

Attachment B

Draft Resolution for Approval

RESOLUTION NO. 2020-76

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, UPHOLDING THE DECISION OF THE PLANNING COMMISSION APPROVING MINOR USE PERMIT NO. UP2019-030 AND COASTAL DEVELOPMENT PERMIT NO. CD2020-052 FOR A SMALL CELL FACILITY LOCATED WITHIN THE PUBLIC RIGHT-OF-WAY ON CITY STREETLIGHT NUMBER SLC0796, AT THE NORTHWESTERN CORNER OF BALBOA BOULEVARD AND 30TH STREET (PA2019-111)

WHEREAS, an application was filed by New Cingular Wireless, LLC ("Applicant"), with respect to City of Newport Beach ("City") Streetlight Number SLC0796 ("SLC0796"), located within the public right-of-way, at the northwestern corner of Balboa Boulevard and 30th Street, requesting approval of a minor use permit;

WHEREAS, the Applicant has applied for a minor use permit and coastal development permit for the installation of a small cell wireless facility on a City-owned streetlight pole. Project implementation will be fully contained within the public right-of-way on Balboa Boulevard and includes the following: (1) removal and replacement of an existing City streetlight; (2) installation of a small cell wireless facility that consists of four remote radio units, a raycap disconnect, and an omni-directional antenna within a 12-inch diameter equipment shroud, with the equipment being fixed to the top of the replaced streetlight pole for a maximum height of 34 feet, 9 inches; and (3) establishment of new below-grade support equipment adjacent to the streetlight (the "Project");

WHEREAS, since the SLC0796 streetlight is located within the public right-of-way, the proposal is regulated by Council Policy L-23 (Siting of Wireless Telecommunications Equipment on City-Owned Property), as well as Chapter 20.49 (Wireless Telecommunication Facilities) of the Newport Beach Municipal Code ("NBMC");

WHEREAS, the City's regulatory review of wireless telecom siting is limited by three federal laws: (1) the Communications Act of 1934; (2) Telecommunications Act of 1996 (Telecommunications Act); and (3) the Middle-Class Tax Relief and Job Creation Act of 2012 (Spectrum Act), which aim to facilitate wireless infrastructure development and restrict certain aspects of local authority in review and permitting of wireless telecommunications facilities;

WHEREAS, on January 14, 2019, the Federal Communications Commission ("FCC") Declaratory Ruling and Order FCC 18-133 ("Order"), modified in part by City of Portland v. United States, No. 18-72689 (9th Cir. 2020), removed barriers to wireless infrastructure deployment and established accelerated timelines for processing wireless applications at the local level;

WHEREAS, the Order also limited the City's rights as a property owner, restricting the type and amount of fees that can be collected for private use of public property such that City's review and approval is primarily limited to reasonable aesthetic requirements, environmental concerns, and land use compatibility;

WHEREAS, a public hearing was held on April 16, 2020, in the Community Room located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act"), Chapter 20.62 and Chapter 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this public hearing;

WHEREAS, the Zoning Administrator adopted Resolution No. ZA2020-030 approving Minor Use Permit No. UP2019-030;

WHEREAS, on April 28, 2020, attorney Mark Pollock filed an appeal of the Zoning Administrator's decision primarily citing concerns with the City's Master License Agreement and the Applicant's authority to file for this application;

WHEREAS, the Project was scheduled for a *de novo* public hearing by the Planning Commission for June 4, 2020, but was continued from that agenda to allow staff additional time to review the Project.

WHEREAS, the Project is located within the Coastal Zone. Subsection 21.49.020(B) (Permit and Agreement Required) of the NBMC requires a coastal development permit for a wireless telecommunication facility unless said facility is exempted by Subsection 21.49.020(C) (Exempt Facilities);

WHEREAS, the Project does not meet any of the prescribed exemptions; therefore, a coastal development permit is required;

WHEREAS, upon finding that a coastal development permit is required, the Applicant revised the request to include said permit, the Zoning Administrator deferred action on Coastal Development Permit CD2020-052 and referred the Project to the Planning Commission pursuant to Section 21.50.020 footnote (3) (Authority for Decisions) for consideration and final action along with Minor Use Permit No. UP2019-030;

WHEREAS, the Project was noticed for the Planning Commission's review. A de novo telephonic public hearing was held by the Planning Commission on July 9, 2020, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California, due to the Declaration of a State Emergency and Proclamation of Local Emergency related to COVID-19. A notice of time, place and purpose of this public meeting was given in accordance with the Ralph M. Brown Act, Chapter 20.62 and Chapter 21.62 of the NBMC. The Planning Commission considered evidence both written and oral at this hearing;

WHEREAS, the Planning Commission adopted Resolution No. PC2020-018 approving Coastal Development Permit No. CD2020-052 and upholding the Zoning Administrator's decision to approve Minor Use Permit No. UP2019-030;

WHEREAS, on July 15, 2020, attorney Mark Pollock filed an appeal of the Planning Commission's decision primarily citing concerns with the City's Master License Agreement and the Applicant's authority to file for this application;

WHEREAS, a Master License Agreement for use of City-owned streetlights for telecommunications facilities was executed by and between the City and New Cingular Wireless PCS, LLC, dated February 12, 2019 (Contract No. C-8584-1);

WHEREAS, New Cingular Wireless PCS, LLC is a Delaware limited liability company that is registered to do business in the State of California, whose Manager is AT&T Mobility Corporation;

WHEREAS, AT&T Mobility Corporation recorded a Fictitious Business Name Statement to do business as AT&T Mobility on November 21, 2016, as Instrument No. 20166459312 in the Official Records of Orange County, California;

WHEREAS, the City holds sufficient documentation showing the Licensee under the MLA is the same entity represented as the Applicant under this permit application;

WHEREAS, the City will enforce the other terms of the Master License Agreement;
and

WHEREAS, a de novo telephonic public hearing was held by the City Council on August 25, 2020, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California, due to the Declaration of a State Emergency and Proclamation of Local Emergency related to COVID-19. A notice of time, place and purpose of this public meeting was given in accordance with the Ralph M. Brown Act, Chapter 20.62 and Chapter 21.62 of the NBMC. The City Council considered evidence both written and oral at this public hearing.

NOW, THEREFORE, the City Council of the City of Newport Beach resolves as follows:

Section 1: The City Council does hereby uphold the Planning Commission's approval of Minor Use Permit No. UP2019-030 and Coastal Development Permit No. CD2020-052 subject to the conditions of approval attached as Exhibit "A," and incorporated herein by reference. The City Council's decision is made in accordance with the following subsections and is supported by the facts to support each beneath them:

Minor Use Permit

In accordance with Subsection 20.52.020(F) (Conditional Use Permits and Minor Use Permits) of the NBMC, the following findings and facts in support of such findings are set forth:

Finding:

A. The use is consistent with the General Plan and any applicable specific plan.

Facts in Support of Finding:

1. SLC0796 is designated as Public Right-of-Way ("ROW"), which is property held in trust by the City, and allows for the construction and maintenance of public roads, crosswalks, pedestrian walkways, electric transmission lines, oil or gas pipeline, water line, sanitary or storm sewer, or other similar uses. City Council Policy L-23 (Siting of Wireless Telecommunications Equipment on City-Owned Property) governs procedures and locations for siting wireless telecommunications equipment in the ROW. Streetlights are eligible for telecom use, subject to entitlements (such as this minor use permit request), yearly rent, and a license agreement.
2. The City of Newport Beach General Plan ("General Plan") Natural Resources Goal NR 21 recommends the "minimized visual impacts of signs and utilities." The proposed design is consistent with NR 21 by introducing no new vertical obstructions in the ROW, employing stealth elements like colorization (painting to match the streetlight pole), and installing the associated equipment below grade. Conditions of Approval No. 20 and 21 prohibit advertising signage or identifying logos on the small cell facility except for small identification, address, warning, and similar information plates. Signage required by State or Federal regulations shall be allowed in its smallest permissible size.

3. General Plan Land Use Policy LU 6.1.3 promotes “architecture and planning that complements adjoining uses.” The proposed design adjoins residential uses and aligns with LU 6.1.3 by copying the size, shape, style, and design of the existing streetlight pole to decrease potential disruption of the visual environment. Adverse impact to circulation, aesthetics, sounds, or odor are not anticipated from project implementation.
4. General Plan Land Use Policy LU 4 calls for the “management of growth and change to protect and enhance the livability of neighborhoods and achieve distinct and economically vital business and employment districts, which are correlated with supporting infrastructure and public services and sustain Newport Beach’s natural setting.” The Project upholds the intent of LU 4 by providing infrastructure to add system capacity for service gaps that may occur for residents and businesses of the area in regular and high demand periods. It also benefits the community by improving the existing coverage and capacity to increase the voice and data system already in use by its customers. The small cell facility is designed to adapt and accept future technologies, such as 5G, and will help meet local demand and sustain the livability of the area.
5. SLC0796 is not located within a specific plan area

Finding:

- B. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.*

Facts in Support of Finding:

1. See Fact in Support of Finding A.1.
2. Wireless telecommunication facilities are regulated by Chapter 20.49 (Wireless Telecommunication Facilities) of the NBMC. To site small cell equipment in the ROW assigns the project a Class 3 specification (Public Right-of-Way Installations) and requires the Applicant to obtain a minor use permit from the Zoning Administrator pursuant to Section 20.49.060 (Permit Review Procedures) of the NBMC. In this case, the Zoning Administrator’s approval was appealed; therefore, the Planning Commission is the review authority.
3. Section 20.49.040(A) (Preferred Locations) of the NBMC, prioritizes telecom facilities from most preferred (1) to least preferred (4) as follows: (1) collocation of a new facility at an existing facility; (2) Class 1 (Stealth/Screened); (3) Class 2 (Visible Antennas) and Class 3 (Public Right-of-Way); and (4) Class 4

(Freestanding Structure). Although lower on the listing of priority facilities, the proposed facility consists of one (1) small cell facility that is designed to not visually dominate the surrounding area and instead to blend into the existing block.

4. Section 20.49.050 (General Development and Design Standards) of the NBMC, requires projects to be visually compatible with surrounding structures. In reviewing this application, the review authority shall consider the proposed facility's use of color blending, equipment screening, and the limited size of the equipment designed consistently with the aforementioned criteria. All telecommunications equipment on top of the streetlight pole would be concealed within a painted-to-match 12-inch diameter shroud. The Project would rely on likeness with the streetlight pole through style, color, and material to help disguise its presence. Engineering of the replacement streetlight pole accommodates and withstands the weight of the small cell equipment and has ability to display a future City banner, if needed. Electrical and wiring components of the telecommunications equipment are designed to be fully contained within the new streetlight pole. The overall height of 34 feet, 9 inches from finished grade to the top of the proposed facility complies with the maximum allowed. Equipment not contained within the shroud on the streetlight pole would be out of sight, located below the ground in the adjacent ROW. Condition of Approval No. 32 requires approved design drawings from Southern California Edison ("SCE") of the power supply to the small cell facility before construction of the facility is to commence.
5. Existing residential properties contiguous to the Project are in the R-2 (Two-Unit Residential) Zoning District. R-2-zoned sites allow for structures up to 24 feet for flat roof elements and 29 feet to the ridge of a sloped roof. The height of the existing streetlight SLC0796 sits just above the maximum allowable height for residential structures. The streetlight is separated from the residences by a large 20-foot vegetated parkway that is landscaped with taller palm trees. Given this buffer between the streetlight and the residences, SLC0796 is softened and screened by the landscaping from the residential neighborhood beyond. Furthermore, keeping the luminaire the same height as the existing streetlight lessens visual obtrusion from the proposed small cell facility with the line of the existing development.
6. Submitted materials from the Applicant demonstrate the proposal would conform with Federal Communications Commission ("FCC") Rules and Regulations regarding safety and radio frequency emissions.
7. Section 20.49.080 (Agreement for Use of City-Owned or City-Held Trust Property) of the NBMC requires a license agreement for all telecom facilities located on City-owned or City-held trust property. A Master License Agreement for use of City-owned streetlights for telecommunications facilities was executed by and between

the City and New Cingular Wireless PCS, LLC, dated February 12, 2019 (Contract No. C-8584-1). New Cingular Wireless PCS, LLC (Licensee) is a Delaware limited liability company that is registered to do business in the State of California, and whose Manager is AT&T Mobility Corporation. AT&T Mobility Corporation recorded a Fictitious Business Name Statement to do business as AT&T Mobility on November 21, 2016, as Instrument No. 20166459312 in the Official Records of Orange County, California. The City holds sufficient documentation showing the Licensee under the MLA is the same entity represented as the Applicant under this permit application.

8. The Project will comply with applicable requirements of the NBMC with construction as shown on the plans and implementation of the conditions of approval.

Finding:

- C. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*

Facts in Support of Finding:

1. City of Newport Beach Streetlight No. SLC0796 is located within the public right-of-way on the northern side of Balboa Boulevard at the northwestern corner of the 30th Street intersection. It is immediately adjacent to an unusually large vegetated parkway that is approximately 20 feet wide. Beyond the parkway to the northeast is a block of two-unit residential development. All surrounding land uses are residential and vary in density from two-unit residential to single-unit residential. The only exception is a CV (Commercial Visitor Serving) zoned parcel across 30th Street from the site, which is presently developed with a laundromat (Beach Coin Laundry).
2. Under the new FCC Order, wireless providers are not required to demonstrate a significant coverage gap, a qualification previously required by local jurisdictions in order to support an application. Pursuant to the Order, the City cannot “materially [inhibit] the introduction of new services or the improvement of existing services.” Moreover, pursuant to Section 332(c)(7)(B)(i)(II) of U.S. Code Title 47 (Telecommunications), the City may “not regulate the placement, construction or modification of wireless service facilities in a manner that prohibits the provision of personal wireless services.” Although not required, the Applicant produced a coverage map for the Project. This map indicates the proposed facility would boost the supply of capacity and coverage in the vicinity.

3. SLC0796 serves as a part of the City's existing streetlight inventory. The Applicant proposes to: (1) remove and replace SLC0796 with a new streetlight in the same location; (2) maintain the existing luminaire height of 29 feet, 9 inches; (3) install telecommunications equipment for a small cell wireless facility on top of the new streetlight pole resulting in an overall height of 34 feet, 9 inches; and (4) establish new below-grade support equipment adjacent to the streetlight, within the public right-of-way.
4. The replacement streetlight pole design is consistent with the size, shape, style, and design of that existing, including the attached light arm and luminaire. For safety and circulation of the area during construction, Condition of Approval No. 40 requires traffic control plans illustrating compliance with the 2016 WATCHbook to be reviewed and approved by the Public Works Department prior to the issuance of any building permit.
5. The Project is anticipated to enhance coverage and capacity for residents, visitors and businesses in the neighborhood by providing wireless access to voice and data transmission services. The proposed telecom facility is not expected to result in any material changes to the character of the local community.
6. See Facts in Support of Finding B.4, B.5, and B.6.
7. The Project will be unmanned, will have no impact on the circulation system, and, as conditioned, will not generate noise, odor, smoke, or any other adverse impacts to adjacent land uses.

Finding:

D. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.

Facts in Support of Finding:

1. Adequate public and emergency vehicle access, public services, and utilities are provided to and around the subject site and the proposed use will not change this.
2. The Project will be unmanned and will have no permanent impact on the circulation system and adjacent land uses due to its location in the parkway, outside of existing vehicle or pedestrian circulation areas.

3. The Public Works Department and Utilities Department have reviewed the project proposal and do not have any concerns regarding access, public services, or utilities provided to the existing neighborhood and surrounding area.

Finding:

E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

Facts in Support of Finding:

1. The Project will only require periodic maintenance and will not generate any type of significant adverse impacts to the environment, such as noise, odor, smoke, etc.
2. The Project must and will comply with the applicable Federal and State rules, regulations and standards thus, ensuring public health and safety.
3. See Facts in Support of Finding B.4, B.5, B.6, and B.7.
4. The Project will be effectively blended based upon the design and location with the incorporation of the conditions of approval to the greatest extent feasible. As a result, the proposed facility at this location is not expected to result in conditions that are materially detrimental to nearby property owners, residents, and businesses, nor to public health or safety.

Wireless Telecommunications Facility

In accordance with Subsection 20.49.060(H)(1) (General Findings for Telecom Facilities) of the NBMC, the following additional findings and facts in support of such findings are set forth:

Finding:

F. The proposed telecom facility is visually compatible with the surrounding neighborhood.

Facts in Support of Finding:

1. See Facts in Support of Finding B.4, B.5, and B.6.

2. The closest residentially zoned property is located approximately 20 feet northeast of SLC0796 and is buffered by a large 20-foot-wide parkway area with vegetation of varying heights. SLC0796 is located along the inland side of a well-traveled street and will blend in with the surrounding streetscape. There are no public parks near the Project. The Project and below-grade accessory equipment meets the City's design parameters approved by the City's Master License Agreement, which emphasizes stealth techniques and best practices to not be materially detrimental to the surrounding area.

Finding:

G. The proposed telecom facility complies with height, location and design standards, as provided for in this chapter.

Facts in Support of Finding:

1. The 34-foot, 9-inch tall small cell facility would comply with the maximum height limit of 35 feet for telecom facilities installed on streetlights within the public right-of-way.
2. See Facts in Support of Finding B in its entirety.
3. The application includes documentation indicating the need to provide and improve coverage to the residential areas within the City. Moreover, the additional system capacity provided by the Project will address service gaps that occur during high demand periods, as well as service gaps that exist at all demand periods to the surrounding area. SLC0796 will help meet coverage objectives and improve coverage to nearby areas that are currently marginal.

Finding:

H. An alternative site(s) located further from a residential district, public park or public facility cannot feasibly fulfill the coverage needs fulfilled by the installation at the proposed site.

Facts in Support of Finding:

1. See Fact in Support of Finding C.2.

2. Five nearby streetlights were identified and investigated by the Applicant as possible alternate locations for this small cell facility; however, all sites were found by the applicant to be not viable.
3. Alternative Site #1 is a wooden utility pole located approximately 100 feet north of the proposed streetlight. This pole is located immediately in front of a two-unit residential structure that is oriented towards Balboa Boulevard within a narrower parkway area. Installation of small cell infrastructure at this location would require placement of a crossarm with exposed equipment on either side of the wooden pole and would not be as aesthetically compatible as the proposed location. Most importantly, the wooden utility pole is located within an approved underground assessment and utility district, which will aim to eventually eliminate such above-ground utilities in the area.
4. Alternative Site #2 at City Streetlight No. SLC0767 located approximately 160 feet northwest of the proposed streetlight on the opposite side of Balboa Boulevard. This alternative location is in very close proximity to overhead powerlines, which would make additional height above the existing streetlight pole infeasible. Furthermore, the existing streetlight is located such that accessibility is limited and a girther pole could not be accommodated without further constraining the sidewalk.
5. Alternative Site #3 is a wooden utility pole located approximately 78 feet west of the proposed streetlight. This pole is located immediately adjacent to the front patio of an existing, single-story residence. Like Alternative Site #1, installation of small cell infrastructure at this location would require placement of a crossarm with exposed equipment on either side of the wooden pole and would not be as aesthetically compatible as the proposed location. Most importantly, the wooden utility pole is located within an approved underground assessment and utility district, which will aim to eventually eliminate such above-ground utilities in the area.
6. Alternative Site #4 at City Streetlight No. SLC0768 is located at the southwest corner of Balboa Boulevard and 30th Street approximately 100 feet from the proposed streetlight. Like Alternative Site #2, this alternative location is in very close proximity to overhead powerlines, which would make additional height above the existing streetlight pole infeasible. Accessibility is also limited here and a girther pole cannot be accommodated without further constraining the sidewalk.
7. Alternative Site #5 at City Streetlight No. SLC0766 is located at the alleyway between 30th Street and 29th Street, approximately 175 feet southeast of the proposed streetlight. Like Alternative Site #2 and Alternative Site #4, accessibility

is limited at this location and a girthier pole cannot be accommodated without further constraining the sidewalk.

Finding:

- I. *An alternative plan that would result in a higher preference facility class category for the proposed facility is not available or reasonably feasible and desirable under the circumstances.*

Facts in Support of Finding:

1. See Fact in Support of Finding C.2.
2. The Applicant's analysis concluded that a more preferred location as defined by Subsection 20.49.040(A) (Preferred Locations) of the NBMC, such as a collocation or a Class 1 or 2 facility, would not be technically feasible from an RF or construction perspective. The analysis explained that small cell facilities are low powered and must be located at the precise location selected to serve the network traffic demands of the specific limited area. Further, this type of service cannot be accomplished with a traditional macro collocation or building mounted site in the area. The abutting properties are zoned for residential use and, as such, a building mounted "stealth" facility would not be possible.

Coastal Development Permit

In accordance with Subsection 21.52.015(F) (Coastal Development Permits, Findings and Decision) of the NBMC, the following findings and facts in support of such findings are set forth:

Finding:

- J. *Conforms to all applicable sections of the certified Local Coastal Program.*

Facts in Support of Finding:

1. The Project is considered a Class 3 (Public Right-of-Way) installation. Section 21.49.040 (Telecom Facility Preferences and Prohibited Locations) of the NBMC lists Class 3 Installations as third on the installation preference list. It is not proposed at a location that is prohibited by NBMC Subsection 21.49.040(B) (Prohibited Locations).
2. See Fact in Support of Finding I.2.

3. The Project complies with Section 21.30.100 (Scenic and Visual Quality Protection) of the NBMC. It is not on a coastal bluff or canyon, not adjacent to or within the viewshed of a public view point, coastal view road, public park or beach, or public accessway, as identified on the Coastal Land Use Plan Map 4-3 (Coastal Views), and does not contain significant natural landforms or vegetation. The Project scope involves the removal and replacement of an existing City streetlight in the same location with the same luminaire height. The shielded antennas will extend above the pole by approximately 5 feet, 6 inches while the antenna shroud will be visible from the immediate vicinity. The Project has been designed to blend in within the existing streetscape. The replacement streetlight is consistent with the size, shape, style, and design of the existing pole. No above-ground mounted equipment is proposed and the support equipment is proposed to be placed in underground handholes. All transmission equipment, including remote radio units and the raycap disconnect switch, are fully concealed within a screening shroud. There will be no negative impacts on coastal views or coastal resources with the Project's implementation.
4. The proposed replacement streetlight and antenna structure will comply with the maximum allowable height limit of 35 feet from existing finished grade.

Finding:

- K. Conforms with the public access and public recreation policies of Chapter 3 of the Coastal Act if the project is located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone.*

Facts in Support of Finding:

1. SLC0796 is not located between the nearest public road and the sea or shoreline; therefore, the Project will not affect the public's ability to gain access to, use, and/or view the coast and nearby recreational facilities. Vertical access to the beach is provided by way of street-ends in the area, including 30th Street. Lateral access along the beach provided on the beach itself and along the Oceanfront Boardwalk. The equipment will be below grade and will not impact any public way.
2. The Project will allow the installation of a small cell facility that complies with all applicable Local Coastal Program (LCP) development standards and maintains development attributes consistent with the existing and anticipated future surrounding neighborhood pattern of development. Therefore, the Project does not have the potential to degrade public views within the Coastal Zone.

Section 2: The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

Section 3: If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 4: The City Council finds the adoption of this resolution is exempt from the California Environmental Quality Act ("CEQA") pursuant to Sections 15302 and 15303 under Class 2 (Replacement or Reconstruction) and Class 3 (New Construction or Conversion of Small Structures), respectively, of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment. Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. In this case, the Project includes the removal and replacement of an existing City streetlight pole to install a small telecommunications wireless facility, including below-grade accessory equipment. The exceptions to the Class 3 categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

Section 5: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.


ADOPTED this 25th day of August, 2020.

Will O'Neill
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney

Attachment(s): Exhibit "A" Conditions of Approval

EXHIBIT "A"

CONDITIONS OF APPROVAL

Planning Division

1. The development shall be in substantial conformance with the plans, including elevation exhibits and visual simulations, stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The Project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this approval.
4. The Project approved by this permit shall comply with all applicable Federal and State rules, regulations, and standards.
5. The replacement pole shall be reconstructed in the exact location of the existing streetlight pole.
6. The reconstructed streetlight pole design shall be consistent with the size (including diameter), shape, style, and design of the existing streetlight pole to the greatest extent feasible, including the attached light arm and luminaire. All mounted equipment shall be painted to match the color and style of the replacement streetlight pole.
7. All accessory support equipment of this Project shall be installed underground.
8. All electrical and antenna wiring shall be fully encased within the reconstructed streetlight pole.
9. The Project approved by the use permit shall comply with the Master License Agreement (Contract No. C-8584-1) and any easements, covenants, conditions, or restrictions on the underlying City-trust property upon which the Project is located.
10. Anything not specifically approved by this permit is not permitted and must be addressed in a separate and subsequent review.
11. Prior to building permit final, a Height Certification Inspection shall be required. The small cell facility and base streetlight pole approved by this permit shall not exceed a total of 34 feet, 9 inches in height from existing grade (maximum elevation height of 43.57 feet above finish grade using the North American Vertical Datum of 1988 [NAVD88]).

12. Prior to building permit issuance, all contractors and subcontractors shall have a valid City of Newport Beach business license.
13. The Applicant shall continually maintain the Project so that it retains its original appearance at the time the building permit is finalized by the City of Newport Beach.
14. On an annual basis, the Applicant shall conduct maintenance inspections of the wireless telecom facility, including the small cell facility and below-grade equipment areas, and make all necessary repairs. The Community Development Director may require additional inspections and/or maintenance activities at his/her discretion.
15. The Applicant shall not prevent the City of Newport Beach from having adequate spectrum capacity on the City's 800 MHz radio frequencies at any time.
16. The Project shall transmit at the approved frequency ranges established by the FCC. The Applicant shall inform the City in writing of any proposed changes to the frequency range in order to prevent interference with the City's Public Safety radio equipment.
17. The Project shall at no time interfere with the frequencies used by the City of Newport Beach for public safety. "Comprehensive advanced planning and frequency coordination" engineering measures shall prevent interference, especially in the choice of frequencies and radio ancillary hardware. This is encouraged in the "Best Practices Guide" published by the Association of Public-Safety Communications Officials-International, Inc. ("APCO"), and as endorsed by the FCC.
18. Should interference with the City's Public Safety radio equipment occur, use of the Project authorized by this permit may be suspended until the radio frequency interference is corrected and verification of the compliance is reported.
19. The Applicant shall provide a "single point of contact" for carriers in its Engineering and Maintenance Departments that is monitored 24 hours per day to ensure continuity on all interference issues, and to which interference problems may be reported. The name, telephone number, fax number, and email address of that person shall be provided to the Community Development Department and Newport Beach Police Department's Support Services Commander prior to activation of the facility. If the point of contact changes, the City shall be immediately alerted and updated.
20. No advertising signage or identifying logos shall be displayed on the Project except for small identification, address, warning, and similar information plates. A detail of the information plates depicting the language on the plate shall be included in the plans submitted for issuance of building permits.

21. Appropriate information warning signs or plates shall be posted on the base streetlight pole of the transmitting antenna. In addition, contact information (e.g., a telephone number) shall be provided on the warning signs or plates. The location of the information warning signs or plates shall be depicted on the plans submitted for construction permits. Signage required by State or federal regulations shall be allowed in its smallest permissible size.
22. Prior to the final of building permits, the Applicant shall schedule an evening inspection by the Code Enforcement Division to confirm compliance with lighting. The telecom facility shall be lighted to the extent deemed necessary by the Newport Beach Police and Utilities Departments for security lighting and consistency with other streetlights in the area.
23. The Applicant shall maintain the Project in good repair, such that it is always consistent with this approval.
24. The Applicant shall ensure that its Project complies with the most current regulatory, operations standards, and radio frequency emissions standards adopted by the FCC. The Applicant shall be responsible for obtaining and maintaining the most current information from the FCC regarding allowable radio frequency emissions and all other applicable regulations and standards. This information shall be made available by the Applicant upon request of the Community Development Director.
25. The Project shall comply with all applicable provisions of U.S. Code Title 47 (Telecommunications) rules and regulations, including those related to FCC Radio Frequency safety.
26. Prior to final of building permits, the Applicant shall schedule an inspection by the Planning Division to ensure materials and colors match existing architecture as illustrated in the approved photographic simulations and in conformance with NBMC Section 20.49.050.
27. Any operator who intends to abandon or discontinue use of a telecom facility must notify the Planning Division by certified mail no less than thirty (30) days prior to such action. The operator shall have ninety (90) days from the date of abandonment or discontinuance to reactivate use of the facility or remove the telecom facility and restore the site.
28. The City reserves the right and jurisdiction to review and modify any permit approved pursuant to NBMC Chapters 20.49 and 21.49, including the conditions of approval, based on changed circumstances. The operator shall notify the Planning Division of any proposal to change the height or size of the facility; increase the size, shape, or number of antennas; change the facility's color or materials or location on the site; or increase the signal output above the maximum permissible exposure ("MPE") limits imposed by the radio frequency emissions guidelines of the FCC. Any changed circumstance shall require the operator to

apply for a review of the modification, and possible amendment to the use permit, prior to implementing any change.

29. Coastal Development Permit No. CD2020-052 and Minor Use Permit No. UP2019-030 shall expire unless exercised within 24 months from the date of approval as specified in Sections 20.54.060 and 21.54.060 (Time Limits and Extensions) of the NBMC, unless an extension is otherwise granted.
30. Construction activities shall comply with Section 10.28.040 of the NBMC, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7 a.m. and 6:30 p.m., Monday through Friday. Noise-generating construction activities are not allowed on Saturdays, Sundays or holidays.
31. This approval may be modified or revoked by the City Council if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
32. A copy of the Resolution, including conditions of approval Exhibit "A," and approved drawings from Southern California Edison (SCE) for the power supply and design, shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
33. The Applicant shall promptly notify the City if the landscaped parkway of the subject streetlight pole is negatively affected or otherwise damaged by project implementation.
34. To the fullest extent permitted by law, Applicant shall indemnify, defend 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 City's approval of Small Cell on SLC0796, including, but not limited to, Minor Use Permit No. UP2019-030 and Coastal Development Permit No. CD2020-052 (PA2019-111). 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. The Applicant 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. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Public Works Department

35. Prior to the issuance of a building permit, an encroachment permit shall be required.
36. Prior to the issuance of a building permit, traffic control plans illustrating compliance with the 2016 WATCHbook requirements shall be reviewed and approved by the Public Works Department before their implementation. Large construction vehicles shall not be permitted to travel narrow streets as determined by the Public Works Department. Disruption caused by construction work along roadways and by movement of construction vehicles shall be minimized by proper use of traffic control equipment and flagman.

Additional Conditions of Approval

37. The Applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of native birds pursuant to MBTA:
 - A. The Project area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.
 - B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one or two short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.