



## Legislation Text

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**File #:** 19-0233, **Version:** 1

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**TO:**

Honorable Mayor and Members of the City Council

**THROUGH:**

Bruce Moe, City Manager

**FROM:**

Anne McIntosh, Community Development Director

Laurie Jester, Planning Manager

Jason Masters, Assistant Planner

**SUBJECT:**

Consider: (a) Applications from AT&T for: Four Wireless Telecommunications Facilities Permits for oDAS Nodes in the Public Right-of-Way on Existing Poles; and Modification to an Existing Rooftop Facility at City Hall; (b) Refunding Appeal Fees; and (c) Making an Environmental Determination in Accordance with the California Environmental Quality Act (Community Development Director McIntosh).

**DIRECT STAFF TO PREPARE RESOLUTIONS EITHER: (A) CONDITIONALLY APPROVING OR (B) DENYING REQUESTS AND CONSIDER REFUNDING APPEAL FEES**

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**RECOMMENDATION:**

Staff recommends that:

1. After consideration, direct staff to prepare Resolutions for the July 2, 2019, City Council meeting for final action on the oDAS node applications;
2. Consider the modification to the City Hall rooftop facility; and
3. Provide direction on refunding appeal fees.

**FISCAL IMPLICATIONS:**

The City will receive revenue for the poles in the public right-of-way through a Master License Agreement and for City Hall through the existing Lease Agreement.

**BACKGROUND:**

AT&T is proposing a multi-node oDAS system to enhance cellular telephone coverage particularly in the Coastal Zone/Sand Section and adjacent areas where coverage is currently marginal or non-existent. See the attached GIS map for the location of all Cellular Antenna sites in the City. On December 5, 2017, the City Council adopted Resolutions approving eight Nodes, and denying seven Nodes, and one additional Node was denied administratively by the Community Development Director. The City Council directed staff to work with the applicant to explore alternative locations, and designs in an effort to mitigate ADA impacts on sidewalks, and potential aesthetic impacts on

businesses, residents and the City as a whole. Further, the Council directed the applicant to demonstrate that the proposed locations are required due to a significant gap in coverage, and that no alternative sites are available that are less intrusive than the proposed sites. The FCC has now limited the revenue to \$200 per year per site.

City Hall has had cell antennas (Macro-site) on the City Hall rooftop since 1994. With the construction of the library that blocks some coverage, as well as changes in capacity, coverage needs, and providers, modifications to the existing City Hall antennas are needed. The City has an existing Lease Agreement for the City Hall site that addresses the revenue for this proposed modification.

### New AT&T Applications

Last summer, AT&T filed applications for nine oDAS Nodes, eight as resubmittals of denied locations, and one application is a completely new location on a City-owned traffic light pole. AT&T also applied for a modification to an existing Macro-site, a roof-mounted facility on City Hall. In April and May of this year, the Community Development Director approved nine proposed AT&T oDAS locations. Of these nine oDAS sites, four were appealed, and the City Hall location requires City Council action. Of the four appeals, two are proposed on the previously proposed pole locations as the prior denials (Group A) and two are relocated from the prior denials (Group B). The City Hall site is a modification to an existing site (Group C). The applications chart (Attachment) provides a list and description of the proposed four sites that have been appealed, and the one City Hall site.

All of the previous AT&T oDAS applications included installation of underground vaults and an aboveground equipment cabinet or pole mounted equipment in the public right-of-way, installed by AT&T. Per Council's directions, AT&T has redesigned all new facilities to have pole mounted equipment, they have removed all proposed ground mounted equipment cabinets, and they are not requesting any new facilities with the antennae hanging over the street on an antenna "arm." All of the street lights, the traffic light and the utility pole will be removed and replaced by AT&T in the same location, at the same height, and with same or similar design, but with an antenna on top of or attached to each pole.

### Appeal Fees

Three antenna applications were appealed by residents, three were appealed by a Council member. Two of the appellants paid the \$500 appeal fee. On April 16, 2019, during the discussion of the Urgency Ordinance related to Wireless Facilities. Council members stated that they would like to refund appeal fees. The City Council will consider taking final action to refund the appeal fees to the two appellants.

### Open House

Earlier today, on June 18, 2019, the City hosted a Telecommunications Open House to allow Telecom Providers and contractors an opportunity to help educate residents, business owners, and interested individuals about Telecommunication Facilities. The Open House included discussions on the different types of facilities; City, State, and Federal regulations; and the providers' efforts to increase wireless coverage and capacity within the City. Staff may provide an oral report summarizing the open house.

## **DISCUSSION:**

### AT&T oDAS System

The AT&T Wireless network is fairly well established throughout the City, particularly along and east

of Sepulveda Boulevard, but is weak in the beach area and adjacent areas (see Attachments for maps of Citywide Cellular Antennae sites and AT&T Existing Coverage). As indicated on the attached AT&T Proposed Coverage Map (Attachment), the proposed facilities significantly enhance coverage from the beach to throughout the coastal area and particularly in the area immediately adjacent to Manhattan and Highland Avenues. Public comments in response to the thousands of public notices sent out for the all of the proposed sites are attached (Attachment). Any later comments will be distributed separately.

Staff has worked with the applicant since the previous submittal of 16 applications to identify alternatives, when available, to mitigate concerns noted in the public comments from the previous City Council meetings, and as directed by the Council. Staff has produced a Comparison Chart of each of the four proposed oDAS sites before the City Council versus the denied site (Attachment) based on the applicant's materials. The Comparison Charts show the 2019 proposed and 2017 denied photo simulations, with information on why the 2019 location and design is the best option and why the Council denied the 2017 site. The Comparison Charts also provide a map with an Alternative Site Analysis aerial view and information on the alternative sites and why they are not considered the best option. Site plans for each of the locations are also included as an Attachment and are available on the City website at the following link:

<https://www.citymb.info/departments/community-development/planning-zoning/current-projects-programs/telecommunication-cell-site-information>.

Staff will provide a presentation at the public meeting which will include the information, graphics, and visual presentations as provided in the attachments to this report, in addition to a description of the proposed modification of the facility located at City Hall.

#### AT&T City Hall Roof-Top Macro-site Modification

AT&T is also requesting approval to modify the existing macro-site on the roof of City Hall. On September 18, 2018, the City Council adopted a Resolution approving an updated lease amount, including a clause for additional revenue resulting from the anticipated future expansion of this facility. The existing arrays are located on the south side of City Hall nearest the library, and the northwestern corner near 15<sup>th</sup> Street. AT&T is requesting to make changes to the City Hall facility as a result of the impact the Library building has had on their coverage (see Attachment for existing and proposed coverage maps of City Hall). Accordingly, they are proposing to relocate the southern array to the eastern most corner of City Hall, and install a new array near the southwest portion of City Hall near Highland Avenue. Manhattan Beach Municipal Code (MBMC) Section 13.02.060, states that a telecommunications facility located on public property requires express written consent of the City Council, who may require rent to be paid for said facility. The City Council approved a new lease agreement with AT&T on September 18, 2018, which included a provision to increase the rent amount should the lessee (AT&T) increase the leased area. Accordingly, as a result of the proposed application, AT&T will be required to pay an additional \$967.52/month. The Comparison Charts (Attached) provide photo simulations, descriptions, and an aerial view of the existing and proposed Telecom Facility on City Hall. A site plan is also available as an Attachment and on the City website at the following link:

<https://www.citymb.info/departments/community-development/planning-zoning/current-projects-programs/telecommunication-cell-site-information>.

### Telecommunications Regulations

The four oDAS applications are subject to a 150-day shot clock, and the City Hall site is subject to a 90-day shot clock, as regulated by the Federal Communications Commission. The City and AT&T have agreed to Tolling Agreements that initially extended the shot clock through June 25, 2019, and AT&T has indicated that it will extend the shot clock to July 8, 2019. If the Council does not take action before the shot clock expires, such applications could be deemed approved. Accordingly, staff recommends that the Council provide direction to staff on all four oDAS Nodes, and the City Hall application tonight. Based on Council's direction, Resolutions will be prepared for consideration on July 2, 2019.

Local discretion to deny wireless telecom facilities is limited by the Federal Telecommunications Act. This law prohibits cities from denying a wireless facility based on potential health or environmental impacts of radio frequency emissions. Additionally, cities cannot unreasonably discriminate among similar carriers or impose regulations and deny a facility if the denial precludes a carrier from addressing a significant gap in its wireless coverage. The Federal Communication Commission (FCC) Telecommunications Act regulations are available at the following link:

[<https://www.fcc.gov/general/telecommunications-act-1996>](https://www.fcc.gov/general/telecommunications-act-1996).

Additionally, a summary of September 2018 FCC ruling and order restricting the City's authority to regulate small wireless facilities in the public rights-of-way is attached.

### Municipal Code Findings and Conditions

Pursuant to MBMC Section 13.02.100 (Denial of Telecommunications Permit), the City Council shall grant a telecom permit unless the decision maker can make the following findings. These findings apply to all of the subject sites.

- A. That installation of the facility will have significant negative impacts to the extent that it substantially interferes with the use of other properties;
- B. That a feasible alternative non-residential site is available for the proposed facility;
- C. That denial of the proposed facility will not result in a competitive disadvantage to the applicant;
- D. That the denial does not discriminate against the applicant in favor of similarly situated competitors; and
- E. That the denial shall not preclude the applicant from proposing an alternate location for the facility.

The comparison charts provide information on visual impacts and alternative site analysis, as discussed in the Code findings. The facilities all have been designed to specifically address the direction provided by the City Council. AT&T and City staff will be available at the hearing to provide further information and technical details for each application.

MBMC Section 13.02.030(G) imposes mandatory conditions on the telecom permits proposed in the public right-of way and allows the Director or City Council to impose additional conditions deemed necessary or advisable. The findings and conditions of approval that were imposed by the Director on the four oDAS permits are provided as an Attachment as well as online at the following link:

<https://www.citymb.info/departments/community-development/planning-zoning/current-projects-programs/telecommunication-cell-site-information>.

The proposed findings and conditions of approval for the City Hall site are included as an Attachment.

#### Local Coastal Program (LCP) Requirements

While one of the oDAS Facilities and the existing Facility at City Hall are within the Coastal Zone, Coastal Development Permits (CDP) are not required for these facilities as the projects are exempt as alterations and additions to existing facilities pursuant to Section A.96.050 B of the City's Local Coastal Program.

#### **PUBLIC OUTREACH:**

For the proposed sites within the public right-of-way, staff mailed several public notices notice of the application, notice of the decision and notice of the appeal, to property owners within 500 feet of each location, and written comments received as well as the appeal letters are included as an Attachment. For the City Hall site, staff provided notice to all property owners located within 500 feet of the facility at least 10 calendar days prior to tonight. Additionally, as previously stated, a Telecommunications Open House took place earlier today to further increase public outreach.

#### **ENVIRONMENTAL REVIEW:**

The City has reviewed the proposed sites ("project," for CEQA purposes) for compliance with the California Environmental Quality Act (CEQA) and has determined that the project qualifies for a Class 3 categorical exemption pursuant to Section 15303(d) of the State CEQA Guidelines since the proposed project requires installation of small new equipment and facilities and the conversion or replacement of existing poles where only minor modifications are made in the exterior of the structure. Thus, no further environmental review is necessary.

#### **LEGAL REVIEW:**

The City Attorney has reviewed this report and determined that no additional legal analysis is necessary.

#### **ATTACHMENTS:**

1. Five AT&T Applications Chart
2. Five Project Comparison Charts
3. Site Plan (Five Sites)
4. Existing and Proposed Citywide AT&T Coverage Maps
5. Existing and Proposed City Hall Coverage Maps
6. GIS Citywide Cell Sites
7. Appeal Letters and Public Comments
8. Directors Approved Findings and Conditions (Four Sites)
9. Proposed Findings and Conditions (City Hall Site)
10. City Hall Lease
11. Summary of September 2018 FCC Ruling and Order