



September 16, 2019

VIA HAND DELIVERY

Chris Jordan  
City Manager  
Los Altos City Hall  
1 North San Antonio Road  
Los Altos, CA 94022

**RE: Appeal Letter to address Denial of Verizon Wireless Small Cell "Los Altos 001" on an existing utility pole at 155 Almond Avenue, Application no. SE19-00019.**

Dear Chris,

Please find enclosed the Appeal Letter for Los Altos 001, addressing the denial letter for a proposed project at 155 Almond Avenue. These are for your review and approval.

The submitted items include the following:

- Los Altos 001 – Appeal Letter
- ~~Fee of #390.00~~

If you have questions please feel free to contact Allison Holleman at 925-699-7460 or Allison@TheCBRGroup.com.

Sincerely,

The CBR Group, Inc.

Please sign below your acknowledgement of receipt of the above site drawings.

Name / Company	Date of Receipt
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**MACKENZIE & ALBRITTON LLP**

155 SANSOME STREET, SUITE 800  
SAN FRANCISCO, CALIFORNIA 94104

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September 16, 2019

**VIA EMAIL**

City Council  
c/o City Clerk  
City of Los Altos  
1 North San Antonio Road  
Los Altos, California 94022

Re: Appeal of City Manager's Denial of  
Verizon Wireless Application No. SE19-00019  
Small Cell Wireless Facility, 155 Almond Avenue

Dear Councilmembers:

We write to you on behalf of Verizon Wireless to appeal the September 11, 2019 decision of the City Manager to deny the above-referenced application filed July 16, 2019 (the "Application") for a small cell wireless facility at 155 Almond Avenue (the "Proposed Facility"). Verizon Wireless appeals on the ground that the decision is in direct violation of the Telecommunications Act of 1996, applicable decisions of the Federal Communications Commission (the "FCC"), and state law granting telephone corporations a statewide right to place equipment along any right-of-way. The Council should reverse the decision.

The City Manager committed an error and abuse of discretion by declaring that the Proposed Facility does not meet required findings of Code Section 11.12.080(A) or standards of Council Resolution 2019-35 (the "Resolution"), which were adopted August 5, 2019, after the Application was filed. The denial violated the Telecommunications Act because it was not supported by substantial evidence, in violation of 47 U.S.C. Section 332(c)(7)(B)(iii). Further, the denial contradicts the FCC's September 2018 order addressing appropriate approval criteria for small cells. *See Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, FCC 18-133 (September 27, 2018) (the "Small Cells Order"). The Small Cells Order became effective on January 14, 2019, with cities required to adopt small cell aesthetic criteria by April 15, 2019. Small Cells Order, ¶¶ 89, 153. The Code and Resolution were adopted after these deadlines.

There is substantial evidence to demonstrate that the Proposed Facility satisfies all required findings and standards that are not preempted by federal law. In our letters to the Council dated July 29, 2019 and August 6, 2019, we advised regarding certain provisions of the draft Resolution that would contradict the Telecommunications Act, the Small Cells Order or state law, but the Council did not make needed revisions.

The City Manager found that the Proposed Facility does not meet location standards because such facilities are not allowed in residential rights-of-way. Code § 11.12.080(A)(1), Resolution § 4.D. However, this residential siting prohibition is preempted by federal and state law. The FCC affirmed that small cells are critical to densifying wireless networks and enhancing service, and that thwarting these goals constitutes a prohibition of service. 47 U.S.C. §§ 253(a), 332(c)(7)(B)(i)(II); Small Cells Order, ¶¶ 37-40. California Public Utilities Code Section 7901 grants telephone corporations a statewide right to place their equipment along any right-of-way, and it does not provide any exception for certain types of rights-of-way such as those in residential areas.

The potential granting of an exception does not excuse preempted standards such as the residential zone prohibition because the exception process itself violates federal law. For small cells, the FCC required cities to provide objective standards that are published in advance. Small Cells Order, ¶ 86. In contrast, the exception process is based on a vague finding that City standards infringe on an applicant's rights under federal and/or state law. Such quasi-judicial determinations are inappropriate for City decision-makers. Further, the exception process leaves Verizon Wireless guessing at the outcome of its applications, but the FCC discouraged such guesswork because small cell criteria must be clear at the outset. Small Cells Order, ¶ 88.

Where the City Manager claimed that the Proposed Facility does not qualify as a small cell wireless facility as defined by the FCC due to antenna volume, that is in error. Functional antenna components are very small, well under the FCC's volume thresholds. 47 C.F.R. § 1.6002(l). Those antenna components are concealed within a cylindrical shroud to improve appearance, and the shroud does not count toward antenna volume calculations. In any case, a three cubic foot enclosure with antenna is available for use with the Proposed Facility.

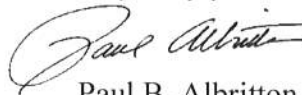
One finding of denial was that the Proposed Facility does meet the required finding of "compatibility with the community." Code § 11.12.080(A)(2). However, that finding is entirely subjective and preempted by the Small Cells Order which, as noted above, requires aesthetic criteria for small cells to be objective.

Another finding of denial claims that Verizon Wireless did not submit information regarding potential noise. Code § 11.12.080(A)(4). However, the Proposed Facility includes no moving parts and will generate no noise, satisfying that finding.

The City Manager claimed that Verizon Wireless did not submit a PG&E letter of authorization, evidence of a City business license, a collocation statement, or proof of the right to enter the right-of-way. The City Manager also described certificates of insurance that have expired. Following Verizon Wireless's application submittal on July 16, 2019, the City did not provide a timely notice of incomplete application within 10 days of the submittal date as required by the FCC. 47 C.F.R. § 1.6003(c)(d)(1). Lack of providing any information required by the Code or Resolution, which were adopted after the application submittal date, cannot be the grounds for denial.

Verizon Wireless reserves the right to supplement these grounds for denial.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul Albritton", written in a cursive style.

Paul B. Albritton