CITY OF LOWELL

PETITION

CITY COUNCIL

Pole Location

New Cingular Wireless PCS, LLC
DBA AT&T
Grant of Location for Wireless
Small Cell Facilities near 6 Industrial Ave

In City Council

November 24, 2020

Read and hearing ordered for 7PM on

December 8, 2020

Read, Hearing Held, Referred to Wire Inspector, Development Services

City Clerk

Office of the City Engineer
City Hall • 375 Merrimack Street • Lowell, MA 01852
P: 978.674.4070 • F: 978.970.3332
www.LowellMA.gov

Review of Utility Company Request for New Conduit/Pole Location

Applicant Information

Utility Gas Electric **Telephone**

(circle one) Other Communiction cell tower

Reason AT&T proposes a low-power small cell tower to address the increasing demands on AT&T's wireless network.

Project Address

6 Industrial Ave

Lowell, MA

Date Submitted Oct, 20, 2020

Review done by JC

Sidewalk Material Concrete **Asphalt** Other

Note: material to be replaced in kind (Concrete in full panels)

Sidewalk Vaults present	Y	**N**
Work on Street under a Paving Moratorium	Y	**N**
Is this location within the Flood Plain?	Y	**N**
Are ADA requirements being met?	**Y**	N

Comments

Outcome of Review

Approved	Approved With Comments	Denied
X		

Ting Chang, P.E.
City Engineer

The City of LOWELL *Alive. Unique. Inspiring.*

Google Maps 6 Industrial Ave

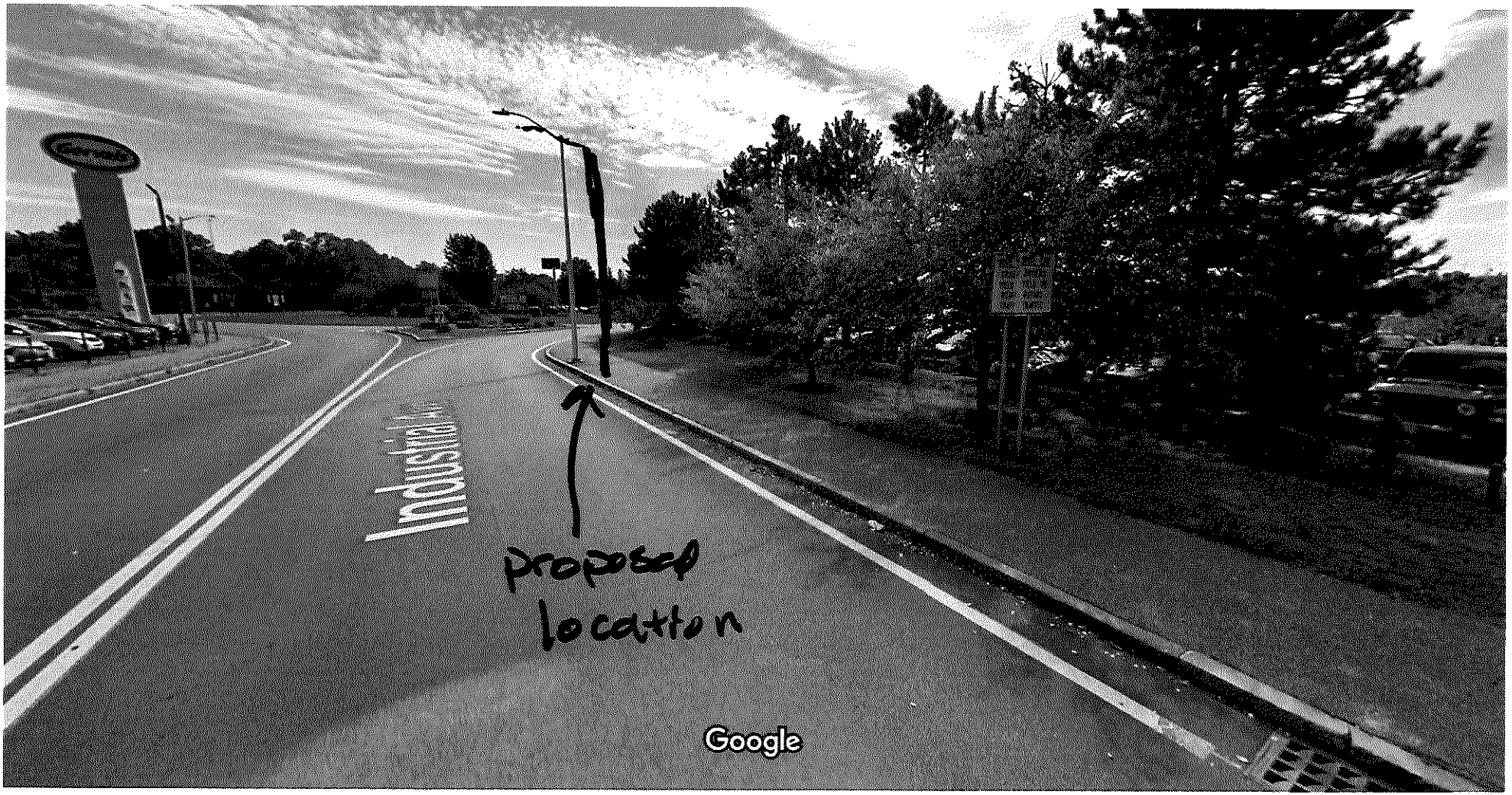

Image capture: Sep 2019 © 2020 Google

Lowell, Massachusetts

Google

Street View

Edward D. Pare, Jr., Esq.
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October 14, 2020

City Council
City of Lowell
c/o Michael Geary
City Clerk
Lowell City Hall
375 Merrimack Street
1st Floor, Room 31
Lowell, MA 01852

OCT 20 '20 AM 11:58
ENGINEERS

Ting Chang, P.E.
City Engineer
City of Lowell
Lowell City Hall
375 Merrimack Street
3rd Floor, Room 61
Lowell, MA 01852

RE: Application of New Cingular Wireless PCS, LLC (d/b/a AT&T) for Grants of Location for Two (2) Wireless Small Cell Facilities, Including Telecommunication Wires and Wireless Attachments and Appurtenances on Replacement City-owned Light Poles in the Public Rights-of-Way at the Following Locations:

Light Pole Replacement – Near 6 Industrial Ave, Lowell, MA 01851
Light Pole Replacement – Near 282 Appleton Street, Lowell, MA 01852

Dear Honorable Members of the Lowell City Council:

As you may recall, we represent New Cingular Wireless PCS, LLC (d/b/a "AT&T") with respect to its deployment of small cell facilities in the City of Lowell and the Commonwealth of Massachusetts. AT&T is licensed by the Federal Communications Commission (the "FCC") to provide wireless communications services in the City of Lowell and throughout the Commonwealth of Massachusetts.

On behalf of AT&T and while reserving all rights, please accept this submission as an application for approval for grants of location (the "Application") for two (2) small cell facilities on replacement City-owned light poles located in the public rights-of-way near the above referenced addresses (pole #12 and pole #18-22) (the "Sites"). The Application is filed pursuant to the federal Telecommunications Act of 1996 (the "TCA"), the Declaratory Ruling and Third Report and Order 18-133 (the "Order") issued by the FCC in September 2018 https://docs.fcc.gov/public/attachments/FCC-18-133A1_Rcd.pdf, the City Manager Directive Regarding Small Wireless Facility Design & Policy Guidelines City of Lowell, MA (the "Guidelines") and Massachusetts General Laws Chapter 166, Sections 21, 22 and 25A for

telecommunication wires and wireless attachments and appurtenances installed within the public rights-of-way. AT&T entered into a Small Cell Agreement (the "Agreement") with the City Lowell in 2018. AT&T will amend the Agreement to include these two (2) locations if approved. The replacement light poles comply with, and are in accordance with the TCA, the Order, the Guidelines and Massachusetts state law.

As part of this Application, we provide detailed sets of drawings (the "Plans") including location maps for these small cell facilities. Additionally, we submit photo simulations of the proposed small cell facilities. Also enclosed, please find a generic small cell facility report demonstrating compliance with applicable exposure to emissions standards established by the FCC.

AT&T proposes these low-power small cell facilities in the City of Lowell to deal with the rapidly increasing demands on AT&T's wireless network. These small cell facilities will work in conjunction with AT&T's existing macro sites installed on rooftops, towers and other structures in and around the City of Lowell. AT&T's radio frequency engineers targeted the proposed locations due to the high traffic and data demands on AT&T's network in these areas. AT&T's existing macro cell sites are not providing adequate data capacity near the Sites due to population, vehicular and foot traffic, multiple wireless devices in use and other contributing factors. These small cell facilities will work to offload the demands on the macro sites and allow for increased data capacity and speed within the immediate vicinity of the Sites and near AT&T's existing macro sites.

These small cell facilities will be installed using standard commercially accepted methods in accordance with all applicable federal, state and local laws, regulations and orders. As depicted on the Plans, these small cell installations on the replacement light poles will be five (5) feet from the existing light poles and each will include: fiber optic cable(s); remote radios in equipment modules (10.71 cubic feet in volume) mounted to the base of the poles; an unobtrusive pole top antenna measuring 25" long and 10" in diameter (1.132 cubic feet in volume); conduits and cable protectors; and, an electrical meter with shutoff switch and grounding rod. The existing light poles are 27'11" and 30'8" in height and the replacement light poles will be a total height of 38'6", including the antenna. The replacement poles will include streetlights and access ports for smart cities devices.

THE TELECOMMUNICATIONS ACT OF 1996

Without the installations, AT&T would be unable to provide specifically established coverage and capacity objectives. The existing light poles are located within the limited geographic area whereby AT&T's radio frequency engineers determined that wireless facilities are required. The TCA imposes substantial restrictions affecting the standard for granting the requested relief. The TCA provides that: no laws or actions by any local government or planning or zoning board may prohibit, or have the effect of prohibiting, the placement, construction, or modification of communications towers, antennas, or other wireless facilities in any particular

geographic area, see 47 U.S.C. §332(c)(7)(B)(i); local government or planning or zoning boards may not unreasonably discriminate among providers of functionally equivalent services, see 47 U.S.C. §332(c)(7)(B)(i); health concerns may not be considered so long as the emissions comply with the applicable standards of the FCC, see 47 U.S.C. §332(c)(7)(B)(iv); and, decisions must be rendered within a reasonable period of time, see 47 U.S.C. §332(c)(7)(B)(ii) and the Order commonly referenced as the applicable "shot clocks". The FCC shot clock in this instance is ninety (90) days from the date of submission of the Application. We also note that the Order redefined "effective prohibition" to mean that state and local governments cannot impose requirements that materially limit or inhibit a provider's ability to engage in activities related to the provision of service. This standard applies to efforts to introduce new or enhance coverage, capacity or service capabilities and notes that regulations that cause a financial burden or competitive disparity can be an effective prohibition.

COMPLIANCE WITH THE GUIDELINES

II. Application Requirements

a. Proof of agent designation

If the applicant is serving as an agent of a small wireless operator, the applicant must provide written documentation of the agent designation signed by the operator.

We represent AT&T, as the applicant, with respect to this Application and Centerline Communications serves as AT&T's site acquisition agent.

b. Map

The applicant must include an aerial map showing the location of the proposed or existing support structure to which the small wireless facility is proposed to be attached, or from which a small wireless facility is proposed to be removed or replaced.

Please see the Plans submitted with this Application.

c. Photo simulations

For all applications to locate small wireless facilities in the ROW, the applicant shall provide photo simulations from at least two reasonable line-of-site locations near the proposed project site. The photo simulations must be taken from the viewpoints of the greatest pedestrian or vehicular traffic.

Please see the photo simulations submitted with this Application.

d. Consolidated applications

An applicant seeking to construct, modify, collocate or replace more than one small wireless facility or more than one wireless support structure within the City's ROW may file a consolidated application for multiple small wireless facility requests or wireless support structure requests provided the requests grouped on a consolidated application only address substantially the same type of small wireless facilities or substantially the same type of wireless support structures. (Note: The City may treat each request individually during application review and processing and when issuing a determination or applying these guidelines.)

This Application is submitted for two (2) substantially similar types of small cell facilities and support structures.

e. Site and other plans and structural calculations

The applicant must include fully dimensioned site plans, elevation drawings and structural calculations that depict any known existing wireless facilities with all existing transmission equipment and other improvements, the proposed facility with all proposed transmission equipment and other improvements, and the legal boundaries of the existing right-of-way and any associated access and utility easements. Fully dimensioned site plans shall indicate the spacing from existing curb, driveways, sidewalks, light poles and any other poles or appurtenances.

Please see the Plans and structural information submitted with this Application.

f. A non-ionizing radiation electromagnetic radiation report (NIER)

A non-ionizing radiation electromagnetic radiation report (NIER) shall be submitted to the pole owner and retained on file for equipment type and model. The NIER report shall be endorsed by an RF PE licensed in the State of Massachusetts. It shall specify minimum approach distances to the general public as well as electrical and communication works that are not trained for working in an RF environment (uncontrolled) when accessing the pole by climbing or bucket. All installations shall meet or exceed all applicable structural standards, clearance standards, and provisions of the latest National Electrical Safety Code (NESC), or applicable City of Lowell construction standards. In case of conflict, the most stringent requirements shall prevail. All necessary permits shall be obtained by the wireless carrier owner and provided to the pole owner and the City of Lowell.

Please see the exposure to radio frequency emissions report submitted with this Application which demonstrates compliance with the FCC standards. The proposed small cell facilities will comply with all applicable federal, state and local requirements.

g. Number and dimensions of facilities and/or structures to be installed

The applicant must include a full description of the number and dimensions of all small wireless facilities proposed to be installed and the wireless support structure, either new or existing, to be

utilized for each small wireless facility. For all equipment proposed to be installed, the applicant must include: (1) the manufacturer's name and model number; (2) physical dimensions, including without limitation, height, width, depth and weight with mounts and other necessary hardware; and (3) the ambient noise level generated from the equipment, if any.

Please see the Plans submitted with this Application. According to the equipment specifications from the manufacturer, the ambient noise produced by the radio units is expected to be only 28 dBA at a distance of two (2) meters at a temperature of 68 degrees Fahrenheit. AT&T will minimize noise and notes the proposed locations are not in residential areas.

h. Owner's Authorization

For any application to attach a small wireless facility to a wireless support structure that is not owned by the City, the applicant must submit evidence sufficient to show that either: (I) applicant owns the proposed support structure; or (2) applicant has obtained the owner's written authorization to file the application.

The existing and replacement light poles are and will be owned by the City of Lowell.

III. Aesthetic Requirements

All cables, wires, and connectors related to the small wireless facility must be fully concealed on the wireless support structure and shall match the color of the wireless support structure. There shall be no external cables and wires related to the small wireless facility hanging off or otherwise exposed on the wireless support structure.

As depicted on the Plans submitted with the Application, AT&T will fully conceal all cables and will match the color of the light pole to the extent possible.

All colors shall match the background of any wireless support structure that the facilities are located upon, including equipment cabinets.

AT&T will match the color of the existing light poles to the extent possible and will work with the City regarding the color.

Equipment enclosures, including electric meters, shall be as small as possible. Ground-mounted equipment shall incorporate concealment elements into the proposed design matching color and materials of the wireless support structure, unless other materials or colors are approved by the City.

AT&T's proposed equipment enclosures are as small as possible for the wireless facilities to property function. The equipment enclosures include concealment elements

that have matching color and material type and are incorporated into the replacement light poles.

Radio equipment shall be fully enclosed within an equipment cabinet or concealed within the antenna shroud enclosure matching the color and materials of the wireless support structure, unless other materials or colors are approved by the City.

AT&T's proposed radio equipment is fully enclosed within equipment enclosures and AT&T will work with the City to provide the best color to match the light pole and surroundings.

Landscaping concealing equipment enclosures shall be planted in such quantity and size such that 100% screening is achieved within two-years of installation.

AT&T's small cell facilities will be located on replacement light poles with antenna and equipment enclosures incorporated into the light poles so no landscaping for ground-based equipment cabinets is required.

Signage: the small wireless facility permittee shall post its name, location, identifying information, and emergency telephone number in an area on the cabinet of the small wireless facility that is visible to the public. Signage required under this section shall not exceed 3 inches by 4 inches, unless otherwise required by law (e.g. radio-frequency (RF) ground notification signs) or the City. If no cabinet exists, the signage shall be placed on the base of the pole.

Please see the enclosed Plans with respect to required signage.

Lights: new small wireless facilities and wireless support structures shall not be illuminated, except in accord with state or federal regulations, or unless illumination is integral to the camouflaging strategy such as design intended to look like a street light pole.

Please see the enclosed Plans. The proposed light poles are designed to match the existing light poles to be replaced and will use a similar streetlight.

Logo/Decals: the small wireless facility operator/permittee shall remove or paint over unnecessary equipment manufacturer decals. The color shall match or shall be as approved by the City.

Please see the enclosed Plans.

IV. Location Requirements

a. Most preferable locations

The following are the most preferred areas for new small wireless facilities in the order of preference:

i. Industrial Districts if not adjacent to a park, residential district or historic district.

ii. Highway Rights of Way areas if not adjacent to a park, residential district, or historic district.

iii. Retail and Commercial Districts if not adjacent to a park, residential district or historic district.

The Sites are located in retail and commercial areas and are not in predominantly residential areas.

b. Collocation preference

It is the City's strong preference that whenever an applicant proposes to place a new small wireless facility that the applicant collocate the same on existing wireless support structures.

AT&T proposes to effectively collocate on existing light poles which will be replaced in areas where AT&T must improve coverage and capacity for its network thereby reducing the need to add additional visual elements.

c. Least preferable locations

The following are the least preferred areas for new small wireless facilities:

i. Residential Districts

ii. Parks

iii. Historic Districts

AT&T proposes to effectively collocate on existing light poles to be replaced in areas where AT&T must improve coverage and capacity for its network thereby reducing the need to add additional visual elements. The Sites are not located in Historic Districts.

d. Consideration of alternate locations

The City reserves the right to propose an alternate location for a small wireless facility and/or wireless support structure to the location proposed in the application within one hundred feet of the proposed location or within a distance that is equivalent to the width of the ROW in or on which the small wireless facility and/or wireless support structure is proposed, whichever is greater, which the operator shall use if it has the right to use the alternate location on reasonable terms and conditions and the alternate location does not impose technical limits or additional costs.

AT&T's proposed facilities reasonably comply with the Guidelines. AT&T is willing to work cooperatively with the City Council but notes that any alternative locations would impose additional cost on AT&T. To the extent not preempted by federal or state laws, regulations or orders, and while reserving all rights, AT&T acknowledges these provisions.

e. Placement guidelines

The City desires to promote cleanly organized and streamlined facilities using the smallest and least intrusive means available to provide wireless services to the community. Generally, a small wireless facility and/or wireless support structure shall match and be consistent with the materials and finish of the wireless support structure, adjacent City poles, and of the surrounding area adjacent to their location. In the absence of adjacent City poles, the wireless support structure shall match the materials and finish of the adjacent utility poles.

AT&T proposes to replace existing City-owned light poles with similar light poles incorporating the small cell facility into the replacement poles.

The following additional guidelines on placement shall apply:

Small wireless facilities and wireless support structures shall be located in a manner that does not impede, obstruct, or hinder usual public pedestrian or vehicular travel or public safety on a ROW.

The support structures are replacement light poles located five feet from the existing poles which do not impede, obstruct or hinder usual public pedestrian or vehicular travel or public safety on a ROW.

Small wireless facilities and wireless support structures shall be located in a manner that does not obstruct the legal use of a ROW by a utility provider.

This Application seeks approval for two replacement light poles located five feet from the existing poles in compliance with these provisions and will not obstruct the legal use of a ROW by a utility provider.

Small wireless facilities and wireless support structures shall be located in a manner that does not violate or conflict with the City Code of Ordinances, applicable laws and regulations, or these Guidelines.

To the extent not preempted by federal or state laws, regulations or orders, and while reserving all rights, AT&T acknowledges these provisions. AT&T's proposed facilities comply with the Guidelines and all applicable laws and regulations to the extent possible.

Small wireless facilities and wireless support structures shall be located in a manner that does not violate the federal Americans with Disabilities Act.

AT&T will comply federal Americans with Disabilities Act.

Small wireless facilities and wireless support structures shall be located in a manner that does not negatively impact the structural integrity of the associated wireless support structure.

This Application seeks approval for two replacement light poles in compliance with these provisions as evidenced by the structural reports submitted with the Application.

Small wireless facilities and wireless support structures shall be located in alignment with existing trees, utility poles, and streetlights.

AT&T's proposed facilities are in alignment with existing light poles and in fact, this Application seeks approval for two replacement light poles located five feet from the existing poles.

Small wireless facilities and wireless support structures shall be located with appropriate clearance from existing utilities.

As depicted on the Plans, the proposed replacement light poles located five feet from the existing poles will maintain appropriate clearances from existing utilities.

Small wireless facilities and wireless support structures shall be located so as not to be located along the frontage of any building deemed to be of historic significance on a federal, state, or local level.

As depicted on the Plans, the proposed replacement light poles located five feet from the existing poles will not be located along the frontage of any building.

Small wireless facilities and wireless support structures shall be located not within sight triangles at street intersections.

As depicted on the Plans, the proposed installations will be replacing existing light poles located five feet from the existing poles and not be located within sight triangles at street intersections.

New wireless support structures shall not be located directly in front of any existing residential, commercial or industrial structure.

As depicted on the Plans, the proposed installations will be replacements of existing light poles located five feet from the existing poles and will not be located directly in front of any existing residential, commercial or industrial structure.

To the greatest extent possible, new wireless support structures shall be located in line with existing lot lines or equidistance from any two existing structures. In areas of the City where multiple structures abut each other and/or where no side lot setback requirements exist, new wireless support structures shall not be located directly in front of an entrance or window of any existing structure.

As depicted on the Plans, the proposed installations will replace existing light poles and be five feet from the existing poles. AT&T is proposing to effectively collocate on existing light poles to be replaced in an area where AT&T must improve coverage and capacity for its network.

Tree "topping" or the improper pruning of trees is prohibited. Any proposed pruning or removal of trees, shrubs, or other landscaping already existing in the ROW must be noted in the application and must be approved by the City.

There are no trees in the area of the proposed installations.

I. Limitations

While the City fully intends to apply the Guidelines established in this policy uniformly to all small wireless facility applications, there may be circumstances where not every specific guideline may be met. In these cases, City staff will use its reasonable discretion in approving small wireless facilities permit applications that deviate from the strict application of this policy.

AT&T appreciates that City staff is required to use its reasonable discretion in approving small wireless facilities that deviate from the strict application of the guidelines. AT&T is committed to working cooperatively with the City of Lowell within the confines of state and federal laws, rules regulations and orders.

CONCLUSION

We respectfully assert that AT&T's proposed small cell facilities are reasonable and reasonably comply with the requirements of the City of Lowell in light of the TCA, the Order and state law. AT&T is willing to work cooperatively with the City of Lowell with respect the deployment of its small cell facilities and we look forward to your feedback. We respectfully submit that the standards as set forth in the Guidelines, as well as Massachusetts law relating to this Application must be interpreted and applied such that the decision issued by the City Council is in conformance with the TCA and the Order.

For the convenience of the City Council, we have provided a proposed Form of Order for your consideration.

If you have any questions, please don't hesitate to contact me. We look forward to presenting the Application at an upcoming meeting.

Sincerely,

BROWN RUDNICK LLP

/s/Edward D. Pare, Jr.__
Edward D. Pare, Jr., Esq.

Enclosures: Plans
Structural Report
Photosimulations
Emissions Report

Cc: Christine Clancy, P.E., Public Works Commissioner

ORDER FOR LOCATION FOR TELECOMMUNICATIONS WIRES AND WIRELESS ATTACHMENTS AND APPURTENANCES

By the City Council

Of the City of Lowell, Massachusetts, _____, 2020

ORDERED:

That pursuant to the federal Telecommunication Act of 1996 and Massachusetts General Laws, Chapter 166, NEW CINGULAR WIRELESS PCS, LLC ("AT&T") is hereby granted a location for and permission to construct and maintain telecommunications wires and wireless attachments and appurtenances, including fiber optic cable(s), remote radios and antennas, to be attached to two (2) replacement City of Lowell owned light poles, located upon, along and under the public ways within the City of Lowell, as substantially shown on the plans filed with said petition.

The forgoing permission is subject to the following condition: the telecommunications wires and wireless attachments and appurtenances shall be installed and operated in compliance with all applicable federal and state laws and regulations.

I hereby certify that the foregoing was adopted at a meeting of the City Council of the City of Lowell, Massachusetts, held on the _____ day of _____, 2020.

_____

City Clerk