



PLANNING COMMISSION REGULAR SESSION AGENDA
Monday, November 23, 2020 - 7:00 PM
City Hall, Council Chambers, 169 SW Coast Hwy, Newport, OR 97365

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. 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. 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.

1. CALL TO ORDER AND ROLL CALL

2. APPROVAL OF MINUTES
 - 2.A Approval of the Planning Commission Work Session Meeting Minutes of October 12, 2020.
[Draft PC Work Session Minutes 10-12-2020](#)

 - 2.B Approval of the Planning Commission Regular Session Meeting Minutes of October 15, 2020.

[Draft PC Reg Session Minutes 10-15-2020](#)

2.C Approval of the Planning Commission Work Session Meeting Minutes of October 26, 2020.

[Draft PC Work Session Minutes 10-26-2020](#)

3. CITIZENS/PUBLIC COMMENT

A Public Comment Roster is available immediately inside the Council Chambers. Anyone who would like to address the Planning Commission on any matter not on the agenda will be given the opportunity after signing the Roster. Each speaker should limit comments to three minutes. The normal disposition of these items will be at the next scheduled Planning Commission meeting.

4. ACTION ITEMS

4.A Recommendation to City Council on NMC Chapter 9.25 (5G Small Wireless Ordinance).

[Memorandum](#)

[Clean Copy of Draft NMC Chapter 9.25, dated 11-19-20](#)

[Clean Copy of Draft Design Standards, dated 11-19-20](#)

5. PUBLIC HEARINGS

6. NEW BUSINESS

7. UNFINISHED BUSINESS

8. DIRECTOR COMMENTS

9. ADJOURNMENT

Draft MINUTES
City of Newport Planning Commission
Work Session
Newport City Hall Council Chambers by Video Conference
October 12, 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: Dustin Capri, Greg Sutton, and Braulio Escobar.

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.** None were heard.
 3. **New Business.**
- A. **City of Newport COVID-19 Virtual, Hybrid, and In-Person Meeting Policy.** Tokos reviewed the meeting policy that was shared with the Commission. He noted that they could accommodate four Commissioners in the Council Chambers at a time during meetings. Tokos explained that they would accommodate people who wanted to attend meetings in person as well. He asked the Commissioners how they felt about participating in person or through video. Patrick was happy to come in when there were meetings other than the work session meetings. Hanselman thought the Zoom meetings were functioning well. He felt that if there was a significant hearing it would be more appropriate to have more Commissioners present than just Chair Patrick. It would be more personable to be onsite to speak to people in person. Berman thought that Zoom meetings were fine when it was just the Commissioners playing a part in the meetings. He didn't know if it was important for the Commission to be onsite but it would be much better to have people giving testimony in person. Berman noted not many people who had given testimony so far had done it through video. He was fine to stay at his home to do Zoom video meetings. Berman thought that people could be asked to testify in person. Branigan thought the meetings were working well as they were. Because he fell in a high risk category for getting COVID, he felt better staying offsite. Sutton reported that he had been doing the video meetings on his iPhone and wanted to be able to be onsite for the meetings. Escobar noted the Zoom meetings worked for him.

Patrick asked if Sutton could have his own laptop during meeting if he attended in person. Tokos explained they could set a computer up at the witness table for him to use, and then if any public wanted to make comment they would have a computer to use.

Hardy didn't have a problem with Zoom meetings. She thought people giving live testimony should be there in person. Franklin agreed with Hardy. Tokos noted that what he heard was that Patrick would attend when the public was participating, and they would encourage people to attend in person if they felt secure to do so. Tokos explained that the special meeting that was being held on October 15th would strictly be a video meeting.

- B. **Draft Regulations for Small Wireless Facilities (5G Implementation).** Tokos reviewed the draft rules and explained that it made sense to break this up into different pieces so the Commission had a chance to look closer at each piece. The first part would be the ordinance piece that put into place a permitting and review process for 5G deployment. The second part would be the design guidelines. The third part would be a fresh look at land use regulations that applied to macro facilities, other than small wireless deployments.

Tokos reported that there were no small wireless 5G deployments in the City of Newport yet. Central Lincoln Public Utility District (CLPUD) owned most of the poles in the right-of-way (ROW) and they had not been

approach either. They were thinking about the implementation and put together a packet of construction standards that were shared with the Commission in the packets. Tokos explained that NMC Chapter 9.25 fell into the ROW provisions and franchise agreements. They tried to model it on the League of Oregon Cities (LOC) model code.

Tokos reviewed the Chapter 9.25 draft. Branigan asked how they determined 50 feet when it came to the definition of small wireless facilities. Tokos explained this was the threshold the FCC established. This would pick up most of the utility poles. If they wanted to put them on towers it would be different and would be a part of the macro and land pieces. Berman asked if this was limited to small wireless facilities as designed. Tokos confirmed it was because it was all they were obligated to allow within the ROW. Berman asked what Chapter 9.25.045(B) was referencing and asked if there was a definition missing to say what was regulated by the Chapter. Tokos would clarify this. Berman requested that they clarify what would get 90 days and 150 days. Tokos thought there could be some things that could be removed. Berman suggested that numbers 2 and 4 could be removed. Patrick noted that the CLPUD standards said that in some cases they would have to go over 50 feet to meet their requirements. He questioned if they would have to do a conditional use for this. Berman noted that there were discussions on poles owned by the city but no discussion on poles not owned by the city. He asked if the design standards only applied to city poles or if they applied to CLPUD poles as well. Tokos explained that they applied to both. City poles were now being leased and there were additional provisions because they were putting these on city poles, not CLPUD poles. This included making sure what they were doing didn't compromise the structural integrity of the pole. Tokos explained that these were things they wouldn't look at if it was a CLPUD pole. Berman asked if CLPUD was able to come up with their own standards. Tokos reported they could. The city needed to make sure they were in sync with CLPUD and would be continuing the discussion with them.

Patrick asked if the 50 feet was measured from the top of the ground, not the top of a building. Tokos confirmed this was correct.

Gary East joined the meeting at 6:25pm.

Branigan asked where the small wireless that would be going on the sides of buildings by private owners would fit in. Tokos thought this would be picked up in the land use regulations.

Tokos reviewed the permit requirements for putting wireless on poles. Patrick asked if this included ones on buildings. Tokos explained the code was not set up to extend outside of the ROW. Unless the building was in a ROW, they would not. Tokos reviewed the routine maintenance and replacement exemption. He noted this would allow the City to have a record on file if someone later felt they were having health issues related to the deployment of small wireless. It would show what the provider indicated they were complying with. Berman asked if there was any documentation on what the actual output was compared to the designed output. Tokos wasn't sure how that was measured. They could look into what exactly would be involved in this, but he didn't think it would be the city who would handle it. The FCC would be over it because it was a compliance issue. Berman asked if someone would complain to the FCC not the city. Tokos confirmed this was correct and FCC made it clear the city was not allowed to regulate for RF emissions, that was their purview. Patrick didn't see where anything was included for decommissioning. Tokos explained this would fall under the franchise agreements that took care of abandonment and decommissioning.

Tokos reported that the model code was substantially similar to the routine maintenance exemption. He pulled it out because it was a little too discretionary to determine what constituted what was "substantially similar in size." Berman thought it was silly to open things up to an agreement. He felt wireless that was the same or smaller in size, weight and height was better. Berman questioned if size should be changed to volume. Hanselman noted volume and cubic feet had been previously used in the code, and he thought it was appropriate to use volume. Berman thought it should say "in the same position on the pole" so they didn't replace something that was lower on the pole with something that would be placed on top of the pole. Escobar noted the model code said it would be at the same height. Patrick thought it should say it should be the same size volume. Berman thought it should say same or smaller in volume, weight and installed height. Sutton noted there were two heights referenced, one was the unit height and the other was the location height. Tokos clarified that the unit height was the height on the pole. He noted that what he was hearing was to go with volume based, and

whatever they were replacing it with didn't have to be exactly the same dimensions, as long as it was the same uniform dimensions for volume, weight and location on the pole.

Tokos reviewed the approval criteria next and explained that the Commission had to approve these unless they had a good reason not to. They needed to have criteria so they could apply the city code and had a way to approve applications. Tokos reported they had to accept batch applications. Berman asked if they could specify a max number on locations. Tokos would look into this. He thought the model code might have some language for this. Tokos explained that the FCC small cell order allowed applicants to submit applications in batches without numerical limits. They considered batch applications based on common design elements as well as other measures to promote efficiency. Tokos didn't know how problematic this would be. If they evaluated it and it worked on a particular pole, such as a decorative pole, how it operated on one decorative pole would probably be pretty consistent throughout.

Tokos reviewed the decorative poles and historic districts next. Patrick noted it said they would require them to collocate whenever possible, but the CLPUD standards said only one antenna per pole. Tokos didn't see this being an issue on the huge poles on Marine Science Drive and was different from decorative poles. Tokos reported CLPUD owned decorative poles in Nye Beach. The city owned most of the ones on the Bayfront, Marine Science Drive, and SE 40th Street by the Community College. Berman asked if CLPUD could limit these on their poles. Tokos wasn't sure if they could but he would talk to them about it.

Hanselman asked if the city would offer more than one franchise. Tokos reported they would and the city had already been approached by three companies for franchises but they hadn't been executed. Hanselman thought this would suggest the possibility of multiple antennas and transmitters on the same poles. Tokos wasn't sure CLPUD could get away with collocation under the FCC provisions. Patrick thought CLPUD had standards on how many risers could be on poles. Tokos thought this was why they would have to go with the FCC provisions because there would have to be a technical or engineering reason why they wouldn't allow more than one on a pole. He thought this would make it difficult in some cases to make the argument.

Tokos asked if the Commission thought that "similar appearances" should be clarified in the design guidelines. Patrick thought all they could ask was if it was a black pole it should be black, and if it was a silver pole it should be silver. Tokos would look at the design guidelines to see if there was a way to clarify this for the decorative poles. Berman noted this only referred new poles and asked if they expected a lot of new poles to go in. Tokos noted they seemed to have many poles but it depended on how much of this was deployed. Berman asked if new poles would be the city's or CLPUD poles. Patrick noted there was an option in the CLPUD standards to replace a pole and make it taller. He didn't know how they would be able to do this on the Bayfront poles to make them look the same when the lights were short and they wanted to go up to 50 feet. Tokos thought they could install a new CLPUD pole under their agreement and noted they had options.

Berman pointed out that the document said new poles were required to support the collation of small wireless. He asked if new poles were required to support the code. Tokos explained that a new pole would be required if they wanted to collocate on an existing pole and it couldn't support it.

Branigan noted in Europe they developed software for providers to share networks and asked if it was possible for the city to require providers to use a shared network. Tokos didn't think this was possible under the current FCC framework. He noted that if someone wanted to piggyback off of someone else's bandwidth this didn't evoke any codes. Tokos would look at an "other than small wireless" piece.

Tokos reviewed the permit review procedures next. He thought a 30 day review timeline was enough time to the review. Tokos noted he would talking to the City Attorney about whether or not they needed the authority granted section in the code.

Tokos reviewed permit duration next. Berman asked why they were getting specific about commercial power communications and thought it should just be "caused by events outside the reasonable control of the wireless provider" to leave it open. Tokos explained he used the model code. Berman thought a blanket statement of "outside the control" should be used. Hanselman asked if they ever ran onto trouble when they used the

suggestion of "reasonable" opportunity, time or control. Tokos explained this was starting to get into legal terms and thought they might want to hold off on using the language.

Tokos reviewed the collocation and City owned poles. Berman suggested changing "person" to something like "company." Tokos noted collocation would have an additional charge on it and there were limits on the maximum charge on these by device for the aggregate annual rate. There wasn't any thought given yet on what the appropriate fee would be yet. Tokos would be looking into what most jurisdictions were charging for these fees. The city should probably stay within the State parameters otherwise the burden would be higher to justify what the number was. Berman asked if the collocation fee would only apply to city poles. Tokos confirmed this was correct. Berman asked what would apply if someone deployed a network on CLPUD poles. Tokos explained they would pay a franchise for a right to be in the city's ROW just like CLPUD did, but they wouldn't pay for a collocate. Patrick asked what happened if they put collocations on a school pole. Tokos explained this would be outside of the ROW and they would need a land use decision.

Tokos noted he would refine the draft and show it to the Commission at round two. He asked if the Commission thought this was reasonable. Hanselman was good with what they discussed at the meeting. Braulio asked if the devices affixed to a building would be small wireless cells. Tokos explained they could be and it would be picked up in the land use regulations, not the ROW. Escobar asked if this would cover the areas where utilities were provided underground rather than on the pole. Tokos explained there would be decorative lighting poles in areas where there were underground utilities, and they would still have to have street lighting. If these weren't suitable they would be on a building or other structure.

C. **DLCD Regional Housing Needs Analysis Report and Outreach.** Tokos reported that the documents provided to the Commission were informational. He noted that this was being done for Lincoln County. Tokos encouraged the Commission to take a look at the materials. The next Housing and Buildable Lands update would happen in possibly two years. The State would look at this in terms of housing strategies and informed needs.

4. **Adjourn.** The meeting adjourned at 7:12 p.m.

Respectfully submitted,

Sherri Marineau,
Executive Assistant

Draft MINUTES
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers by Video
October 15, 2020

Planning Commissioners Present by Video Conference: Jim Patrick, Lee Hardy, Jim Hanselman, and Bill Branigan.

Planning Commissioners Absent: Gary East, Bob Berman, and Mike Franklin.

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

1. **Call to Order & Roll Call.** Chair Patrick called the meeting to order in the City Hall Council Chambers at 6:02 p.m. On roll call, Commissioners Hardy, Hanselman, Branigan, and Patrick were present.

2. **Approval of Minutes.**

A. Approval of the Planning Commission Regular Session Meeting Minutes of September 28, 2020.

MOTION was made by Commissioner Branigan, seconded by Commissioner Hardy to approve the Planning Commission Regular Session Meeting Minutes of September 28, 2020 as written. The motion carried unanimously in a voice vote.

3. **Citizen/Public Comment.** None were heard.

4. **Action Items.** None were heard.

5. **Public Hearings.** Chair Patrick read the statement of rights and relevance. He asked the Commissioners for declarations of conflicts of interest, ex parte contacts, bias, or site visits. Patrick, Hanselman, and Branigan reported site visits. Hardy reported a potential ex parte contact with Lee Ritzman when she had a chance meeting with him. She noted they did not share information because Mr. Ritzman declined. Patrick called for objections to any member of the Planning Commission or the Commission as a whole hearing this matter; and none were heard.

A. **File 1-MISC-20-A.**

Tokos reported that the applicant requested a continuation of the hearing to the November 9, 2020 meeting. He also confirmed that the request that was received to keep the record open did not have to happen because of the continuation of the hearing.

MOTION was made by Commissioner Hanselman, seconded by Commissioner Hardy to continue the hearing to the November 9, 2020 Planning Commission Regular Session meeting. The motion carried unanimously in a voice vote.

6. **New Business.** None were heard.

7. **Unfinished Business.** None were heard.

8. **Director Comments.** None were heard.

9. **Adjournment.** Having no further business, the meeting adjourned at 6:11 p.m.

Respectfully submitted,

Sherrri Marineau
Executive Assistant

Draft MINUTES
City of Newport Planning Commission
Work Session
Newport City Hall Council Chambers by Video Conference
October 26, 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: Dustin Capri, and Braulio Escobar.

PC Citizens Advisory Committee Members Absent: Greg Sutton.

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 NMC Chapter 9.25, Regulating the Placement of Small Wireless Facilities within Rights-of-Way (5G Implementation).** Tokos reviewed the amendments to the draft of Chapter 9.25. Berman thought that 10 percent should refer to all structures, not just poles. Tokos would change this. Patrick asked if this would be a problem for short light poles. Tokos thought this would be put in the design guidelines. He had a conversation with Central Lincoln PUD (CLPUD) and the acorn lights were probably too small for this purpose anyway. The ideal height for 5G development was about 35-45 feet and acorn lights were about 14.5 feet tall to the base of the light fixture. Tokos suspected there were a lot of underground utilities and decorative poles, and they would look for other ways to do 5G development. CLPUD might also go with a different pole design to accommodate 5G deployment either inside the pole proper, at a specific mounting location, or a combination of both. Tokos noted that he had added in the requirements that the applicant would need to explain how they would meet the design standards.

Bill Branigan joined the meeting at 6:09 p.m.

Tokos reviewed the changes to routine maintenance, and the permit review procedures next. He reported that when he looked closer at the clock as it was built into the federal rules, the timeline needed to be changed from 30 days to 10 calendar days to identify if there was any missing information. The City would have to call out in writing what was missing in their application and point to the specific rule or regulation that called for the information that they didn't provide. Berman questioned if 10 days was enough time and asked if it could be changed to 14 days. Tokos explained the 10 days was in the federal rules and there was no flexibility. Hanselman asked if it was a federal rule to have them as calendar days rather than business days. Tokos would take a look into it and noted if flexibility could be built in to it they would.

Tokos reviewed the changes to maximum heights and permit duration. If it looked good he would route this for review by the City Attorney and share it with their partner utilities who had infrastructure in the rights-of-way (ROW) to see if they had any comments on the framework they were putting together as well. Patrick noted that they could not collocate in CLPUDs standards. Tokos didn't know if CLPUD thoroughly vetted this but didn't think the City had to worry about it because it was CLPUD's fight. Berman asked if Public Works signed off on this. Tokos reported they were involved but he didn't shared the changes with them yet.

3. **New Business.**

A. **Draft Small Wireless Facility Design Standards.** Tokos reviewed the small wireless facility design standards next and explained that he thought it would be good to have design standards as a handout with the application. Berman thought this was a good idea. Tokos noted that the intent of the design standards was that they were something that would be updated on a more frequent basis and they could easily be changed by City Council resolution.

Tokos reviewed the general requirements and ground mounted equipment requirements next. He asked for the Commission's thoughts. Berman didn't like the word "discourage" and thought it was too vague. He thought it should say "permitted under certain conditions" or "not permitted unless." Franklin thought that putting poles on Highway 101 and Highway 20 would be more expensive but was the direction that the city was wanting to move. Tokos explained that presently they couldn't put antennas on the ground because they would have to be 35 to 45 feet in the air to get the reception they were looking for. Ground equipment, power sources, and back up devices could go on the ground. The question was if the Commission wanted to discourage this and require equipment to be put on the pole if technically feasible. Hanselman asked if each antenna needed to have an equipment box. Tokos didn't know. Hanselman thought that poles that were shared by multiple franchises might look interesting with different boxes on them. Branigan asked what height the pole needed to be. Hanselman explained it was determined by how the cubic feet added up.

Hanselman thought that if ground mounted equipment had the possibility of making it difficult to get to underground services it would end up costing more to get to the underground material. He thought it would be more cost effective to put equipment up where it didn't automatically interfere with any underground work that might have to be done. Berman wanted to see language that said that ground mounted equipment was not permitted unless there was no other technically feasible alternative. Branigan thought they ran the risk for vandalism if they put equipment on the ground. He questioned how much equipment the companies would actually put on the ground. Tokos thought this was a good point and guessed that the equipment would be in something like a transformer box typically. Capri asked if they would put in a pole just for this in areas such as the Bayfront where poles weren't already there. Tokos confirmed they would and they could couple it with building mounts as well. He didn't think that multiple poles for 5G would go up in the same area because it cost too much. Franklin noted the CLPUD poles along Highway 101 weren't in good shape. He had concerns about allowing multiple companies to come in and add a lot of equipment to the poles, then have them fail. Tokos explained that this would require utilities to swap out poles with something more robust. East asked if 5G would deploy before utilities went undergoing. Tokos explained that the thought was to have the framework in place in advance of the implementation. It would be in place before because it would take at least 5 years to have enough urban renewal funds to do the undergrounding.

Berman asked what the implications were if the city or CLPUD decided to put utilities underground. Would the companies who had other pieces of equipment on the existing poles be required to fix the situation for their purposes. Tokos confirmed they would and explained this would be part of the franchise agreements. They would be provided notice in advance and would be required address it. Branigan noted the wavelengths for 4G was 10 miles and 5G had a much shorter wavelength around 1,000 feet. Unless they figured out how to extend 5G, it would mean a forest of poles or a lot of them being placed on the sides of buildings. Tokos agreed and thought some would be on light poles and some on buildings to get the network they wanted.

East asked if there was a set distance for light standards on Highway 101 through downtown. Tokos explained it was the function of whatever the street lighting spread was. Every light fixtures had a different light spreads and it was analyzed to make sure there was sufficient coverage. East thought if there was a standard distance for lighting at 1,000 feet, it would give them enough coverage and they wouldn't need to change the design of the street pole. Berman thought 1,000 feet was a maximum and it could be considerably less than that.

Tokos continued his review of the design standards. Hanselman noted the 15 cubic feet standard suggested that there could be five antennas on a pole. He didn't think this would be very positive aesthetically. Hanselman wondered how many equipment boxes there would be for multiple carriers and how it would affect wind load. Tokos pointed out that the design for poles would have a limiting factor if the pole couldn't handle them. The city would assess their poles to see if they could handle the load. If the pole couldn't handle it, the applicant

would be told and the antenna would not be added then. Hanselman thought this was something people wanted to look into and he wanted to see it reduced. Tokos asked Hanselman what he thought it should be. Hanselman thought two or three should be sufficient and they should do something so poles didn't become gigantic small towers. Patrick thought this was why CLPUD didn't allow collocation because each of them would need a cabinet. Berman thought three cubic feet was very generous for the equipment cabinet. Franklin thought they were missing something on this and didn't think there would be many towers going down the sidewalk because it wouldn't be feasible for companies to do them. A discuss ensued regarding the amount of equipment shown on the different photo examples in the meeting packet. Tokos noted this would be evolving. By the time 5G was in Newport it will be different. Patrick was okay with 15 cubic feet with antenna and thought they would be more limited on CLPUD poles. Berman noted there was probably three carriers who would be implementing 5G. If this was implemented by resolution they could go back and take a look at it if circumstances changed. Berman was fine with the language because it would be years before it would become an issue. Tokos noted the standard was pulled out of a model code the League of Oregon Cities put out. In this regard it would be reasonable and they could revisit it if it became problematic. Tokos reported that there was no requirement to illuminate equipment.

Tokos reviewed the standard that said that small wireless facilities could not displace any existing street tree or landscape features guidelines. Berman thought that this section should say it would be “in accordance with the adopted tree manual” instead.

Tokos reviewed standards for attaching small wireless facilities to wooden poles and non-wooden poles with overhead lines. Berman thought this was the area where they needed to make “10 percent” more consistent. Tokos reviewed the guidelines that the antennas must be camouflaged on the pole. Berman thought this was weird and didn't understand how the antenna would look if it was on a wooden pole. Tokos explained they would paint it as close to the color of the pole to camouflage it.

Tokos reviewed the concealment of equipment guidelines. Berman asked if conduit and fiber needed to be concealed inside the pole. Tokos confirmed it did unless it wasn't technically feasible to do so. If not there were other options to camouflage. Berman thought the last sentence of Section D.2 needed to say “if technically feasible” as well. Tokos thought there would be circumstances where they wanted a pole that didn't have an interior. Patrick didn't see there being any poles like this. What they were talking about was where they wanted to get antennas hidden in the poles. Berman thought this limited their flexibility without adding if technically feasible.

Tokos reviewed the replacement pole requirements for non-wooden poles. Hanselman asked why there was a big change in heights. Tokos explained a lot of the lighting wasn't that tall and below what they wanted to do operationally. Berman asked who would get the letter in writing that was required. Tokos explained they would have to submit a letter to the city in writing dictating a different height for some reason.

Tokos reviewed the new poles section next. Franklin pointed out that the example on page 26 didn't have equipment at the top because that was where the utilities had to have their equipment. He asked if this was why they were requiring up to 45 feet and asked if it was wrong to only allow up to 40 feet. Tokos explained these were new poles and not replacement poles. They wouldn't be beholden to the utility provider's needs. Berman asked if it was clear in the definitions that 40 feet was after the whole thing was construction, not the extension off the top of the pole. Tokos confirmed this was strictly the pole height. Berman asked if the antenna could be above this. Patrick thought this was where they would be putting a pole up by itself to put the 4G on it. Tokos explained they could put an antenna array at the top and it could nominally extend above 40 feet, but not by a lot.

Tokos reviewed the historic district requirements, strand mounted equipment, and deviation from design standards next. Franklin thought the deviation standards sounded like a free for all and let them put their equipment where they wanted because it didn't work for them. Berman thought the city would have no technical expertise to know whether it materially inhibited or limited the service and network performance. All of these were vague and only a communications engineer would know if this was true or not. Tokos explained they

would end up defaulting to Section H.2 and H.3. The city would have a back and forth with them and point to different examples. Hanselman noted that half the committee that put this together were representatives from the industry and it put the city at a disadvantage because they didn't have a background in it. Franklin reminded that by the time this got to the city the technology would be more advanced and would change. Tokos reminded they could do changes by resolution. Once the standards were put in place they would revisit it periodically. Berman asked if the applicants had any appeal rights if they were turned down. Tokos thought it would be done through the FCC. Escobar thought that they would sue the city when they didn't get their way. He thought they would say the FCC would take precedent over city rules. Franklin asked when communication companies approached the city with an entire plan for everything they wanted to implement, would the city only have 10 days to approve. Tokos clarified that they could submit batch applications and bring in multiple deployment sites as part of a single application packet. The City would be stuck with the rules because of the FCC. Tokos noted that if they were deploying in 10 different areas they were probably deploying the same equipment effectively. Franklin thought this would make it hard to catch poles that were over utilized with equipment. He didn't see the city keeping up with this because the city would be steamrolled by the information. Berman explained the 10 days deadline was only to determine the completeness of the application. Patrick noted this would have to go by CLPUD and they were more restrictive than the city standards.

Tokos reported there were three companies that had already approached the city for franchises. He would make changes to the standards based on the Commission's feedback. Tokos would bring forward the private party part of the review to the Commission as the third part of the small wireless review.

B. Transportation System Plan Fall Virtual Events. Tokos asked the Commission to share the flyer for the virtual events. He noted the November 21st event would be an interactive virtual workshop. There would be inserts that would go out with the city billing and a post card would be mailed out city wide for the events. Tokos asked which Commissioners wanted to participate. Berman, Patrick, Hanselman, and East stated they would be participating. Tokos noted they would send out a notice since there would be a quorum of Commissioners participating that day.

C. Updated Planning Commission Work Program. No discussion was heard.

4. Adjourn. The meeting adjourned at 7:13 p.m.

Respectfully submitted,

Sherri Marineau,
Executive Assistant

City of Newport

Community Development Department

Memorandum

To: Planning Commission / Commission Advisory Committee
From: Derrick I. Tokos, AICP, Community Development Director 
Date: November 19, 2020
Re: Recommendation to City Council on NMC Chapter 9.25 (5G Small Wireless Ordinance)

Enclosed is a final draft of the new NMC Chapter 9.25 provisions regulating the deployment of small wireless facilities within rights-of-way and the related design standards. Since these are not land use regulations, a public hearing before the Planning Commission is not required. A public hearing will be required before the City Council.

At this time, it would be appropriate for the Planning Commission to entertain a motion to recommend the package of proposed changes to the Council for its consideration. That recommendation could be for the Council to consider the proposal as drafted or with amendments. The Commission could also forward the package without recommendation, in which case you might want to explain why a recommendation is not forthcoming.

The draft proposal will be provided to utilities for comment before the Ordinance is presented to the City Council. The City Attorney may also request changes to ensure the amendments are legally sufficient and that they sync cleanly with other code provisions.

Attachments

Clean Copy of Draft NMC Chapter 9.25, dated 11/19/20
Clean Copy of Draft Design Standards, dated 11/19/20

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 40th 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.]

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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(I).
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(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).

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).

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