

RESOLUTION NO. 2024-013

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
CHULA VISTA AFFIRMING THE PLANNING COMMISSION
DECISION TO APPROVE CONDITIONAL USE PERMIT
(CUP22-0052) TO INSTALL A NEW 45-FOOT
FREESTANDING WIRELESS TELECOMMUNICATION
FACILITY ON A 2.09-ACRE SITE WITH AN EXISTING
CHURCH LOCATED AT 430 SECOND AVENUE

WHEREAS, on December 14, 2022, a duly verified application for a Conditional Use Permit (“CUP”) was filed with the City of Chula Vista Development Services Department by AT&T (“Applicant”); 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 before the Planning Commission 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 duly called and noticed public hearing on the Project was held before the Planning Commission of the City of Chula Vista on October 25, 2023, in the Council Chambers, 276 Fourth Avenue, at 6:00 p.m. to hear public testimony and staff’s presentation; and

WHEREAS, the Planning Commission on October 25, 2023, reviewed the Project and approved the CUP by a vote of 7-0; and

WHEREAS, on November 3, 2023, William D. Daley filed an appeal of the Planning Commission’s decision to approve the CUP (CUP22-0052); and

WHEREAS, the City Clerk set the time and place for the public hearing before the City Council on the appeal, and notice of said 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, City staff recommends denying the appeal and affirming the Planning Commission approval of CUP22-0052 for the Project; and

Resolution No. 2024-013

Page No. 2

WHEREAS, the Chula Vista City Council has reviewed and considered all such materials for CUP for the Project; and

WHEREAS, the City Council held a duly noticed public hearing to consider said appeal at the time and place as advertised, namely January 16, 2024 at 5:00 p.m., in the City Council Chambers, 276 Fourth Avenue, before the City Council, and the hearing was thereafter closed.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Chula Vista does hereby find and determine that the Planning Commission's approval of Conditional Use Permit CUP22-0052 is hereby AFFIRMED, with findings as follows:

I. CONFORMANCE WITH CHULA VISTA MUNICIPAL CODE

That the City Council of the City of Chula Vista, in the exercise of its independent judgment, as set forth in the record of its proceedings does hereby adopt all findings made by the Planning Commission contained in resolution for the Project, which are attached hereto and incorporated herein by this reference, as if said findings were their own. The City Council specifically finds that the following are essential concealment elements of the stealth design for this proposed facility that make the facility look like something other than a wireless facility: (a) the design of the vertical support structure as a faux eucalyptus tree, including without limitation: (i) the size and shape of the canopy of faux eucalyptus tree that resembles a mature natural eucalyptus tree, (ii) the placement of antennas and other tower-mounted equipment within the canopy of faux eucalyptus tree, and (iii) the painting of all surfaces to blend with the natural colors of the eucalyptus tree; (b) the design of the ground-level enclosure as one that resembles a trash corral; and (c) all the planting and related maintenance requirements.

BE IT FURTHER RESOLVED that the City Council of the City of Chula Vista, based on the findings above, does hereby approve Conditional Use Permit CUP22-0052, subject to the following conditions:

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 for CUP22-0052, which include site plans and elevation plans dated June 6, 2023, and on file in the Planning Division, compliance with the conditions contained herein, and CVMC Title 19.
2. The conditions of approval for this Conditional Use Permit, CUP22-0052, 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 under this permit. Any new use or 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 property, provided said co-locators have received a Conditional Use Permit from the City for such use. 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 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, the Applicant shall restore the Project Site to its original condition. Any changes to this Conditional Use Permit shall require a modification to be reviewed by the Zoning Administrator.
6. The Property Owner and Applicant shall and do hereby agree to timely indemnify, protect, defend and hold harmless the 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 fees (collectively, "liabilities") incurred by the City arising, directly or indirectly, from (a) any environmental determinations; (b) the City's approval and issuance of this Conditional Use Permit; and (c) the City's approval or issuance of any other permit or action, whether discretionary or non-discretionary, in connection with the use contemplated herein. 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 is an express condition of this permit and shall be binding on any and all of the Property Owner's and Applicant's successors and assigns.
7. The conditions of approval for this Conditional Use Permit shall be applied to the Project Site until such time as the approval may be revoked, and the existence of this approval with the conditions shall be recorded with the title of the property.
8. Any violations of the terms and conditions of this permit may result in the imposition of civil or criminal penalties and/or the revocation or modification of this permit.
9. This Conditional Use Permit (CUP22-0052) may be reviewed 10 years from the date of approval (January 16, 2034) at which time the Zoning Administrator may review this use for compliance with the conditions of approval and any applicable codes and regulations and shall determine, in consultation with the Applicant, whether the Project shall be modified from its original approval, or revoked, and whether another review shall be necessary for the Project and if so, in what period of time.

Resolution No. 2024-013

Page No. 4

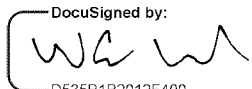
10. This Conditional Use Permit (CUP22-0052) shall become void and ineffective if not utilized within three (3) years from the effective date thereof (January 16, 2027), in accordance with CVMC Section 19.14.260. Failure to comply with any conditions of approval shall cause this permit to be reviewed by the City for additional conditions or revocation.

I. 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.

II. EXECUTION OF RESOLUTION OF APPROVAL

The Property Owner and Applicant shall execute this document by 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.

DocuSigned by:

D535B4B2012E400

Signature of Property Owner
William Lewallen

2/6/2024

Date

William Lewallen for The Church in Chula Vista
Printed Name of Property Owner

DocuSigned by:

C99BE443B3B84DD

Signature of Applicant
Tara Carmichael

1/18/2024

Date

Tara Carmichael for AT&T Wireless
Printed Name of Applicant

III. CONSEQUENCE OF FAILURE OF CONDITIONS

If any of the foregoing conditions fail to be met, or in the case that 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.

VI. INVALIDITY; AUTOMATIC REVOCATION


It is the intention of the City Council 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 automatically revoked and of no further force and effect.

[SIGNATURES ON THE FOLLOWING PAGE]

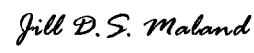
Resolution No. 2024-013

Page No. 6

Presented by

DocuSigned by:

68970191600C4C4...
Laura C. Black, AICP
Director of Development Services

Approved as to form by

DocuSigned by:

EE8949DC9B5747E...
Jill D.S. Maland
Lounsbery Ferguson Altona & Peak
Acting City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 16th day of January 2024 by the following vote:

AYES: Councilmembers: Cardenas, Chavez, Gonzalez, and Preciado

NAYS: Councilmembers: McCann

ABSENT: Councilmembers: None

DocuSigned by:

7804EC23B90B473...
John McCann, Mayor

ATTEST:

DocuSigned by:

3074D104EAF342E...
Kerry K. Bigelow, MMC, City Clerk

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)
CITY OF CHULA VISTA)

I, Kerry K. Bigelow, City Clerk of Chula Vista, California, do hereby certify that the foregoing Resolution No. 2024-013 was duly passed, approved, and adopted by the City Council at a regular meeting of the Chula Vista City Council held on the 16th day of January 2024.

Executed this 16th day of January 2024.

DocuSigned by:

3074D104EAF342E...
Kerry K. Bigelow, MMC, City Clerk

Attachment 5

RESOLUTION NO. 2023-20

RESOLUTION OF THE CITY OF CHULA VISTA PLANNING COMMISSION APPROVING CONDITIONAL USE PERMIT (CUP22-0052) FOR A NEW 45-FOOT FREESTANDING WIRELESS TELECOMMUNICATION FACILITY ON A 2.09 ACRE SITE WITH AN EXISTING CHURCH LOCATED AT 430 SECOND AVENUE WITHIN THE SINGLE-FAMILY RESIDENCE ZONE (R-1) ZONE AND RESIDENTIAL LOW-MEDIUM (RLM) GENERAL PLAN LAND USE DESIGNATION.

WHEREAS, on December 14, 2022, a duly verified application for a Conditional Use Permit (“CUP”) was filed with the City of Chula Vista Development Services Department by AT&T (“Applicant”); Church in Chula Vista is the property owner (“Owner”); and

WHEREAS, the area leased by the Applicant, which is the subject of this Resolution, is a portion of a property improved with an existing church at 430 Second Avenue, on the west side of Second Avenue, north of Alvarado Street, and south of G Street (“Project Site”); and

WHEREAS, the Applicant requests approval of a CUP to install a new Wireless Telecommunication Facility, consisting of a 45-foot-high freestanding tower structure designed as a eucalyptus tree along with enclosed associated equipment (“Project”); 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 Single-Family Residence Zone (R-1) zone has a maximum building height of 28 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 a CUP approved following a 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

PC Resolution No. 2023-20

October 25, 2023

Page 2

WHEREAS the Chula Vista Planning Commission has reviewed and considered all materials for CUP22-0052 and the Project, as well as having considered oral testimony and documentary evidence submitted related to CUP22-0052 and this Project; and

WHEREAS, as advertised, the hearing was held at 6:00 p.m. on Wednesday, October 25, 2023 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 pursuant to CVMC Section 19.14.080 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 proposed use will include facilities (i.e. a tower with antennas attached) that will exceed 28 feet in height; however, the proposed height is the only technologically feasible option for providing service to the area. Additionally, a facility built at the maximum building height (28 feet) would not be sufficient enough to allow for current or future expansion, and, co-locations with other cellular providers.

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. The use will continue to aid in the general wellbeing of the community by providing 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.

- 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.**

To minimize any visual impact, the facility utilizes a stealth design and is proposed as a faux eucalyptus tree, complimenting adjacent, existing landscaping, and, to screen any cellular equipment from public view. It will not interfere with any existing activities or conveniences of the public.

- 3. That the proposed use will comply with the regulations and conditions specified in Title 19 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 telecommunications facility use. The use will be built in compliance with the City's Wireless Ordinance development criteria and all other City zoning and building

regulations. Additionally, a facility built at the maximum building height (28 feet) would not be sufficient enough to allow for current or future expansion, and, co-locations with other cellular providers.

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 Public Facilities and Services Element of the General Plan, 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 CUP22-0052, subject to the following conditions:

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 for CUP22-0048, which include site plans and elevation plans on file in the Planning Division, compliance with the conditions contained herein, and CVMC Title 19.
2. The conditions of approval for this Conditional Use Permit CUP22-0052, 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 under this permit. Any new use or 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 property, provided said co-locators have received a Conditional Use Permit from the City for such use. 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 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, the Applicant shall restore the Project Site to its original

condition. Any changes to this Conditional Use Permit shall require a modification to be reviewed by the Zoning Administrator.

6. The Property Owner and Applicant shall and do hereby agree to timely indemnify, protect, defend and hold harmless the 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 fees (collectively, "liabilities") incurred by the City arising, directly or indirectly, from (a) any environmental determinations; (b) the City's approval and issuance of this Conditional Use Permit; and (c) the City's approval or issuance of any other permit or action, whether discretionary or non-discretionary, in connection with the use contemplated herein. 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 is an express condition of this permit and shall be binding on any and all of the Property Owner's and Applicant's successors and assigns.
7. The conditions of approval for this Conditional Use Permit shall be applied to the Project Site until such time as the approval may be revoked, and the existence of this approval with the conditions shall be recorded with the title of the property.
8. Any violations of the terms and conditions of this permit may result in the imposition of civil or criminal penalties and/or the revocation or modification of this permit.
9. This Conditional Use Permit (CUP22-0052) may be reviewed 10 years from the date of approval (October 25, 2033) at which time the Zoning Administrator may review this use for compliance with the conditions of approval and any applicable codes and regulations and shall determine, in consultation with the Applicant, whether the Project shall be modified from its original approval, or revoked, and whether another review shall be necessary for the Project and if so, in what period of time.
10. This Conditional Use Permit (CUP22-0052) shall become void and ineffective if not utilized within three (3) years from the effective date thereof (October 25, 2026), 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.

I. 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

PC Resolution No. 2023-20

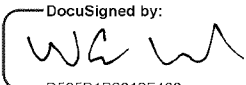
October 25, 2023

Page 5

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.

II. EXECUTION OF RESOLUTION OF APPROVAL

The Property Owner and Applicant shall execute this document by 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.

 DocuSigned by:
D535B1B2042E400...

Signature of Property Owner
(William Lewallen for The Church in Chula Vista)

10/31/2023

Date

Printed Name of Property Owner
(William Lewallen for The Church in Chula Vista)

 DocuSigned by:
C99BE443B3B84DD...

Signature of Applicant
(Tara Carmichael for AT&T Wireless)

10/30/2023

Date

Tara Carmichael

Printed Name of Applicant
(Tara Carmichael for AT&T Wireless)

PC Resolution No. 2023-20

October 25, 2023

Page 6

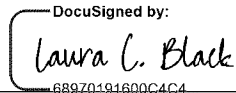
III. CONSEQUENCE OF FAILURE OF CONDITIONS

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.

IV. INVALIDITY; AUTOMATIC REVOCATION

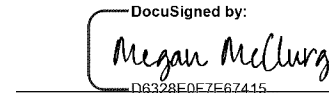
It is the intention of the Planning Commission that its adoption of this Resolution is dependent upon the enforceability of each and every term, provision and condition herein stated; and that in the event that any one or more terms, provisions or conditions are determined by a Court of competent jurisdiction 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:

DocuSigned by:

68970191600C4C4...

Laura C. Black, AICP
Director of Development Services

Approved as to form:

DocuSigned by:

D6328E0F7E67415...

for Jill D.S. Maland
Lounsbery Ferguson Altona & Peak
Acting City Attorney

PC Resolution No. 2023-20

October 25, 2023

Page 7

PASSED AND APPROVED BY THE PLANNING COMMISSION OF THE CITY OF CHULA VISTA, CALIFORNIA, this 25^h day of October 2023, by the following vote, to-wit;

AYES: Burroughs, Combs, De La Rosa, Felber, Leal, Torres, Zaker

NOES:

ABSENT:

ABSTAIN:

DocuSigned by:

Michael De La Rosa

8B6C21D645E7448

Michael De La Rosa, Chair

ATTEST:

DocuSigned by:

Mariluz Zepeda

B5923AE3F556490...

Mariluz Zepeda, Secretary