

## **RESOLUTION NO. 17-0154**

### **RESOLUTION OF THE MANHATTAN BEACH CITY COUNCIL DENYING A TELECOM PERMIT AND COASTAL DEVELOPMENT PERMIT CA-16-48 FOR THE CONSTRUCTION AND OPERATION OF WIRELESS FACILITY PROPOSED TO BE LOCATED AT MANHATTAN AVENUE AND 11TH STREET**

#### **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 11th Street (11th Street Facility). Concurrently, the Applicant submitted 15 other applications for wireless telecommunications facilities at other locations in the City of Manhattan Beach.

SECTION 2. Pursuant to Municipal Code Chapter 13.02, the 11th Street Facility, as a “non-standard facility,” is reviewed by the Director of Community Development and is subject to final review by the City Council. On October 17, 2017, two Councilmembers requested that the Director’s decision be reviewed by the City Council.

SECTION 3. 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 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 4. The record of the public hearing indicates the following:

A. This 11th Street Facility is proposed in a commercial area on a new arm installed on an existing utility pole.

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 11th Street Facility is proposed in the non-appealable 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 5.** 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 11th Street Facility would site a wireless antenna and cabinet on a utility pole in a commercial area. As originally proposed, both the cabinet and the antenna were flush-mounted to the utility pole. However, the Applicant altered this design at the request of Southern California Edison to affix a new L-shaped arm to the utility pole, on which the facilities would be mounted. This arm would increase view obstructions and increase the utility pole's aesthetic prominence to the detriment of the neighborhood's aesthetics. Thus, due to the recently revised design plan for this facility, it would have significant aesthetic impacts.

B. The City suggested that the Applicant relocate the 11th Street Facility to one of the commercial properties on the block or install the facility on a

light pole. As discussed above, the Applicant recently revised the 11th Street Facility's design at the request of Southern California Edison. Instead of flush-mounting the antenna and cabinet to the utility pole, the Applicant's current proposal would involve a new arm protruding from the side of the utility pole. Because the original design was less obstructive, the Applicant had not considered other alternatives such as installing a new light pole at the proposed location. Moreover, there are several commercial properties on this City block, and the 11th Street Facility could potentially be installed on a commercial property instead of pole in the right-of-way. At the public hearing, the City Council considered approving the 11th Street Facility with a condition of approval requiring the Applicant to implement one of these two alternatives. However, the Applicant requested that the City Council deny the application so that the Applicant could consider a range of alternatives to 11th Street Facility as proposed.

C. Denial of the 11th Street Facility, to allow the Applicant and City staff time to explore other alternatives, would not result in a competitive disadvantage because other providers have not yet established telecommunications facilities in this area of the City and because the two alternatives discussed at the public hearing would be equally effective in providing service to the target service area. Further, the Applicant proposed the 11th Street Facility along with 15 other independently operative facilities in the area, and the City Council approved up to eight of these facilities. No substantial evidence was provided to demonstrate that (a) this particular facility, at the proposed location, is necessary, or (b) the alternative locations are infeasible or ineffective.

D. The bases for this denial would apply to any applicant proposing a similar facility in this location. At the public hearing, the City Council expressed concerns that affixing an L-shaped arm on the utility pole would exacerbate the bulk of infrastructure in the street, which would negatively impact aesthetics. When feasible and effective, the City encourages wireless providers to avoid increasing the bulk of infrastructure and to site new facilities on commercial properties. By denying the 11th Street 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 discussed above, the City has encouraged the Applicant to relocate or redesign the 11th Street Facility. Further, the City Council offered to approve the facility with a condition of approval requiring the Applicant to implement one of these alternatives. However, the Applicant requested a denial so it could explore a range of alternatives that were not previously considered. To this end, the City Council has directed the Applicant and City staff to explore these and other alternative designs or locations.

F. The project, as described in the application and accompanying materials, and even with the Director's imposed conditions of approval, does not conform with the certified Manhattan Beach Local Coastal Program. Pursuant to

Chapter A.12, the purposes of Commercial Districts and the Downtown Commercial District are to ensure that development is harmonious with the character of the area, to minimize impacts on adjacent residential districts and to serve the local community and beach visitors. A wireless facility in the general area could conform to these provisions of the Local Coastal Program. Nevertheless, the 11th Street Facility, as proposed with the installation of a L-shaped protuberance on the utility pole, would cause severe negative aesthetic impacts to the City's downtown streetscape. This area of the City's downtown is a pedestrian-focused area where the quaint, small-town aesthetic is particularly important to the City's character and economy.

G. 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.

H. 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 11th Street 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.

I. The 11th Street 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, based on the photo simulations, constitute substantial evidence of potential aesthetic and land use impacts resulting from the 11th Street Facility.

SECTION 6. Based upon the foregoing, the City Council denies the application, without prejudice.

SECTION 7. The City Council's decision is based upon each independent and separate ground stated herein.

SECTION 8. 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 9. The City Council hereby invites and encourages the Applicant to re-apply and consider a better location.

SECTION 10. 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