



**SMALL CELL NODES
APPEALS**

AGENDA REPORT SUMMARY

Meeting Date: December 17, 2019

Subject: Appeals of Denials of Applications to Install Wireless Telecommunications Facilities in the Public Right-of-Way by Verizon Wireless and AT&T Mobility

Prepared by: Vency Woo, GIS Technician

Reviewed by: Jim Sandoval, Engineering Services Director

Approved by: Chris Jordan, City Manager

Attachment(s):

1. Letter of Denial Decision for the Verizon Wireless application dated September 11, 2019
2. Letters of Denial for twelve (12) AT&T Mobility applications dated September 17, 2019
3. Appeal Letter submitted by Verizon Wireless dated September 16, 2019
4. Appeal Letters submitted by AT&T Mobility dated September 20, 2019
5. Appeal Letter and supplemental information submitted by Verizon Wireless dated October 23, 2019

Electronic Attachments:

Attachments listed below may be found at: <https://www.losaltosca.gov/citycouncil/page/city-council-special-meeting-55>

6. AT&T's twelve (12) applications
7. Verizon Wireless application
8. City Letter to AT&T dated August 13, 2019
9. City Letter to Verizon Wireless dated August 13, 2019
10. AT&T Letter to City Attorney dated August 21, 2019
11. Notices of Administrative Public Hearing on the Appeals
12. Legal Memo from City Attorney dated October 21, 2019
13. Supplemental documentation from Verizon dated October 25, 2019
14. Supplemental documentation from AT&T dated October 28, 2019
15. Tolling Agreement between City and Verizon dated November 11, 2019
16. Tolling Agreement between City and AT&T dated November 25, 2019
17. City Letter to AT&T requesting additional information dated November 25, 2019
18. Verizon Response to City's Request for Additional Information dated December 10, 2019
19. AT&T Response to City's Request for Additional Information dated December 4, 2019
20. Correspondence from the public

Initiated by:

Verizon Wireless (Verizon) and AT&T Mobility (AT&T) - Appellants

City Manager

CJ

Reviewed By:

City Attorney

CD

Finance Director

SE



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Previous Council Consideration:

Council agendaed a public hearing on the appeals on October 29, 2019 and at that meeting continued the matter to this meeting, with the agreement of both Verizon and AT&T.

Fiscal Impact:

None

CEQA:

A denial of an application does not require a CEQA determination. An approval of an application would require a CEQA determination, and categorical exemptions may apply, including, but not limited to, the following: State CEQA Guidelines section 15302 (replacement or reconstruction), State CEQA Guidelines section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines section 15304 (minor alterations to land).

Policy Question(s) for Council Consideration:

None

Staff Recommendation:

The City Council hold an Administrative Public Hearing for the appeals of denials of applications to install wireless telecommunications facilities in the public rights-of-way and consider whether or not the Appellants have demonstrated that each application should be approved and, if Council determines any applications should be denied, consider whether appellants have demonstrated that exceptions from Chapter 11.12 of the Municipal Code are warranted for any of their proposed facilities.



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Purpose

City Council to consider appeals by Verizon and AT&T of the denial decisions on applications to install wireless telecommunications facilities in the public right-of-way and, if necessary, consider whether or not the Appellants have demonstrated that exceptions from Chapter 11.12 of the Municipal Code are warranted for each of the proposed facilities.

Background

Between March 2019 and May 2019, City received thirteen (13) permit applications which are now before the City Council for final action - one from Verizon and twelve (12) from AT&T – for the placement of wireless telecommunications facilities on existing or replaced utility poles located in the public right-of-way at various locations within the City. All applications were deemed incomplete due to missing documents, and all applicants were notified.

On August 5, 2019, the City of Los Altos adopted Ordinance 2019-460 and Resolutions 2019-35 (Design Standards) and 2019-36 (Fees), which collectively addressed placement of wireless telecommunications facilities within the City limits. The new Ordinance requires that the new provisions be applied to all pending permit applications.

On August 13, 2019, the City sent letters to Verizon and AT&T informing them that the City had adopted the Ordinance and Resolutions, which would be applied to the pending applications. The City explained that based on the proposed locations and designs of the proposed wireless telecommunications facilities, it was treating the applications as requests for exceptions under Section 11.12.090 of the Ordinance. The City gave Verizon and AT&T an opportunity to submit additional information to support their applications by August 22, 2019.

Verizon did not provide any additional information or documents in response to the City's letter.

AT&T submitted a letter dated August 21, 2019, which argued that the Ordinance and Design Standards Resolution should not apply to AT&T's applications, and proposed to toll the FCC shot clock in order to give the City additional time to process the applications under the regulations that were in effect at the time the applications were submitted.

Shortly thereafter, the City Manager denied all of the applications. The letters of denial decision were delivered via email to Verizon and AT&T on September 11, 2019 and September 17, 2019, respectively. Each letter explained the reasons for denial, and the applicants were informed that they had the opportunity to file appeals of denial decisions to the City Clerk within five (5) days of the decision, pursuant to Section 11.12.210 of the Ordinance.



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Both applicants submitted timely requests for appeal. Verizon filed its appeal of denial decision on September 16, and AT&T filed its appeals of denial decisions on September 20, 2019.

An Administrative Public Hearing was scheduled to hear the appeals for all thirteen (13) applications. Property owners and residents within 1,000 feet from the proposed project areas were mailed notifications of this Administrative Public Hearing on October 15, 2019. City staff also received confirmation from the applicants that representatives from Verizon and AT&T planned to attend the Administrative Public Hearing scheduled on October 29, 2019.

Shortly before the scheduled Administrative Public Hearing, the City received supplemental information from Verizon and AT&T on October 25, 2019 and October 28, 2019, respectively. With the consideration of allowing additional time for the City to consider the newly-submitted supporting documentation, representatives from both Verizon and AT&T agreed to reschedule the Administrative Public Hearing to a later date. The City entered into tolling agreements with Verizon on November 11, 2019 and with AT&T on November 25, 2019 to extend the time for final action on the applications to no later than December 31, 2019.

The Administrative Public Hearing to hear the appeals for all thirteen (13) applications is rescheduled to December 17, 2019. Notifications for the hearing were mailed to property owners and residents within 1,000 feet of the proposed wireless telecommunications facilities on November 26, 2019.

Staff reviewed the supplemental materials submitted by Verizon and AT&T, in addition to all of the materials submitted previously, and found that Verizon's application package was complete and AT&T's was not. The City informed AT&T via email and certified mail that the application content was insufficient. The City gave AT&T an opportunity to submit additional materials by December 4, 2019, and AT&T provided the additional application content promptly on December 4, 2019.

Discussion/Analysis

Section 11.12.080 of Ordinance 2019-460 provides that the City shall not approve an application for the placement of a wireless telecommunications facility in the public right-of-way unless the following findings can be made:

1. The proposed facility complies with all applicable provisions of this chapter, and with design and siting guidelines adopted by the City Council, and will be in compliance with all applicable building, electrical, and fire safety codes.
2. The proposed facility has been designed and located to achieve compatibility with the community to the maximum extent reasonably feasible.
3. The applicant has submitted a statement of its willingness to allow other carriers to collocate on the proposed wireless telecommunications facility wherever technically and economically feasible and where collocation would not harm community compatibility.



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4. Noise generated by equipment will not be excessive, annoying nor be detrimental to the public health, safety, and welfare and will not exceed the standards set forth in Chapter 6.16 of the Municipal Code and Resolution 2019-35.
 5. The applicant has provided substantial written evidence supporting the applicant's claim that it has the right to enter the public right-of-way pursuant to state or federal law, or the applicant has entered into a franchise or other agreement with the City permitting them to use the public right-of-way.
 6. The applicant has demonstrated that the facility will not interfere with the use of the public right-of-way, existing subterranean infrastructure, or the City's plans for modification or use of such location and infrastructure.

The City Manager denied all of the applications. Copies of the City Manager's decision letters are attached.

Grounds for Appeal

In addition to providing supplemental information on the main required findings, both applicants make various arguments that denial of the applications would violate federal and state law. For example, both applicants argue that the residential siting ban in the Design Standards Resolution violates federal and state law. Some of the legal issues raised by the appeal letters are addressed in the legal memo prepared by the City Attorney's office and the two Resolutions of the City Council included with this report.

Recommendation

After reviewing all of the application materials, the City staff composed a draft decision Resolution that contains an analysis of staff's conclusion on the main required findings in Section 11.12.080. Staff concluded that positive determinations cannot be made for all of the required findings. Therefore, if Council concurs with staff's analysis or otherwise finds it cannot make all of the required findings for approval after considering all of the evidence, each application would be denied, unless an exception can be granted pursuant to Section 11.12.090. Staff did not make a recommendation on whether an exception is warranted but did note in the draft Resolution where the applicants provided evidence to support their view that an exception is warranted.

The table below summarizes the recommended denial reasons for each application based on staff's review of the additional information provided by the Appellants after the City Manager issued the denials:



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Cell Nodes	Location	Date Application Received	Reasons of Denial (Findings Not Made)
Verizon #1	155 Almond Avenue	7/16/2019	1 and 2
AT&T #1	141 Almond Avenue	3/22/2019	1 and 2
AT&T #2	687 Linden Avenue	3/22/2019	1 and 2
AT&T #3	421 Valencia Drive	5/28/2019	1 and 2
AT&T #4	33 Pine Lane	3/22/2019	1 and 2
AT&T #5	49 San Juan Court	3/22/2019	1 and 2
AT&T #6	791 Los Altos Avenue	3/22/2019	1 and 2
AT&T #7	98 Eleanor Avenue	3/22/2019	1 and 2
AT&T #8	182 Garland Way	3/22/2019	1 and 2
AT&T #9	491 Patrick Way	3/22/2019	1 and 2
AT&T #10	300 Los Altos Avenue	3/22/2019	1 and 2
AT&T #11	130 Los Altos Avenue	3/22/2019	1 and 2
AT&T #12	356 Blue Oak Lane	3/22/2019	1 and 2

Section 11.12.210 designates the City Council as the appellate authority for all appeals of all actions of the City Manager taken pursuant to the Chapter 11.12 of the City Code. The City Council shall limit its review to whether the project should be approved or denied in accordance with the provisions in Chapter 11.12 and any applicable City design and siting guidelines. If City Council concludes that positive determinations cannot be made for all required findings in Section 11.12.080, then it should consider whether an exception is warranted and provide its analysis and conclusions in the appropriate section of the draft decision Resolutions.

At the conclusion of the Administrative Public Hearing(s), the City Council may:

- a. Approve one or more of the applications that have been appealed; or
- b. Deny one or more of the applications that have been appealed.

Approval

If the City Council intends to grant the appeal and approve one or more of the applications, the Council should adopt a resolution for approval that makes the requisite findings under the Ordinance as well as the environmental determination under CEQA for each application.

Denial

If the City Council intends to deny one or more of the applications on appeal, the Council should adopt a resolution stating its finding(s) along with reasons for denial of each application based on substantial evidence in the record.