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DEPUTY CITY ATTORNEY

## OAKLAND CITY COUNCIL

### RESOLUTION NO. 83060 C.M.S.

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**A RESOLUTION DENYING APPEAL #A10224 AND UPHOLDING THE DECISION OF THE PLANNING COMMISSION TO DENY CASE #CM10140 FOR A 36'-4"-TALL MONOPOLE WIRELESS TELECOMMUNICATIONS FACILITY IN THE OPEN SPACE ZONE SECTION OF PUBLIC RIGHT-OF-WAY ON SKYLINE BLVD. NORTH OF THE CHABOT SPACE AND SCIENCE CENTER STREET ENTRANCE.**

**WHEREAS**, on March 12, 2010, the applicant Ms. Sharon James/NextG Networks, submitted a proposal for four sites including a 36'-4"-tall wooden pole with one antenna attached for wireless telecommunications purposes in the open space zone section of public right-of-way on Skyline Boulevard north of the Chabot Space and Science Center street entrance; and

**WHEREAS**, on April 9, 2010, Planning and Zoning Department staff sent the applicant a letter indicating the application was incomplete and that the proposal constituted Monopole Wireless Telecommunications Facilities requiring four separate Major Conditional Use Permits; and

**WHEREAS**, on May 13, 2010, the Zoning Manager issued a formal administrative determination that interpreted the Planning Code to classify the proposed pole's facility type as Monopole Wireless Telecommunications Facility requiring a Major Conditional Use Permit; and

**WHEREAS**, on May 24, 2010 Ms. Natasha Ernst/NextG Networks filed an administrative appeal of the Zoning Manager's Determination; and

**WHEREAS**, on July 21, 2010, the Planning Commission upheld the Zoning Administrator's determination dated May 13, 2010 which classified the facility as a Monopole and determined that the Monopole was subject to the Telecommunications Regulations and required a Major Conditional Use Permit, and this decision is final and non-appealable; and

**WHEREAS**, on June 3, 2010, notwithstanding the fact that NextG's appeal on the Zoning Administrator's decision was pending, the applicant Ms. Sharon James/NextG Networks, re-submitted an individual application for a Major Conditional Use Permit with two sets of additional findings (Conditional Use Permit for Monopole; Design Review for Monopole)

to construct a 36'-4"-tall pole with one antenna in the open space zone section of public right-of-way on Skyline Boulevard north of the Chabot Space and Science Center street entrance as case # CM10140 (Project); and

**WHEREAS**, on July 26, 2010, staff advised the applicant that required legal findings could not be made to support the project and other options might be considered which the applicant declined to pursue; and

**WHEREAS**, on August 4, 2010 a duly noticed public hearing was held before the City Planning Commission for the Project; and

**WHEREAS**, on August 4, 2010, the Planning Commission independently reviewed, considered and determined that the Project is statutorily exempt from the environmental review requirements of the California Environmental Quality Act ("CEQA") pursuant to section 15270 of the State CEQA Guidelines because the project was disapproved; and

**WHEREAS**, on August 4, 2010, the Planning Commission denied the application for case # CM10140 and advised the applicant they are encouraged to submit a revised proposal as a new application; and

**WHEREAS**, on August 16, 2010 Ms. Natasha Ernst/NextG Networks timely filed an appeal of the Planning Commission's decision to deny the Project; and

**WHEREAS**, after giving due notice to the Appellants, the Applicant, all interested parties, and the public, the Appeal came before the City Council in a duly noticed public hearing on November 9, 2010; and

**WHEREAS**, the Appellants and all other interested parties were given the opportunity to participate in the public hearing by submittal of oral and written comments; and

**WHEREAS**, the public hearing on the Appeal was closed by the City Council on November 9, 2010; now, therefore, be it

**RESOLVED:** The City Council independently finds and determines that this Resolution complies with CEQA, as the Project is statutorily exempt from CEQA pursuant to CEQA Guideline Section 15270 "Projects Which Are Disapproved" of the State CEQA Guidelines. The Environmental Review Officer is directed to cause to be filed a Notice of Exemption with the appropriate agencies; and be it

**FURTHER RESOLVED:** That the City Council, having independently heard, considered, and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Application, the Planning Commission's decision, and the Appeal, finds that the Appellant has not shown, by reliance on evidence in the record, that the Planning Commission's decision was made in error, that there was an abuse of discretion by the Commission, or that the Commission's decision was not supported by substantial evidence in the record. This decision is based, in part, on the November 9, 2010, City Council Agenda Report and the August 4, 2010, Planning Commission Report, which are hereby incorporated by reference as if fully set forth

herein and on the reports and testimony provided at the hearing. Accordingly, the Appeal is denied, the Planning Commission's decision to deny a 36'-4"-tall Monopole Wireless Telecommunications Facility with one antenna in the open space zone section of public right-of-way on Skyline Boulevard north of the Chabot Space and Science Center street entrance, is upheld, subject to the findings for denial adopted by the Planning Commission, each of which is hereby separately and independently adopted by this Council in full, as may be amended here; and be it

**FURTHER RESOLVED:** That, in support of the City Council's decision to deny the Project, the City Council affirms and adopts as its findings and determinations (i) the November 9, 2010, City Council Agenda Report, attached to the report as Attachment "A" [including without limitation the discussion, findings and conclusions (each of which is hereby separately and independently adopted by this Council in full)], and (ii) the August 4, 2010 Denied City Planning Commission Staff Report [including without limitation the discussion, findings and conclusions (each of which is hereby separately and independently adopted by this Council in full)], attached to the report as Attachment "B," except where otherwise expressly stated in this Resolution; and be it

**FURTHER RESOLVED:** That the record before this Council relating to this Project application and appeal includes, without limitation, the following:

1. the Project application, including all accompanying maps and papers;
2. all plans submitted by the Applicant and their representatives;
3. all final staff reports, decision letters and other documentation and information produced by or on behalf of the City.
4. all oral and written evidence received by the City staff, Planning Commission and City Council before and during the public hearings on the application and appeal;
5. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan and the General Plan Conformity Guidelines; (b) Oakland Municipal Code, including, without limitation, the Oakland real estate regulations, Oakland Fire Code; (c) Oakland Planning Code; (d) other applicable City policies and regulations; and, (e) all applicable state and federal laws, rules and regulations; and be it

**FURTHER RESOLVED:** That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) Community & Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, CA.; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1<sup>st</sup> floor, Oakland, CA; and be it

**FURTHER RESOLVED:** That the recitals contained in this resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, NOV 9 2010, 2010


**PASSED BY THE FOLLOWING VOTE:**

AYES - BROOKS, DE LA FUENTE, ~~KAPLAN~~, KERNIGHAN, NADEL, QUAN, REID, AND PRESIDENT BRUNNER - 7

NOES- 0

ABSENT- 0

ABSTENTION- Kaplan-1

ATTEST:   
LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California

**LEGAL NOTICE:**

**ANY PARTY SEEKING TO CHALLENGE THIS FINAL DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE DATE OF THE ANNOUNCEMENT OF THIS DECISION, PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 1094.6, UNLESS A SHORTER PERIOD APPLIES.**