



**PLANNING COMMISSION WORK SESSION AGENDA**  
**Monday, January 25, 2021 - 6:00 PM**  
**City Hall, Conference Room A, 169 SW Coast Hwy, Newport, OR 97365**

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This meeting will be held electronically. The public can live-stream this meeting at <https://newportoregon.gov>. To access the livestream, visit the Planning Commission page at <https://www.newportoregon.gov/citygov/comm/pc.asp>. Once there, an "in progress" note will appear if the meeting is underway; click on the "in progress" link to watch the livestream. It is not possible to get into a meeting that will be livestreamed before the meeting starts. The meeting will also be broadcast on Charter Channel 190.

Public comment may be made, via e-mail, by noon on the scheduled date of the meeting at [publiccomment@newportoregon.gov](mailto:publiccomment@newportoregon.gov). To make a "real time" comment during a meeting, a request to speak must be received by 2:00 P.M. on the scheduled date of the meeting. The request to speak should include the agenda item on which the requestor wishes to speak. If the comments are not related to a particular agenda item, the request to speak should include a notation that the request is for general public comment, and the general topic. The request should be e-mailed to [publiccomment@newportoregon.gov](mailto:publiccomment@newportoregon.gov). Once a request to speak has been received, staff will send the requestor the Zoom meeting link. This link will allow a requestor to participate via video or telephone.

The agenda may be amended during the meeting to add or delete items, change the order of agenda items, or discuss any other business deemed necessary at the time of the meeting.

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1. CALL TO ORDER
  
2. UNFINISHED BUSINESS
  
- 2.A Discuss Central Lincoln People's Utility District Comments on Draft Small Wireless (5G) Regulations and Design Standards for Public Rights-of-Way.  
[Memorandum](#)  
[Central Lincoln PUD Comments, dated 1-21-21](#)  
[Draft Chapter 9.25, Small Wireless Facilities](#)  
[Draft Small Wireless Facility Design Standards](#)

- 2.B **Second Review of Adjustments to Large Wireless and Other Telecommunications Land Use Standards, and Provisions for Small Wireless Facilities Outside of the Right-of-Way.**
  - [Memorandum](#)
  - [Draft Amendments to the Newport Municipal Code](#)
  - [Minutes from the 11-23-21 Planning Commission Work Session](#)
  - [PowerPoint Outlining Options for Amending Wireless Land Use Standards](#)
  
- 2.C **Updated Planning Commission Work Program.**
  - [PC Work Program - 1-25-21](#)
  
- 3. **NEW BUSINESS**
  
- 3.A **City of Newport COVID-19 Virtual, Hybrid, and In-Person Meeting Policy.**
  - [City of Newport Emergency Order No 2020-28](#)
  
- 4. **ADJOURNMENT**

# Memorandum

To: Planning Commission / Commission Advisory Committee  
From: Derrick I. Tokos, AICP, Community Development Director   
Date: January 22, 2021  
Re: Discuss Central Lincoln People's Utility District Comments on Draft Small Wireless (5G) Regulations and Design Standards for Public Rights-of-Way

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Enclosed are comments provided by Central Lincoln People's Utility District on the draft regulations and design standards that are to be presented to the City Council at its February 1, 2021 meeting. This work session item has been scheduled to provide the Commission and Advisory Committee an opportunity to review their feedback and determine if the group wants to recommend changes to the draft regulations or design standards before they are presented to the Council for adoption. I'll be prepared to discuss each of the points they have outlined, and would very much appreciate your thoughts on points 3 and 6 in particular. We might want to adjust the pole height limitation so that it better aligns with the small wireless facility definition and I'll mock up some language for the meeting.

#### Attachments

Central Lincoln PUD Comments, dated 1/21/21  
Draft Chapter 9.25, Small Wireless Facilities  
Draft Small Wireless Facility Design Standards

## Derrick Tokos

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**From:** Pettis, Jacob <JPettis@cencoast.com>  
**Sent:** Thursday, January 21, 2021 4:49 PM  
**To:** Derrick Tokos  
**Cc:** Hillebrand, Tyrell; Beckham, Donna  
**Subject:** RE: Small Wireless (5G) Regulatory Update

Derrick,

Thank you for the opportunity to look over this, we appreciate it.

There were a few items in your document that raised some possible concerns:

1. Oregon is not a FCC regulated state. Oregon is subject to the PUC requirements. Your document sites FCC rules in several places.
2. FCC timelines (shot clock) are not required by PUC, but we do have timelines built into our contracts with our Joint Use Attachees.
3. Pole height limitations- 50' maximum height. This requirement will prohibit us from allowing them to attach antennas to a significant number of existing wood poles. This would result in extra "communication only" poles to be added in the immediate area when an existing pole could have been replaced with one 5-10' taller. Central Lincoln currently has poles that exceed this 50' above ground limit within City limits. Would this exclude these poles from having antennas?
4. Pulling old poles within 30 days is not consistent with Oregon PUC guidelines. PUC typically allows 30 days for each transfer to take place. If there is more than one company attached the 30 days will be exceeded.
5. Decorative/ornamental poles- Light poles will need to meet Central Lincoln standards if we are to own and maintain these lights. We currently do not have any of these type poles. We can start looking for these type poles to meet future needs.
6. Permits- Having the communication companies apply for a City ROW permit for attaching to our pole that already has been approved to be in the ROW will create the need for 2 permits for each pole attachment. Is it necessary for them to get a permit from the City to attach to a Central Lincoln owned pole? Another option might be to set up a fee structure as part of your franchise agreement with them. Central Lincoln could provide an annual list of these installations within the City ROW so you can assess your fees.

Thanks again for letting us review this. If you have any follow up questions or need any clarification on any of this, please give me a call.

Sincerely,

*Jake Pettis*

**Distribution Engineering Supervisor**

Office: (541) 574-3639

[jpettis@cencoast.com](mailto:jpettis@cencoast.com)



## CHAPTER 9.25 SMALL WIRELESS FACILITIES

### 9.25.005 Purpose

The purpose of this Chapter is to establish reasonable and non-discriminatory policies and procedures for the placement of small wireless facilities in rights-of-way within the City’s jurisdiction, which will provide public benefit consistent with the preservation of the integrity, safe usage, and reasonable aesthetic qualities of the City rights-of-way and the City as a whole. In enacting this Chapter, the City is establishing uniform standards consistent with federal law to address the placement of small wireless facilities and associated poles in the rights-of-way, including without limitation, to manage the public rights-of-way in order to:

- A. prevent interference with the use of streets, sidewalks, alleys, parkways and other public ways and places; and
- B. prevent the creation of obstructions and other conditions that are hazardous to vehicular and pedestrian traffic; and
- C. prevent interference with the facilities and operations of facilities lawfully located in rights-of-way or public property; and
- D. protect against environmental damage, including damage to trees; and
- E. preserve the character of the community, historic districts or areas with decorative poles; and
- F. facilitate technology advancements, such as deployment of small wireless facilities, to provide the benefits of wireless services.

*Staff: This Section incorporates the purpose and intent language from the League of Oregon Cities Model Ordinance (“model ordinance”), dated June of 2020.*

### 9.25.010 Definitions

The following definitions apply in this chapter.

**Antenna** means the same as defined in 47 C.F.R. § 1.6002(b), as may be amended or superseded. The term includes an apparatus designed for the purpose of emitting radio frequencies (RF) to be operated or operating from a fixed location pursuant to Federal Communications Commission authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under 47 C.F.R. Part 15.

**Antenna Equipment** means the same as defined 47 C.F.R. § 1.6002(c), as may be amended or superseded, which defines the term to mean equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.

**Antenna Facility** means the same as defined in 47 C.F.R. § 1.6002(d), as may be amended or superseded, which defines the term to mean an antenna and associated antenna equipment.

**Applicable codes** means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or state or local amendments to those codes that are of general application and consistent with state and federal law.

**Applicant** means any person who submits an application as or on behalf of a wireless provider.

**Application** means requests submitted by an applicant (i) for permission to collocate small wireless facilities; or (ii) to approve the installation, modification or replacement of a structure on which to collocate a small wireless facility in the rights-of-way, where required.

**Collocate** means the same as defined in 47 C.F.R. § 1.6002(g), as may be amended or superseded, which defines that term to mean (1) mounting or installing an antenna facility on a preexisting structure, and/or (2) modifying a structure for the purpose of mounting or installing an antenna facility on that structure. "Collocation" has a corresponding meaning.

**Day** means calendar day. For purposes of the FCC shot clock, a terminal day that falls on a holiday or weekend shall be deemed to be the next immediate business day.

**Decorative pole** means a pole that is specially designed and placed for aesthetic purposes.

**Historic district** means a group of buildings, properties, or sites that are either: (1) listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register in accordance with Section VI.D.1a.i-v of the Nationwide Programmatic Agreement codified at 47 C.F.R. Part 1, Appendix C; or, (2) a design review district established pursuant to Chapter 14.30, or (3) historic buildings or sites listed in the Newport Comprehensive Plan as being significant

historical resources which should be preserved and regulated pursuant to Chapter 14.23.

*Staff: Adjusted the definition to include rights-of-way in design review districts (i.e. Nye Beach) and rights-of-way that may be a part of a historic site regulated under NMC Chapter 14.23.*

**Permissions** means a franchise agreement, building permit, right-of-way permit, business license or other authorization needed for SWF deployment.

**Person** means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the City.

**Pole** means a type of structure in the rights-of-way that is or may be used in whole or in part by or for wireline communications, electric distribution, lighting, traffic control, signage, or similar function, or for collocation of small wireless facilities; provided, such term does not include a tower, building or electric transmission structures.

**Rights-of-Way or "ROW"** means areas dedicated to the public and administered by the city for use for transportation purposes, including any city street, road, bridge, alley, sidewalk, trail, or path, and all other public ways and areas managed by the city. Rights-of-Way also includes public utility easements to the extent that the easement allows use by the utility operator planning to use or using the public utility easement. "Right-of-way" includes the subsurface under and airspace over these areas.

*Staff: Definition aligns with definition in Chapter 9.05 Utilities*

**Routine Maintenance** means inspections, testing, repair, and modifications subject to Section 6409(a) that maintain functional capacity, aesthetic and structural integrity of a small wireless facility and/or the associated pole or structure.

**Small wireless facility** means a facility that meets each of the following conditions per 47 C.F.R § 1.6002(l), as may be amended or superseded:

- A. The facilities (i) are mounted on structures 50 feet or less in height as measured from adjacent finished ground elevation, including the antennas, or (ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or (iii) do not extend existing structures on which they are located to a height of more than 50 feet above the finished ground elevation or by more than 10 percent, whichever is greater; and

*Staff: Added finished ground elevation reference to addresses concern raised by Commission members at the 10/12/20 work session, that the baseline point of measurement be called out in the definition.*

- B. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume; and
- C. All other wireless equipment associated with the structure, including wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume; and
- D. The facilities do not result in human exposure to radio frequency in excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).

**Structure** means the same as defined in 47 C.F.R. § 1.6002(m), as may be amended or superseded, which defines that term as a pole, tower, or base station, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of service).

**Wireless Infrastructure Provider** means any person, including a person authorized to provide communications service in the state, that builds or installs wireless communication transmission equipment, wireless facilities, but that is not a wireless services provider.

**Wireless Provider** means a wireless infrastructure provider or a wireless services provider.

**Wireless Services Provider** means a person who provides personal wireless services (whether or not it is comingled with other services).

*Staff: Except where staff comments are provided, definitions are verbatim from the model ordinance. "City Structure" is a defined term in the model ordinance that is not included because collocation interest is likely to be limited to City owned poles, and the term "pole" is defined.*

#### 9.25.015 Permit Required

Except as otherwise provided in this Chapter, no person shall place any small wireless facility, or a new, modified, or replacement pole for collocation of a small wireless facility, in rights-of-way without first obtaining a permit from the City of Newport.

*Staff: This Section addresses the permitted use and permission required components of the model ordinance.*

### 9.25.020 Application Requirements

An application filed pursuant to this Chapter shall be made by the wireless provider or its duly authorized representative on forms provided by the city, and shall contain the following:

- A. The applicant's name, address, telephone number, and e-mail address; and
- B. The names, addresses, telephone numbers, and e-mail addresses of all duly authorized representatives and consultants, if any, acting on behalf of the applicant with respect to the filing of the application; and
- C. A general description of the proposed small wireless facility and associated pole, if applicable. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the physical work proposed; and
- D. Site plans and engineering drawings to scale that identify the proposed small wireless facility; and
- E. Written narrative explaining how the application complies with small wireless facility design standards adopted by resolution of the Newport City Council.
- F. A copy of the wireless providers franchise agreement with the City of Newport; and
- G. A statement or other demonstration that the small wireless facility shall comply with all applicable codes, regulations and standards, including applicable FCC regulations for human exposure to RF emissions.

*Staff: This Section includes the submittal requirements recommended in the model code. It also includes a requirement that the provider possess a duly executed franchise agreement to operate within City rights-of-way. Added a requirement that applicants explain how a project complies with design standards following 10/12/20 work session. This should minimize potential miscommunication.*

### 9.25.025 Routine Maintenance and Replacement Exemption

An application for a permit pursuant to this Chapter shall not be required for routine maintenance or the replacement of a small wireless facility with another small wireless facility that is the same, or smaller in volume, weight and installed height. The City may require a permit for work within the right

of way as set forth in Chapter 9.10 or if the activity is regulated by building codes adopted by the City of Newport pursuant to Section 11.05.080.

*Staff: Similar to language in the model code. Removed the language "substantially similar" because its discretionary. Cross reference added to right-of-way permit chapter which lists regulated activities within the right-of-way and building codes to the extent that they are applicable. At the 10/12/20 work session, Commission members felt that the term "volume" is clearer than "size" and that the reference to "height" should be "installed height."*

#### 9.25.030 Approval Criteria

An application filed pursuant to this Chapter shall be approved unless the proposed small wireless facility, or new, modified, or replacement pole:

- A. Materially and demonstrably interferes with the safe operation of traffic control equipment; or
- B. Materially and demonstrably interferes with sight lines or clear zones for transportation or pedestrians; or
- C. Materially fails to comply with the Americans with Disabilities Act or similar federal, state, or local laws, standards and regulations regarding pedestrian access or movement; or
- D. Fails to comply with applicable codes, standards and regulations, including the City's design standards for small wireless facilities as adopted by City Council resolution; or
- E. Fails to comply with the provisions in this Chapter.

*Staff: Standards are consistent with the model code. Compliance with city adopted design standards is picked up under this Section.*

#### 9.25.035 Batch Applications

Applicants may include the proposed installation of multiple small wireless facilities, or new, modified, or replacement poles in a single, consolidated permit application.

*Staff: The FCC small cell order requires that local governments allow applications to be batched in this manner. This approach is also more efficient.*

#### 9.25.040 Decorative Poles and Historic Districts

Small wireless facilities that are proposed to be placed on a decorative pole or any structure within a historic district shall be designed to have a similar appearance, including coloring and design elements, if technically feasible, of the structure upon which it is being installed. New poles required to support the collocation of small wireless facilities shall be designed to have a similar appearance, including coloring and design elements, if technically feasible, of other poles in the rights-of-way within 500 feet of the proposed installation. Concealment measures used to comply with the above requirements shall not be considered part of the small wireless facility for purpose of the size restrictions in the definition of small wireless facility in Section 9.25.010.

*Staff: This Section combines a couple of elements of the model code and requires that small cell deployments have a similar appearance, color, and design elements as the structures upon which they are being installed. This may need more work to clarify expectations (and reduce discretion).*

#### 9.25.045 Permit Review Procedures

- A. No later than 10 calendar days after receipt of an application filed pursuant to this Chapter, the city shall determine whether or not the permit application is complete and notify the applicant, in writing, of any information that is missing, including the specific rule or regulation creating the obligation that such documents or information be submitted.
- B. Upon receipt of a complete permit application, the city shall either approve or deny the permit in accordance with the following timelines:
  1. Applications to collocate a small wireless facility on an existing structure: 60 days.
  2. Applications to deploy a small wireless facility using a new structure: 90 days.
- C. Review timelines outlined in this Section begin at the time of application. If an application is determined to be incomplete, then the timeline is tolled (i.e. the clock stops) when the applicant is informed, in writing, that information is missing. The timeline restarts at zero on the date that the missing information is submitted. If an applicant believes they have submitted all required information, they may indicate as much in writing and a decision on the permit application will be rendered considering the information that has been submitted.

*Staff: This Section addresses the FCC shot clock review timelines. In response to a question raised by the Commission at the 10/12/20 work*

*session, options 2 and 4 were deleted because they apply to deployment of wireless facilities not regulated by this chapter. Facilities other than small wireless are typically located outside of rights-of-way. The 30-day review timeline was reduced to 10-calendar days to comply with 47 C.F.R, Section 1.6003, which sets out an expedited review timeline for small wireless facilities. The change indicating that the timeline restarts at zero has also been made to align with the federal regulations.*

#### 9.25.050 Maximum Height Limitations

Any wireless provider that seeks to install, modify, or replace facilities on a pole in a right-of-way that exceeds 50-feet in height, as measured from adjacent finished ground elevation, shall be subject to applicable requirements of Title XIV of the Newport Municipal Code.

*Staff: Title XIV is the City of Newport Zoning Ordinance. Potential changes to the Zoning Ordinance that would apply to facilities of this nature will be presented at a future work session. Change picks up Commission request from the 10/12 work session that 50-feet means 50-feet from the ground up.*

#### 9.25.055 Authority Granted

A permit from the City authorizes an applicant to undertake only certain activities in accordance with this Chapter and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the rights-of-way.

*Staff: This language is recommended in the model code and will need to be reviewed by the City Attorney. This may be adequately addressed in the City's franchise code (NMC Chapter 9.05).*

#### 9.25.060 Permit Duration

- A. A permit for construction granted pursuant to this Section shall be valid for a period of 12-months after issuance unless the City agrees to extend this period for circumstances outside of the control of the permittee.
- B. The installed facility is subject to applicable relocation requirements, termination for material non-compliance after notice and a reasonable opportunity to cure, as outlined in Chapter 9.05. An applicant may terminate a permit at any time.

*Staff: The 12-month timeframe is consistent with the period of time that a right-of-way permit is valid (ref: Chapter 9.10). That provides administrative consistency, as a right-of-way permit will almost always be required in conjunction with the deployment of a small wireless facility. Issues under Subsection (B) are addressed in the City's franchise code. The same goes*

*for Section 7 of the League of Oregon Cities Model Ordinance. At the 10/12/20 work session, the Commission requested that the extension language be simplified to “circumstances outside of the control of the permittee.”*

#### 9.25.065 Collocation on City Owned Poles

- A. Small wireless facilities may be collocated on city owned poles in rights-of-way pursuant to this Chapter. No person will be permitted an exclusive arrangement or an arrangement which excludes otherwise qualified applicants to attach to city owned poles in the rights-of-way. A wireless provider seeking to collocate on a city owned pole is subject to the requirements of this Section.
- B. The City will provide a good faith estimate for any work reasonably necessary to make a specific city owned pole suitable for attachment of the requested small wireless facility (“make-ready work”), including pole replacement if necessary, within 60 days after receipt of a completed request. Make-ready work including any pole replacement shall be completed prior to the installation of the requested small wireless facility.
- C. City’s good faith estimate shall be limited to actual and direct costs required to meet applicable codes, or that may be reasonably necessary to avoid interference with other attachments on the pole.
- D. A wireless provider authorized to place a small wireless facility on a city-owned pole will pay to the City compensation for use of the rights-of-way and collocation at a rate established by City Council resolution.
- E. A wireless provider may remove one or more of its small wireless facilities at any time from a city owned pole with the required permits. The wireless provider will cease owing the City compensation, as of the date of removal, for such removed facilities.

*Staff: While most poles within rights-of-way are owned by non-city utilities, the City of Newport owns some light poles. They are located along the bayfront, SE 40<sup>th</sup> and SE Marine Science Drive. This Section was drafted specific to poles because other structures the City owns within the right-of-way, such as signs, will not be suitable for small cell deployment. The City’s franchise code does not clearly address collocation, so this Section is needed. It is closely aligned with the model ordinance. The model ordinance notes that the FCC has established a “safe harbor” limit on use of right-of-way and collocation to an aggregate annual rate that is not to exceed \$270 per small wireless facility. Annual use of right-of-way fees are established in the franchise code at 5% of gross revenue. This “gross revenue” approach to calculating franchise fees, may need to be adjusted*

*for small wireless deployments in order for the city to stay within the safe harbor limits.*

#### 9.25.070 Permit Fee

The fee for a permit application submitted in accordance with the provisions of this Chapter shall be due at the time the application is submitted, in the amount established by City Council resolution.

*Staff: This is consistent with the model ordinance and how the City establishes permit fees. The model ordinance notes that the FCC has established "safe harbor" limits on the fees local governments can charge. They are as follows: \$500 for up to the first five small wireless facilities in the same application, with an additional \$100 for each small wireless facility beyond five in the same application, or fees that are (1) a reasonable approximation of costs, (2) those costs themselves are reasonable, and (3) are nondiscriminatory. (2) \$1000 for the installation, modification or replacement of a pole together with the collocation of an associated small wireless facility in the rights-of-way that is a permitted use in accordance with this Chapter, or fees that are (1) a reasonable approximation of costs, (2) those costs themselves are reasonable, and (3) are nondiscriminatory.]*

DRAFT

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## Small Wireless Facility Design Standards

### A. Definitions.

The definition of terms listed in the NMC Section 9.25.010 of the City of Newport's Small Wireless Facility Ordinance apply to the design standards outlined below.

*Staff: Wireless providers should familiarize themselves with the ordinance, and including a cross reference to defined terms might help in that regard. Alternatively, we can replicate the definitions in this document.*

### B. General Requirements.

1. Ground-mounted equipment in the right-of-way is not permitted unless the applicant can demonstrate that pole-mounted equipment is not technically feasible, or the electric utility requires placement of equipment on the ground (such as an electric meter). If ground-mounted equipment is necessary, then the applicant shall conceal the equipment in a cabinet, in street furniture or with landscaping.

*Staff: The League of Oregon Cities (LOC) design standards list this as optional language. It can be difficult to accommodate ground-mounted equipment within rights-of-way, particularly those that are fully developed, as they can obstruct access to underground utilities and impede user mobility (e.g. blocking pedestrian access). Requiring the equipment be elevated where technically feasible is a reasonable requirement. As noted in the design standards, the term "technically feasible" is used by the FCC to describe when aesthetic standards may be found to be reasonable and do not materially inhibit the wireless providers ability to provide service. The term "Discouraged" was replaced with the more definitive "not permitted" at the Commission's suggestion during a 10/26/20 work session.*

2. Replacement poles, new poles and all antenna equipment shall comply with the Americans with Disabilities Act ("ADA"), city construction and sidewalk clearance standards and city, state and federal laws and regulations in order to provide a clear and safe passage within, through and across the right-of-way. Further, the location of any replacement pole, new pole, and/or antenna equipment must comply with applicable traffic requirements, not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices).

*Staff: Language mirrors the LOC design standards except for the reference to "and not adversely affect public health, safety or welfare," as that phrase is too open ended. Standards need to be specific enough that applicants know how to comply with them.*

3. Replacement poles shall be located as near as feasible to the existing pole. The abandoned pole must be removed within 30 days, unless an alternative timeline is agreed to, in writing, by the City engineer, or designee.

*Staff: This language aligns with the abandonment provisions outlined in NMC Section 9.05.280 of the City's franchise code.*

4. Any replacement pole shall substantially conform to the material and design of the existing pole or adjacent poles located within the contiguous right-of-way unless a different design is requested and approved pursuant to Section H.
5. No advertising, branding or other signage is allowed unless approved by the City as a concealment technique or as follows:
  - a. Safety signage as required by applicable laws, regulations, and standards; and,
  - b. Identifying information and 24-hour emergency telephone number (such as the telephone number for the operator's network operations center) on wireless equipment in an area that is visible.

*Staff: The language in (4) and (5) above aligns with what is contained in the LOC design standards. Safety signage is likely to be most relevant for colocation on poles with overhead utility lines. That issue is specifically addressed by Central Lincoln PUD. The city could require that signage be legible when viewed from the ground; however, that could lead to large lettering that runs counter to concealment objectives, particularly for units mounted at the upper end of the 50-foot height limit.*

6. The total volume of multiple antennas on one structure shall not exceed fifteen (15) cubic feet, unless additional antenna volume is requested and approved pursuant to Section H.

*Staff: The "Small Wireless Facility" definition limits antenna, excluding associated equipment, to three cubic feet in volume.*

7. Antennas and antenna equipment shall not be illuminated except as required by municipal, federal or state authority, provided this shall not preclude deployment on a new or replacement street light.
8. Small wireless facilities may not displace any existing street tree or landscape features unless such displaced street tree or landscaping is replaced in accordance with the City's adopted Tree Manual.

*Staff: The language in (7) above aligns with the LOC design standards. Removal of trees within the right-of-way is governed by the City's right-of-way permitting process that relies upon an adopted Tree Manual. The language in (8) has been drafted to be consistent. Language streamlined to simply reference the Tree Manual per the Commission's suggestion at the 10/26/20 work session.*

### C. Small Wireless Facilities Attached to Wooden Poles and Non-Wooden Poles with Overhead Lines.

Small wireless facilities located on wooden utility poles and non-wooden utility poles with overhead lines shall conform to the following design criteria unless a deviation is requested and approved pursuant to Section H:

1. Proposed antenna and related equipment shall meet:
  - a. The City's design standards for small wireless facilities;
  - b. The pole owner requirements; and
  - c. National Electric Safety Code ("NESC") and National Electric Code ("NEC") standards.
2. The pole at the proposed location may be replaced with a taller pole or extended for the purpose of accommodating a small wireless facility; provided that the replacement or extended pole, together with any small wireless facility, does not exceed 50 feet in height or 10 percent taller than the height of adjacent poles, whichever is greater. The replacement or extended pole height may be increased if required by the pole owner, and such height increase is the minimum necessary to provide sufficient separation and/or clearance from electrical and wireline facilities. Such replacement poles may either match the approximate color and materials of the replaced pole or shall be the standard new pole used by the pole owner in the city.
3. To the extent technically feasible, antennas, equipment enclosures, and all ancillary equipment, boxes, and conduit shall match the approximate material and design of the surface of the pole or existing equipment on which they are attached, or adjacent poles located within the contiguous right-of-way. Near matches may be permitted by the City when options are limited by technical feasibility considerations, such as when high-frequency antennas cannot be placed within an opaque shroud but could be wrapped with a tinted film.
4. Antennas which are mounted on poles shall be mounted as close to the pole as technically feasible and allowed by the pole owner.
5. No antenna shall extend horizontally more than 20 inches past the outermost mounting point (where the mounting hardware connects to the antenna), unless additional antenna space is requested and approved pursuant to Section H.
6. Antenna equipment, including but not limited to radios, cables, associated shrouding, disconnect boxes, meters, microwaves and conduit, which is mounted on poles shall be mounted as close to the pole as technically feasible and allowed by the pole owner.
7. Antenna equipment for small wireless facilities must be attached to the pole, unless otherwise required by the pole owner or permitted to be ground-mounted [pursuant to subsection (B)(1) above]. The equipment must be placed in an enclosure reasonably related in size to the intended purpose of the facility.

*Staff: The language above aligns with the LOC design standards. At the 10/26/20 work session the Commission expressed concern about the consistency of the 10% provision in C.2. Clarifying language has been added. This provision aligns with the definition of "small wireless facility" in the FCC Small Cell Order and is required by that order.*

8. All cables and wiring shall be covered by conduits and cabinets to the extent that it is technically feasible, if allowed by pole owner. The number of conduits shall be minimized to the extent technically feasible.

**D. Small Wireless Facilities Attached to Non-Wooden Light Poles and Non-Wooden Utility Poles without Overhead Utility Lines.**

Small wireless facilities attached to existing or replacement non-wooden light poles and non-wooden utility poles without overhead lines shall conform to the following design criteria unless a deviation is requested and approved pursuant to Section H:

1. All equipment (excluding disconnect switches), conduit and fiber must be fully concealed within the pole, if technically feasible. The antennas must be camouflaged to appear as an integral part of the pole or be mounted as close to the pole as feasible.
2. In cases where the applicant demonstrates that it is not technically feasible to conceal equipment within the pole, then the antennas and associated equipment enclosures must be camouflaged to appear as an integral part of the pole or be mounted as close to the pole as feasible and must be reasonably related in size to the intended purpose of the facility and reasonable expansion for future frequencies and/or technologies, not to exceed the volumetric requirements described in Section A. If the equipment enclosure(s) is mounted on the exterior of the pole, the applicant is encouraged to place the equipment enclosure(s) behind any decorations, banners or signs that may be on the pole. Conduit and fiber must be fully concealed within the pole, if technically feasible.

*Staff: The LOC design standards indicate that municipalities may want to consider one or both of these concepts. This version includes both. If it is technically feasible to locate equipment within a pole then they will be required to go that route. Otherwise, they can mount to the exterior of the pole and camouflage. Note that, at this time, all antennas will be exterior mounted. Central Lincoln PUD has indicated that the acorn style ornamental poles are not designed to accommodate the additional weight of wireless equipment, and at 14-ft, 6-in height they are not tall enough to be an attractive collocation option. Pole options can change though, so I don't know that it is relevant to the adoption of an initial set of design standards. The term "if technically feasible" was added at the Commission's request during the 10/26/20 work session so it is clear that camouflage is only an option if conduit and fiber cannot be placed in the pole.*

3. Any replacement pole shall substantially conform to the material and design of the existing pole or adjacent poles located within the contiguous right-of-way unless a different design is requested and approved pursuant to Section H.
4. The height of any replacement pole may not extend more than 10 feet above the height of the existing pole, unless such further height increase is required in writing by the pole owner.

*Staff: The language in (3) and (4) aligns with the LOC design standards.*

#### **E. New Poles.**

Small wireless facilities may be attached to new poles that are not replacement poles under sections C or D, installed by the wireless provider, subject to the following criteria:

1. Antennas, antenna equipment and associated equipment enclosures (excluding disconnect switches), conduit and fiber shall be fully concealed within the structure. If such concealment is not technically feasible, or is incompatible with the pole design, then the antennas and associated equipment enclosures must be camouflaged to appear as an integral part of the structure or mounted as close to the pole as feasible, and must be reasonably related in size to the intended purpose of the facility, not to exceed the volumetric requirements for small wireless facilities.
2. To the extent technically feasible, all new poles and pole-mounted antennas and equipment shall substantially conform to the material and design of adjacent poles located within the contiguous right-of-way unless a different design is requested and approved pursuant to Section H.
3. New poles shall be no more than forty (40) feet in height unless additional height is requested and approved pursuant to Section H.
4. The city prefers that wireless providers install small wireless facilities on existing or replacement poles instead of installing new poles, unless the wireless provider can document that installation on an existing or replacement pole is not technically feasible or otherwise not possible (due to a lack of owner authorization, safety considerations, or other reasons acceptable to the City engineer, or designee).

*Staff: The above language aligns with the LOC design standards. As noted in the LOC design standards, small cell deployments work best at 35-45-feet in height, so a 40-foot height limitation for new poles should be fine. Language in (4) should help with pole clutter, which could be an issue in areas where existing ornamental lights cannot accommodate collocation of small wireless facilities.*

#### **F. Historic District Requirements.**

Small wireless facilities or poles to support collocation of small wireless facilities located in Historic Districts shall be designed to have a similar appearance, including material and design elements, if technically feasible, of other poles in the rights-of-way within 500 feet of the proposed installation. Any such design or concealment measures may not be considered part of the small wireless facility for purpose of the size restrictions in the definition of small wireless facility.

*Staff: The above language aligns with the LOC design standards.*

### G. Strand Mounted Equipment.

Strand mounted small wireless facilities, designed to fit onto existing aerial cables, are permitted, subject to the following criteria:

1. Each strand mounted antenna shall not exceed 3 cubic feet in volume, unless a deviation is requested and approved pursuant to Section H.
2. Only 2 strand mounted antennas are permitted between any two existing poles.
3. Strand mounted devices shall be placed as close as possible to the nearest pole and in no event more than five feet from the pole unless a greater distance is required by the pole owner.
4. No strand mounted device will be located in or above the portion of the roadway open to vehicular traffic.
5. Strand mounted devices must be installed with the minimum excess exterior cabling or wires (other than original strand) to meet the technological needs of the facility.

*Staff: The above language aligns with the LOC design standards.*

### H. Deviation from Design Standards.

1. An applicant may obtain a deviation from these design standards if they demonstrate, in writing, that compliance with the standard:
  - a. is not technically feasible; or
  - b. impedes the effective operation of the small wireless facility; or
  - c. impairs a desired network performance objective; or
  - d. conflicts with pole owner requirements; or
  - e. otherwise materially inhibits or limits the provision of wireless service.
2. When requests for deviation are sought under subsections (H)(1)(a)-(e), the request must be narrowly tailored to minimize deviation from the requirements of these design standards, and the City engineer, or designee, must find the applicant's proposed design provides similar aesthetic value when compared to strict compliance with these standards.
3. City engineer, or designee, may also allow for a deviation from these standards when he/she finds the applicant's proposed design provides equivalent or superior aesthetic value when compared to strict compliance with these standards.
4. The small wireless facility design approved under this Section H must meet the conditions of 47 C.F.R. Sec. 1.6002(l).
5. City engineer, or designee, will review and may approve a request for deviation to the minimum extent required to address the applicant's needs or facilitate a superior design. Such approval shall be in writing, and shall include the reason(s) for the deviations.

*Staff: The above language aligns with the LOC design standards, including the recommendation that municipalities document their rationale for granting requests to deviate from design standards.*

## Appendix A: Definitions

The following definitions apply to these design standards.

**Antenna** means the same as defined in 47 C.F.R. § 1.6002(b), as may be amended or superseded. The term includes an apparatus designed for the purpose of emitting radio frequencies (RF) to be operated or operating from a fixed location pursuant to Federal Communications Commission authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under 47 C.F.R. Part 15.

**Antenna Equipment** means the same as defined 47 C.F.R. § 1.6002(c), as may be amended or superseded, which defines the term to mean equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.

**Antenna Facility** means the same as defined in 47 C.F.R. § 1.6002(d), as may be amended or superseded, which defines the term to mean an antenna and associated antenna equipment.

**Applicable codes** means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or state or local amendments to those codes that are of general application and consistent with state and federal law.

**Applicant** means any person who submits an application as or on behalf of a wireless provider.

**Application** means requests submitted by an applicant (i) for permission to collocate small wireless facilities; or (ii) to approve the installation, modification or replacement of a structure on which to collocate a small wireless facility in the rights-of-way, where required.

**Collocate** means the same as defined in 47 C.F.R. § 1.6002(g), as may be amended or superseded, which defines that term to mean (1) mounting or installing an antenna facility on a preexisting structure, and/or (2) modifying a structure for the purpose of mounting or installing an antenna facility on that structure. "Collocation" has a corresponding meaning.

**Day** means calendar day. For purposes of the FCC shot clock, a terminal day that falls on a holiday or weekend shall be deemed to be the next immediate business day.

**Decorative pole** means a pole that is specially designed and placed for aesthetic purposes.

**Historic district** means a group of buildings, properties, or sites that are either: (1) listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register in accordance with Section VI.D.1a.i-v of the Nationwide Programmatic Agreement codified at 47 C.F.R. Part 1, Appendix C; or, (2) a design review district established pursuant to Chapter 14.30, or (3) historic buildings or sites listed in the Newport Comprehensive Plan as being significant historical resources which should be preserved and regulated pursuant to Chapter 14.23.

**Permissions** means a franchise agreement, building permit, right-of-way permit, business license or other authorization needed for SWF deployment.

**Person** means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the City.

**Pole** means a type of structure in the rights-of-way that is or may be used in whole or in part by or for wireline communications, electric distribution, lighting, traffic control, signage, or similar function, or for collocation of small wireless facilities; provided, such term does not include a tower, building or electric transmission structures.

**Rights-of-Way or "ROW"** means areas dedicated to the public and administered by the city for use for transportation purposes, including any city street, road, bridge, alley, sidewalk, trail, or path, and all other public ways and areas managed by the city. Rights-of-Way also includes public utility easements to the extent that the easement allows use by the utility operator planning to use or using the public utility easement. "Right-of-way" includes the subsurface under and airspace over these areas.

**Routine Maintenance** means inspections, testing, repair, and modifications subject to Section 6409(a) that maintain functional capacity, aesthetic and structural integrity of a small wireless facility and/or the associated pole or structure.

**Small wireless facility** means a facility that meets each of the following conditions per 47 C.F.R § 1.6002(f), as may be amended or superseded:

- A. The facilities (i) are mounted on structures 50 feet or less in height as measured from adjacent finished ground elevation, including the antennas, or (ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or (iii) do not extend existing structures on which they are located to a height of more than 50 feet above the finished ground elevation or by more than 10 percent, whichever is greater; and
- B. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume; and
- C. All other wireless equipment associated with the structure, including wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume; and
- D. The facilities do not result in human exposure to radio frequency in excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).

**Structure** means the same as defined in 47 C.F.R. § 1.6002(m), as may be amended or superseded, which defines that term as a pole, tower, or base station, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of service).

**Wireless Infrastructure Provider** means any person, including a person authorized to provide communications service in the state, that builds or installs wireless communication transmission equipment, wireless facilities, but that is not a wireless services provider.

**Wireless Provider** means a wireless infrastructure provider or a wireless services provider.

**Wireless Services Provider** means a person who provides personal wireless services (whether or not it is comingled with other services).

DRAFT



# City of Newport

## Community Development Department

# Memorandum

To: Planning Commission / Commission Advisory Committee  
From: Derrick I. Tokos, AICP, Community Development Director   
Date: January 22, 2021  
Re: Review of Land Use Regulatory Options for Wireless Telecommunication Facilities

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Enclosed is a draft set of amendments to the Newport Municipal Code that implement targeted changes that the Planning Commission asked staff to develop coming out of November 23, 2020 work session. For your convenience, I am including a copy of the minutes from that meeting and the PowerPoint presentation that summarized the City's existing regulations, FCC limitations, and approaches being taken by other local governments in Oregon.

If the changes are acceptable as is, or with minor revisions, then the Commission could initiate the legislative process at its regular meeting. A public hearing would then be scheduled for February 22, 2021 or March 8, 2021.

#### Attachments

Draft Amendments to the Newport Municipal Code  
Minutes from the 11/23/21 Planning Commission Work Session  
PowerPoint Outlining Options for Amending Wireless Land Use Standards

(New language is shown with a double underline, and text to be removed is depicted with ~~strikethrough~~. Staff comments, in italics, are provided for context and are not a part of the proposed amendments.)

## CHAPTER 10.10 SIGNS

\*\*\*

### 10.10.045 Prohibited Signs

No sign shall be constructed, erected, or maintained:

\*\*\*

L. That are attached to standalone antennas, cell towers, electrical transmission towers, telephone or electric line poles and other public utility types of structures or structural parts, where allowed by this Ordinance, except for warning and safety signage as provided in Section 10.10.060.

### 10.10.060 Partially Exempt Signs

A. The following signs are exempt from the permit requirement and, except as expressly provided to the contrary, do not count towards maximum display area:

\*\*\*

8. Warning and safety signage attached to standalone antennas, cell towers, electrical transmission towers, telephone or electric line poles and other public utility types of structures or structural parts with a surface area of no more than three square feet.

## CHAPTER 10.15 AGATE BEACH SIGN REGULATIONS

### 10.15.020 Exempt Signs

The following signs and devices shall not be subject to the provisions of this chapter.

\*\*\*

I. Warning and safety signage attached to standalone antennas, cell towers, electrical transmission towers, telephone or electric line poles and other public utility types

of structures or structural parts with a surface area of no more than three square feet.

*Staff: The changes above are intended to prohibit signage on communication facilities unless it is needed for safety purposes. The Planning Commission expressed an interest in seeing such language at its 11/23/20 work session. Section 10.10 applies to all areas in the city limits except for the Agate Beach Neighborhood, which is addressed under Section 10.15.*

## TITLE XIV - ZONING

\*\*\*

### 14.01.020 Definitions

As used in this ordinance, the masculine includes the feminine and neuter, and the singular includes the plural. The following words and phrases, unless the context otherwise requires, shall mean:

\*\*\*

Small wireless facility means a facility that meets each of the following conditions per 47 C.F.R § 1.6002(l), as may be amended or superseded:

- A. The facilities (i) are mounted on structures 50 feet or less in height as measured from adjacent finished ground elevation, including the antennas, or (ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or (iii) do not extend existing structures on which they are located to a height of more than 50 feet above the finished ground elevation or by more than 10 percent, whichever is greater; and
- B. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume; and
- C. All other wireless equipment associated with the structure, including wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume; and

D. The facilities do not result in human exposure to radio frequency in excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).

*Staff: Definition has been added to the zoning code so that it can be distinguished from other communication facilities.*

\*\*\*

14.03.060 Commercial and Industrial Districts.

The uses allowed within each commercial and industrial zoning district are classified into use categories on the basis of common functional, product, or physical characteristics.

\*\*\*

E. Institutional and Civic Use Categories

\*\*\*

1. Basic Utilities and Roads

- a. Characteristics. Basic utilities and Roads are infrastructure services which need to be located in or near the area where the service is provided. Basic Utility and Road uses generally do not have regular employees at the site. Services may be public or privately provided.
- b. Examples. Examples include water and sewer pump stations; sewage disposal and conveyance systems; electrical substations; water towers and reservoirs; water quality and flow control devices. Water conveyance systems; stormwater facilities and conveyance systems; telephone exchanges; suspended cable transportation systems; bus stops or turnarounds; local, collector and arterial roadways; and highway maintenance.
- c. Exceptions.
  - i. Services where people are generally present, other than bus stops or turnarounds, are classified as Community Services or Offices.

- ii. Utility offices where employees or customers are generally present are classified as Offices.
- iii. Bus barns are classified as Warehouse and freight movement.
- iv. Public or private passageways, including easements for the express purpose of transmitting or transporting electricity, gas, oil, water, sewage, communication signals, or other similar services on a regional level are classified as Utility Corridors.

\*\*\*

## 8. Communication Facilities

- a. Characteristics. Includes facilities designed to provide signals or messages through the use of electronic and telephone devices. Includes all equipment, machinery, structures (e.g. towers) or supporting elements necessary to produce signals.
- b. Examples. Examples include broadcast towers, communication/cell towers, and point to point microwave towers.
- c. Exceptions.
  - i. Receive only antennae are not included in this category.
  - ii. Radio and television studios are classified in the Office category.
  - iii. Radio Frequency Transmission Facilities that are public safety facilities and small wireless facilities are classified as Basic Utilities. Small wireless facilities shall be subject to design standards as adopted by resolution of the City Council.

*Staff: This change will classify small wireless facilities as "Basic Utilities" making them a use that is permitted in the C-2 zone. This will also make them permissible, subject to conditional use review, in the W-2 zone. All other communication facilities will continue to be prohibited in C-2*

*and W-2 zoned areas. At its 11/23/20 work session, the Commission expressed a desire to stick with existing land use parameters for communication facilities, except small wireless, which it wanted to treat similar to the new rules that apply to small wireless deployments in rights-of-way. These changes carry out that intent. Small wireless outside rights-of-way will be subject to design standards, just like deployments within rights-of-way.*

#### 14.03.070 Commercial and Industrial Uses.

The following list sets forth the uses allowed within the commercial and industrial land use categories.

"P" = Permitted uses.

"C" = Conditional uses; allowed only after the issuance of a conditional use permit.

"X" = Not allowed.

		C-1	C-2* <sup>1</sup>	C-3	I-1	I-2	I-3
1.	Office	P	X	P	P	P	X
2.	Retails Sales and Service						
	a. Sales-oriented, general retail	P	P	P	P	P	C
	b. Sales-oriented, bulk retail	C	X	P	P	P	C
	c. Personal Services	P	C	P	P	C	X
	d. Entertainment	P	P** <sup>2</sup>	P	P	C	X
	e. Repair-oriented	P	X	P	P	P	X
3.	Major Event Entertainment	C	C	P	P	C	X
4.	Vehicle Repair	X	X	P	P	P	X
5.	Self-Service Storage	X	X	P	P	P	X
6.	Parking Facility	P	P	P	P	P	P
7.	Contractors and Industrial Service	X	X	P	P	P	P
8.	Manufacturing and Production						
	a. Light Manufacturing	X	X	C	P	P	P
	b. Heavy Manufacturing	X	X	X	X	C	P
9.	Warehouse, Freight Movement, & Distribution	X	X	P	P	P	P
10.	Wholesale Sales	X	X	P	P	P	P
11.	Waste and Recycling Related	C	C	C	C	C	C
12.	Basic Utilities and Roads <sup>3</sup>	P	P	P	P	P	P
13.	Utility, Road and Transit Corridors	C	C	C	C	C	C
14.	Community Service	P	C	P	P	C	X
15.	Daycare Facility	P	C	P	P	P	X

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16.	Educational Institutions						
	a. Elementary & Secondary Schools	C	C	C	X	X	X
	b. College & Universities	P	X	P	X	X	X
	c. Trade/Vocational Schools/Other	P	X	P	P	P	P
17.	Hospitals	C	C	C	X	X	X
18.	Courts, Jails, and Detention Facilities	X	X	P	C	X	X
19.	Mining						
	a. Sand & Gravel	X	X	X	X	C	P
	b. Crushed Rock	X	X	X	X	X	P
	c. Non-Metallic Minerals	X	X	X	X	C	P
	d. All Others	X	X	X	X	X	X
20.	Communication Facilities <sup>4</sup>	P	X	P	P	P	P
21.	Residences on Floors Other than Street Grade	P	P*	P	X	X	X

*~~\*Uses in excess of 2,000 square feet of gross floor area are Conditional Uses within the Historic Nye Beach Design Review District. Residential Uses within the Historic Nye Beach Design Review District are subject to limitations as set forth in NMC Chapter 14.30.~~*

*~~\*\* Recreational Vehicle Parks are prohibited on C-2 zoned property within the Historic Nye Beach Design Review District.~~*

1. Any new or expanded outright permitted commercial use in the C-2 zone district that exceeds 2,000 square feet of gross floor area. New or expanded uses in excess of 2,000 square feet of gross floor area may be permitted in accordance with the provisions of Chapter 14.34, Conditional Uses. Residential uses within the C-2 zone are subject to special zoning standards as set forth in Section 14.30.100.

2. Recreational Vehicle Parks are prohibited on C-2 zoned property within the Historic Nye Beach Design Review District.

3. Small wireless facilities shall be subject to design standards as adopted by City Council resolution.

4. Communication facilities located on historic buildings or sites, as defined in Section 14.23, shall be subject to conditional use review for compliance with criteria outlined in Sections 14.23 and 14.34.

*Staff: Footnotes 1 and 2 reference existing code provisions and were previously identified with asterisks. Footnote 3 reinforces the requirement that small wireless facilities are subject to design standards and Footnote 4 points out that Conditional Use Review is required for communication facilities on historic sites or buildings. The Commission requested such language at its 11/23/20 work session.*

## CHAPTER 14.10 HEIGHT LIMITATIONS AND COMMUNICATION FACILITY STANDARDS

### 14.10.010 Height Limitations

A building, structure, or portion thereof hereafter erected shall not exceed the height listed in Table A for the zone indicated except as provided for in [Sections 14.10.020](#), General Exceptions to Building Height Limitations and [14.10.030](#), Special Exceptions to Building Height Limitations.

### 14.10.020 General Exceptions to Building Height Limitations

- A. The following types of structures or structural parts are not subject to the building height limitations of this Code as long as the square footage of said structure or structural part is no greater than 5% of the main building foot print as shown on the site plan, or 200 square feet, whichever is less: chimneys, cupolas, church spires, belfries, domes, transmission towers, smokestacks, flag poles, radio and television towers, elevator shafts, conveyors and mechanical equipment.
- B. No structure or structural part excepted under Subsection (A) from the building height limitations of this Code, whether freestanding or attached to another structure or structural part, may exceed the maximum allowable height by more than 25% unless approved by the Planning Commission per section 14.10.030.
- C. Standalone antennas, cell towers, electrical transmission towers, telephone or electric line poles and other public utility types of structures or structural parts, where allowed by this Ordinance, are limited in height to 50 feet in R-1, R-2, R-3, R-4, W-1, W-2, and C-2 zones; 100 feet in the P-1, C-1 and C-3 zones; 150 feet in the I-1, I-2 and I-3 zones, except as modified by height buffer provisions of Section 14.18.010 or the airport zone height Limitations of Section 14.22.030. A taller structure or structural part referenced under this subsection may be allowed upon the issuance of a conditional use permit per ~~Section 14.33~~ Section 14.34 of this Code.

*Staff: These changes add cross-references to other, existing applicable provisions to assist staff and others. The height buffer provisions limit the height of communication facilities when located close to residential*

*areas. The airport zone height limits are for safety purposes, protecting the approach zones to the Municipal Airport.*

- D. A stand-alone structure or portion of a building designed for vertical evacuation from a tsunami where the property upon which the structure or building is located is situated south of the Yaquina Bay Bridge within the "XXL" tsunami inundation area boundary, as depicted on the maps titled "Local Source (Cascadia Subduction Zone) Tsunami Inundation Map Newport North, Oregon" and "Local Source (Cascadia Subduction Zone) Tsunami Inundation Map Newport South, Oregon" produced by the Oregon Department of Geology and Mineral Industries (DOGAMI), dated February 8, 2013 (i.e. the tsunami inundation maps), provided:
1. Evacuation assembly areas shall provide at least 10 square feet of space per occupant. Vertical-evacuation assembly areas that are incorporated into a building shall be sized to accommodate the occupant load of the assembly spaces in building plus half of the occupant load of the remainder of the building; for stand-alone structures, the assembly area shall be sized to accommodate the occupant load of nearby building(s) and/or assembly area(s) to which it is associated; and
  2. Ingress/egress to the evacuation assembly area shall be signed in a manner consistent with state and/or federal guidelines for the identification of such facilities; and
  3. Plans and specifications, stamped by an architect or engineer licensed in the State of Oregon, establish that the structure is of sufficient height and has been designed to withstand an earthquake and wave forces attributable to an "XXL" tsunami event as depicted on the tsunami inundation maps; and
  4. An architect or engineer licensed in the State of Oregon is retained by the applicant or land owner to perform structural observations during the course of construction. Prior to issuance of a building permit, the observer shall submit a written statement identifying the frequency and extent of the structural observations to be performed. At the conclusion of the work and prior to issuance of a certificate of occupancy, the structural

observer shall submit a statement that the site visits were performed and that any deficiencies identified as a result of those observations were addressed to their satisfaction.

- E. Except as provided in Section 14.10.020(D), no structure or structural part excepted under this section from the building height limitations of this Code may be used for human habitation.

#### 14.10.030 Special Exceptions to Building Height Limitations

Any person seeking a special exception to the building height limitations of this Code shall do so by applying for an adjustment or variance as described in [Section 14.33](#) of this Code, and consistent with [Section 14.52](#), Procedural Requirements.\*\*

#### 14.10.040 Communication Facilities

New communication facilities shall satisfy the following standards:

- A. Building plans for freestanding communication facilities shall be accompanied by a colocation feasibility study that satisfies the following requirements.
1. Documents that colocation on existing structures within a radius of at least 2,000 feet has been considered and is technologically unfeasible or unavailable. Such documentation shall identify the reasons why colocation is not an option, which may include structural support limitations, safety considerations, lack of available space, failure to meet service coverage needs, or unreasonable economic constraints; and
  2. Is supported by engineering analysis establishing that the support structure is designed to accommodate collocation of at least two additional providers either outright or through future modification to the structure.

- B. Communication facilities located on historic buildings or sites, as defined in Section 14.23, shall be subject to conditional use review for compliance with criteria outlined in Sections 14.23 and 14.34.
- C. A copy of the applicant's FCC license and/or construction permit shall be submitted, if an FCC license and/or construction permit is required for the proposed facility, including documentation showing that the applicant is in compliance with all FCC RF emissions safety standards.
- D. Freestanding communication facilities that exceed the maximum building height of the zone district, as set forth in Section 14.10.10, Table A, shall be enclosed by security fencing not less than six feet in height.

*Staff: The standards above are intended to implement the targeted changes the Commission requested at its 11/23/20 work session. If adopted, applicants looking to construct freestanding communication facilities will be required to document that they explored colocation opportunities and have designed the facility to accommodate colocation by other providers. They will also be required to show that they have demonstrated to the FCC that the facility conforms to federal RF emission requirements. The conditional use permit requirement, noted in the above chart, is codified in this section. The last provision requires security fencing if the freestanding structure exceeds the typical height limits in Table A. There was some interest in dealing with abandoned poles. That is not typically addressed in land use codes, and the City's nuisance and building code authority is likely sufficient to address the issue should it come up in the future.*

**MINUTES**  
**City of Newport Planning Commission**  
**Work Session**  
**Newport City Hall Council Chambers by Video Conference**  
**November 23, 2020**  
**6:00 p.m.**

**Planning Commissioners Present by Video Conference:** Jim Patrick, Lee Hardy, Bob Berman, Jim Hanselman, Bill Branigan, Mike Franklin, and Gary East.

**PC Citizens Advisory Committee Members Present by Video Conference:** Greg Sutton, and Braulio Escobar.

**PC Citizens Advisory Committee Members Absent:** Dustin Capri (*excused*)

**City Staff Present:** Community Development Director (CDD) Derrick Tokos; and Executive Assistant, Sherri Marineau.

1. **Call to Order.** Chair Patrick called the Planning Commission work session to order at 6:02 p.m.
2. **Unfinished Business.**
  - A. **Updated Draft of Small Wireless Facility Design Standards.** Tokos reviewed the changes from the last work session meeting that were shown in the draft, and asked for comments. None were heard. Tokos noted that there was an action item on the night's regular session meeting to give a recommendation on the standards to the City Council so they could take this up in an ordinance.
3. **New Business.**
  - A. **Review of Land Use Regulatory Options for Wireless Telecommunication Facilities.** Tokos reviewed the PowerPoint slides. The Commission would review the provisions that were commonly applied by local governments through their land use regulations, and determining which ones they were concerned about so draft could be packaged for future review.

Tokos reviewed Newport's existing standards. He explained that towers were permitted outright as communication facilities in C-1, C-3, industrial and public zones. They weren't allowed in tourist commercial, water related zones, and residential zones. The height limits were 150 feet in industrial, and 100 feet in commercial and public zones. Tokos noted that there were more stringent height limitations if the property was adjacent to a residential zone. The height limit was scalable depending on how close it was to the residential zone. Tokos noted that towers weren't typically placed near residential zones and didn't think this was much of an issue.

Tokos explained how antennas were allowed as accessory uses on non-residential buildings as long as they did not exceed 25% of the maximum allowable building height. Berman asked if a building was 50 feet high, could they have a 12.5 foot tower on top of the building. Tokos confirmed they could. Berman asked if a building was 10 feet high, could they have a 12.5 foot tower. Tokos confirmed they could because this would be under the building height limit. Patrick questioned if there was a federal law that gave an exception for free standing ham antennas up to 50 feet in residential zones. Tokos wasn't sure but explained that this review focused on the commercial aspect, not the residential use. It set up the parameters for what they could and couldn't regulate in local zoning. They couldn't adopt regulations that appeared to prohibit wireless services, or discriminate between providers. Berman asked if what they were talking about was only for communications. Tokos confirmed this was correct. Berman asked if electrical transmission towers fell somewhere else. Tokos would take a look at this and thought it was addressed as a conditional use. He would have to double check on the height limitation language to see if it was picked up there. Tokos reviewed the height limits for conditional uses

in the Municipal Code and was able to confirm that electrical transmission towers were captured under these rules.

Tokos continued his review of the FCC limitations on local zoning. Patrick asked if there were any clock problems with the procedures. Tokos thought they needed to be cognizant of this when making changes. For example, they wouldn't want to set up a conditional use process for small wireless because we couldn't complete a conditional use process in 60 days. Tokos reminded that conditional uses had a 120 day clock because any conditional use decision was appealable to the City Council. A discuss ensued regarding on whether or not a conditional use could be done with enough time to go to LUBA.

Tokos reviewed the location of key wireless facilities and the existing facilities images next. He then discussed the local government regulatory approach to wireless facilities small wireless (5G) and antenna collocates. Tokos noted that the Bend example included 5G and was beneficial for the Commission's review.

Tokos asked for the Commissioner's thoughts. Berman asked if they were just reviewing the current ordinance to see if it needed tweaking or something else. Tokos explained they weren't obligated to do anything but they were opening it up to address small wireless and how the rules would apply outside of the right-of-way. He noted they could modernized other parts of the code as well. Berman asked how much modernizing would be done. Tokos explained this would be up to the Commission. Patrick didn't want to do limits because there was already limited wireless service in Newport. He wasn't sure about making considerations for colors as well.

Patrick questioned how much noise the towers would make. Franklin thought they would make a hum. Patrick asked if the towers were tall enough to get picked up for the lighting standards. Tokos confirmed they didn't and why there weren't lights on them. He wondered if the C-1 zone was a good fit for towers but noted there were towers already in that zone. Patrick suggested a lower height limit for towers in the C-1 zone. A discuss ensued regarding an existing tower on a Lincoln County building in the C-1 zone and how it met the height limits through a possible variance approval.

Tokos asked if the Commission wanted him to bring forward a code that dealt with small wireless provisions on private property, and clarification on collocation, but not a lot of language on the towers. Branigan wanted to look at private properties because there would be more little antennas for 5G wireless and their reach was smaller. Tokos asked if 5G should be treated similar to how they were treating it in the right-of-way. Branigan thought they should treat it similar, but the Commission should review it. Tokos explained he could put together a package that treated 5G similar in terms of design standards for private properties, and then hold them to the design guidelines that the Commission reviewed already if they were to be placed on the side of a building.

Hanselman thought that keeping just one set of rules would be beneficial for city to make decisions. Tokos agreed that it would keep things consistent. Hanselman wanted to see 5G limited to 35-45 feet in residential neighborhoods.

Tokos ran through the category headers to see if the Commission thought there was anything needed. He asked if they were comfortable with where towers were allowed. The Commission was in general agreement. Tokos asked if they saw a need for alternatives analysis. Hanselman thought it was a good idea and would give the city options. Escobar asked if this would put a crunch on the timeline. Tokos explained it wouldn't for a new tower because they had 150 days for this. He would put language together for an alternatives analysis. He asked if the Commission wanted to require separation between towers. Patrick didn't think so because some areas had typography where towers needed to be placed by each other because they were on a hill. Tokos asked if they wanted to see any adjustments to the height limitations that were typically between 100 to 150 feet. Berman thought they would need all the height given the typography. He liked the stealth deployment for historical buildings and didn't want to see a big tower on a historical building. Hanselman thought that the alternative analysis would allow them some leeway on height restrictions. Tokos noted that the alternative analysis he was thinking of was different. The analysis would be for scenarios such as when a provider wanted to put up a new tower close to one that another service provider had installed. The applicant for the new tower would have to prove they couldn't collocate on the other tower.

Sutton suggested adding language for removing abandoned towers. He also thought they should stay away from the lattice towers. Tokos asked for thoughts on lattice or guy wire towers. Berman didn't like guy wire towers but didn't have any problems with lattice towers.

Tokos asked about the Commissioner's thoughts on setbacks, and noted this was typically for residential zones. The city already had this but it needed clarification in the code. Patrick wanted to look at this but noted the tower at the football field might have been in violation of this. He explained there was a hearing around 12 years before to allow it to be built there. Tokos thought they would had a variance for this at the time.

Tokos asked if the Commission saw any need for viewshed standards. Hanselman liked the concept but didn't know where this would apply in Newport because they weren't allowed in areas where they would be an issue. Patrick couldn't think of any area this would apply other than the tower at the Yaquina Head.

Tokos asked if they should require new towers to show that they could accommodate a certain number of collocates. The Commission was in general agreement that this was a good idea. Patrick questioned what a good cut off number would be. Tokos noted that a tower up to 75 to 100 feet would have two collocates at this height. A tower under 75 feet would require one collocate. Berman asked how the number of collocates were verified. Tokos reported the design engineer would provide a letter on how many the tower could accommodate.

Tokos asked for thoughts on buffering or screening requirements for ground mounted equipment. Patrick thought if they did this, it had to be limited the equipment close to residential areas. Hanselman noted there was also the issue of whether they would maintain the buffering landscaping. Tokos explained security fences were generally a requirement for them.

Tokos asked for thoughts on the FCC requirements. Patrick didn't see any problems asking for this. Hanselman asked if they could do ask for annual or biannual testing to make sure towers were operating within safe parameters. Tokos explained the FCC prohibited regulations to get emissions. If someone said they were operating outside of the requirements it would go to the FCC. There was a process with the FCC to decide if they would look into the complaint any further. Berman asked if the city had any kind of process to confirm if the standards were met when a second transmitter was installed. Tokos reported that there would be a building code review. Though it wasn't currently done, the city could require them to provide documentation for collocates. Berman and Hanselman thought this should be required.

Tokos asked for thoughts on prohibiting signage other than for safety. Patrick didn't think the city would want to see branding posted on the towers. Tokos asked if the Commission saw any reason to impose noise limitations above the noise ordinance. The Commission was in general agreement not to. Tokos asked if they wanted to regulate color. The Commission was in general agreement not to regulate this. Tokos asked if they wanted to regulate lighting. Escobar thought residential areas should have standards.

Franklin asked if a tower was having problems with a noise in the city, what avenue would the city have to address the problem. Tokos explained this could be addressed with the nuisance code. East was concerned about the noise levels of backup generators. Tokos explained this would be handled with the nuisance code and noted the code didn't specify where the noise came from.

Tokos reiterated that what he heard was the Commission wasn't interested in prohibiting specific types of towers, and that they thought they should address abandoned towers. Berman thought they should add language for guy wires to require the applicant to show a need for them.

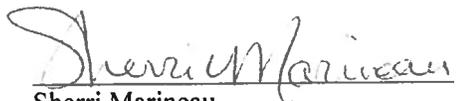
Tokos asked the Commission if there was anything else they wanted to add. Patrick thought there needed to be a variance process included. Tokos would add this. Berman asked if public agencies would be subject to all the same provisions. Tokos confirmed they would.

Tokos reported that Mike Franklin would not be renewing his term as a Planning Commissioner and they would

be recruiting to fill his place. The Commissioners thanked Franklin for his service. There would be an advertisement done around the first of the year and the City Council would make the appointment.

4. **Adjourn.** The meeting adjourned at 7:00 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Sherri Marineau". The signature is written in black ink and is positioned above the printed name.

Sherri Marineau,  
Executive Assistant

# Potential Amendments to Wireless Telecommunication Facility Land Use Standards

Newport Planning Commission  
November 23, 2020 Work Session

# Newport's Existing Standards

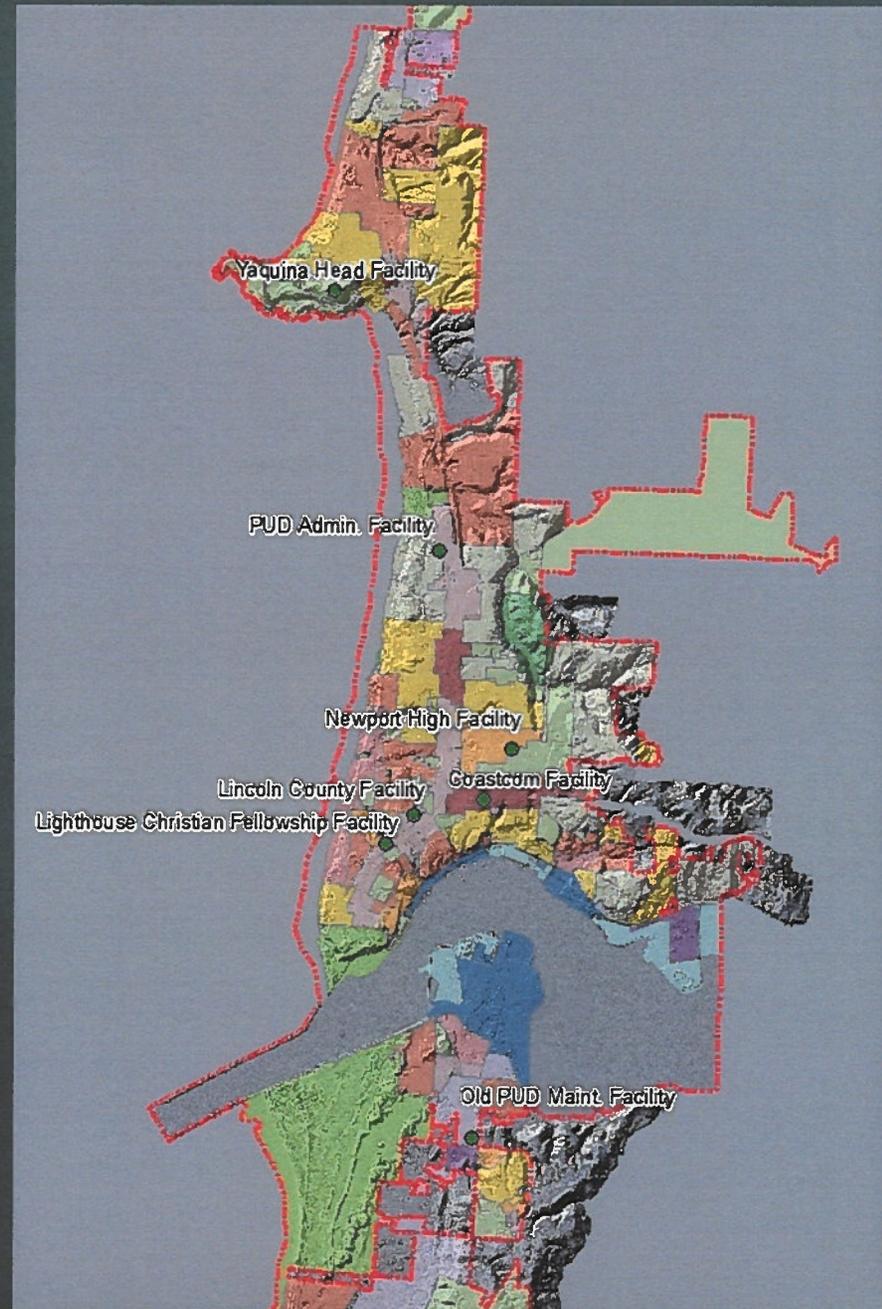
- ◆ Towers are permitted outright as “communication facilities” in retail and heavy commercial zones, industrial zones, and public zones
- ◆ Towers are prohibited in tourist commercial, water-dependent, water-related and residential zones
- ◆ Height limit is 150-ft in industrial zones, 100-ft in commercial and public zones
- ◆ More stringent, scalable height limits and landscape screening standards apply to lots that abut residential zoned property
- ◆ Antenna allowed as accessory uses on non-residential buildings as long as they do not exceed 25% of the maximum allowable building height
- ◆ Construction is subject to 2018 International Building Code (Towers exempted from Oregon Structural Specialty Code in 2019)
- ◆ FCC limitations apply within the Municipal Airport approach zones

# Federal Communications Commission (FCC) Limitations on Local Zoning

- ◇ Cannot prohibit or have the effect of prohibiting wireless services
- ◇ May not apply different standards to providers of functionally equivalent services
- ◇ Must review requests in accordance with FCC shot clocks
  - ◇ Small wireless (5G) on existing structure: 60 days
  - ◇ Other collocates: 90 days
  - ◇ Small wireless on new structure: 90 days
  - ◇ Other new structures: 150 days
- ◇ Denial of an application must be in writing and supported by substantial evidence
- ◇ May not impose regulations on the basis of environmental effects of radio frequency emissions if they are within FCC parameters

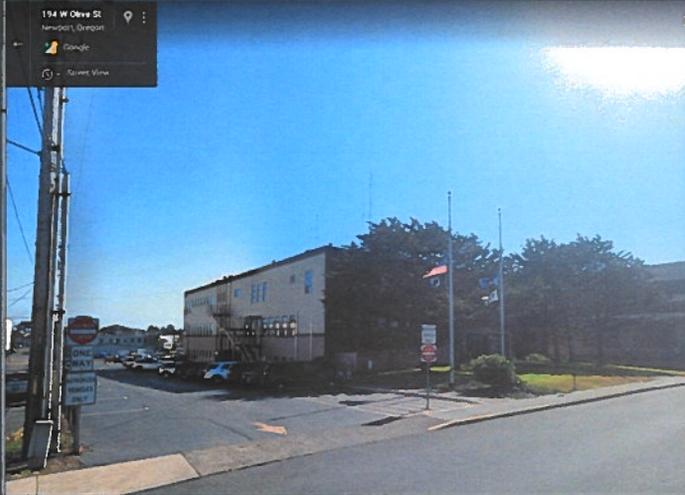
# Location of Key Wireless Facilities

- ◆ Facilities are owned/leased by a variety of providers
- ◆ Common that multiple providers collocate on a single pole or building
- ◆ PUD Admin Facility (lattice tower) recently reinforced
- ◆ Coastcom Facility is a new monopole (replaced wooden structure)
- ◆ No new towers sites developed in over a decade



# Images of Existing Facilities

Lincoln County Building Mounted



Newport High School



Lighthouse Christian Fellowship



Yaquina Head Facility

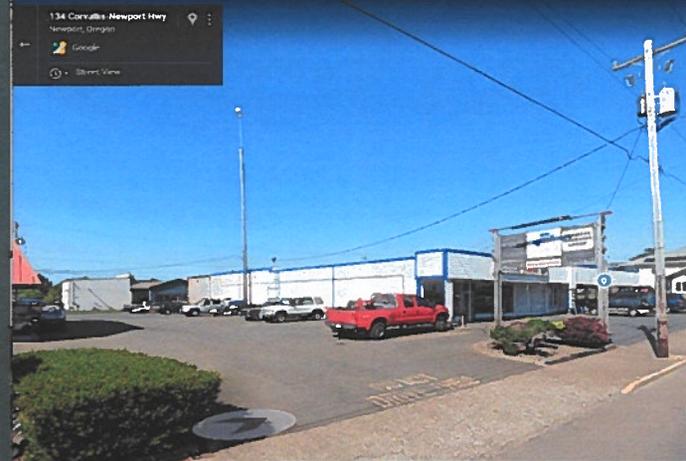


# Images of Existing Facilities

Central Lincoln Lattice Tower



Coastcom (Old Wooden Pole)



Former PUD Maintenance Site



Coastcom (New Monopole)



# Local Government Regulatory Approach to Wireless Facilities

## Small Wireless (5G) and Antenna Collocates

- ◇ Small wireless (5G) and antenna collocates on existing towers or non-residential buildings are typically allowed outright
- ◇ Some jurisdictions require noticed staff decision if collocates do not deploy stealth technology or antenna extend more than a fixed distance above an existing building
- ◇ Small wireless collocates on utility poles and light poles outside rights-of-way are held to the same standards that apply inside rights-of-way
- ◇ May require stealth deployment as only option for historic buildings
- ◇ FCC 60 and 90 day shot clocks will not allow for hearings process
- ◇ Screening vegetation and security fencing may be required for ground mounted equipment

## Local Government Regulatory Approach to Wireless Facilities New Towers or Other High Visibility Structures (Part 1)

- ◇ Where allowed – Often allowed outright or subject to staff review in industrial, commercial, and mixed use zones. Not commonly allowed in residential or tourist commercial areas. Staff level versus Commission approval can be keyed off height or zone
- ◇ Alternatives Analysis – May require provider to explain why collocate is not an option and demonstrate that the structure is not speculative
- ◇ Separation Between Towers – Intended to prevent visual impact of clustered facilities. Can be a fixed standard or variable depending upon tower height
- ◇ Height Limits – Vary from 60 to 80-ft on the low end, up to 150-ft. Typically more permissive in industrial areas. FCC requires expedited review of tower extensions up to 10% of the height of existing towers
- ◇ Setbacks – Typically applied from residential zone district boundaries. Often correlated to height (i.e. 1-ft setback for every 1-ft tower height).

## Local Government Regulatory Approach to Wireless Facilities New Towers or Other High Visibility Structures (Part 2)

- ◆ Collocation – Some jurisdictions require providers demonstrate that the tower is designed to accommodate a fixed number of collocates
- ◆ Viewshed Standards – May be photo simulations or prohibitions above certain contour elevations. Comes into play when a jurisdiction is trying to protect views from specific vantage points or a ridgeline
- ◆ Buffering/Screening – Can require it for ground mounted equipment (other than the tower). This can be a general standard or it could apply only to properties adjacent to residential areas
- ◆ Security Fencing – Often occurs as a matter of course, but some jurisdictions require it as an approval standard
- ◆ FCC Emissions Compliance – May be required as part of the application process. Enforcement is purview of the FCC
- ◆ Signage – Typically prohibited unless safety related. Limited in size

## Local Government Regulatory Approach to Wireless Facilities New Towers or Other High Visibility Structures (Part 3)

- ◆ Noise – Some jurisdictions establish specific noise standards for wireless facilities whereas others rely upon nuisance ordinances
- ◆ Colors – Focus is typically on non-obtrusive colors, such as unpainted galvanized steel or light gray paint. Can also require paint to match existing structures or landscape features
- ◆ Lighting – Often prohibited unless required by FAA. High intensity white lights and flashing lights may be prohibited. Shielding from the ground might also be desirable
- ◆ Prohibited Structures – Lattice towers and guy wired structures are commonly prohibited. Some jurisdictions limit structures to monopoles or stealth technology
- ◆ Abandoned Towers – Typically required to be removed within a fixed period of time (e.g. 6 to 12 months)
- ◆ Variance Process – Commonly offered for dimensional provisions such as height limits and setbacks

# Tentative Planning Commission Work Program

*(Scheduling and timing of agenda items is subject to change)*



## January 11, 2021 Work Session

- Initial Review of Land Use Code Amendments to Implement HB 2001 Duplex, Townhouse, and Cottage Cluster Standards (Carried over from 12-13-20 work session).

## January 11, 2021 Regular Session

- Organizational Meeting (Elect Chair and Vice-Chair)

## January 25, 2021 Work Session

- Discuss Central Lincoln PUD Comments on City's Draft Small Cell Wireless ROW Regulations
- File 5-Z-20 Second Review of Adjustments to Large Wireless and Other Telecommunications Land Use Standards. Will include Provisions for Small Wireless Facilities Outside of the Right-of-Way

## January 25, 2021 Regular Session

- File 5-Z-20 Initiate Large Wireless and Other Telecommunications Land Use Standard Legislative Amendments. Will include Provisions for Small Wireless Facilities Outside of the Right-of-Way

## February 8, 2021 Work Session

- File 1-CP-17, Review Results from Nov/Dec TSP Outreach, Preferred Alternatives, Next Steps
- Second Review of Land Use Code Amendments to Implement HB 2001 Duplex, Townhouse, and Cottage Cluster Standards

## February 8, 2021 Regular Session

- Initiate Legislative Process to Amend Land Use Regulations to Implement HB 2001 Duplex, Townhouse, and Cottage Cluster Standards
- Hearing File 1-SV-21, Vacation of a Portion of SW 2nd Street between SW Angle and US 101 (placeholder)

## February 22, 2021 Work Session

- File 5-Z-20 Initiate Large Wireless and Other Telecommunications Land Use Standard Legislative Amendments. Will include Provisions for Small Wireless Facilities Outside of the Right-of-Way

## February 22, 2021 Regular Session

- Hearing on File 5-Z-20, Amending NMC Chapter 14 for Large Wireless and Other Telecommunications Land Use Standards, including provisions for small wireless outside ROWs

## March 8, 2021 Work Session

- Initial Review of Draft Revisions to Transportation Standards in NMC Chapters 13 and 14 Related to Transportation System plan Update
- City / DLCD Presentation on Newport Beach Access Resiliency Plan (placeholder)

## March 8, 2021 Regular Session

- Hearing to amend NMC Chapter 14 Legislative Process to Amend Land Use Regulations to Implement HB 2001 Duplex, Townhouse, and Cottage Cluster Standards

## March 22, 2021 Work Session

- Second Review of Draft Revisions to Transportation Standards in NMC Chapters 13 and 14 Related to Transportation System plan Update
- Update on TSP Schedule and Concept for Second Round of Community Outreach (Preferred Alternatives)
- Initial Discussion about Code Options for Lifting Restrictions on the Operation of Food Carts (Council Goal)

## March 22, 2021 Regular Session

- TBD

**CITY OF NEWPORT  
EMERGENCY ORDER NO. 2020-28**

**ENACTING A COVID-19 VIRTUAL AND IN-PERSON  
MEETING POLICY**

**WHEREAS**, the Governor of the State of Oregon declared a state of emergency for the state on March 8, 2020, finding that COVID-19 created a threat to the public health and safety and constituted a statewide emergency; and

**WHEREAS**, the City of Newport declared an emergency on March 13, 2020, which was ratified by the City Council at its March 16, 2020 meeting; and

**WHEREAS**, the President of the United States signed a proclamation declaring a national emergency concerning COVID-19 on March 13, 2020; and

**WHEREAS**, local, state, and national public health agencies have instituted guidelines, recommendations, and actions to curb the spread of the disease in an attempt to “flatten the curve” of the disease’s progression in the United States. Many of those recommendations have been adopted by states and local governments across the country. In Oregon, the Governor has issued Executive Orders 20-01 through 20-20, and 20-22, 20-24, 20-25, 20-27, 20-28, 20-29, 20-30, 20-37, and 20-38 to address COVID-19 closures and reopening of certain facilities, limiting public gatherings, higher education restrictions, and other needs and requirements related to the COVID-19 pandemic; and

**WHEREAS**, the Governor directed Oregonians to “stay at home to stay healthy” through physical and social distancing guidelines, limitations on congregations, and non-essential travel; and

**WHEREAS**, the City of Newport, through emergency orders, has closed various municipal facilities, and limited access to others; and

**WHEREAS**, Governor Brown approved Lincoln County for Phase Two reopening, and on September 29, 2020, Lincoln County entered Phase Two of its reopening; and

**WHEREAS**, City of Newport staff developed a phased reopening plan for city facilities, programming, and meetings; and

**WHEREAS**, the City Council, Planning Commission, and the city’s standing committees have been holding fully virtual meetings since March of 2020; and

**WHEREAS**, the City of Newport is moving into its Phase Two reopening, and Phase Two allows the City Council to meet with three Councilors in-person, plus two staff members at the dais, with an audience limited to 15 - 18; and

**WHEREAS**, Phase Two allows the Planning Commission to meet with up to four Commissioners in-person, plus one staff person at the dais, and an audience size limited to 15 - 18; and

**WHEREAS**, Phase Two allows advisory committees to meet in-person, in the City Council Chambers, with a limit of 12 people, including staff.

**WHEREAS**, the decision to hold in-person meetings will be left to the committee and its staff; and

**WHEREAS**, if a completely virtual, or a hybrid (part virtual and part in-person) meeting is held, the public comment and participation in virtual meetings will occur as described in Attachment A - Virtual Meeting Policy as revised October 5, 2020.

I, **Spencer R. Nebel, City Manager for the City of Newport**, hereby order:

October 5, 2020 Approved a revised Virtual Meeting Policy for the City Council, Planning Commission, and standing committees of the City of Newport. A copy of the policy is included as Attachment A.



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Spencer R. Nebel, City Manager

**ATTACHMENT A****COVID-19 TEMPORARY  
VIRTUAL, HYBRID, AND IN-PERSON MEETING POLICY****Why Virtual Meetings**

Due to COVID-19, the City of Newport has been holding all its public meetings virtually. This includes City Council, Planning Commission, and all of the city's standing advisory committees. Zoom is the virtual meeting platform that is utilized by the city. It is expected that virtual, hybrid, and some in-person meetings will continue as the city enters Phase Two of its reopening plan.

**Types of Meetings**

**Virtual Meetings** - virtual meetings will be held in the City Council Chambers of the Newport City Hall. These meetings will be livestreamed and televised on Charter Channel 190. Most attendees will be attending virtually with a limited number of staff and committee members present in the City Council Chambers.

**Hybrid Meetings** - hybrid meetings will be held in the City Council Chambers of the Newport City Hall. These meetings will be livestreamed and televised on Charter Channel 190.

For a hybrid City Council meeting, up to three City Councilors and two staff may be present on the dais. Audience size is limited to 15 - 18 people.

For a hybrid Planning Commission meeting, up to four Commissioners and one staff may be present on the dais. Audience size is limited to 15 - 18 people.

For hybrid advisory committee meetings, up to five people, including staff, may be present on the dais. Other advisory committee members may sit in the audience section, with a limit of 15 - 18 people.

For in-person advisory committee meetings, attendance is limited to 12 people including staff, when using the City Council Chambers as a meeting venue.

Meetings in other spaces are subject to congregation limits and required physical distancing measures.

All meetings are subject to Oregon Public Meeting Law, and the city's requirement that meetings, if not livestreamed and shown on Charter Channel 190, will have an audiofile that is posted on the city website within 24 hours of the meeting.

### **Access to Watch a Virtual City Council or Committee Meeting**

All virtual public meetings of the City of Newport are livestreamed and televised on Charter Channel 190. To access the livestream, visit the City of Newport website at [www.newportoregon.gov](http://www.newportoregon.gov). Once there, click on "City Government;" then click on "City Council" or "Committees (depending on the meeting of interest); click on the name of the committee; then an "in progress" note will appear if the meeting is underway; click on the "in progress" link to watch the livestream. It is not possible to get into a meeting that will be livestreamed before the meeting starts.

### **Public Comment during a Virtual or Hybrid Meeting**

#### **1. Written Comment.**

To submit a written public comment for any City of Newport meeting, send the written comment to [publiccomment@newportoregon.gov](mailto:publiccomment@newportoregon.gov). For City Council and Planning Commission meetings, the e-mail must be received by noon on the scheduled date of the City Council or Planning Commission meeting. For standing committee meetings, the public comment must be received four hours prior to a scheduled meeting. For example, if a meeting is to be held at 3:00 P.M., the deadline to submit written comment is 11:00 A.M. If a meeting is scheduled to occur before noon, the written comment must be submitted by 5:00 P.M. the previous day.

For City Council meetings, written comments received by the above noted deadlines will be included in the meeting materials, i.e., agenda packet. These comments will be acknowledged, at the appropriate time, by the Mayor or Council President, in the absence of the Mayor. If a specific request is made to read written public comment into the record during a meeting, the City Recorder, or designee, will be provided a maximum of three minutes to read the comment during the meeting.

#### **2. Virtual and Hybrid Meeting - Committee Guidelines.**

As a reminder, members of the City Council, Planning Commission, or any standing committee, should not be exchanging e-mails, texts, or communicating privately during the meeting in any way. This also applies to the chat feature of Zoom. The goal of this reminder is to prohibit side conversations which could violate public meetings law and/or trigger public records law related to retention and access/disclosure.

#### **3. Virtual Comments during a Meeting.**

If you wish to make a “real time” comment during a meeting, a request to speak should be made by 2:00 P.M. on the scheduled date of a City Council or Planning Commission meeting. The request to speak should include the agenda item on which the requestor wishes to speak. If the comments are not related to a particular agenda item, the request to speak should include a notation that the request is for general public comment, and the general topic. The request should be e-mailed to [publiccomment@newportoregon.gov](mailto:publiccomment@newportoregon.gov). For standing committee meetings, the request to speak should be received four hours prior to a scheduled meeting. For example, if a meeting is to be held at 3:00 P.M., the deadline to submit a request to speak is 11:00 A.M. If a meeting is scheduled to occur before noon, the request to speak must be submitted by 5:00 P.M. the previous day. Once a request to speak has been received, staff will send the requestor the Zoom meeting link. This link will allow a requestor to participate via video or telephone.

4. **Public Hearings.**

Individuals wishing to offer testimony during public hearings should utilize the process in Sections 1. and 3. above.

5. **Script for Use at Quasi-Judicial or Legislative Land Use Hearings.**

The script for use at quasi-judicial or legislative land use hearings before the Planning Commission/City Council is attached.

6. **General Virtual Meeting Participation Guidelines.**

All public participants attending virtual meetings will be muted until it is their turn to speak. The participant will be muted at the conclusion of their comments. Public meeting participants are encouraged to remain on the Zoom meeting in the event the public body has follow-up questions. In that situation, the participant will be unmuted for the follow-up response.

## CITY COUNCIL SCRIPT FOR QUASI-JUDICIAL OR LEGISLATIVE LAND USE HEARINGS USING THE ZOOM VIDEO-CONFERENCING PLATFORM

### 1. Call Public Hearing to Order (Mayor)

This public hearing is being conducted utilizing the Zoom video-conference platform. Before we get started, I would like to provide staff a moment to identify individuals that are participating virtually. I would also like to cover a few ground rules:

- A. Individuals wishing to speak may raise their hand proper or use the raise hand feature, which can be found by clicking on the "Participants" button on the bottom of a computer screen, the "Raise Hand" button on the bottom of a smartphone, or by dialing \*9 on a landline. I will call out the order of testimony in cases where multiple hands are raised.
- B. Please keep your microphone muted unless you are speaking. Press \*6 to mute and unmute a landline.
- C. For persons participating by video or phone, the City can make the shared screen feature available for those that wish to make a presentation. Information shared with the City Council in this manner is part of the record, and a copy of the materials will need to be provided to staff.
- D. For those persons who have elected to attend the hearing in person, a computer has been setup so that they may provide testimony using the video-conference platform.

### 2. Quasi-Judicial and Legislative Land Use Public Hearings (Briefly describe the public hearing items to be heard, as summarized in the staff report or hearing notice, then read the statement below VERBATIM.)

**"This statement applies to quasi-judicial and legislative land use hearings on the agenda. All testimony and evidence presented toward the request(s) being heard must be directed toward the applicable criteria in the Newport Comprehensive Plan, Newport Municipal Code, or other land use regulations or standards which the speaker believes to apply to the decision.**

**The failure of anyone to raise an issue accompanied by statements or evidence sufficient to afford the City Council and the parties an opportunity to respond to the issue will preclude appeal to the Land Use Board of Appeals (LUBA) based on that issue. An issue which may be the basis for an appeal to LUBA shall be raised not later than the close of the record at, or following, this evidentiary hearing. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the city decision makers and the parties an adequate opportunity to respond to each issue.**

**The failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the city to respond to the issue precludes an action for damages in circuit court.**

**Prior to the conclusion of a hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. If such a request is made then the hearing will be continued to a date certain and schedule set for submittal of additional testimony, a period for parties to respond to the new testimony, and a period whereby the applicant can provide final argument."**

At this time, I would ask City Councilors to disclose any actual or potential conflicts of interest, bias, ex-parte contacts, or site visits? *(If there is an actual conflict of interest the member must abstain, but counts toward the quorum. Potential conflicts of interest need only be disclosed.)*

If anyone present has an objection to the participation of any City Councilor, or the City Council as a whole, please raise that objection now. *(If an objection is made, the Councilor(s) to whom it is directed will need to respond and then decide as to whether or not they should recuse themselves.)*

The City Council may, at the request of a participant or on its own accord, continue the hearing to a date certain to provide an opportunity for persons to present and rebut new evidence, arguments or testimony related to the applicable criteria.

The hearing will proceed in the following order:

- Staff report
- Applicant's testimony
- Persons in favor
- Persons opposed
- Applicant's rebuttal
- Record closes for public testimony
- City Council deliberation, questions, and verbal decision
- A final order and findings will be prepared for consideration at the next meeting

(Optional: If due to time constraints, staff and the applicant will be allocated up to 15 minutes each for their presentations. Applicant will also receive up to five minutes for final rebuttal. All others wishing to testify will be given three minutes each.)

3. **Adjourn** (Note the time for the record)

## PLANNING COMMISSION SCRIPT FOR QUASI-JUDICIAL OR LEGISLATIVE LAND USE HEARINGS USING THE ZOOM VIDEO-CONFERENCING PLATFORM

### 1. Call Public Hearing to Order (Chair)

This public hearing is being conducted utilizing the Zoom video-conference platform. Before we get started, I would like to provide staff a moment to identify individuals that are participating virtually. I would also like to cover a few ground rules:

- A. Individuals wishing to speak may raise their hand proper or use the raise hand feature, which can be found by clicking on the "Participants" button on the bottom of a computer screen, the "Raise Hand" button on the bottom of a smartphone, or by dialing \*9 on a landline. I will call out the order of testimony in cases where multiple hands are raised.
- B. Please keep your microphone muted unless you are speaking. Press \*6 to mute and unmute a landline.
- C. For persons participating by video or phone, the City can make the shared screen feature available for those that wish to make a presentation. Information shared with the Planning Commission in this manner is part of the record, and a copy of the materials will need to be provided to staff.
- D. For those persons who have elected to attend the hearing in person, a computer has been setup so that they may provide testimony using the video-conference platform.

### 2. Quasi-Judicial and Legislative Land Use Public Hearings (Briefly describe the public hearing items to be heard, as summarized in the staff report or hearing notice, then read the statement below VERBATIM.)

"This statement applies to quasi-judicial and legislative land use hearings on the agenda. All testimony and evidence presented toward the request(s) being heard must be directed toward the applicable criteria in the Newport Comprehensive Plan, Newport Municipal Code, or other land use regulations or standards which the speaker believes to apply to the decision.

The failure of anyone to raise an issue accompanied by statements or evidence sufficient to afford the Planning Commission and the parties an opportunity to respond to the issue will preclude appeal to the Land Use Board of Appeals (LUBA) based on that issue. An issue which may be the basis for an appeal to LUBA shall be raised not later than the close of the record at, or following, this evidentiary hearing. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the city decision makers and the parties an adequate opportunity to respond to each issue.

The failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the city to respond to the issue precludes an action for damages in circuit court.

Prior to the conclusion of a hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. If such a request is made then the hearing will be continued to a date certain and schedule set for submittal of additional testimony, a period for parties to respond to the new testimony, and a period whereby the applicant can provide final argument."

At this time, I would ask Planning Commissioners to disclose any actual or potential conflicts of interest, bias, ex-parte contacts, or site visits? *(If there is an actual conflict of interest the member must abstain, but counts toward the quorum. Potential conflicts of interest need only be disclosed.)*

If anyone present has an objection to the participation of any Planning Commission member, or the Commission as a whole, please raise that objection now. *(If an objection is made, the Commissioner(s) to whom it is directed will need to respond and then decide as to whether or not they should recuse themselves.)*

The Planning Commission may, at the request of a participant or on its own accord, continue the hearing to a date certain to provide an opportunity for persons to present and rebut new evidence, arguments or testimony related to the applicable criteria.

The hearing will proceed in the following order:

- Staff report
- Applicant's testimony
- Persons in favor
- Persons opposed
- Applicant's rebuttal
- Record closes for public testimony
- Planning Commission deliberation, questions, and verbal decision
- A final order and findings will be prepared for consideration at the next meeting

(Optional: If due to time constraints, staff and the applicant will be allocated up to 15 minutes each for their presentations. Applicant will also receive up to five minutes for final rebuttal. All others wishing to testify will be given three minutes each.)

3. **Adjourn** (Note the time for the record)