



**City of Los Altos
One North San Antonio Road
Los Altos, California 94022-3087
Tel: (650) 947-2700
Fax (650) 947-2701**

Suresite
Attn: Annie Freeman, Site Development Specialist
2033 Gateway Place, 5th Floor
San Jose, CA 95110

September 17, 2019

RE: Denial Decision: Application for personal wireless facility located at **AT&T #1, 141 Almond Avenue, Application No. SE19-00009**

Dear Applicant,

The above referenced application to locate a personal wireless facility at 141 Almond Avenue is hereby denied for the reasons stated below.

A. Applicable Siting Regulations

On August 5, 2019, the City of Los Altos adopted Ordinance 2019-460 and Resolutions 2019-35 and 2019-36, which collectively address placement of wireless facilities within the City limits (“Wireless Regulations”). Section 11.12.030(A)(1) of the new Ordinance requires that these new provisions be applied to all pending permit applications. The above referenced application (and eleven others submitted by AT&T addressed in separate decision letters) was pending as of August 5, 2019 and is therefore required to be processed pursuant to the Wireless Regulations.

By letter dated August 21, 2019, AT&T asserted that all of its applications which were filed prior to the adoption of the Wireless Regulations (including the above referenced application) must be processed under the City’s regulations in effect at the time the applications *were filed*. The alleged basis for this position is AT&T’s belief that because the FCC’s *Small Cell Order* (FCC 18-133)¹ requires that aesthetic standards be published “in advance” and the City adopted its Wireless Regulations after the applications were filed, they cannot be applied to the applications. The City disagrees with this reading of the FCC order. The requirement that aesthetic standards be published in advance of an application only went into effect on April 15, 2019, after all but one of the AT&T applications were submitted. The FCC requirement to publish in advance does not apply retroactively to applications submitted prior to April 15, 2019 when there was no FCC rule obligating the City to apply only those aesthetic standards published in advance. Moreover,

¹ The Small Cell Order is referred to by AT&T in its letter as the Infrastructure Order.

the referenced FCC requirement to publish in advance only applies to aesthetic standards. It does not apply to any other elements of the application requirements and review process. Therefore, this application is being processed under the requirements of the Wireless Regulations.

B. Application Findings

The above referenced application is for a wireless facility to be placed on a new pole and with equipment mounted on the pole in the public right-of-way in an area of the City zoned as residential. Section 11.12.080 of the New Ordinance provides that the City shall *not* approve an application for placement in the public right-of-way unless several findings can be made. For the reasons discussed below, a number of the required findings cannot be made.

Required Finding 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.

Section 4.D. of Resolution 2019-35 states: “Wireless facilities shall only be permitted in the City in accordance with the following table:” The table indicates wireless facilities of the type described in the application are permitted in public rights-of-way in non-residential districts with a use permit. Thus, the residential zone location selected for siting this wireless facility does not conform with the location requirements of Resolution 2019-35.

For these reasons, required finding 1 cannot be made.

Required Finding 2. The proposed facility has been designed and located to achieve compatibility with the community to the maximum extent reasonably feasible.

For the same reasons described under required finding 1 above, required finding number 2 cannot be made.

Required Finding 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.

No such statement is included in the application. Therefore, required finding 3 cannot be made.

Required Finding 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.

No information needed to assess this issue is included in the application. Therefore, required finding 4 cannot be made.

Required Finding 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.

No such evidence is included in the application. Therefore, required finding 5 cannot be made.

Required Finding 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 submitted design of the facility does not indicate any physical interferences with the use of the public right-of-way. Therefore, required finding 6 can be made.

C. Findings With Regard to Exceptions

LAMC Section 11.12.090 provides that exceptions pertaining to any provision of Chapter 11.12, including, but not limited to, exceptions from findings that would otherwise justify denial, may be granted by the City if the City makes the finding that:

1. Denial of the facility as proposed would violate federal law, state law, or both; or
2. A provision of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both.

Among other things, Section 11.12.090 further provides that an applicant may only request an exception at the time of applying for a wireless telecommunications facility permit; the request must include both the specific provision(s) of Chapter 11.12, and any design or siting standards from which the exception is sought and the basis of the request; and the applicant shall have the burden of proving that denial of the facility as proposed would violate federal law, state law, or both, or that the provisions of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both, using the evidentiary standards required by that law at issue.

City staff was aware that some of the required findings for approval likely could not be made based on the application as filed and determined that it would be fair to the applicant to treat the application as requesting one or more exceptions under Section 11.12.090 of the new Ordinance and to give the applicant an opportunity to supplement its application with supporting information if desired. This was communicated to the applicant by letter dated August 13, 2019. In response, the applicant's letter dated August 21, 2019 took the position described above that the Wireless Regulations do not apply and the act of imposing the Wireless Regulations on the

application itself is an effective prohibition. For the reasons discussed in Part A above, the City disagrees. As AT&T did not identify in any of its application materials any specific requirements of the Wireless Regulations that create an effective prohibition or establish any other basis for granting of an exception, the applicant has not met its burden of proving that an exception is warranted and therefore no exceptions are granted.

For all of the above reasons the application is denied. In accordance with LAMC 11.12.210, you have the opportunity to appeal this decision. The appeal of this decision must be filed with the City Clerk within 5 days of the decision. The appeal will be heard by the City Council at a noticed public meeting. Attached for your information is LAMC 11.12.210.

If you have any questions, please contact Engineering Services Director Jim Sandoval at jsandoval@losaltosca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Jordan", written over a horizontal line.

Chris Jordan
City Manager

Enclosure



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September 17, 2019

RE: Denial Decision: Application for personal wireless facility located at **AT&T #2, 687 Linden Avenue, Application No. SE19-00003**

Dear Applicant,

The above referenced application to locate a personal wireless facility at 687 Linden Avenue is hereby denied for the reasons stated below.

A. Applicable Siting Regulations

On August 5, 2019, the City of Los Altos adopted Ordinance 2019-460 and Resolutions 2019-35 and 2019-36, which collectively address placement of wireless facilities within the City limits (“Wireless Regulations”). Section 11.12.030(A)(1) of the new Ordinance requires that these new provisions be applied to all pending permit applications. The above referenced application (and eleven others submitted by AT&T addressed in separate decision letters) was pending as of August 5, 2019 and is therefore required to be processed pursuant to the Wireless Regulations.

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¹ The Small Cell Order is referred to by AT&T in its letter as the Infrastructure Order.

the referenced FCC requirement to publish in advance only applies to aesthetic standards. It does not apply to any other elements of the application requirements and review process. Therefore, this application is being processed under the requirements of the Wireless Regulations.

B. Application Findings

The above referenced application is for a wireless facility to be placed on an existing utility pole and with equipment mounted on the pole in the public right-of-way in an area of the City zoned as residential. Section 11.12.080 of the New Ordinance provides that the City shall *not* approve an application for placement in the public right-of-way unless several findings can be made. For the reasons discussed below, a number of the required findings cannot be made.

Required Finding 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.

Section 4.D. of Resolution 2019-35 states: “Wireless facilities shall only be permitted in the City in accordance with the following table:” The table indicates wireless facilities of the type described in the application are permitted in public rights-of-way in non-residential districts with a use permit. Thus, the residential zone location selected for siting this wireless facility does not conform with the location requirements of Resolution 2019-35.

For these reasons, required finding 1 cannot be made.

Required Finding 2. The proposed facility has been designed and located to achieve compatibility with the community to the maximum extent reasonably feasible.

For the same reasons described under required finding 1 above, required finding number 2 cannot be made.

Required Finding 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.

No such statement is included in the application. Therefore, required finding 3 cannot be made.

Required Finding 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.

No information needed to assess this issue is included in the application. Therefore, required finding 4 cannot be made.

Required Finding 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.

No such evidence is included in the application. Therefore, required finding 5 cannot be made.

Required Finding 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 submitted design of the facility does not indicate any physical interferences with the use of the public right-of-way. Therefore, required finding 6 can be made.

C. Findings With Regard to Exceptions

LAMC Section 11.12.090 provides that exceptions pertaining to any provision of Chapter 11.12, including, but not limited to, exceptions from findings that would otherwise justify denial, may be granted by the City if the City makes the finding that:

1. Denial of the facility as proposed would violate federal law, state law, or both; or
2. A provision of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both.

Among other things, Section 11.12.090 further provides that an applicant may only request an exception at the time of applying for a wireless telecommunications facility permit; the request must include both the specific provision(s) of Chapter 11.12, and any design or siting standards from which the exception is sought and the basis of the request; and the applicant shall have the burden of proving that denial of the facility as proposed would violate federal law, state law, or both, or that the provisions of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both, using the evidentiary standards required by that law at issue.

City staff was aware that some of the required findings for approval likely could not be made based on the application as filed and determined that it would be fair to the applicant to treat the application as requesting one or more exceptions under Section 11.12.090 of the new Ordinance and to give the applicant an opportunity to supplement its application with supporting information if desired. This was communicated to the applicant by letter dated August 13, 2019. In response, the applicant's letter dated August 21, 2019 took the position described above that the Wireless Regulations do not apply and the act of imposing the Wireless Regulations on the application itself is an effective prohibition. For the reasons discussed in Part A above, the City disagrees. As AT&T did not identify in any of its application materials any specific requirements

of the Wireless Regulations that create an effective prohibition or establish any other basis for granting of an exception, the applicant has not met its burden of proving that an exception is warranted and therefore no exceptions are granted.

For all of the above reasons the application is denied. In accordance with LAMC 11.12.210, you have the opportunity to appeal this decision. The appeal of this decision must be filed with the City Clerk within 5 days of the decision. The appeal will be heard by the City Council at a noticed public meeting. Attached for your information is LAMC 11.12.210.

If you have any questions, please contact Engineering Services Director Jim Sandoval at jsandoval@losaltosca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Jordan", written over a horizontal line.

Chris Jordan
City Manager

Enclosure



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Suresite
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2033 Gateway Place, 5th Floor
San Jose, CA 95110

September 17, 2019

RE: Denial Decision: Application for personal wireless facility located at **AT&T #3, 421 Valencia Drive, Application No. SE19-00017**

Dear Applicant,

The above referenced application to locate a personal wireless facility at 421 Valencia Drive is hereby denied for the reasons stated below.

A. Applicable Siting Regulations

On August 5, 2019, the City of Los Altos adopted Ordinance 2019-460 and Resolutions 2019-35 and 2019-36, which collectively address placement of wireless facilities within the City limits (“Wireless Regulations”). Section 11.12.030(A)(1) of the new Ordinance requires that these new provisions be applied to all pending permit applications. The above referenced application (and eleven others submitted by AT&T addressed in separate decision letters) was pending as of August 5, 2019 and is therefore required to be processed pursuant to the Wireless Regulations.

By letter dated August 21, 2019, AT&T asserted that all of its applications which were filed prior to the adoption of the Wireless Regulations (including the above referenced application) must be processed under the City’s regulations in effect at the time the applications *were filed*. The alleged basis for this position is AT&T’s belief that because the FCC’s *Small Cell Order* (FCC 18-133)¹ requires that aesthetic standards be published “in advance” and the City adopted its Wireless Regulations after the applications were filed, they cannot be applied to the applications. The City disagrees with this reading of the FCC order. The requirement that aesthetic standards be published in advance of an application only went into effect on April 15, 2019, after this AT&T application was submitted. The referenced FCC requirement to publish in advance only applies to aesthetic standards. It does not apply to any other elements of the application requirements and review process. Therefore, this application is being processed under the

¹ The Small Cell Order is referred to by AT&T in its letter as the Infrastructure Order.

requirements of the Wireless Regulations. And even if the Wireless Regulations adopted on August 5, 2019 do not apply, the application will still be denied based on the application findings explained in the next section.

B. Application Findings

The above referenced application is for a wireless facility to be placed on a new utility pole and with equipment mounted on the pole in the public right-of-way in an area of the City zoned as residential. Section 11.12.080 of the New Ordinance provides that the City shall *not* approve an application for placement in the public right-of-way unless several findings can be made. For the reasons discussed below, a number of the required findings cannot be made.

Required Finding 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.

Section 4.D. of Resolution 2019-35 states: “Wireless facilities shall only be permitted in the City in accordance with the following table:” The table indicates wireless facilities of the type described in the application are permitted in public rights-of-way in non-residential districts with a use permit. Thus, the residential zone location selected for siting this wireless facility does not conform with the location requirements of Resolution 2019-35.

Section A of City’s Distributed Antenna Systems for Wireless Communications Encroachment Permit Requirements states that antenna system facilities “are allowed on local streets upon verification by a qualified electrical engineer licensed by the state of California representing the FCC licensee that using local streets is necessary to obtain capacity and coverage.” City cannot confirm the qualification of the individual who prepared the Mobility Radio Frequency Statement for this location.

Section B of City’s Distributed Antenna Systems for Wireless Communications Encroachment Permit Requirements states that “Antenna systems are permitted on joint utility poles at a height not to exceed 10 feet above the height of joint utility pole.” The increase in height for the proposed design has exceeded this requirement.

For these reasons, required finding 1 cannot be made.

Required Finding 2. The proposed facility has been designed and located to achieve compatibility with the community to the maximum extent reasonably feasible.

For the same reasons described under required finding 1 above, required finding number 2 cannot be made.

Required Finding 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.

No such statement is included in the application. Therefore, required finding 3 cannot be made.

Required Finding 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.

No information needed to assess this issue is included in the application. Therefore, required finding 4 cannot be made.

Required Finding 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.

No such evidence is included in the application. Therefore, required finding 5 cannot be made.

Required Finding 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 submitted design of the facility does not indicate any physical interferences with the use of the public right-of-way. Therefore, required finding 6 can be made.

C. Findings With Regard to Exceptions

LAMC Section 11.12.090 provides that exceptions pertaining to any provision of Chapter 11.12, including, but not limited to, exceptions from findings that would otherwise justify denial, may be granted by the City if the City makes the finding that:

1. Denial of the facility as proposed would violate federal law, state law, or both; or
2. A provision of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both.

Among other things, Section 11.12.090 further provides that an applicant may only request an exception at the time of applying for a wireless telecommunications facility permit; the request must include both the specific provision(s) of Chapter 11.12, and any design or siting standards from which the exception is sought and the basis of the request; and the applicant shall have the burden of proving that denial of the facility as proposed would violate federal law, state law, or

both, or that the provisions of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both, using the evidentiary standards required by that law at issue.

City staff was aware that some of the required findings for approval likely could not be made based on the application as filed and determined that it would be fair to the applicant to treat the application as requesting one or more exceptions under Section 11.12.090 of the new Ordinance and to give the applicant an opportunity to supplement its application with supporting information if desired. This was communicated to the applicant by letter dated August 13, 2019. In response, the applicant's letter dated August 21, 2019 took the position described above that the Wireless Regulations do not apply and the act of imposing the Wireless Regulations on the application itself is an effective prohibition. For the reasons discussed in Part A above, the City disagrees. As AT&T did not identify in any of its application materials any specific requirements of the Wireless Regulations that create an effective prohibition or establish any other basis for granting of an exception, the applicant has not met its burden of proving that an exception is warranted and therefore no exceptions are granted.

For all of the above reasons based on City's Distributed Antenna Systems for Wireless Communications Encroachment Permit Requirements, the application is denied. In accordance with LAMC 11.12.210, you have the opportunity to appeal this decision. The appeal of this decision must be filed with the City Clerk within 5 days of the decision. The appeal will be heard by the City Council at a noticed public meeting. Attached for your information is LAMC 11.12.210.

If you have any questions, please contact Engineering Services Director Jim Sandoval at jsandoval@losaltosca.gov.

Sincerely,



Chris Jordan
City Manager

Enclosure



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Suresite
Attn: Annie Freeman, Site Development Specialist
2033 Gateway Place, 5th Floor
San Jose, CA 95110

September 17, 2019

RE: Denial Decision: Application for personal wireless facility located at **AT&T #4, 33 Pine Lane, Application No. SE19-00004**

Dear Applicant,

The above referenced application to locate a personal wireless facility at 33 Pine Lane is hereby denied for the reasons stated below.

A. Applicable Siting Regulations

On August 5, 2019, the City of Los Altos adopted Ordinance 2019-460 and Resolutions 2019-35 and 2019-36, which collectively address placement of wireless facilities within the City limits (“Wireless Regulations”). Section 11.12.030(A)(1) of the new Ordinance requires that these new provisions be applied to all pending permit applications. The above referenced application (and eleven others submitted by AT&T addressed in separate decision letters) was pending as of August 5, 2019 and is therefore required to be processed pursuant to the Wireless Regulations.

By letter dated August 21, 2019, AT&T asserted that all of its applications which were filed prior to the adoption of the Wireless Regulations (including the above referenced application) must be processed under the City’s regulations in effect at the time the applications *were filed*. The alleged basis for this position is AT&T’s belief that because the FCC’s *Small Cell Order* (FCC 18-133)¹ requires that aesthetic standards be published “in advance” and the City adopted its Wireless Regulations after the applications were filed, they cannot be applied to the applications. The City disagrees with this reading of the FCC order. The requirement that aesthetic standards be published in advance of an application only went into effect on April 15, 2019, after all but one of the AT&T applications were submitted. The FCC requirement to publish in advance does not apply retroactively to applications submitted prior to April 15, 2019 when there was no FCC rule obligating the City to apply only those aesthetic standards published in advance. Moreover,

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the referenced FCC requirement to publish in advance only applies to aesthetic standards. It does not apply to any other elements of the application requirements and review process. Therefore, this application is being processed under the requirements of the Wireless Regulations.

B. Application Findings

The above referenced application is for a wireless facility to be placed on an existing utility pole and with equipment mounted on the pole in the public right-of-way in an area of the City zoned as residential. Section 11.12.080 of the New Ordinance provides that the City shall *not* approve an application for placement in the public right-of-way unless several findings can be made. For the reasons discussed below, a number of the required findings cannot be made.

Required Finding 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.

Section 4.D. of Resolution 2019-35 states: “Wireless facilities shall only be permitted in the City in accordance with the following table:” The table indicates wireless facilities of the type described in the application are permitted in public rights-of-way in non-residential districts with a use permit. Thus, the residential zone location selected for siting this wireless facility does not conform with the location requirements of Resolution 2019-35.

For these reasons, required finding 1 cannot be made.

Required Finding 2. The proposed facility has been designed and located to achieve compatibility with the community to the maximum extent reasonably feasible.

For the same reasons described under required finding 1 above, required finding number 2 cannot be made.

Required Finding 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.

No such statement is included in the application. Therefore, required finding 3 cannot be made.

Required Finding 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.

No information needed to assess this issue is included in the application. Therefore, required finding 4 cannot be made.

Required Finding 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.

No such evidence is included in the application. Therefore, required finding 5 cannot be made.

Required Finding 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 submitted design of the facility does not indicate any physical interferences with the use of the public right-of-way. Therefore, required finding 6 can be made.

C. Findings With Regard to Exceptions

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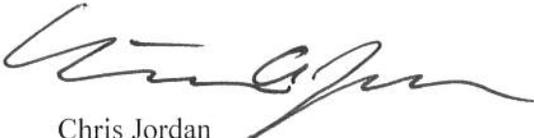
City staff was aware that some of the required findings for approval likely could not be made based on the application as filed and determined that it would be fair to the applicant to treat the application as requesting one or more exceptions under Section 11.12.090 of the new Ordinance and to give the applicant an opportunity to supplement its application with supporting information if desired. This was communicated to the applicant by letter dated August 13, 2019. In response, the applicant's letter dated August 21, 2019 took the position described above that the Wireless Regulations do not apply and the act of imposing the Wireless Regulations on the application itself is an effective prohibition. For the reasons discussed in Part A above, the City disagrees. As AT&T did not identify in any of its application materials any specific requirements

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Sincerely,

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Chris Jordan
City Manager

Enclosure



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San Jose, CA 95110

September 17, 2019

RE: Denial Decision: Application for personal wireless facility located at **AT&T #5, 49 San Juan Court, Application No. SE19-00010**

Dear Applicant,

The above referenced application to locate a personal wireless facility at 49 San Juan Court is hereby denied for the reasons stated below.

A. Applicable Siting Regulations

On August 5, 2019, the City of Los Altos adopted Ordinance 2019-460 and Resolutions 2019-35 and 2019-36, which collectively address placement of wireless facilities within the City limits (“Wireless Regulations”). Section 11.12.030(A)(1) of the new Ordinance requires that these new provisions be applied to all pending permit applications. The above referenced application (and eleven others submitted by AT&T addressed in separate decision letters) was pending as of August 5, 2019 and is therefore required to be processed pursuant to the Wireless Regulations.

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the referenced FCC requirement to publish in advance only applies to aesthetic standards. It does not apply to any other elements of the application requirements and review process. Therefore, this application is being processed under the requirements of the Wireless Regulations.

B. Application Findings

The above referenced application is for a wireless facility to be placed on a new utility pole and with equipment mounted on the pole in the public right-of-way in an area of the City zoned as residential. Section 11.12.080 of the New Ordinance provides that the City shall *not* approve an application for placement in the public right-of-way unless several findings can be made. For the reasons discussed below, a number of the required findings cannot be made.

Required Finding 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.

Section 4.D. of Resolution 2019-35 states: “Wireless facilities shall only be permitted in the City in accordance with the following table:” The table indicates wireless facilities of the type described in the application are permitted in public rights-of-way in non-residential districts with a use permit. Thus, the residential zone location selected for siting this wireless facility does not conform with the location requirements of Resolution 2019-35.

For these reasons, required finding 1 cannot be made.

Required Finding 2. The proposed facility has been designed and located to achieve compatibility with the community to the maximum extent reasonably feasible.

For the same reasons described under required finding 1 above, required finding number 2 cannot be made.

Required Finding 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.

No such statement is included in the application. Therefore, required finding 3 cannot be made.

Required Finding 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.

No information needed to assess this issue is included in the application. Therefore, required finding 4 cannot be made.

Required Finding 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.

No such evidence is included in the application. Therefore, required finding 5 cannot be made.

Required Finding 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 submitted design of the facility does not indicate any physical interferences with the use of the public right-of-way. Therefore, required finding 6 can be made.

C. Findings With Regard to Exceptions

LAMC Section 11.12.090 provides that exceptions pertaining to any provision of Chapter 11.12, including, but not limited to, exceptions from findings that would otherwise justify denial, may be granted by the City if the City makes the finding that:

1. Denial of the facility as proposed would violate federal law, state law, or both; or
2. A provision of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both.

Among other things, Section 11.12.090 further provides that an applicant may only request an exception at the time of applying for a wireless telecommunications facility permit; the request must include both the specific provision(s) of Chapter 11.12, and any design or siting standards from which the exception is sought and the basis of the request; and the applicant shall have the burden of proving that denial of the facility as proposed would violate federal law, state law, or both, or that the provisions of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both, using the evidentiary standards required by that law at issue.

City staff was aware that some of the required findings for approval likely could not be made based on the application as filed and determined that it would be fair to the applicant to treat the application as requesting one or more exceptions under Section 11.12.090 of the new Ordinance and to give the applicant an opportunity to supplement its application with supporting information if desired. This was communicated to the applicant by letter dated August 13, 2019. In response, the applicant's letter dated August 21, 2019 took the position described above that the Wireless Regulations do not apply and the act of imposing the Wireless Regulations on the application itself is an effective prohibition. For the reasons discussed in Part A above, the City disagrees. As AT&T did not identify in any of its application materials any specific requirements

of the Wireless Regulations that create an effective prohibition or establish any other basis for granting of an exception, the applicant has not met its burden of proving that an exception is warranted and therefore no exceptions are granted.

For all of the above reasons the application is denied. In accordance with LAMC 11.12.210, you have the opportunity to appeal this decision. The appeal of this decision must be filed with the City Clerk within 5 days of the decision. The appeal will be heard by the City Council at a noticed public meeting. Attached for your information is LAMC 11.12.210.

If you have any questions, please contact Engineering Services Director Jim Sandoval at jsandoval@losaltosca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Jordan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Chris Jordan
City Manager

Enclosure



City of Los Altos
One North San Antonio Road
Los Altos, California 94022-3087
Tel: (650) 947-2700
Fax (650) 947-2701

Suresite
Attn: Annie Freeman, Site Development Specialist
2033 Gateway Place, 5th Floor
San Jose, CA 95110

September 17, 2019

RE: Denial Decision: Application for personal wireless facility located at **AT&T #6, 791 Los Altos Avenue, Application No. SE19-00011**

Dear Applicant,

The above referenced application to locate a personal wireless facility at 791 Los Altos Avenue is hereby denied for the reasons stated below.

A. Applicable Siting Regulations

On August 5, 2019, the City of Los Altos adopted Ordinance 2019-460 and Resolutions 2019-35 and 2019-36, which collectively address placement of wireless facilities within the City limits (“Wireless Regulations”). Section 11.12.030(A)(1) of the new Ordinance requires that these new provisions be applied to all pending permit applications. The above referenced application (and eleven others submitted by AT&T addressed in separate decision letters) was pending as of August 5, 2019 and is therefore required to be processed pursuant to the Wireless Regulations.

By letter dated August 21, 2019, AT&T asserted that all of its applications which were filed prior to the adoption of the Wireless Regulations (including the above referenced application) must be processed under the City’s regulations in effect at the time the applications *were filed*. The alleged basis for this position is AT&T’s belief that because the FCC’s *Small Cell Order* (FCC 18-133)¹ requires that aesthetic standards be published “in advance” and the City adopted its Wireless Regulations after the applications were filed, they cannot be applied to the applications. The City disagrees with this reading of the FCC order. The requirement that aesthetic standards be published in advance of an application only went into effect on April 15, 2019, after all but one of the AT&T applications were submitted. The FCC requirement to publish in advance does not apply retroactively to applications submitted prior to April 15, 2019 when there was no FCC rule obligating the City to apply only those aesthetic standards published in advance. Moreover,

¹ The Small Cell Order is referred to by AT&T in its letter as the Infrastructure Order.

the referenced FCC requirement to publish in advance only applies to aesthetic standards. It does not apply to any other elements of the application requirements and review process. Therefore, this application is being processed under the requirements of the Wireless Regulations.

B. Application Findings

The above referenced application is for a wireless facility to be placed on a new utility pole and with equipment mounted on the pole in the public right-of-way in an area of the City zoned as residential. Section 11.12.080 of the New Ordinance provides that the City shall *not* approve an application for placement in the public right-of-way unless several findings can be made. For the reasons discussed below, a number of the required findings cannot be made.

Required Finding 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.

Section 4.D. of Resolution 2019-35 states: “Wireless facilities shall only be permitted in the City in accordance with the following table:” The table indicates wireless facilities of the type described in the application are permitted in public rights-of-way in non-residential districts with a use permit. Thus, the residential zone location selected for siting this wireless facility does not conform with the location requirements of Resolution 2019-35.

For these reasons, required finding 1 cannot be made.

Required Finding 2. The proposed facility has been designed and located to achieve compatibility with the community to the maximum extent reasonably feasible.

For the same reasons described under required finding 1 above, required finding number 2 cannot be made.

Required Finding 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.

No such statement is included in the application. Therefore, required finding 3 cannot be made.

Required Finding 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.

No information needed to assess this issue is included in the application. Therefore, required finding 4 cannot be made.

Required Finding 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.

No such evidence is included in the application. Therefore, required finding 5 cannot be made.

Required Finding 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 submitted design of the facility does not indicate any physical interferences with the use of the public right-of-way. Therefore, required finding 6 can be made.

C. Findings With Regard to Exceptions

LAMC Section 11.12.090 provides that exceptions pertaining to any provision of Chapter 11.12, including, but not limited to, exceptions from findings that would otherwise justify denial, may be granted by the City if the City makes the finding that:

1. Denial of the facility as proposed would violate federal law, state law, or both; or
2. A provision of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both.

Among other things, Section 11.12.090 further provides that an applicant may only request an exception at the time of applying for a wireless telecommunications facility permit; the request must include both the specific provision(s) of Chapter 11.12, and any design or siting standards from which the exception is sought and the basis of the request; and the applicant shall have the burden of proving that denial of the facility as proposed would violate federal law, state law, or both, or that the provisions of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both, using the evidentiary standards required by that law at issue.

City staff was aware that some of the required findings for approval likely could not be made based on the application as filed and determined that it would be fair to the applicant to treat the application as requesting one or more exceptions under Section 11.12.090 of the new Ordinance and to give the applicant an opportunity to supplement its application with supporting information if desired. This was communicated to the applicant by letter dated August 13, 2019. In response, the applicant's letter dated August 21, 2019 took the position described above that the Wireless Regulations do not apply and the act of imposing the Wireless Regulations on the application itself is an effective prohibition. For the reasons discussed in Part A above, the City disagrees. As AT&T did not identify in any of its application materials any specific requirements

of the Wireless Regulations that create an effective prohibition or establish any other basis for granting of an exception, the applicant has not met its burden of proving that an exception is warranted and therefore no exceptions are granted.

For all of the above reasons the application is denied. In accordance with LAMC 11.12.210, you have the opportunity to appeal this decision. The appeal of this decision must be filed with the City Clerk within 5 days of the decision. The appeal will be heard by the City Council at a noticed public meeting. Attached for your information is LAMC 11.12.210.

If you have any questions, please contact Engineering Services Director Jim Sandoval at jsandoval@losaltosca.gov.

Sincerely,

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

Chris Jordan
City Manager

Enclosure



City of Los Altos
One North San Antonio Road
Los Altos, California 94022-3087
Tel: (650) 947-2700
Fax (650) 947-2701

Suresite
Attn: Annie Freeman, Site Development Specialist
2033 Gateway Place, 5th Floor
San Jose, CA 95110

September 17, 2019

RE: Denial Decision: Application for personal wireless facility located at **AT&T #7, 98 Eleanor Avenue, Application No. SE19-00005**

Dear Applicant,

The above referenced application to locate a personal wireless facility at 98 Eleanor Avenue is hereby denied for the reasons stated below.

A. Applicable Siting Regulations

On August 5, 2019, the City of Los Altos adopted Ordinance 2019-460 and Resolutions 2019-35 and 2019-36, which collectively address placement of wireless facilities within the City limits (“Wireless Regulations”). Section 11.12.030(A)(1) of the new Ordinance requires that these new provisions be applied to all pending permit applications. The above referenced application (and eleven others submitted by AT&T addressed in separate decision letters) was pending as of August 5, 2019 and is therefore required to be processed pursuant to the Wireless Regulations.

By letter dated August 21, 2019, AT&T asserted that all of its applications which were filed prior to the adoption of the Wireless Regulations (including the above referenced application) must be processed under the City’s regulations in effect at the time the applications *were filed*. The alleged basis for this position is AT&T’s belief that because the FCC’s *Small Cell Order* (FCC 18-133)¹ requires that aesthetic standards be published “in advance” and the City adopted its Wireless Regulations after the applications were filed, they cannot be applied to the applications. The City disagrees with this reading of the FCC order. The requirement that aesthetic standards be published in advance of an application only went into effect on April 15, 2019, after all but one of the AT&T applications were submitted. The FCC requirement to publish in advance does not apply retroactively to applications submitted prior to April 15, 2019 when there was no FCC rule obligating the City to apply only those aesthetic standards published in advance. Moreover,

¹ The Small Cell Order is referred to by AT&T in its letter as the Infrastructure Order.

the referenced FCC requirement to publish in advance only applies to aesthetic standards. It does not apply to any other elements of the application requirements and review process. Therefore, this application is being processed under the requirements of the Wireless Regulations.

B. Application Findings

The above referenced application is for a wireless facility to be placed on an existing utility pole and with equipment mounted on the pole in the public right-of-way in an area of the City zoned as residential. Section 11.12.080 of the New Ordinance provides that the City shall *not* approve an application for placement in the public right-of-way unless several findings can be made. For the reasons discussed below, a number of the required findings cannot be made.

Required Finding 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.

Section 4.D. of Resolution 2019-35 states: “Wireless facilities shall only be permitted in the City in accordance with the following table:” The table indicates wireless facilities of the type described in the application are permitted in public rights-of-way in non-residential districts with a use permit. Thus, the residential zone location selected for siting this wireless facility does not conform with the location requirements of Resolution 2019-35.

For these reasons, required finding 1 cannot be made.

Required Finding 2. The proposed facility has been designed and located to achieve compatibility with the community to the maximum extent reasonably feasible.

For the same reasons described under required finding 1 above, required finding number 2 cannot be made.

Required Finding 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.

No such statement is included in the application. Therefore, required finding 3 cannot be made.

Required Finding 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.

No information needed to assess this issue is included in the application. Therefore, required finding 4 cannot be made.

Required Finding 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.

No such evidence is included in the application. Therefore, required finding 5 cannot be made.

Required Finding 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 submitted design of the facility does not indicate any physical interferences with the use of the public right-of-way. Therefore, required finding 6 can be made.

C. Findings With Regard to Exceptions

LAMC Section 11.12.090 provides that exceptions pertaining to any provision of Chapter 11.12, including, but not limited to, exceptions from findings that would otherwise justify denial, may be granted by the City if the City makes the finding that:

1. Denial of the facility as proposed would violate federal law, state law, or both; or
2. A provision of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both.

Among other things, Section 11.12.090 further provides that an applicant may only request an exception at the time of applying for a wireless telecommunications facility permit; the request must include both the specific provision(s) of Chapter 11.12, and any design or siting standards from which the exception is sought and the basis of the request; and the applicant shall have the burden of proving that denial of the facility as proposed would violate federal law, state law, or both, or that the provisions of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both, using the evidentiary standards required by that law at issue.

City staff was aware that some of the required findings for approval likely could not be made based on the application as filed and determined that it would be fair to the applicant to treat the application as requesting one or more exceptions under Section 11.12.090 of the new Ordinance and to give the applicant an opportunity to supplement its application with supporting information if desired. This was communicated to the applicant by letter dated August 13, 2019. In response, the applicant's letter dated August 21, 2019 took the position described above that the Wireless Regulations do not apply and the act of imposing the Wireless Regulations on the application itself is an effective prohibition. For the reasons discussed in Part A above, the City disagrees. As AT&T did not identify in any of its application materials any specific requirements

of the Wireless Regulations that create an effective prohibition or establish any other basis for granting of an exception, the applicant has not met its burden of proving that an exception is warranted and therefore no exceptions are granted.

For all of the above reasons the application is denied. In accordance with LAMC 11.12.210, you have the opportunity to appeal this decision. The appeal of this decision must be filed with the City Clerk within 5 days of the decision. The appeal will be heard by the City Council at a noticed public meeting. Attached for your information is LAMC 11.12.210.

If you have any questions, please contact Engineering Services Director Jim Sandoval at jsandoval@losaltosca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Jordan", written over a horizontal line.

Chris Jordan
City Manager

Enclosure



**City of Los Altos
One North San Antonio Road
Los Altos, California 94022-3087
Tel: (650) 947-2700
Fax (650) 947-2701**

Suresite
Attn: Annie Freeman, Site Development Specialist
2033 Gateway Place, 5th Floor
San Jose, CA 95110

September 17, 2019

RE: Denial Decision: Application for personal wireless facility located at **AT&T #8, 182 Garland Way, Application No. SE19-00006**

Dear Applicant,

The above referenced application to locate a personal wireless facility at 182 Garland Way is hereby denied for the reasons stated below.

A. Applicable Siting Regulations

On August 5, 2019, the City of Los Altos adopted Ordinance 2019-460 and Resolutions 2019-35 and 2019-36, which collectively address placement of wireless facilities within the City limits (“Wireless Regulations”). Section 11.12.030(A)(1) of the new Ordinance requires that these new provisions be applied to all pending permit applications. The above referenced application (and eleven others submitted by AT&T addressed in separate decision letters) was pending as of August 5, 2019 and is therefore required to be processed pursuant to the Wireless Regulations.

By letter dated August 21, 2019, AT&T asserted that all of its applications which were filed prior to the adoption of the Wireless Regulations (including the above referenced application) must be processed under the City’s regulations in effect at the time the applications *were filed*. The alleged basis for this position is AT&T’s belief that because the FCC’s *Small Cell Order* (FCC 18-133)¹ requires that aesthetic standards be published “in advance” and the City adopted its Wireless Regulations after the applications were filed, they cannot be applied to the applications. The City disagrees with this reading of the FCC order. The requirement that aesthetic standards be published in advance of an application only went into effect on April 15, 2019, after all but one of the AT&T applications were submitted. The FCC requirement to publish in advance does not apply retroactively to applications submitted prior to April 15, 2019 when there was no FCC rule obligating the City to apply only those aesthetic standards published in advance. Moreover,

¹ The Small Cell Order is referred to by AT&T in its letter as the Infrastructure Order.

the referenced FCC requirement to publish in advance only applies to aesthetic standards. It does not apply to any other elements of the application requirements and review process. Therefore, this application is being processed under the requirements of the Wireless Regulations.

B. Application Findings

The above referenced application is for a wireless facility to be placed on an existing utility pole and with equipment mounted on the pole in the public right-of-way in an area of the City zoned as residential. Section 11.12.080 of the New Ordinance provides that the City shall *not* approve an application for placement in the public right-of-way unless several findings can be made. For the reasons discussed below, a number of the required findings cannot be made.

Required Finding 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.

Section 4.D. of Resolution 2019-35 states: “Wireless facilities shall only be permitted in the City in accordance with the following table:” The table indicates wireless facilities of the type described in the application are permitted in public rights-of-way in non-residential districts with a use permit. Thus, the residential zone location selected for siting this wireless facility does not conform with the location requirements of Resolution 2019-35.

For these reasons, required finding 1 cannot be made.

Required Finding 2. The proposed facility has been designed and located to achieve compatibility with the community to the maximum extent reasonably feasible.

For the same reasons described under required finding 1 above, required finding number 2 cannot be made.

Required Finding 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.

No such statement is included in the application. Therefore, required finding 3 cannot be made.

Required Finding 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.

No information needed to assess this issue is included in the application. Therefore, required finding 4 cannot be made.

}
}
Required Finding 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.

No such evidence is included in the application. Therefore, required finding 5 cannot be made.

Required Finding 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 submitted design of the facility does not indicate any physical interferences with the use of the public right-of-way. Therefore, required finding 6 can be made.

C. Findings With Regard to Exceptions

LAMC Section 11.12.090 provides that exceptions pertaining to any provision of Chapter 11.12, including, but not limited to, exceptions from findings that would otherwise justify denial, may be granted by the City if the City makes the finding that:

1. Denial of the facility as proposed would violate federal law, state law, or both; or
2. A provision of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both.

Among other things, Section 11.12.090 further provides that an applicant may only request an exception at the time of applying for a wireless telecommunications facility permit; the request must include both the specific provision(s) of Chapter 11.12, and any design or siting standards from which the exception is sought and the basis of the request; and the applicant shall have the burden of proving that denial of the facility as proposed would violate federal law, state law, or both, or that the provisions of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both, using the evidentiary standards required by that law at issue.

City staff was aware that some of the required findings for approval likely could not be made based on the application as filed and determined that it would be fair to the applicant to treat the application as requesting one or more exceptions under Section 11.12.090 of the new Ordinance and to give the applicant an opportunity to supplement its application with supporting information if desired. This was communicated to the applicant by letter dated August 13, 2019. In response, the applicant's letter dated August 21, 2019 took the position described above that the Wireless Regulations do not apply and the act of imposing the Wireless Regulations on the application itself is an effective prohibition. For the reasons discussed in Part A above, the City disagrees. As AT&T did not identify in any of its application materials any specific requirements

of the Wireless Regulations that create an effective prohibition or establish any other basis for granting of an exception, the applicant has not met its burden of proving that an exception is warranted and therefore no exceptions are granted.

For all of the above reasons the application is denied. In accordance with LAMC 11.12.210, you have the opportunity to appeal this decision. The appeal of this decision must be filed with the City Clerk within 5 days of the decision. The appeal will be heard by the City Council at a noticed public meeting. Attached for your information is LAMC 11.12.210.

If you have any questions, please contact Engineering Services Director Jim Sandoval at jsandoval@losaltosca.gov.

Sincerely,

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

Chris Jordan
City Manager

Enclosure



**City of Los Altos
One North San Antonio Road
Los Altos, California 94022-3087
Tel: (650) 947-2700
Fax (650) 947-2701**

Suresite
Attn: Annie Freeman, Site Development Specialist
2033 Gateway Place, 5th Floor
San Jose, CA 95110

September 17, 2019

RE: Denial Decision: Application for personal wireless facility located at **AT&T #9, 491 Patrick Way, Application No. SE19-00012**

Dear Applicant,

The above referenced application to locate a personal wireless facility at 491 Patrick Way is hereby denied for the reasons stated below.

A. Applicable Siting Regulations

On August 5, 2019, the City of Los Altos adopted Ordinance 2019-460 and Resolutions 2019-35 and 2019-36, which collectively address placement of wireless facilities within the City limits (“Wireless Regulations”). Section 11.12.030(A)(1) of the new Ordinance requires that these new provisions be applied to all pending permit applications. The above referenced application (and eleven others submitted by AT&T addressed in separate decision letters) was pending as of August 5, 2019 and is therefore required to be processed pursuant to the Wireless Regulations.

By letter dated August 21, 2019, AT&T asserted that all of its applications which were filed prior to the adoption of the Wireless Regulations (including the above referenced application) must be processed under the City’s regulations in effect at the time the applications *were filed*. The alleged basis for this position is AT&T’s belief that because the FCC’s *Small Cell Order* (FCC 18-133)¹ requires that aesthetic standards be published “in advance” and the City adopted its Wireless Regulations after the applications were filed, they cannot be applied to the applications. The City disagrees with this reading of the FCC order. The requirement that aesthetic standards be published in advance of an application only went into effect on April 15, 2019, after all but one of the AT&T applications were submitted. The FCC requirement to publish in advance does not apply retroactively to applications submitted prior to April 15, 2019 when there was no FCC rule obligating the City to apply only those aesthetic standards published in advance. Moreover,

¹ The Small Cell Order is referred to by AT&T in its letter as the Infrastructure Order.

the referenced FCC requirement to publish in advance only applies to aesthetic standards. It does not apply to any other elements of the application requirements and review process. Therefore, this application is being processed under the requirements of the Wireless Regulations.

B. Application Findings

The above referenced application is for a wireless facility to be placed on a new utility pole and with equipment mounted on the pole in the public right-of-way in an area of the City zoned as residential. Section 11.12.080 of the New Ordinance provides that the City shall *not* approve an application for placement in the public right-of-way unless several findings can be made. For the reasons discussed below, a number of the required findings cannot be made.

Required Finding 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.

Section 4.D. of Resolution 2019-35 states: “Wireless facilities shall only be permitted in the City in accordance with the following table:” The table indicates wireless facilities of the type described in the application are permitted in public rights-of-way in non-residential districts with a use permit. Thus, the residential zone location selected for siting this wireless facility does not conform with the location requirements of Resolution 2019-35.

For these reasons, required finding 1 cannot be made.

Required Finding 2. The proposed facility has been designed and located to achieve compatibility with the community to the maximum extent reasonably feasible.

For the same reasons described under required finding 1 above, required finding number 2 cannot be made.

Required Finding 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.

No such statement is included in the application. Therefore, required finding 3 cannot be made.

Required Finding 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.

No information needed to assess this issue is included in the application. Therefore, required finding 4 cannot be made.

Required Finding 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.

No such evidence is included in the application. Therefore, required finding 5 cannot be made.

Required Finding 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 submitted design of the facility does not indicate any physical interferences with the use of the public right-of-way. Therefore, required finding 6 can be made.

C. Findings With Regard to Exceptions

LAMC Section 11.12.090 provides that exceptions pertaining to any provision of Chapter 11.12, including, but not limited to, exceptions from findings that would otherwise justify denial, may be granted by the City if the City makes the finding that:

1. Denial of the facility as proposed would violate federal law, state law, or both; or
2. A provision of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both.

Among other things, Section 11.12.090 further provides that an applicant may only request an exception at the time of applying for a wireless telecommunications facility permit; the request must include both the specific provision(s) of Chapter 11.12, and any design or siting standards from which the exception is sought and the basis of the request; and the applicant shall have the burden of proving that denial of the facility as proposed would violate federal law, state law, or both, or that the provisions of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both, using the evidentiary standards required by that law at issue.

City staff was aware that some of the required findings for approval likely could not be made based on the application as filed and determined that it would be fair to the applicant to treat the application as requesting one or more exceptions under Section 11.12.090 of the new Ordinance and to give the applicant an opportunity to supplement its application with supporting information if desired. This was communicated to the applicant by letter dated August 13, 2019. In response, the applicant's letter dated August 21, 2019 took the position described above that the Wireless Regulations do not apply and the act of imposing the Wireless Regulations on the application itself is an effective prohibition. For the reasons discussed in Part A above, the City disagrees. As AT&T did not identify in any of its application materials any specific requirements

of the Wireless Regulations that create an effective prohibition or establish any other basis for granting of an exception, the applicant has not met its burden of proving that an exception is warranted and therefore no exceptions are granted.

For all of the above reasons the application is denied. In accordance with LAMC 11.12.210, you have the opportunity to appeal this decision. The appeal of this decision must be filed with the City Clerk within 5 days of the decision. The appeal will be heard by the City Council at a noticed public meeting. Attached for your information is LAMC 11.12.210.

If you have any questions, please contact Engineering Services Director Jim Sandoval at jsandoval@losaltosca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Jordan", written over a horizontal line.

Chris Jordan
City Manager

Enclosure



**City of Los Altos
One North San Antonio Road
Los Altos, California 94022-3087
Tel: (650) 947-2700
Fax (650) 947-2701**

Suresite
Attn: Annie Freeman, Site Development Specialist
2033 Gateway Place, 5th Floor
San Jose, CA 95110

September 17, 2019

RE: Denial Decision: Application for personal wireless facility located at **AT&T #10, 300 Los Altos Avenue, Application No. SE19-00013**

Dear Applicant,

The above referenced application to locate a personal wireless facility at 300 Los Altos Avenue is hereby denied for the reasons stated below.

A. Applicable Siting Regulations

On August 5, 2019, the City of Los Altos adopted Ordinance 2019-460 and Resolutions 2019-35 and 2019-36, which collectively address placement of wireless facilities within the City limits (“Wireless Regulations”). Section 11.12.030(A)(1) of the new Ordinance requires that these new provisions be applied to all pending permit applications. The above referenced application (and eleven others submitted by AT&T addressed in separate decision letters) was pending as of August 5, 2019 and is therefore required to be processed pursuant to the Wireless Regulations.

By letter dated August 21, 2019, AT&T asserted that all of its applications which were filed prior to the adoption of the Wireless Regulations (including the above referenced application) must be processed under the City’s regulations in effect at the time the applications *were filed*. The alleged basis for this position is AT&T’s belief that because the FCC’s *Small Cell Order* (FCC 18-133)¹ requires that aesthetic standards be published “in advance” and the City adopted its Wireless Regulations after the applications were filed, they cannot be applied to the applications. The City disagrees with this reading of the FCC order. The requirement that aesthetic standards be published in advance of an application only went into effect on April 15, 2019, after all but one of the AT&T applications were submitted. The FCC requirement to publish in advance does not apply retroactively to applications submitted prior to April 15, 2019 when there was no FCC rule obligating the City to apply only those aesthetic standards published in advance. Moreover,

¹ The Small Cell Order is referred to by AT&T in its letter as the Infrastructure Order.

the referenced FCC requirement to publish in advance only applies to aesthetic standards. It does not apply to any other elements of the application requirements and review process. Therefore, this application is being processed under the requirements of the Wireless Regulations.

B. Application Findings

The above referenced application is for a wireless facility to be placed on a new utility pole and with equipment mounted on the pole in the public right-of-way in an area of the City zoned as residential. Section 11.12.080 of the New Ordinance provides that the City shall *not* approve an application for placement in the public right-of-way unless several findings can be made. For the reasons discussed below, a number of the required findings cannot be made.

Required Finding 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.

Section 4.D. of Resolution 2019-35 states: “Wireless facilities shall only be permitted in the City in accordance with the following table:” The table indicates wireless facilities of the type described in the application are permitted in public rights-of-way in non-residential districts with a use permit. Thus, the residential zone location selected for siting this wireless facility does not conform with the location requirements of Resolution 2019-35.

For these reasons, required finding 1 cannot be made.

Required Finding 2. The proposed facility has been designed and located to achieve compatibility with the community to the maximum extent reasonably feasible.

For the same reasons described under required finding 1 above, required finding number 2 cannot be made.

Required Finding 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.

No such statement is included in the application. Therefore, required finding 3 cannot be made.

Required Finding 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.

No information needed to assess this issue is included in the application. Therefore, required finding 4 cannot be made.

Required Finding 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.

No such evidence is included in the application. Therefore, required finding 5 cannot be made.

Required Finding 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 submitted design of the facility does not indicate any physical interferences with the use of the public right-of-way. Therefore, required finding 6 can be made.

C. Findings With Regard to Exceptions

LAMC Section 11.12.090 provides that exceptions pertaining to any provision of Chapter 11.12, including, but not limited to, exceptions from findings that would otherwise justify denial, may be granted by the City if the City makes the finding that:

1. Denial of the facility as proposed would violate federal law, state law, or both; or
2. A provision of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both.

Among other things, Section 11.12.090 further provides that an applicant may only request an exception at the time of applying for a wireless telecommunications facility permit; the request must include both the specific provision(s) of Chapter 11.12, and any design or siting standards from which the exception is sought and the basis of the request; and the applicant shall have the burden of proving that denial of the facility as proposed would violate federal law, state law, or both, or that the provisions of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both, using the evidentiary standards required by that law at issue.

City staff was aware that some of the required findings for approval likely could not be made based on the application as filed and determined that it would be fair to the applicant to treat the application as requesting one or more exceptions under Section 11.12.090 of the new Ordinance and to give the applicant an opportunity to supplement its application with supporting information if desired. This was communicated to the applicant by letter dated August 13, 2019. In response, the applicant's letter dated August 21, 2019 took the position described above that the Wireless Regulations do not apply and the act of imposing the Wireless Regulations on the application itself is an effective prohibition. For the reasons discussed in Part A above, the City disagrees. As AT&T did not identify in any of its application materials any specific requirements

of the Wireless Regulations that create an effective prohibition or establish any other basis for granting of an exception, the applicant has not met its burden of proving that an exception is warranted and therefore no exceptions are granted.

For all of the above reasons the application is denied. In accordance with LAMC 11.12.210, you have the opportunity to appeal this decision. The appeal of this decision must be filed with the City Clerk within 5 days of the decision. The appeal will be heard by the City Council at a noticed public meeting. Attached for your information is LAMC 11.12.210.

If you have any questions, please contact Engineering Services Director Jim Sandoval at jsandoval@losaltosca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Jordan". The signature is fluid and cursive, with a prominent initial "C".

Chris Jordan
City Manager

Enclosure



**City of Los Altos
One North San Antonio Road
Los Altos, California 94022-3087
Tel: (650) 947-2700
Fax (650) 947-2701**

Suresite
Attn: Annie Freeman, Site Development Specialist
2033 Gateway Place, 5th Floor
San Jose, CA 95110

September 17, 2019

RE: Denial Decision: Application for personal wireless facility located at **AT&T #11, 130 Los Altos Avenue, Application No. SE19-00007**

Dear Applicant,

The above referenced application to locate a personal wireless facility at 130 Los Altos Avenue is hereby denied for the reasons stated below.

A. Applicable Siting Regulations

On August 5, 2019, the City of Los Altos adopted Ordinance 2019-460 and Resolutions 2019-35 and 2019-36, which collectively address placement of wireless facilities within the City limits (“Wireless Regulations”). Section 11.12.030(A)(1) of the new Ordinance requires that these new provisions be applied to all pending permit applications. The above referenced application (and eleven others submitted by AT&T addressed in separate decision letters) was pending as of August 5, 2019 and is therefore required to be processed pursuant to the Wireless Regulations.

By letter dated August 21, 2019, AT&T asserted that all of its applications which were filed prior to the adoption of the Wireless Regulations (including the above referenced application) must be processed under the City’s regulations in effect at the time the applications *were filed*. The alleged basis for this position is AT&T’s belief that because the FCC’s *Small Cell Order* (FCC 18-133)¹ requires that aesthetic standards be published “in advance” and the City adopted its Wireless Regulations after the applications were filed, they cannot be applied to the applications. The City disagrees with this reading of the FCC order. The requirement that aesthetic standards be published in advance of an application only went into effect on April 15, 2019, after all but one of the AT&T applications were submitted. The FCC requirement to publish in advance does not apply retroactively to applications submitted prior to April 15, 2019 when there was no FCC rule obligating the City to apply only those aesthetic standards published in advance. Moreover,

¹ The Small Cell Order is referred to by AT&T in its letter as the Infrastructure Order.

the referenced FCC requirement to publish in advance only applies to aesthetic standards. It does not apply to any other elements of the application requirements and review process. Therefore, this application is being processed under the requirements of the Wireless Regulations.

B. Application Findings

The above referenced application is for a wireless facility to be placed on an existing utility pole and with equipment mounted on the pole in the public right-of-way in an area of the City zoned as residential. Section 11.12.080 of the New Ordinance provides that the City shall *not* approve an application for placement in the public right-of-way unless several findings can be made. For the reasons discussed below, a number of the required findings cannot be made.

Required Finding 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.

Section 4.D. of Resolution 2019-35 states: “Wireless facilities shall only be permitted in the City in accordance with the following table:” The table indicates wireless facilities of the type described in the application are permitted in public rights-of-way in non-residential districts with a use permit. Thus, the residential zone location selected for siting this wireless facility does not conform with the location requirements of Resolution 2019-35.

For these reasons, required finding 1 cannot be made.

Required Finding 2. The proposed facility has been designed and located to achieve compatibility with the community to the maximum extent reasonably feasible.

For the same reasons described under required finding 1 above, required finding number 2 cannot be made.

Required Finding 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.

No such statement is included in the application. Therefore, required finding 3 cannot be made.

Required Finding 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.

No information needed to assess this issue is included in the application. Therefore, required finding 4 cannot be made.

Required Finding 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.

No such evidence is included in the application. Therefore, required finding 5 cannot be made.

Required Finding 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 submitted design of the facility does not indicate any physical interferences with the use of the public right-of-way. Therefore, required finding 6 can be made.

C. Findings With Regard to Exceptions

LAMC Section 11.12.090 provides that exceptions pertaining to any provision of Chapter 11.12, including, but not limited to, exceptions from findings that would otherwise justify denial, may be granted by the City if the City makes the finding that:

1. Denial of the facility as proposed would violate federal law, state law, or both; or
2. A provision of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both.

Among other things, Section 11.12.090 further provides that an applicant may only request an exception at the time of applying for a wireless telecommunications facility permit; the request must include both the specific provision(s) of Chapter 11.12, and any design or siting standards from which the exception is sought and the basis of the request; and the applicant shall have the burden of proving that denial of the facility as proposed would violate federal law, state law, or both, or that the provisions of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both, using the evidentiary standards required by that law at issue.

City staff was aware that some of the required findings for approval likely could not be made based on the application as filed and determined that it would be fair to the applicant to treat the application as requesting one or more exceptions under Section 11.12.090 of the new Ordinance and to give the applicant an opportunity to supplement its application with supporting information if desired. This was communicated to the applicant by letter dated August 13, 2019. In response, the applicant's letter dated August 21, 2019 took the position described above that the Wireless Regulations do not apply and the act of imposing the Wireless Regulations on the application itself is an effective prohibition. For the reasons discussed in Part A above, the City disagrees. As AT&T did not identify in any of its application materials any specific requirements

of the Wireless Regulations that create an effective prohibition or establish any other basis for granting of an exception, the applicant has not met its burden of proving that an exception is warranted and therefore no exceptions are granted.

For all of the above reasons the application is denied. In accordance with LAMC 11.12.210, you have the opportunity to appeal this decision. The appeal of this decision must be filed with the City Clerk within 5 days of the decision. The appeal will be heard by the City Council at a noticed public meeting. Attached for your information is LAMC 11.12.210.

If you have any questions, please contact Engineering Services Director Jim Sandoval at jsandoval@losaltosca.gov.

Sincerely,

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

Chris Jordan
City Manager

Enclosure



City of Los Altos
One North San Antonio Road
Los Altos, California 94022-3087
Tel: (650) 947-2700
Fax (650) 947-2701

Suresite
Attn: Annie Freeman, Site Development Specialist
2033 Gateway Place, 5th Floor
San Jose, CA 95110

September 17, 2019

RE: Denial Decision: Application for personal wireless facility located at **AT&T #12, 356 Blue Oak Lane, Application No. SE19-00008**

Dear Applicant,

The above referenced application to locate a personal wireless facility at 356 Blue Oak Lane is hereby denied for the reasons stated below.

A. Applicable Siting Regulations

On August 5, 2019, the City of Los Altos adopted Ordinance 2019-460 and Resolutions 2019-35 and 2019-36, which collectively address placement of wireless facilities within the City limits (“Wireless Regulations”). Section 11.12.030(A)(1) of the new Ordinance requires that these new provisions be applied to all pending permit applications. The above referenced application (and eleven others submitted by AT&T addressed in separate decision letters) was pending as of August 5, 2019 and is therefore required to be processed pursuant to the Wireless Regulations.

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¹ The Small Cell Order is referred to by AT&T in its letter as the Infrastructure Order.

the referenced FCC requirement to publish in advance only applies to aesthetic standards. It does not apply to any other elements of the application requirements and review process. Therefore, this application is being processed under the requirements of the Wireless Regulations.

B. Application Findings

The above referenced application is for a wireless facility to be placed on an existing utility pole and with equipment mounted on the pole in the public right-of-way in an area of the City zoned as residential. Section 11.12.080 of the New Ordinance provides that the City shall *not* approve an application for placement in the public right-of-way unless several findings can be made. For the reasons discussed below, a number of the required findings cannot be made.

Required Finding 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.

Section 4.D. of Resolution 2019-35 states: “Wireless facilities shall only be permitted in the City in accordance with the following table:” The table indicates wireless facilities of the type described in the application are permitted in public rights-of-way in non-residential districts with a use permit. Thus, the residential zone location selected for siting this wireless facility does not conform with the location requirements of Resolution 2019-35.

For these reasons, required finding 1 cannot be made.

Required Finding 2. The proposed facility has been designed and located to achieve compatibility with the community to the maximum extent reasonably feasible.

For the same reasons described under required finding 1 above, required finding number 2 cannot be made.

Required Finding 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.

No such statement is included in the application. Therefore, required finding 3 cannot be made.

Required Finding 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.

No information needed to assess this issue is included in the application. Therefore, required finding 4 cannot be made.

Required Finding 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.

No such evidence is included in the application. Therefore, required finding 5 cannot be made.

Required Finding 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 submitted design of the facility does not indicate any physical interferences with the use of the public right-of-way. Therefore, required finding 6 can be made.

C. Findings With Regard to Exceptions

LAMC Section 11.12.090 provides that exceptions pertaining to any provision of Chapter 11.12, including, but not limited to, exceptions from findings that would otherwise justify denial, may be granted by the City if the City makes the finding that:

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Among other things, Section 11.12.090 further provides that an applicant may only request an exception at the time of applying for a wireless telecommunications facility permit; the request must include both the specific provision(s) of Chapter 11.12, and any design or siting standards from which the exception is sought and the basis of the request; and the applicant shall have the burden of proving that denial of the facility as proposed would violate federal law, state law, or both, or that the provisions of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both, using the evidentiary standards required by that law at issue.

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of the Wireless Regulations that create an effective prohibition or establish any other basis for granting of an exception, the applicant has not met its burden of proving that an exception is warranted and therefore no exceptions are granted.

For all of the above reasons the application is denied. In accordance with LAMC 11.12.210, you have the opportunity to appeal this decision. The appeal of this decision must be filed with the City Clerk within 5 days of the decision. The appeal will be heard by the City Council at a noticed public meeting. Attached for your information is LAMC 11.12.210.

If you have any questions, please contact Engineering Services Director Jim Sandoval at jsandoval@losaltosca.gov.

Sincerely,

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

Chris Jordan
City Manager

Enclosure