

Verizon Wireless

Preliminary Response to Grounds for Appeal of Conditional Use Permit CUP23-043, Approved Wireless Facility, 244 Colgan Avenue

1. **General Plan consistency.** The General Plan does not regulate wireless facilities. The Approved Facility is consistent with the General Plan land use designation of Light Industry and it will not impact manufacturing or heavy commercial uses. By enhancing communications for nearby residents, business customers, workers, and emergency personnel, the Approved Facility promotes livability, economic vitality, and public safety.
2. **Code compliance.** The Approved Facility satisfies the findings for a conditional use permit, and complies with Code standards, including the Telecommunications Facilities standards of Chapter 20.44. Notably, it is located on the rear half of the subject property, adjacent to the rear property line outside setbacks, and well over 75 feet from off-site habitable structures, with the closest residence 300 feet north. Code §§ 20-44.060(F)(3), (19).
3. **CEQA compliance.** Appellant does not cite any particular environmental impact or regulation. The Planning Commission determined that the Approved Facility is categorically exempt from CEQA, qualifying for a Class 3 exemption for construction of new small structures. The Approved Facility will be located in a previously-disturbed area and will not discharge pollutants that would affect any local waterway.
4. **Federal, state and local law.** Appellant does not cite any particular provision of federal, state or local law. See Item 6 regarding federal law.
5. **Proliferation.** The Code does not discourage proliferation of telecommunications facilities, and in fact encourages consideration of multiple, shorter facilities. The Code requires applicants to collocate facilities, unless an existing facility cannot reasonably accommodate additional facilities, visual impacts are substantial, or lease arrangements fail. Code § 20-44.060(G)(3). Verizon Wireless determined that there are no existing wireless facilities where collocation could meet its service objective, and therefore a new facility is required to meet rapidly-increasing demand in the area.
6. **Need for Approved Facility.** The Code's permit findings and telecommunications standards do not require demonstration of a gap in service, lack of capacity, or need for a new wireless facility. These concepts are therefore inapplicable to the City's decision. The service gap, capacity, dropped call, and drive test data referenced by appellant are concepts drawn from federal court decisions, but those apply only if a wireless facility is denied, and the applicant files a lawsuit against a city claiming a prohibition of service in violation of the federal Telecommunications Act. See 47 U.S.C. § 332(c)(7)(B)(i)(II); see also *American Tower Corp. v. City of San Diego*, 763 F.3d 1035, 1056 (9th Cir. 2014).

7. **RF exposure compliance.** The Waterford Consultants *Radio Frequency Exposure FCC Compliance Assessment* determined that to comply with FCC radio frequency exposure guidelines, mitigation is required to ensure compliance on the roofs of adjacent 30-foot buildings to the north and south. This requires an engineering control measure: a 3 dB power reduction for the C-Band antennas in the alpha (north-facing) and gamma (south-facing) sectors. With this mitigation, the proposed facility will fully comply with FCC exposure guidelines, as required by federal law.
8. **Fall zone.** The structural capacity of the monopole will be evaluated during the building permit application process to ensure compliance with applicable building and safety codes.
9. **Fire safety.** Verizon Wireless's plans confirm that they were prepared in compliance with the 2022 California Fire Code (cited on Sheet T-1.1). The Fire Department can review compliance during the building permit application process.
10. **Alternatives.** No feasible collocation has been identified. While the Code defines minor facilities to include non-residential building-mounted facilities and new towers up to 45 feet in certain zones, Verizon Wireless requires an antenna centerline of 60 feet for adequate service, and identified no non-residential buildings of suitable height nearby. Therefore, a major facility is required.
11. **Service Gap.** See Item 6 above.
12. **Aesthetics.** Appellant alleges impact to "aesthetics and character" of surroundings, but those vague criteria are not factors of the Code's use permit findings. The Design Review Board approved the tower with a condition requiring a monopole design, and its decision was not appealed.
13. **Property values.** This is not a factor for the Code's permit findings or standards. Federal law bars a denial based on concerns over radio frequency emissions (47 U.S.C. § 332(c)(7)(B)(iv)), or proxy concerns such as property values.
14. **Visual assessment.** Verizon Wireless is providing photosimulations of the approved monopole design from vantage points requested by the City.
15. **Gap in particular frequency.** See Item 6 above.
16. **Future increase in size.** A speculative future height increase is beyond the scope of the present permit application, and irrelevant to Code permit findings and standards for a new tower. The plans confirm that there will be space on the tower underneath Verizon Wireless's antennas available for future collocation by another carrier, so a height increase would be unnecessary.