

ATTACHMENT 1

FINDINGS AND CONDITIONS

APRIL 25, 2013

2095 Rose Street

Use Permit #12-1000058 to establish a new AT&T wireless telecommunication facility consisting of twelve panel antennas mounted on the rooftop and six associated equipment cabinets within a 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 Verizon wireless telecommunication facility consisting of twelve panel antennas mounted on the rooftop and installation of six associated equipment cabinets within a rooftop lease space, 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 proposed 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 at grade that will not be visible to the general public; cable trays that will be located on the rooftop and

along hidden from view; and antennas that will be screened in radomes, constructed of Radio Frequency Transparent material, painted and textured to match the existing building;

- C. A report prepared for the project confirmed that the proposed facility would significantly improve coverage in AT&T's network area in the area roughly bounded by Eunice Street to the north, Vine Street to the south, Grant Street to the west and Euclid Avenue to the east. AT&T also demonstrated that signal levels indicate a deficiency of in-building and in-transit coverage;
- D. A noise study prepared for the project demonstrated that the proposed equipment would not generate noise levels exceeding the limits established by the Berkeley Municipal Code Chapter 13.40, Community Noise; 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;
 - 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 Engineers, an electrical and mechanical

engineer registered with the State of California, indicates that the wireless facility will comply with the FCC standards for limiting human exposures to radio frequency energy;

- B. The Hammett & Edison report includes the maximum calculated cumulative level for the simultaneous operation of the existing T-Mobile facility and the proposed AT&T installation. Hammett & Edison estimates the maximum cumulative level at the ground near the AT&T facility is 3.9% of the public exposure limit, and the maximum calculated cumulative level at the second floor elevation of any building near the AT&T site is 25% of the public limit; and
 - C. 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.
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 the 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 design incorporates a number of features to ensure that the wireless telecommunications facility would be compatible with the existing building including the installation of antennas that will be screened in radomes, constructed of Radio Frequency Transparent material, painted and textured to match the existing building, support equipment cabinets will be located within a lease area, and coaxial cables are located on the roof housed within conduit to mitigate any potential visual impacts.
 - B. The design was given preliminary design review approval by DRC subject to Final Design Review.
6. Pursuant to Berkeley Municipal Code Section 23C.17.100.B.3, the Zoning Adjustments Board finds that the facility “*is necessary to prevent a significant gap in coverage or capacity shortfall in the applicant’s service area, and it is the least intrusive means of doing so*” for the following reasons:
- A. AT&T states that in addition to coverage issues, the facility is necessary to mitigate capacity shortfalls in the area of Shattuck and Rose and that the existing system cannot handle the amount of wireless calls generated along this area of Shattuck Avenue;

- B. The City engaged a third party engineering peer review of material provided by AT&T. The consultants, RCC, concluded that based on the documents provided, the existing and proposed coverage maps reflect signal levels designed to achieve in-building coverage, the most common design criteria for wireless service providers and that AT&T demonstrated a coverage gap in its network in the area and that the gap will be substantially mitigated by the proposed installation; and
 - C. The proposed facility will not be readily visible as the antennas will be screened in radomes, constructed of Radio Frequency Transparent material, painted and textured to match the existing building, and the design was reviewed and given preliminary DRC approval, subject to final design review.
7. Pursuant to Berkeley Municipal Code Section 23C.17.100.B.4, the Zoning Adjustments Board finds that AT&T, the wireless carrier, is in compliance with Sections 23C.17.090.A1 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

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 exclude 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 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 does not 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

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 by the Design Review Staff or by the Design Review Committee. Final plans shall address the following conditions:

- 12A. **COLORS** Note on the Building Permit set of drawings that all colors and materials match existing color and material scheme. All materials will be matte.
 - 12B. **SCREENING** Equipment screening for any new and relocated equipment to be resolved with the Design Review Staff prior to sign-off on the Building Permit set of drawings.
 - 12C. **DETAILS** Prior to Design Review sign-off of the Building Permit set of drawings, the applicant shall submit equipment screen details for review and approval by the Design Review Staff.
 - 12D. **ROOF EQUIPMENT** Any above ground or roof equipment, such as transformer(s), utilities, fire apparatus, air conditioning units, compressors, etc. shall be shown to scale on the architectural drawings of the building permit set of drawings in both plan and elevation, in order to determine what additional screening is required.
 - 12E. **LIGHTING** Prior to Design Review sign-off of the building permit set of drawings, the applicant shall submit lighting details showing all existing and proposed site and building lighting pertaining to this installation. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
 - 12F. **USE PERMIT** Design Review approval is contingent upon use permit approval.
 - 12G. The applicant shall be responsible for identifying and securing all applicable permits from the Building and Safety Division and all other affected City divisions/departments prior to the start of work.
 - 12H. The applicant is responsible for complying with all the above conditions. Failure to comply with any condition could result in construction work being stopped, issuance of citations, as well as further review by the Design Review Staff, which may modify or impose additional conditions, or revoke the design review approval.
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 # 25 B and C 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. 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.
17. 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.
18. 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.
19. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
20. 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:

21. The project shall conform to the plans and statements in the Use Permit.
22. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated November 30, 2012.

At All Times:

23. The mitigations recommended by William F. Hammett, P.E. of Hammett & Edison Consulting Engineers in the June 12, 2012 evaluation of the facility for radio frequency fields, and any subsequent engineering recommendations, shall be implemented including:
 - A. The upper roof of the subject building be kept locked so that the antennas are not accessible to the general public;
 - B. There shall be no access within eleven (11) 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
 - C. Posting explanatory warning signs at the roof access hatch, at the exterior ladder, and on the screen in front of the antennas. Such signs shall be 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.

24. 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 #15 above).
25. 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.
26. 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.
27. 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).
28. 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.
29. Openings in all aboveground equipment shelters and cabinets shall be protected against penetration by fire and windblown embers to the extent feasible.
30. Material used as supports for antennas shall be fire resistant, termite proof, and subject to all applicable requirements of the Uniform Building Code.

- 31.** 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.
- 32.** 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.
- 33.** 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.
- 34.** 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.
- 35.** 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.

36. 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.
37. 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.
38. 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.
39. 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.
40. 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.
41. 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.
- 42.** 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.
- 43.** 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.
- 44.** All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
- 45.** 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.