

REGULAR MEETING
Tuesday, December 7, 2021

TOUR
3:00 PM

TOUR OF INSPECTION

Prior to calling the meeting to order, the Board/Commission will conduct an on-site tour of inspection of the properties listed on the agenda and the public is welcome to join. After the tour is complete, the Board/Commission will begin the meeting in the City Council Chambers no earlier than the time noted on the agenda.

- A.** Verizon - 4 locations: Carmelo 2 SW of 8th (Residence), Carmelo 2 NE of 9th (Residence), Camino Real & 9th (La Playa Hotel), Camino Real 3 NE of 9th (Residence)

OPEN SESSION
4:30 PM

CALL TO ORDER AND ROLL CALL

Mayor Potter called the meeting to order at 4:31 p.m.

Present: Council Members: Baron, Ferlito, Theis, Mayor Pro Tem Richards, Mayor Potter

PUBLIC APPEARANCES

The following members of the public spoke:

Wanda Vollmer
Jo Todd
Richard Kreitman
Amy Herzog

ANNOUNCEMENTS

Item A: City Administrator Announcements

City Administrator Chip Rerig thanked Corporal Lightfoot, CERT volunteers and all resident volunteer groups that keep the village special. He thanked Library and Community Activities Director Ashlee Wright, Executive Assistant Leslie Fenton, and Community Activities Commission for organizing the wonderful City Holiday Tree Lighting event on December 3, and thanked everyone who attended.

Item B: City Attorney Announcements

City Attorney Brian Pierik stated that there was no reportable action from the December 6, 2021 Closed Session agenda.

Item C: Council Member Announcements

Council Member Ferlito thanked the Community Activities Commission for the City Holiday Tree Lighting event. She thanked the CERT volunteers, and that she is looking forward to their other activities. She announced that she will be attending AMBAG's Special Meeting December 8. She suggested for Director of Community Planning and Building Brandon Swanson to give a brief update on the regional housing needs assessment numbers.

Mayor Pro Tem Richards thanked the Community Activities Commission and staff and hopes that the City Holiday Tree Lighting become a traditional event. He wishes good luck to the three new businesses: Social Hour, Monica Graham Fine Art, and Big Little Boxes. He thanked the CERT volunteers. He attended the Veteran's celebration in the park this month.

Council Member Theis reported that Monterey Regional Waste Management District's current General Manager is retiring, and that the new General Manager, Felipe Melchor, will start in January.

Mayor Potter announced that Caltrans has grant monies available. Council Member Ferlito stated that she will pursue grant funding for the Illegal dumping and litter task force.

CONSENT AGENDA

Items 4 and 5 were pulled for further discussion.

Item 1: Monthly Reports for October: 1) City Administrator Contract Log; 2) Community Planning and Building Department Reports; 3) Police, Fire, and Ambulance Reports; 4) Public Records Act Requests, and 5) Public Works Department Report

Item 2: October 2021 Check Register Summary

Item 3: October 4, 2021 Special Meeting, October 5, 2021 Regular Meeting, November 1, 2021 Special Meeting, and November 2, 2021 Regular Meeting

Item 6: Resolution 2021-081 to designate the 2021 Holiday Closure from December 27, 2021 – December 31, 2021

Item 7: Resolution 2021-082 authorizing a one-time payment to employees known as the COVID-19 Emergency Recognition Pay in recognition and appreciation for employees' efforts during the initial COVID-19 Emergency Shelter in Place Order.

Item 8: Resolution 2021-085 authorizing a Free Use Day of Sunset Center to AIM Youth Mental Health for their 2nd annual Scientific Symposium.

Public Comment – None

On a motion by Mayor Pro Tem Richards and seconded by Council Member Baron, the City Council approved items 1, 2, 3, 6, 7 and 8 on the Consent Agenda by the following roll call vote:

AYES:	BARON, FERLITO, THEIS, RICHARDS, POTTER
NOES:	NONE
ABSENT:	NONE
ABSTAIN:	NONE

The following items were pulled for discussion:

Item 4: Resolution 2021-079 authorizing the consumption of alcohol on public property for Visit Carmel's Culinary Week kick-off event to be held Friday, January 14, 2022; and authorizing the consumption of alcohol on public property and the erection of a tent for the Carmel Art Festival event that will be held May 13 -15, 2022.

Public Comment – None

Council discussion followed.

On a motion by Council Member Baron and seconded by Council Member Theis, the City Council adopted Resolution 2021-079 authorizing the consumption of alcohol on public property and the erection of a tent for the Carmel Art Festival event that will be held May 13 -15, 2022 by the following roll call vote:

AYES:	BARON, FERLITO, THEIS, RICHARDS, POTTER
NOES:	NONE
ABSENT:	NONE
ABSTAIN:	NONE

Item 5: Resolution 2021-080 amending Policy C16-02, Records Management Program.

Public Comment – None

Council discussion followed. Council Member Baron recommended modifications for the timeframe to be permanently for Records #9, #30, and #72. Council directed staff to bring this item back to a future meeting. No formal action was taken.

ORDERS OF BUSINESS

Item 9: Resolution 2021-077 updating the At-Will (Unrepresented) Miscellaneous and Police Management Pay Schedule/Salary Schedule

City Administrator Chip Rerig presented the staff report and responded to Council's questions.

Public Comment – None

Council discussion followed.

On a motion by Council Member Baron and seconded by Council Member Theis, the City Council adopted Resolution 2021-077 updating the At-Will (Unrepresented) Miscellaneous and Police Management Pay Schedule/Salary Schedule for Grades 1-6 only directed staff to bring back at a future meeting a more comprehensive schedule that would include the current grades 7-10 (recommending 7, 8, 9 to be banded together, and 10 to be separate) by the following roll call vote:

AYES:	BARON, FERLITO, THEIS, RICHARDS, POTTER
NOES:	NONE
ABSENT:	NONE
ABSTAIN:	NONE

Item 10: Consideration of a permanent encroachment permit application (EN 21-187, Stilwell) to install an underground grease interceptor in the public right of way between the sidewalk and the curb on the eastside of San Carlos Street near the corner of 5th Avenue

Council Member Theis recused herself due to her place of business being within the sphere of influence.

Community Planning and Building Director Brandon Swanson provided the staff report.

The applicant provided information.

The following members of the public spoke on this item:

Jo Todd
Rich Pepe
Mark Stillwell

Council discussion followed.

On a motion by Council Member Ferlito and seconded by Mayor Pro Tem Richards, the City Council considered and provided a determination on an application (EN 21-187) to install an underground grease interceptor in the public right of way between the sidewalk and the curb on the east side of San Carlos Street near the corner of 5th Avenue, as conditioned, by the following roll call vote:

AYES:	BARON, FERLITO, RICHARDS, POTTER
NOES:	NONE
ABSENT:	NONE
ABSTAIN:	THEIS

The motion passed 4-0-1 with Council Member Theis recused.

PUBLIC HEARING

Item 11: Consideration of an appeal by Sequoia Deployment Services on behalf of Verizon Wireless (APP 21-360, Verizon Wireless-Carmelo) of the Planning Commission's denial of a Design Review, Use Permit (DR/UP 21-115, Verizon Wireless-Carmelo), and associated Coastal Development Permit for the installation and operation of a wireless telecommunications facility on a replacement utility pole, and ancillary equipment on the ground adjacent to that pole, within the public right-of-way, located in the Multi-Family Residential (R-4) District

Community Planning and Building Director Brandon Swanson provided the background. Senior Planner Marnie Waffle presented the staff report. Tripp May (Telecommunications Firm) provided additional information. City Attorney Brian Pierik announced that BBK law attorney Gail Karish is also present to assist with questions.

The Appellant, Verizon Wireless, as represented by Pete Shubin and Paul Albritton, provided information.

The following members of the public spoke on this item:

Anthony Lombardo, representative of the Stop the Cell Tower in Carmel Neighborhoods group, on behalf of Nancy Louis, Sue Dangle and Kelly Kamps.

Bob Kavener
Bill Lewis
Mike Handy
Tasha Witt
Alison Kavener
Veronica Faustner
Deon Campizi
Christie Hollenbeck
Dylan Witt
Jan Reimers
Alissandra Dramov
Janice Bradner
Sherri McCarthy Hamlin
Karyl Hall on behalf of the Carmel Village Preservation Group
Gene Dangle
No name given
Mary Crowe
Jeanie Branham
Sara Boyle
Jeff Melching
No name given

Mayor Potter requested a brief recess at this time.

The Council reconvened the meeting at 7:30 p.m.

The Appellant and staff responded to Council's questions.

Mayor Potter moved to adopt Resolution 2021-084 denying an Appeal (APP 21-360) and upholding the Planning Commission denial of a Design Review, Use Permit (DR/UP 21-115, Verizon Wireless-Carmelo), and associated Coastal Development Permit for the installation and operation of a wireless telecommunications facility located on the east side of Carmelo Street between 8th & 9th Avenues in the Multi-Family Residential (R-4) District, and seconded by Mayor Pro Tem Richards.

City Council discussion followed.

Public Comment – None

On a substitute motion by Council Member Ferlito and seconded by Council Member Baron, the City Council continued the hearing and direct staff to work with the applicant on evaluating an alternate location, such as the Golden Bough Theatre located in the A-1 District, with an agreement with Verizon to extend the shock clock to June 17, 2022.

AYES: BARON, FERLITO

NOES: THEIS, RICHARDS, POTTER
ABSENT: NONE
ABSTAIN: NONE

The substitute motion failed with 2 ayes and 3 noes, with Council Member Theis, Mayor Pro Tem Richards and Mayor Potter dissenting.

On a motion by Mayor Potter and seconded by Mayor Pro Tem Richards, the City Council adopted Resolution 2021-084 upholding the Planning Commission's denial of a Design Review, Use Permit (DR/UP 21-115, Verizon Wireless-Carmelo), and associated Coastal Development Permit for the installation and operation of a wireless telecommunications facility located on the east side of Carmelo Street between 8th & 9th Avenues in the Multi-Family Residential (R-4) District based upon the following evidence for denial by the following roll call vote:

1) CMC Section 17.12.020.H.5 states: *"No part of any antenna shall be higher than 24 feet."* The project is in conflict with 17.12.020.H.5 in that, no part of any antenna shall be higher than 24 feet and the proposed 38.7" antenna would be located on top of a 46'-6" utility pole, well over the 24-foot maximum height limit. The R-4 height limit applies to Verizon's antenna because (i) the R-4 height limit for antennas applies to all antennas erected in the R-4 district, except certain amateur radio antennas (which are subject to special privileges and exemptions from generally applicable local zoning regulations under both federal and state laws); (ii) the R-4 regulations also apply to the public right-of-way because the zoning district boundaries extend to the centerline of the public right-of-way; and (iii) the provision does not exempt antennas for telecommunications facilities. Moreover, other district-specific antenna regulations show that the exemptions for telecommunications facilities apply in some, but not all, districts as shown in the design regulations for antennas in the R-1 and commercial districts that exempt telecommunication facilities from compliance to the extent provided in Chapter 17.46. However, the antenna regulations for the R-4 district do not contain such an exemption.

2) CMC Section 17.46.020.A states: *"Wireless communications facilities shall be allowed within all zones except the R-1 district. Such facilities shall be discouraged in open space areas, areas of extraordinary scenic quality and in the R-4 district."* The project is in conflict with 17.46.020.A in that, wireless communications facilities are *"discouraged"* in the R-4 district and the proposed project would be located on the east side of Carmelo Street between 8th and 9th Avenues in the R-4 district. Given the existence of a more-preferred and technically feasible alternative, the denial of Verizon's application in a discouraged zone is warranted. Analysis by the City's independent expert shows that Verizon could achieve virtually all its objectives for the proposed location if it used an alternative site at the Golden Bough Playhouse that did not violate the discouraged locations provisions in the Code (i.e., not within an R-4 zoning district or within the public rights-of-way). Verizon's disclosures show that it intends provide service on low-band and mid-band frequencies to the area southwest from the proposed location. As the analysis prepared by CTC shows, an alternative location at the Golden Bough Playhouse would provide nearly identical service improvements within the low-band frequencies (at least 85% of the same service improvements to in-building services, nearly 100% of the same service improvement to in-vehicle services and more than 100% of the intended improvements to outdoor services because the alternative site would reach a larger area) and nearly 100% of the same

improvements in outdoor and in-vehicle service within the mid-band frequencies. An alternative site at the Golden Bough Playhouse would also provide new in-building services within the mid-band frequencies to an area currently without those services that is slightly larger than the area Verizon's proposed location would cover. Although the in-building coverage within the mid-band would have roughly a 33% overlap with the area covered by Verizon's proposed site, this is a conservative estimate that assumes Verizon would use the same equipment at both locations rather than use more creative engineering solutions such as it did in at the Sunset Center site where it deployed directional antennas with separate radios to boost the power output and optimize efficiency. The record also shows that the owners of Golden Bough Playhouse are receptive to allowing Verizon to place a facility on their property thus it is also available. Further, although the expert analysis evaluates a potential alternative on the Golden Bough Playhouse property, it is reasonable to assume that substantially the same results would be achieved if Verizon placed a new pole within the public right-of-way in the segments of Monte Verde or Casanova that are included in the A-1 district in which the Golden Bough Playhouse sits. Thus, while the Golden Bough Playhouse has expressed its willingness as a potential landlord to Verizon, it is also reasonable to assume that alternative locations within this non-residential district would also be technically feasible and potentially available if Verizon and the Golden Bough Playhouse could not reach agreement on a lease. Further support for the CMC's policy discouraging visibility from the front of properties is found in CMC Section 17.12.020.H.1, which prohibits antennas and supporting facilities in the front yard spaces between the property line and the portion of the main structure on the property closest to the property line.

3) CMC Section 17.46.040.A states: *"Site location and development of wireless communications facilities shall preserve the visual character and aesthetic values of the community. Facilities shall be integrated to the maximum extent feasible into the existing characteristics of the site and surrounding area."* The project is in conflict with 17.46.040.A in that, while the site location on the east side of Carmelo Street between 8th and 9th Avenues is in an R-4 district, it is an "island" surrounded by the R-1 district and single-family residences and directly across the street from single-family residences in the R-1 district. The code discourages wireless facilities in R-4 zones and in the public rights-of-way because wireless facilities at these locations are inherently likely to produce visual incompatibility with the surrounding areas. Moreover, even though the facility would be located in an R-4 zone, its impacts would not be. The antenna would negatively impact ocean views from neighboring properties in R-1 zones. The bulky pole-mounted accessory equipment would be prominently visible from ground level, including by the public who uses the public rights-of-way for both transportation and aesthetic/expressive purposes. Although other utilities are currently in the public rights-of-way, no other utility equipment would be as tall or have similar impacts on ocean views and Verizon's accessory equipment would be noticeably larger than other cabinets or shrouds on or adjacent to nearby utility poles, even with its re-design after the Planning Commission's denial. As such, the project is inconsistent with the visual character and aesthetic values of the surrounding single-family residential community.

- 4) CMC Section 17.46.040.C states: *"Wireless communications facilities, to every extent possible, should not be sited to create visual clutter or negatively affect important public or private views as determined by the Planning Commission."* The project is in conflict with 17.46.040.C in that, it would create visual clutter and negatively affect both important public and private views. Based on the written record submitted by the public (including photo simulations that showed the antenna protruding above the tree line, even though no other utility infrastructure would similarly protrude) and first-hand observations by the Planning Commissioners at the project site, the proposed extension would encroach into scenic ocean views from spaces within the La Playa Carmel Hotel and surrounding residences including those across the street. Whereas these properties currently have an unobstructed view of the ocean, Verizon's proposed facility would encroach on and obstruct those views. Moreover, the encroachment into these views would exceed the overall height limit permitted by the CMC. Although Verizon has submitted revised plans that lower the overall height of the antenna by approximately 13", the impact to views has not been materially changed. Potential siting alternatives that would mitigate the visual clutter and negative view impacts include the Golden Bough Playhouse or a new pole in the public right-of-way adjacent to the Golden Bough Playhouse on Monte Verde or Casanova. Lastly, an alternative configuration that involves mounting the antenna in the communications space below the electric utility lines would eliminate the protrusion above the pole in direct line-of-sight of neighboring properties.
- 5) CMC Section 17.46.040.C states: *"Wireless communications facilities are discouraged in the public right-of-way."* The project is in conflict with 17.46.040.C because the record that shows that there are technically feasible and potentially available alternatives located in more preferred locations. Analysis by the City's independent expert shows that Verizon could achieve virtually all its objectives for the proposed location if it used an alternative site at the Golden Bough Playhouse that did not violate the discouraged locations provisions in the Code (i.e., not within an R-4 zoning district or within the public rights-of-way). Verizon's disclosures show that it intends provide service on low-band and mid-band frequencies to the area southwest from the proposed location. As the analysis prepared by CTC shows, an alternative location at the Golden Bough Playhouse would provide nearly identical service improvements within the low-band frequencies (at least 85% of the same service improvements to in-building services, nearly 100% of the same service improvement to in-vehicle services and more than 100% of the intended improvements to outdoor services because the alternative site would reach a larger area) and nearly 100% of the same improvements in outdoor and in-vehicle service within the mid-band frequencies. An alternative site at the Golden Bough Playhouse would also provide new in-building services within the mid-band frequencies to an area currently without those services that is slightly larger than the area Verizon's proposed location would cover. Although the in-building coverage within the mid-band would have roughly a 33% overlap with the area covered by Verizon's proposed site, this is a conservative estimate that assumes Verizon would use the same equipment at both locations rather than use

more creative engineering solutions such as it did in at the Sunset Center site where it deployed directional antennas with separate radios to boost the power output and optimize efficiency. Taken together, the alternative site provides substantially the same service improvements in low-band frequencies, substantially the same improvements to outdoor and in-vehicle coverage in the mid-band frequencies and new in-building services within the mid-band frequencies to an area that is essentially equal in size to the one that could be covered by Verizon's proposed site. Given the parity between the proposed and alternative sites, denial of the proposed site due to a preference for the available alternative site would not "materially inhibit" Verizon's ability to provide services. Although the CTC Report evaluates a potential alternative on the Golden Bough Playhouse structure, it is reasonable to assume that substantially the same results would be achieved if Verizon placed a new pole within the public right-of-way in the segments of Monte Verde or Casanova that are included in the theater district (A-1 Zoning District) in which the Golden Bough Playhouse sits. Thus, while the Golden Bough Playhouse has expressed its willingness as a potential landlord to Verizon, alternative facilities within the non-residential A-1 district would also be technically feasible and potentially available if Verizon and the Golden Bough Playhouse could not reach agreement on a lease.

6) CMC Section 17.46.050.E states: *"Support facilities (i.e., vaults, equipment rooms, utilities, and equipment enclosures) shall be constructed out of nonflammable, nonreflective materials. Support facilities that cannot be located within existing buildings or underground shall either be located out of public view or shall be enclosed in an architecturally compatible structure on private property."* The project is in conflict with 17.46.050.E the support facilities would not be located underground or out of public view. As previously proposed with ground-mounted equipment enclosed by a redwood grape stake fence enclosure, the enclosure would be flammable and architecturally incompatible. Although some wooden structures appear in commercial portions of the City's public rights-of-way, no such structures exist in the vicinity of the proposed facility and none are as tall or bulky as the one proposed to house the ground equipment. Verizon's revised configuration also violates 17.46.050.E because the pole-mounted enclosure would be publicly visible and not located underground. Even though the non-antenna wireless equipment (including the radios) can be installed in an underground vault, Verizon would install them above ground on the pole within public view. This configuration contravenes the code requirement and Verizon has made no showing that it could not install the support facilities underground. According to oral testimony by Verizon's representative, undergrounding the nonantenna equipment was possible but would result in potentially negative aesthetic impacts and possible constructability issues. Council is unpersuaded by the testimony at the hearing regarding the infeasibility of installing the nonantenna equipment underground.

7) The size of the equipment area would add unreasonable visual clutter to the utility pole; the project would not be compatible with the surrounding land use; the proposed equipment area creates visual clutter and unreasonably diminishes public and private views; the pole mounted equipment would add mass to the utility pole; the alternatives analysis provided contains certain shortcomings in that it does not provide identify

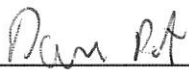
the personal wireless service that the applicant provides or intends to provide; the project would diminish the public use and enjoyment of the public right-of-way; and, the project would set an undesirable land use precedent within the residential area of the village that would contribute to the adverse visual impact. the Verizon representative indicated that undergrounding the non-antennae equipment was possible but raised potential negative aesthetic impacts and constructability issues.

AYES: BARON, FERLITO, THEIS, RICHARDS, POTTER
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

ADJOURNMENT

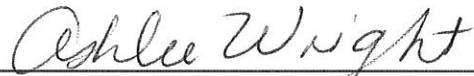
The City Council adjourned the meeting at 8:32 PM.

APPROVED:



Dave Potter, Mayor

ATTEST:



Ashlee Wright, Acting City Clerk