



CITY OF OAKLAND

Oakland City Planning Commission

Case File Numbers: PLN17352 & PLN17359

STAFF REPORT
February 21, 2018

Location:	City Street light pole in public right-of-way (sidewalk) adjacent to: 3146 Martin Luther King Jr. Way (PLN17352, APN: 009-0715-030-00) Zone: RU-1, Land Use: Urban Residential; 2833 Harrison Street (PLN17359, APN: 010-0801-001-00) Zone: RM-3, Land Use: Mixed Housing Type Residential (See map on reverse)
Proposal:	To establish (2) wireless "small cell site" Monopole Telecommunication Facilities on existing City street light poles, located in the Public Right-of-Way.
Permits Required:	Major Conditional Use Permits and Regular Design Reviews for Monopole Telecommunication Facilities; Minor Variances for Monopoles adjacent to Residential Lot Lines.
Applicant:	James Singleton/Mobilitie (650)814-0564
Environmental Determination:	Exempt, Section 15301 of the State CEQA Guidelines: Existing Facilities; Exempt, Section 15302: Replacement or Reconstruction; Exempt, Section 15303: New Construction of Small Structures; Section 15183: Projects Consistent with a Community Plan, General Plan or Zoning
Historic Status:	Non-historic poles
City Council District:	3
For further information:	Contact case planner Marilu Garcia at (510) 238-5217 or by email: mgarcia2@oaklandnet.com

EXECUTIVE SUMMARY

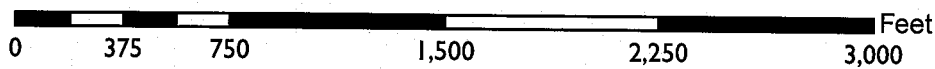
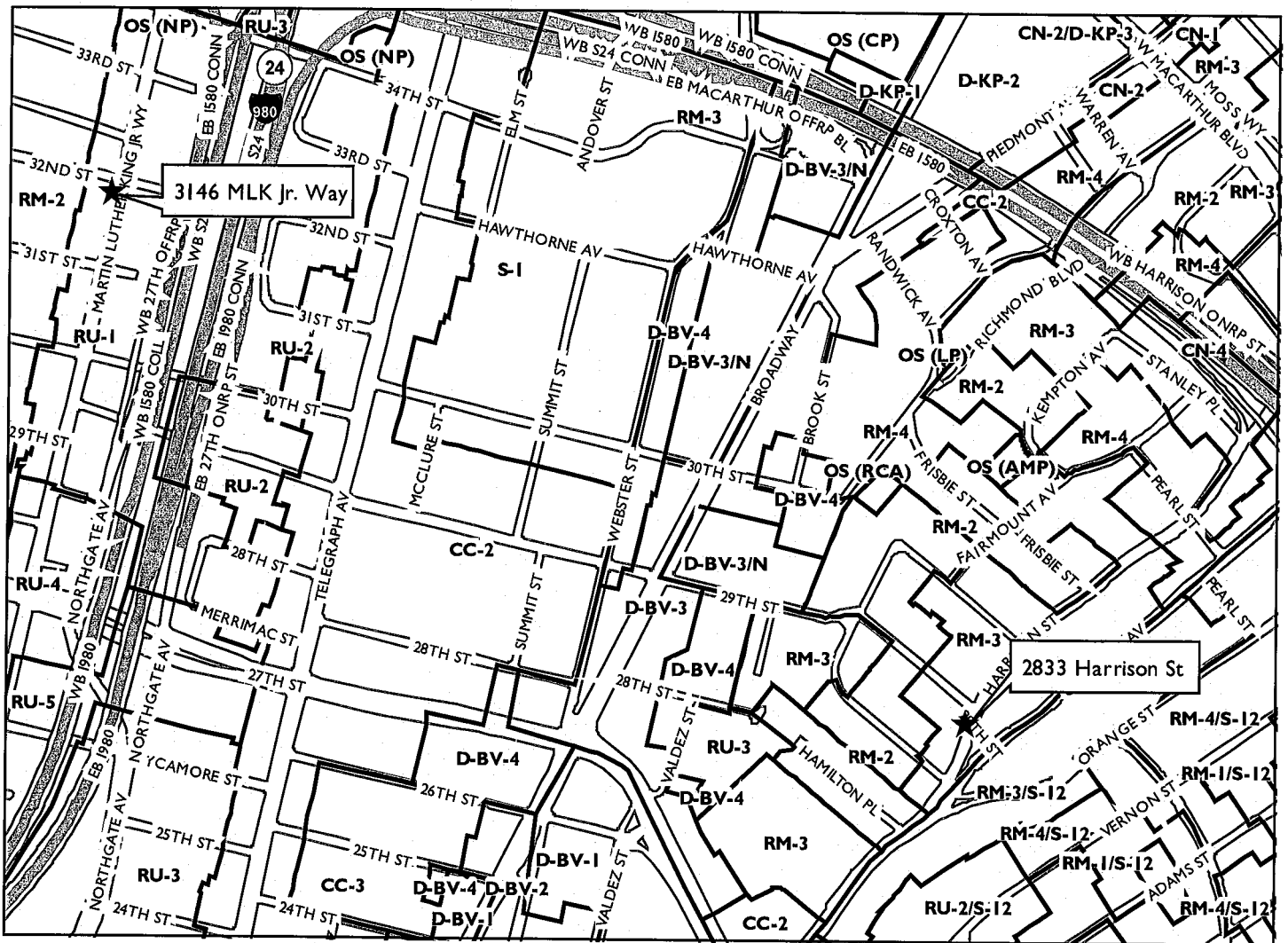
The applicant (Mobilitie) requests Planning Commission approval to establish two (2) small cell wireless telecommunication facility sites on existing City Street light poles located on the public right-of-way in residential neighborhoods. The project involves attaching an antenna within an antenna shroud and equipment to each utility pole as described in the submitted plans to enhance wireless services in those areas.

The proposals are classified as "Monopoles" and each require a Major Conditional Use Permit, Regular Design Review with additional findings and a Minor Variance for being located in a residential zone and adjacent to a residential lot line. The proposed projects, including the antenna and associated equipment are similar to other poles and equipment located around the City. The antenna shroud will extend toward the top of the pole and away from the adjacent residences. The antenna shroud and associated equipment will be painted to match the pole and/or other utilities located on the pole. As result, the proposed telecommunication facilities would be an appropriate location and would not significantly increase negative visual impacts to adjacent neighboring residential properties. The project meets all the required findings for approval of these two (2) small cell sites.

TELECOMMUNICATIONS BACKGROUND

Limitations on Local Government Zoning Authority under the Telecommunications Act of 1996

CITY OF OAKLAND PLANNING COMMISSION



Case Files: PLN17352, PLN17359
Applicant: James Singleton, Mobilitie LLC
Addresses: 3146 MLK Jr. Way, 2833 Harrison Street
Zones: RU-1, RM-3

Section 704 of the Telecommunications Act of 1996 (TCA) provides federal standards for the siting of “Personal Wireless Services Facilities.” “Personal Wireless Services” include all commercial mobile services (including personal communications services (PCS), cellular radio mobile services, and paging); unlicensed wireless services; and common carrier wireless exchange access services. Under Section 704, local zoning authority over personal wireless services is preserved such that the FCC is prevented from preempting local land use decisions; however, local government zoning decisions are still restricted by several provisions of federal law. Specifically:

- Under Section 253 of the TCA, no state or local regulation or other legal requirement can prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.
- Further, Section 704 of the TCA imposes limitations on what local and state governments can do. Section 704 prohibits any state and local government action which unreasonably discriminates among personal wireless providers. Local governments must ensure that its wireless ordinance does not contain requirements in the form of regulatory terms or fees which may have the “effect” of prohibiting the placement, construction, or modification of personal wireless services.
- Section 704 also preempts any local zoning regulation purporting to regulate the placement, construction and modification of personal wireless service facilities on the basis, either directly or indirectly, on the environmental effects of radio frequency emissions (RF) of such facilities, which otherwise comply with Federal Communications Commission (FCC) standards in this regard. (See 47 U.S.C. Section 332(c)(7)(B)(iv) (1996)). This means that local authorities may not regulate the siting or construction of personal wireless facilities based on RF standards that are more stringent than those promulgated by the FCC.
- Section 704 mandates that local governments act upon personal wireless service facility siting applications to place, construct, or modify a facility within a reasonable time (See 47 U.S.C.332(c)(7)(B)(ii) and FCC Shot Clock ruling setting forth “reasonable time” standards for applications deemed complete).
- Section 704 also mandates that the FCC provide technical support to local governments in order to encourage them to make property, rights-of-way, and easements under their jurisdiction available for the placement of new spectrum-based telecommunications services. This proceeding is currently at the comment stage.

For more information on the FCC’s jurisdiction in this area, consult the following:
Competition & Infrastructure Policy Division (CIPD) of the Wireless Telecommunications Bureau, main division number: (202)418-1310. <https://www.fcc.gov/general/competition-infrastructure-policy-division-wireless-telecommunications-bureau>

PROPERTY DESCRIPTION

- The existing 27-foot tall City Street pole is located in the City of Oakland public right-of-way (side walk, towards the curb) near 3146 Martin Luther King Jr. Way.
- The existing 26-foot tall City Street light pole is located in the City of Oakland public right-of-way (side walk, towards the curb) near 2833 Harrison Street.

PROJECT DESCRIPTION

As shown in Attachment C for PLN17352 (3146 Martin Luther King Jr. Way), the applicant proposes to:

- Install one omni directional antenna within an antenna shroud measuring 29.5” tall and 4.5” in diameter on top of the existing pole up to 31’-5.5” in height;
- Install associated equipment including a 13” UE relay and 7.7” radio unit mounted on the side at 12.9’ above ground; and
- Paint the proposed antennas and associated equipment to match the pole and/or other utilities located on the pole.

As shown in Attachment C for PLN17359 (2833 Harrison Street), the project applicant proposes to:

- Install one omni directional antenna within an antenna shroud measuring 29.5” tall and 4.5” in diameter at a height of 30’-5.5” on existing pole, extending toward street;
- Install associated equipment including a 13” UE relay and 7.7” radio unit mounted on the side at 11’-3” above ground; and
- Paint the proposed antennas and associated equipment to match the pole and/or other utilities located on the pole.

No portion of the telecommunication facilities will be located on the ground. The proposed antenna and associated equipment will not be accessible to the public.

SURROUNDING USES

1) 3146 Martin Luther King Jr. Way - The pole is within the Urban Residential- 1 Zone (RU-1). The property is used as a two-story duplex. The pole is located approximately 12-feet from the structure at the intersection of Martin Luther King Jr. Way and 32nd Street. The neighborhood consists of residential uses.

2) 2833 Harrison Street - The pole is located within the Mixed Housing Type Residential – 3 Zone (RM-3) The property is used as a two-story duplex. The pole is located approximately 10-feet from the structure at the intersection of Harrison and 29th Street. The neighborhood consists of residential uses.

SIMILAR CASES

The Planning Commission reviewed and approved three similar cases in the City of Oakland. The projects required a Major Conditional Use Permit, Regular Design Review and Minor Variance for Monopole Telecommunications Facilities.

GENERAL PLAN AND ZONING

The sites are located within the RU-1 and RM-3 zones and within the Urban Residential and Mixed Use Housing Type Residential areas under the General Plan’s Land Use and Transportation Element (LUTE). Per OMC sections 17.128.080, 17.136.040 and 17.134.020 (3)(e) a Major Conditional Use Permit is required when a Monopole Telecommunications Facility is in, or within, 300 feet of the boundary of any residential zone or HBX zone. Section 17.128.080 (A)(3) also states: “When a monopole is in a Residential Zone or adjacent to a residential use, it must be set back from the nearest residential lot line a distance at least equal to its total height”. The applicant has requested a Minor Variance for a setback reduction.

Staff finds the proposal, as conditioned, to conform to the General Plan and Planning Code.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines categorically exempts specific types of projects from environmental review. Section 15301 exempts projects involving ‘Existing Facilities’; Section 15302 exempts projects involving ‘Replacement or Reconstruction’; and, Section 15303 exempts projects involving ‘Construction of Small Structures.’ The proposal fits all of these descriptions. The

project is also subject to Section 15183 for 'Projects consistent with a community plan, general plan or zoning.' The project is therefore exempt from further Environmental Review.

KEY ISSUES

The proposal to establish two Monopole Telecommunications Facilities is subject to the following Planning Code development standards, followed by staff's analysis:

17.128.080 Monopole Telecommunications Facilities.

A. General Development Standards for Monopole Telecommunications Facilities.

1. Applicant and owner shall allow other future wireless communications companies including public and quasi-public agencies using similar technology to collocate antenna equipment and facilities on the monopole unless specific technical or other constraints, subject to independent verification, at the applicant's expense, at the discretion of the City of Oakland Zoning Manager, prohibit said collocation. Applicant and other wireless carriers shall provide a mechanism for the construction and maintenance of shared facilities and infrastructure and shall provide for equitable sharing of cost in accordance with industry standards. Construction of future facilities shall not interrupt or interfere with the continuous operation of applicant's facilities.

The proposal involves using two existing City of Oakland Street light poles for the wireless communication facilities that would be available for future collocation purposes.

2. The equipment shelter or cabinet must be concealed from public view or made compatible with the architecture of the surrounding structures or placed underground. The shelter or cabinet must be regularly maintained.

Recommended conditions of approval require painting and texturing the antennas and equipment to match the appearance of the poles. There is no equipment shelter or cabinet proposed, however, minimal equipment would be closely mounted on the side of the poles.

3. When a monopole is in a Residential Zone or adjacent to a residential use, it must be set back from the nearest residential lot line a distance at least equal to its total height.

The existing City Street light poles are in residential zones. The proposed facility adjacent to 3146 Martin Luther King Jr. Way is approximately 12-feet from the residential lot line (the property is a multi-family dwelling). The proposed facility at 2833 Harrison Street is approximately 10-feet from the residential lot line. A Minor Variance has been requested to allow a reduction in setback requirements. The proposals meets the variance criteria included in that section of this attachment and would not create a negative visual impact on the neighborhood.

4. In all zones other than the D-CE-5, D-CE-6, IG, CIX-2, and IO Zones, the maximum height of Monopole Telecommunications Facilities and connecting appurtenances may be increased from the otherwise required maximum height to forty-five (45) feet upon the granting of a Conditional Use Permit (see Chapter 17.134 for the Conditional Use Permit Procedure).

The facilities would not exceed the maximum height limit.

5. In the D-CE-5, D-CE-6, CIX-2, and IO Zones, the maximum height of Monopole Telecommunications Facilities and connecting appurtenances may be increased from the otherwise required maximum height to eighty (80) feet upon the granting of a Conditional Use Permit (see Chapter 17.134 for the Conditional Use Permit Procedure).

This requirement does not apply. The subject properties are not located in any of the described zoning districts. Nonetheless, the facilities would not exceed maximum height limit.

6. In the IG Zone, the maximum height of Monopole Telecommunications Facilities and connecting appurtenances may reach a height of forty-five (45) feet. These facilities may reach a height of eighty (80) feet upon the granting of Regular Design Review approval (see Chapter 17.136 for the Design Review Procedure).

This requirement does not apply. The subject properties are not located in any of the described zoning districts. Nonetheless, the facilities would not exceed the maximum height limit.

7. The applicant shall submit written documentation demonstrating that the emissions from the proposed project are within the limits set by the Federal Communications Commission.

This standard is met by the proposal; a satisfactory emissions report has been submitted and is attached to this report (Attachment F).

8. Antennas may not extend more than fifteen (15) feet above their supporting structure.

The proposed antennas would not extend more than fifteen feet above the City light pole.

17.128.110 Site location preferences.

New wireless facilities shall generally be located on the following properties or facilities in order of preference:

- A. Co-located on an existing structure or facility with existing wireless antennas.**
- B. City-owned properties or other public or quasi-public facilities.**
- C. Existing commercial or industrial structures in Nonresidential Zones (excluding all HBX Zones and the D-CE-3 and D-CE-4 Zones).**
- D. Existing commercial or industrial structures in Residential Zones, HBX Zones, or the DCE-3 or D-CE-4 Zones.**
- E. Other Nonresidential uses in Residential Zones, HBX Zones, or the D-CE-3 or D-CE-4 Zones.**
- F. Residential uses in Nonresidential Zones (excluding all HBX Zones and the D-CE-3 and D-CE-4 Zones).**
- G. Residential uses in Residential Zones, HBX Zones, or the D-CE-3 or D-CE-4 Zones.**

A site alternatives analysis is not required because the proposal conforms to 'B' as it would be located on a public facility (City light pole). Nonetheless, the applicant has submitted an analysis which is attached to this report (Attachment E).

17.128.120 Site design preferences.

New wireless facilities shall generally be designed in the following order of preference:

- A. Building or structure mounted antennas completely concealed from view.**
- B. Building or structure mounted antennas set back from roof edge, not visible from public right-of way.**
- C. Building or structure mounted antennas below roof line (facade mount, pole mount) visible from public right-of-way, painted to match existing structure.**
- D. Building or structure mounted antennas above roof line visible from public right-of-way.**
- E. Monopoles.**
- F. Towers.**

Facilities designed to meet an A or B ranked preference do not require a site design alternatives analysis. Facilities designed to meet a C through F ranked preference, inclusive, must submit a site design alternatives analysis as part of the required application materials. A site design alternatives analysis shall, at a minimum, consist of: a. Written evidence indicating why each such higher preference design alternative cannot be used. Such evidence shall be in sufficient detail that

independent verification could be obtained if required by the City of Oakland Zoning Manager. Evidence should indicate if the reason an alternative was rejected was technical (e.g. incorrect height, interference from existing RF sources, inability to cover required area) or for other concerns (e.g. inability to provide utilities, construction or structural impediments).

The proposal most closely conforms to 'E' (monopole) and the applicant has submitted a satisfactory site design alternatives analysis. (Attachment E)

17.128.130 Radio frequency emissions standards.

The applicant for all wireless facilities, including requests for modifications to existing facilities, shall submit the following verifications:

- a. With the initial application, a RF emissions report, prepared by a licensed professional engineer or other expert, indicating that the proposed site will operate within the current acceptable thresholds as established by the Federal government or any such agency who may be subsequently authorized to establish such standards.
- b. Prior to commencement of construction, a RF emissions report indicating the baseline RF emissions condition at the proposed site.
- c. Prior to final building permit sign off, an RF emissions report indicating that the site is operating within the acceptable thresholds as established by the Federal government or any such agency who may be subsequently authorized to establish such standards.

A satisfactory report is attached to this report (Attachment F).

Analysis

The proposed site design would not be situated on a historic pole or structure, create a view obstruction, or be directly adjacent to a primary living space such as a living room or bedroom window. Staff requested the equipment on the side of the pole to be moved to reduce visual impacts from the neighboring property. The applicant modified the plans to comply with this request. Staff finds the proposal is the less intrusive alternative and will improve wireless communication services in this area. Draft conditions of approval stipulate that the components be painted and textured to match the City Street-light pole for camouflaging.

- RECOMMENDATIONS:**
1. Affirm staff's environmental determination.
 2. Approve the Regular Design Reviews subject to the attached Findings and Conditions of Approval.


Prepared by:


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Reviewed by:


ROBERT MERKAMP
Acting Zoning Manager

Approved for forwarding to the Planning Commission:


WILLIAM A. GILCHRIST, FAIA, Director
Planning and Building Department

ATTACHMENTS:

- A. Findings
- B. Conditions of Approval
- C. Plans
- D. Applicant's Photo-Simulations
- E. Site Alternatives Analysis/Site Design Alternatives Analysis
- F. RF Emissions Report by Hammett & Edison, Inc.
- G. CPUC Compliance Letter
- H. Applicant's Proof of Public Notification Posting

ATTACHMENT A: FINDINGS

This proposal meets the required findings under General Use Permit Criteria (OMC Section 17.134.050; Conditional Use Permit Criteria for Monopole Facilities (OMC Section 17.128.080 (C)); Regular Design Review for Non-Residential Facilities (OMC Section 17.136.050 (B)) and Telecommunications Regulations/Design Review Criteria for Monopole Telecommunications Facilities (OMC Sec. 17.128.080(B)) and Minor Variance Criteria (OMC 17.148.050(A)) as set forth below. Required findings are shown in **bold type**; explanations as to why these findings can be made are in normal type.

GENERAL USE PERMIT CRITERIA (OMC SEC. 17.134.050)

A. That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.

The proposal involves the placement of two Monopole Facilities in residential zones. Specifically, it will provide for one new antenna to the upper portion of each of two City Street light poles located in the public right-of-way. The antennas and equipment are to be camouflaged to match the poles. The project will be compatible with the neighborhoods, it meets special findings, and is intended to improve wireless services in those areas.

B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant.

The proposal is to place two wireless telecommunications facilities to improve wireless services in those areas. The inclusion of camouflaging will lessen the impacts of the proposed facilities.

C. That the proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region.

The placement of the proposed Monopole Facilities will provide and enhance wireless communication services in those neighborhoods.

D. That the proposal conforms to all applicable design review criteria set forth in the design review procedure at Section 17.136.050.

The projects conform to Design Review findings which are included in that section of this attachment of Findings for Approval.

E. That the proposal conforms in all significant respects with the Oakland Comprehensive Plan and with any other applicable plan or development control map which has been adopted by the City Council.

The projects are consistent with the following Objectives of the Oakland General Plan's Land Use & Transportation Element (adopted 1998):

Civic and Institutional Uses, Objective N2: Encourage adequate civic, institutional, and educational facilities located within Oakland, appropriately designed and sited to serve the community.

Infrastructure, Objective N12: Provide adequate infrastructure to meet the needs of Oakland's growing community.

The proposals to establishment two wireless telecommunications facilities will not create functional issues for the areas and the project possesses a satisfactory emissions report.

SECTION 17.128.080(C) – CONDITIONAL USE PERMIT CRITERIA FOR MONOPOLE FACILITIES.

1. The project must meet the special design review criteria listed in subsection B of this section.

The projects conform to Design Review findings, which are included in the following section of this attachment.

2. Monopoles should not be located any closer than one thousand five hundred (1,500) feet from existing monopoles unless technologically required or visually preferable.

The requests are part of proposed small cell network. This network consists of a series of radio access nodes connected to small telecommunications antennas that distribute wireless communication signals. Monopoles within the network may be located within one-thousand five-hundred feet. The applicant has submitted documentation to demonstrate that this arrangement is technologically required and/or visually preferable to a minimum distance separation. (Attachment F)

3. The proposed project must not disrupt the overall community character.

The Monopole Facilities will not alter or disrupt the current overall character of the community as they will be attached to existing City Street light poles. The antennas and equipment will be painted and texturized to match existing metal poles in appearance.

4. If a major conditional use permit is required, the Planning Director or the Planning Commission may request independent expert review regarding site location, collocation and facility configuration. Any party may request that the Planning Commission consider making such request for independent expert review.

An independent expert review may be requested by the specified parties. No expert review has been requested.

REGULAR DESIGN REVIEW CRITERIA FOR NON-RESIDENTIAL FACILITIES (OMC SEC. 17.136.050(B))

1. That the proposed design will create a building or set of buildings that are well related to the surrounding area in their setting, scale, bulk, height, materials, and textures:

The attachment of a small antenna and equipment to two non-historic City Street light poles, painted and texturized to match the poled in appearance for camouflaging, will be the least intrusive design. The antennas will be placed on top of the poles. The facility will not adversely affect and detract from the characteristics of the surrounding.

2. That the proposed design will protect, preserve, or enhance desirable neighborhood characteristics;

The proposals will improve wireless services in the areas where a gap in wireless service has been identified and will enable better response from emergency services such as police, fire department and emergency response teams.

3. That the proposed design conforms in all significant respects with the Oakland General Plan and with any applicable design review guidelines or criteria, district plan, or development control

The proposed design conforms to the General Plan as described in a previous section of this attachment.

TELECOMMUNICATIONS REGULATIONS/DESIGN REVIEW CRITERIA FOR MONOPOLE TELECOMMUNICATIONS FACILITIES (OMC SEC. 17.128.080(B))

1. Collocation is to be encouraged when it will decrease visual impact and collocation is to be discouraged when it will increase negative visual impact.

The proposal does not involve collocation as it involves the establishment of two new telecommunications facilities; however, the project should not preclude any future proposals for collocation at the sites.

2. Monopoles should not be sited to create visual clutter or negatively affect specific views.

The Monopole Facilities do not create clutter or negatively affect specific views as they are proposed to be placed on existing light poles.

3. Monopoles shall be screened from the public view wherever possible.

The Monopole Facilities will be camouflaged and placed as an attachment to existing light poles.

4. The equipment shelter or cabinet must be concealed from public view or made compatible with the architecture of the surrounding structures or placed underground. The shelter or cabinet must be regularly maintained.

Recommended conditions of approval require painting and texturing the antennas and equipment to match the appearance of the poles. There is no equipment shelter or cabinet proposed, however minimal equipment would be closely mounted on the side of the poles.

5. Site location and development shall preserve the preexisting character of the surrounding buildings and land uses and the zone district as much as possible. Wireless communication towers shall be integrated through location and design to blend in with the existing characteristics of the site to the extent practical. Existing on-site vegetation shall be preserved or improved, and disturbance of the existing topography shall be minimized, unless such disturbance would result in less visual impact of the site to the surrounding area.

The proposed Monopole Facilities will be placed on existing non-decorative City Street light poles. This enables the preservation of character and will not pose a negative visual impact as the proposal will be camouflaged to match the poles. There is no impact on existing vegetation or topography as these are existing City Street light poles.

6. That all reasonable means of reducing public access to the antennas and equipment has been made, including, but not limited to, placement in or on buildings or structures, fencing, anti-climbing measures and anti-tampering devices.

The minimal clearance to the facilities will be approximately 9 feet.

MINOR VARIANCE FINDINGS (OMC 17.148.050(A))

1. That such strict compliance would preclude an effective design solution improving livability, operational efficiency, or appearance.

The applicant intends to improve wireless communication services and fill a gap in service in these neighborhoods. Strict compliance would preclude this intent.

2. That such strict compliance would preclude an effective design solution fulfilling the basic intent of the applicable regulation.

Strict compliance would preclude an effective design solution to improve wireless communication services in these areas. The City Street light poles are existing and the antennas would not cause view obstructions.

3. That the variance, if granted, will not adversely affect the character, livability, or appropriate development of abutting properties or the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy.

The proposal would not be detrimental to the public welfare or contrary to adopted plans or development policy. The Monopoles would be placed on an existing City light poles in areas that not adversely affect the character of the surroundings. The antennas and equipment would be camouflaged to reduce visual impacts and would provide wireless communications services.

4. That the variance will not constitute a grant of special privilege inconsistent with limitations imposed on similarly zoned properties or inconsistent with the purposes of the zoning regulations.

The variance would not constitute a grant of privilege. Monopole wireless communication facilities are allowed as a Conditional Use in this zoning district. Findings for the Conditional Use Permit are included above. The antennas would be placed on existing light poles and the proposal is consistent with the purposes of the zoning regulations.

5. That the elements of the proposal requiring the variance (e.g., elements such as buildings, walls, fences, driveways, garages and carports, etc.) conform with the regular design review criteria set forth in the design review procedure at Section 17.136.050

The proposal for two Monopole Wireless Communication Facilities conforms with the Regular Design Review criteria specified in that section of this attachment of Findings of Approval.

6. That the proposal conforms in all significant respects with the Oakland General Plan and with any other applicable guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission or City Council.

The proposal for two Monopole Wireless Communication Facilities conforms with the General Plan and applicable guidelines as specified in a previous sections of this attachment of Findings of Approval.

Attachment B: Conditions of Approval

Approved Use

The project shall be constructed and operated in accordance with the authorized use as described in the approved application materials, **staff report** and the approved plans **dated November 16, 2017 and submitted September 2017**, as amended by the following conditions of approval and mitigation measures, if applicable (“Conditions of Approval” or “Conditions”). Case Numbers: PLN17441, (APN: 009-0679-001-00) and PLN17446, (APN: 003-0033-026-00).

2. Effective Date, Expiration, Extensions and Extinguishment

This Approval shall become effective immediately, unless the Approval is appealable, in which case the Approval shall become effective in ten calendar days unless an appeal is filed. Unless a different termination date is prescribed, this Approval shall expire **two calendar years** from the Approval date, or from the date of the final decision in the event of an appeal, unless within such period all necessary permits for construction or alteration have been issued, or the authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this Approval, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit or other construction-related permit for this project may invalidate this Approval if said Approval has also expired. If litigation is filed challenging this Approval, or its implementation, then the time period stated above for obtaining necessary permits for construction or alteration and/or commencement of authorized activities is automatically extended for the duration of the litigation.

3. Compliance with Other Requirements

The project applicant shall comply with all other applicable federal, state, regional, and local laws/codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City’s Bureau of Building, Fire Marshal, and Public Works Department. Compliance with other applicable requirements may require changes to the approved use and/or plans. These changes shall be processed in accordance with the procedures contained in Condition #4.

4. Minor and Major Changes

- a. Minor changes to the approved project, plans, Conditions, facilities, or use may be approved administratively by the Director of City Planning.
- b. Major changes to the approved project, plans, Conditions, facilities, or use shall be reviewed by the Director of City Planning to determine whether such changes require submittal and approval of a revision to the Approval by the original approving body or a new independent permit/approval. Major revisions shall be reviewed in accordance with the procedures required for the original permit/approval. A new independent permit/approval shall be reviewed in accordance with the procedures required for the new permit/approval.

5. Compliance with Conditions of Approval

- a. The project applicant and property owner, including successors, (collectively referred to hereafter as the “project applicant” or “applicant”) shall be responsible for compliance with all the Conditions of Approval and any recommendations contained in any submitted and approved

technical report at his/her sole cost and expense, subject to review and approval by the City of Oakland.

- b. The City of Oakland reserves the right at any time during construction to require certification by a licensed professional at the project applicant's expense that the as-built project conforms to all applicable requirements, including but not limited to, approved maximum heights and minimum setbacks. Failure to construct the project in accordance with the Approval may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension, or other corrective action.
- c. Violation of any term, Condition, or project description relating to the Approval is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approval or alter these Conditions if it is found that there is violation of any of the Conditions or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the ability of the City to take appropriate enforcement actions. The project applicant shall be responsible for paying fees in accordance with the City's Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the Approval or Conditions.

6. Signed Copy of the Approval/Conditions

A copy of the Approval letter and Conditions shall be signed by the project applicant, attached to each set of permit plans submitted to the appropriate City agency for the project, and made available for review at the project job site at all times.

7. Blight/Nuisances

The project site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60 days of approval, unless an earlier date is specified elsewhere.

8. Indemnification

- a. To the maximum extent permitted by law, the project applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the Oakland Redevelopment Successor Agency, the Oakland City Planning Commission, and their respective agents, officers, employees, and volunteers (hereafter collectively called "City") from any liability, damages, claim, judgment, loss (direct or indirect), action, causes of action, or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul this Approval or implementation of this Approval. The City may elect, in its sole discretion, to participate in the defense of said Action and the project applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.
- b. Within ten (10) calendar days of the filing of any Action as specified in subsection (a) above, the project applicant shall execute a Joint Defense Letter of Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Joint Defense Letter of Agreement shall survive termination, extinguishment, or invalidation of the Approval. Failure to timely execute the Letter of Agreement does not relieve the project applicant of any of the obligations contained in this Condition or other requirements or Conditions of Approval that may be imposed by the City.

9. Severability

The Approval would not have been granted but for the applicability and validity of each and every one of the specified Conditions, and if one or more of such Conditions is found to be invalid by a court of

competent jurisdiction this Approval would not have been granted without requiring other valid Conditions consistent with achieving the same purpose and intent of such Approval.

10. Job Site Plans

Ongoing throughout demolition, grading, and/or construction

At least one (1) copy of the stamped approved plans, along with the Approval Letter and Conditions of Approval, shall be available for review at the job site at all times.

11. Special Inspector/Inspections, Independent Technical Review, Project Coordination and Monitoring

The project applicant may be required to cover the full costs of independent third-party technical review and City monitoring and inspection, including without limitation, special inspector(s)/inspection(s) during times of extensive or specialized plan-check review or construction, and inspections of potential violations of the Conditions of Approval. The project applicant shall establish a deposit with the Bureau of Building, if directed by the Building Official, Director of City Planning, or designee, prior to the issuance of a construction-related permit and on an ongoing as-needed basis.

12. Public Improvements

The project applicant shall obtain all necessary permits/approvals, such as encroachment permits, obstruction permits, curb/gutter/sidewalk permits, and public improvement ("p-job") permits from the City for work in the public right-of-way, including but not limited to, streets, curbs, gutters, sidewalks, utilities, and fire hydrants. Prior to any work in the public right-of-way, the applicant shall submit plans for review and approval by the Bureau of Planning, the Bureau of Building, and other City departments as required. Public improvements shall be designed and installed to the satisfaction of the City.

13. Construction Days/Hours

Requirement: The project applicant shall comply with the following restrictions concerning construction days and hours:

- a. Construction activities are limited to between 7:00 a.m. and 7:00 p.m. Monday through Friday, except that pier drilling and/or other extreme noise generating activities greater than 90 dBA shall be limited to between 8:00 a.m. and 4:00 p.m.
- b. Construction activities are limited to between 9:00 a.m. and 5:00 p.m. on Saturday. In residential zones and within 300 feet of a residential zone, construction activities are allowed from 9:00 a.m. to 5:00 p.m. only within the interior of the building with the doors and windows closed. No pier drilling or other extreme noise generating activities greater than 90 dBA are allowed on Saturday.
- c. No construction is allowed on Sunday or federal holidays.

Construction activities include, but are not limited to, truck idling, moving equipment (including trucks, elevators, etc.) or materials, deliveries, and construction meetings held on-site in a non-enclosed area.

Any construction activity proposed outside of the above days and hours for special activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a case-by-case basis by the City, with criteria including the urgency/emergency nature of the work, the proximity of residential or other sensitive uses, and a consideration of nearby residents'/occupants' preferences. The project applicant shall notify property owners and occupants located within 300 feet at least 14 calendar days prior to construction activity proposed outside of the above days/hours. When submitting a request to the City to allow construction activity outside of the above days/hours, the project applicant shall submit information concerning the type and duration of proposed construction activity and the draft public notice for City review and approval prior to distribution of the public notice.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

PROJECT-SPECIFIC CONDITIONS

14. Emissions Report

Requirement: A RF emissions report shall be submitted to the Planning Bureau indicating that the site is actually operating within the acceptable thresholds as established by the Federal government or any such agency who may be subsequently authorized to establish such standards.

Requirement: Prior to a final inspection

When Required: Prior to final building permit inspection sign-off

Initial Approval: N/A

Monitoring/Inspection: N/A

15. Camouflage

Requirement: The antenna shall be painted, texturized, and maintained light gray-green, and the equipment and any other accessory items including cables light gray-green, to better camouflage the facility to the City light pole.

When Required: Prior to a final inspection

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

16. Operational

Requirement: Noise levels from the activity, property, or any mechanical equipment on site shall comply with the performance standards of Section 17.120 of the Oakland Planning Code and Section 8.18 of the Oakland Municipal Code. If noise levels exceed these standards, the activity causing the noise shall be abated until appropriate noise reduction measures have been installed and compliance verified by the Planning and Zoning Division and Building Services.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

17. Possible Removal

Requirement: Should the City light pole be permanently removed for any reason; the telecommunications facility can only be re-established by applying for and receiving approval of a new application to the Oakland Planning Bureau as required by the regulations.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: N/A

18. Graffiti Control

Requirement:

- a. During construction and operation of the project, the project applicant shall incorporate best management practices reasonably related to the control of graffiti and/or the mitigation of the impacts of graffiti. Such best management practices may include, without limitation:
 - a. The project applicant shall remove graffiti by appropriate means within seventy-two (72) hours. Appropriate means include the following:

- i. Removal through scrubbing, washing, sanding, and/or scraping (or similar method) without damaging the surface and without discharging wash water or cleaning detergents into the City storm drain system.
- ii. For galvanized poles, covering with new paint to match the color of the surrounding surface.
- iii. Replace pole numbers.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building