

Civic San Diego

TRANSMITTAL MEMORANDUM

Date: August 14, 2013
From: Lorena Cordova
To: Honorable Members of the Planning Commission
Subject: Sprint – Porto Vista Project No. 2013-06 – Planning Commission Item #10 – Docket of August 15, 2013

Enclosed please find a revised version of Conditional Use Permit (CUP) No. 2013-06 for Sprint Wireless Communication Facility at Porto Vista. The revisions that were made to the CUP consist of clarifying some language and including standard indemnification language. For your quick reference, the revisions have been underlined in the permit.

Thank you.

CIVIC SAN DIEGO

By: _____



Lorena Cordova
Assistant Planner

Enclosure

RECORDING REQUESTED BY:

Civic San Diego
401 B Street, Suite 400
San Diego, CA 92101

AND WHEN RECORDED MAIL TO:

Civic San Diego
401 B Street, Suite 400
San Diego, CA 92101

THIS SPACE FOR RECORDER'S USE ONLY

*NOTE: COUNTY RECORDER, PLEASE RECORD AS
RESTRICTION ON USE OR DEVELOPMENT
OF REAL PROPERTY AFFECTING THE TITLE
TO OR POSSESSION THEREOF*

**CENTRE CITY PLANNED DISTRICT
CONDITIONAL USE PERMIT NO. 2013-06
1835 COLUMBIA STREET
[APN#533-241-12]**

**CENTRE CITY PLANNED DISTRICT
CONDITIONAL USE PERMIT NO. 2013-06
1835 COLUMBIA STREET
[APN#533-241-12]**

This Conditional Use Permit No.2013-06 is granted by the Planning Commission of the City of San Diego to Maegan Murphy Steudler on behalf of Sprint, Permittee, and Arnold Ming on behalf of 1835 Columbia Street, LP, Owner, pursuant to San Diego Municipal Code (SDMC) Sections 126.0304, 126.0305, 141.0420 and 156.0308. The property is legally described as Lots 2, 3, 4, 10, 11 and 12 in Block 37 of Middletown, in the City of San Diego, County of San Diego, State of California, according to partition map thereof made by J.E. Jackson on file in the Office of the County Clerk of San Diego County in the Little Italy District of the Downtown Community Plan Area.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to construct, operate, and maintain a Wireless Communication Facility described and identified by size, dimension, quantity, type and location as follows and on the approved exhibits dated March 18, 2013, on file in the Civic San Diego Planning Department.

The project shall include:

- a. Three panel antennas of four feet six inches and one six-foot panel antenna, all façade-mounted on the penthouses of the building near the southern property line;
- b. Three fiber optic cables;
- c. Three remote radio units mounted behind the existing penthouses; and,
- d. Existing equipment area of 160 square feet on the rooftop of the existing building.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized, this permit shall be void unless an Extension of Time has been granted.
2. The Sprint facilities on the site shall **expire on August 29, 2023**. Upon expiration of this Permit, the facilities and improvements described herein shall be removed from this site and the property shall be restored to its original condition preceding approval of this Permit unless the applicant of record files a new application for a facility which will be subject to compliance with all regulations in effect at the time.
3. No later than ninety (90) days prior to the expiration of this permit, the Owner/Permittee may submit a new application for consideration with review and a decision by the appropriate decision maker at that time. Failure to submit prior to the deadline will be cause for enforcement for noncompliance, which may include penalties and fines.

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Sprint at Porto Vista

4. Under no circumstances, does approval of this permit authorize Sprint to utilize this site for wireless communication purposes beyond the permit expiration date. Use of this permit beyond the expiration date of this permit is prohibited.
5. All work authorized by this permit shall be in conformance with the description of work contained herein and as indicated on the plans submitted to the Building Safety Division and stamped with the CivicSD "**APPROVED**" stamp. All modifications to this structure or site not directly approved by this permit shall require further review by CivicSD.
6. No change, modifications, or alterations to the approved plans shall be made without a determination of substantial conformance by CivicSD or amendment of this Permit has been granted. Any future requested amendment to this Permit shall be reviewed for compliance with the regulations of the underlying zone which are in effect on the date of the submittal of the requested amendment.
7. At any time in which the facilities are no longer utilized as approved, the facilities and improvements described herein shall be removed from this site and the property shall be restored to its original condition preceding approval of this Permit.
8. This Permit may be revoked by CivicSD if there is a material breach or default in any of the conditions of this permit. If the business creates a nuisance to the surrounding neighborhood, based on a determination of the President of CivicSD, this permit may be revoked after the holding of a public hearing.
9. This Permit shall not become effective until:
 - a) The Permittee and Owner signs and returns the Permit to CivicSD; and
 - b) The Permit is recorded in the Office of the County Recorder.
 - c) This Permit must be used within 36 months after the date of approval or the Permit shall be void.
10. After establishment of the business, the Property shall not be used for other uses unless:
 - a) Authorized by CivicSD; and,
 - b) The uses are consistent with all zoning and development regulations of the Centre City Planned District Ordinance; or
 - c) This permit has been revoked by CivicSD.
11. This Permit is a Covenant running with the lands 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.

12. The owner and permittee shall adhere to all Federal, State and local laws, ordinances and regulations at all times.
13. The owner and permittee shall maintain the CUP and other business licenses in the establishment and shall make these documents available to anyone lawfully engaged in the inspections of the premises.
14. All of the conditions contained in this Permit have been considered and were determined necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.
15. If 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 an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" conditions(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed 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.
16. The Owner/Permittee shall defend, indemnify, and hold harmless CivicSD, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the CivicSD or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. CivicSD will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the CivicSD should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the CivicSD or its agents, officers, and employees. CivicSD may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the CivicSD and Owner/Permittee regarding litigation issues, CivicSD shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

PLANNING/DESIGN REQUIREMENTS:

17. The panel antennas will be concealed within radio frequency screen boxes that are painted and textured to match the wall on which they are mounted.
18. The remote radio units will be mounted behind the existing rooftop penthouses.

19. All equipment including transformers, emergency generators and air conditioners shall be designed and operated consistent with the City noise ordinance. Ventilation openings shall be baffled and directed away from residential areas. Vibration resonance of operating equipment in the equipment enclosures shall be eliminated.
20. Associated lighting for the communications equipment (not for the Sprint Building) shall be minimized and directed to shine on the equipment building only. Motion detectors should be implemented when practical.
21. Prior to the issuance of a Building Permit, the Permittee shall provide a certified cumulative radio frequency model study demonstrating compliance with the Federal Communications Commission's Radio Frequency Guidelines. All significant contributors to the ambient RF environment should be considered in the radio frequency model study.
22. The Permittee shall secure all necessary building permits. The applicant is informed that to secure these permits, modifications to the building and/or site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law may be required.

Approved by the Planning Commission of the City of San Diego on August 15, 2013 by Resolution No. PC-XXXX.

AUTHENTICATED BY THE CIVIC SAN DIEGO

Lorena Cordova
Assistant Planner
Civic San Diego

**Note: Notary Acknowledgement
must be attached per Civil Code
Section 1189 et seq.**

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

1835 COLUMBIA STREET, LP
Owner

By: _____
Arnold Ming

CUP 2013-06
Sprint at Porto Vista

SPRINT
Permittee

By: _____
Maegan Murphy Steudler

**Note: Notary Acknowledgement
must be attached per Civil Code
Section 1189 et seq.**

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