

## **RESOLUTION NO. 17-0147**

### **RESOLUTION OF THE MANHATTAN BEACH CITY COUNCIL DENYING A TELECOM PERMIT AND COASTAL DEVELOPMENT PERMIT CA-16-39 FOR THE CONSTRUCTION AND OPERATION OF A WIRELESS FACILITY PROPOSED TO BE LOCATED AT MANHATTAN AVENUE AND 5TH PLACE**

#### **THE MANHATTAN BEACH CITY COUNCIL HEREBY FINDS, DETERMINES AND RESOLVES AS FOLLOWS:**

SECTION 1. Pursuant to Manhattan Beach Municipal Code (Municipal Code) Section 13.02.030, New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (Applicant) submitted an application for the subject telecommunications facility at Manhattan Avenue and 5th Place (Manhattan/5th Facility). Concurrently, the Applicant submitted 15 other applications for wireless telecommunications facilities at other locations in the City of Manhattan Beach. Pursuant to Local Coastal Program (LCP) Chapter A.96, applications for a Coastal Development Permit within the Coastal Zone Appealable Area require a public hearing before the City Council.

SECTION 2. On November 16, 2017, the City Council conducted a public hearing to consider the application. The Council considered all evidence, both written and oral, presented during the public hearing. The Applicant's representatives spoke in favor of the application. City residents spoke in opposition to the installation of any telecommunications facilities. After providing an opportunity to all interested parties to speak, the Mayor provided an opportunity for rebuttal to the Applicant. The Applicant's representatives responded to questions posed by the public and by Councilmembers.

SECTION 3. The record of the public hearing indicates the following:

A. The Manhattan/5th Facility is proposed in a residential district, comprised of primarily single family residences in a densely populated area.

B. Municipal Code Chapter 13.02.030 regulates the issuance of telecommunications permits in the public right-of-way. Pursuant to Municipal Code Section 13.02.100, the City can deny a telecommunications permit if it makes the following findings:

1. That installation of the facility will have significant negative impacts to the extent that it substantially interferes with the use of other properties;

2. That a feasible alternative non-residential site is available for the proposed facility;

3. That denial of the proposed facility will not result in a competitive disadvantage to the applicant;

4. That the denial does not discriminate against the applicant in favor of similarly situated competitors; and

5. That the denial shall not preclude the applicant from proposing an alternate location for the facility.

C. The Manhattan/5th Facility is proposed for a location in the City's Coastal Zone. Accordingly, a Coastal Development Permit (CDP) is required. Pursuant to LCP Section A.96.150(A), the following findings are required to approve a CDP:

1. That the project, as described in the application and accompanying materials, as modified by any conditions of approval, conforms with the certified Manhattan Beach Local Coastal Program; and

2. If the project is located between the first public road and the sea, that the project is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act of 1976.

D. Pursuant to Section 332(c)(7) of the federal Telecommunications Act, local governments retain their authority over decisions regarding the placement, construction, and modification of personal wireless service facilities. A local government's decision to deny a request to place or construct personal wireless service facilities must be in writing and supported by substantial evidence contained in a written record.

SECTION 4. Based upon substantial evidence in the record, including the evidence presented at the public hearing, the staff report and presentation, the attachments to the staff report, and all testimony at the public hearing, the City Council hereby finds:

A. This Manhattan/5th Facility would be located in close proximity to residential properties in a dense residential neighborhood with limited sidewalk space. Due to its close proximity, the pole-mounted antenna would adversely impact views from adjacent residences. In addition to the pole-mounted antenna, the Applicant's proposal includes a ground-mounted cabinet that would interfere with the usability and aesthetic appearance of the streetscape.

B. The City suggested that the Applicant redesign the Manhattan/5th Facility to mount the cabinet to the pole or relocate the facility to a nearby commercial area. As indicated during the public hearing, the ground-mounted cabinet could be mounted to a pole under an alternative design. Additionally, it could potentially be re-located to a commercial property in the southern portion of the City's Downtown Commercial area, which is less than a quarter mile from the proposed location. According to the Applicant, this commercial alternative was not previously considered or explored. Because the southern portion of the City's Downtown Commercial area is nearby and has a similar elevation, this

alternative location could service the intended area while minimizing adverse impacts to the residential neighborhood. At the public hearing, the Applicant could not provide information related to the feasibility of this alternative nearby location. Accordingly, the Applicant and the City are exploring this alternative location.

C. Denial of the Manhattan/5th Facility, to allow the Applicant and City staff time to determine whether an alternative site in the nearby commercial area is feasible and effective for service coverage, would not result in a competitive disadvantage because other providers have not yet established telecommunications facilities in this area of the City. Further, the Applicant proposed the Manhattan/5th Facility along with 15 other wireless facilities, and the City Council approved up to eight of these facilities, which will help serve the western section of the City. No substantial evidence was provided to demonstrate that (a) this Manhattan/5th Facility is necessary, in addition to the eight approved sites, to sufficiently improve service or (b) alternative locations in the nearby commercial area are infeasible or ineffective.

D. The same reasons for this denial would apply to any applicant proposing a similar facility in this location. If it is feasible and effective to service this section of the City with a facility located in a commercial area, the City would encourage wireless providers to first explore an option on a commercial property. By denying the Manhattan/5th Facility as proposed, the City intends to help facilitate efforts by the Applicant, along with other cellular providers, to improve service in this area without significantly impacting aesthetics.

E. The denial does not preclude the Applicant from proposing an alternate location for the facility. Rather, as stated above, the City has encouraged the Applicant to explore an alternative location for the Manhattan/5th Facility. To this end, the City Council has directed the Applicant and City staff to explore the possibility of siting this facility in the commercial district. In the event that re-location to a commercial property is either infeasible or ineffective, the Applicant is encouraged to propose an alternate location or design that would achieve the desired service coverage while minimizing aesthetic impacts.

F. The City Council has concurrently approved up to eight other wireless facilities. The Applicant has failed to establish that this particular facility, in the proposed location, is needed to fill any significant gap in wireless coverage. Further, the Applicant also failed to establish that it is the least intrusive means despite evidence at the public hearing that there are feasible alternatives that were not previously considered and that would be less aesthetically intrusive.

G. The project, as described in the application and accompanying materials, does not conform to the certified Manhattan Beach Local Coastal Program. Pursuant to Chapter A.12, the purposes of the Residential Districts and the Medium-Density Residential District are to isolate residential uses from incompatible commercial and industrial uses and facilities, to ensure adequate light and open space for each residence, and to encourage reduced visual bulk. The Manhattan/5th Facility, as proposed, would not conform to the purposes or

vision for the residential neighborhood because this pole-mounted antenna would cause severe negative aesthetic impacts to adjacent residents and the ground-mounted cabinet would cause a physical and aesthetic obstruction in an area densely populated by residents and visitors.

H. The project is not located between the first public road and the sea and, therefore, the finding regarding conformity with the public access and recreation policies is not applicable.

I. Based on the current wireless service coverage existing in the area, and due to the approval of up to eight new wireless facilities enhancing the Applicant's service coverage in the area, denial of this one facility would neither have the effect of prohibiting provision of personal wireless service nor prevent the Applicant from filling any significant gap in service coverage.

J. The Manhattan/5th Facility, as proposed, has the potential to result in significant adverse impacts in the areas of land use and aesthetics that have not been adequately mitigated. These potential impacts result from the proximity of the facility to residential uses and the failure to adequately analyze other less impactful alternative locations and designs to provide service to the areas. The Applicant has not provided sufficient information to demonstrate that there is no potential for such impacts to occur. Further, impacts to views from private residences constitute substantial evidence of potential aesthetic and land use impacts resulting from the Manhattan/5th Facility.

SECTION 5. Based upon the foregoing, the City Council denies the application, without prejudice.

SECTION 6. The City Council's decision is based upon each independent and separate ground stated herein.

SECTION 7. The City Clerk shall mail by first class mail, postage prepaid, a certified copy of this Resolution and a copy of the affidavit or certificate of mailing to the Applicant and any other persons or entities requesting notice of the decision.

SECTION 8. The City Council hereby invites and encourages the Applicant to re-apply and consider a better location.

SECTION 9. The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED and ADOPTED December 5, 2017.

AYES:

NOES:

ABSENT:

ABSTAIN:

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AMY HOWORTH  
Mayor

ATTEST:

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LIZA TAMURA  
City Clerk