

MARK S. POLLOCK  
C. EVANGELINE JAMES  
E-MAIL: mpollock@pollockandjames.com  
E-MAIL: ejames@pollockandjames.com

1827 Clay St., Ste. 300  
NAPA, CA 94559  
TEL: (707) 257-3089  
FAX: (707) 257-3096

**POLLOCK & JAMES, LLP**

ATTORNEYS AT LAW  
ENVIRONMENTAL LAW

July 16, 2020

City of Santa Rosa  
Tom Schwedhelm, Mayor  
City Council  
City Hall  
100 Santa Rosa Avenue  
Santa Rosa, CA 95404

Dear Mayor and City Council,

Our office represents Santa Rosa For Safe Technology, a group of Santa Rosa residents who have asked us to prepare and submit the attached materials, in support and furtherance of the City updating Chapters 13 and 20 of the municipal code, related to small cell technology.

Respectfully submitted  
Pollock & James, LLP

  
Mark S. Pollock

**Re: 7/21/2020 Study session item 3.2- WIRELESS SMALL CELL DEPLOYMENTS  
ON CITY OWNED STREET LIGHTS AND JOINT UTILITY POLES [\(1\)](#)**

- Our desire and main objective: We (Santa Rosa for Safe Technology) request the City Council (of Santa Rosa, CA) to direct City (of Santa Rosa, CA) staff to prioritize updating chapters 13 and 20 of the City Code to include Small Cell Technology, with the intention of retaining as much local control to the placement of such facilities consistent with current State and Federal Laws.
- Cities across the U.S. have adopted ordinances that eliminate and/or minimize the numbers of facilities in their cities and which ensure that the installation, augmentation and relocation of personal wireless facilities/small cell antenna in the public rights-of-way are conducted in such a manner as to lawfully balance the legal rights of applicants under the federal Telecommunications Act, the 2012 Middle-Class Tax Relief and Job Opportunities Act, any FCC orders, and the California State Public Utilities Code, and with the rights, safety, privacy, property and security of residents, businesses and visitors of and to Santa Rosa.
- We have no intention to : (1) prohibit or effectively prohibit any wireless telecommunications service provider's ability to provide wireless services where a gap in personal telecommunication services is documented; (2) prohibit or effectively prohibit any entity's ability to provide any interstate or intrastate telecommunications service; (3) unreasonably discriminate among providers of functionally equivalent services; (4) deny any request for authorization to place, construct or modify wireless telecommunications service facilities on the basis of environmental effects of radio frequency emissions so long as such wireless facilities comply with the FCC's regulations concerning such emissions; (5) prohibit any collocation or modification that Santa Rosa may not deny under federal or state law; or (6) otherwise authorize Santa Rosa to preempt any applicable federal or state law.
- It is critical that the City Council also direct City staff to enact an Urgency Ordinance immediately, to be effective while successfully updating the City Code to include Small Cell Technology. The Urgency Ordinance could be quite simple and need only add a few lines to the existing code.
  - “Restrict the placement of small cell personal wireless telecommunications facilities within 300 feet of residential zones, schools and daycare facilities and within 50 feet from any resident in any zone as well as a distance of at least 1,500 feet between all small cells, unless the applicant can prove a significant gap in personal wireless telecommunications services in the area and that the installation of any wireless telecommunications facility (WTF), including small cell technology, within any of these restricted areas is the least intrusive means of remedying that gap.”

- The City shall reserve the right to deny any WTF permit or application on any pole and in any zone if the City so determines that said WTF is not necessary to remedy a significant gap in personal wireless telecommunications services, as confirmed by a City selected independent engineer.
- No additional Multiple Year Leases will be considered until new code in Chapters 13 and 20 is finalized.
- The urgency ordinance is important to defend the City from the anticipated onslaught of applications by wireless providers during the time it may take the City to update its ordinance.
- It is important to note that the worst consequence of litigation by the applicant claiming prohibition or too much restriction to wireless telecommunication services will be the Superior Court ordering the approval of the application and issuance of permits. There is no legal basis for recovery of money damages or attorney fees under the Telecommunications Act. The City has no risk of financial exposure by taking a stance to protect its residential and school zones and childcare areas during the time it takes to update City Code.
- Proof of gap in personal telecommunications services requires the applicant to submit substantial evidence, of a significant gap in personal telecommunications services coverage which requires placement of small cell technology within a limited zone:
  - Most common forms of evidence
    - 1. Drive test results (not based on computer modeling or hypothetical propagation maps) done at random times.
    - 2 RF engineer reports with dropped call data, from the RF engineers of the provider who suffers from a gap in their personal wireless services.
    - 3 dropped call records (actual data, not estimated).

\*Perhaps the most common tool employed to ascertain the existence, location and extent of gaps in personal wireless services, is the drive test which consists of attaching a recording device to a cell phone, which records actual wireless signal strengths every few milliseconds. This tester then drives through a geographic area, while the device records the signal strengths through the area. In a one to two-hour drive, the device can record hundreds of thousands of signal strength records, thereby provide an accurate record of any gaps in service, and the precise location and extent of each such gap.

**Example-** A Comprehensive Wireless Signal Strength Test to be conducted every six months by an independently-funded RF Engineer, who will log, second-by-second, the

Wireless signal-strength levels in dBm (decibel-milliwatts) of every carrier-specific licensed and unlicensed wireless frequency that is being transmitted to the streets of Santa Rosa. The full data file for each test will be placed in the public record for anyone to view, analyze and verify and will serve as the basis for local decisions, regarding:

- The need for any additional Wireless infrastructure; and
- The placement, construction, modification, and operations of WTFs of Any G within Santa Rosa's borders.
- Compliance with FCC radio frequency human exposure guidelines.

The cost of each test would be contracted by and paid for by the City. The City may charge the providers maintenance fees to cover the costs. The City can charge the facility operators on a pro rata basis: the share of each Wireless Company's facility capabilities, meaning the percentage of the sum of the maximum Effective Radiated Power that could be transmitted by each facility operating within Santa Rosa.

- The City should note that FCC Order 18-133 is a presumptive order and not self-enforcing. That means that it is merely a statement of preference and are not binding. FCC Order 18-133 establishes limits on fees that can be charged and establishes new "shot clocks."[\(2\)](#)
- We are also expecting that most or all of FCC Orders 18-111 and 18-133 will be vacated by the same three-judge Ninth Circuit Court of Appeals panel in a matter of weeks. Presumptive order 18-111 among other things, preempts, local moratoria on telecommunications services.[\(3\)](#)
- An FCC opinion cannot wipe out the precedent of Ninth Circuit case law. Metro PCS v San Francisco (2005) is alive and well and represents the law of CA today.[\(4\)](#)

**The following are comments to the presenter's slides. (5)**

**Slide 9**



## Deployment Update

### Joint Utility Poles

- 7 new AT&T sites
- Residential and commercial areas
- Applicant has provided notification to the surrounding residents
- City staff has received resident feedback on 5 of the 7 proposed sites
  - Community concerns were predominately associated with RF exposure

9

**Slide 9 Comment-** The photo used in this slide is not an accurate visual representation of the aesthetic impact of this facility located on Bethards Dr. and Yulupa Ave. Picture of the same facility from another angle using proportional camera settings can be seen in [Exhibit A](#).

**Slide 9 Comments Cont.-** The photo simulation ([Exhibit B](#)) submitted by AT&T in their application to the City for a wireless small cell facility located at 2328 West College Ave, one of the 7 PG&E pole small cell sites referenced in this slide, is inaccurate and a misrepresentation. This photo simulation is deceitful and does not accurately represent the aesthetic impact of this project and is by itself grounds for the City to revoke a permit. All other 6 applications had similar inaccurate and deceitful photo simulation representations.

**Slide 9 Comment Cont.-** This is the notice ([Exhibit C](#)) sent out by the applicants to notify the residents of the proposed installation. The notice does not contain adequate information or pictures to represent the visual impact of the proposed small cell technology installation. Furthermore, we believe it is the City's duty to notify the residents and to provide them with an accurate description of the project and their rights to appeal the encroachment permit under City Code Chapter 13-04.310 regardless of the site being constructed on either a City owned light pole or PG&E utility pole.

**Slide 9 Comments Cont.-** We have evidence that the community "concerns" related to these 7 sites also included-lack of notification, aesthetics, and property value. Small Cell Technologies are particularly unaesthetic and detract from our beautiful tree lined streets.

**Slides 10-13 Comments-** These slides only show 4 of the 7 sites that ATT submitted applications for on PG&E poles. Excluded from the slides is the following location on the SRJC campus which shows the proximity to this institution and student housing ([Exhibit D](#)). Here, ATT is demonstrating blatant disregard in placing this powerful industrial

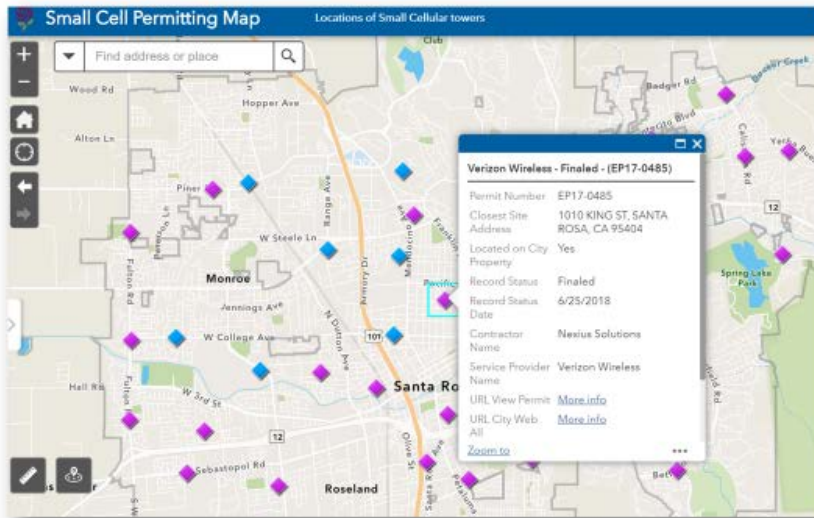
equipment in such proximity to this sensitive area without any evidence of considering a less intrusive means.



**Slide 14**

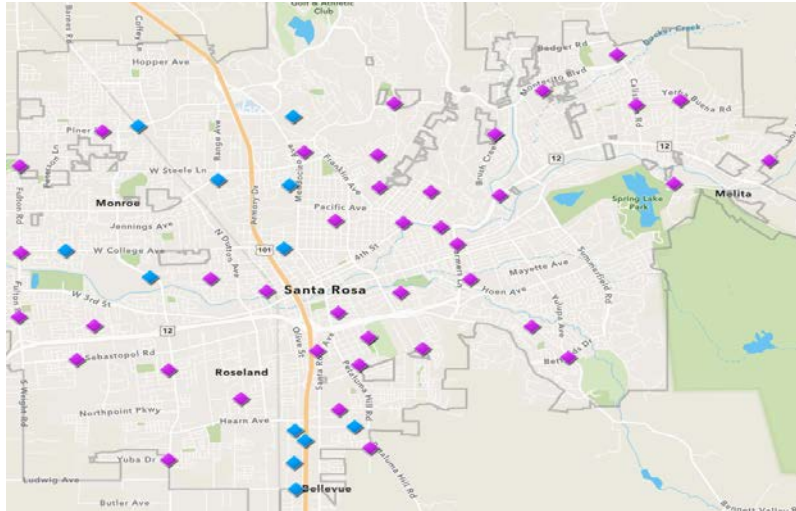


[srcity.org/smallcells](http://srcity.org/smallcells)



17

**Slide 14 Comment-** Below is the entire picture of Small Cell locations from the City's data set.



➤ **Question- Regarding the carbon footprint, how many kilowatt hours does each small cell use per year? How will you offset this increase in emissions?**

\*We understand and are aware of the environmental exclusion clause in the 1996 Telecommunications Act, however the City has the responsibility to account for this increase in carbon emissions.

- Not tracking this data is inconsistent with the city of Santa Rosa's Climate Action Plan.(6)
- As well as inconsistent with the Climate Emergency Resolution adopted by the City Council on January 14, 2020.(7)
- Additional small cell facilities and future upgrades to small cells will require facilities to use more power and more energy, creating an even larger carbon footprint. We request the city to consider fiber optic as a better option for large data transfers instead of the inefficient use of modulated radio frequency radiation to transfer large amounts of data through the air. In contrast the city could decrease our carbon footprint by making a commitment to putting wired fiber optic broadband into the city master plan. Wired fiber optic broadband to and through the premises are faster, more energy efficient, more secure, and more resilient than small cell technology and will not require updates and reconstruction in the future in the same manner as small cells will. It is important to note that each small cell wireless facility requires its own direct fiber optic connection.

## Slide 15



### Radio Frequency Exposure

Under Federal law (1996 Telecommunications Act), the City is prohibited from denying a permit to construct a wireless facility based on health concerns over radio frequency emissions provided that the emissions from the facility comply with Federal Communications Commission requirements.



#### Response to Resident Inquiries

- Describe Federal requirements and City's authority level
- Provide resources associated with the development and application of RF standards
- Provide RF reports
- Connect resident with the service provider

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**Slide 15 Comments-** The clause being referenced in the 1996 TCA literally states...

**“(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission’s regulations concerning such emissions.”**

Nowhere in the clause does it state “health” effects. The word used is “environmental” effects. This language needs to be interpreted literally, therefore using the term “health” is an overreach.

- **Question- Can you or the City Attorney please supply me with references to court decisions that prove this clause is referring to “health” effects inside one’s body, which could arguably be defined differently than the “environmental” effects which occur outside of and are separate to within one’s body.**

\*Regardless of whether or not the City attorney can reference prior court decisions that interpret “health effects” to mean the same as “environmental effects”, the City continues to hold the authority to require the applicants to provide substantial proof of a significant gap in personal wireless telecommunications services in order to be required to approve the application at any given location.

**Slide 15 Comments Cont.-** Additionally, as shown in ([Exhibit E](#)), there was clear congressional intent in the 1996 TCA to exclude the word “Operation” in the clause.



- **Question- Would this mean the city has the authority to regulate the “operations” of personal wireless facilities based on the environmental effects of radio frequency emissions? Could the city regulate the *amount of power* these facilities “operate” at in order to avoid the prohibition of “telecommunications services”?**

\*Arguably, if the City retains the authority to regulate the operation of these facilities, it may compel the Telecom Companies/carriers/providers to justify the power level at which they would operate. Doing so, could limit power to just enough to meet the needs of providing cell phone service, notwithstanding that such power level may be significantly lower than the maximum levels set by the FCC.

## **Slide 16**



### **Joint Utility Pole** Review Process

#### **PG&E Review**

- Agency determines pole eligibility based on code requirements
- Code requirements ensure that the installation does not affect ability to maintain power infrastructure
- Requirements significantly reduce number of available poles

#### **City Review – Encroachment Permit**

- Ministerial application
- Reviewed against objective standards – Chapter 13 of the City Code
- Application cannot be denied if the proposal meets published standards

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**Slides 16 Comments-** Section 04.310 of Chapter 13 is also worth referencing and is relevant to the matter. Although this is no solution to the problem as the Director of Public Works will have no ground for denying the permit, it is worth pointing out that the residents near the current AT&T locations do currently have the right to appeal and receive a hearing. We recommend chapter 13 be updated to include prenotification of all potentially affected people within a radius surrounding small cell installations, whether on a City owned light pole or joint utility pole.

#### **"13-04.310 Appeal of denial of permit.**

*Any person aggrieved by the denial of a permit required by this chapter may appeal to the Director of Public Works, by submitting a written appeal within 15 days of the date the application was denied. The Director of Public Works shall thereafter give written notice to the applicant of a hearing to be held within 30 days of receipt of the appeal. The decision by the Director of Public Works on the appeal shall be final. (Ord. 3783 § 1, 2006)"(8)*

- **Question- Were previous residents who appealed small cells near their residence within 15 days of an approved encroachment permit given this hearing, which they are entitled to under Chapter 13 of City Code? How were or will residents be notified of their 15 day right to appeal and receive hearing regarding a small cell encroachment permit?**

\*As you can see in 13-04.310, the code focuses on the processes associated with the denial of an encroachment permit. In this situation, a surrounding resident would be appealing the approval of the permit. The interpretation of the City Attorney's Office was that the appeal process can apply to both situations. This code section does apply to the seven (7) AT&T permits that are currently going through the review process.

## **Slide 18**



## **Wireless Facilities**

### **Can codes be amended to add additional requirements?**

**-Yes, if the requirements are consistent with State and Federal laws**

- State and local governments cannot effectively prohibit wireless services
- Local control on design and development standards
  - No prohibition on wireless communications services
  - Must be reasonable and treat providers equally
  - No more burdensome than those imposed on other infrastructure
  - Objective
  - Published prior to application submittal
  - Denials cannot be based on RF concerns

18

**Slide 18 Comments-** No language in 47 USC 332 prohibits a City from requiring General Liability Insurance as a condition of issuing a permit for placement of Small Cell Technology. The City may consider health risks of EMF exposure in considering the type and scope of such insurance and may require that the General Liability policy **not** have a pollution exclusion that denies coverage for EMF induced illness, where the EMF levels exceed the FCC guidelines.

## **Slide 20**



## Wireless Facilities

### What can be added or changed with a code amendment?

-Application requirements and review process.

- Define required permit types
- Public review process and noticing
- Define appeal process
- Modify submittal requirements
- Master deployment plans
- Alternate site analysis
- Proof of coverage gaps

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**Slide 20 Comments-** We agree with all these directions to code amendments and stress the point that **the City has the authority to make such changes apply to both City owned light poles and PG&E utility poles.**

### Slide 21



## Wireless Facilities

### How are new or existing applications treated during the code amendment process?

-Current published codes apply.

- Applications must be reviewed against codes published prior to date of application submittal
- FCC order places review of applications under shot clocks
- Local agency cannot create moratoria (delay review or refuse to accept applications)

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**Slide 21 Comments-** The first bullet point on slide 21 supports the importance of an Urgency Ordinance.

## Slide 22



# 5G Network Upgrade



- All current installations are supporting 4G networks
- No timelines associated with 5G upgrades
- Significant infrastructure upgrades may be needed
  - Fiber expansion
- Existing small cell sites will require equipment modifications to support 5G
- New antenna sites improve coverage and will benefit the deployment of next generation networks
- 5G deployments will be required to meet FCC requirements associated with RF exposure

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**Slide 22 Comments-** Under the Middle-Class Tax Relief And Job Creation Act of 2012, wireless providers are able to change the frequencies and even the power output of their facilities, exempt from local authorities' ability to stop them. So unfortunately, due to the Act, providers can not only change from 4G to 5G whenever they please, they can increase the power output, they can also increase the size of the facility and increase the height of any tower.

**Slide 22 Comments Cont.-** It is also important to understand that 4G is the backbone of 5G and is required to allow high frequency 5G technologies to function. After 5G hardware upgrades, 4G frequencies will remain constant with added 5G frequencies layered on from additional antennae. When small cells are upgraded with 5G antennae, the already installed 4G dipole cylinder antennas will remain on the pole and a new 5G phased array antenna(s) will be added. **(See Exhibit F)**

## Slide 23



# National Environmental Policy Act (NEPA)

- Small cells are subject to NEPA
- Most locations fall with a categorical exclusion and deemed to have minimal or no impact on the environment
- The City has no obligation under Federal law to ensure compliance with NEPA as part of the encroachment permit review
- City staff are working with the cellular providers to address public concerns regarding review process

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**Slide 23 Comments-** The City may require proof of compliance with NEPA, through FCC, as a precondition to approval of any deployment permit.

## Slide 24



## Solutions

Code and Policy Consistency



### Code Amendment

- Align all codes and polices associated with telecommunications facilities
- Revise submittal requirements
- Create uniform notification and public participation processes
- Develop design standards for small cells and modify macro site standards
- Codify RF testing procedures – City control

### Amendment Process

- 9 to 12 month timeline
- Timeline varies based on level of environmental review and community engagement
- Code development process may benefit from the use of professional services
- Priority setting

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**Slide 24 Comments-** Important to note that the City can require the applicant to pay for random independent RF testing. Also, important to note the importance of an urgency ordinance given the 9-12-month time frame to update the City code. We request that the City contract out with an expert that will help develop the updated telecom and permitting ordinances to retain and restore as much local control as legally possible regarding the placement, construction, modification and operation of personal wireless telecommunication facilities, including small cell technology, within Santa Rosa, CA.

- Additions and clarifications to Code amendments we request include but are not limited to:
  - Must include public notification by the city for permitting and appeal processes
  - Must include liability insurance with NO “pollution exemption.”
  - RF testing process must include random unannounced testing by certified engineers.
  - Must include compliance bonds.

#### References

1. <https://santa-rosa.legistar.com/View.ashx?M=A&ID=746427&GUID=5BC551B1-1B48-4484-97C8-9BF5E3B2625A>
2. <https://docs.fcc.gov/public/attachments/DOC-354283A1.pdf>
3. <https://docs.fcc.gov/public/attachments/FCC-18-111A1.pdf>
4. <https://caselaw.findlaw.com/us-9th-circuit/1406360.html>
5. <https://santa-rosa.legistar.com/View.ashx?M=F&ID=8673086&GUID=B8ECF256-588A-4A58-8A76-6E961CF0F7C6>
6. <https://srcity.org/1634/Climate-Action-Planning>
7. <https://srcity.org/DocumentCenter/View/28039/Climate-Emergency-Resolution>
8. [http://qcode.us/codes/santarosa/view.php?topic=13-13\\_04-13\\_04\\_310&frames=on](http://qcode.us/codes/santarosa/view.php?topic=13-13_04-13_04_310&frames=on)

**Exhibit A**

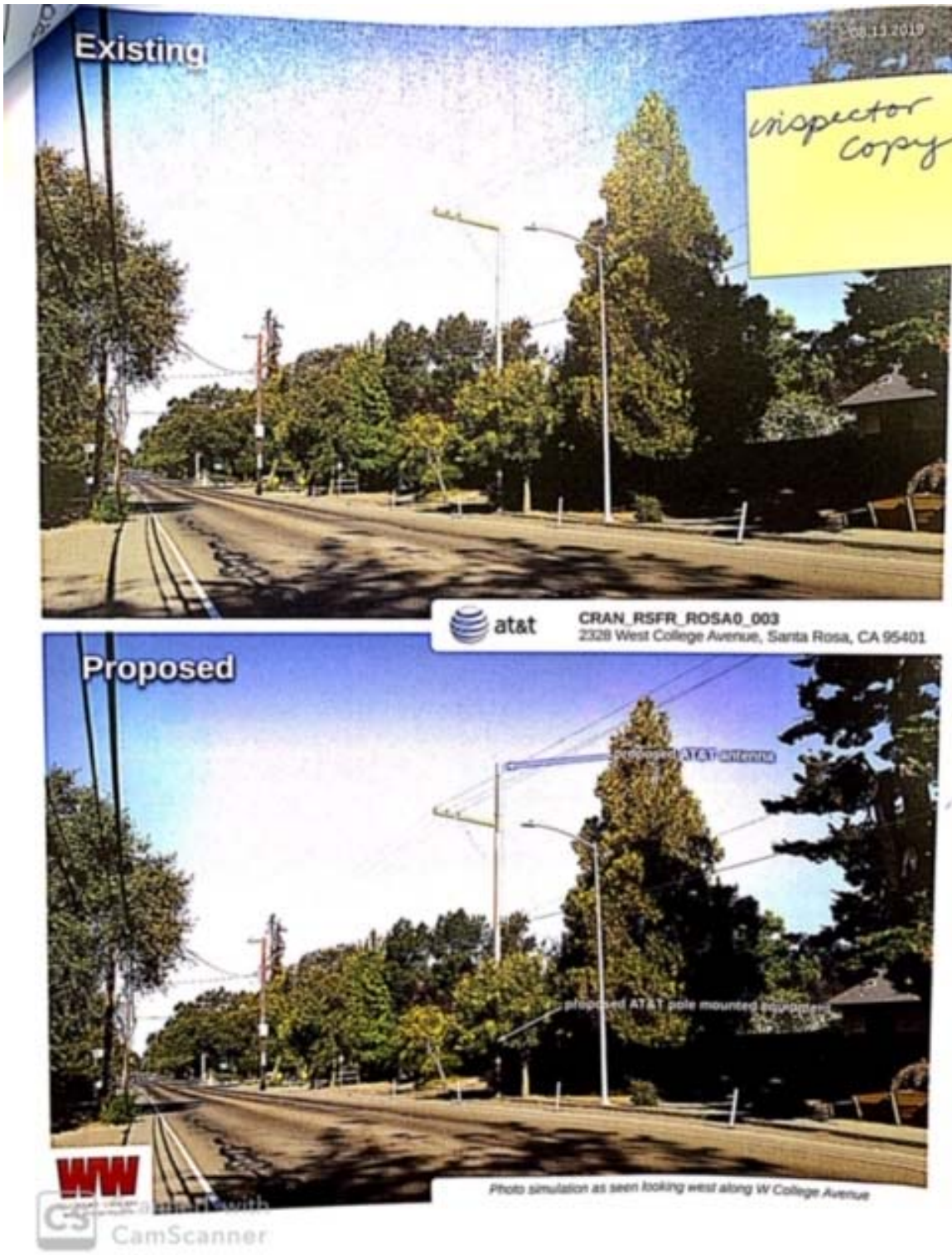
*Small Cell Wireless Facility located at Bethards Dr. and Yulupa Ave.*



- 1) Antenna
- 2) 3 Radios
- 3) Battery Backup
- 4) Smart electric meter

**Exhibit B**

*Small Cell facility photo simulation of 2328 W College Ave. submitted to City by AT&T*





## Exhibit C

Notification letter sent from AT&T to nearby residents at 7 locations referenced in slide 9



240 Stockton Street  
3<sup>rd</sup> floor  
san francisco, ca 94108  
t. 415.989.1102  
www.modus-corp.com

### Notice of AT&T Permitting and Proposed Installation

September 4, 2019

Dear Property Owner/Resident:

Modus Inc c/o AT&T Mobility proposes to install a state-of-the-art wireless communication small cell node facility atop an existing PG&E utility pole in the public right-of-way at the following location: at the end of Buena Vista Drive near Joan Way.

This proposed small cell node is part of a greater network that will provide and enhance AT&T fourth generation (4G) wireless voice and data service to the surrounding area, improving wireless capabilities and public safety connectivity. Although experiences with wireless services vary based on specific location and usage times, the wireless service proposed by this facility will help meet existing, fluctuating and future demands.

If you have any questions or concerns please call or e-mail Modus Project Manager Caitlin McLester at: [cmclester@modus-corp.com](mailto:cmclester@modus-corp.com) or (510) 914-1357.

Sincerely,

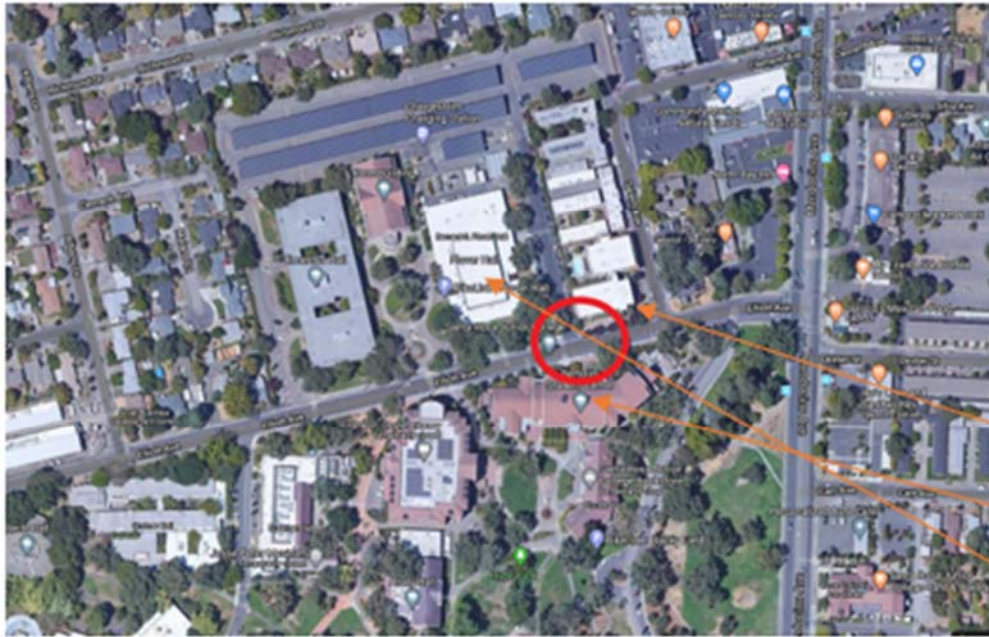
Caitlin McLester

Modus Inc c/o AT&T

City of Santa Rosa  
SEP 16 2019  
Planning & Economic  
Development Department

## Exhibit D

*Location of proposed small cell at the SRJC campus and application from AT&T*



Student Housing

Student Center

Administration Building

EP19-1209

PERMIT DATE:	11/20/2019
EXPIRATION DATE:	5/18/2020
SUBDIVISION:	
JOB NAME:	Emeritus Cir (500) AT&T
JOB/FILE NUMBER:	CRAN_RSFR_ROSA1_010\B19-6761
JOB LOCATION:	500 EMERITUS CIR
NEAREST X-STREET:	Emeritus Cir
CONTRACTOR:	New Cingular Wireless PCS LLC DBA AT&T Mobility
	DALLAS, TX 75202
PHONE:	(510)914-1357
CELL:	Not on File
FAX:	Not on File
Sub Contractor(s):	
	MODUS REX LLC - (415) 297-8076

## Exhibit E

*Congressional intent to remove “operations” from the 1996 TCA*

**Penultimate Version of the TCA  
(HR 1555 from Fall 1995)  
&  
Ultimate Version of the TCA  
(S.652 passed in Feb 1996)**

In the penultimate version of the TCA, in Section 107, the words **operate** and **operation** appear throughout.

**1995 — SEC. 107. FACILITIES SITING; RADIO FREQUENCY EMISSION STANDARDS.**

**(a) National Wireless Telecommunications Siting Policy.** — Section 332(c) of the Act (47 U.S.C. 332(c)) is amended by adding at the end the following new paragraph:

**(7) Facilities siting policies.** —

(A) Within 180 days after enactment of this paragraph, the Commission shall prescribe and make effective a policy regarding State and local regulation of the **placement, construction, modification, or operation** of facilities for the provision of commercial mobile services.

(B) Pursuant to subchapter III of chapter 5, title 5, United States Code, the Commission shall establish a negotiated rulemaking committee to negotiate and develop a proposed policy to comply with the requirements of this paragraph. Such committee shall include representatives from State and local governments, affected industries, and public safety agencies. In negotiating and developing such a policy, the committee shall take into account —

(i) the desirability of enhancing the **coverage** and quality of commercial mobile services and fostering competition in the provision of such services;

(ii) the **legitimate interests of State and local governments** in matters of exclusively local concern;

(iii) the effect of State and local regulation of facilities siting on interstate commerce; and

;(iv) the administrative costs to State and local governments of reviewing requests for authorization to locate facilities for the provision of commercial mobile services.

(C) The policy prescribed pursuant to this paragraph shall ensure that —

(i) regulation of the **placement, construction, and modification** of facilities for the provision of commercial mobile services by any State or local government or instrumentality thereof —

&nbsp;(I) is reasonable, nondiscriminatory, and limited to the minimum necessary to accomplish the State or local government’s legitimate purposes; and

(II) does not prohibit or have the effect of precluding any commercial mobile service; and

(ii) a State or local government or instrumentality thereof shall act on any request for authorization to **locate, construct, modify, or operate** facilities for the provision of commercial mobile services within a reasonable period of time after the request is fully filed with such government or instrumentality; and

(iii) any decision by a State or local government or instrumentality thereof to deny a request for authorization to **locate, construct, modify, or operate** facilities for the provision of commercial mobile services shall be in writing and shall be supported by substantial evidence contained in a written record.

(D) The policy prescribed pursuant to this paragraph shall provide that **no State or local government or any instrumentality thereof may regulate the placement, construction, modification, or operation** of such facilities on the basis of the **environmental effects** of radio frequency emissions, to the extent that such facilities comply with the Commission’s regulations concerning such emissions.

(E) In accordance with subchapter III of chapter 5, title 5, United States Code, the Commission shall periodically establish a negotiated rulemaking committee to review the policy prescribed by the Commission under this paragraph and to recommend revisions to such policy."

**(b) Radio Frequency Emissions.** — Within 180 days after the enactment of this Act, the Commission shall complete action in ET Docket 93-62 to prescribe and make effective rules regarding the environmental effects of radio frequency emissions.

**(c) Availability of Property.** — Within 180 days of the enactment of this Act, the Commission shall prescribe procedures by which Federal departments and agencies may make available on a **fair, reasonable, and nondiscriminatory basis, property, rights-of-way, and easements under their control for the placement of new telecommunications facilities** by duly licensed providers of telecommunications services that are dependent, in whole or in part, upon the utilization of Federal spectrum rights for the transmission or reception of such services. These procedures may establish a presumption that requests for the use of property, rights-of-way, and easements by duly authorized providers should be **granted absent unavoidable direct conflict with the department or agency’s mission, or the current or planned use of the property,**

**rights-of-way, and easements in question.** Reasonable cost- based fees may be charged to providers of such telecommunications services for use of property, rights-of-way, and easements. The Commission shall provide technical support to States to encourage them to make property, rights-of-way, and easements under their jurisdiction available for such purposes.

**In the ultimate version of the TCA, in Section 704, the words **operate** and **operations** were removed, expressing Congressional intent.**

**1996 — SEC. 704. FACILITIES SITING; RADIO FREQUENCY EMISSION STANDARDS.**

**(a) National Wireless Telecommunications Siting Policy.** — Section 332(c) (47 U.S.C. 332(c)) is amended by adding at the end the following new paragraph:

**(7) Preservation of local zoning authority.** —

**(A) General authority.** — Except as provided in this paragraph, **nothing in this Act shall limit or affect the authority of a State or local government** or instrumentality thereof over decisions regarding the **placement, construction, and modification** of personal wireless service facilities.

**(B) Limitations.** —

(i) The **regulation of the placement, construction, and modification** of personal wireless service facilities by any State or local government or instrumentality thereof —

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) A State or local government or instrumentality thereof shall act on any request for authorization to **place, construct, or modify** personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to **place, construct, or modify** personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

(iv) No State or local government or instrumentality thereof may regulate the **placement, construction, and modification** of personal wireless service facilities on the basis of the **environmental effects** of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

**(C) Definitions.** — For purposes of this paragraph —

(i) the term '**personal wireless services**' means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

(ii) the term '**personal wireless service facilities**' means facilities for the provision of personal wireless services; and

(iii) the term '**unlicensed wireless service**' means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services (as defined in section 303(v))."

## Exhibit F

*Example of a Small Cell with both a 4G and 5G antenna*



- 4G Dipole Antenna (Already installed on Santa Rosa Small Cells)
- 5G Phased Array Antenna (Likely a future hardware upgrade to existing Small Cells)
- Ancillary Equipment (Radios & Battery)