

RESOLUTION NO. 95-17

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHMOND
UPHOLDING T-MOBILE'S APPEAL AND MODIFYING THE PLANNING
COMMISSION'S ACTION ON CONDITIONAL USE PERMIT (PLN16-366) TO
MODIFY AN EXISTING T-MOBILE WIRELESS COMMUNICATIONS FACILITY AT
5221 CENTRAL AVENUE BY MODIFYING CERTAIN CONDITIONS**

WHEREAS, on June 27, 2016, T-Mobile c/o Jacqueline Smart Steinberg (the "applicant" or "permittee"), filed Planning Application PLN16-366 with the City of Richmond requesting a Conditional Use Permit modification to upgrade an existing unmanned telecommunications facility located at 5221 Central Avenue (Assessor's Parcel No. 510-081-055) (the "subject site" or "premises") consisting of adding three new panel antennas and three radio remote units on the rooftop of an existing building, behind a screen that will be painted and textured to match the exterior of the building (the "proposed project" or "project"); and

WHEREAS, the Conditional Use Permit approval, conditional approval or disapproval is subject to the provisions of Section 15.04.806 of the Richmond Zoning Ordinance related to Conditional Use Permits, and Section 15.04.614 of the Zoning Ordinance related to wireless communications facilities; and

WHEREAS, on February 16, 2017, the Planning Commission reviewed and approved the proposed project with modified conditions; and

WHEREAS, on February 24, 2017, T-Mobile c/o Jacqueline Smart Steinberg submitted an appeal of the Planning Commission action on PLAN 16-366 citing their objections to modified conditions 3 and 16; and

WHEREAS, on June 20, 2017, the City Council conducted a properly noticed public hearing pursuant to California Government Code Section 65090, and considered all written and verbal testimony presented before or during the hearing; and continued the public hearing and directed the applicant to request assistance from other telecommunications operators with facilities at same location to develop a joint screening program and report any progress at the next meeting; and

WHEREAS, the applicant, followed City Council direction and made numerous unsuccessful attempts to reach decision makers at AT&T but was not able to make contact and therefore could not secure a commitment from them to modify their existing entitlements; and

WHEREAS, the project is categorically exempt from the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15302(c), consisting of projects that involve the replacement or reconstruction of existing utility systems and/or facilities where the new structure is located on the same site and will result in negligible or no expansion of capacity; and

WHEREAS, on the basis of the application, plans, materials, and testimony provided at or prior to the public hearing on July 18, 2017, including the agenda report dated thereof, the Council adopts the following findings with statements of fact in approving the proposed project:

CONDITIONAL USE PERMIT FINDINGS:

- 1. The location of the proposed conditional use is in accordance with the General Plan and any applicable specific plan and the land use designation for the project site.**

Staff Statement: Criterion Satisfied. The General Plan 2030 designates the subject site as Regional Commercial Mixed-Use. The intent of this General Plan land use designation is to facilitate office, retail, and residential uses in mid-rise, mixed-use developments characterized by compact and pedestrian-friendly urban environments. Although the General Plan's Regional Commercial Mixed-Use land use designation does not specifically address wireless communications facilities, approval of the proposed project would be consistent with General Plan Policy ED1.2, High Quality Infrastructure and Public Services, which aims to maintain infrastructure such as streets, freeways and

utilities essential for improving the quality of life for residents and attracting businesses to locate to Richmond. The proposed project is also consistent with Action CF1.G, Information Technology, which aims to provide affordable broadband data communications such as wireless networks.

- 2. The location, size, design, and operating characteristics of the proposed use will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.**

Staff Statement: *Criterion Conditionally Satisfied.* The proposed project will be fully compliant with Federal Communications Commission (FCC) Rules and Regulations. FCC Rules and Regulations require wireless providers to operate their wireless facilities within radio frequency emission limits that are considered safe for public exposure. According to a Compliance Study on Electromagnetic Fields Exposure submitted with the application, no locations in the surrounding area near the T-Mobile facility will have RF exposure levels close to the FCC's Maximum Permissible Exposure Limit. However, the Compliance Study recommends mitigation measures (signage) to raise awareness of RF exposure for persons who need to work near the antennas. These mitigations measures are included in the conditions of approval.

- 3. The proposed use will not create any nuisances arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding ambient conditions.**

Staff Statement: *Criterion Conditionally Satisfied.* As conditioned, the wireless facility and all equipment will not generate noise that exceeds the applicable ambient noise limits in the CR Zoning District. Furthermore, the permittee shall take all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, modifications and removal of the facility. The equipment area will remain unchanged and the rooftop wireless equipment will be screened from public view.

- 4. The proposed use complies with all applicable provisions of the Zoning Ordinance.**

Staff Statement: *Criterion Conditionally Satisfied.* As conditioned, the wireless facility modification will comply with all development standards in the Richmond Zoning Ordinance. The wireless facility will include concealment measures to camouflage the facility and match the underlying structure in style and finish, and the wireless facility will meet height and setback requirements for the CR Zoning District.

- 5. The site of the proposed use is adequately served by highways, streets, water, sewer, and other public facilities and services.**

Staff Statement: *Criterion Satisfied.* The project involves a modification of an existing wireless communications facility located in an urbanized and built area in the Southwest Annex Neighborhood Council area. The proposed use will be on the rooftop an existing building with access to highways, streets, public utilities and services.

NOW, THEREFORE, BE IT RESOLVED, that the City Council, does hereby uphold T-Mobile's appeal and grants approval of Conditional Use Permit PLN16-366, subject to the following modified conditions of approval:

- 1. *General/Consistency with Plans:*** This Conditional Use Permit is granted for the modification to an existing wireless communication facility at 5221 Central Avenue, in substantial conformance with the project plans submitted to and date stamped June 27, 2016, by the City of Richmond Planning and Building Services Department, the project description, and all development standards for wireless communication facilities pursuant to Section 15.04.614 of the Richmond Municipal Code.
- 2. *Design Review:*** This Conditional Use Permit must also obtain design review and approval, in accordance with Section 15.04.614.030(C) of the Richmond Municipal Code.
- 3. *Concealment:*** The Permittee shall conceal the subject wireless facility located at 5221 Central Avenue. The wireless facility must be screened from public view and incorporate

concealment measures sufficient to render the facilities either camouflaged or stealth, and match the underlying structure in proportion, quality, architectural style, and finish.

4. **Future Collocations:** The wireless facility modification must be designed and sited in a manner that contemplates future collocations, and will allow additional equipment to be integrated into the proposed facility with no or negligible visible changes to its outward appearance to the greatest extent feasible.
5. **Compliance with Laws:** The Permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations, ordinance or other rules.
6. **Noise:** The wireless facility and all equipment associated with a wireless facility must not generate noise that exceeds the applicable ambient noise limit in the CR Zoning District, including without limitation the provisions in Article 15.04.608 (Performance Standards) and Article 15.04.605 (Noise) of the Richmond Municipal Code.
7. **Lights:** Unless otherwise required under FAA or FCC regulations, applicants may install only timed or motion-sensitive light controllers and lights, and must install such lights so as to comply with Article 15.04.604 (Lighting and Illumination) and avoid illumination impacts to adjacent properties to the maximum extent feasible.
8. **Signs:** Signs should be posted and maintained at the first point of access to the site. This signage shall:
 - a. Provide information and notify workers that there are active antennas installed and provide guidelines for working in RF environments.
 - b. Accurately identify the facility owner's unique site number, and also provides a local or toll-free telephone number to contact the facility owner's operations center.
 - a. Provide T-Mobile emergency contact information.
 - b. Alert individuals that they are entering an area where the power density emitted from transmit antennas may exceed the FCC's maximum permissible exposure limit for the general public.
9. **Adverse Impacts:** The Permittee shall take all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification and removal of the facility. Construction and maintenance at the facility shall only occur during the hours of 8:00AM to 6:00PM.
10. **Permit Duration:** This permit will automatically expire 10 years from the issuance date, except when California Government Code section 65964(b), as may be amended, authorizes the City to issue a permit with a shorter term.
11. **Permit Renewal:** Any application to renew this permit must be tendered to the City between 365 days and 180 days prior to its expiration, and must be accompanied by all required application materials, fees and deposits for a new application as then in effect. The City shall review an application for permit renewal in accordance with the standards for new facilities as then in effect. The Zoning Administrator may, but is not obligated to, grant a written temporary extension on the permit term to allow sufficient time to review a timely submitted permit renewal application.
12. **Build-out Period:** Any permit approved under this Article or by operation of law shall automatically expire one year from the approval date if the applicant fails to commence construction within that one-year period; provided, however, that the Zoning Administrator may renew any such permit for up to one additional year if the Zoning Administrator receives a written request from the permittee within 30 days prior to the expiration date, at the Zoning Administrator's sole discretion.
13. **Permittee's Contact Information:** The permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person. All such contact information for responsible parties shall be provided to the Zoning Administrator within one business day after permittee receives a written request from the Zoning Administrator.

14. **Cooperation with Access and Inspections:** The City or its designee may enter onto the facility area to inspect the facility upon reasonable notice to the permittee. The permittee shall cooperate with all inspections. The City reserves the right to enter or direct its designee to enter the facility to support, repair, disable or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.
15. **Maintenance:** The site and the facility, including but not limited to all landscaping, fencing and related transmission equipment, must be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.
16. **Graffiti Abatement:** The Permittee shall promptly remove all graffiti on the wireless facility at the Permittee's sole cost and expense, and in no instance more than 48 hours from the time of notification by the City to the Permittee or after discovery by the Permittee.
17. **Indemnification:** The permittee and, if applicable, the non-government owner of the private property upon which the tower/and or base station is installed shall defend, indemnify and hold harmless the City, its agents, officers, officials and employees (i) from any and all damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs of mandamus and other actions or proceedings brought against the City or its agents, officers, officials or employees to challenge, attack, seek to modify, set aside, void or annul the City's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs and expenses and any and all claims, demands, law suits or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors or independent contractors. In the event the City becomes aware of any such actions or claims the City shall promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. It is expressly agreed that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense.

I certify that the foregoing resolution was passed and adopted by the Council of the City of Richmond at a regular meeting thereof held July 18, 2017, by the following vote:

AYES: Councilmembers Choi, McLaughlin, Willis, Vice Mayor Beckles, and Mayor Butt.
NOES: None.
ABSTENTIONS: Councilmember Martinez.
ABSENT: Councilmember Myrick.

PAMELA CHRISTIAN
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:

TOM BUTT

Mayor

Approved as to form:

BRUCE GOODMILLER

City Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Resolution No. 95-17**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on July 18, 2017.



Pamela Christian, Clerk of the City of Richmond