

## RESOLUTION NO. 73599

A Resolution of the City Council of the City of San José upholding the Planning Commission's decision to approve, subject to conditions a Conditional Use Permit to use certain real property described herein for the purpose of allowing the collocation of six (6) cellular telephone antennas on an existing monopole located on a 0.24 gross acre site on the north side of Lano Lane, approximately 300 feet east of Almaden Expressway.

### FILE NO. CP06-030

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San Jose Municipal Code, on April 12, 2006, an application (File No. **CP06-030**) was filed for a Conditional Use Permit for the purpose of allowing the collocation of six (6) cellular telephone antennas on an existing monopole, on that certain real property (hereinafter referred to as "subject property"), situate in the LI Light Industrial Zoning District, located on the north side of Lano Lane, approximately 300 feet east of Almaden Expressway, and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San Jose Municipal Code, the Planning Commission conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, the Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing the Planning Commission received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, the Planning Commission received in evidence a development plan for the subject property entitled, "SF14990 Willow Glen," last revised September 22, 2005, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, the public hearing before the Planning Commission was conducted in all respects as required by the San Jose Municipal Code and the rules of the Planning Commission; and

WHEREAS, an appeal of the Planning Commission's decision in this matter was filed on October 25, 2006 and a hearing on such appeal was subsequently scheduled for City Council consideration; and

WHEREAS, said hearing was conducted in all respects as required by the San José Municipal Code and the rules of this City Council;

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this City Council conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this City Council received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement and the Planning Commission; and

WHEREAS, at said hearing, this City Council received in evidence a development plan for the subject property entitled, "SF14990 Willow Glen," last revised September 22, 2005, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San José Municipal Code and the rules of this City Council.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE AS FOLLOWS:**

The City Council finds that the following are the relevant facts regarding this proposed project:

1. The applicant is requesting the subject Conditional Use Permit to allow collocation of six antennas on an existing wireless communications monopole.
2. A Conditional Use Permit is required for a wireless communication antenna that is not a slimline monopole in the HI Heavy Industrial Zoning District.
3. The existing monopole is located on a 0.24 gross acre site currently used for industrial purposes.

4. No change in the primary use of the site is proposed as a part of this application.
5. The uses immediately adjacent to this lot are industrial. Surrounding land uses consist of a mixture of industrial and commercial uses. The closest residential use is located on Cross Way, approximately 650 feet from the monopole.
6. In 1990 the subject monopole was approved with a Conditional Use Permit (CP90-002) and a Development Variance (V90-001) to allow a 75 foot tall monopole. The Conditional Use Permit was approved without an expiration date.
7. The existing monopole and AT&T and Cingular antennas were erected under and in accordance with Conditional Use Permit CP90-002 and Development Variance V90-001.
8. In 2004 collocation of three (3) new antennas for Sprint on the existing monopole was approved through a Permit Adjustment, AD04-161. This adjustment approved the antennas to extend away from the pole no more than two (2) feet. The antennas were constructed extending approximately five (5) feet from the pole. These antennas were constructed in violation of the Permit.
9. The subject site is designated LI Light Industrial on the City of San Jose's 2020 General Plan Land Use/Transportation Diagram.
10. The project site is located in the HI Heavy Industrial Zoning District, and is surrounded by predominantly industrial uses.
11. The maximum allowed height in the HI Heavy Industrial Zoning District is currently 45 feet at time of issuance of this permit, however, Title 20 of the San Jose Municipal Code allows a wireless communication antenna to be increased over the required maximum height of the zoning district in which it is located to a maximum of 60 feet provided that the antenna is a slimline monopole.
12. The proposed T-Mobile antennas are to be mounted at a height of 50 feet.
13. The existing Sprint antennas are mounted at a height of 65 feet pursuant to previous approvals noted above.
14. The purpose of Council Policy 6-20: Land Use Policy for Wireless Communication Facilities is to support necessary communication facilities in a manner that minimizes visual clutter and other land use impacts and provides future opportunities for reducing impacts as changes in technology or development patterns make this possible.
15. Council Policy 6-20 encourages siting monopoles in industrial areas and encourages carriers to collocate their facilities when possible.

16. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project has been found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.
17. The primary industrial use of the property would not be affected by this permit.
18. The project will not reduce the amount parking spaces available on the site.

This City Council concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San Jose 2020 General Plan Land Use Transportation Diagram.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The existing monopole does not fully comply with the City's Wireless Policy, however, the proposed collocation does meet the intent of the purpose of the City's Wireless Policy in that the proposed antennas are flush mounted.
4. The proposed project is in compliance with the California Environmental Quality Act.
5. The proposed use is compatible with the surrounding neighborhood.

Finally, based upon the above stated findings and subject to the conditions set forth below, the City Council finds that:

1. The proposed use at the location requested will not
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons residing or working in the surrounding area; or
  - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
  - a. By highway or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate and; and

- b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This City Council expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

### CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until this Resolution has been recorded with the County Recorder.

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
  - a. Acceptance of the Permit by the applicant; and
  - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Building Permit/Certificate of Occupancy.** Procurement of a Structure Permit and/or Certificate of Occupancy from the Structure Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Structure Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.

### CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California

Regional Water Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.

2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "SF14990 Willow Glen," last revised September 22, 2005, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24).
3. **Colors and Materials.** All structure colors and materials are to be those specified on the approved plan set.
4. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
5. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final approved plan set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San Jose Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San Jose Landscape and Irrigation Guidelines.
6. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.
7. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San Jose Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in a manner as to cause a nuisance, as defined above.
8. **Liability.** The Applicant shall indemnify and hold harmless the City and any officers and employees thereof against and from all claims, loss, liability, damages, judgments, decrees, costs and expenditures which the City of such officer or employee may suffer, or which may be recovered from or obtainable against the City of such officer or employee, proximity caused by and growing out of or resulting from the exercise of the Permit.
9. **Anti Litter.** The site and the adjoining street frontage shall be maintained free of litter, refuse, and debris.
10. **Lighting.** No new lighting is approved as a part of this project.
11. **Outdoor Storage.** No outdoor storage is permitted except in areas designated on the approved plan set.

12. **Refuse.** All trash shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.
13. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Director of Planning, Building, and Code Enforcement:
  - a. **Construction Plans.** The permit file number, **CP06-030** shall be printed on all construction plans submitted to the Building Division.
  - b. **Emergency Address Card.** The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department
  - c. **Plan Conformance.** A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms with all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date. The subject permit shall be incorporated into all construction plans submitted to the Building Division as follows
    - 1) Index Sheet and all construction plans shall reference the approved permit, CP06-030, any subsequent Amendments, or Adjustments to the approved permit, and applicable sheets.
    - 2) The approved subject permit (with signature) shall be copied in its entirety onto plans set sheets.
    - 3) Construction plans shall also incorporate all elements of the approved permit included in the plan set.
14. **Compliance Review.** A compliance review is required at the discretion of the Director of Planning based on complaints regarding the operation of the facility.

#### **CONDITIONS SUBSEQUENT**

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, whichever date last occurs, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission or the City Council on appeal, whichever date last occurs. The Director of

Planning may approve a Permit Adjustment/Amendment extending the permit in accordance with Title 20.

2. **Time Limit.** This Conditional Use Permit expires and has no further force or effect ten (10) years from the date of this Permit.

Please note that this Conditional Use Permit has been granted for a period of 10 years only. You are being specifically and separately advised of this time limitation so that you will consider this time limitation in your decision to accept this permit or as you make any investment decision related to this property.

3. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Director of Planning, Building and Code Enforcement. In order to be timely, an application for renewal must be filed more than 90 calendar days but less than 180 calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.
4. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
  - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or

///

///

///

///

///

///

- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance

**APPROVED** this 9<sup>th</sup> day of January, 2007 by the following vote:

AYES: CAMPOS, CHIRCO, CONSTANT, CORTESE,  
LICCARDO, NGUYEN, PYLE, WILLIAMS; REED

NOES: NONE

ABSENT: NONE

DISQUALIFIED;: NONE

VACANT: DISTRICT 4, DISTRICT 6

---

CHUCK REED  
Mayor

ATTEST:

---

LEE PRICE, MMC  
City Clerk

### NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.