

These minutes will be considered for approval at the Planning Commission meeting of 09-04-2019.

**MINUTES OF THE ADJOURNED REGULAR MEETING  
OF THE CITY OF SAN CLEMENTE  
PLANNING COMMISSION  
August 21, 2019 @ 6:00 p.m.  
Council Chambers  
100 Avenida Presidio  
San Clemente, California 92672**

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**1. CALL TO ORDER**

Chair Ruehlin called the Adjourned Regular Meeting of the Planning Commission of the City of San Clemente to order at 6:03 p.m.

**2. PLEDGE OF ALLEGIANCE**

Chair pro tem Crandell led the Pledge of Allegiance.

**3. ROLL CALL**

Commissioners Present: Donald Brown, Chris Kuczynski, Jason Talley, Zhen Wu;  
Chair pro tem Barton Crandell, Chair Jim Ruehlin

Commissioners Absent: Vice Chair Michael Blackwell

Staff Present: Gabriel J. Perez, City Planner  
Katie Crockett, Associate Planner  
David Pierucci, Deputy City Attorney  
Eileen White, Recording Secretary

Planner Perez introduced Planning Division's newest employee Jennifer Savage, Senior Planner. Senior Planner Savage thanked the Commissioners for the warm welcome.

**4. SPECIAL ORDERS OF BUSINESS**

None

**5. MINUTES**

- A. Minutes from the Adjourned Regular Planning Commission Meeting of August 7, 2019.

IT WAS MOVED BY COMMISSIONER TALLEY SECONDED BY COMMISSIONER WU, AND CARRIED 5-0-1 WITH COMMISSIONER BROWN ABSTAINING, TO RECEIVE AND FILE THE MINUTES FROM THE ADJOURNED REGULAR MEETING OF AUGUST 7, 2019.

Amended as follows:

Page 8, middle of page, replace the last bullet point with the following bulleted comment, "Recommended City Council direct staff to look into the feasibility of further restricting smoking and vaping throughout the City in general."

Page 8, under "Old Business", 2<sup>nd</sup> sentence, replace "City processes/has processed" with "City Planner processes/has processed". At the end of the paragraph, insert the following, "He had requested the interpretation be rescinded and sent to the entire Planning Commission for review. He commented that he was not opining on the substantive nature of the interpretation, but the procedure."

**[DECISIONS FINAL. SUBJECT TO APPEAL OR CALL UP BY COUNCIL.]**

**6. ORAL AND WRITTEN COMMUNICATION**

None

**7. CONSENT CALENDAR**

None

**8. PUBLIC HEARING**

**A. AT&T Cell Sites (Crockett)**

Consider requests to install and operate small wireless telecommunications facilities on City streetlight poles in the public right of way.

**1. 2400 Camino Faro CS – Conditional Use Permit 18-530 – AT&T Small Cell MSVJO 009**

**2. 2411 Via Turqueza CS – Conditional Use Permit 18-532 – AT&T Small Cell MSVJO 012**

**3. 3018 Camino Vera Cruz CS – Conditional Use Permit 18-534 – AT&T Small Cell MSVJO 014**

DRAFT

**4. 1101 Calle Del Cerro CS – Conditional Use Permit 18-535 – AT&T Small Cell MSVJO 016**

Deputy City Attorney Pierucci explained that the City has limited capabilities for reviewing the installation of cell towers. The FCC has established Federal regulations for reviewing wireless facilities, which curtail the City's ability to question the radiofrequency emission levels associated with wireless facilities and establish specific timeframes within which wireless facility applications must be acted upon by the City.

Katie Crockett, Associate Planner, narrated a PowerPoint Presentation entitled, "Four AT&T Small Cells in the Right of Way, CUP 18-530, 18-532, 18-534, and 18-535," dated August 21, 2019. A copy of the Presentation is on file in Planning Division. In response to questions from the Commission, she clarified that the City does not protect private views, only those in designated scenic corridors; light fixtures must be reinstalled at a similar height to provide the same lighting when the new poles are installed. She noted the City does not have language on the books to request the applicant provide evidence the proposed location is necessary to provide the coverage and/or alternative locations. Due to the "shot clock" provision, the City only has until September 27, 2019, to approve or deny the requests. The proposed cell installations will be automatically approved on September 27, 2019, if the City does not take action or secure a tolling agreement with the applicant before then. The applicant was asked to provide the alternatives/evidence to justify the locations after negative input from the public was received.

Franklin Orozco, on behalf of AT&T and Ericson stated the proposed installations will provide increased data capacity and better coverage for residents; noted the improvements are proposed in response to changes in the way California is communicating, which has tremendously increased demand for data traffic, and is expected to continue to increase; described constraints and challenges to providing reliable service associated with the City's topography; described how the small cells will function; and agreed with the project conditions of approval. In response to questions, he noted that although the maps indicating coverage before and after may appear contrary, the proposed installations are just a portion of the overall network, and added together with previous approvals make for improved coverage; discussed some of the adjacent light fixtures in the area that were considered and rejected due to increased negative view impacts and/or inadequate coverage. He did not have adequate time to document the alternatives and provide evidence confirming best placement in the short space of time. In response to suggestion that they consider installing new poles, he noted focus is on using existing locations rather than installing additional poles that would further obstruct views.

Chair Ruehlin opened the public hearing and acknowledged receipt of emails and correspondence from the public on the dais.

Robb McMillan, resident, requested the City require the applicant to provide readings for the radius of the small cells, noting that one of the proposed will be at eye level with his back yard and another will be 65 feet from the kindergarten playground. The proposed locations are reckless, dangerous, reduce his property values and give AT&T a monopoly in the area.

Vanessa Barr, resident, reviewed a written communication she submitted with photos of the proposed location. She objects to the placement on Via Turqueza due to potential health risks to children living adjacent to and playing in the nearby playground, increased exposure to dangerous health risks because the antennas are on eye level with yards, and view obstructions for many homes. She challenged the City's assertion that the project is exempt from CEQA because the antennas will be placed in a sensitive environment, one of the poles is only 35 feet away from the guard building, and the antennas will obstruct scenic vistas.

Matt Barr, resident, suggested the City create an ordinance that would define parameters, such as no cell sites 500 feet from homes and 1,000 feet from schools. For this project, the applicant should be required to submit documents indicating other structures were considered and justify these locations. He is also concerned about loss in property values.

Susan Hennebry, resident, spoke on behalf of Signal Point residents. She requested the City deny the application due to insufficient notice, claim that one of the fixtures is on private property, and potential that the fixtures will detract from ocean views, result in decreased property values, and require disclosure notices when selling homes. She believes there are other locations where the cell tower can be located and noted only AT&T customers will benefit.

Art Cartwright, resident, opposed the cell tower installation due to its close proximity to his home and he and his wife's chronic health problems; suggested the City join with other plaintiffs to challenge the FCC regulations that give cities insufficient control.

Mike Bivins, resident, opposed the cell tower installation due to its close proximity to schools and potential to harm children, suggested property values will drop; requested the applicant be required to find alternative sites.

Ted Kibby, resident, opposed the proposed locations due to dangerous and harmful radiation exposure to the kids at school.

Peter Langevin, resident, suggested those living next to the school will be exposed both during the day at school and home when not at school;

requested the City work harder to force the applicant to find better cell tower sites away from families and children.

Adam Agathakis, resident, opposed the proposed location for the cell towers due to potential health concerns; requested the City find alternative locations; asked if the City will be compensated.

Jennifer Malone de Koeper, resident, requested the cell tower proposed for Site 2 be relocated to protect the children's health; suggested wildlife in the area would be negatively affected by the installation; expressed concern that her ocean view will be negatively impacted; requested the applicant be required to submit justification for the locations and alternative location studies.

Kristy Nehausen, resident representing the Montego neighborhood, opposed installation of the cell tower on Calle del Cerro due to danger to humans from radiation and loss of property value. She requested the applicant move the cell towers far away from schools and homes.

Chair Ruehlin closed the public hearing.

In response to questions, Associate Planner Crockett explained that the proposed towers will feature 4G technology at this time, but can be upgraded to 5G either administratively if only minor changes are proposed, as defined by the FCC, or through public hearing in the event designs have significant changes proposed; noted the City is only able to regulate time, place and manner, and to some extent design and location (with limitations). The applicant provided a worksheet for each site indicating that each site meets the FCC parameters for facilities unlikely to cause RF emissions in excess of the FCC established limits, and must do a field test following installation to prove the towers operate within those levels. The City collects rent for each site, and is limited to collecting approximately \$270 annually for each site due to a new rule that took effect in January 2019. Additionally, she addressed the claim that the project was not exempt from CEQA, noted the noticing list is provided and certified by the applicant, and that the noticing list was checked by staff to ensure the HOAs appeared on the noticing list. The notice was also published in the newspaper and posted at the subject sites.

During the ensuing discussion, the Commissioners, either individually or in agreement, provided the following commentary:

- Discussed potential to continue this item to a future agenda to allow the applicant time to provide studies of alternative sites and justification for the ones proposed. The applicant should provide 2-3 alternatives (1 or more in addition to original) for each of the proposed locations; explore potential to move fixtures, install additional, or consider other structures for the cell towers.

- Expressed concern that the shot clock in this case will run out on September 27, 2019, unless the applicant agrees to toll the shot clock.
- Confirmed that the shot clock time measurement includes the appeal time for the project; suggested the Commission take action this evening to allow adequate time for the project to be studied during the appeal process.
- Confirmed that the City has no legal basis to claim at this time that the application is not complete.
- Suggested staff and the public should have greater influence on determining whether the sites proposed are the least obtrusive to residents.
- Established from staff the importance of having an ordinance in place to help make the process more objective as soon as possible.
- Suggested the project could be continued to the Commission's next meeting; noted if alternative locations are suggested, those locations would have to be vetted, and the public noticed.
- Stated inability to make a decision this evening because all information needed, such as the list of alternative locations studied and justification for the proposed locations, has not been provided with the application.
- Commented that as per the FCC regulations the applicant is not entitled to the most optimal site, but entitled to one adequate to meet needs.
- Suggested the project be continued to allow the applicant adequate time to perform the alternative location studies, gather information to justify the locations, and draw up the plans. Special meetings can be scheduled to ensure the shot clock does not run out.
- Expressed concern that any alternative locations selected must be noticed, further lengthening the review process.
- Commented that the antenna shroud is not aesthetically pleasing and suggested its replacement with a different style.
- Commented that a better site for these installations would be locations that meet adequate levels of service as far as possible from residential and school properties; locations that do not interfere with views from individual properties are preferable.
- Elected to deny the proposed projects without prejudice to allow the applicant the opportunity to bring them back once the site alternatives information has been compiled.

Applicant Orozco commented that he would be able to do some research within the next few weeks regarding potential alternative sites; suggested that a consistent design is preferable; noted reducing the height of the cell tower installations on the lighting fixtures would drastically reduce coverage. He would need to work with AT&T to determine if tolling the shot clock would be a possibility.

In response to the Commission concurrence to deny the installations, Deputy City Attorney Pierucci requested the Commission instead continue the project and direct staff to prepare findings to support a resolution of denial, which would be brought back for final action by the Commission. If the Commission elects to continue the project in order to allow staff and the applicant time to provide the information requested, the Commission should direct staff to work with the applicant on potential for a tolling agreement and provide guidance regarding potential alternative site analysis.

1. 2400 CAMINO FARO

IT WAS MOVED BY COMMISSIONER TALLEY, SECONDED BY COMMISSIONER CRANDELL, AND CARRIED 5-1-0, WITH COMMISSIONER WU OPPOSED, TO ~~APPROVE~~ **DENY WITHOUT PREJUDICE** RESOLUTION NO. 19-029, A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA, ~~APPROVING~~ **DENYING** CONDITIONAL USE PERMIT 18-530, AT&T SMALL CELL MSVJO 009, A REQUEST TO INSTALL AND OPERATE A SMALL WIRELESS FACILITY ON A CITY STREETLIGHT POLE IN THE PUBLIC RIGHT OF WAY AT 2400 CAMINO FARO CS, ON THE SOUTH SIDE OF CAMINO FARO AT CAMINO CORSO RIO.

**[DECISION FINAL. SUBJECT TO APPEAL OR CALL UP BY COUNCIL.]**

2. 2411 VIA TURQUEZA

IT WAS MOVED BY COMMISSIONER TALLEY, SECONDED BY COMMISSIONER KACZYNSKI, AND CARRIED 5-1-0, WITH COMMISSIONER WU OPPOSED, TO ~~APPROVE~~ **DENY WITHOUT PREJUDICE** RESOLUTION NO. 19-030, A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA, ~~APPROVING~~ **DENYING** CONDITIONAL USE PERMIT 18-532, AT&T SMALL CELL MSVJO 012, A REQUEST TO INSTALL AND OPERATE A SMALL WIRELESS FACILITY ON A CITY STREETLIGHT POLE IN THE PUBLIC RIGHT OF WAY AT 2411 VIA TURQUEZA CS, ON THE EAST SIDE OF VIA TURQUEZA APPROXIMATELY 300 FEET NORTHERLY OF THE CENTERLINE OF VIA ZAFIRO.

**[DECISION FINAL. SUBJECT TO APPEAL OR CALL UP BY COUNCIL.]**

3. 3018 CAMINO VERA CRUZ

IT WAS MOVED BY COMMISSIONER BROWN, SECONDED BY COMMISSIONER KACZYNSKI, AND CARRIED 5-1-0, WITH COMMISSIONER WU OPPOSED, TO ~~APPROVE~~ **DENY WITHOUT PREJUDICE** RESOLUTION NO. 19-031, A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA, ~~APPROVING~~ **DENYING** CONDITIONAL USE PERMIT 18-

534, AT&T SMALL CELL MSVJO 014, A REQUEST TO INSTALL AND OPERATE A SMALL WIRELESS FACILITY ON A CITY STREETLIGHT POLE IN THE PUBLIC RIGHT OF WAY AT 3018 CAMINO VERA CRUZ CS, ON THE WEST SIDE OF CAMINO VERA CRUZ APPROXIMATELY 325 FEET NORTHERLY OF THE CENTERLINE OF CALLE DE LOS ARBOLES.

**[DECISIONS FINAL. SUBJECT TO APPEAL OR CALL UP BY COUNCIL.]**

**4. 1101 CALLE DEL CERRO**

The Commissioners conducted several motions in an effort to come to a resolution on this location.

IT WAS MOVED BY COMMISSIONER BROWN, SECONDED BY CHAIR PRO TEM CRANDELL, AND **FAILED** 3-3-0, WITH COMMISSIONER BROWN, COMMISSIONER KACZYNSKI, AND CHAIR RUEHLIN IN FAVOR, AND COMMISSIONER WU, COMMISSIONER TALLEY, AND CHAIR PRO TEM CRANDELL OPPOSED TO ~~APPROVE~~ **DENY WITHOUT PREJUDICE** RESOLUTION NO. 19-032, A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA, ~~APPROVING~~ **DENYING** CONDITIONAL USE PERMIT 18-535, AT&T SMALL CELL MSVJO 016, A REQUEST TO INSTALL AND OPERATE A SMALL WIRELESS FACILITY ON A CITY STREETLIGHT POLE IN THE PUBLIC RIGHT OF WAY AT 1101 CALLE DEL CERRO CS, ON THE SOUTH SIDE OF CALLE DEL CERRO AT RIO LINDO.

IT WAS MOVED BY COMMISSIONER TALLEY, SECONDED BY CHAIR PRO TEM CRANDELL, AND **FAILED** 3-3-0, WITH COMMISSIONER WU, COMMISSIONER TALLEY, AND CHAIR PRO TEM CRANDELL IN FAVOR AND COMMISSIONER BROWN, COMMISSIONER KACZYNSKI, AND CHAIR RUEHLIN OPPOSED, TO APPROVE RESOLUTION NO. 19-032, A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT 18-535, AT&T SMALL CELL MSVJO 016, A REQUEST TO INSTALL AND OPERATE A SMALL WIRELESS FACILITY ON A CITY STREETLIGHT POLE IN THE PUBLIC RIGHT OF WAY AT 1101 CALLE DEL CERRO CS, ON THE SOUTH SIDE OF CALLE DEL CERRO AT RIO LINDO.

IT WAS MOVED BY CHAIR RUEHLIN, SECONDED BY COMMISSIONER KACZYNSKI, AND **CARRIED** 4-2-0 WITH COMMISSIONER BROWN, COMMISSIONER KACZYNSKI, CHAIR PRO TEM CRANDELL AND CHAIR RUEHLIN IN FAVOR, AND COMMISSIONER WU AND COMMISSIONER TALLEY OPPOSED, TO ~~APPROVE~~ **DENY WITHOUT PREJUDICE** RESOLUTION NO. 19-032, A



RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA, ~~APPROVING~~ **DENYING** CONDITIONAL USE PERMIT 18-535, AT&T SMALL CELL MSVJO 016, A REQUEST TO INSTALL AND OPERATE A SMALL WIRELESS FACILITY ON A CITY STREETLIGHT POLE IN THE PUBLIC RIGHT OF WAY AT 1101 CALLE DEL CERRO CS, ON THE SOUTH SIDE OF CALLE DEL CERRO AT RIO LINDO.

**[DECISION FINAL. SUBJECT TO APPEAL OR CALL UP BY COUNCIL.]**

**9. NEW BUSINESS**

None

**10. OLD BUSINESS**

The Planning Commission expressed procedural concerns with the City Planner interpretation related to the West of Artifex application that allows a Minor Conditional Use Permit (MCUP) decision by the Zoning Administrator rather than a decision by the Planning Commission. The Commission suggested a non-binding resolution to the City Council expressing the opinion of the Planning Commission that the West of Artifex application be remanded to the Planning Commission for consideration. Deputy City Attorney Pierucci suggested that Commission concerns be addressed through the meeting minutes process instead of a non-binding resolution.

On a straw vote, the Commissioners expressed a unanimous preference that the City Council remand the West of Artifex Project application to the Planning Commission for consideration. The Commission requested the Community Development Director highlight this request during the City Council review of the draft minutes from this meeting.

**11. REPORTS OF COMMISSIONERS/STAFF**

- A. Tentative Future Agenda
- B. Staff Waiver Memo and Reports

In response to a concern expressed regarding newly constructed sidewalks at the Pier, City Planner Perez distributed highlighted language in the City's Municipal Ordinance, Section 17.28.230 indicating the exclusion of certain recreational facilities from Zoning Ordinance requirements. Additionally, he distributed Chapter 10, Landscape/Streetscape Design Standards of the Pier Bowl Specific Plan (PBSP). Public Works reached out to staff regarding color choice for the concrete Americans with Disabilities Act (ADA) path. Staff looked for guidance in the PBSP that identifies a guideline for terra cotta colored pavers for sidewalks, and determined that a terra cotta color applied to the concrete

would be a suitable alternative to the suggested terra cotta colored pavers. The draft revised PBSP will be presented to this body in September for their review.

The Commissioners commented that in the past these types of decisions would have been reviewed by the Design Review Subcommittee (DRSC). The Commissioners requested going forward that the DRSC should be involved in revisions proposed in the City's high visible public areas.

Commissioner Talley reported that at the last Coastal Advisory Committee meeting, the Committee heard the same presentation on sea level rise as the Planning Commission had the night before. He had to leave the meeting early due to a prior engagement.

City Planner Perez announced the Planning Commission Study Session of September 4, 2019, will begin at 5:00 p.m. to accommodate a presentation from Architect Henry Lenny. The Second Hand Dealer Ordinance will be heard at the Regular Meeting.

## 12. ADJOURNMENT

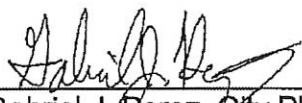
IT WAS MOVED BY COMMISSIONER TALLEY, SECONDED BY COMMISSIONER BROWN, AND UNANIMOUSLY CARRIED TO ADJOURN AT 10:36 P.M. TO THE ADJOURNED STUDY SESSION OF THE PLANNING COMMISSION TO BE HELD ON SEPTEMBER 4, 2019, AT 5:00 P.M. IN COUNCIL CHAMBERS LOCATED AT 100 AVENIDA PRESIDIO, SAN CLEMENTE, CALIFORNIA

Respectfully submitted,

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Jim Ruehlin, Chair

Attest:

  
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Gabriel J. Perez, City Planner