

ATTACHMENT 1

FINDINGS AND CONDITIONS

APRIL 25, 2013

1632 University Avenue

Use Permit #12-1000057 to establish a new wireless telecommunication facility for AT&T including twelve antennas concealed within Radio Frequency Transparent screens on the rooftop of a three story mixed use building and install related equipment in a basement lease space.

CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15301 of the CEQA Guidelines (“Existing Facilities”). Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project will not affect any historical resource.

GENERAL NON-DETRIMENT FINDING

2. Pursuant to Berkeley Municipal Code Section 23B.32.040, the Zoning Adjustments Board finds that the proposed project, under the circumstances of the particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City, for the following reasons:
 - A. A report prepared by a registered engineer indicates that the AT&T wireless telecommunications facility (“wireless facility”) would comply with the Federal Communications Commission (FCC) standards for limiting human exposure to radio frequency;
 - B. The design of the wireless facility would incorporate a number of features to ensure that the facility would be compatible with the existing building and would not be “readily visible”, including support equipment located in a basement lease space that will not be visible to the general public; cable trays that will be located on the rooftop and along the west side of the building; and antennas that will be screened in “antenna boxes”, constructed of Radio Frequency Transparent material, painted and textured to match the existing building. The design was reviewed and given Preliminary Design Review approval subject to the following changes: (1) The

south wall of the antenna screen on the stair extension to be relocated in line with exterior wall below. Four antennas on this wall to be façade-mounted and painted to match the existing building and screen color; and (2) Stair extension shall have a simple rectilinear profile and finish detail at the top.

- C. A report prepared for the project confirmed that the proposed facility would significantly improve the gap of in-transit and in-building coverage in the subject area;
- D. A noise study prepared for the project by the City's third party noise consultant demonstrated that the proposed equipment is not expected to generate audible noise levels and would not contribute to the ambient noise environment; and
- E. The facility is conditioned to meet all standards of the California Building Code and all portions of the facility shall be anchored so that an earthquake does not dislodge them or tip them over.

OTHER REQUIRED FINDINGS

- 3. Pursuant to Berkeley Municipal Code Section 23C.17.100.B.1, the Zoning Adjustments Board finds that the proposed project "*...is consistent with the general requirements of this chapter and any specific requirements applicable to the proposed facility...*" for the following reasons:
 - A. The proposed project is consistent with relevant provisions of the General Plan, particularly Policy LU-7 Neighborhood Quality of Life, Action A, Policy UD-16–Context, and Policy UD-24 Area Character. The proposal is consistent with the relevant Zoning standards which require that the need for the wireless telecommunication facility be demonstrated, that the facility not be readily visible, that the facility be certified to comply with federal standards, and not result in negative effects on public health;
 - B. A report submitted by the applicant and prepared by a registered engineer indicates that the wireless facility will comply with the FCC standards for limiting human exposure to radio frequency energy; and
 - C. There are no discretionary permits affecting the property that are relevant to the project.
- 4. Pursuant to Berkeley Municipal Code Section 23C.17.100.B.2, the Zoning Adjustments Board finds that the proposed project "*will comply with all applicable state and Federal standards and requirements* for the following reasons:
 - A. A report submitted by the applicant and prepared by William F. Hammett, P.E. of Hammett & Edison, Inc. Consulting Engineering, a registered engineer with the State of California, indicates that the wireless facility will comply with the FCC standards for limiting human exposure to radio frequency energy;

- B. An independent licensed engineer peer reviewed the RF report and concurs with its analysis and conclusion that the proposed antenna installation will comply with the FCC guidelines for radio frequency emissions; and
 - C. The proposed facility will not be readily visible as the antennas are screened in “antenna boxes”, constructed of Radio Frequency Transparent material, painted and textured to match the existing building and support equipment cabinets are located in a basement lease space and will not be visible to the general public. The design was reviewed and given Preliminary Design Review approval subject to conditions contained in this permit.
5. Pursuant to Berkeley Municipal Code Section 23C.17.100.B.2.a, the Zoning Adjustments Board finds that the proposed project will “*not be readily visible*” because it will not be distinguishable as an antenna or other component from street level, from the main living area of a legal residence in a residential district, or from a public park by a person with normal vision, because it will not stand out as a prominent feature of the landscape or protrude above or out from the building’s roof, and is otherwise sufficiently camouflaged and designed to be compatible with the subject property. The basis for this finding is that:
- A. The antennas are screened in “antenna boxes” constructed of Radio Frequency Transparent material, painted and textured to match the existing building and support equipment cabinets are located in a basement lease space and will not be visible to the general public;
 - B. Cable trays are located on the rooftop and along the west side of the building, painted to match the building to mitigate any potential visual impacts; and
 - C. The design was reviewed and given Preliminary Design Review approval subject to conditions in this permit.
6. Pursuant to Berkeley Municipal Code Section 23C.17.100.B.3, the Zoning Adjustments Board finds that “*is necessary to prevent a significant gap in coverage or capacity shortfall in the applicant’s service area, and is the least intrusive means of doing so*” for the following reasons:
- A. AT&T stated that the proposed facility is needed to fill in a coverage gap in the surrounding area. The City commissioned a peer review prepared by RCC Consultants to independently review the AT&T proposal to verify the need for the facility. Based on coverage maps, drive data, and network data provided by AT&T RCC concluded that AT&T demonstrated a gap in in-transit and in-building coverage in its network area bounded by Cedar Street to the north, Channing Way to the south, Acton Street to the west and Milvia Street to the east. RCC states that there exists outdoor coverage, however, the adjacent existing AT&T sites are too far removed from the intended coverage area to provide reliable in-transit and in-building coverage. RCC concluded that AT&T has demonstrated a coverage

gap in its network in the area for in-building and in-building service and that this gap will be substantially mitigated by the activation of the AT&T service from the proposed installation.

7. Pursuant to Berkeley Municipal Code Section 23C.17.10.B.4, the Zoning Adjustments Board finds that AT&T, the wireless carrier, is in compliance with Sections 23C.17.090.A.1 and 23C.17.090.A.2 by providing written certification that each AT&T facility in the City of Berkeley is operating in accordance with the approved local and federal permits, providing contact information for AT&T, and providing written certification by a licensed professional engineer that new facilities' radio frequency emissions are in compliance with the approved application and any required conditions.

STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

1. Conditions Shall be Printed on Plans

The conditions of this Permit shall be printed on the first sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions'. The second sheet may also be used if the first sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

2. Applicant Responsible for Compliance with Conditions

The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

3. Uses Approved Deemed to Exclude Other Uses (Section 23B.56.010)

- A. This Permit authorizes only those uses and activities actually proposed in the application and excludes other uses and activities.
- B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

4. Modification of Permits (Section 23B.56.020)

No change in the use or structure for which this Permit is approved is permitted unless the Permit is modified by the Zoning Adjustments Board, in conformance with Section 23B.56.020.A.

Changes in the plans for the construction of a building or structure may be modified prior to the completion of construction, in accordance with Section 23B.56.020.D. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project. The Zoning Officer may also approve a maximum two-foot variation to Board approved plans, provided that such variation does not increase a structure's height, reduce the minimum distance to any property line, and/or conflict with any special objective sought by the Board.

5. Plans and Representations Become Conditions (Section 23B.56.030)

Except as expressly specified herein, the site plan, floor plans, building elevations and any additional information or representations submitted by the applicant during the Staff review and public hearing process leading to the approval of this Permit, whether oral or written, which indicated the proposed structure or manner of operation are deemed conditions of approval.

6. Subject to all City and Other Regulations (Section 23B.56.040)

The approved use and/or construction are subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies.

7. Exercised Permit for Use Survives Vacancy of Property (Section 23B.56.080)

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8 below.

8. Exercise and Lapse of Permits (Section 23B.56.100)

- A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
- B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has (1) applied for a building permit or (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

9. The applicant shall hold the City of Berkeley and its officers harmless in the event of any legal action related to the granting of this Permit, shall cooperate with the City in defense of such action, and shall indemnify the City for any award of damages or attorneys fees that may result.

ADDITIONAL CONDITIONS OF APPROVAL

Pursuant to BMC Section 23B.32.040.D, the Zoning Adjustments Board attaches the following conditions to this Permit:

Prior to Issuance of Any Building Permit

10. Prior to issuance of a building permit, the applicant shall provide the project planner with the name and telephone number of the individual empowered to manage construction noise from the project. The individual's name, telephone number, and responsibility for noise management shall be posted at the project site for the duration of construction in a location easily visible to the public. The individual shall record all noise complaints received and actions taken in response, and submit this record to the project planner upon request.

- Noise Management Individual _____
Name Phone #

11. The applicant and all persons associated with the project are hereby notified that a Transportation Management Permit (TMP) would be required under any of the following circumstances:

- Alterations, closures, or blockages to sidewalks or pedestrian paths
- Alterations, closures, or blockages to vehicle travel lanes (including bicycle lanes)
- Storage of building materials, dumpsters, debris anywhere in the public ROW
- Provision of exclusive contractor parking on-street
- Significant truck activity.

Contact the Permit Service Center (PSC) at 2120 Milvia Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Public Works Traffic Engineering (981-6400) reviews all submitted TMP requests.

The TMP may include designation of a specific truck haul route. Meter heads (if in the construction area) shall be removed only by City staff. Contact the site inspector 72 hours in advance of required removal so arrangements can be made.

12. Project requires approval of a Final Design Review application deferred to Staff with Committee assistance as necessary. Final plans shall address the following conditions: (a) The south wall of the antenna screen on the stair extension to be relocated in line with exterior wall below. Four antennas on this wall to be façade-mounted and painted to match the existing building and screen color; and (b) Stair extension shall have a simple rectilinear profile and finish detail at the top.

13. The applicant shall provide signage identifying the name and phone number of a party to contact in event of an emergency. The design, materials, colors and location of signs shall be subject to Design Review approval. The plans submitted for a building permit shall include a sample of the proposed emergency sign(s) as well as the warning signs as required in COA #24 below, as well as the location for posting such signs.

14. The applicant shall either secure a bond or provide financial assurances in a form acceptable to the City Manager for the removal of the facility in the event that its use is abandoned or the approval is otherwise terminated.

During Construction:

15. Construction activity shall be limited to between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Friday, and between 9:00 a.m. and noon on Saturday. No construction-related activity shall occur on Sunday or on any Federal Holiday.

16. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the

Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

17. Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.
18. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.
19. All active construction areas shall be watered at least twice daily, and all piles of debris, soil, sand or other loose materials shall be watered or covered.
20. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
21. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.

Prior to Issuance of Occupancy Permit or Final Inspection:

22. The project shall conform to the plans and statements in the Use Permit.
23. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated January 15, 2013.

At All Times:

24. The conditions recommended by William F. Hammett, P.E. of Hammett & Edison, Inc. Consulting Engineers in the March 28, 2013 evaluation of the facility for radio frequency fields, and any subsequent engineering recommendations, shall be implemented including:
 - A. There shall be no access within thirteen (13) feet directly in front of the antennas while the site is in operation, unless other measures can be demonstrated to ensure that occupational protection requirements are met; and
 - B. Warning signs shall be posted at the roof access doors, on the view screen enclosure in front of the antennas, on the elevator penthouse, and at the antennas on the stairwell penthouse, such that the signs are readily visible from any angle of approach to persons who might need to work within that distance. The signs shall comply with OET-65 color, symbol, and content recommendations. Contact information should be provided on the signs (e.g. a telephone number) to arrange access to restricted areas.
25. Signage identifying the name and phone number of the individual to contact in the event of an emergency shall be installed at the project site (see Condition #13 above).

26. Subject to review and approval by the Zoning Officer, future changes to or replacement of the wireless equipment shall be permitted through issuance of a Zoning Certificate, rather than a Modification of the Use Permit, so long as the proposed changes are not detrimental, comply with performance standards within this Use Permit (e.g. noise levels, visual appearance, and RF standards), do not increase the size or visibility of any legally established wireless telecommunication facility, and complies with the FCC's MPE limits for electric and magnetic field strength and power density for transmitters within the designated equipment area.
27. The wireless telecommunications facility and related equipment, including lighting, fences, shields, cabinets, and poles, shall be maintained in good repair, free from trash, debris, litter and graffiti and other forms of vandalism, and any damage from any cause shall be repaired as soon as reasonably possible so as to minimize occurrences of dangerous conditions or visual blight. Graffiti shall be removed from any facility or equipment as soon as practicable, and in no instance more than forty-eight (48) hours from the time of notification by the city.
28. The wireless telecommunications facility shall be operated in a manner that will minimize noise impacts to surrounding residents and persons using nearby parks, trails, and similar recreation areas. Except for emergency repairs, testing and maintenance activities that will be audible beyond the property line shall only occur between the hours of 8:00 am and 7:00 pm on Monday through Friday, excluding holidays. All air conditioning units and any other equipment that may emit noise that would be audible from beyond the property line shall be enclosed or equipped with noise attenuation devices. Backup generators shall only be operated during periods of power outages or for testing. At no time shall equipment noise from any source exceed the standards specified in the Berkeley Community Noise Ordinance (BMC Chapter 13.40).
29. The exterior walls and roof covering of all aboveground equipment shelters and cabinets shall be constructed of materials rated as nonflammable in the Uniform Building Code.
30. Openings in all aboveground equipment shelters and cabinets shall be protected against penetration by fire and windblown embers to the extent feasible.
31. Material used as supports for antennas shall be fire resistant, termite proof, and subject to all applicable requirements of the California Building Code.
32. Telecommunications antenna towers shall be designed to withstand forces expected during earthquakes to the extent feasible. Building-mounted facilities shall be anchored so that an earthquake does not dislodge them or tip them over. All equipment mounting racks and attached equipment shall be anchored so that a quake would not tip them over, throw equipment off its shelves, or otherwise damage equipment.

- 33.** All connections between various components of the wireless telecommunications facility and necessary power and telephone lines shall, to the extent feasible, be protected against damage by fire, flooding, and earthquake. Reasonable measures shall be taken to keep wireless telecommunication facilities in operation in the event of a natural disaster.
- 34.** No wireless telecommunications facility or combination of facilities shall at any time produce power densities that exceed the FCC's limits for electric and magnetic field strength and power density for transmitters. In order to ensure continuing compliance with all applicable emission standards, all wireless telecommunications facilities shall be reviewed by an approved engineer-in accord with the schedule and procedures set forth in Section 23C.17.090. All reasonable costs of such inspections shall be borne by the owner or operator of the facility. The City may require, at the operator's expense, independent verification of the results of any analysis. If an operator of a telecommunications facility fails to supply the required reports or fails to correct a violation of the Federal Communications Commission standard following notification, the Use Permit is subject to modification or revocation by the Zoning Adjustments Board following a public hearing.
- 35.** Within forty five (45) days of initial operation or modification of a telecommunications facility, the operator of each telecommunications antenna shall submit to the Zoning Officer written certification by an approved engineer that the facility's radio frequency emissions are in compliance with the approved application and any required conditions. The engineer shall measure the radio frequency radiation of the approved facility and determine if it meets the FCC requirements. A report of these measurements and the engineer's findings with respect to compliance with the FCC's MPE limits shall be submitted to the Zoning Officer. If the report shows that the facility does not comply with applicable FCC requirements, the owner or operator shall cease operation of the facility until the facility complies with, or has been modified to comply with, this standard. Proof of compliance shall be a certification provided by the engineer who prepared the original report. In order to assure the objectivity of the analysis, the City may require, at the applicant's expense, independent verification of the results of the analysis.
- 36.** Hereafter, prior to January 31 of every year, an authorized representative for each wireless carrier providing service in the City of Berkeley shall provide written certification to the City that each facility is being operated in accordance with the approved local and federal permits and shall provide the current contact information.
- 37.** Once every two years, the City may retain, at the operator's expense, an approved engineer to conduct an unannounced spot check of the facility's compliance with applicable FCC radio frequency standards.
- 38.** In the event of a change in the FCC's Maximum Permissible Exposure (MPE) limits for electric and magnetic field strength and power density for transmitters, the operator of the facility shall be required to submit to the Zoning Officer written certification by an approved engineer of compliance with applicable FCC radio frequency standards

within 90 days of any change in applicable FCC radio frequency standards or of any modification of the facility requiring a new submission to the FCC to determine compliance with emission standards. If calculated levels exceed 50% of the FCC's MPE limits, the operator of the facility shall hire an approved engineer to measure the actual exposure levels. If calculated levels are not in compliance with the FCC's MPE limit, the operator shall cease operation of the facility until the facility is brought into compliance with the FCC's standards and all other applicable requirements. A report of these calculations, required measurements, if any, and the engineer's findings with respect to compliance with current MPE limits shall be submitted to the Zoning Officer.

39. If the Zoning Officer at any time finds that there is good cause to believe that a telecommunications antenna is not in compliance with applicable FCC radio frequency standards, he/she may require the operator to submit written certification that the facility is in compliance with such FCC standards.
40. Within thirty (30) days of cessation of operations of any wireless telecommunications facility approved pursuant to this chapter, the operator shall notify the Zoning Officer in writing. The permit for said wireless telecommunications facility shall be deemed lapsed and of no further effect six (6) months thereafter unless:
 - A. The Zoning Officer has determined that the same operator resumed operation within six (6) months of the notice; or
 - B. The City has received an application to transfer the permit to another operator.
41. No later than thirty (30) days after a permit has lapsed under the preceding condition of approval, the operator shall remove all wireless telecommunication facilities from the site. If the operator fails to do, the property owner shall be responsible for removal, and may use any bond or other assurances provided by the operator pursuant to the requirements of Section 23C.17.050 to do so. If such facilities are not removed, the site shall be deemed to be a nuisance pursuant to Section 23B.64 and the City may call the bond to pay for removal.
42. Failure to inform the Zoning Officer of cessation of operations of any existing facility shall constitute a violation of the Zoning Ordinance and be grounds for:
 - A. Prosecution;
 - B. Revocation or modification of the permit;
 - C. Calling of any bond or assurance secured by the operator pursuant to the requirements of Section 23C.17.050; and/or
 - D. Removal of the facilities.
43. Any FCC-licensed telecommunications carrier that is buying, leasing, or considering a transfer of ownership of an already approved facility, shall provide written notification to the Zoning Officer and request transfer of the existing Use Permit. The Zoning Officer may require submission of any supporting materials or documentation necessary to determine that the proposed use is in compliance with the existing Use

Permit and all of its conditions including, but not limited to, statements, photographs, plans, drawings, models, and analysis by a State-licensed radio frequency engineer demonstrating compliance with all applicable regulations and standards of the Federal Communications Commission and the California Public Utilities Commission. If the Zoning Officer determines that the proposed operation is not consistent with the existing Use Permit, he/she shall notify the applicant who may revise the application or apply for modification to the Use Permit pursuant to the requirements of Section 23B.56.

44. The applicant shall be responsible for paying all costs (including City staff time) associated with monitoring and/or enforcement of the above conditions. Fees shall be based on the adopted City fee schedule in place at the time the work is performed or action is taken.
45. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
46. This permit is subject to review, imposition of additional conditions, or revocation if factual complaint is received by the Zoning Officer that the maintenance or operation of this establishment is violating any of these or other required conditions or is detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.