

RESOLUTION NO.

RESOLUTION APPROVING U-19-2, A CONDITIONAL USE PERMIT, TO ALLOW REPLACEMENT OF COMMUNICATION EQUIPMENT WITH A MONOPOLE COMMUNICATION TOWER LOCATED AT 6590 CENTRAL AVENUE (APN: 92A-2165-13-3).

WHEREAS, Sprint, has filed with the Planning Commission of the City of Newark application for U-19-2, a conditional use permit, to allow replacement of communication equipment with a new monopole communication tower located at 6590 Central Avenue; and

PURSUANT to the Municipal Code Section 17.31.060, a public hearing notice was published in The Tri City Voice on June 11, 2019 and mailed as required, and the Planning Commission held a public hearing on said application at 7:30 p.m. on June 25, 2019 at the City Administration Building, 37101 Newark Boulevard, Newark, California; and

WHEREAS, the public hearing was scheduled for June 25, 2019; and

WHEREAS, pursuant to Chapter 17.35 (Use Permits), Section 17.35.060 (Action by Planning Commission), the Planning Commission hereby makes the following findings:

- A. The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Ordinance and all other titles of the Municipal Code;
- B. The proposed use is consistent with the General Plan and any applicable specific plan;
- C. The proposed use will not be adverse to the public health, safety, or general welfare of the community, nor detrimental to surrounding properties or improvements;
- D. Tax revenue generated by the development will exceed the City's cost of the service demand as a result of the development or a compelling community benefit will be provided;
- E. The proposed use complies with any design or development standards applicable to the zoning district or the use in question unless waived or modified pursuant to the provisions of this Ordinance;
- F. 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;
- G. The site is physically suitable for the type, density and intensity of use being proposed, including access, utilities, and the absence of physical constraints.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby approves this application, subject to compliance with the following conditions:

### Planning Division

- a) Screening shall be provided along Cherry Street. The screening shall consist of two 36” box trees that shall have the ability to grow up to 40 feet at maturity.
- b) The developer shall cooperate in the siting of equipment and antennas to accommodate the maximum number of operators at a given site where found by the City to be feasible and aesthetically desirable.
- c) The antennas shall be installed as close to the monopole as possible.
- d) The antennas and any exposed antenna attachments including, but not limited to, mounting brackets, cable and cable covers shall be painted to match their respective adjoining surfaces, as approved by the Community Development Director.
- e) The equipment shelter shall utilize materials and colors that match and/or complement the other buildings on the property, as approved by the Community Development Director.
- f) The wireless telecommunication facility shall be maintained in a neat, presentable, and satisfactory condition that is acceptable to the Community Development Director.
- g) Any vehicle or portable building brought on the site during construction shall remain graffiti-free.
- h) All construction within the project area shall abide by the City of Newark Noise Ordinance.
- i) Building permits shall be required for proposed modifications.
- j) All equipment associated with this wireless telecommunications facility shall be removed within 30 days of the discontinuation of the use and the site shall be restored to its original, pre-construction condition. The applicant shall provide the City with a notice of intent to vacate the site a minimum of 30 days prior to the vacation.

### Engineering

- k) Any work within Cherry Street or Central Avenue right-of-way requires issuance of a City of Newark Encroachment Permit prior to the issuance of a building permit. During the building permit review, the plans shall show point of connections to existing power for the new antenna, cabinets, and battery racks.
- l) There are 2 (two) existing bioretentions located in close proximity of the proposed antenna. The existing bioretentions shall not be disturbed or the area graded such that it impacts the drainage flow into the bioretentions. The building plan set shall identify the limits of the bioretention areas, indicate a note to install orange fencing around the bioretention to protect the area, and a note to not disturb the grading in the area. Additionally, any contamination of the bioretention media soil from the project during construction will require removal and replacement of the contaminated soil prior to building permit final.
- m) It appears that a roof downspout very close to the new antenna location is piped into the bioretention area. The building plan set shall identify its existing location and a note to protect it in place during the construction work.

### General

- n) This conditional use permit shall be given a public hearing before the City Council for the Council’s review and approval.

- o) All proposed changes from approved exhibits shall be submitted to the Community Development Director who shall decide if they warrant Planning Commission review and, if so decided, said changes shall be submitted for the Commission's review and decision. The applicant shall pay the prevailing fee for each additional separate submittal of project exhibits requiring Planning Commission review and approval.
- p) If any condition of this conditional use permit be declared invalid or unenforceable by a court of competent jurisdiction, this conditional use permit shall terminate and be of no force and effect, at the election of the City Council on motion.
- q) The applicant hereby agrees to defend, indemnify, and save harmless the City of Newark, its Council, boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions, liability, loss, damage, expense, cost (including, without limitation, attorneys' fees, costs and fees of litigation) of every nature, kind or description, which may be brought by a third party against, or suffered or sustained by, the City of Newark, its Council, boards, commissions, officers, employees or agents to challenge or void the permit granted herein or any California Environmental Quality Act determinations related thereto.
- r) In the event that any person should bring an action to attack, set aside, void or annul the City's approval of this project, the applicant shall defend, indemnify and hold harmless the City and/or its agents, officers and employees from any claim, action, or proceeding against the City and/or its agents, officers and employees with counsel selected by the applicant (which shall be the same counsel used by applicant) and reasonably approved by the City. Applicant's obligation to defend, indemnify and hold harmless the City and/or its agents, officers and employees shall be subject to the City's compliance with Government Code Section 66474.9.
- s) The Conditions of Project Approval set forth herein may include certain fees, dedication requirements, reservation requirements and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations and other exactions. The applicant is hereby further notified that the 90-day approval period in which the applicant may protest these fees, dedications, reservations and other exactions, pursuant to Government Code Section 66020(a), has begun. If the applicant fails to file a protest within this 90-day period complying with all of the requirements of Section 66020, the applicant will be legally barred from later challenging such exactions.

The Commission makes the findings prescribed in Newark Municipal Code Section 17.35.060, and directs a Notice of Action be mailed to the applicant and filed with the City Clerk pursuant to Newark Municipal Code Section 17.31.080.

This Resolution was introduced at the Planning Commission's June 25, 2019 meeting by  
, seconded by , and passed as follows:

AYES:

NOES:

ABSENT:

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ARTURO INTERIANO, Secretary

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WILLIAM FITTS, Chairperson