny Use Permit and Environmental and Design Review Permit applications for the following:

   (a) Co-located facilities on an existing approved structure; and

   (b) Building-mounted facilities.

5. **Appeals.** All decisions of the Community Development Director, Zoning Administrator or the Planning Commission can be appealed in accordance with the provisions of Chapter 14.28 *Appeals* of this Title.

E. **Exemptions.** The following types of facilities are exempt from the provisions of this Section:

1. Facilities for which applications were approved by the City and/or building permits were issued on or prior to the effective date of this Section shall be
exempt from the requirements of this Section, except for the requirements for validation of proper operation, monitoring, and removal of abandoned facilities, and for proposed modifications to existing facilities;

2. Facilities owned and operated by public agencies; and

3. Proposed facilities that would be located entirely within a building and only serve that building.

F. Public Notice. Notice of a public meeting or hearing for a wireless communication facility shall be given in accordance with Chapter 14.29 Public Notice, except that a public notice shall be mailed to all property owners within 1,000 feet of any proposed facility that includes a tower/monopole.

G. General Location Standards. The most desirable location for new wireless communication facilities is co-location on existing facilities or buildings. All wireless communication facilities shall be sited to avoid or minimize land use conflicts in compliance with the following standards:

1. Preferred Locations. The following list of preferred locations for wireless communication facilities is in order of preference from most to least preferred: Industrial, Public/Quasi-Public, Commercial and Office Zoning Districts are the preferred locations.

2. Less Preferred Locations. The following less preferred locations are listed in order of preference from most to least preferred: Parks/Open Space and Residential Zoning Districts.

3. Avoid residential and open space areas. New monopoles or towers shall not be located within residential, designated open space or conservation areas unless
sufficient technical and other information is provided to demonstrate to the satisfaction of the Planning Commission or Zoning Administrator that location in such areas is appropriate, subject to the following findings:

a. The location of the proposed facility site is essential to meet the service demands of the carrier and no other alternative co-location, existing development or utility facility site, or type of antenna support structure is feasible. This shall be documented by the applicant providing a list of the locations of preferred technically feasible sites, the good faith efforts and measures taken by the applicant to secure these preferred sites, and the specific reasons why these efforts and measures were unsuccessful.

b. The use of a monopole for the proposed facility by itself or in combination with other existing, approved, and proposed facilities will avoid or minimize adverse effects related to land use compatibility, visual resources, and public safety.

4. **Avoid Significant Buildings and View Sheds.** Wireless communication facilities shall not be located on historically or architecturally significant structures unless visually and architecturally integrated with the structure, and shall not interfere with prominent vistas or significant public view corridors.

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.

2. **Stealth Design.** All wireless communication facilities shall have a stealth design to screen or reduce visual impacts and blend the facility into the existing environment. Examples of stealth design are façade-mounted antennas located within architectural features so they are screened from view, or an antenna design that mimics architectural features so they appear to be a part of the building design, or facilities with colors and materials to minimize visibility such as a non-reflective finish in a color compatible with the surrounding area.

3. **Ground-Mounted Facilities.** All new ground-mounted wireless communication equipment, antennas, poles, dishes, cabinet structures, towers or other appurtenances shall be:
   a. Co-located on existing structures to the extent feasible. Co-location is preferred over new monopoles or other towers erected specifically to support wireless communication facilities unless technical evidence demonstrates that there are no other alternative sites or feasible support structures or the use of a monopole or tower would avoid or minimize adverse effects related to the view shed, land use compatibility, visual resources, and public safety.
   b. Sited to be screened by existing development, topography or vegetation to the extent consistent with proper operation of the wireless communication facility. Additional new, irrigated vegetation, or other screening, may be required as a condition of approval.
4. **Roof and Building-Mounted Facilities.** Roof and building-mounted antennas and equipment shall be:

a. Sited and designed to appear as an integral part of the structure or otherwise minimize their appearance. Placing roof-mounted antennas in direct line with significant view corridors shall be avoided. Where appropriate, construction of a rooftop parapet wall to hide the facility may be required.

b. Integrated architecturally with the style and character of the structure or otherwise made as unobtrusive as possible. If possible, antennas shall be located entirely within an existing or newly-created architectural feature so as to be completely screened from view. To the extent feasible, building-mounted antennas shall not be located on the front, or most prominent façade of a structure, and shall be located above the pedestrian line-of-sight.

c. Whenever possible, base stations, equipment cabinets, back-up generators, and other equipment associated with building-mounted antennas shall be installed within the existing building or underground. If this is not feasible, the equipment shall be painted, screened, fenced, landscaped or otherwise treated architecturally to minimize its appearance from off-site locations and to visually blend with the surrounding natural and built environment.
5. **Signage.** No advertising signage or identifying logos shall be displayed on any wireless communication facility except for small identification plates used for emergency notification and legally required hazard warnings.

6. **Waiver Request.** A waiver from these requirements may be requested if the applicant can show, by substantial evidence, that compliance with a particular requirement is technologically infeasible or would result in an unreasonable interference with signal quality. The applicant will be required to prove that there are no feasible alternatives to the waiver request.

I. **Development Standards.**

1. **Height.** The maximum height of building-mounted antennas shall be in compliance with the height limitations for the zoning district in which they are located. An exception to antenna height may be granted by the Planning Commission or Zoning Administrator if the RFR exposures and aesthetic quality of the proposed facility are found to be acceptable. Antenna structures, including towers and monopoles, and mechanical screening features related to wireless communication facilities, shall be regulated subject to Section 14.16.120.

2. **Setbacks.**

   (a) Towers, guy wires, and accessory structures, including equipment cabinets, shall comply with the setback requirements of the applicable zoning district. Towers and support structures shall be located a minimum of 200 feet or at least three times the height of the tower,
whichever is greater, from existing residential units or vacant residentially zoned property.

(b) Building-mounted facilities may be permitted to extend up to two (2) feet horizontally beyond the edge of the structure regardless of setback requirements through the application review process, provided that the antenna does not encroach over an adjoining parcel or public right-of-way or otherwise create a safety hazard.

J. **Lighting.** Any exterior lighting shall be manually operated, low wattage, and used only during night maintenance or emergencies, unless otherwise required by applicable federal law or FCC rules. The lighting shall be constructed or located so that only the intended area is illuminated and off-site glare is fully controlled.

K. **Landscaping.** Wireless communication facilities shall be installed in a manner that maintains and enhances existing vegetation and provides new landscape material to screen proposed facilities through the following measures:

1. The emphasis of the landscape design shall be to visually screen the proposed facility and stabilize soils on sloping sites. Introduced vegetation shall be native, drought tolerant species compatible with the predominant natural setting of the adjacent area.

2. Existing trees and other screening vegetation in the vicinity of the proposed facility shall be protected from damage both during and after construction. Submission of a tree protection plan prepared by a certified arborist may be required.
3. All vegetation disturbed during project construction shall be replanted with compatible vegetation and soils disturbed by development shall be reseeded to control erosion.

4. Appropriate provisions for irrigation and maintenance shall be identified in the landscape plan. The City may impose a requirement for a landscape maintenance agreement as a condition of approval.

L. **Noise.** Wireless communication facilities shall be constructed and operated in a manner that minimizes noise. Noise reduction shall be accomplished through the following measures:


2. Normal testing and maintenance activities shall occur between 8:00 a.m. and 6:00 p.m., Monday through Friday, excluding emergency repairs.

3. Backup generators shall comply with the same noise standards referenced in Section 14.16.360 L.1 and shall only be operated during power outages, emergency occurrences, or for testing and maintenance.

M. **Radio Frequency Radiation (RFR).**

1. **RFR Standards.** Wireless communication facilities operating alone and in conjunction with other telecommunication facilities shall not produce RFR in excess of the standards for permissible human exposure as adopted by the FCC.

2. **RFR Report.** Applications for wireless communication facilities shall include a RFR report, prepared by a qualified expert, which identifies the predicted
and actual (if available) levels of RFR emitted by the proposed facility operating by itself and in combination with other existing or approved facilities which can be measured at the proposed facility site. Measurements for RFR shall be based on all proposed, approved, and existing facilities operating at maximum power densities and frequencies.

N. Post Approval Requirements.

1. Validation of Proper Operation. Within 45 days of commencement of operations, the applicant for the wireless communication facility shall provide the Community Development Department with a report, prepared by a qualified expert, indicating that the actual RFR levels of the operating facility, measured at the property line or nearest point of public access and in the direction of maximum radiation from each antenna, is in compliance with the standards established by the FCC for RFR.

2. Three-Year Review. The City will notify all owners/operators of wireless communication facilities every three years that they shall participate in the measurement by the City of the RFR of the facility. The requirement for a three-year review shall be made a condition of approval for all wireless communication facilities. The City will contract to perform the testing with a qualified expert and the owners/operators shall bear the proportionate cost of testing for its facility. The City will establish procedures for:

   (a) scheduling the three-year review period;

   (b) hiring an expert to perform RFR testing;

   (c) collecting reasonable fees; and
(d) enforcement actions for nonpayment of fees.

3. **Notification of Abandonment of Use.** The owner/operator of an approved wireless communication facility shall remove any abandoned facilities or restore the existing approved use of a facility within 90 days of termination of use.

4. **Changes Affecting RFR.** Any operational or technological changes to an approved wireless communication facility affecting RFR exposures shall be reported promptly to the City, including any change of ownership. The City may require new RFR testing within 45 days of notification.

5. **Changes to FCC Standards.** Owner/operators of all approved wireless communication facilities shall make necessary changes or upgrades to their facilities in order to comply with any newly adopted FCC standards for RFR. Upgrades to facilities shall be made no later than 90 days after notification of the changed FCC standards and the owner/operator shall notify the City in writing that the upgrades have been completed.
The following definitions shall be added to Section 14.03.030 Definitions of the Zoning Ordinance:

- "Antenna" means any system of poles, panels, rods, reflecting dishes, wires or similar devices used for the transmission or reception of electromagnetic waves or signals.

- "Antenna, building-mounted" (also known as façade-mounted) means any antenna mounted to a building or rooftop equipment screen that transmits or receives electromagnetic signals.

- "Antenna, ground-mounted" means any antenna which is attached or affixed to a freestanding support structure which has its base placed directly on the ground, specifically including, but not limited to monopoles or towers.

- "Antenna structure" means an antenna array and its associated support structure, such as a monopole or tower.

- "Co-location" means the location of two or more wireless communication facilities on a single support structure or otherwise sharing a common location. Co-location shall also include the location of wireless communication facilities with other types of pre-existing structures including, but not limited to water tanks, light standards, outbuildings and other utility facilities and structures.

- "Equipment cabinet" means a cabinet, structure, or building used to house equipment associated with a wireless communication facility.

- "Federal Communication Commission (FCC)" is an independent United States government agency responsible for the regulation of interstate and international communications by radio, television, wire, satellite and cable.
• "Owner or operator" (also "provider or service provider") means the person, entity or agency primarily responsible for installation and maintenance of a wireless communication facility, which may or may not be the same person or entity which is the owner of the property on which the facility is located.

• "Related equipment" means all equipment ancillary to the transmission and reception of any signal via radio frequencies. Such equipment may include, but is not limited to, cable, guy wires, conduit, conductors and power lines and their supporting poles associated with a wireless communication facility.

• "Service provider" means any authorized provider/carrier of wireless communications services.

• "Stealth design" means a wireless communication facility design that blends in with the surrounding environment by means of screening, concealment or camouflage.

• "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 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 30 feet in height but do not include government-operated public safety networks.