



Agenda Item 7D

Approvals:

City Manager [Signature]

Dept. Head [Signature]

Attorney \_\_\_\_\_

Finance \_\_\_\_\_

## AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING

Meeting Date: November 19, 2019

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**Department:** Community Development Department, Planning Division  
**Prepared By:** Katie Crockett, Associate Planner

**Subject:** *APPEAL OF CONDITIONAL USE PERMIT 18-535, AT&T SMALL CELL (MSVJO 016) IN THE RIGHT-OF-WAY AT 1101 CALLE DEL CERRO CS*

**Fiscal Impact:** There is no fiscal impact for the tabling of this item.

**Summary:** This item is a continuation of an item heard at the October 1, 2019 regular City Council meeting. The project concerns an appeal of the Planning Commission's August 21, 2019 decision to deny without prejudice Conditional Use Permit (CUP) for a proposed small cell wireless telecommunications facility (MSVJO 016) on a replacement streetlight pole in the right-of-way at 1101 Calle Del Cerro CS. The decision of the Planning Commission was appealed by the applicant, New Cingular Wireless PCS, LLC dba AT&T Mobility ("AT&T").

After discussions between the parties, the applicant and the City agreed it is mutually beneficial for the City to have in place an ordinance addressing the siting and design of small cell facilities prior to these applications being approved or denied. The City anticipates this Ordinance will be in place in March 2020 or soon thereafter. The applicant has agreed to toll the shotclock until March 17, 2020 (see Attachment 1), at which time if the application is still pending, the project would be scheduled for decision by the City Council, and the hearing will be re-noticed.

**Recommended**

**Action:** STAFF RECOMMENDS THAT the City Council:  
Table CUP 18-535, pursuant to Tolling Agreement No. 3.

**Attachments:**

1. AT&T Tolling Agreement No. 3

ATTACHMENT 1



**City of San Clemente**  
**COMMUNITY DEVELOPMENT**

910 Calle Negocio, San Clemente, CA 92673  
www.san-clemente.org

October 30, 2019

VIA EMAIL

Franklin Orozco  
1387 Calle Avanzado  
San Clemente, CA 92673

Re: Tolling Agreement No. 3 for AT&T Wireless Applications identified as follows:

Site One: Site Address: 3018 Camino Vera Cruz CS  
AT&T Site No.: CRAN\_RLOS\_MSVJO\_014  
City File No.: CUP 18-534

Site Two: Site Address: 1101 Calle Del Cerro CS  
AT&T Site No.: CRAN\_RLOS\_MSVJO\_016  
City File No.: CUP 18-535

Dear Mr. Orozco:

This letter shall serve as an agreement (the "Letter Agreement") between the City of San Clemente (the "City") and AT&T (the "Applicant") regarding the above referenced applications (the "Applications"), which the City initially received on August 31, 2018 and which were resubmitted on May 28, 2019 after the City issued a Notice of Incompleteness on September 28, 2018.

On August 21, 2019, the City of San Clemente Planning Commission considered the above-referenced applications and denied both applications. AT&T appealed the Planning Commission's decision to the City Council. The appeal was originally scheduled to be heard at the September 17, 2019 City Council meeting, that is, in advance of the September 27th expiration of the applicable shot clock. However, AT&T requested that the hearing be continued until the October 1, 2019 meeting and agreed to toll the shot clock until October 16, 2019.

On October 1, 2019, at the City Council public hearing for the Applications, AT&T's representative agreed on the record to toll the shot clock on these applications until November 19, 2019 to allow AT&T additional time to submit necessary information to the City Council for consideration as part of the appeal hearing, as memorialized in Tolling Agreement No. 2, dated October 7, 2019.

ATTACHMENT 1

Subsequently, after discussions between the parties, the applicant and the City agreed that it is mutually beneficial for the City to have in place an ordinance addressing the siting and design of small cell facilities prior to these applications being approved or denied. The City anticipates this Ordinance will be in place in March 2020 or soon thereafter. Based on the foregoing, the parties agree to extend the time for action on the Applications as follows: until March 17, 2020.

This Letter Agreement shall not be construed as an admission by the City that absent this extension it would have failed to act within time periods required by applicable federal, state, or local laws or regulations; or that its failure to act on the Applications on or before March 17, 2020 would be a violation of the same. This Letter Agreement is not intended to imply or assure any particular outcome of the City's processing of the Applications. Except as required to give effect to this extension, neither party waives any claims or defenses it might otherwise have.

This Letter Agreement may be executed in counterparts, and scanned or facsimile signatures shall be deemed equivalent to original signatures. Please return a countersigned copy to me at your earliest convenience.

Sincerely,

  
Cecilia Gallardo-Daly  
Community Development Director  
CITY OF SAN CLEMENTE

Accepted and Agreed for Applicant  
whom I have express authority to bind:

\_\_\_\_\_  
Name:  
Title:  
AT&T



ATTACHMENT 1



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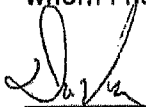
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Cecilia Gallardo-Daly  
Community Development Director  
CITY OF SAN CLEMENTE

Accepted and Agreed for Applicant  
whom I have express authority to bind:



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Name: Dan Vozenilek  
Title: Area Manager  
AT&T