



**City of Los Altos
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The CBR Group
Attn: Steve Piper
2840 Howe Road, Suite E
Martinez, CA 94553

September 11, 2019

RE: Denial Decision: Application for personal wireless facility located at **Verizon #1, 155 Almond Avenue, Application No. SE19-00019**

Dear Applicant,

The above referenced application to locate a personal wireless facility at 155 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 was pending as of August 5, 2019 and is therefore required to be processed pursuant to the Wireless Regulations. This was communicated to the applicant by letter dated August 13, 2019. By email dated August 22, 2019, the applicant did not clearly dispute the applicability of the new ordinance, and instead the applicant sought clarifications from the letter received.

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 2 of Resolution 2019-35 defines Small Cell Facility as each antenna associated with the deployment, excluding associated antenna equipment as no more than three cubic feet in volume. The proposed design of the antenna has exceeded this requirement and does not qualify as a Small Cell Facility.

No letter of authorization between PG&E and Verizon is included in the application.

The certificate of liability insurance for both Commercial General Liability and Automobile Liability expired on August 23, 2019 and August 30, 2019 respectively.

No evidence of a valid business license with City of Los Altos is included in the application.

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.

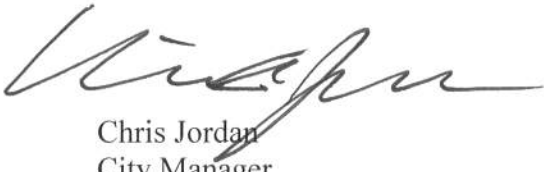
Among other things, Section 11.12.090 further provides that an applicant may only request an exception at the time of applying for a wireless telecommunications facility permit; the request must include both the specific provision(s) of Chapter 11.12, and any design or siting standards from which the 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. As The CBR Group 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