

RESOLUTION NUMBER R-287711

ADOPTED ON JULY 30, 1996

WHEREAS, on FEBRUARY 29, 1996, CLAIREMONT MEDICAL SURGICAL CENTER, Owner, COX CALIFORNIA PCS, INC., a California Corporation, Permittee, filed an application for a Conditional Use Permit to construct and operate a wireless communication facility, located at 4282 Genesee Avenue, described as Parcel 2, Map No. 9284, in the CA Zone; and

WHEREAS, on JUNE 20, 1996, the Planning Commission of the City of San Diego considered Conditional Use Permit No. 95-0351-22, pursuant to San Diego Municipal Code section 101.0510, and recommended approval to the City Council; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that this Council adopts the following findings with respect to Permit No. 95-0351-22:

**COMMUNITY PLAN IMPLEMENTATION OVERLAY ZONE/CONDITIONAL USE FINDINGS:**

- A. THE PROPOSED USE WILL FULFILL AN INDIVIDUAL AND/OR COMMUNITY NEED AND WILL NOT ADVERSELY AFFECT THE GENERAL PLAN OR THE COMMUNITY PLAN.

The proposed use will provide citizens in the Clairemont Mesa area with a competitive alternative for cellular services. The project site is designated for commercial use in the Clairemont Mesa Community Plan, and the proposed use would not have an adverse affect on the General Plan or the Clairemont Mesa Community Plan.

- B. THE PROPOSED USE, BECAUSE OF CONDITIONS THAT HAVE BEEN APPLIED TO IT, WILL NOT BE DETRIMENTAL TO THE HEALTH, SAFETY AND GENERAL WELFARE OF PERSONS RESIDING OR WORKING IN THE AREA AND WILL NOT ADVERSELY AFFECT OTHER PROPERTY IN THE VICINITY.

Radio frequency energy transmission from the proposed panel antennas would have a maximum of 5.9 microwatts per square centimeter, well below the accepted safety standard of 580 microwatts per square centimeter, established by the American National Standards Institute and the National Council on Radiation Protection.

**C. THE PROPOSED USE WILL COMPLY WITH THE RELEVANT REGULATIONS IN THE MUNICIPAL CODE.**

The proposed facility complies with all relevant regulations in the Municipal Code, except for Section 101.0452.5, Clairemont Mesa Height Limitation Zone. Cox California PCS, Inc., is seeking an exception to the 30-foot height limit pursuant to Section 101.0452.2(d). Separate Height Limitation Exception Findings are included in this resolution.

**CLAIREMONT MESA HEIGHT LIMITATION OVERLAY ZONE EXCEPTION:**

**D. THE GRANTING OF AN EXCEPTION WILL NOT INTERFERE WITH PUBLIC VIEWS FROM WESTERN CLAIREMONT MESA TO MISSION BAY AND THE PACIFIC OCEAN WITHIN THE SURROUNDING AREA.**

The site is developed with a three-story office building and located in the northeastern area of the community. The proposed project would not interfere with public views to either Mission Bay or the Pacific Ocean.

**E. IF THERE ARE EXISTING STRUCTURES OVER 30 FEET IN HEIGHT, A VARIATION IN HEIGHT MAY BE GRANTED, PROVIDED THE NEW STRUCTURE IS COMPATIBLE WITH SURROUNDING ONE-, TWO-OR THREE-STORY STRUCTURES.**

The existing building is 36'-0" in height and the proposed communication facility equipment would be located in the center of the roof, therefore, would not contribute to the overall bulk of the building, nor would it be visible from ground-level.

**F. THE PROPOSED STRUCTURE MAY EXCEED THE HEIGHT LIMIT TO INCLUDE ROOFLINE AND FACADE VARIATIONS, ACCENTS, TOWER ELEMENTS AND OTHER SIMILAR ELEMENTS, PROVIDED THE ELEMENT WILL NOT INCREASE THE FLOOR AREA OF THE STRUCTURE.**

No new construction is proposed. The panel antennas are facade mounted and the equipment boxes are clustered in the center of the roof. There will be no increase in floor area.

- G. THE PROPOSED STRUCTURE MAY EXCEED THE HEIGHT LIMIT IF THERE ARE TOPOGRAPHIC CONSTRAINTS PECULIAR TO THE LAND.

No new construction is proposed. The current site has been previously graded flat to accommodate the existing development and parking areas.

- H. THE PROPOSED STRUCTURE WILL COMPLY WITH THE REGULATIONS AND CONDITIONS SPECIFIED IN THE UNDERLYING ZONE FOR SUCH STRUCTURES.

Please see finding "C."

- I. THE GRANTING OF AN EXCEPTION WILL NOT ADVERSELY AFFECT ANY ADOPTED PLAN OF ANY GOVERNMENTAL AGENCY.

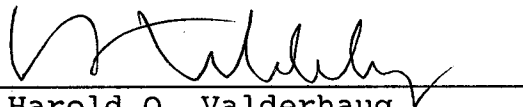
Please see finding "A."

The above findings are supported by maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the City Council, Conditional Use/Community Plan Implementation Overlay Zone/Clairemont Mesa Height Limitation Exception Permit No. 95-0351-22 is hereby granted to Owner/Permittee, in the form and with the terms and conditions set forth in Conditional Use/Community Plan Implementation Overlay Zone/Clairemont Mesa Height Limitation Exception Permit No. 95-0351-22, a copy of which is attached hereto and made a part hereof.

APPROVED: JOHN W. WITT, City Attorney

By

  
Harold O. Valderhaug  
Head Deputy City Attorney

HOV:ps  
08/27/96  
Or.Dept:Clerk  
Case 95-0351-22  
R-97-131

RECORDING REQUESTED BY  
CITY OF SAN DIEGO  
DEVELOPMENT SERVICES DEPARTMENT

AND WHEN RECORDED MAIL TO  
PERMIT INTAKE  
MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CONDITIONAL USE/COMMUNITY PLAN IMPLEMENTATION OVERLAY ZONE/  
CLAIREMONT MESA HEIGHT LIMITATION EXCEPTION PERMIT NO. 95-0351-22  
CITY COUNCIL  
COX CALIFORNIA PCS-GENNY

This Conditional Use/Community Plan Implementation Overlay Zone/Clairemont Mesa Height Limitation Exception Permit is granted by the City Council of the City of San Diego to CLAIREMONT MEDICAL SURGICAL CENTER, Owner, and COX CALIFORNIA PCS, Inc., Permittee, pursuant to Section 101.0510 of the Municipal Code of the City of San Diego.

1. Permission is granted to Owner/Permittee to install and operate a wireless communication facility on an existing three-story medical building, located at 4282 Genesee Avenue, described as Parcel No. 2 of Map No. 9284, in the CA (Area Shopping Center) Zone and CPIOZ (Community Plan Implementation Overlay Zone).
2. The facility shall consist of the following:
  - a. Eight plastic panel antennas 3'-3" high;
  - b. One Global Positioning System (GPS) oval antenna; and
  - c. Seven radio equipment cabinets not to exceed 3'-8" above the existing parapet.
3. No permit for construction of any facility shall be granted nor shall any activity authorized by this permit be conducted on the premises until:
  - a. The Permittee signs and returns the permit to the Development Services Department;
  - b. The Conditional Use Permit is recorded in the office of the County Recorder.

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4. Before issuance of any building permits, complete building plans shall be submitted to the Development Services Manager for approval. Plans shall be in substantial conformance to Exhibit "A," dated July 30, 1996, on file in the office of the Development Services Department. No change, modifications or alterations shall be made unless appropriate applications, findings of substantial conformance or amendment of this permit shall have been granted.

5. This Conditional Use Permit must be used within 36 months after the date of City approval or the permit shall be void. An Extension of Time may be granted as set forth in Section 101.0510.k. of the Municipal Code. Any extension of time shall be subject to all standards and criteria in effect at the time of extension is applied for.

6. Construction and operation of the approved use shall comply at all times with the regulations of this or any other governmental agencies, including current and future regulations of the Federal Communications Commission and the California Public Utilities Commission.

7. This Conditional Use Permit may be revoked by the City if there is a material breach or default in any of the conditions of this permit.

8. This Conditional Use Permit is a covenant running with the subject property and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this permit and all referenced documents.

9. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this discretionary permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded special rights which the holder of the permit is obtaining as a result of this permit. It is the intent of the City that the Owner of the property which is the subject of this permit either utilize the property for any use allowed under the zoning and other restrictions which apply to the property or, in the alternative, that the Owner of the property be allowed the special and extraordinary rights conveyed by this permit, but only if the Owner complies with all the conditions of this permit.

In the event that any condition of this permit, on a legal challenge by the Owner/Permittee of this permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable or unreasonable, this permit shall be void. However, in such event, the Owner/Permittee shall have the right, by paying

applicable processing fees, to bring a request for a new permit without the "invalid" condition back to the discretionary body which approved the permit for a determination by that body as to whether all the findings necessary for the issuance of the permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove or modify the proposed permit and the condition(s) contained therein.

The issuance of this permit by the City of San Diego does not authorize the applicant for said permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 U.S.C. Section 1531 et seq.).

10. This Conditional Use/Community Plan Implementation Overlay Zone/Clairemont Mesa Height Limitation Exception Permit shall expire ten years after the date of City approval. At that time, the facility shall be removed from the site to the satisfaction of the Development Services Manager, or an application in accordance with a Process Four decisionmaking process shall be submitted and approved prior to continuing operations of the facility.

11. Cox California PCS, Inc., will cooperate in a good faith effort to allow other communications providers to locate at this site providing that the additional facility does not give rise to a substantial technical level or quality-of-service impairment of the existing communication facility.

Adopted by the Council of The City of San Diego on July 30, 1996, by Resolution No. R-287711.

AUTHENTICATED BY THE CITY MANAGER

By \_\_\_\_\_

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The undersigned Permittee, by execution hereof, agrees to each and every condition of this permit and promises to perform each and every obligation of Permittee hereunder.

Owner/Permittee

By \_\_\_\_\_

By \_\_\_\_\_

NOTE: Notary acknowledgments  
must be attached per Civil  
Code Section 1180, et seq.  
08/26/96