

**RESOLUTION NO. 2022-002**

**RESOLUTION OF THE CITY OF CHULA VISTA PLANNING COMMISSION APPROVING CONDITIONAL USE PERMIT CUP21-0021 FOR A NEW WIRELESS TELECOMMUNICATION FACILITY LOCATED ON 5.01-ACRES WITHIN VILLAGE CENTER (VC-5) OF THE EASTLAKE II SPECIFIC PLAN**

WHEREAS, on December 17, 2021, a duly verified application for a Conditional Use Permit (CUP21-0021) was filed with the City of Chula Vista Development Services Department by AT&T Wireless (Applicant); Eastlake Design District, LLC is the property owner (Owner); and

WHEREAS, the area leased by the Applicant, which is the subject of this Resolution, is a portion of an existing commercial center located at 851 Showroom Place, north of Otay Lakes Road between Fenton Street and Hunte Parkway (the "Project Site"); and

WHEREAS, the Applicant requests approval of a Conditional Use Permit (CUP) to install a new Wireless Telecommunication Facility, consisting of a 55-foot mono-broadleaf tree (Project) that will occupy four (4) existing off-street parking spaces at the Project Site; and

WHEREAS, in accordance with Chula Vista Municipal Code (CVMC) Section 19.89.060, wireless telecommunication facilities are subject to the height limitation stipulated in the underlying zone; and

WHEREAS, the Village Center (VC-5) zone has a maximum building height of 35-feet; and

WHEREAS, in accordance with CVMC Section 19.89.060, any wireless telecommunication facilities that exceeds the maximum building height allowed in a particular zone shall require public hearing with the City of Chula Vista Planning Commission; and

WHEREAS, the Director of Development Services has reviewed the proposed Project for compliance with the California Environmental Quality Act (CEQA) and has determined that the Project qualifies for a Class 3 Categorical Exemption pursuant to Section 15303 (New Construction or Conversion of Small Structures) of the State CEQA Guidelines. Thus, no further environmental review is required; and

WHEREAS, the Director of Development Services set the time and place for a hearing on the CUP application, and notice of the hearing, together with its purpose, was given by its publication in a newspaper of general circulation in the City and its mailing to property owners and residents within 500 feet of the exterior boundaries of the property at least 10 days prior to the hearing; and

WHEREAS, the hearing was held at the time and place as advertised in the Council Chambers, 276 Fourth Avenue, before the Planning Commission and the hearing was thereafter closed.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Chula Vista that it hereby makes the following findings:

- 1. That the proposed use at the particular location is necessary or desirable to provide a service or facility which will contribute to the general well-being of the neighborhood or the community.**

The proposed use will provide expanded wireless communication services to the Chula Vista community including, residential and public facilities. The Project Site is desirable because it will improve the wireless communication as a public convenience by providing essential communication and improved service in the surrounding area of its location. It will not interfere with any existing activities or conveniences of the public and will continue to aid in the general wellbeing of the community by providing uninterrupted wireless service for the nearby communities.

In order to minimize the visual impact, the proposed facility and all associated equipment will be located on the northeast corner of the Project Site behind the existing buildings and approximately 300-feet away from the public street. Even though the location of the facility will be adjacent to a residential neighborhood to the east, the Project Site is located approximately 115-linear-feet away and 50-feet above the adjacent neighborhood's elevation, thus only a portion of the mono-broadleaf tree will be visible to the residents. In addition, there are existing mature trees (both on-site and off-site) which are of relatively the same height as the facility helping it to further blend into the area.

- 2. That such use will not, under the circumstances of the particular case, be detrimental to the health, safety or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity.**

The use will improve and continue to provide a choice in wireless communication reliability in the use's coverage area. In the event of an emergency or natural disaster, the use will be able to continue to function, which supports the general health, safety, and welfare of the citizens of Chula Vista.

- 3. That the proposed use will comply with the regulations and conditions specified in this title for such use.**

The use requires the Applicant and Property Owner to fulfill conditions and to comply with all applicable regulations and standards specified in the City's Wireless Ordinance (CVMC 19.89) for the telecommunication facility's use. The use will be built in compliance with the City's Wireless Ordinance development criteria and all other City zoning and building regulations.

**4. That the granting of this conditional use will not adversely affect the General Plan of the City or the adopted plan of any governmental agency.**

The integration of wireless facilities with existing uses helps to achieve the General Plan Public Facilities and Services Element, including Policy PFS 24.1, regarding installing state-of-the-art wireless facilities, and Policy PFS 24.2, regarding reviewing new telecommunications facilities and requesting siting and design techniques that minimize community impacts.

BE IT FURTHER RESOLVED that the Planning Commission, based on the Findings above, does hereby approve the Conditional Use Permit subject to the following conditions:

**I. The following on-going conditions shall apply to the Project Site as long as it relies on this approval:**

1. The Applicant shall maintain the Project Site in accordance with the approved plans, which include site plans and elevation plans on file in the Planning Division, the conditions contained herein, and CVMC Title 19.
2. The conditions of approval for this Conditional Use Permit shall be applied to the subject property until such time as the approval may be revoked, and the existence of this approval with conditions shall be recorded with the title of the property.
3. The Applicant and Owner shall execute this Conditional Use Permit acknowledging that the subject telecommunications use is the only use that has been approved and is authorized on the subject site. Any minor modification/expansion of uses shall be subject to the review and approval of the Zoning Administrator.
4. The Applicant shall cooperate with telecommunications companies in co-locating additional antennas on the subject site provided said co-locators have received a Conditional Use Permit for such use at said site from the City. The Applicant shall exercise good faith in co-locating with other communications companies and sharing the permitted site, provided such shared use does not give rise to a substantial technical level-or quality-of-service impairment of the permitted use (as opposed to a competitive conflict or financial burden). In the event a dispute arises as to whether the Applicant has exercised good faith in accommodating other users, the City may require a third-party technical study at the expense of the Applicant.
5. Within 90 days of cessation of the business operations and use of the antennas, the Applicant shall submit a substitute user to the satisfaction of the Development Services Director and/or remove the Project and all associated equipment from the Project Site. If the facility is removed, then the Applicant shall restore the Project Site to its original condition. Any minor changes on the Conditional Use Permit shall require a modification to be reviewed by the Zoning Administrator.

6. The Property Owner and Applicant shall and do agree to indemnify, protect, defend and hold harmless City, its City Council members, Planning Commission members, officers, employees and representatives, from and against any and all liabilities, losses, damages, demands, claims and costs, including court costs and attorney's fees (collectively, liabilities) incurred by the City arising, directly or indirectly, from (a) any environmental determinations; (b) City's approval and issuance of this Conditional Use Permit and (c) City's approval or issuance of any other permit or action, whether discretionary or non-discretionary, in connection with the use contemplated on the Project Site. The property Owner and Applicant shall acknowledge their agreement to this provision by executing a copy of this Conditional Use Permit where indicated below. The property Owner's and Applicant's compliance with this provision shall be binding on any and all of the property Owner's and Applicant's successors and assigns.
7. Any violations of the terms and conditions of this Conditional Use Permit may result in the imposition of civil or criminal penalties and/or the revocation or modification of this Conditional Use Permit.
8. This Conditional Use Permit shall become void and ineffective if not utilized within three (3) years from the effective date thereof, or the end of any appeal period, unless the Applicant initiates an extension prior to expiration of the permit in accordance with CVMC Section 19.14.260. Failure to comply with any conditions of approval shall cause this permit to be reviewed by the City for additional conditions or revocation.

## **II. GOVERNMENT CODE SECTION 66020(d)(1) NOTICE**

Pursuant to Government Code Section 66020(d) (1), NOTICE IS HEREBY GIVEN that the 90 day period to protest the imposition of any impact fee, dedication, reservation, or other exaction described in this resolution begins on the effective date of this resolution and any such protest must be in a manner that complies with Government Code Section 66020(a) and failure to timely follow this procedure will bar any subsequent legal action to attack, review, set aside, void or annul imposition. The right to protest the fees, dedications, reservations, or other exactions does not apply to planning, zoning, grading, or other similar application processing fees or service fees in connection with this project; and it does not apply to any fees, dedication, reservations, or other exactions which have been given notice similar to this, nor does it revive challenges to any fees for which the statute of limitations has previously expired.

### **III. EXECUTION OF RESOLUTION OF APPROVAL**

The Property Owner and Applicant shall execute this document signing on the lines provided below, indicating that the Property Owner and Applicant have each read, understood, and agreed to the conditions contained herein, and will implement the same. Upon execution, this document shall be signed and returned to the City's Development Services Department.

\_\_\_\_\_  
Signature of Property Owner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Property Owner

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Applicant

### **IV. CONSEQUENCE OF FAILURE OF CONDITIONS**

If any of the foregoing conditions fail to occur, or if they are, by their terms, to be implemented and maintained over time, if any of such conditions fail to be so implemented and maintained according to their terms, the City shall have the right to revoke or modify all approvals herein granted, deny, or further condition issuance of all future building permits, deny, revoke, or further condition all certificates of occupancy issued under the authority of approvals herein granted, institute and prosecute litigation to compel their compliance with said conditions or seek damages for their violation. Failure to satisfy the conditions of this permit may also result in the imposition of civil or criminal penalties.

### **V. INVALIDITY; AUTOMATIC REVOCATION**

It is the intention of the Planning Commission that its adoption of this Resolution is dependent upon the enforceability of each and every term, provision and condition herein stated; and that in the event that any one or more terms, provisions or conditions are determined by a Court of competent jurisdiction to be invalid, illegal or unenforceable, this resolution and the permit shall be deemed to be automatically revoked and of no further force and effect.

Presented by:

Approved as to form by:

\_\_\_\_\_  
Laura C. Black, AICP  
Interim Director of Development Services

\_\_\_\_\_  
Glen R. Googins  
City Attorney

PASSED AND APPROVED BY THE PLANNING COMMISSION OF THE CITY OF  
CHULA VISTA, CALIFORNIA, this \_\_\_\_ day of \_\_\_\_\_ 2022, by the following vote,  
to-wit;

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Max Zaker, Chair

ATTEST:

\_\_\_\_\_  
Patricia Salvacion, Secretary