

RESOLUTION NO. 19-0078

RESOLUTION OF THE MANHATTAN BEACH CITY COUNCIL APPROVING A TELECOM PERMIT (TCP 18-09) FOR THE CONSTRUCTION AND OPERATION OF A WIRELESS TELECOMMUNICATIONS FACILITY (MBCH16) LOCATED IN THE VETERANS PARKWAY NEAR THE INTERSECTION OF ARDMORE AVENUE AND 9TH STREET/9TH PLACE, SUBJECT TO CONDITIONS

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 a telecommunications facility proposed to be located at Ardmore Avenue and 9th Street (the “oDAS Facility”).

SECTION 2. Pursuant to Municipal Code Chapter 13.02, the oDAS Facility is a “non-standard facility,” and thus is reviewed by the Director of Community Development and is subject to final review by the City Council. The Director conditionally approved the application.

SECTION 3. On June 18, 2019, the City Council conducted a public meeting to consider the application. The Council considered all evidence, both written and oral, presented during the public meeting. The Applicant’s representatives spoke in favor of the application. Residents spoke against the application. 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. At the June 18 meeting, a number of residents opposed the proposed location of the oDAS Facility. They testified that the proposed antenna would obstruct views and that an alternative design and location in the commercial area or on the Veterans Parkway was not fully explored. The Applicant offered to explore an alternative site in the Veterans Parkway greenbelt. The City Council directed the Applicant to bring back a revised alternative facility design and location in the Veterans Parkway, and bring the alternative back to the Council to consider on July 16, 2019.

SECTION 6. Staff sent out new notices to residents in an expanded radius surrounding the new location. On July 16, 2019, the City Council considered AT&T’s request for alternative designs and locations for the proposed Ardmore Avenue oDAS facility in Veterans Parkway. After hearing public testimony, and reviewing the alternatives the City Council directed staff to prepare a resolution conditionally approving an alternative design and location in

the Veterans Parkway for Council consideration on August 6, 2019. The record of the public meetings indicates the following:

A. The Veterans Parkway near Ardmore Avenue and 9th Street/9th Place Facility is proposed in an Open Space. It includes a new pole with equipment mounted on the pole.

B. Municipal Code Chapter 13.02.060 regulates the issuance of telecommunications permits on City property. Pursuant to Municipal Code Section 13.02.100, the City must approve a telecommunications permit unless 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 Municipal Code Section 13.02.060, the City may require rent or other compensation for any facility on City property. 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.

SECTION 7. Based upon substantial evidence in the record, including the evidence presented at the public meetings, the staff reports and presentations, the attachments to the staff reports, and all testimony at the public meetings, the City Council hereby finds:

A. Based upon the evidence presented, the City Council could not make the findings necessary to deny the revised proposal required by Municipal Code Section 13.02.100. The subject facility will minimize aesthetic impacts because it is in Veterans Parkway and will be integrated into the surrounding trees and landscaping. In 2017, the Applicant had proposed a location for this facility immediately adjacent to residences, but the Council denied the application, and suggested that it consider an alternative site that is not adjacent to homes.

SECTION 8. The oDAS Facility is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15061(b)(3) and 15303 (Class 3, New Construction of Small Structures). The Veterans Parkway at Ardmore Avenue and 9th Street/9th Place Facility presents no unusual circumstances and there are no environmental resources of hazardous or critical concern.

SECTION 9. The City Council's decision is based upon each independent and separate grounds stated herein.

SECTION 10. The City Council hereby approves the telecom permit for the Veterans Parkway at Ardmore Avenue and 9th Street/9th Place Facility, subject to the conditions set forth in Exhibit A. In that the new site is owned by the City, the City requires a license and the Facility will not be installed until after the license, approved as to form by the City Attorney, is fully executed.

SECTION 11. 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 12. The City Clerk shall certify to the adoption of this Resolution.

ADOPTED on August 6, 2019.

AYES:
NOES:
ABSENT:
ABSTAIN:

NANCY HERSMAN
Mayor

ATTEST:

LIZA TAMURA
City Clerk

Exhibit A
AT&T Telecommunication Facilities Conditions of Approval
Veterans Parkway at Ardmore Avenue and 9th Street/9th Place (MBCH18
TCP 18-10)

1. Terms and Conditions are Perpetual; Recordation of Covenant. The provisions, terms and conditions set forth herein are perpetual, and are binding on New Cingular Wireless PCS, LLC d/b/a AT&T Mobility ("Permittee" hereinafter) and its successors-in-interest. Further, the Permittee shall record a covenant indicating its consent to the conditions of approval of these conditions with the Office of the County Clerk/Recorder of Los Angeles. The covenant is subject to review and approval by the City Attorney. Permittee shall deliver the executed covenant, and all required recording fees, to the Department of Community Development within 30 days of this approval. If Permittee fails to deliver the executed covenant within 30 days, this approval shall be null and void and of no further effect. Notwithstanding the foregoing, the City, upon a request by Permittee, may grant an extension to the 30-day time limit.
2. Should public necessity require, Permittee shall remove or relocate the permitted facility at no cost to the City upon 30 days' written notice to the permittee from the City, and Permittee shall reimburse the City for all its costs and expenses incurred in connection with the removal of such facility. If the facility is removed and lighting and/or security cameras or other City facilities have been placed in or on the AT&T facility, those City facilities will be replaced by the Permittee, subject to review and approval of the City.
3. A certificate of insurance in amounts and form satisfactory to the City Risk Manager shall be filed with the City upon the granting of the telecom permit and shall be maintained in good standing at all times so long as the facility exists, releasing the City from any and all liability whatsoever arising from the granting of such permit or Permittee's installation, operation or maintenance of the facility.
4. To the extent possible, the facility shall be co-located with similar facilities and all work done coordinated to coincide to the maximum extent possible with other work being done in the right-of-way and Veterans Parkway to minimize disruption to the public.
5. The Permittee shall be required to camouflage and make inconspicuous any facility permitted hereunder by having the size, location of facilities and selection of colors and finishes specified to match and blend the facility with its surroundings in accordance with plans to be reviewed and approved by Community Development Director ("Director" hereinafter).
6. The Permittee shall install additional conduit(s) or fiber in all trenches for future City fiber or other use, subject to review and approval of the

Directors of Community Development, Public Works, and Information Technology.

7. All antennas or telecom equipment shall be located a minimum of ten feet from a residential building.
8. Provide verification that the proposed facilities complies with all applicable rules, regulations and licensing requirements of the FCC including a report prepared by an engineer, prepared at the Permittee's expense, which quantifies the facilities radio frequency (RF) exposures and compares them to FCC adopted standards. Following installation of the proposed facilities, a subsequent field report shall be submitted detailing the facilities cumulative field measurements of RF power densities and RF exposures, confirming that the facilities complies with accepted FCC standards, if applicable.
9. A Construction Management and Parking Plan (CMPP) including but not limited to a construction schedule showing start and end dates, project milestones, and emergency contact information shall be submitted by the Permittee and reviewed and approved to the satisfaction of Director, prior to issuance of a permit.
10. The Director reserves the right to require phasing of construction projects or limit the hours of construction to reduce the adverse impacts on the public health, safety and welfare. The City Traffic Engineer and City Engineer has the authority to approve or reject a method of excavation or other construction methodology.
11. The Permittee shall obtain all necessary construction permits and shall comply with all applicable building and safety code requirements. The Permittee shall also obtain all necessary right-of-way and related permits and shall comply with all applicable Public Works regulations and standards, including but not limited to repair and replacement of adjacent public improvements, landscaping, sidewalk, and other public improvements.
12. The Permittee shall comply with all terms and conditions of the License Agreement between the City and Permittee. The Agreement shall be fully executed prior to Permit issuance.
13. All electrical and phone service to the proposed facility shall be placed in underground conduits.
14. The Permittee agrees to maintain and improve all portions of said facility, including but not limited to antennas, pole, and equipment cabinets with new updated technology as it becomes available and used by the Permittee for other distributed antenna system or small cell facilities in the City, and that upon cessation of use or abandonment of the facility it shall be promptly removed at the expense of the Permittee.

15. The facilities shall be in substantial conformance with the photo simulations provided in the July 16, 2019 City Council agenda packet, and Project descriptions submitted to, and approved by, City Council on August 6, 2019. Permittee shall submit a final plan incorporating all of the refinements, modifications, and conditions approved within 90 days of the date of approval. Final plans, including but not limited to the precise location of all facilities, will be reviewed during the plan check process and will be subject to field inspection prior to permit issuance. The Director shall determine whether any deviation from the approved facilities is substantial which requires an amendment to the approval. Any substantial deviation from the approved plans or facilities descriptions shall require approval from City Council.
16. The facilities, shall be developed and utilized within a period detailed in the License Agreement and, if not so developed and utilized, such permit automatically shall become null and void at the expiration specified in the Agreement. The permittee may apply in writing for one extension of time, not to exceed six months, within which to develop and use such permit. The Director, in their sole discretion after due consideration, shall either grant or deny the extension of time for such development and use.
17. *Indemnity, Duty to Defend and Obligation to Pay Judgments and Defense Costs, Including Attorneys' Fees, Incurred by the City.* Permittee shall defend, indemnify, and hold harmless the City, its elected officials, officers, employees, volunteers, agents, and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees") from and against any claims, damages, actions, causes of actions, lawsuits, suits, proceedings, losses, judgments, costs, and expenses (including, without limitation, attorneys' fees or court costs) in any manner arising out of or incident to this approval, related entitlements, or the City's environmental review thereof. Permittee shall pay and satisfy any judgment, award or decree that may be rendered against City or the other Indemnitees in any such suit, action, or other legal proceeding. The City shall promptly notify Permittee of any claim, action, or proceeding and the City shall reasonably cooperate in the defense. If the City fails to promptly notify Permittee of any claim, action, or proceeding, or if the City fails to reasonably cooperate in the defense, Permittee shall not thereafter be responsible to defend, indemnify, or hold harmless the City or the Indemnitees. The City shall have the right to select counsel of its choice. Permittee shall reimburse the City, and the other Indemnitees, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Nothing in this Section shall be construed to require Permittee to indemnify Indemnitees for any Claim arising from the sole negligence or willful misconduct of the Indemnitees. In the event such a legal action is filed challenging the City's determinations herein or the issuance of the approval, the City shall estimate its expenses for the litigation. Permittee

shall deposit that amount with the City or enter into an agreement with the City to pay such expenses as they become due.

Site Specific Conditions

18. The Permittee shall also install lighting, as well as wiring and other required infrastructure to support possible future security cameras, on the pole as determined and approved by the City.