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**RESOLUTION# 2012-49**  
**DECISION AND ADOPTION OF FINDINGS**  
**BY THE CITY COUNCIL OF THE CITY OF ALBANY, STATE OF**  
**CALIFORNIA, UPHOLDING THE DECISION AND FINDINGS OF THE**  
**PLANNING AND ZONING COMMISSION**  
**OF THE CITY OF ALBANY, STATE OF CALIFORNIA,**  
**DENYING DESIGN REVIEW APPROVAL AND A CONDITIONAL USE**  
**PERMIT FOR APPLICATION # PA08-038**  
**AT&T WIRELESS APPLICATION FOR A NEW FACILITY**  
**AT 1035 SAN PABLO AVENUE**

**WHEREAS**, In 2005, the City Council of the City of Albany adopted Ordinance #05-02 approving Planning and Zoning Code Section 20.20.100 (Wireless Communications Facilities).; and

**WHEREAS**, in summary, the purpose and intent of Planning and Zoning Code Section 20.20.100 is to establish standards to regulate the placement and design of wireless communications facilities in a manner consistent with Federal law; and

**WHEREAS**, Planning and Zoning Code Section 20.20.100 F. requires that wireless communications facilities are subject to the approval of a Conditional Use Permit and approval of Design Review pursuant to procedures and findings established in Section 20.20.100 and Section 20.100; and

**WHEREAS**, AT&T Wireless (hereinafter referred to as Applicant) filed an application on May 22, 2008 with the City of Albany (hereinafter referred to as City) requesting a Conditional Use Permit and Design Review approval for the construction, operation, and maintenance of new wireless equipment at 1035 San Pablo Ave.; and

1           **WHEREAS**, the property at 1035 San Pablo Avenue is located in the “SPC”  
2 (San Pablo Commercial) zoning district; and

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4           **WHEREAS**, abutting properties to the east located on Kains Avenue are  
5 located in “R-3” (High Density Residential) zoning district; and

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7           **WHEREAS**, the Planning and Zoning Commission initially reviewed the  
8 application request at its May 26, 2009 hearing and continued the project to a date  
9 uncertain pending further preparation of an alternatives analysis, verification of field  
10 measurements, and a review by a third party consultant; and

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12           **WHEREAS**, the applicant submitted revised plans on July 22, 2010; and

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14           **WHEREAS**, the Planning and Zoning Commission subsequently reviewed  
15 the application at its October 26, 2010 hearing and continued the project to a date  
16 uncertain pending further revisions to the application; and

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18           **WHEREAS**, on October 22, 2011 AT&T submitted a revised application  
19 request including the additional information previously requested by the Planning &  
20 Zoning Commission; and

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22           **WHEREAS**, the application was deemed complete on December 15, 2011;  
23 and

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25           **WHEREAS**, the City retained the services of the consulting firm Kramer.  
26 Firm Inc., who specializes in telecommunications review for municipalities, to  
27 conduct a third-party review of the application;

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29           **WHEREAS**, Kramer. Firm Inc., prepared a report on the application dated  
30 January 4, 2012;

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1           **WHEREAS**, a study session was held on January 10, 2012 to introduce the  
2 revised project to the Planning & Zoning Commission and determine if additional  
3 information was necessary to complete the review; and  
4

5           **WHEREAS**, the Planning & Zoning Commission requested at the January 12,  
6 2012 review that staff verify the building height, roof top penthouse use, and building  
7 measurements prior to scheduling the application request for action; and  
8

9           **WHEREAS**, the requested information was prepared by staff and presented  
10 to the Planning & Zoning Commission on February 28, 2012 and the Commission  
11 continued the project to a date uncertain pending further design changes; and  
12

13           **WHEREAS**, the Planning & Zoning Commission identified the existing  
14 unpermitted roof-top penthouse as part of the roof-top coverage calculations at its  
15 February 28, 2012 hearing; and  
16

17           **WHEREAS**, the inclusion of the roof-top penthouse as part of the roof-top  
18 mechanical equipment results in an existing roof-top coverage of 14.5%, and exceeds  
19 the 10% roof-top coverage maximum contained in Section 20.24.080 (B) of the  
20 Albany Municipal Code; and  
21

22           **WHEREAS**, Section 20.20.100 (2) (h) contained in the “Wireless Facilities  
23 Ordinance” cross references Section 20.24.080 (B) for roof coverage compliance and  
24 identifies a wireless facility as an ancillary building structure; and  
25

26           **WHEREAS**, a “Wireless Communication Facility” is defined in Section  
27 20.08.020 as follows:  
28

29           *Wireless Communications Facility means any device or system for the*  
30 *transmitting and/or receiving of electromagnetic signals, including but not*  
31 *limited to radio waves and microwaves, for cellular technology, personal*

1           *communications services, mobile services, paging systems and related*  
2           *technologies. Facilities include antennas, microwave dishes, parabolic*  
3           *antennas and all other types of equipment used in the transmission and*  
4           *reception of such signals; structures for the support of such facilities,*  
5           *associated buildings or cabinets to house support equipment, and other*  
6           *accessory development; and*

7  
8           **WHEREAS**, the building at 1035 San Pablo Ave. was constructed in 1984  
9 when the subject site was zoned C-2 Highway Commercial and the maximum  
10 building height for the District was 45 ft.; and

11  
12           **WHEREAS**, the subject site was rezoned to San Pablo Commercial in 2005  
13 and the new zoning classification also reduced the maximum permitted building  
14 height in the San Pablo corridor from 45 ft. to 38 ft.; and

15  
16           **WHEREAS**, the current building height of 40 ft. makes the subject site legal  
17 non-conforming; and

18  
19           **WHEREAS**, a public hearing notice mailed to property owners within 300 ft.  
20 of the subject site and was posted in three public places on Friday, April 13, 2012  
21 pursuant to Government Code Section 65090; and

22  
23           **WHEREAS**, the Planning & Zoning Commission has held a public hearing,  
24 considered all public comments received, the presentation by City staff, the staff  
25 report, and all other pertinent documents regarding the proposed request; and

26  
27           **WHEREAS**, the Planning & Zoning Commission continued the item to a date  
28 certain of May 8, 2012 at its April 24, 2012 hearing and directed City staff to craft  
29 draft findings of denial for review and subsequent action;

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1           **WHEREAS**, the Planning & Zoning Commission adopted a resolution  
2 containing findings of denial for Planning Application 08-038, Design Review &  
3 Conditional Use Permit for AT&T Wireless at its May 8, 2012 hearing by a 3-1 vote;  
4 and

5  
6           **WHEREAS**, AT&T filed an appeal of the Planning & Zoning Commission's  
7 decision with the Albany City Clerk's office on May 22, 2012; and

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9           **WHEREAS**, a public hearing notice mailed to property owners within 300 ft.  
10 of the subject site and was posted in three public places on Friday, June 22, 2012  
11 pursuant to Government Code Section 65090; and

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13           **WHEREAS**, the City Council reviewed the applicant's appeal of the  
14 Commission decision and analysis of the appeal letter contained in the staff report  
15 dated July 2, 2012; and

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17           **WHEREAS**, the City Council reviewed the appeal application at its July 2,  
18 2012 hearing and continued the appeal hearing to a date certain of July 16, 2012  
19 pending further analysis of the following:

- 20           • AT&T and staff to further evaluate the 979 San Pablo Avenue site  
21           with regard to technical feasibility and availability
- 22           • Determine if there is any way to change roof coverage at the 1035 San  
23           Pablo site to prevent a net increase

24  
25           **WHEREAS**, additional analysis has been provided on the site at 979 San  
26 Pablo Avenue in the staff report dated July 16, 2012 as requested by the City Council;  
27 and

28           **WHEREAS**, additional review of the alternative plans provided on May 4,  
29 2012 has been included in the supplemental staff report dated July 16, 2012 as  
30 requested by the City Council;

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1           **NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the  
2 City of Albany denies application request PA08-083 based on the following findings:

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4 **1. CEQA**

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6           **Finding:** The project proposal is not subject to the California Environmental  
7 Quality Act Guidelines as it is being denied approval.

8  
9           **Evidence:** The City Council hereby finds that this project is exempt from CEQA  
10 pursuant to CEQA Guidelines Section 15270(a), which exempts projects that are  
11 denied by the public agency.

12  
13 **2. Design Review**

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15           **Findings for Design Review approval (Per section 20.100.050.E of the AMC)**

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17           **1. Finding Required for Approval:** The project conforms to the General Plan,  
18 any applicable specific plan, applicable design guidelines adopted by the City  
19 of Albany, and all applicable provisions of this Chapter.

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21                   **Evidence:** The City Council is unable to make the required findings  
22 for approval because the project does not comply with Section  
23 20.24.080 (B) where roof coverage cannot exceed 10%. Currently, the  
24 roof-top coverage exceeds the threshold and is 14.5%. This coverage  
25 includes existing Sprint equipment facilities and the roof-top  
26 penthouse.

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28                   The Council is unable to make the required findings for approval  
29 because the project does not comply with Section 20.24.080 (C) as the  
30 installation on the south side of the site exceeds the height limit by

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more than 6’ and is within ten feet of the perimeter of the plate line of the top story.

- 2. **Finding Required for Approval:** Approval of project design is consistent with the purpose and intent of this section, which states “designs of projects...will result in improvements that are visually and functionally appropriate to their site conditions and harmonious with their surroundings, including natural landforms and vegetation. Additional purposes of design review include (but are not limited to): that retention and maintenance of existing buildings and landscape features are considered; and that site access and vehicular parking are sufficient.”

**Evidence:** The Council is unable to make the required findings for approval because the project as proposed would make the legal non-conforming subject site further non-conforming by increasing the roof coverage area. Additionally, the existing building height is legal non-conforming and is 40 ft. in height.

- 3. **Finding Required for Approval:** Approval of the project is in the interest of public health, safety and general welfare.

**Evidence:** The Council is unable to make the required findings for approval because the Zoning Code is adopted in order to protect and promote public health, safety, peace, comfort, convenience, prosperity, and general welfare. The project as it is proposed fails to comply with Section 20.24.080 (B) of the Albany Municipal Code. By failing to comply with provisions contained in the Zoning Code, the project as proposed does not protect the public health, safety and general welfare of the community.

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4. **Finding Required for Approval:** The project is in substantial compliance with applicable general and specific Standards for Review stated in Subsection 20.100.050.D.

**Evidence:** The Council is unable to make the required findings for approval because the proposed project is inconsistent with provision (j) “Retention and Maintenance of Buildings.” The project design fails to improve the existing building and would make the building further non-compliant by increasing roof coverage.

3. **Conditional Use Permit**

1. **Finding Required for Approval:** The size, location and intensity of the project are desirable and compatible with the neighborhood and community.

**Evidence:** The Council is unable to make the required findings for approval because the size of the project as proposed exceeds the roof-top coverage requirements contained in Section 20.24.080 (B). The project location is proposed to be a legal non-conforming building and roof-top. The intensity of roof coverage would be further increased if the use were to be approved and the project constructed. Due to these inconsistencies, the project is not compatible with the surrounding neighborhood and community.

2. **Finding Required for Approval:** The project will not be detrimental to the health, safety, convenience or general welfare of people residing or working in the vicinity, or injurious to property, improvements or potential development in the vicinity, with respect to aspects including but not limited to the following:

- a. The nature of the proposed site, including its size and shape, and the proposed size, shape and arrangement of structures



- b. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading.
- c. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor.
- d. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs.

**Evidence:**

- a. The Council is unable to make the required findings for approval because the proposed equipment and arrangement of structures would increase the roof-top coverage, which is already fails to comply with provision 20.24.080 (B) where there is a maximum of 10% roof-top coverage.
- b. N/A
- c. N/A
- d. N/A

- 3. **Finding Required for Approval:** That such use or feature as proposed will comply with the applicable provisions of this Chapter and will be consistent with the policies and standards of the General Plan.

**Evidence:** The Council is unable to make the required findings for approval because the project as proposed fails to comply with Section 20.24.080 (B) where roof coverage cannot exceed 10%. Currently, the roof-top coverage exceeds the threshold and is 14.5%. This coverage includes existing Sprint equipment facilities and the roof-top penthouse.

**4. Section 20.20.100F.5 of the Albany Municipal Code**

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1. **Finding Required for Approval:** The establishment or expansion of the facility demonstrates a reasonable attempt to minimize stand-alone facilities, is designed to protect the visual quality of the City, and will not have an undue adverse impact on historic resources, scenic views, or other natural or man-made resources.

**Evidence:** The Council is unable to make the required findings for approval because the establishment of the facility would adversely impact an existing non-conforming building. As proposed, the project would increase the roof-top coverage and fails to comply with the Albany Municipal Code.

2. **Finding Required for Approval:** All applicable Development Standards in subsection 20.20.100.E. above have been met; or: Finding for an exception to the Development Standards: Strict compliance would not provide for adequate radio-frequency signal reception and that no other alternative solutions which would meet the Development Standards are feasible.

**Evidence:** The Council is unable to make the required findings for approval because the Section 20.20.100 (E) (2) (h) specifically cross references compliance with Section 20.24.080 (B) and classifies wireless facilities as ancillary roof-top structures which cannot exceed 10% roof-top coverage.

3. **Finding Required for Approval:** The placement, construction, or modification of a wireless telecommunications facility in the proposed location is necessary for the provision of wireless communication services to Albany residents and businesses, or their owners, customers, guests, or invitees, or other persons traveling in or about the City.

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**Evidence:** The Council is unable to make the required findings for approval because the proposed location is not suitable for the installation of wireless facility as the building and roof top coverage are legal-nonconforming.

- 4. **Finding Required for Approval:** Finding for establishment of a satellite dish or parabolic antenna exceeding thirty-nine (39) inches in diameter: A smaller or different antenna cannot feasibly accomplish the provider's technical objectives and that the facility will not be readily visible.

**Evidence:** N/A

- 5. **Finding Required for Approval:** Findings for the establishment of a wireless communications facility that is not co-located with other existing or proposed facilities or a new freestanding pole or tower (at least one (1) finding required):
  - a) Co-location is not feasible;
  - b) Co-location would have more significant adverse effects on views or other environmental consideration;
  - c) Co-location is not permitted by the property owner;
  - d) Co-location would impair the quality of service to the existing facility;
  - e) Co-location would require existing facilities at the same location to go off-line for a significant period of time; or

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**Evidence:** The project as proposed would be considered a co-location.  
These provisions are not applicable to the application request.

**PASSED AND ADOPTED** by the City Council of the City of Albany on the 16<sup>th</sup> day of July 2012.

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
MAYOR JAVANDEL

ATTEST: \_\_\_\_\_

Anne Hsu  
Deputy City Clerk