



## PLANNING COMMISSION AGENDA REPORT

**Meeting Date:** December 5, 2024

**Subject:** 707 Fremont Ave - Conditional Use Permit for a Wireless Telecommunications Facility

**Prepared by:** Brittany Whitehill, Senior Planner

**Initiated by:** Eric Lentz on behalf of AT&T, Applicant

**Attachments:**

1. Draft Resolution Approving the Conditional Use Permit
2. Project Plans
3. Project Photo Simulations
4. Service Coverage Maps
5. Radiofrequency Exposure Study
6. Public Correspondence

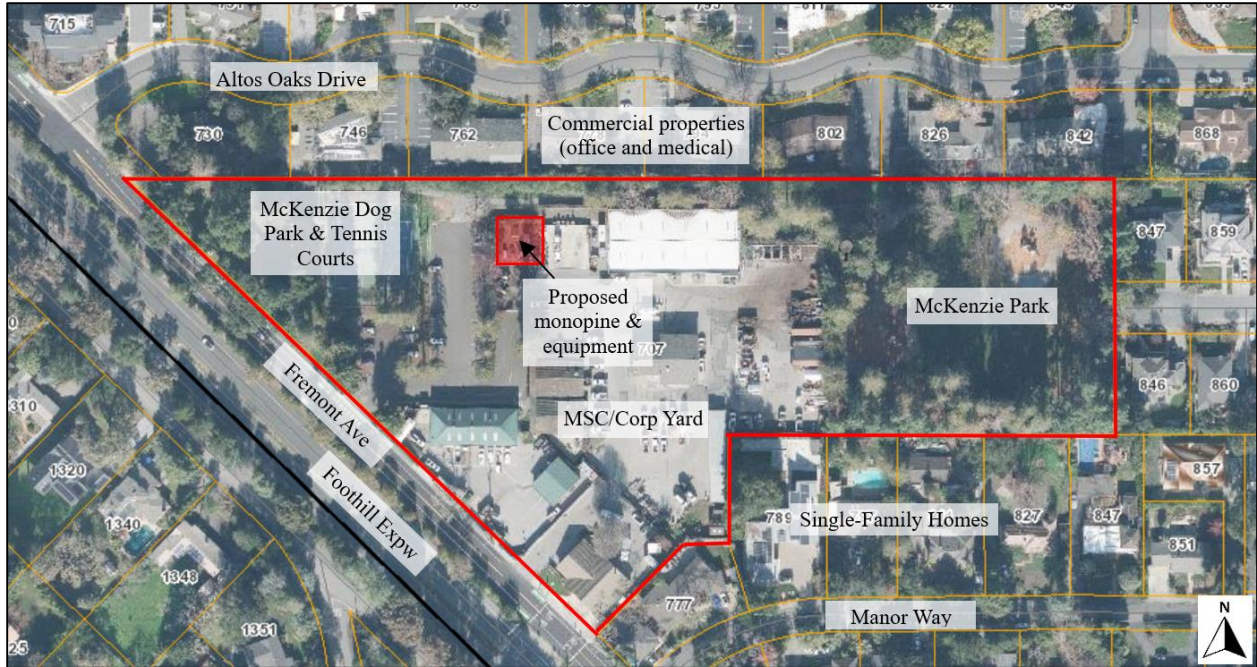
**Recommendation**

1. Adopt a Resolution approving a Conditional Use Permit (Application No. CUP24-0001) to allow construction of an 80-foot-tall wireless telecommunications facility (“monopine”) and associated equipment, per the recommended findings and conditions of approval in the attached resolution; and find the project is categorically exempt from environmental review pursuant to Section 15303 (“New Construction or Conversion of Small Structures”) of the California Environmental Quality Act (CEQA).

**Background**

Property Description

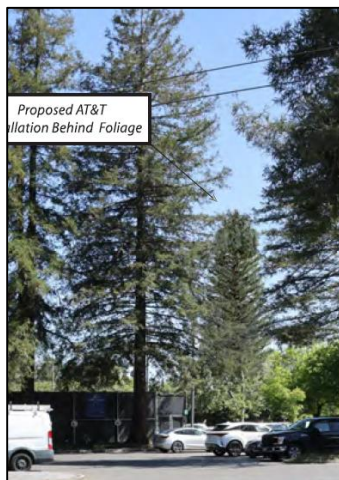
The project site is an approximately 5.3-acre lot located on the northeast side of Fremont Avenue between Manor Way and Altos Oaks Drive. The site is zoned PCF (Public and Community Facility) and is developed with the City’s Municipal Services Center (MSC) and corporation yard and McKenzie Park. Uses that surround the project site include professional and medical offices to the north that front onto Altos Oaks Drive, and single-family residential uses to the east, south, and across Foothill Expressway to the west as shown in Figure 1 below.



**Figure 1: Vicinity Map**

Project Overview

On August 8, 2024, the City received an application from AT&T for a Conditional Use Permit to construct an 80’ tall monopole wireless telecommunications facility designed to look like a conifer tree (“monopine”), associated equipment, and fenced in enclosure within an approximately 750 square-foot area in the City’s corporation yard. The area of the proposed telecommunications facility is an unpaved area that is screened from public view by an (8) eight-foot tall wooden fence (see Attachment 2 – Project Plans and Attachment 3 – Photo Simulations). The proposed facility is intended to improve cellular service in an area that currently has a significant coverage gap and



**Figure 2:  
View from MSC**



**Figure 3:  
View from Altos Oaks Drive**



**Figure 4:  
View from Manor Way**

improve emergency communications for first responders as demonstrated in coverage maps prepared by the applicant (see Attachment 4 – Service Coverage Maps).

Los Altos Municipal Code (LAMC) Section 14.80.050 (A)(1) grants the Planning Commission authority to grant Conditional Use Permits for all monopole wireless facilities that comply with applicable zoning regulations. AT&T has engaged with the City for initial lease negotiations to lease this portion of the corporation yard for the wireless facility. The lease will be considered by the City Council at a future meeting pending approval of the Conditional Use Permit.

## **Analysis**

### General Plan Consistency

The project site has General Plan Land Use designation of PI (Public and Institutional), which provides for a variety of public and quasi-public uses, including utilities, and City-owned facilities and services, all of which improve the function of the City and quality of life for residents. Construction of the wireless facility is therefore appropriate within the PI land use designation.

The proposed project is aligned with the following General Plan goals and implementation programs:

- **Infrastructure and Waste Disposal Element Policy 4.5:** Allow for the latest in communication technology for Los Altos that can be built in a way that retains the character of the constructed environment.
- **Natural Environment and Hazards Element Implementation Program 18 (Communication Network for Emergencies):** Support a high level of multi-jurisdictional cooperation and communication for emergency planning and management. Solicit private individuals and organizations to enhance service provider communication and response with cellular telephones, ham radios, AM/FM radio and cable television and local school districts.

### Los Altos Municipal Code Consistency

Wireless facilities are regulated by portions of Chapter 11 (Wireless Facilities) and Chapter 14 (Zoning) of the LAMC. The project complies with all applicable provisions of the LAMC, as summarized below:

- **Setback/Placement Standards:** LAMC Section 14.85.030(D)(1) prohibits wireless facilities from impeding access to public or private utilities, ingress/egress to buildings, fire escapes, or infrastructure associate with public transit stops. The placement of the proposed wireless facility will not impede access with any of the infrastructure noted above. Section 14.85.030(D)(2) further requires that pole-mounted facilities not be located within 20' of a building entrance, comply with all setbacks of the underlying zone, and not result in a reduction in the parking available on the project site. The project has been designed to comply with all requirements of Section 14.85.030(D)(2).

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- **Locational Preferences:** LAMC Section 14.85.030 identifies the City’s preferred and less preferred zone districts for wireless facilities. The PCF (Public and Community Facilities) zoning district as a less preferred location for telecommunications facilities. The PCF (Public and Community Facilities) zoning district as a less preferred location, therefore the applicant was required to provide a written statement with the following information:
  - a. Clear and convincing written evidence demonstrating that installation at a preferred location is infeasible, and that approval of the proposed location rather than a preferred location is therefore needed.
  - b. Confirmation that the applicant does not own any property or facilities within five hundred (500) feet from the proposed site that could provide service in lieu of the proposed facility.
  - c. No preferred location exists within five hundred (500) feet from the proposed site; or any preferred location within five hundred (500) feet from the proposed site would be technically infeasible.

With their application submittal, the applicant provided a written statement with sufficient information to demonstrate compliance with these requirements. The statement confirmed that there was no suitable alternative preferred location for the project, because the applicant was unable to locate a site with a willing property owner in a location that would address the existing coverage gap.

#### City of Los Altos Design Guidelines and Standards for Wireless Facilities (Design Guidelines)

In addition to the municipal code requirements for wireless facilities, the City has adopted Design Guidelines to regulate the design of wireless facilities. The Design Guidelines require that faux tree wireless facilities replicate the shape, structure, and color of live trees, and be designed to look like the tree species they intend to replicate, and that branching shall not make the tree look top-heavy or unnatural. As designed, the faux tree has a natural-appearing shape and dense, realistic branching and foliage. The design guidelines also stipulate that faux tree designs are only appropriate on sites with existing or proposed tree canopy coverage of similar species. The MSC site has many tall, mature redwood trees, making the faux tree design an appropriate choice.

The Design Guidelines state that telecommunications facilities shall be designed to be the minimum functional height and width required to adequately support the proposed facility and meet Federal Communications Commission (FCC) requirements. AT&T requires the proposed height to meet the coverage objectives to close the significant coverage gap in this area. A lower height would result in less coverage.

#### Radiofrequency (RF) Emissions and Noise

Limits on radiofrequency (RF) emissions associated with wireless facilities are established and regulated by the Federal Communications Commission (FCC). The applicant provided an RF exposure study that determined for a person anywhere at ground, the maximum RF exposure level due to the proposed AT&T operation would be 17% of the applicable public exposure limit. The

maximum calculated level at the second-floor elevation of any nearby building would be 23% of the public exposure limit. The maximum calculated level at the second-floor elevation of any nearby residence would be 10% of the public exposure limit. The exposure study also found that AT&T, as an FCC licensee, will be required to take adequate steps to ensure that its employees and contractors receive appropriate training and comply with FCC occupational exposure guidelines whenever work is required near the antennas themselves (see Attachment 5).

Wireless facilities are required to comply with the noise limitations established in the LAMC. The applicant provided a noise assessment prepared by an acoustic engineer to demonstrate that, during normal operations, noise emissions from the facility will not exceed 42dBA at the nearest adjoining property with an OA zoning designation, where the maximum allowed noise is 55dBA. Similarly, the noise emissions will not exceed 28.7 dBA at the nearest adjoining residential property, where the maximum allowed noise is 45 dBA.

### Federal Requirements for the Permitting of Wireless Facilities

The City's review of telecommunications facility applications is strictly regulated by federal and state law. 47 U.S.C. § 332(c)(7) (Section 332) of the United States Communications Act is the principal federal law limiting the City's authority to regulate wireless facilities. Section 332 recognizes and preserves local zoning authority over the placement, construction and modification of wireless communications facilities, provided the locality complies with the following five requirements:

#### **1. The City must act on a wireless application within a reasonable time.**

Local authorities must make a final decision regarding whether to approve or deny an application within a "reasonable period of time" after the request is filed, considering the nature and scope of the request. In 2009, the FCC established "presumptively reasonable periods" for local action on a wireless communications facility siting application—typically referred to as the "shot clocks." Pursuant to FCC requirements, applications for new wireless facilities must be approved or denied within 150 days. The 150-day shot clock period begins when the applicant submits the initial application and includes processing of all necessary Planning and Building permits.

Furthermore, California Gov. Code Section 65964.1, provides that if a local government fails to act within the time required by the applicable FCC shot clock, the applicant may pursue a "deemed granted" assertion of its application by providing notice to the local government. The local government would then have 30 days to challenge the "deemed granted" assertion in court.

City staff have been working expeditiously with the applicant team to adhere to the 150-day shot clock and will continue to do so through the building permit review process. Staff anticipates full compliance with the shot clock requirement can be achieved. The Commission should be aware that continuance of the application request or referral to City

Council will continue the shot clock, resulting in less available time for building permit review.

**2. The City cannot enforce its own radiofrequency (RF) standards, but can require compliance with FCC standards for RF.**

The FCC has exclusive responsibility and authority to set safety standards for public and worker exposure to RF emissions associated with wireless facilities. Local governments are prohibited from denying a wireless facility application based on concerns about RF emissions if the applicant has demonstrated that the facility will comply with applicable FCC RF emissions standards.

As previously described, the proposed wireless facility complies with the FCC RF emissions standards for the public and workers.

**3. The City cannot apply standards that would create an “effective prohibition” the provision of personal wireless services.**

While federal law preserves local authority to establish development and design standards for wireless facilities, local agencies are restricted from applying any regulations that would result in a prohibition or effective prohibition of the provision of personal wireless services.

What constitutes an “effective prohibition” has been clarified by the FCC and tested in recent case law. In 2023, the Third Circuit U.S. Court of Appeals heard the civil suit *Cellco Partnership d/b/a Verizon Wireless v. The White Deer Township Zoning Hearing Board*. Verizon Wireless had requested several variances from zoning standards, including setback and minimum lot size standards, to construct a cell tower within White Deer Township in Pennsylvania, in order to fill what Verizon had determined to be a significant gap in coverage. The township denied the variances, and Verizon Wireless filed a lawsuit asserting that, in denying the variances, the township created an effective prohibition on the provision of personal wireless services. The district court and Third Circuit US Court of Appeals both ruled in Verizon’s favor.

A two-part test is used to determine whether a local agency’s zoning standards restrict wireless facilities to an extent that creates an “effective prohibition”. First, the provider must prove that a significant gap in wireless service exists. Second, the provider must also show that the manner in which it proposes to fill the significant gap in service is the “least intrusive” manner feasible. This will require a showing that a good faith effort has been made to identify and evaluate less intrusive alternatives, e.g., that the provider has considered less sensitive sites, alternative system designs, and placement of antennae on existing structures.

As previously described, the applicant has provided maps demonstrating the existence of a gap in cell coverage (generally in the area south of downtown and east of Foothill

Expressway), and their facility would help to remedy that gap. The applicant has evaluated alternative locations, but was unable to identify a location that had a willing property owner and would adequately address the coverage gap. Additionally, the applicant has demonstrated, and staff concurs, that the height of the structure is the minimum feasible height required to address the significant gap in coverage, and that the proposed monopine design will be the most effective way to disguise the facility, given the surrounding tree coverage.

**4. Any denials must be supported by substantial evidence.**

Any decision under local regulations to deny a request to construct personal wireless facilities “shall be in writing and supported by substantial evidence contained in a written record.”

There is no evidence that the proposed wireless facility is out of compliance with any applicable standard in the Los Altos Municipal Code or Design Guidelines. Additionally, no evidence exists that the project would violate any applicable state or federal law, such as the United States Communications Act or the California Environmental Quality Act.

**5. The City cannot discriminate among providers of functionally equivalent services.**

Section 332 prohibits the City from “unreasonably discriminating among providers of functionally equivalent services.” This limitation is intended to prevent the City from dictating a preference for certain wireless technologies over others. For example, a local government cannot prohibit 5G wireless facilities.

**Environmental Review**

This project is categorically exempt from environmental review under Section 15303 (“New Construction or Conversion of Small Structures”) of the California Environmental Quality Act (CEQA). This exemption applies when a project involves construction of one or more structures with a combined floor area of up to 2,500 square feet if the project does not involve use of significant amounts of hazardous materials, and the site is zoned for the proposed use, is served by all necessary public services, and the surrounding area is not environmentally sensitive. The total combined footprint of the proposed facility is less than 750 square feet, the project will not involve use of hazardous materials, the PCF zone district allows wireless facilities as a conditionally permitted use, the site is, and will continue to be served by all necessary public services and utilities, and no sensitive habitat exists at or near the site, therefore the “New Construction or Conversion of Small Structures” categorical exemption from CEQA applies and no additional environmental review is required.

**Public Notification**

A public meeting notice was mailed to property owners within a 300-foot radius and published in the newspaper. The applicant also posted the public notice sign (24” x 36”) in conformance with the

Planning Division posting requirements. One public comment has been received as of the preparation of this report. Written public comments have been included as “Attachment 6” to the staff report.

### **Next Steps**

The Planning Commissions decision on the Conditional Use Permit application is final unless appealed to Council. If this application is approved, the City Council will consider a lease agreement with AT&T for use of a portion of the property to accommodate the wireless telecommunications facility during a future City Council meeting.