

RESOLUTION NO. ZA-2024-030

RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF SANTA ROSA APPROVING A MINOR CONDITIONAL USE PERMIT AND MINOR DESIGN REVIEW FOR THE A ROOF-MOUNTED TELECOMMUNICATIONS FACILITY FOR THE PROPERTY LOCATED AT 3562 ROUND BARN CIRCLE, SANTA ROSA, ASSESSOR'S PARCEL NO.: 173-020-050, FILE NO. PRJ24-008 (CUP24-021, DR24-014)

WHEREAS, the Santa Rosa Zoning Administrator has completed review of the Minor Conditional Use Permit and Minor Design Review applications to allow the project described above; and

WHEREAS, the Minor Conditional Use Permit and Minor Design Review approvals to allow the proposed use and development are based on the project description and official plan set dated date stamp received August 15, 2024; and

WHEREAS, under the Telecommunications Act of 1996 (the "Act"), Federal law requires that requests to authorize the installation of wireless communications equipment must be acted upon in a "reasonable period of time", which was later determined to be 150 days; and

WHEREAS, the Federal government has largely preempted local government regulation in the area of Radio Frequency (RF) emissions, making the Federal Communications Commission (FCC) the federal agency responsible for setting nationwide guidelines for safe RF levels, and severely limiting local authority to regulate RF emissions or to deny an application to install wireless service facilities based on concerns about RF emissions; and

WHEREAS, Federal law specifically provides that "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 Federal Communications Commission's (FCC) regulations concerning such emissions" (47 U.S.C. §332(c)(7)(B)(iv)); and

WHEREAS, Federal courts have also held that the FCC has exclusive jurisdiction over RF interference issues and thus local zoning ordinances and permit conditions cannot regulate RF interference (*Southwestern Bell Wireless v. Johnson County Board of County Commissioners*, 199F. 3d 1185 (10th Cir. 1999)); and

WHEREAS, the matter has been properly noticed as required by Section 20-52.050.E.2.a and Section 20-52.030.H.2.a and no request for a public hearing has been received;

NOW, THEREFORE, BE IT RESOLVED that in accordance with Section 20-52.050 and Section 20-52.030, the Zoning Administrator of the City of Santa Rosa finds and determines that:

MINOR CONDITIONAL USE PERMIT FINDINGS:

1. The proposed use is allowed within the Planned Development (PD 72-001) zoning district and complies with all other applicable provisions of this Zoning Code and the City Code in that the project complies with application requirements and development standards as set forth in the PD 72-001-RC Policy Statement and the in City Code Chapter 20-44 (Telecommunication Facilities). Specifically, the facility will be placed atop of an existing three-story office building and will be screened by an 8-foot-tall fiber reinforced (FRP) enclosure, thereby shielding the equipment from public view. Further, Section 20-44.060 of the Zoning Code regulates the location of telecommunication towers by requiring an alternative site analysis, a separation between facilities, a good faith effort in achieving colocation, minimum roads and parking areas as necessary to serve the facility, and operation in compliance with the Federal Communication Commission's (FCC) human exposure standards for non-ionizing electromagnetic radiation (NIER). The applicant has provided analysis of six alternative sites for the necessary coverage, all of which were ruled out due to an inability of the sites to address service coverage gaps and also due to lack of room for co-location. Further, an Electromagnetic Energy (EME) Exposure Report, prepared by OSC Engineering, dated February 9, 2024, concluded that the proposed placement of the facility at the subject site will not result in exposure of the public to excessive levels of radio-frequency energy as defined in the FCC Rules and Regulations. The proposed facility would be located in the Planned Development Zoning District and would be over 200 feet from the nearest habitable structure. Finally, Zoning Code Section 20-44.060(G)(2) states that no telecommunications tower, providing services for a fee directly to the public, shall be installed closer than two miles from another readily visible, uncamouflaged or unscreened telecommunication tower unless it is a co-located facility, situated on a multiple user site, not readily visible, or technical evidence acceptable to the Director or Commission, as appropriate, is submitted showing a clear need for the facility and the infeasibility of co-locating it on an existing tower. While there is another tower within 2 miles of the proposed facility, because the subject facility will be placed on the roof of an existing building and will be completely shielded by an enclosure, the distance requirement is not required. Further, the applicant has submitted coverage maps demonstrating the clear need for the facility at this location; and
2. The proposed use is consistent with the General Plan land use designation of Retail and Business Services, which is intended for retail and service enterprises, offices, restaurants and regional centers. While there are no specific General Plan goals or policies that mention telecommunication facilities, cellular phone service has become an integral part of personal and business communication. As such, installation of the proposed telecommunications facility implements a variety of overarching General Plan goals by creating a functional place for those who live and work within the City. Specifically, the Economic Vitality element of the General Plan 2035 calls out the emergence of telecommunications companies, among other industries, as contributing to the dynamic regional economy. The General Plan also includes goals and policies related to ensuring the availability of emergency communications facilities in the event of a disaster; and

3. The design, location, size and operating characteristics of the proposed use would be compatible with the existing and future land uses in the vicinity in that the facility will be atop of a roof of an existing office building and the facility and all related equipment will be shielded from public view, behind an 8-foot-tall FRP enclosure, which will minimize visual impacts as much as possible; and
4. The site is physically suited for the type, density, and intensity of the proposed use including access, utilities, and the absence of physical constraints in that the project site is both developed and surrounded by existing commercial development, as well as open space, with adequate access to the proposed use and once in operation, the telecommunications facility does not require frequent visits by employees, thus not intensifying the use of the site; and
5. Granting the permit would not constitute a nuisance or be injurious or detrimental to the public interest, health, safety, convenience, or welfare, or materially injurious to persons, property, or improvements in the vicinity and zoning district in which the property is located in that the project included an Electromagnetic Energy Report, prepared by OSC Engineering, and prepared on February 9, 2024, which concluded that the proposed placement of the telecommunications facility at the subject site will not result in exposure of the public to excessive levels of radio-frequency energy as defined in the FCC Rules and Regulations; and
6. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA):

Pursuant to CEQA Guidelines Section 15303, the telecommunications facility and related equipment qualify for a Class 3 Categorical Exemption, which exempts the construction of new small structures. Telecommunications facilities are considered small structures that are similar to this Project. No exceptions to the exemptions apply and there is no reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances (CEQA Guidelines Section 15300.2).

Pursuant to CEQA Guidelines Section 15183, the proposed use is eligible for a streamlining measure as it is consistent with General Plan 2035, for which an Environmental Impact Report was certified by Council in 2009.

MINOR DESIGN REVIEW FINDINGS:

1. The design and layout of the proposed development is of superior quality and is consistent with the General Plan, any applicable specific plan, applicable Zoning Code standards and requirements, the City's Design Guidelines, architectural criteria for special areas, and other applicable City requirements (e.g., City policy statements and development plans) in that the project complies with application requirements and development standards as set forth in the PD 72-001 Policy Statement and the in City Code Chapter 20-44 (Telecommunication Facilities), and installation of the proposed telecommunications facility implements a variety of overarching General

Plan goals by creating a functional place for those who live and work within the City; and

2. The design is appropriate for the use and location of the proposed development and achieves the goals, review criteria and findings for approval as set forth in the Framework of Design Review in that the Project has been reviewed by City staff and has been conditioned appropriately; and
3. The design and layout of the proposed development will not interfere with the use and enjoyment of neighboring existing or future developments in that the existing site is both developed and surrounded by existing commercial development with adequate access to the proposed use and once in operation, the telecommunications facility does not require frequent visits by employees, thus would not intensify the site; and
4. The architectural design of the proposed development is compatible with the character of the surrounding neighborhood in that the facility will be placed on the roof of an existing office building, surrounded by an 8-foot-tall FRP enclosure, which will screen it from public view; and
5. The design of the proposed development will provide a desirable environment for its occupants, visiting public, and its neighbors through the appropriate use of materials, texture, and color and would remain aesthetically appealing and be appropriately maintained in that the design of the FRP enclosure will blend in with the existing design and materials of the office building. Additionally, the telecommunications facility will be shielded and not visible from public view.

BE IT RESOLVED, pursuant to City Code Section 20-44.060 (Commercial Transmission Facility Location), the City Council of the City of Santa Rosa finds and determines:

- A. The proposed site results in the least potentially adverse impacts than any feasible alternative site. The applicant has prepared a comprehensive alternatives analysis evaluating six alternative sites. A potential collocation site was identified in the greater vicinity, but the nearby rooftop facility's lease area was not large enough; the Project would've needed to be horizontally separated to avoid frequency interference. As to new tower alternatives, the proposed facility is ideally located in a service gap and is over 200 feet from residences. Other tower locations evaluated are too distant to serve the gap or the property owners were not interested in co-locating.
- B. The applicant has provided a written explanation why the subject facility is not a candidate for co-location. The applicant has proposed a rooftop facility, which will be properly screened from public view. The applicant has submitted a comprehensive coverage map which serves as technical evidence of the need for the proposed facility.
- C. All commercial telecommunications facilities shall be served by the minimum roads and parking areas necessary. The proposed facility will be located on the rooftop of an existing building, and no new road or parking will be required.
- D. Commercial telecommunications facilities shall be operated in compliance with the Federal Communication Commission's (FCC) human exposure standards for non-ionizing electromagnetic radiation (NIER), and the applicant for commercial

telecommunication facilities shall be responsible for demonstrating that the proposed facility will comply with this standard. The applicant has submitted an EME Report, prepared by OSC Engineering, dated February 9, 2024, showing compliance with the FCC's radio frequency exposure limits.

This entitlement would not be granted but for the applicability and validity of each and every one of the below conditions and that if any one or more of the below conditions is invalid, this entitlement would not have been granted without requiring other valid conditions for achieving the purposes and intents of such approval. The approval of the project is contingent upon compliance with all the conditions listed below. Use shall not commence until all conditions of approval have been complied with. Additional permits and fees are/may be required. **It is the responsibility of the applicant to pursue and demonstrate compliance.**

Conditions of Approval

1. Comply with all applicable federal, state, and local codes. Failure to comply may result in issuance of a citation and/or revocation of approval.
2. Comply with the latest adopted ordinances, resolutions, policies, and fees adopted by the City Council at the time of building permit review and approval.
3. Obtain building permits for the proposed project.
4. The building materials, elevations, and appearance of this project, as presented for issuance of a building permit, shall be the same as that approved by the Zoning Administrator upon approval of the Minor Conditional Use Permit and Minor Design Review applications. Any future additions, expansions, remodeling, etc., will be subject to the review and approval of the Planning Division.
5. The applicant shall complete all remediations listed within the Electromagnetic Energy Exposure (EME) Report.
6. The telecommunication facility and supporting equipment shall be maintained in good condition.
7. When the telecommunications facility (and/or supporting equipment) becomes obsolete or is no longer used, the telecommunications facility and all supporting equipment shall be removed at the operator's expense.

This Minor Conditional Use Permit and Minor Design Review are hereby approved on September 19, 2024. If conditions have not been met or if work has not commenced within 24 months from the approval date, these approvals shall automatically expire and be invalid unless an application for extension is filed prior to expiration. These approvals are subject to appeal within ten calendar days from the date of approval.

APPROVED: _____
KRISTINAE TOOMIANS, ZONING ADMINISTRATOR