



## Legislation Text

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**File #:** ID19-11412, **Version:** 1

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### REPORT TO THE PLANNING COMMISSION

**OCTOBER 16, 2019**

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Development Services Division

**THROUGH:** MARGO LERWILL, Supervising Planner  
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### SUBJECT

Consideration of Conditional Use Permit Application No. P19-00974, for property located at 3199 East McKinley Avenue in Fresno, on the north side of East McKinley Avenue between North First Street and North Second Street. - Planning and Development Department

Based upon the evaluation contained in this report and appeal received from the public, staff recommends that the Planning Commission take the following action:

1. **ADOPT** Environmental Assessment for No. P19-00974 dated August 16, 2019, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Class 3 Categorical Exemption.
2. **DENY** the appeal and **UPHOLD** the action of the Planning and Development Department Director to recommend approval for Conditional Use Permit Application No. P19-00974 requesting to construct a 60-foot-high monopine telecommunications tower with associated equipment in the Mayfair Self Storage parking lot.

### EXECUTIVE SUMMARY

Conditional Use Permit Application No. P19-00974 was filed by Casey Ogata-Tran, on-behalf of SAC Wireless o/b/o Verizon Wireless. The proposed project is located on 4.40 acres at 3199 East McKinley Avenue, on the north side of East McKinley Avenue between North First Street and North

Second Street. The applicant requests to construct a 60-foot high monopine telecommunication tower located at the Mayfair Self Storage parking lot within an enclosed and screened equipment area spanning 18' x 30'. Related equipment would include remote radio head (RRH) units, 4 raycaps, 3 hybrid cables, and 9 antennas.

On August 16, 2019, Conditional Use Permit Application No. P19-00974 was conditionally approved and a Notice of Action was mailed to property owners who had requested to be notified once the project was approved. On September 3, 2019, two public appeals were received by mail from property owners in opposition to the proposed project.

## **BACKGROUND**

The proposed project is located in the CC (Community Commercial) zone district. Pursuant to Section 15-2759 of the Fresno Municipal Code (FMC), telecommunications and wireless facilities shall comply with the City's policy pertaining to said uses. These regulations are intended to provide for the appropriate development of wireless telecommunication facilities within the city to meet the needs of residents, business-owners, and visitors while protecting public health and safety and preventing visual blight and degradation of the community's aesthetic character. The proposed project will also be in conformance with the Fresno Municipal Code and the Policies and Procedure for Wireless Telecommunications Facilities Issue No.33.

The applicant is proposing to construct a 60 foot tall monopine wireless telecommunication facility that will be able to co-locate with another wireless service. The applicant proposes a six-foot-tall CMU wall to secure the area for the monopine cell tower and outdoor cabinet equipment. The monopine telecommunication facility will be a special design that will aesthetically camouflage the cell tower as a pine tree instead of a slim line pole. The facility will operate 24 hours a day and 7 days a week. The facility will only be service by technicians when maintenance is required and no sound will be produce in result of the operation of the cell tower facility.

Initially the applicant made an appeal to the conditions that were not applicable to the project in the Conditions of Approval issued on August 16, 2019. However, as of September 26, 2019, the applicant and the City of Fresno staff came to an agreement in result of a response letter to the applicant's appeal which was resolved with a response letter dated September 26, 2019 (see Response Letter to Verizon's Appeal in Exhibit I).

## **Notice of Intent to Take Action**

On August 2, 2019, pursuant to Fresno Municipal Code Section 15-5007, a Notice of Intent to take Action was mailed to property owners within 1,000 feet of the location (see Exhibit E for Public Noticing and Map). By August 18, 2019, phone calls were received from two people opposing the proposed project based on concerns about the health issues and unpleasant aesthetic the telecommunication tower would bring to their neighborhood. The two property owners requested that once action was taken, they shall be notified through mail. On August 9, 2019, a letter from a concerned resident nearby the proposed project was received with concerns about the health issues a cell tower would bring to the area (See the Resident's Letter of Concerns in Exhibit J).

## **Analysis of the Appeal**

Pursuant to the Fresno Municipal Code Section 15-5009, on August 16, 2019, a Notice of Action was mailed to those members of the public interested in the proposed project. The public was given

fifteen days to appeal the project and on September 3, 2019, two appeal letters were received. The first appeal was filed by Debbie Poblano residing at 3134 East Home Avenue. The second appeal was filed by Christy Casanova also residing at 3134 East Home Avenue. The two appellants are concerned about the health and safety of the public, school, and residence nearby the proposed project (see letters attached as Exhibit K).

### **Response to Appellants Concerns**

Verizon Wireless's attorney has responded to the appellants' concerns in regard to radio frequency and the location of the proposed project. The response letter addresses that Verizon Wireless will comply with the federal radio frequency guidelines and will comply with the exposure of the radio emission within the standard set by the FCC (Federal Communications Commission) radio frequency exposure guidelines. (See Verizon's Response Letter in Exhibit L).

With respect to health related concerns, under the Telecommunications Act of 1996, the U.S Code for Telecommunications under section 47 U.S. Code § 332. Mobile services (c)(7)(B)(iv) limits the authority of a state or local governments decision on a telecommunication facility. The code states, "No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions." Therefore, the City is precluded from taking any position on the matter of health related issues.

In other words, the review process of the Planning and Development Department will ensure that the applicant follows all applicable regulations and codes to meet the appropriate standards in size, esthetic and structural integrity in constructing the telecommunication facility. However, the health considerations and emissions generated by the telecommunication facility are outside the authority of local or state governments.

### **Fresno County Airport Land Use Commission**

The proposed project was reviewed and approved by the Airport Land Use Commission on August 12, 2019 with a finding of consistency with the Fresno County Airport Land Use Compatibility Plan. Due to the proposed project's height and proximity to the airport, the project was required to submit form 7460-2 to the FAA (Federal Aviation Administration) for Determination of No Hazard to Air Navigation. Form 7460-2 takes a minimum of 45 days to complete the review, therefore the findings of no hazard was not presented at the meeting. However, the ALUC approved the project with conditions that the FAA Determination of No Hazard to Air Navigation findings be completed before the start of construction. FAA findings can be reviewed in Exhibit M.

### **Other Agencies**

All comments received from the applicable agencies have been incorporated into the conditions of approval for Conditional Use Permit Application No. P19-00974. The project will comply with all development code requirements including setbacks, landscaping, and parking requirements, as incorporated into the conditions of approval.

## **LAND USE PLANS AND POLICIES**

### **Fresno General Plan**

The Fresno General Plan designates the subject site for Commercial Community planned land uses and provides objectives to guide in the development of these projects. The Commercial Community planned land use is intended for commercial development that primarily serves local needs such as convenience shopping and offices. Specific uses allowed include medium-scale retail, office, civic and entertainment uses, supermarkets, drug stores, and supporting uses.” Conditional Use Permit Application No. P19-00974 meets all policies, goals, and objectives of the Fresno General Plan. The following are excerpts of such goals.

Goal 12. Resolve existing public infrastructure and service deficiencies make full use of existing infrastructure, and invest in improvements to increase competitiveness and promote economic growth.

Goal 15. Improve Fresno's visual image and enhance its form and function through urban design strategies and effective maintenance.

The monopine cell tower design will improve wireless service for surrounding carriers and users in the area as well as provide a more pleasing telecommunication facility to the eyes of the public with a monopine design compared to the regular slim line monopole design.

### **McLane Community Plan**

Upon reviewing the policies contained in the McLane Community Plan, staff has determined that there are no policies that are applicable or are more restrictive than those contained in the FMC or the Fresno General Plan.

### **Notice of Planning Commission Hearing**

The Planning and Development Department mailed notices of this Planning Commission hearing to surrounding property owners within 1,000 feet of the subject property (Exhibit E) on October 4, 2019. Staff also sent notices, via U.S. mail and email, to individuals who requested notification.

## **ENVIRONMENTAL FINDINGS**

The CEQA permits a public agency to determine whether a particular project is exempt from CEQA. A determination of a Categorical Exemption, Section 15303/Class 03 of the CEQA Guidelines was made and Environmental Assessment No. P19-00974 was completed for this project on August 16, 2019.

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. The numbers of structures described in this section are the maximum allowable on any legal parcel.

The proposed project is comprised of 540 square-foot enclosed space with a 60-foot high monopine telecommunication tower and outdoor cabinet equipment. The lease area is adequately served by emergency access, utilities and services. The proposed project is consistent with the Fresno General Plan, the McLane Community Plan, and the Fresno Airport Land Use Compatibility Plan without

negatively impacting the characteristics of the area.

None of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, Section 15300.2 apply to this project.

## **FRESNO MUNICIPAL CODE FINDINGS**

The required findings under Section 15-5306, for Conditional Use Permits, of the Fresno Municipal Code are as follows:

- a. The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Code and all other chapters of the Municipal Code; and,
- b. The proposed use is consistent with the General Plan and any other applicable plan and design guideline the City has adopted; and,
- c. The proposed use will not be substantially adverse to the public health, safety, or general welfare of the community, nor be detrimental to surrounding properties or improvements; and,
- d. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and reasonably foreseeable future land uses in the vicinity; and,
- e. The site is physically suitable for the type, density, and intensity of use being proposed, including access, emergency access, utilities, and services required.

Based upon analysis of the application, staff concludes that the required findings of FMC Section 15-5306 can be made for the proposed project. These findings are attached as Exhibit O.

[Based upon analysis of the applications, staff concludes that the required findings of Section 15-xxxx of the Fresno Municipal Code can be made. These findings are attached as Exhibit X.]

## **CONCLUSION**

The appropriateness of the proposed project has been examined with respect to its consistency with goals and policies of the McLane Community Plan and Fresno General Plan; its compatibility with surrounding existing or proposed uses; and, its avoidance or mitigation of potentially significant adverse environmental impacts. These factors have been evaluated as described above and by the accompanying environmental assessment. Upon consideration of this evaluation, it can be concluded that the proposed Conditional Use Permit Application No. P19-00974 is appropriate for the project site.

### **Attachments:**

Exhibit A - Vicinity Map  
Exhibit B - Aerial Photograph of Subject Property  
Exhibit C - Planned Land Use Map  
Exhibit D - Zoning Map  
Exhibit E - Mailed Public Notices and Map  
Exhibit F - Project Information Tables

Exhibit G - Exhibits (Site Plans, Floor Plans, Elevations, Photo Simulation)  
Exhibit H - Operational Statement  
Exhibit I - Response Letter to Verizon Wireless's Appeal  
Exhibit J - Resident's Letter of Concerns  
Exhibit K - Public's Appeal Letters  
Exhibit L - Verizon Wireless Response Letter  
Exhibit M - FAA Findings  
Exhibit N - Categorical Exemption  
Exhibit O - Fresno Municipal Code Findings  
Exhibit P - Conditions of Approval dated October 16, 2019 with attachments