

RESOLUTION NO. 15-027

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS APPROVING CONDITIONAL USE PERMIT AMENDMENT NO. UA15-0005, FOR A NEW LIGHT POLE 95-FEET IN HEIGHT AND SIX (6) WIRELESS ANTENNAS IN A RADOME LOCATED AT 1285 ESCUELA PARKWAY

WHEREAS, on May 28, 2015, an application was submitted by Kevin Bowyer on behalf of T-Mobile, 149 Natoma Street, San Francisco, CA, to allow the removal of an existing 95-foot tall sports field light pole and three wireless antennas to be replaced by a new 95-foot tall sports field light pole and six wireless antennas in a radome at 1285 Escuela Parkway (Milpitas High School). The property is located within the Institutional (I) Zoning District (APN: 026-18-003 & 004).

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine this project exempt under CEQA.

WHEREAS, on August 12, 2015, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

Section 1: The Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Planning Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

Section 2: The Planning Division conducted an environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). The project is categorically exempt from further CEQA review under Section 15302(c) 'Existing Facilities - Replacement or Reconstruction of Existing Structures & Facilities' of the CEQA Guidelines.

Section 3: The Planning Commission makes the following findings based on the evidence in the public record in support of Conditional Use Permit Amendment No. UA15-0005:

- a. The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety and general welfare.*

As conditioned, the proposed installation of six wireless antenna mounted on a new sports field light pole 95-foot tall at this location will not be detrimental or injurious to the

surrounding single-family residential development nor to the public health and safety, as the project replaces existing equipment in a similar configuration. The antenna will be visually shielded by a radome enclosure. The new pole is designed to support the weight of the wireless equipment to be attached to it.

b) The proposed use is consistent with the Milpitas General Plan.

As conditioned, the proposed use meets the intent of the General Plan and Zoning Ordinance by providing for alternate wireless communications services for the conduct of commercial and personal business without creating aesthetic disharmony at the site, or adverse impacts on surrounding residential development.

c) The proposed use is consistent with the Milpitas Zoning Ordinance:

As conditioned, the project will not result in any significant visual or aesthetic impacts because the proposed wireless antennae is visually disguised within a cylindrical radome container located near the top of a sports field light standard.

Section 6: The Planning Commission of the City of Milpitas hereby adopts **Resolution No. 15-027 approving T-MOBILE @ MILPITAS HIGH SCHOOL CONDITIONAL USE PERMIT AMENDMENT NO. UA15-005 based on the above Findings and subject to the Conditions of Approval attached hereto as Exhibit 1 incorporated herein.**

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on August 12, 2015.

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on August 12, 2015, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Sudhir Mandal				
Lawrence Ciardella				
Hon Lien				
Rajeev Madnawat				
Ray Maglalang				
Zeya Mohsin (Alternate)				
Demetress Morris				
Gurdev Sandhu				

EXHIBIT 1

CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT AMENDMENT NO. UA15-0005
(T-Mobile @ 1285 Escuela Parkway)

General Conditions

1. General Compliance. The applicant, including all successors in interest (collectively “Permittee”) shall comply with each and every condition set forth in this Permit. This Conditional Use Permit Amendment No. UA15-0005 (“Permit”) shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed and this Resolution has been recorded by the Permittee with the Santa Clara County’s Recorder Office and a copy shall be provided to the Planning Division.
2. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit.
3. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
 - a. Acceptance of this Permit by Permittee; and
 - b. Agreement by the Permittee and to do all things required of or by Permittee pursuant to all of the terms, obligations and conditions of this Permit.
4. Permit Expiration. Pursuant to Section XI-10-64-06 of the Milpitas Zoning Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Zoning Code, an activity permitted by this Permit shall be deemed to have commenced when the project:
 - a. Completes a foundation associated with the project; or
 - b. Dedicates any land or easement as required from the zoning action; or
 - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
5. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**

6. Project Job Account. If Permittee's project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until Permittee's private job account is paid in full and the required deposit has been made. Additionally, prior to the issuance of any building permit or occupancy permit, as applicable, Permittee shall pay in full the project account balance and establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit.
7. Notice. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the applicant may file a protest has begun under California Government Code Section 66020(d) (1).
8. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition.
9. Conditions. Each and every condition set forth in this Exhibit shall apply to the project and continue to apply to the project so long as the Permittee is operating the project under the permits and approvals in this Resolution.
10. Compliance with Laws. The construction, use and all related activity authorized under this Permit shall comply with all applicable local, state and federal laws, rules, regulations, guidelines, requirements and policies. **(CA/P)**
11. Previous Approvals. Permittee shall abide and continue to comply with all previous City approvals, permits or requirements relating to the subject property, unless explicitly superseded or revised by this Permit.
12. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act, and (ii) Permittee's construction, operation, use, or related activity under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs, attorneys' fees and damages, which City incurs in enforcing the

indemnification provisions set forth in this condition. Permittee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition.

13. Revocation, Suspension, Modification. This Permit may be suspended, revoke, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code.
14. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable.
15. Permittee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on August 12, 2015, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, elevations, materials, colors, landscape plan or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission or City Council, as applicable, in accordance with the Milpitas Zoning Code. **(P)**

1. Written Response to Conditions. The Permittee shall provide a written response to the Conditions of Approval indicating how each condition has been addressed with the building permit application submittal. **(ALL)**

Project Specific Conditions

16. Applicable codes shall be 2013 CBC, CEC and 2014 Milpitas Municipal Code. **(B)**
17. Engineer or Architect licensed in the State of California shall prepare the plans. Structural design calculations and plans for the pole shall be signed and stamped when applying for building permit. **(B)**
18. Provide Soils Report for the footing design of 95 feet tall to justify footing size. **(B)**
19. All new electrical services shall be underground per 2014 Milpitas Municipal Code section II-6-2.02. **(B)**

Fire Conditions

1. Submitted drawings are not reviewed nor approved for fire permits and construction. These notes are provided to assist with the Fire Department permit process. **(F)**

2. Fire apparatus access roads shall provide a minimum clear width of 26 feet. This requirement is for the use and function of a fire ladder apparatus. International Fire Code, Appendix D, Sections D103.1 and D105, adopted and amended by Milpitas Municipal Code. **(F)**
3. Portable fire extinguishers shall be selected, installed and maintained in accordance with CFC Section 906.2 and Chapter 3, Title 19 California Code of Regulations. **(F)**
4. No approval for any hazardous materials under this review. **(F)**
5. The telecom site shall comply with the following requirements:
 - a. Approved access shall be provided to the equipment. A Knox Box (quantity and location to be determined by the Fire Dept. if none exists) for Fire Department access shall be installed. (CFC Section 506) **(F)**
 - b. Equipment shall be posted with signage identifying the company name and the site identification number.
 - c. The location shall be labeled for the hazard with a sign approved for location and content by the Fire Department. Signage shall conform to the NFPA 704 standards.
 - d. Shutdown of transmitter antennas (equipment) shall be provided. Written shutdown procedures (including remote shutdown) shall be provided to the Milpitas Fire Department Inspector at the time of inspection. Fire Department inspection shall include system shutdown.
 - e. For remote shutdown process, the phone number, the specific site I.D. number shall be posted outside of the equipment enclosure, on the face of the wireless equipment cabinet, at the electrical equipment (if different location than the wireless equipment), roof hatch, fire control, and other access points to the transmitter antennae.
 - f. If manual shutdown mechanism is located on site, the shutdown mechanism shall be identified.
 - g. Prior to final permit signoff, the installer shall call for an inspection by the Fire Department to verify labeling, signage and transmission shutdown. **(F)**
6. Fire Dept. construction permit application, fees, review and inspection process will apply to this work. **(F)**

(P) = Planning

(B) = Building

(E) = Engineering

(F) = Fire Prevention

(CA) = City Attorney