

1 [Settlement of Lawsuit - T-Mobile West Corporation]

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3 **Ordinance authorizing settlement of the lawsuit filed by T-Mobile West Corporation**
4 **against the City and County of San Francisco on July 8, 2010, in the United States**
5 **District Court for the Northern District of California, Case No. C-10-03011-CW; entitled**
6 ***T-Mobile West Corporation v. City and County of San Francisco*, according to the terms**
7 **set forth in the Settlement Agreement and subject to court approval of the parties'**
8 **Stipulated Judgment; approving as part of the settlement a conditional use**
9 **authorization enabling T-Mobile West Corporation to construct a wireless facility at 725**
10 **Taraval Street containing substantially fewer antennas than originally proposed and**
11 **subject to all City required conditions; and making environmental findings.**

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13 Be it ordained by the People of the City and County of San Francisco:

14 Section 1. The City Attorney is hereby authorized to settle the action entitled *T-Mobile*
15 *West Corporation v. City and County of San Francisco*, United States District Court for the
16 Northern District of California, Case No. C-10-03011-CW, on the terms set forth in the
17 Settlement Agreement on file with the Clerk of the Board of Supervisors in File No. 110591
18 which is hereby declared to be a part of this ordinance as if set forth fully herein. The
19 Settlement Agreement specifies that the parties will enter a Stipulated Judgment requiring the
20 City and County of San Francisco ("City") to approve a conditional use authorization enabling
21 T-Mobile West Corporation ("T-Mobile") to construct a wireless facility at 725 Taraval Street
22 that contains fewer antennas than the wireless facility that T-Mobile originally proposed and
23 that the Board of Supervisors previously disapproved. A copy of the Stipulated Judgment is
24 on file with the Clerk of the Board of Supervisors in File No. 110591, which is hereby declared
25 to be a part of this ordinance as if set forth fully herein.

1 Section 2. The above-named action was filed in the United States District Court for the
2 Northern District of California on July 8, 2010, and the following parties are named in the
3 lawsuit: plaintiff T-Mobile West Corporation and defendant City and County of San Francisco.

4 Section 3. As required by the Stipulated Judgment, the Board of Supervisors, acting
5 pursuant to San Francisco Planning Code Sections 303, 711.83 and 790.80, approves a
6 conditional use authorization enabling T-Mobile to install a wireless telecommunications
7 facility at 725 Taraval Street, San Francisco, California consisting of four panel antennas
8 mounted on the elevator penthouse structures of an existing mixed-use building, a maximum
9 of 55'-0" above grade, with four related equipment cabinets installed within the underground
10 garage. This authorization includes certain Conditions of Approval, which are on file with the
11 Clerk of the Board of Supervisors in File No. 110591 and hereby declared to be a part of this
12 ordinance as if set forth fully herein. This approval will become effective upon the Court's
13 approval and entry of the Stipulated Judgment.

14 Section 4. The Board of Supervisors finds that the proposed settlement is in the best
15 interests of the City for four reasons. First, the City will eliminate the risk and expense of
16 further litigation (including a potential appeal). Second, by settling the case as proposed the
17 City will be certain that T-Mobile's wireless facility at 725 Taraval Street will contain
18 substantially fewer antennas than the facility disapproved by the Board. Third, T-Mobile's
19 customers and others in the vicinity of 725 Taraval Street will be able to make better use of
20 their wireless phones. Fourth, T-Mobile will agree as part of the settlement to abide by the
21 standard Conditions of Approval used by the Planning Commission with conditional use
22 permits for wireless facilities.

23 Section 5. The Planning Department has determined that the actions contemplated in
24 this ordinance comply with the California Environmental Quality Act (Public Resources Code
25 Section 21000 *et seq.*). Said determination is on file with the Clerk of the Board of

1 Supervisors in File No. _____, which determination is incorporated herein by this
2 reference.

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4 APPROVED AS TO FORM AND
5 RECOMMENDED:

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7 DENNIS J. HERRERA
8 City Attorney

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10 See File for Signature
11 WILLIAM K. SANDERS
12 Deputy City Attorney

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