

## **RESOLUTION NO. 17-0159**

### **RESOLUTION OF THE MANHATTAN BEACH CITY COUNCIL DENYING A TELECOM PERMIT FOR THE CONSTRUCTION AND OPERATION OF A WIRELESS FACILITY PROPOSED TO BE LOCATED AT CHURCH STREET AND 13TH/14TH STREETS**

#### **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 Church Street and 13th/14th Streets (Church 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 Church 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 application and 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. The Church Street Facility is proposed in a residential community, comprised of primarily single family residences and with limited sidewalk space.

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. 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.

D. A number of residents in close proximity to the proposed site testified that the proposed antenna would directly obstruct views from their residences and that the facility would detrimentally impact neighborhood aesthetics.

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 Church Street Facility is proposed in a residential community and in close proximity to residential homes. The proposal includes an antenna mounted to a utility pole on Church Street between 13th Street and 14th Street and a ground-mounted cabinet on Church Street near the corner of 14th Street. This antenna would increase view obstructions and draw attention to the utility pole, to the detriment of views from adjacent residences and the aesthetics of the residential streetscape. Thus, the proposed antenna would cause significant aesthetic impacts.

B. The City suggested that the Applicant relocate the Church Street Facility to the American Martyrs Church or mount the antenna to a new pole near the corner of 14<sup>th</sup> Street and Church Street. The Applicant had not considered other alternatives such as installing a new pole at the proposed location at the corner of Church Street and 14<sup>th</sup> Street. At the public hearing, the Applicant acknowledged that the antenna could be mounted to a new pole near the corner of 14<sup>th</sup> Street and Church Street or could be sited on the adjacent property of American Martyrs Church. By siting the Church Street Facility at American Martyrs Church, the wireless facility could provide wireless service to the target area while reducing aesthetic impacts to the residential neighborhood. At the public hearing, no evidence was presented that these alternatives would be

infeasible. Accordingly, the Applicant and the City are exploring the alternative locations and alternative designs.

C. Denial of the Church Street Facility, to allow the Applicant and City staff time to explore these 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 Church 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 location on another property is infeasible or ineffective.

D. The bases for this denial would apply to any applicant proposing a similar facility in this location. When feasible and effective, the City would encourage wireless providers to first explore non-residential locations and to avoid increasing the bulk of infrastructure resulting in negative aesthetic impacts. By denying the Church Street Facility as proposed, the City intends to help facility efforts by the Applicant, along with other cellular providers, to improve service in this area without significantly impacting aesthetics.

E. The denial shall not preclude the Applicant from proposing an alternate location for the facility. Rather, as discussed above, the City has encouraged the Applicant to explore the alternative location at American Martyrs Church or an alternative location on a new pole. To this end, the City Council has directed the Applicant and City staff to explore these and other alternative designs or locations.

F. 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 Church 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.

G. The Church 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, and testimony at the public hearings, constitute substantial evidence of potential aesthetic and land use impacts resulting from the Church 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