

PLANNING & ZONING COMMISSION



Wendy McClure
Commission Chair

~Agenda~

Mike Ray
Staff Liaison

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**Wednesday
February 12, 2020**

7:00 PM

**Council Chambers
206 E 3rd Street**

Call to order

1. Approval of minutes from January 22, 2020 [ACTION ITEM]

ACTION: Approve minutes as presented; approve minutes with amendments; or provide staff further direction.

2. Public Comment

(Time limit 15 minutes. Members of the Public may speak to the Commission regarding matters NOT on the Agenda nor currently pending before the Planning and Zoning Commission. Please state your name and address for the record and limit your remarks to three minutes.)

3. Approval of Reasoned Statement of Relevant Criteria and Standards [ACTION ITEM]:

1. Proposal for a preliminary subdivision plat of a 10.22-acre parcel located at 2350 Trail Road and 2175 N Mountain View Road within the Area of City Impact – Sunrise Estates Addition: LUP2019-0035

ACTION: Review the draft Relevant Criteria and Standards document and approve the document; or approve the document with modifications; or provide Staff further direction as deemed necessary.

4. Small Cell Wireless Facilities Draft Ordinance [ACTION ITEM]:

Telecommunications service providers are currently in the process of deploying 5G/small cell wireless technology throughout the developed world. 5G high speed deployment will bring much higher data speeds and traffic, but requires small cell installations to accommodate the data demand. Telecommunications services are largely governed by the Federal Communications Commission (FCC) and the Telecommunications Act, but local governments are allowed to adopt certain regulations at the local level. With the likelihood of 5G/small cell deployment in Moscow, Staff has been working on drafting an ordinance to address them in the Zoning Code.

ACTION: Review the 5G/small cell wireless facilities draft ordinance and provide Staff further direction as deemed necessary.

5. Draft Subdivision Code Review [ACTION ITEM]

The Commission has been working on updating the City's Subdivision Code for the last year and a half, including the lot division and lot line adjustment process. New subdivision concepts of conservation and traditional subdivisions have been incorporated into the proposed draft as well. The Commission formed a subdivision review committee who met to review the draft subdivision code on October 18, 2019 and November 15, 2019 and provided recommendations for consideration by the Commission. The Commission reviewed the recommendations at their December 11, 2019 meeting and directed staff to amend the ordinance based upon some of the recommendations.

NOTICE: Moscow City Council Commission meetings can be televised, videotaped and/or recorded. Individuals attending the meeting who require special assistance to accommodate physical, hearing, or other impairments, please contact the City Clerk, at (208) 883-7015 or TDD 883-7019, as soon as possible so that arrangements may be made.

ACTION: Review the subdivision code draft ordinance and provide Staff further direction as deemed necessary.

6. Transportation Commission Meeting Report

ACTION: Receive report and provide staff further direction if necessary.

7. Announcements

ACTION: Read any correspondence received and provide staff further direction if necessary.

Adjourn

PLANNING & ZONING COMMISSION



Wendy McClure
Commission Chair

~Meeting Minutes~
January 22, 2020

Mike Ray
Staff Liaison

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Parish called the meeting to order at 7:00 p.m. with a welcome to new Commissioner Rich Beebe.

MEMBERS PRESENT: Robb Parish, Vice Chair; Scott Gropp, Joel Hamilton, Wendy McClure (via phone), Nels Reese, Victoria Seever, Rich Beebe

MEMBERS ABSENT: Mike Nelsen, Dennis Wilson

ALSO IN ATTENDANCE: Mike Ray, Anne Peterson

1. Approval of minutes from January 8, 2020 [ACTION ITEM]

Reese moved approval of the minutes as presented, seconded by Gropp. Motion carried by acclamation.

2. Public Comment

None.

3. Public Hearing: Proposal for a preliminary subdivision plat of a 10.22-acre parcel located at 2350 Trail Road and 2175 N Mountain View Road within the Area of City Impact – Sunrise Estates Addition: LUP2019-0035 [ACTION ITEM]:

Proposal for a preliminary subdivision plat of a 10.22-acre parcel located at 2350 Trail Road and 2175 N Mountain View Road to create two lots of 5.16 and 5.05 acres in size, referred to as Sunrise Estates Addition. The subject property is within the Moscow Area of City Impact. The City of Moscow Planning and Zoning Commission will make a recommendation to the Latah County Board of County Commissioners regarding this matter.

Ray presented the application, including a reminder to the Commission that the westerly portion of the subject property was rezoned from Ag-Forest to Farm Ranch to facilitate this subdivision plat. Subject property is primarily surrounded by agricultural use and rural residential properties. The existing residence on the easterly portion is accessed from Mountain View Road. There are existing outbuildings on the westerly portion remaining from the earlier agricultural use. The proposal fits within the Comprehensive Plan land use designation. The County has adopted the City's Thoroughfare Plan for this area which designates Trail Road and Mountain View Road as minor arterials. The previous rezone recommended an additional ten-foot right-of-way along Trail Road which has been accommodated within the proposed subdivision plat. The City Engineering department recommends a similar dedication be made on the west side of Mountain View Road for future expansion to the standard 70-foot width for minor arterials. Staff recommended approval to Latah County with the one condition regarding ROW dedication. Ray said current street standards actually call for an 90-foot width but staff thought in this situation 70 feet would be sufficient.

Parish opened the public hearing at 7:09 p.m.

Attorney Aaron Roepke, 530 S Asbury #2, attended to represent the applicant in case Commissioners had questions. He confirmed everyone was comfortable with the recommended ROW dedication.

Scott Becker, 405 S Washington, was present as the applicant's engineer in case anyone had questions that Roepke couldn't answer, but there were none.

Peter Garaway, the adjacent neighbor at 2175 N Mountain View Road, said when he purchased in 2016 it was contingent on the lot split already being completed, so he wondered how this action would affect his parcel. Ray explained anyone can quit claim property and the assessor will create parcel lines and parcel numbers for tax purposes, but the County doesn't recognize them as buildable lots until the subdivision plat has been completed.

Mary Lewandowski, 2351 Mountain View Road, asked what type of housing would be allowed on the eastern lot and Ray replied it was zoned for one single family dwelling. When she pressed about how many people that might mean, Ray said the occupants would need to meet the City's zoning definition of "family."

Mike Church, 1041 Lyon Rd, asked if the ROW dedication would change the parcel sizes. Ray explained the County and City show ROW dedications differently so the maps can be confusing. In the County, the ROW dedication is actually a public easement on property that is retained by the owner.

The public hearing closed at 7:17 p.m. McClure asked if the ROW dedication will accommodate future plans for bike lanes and travel aisles on Mountain View Road, and Ray responded affirmatively. Hamilton moved to recommend to the County that the proposal be approved with the recommended condition of additional ROW dedication. Gropp seconded the motion and it carried unanimously. Hamilton directed staff to create the Relevant Criteria and Standards, seconded by Reese and carried unanimously.

4. Small Cell Wireless Facilities Draft Ordinance [ACTION ITEM]:

Telecommunications service providers are currently in the process of deploying 5G/small cell wireless technology throughout the developed world. 5G high speed deployment will bring much higher data speeds and traffic, but requires small cell installations to accommodate the data demand. Telecommunications services are largely governed by the Federal Communications Commission (FCC) and the Telecommunications Act, but local governments are allowed to adopt certain regulations at the local level. With the likelihood of 5G/small cell deployment in Moscow, Staff has been working on drafting an ordinance to address them in the Zoning Code.

Citizen David Hall provided written documentation of his research on the topic. Parish thanked him and encouraged Hall to continue bringing forward additional data, reminding him that public testimony will be taken during the public hearings prior to ordinance adoption. Another citizen had provided a sample ordinance from Mill Valley, CA prior to the meeting for the Commission's consideration. Ray walked through Moscow's current draft ordinance. Points of discussion included co-location options, design standards, placement on historic structures, and the importance of retaining both public and private urban greenery. Parish offered that whatever is ultimately decided will need to be flexible enough to remain relevant as technology changes. Commissioners directed staff to provide more information about the technology itself, the latest court rulings regarding FCC rulings; the potential frequency of poles, proximity of towers to residential buildings; and what the compliance mechanism will be to ensure towers meet radiofrequency safety standards. David Hall offered that UI law professor Richard Seamon will be presenting on the topic next month. Commissioners will discuss the Mill Valley ordinance at the February 12th meeting.

5. Draft Subdivision Code Review [ACTION ITEM]

The Commission has been working on updating the City's Subdivision Code for the last year and a half, including the lot division and lot line adjustment process. New subdivision concepts of conservation and traditional subdivisions have been incorporated into the proposed draft as well. The Commission formed a subdivision review committee who met to review the draft subdivision code on October 18, 2019 and November 15, 2019 and provided recommendations for consideration by the Commission. The Commission reviewed the recommendations at their December 11, 2019 meeting and directed staff to amend the ordinance based upon some of the recommendations.

Ray said the only change from the last time Commissioners discussed this subject is the entire document is now ordinance form. Ray said he could prepare a presentation for the next meeting showing real-life examples of how the new concepts might look. Ray thought the ordinance would be ready for public hearing after one or two more reviews.

6. Transportation Commission Meeting Report

On January 9th the Commission discussed a request for ROW vacation on Howard Street between E and Homestead Streets for the purpose of infill development. The Commission had several concerns and did not make a recommendation to Council. They also received a report regarding City staff's plan to apply for grant funding to install a small-scale roundabout at the A and Baker Streets intersection which has a high vehicle and pedestrian accident history.

7. Announcements

None.

The meeting adjourned at 8:26 p.m.

Robb Parish, Vice Chair

**BEFORE THE PLANNING AND ZONING COMMISSION
OF THE CITY OF MOSCOW, COUNTY OF LATAH,
STATE OF IDAHO**

REASONED STATEMENT OF RELEVANT CRITERIA AND STANDARDS

REASONED STATEMENT OF RELEVANT CRITERIA AND STANDARDS REGARDING A REQUEST FOR THE PRELIMINARY SUBDIVISION PLAT OF A TEN POINT TWO (10.2) ACRE AREA OF LAND LOCATED AT 2350 TRAIL ROAD AND 2175 N MOUNTAIN VIEW ROAD WITHIN THE AREA OF CITY IMPACT OF THE CITY OF MOSCOW, IDAHO.

WHEREAS, the applicant filed an application for a Preliminary Plat in the Moscow Area of City Impact on December 2, 2019; and

WHEREAS, this matter came before the Moscow Planning and Zoning Commission during a duly noticed public hearing on January 22, 2020; and

WHEREAS, having reviewed the application, including all exhibits entered, and having considered the issues presented by the applicant and the opponents:

THE PLANNING AND ZONING COMMISSION OF THE CITY OF MOSCOW, IDAHO, AFTER DUE DELIBERATION AND CONSIDERATION, HEREBY CONCLUDES:

I. RELEVANT FACTS AND CONCLUSIONS

1. The Planning and Zoning Commission considered the request pursuant to the City of Moscow 1999 Comprehensive Plan, City of Moscow Zoning Ordinance, the Local Land Use Planning Act, the Moscow Area of City Impact Agreement, and other applicable development regulations.
2. Per the Moscow Area of City Impact Agreement with Latah County, the Moscow Planning and Zoning Commission is to conduct one hearing and forward a recommendation on to Latah County.
3. The subject property is a ten-point two (10.2) acre area of land generally located at 2350 Trail Road and 2175 N Mountain View Road within the Area of City Impact.
4. The westerly 5.16 acres is currently being used as hay and pasture ground and includes a large barn that is used for storage. The easterly 5.05 acres is located at the northwest corner of the intersection of Trail Road and Mountain View Road and currently contains a single-family dwelling and several outbuildings.
5. The subject property is primarily surrounded by agricultural lands and rural single-family dwellings that are within the Area of City Impact. Access is provided via Trail Road and Mountain View Road which are currently designated as a minor arterials within the 2019 Comprehensive Plan. The 2019 Comprehensive Plan has been adopted within the 2019 ACI agreement.

6. The subject property is currently designated as Agricultural (A) upon the 2019 City of Moscow Comprehensive Plan Land Use Map. Surrounding properties on all sides are also designated as Agricultural (A).
7. According to the 2019 Comprehensive Plan, the Agricultural designated areas,

“are intended to allow continued use for agricultural purposes with allowances for limited residential development at very low densities. Lands with this designation should be preserved for agricultural use and development should be directed to areas in closer proximity to the City where municipal utilities are available and land can be efficiently developed and serviced. Areas shown as Agriculture on the Future Land Use Plan are outside of the 10-year growth area (refer to Chapter 5, Growth Management and Capacity), and beyond the area for which the City is prepared to provide adequate facilities and services during the horizon of this Plan. Generally, these are found around the periphery of the City and throughout the Area of City Impact. The residential development options allow septic/well and septic/public water (where applicable and warranted) at very low densities, consistent with the intended agricultural character. Appropriate current zones for lands with this designation are Agriculture/Forestry (AF) and Farm, Ranch and Outdoor Recreation (FR).”
8. The subject property is located in Latah County within the Area of City Impact and the 5.16-acre portion of the property was rezoned from Agriculture/Forestry (AF) to Farm Ranch (FR) in 2018 and the 5.05-acre portion is currently zoned AF.
9. All of the surrounding properties are currently zoned Agriculture/Forestry (AF).
10. According to the City of Moscow Zoning Code, the purpose of the FR Zoning District is intended to,

“permit current agricultural, outdoor recreation and other open land uses to be maintained and at the same time to set minimum standards for the development of similar new uses in order that this open zoning district be protected against spasmodic, disorderly and indiscriminate development until such time as another appropriate use of the land in this zoning district has been determined. It is also intended that newly annexed areas of the City be placed in this classification until land use studies determine the character and appropriate use of such areas.”
12. Uses permitted within the FR Zone include single family dwellings, urban agriculture, child care services, and bed and breakfast inns. Conditionally permitted uses include golf courses, veterinary services, pet care services, antenna towers, cemeteries, community centers, fairgrounds, government office buildings, religious facilities, self-storage facilities, and RV parks and campgrounds.
13. The applicant is proposing to subdivide the existing 10.22 acre parcel to create two lots of 5.16 and 5.05 acres in size. The westerly lot that is proposed to be 5.16 acres in size is currently zoned FR, which requires a minimum lot size of 3 acres and lot width of 125 feet. The proposed westerly lot meets all the requirements in the FR Zone to be eligible for a single-family dwelling.
14. The proposed easterly lot that is 5.05 acres in size is within the AF Zone, which has a 40 acre minimum lot size requirement and 150 ft lot width requirement. This lot already contains a single-family dwelling and currently has a nonconforming lot size.
15. Water is currently available to the subject property via a private well and sewer is available via a private septic system.

16. The subject property has access via Trail Road and Mountain View Road, which are both currently designated as a minor arterials within the 2019 Comprehensive Plan. Trail Road is developed as an approximately 22-foot-wide gravel roadway with ditches on both sides and Mountain View Road is an approximately 26-foot-wide paved roadway with ditches on both sides.
17. As part of the previous rezone request, an additional 10' of street right-of-way was dedicated along Trail Road to allow for the future expansion of the roadway to minor arterial standards. Since the proposed subdivision has street frontage along Mountain View Road, which is also a minor arterial, the same recommendation of 10' of additional right-of-way for future roadway expansion is recommended by the Engineering Department.

BASED ON THE ABOVE RELEVANT FACTS AND CONCLUSIONS, THE PLANNING AND ZONING COMMISSION OF THE CITY OF MOSCOW HEREBY FINDS THE FOLLOWING RELEVANT CRITERIA AND STANDARDS:

II. RELEVANT CRITERIA AND STANDARDS

1. **This plat is not contradictory to the Moscow Comprehensive Plan.** The proposed preliminary plat is consistent with the underlying 2019 Comprehensive Plan Land Use Designation of Agricultural in promoting the continued use for agricultural purposes with allowances for limited residential development at very low densities. The proposed lots sizes and densities are consistent with the Comprehensive Plan Land Use designation of Agricultural.
2. **This plat is compatible with the Moscow Zoning Ordinance.** The proposed preliminary plat is consistent with and in conformance with the requirements and provisions of the Farm Ranch (FR) and Agriculture/Forestry (AF) Zones. The proposed 5.16-acre lot meets the minimum lot size and width requirements of the FR Zone, and the 5.05-acre lot is already a legal nonconforming lot within the AF Zone.
3. **This plat is compatible with the Moscow Subdivision Ordinance.** The proposed preliminary plat is consistent and in conformance with the general requirements of the Moscow Subdivision Ordinance. With the recommended dedication of an additional 10 feet of road right-of-way along Trail Road and Mountain View Road, the future extension of the roadways to a minor arterial standard is feasible.
4. **This plat is considerate of the natural features of the subject land.** The proposed preliminary plat provides for development of the subject property in conformance and consideration of the natural contours of the subject property.
5. **This plat is not expected to place an undue burden on public services and infrastructure, and does not pose an apparent threat to the public health, safety or welfare.** The subject property has direct access to Trail Road and Mountain View Road, which are both minor arterials. The applicant will be required to obtain proper approval for water and sewer to the subject property.

III. DECISION

Based on the above Reasoned Statement of Relevant Criteria, the Planning and Zoning Commission of the City of Moscow recommends approval of the preliminary plat request for the ten-point two (10.2) acre property to Latah County with one condition:

1. The applicant shall dedicate sufficient right-of-way along the full frontage of the property adjacent to Mountain View Road to provide 35 feet of width west of the existing centerline of Mountain View Road to meet the existing minor arterial street standard.

PASSED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF MOSCOW this
____ day of _____, 2020.

Robb Parish, Vice Chair
Planning and Zoning Commission

ORDINANCE NO. 2020 -

AN ORDINANCE OF THE CITY OF MOSCOW, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; PROVIDING FOR THE AMENDMENT OF MOSCOW CITY CODE TITLE 4, CHAPTER 3; PROVIDING FOR THE ; PROVIDING THAT THE PROVISIONS OF THIS ORDINANCE BE DEEMED SEVERABLE; AND PROVIDING FOR THIS ORDINANCE TO BE IN FULL FORCE AND EFFECT FROM THE DATE OF ITS PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

WHEREAS, : and

WHEREAS, : and

WHEREAS, : and

WHEREAS, : and

WHEREAS, : and

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MOSCOW, IDAHO, AS FOLLOWS:

SECTION 1: That Moscow City Code Title 4, Chapter 3 be amended as follows:

...

H. Telecommunications Facilities.

1. Applicability. This Section shall apply to antenna towers, antenna support structures, antennas and their ancillary facilities (telecommunications facilities) any of which are used to provide commercial telecommunications services. This Section shall not apply to noncommercial antenna towers exclusively used as accessory to a residential use on the same lot.
2. Purpose. The provisions of this Section are intended to ensure that telecommunications facilities are located, installed, maintained and removed in a manner that:
 - a. Minimizes the number of antenna towers throughout the community;
 - b. Encourages the co-location of telecommunications facilities;
 - c. Encourages the use of existing buildings, light or utility poles, water towers or other structures for antenna mounting and discourages construction of new antenna towers;
 - d. Ensures that telecommunications facilities are located and designed to minimize visual impact on the surroundings.
 - e. Ensures that regulation of telecommunications facilities does not have the effect of prohibiting the provision of telecommunications services, does not unreasonably discriminate among functionally equivalent providers of such services, and allows the provision of adequate area coverage by such services.

3. Definitions.

- a. *Ancillary Facilities.* Buildings, cabinets, vaults, enclosures, equipment, and the like required for operation of telecommunications systems.
- b. *Antenna.* Any device that transmits and/or receives radio waves, microwaves, or other electro-magnetic radiation for voice, data or video communications purposes including, but not limited to, television, AM/FM radio, micro-wave, cellular telephone and similar forms of communications.
- c. *Antenna Support Structure.* Any structure or building not constructed primarily for the purpose of supporting an antenna but that supports an antenna as a secondary or accessory use.
- d. *Antenna Tower.* Any structure or pole erected primarily for the purpose of supporting one or more antennas that are used to provide commercial wireless communications or telecommunications services.
- e. *Antenna Tower Height.* The overall vertical length of the antenna tower above ground level.
- f. *Co-location.* Placement of one or more antenna(s) on an antenna support structure or the placement of an antenna on an antenna tower on which one or more antennas are already located.
- g. *Lattice Tower.* An antenna tower characterized by a framework of lateral or diagonal cross members that stabilize the tower.
- h. *Monopole.* An antenna tower that consists of a single upright pole, which is self-supporting and without supports or guys.
- i. *Small Wireless Facility.* Is a telecommunications facility that meets each of the following conditions:
 - i. The structure on which the antenna facilities are mounted is:
 - (a) Fifty (50) feet or less in height; or
 - (b) No more than ten percent (10%) taller than other adjacent structures; or
 - (c) Not extended to a height of more than ten percent (10%) above the height as a result of the collocation of new antenna facilities.
 - ii. Each antenna (excluding associated antenna equipment) is no more than three (3) cubic feet in volume; and
 - iii. All antenna equipment associated with the facility (excluding antennas) are cumulatively no more than twenty eight (28) cubic feet; and
 - iv. The facility does not require antenna structure registration under Part 17 of FCC regulations; and
 - v. The facility does not result in human exposure to radiofrequency radiation in excess of the application safety standards specified in FCC Rule 1.1307(b).
- j. *Telecommunications facilities.* Antenna towers, antenna support structures, antennas and their ancillary facilities that are used to provide commercial wireless communications or telecommunications services.
- k. *Temporary Antenna Tower.* An antenna tower established for the purpose of providing tele-communications services on a temporary basis for a special event or to temporarily replace an antenna tower while it is being repaired.

4. General Use Regulations

- a. A Conditional Use Permit shall be required before the installation, relocation, replacement, and/or alteration of an antenna tower that exceeds thirty-five feet (35') in

- height in all Zoning Districts.
- b. Except for small wireless facilities which are subject to the standards contained in Section 6 herein, co-location shall be a permitted use within all zoning districts when located upon existing antenna towers and antenna support structures if the antenna extends no more than fifteen feet (15') above, and projects no more than eight feet (8') horizontally away from the existing tower or support structure. Any co-location of wireless facilities that exceed such limits shall require a Conditional Use Permit.
 - c. A temporary antenna tower as defined herein shall be a permitted use in all zoning districts, subject to site plan approval by the Zoning Administrator. The duration of the temporary antenna tower at the site shall not exceed the special event time or the time reasonably needed to repair the antenna tower in need of repair.
5. General Telecommunication Facility Development Standards
- a. Prohibited Towers. The installation of telecommunications facilities utilizing lattice towers or towers requiring supporting guy wires shall be prohibited.
 - b. Antenna Tower Setback from Highway Right-of-Way. No antenna tower that exceeds sixty feet (60') in height shall be permitted within five hundred feet (500') of US Highway 95 and/or State Highway 8 rights-of-way unless the proposed site is in the U, MB, or I Zoning District, in which case the antenna tower shall be set back a minimum of one hundred feet (100') from said right-of-way.
 - c. Antenna Tower Setback from Property Lines. Antenna towers shall be separated from the property line of any adjacent property zoned for residential uses at least a distance equal to the height of the antenna tower, and shall be separated from all other adjacent property lines at least a distance equal to one-half (1/2) the height of the antenna tower.
 - d. Security. Every telecommunications facility shall be protected from unauthorized access by appropriate security measures.
 - e. Lighting. Every antenna and antenna tower shall not be lighted unless required by the Federal Aviation Administration or other state or federal agency having such authority, and such lighting shall not be more than the minimum required by such agency.
 - f. Noise Reduction. Noise generating equipment shall be sound-buffered by means of baffling, barriers, or other suitable means to reduce sound level measured at the property line to forty five decibels (45 dB).
 - g. Signage. The placement of signage on antenna towers is prohibited, except for the placement of security signage, which shall not exceed six (6) square feet on each side of the antenna tower and shall not be located higher than six feet (6') above grade. Additionally, one security sign not to exceed one (1) square foot may be provided on each fifty feet (50') of wall or fence enclosing the facility.
 - h. Aesthetic Considerations.
 - i. Antenna towers shall be painted a neutral color consistent with the natural or built environment of the subject site and the surrounding area unless otherwise required by the Federal Aviation Administration or any other State or Federal agency having such authority.
 - ii. Equipment shelters or cabinets shall have an exterior finish compatible with the natural or built environment of the subject site and the surrounding area and shall also comply with any design guidelines applicable to the particular zoning district in which the facility is located.
 - iii. Antennas and cables shall be of a color identical to or closely compatible with that

of the structure to which they are attached unless otherwise required by the Federal Aviation Administration or any applicable state or federal agency. Telecommunications facilities located above ground in or directly adjacent to any residential zoning districts shall be surrounded by a minimum six-foot (6') high decorative wall constructed of brick, stone, or textured concrete block. Said wall shall be surrounded by a Type "A" Landscape Buffer Yard planted adjacent to said wall or fence or at an alternate location providing equal or better buffering. Telecommunications facilities in all other zoning districts shall be surrounded by a minimum six-foot (6') high wall or solid or slatted fence. Said fence or wall shall be surrounded by a Type "A" Landscape Buffer Yard planted adjacent to said wall or fence or at an alternate location providing equal or better buffering.

- iv. Vehicle or outdoor storage on any antenna tower site is prohibited unless otherwise permitted by the Zoning District in which the tower is located.
- v. At least one (1) on-site parking stall with a vehicle turnaround area shall be provided at each antenna tower site. The parking area and driveway to it shall consist of asphalt, concrete, or gravel.
- vi. Ancillary facilities located above ground for antennas shall be set back a minimum of fifty feet (50') from any adjacent property that is either located within a residential zoning district or utilized for residential purposes, unless the applicant can demonstrate that the specific proposal will present no greater adverse visual and audio impacts to surrounding properties.
- i. Co-Location Consent for New or Existing Antenna Towers.
 - i. Existing Antenna Towers. Prior to the issuance of any permit to relocate, alter or modify any antenna tower, the tower owner shall provide to the City a notarized written commitment to make said antenna tower available for use by others subject to technical and structural limitations and reasonable financial terms. The failure of an antenna tower owner to agree to shared use or to negotiate in good faith with potential users shall be unlawful and, among other remedies of the City, shall be just cause for the withholding of the issuance of future antenna tower permits to such an owner as well as revocation of antenna tower permits for any antenna tower on which co-location is refused or unreasonably hindered.
 - ii. New Antenna Towers. Any new or relocated antenna tower eighty feet (80') or greater in height shall be designed and constructed to accommodate at least two (2) additional users unless a larger number of users needs to be accommodated as indicated by the response to the Notice provisions herein. As an alternative, a smaller tower may be approved if the tower owner commits in writing to "swap out" to a larger tower, or extend the tower, when needed to allow co-location space for additional service providers. A notarized written commitment to shared use as specified in Subsection 6.a. above shall be submitted to the Zoning Administrator by the antenna tower applicant. The failure of the owner of an antenna tower built with a capacity for shared use to negotiate in good faith with potential users shall be unlawful and shall be a violation of this Ordinance and, among other remedies of the City, shall be just cause for the withholding of the issuance of future antenna tower permits to such an owner as well as revocation of antenna tower permits for any antenna tower on which co-location is refused or unreasonably hindered.
- j. Antenna Tower Inventories. Prior to the issuance of any permit to install, relocate,

- replace or alter any antenna tower, the tower owner shall furnish the Zoning Administrator an inventory of all of the owner's antennas and antenna towers in the City of Moscow and within one (1) mile of the City limit boundary. The inventory shall include the reference name or number, or other description of location including a site map(s), structure type, height, type of antenna tower(s) or antenna support structure(s) and height of all existing antennas and an assessment of available ground space for the placement of additional equipment shelters for potential future users.
- k. Notice of Antenna Tower Permit Applications. The applicant for any new antenna tower permit shall have a copy of the application and a summary containing the height, design, location, type and frequency of antennas delivered by certified mail to all known and potential antenna tower users within the service area. Proof of such delivery of the summary shall be submitted with the permit application to the City. Such notification shall be so mailed no less than sixty (60) days prior to the public hearing where the application will be considered and shall specifically solicit co-location discussion between the applicant and recipients of the notice. The Zoning Administrator may establish a form required to be used for such notifications. Upon request, the Zoning Administrator shall place on a list the name and address of any user or prospective user of antenna towers to receive notification of applications. The failure of the party receiving such Notice to use this process or respond to any such Notice may be considered cause for denying requests by such party for antenna tower permits. Such response shall be provided in writing to the Zoning Administrator within forty-five (45) days of mailing and shall contain a statement specifying desire to co-locate on the applicant's proposed tower and a statement regarding the responder's ability to accommodate the needs of the applicant on an existing tower or support structure owned or operated by the responder.
6. Small Wireless Facility Standards.
- a. Applicability. These standards shall apply to the installation of new small wireless facilities antennas or the co-location of small wireless facilities on existing antenna support structures. The City Council may adopt additional small wireless facility design and construction standards by Resolution and the most restrictive provisions of either shall apply.
- b. Approvals. Small wireless facilities shall be subject to the administrative approval of the Zoning Administrator, or their designee, subject to the construction standards and permit and application process and contained herein and as established by Resolution of the City Council.
- c. Co-location upon existing antenna support structures. Co-location of small wireless facilities upon existing antenna support structures shall be a permitted use subject to the following standards.
- i. Height of co-location antennas. Small wireless facilities shall not extend more than five feet (5') above and two feet (2') horizontally from the existing antenna support structure.
- ii. Shrouding of antennas and supporting equipment. All small wireless facility antennas, attendant equipment, and cabling shall be shielded from view by equipment and cable shrouds and/or equipment enclosures that shall be colored gray (RAL 7074) or other similar color as approved by the City.
- iii. Maximum number of shrouds. Only one equipment shroud, containing all required

small wireless facility equipment, shall be installed per antenna support structure. Except, one additional equipment shroud shall be allowed per pole if the antenna is located within the second equipment shroud.

- iv. Shroud mounting method. Small wireless facility shrouds may be either top or side mounted to an existing antenna support structure, or suspended from strand-mounted to aerial cables as may be approved by the utility cable owner in accordance with the standards contained herein.
 - (a) Side mounted. Side mounted equipment shrouds shall be located in such a manner as to not obstruct pedestrian access on adjacent sidewalks. Where side mounted equipment shrouds are placed above adjacent sidewalks a minimum clearance of eight feet (8') shall be maintained between the bottom of the shroud and mounting hardware and the walking surface. Where side mounted shrouds overhang the adjacent curb or roadway, a minimum clearance of fourteen feet (14') shall be maintained between the bottom of the equipment shroud or mounting hardware to the roadway surface. If the antenna is mounted to the side of the pole it shall be located inside a maximum shroud of 5.5 cubic feet in volume with a sixteen inch (16") maximum width.
 - (b) Top mounted. If the antenna shroud is located on top of the antenna support structure, the outer diameter shall be fourteen inch (14") maximum and the antenna shroud shall be no more than five feet (5') tall, including antenna, radio head, mounting bracket, and all other hardware necessary for a complete installation.
- v. Obstruction of lighting prohibited. Shroud installations upon antenna support structures containing street lights shall not obstruct, interfere with, or diminish the light distribution and lighting levels of the street light fixture.
- d. Replacement combination light and antenna towers.
 - i. Existing antenna support structures (such as light poles) may be replaced new equivalent combination structures intended to accommodate the intended function of the existing antenna support structure and accommodate a small wireless facility subject to the following requirements:
 - (a) The replacement antenna support structure is of the same quality, color, design and style so be consistent with other existing support structures in the surrounding area subject to the approval of the Zoning Administrator;
 - (b) The replacement antenna support structure is of the same height of the existing support structure excluding the top mounted small wireless facility antenna which may exceed the height of the existing antenna support structure which shall comply with the top mounted shroud standards contained herein;
 - (c) The replacement antenna support structure shall be designed to internally accommodate all necessary small wireless supporting equipment in accordance with the standards required of new small wireless facilities contained herein;
 - (d) The replacement of decorative and/or historic light fixtures shall not be permitted unless the applicant can demonstrate that the proposed replacement antenna support structure will not disrupt or interfere with the visual theme and style of lighting within the surrounding area.
- e. New small wireless facility antenna towers.
 - i. Maximum height. No new small wireless antenna tower may exceed forty feet (40')

in height unless a Conditional Use Permit is received to exceed this height limitation.

- ii. Antenna and equipment shrouding. New standalone or new and/or replacement combination light and small wireless antenna towers shall fully enclose and contain all the small wireless communications equipment, cabling, and antennas, and shall be of a style and color that is consistent with other similar light poles and fixture within the surrounding area as approved by the City.
 - iii. Maximum number of shrouds. Only one equipment shroud, containing all required small wireless facility equipment, shall be installed per antenna tower
 - iv. Minimum spacing between small wireless facility antenna towers. Small wireless facility antenna towers shall be located no closer than two hundred and fifty feet (250') from another small wireless facility antenna tower. This separation require shall not apply to co-locations upon existing antenna support structures or replacement combination light and small wireless antenna towers.
 - v. Antenna tower design. New small wireless antenna towers shall consist of a ten inch (10") galvanized straight steel pole, powder coated black over zinc paint, with a foundation base of sixteen inches (16") in diameter designed to accommodate all necessary supporting equipment and a top antenna shroud of no more than fourteen inches (14") in diameter. All tower components and antenna shrouds shall be painted a matching black color.
7. Permits Required
- a. A building permit shall be required to construct, install, relocate, replace, or alter any antenna tower. An administrative zoning permit shall be required to locate or replace any antenna on an antenna tower or antenna support structure or for the installation of a small wireless facility. A Conditional Use Permit shall be required as specified in Section 4 herein.
 - b. An application for any of the above-mentioned permits shall include or be accompanied by all of the information necessary to determine and document compliance with the regulations established herein. Where no application or permit form exists, the application shall be in the form of a letter signed and dated by the applicant, and the permit issuance shall be in the form of a letter of approval signed and dated by the Zoning Administrator or a dated signature by the Zoning Administrator on the applicable site plan.
 - c. Specific permit application submittal requirements shall be determined by the Zoning Administrator and may include, but are not limited to, the following:
 - i. Permit application.
 - ii. Site plan.
 - iii. Elevation drawing(s) of the antenna tower or antenna support structure, antenna(s) and ancillary facilities.
 - iv. Photo simulations from three different perspectives of the installation site illustrating the anticipated visual appearance of the proposed wireless facility (not required for small wireless facilities).
 - v. Description of proposed and required lighting including light locations. Documentation of required lighting, as specified in Section 5.c. herein, may be deferred until prior to issuance of building permit if not available at time of application submittal.

- vi. Any plans necessary to depict structural requirements.
 - vii. Description of the number and types of antennas being proposed, as well as the expected or known capacity of the antenna tower in terms of the number of antennas the antenna tower can accommodate.
 - viii. Antenna tower or antenna location study specifying the search process by which the proposed site was chosen.
 - ix. Antenna tower inventory as specified in Section 6.c. herein.
 - x. Notarized written commitment to allow co-location/shared use as specified in Section 6 herein (not required for small wireless facilities).
 - xi. Documentation demonstrating compliance with non-ionizing electromagnetic radiation (NIEER) or radio frequency (RF) emissions standards as established by the Federal Communications Commission (FCC). Such documentation may be deferred until prior to issuance of building permit if not available at time of application submittal.
 - xii. Current FCC license to operate.
 - xiii. Documentation of a review by the Federal Aviation Administration (FAA) and/or the Aviation Division of the Idaho Transportation Department (ITD). Such documentation may be deferred until prior to issuance of building permit if not available at time of application submittal.
 - xiv. Name and address of the property owner, telecommunications service provider, and owner of the telecommunications facility on the permit application, and a written statement of approval of the application by the property owner.
 - xv. Description of proposed security measures as required in Section 5.b. herein.
8. Findings for Conditional Use Permit.
- a. Before a Conditional Use Permit for an antenna tower may be issued, the applicant must demonstrate, and the Zoning Board of Adjustment must find, compliance with all of the following:
 - i. No existing antenna towers or antenna support structures within the necessary geographic area for the applicant's antenna tower meet the applicant's requirements considering (a) height, (b) structural integrity, or (c) that there are other prohibitive conditions that render existing antenna towers or antenna support structures within the applicant's required geographic area unsuitable.
 - ii. That the design of the antenna tower, including the antennas and ancillary facilities, minimizes visual impact and otherwise complies with provisions and intent of this Section.
 - iii. That the proposed antenna tower location minimizes the number and/or size of antenna towers or antenna support structures that will be required in the area.
 - iv. That the applicant has not previously failed to take advantage of reasonably available shared use opportunities or procedures provided by this Ordinance or otherwise.
 - v. These findings shall be required in addition to those required for the Reasoned Statement of Relevant Criteria and Standards provided in Section 4-8-4 of the Zoning Code.
9. Abandonment and Removal.
- a. All telecommunications facilities shall be removed by the owner of the facility, by the operator of the facility, and/or by the property owner within six (6) months of the time

that the facility has substantially ceased being used to provide telecommunications services to the public. Removal shall not be required when the owner or operator of the facility has, within the aforementioned six (6) months, filed with the City a written request to reuse the antenna tower and the City has approved such request. Such written request shall detail the circumstances that justify why the antenna tower should not be removed, why it will be unused for six (6) months or more, and shall commit to a date certain, not to exceed twelve (12) months from the date of last use, by which time the antenna tower will again provide telecommunications services to the public. Before issuance of an antenna tower permit, the applicant for any antenna tower permit shall provide to the City financial security, such as but not limited to an open-ended bond, to ensure removal of the antenna tower and ancillary facilities after the facility is no longer being used to provide telecommunications services to the public.

10. Affirmative Duty to Keep City Informed.

- a. All telecommunications service providers having telecommunications facilities in the jurisdiction of the City shall be required to report in writing to the Zoning Administrator any change in the status of their operations. Change in status shall include, but is not limited to, the following:
 - i. Change in or loss of license from the FCC to operate.
 - ii. Receipt of notice of failure to comply with the regulations of any other authority having jurisdiction over the business or facility.
 - iii. Change in ownership of the company that owns the telecommunications facilities or that provides telecommunications services.
 - iv. Loss or termination of lease with the property owner or the owner of the telecommunications facilities.
 - v. Abandonment of a facility or non-use of a facility for a period of six (6) months or longer.
- b. All telecommunications service providers having facilities in the jurisdiction of the City shall file with the Zoning Administrator an annual written statement verifying continued use of each of their facilities in the City's jurisdiction as well as continued compliance with state and federal agency regulations.

...

SECTION 5: SEVERABILITY. Provisions of this Ordinance shall be deemed severable and the invalidity of any provision of this Ordinance shall not affect the validity of remaining provisions. The remaining sections of Title 4 shall be in full force and effect.

SECTION 6: EFFECT ON OTHER ORDINANCES. Where the definitions contained in this Ordinance are in conflict with relevant portions of the City of Moscow, Idaho, Municipal Code, the definitions contained within those portions of the Moscow Municipal Code will be unaffected until such time, if any, as they are amended to be consistent with this Ordinance.

SECTION 7: EFFECTIVE DATE. This Ordinance shall be effective upon its passage, approval, and publication according to law.

PASSED by the City Council and APPROVED by the Mayor this _____ day of _____, 2020.

Bill Lambert, Mayor

ATTEST:

Laurie M. Hopkins, City Clerk

DRAFT

PROPOSED ZONING CODE CHAPTER 17.36 (WIRELESS
COMMUNICATION APPARATUS)

Chapter 17.36

WIRELESS COMMUNICATION APPARATUS

Sections:

- 17.36.010 Purpose
- 17.36.020 General Provisions
- 17.36.030 Definitions
- 17.36.040 Wireless Communication Facilities
- 17.36.050 Small Cell Permit Application
- 17.36.060 Small Cell Permit Review Process
- 17.36.070 Design and Concealment Standards
- 17.36.080 Small Cell Permit and Minor Deviations
- 17.36.090 Significant Deviations
- 17.36.100 Compliance With State Processing Limitations
- 17.36.110 Time Periods for Review of Applications

17.36.010 Purpose. The purpose of this Chapter is to manage public rights-of-way and other properties within the City of Pullman in a thoughtful manner which balances the need to accommodate new and evolving technologies with the preservation of the natural and aesthetic environment of the City while complying with the requirements of state and federal law.

17.36.020 General Provisions.

- (1) Service providers who seek to utilize the public right-of-way for small cell deployment in order to provide wireless communication, data transmission or other related services to the citizens of the City shall receive a valid franchise to provide the specific service seeking to utilize the small cell deployment. Entities with franchises who wish to utilize a small cell deployment to upgrade or expand their existing services shall utilize the processes set forth in this Chapter to deploy their technology and obtain design approval of specific installations.
- (2) Small cell deployments shall be made in compliance all federal, state, and local small cell permitting requirements.

- (3) Nothing in this Chapter revises or diminishes the rights and obligations of an existing franchise.

17.36.030 Definitions.

- (1) Antenna. Any exterior apparatus designed for telephonic, radio, data, internet, or other communications through the sending and/or receiving of radio frequency signals including, but not limited to, equipment attached to a tower, pole, light standard, utility pole, building, or other structure for the purpose of providing wireless services. Types of antennas include:
- (a) an "omni-directional antenna" which receives and transmits radio frequency signals in a 360-degree radial pattern;
 - (b) a "whip antenna" which is an omni-directional antenna that is up to 15 feet in height and no more than six inches in diameter; and
 - (c) a "directional or panel antenna" which receives and transmits radio frequency signals in a specific directional pattern of less than 360 degrees.
- (2) Antenna Height. The vertical distance measured from average building elevation to the highest point of the antenna, or if on a rooftop or other structure, from the top of the roof or structure to the highest point of the antenna. For replacement structures, antenna height is measured from the top of the existing structure to the highest point of the antenna or new structure, whichever is greater.
- (3) Approved Small Cell Facility. Any small cell facility that has received all required permits.
- (4) Base Station. A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined herein nor any equipment associated with a tower. Base Station includes, without limitation:
- (a) Equipment associated with wireless communications services as well as unlicensed wireless services

and fixed wireless services such as microwave backhaul.

- (b) Radio transceivers, antennas, coaxial, or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems ["DAS"] and small cell networks).
- (c) Any structure other than a tower that, at the time the relevant application is filed with the City, supports or houses equipment described above that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.

The term does not include any structure that, at the time the relevant application is filed with the City, does not support or house equipment described above.

- (5) Collocation. The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communication purposes.
- (6) Concealment Technology. Transmission facilities designed to look like some feature other than a wireless tower or base station or which minimizes the visual impact of an antenna by use of nonreflective materials, appropriate colors, and/or a concealment canister or enclosure.
- (7) Deviations, Minor. Any deviation in the dimensions or volume of small cell facilities that does not exceed the cumulative total provided by the definition of a small cell or microcell facility in RCW 80.36.375, and that does not defeat the concealment features set by the City's generally applicable design and concealment standards.
- (8) Deviations, Significant. Any deviation in the dimensions or volume of small cell facilities that exceeds the cumulative total provided by the definition of a small cell or microcell facility in RCW 80.36.375,

or that defeats the concealment features set by the City's generally applicable design and concealment standards. A significant deviation is not a substantial change as defined in this Chapter.

- (9) Eligible Support Structure. Any tower or base station as defined in this section, provided that, at the time the relevant application is filed with the City, it houses or supports an antenna, micro cell, or small cell deployment.
- (10) Equipment Structure. A facility, shelter, cabinet, or vault used to house and protect electronic or other associated equipment necessary for processing wireless communications signals. "Associated equipment" may include, for example, air conditioning, backup power supplies, and emergency generators.
- (11) Existing. A constructed tower or base station is existing if it has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, provided that a tower that has not been reviewed because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this Chapter.
- (12) Major Small Cell Facility. See "Small Cell Facility, Major."
- (13) Minor Deviations. See "Deviations, Minor."
- (14) Minor Small Cell Facility. See "Small Cell Facility, Minor."
- (15) Microcell. Has the same meaning as set forth in RCW 80.36.375, as now adopted or hereafter amended.
- (16) Other Support Structure. A structure used to support small cell facilities or equipment structures, excluding buildings, utility poles, and water reservoirs. Examples of "other support structures" include flagpoles and ball field light standards.
- (17) RF Engineer. A person who is qualified with education, training, and experience in wireless communication services, radio frequencies, and FCC and other applicable governmental regulations to provide the

necessary certification(s) required pursuant to this Chapter.

- (18) Service Provider. Has the same meaning as set forth in RCW 35.99.010(6) as now adopted or hereafter amended. Service provider shall include those infrastructure companies that provide telecommunications services or equipment to enable the deployment of personal wireless services.
- (19) Significant Deviations. See "Deviations, Significant."
- (20) Small Cell and Small Cell Deployment. Have the same meaning as set forth in RCW 80.36.375, as now adopted or hereafter amended.
- (21) Small Cell Facility, Major. Any small cell that involves a substantial change as defined in this Chapter.
- (22) Small Cell Facility, Minor. Any small cell that involves modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, including collocation of new transmission equipment, removal of transmission equipment, or replacement of transmission equipment.
- (23) Stealth. A telecommunications antenna that is effectively camouflaged or concealed from view.
- (24) Substantial Change. A modification substantially changes the physical dimensions of an eligible support structure or site if it meets any of the following criteria:
 - (a) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;
 - (b) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge

of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

- (c) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
- (d) It entails any excavation or deployment outside the current site, such as the installation of any new support structure;
- (e) It would defeat the concealment elements of the eligible support structure; or
- (f) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided, however, that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified above.

(25) Telecommunications Service. Has the same meaning as set forth in RCW 35.99.010(7), as now adopted or hereafter amended.

(26) Tower. Any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless

services such as microwave backhaul and the associated site. A "tower" shall not include a replacement utility pole as authorized by a lease with the City, a franchise or a Small Cell Permit.

- (27) Transmission Equipment. Equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial, or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- (28) Unified Design Enclosure. Concealment of antennas and equipment within a single enclosure.
- (29) Utility Pole. A structure designed and used primarily for the support of electrical wires, telephone wires, television cable, traffic signals, or lighting for streets, parking areas, or pedestrian paths.
- (30) Wireless Communication Attached Facility. A wireless communication transmission and/or reception device that is affixed to an existing structure such as an existing building, tower, water tank, or utility pole; an equipment structure; and connecting appurtenances.
- (31) Wireless Communication Facility. An un-staffed public utility facility for the transmission and/or reception of radio frequency signals usually composed of an equipment structure; a support structure; transmission and/or reception devices, consisting of linear and/or parabolic antennas; and related equipment. This definition does not include ancillary antennas such as are usual to individual businesses and residences and which conform to height limits and other development standards in the zone district in which such antennas would be located, nor does it include radio and television transmitting stations and towers, accessory TV reception or amateur radio/citizens radio antennas, or their respective support structures. This definition also does not include the terms "small cell" or "small cell facility."

- (32) Wireless Communication Freestanding Facility. A wireless communication transmission and/or reception device(s) that is affixed to a structure erected to support said transmission and/or reception device(s), an equipment structure, and connecting appurtenances. Support structure types include, but are not limited to, metal poles, lattice, towers, wood poles, and guyed towers.

17.36.040 Wireless Communication Facilities. Wireless communication facilities shall be regulated as follows:

- (1) Wireless communication facilities are allowed as set forth in the Use Chart, Section 17.70.030.
- (2) Unless otherwise stated, the provisions contained in this section apply to any wireless communication facility regardless of whether it is a use or conditional use in the zone district in which it is proposed to be located.
- (3) Unless waived wholly or in part by the director, an applicant for a wireless communication facility shall submit with the application the following information in addition to other application materials required for said facility by this Title:
 - (a) precise drawings, in plan and profile view, of all proposed components of the facility, including, but not limited to, equipment structures, support structures, and transmission and/or reception devices, which display proposed heights, materials, colors, and lighting;
 - (b) documentation from a licensed professional engineer demonstrating the proposed facility's compliance with applicable building code standards, and describing the general structural capacity of the proposed facility, including the number and type of transmission and/or reception devices that can be accommodated and the basis for the calculation of capacity;
 - (c) a description of the expected noise level from the proposed facility along with any proposed noise abatement measures;

- (d) a description of the need for the proposed facility at the proposed location, the procedures involved in site selection, and an evaluation of alternative sites and existing structures on which the proposed facility could be located or collocated.
- (4) The height of wireless communication facilities shall be measured as follows:
 - (a) For a wireless communication attached facility, the height shall be the overall vertical length of the transmission and/or reception device above the highest point of the building or support structure to which it is attached.
 - (b) For a wireless communication freestanding facility, the height shall be the overall vertical length of the transmission and/or reception device combined with the support structure to which it is attached, as measured from the existing grade prior to construction.
- (5) The minimum required setbacks for wireless communication facilities shall be as follows:
 - (a) A wireless communication freestanding facility shall have a minimum setback of 15 feet from all property lines; provided that, when a wireless communication freestanding facility exceeds 30 feet in height, said facility shall be set back at least one additional foot from each 15-foot setback line for every five feet in height by which said facility exceeds 30 feet (for example, a wireless communication freestanding facility of 80 feet in height would have a minimum required setback of 25 feet from all property lines).
 - (b) For an equipment structure associated with either a wireless communication attached facility or a wireless communication freestanding facility, the minimum setbacks shall be the same as the minimum required yard dimensions for any building in the zone district in which said equipment structure is located.
 - (c) Transmission and/or reception devices for a wireless communication attached facility may be

attached on an existing structure regardless of whether said structure meets the minimum required yard dimensions for the zone district in which said structure is located.

(6) Screening requirements for wireless communication facilities shall be as follows:

(a) The base of any wireless communication freestanding facility, or any equipment structure associated with either a wireless communication attached facility or a wireless communication freestanding facility, shall be screened around its entire perimeter with a minimum six (6) foot high screening device such as a sight-obscuring fence or a minimum five (5) foot wide planting area with Type I landscaping as set forth in 17.45.080.

(b) If a security fence or wall is used to prevent access into a wireless communication freestanding facility or any equipment structure associated with either a wireless communication attached facility or a wireless communication freestanding facility, and landscaping is chosen as the screening method in accordance with Paragraph 17.36.040(6)(a), said landscaping shall be placed outward of such security fence or wall.

(c) The screening requirements of this paragraph may be waived if the existing topography of the subject property decreases or eliminates the need for screening, if existing vegetation at the subject property would result in as good or better satisfaction of the provisions of this paragraph, or if, in the opinion of the Site Plan Review Committee, screening should not be required.

(7) Wireless communication facilities shall be designed to be compatible with the natural and built environment. This includes, but is not necessarily limited to, building and structure design and the use of exterior materials and colors harmonious with the character of the surrounding neighborhood. All radio electronics equipment and associated cabling shall be enclosed within a structure or shall be concealed, camouflaged, or placed underground.

- (8) Parabolic antennas that are a component of a wireless communication facility shall not exceed a diameter of six feet.
- (9) A wireless communication attached facility shall not be allowed to be attached to any building which has a dwelling unit in it whether occupied or not.
- (10) Wireless communication facilities shall conform to the light and glare standards set forth in Section 17.35.090.
- (11) Wireless communication facilities shall comply with State noise level standards under W.A.C. 173.60, as they exist now or may hereafter be amended. For purposes of this section, wireless communication facilities shall be considered a Class B noise source pursuant to W.A.C. 173-60-040. The City may require noise attenuation devices or other noise mitigation measures to implement the standards of this section. Generators associated with wireless communication facilities may be permitted only for emergency operation purposes.
- (12) Wireless communication facilities may be collocated on an existing support structure. Where a wireless communication freestanding facility requires a conditional use permit, collocation of an additional transmission and/or reception device(s) on said freestanding facility shall be permitted without an additional conditional use permit, provided there are no substantial changes made to the existing support structure and provided the additional transmission and/or reception device(s) does not increase the height of said freestanding facility.
- (13) The site plan review provisions of Chapter 17.135 shall apply to all wireless communication facilities.
- (14) Minor modifications of existing wireless communication facilities, whether emergency or routine, are allowed, provided there is no remarkably significant change in the visual appearance of the facility. Minor modifications are those modifications, including the addition of transmission and/or reception device(s), to conforming wireless communication facilities that meet the provisions of this section.

- (15) A wireless communication facility shall be removed by the facility owner within six months of the date it ceases to be operational.
- (16) New applications for wireless communications facilities shall be processed within 150 days of receipt of a complete application. The city planner shall notify the applicant within 30 days of receipt of an application whether it is complete or if additional information is required.

17.36.050 Small Cell Permit Application.

- (1) Concurrent Small Cell Permit Application and Franchise Application. Rights granted under the franchise for construction, installation, and placement of small cell facilities shall be implemented through the issuance of small cell permits. The franchise application may be accompanied by one or more concurrent applications for a small cell permit to deploy small cells.
- (2) Small Cell Permit Application. A small cell permit application shall abide by the following requirements:
 - (a) Applications shall be in a form prescribed and supplied by the City, with required information as set forth in Section 17.175.030.
 - (b) All small cell facility sites shall be specified. Up to 30 sites may be specified in one small cell permit application for processing. The application shall include sufficient information about each site and facility in order for the City to determine that it complies the design and concealment standards set forth in Section 17.36.070.
 - (c) If the application includes small cell deployment in the public rights-of-way, a copy of the franchise application or reference to approved existing franchise shall be included. Approval for a small cell permit to install a small cell deployment shall be contingent upon approval of a small cell franchise or the possession of a valid small cell franchise.

- (d) If more than one application for a small cell permit is submitted by an applicant, they shall be considered in the order received. If multiple applications are submitted on the same date, the applicant shall indicate which application shall be considered first.
- (e) Any element of a deployment which qualifies as a minor small cell facility shall be specifically designated by the applicant and may be addressed separately by the city planner in order to comply with the applicable processing requirements established by federal law, state law, and Pullman City Code.
- (f) Any application for a small cell permit which contains an element which is not exempt from State Environmental Policy Act review shall include an environmental checklist pursuant to R.C.W. 43.21C and Pullman City Code Chapter 16.39.
- (g) The applicant shall submit a sworn declaration under penalty of perjury signed by an RF Engineer with knowledge of the proposed project affirming that the small cell deployment will be compliant with all FCC and any other applicable regulations in connection with human exposure to radio frequency emissions for every frequency at which the small cell facility and associated wireless backhaul will operate. An existing franchisee applying for a small cell permit for small cell deployment shall provide an RF certification for all facilities included in the deployment.
- (h) The applicant shall provide proof of FCC and other regulatory approvals required to provide the service(s) or utilize the technologies sought to be installed.
- (i) As applicable, the applicant shall provide written proof from any utility provider authorizing the applicant to use the utility provider's utility poles for a small cell deployment. The applicant shall also provide evidence of a professional engineer certification or other form of formal approval that the small cell deployment meets

applicable structural standards for any impacted utility pole.

- (3) Completeness of Small Cell Applications. The city planner shall review an application for completeness and notify the applicant within 30 days of submission whether the application is complete, provided, however, that an applicant may consent to a different completeness review period. A service provider may resubmit an application determined to be incomplete within 30 days of notice by the city planner or designee. Failure to resubmit an application in a timely manner shall be deemed a withdrawal of that application. No application shall be deemed complete without the fee deposit set by the city planner.
- (4) Approval Authority. Depending on the type of review set forth in Subsection 17.36.060(3), the city planner or Board of Adjustment may approve, deny, or conditionally approve all or any portion of the sites proposed in the small cell permit application.

17.36.060 Small Cell Permit Review Process. The following provisions relate to review of applications for a small cell permit for small cell deployments.

- (1) Review of Facilities. Review of the site locations proposed by the applicant shall be governed by the provisions of 47 U.S.C. 253 and 47 U.S.C. 332 and applicable case law. Applicants for small cell permits shall be treated in a competitively neutral and non-discriminatory manner with other service providers utilizing supporting infrastructure which is functionally equivalent, that is, service providers whose facilities are similarly situated in terms of structure, placement or cumulative impacts. Small cell permit application review under Chapter 17.36 shall neither prohibit nor have the effect of prohibiting the ability of an applicant to provide telecommunications services.
- (2) Use Chart Classification. Small cells and small cell deployments are allowed as set forth in the Use Chart, Section 17.70.030.
- (3) Type of Review. An application for a small cell facility that is classified as a use permitted outright in Section

17.70.030 shall be reviewed in accordance with the provisions of Section 17.175.050. An application for a small cell facility that is classified as a conditional use in Section 17.70.030 shall require a conditional use permit which shall be considered under the provisions of Chapter 17.125.

- (4) Design Review and Concealment. Small cell facilities shall conform to design, location, and concealment standards and be subject to design review as set forth in Section 17.36.070.
- (5) Other conditions of approval. Approval of a small cell permit is conditioned on the following requirements:
 - (a) Satisfy all applicable bulk requirements including but not limited to height, noise, light, and any other applicable zoning requirements.
 - (b) Unless specifically provided for in a franchise, obtain a lease from the City or provide proof of a lease between the City and the utility owner on whose poles the applicant is placing small cell utilities authorizing the utility owner to utilize the City's ground space for the installation of any new pole, a replacement utility pole over 60 feet or to locate any new ground based structure, base station or other attendant equipment on City right-of-way or City property;
 - (c) Comply with applicable City approval processes for the co-location of facilities, or the installation of any new or replacement utility poles in the right-of-way; and
 - (d) Comply with all City construction standards and state and federal codes when operating in the right-of-way and obtain a required permit to enter the right-of-way.

17.36.070 Design and Concealment Standards. Small cell facilities shall be installed using stealth or concealment technology. Stealth or concealment technology applies to all small cell facilities, including, without limitation, antennas, towers and primary equipment enclosures. For any small cell facility, stealth or concealment technology means the use of both existing and future technology through which the small cell facility is

designed to resemble or blend into an object which is already present in the local environment, such as a tree, streetlight, or traffic signal. Small cell facilities shall abide by the following standards:

- (1) For those portions of small cell facilities attached to or part of light, power, sign, or other poles:
 - (a) For new poles, the small cell shall be integrated within the pole unless technically infeasible, and new poles shall be subject to any applicable City or industry standards;
 - (b) For existing poles, the small cell shall be integrated into the existing design of the pole to which it is attached, with external projections limited in size and scope to the greatest extent technically feasible, including but not limited to being as flush as possible to the pole, not projecting more than fifteen feet vertically above the pole, and having architectural compatibility with the pole;
 - (c) External projections shall be painted a color to resemble and match the pole so that they appear to be part of the pole;
 - (d) Shall conform to any structural standards so as not to degrade the structural engineering of the pole to which it is attached;
 - (e) Shall not interfere with the normal use for which the pole is intended, including but not limited to blocking any light designed to be dispersed from existing lighting fixtures installed on light poles, interfering with power lines on power poles, and obscuring any portion of the applicable sign-face on signs; and
 - (f) Antennas and unified design enclosures shall conform to the following standards:
 - (i) Antennas for small cell facilities shall be located inside of an antenna enclosure no more than three cubic feet in volume, or in the case of an antenna that has exposed elements, the antenna and all its exposed elements could

fit within an imaginary enclosure of no more than three cubic feet.

(ii) In lieu of antennas and primary equipment enclosures, unified design enclosures are permitted, provided that the overall dimensions of such designs shall not exceed six cubic feet in volume.

(iii) Antennas and unified design enclosures shall be located at least 20 feet above the base elevation of the ground unless technically infeasible.

(2) Primary equipment enclosures shall be no larger than seventeen cubic feet in volume. The following associated equipment may be located outside the primary equipment enclosure and if so located, are not included in the calculation of equipment volume: electric meter, concealment, telecomm demarcation box, ground-based enclosures, battery back-up power systems, grounding equipment, power transfer switch, and cut-off switch. Primary equipment enclosures shall be buried below ground or locked and integrated into the surroundings unless technically infeasible. This shall include incorporating the facilities into the base of the pole, integrating into existing surrounding fixtures, such as garbage containers or other power boxes, and/or use of materials and colors that blend into the surrounding setting. Ground-mounted facilities shall not be located in an improved street or sidewalk. Ground-mounted facilities shall not be located in a stormwater facility. Unified design enclosures are permitted pursuant to Subsection 17.36.070(1).

(3) For small cell facilities mounted on one or more building facades, stealth or concealment technology means use of color and materials such that the facility has architectural compatibility with the building. It shall be mounted on a wall of an existing building in a configuration as flush to the wall as technically possible and shall not project more than three feet above the wall on which it is mounted.

(4) Advertising or display shall not be located on any small cell facility; however, the owner of the small cell

facility shall place an identification plate indicating the name of the wireless service provider and a telephone number for emergency contact on the site.

- (5) No artificial lights other than those required by FAA or other applicable authority shall be permitted. Any security lights shall be down-shielded.
- (6) Small cell facilities that are not within the right-of-way shall meet the minimum primary structure setback requirements for the underlying zone.
- (7) Small cell facilities shall not be permitted inside a public park, public monument or private holding located within a public park or public monument.
- (8) Small cell facilities shall not be located within 250 feet of any other small cell facility unless the applicant demonstrates that no other location can accommodate or is sufficient to meet the wireless service needs. In the event a small cell facility is required to be located within 250 feet of another existing small cell facility, the applicant shall make a good faith effort to collocate the new facility on the same pole or structure as the existing small facility in order to minimize impacts from new small cell facilities. Applicants shall provide the City with evidence of efforts for collocation. An applicant may demonstrate good faith efforts to collocate by providing written evidence from the other wireless provider(s) that they are unwilling or it is technically infeasible to collocate, or from pole or structure owners that they will not allow collocation or that it is technically infeasible to allow collocation.

17.36.080 Small Cell Permit and Deviations.

- (1) The city planner shall review applications for small cell permits for small cell deployments approved by a franchise or small cell permit. The city planner may authorize minor deviations in the small cell permit from the dimensional design and concealment technologies referenced in the exhibits to the franchise or design standards where such deviation is necessary to allow the applicant to provide coverage and where such deviation either does not materially differ from the City's design

and concealment standards or achieves equivalent or better integration.

- (2) Small cell permits to install facilities including approval of minor deviations shall be processed within 60 days of receipt of a complete application and final approval of a franchise, whichever occurs last.

17.36.090 Significant Deviations. Any request for significant deviations from the approved small cell facilities design designated in the small cell permit or City's design standards shall require a conditional use permit and shall be considered under the provisions of Chapter 17.125, and pursuant to the timelines established in Section 17.36.110.

17.36.100 Compliance With State Processing Limitations. Review of small cell permits shall comply with the provisions of RCW 35.99.030. Applications shall be reviewed, completeness determined, and the timeframe tolled as provided in Section 17.36.110.

17.36.110 Time Periods for Review of Applications. In accordance with federal and state law, the following time periods apply to review of applications for small cell facility requests, small cell permits, and other approvals for service providers of telecommunication services.

(1) Small Cell Application Review.

- (a) The city planner shall prepare and make publicly available an application form which shall be limited to the information necessary for the City to consider whether an application is a small cell facilities request. The application may not require the applicant to demonstrate a need or business case for the proposed modification.
- (b) Upon receipt of an application for a small cell facilities request, the city planner shall review such application to determine whether the application qualifies as a small cell facilities request.
- (c) Within 60 days of the date on which an applicant submits a complete small cell facilities request application, the City shall act on the application

unless it determines that the application is not covered by this Section.

- (d) The 60-day review period begins to run when the complete application is filed, and may be tolled only by mutual agreement by the city planner and the applicant or in cases where the city planner determines that the application is incomplete. The timeframe for review of a small cell facilities request is not tolled by a moratorium on the review of applications.
 - (i) To toll the timeframe for incompleteness, the city planner shall provide written notice to the applicant within 30 days of receipt of the application, specifically delineating all missing documents or information required in the application.
 - (ii) The timeframe for review begins running again when the applicant makes a compliant supplemental submission in response to the city planner's notice of incompleteness.
 - (iii) Following a supplemental submission, the city planner shall notify the applicant within 10 days if the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this Subparagraph. Second or subsequent notice of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.
- (e) If the City determines that the applicant's request does not qualify as a small cell facilities request, the time periods established by the applicable state or federal law and Chapter 17.36 begin to run from the issuance of the city planner's decision that the application is not a small cell facilities request. To the extent additional information is necessary, the City may

request such information from the applicant to evaluate the application under other provisions of Chapter 17.36 and applicable law.

- (f) In the event the city planner or Board of Adjustment fails to approve or deny a request for a small cell facilities request within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the city planner in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.
 - (g) Both the applicant and the City may bring claims related to Section 6409(a) of the Spectrum Act to any court of competent jurisdiction.
- (2) Collocation Application Review. Eligible collocations shall be processed within 90 days of receipt of a complete application. The city planner shall notify the applicant within 30 days of receipt of an application whether it is complete or if additional information is required. The term collocation shall not apply to the initial placement of a small cell facility on a utility pole or on any other base station or tower that was not constructed for the sole or primary purpose of an FCC licensed antenna and their associated facilities.

TRANSPORTATION, COMMUNICATION
AND UTILITIES USES

DISTRICTS

	R1	RT	R2	R3	R4	C1	C2	C3	IRP	I1	I2	WSU	NO. OF REQUIRED PARKING SPACES EXCEPT C2 DISTRICT
Air Transportation								P		P	P		
Railroad Transportation								P		P	P		
Railroad Right of Way	P	P	P	P	P	P	P	P	P	P	P		
Bus Passenger Terminals							P	P		P	P		One per employee on largest shift plus parking for company vehicles
Bus Garaging and Maintenance								P		P	P		
Municipal Bus Stops	P	P	P	P	P	P	P	P	P	P	P		
Motor Freight Transportation							P	P	P	P	P		
Accessory Parking Area/Garages	PERMITTED AS AN ACCESSORY USE AS REQUIRED BY SECTION 17.40.070												
Commercial Parking Areas/Garages	C ³	C ³	C ³	C ³	C ³	C ³	P	P	P	P	P		
Radio and Television Studios						P	P	P	P	P	P		One per 400 SF net floor area
Radio & Television Transmitting Stations and Towers ¹						C	C	P	P	P	P		One per employee on largest shift plus parking for company vehicles
Accessory TV Reception or Amateur Radio/Citizens Radio Antennas or support structures <= 60 ft. ¹	P	P	P	P	P	P	P	P	P	P	P		
Accessory TV Reception or Amateur Radio/Citizens Radio Antennas or support structures > 60 ft. ¹	C	C	C	C	C	C	C	P	P	P	P		
Wireless Attached Facility <= 30 ft. ⁴	P	P	P	P	P	P	P	P	P	P	P		
Wireless Attached Facility > 30 ft. ⁴	C	C	C	C	C	C	P	P	P	P	P		
Wireless Freestanding Facility <= 80 ft. ⁴	C	C	C	C	C	C	C	P	P	P	P		
Wireless Freestanding Facility > 80 ft. ⁴								C	C	C	C		
Minor Small Cell Facility	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>		
Major Small Cell Facility						<u>C</u>	<u>C</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>		
Utilities and Telephone Communication: facilities necessary and incidental to other uses in the district in which located and not otherwise cited in this Use Chart	P	P	P	P	P	P	P	P	P	P	P		
Public Facilities (wells, water towers, transformer stations)	C	C	C	C	C	C	P	P	P	P	P		
Utility Maintenance Yards								P	P	P	P		One per employee on largest shift plus parking for company vehicles
Utility Business Offices						P	P	P	P	P	P		One per 400 SF net floor area
Solid Waste Disposal/Sanitary Landfill										C	C		One per employee on largest shift plus parking for company vehicles
Off-site Hazardous Waste Treatment and Storage Facility									C ²	C ²	C ²		One per employee on largest shift plus parking for company vehicles
Accessory On-site Hazardous Waste Treatment and Storage Facilities							P ²	P ²	P ²	P ²	P ²		

FOOTNOTE:

¹ See 17.35.080(9)² See 17.35.100³ See 17.35.080(10) and 17.40.070(2)⁴ See 17.35.080(11)

Small Cell Facilities—Basic Provisions Proposed in Draft Zoning Code Chapter 17.36

- small cell categories
 - minor small cell facility
 - permitted use in all zoning districts (reviewed administratively by staff in accordance with Zoning Code Section 17.175.050)
 - a new antenna assembly that involves a modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, including collocation of new transmission equipment, removal of transmission equipment, or replacement of transmission equipment
 - design and concealment standards apply
 - major small cell facility
 - permitted use in C3 and Industrial zones (reviewed administratively by staff in accordance with Zoning Code Section 17.175.050)
 - conditional use in C1, and C2 zones (reviewed by the Board of Adjustment at a duly noticed public hearing in accordance with Zoning Code Chapter 17.125)
 - prohibited use in all Residential zones
 - a new antenna assembly that involves:
 - a) construction of a new support structure
 - b) defeat of the concealment elements of an existing support structure
 - c) inconsistency with any conditions previously applied to the existing support structure
 - d) *for towers outside the public right-of-way:*
 - i) an increase in the height of the tower by more than 10 percent, or by more than 20 feet
 - ii) the addition of equipment that protrudes from the tower by more than 20 feet, or by more than the width of the tower at the level of the added equipment
 - e) *for other eligible support structures:*
 - i) an increase in the height of the structure by more than 10 percent, or by more than 10 feet
 - ii) the addition of equipment that protrudes from the structure by more than six feet
 - iii) the installation of more than the standard number of new cabinets (not to exceed four cabinets)
 - f) *for towers in the public right-of-way and base stations:*
 - i) the installation of any new ground cabinets if none are present at the site
 - ii) installation of new ground cabinets that are more than 10 percent larger in height or total volume than any existing cabinets at the site
 - design and concealment standards apply

ORDINANCE NO. 4745

AN ORDINANCE OF THE CITY OF LEWISTON ADDING A NEW ARTICLE VI, RIGHT-OF-WAY REGULATIONS FOR WIRELESS COMMUNICATION FACILITIES, TO CHAPTER 31 OF THE LEWISTON CITY CODE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 31 of the Lewiston City Code currently governs the City's regulation of rights-of-way in the City;

WHEREAS, federal laws, regulations and court decisions, wireless technology and consumer usage have reshaped the environment within which wireless communication facilities are permitted and regulated;

WHEREAS, federal laws and regulations that govern local zoning standards and procedures for wireless communications have substantially changed over the last few years; and

WHEREAS, the City Council of the City of Lewiston desires to update its local standards and procedures to protect rights-of-way and promote the public health, safety, and welfare of the community; to reasonably regulate wireless communication facilities aesthetics; and to protect and promote the City's unique character in a manner consistent with State and federal laws and regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF LEWISTON, IDAHO:

SECTION 1: A new Article VI, "Right-of-Way Regulations for Wireless Communication Facilities" is hereby added to Chapter 31 of the Lewiston City Code, as follows:

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ARTICLE VI.
RIGHT-OF-WAY REGULATIONS FOR WIRELESS COMMUNICATION
FACILITIES

Sec. 31-125. Purpose.

The provisions of this article shall be known as the Right-of-Way Regulations for Wireless Communication Facilities. It is the purpose of these provisions to delineate restrictions, development standards and siting criteria, and establish removal procedures in order to protect the City from the uncontrolled siting of wireless communication facilities in rights-of-way that have significant adverse effects and cause irreparable harm. It is further the purpose of these provisions:

- (1) To protect the community's visual quality and safety while facilitating the reasonable and balanced provision of wireless communication services. More specifically, it is the City's goal to minimize the visual impact of wireless communication facilities on the community, particularly in rights-of-way in residential zones, the Central Business District, the Normal Hill Heritage Overlay Zone, and Historic Districts;
- (2) To promote and protect the public health, safety and welfare, preserve the aesthetic character of the Lewiston community, and to reasonably regulate the development and operation of wireless communication facilities within rights-of-way to the extent permitted under State and federal law;
- (3) To minimize the impact of wireless communication facilities by establishing standards for siting design and screening;
- (4) To preserve the opportunity for continued and growing service from the wireless industry;
- (5) To accommodate the growing need and demand for wireless communication services;
- (6) To establish clear guidelines and standards and an orderly process for review intended to facilitate the deployment of wireless transmission equipment in rights-of-way, to provide advanced communication services to the City, its residents, businesses and community at large;
- (7) To minimize the number of new poles in the rights-of-way and encourage the collocation of antenna arrays of more than one wireless communication service provider on a single pole;
- (8) To ensure City regulations are applied consistently with federal and state telecommunications laws, rules, regulations, and controlling court decisions;
and

- (9) To provide regulations that are specifically not intended to, and shall not be interpreted or applied to: (1) prohibit or effectively prohibit the provision of wireless services, (2) unreasonably discriminate among functionally equivalent service providers, or (3) regulate wireless communication facilities and wireless transmission equipment on the basis of the environmental effects of radio frequency emissions to the extent that such emissions comply with the standards established by the Federal Communications Commission.

Sec. 31-126. Definitions.

As used in this article, the following terms shall have the meanings set forth below:

Antenna is a WCF and means any exterior transmitting or receiving device mounted on a pole or structure and used in communications that sends or receives digital signals, analog signals, radio frequencies or wireless communication signals.

Antenna array is a WCF and means a single or group of antenna elements, not including small cells, and associated mounting hardware, transmission lines, or other appurtenances that share a common attachment device for the sole purpose of transmitting or receiving wireless communication signals.

Applicant means any person engaged in the business of providing wireless communication services or the wireless communication infrastructure required for wireless communication services and who submits an application pursuant to this article.

Application means the process by which an applicant submits a written request on a form provided by the City and indicates a desire to be granted a permit to utilize rights-of-way in the City. A *complete application* includes all written documentation, in whatever form or forum, made by an applicant to the City concerning the construction of wireless communication facilities; the wireless services proposed to be provided in the City by a provider; and any other matter pertaining to a proposed system or service.

Base station is a WCF and means a structure or equipment at a fixed location that enables City-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this article or any equipment associated with a tower.

1. The term includes, but is not limited to, equipment associated with wireless communication services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services, such as microwave backhaul.
2. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small cell networks).

3. The term includes any structure other than a tower that, at the time the relevant application is filed with the City under this article, supports or houses equipment described in this section that has been reviewed and approved under the applicable zoning or siting process, or under State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.
4. The term does not include any structure that, at the time the relevant application is filed with the State or the City under this article, does not support or house equipment described in this section.

Central Business District means that area described as the Central Business District in section 37-145 of this code.

City means City of Lewiston, Idaho.

Collocation means the mounting or installation of an antenna on an existing pole or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

Commercial zone means the following zoning districts within the city of Lewiston: the Local Commercial (C-1) Zone; the Tourist Commercial (C-2) Zone; the Community Commercial (C-3) Zone; the General Commercial (C-4) Zone; the Central Commercial (C-5) Zone, except that portion of the C-5 Zone located in the Central Business District; the Regional Commercial (C-6) Zone; the Light Industrial (M-1) Zone; the Heavy Industrial (M-2) Zone; the Planned Unit Development (PD) Zone, where commercial uses are allowed; the Port (P) Zone; and the Airport (A) Zone.

Distributed Antenna System or *DAS* is a WCF and means a network consisting of transceiver equipment at a central hub site to support multiple antenna locations throughout the desired coverage area.

Eligible Facilities Request means any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:

1. Collocation of new transmission equipment;
2. Removal of transmission equipment; or
3. Replacement of transmission equipment.

Eligible support structure is a WCF and means any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the City under this article.

Equipment cabinet means an enclosure that is either placed on a concrete slab, tower, or pole that contains a provider's improvements and facilities to operate its antennas including, without limitation, radio receivers, transmitters, cables, utility lines,

electrical meter, and any other equipment necessary for the operation of a wireless antenna.

Existing means a tower or base station that has been reviewed and approved under an applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

FAA means the Federal Aviation Administration.

FCC means the Federal Communications Commission.

Historic District(s) means that historic district(s) described in Chapter 19.5 of this code.

Macro cell is a WCF and means a wireless communication facility that provides broad coverage (typically 1 mile or greater) served by a high power cell site (tower, antenna or mast). Generally, macro cell antennas are mounted on ground-based towers and other existing structures, at a height that provides a clear view over the surrounding buildings and terrain. Macro cells typically cover large geographic areas with relatively high capacity and are capable of hosting multiple wireless service providers.

Mixed use zone means the following zoning districts within the city of Lewiston: the Bryden Avenue Special Planning Area A (BASPAA) Zone; the North Lewiston Mixed Use Development (MXD-NL) Zone; the Normal Hill Special Planning Area Mixed Use (NHMU) Zone; and the Planned Unit Development (PD) Zone, where commercial and residential uses are allowed.

Normal Hill Heritage Overlay Zone or *NHHO* means the NHHO zone described in Chapter 37, Article III of this code.

Operator means any person who provides service over a wireless communication system and directly or through one (1) or more persons owns a controlling interest in such system, or who otherwise controls or is responsible for the operation of such a system.

Person includes any individual, corporation, limited liability company, partnership, association, joint stock company, trust, or any other legal entity, but not the City.

Pole means a vertical structure in the right-of-way that typically supports utilities, cable television, telecommunications, or other types of facilities. A pole is a type of tower if it is constructed primarily for the purpose of supporting wireless communication facilities.

Protected areas mean all real property located in residential zones, within two hundred feet (200') of a residential zone, the Central Business District, the Normal Hill Heritage Overlay Zone, and all historic districts.

Provider means an operator, wireless infrastructure provider, or wireless services provider.

Public Works Director means the Director of the Public Works Department of the City of Lewiston and his/her designee(s).

Residential zone means the following zoning districts within the city of Lewiston: the Agricultural Transitional (F-2) Zone; the Suburban Residential (R-1) Zone; the Low Density Residential (R-2) Zone; the Low Density Residential (R-2A) Zone; the Medium Density Residential (R-3) Zone; the Higher Density Residential (R-4) Zone; the Bryden Avenue Special Planning Area B (BASPAB) Zone; the Normal Hill North (NHN) Zone; the Normal Hill South (NHS) Zone; and the Planned Unit Development (PUD) Zone, where residential uses are allowed.

RF means radio frequency emissions at such levels as are determined by the FCC.

Rights-of-way or *right-of-way* means the same as defined or referenced in Chapter 31 of the Lewiston City Code.

Site means the area in general proximity to a WCF.

Small cells and small wireless facilities mean facilities that meet the following conditions: (1) the facilities -- (i) are mounted on structures fifty (50) feet or less in height including their antennas, or (ii) are mounted on structures no more than ten percent (10%) taller than other adjacent structures, or (iii) do not extend existing structures on which they are located to a height of more than fifty (50) feet or by more than ten percent (10%), whichever is greater; (2) each antenna associated with the deployment, excluding associated antenna equipment, is no more than three (3) cubic feet in volume; (3) all other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than twenty eight (28) cubic feet in volume; (4) the facilities do not require antenna structure registration under federal law; (5) the facilities are not located on Tribal land as defined under federal law; and (6) the facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified under federal law.

Stealth design means a design that minimizes the visual impact of wireless communication facilities by camouflaging, disguising, screening or blending them into the surrounding environment. Examples of stealth design include, but are not limited to, WCFs disguised as trees (monopines), flagpoles, utility and light poles, bell towers, clock towers, ball field lights, and architecturally screened roof-mounted antennas.

Substantial change means a significant change to a WCF, as defined in the Code of Federal Regulations (Title 47, Part 1, Subpart U § 1.6100(b)(7), as amended from time-to-time).

Tower is a WCF and means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antenna arrays, antennas and their associated facilities, including structures that are constructed for wireless communication services including, but not limited to, private, broadcast, and public

safety services, as well as unlicensed wireless services and fixed wireless services, such as microwave backhaul, and the associated site.

Tower height means the vertical distance measured from the base of the building and including the tower structure to the highest point of the structure including the tower. A lightning rod, not to exceed ten feet (10') in height, shall not be included within tower height.

Transmission equipment is a WCF and means equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supplies. The term includes equipment associated with wireless communication services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services, such as microwave backhaul.

Utility support structure means utility poles or utility towers supporting electrical, telephone, cable, or other similar facilities.

Wireless Communication Facilities or *WCF* means equipment for the transmission or reception of: (a) radio frequency signals or other wireless communications; or (b) other signals for communications purposes. Such equipment may consist of, for example, antennas, antenna arrays, base stations, equipment cabinets, distributed antenna systems, macro cells, small cells, poles, towers, and transmission equipment.

Wireless Infrastructure Provider means a person, other than a wireless services provider, that builds or installs wireless communication transmission equipment, wireless facilities' utility poles, or wireless support structures.

Wireless Services Provider means a person that provides wireless services.

Sec. 31-127. Applicability.

- (a) Application to Rights-of-Way. The regulations set forth in this article shall apply to all WCFs located or proposed to be located within the rights-of-way. Wireless Communication Facilities Regulations that apply to all other locations within the City of Lewiston are addressed in Chapter 37, Article XVII of this code.
- (b) Exempt Facilities. A government-owned WCF installed upon the declaration of a state of emergency by the federal, state, or local government, or a written determination of public necessity by the City is exempt from this article; except that such facility must comply with all federal and State requirements. The WCF shall be exempt from the provisions of this article for up to one (1) month after the duration of the state of emergency.

Sec. 31-128. General Requirements.

- (a) All WCFs in rights-of-way shall comply with the following regulations:
- (1) Color. All WCFs shall be placed and colored to blend into their surroundings. The use of grays, blues, greens, dark bronze, browns or other site specific colors may be appropriate; however, each case should be evaluated individually.
 - (2) Lighting. Security lighting for the equipment shelters or cabinets and other on the ground ancillary equipment is permitted, as long as it is appropriately down shielded to keep light within the boundaries of the site.
 - (3) State or Federal Requirements. Towers and antennas must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas. Towers and antennas must comply with all applicable federal, state, and local laws, rules, and regulations.
 - (4) Permits. All WCFs shall be required to obtain permits in accordance with chapter 10 of this code.
 - (5) Certificate of Appropriateness and Alternative Use Permits. All WCFs located in a Historic District shall be required to obtain a Certificate of Appropriateness from the Historic Preservation Commission so that the WCFs' stealth design blends into the Historic District in accordance with code requirements for new construction. All WCFs that are proposed to be located in a Historic District shall be subject to the additional regulations governing those areas, including, but not limited to, securing a Certificate of Appropriateness when required. Additionally, all WCFs located in Historic District(s) or the Normal Hill Heritage Overlay Zone shall be required to obtain an alternative use permit. The processes for obtaining a Certificate of Appropriateness and alternative use permit shall proceed simultaneously.
 - (6) Notice. When seeking an administrative permit or approval pursuant to this article, the applicant shall notify all surrounding property owners and utility providers located within three hundred feet (300') of the proposed location of the WCF. Notice shall also be provided to the Lewiston-Nez Perce County Regional Airport if the WCF is proposed to be installed within a three (3) mile radius of the center of the Airport. Notice shall be provided not more than five (5) business days after the filing an application and shall include, at a minimum: (i) a description, site plan, elevation drawing, and photo simulation of the proposed WCF; (ii) an advisement that comments regarding the proposed WCF may be submitted to the Public Works Department within fourteen (14) days; and (iii) contact information for the Public

Works Department, including the physical address, mailing address, and phone number. The applicant shall, within five (5) business days of filing an application, provide a copy of such notice to the Public Works Department, and a copy of such notice shall be forwarded to the Building Code Official.

- (7) Signs. A WCF shall not bear any signage or advertisement other than signage required by law or expressly required by the City.
- (8) Visual Impact. All WCFs, except for those located in the commercial and mixed use zones, shall be sited and designed in rights-of-way to minimize adverse visual impacts on surrounding properties and the traveling public to the greatest extent reasonably possible, consistent with the proper functioning of the WCF. Such WCFs and equipment enclosures shall be integrated through location and design to blend in with the existing characteristics of the site. Such WCFs shall also be designed to either resemble the surrounding landscape and other natural features where located in proximity to natural surroundings, or be compatible with the built environment, through matching and complimentary existing structures and specific design considerations, such as architectural designs, height, scale, color, and texture or be consistent with other uses and improvements permitted in the relevant zone.
- (9) Use of Stealth Design. Stealth design is required as provided in Table 1 of section 31-131 of this article, and concealment techniques must be appropriate given the proposed location, design, visual environment, and nearby uses, structures, and natural features. Stealth design shall be designed and constructed to substantially conform to surrounding building designs or natural settings, so as to be visually unobtrusive.
- (10) Installation in Rights-of-Way. Installation of any WCF in rights-of-way requires a duly executed written agreement with the City prior to installation. The Public Works Director shall have the authority to approve all such written agreements.
- (11) Utility Support Structure or Pole-Mounted Equipment. All transmission equipment mounted on a utility support structure or pole shall be mounted as close as possible to the structure or pole so as to reduce the overall visual profile to the maximum extent feasible in accordance with safety standards.
- (12) Collocation Encouraged. A written statement shall be provided demonstrating the applicant's willingness to allow transmission equipment owned by others to collocate with the proposed wireless communication facility whenever technically and economically feasible and aesthetically desirable. The City desires that providers

collocate onto existing or replacement poles in lieu of placing multiple poles in close proximity to one another.

- (13) Accessory Equipment. All accessory equipment located at the base of a WCF shall be located or placed (at the applicant's choice) underground or in an equipment shelter or cabinet that is: (a) designed to blend in with existing surroundings, using architecturally compatible construction and colors; and (b) located so as to be as unobtrusive as possible consistent with the proper functioning of the WCF.
 - (14) Compliance Report. A written report shall be prepared, signed, and sealed by an Idaho-licensed professional engineer or another person with demonstrated expertise in the field of RF engineering. Such report shall assess whether the proposed WCF (whether it be new or replacement equipment) demonstrates compliance with the RF emissions limits established by the FCC. Such report shall be submitted with a permit application.
 - (15) Setback Requirements. WCFs shall be set back from travel lanes as determined by the Public Works Director. The Public Works Director shall use the Manual on Uniform Traffic Control Devices (MUTCD) as a guide in determining the setback requirements for WCFs.
- (b) Site Design Flexibility. Individual WCF sites in rights-of-way vary in the location of adjacent buildings, existing trees, topography, and other local variables. By mandating certain design standards, there may result a project that could have been less intrusive if the location of the various elements of the project could have been placed in more appropriate locations within a given site. Therefore, the WCF and supporting equipment may be installed so as to best camouflage, disguise, or conceal them, to make the WCF more closely compatible with and blend into the setting or host structure, upon approval from the Public Works Director.

Sec. 31-129. Antenna Arrays.

- (a) Unless an alternative use permit is obtained, antenna arrays shall not be permitted: (i) in residential zones, (ii) on signs, (iii) in Historic Districts, or (iv) in the Normal Hill Heritage Overlay Zone.
- (b) Subject to section 31-129(a) of this article, antenna arrays are permitted if located on an existing structure such that they do not extend more than fifteen feet (15') above said structure.

Sec. 31-130. Distributed Antenna Systems and Small Cells.

- (a) Distributed Antenna Systems and small cells are allowed in all zones, provided the applicant complies with all federal laws and State laws and requirements and structural industry standards.
- (b) Distributed Antenna Systems and small cells are subject to approval via permits and administrative review unless their installation requires the construction of a pole that exceeds the height limitation set forth in Table 1 of this article. If the height limitation is exceeded, a waiver pursuant to section 31-133 of this article shall be required. A waiver shall not be required for replacement utility support structures, so long as the height of a replacement structure, including antennas, does not exceed the height of the existing structure.

Sec. 31-131. Towers and Poles.

- (a) New Towers and Poles. New towers and poles shall be subject to the general requirements set forth in section 31-128 of this article. Additionally, new tower and pole locations shall meet all requirements of the Americans with Disabilities Act, as amended, and not interfere with sight distance triangle or approaches.
- (b) Height Restrictions and Stealth Design. New towers and poles shall be subject to the height restrictions and stealth design requirements set forth below in Table 1. If an applicant desires to exceed the maximum height restrictions set forth in Table 1, then the applicant shall be required to apply for a waiver pursuant to section 31-133 of this article.

Table 1		
Height Restrictions		
Zone	Maximum Height	Stealth Design
Residential Zones	40 feet	Required ^[1]
Central Business District	40 feet	Required ^[1]
Normal Hill Heritage Overlay	40 feet	Required ^[2]
Historic District(s)	40 feet	Required ^[2]
Commercial Zones	120 feet ^[3]	Optional ^[1]
Mixed Use Zones	90 feet ^[3]	Optional ^[1]

[1] Stealth design is subject to approval by the Public Works Director and must comply with the General Requirements set forth in section 31-128 of this article.

[2] Stealth design is subject to approval by the Historic Preservation Commission and must comply with the General Requirements set forth in section 31-128 of this article.

[3] Up to an additional thirty feet (30') in height is allowed if applicant uses stealth design.

- (c) Preferred Macro Cell Tower Locations. The following siting priorities for macro cell towers, ordered from most-preferred (1) to least-preferred (7), are as follows and require an alternative sites analysis, as set forth in section 31-131(e) of this article:

- (1) City-owned property and facilities, except those in protected areas, and not including rights-of-way
- (2) Commercial zones, except the Central Business District
- (3) Mixed use zones
- (4) Rights-of-way in non-residential zones
- (5) City-owned property and facilities in protected areas, but not including rights-of-way
- (6) Other parcels of land in protected areas, but not including rights-of-way
- (7) Rights-of-way in protected areas

- (d) Macro Cell Towers in Protected Areas. Macro cell towers in the rights-of-way in protected areas are permitted only upon the issuance of an alternative use permit.

- (e) Alternative Sites for Macro Cell Towers.

- (1) Analysis.

- a. For proposed macro cell towers, the applicant must address the City's preferred macro cell tower locations with a detailed explanation justifying why a site of higher priority was not selected. The City's macro cell tower location preferences must be addressed in a clear and complete written alternative sites analysis that shows at least three (3) higher ranked, alternative sites considered that are in the geographic range of the service coverage objectives of the applicant, together with a factually detailed and meaningful comparative analysis between each alternative site and the proposed site that explains the substantive reasons why the applicant rejected each alternative site.
- b. A complete alternative sites analysis provided under this subsection may include less than three (3) alternative sites so long as the applicant provides a factually detailed written rationale for why it could not identify at least three (3) potentially available, higher ranked, alternative sites.

- c. For purposes of disqualifying potential collocations or alternative sites for the failure to meet the applicant's service coverage or capacity objectives, the applicant shall provide: (a) a description of its objective, whether it be to address a deficiency in coverage or capacity; (b) detailed maps or other exhibits with clear and concise RF data to illustrate that the objective is not met using the alternative site (whether it be collocation or a more preferred location); and (c) a description of why the alternative site (collocation or a more preferred location) does not meet the objective.
 - d. An applicant must apply for and be granted an alternative use permit in order to locate a macro cell tower at an alternative site.
- (2) Documentation. The following materials shall be submitted with an alternative sites analysis:
- a. A copy of the applicant's FCC license or registration.
 - b. A color visual analysis that includes to-scale visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least four (4) angles, together with a map that shows the location of each view, including all equipment and ground wires.
 - c. A written analysis that explains how the proposed design complies with the applicable design standards under this article to the maximum extent feasible. A complete design justification must identify all applicable design standards under this article and provide a factually detailed reason why the proposed design either complies or cannot feasibly comply.
 - d. A noise study for the proposed macro cell tower and all associated equipment.
 - e. A scaled site plan clearly indicating the location, type, height, and width of the proposed macro cell tower; on-site improvements; land uses and zoning; adjacent land uses and zoning (including when adjacent to the County); separation distances from a macro cell tower to property lines; adjacent roadways; buildings on adjoining properties; photo simulations; a depiction of all proposed transmission equipment; proposed means of access; setbacks from property lines; elevation drawings or renderings of the proposed macro cell tower; topography, utility runs, or other

information deemed by the Public Works Department to be necessary to assess compliance with this article.

- f. An inventory of the applicant's existing towers and antennas and sites approved for towers or antennas that are either within the jurisdiction of the City or within one (1) mile of the border thereof, including specific information about the location, height, and design of each tower and antenna. The Public Works Department may share such information with other applicants applying for administrative approvals or alternative use permits under this article or other organizations seeking to locate macro cell towers within the jurisdiction of the City; provided, however, that the Public Works Department is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
 - g. An updated site plan or map showing the separation distance from other macro cell towers and antennas that are described in the inventory of existing sites. The applicant shall also identify the type of construction of the existing macro cell towers and antennas and the owner/operator of the existing macro cell towers and antennas, if known.
 - h. A description of compliance with all applicable federal, state, and local laws.
 - i. A written statement of purpose, which shall minimally include: (i) a description of the objective to be achieved; (ii) a to-scale map that identifies the proposed site location and the targeted service area to be benefited by the proposed project; and (iii) full-color signal propagation maps with objective units of signal strength measurement that show the applicant's current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site, and predicted service coverage levels from the proposed site without all adjacent sites. These materials shall be reviewed, signed, and sealed by an Idaho-licensed professional engineer.
- (f) Separation Requirements for Macro Cell Towers. No macro cell tower may be constructed within one-half (1/2) mile of an existing macro cell tower unless a waiver is obtained pursuant to section 31-133 of this article or through an alternative use permit pursuant to section 31-132 of this article waiving or modifying this separation standard, and the applicant can demonstrate that: (i) an existing macro cell tower is not available or feasible for collocation of an additional wireless communication facility; (ii) the location of the existing macro cell tower does not satisfy the operational

requirements of the applicant; or (iii) another departure from this standard is needed. Factors to be considered in determining whether an applicant has made this demonstration include those listed in section 31-132(g) of this article.

Sec. 31-132. Alternative Use Permits.

- (a) Applicability. This section shall apply only to alternative use permits required by this article and shall have no applicability to chapter 37 of this code.
- (b) Application and Fee. A request for an alternative use permit shall be made in writing on a form provided by the City. A request will not be processed until the application is completed in its entirety and the application fee, as set by resolution of the City Council, is paid in full.
- (c) Public Comment Required. Before the Public Works Director shall act upon a request for an alternative use permit, the Public Works Director shall solicit comments from the public in accordance with this section.
- (d) Notice Content. Each notice of a public comment period shall include, at a minimum: (1) a summary of the proposed action necessitating an alternative use permit; (2) a statement that additional information regarding the proposed action is available at the Public Works Department for review by the public; (3) a statement that written comments may be submitted to the Public Works Department via mail, hand delivery, e-mail, and such other methods deemed appropriate by the Public Works Director, if any; (4) the date by which written comments must be received by the Public Works Director; and (5) the address and phone number of the Public Works Department and the e-mail address of the Public Works Director.
- (e) Notice Required. At least fifteen (15) calendar days prior to the end date of the public comment period, notice of the public comment period shall be published in a newspaper of general circulation in the city and mailed to the owners of all properties within three hundred feet (300') of the proposed WCF.
 - (1) Public Announcements in Lieu of Mailed Notice. When notice is required to two hundred (200) or more property owners, mailed notice may be omitted. In lieu thereof, public announcements of the public comment period shall be made on local radio and television stations at least fifteen (15) calendar days prior to the end date of the public comment period.
 - (2) Failure to Receive Notice. Failure of any property owner to receive the notice prescribed in this section shall not impair the validity of the public comment period.
- (f) Written Response. Within five (5) calendar days of the end of the public comment period, the Public Works Director shall provide copies of all written comments received during the public comment period to the

applicant. The applicant shall be allowed at least five (5) calendar days to provide a written response to the comments to the Public Works Director.

- (g) Factors. In applying for an alternative use permit, the applicant shall address and the Public Works Director shall consider the following factors. The Public Works Director may waive or reduce the burden on the applicant of one (1) or more of these factors if the Public Works Director concludes that the purposes of this article are, nevertheless, served thereby.
- (1) Whether the proposed WCF meets the other applicable provisions of this article.
 - (2) Surrounding topography, trees, buildings and antennas that would impair RF signals.
 - (3) Proximity of the WCF to residential structures and residential zone boundaries and whether the WCF impairs the view shed.
 - (4) Proximity of the WCF to structures in historic district(s) or in the Normal Hill Heritage Overlay Zone so as to impair visual aesthetics.
 - (5) Nature of uses on adjacent and nearby properties and compatibility with those uses.
 - (6) Design of the WCF, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
 - (7) Whether existing towers or structures are available and located within the geographic area that meets the applicant's service coverage and structural requirements.
 - (8) Whether existing towers or structures have sufficient structural strength to support applicant's proposed WCF and related equipment.
 - (9) Whether the applicant demonstrates that there are other limiting factors not enumerated herein that render existing towers and structures unsuitable.
 - (10) Whether the WCF will be within the RF emission limits allowed by the FCC. The applicant shall provide documentation from an expert regarding this requirement.
 - (11) Whether the applicant's proposed WCF would interfere with City communications equipment and/or frequency space.
 - (12) Whether the WCF will comply with applicable federal, state, and local laws, orders, rules, and regulations, including, but not limited to, those of the FAA and FCC.

- (h) Contents of Decision. The decision by the Public Works Director to approve, approve with conditions, or deny an application for an alternative use permit shall be in writing and include, at a minimum: (1) the reasons for such decision; (2) a notice of the right to appeal, as set forth in this section; and (3) the date on which the decision was rendered. If the decision is to deny the alternative use permit, then the Public Works Director shall also include in the decision the actions, if any, the applicant could take to obtain an alternative use permit.
- (i) Decision. Within five (5) business days of the Public Works Director's receipt of the applicant's written response, the Public Works Director shall provide the applicant with a copy of the Public Works Director's written decision, and such decision shall be available for public inspection at the Public Works Department. Such decision shall be final, unless appealed in accordance with this section.
- (j) Appeal. The Public Works Director's decision regarding an application for an alternative use permit may be appealed to the City Manager by the applicant or any property owner entitled to notice by mail pursuant to this section on a form provided by the City. Written notice of the appeal shall be filed with and the appeal fee, set by resolution of the City Council, paid to the City Clerk within fifteen (15) calendar days from the date of the Public Works Director's written decision. The notice of appeal shall specify the grounds for appeal.

The City Manager shall hold a hearing on the appeal within ten (10) calendar days of receipt of the notice of appeal. The applicant shall have the right to be represented by legal counsel at the hearing and rebut any evidence that might be submitted. The formal rules of evidence shall not apply during the hearing. The City Manager's review of the Public Works Director's decision shall be de novo. The City Manager shall issue a written decision within seven (7) calendar days after the hearing, and such decision shall be final.

Sec. 31-133. Waiver to Standards.

- (a) Applicability. No WCF shall be developed or modified contrary to any applicable development standard set forth in this article unless a waiver has been granted pursuant to this section or through an alternative use permit waiving or modifying a development standard.
- (b) Application and Fee. A request for a waiver shall be made in writing on a form provided by the City. A request will not be processed until the application is completed in its entirety and the application fee, as set by resolution of the City Council, is paid in full.
- (c) Notice and Procedure. A waiver to an applicable WCF development standard shall require approval by the Public Works Director. The notice and procedural requirements set forth in this article for alternative use permits shall apply to waivers sought pursuant to this section, including the procedures and timelines for notices, written responses, contents of the

Public Works Director's decision, and appeals, and the requirement for payment of an appeal fee, as set by resolution of the City Council.

- (d) Submittal Requirements. In applying for a waiver to a development standard, the applicant shall address and the Public Works Director shall consider the following items. The Public Works Director may waive or reduce the burden on the applicant of one (1) or more of these items if the Public Works Director concludes that the purposes of this article are, nevertheless, served thereby.
- (1) A description of the requested waiver.
 - (2) A written statement demonstrating how the waiver would not contradict or conflict with the purposes of this article.
 - (3) A site plan that includes:
 - a. Description of the proposed WCF's design and dimensions, as it would appear with and without the waiver.
 - b. Elevations showing all components of the WCF, as it would appear with and without the waiver.
 - c. Color simulations of the WCF after construction demonstrating compatibility with the vicinity, as it would appear with and without the waiver.
 - (4) An explanation that demonstrates the following:
 - a. The WCF development standard materially limits or inhibits the ability of the provider to compete in a fair and balanced legal and regulatory environment;
 - b. The problem can only be resolved by a waiver to one (1) or more of the standards in this article;
 - c. The waiver is narrowly tailored such that the WCF conforms to this article's standards to the greatest extent possible; and
 - d. The impact on development standards, such as height requirements.

Sec. 31-134. Independent Technical and Other Review.

- (a) Although the City intends for City staff to review applications to the extent feasible, the City may retain the services of an independent technical expert and other consultants of its choice to provide technical and other evaluations of permit applications for WCFs. The third party experts shall have recognized training or qualifications in their fields of radio frequency engineering or wireless communication facilities regulations.

- (b) The expert's review may include, but is not limited to: (a) the accuracy and completeness of the items submitted with the application; (b) the applicability of analysis and techniques and methodologies proposed by the applicant; (c) the validity of conclusions reached by the applicant; (d) whether the proposed WCF complies with the applicable approval criteria set forth in this article; and (e) an evaluation of the functionality of the equipment after addition or replacement.
- (c) The applicant shall pay the cost for any independent consultant fees through a deposit, estimated by the City, within ten (10) days of the City's request. When the City requests such payment, the application shall be deemed incomplete for purposes of application processing timelines until the deposit is received. In the event that such costs and fees do not exceed the deposit amount, the City shall refund any unused portion within thirty (30) days after the final permit is released or, if no final permit is released, within thirty (30) days after the City receives a written request from the applicant. If the costs and fees exceed the deposit amount, then the applicant shall pay the difference to the City before the permit is issued.

Sec. 31-135. Final Inspection.

A certificate of completion shall only be granted upon satisfactory evidence that the WCF was installed in substantial compliance with the approved plans and photo simulations. If it is found that the WCF installation does not substantially comply with the approved plans and photo simulations, the applicant shall make any and all changes required to bring the WCF installation into compliance promptly and, in any event, prior to putting the WCF in operation. If the WCF is not brought into substantial compliance within thirty (30) days of notice of noncompliance by the City, the applicant shall remove the noncompliant components.

Sec. 31-136. Compliance.

- (a) All WCFs shall comply with all standards and regulations of the FCC and FAA and any State or other federal government agency with the authority to regulate wireless communication facilities.
- (b) The site and WCFs, including all related transmission equipment, shall be maintained at all times in a neat and clean manner and in accordance with all approved plans.
- (c) All graffiti on WCFs shall be removed at the sole expense of the permittee after notification by the City to the owner/operator of the WCF.
- (d) If any FCC or FAA, State, or other governmental license or any other governmental approval to provide communication services is revoked as to any site permitted or authorized by the City, the permittee shall inform the City of the revocation within thirty (30) days of receiving notice of such

revocation and cease using the site. The owner of the WCF shall also be subject to the removal provisions of section 31-137 of this article.

Sec. 31-137. Removal of Abandoned WCFs.

- (a) Any WCF that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such WCF shall so notify the City in writing and remove the same within ninety (90) days of giving notice to the City of such abandonment. Failure to remove an abandoned WCF within said ninety (90) days shall be grounds to remove the WCF at the owner's expense, including all costs and attorneys' fees.
- (b) The City may contact the owner of the WCF to make a determination as to whether such WCF is abandoned. If the owner of such WCF does not respond within ninety (90) days, the City may remove the WCF (including its foundation) at the owner's expense, including all costs and attorneys' fees associated with such removal. Such notice by the City shall be by certified mail, return receipt requested, or posted on or near the WCF for fifteen (15) days, or both.
- (c) If there are two (2) or more users of a WCF, then this section shall not become effective until all users cease using the WCF.

Sec. 31-138. Indemnification.

Each permit issued for a WCF shall be deemed to have as a condition of the permit a requirement that the applicant defend, indemnify, and hold harmless the City and its officers, agents, employees, volunteers, and contractors from any and all liability, damages, or charges (including attorneys' fees and expenses) arising out of claims, suits, demands, or causes of action as a result of the permit process, a granted permit, construction, location, performance, operation, maintenance, repair, installation, replacement, removal, or restoration of the WCF.

Sec. 31-139. Eligible Facilities Modification Request.

- (a) Purpose. This section implements Section 6409(a) of the Spectrum Act (47 U.S.C. Section 1455(a)), as it may be amended from time to time and as interpreted by the FCC in its Report and Order No. 14-153 and Declaratory Ruling and Third Report and Order released September 27, 2018, which requires a state or local government to approve any Eligible Facilities Request for a modification of an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station. Eligible Facilities Requests shall be governed solely by the provisions in this section and Federal law.

(b) Application Review.

- (1) Application. The Public Works Department shall prepare and make publicly available an application form, which form shall be used by the applicant. No information may be required from an applicant for any documentation intended to illustrate the need for any such wireless facilities or to justify the business decision to modify such wireless facilities.
- (2) Review. Upon submission of an application for an Eligible Facilities Request pursuant to this section, the Public Works Department shall, within sixty (60) days (subject to the tolling provisions set forth below), review such application, make its final decision to approve or deny the application, and advise the applicant in writing of its final decision.
- (3) Tolling of the Timeframe for Review. The sixty (60) day review period begins to run when the application is filed, and may be tolled only by mutual agreement between the Public Works Department and the applicant, or in cases where the Public Works Department determines that the application is incomplete.
 - a. To toll the timeframe for incompleteness, the Public Works Department must provide written notice to the applicant within thirty (30) days of receipt of the application, specifically delineating all missing documents or information required in the application.
 - b. The timeframe for review begins running again when the applicant makes a supplemental submission in response to the Public Works Department's notice of incompleteness.
 - c. Following a supplemental submission, the Public Works Department shall have ten (10) days to notify the applicant if the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.
- (4) Failure to Act. In the event the Public Works Department fails to approve or deny a complete application under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted provided the applicant notifies the Public Works Department in writing after the review period has expired.

- (c) Change in Federal Law. If Federal law changes regarding an application for an Eligible Facilities Request, then this section shall be deemed amended to comply with Federal law without further action by the City.

Sec. 31-140. Small Wireless Facilities - Collocation on Existing Structures.

- (a) Purpose. This section implements a shot clock that is contained in the FCC's Declaratory Ruling and Third Report and Order released September 27, 2018, regarding the collocation of small wireless facilities on existing structures.
- (b) Application Review.
 - (1) Application. The Public Works Department shall prepare and make publicly available an application form, which form shall be used by the applicant.
 - (2) Review. Upon submission of an application for collocation of small wireless facilities on an existing structure pursuant to this section, the Public Works Department shall, within sixty (60) days (subject to resetting of the shot clock and the tolling provisions set forth below), review such application, make its final decision to approve or deny the application, and advise the applicant in writing of its final decision.
 - (3) Tolling of the Timeframe for Review. The sixty (60) day review period begins to run when the application is filed. The Public Works Department shall notify the applicant in writing within ten (10) days as to whether the application is incomplete. Upon resubmission by the applicant, a new sixty (60) day shot clock shall commence, and the Public Works Department shall have ten (10) days to notify the applicant again of an incomplete application. The shot clock may be tolled only by mutual agreement between the Public Works Department and the applicant, or in cases where the Public Works Department determines upon a resubmission that the application is incomplete.
 - a. The timeframe is tolled in the case of subsequent notices pursuant to the procedures identified in this section. Subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.
 - (4) Failure to Act. In the event the Public Works Department fails to approve or deny a complete application under this section within the

timeframe for review (accounting for resetting the shot clock once or any tolling), the applicant may pursue judicial relief.

- (c) Change in Federal Law. If Federal law changes regarding an application for the collocation of small wireless facilities on an existing structure, then this section shall be deemed amended to comply with Federal law without further action by the City.

Sec. 31-141. Small Wireless Facilities - New Construction (New Builds).

- (a) Purpose. This section implements a shot clock that is contained in the FCC's Declaratory Ruling and Third Report and Order released September 27, 2018, regarding the construction of small wireless facilities on a new structure.
- (b) Application Review.
 - (1) Application. The Public Works Department shall prepare and make publicly available an application form, which form shall be used by the applicant.
 - (2) Review. Upon submission of an application for the construction of small wireless facilities on a new structure pursuant to this section, the Public Works Department shall, within ninety (90) days (subject to resetting of the shot clock and the tolling provisions set forth below), review such application, make its final decision to approve or deny the application, and advise the applicant in writing of its final decision.
 - (3) Tolling of the Timeframe for Review. The ninety (90) day review period begins to run when the application is filed. The Public Works Department shall notify the applicant in writing within ten (10) days as to whether the application is incomplete. Upon resubmission by the applicant, a new ninety (90) day shot clock shall commence, and the Public Works Department shall have ten (10) days to notify the applicant again of an incomplete application. The shot clock may be tolled only by mutual agreement between the Public Works Department and the applicant, or in cases where the Public Works Department determines upon a resubmission that the application is incomplete.
 - a. The timeframe is tolled in the case of subsequent notices pursuant to the procedures identified in this section. Subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

- (4) Failure to Act. In the event the Public Works Department fails to approve or deny a complete application under this section within the timeframe for review (accounting for resetting the shot clock once or any tolling), the applicant may pursue judicial relief.
- (c) Change in Federal Law. If Federal law changes regarding an application for the construction of small wireless facilities on a new structure, then this section shall be deemed amended to comply with Federal law without further action by the City.

Sec. 31-142. Collocation Applications for Other than Small Wireless Facilities.

- (a) Purpose. This section implements, in part, 47 U.S.C. Section 332(c)(7) of the Federal Communications Act of 1934, as it may be amended from time to time and as interpreted by the FCC in its Report and Order No. 14-153 and Declaratory Ruling and Third Report and Order released September 27, 2018. Except when a shorter timeframe is otherwise required under this article, the following timeframes apply to applications for collocation for other than small wireless facilities.
- (b) Application Review.
 - (1) Application. The Public Works Department shall prepare and make publicly available an application form, which shall be used by the applicant.
 - (2) Review. Upon receipt of an application for a collocation request pursuant to this section, the Public Works Department shall, within ninety (90) days (subject to the tolling provisions set forth below), review such application, make its final decision to approve or deny the application, and advise the applicant in writing of its final decision.
 - (3) Tolling of the Timeframe for Review. The ninety (90) day review period begins to run when the application is filed, and may be tolled only by mutual agreement between the Public Works Department and the applicant, or in cases where the Public Works Department determines that the application is incomplete.
 - a. To toll the timeframe for incompleteness, the Public Works Department must provide written notice to the applicant within thirty (30) days of receipt of the application, specifically delineating all missing documents or information required in the application.

- b. The timeframe for review begins running again when the applicant makes a supplemental submission in response to the Public Works Department's notice of incompleteness.
 - c. Following a supplemental submission, the Public Works Department shall notify the applicant within ten (10) days if the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.
- (4) Failure to Act. In the event the Public Works Department fails to approve or deny a complete application under this section within the timeframe for review (accounting for any tolling), the applicant may pursue judicial relief.
- (c) Change in Federal Law. If Federal law changes regarding applications for collocation for other than small wireless facilities, this section shall be deemed amended to comply with Federal law without further action by the City.

Sec. 31-143. New Macro Cell Tower Applications.

- (a) Purpose. This section also implements, in part, 47 U.S.C. Section 332(c)(7) of the Federal Communications Act of 1934, as it may be amended from time to time and as interpreted by the FCC in its Report and Order No. 14-153 and Declaratory Ruling and Third Report and Order released September 27, 2018.
- (b) Application Review.
 - (1) Application. The Public Works Department shall prepare and make publicly available an application form, which shall be used by the applicant.
 - (2) Review. Upon receipt of an application for a request for a new macro cell tower pursuant to this section, the Public Works Director shall review the application and make a recommendation to the City Council. The City Council shall render a decision within one hundred fifty (150) days of the filing of the application (subject to the tolling provisions set forth below) and notify the applicant in writing of its final decision. If the application is approved, any associated permit shall be issued and a Master License Agreement negotiated within the one hundred fifty (150) day time period.

- (3) Tolling of the Timeframe for Review. The one hundred fifty (150) day review period begins to run when the application is filed, and may be tolled only by mutual agreement between the Public Works Department and the applicant, or in cases where the Public Works Department determines that the application is incomplete.
- a. To toll the timeframe for incompleteness, the Public Works Department must provide written notice to the applicant within thirty (30) days of receipt of the application, specifically delineating all missing documents or information required in the application.
 - b. The timeframe for review begins running again when the applicant makes a supplemental submission in response to the Public Works Department's notice of incompleteness.
 - c. Following a supplemental submission, the Public Works Department shall notify the applicant within ten (10) days if the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.
- (4) Failure to Act. In the event the City Council fails to approve or deny a complete application under this section within the timeframe for review (accounting for any tolling), the applicant may pursue judicial relief.
- (c) Change in Federal Law. If Federal law changes regarding applications for a new macro cell tower, this section shall be deemed amended to comply with Federal law without further action by the City.

Sec. 31-144. Fees.

In connection with the filing of an application pursuant to this article, the applicant or provider shall pay all applicable fees, as set by resolution of the City Council.

Sec. 31-145. Laws, Rules, and Regulations.

This article shall be subject to all applicable laws, rules, and regulations.

Sec. 31-146. Severability.

The various parts, sentences, paragraphs, sections, and clauses of this article are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this article shall not be affected thereby.

SECTION 2: This ordinance shall take effect and be in full force from and after its passage and publication.

PASSED this _____ day of _____ 2019.

CITY OF LEWISTON

By: _____
Michael G. Collins, Mayor

ATTEST:

Kari J. Ravencroft, City Clerk

ORDINANCE NO. 2019 -

AN ORDINANCE OF THE CITY OF MOSCOW, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; PROVIDING FOR THE AMENDMENT OF MOSCOW CITY CODE TITLE 4, CHAPTER 1, RELATING TO GENERAL PROVISIONS OF MOSCOW ZONING CODE; PROVIDING THAT THE PROVISIONS OF THIS ORDINANCE BE DEEMED SEVERABLE; AND PROVIDING FOR THIS ORDINANCE TO BE IN FULL FORCE AND EFFECT FROM THE DATE OF ITS PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

WHEREAS,

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MOSCOW, IDAHO, AS FOLLOWS:

SECTION 1: That Moscow City Code Title 4, Chapter 1 be amended as follows:

.

Sec. 1-7. Nonconformities.

A. Intent:

1. Within the zoning districts established by this Zoning Code or amendments thereto, there exist lots, structures, uses of land and structures, and characteristics of uses and structures which were lawful before this Zoning Code was enacted or amended, but which would be prohibited, regulated, or restricted under the terms of this Zoning Code or future amendment. It is the intent of this Zoning Code to permit these nonconformities to continue until they are removed, destroyed or lost by time, but not to encourage their survival. Further it is the intent of this Zoning Code that nonconformities shall not be enlarged, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same zoning district.
2. Nonconforming uses are declared by this Zoning Code to be incompatible with permitted uses in the same zoning district. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land in combination shall not be extended or enlarged after passage of this Zoning Code by attachment to a building or by the addition of other uses, of a nature which would otherwise be prohibited in the same zoning district.
3. To avoid undue hardship, nothing in this Zoning Code shall be deemed to require a change in the City-approved plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this

Zoning Code and upon which actual building construction has since been diligently pursued. Actual construction includes the placing of construction materials in permanent position and fastening in a permanent manner. Where excavation, demolition, or removal of an existing building has been substantially begun in preparation for rebuilding, such excavation, demolition or removal shall be deemed to be actual construction, provided that work shall be diligently carried on.

B. Nonconforming Lots of Record:

1. In any zoning district in which single family dwellings are permitted, where any single lot of record existing as of the effective date of adoption of this Zoning Code has been previously approved by the City, a single family dwelling and customary accessory buildings may be erected on such lot. This provision shall apply even if such lot otherwise fails to meet the requirements for area or width, or both, which are generally applicable in the district. Such lot shall conform to yard dimensions and requirements other than those applying to lot area or width for the zoning district in which such lot is located. Variance of yard requirements may be granted only pursuant to the procedure set forth in this Zoning Code.

2. Legal lots of record that have been approved by the City Council prior to the adoption of this Zoning Code and which do not abut a public street right-of-way shall be excepted from meeting street frontage requirements so long as sufficient permanent legal access is available (via public right-of-way, private access easement, or other legal means) to provide safe and convenient access for servicing, fire protection, and required off-street parking.

C. Nonconforming Use of Land (or land with minor structures only): Where at the time of passage of this Zoning Code, or of an amendment thereto, lawful use of land exists which would not be permitted by the regulations imposed by this Zoning Code or an amendment, and where such use involves no individual structure with a replacement cost exceeding Two Thousand Dollars (\$2,000), such use may be continued as long as it remains otherwise lawful, provided:

1. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Zoning Code; and

2. No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that physically occupied by such use on the effective date of adoption or amendment of this Zoning Code; and

3. If any such nonconforming use of land ceases for any reason for a period of more than thirty (30) days, any subsequent use of such land shall conform to the regulations specified by this Zoning Code for the zoning district in which such land is located. This provision shall not apply when the discontinuance or abandonment is caused by government action impeding access to the premises; and

4. No additional structure not conforming to the requirements of this Zoning Code shall be erected in connection with such nonconforming use of land.

D. Nonconforming Structures: Where a lawful structure exists on the effective date of adoption or amendment of this Zoning Code that could not be built under the terms of this Zoning Code by reason of standards for area, lot coverage, height, yards, the structure's location on the lot, or other requirements concerning the structure, such structure may be retained if it remains otherwise lawful, subject to the following provisions:

1. No such nonconforming structure may be enlarged or altered in any manner which increases its nonconformity, except as provided in M.C.C. 4-1-8(D)(4) below; and

2. Should such nonconforming structure or nonconforming portion of structure be destroyed by no fault of the owner (fire, flood, natural disaster, etc.), it may be reconstructed having the same zoning nonconformities, but no more than as existed before the damage occurred;
 3. Should such structure be moved for any reason for any distance whatsoever, it shall thereafter conform to the regulations for the zoning district in which it is located after it is moved; and
 4. A nonconforming structure may be enlarged or altered with the same zoning nonconformities through the issuance of a Conditional Use Permit.
- E. Nonconforming Uses of Structures or of Structures and Premises in Combination: If lawful use of individual structures with a replacement cost of Two Thousand Dollars (\$2,000) or more, or of such structures and land in combination, exists on the effective date of adoption or amendment of this Zoning Code that would not be allowed in the zoning district under the terms of this Zoning Code, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:
1. No existing structure devoted to a use not permitted by this Zoning Code in the zoning district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the zoning district in which it is located. An exception would be when destruction of an existing structure and use in combination occurs by no fault of the owner (fire, flood, natural disaster, etc.), the structure and use in combination may be replaced to its original size and use prior to the destruction; and
 2. Any nonconforming use may be extended throughout any part of a building which was manifestly arranged or designed for such use at the time of adoption or amendment of this Zoning Code, but no such use shall be extended to occupy any land outside such building; and
 3. Any structure, or structure and land in combination, in or on which a nonconforming use is replaced by a permitted use, shall thereafter conform to the regulations for the zoning district in which it is located. The nonconforming use shall not thereafter be resumed; and
 4. When a nonconforming use of a structure, or of a structure and premises in combination, is discontinued or abandoned for six (6) consecutive months or for eighteen (18) months during any three (3) year period, the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the zoning district in which the structure is located. This provision shall not apply when the discontinuance or abandonment is caused by government action impeding access to the structure or premises;
- F. Repairs and Maintenance:
1. Ordinary repairs and maintenance may be done on any nonconforming structure or nonconforming portion of a structure.
 2. Further, upon order of any official charged with protecting the public safety, any building or part thereof declared to be unsafe by such official may be strengthened or restored to a safe condition.

Sec. 4-1. Introduction.

This section establishes parcel and building standards for developments within all zoning districts. The standards vary depending upon the zone in which the development is located within as well as the building type. All residential and non-residential development must comply with the standards contained within the Bulk and Placement Regulations Table below. General exceptions

to parcel and building standards as well as standards of how to measure setback requirements can also be found within this section.

Sec. 4-2. Bulk and Placement Regulations Table.

BULK & PLACEMENT REGULATIONS TABLE																
	AF	FR	SR	R-1	R-2	R-3	R-4	RO	NB	RTO	CB	GB	MB	I	UMC	U
Minimum Lot Requirements																
Minimum lot area (expressed in square feet unless otherwise noted, no minimum lot area for non-residential uses)																
Single family detached	40 acres ¹³	3 acres	1 acre	9,600	7,000	6,000	5,000 ¹	5,000 ¹	5,000 ¹	-				-		
Twinhome	-	-	-	-	-	3,250	2,250	2,250	2,250	-				-		
Townhouse	-	-	-	-	-	2,000 ²	1,800	1,800	1,800	-				-		
Two family dwelling	-	-	-	-	-	7,000	5,000 ¹	5,000 ¹	5,000 ¹	-				-		
Multiple family dwelling	-	-	-	-	-	-	5,000 ¹	5,000 ¹	5,000 ¹	-				-		
Minimum lot width (in feet, no minimum lot width for non-residential uses)																
Single family detached	150	125	100	80 ³	60 ³	60 ³	50	50	50	-				-		
Twinhome	-	-	-	-	-	30	25	25	25	-				-		
Townhouse	-	-	-	-	-	20	18	18	18	-				-		
Two family dwelling	-	-	-	-	-	60 ³	50	50	50	-				-		
Multiple family dwelling	-	-	-	-	-	-	50	50	50	-				-		
Minimum frontage on a public street other than an alley (in feet)																
Standard lot	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40
Lot on cul-de-sac or turnaround	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20
Flag lot	20 ¹⁵	20 ¹⁵	20 ¹⁵	20 ¹⁴	20 ¹⁴	20 ¹⁴	20 ¹⁴	20 ¹⁴	20 ¹⁴	20 ¹⁴	20 ¹⁴	20 ¹⁴	20 ¹⁴	20 ¹⁴	20 ¹⁴	20 ¹⁴
Twinhome	-	-	-	-	-	20	20	20	20	-	20	20	20	-	20	20
Townhouse	-	-	-	-	-	20	18	18	18	-	18	18	18	-	18	18
Minimum Setbacks⁹ (in feet)																
Front ¹⁰	30	25	25	25	20	15	15	10	20	25				10	10	
Rear	35	30	30	20	20	20	20	20	20	20 ⁴						
Side Yard Minimum	35	20	20	5	5	5	5 ^{5/6}	5 ^{5/6}	10	20 ⁴						
Side Yard Combined Minimum				15	15 ⁵	15 ⁵	15 ^{5/6}	15 ^{5/6}								
Street Side	20	17	17	17	15	13	13	10	10	20				10		
Exceptions to Minimum Setbacks Listed Above																
Twinhome and Townhouse Exterior Side Setback	-	-	-	-	-	8	8	8	8	-						
Garage Door Front Setback (when door faces said street)	20	40	40	25	20	20	20	20	20	25						
Garage Door Street-Side Setback (when door faces said street)	20	20	20	20	20	20	20	20	20	20						
Accessory Structure Side & Rear Setback (detached, 200 sq ft or less) ¹¹	0	0	0	0	0	0	0	0	0	0						
Accessory Structure Rear Setback (detached, greater than 200 sq ft) ¹²	5	5	5	5	5	5	5	5	5	5						
Common Open Space (minimum 400 square feet per lot or as required below, whichever is greater, residential uses only)																
							75/du	75/du	75/du			75/du	75/du			
	AF	FR	SR	R-1	R-2	R-3	R-4	RO	NB	RTO	CB	GB	MB	I	UMC	U
Maximum Building Height⁸ (in feet)																
Principal Structure	35	35	35	35	35	35	40	40	40	65	65	65			65	
Accessory Structure (detached, GREATER than 200 sq ft, and encroaching into required rear yard setback for the parcel)																
Building Height	35	35	35	35	35	35	40	40	40	65	65	65				
Wall Height ⁷	14	14	14	14	14	14	14	14	14	14	-	-				
Accessory Structure (detached, 200 sq ft OR LESS, and encroaching into principal structure side or rear yard setbacks)																
Building Height	12	12	12	12	12	12	12	12	12	12	-	-				

Notes
where space is blank there is no minimum/maximum requirement, " - " = not applicable, use not permitted in that zone
du = dwelling unit
¹ Or 800 square feet per dwelling, whichever is greater
² Average net density of a townhouse development shall not be more than fourteen and one-half (14.5) units per acre
³ Minimum lot width for lots that have rear alley access is reduced by 10 feet
⁴ Or equal to the height of the building, whichever is greater, when adjacent to R-1, R-2, R-3, or R-4 Zones
⁵ Side yard combined minimum of 15 feet only applies to lots 55 feet or more in width
⁶ Minimum side yard setback for multiple family developments on lots greater than 20,000 square feet shall be no less than 10 feet
⁷ Dormers may be allowed to exceed 14 feet provided they do not occupy more than fifty percent (50%) of the length of the wall, each wall measured separately
⁸ Building height is defined in Section 4-1-6 of this Code. <u>For the exceedance of maximum building height for non-residential structures in certain zones, refer to Section 4-3-4. Height limitations do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, solar panels, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.</u>
⁹ Minimum setbacks as specified on this table are for building walls. For permitted projections into minimum setback areas, refer to Section 4-5-4(C) of this Code
¹⁰ Where established front setbacks are less than the minimum required for such Zone, refer to Section 4-5-4(E) of this Code for an alternate front setback requirement
¹¹ Roof drainage must be contained on-site
¹² The accessory structure shall not occupy more than fifty percent (50%) of the area of the required rear yard for the parcel
¹³ Exception to minimum forty (40) acre lot size: No more than one (1) parcel of land less than forty (40) acres may be divided from an existing parcel of forty (40) acres or more in the AF zoning district (a 1/4-1/4 section or full Government Lot shall be treated as a forty (40) acre parcel for the purposes of this Zoning Code). The small parcel shall be at least one (1) acre in area and must be registered with the Office of the Latah County Clerk and the City Community Development Department. Such exceptions must be reviewed and approved by the Council and the Board of Latah County Commissioners.
¹⁴ <u>The flagpole portion of flag lots shall not exceed one hundred fifty feet (150') in length and shall not be less than twenty feet (20') in width at any point.</u>
¹⁵ <u>Access may be provided by a permanent access easement of no less than twenty feet (20') in width at any point and may be greater than one hundred fifty feet (150') in length as long as sufficient Fire Department access is provided.</u>

Sec. 4-3. Traditional Subdivision Option

A. Purpose. This section is intended to allow for a subdivision development option that encourages a traditional neighborhood development pattern which is characterized by smaller lot sizes, a mixture of housing types, neighborhood open space, and a gridded street system with alleys that is pedestrian oriented.

B. Application. The use of this section is optional and allows for an alternative to conventional subdivision development. Applications for traditional subdivisions shall follow the same process as outlined in M.C.C. 12-1-3 of this code. The use of this section supersedes minimum lot area, lot width, setbacks, and maximum building height requirements found within Section 4-2 of this Code, but all other City standards still apply.

C. Common Open Space.

a. General. The amount of open space required as part of a traditional subdivision is stated within the design standards table in Section 4 below and depends on the zoning district which the property is located within. The Parks and Recreation Commission shall make a recommendation to City Council on the suitability of an area of land proposed for open space dedication. When determining the suitability of land proposed to be dedicated, the following standards should be taken into consideration. In the case of unique circumstances that require deviation from these standards, the Council shall have the authority to approve such deviations.

b. Standards. Land proposed for common open space should:

- i. Meet functional parkland dedication requirements of Section 1-5-6.**
- ii. Be dedicated to the public and managed by the City of Moscow.**
- iii. Be located in one contiguous area unless determined to be more beneficial in multiple locations.**

D. Traditional Subdivision Development Standards.

a. Streets. Traditional subdivisions shall utilize a network of streets and alleys that form an interconnected grid pattern. Cul-de-sacs, or other dead-end street configurations, shall only be allowed in limited situations where the street cannot be continued or extended due to extreme topography, existing development, or a natural or manmade physical barrier that precludes such street extension.

b. Lots. Building lots shall be designed for vehicular access to the rear of the lots via alley access to allow the front building wall of dwellings to be located closer to the street in order to reinforce traditional neighborhood design and maintain a pedestrian-oriented environment. Alleys shall serve all building lots unless special circumstances exist which preclude access such alley extension.

c. Bulk and Dimensional Standards.

TRADITIONAL SUBDIVISION					
	R-1	R-2	R-3	R-4	RO
Minimum development size (in acres)					
	5	5	5	5	5
Minimum lot area (in square feet)					
Single family detached	5,500	5,000	4,000	2,500	2,500
Twinhome	-	-	3,250	2,250	2,250
Townhouse	-	-	2,000	1,800	1,800
Minimum lot width (in feet)					
Single family detached	50	45	40	40	40
Twinhome	-	-	30	25	25
Townhouse	-	-	20	18	18
Minimum Setbacks² (in feet)					
Front ³	10	10	10	10	10
Rear	20	20	20	20	20
Side Yard Minimum	5	5	5	5	5
Street Side	10	10	10	10	10
Common Open Space					
	9%	11%	12%	14%	14%
Effective Maximum Net Density (units per acre)					
	7.9	8.7	21.7	24.2	24.2
Maximum Building Height¹ (in feet)					
	25	25	25	30	30
Notes					
where space is blank there is no minimum/maximum requirement, " - " = not applicable, use					
du = dwelling unit					
¹ Building height is defined in Section 4-1-6 of this Code. For the exceedance of maximum building height for non-residential structures in certain zones, refer to Section 4-3-4. Height limitations do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, solar panels, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.					
² Minimum setbacks as specified on this table are for building walls. For permitted projections into minimum setback areas, refer to Section 4-5-4(C) of this Code					
³ Where established front setbacks are less than the minimum required for such Zone, refer to Section 4-5-4(E) of this Code for an alternate front setback					

Sec. 4-4. Cluster Subdivision Option

A. Purpose. This section is intended to allow for a subdivision development option that allows and encourages subdivision development at a higher density, while preserving sensitive areas such as floodplains, steep slopes, wetlands, critical habitat, and other natural areas.

B. Application. The use of this section is optional and allows for an alternative to conventional subdivision development. Applications for cluster subdivisions shall follow the same process as outlined in Section 1-3 of this code. The use of this section supersedes minimum lot area, lot width, setbacks, and maximum building height requirements found within M.C.C. 4-4-2, but all other City standards still apply.

C. Common Open Space.

a. General. The amount of open space required as part of a cluster subdivision is stated within the design standards table in Section 4 below and depends on the zoning district which the property is located within. The Parks and Recreation Commission shall make a recommendation to City Council on the suitability of an area of land proposed for open space dedication. When determining the suitability of land proposed to be dedicated, the following standards should be taken into consideration. In the case of unique circumstances that require deviation from these standards, the Council shall have the authority to approve such deviations.

b. Standards. Land proposed for common open space should:

- i. Meet functional parkland dedication requirements of Section 1-5-6.**
- ii. Be dedicated to the public and managed by the City of Moscow.**
- iii. Be located in one contiguous area unless determined to be more beneficial in multiple locations.**
- iv. Preserve important natural areas such as agricultural land, floodplains, wetlands, steep slopes, wildlife habitat, riparian area, or other natural features.**

D. Bulk and Dimensional Standards.

CLUSTER SUBDIVISION						
	SR	R-1	R-2	R-3	R-4	RO
Minimum development size (in acres)						
	5	5	5	5	5	5
Minimum lot area (in square feet)						
Single family detached	22,000	6,500	5,000	4,000	2,500	2,500
Twinhome	-	-	-	3,250	2,250	2,250
Townhouse	-	-	-	2,000	1,800	1,800
Minimum lot width (in feet)						
Single family detached	70	50	45	40	30	30
Twinhome	-	-	-	30	25	25
Townhouse	-	-	-	20	18	18
Minimum Setbacks² (in feet)						
Front ³	20	15	15	10	10	10
Rear	20	15	15	10	10	10
Side Yard Minimum	10	5	5	5	5	5
Street Side	15	15	15	10	10	10
Common Open Space						
	10%	12%	14%	16%	18%	18%
Effective Maximum Net Density (units per acre)						
	1.98	6.7	8.7	21.7	24.2	24.2
Maximum Building Height¹ (in feet)						
	25	25	25	30	35	35
Notes						
where space is blank there is no minimum/maximum requirement, " - " = not applicable, use not permitted in that zone						
du = dwelling unit						
¹ Building height is defined in Section 4-1-6 of this Code. For the exceedance of maximum building height for non-residential structures in certain zones, refer to Section 4-3-4. Height limitations do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, solar panels, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.						
² Minimum setbacks as specified on this table are for building walls. For permitted projections into minimum setback areas, refer to Section 4-5-4(C) of this Code						
³ Where established front setbacks are less than the minimum required for such Zone, refer to Section 4-5-4(E) of this Code for an alternate front setback requirement						

Sec. 4-3. — Exceptions to Height Regulations:

~~The height limitations contained in the district regulations do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, solar panels, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.~~

Sec. 4-45. Setbacks.

- A. Definition. A setback is the distance that buildings or uses must be removed from their property lines. Every lot typically has front, rear, and side setbacks that are determined by the underlying zoning district and the building type upon the lot.
- B. Setbacks Measurement. Setbacks are measured from the property line unless otherwise indicated. When measuring front and street side yard setbacks for lots that abut a Local Residential Street, as designated upon the Thoroughfare Plan within the City's Comprehensive Plan, the front and street side setbacks shall be measured from the building lot side of the public sidewalk to the nearest point of the wall of the main building on the lot, as shown in Figure 1 below. In such cases where sidewalks do not exist in front or street side of a building lot, the Zoning Administrator shall determine the point of measurement based upon the location of adjacent principal structures, the likelihood of future sidewalk installation, and the anticipated location of such future sidewalk.
- C. Permitted Projections into Required Setbacks. Architectural features that do not provide indoor floor space, including eaves, bay windows, decks, carports, and unwallled porches, may project up to twenty-four inches (24") into required side yards and up to forty-eight inches (48") into required front, street side and rear yards.
- D. Exceptions to Required Setbacks: Structures of thirty inches (30") or less in height from grade to the top of the structure are exempt from setback requirements. Deck railings are not to be included when measuring the height of structures for the purposes of this setback exemption so long as they do not exceed forty-two inches (42") in height and where the rails and material constitute not more than seventy percent (70%) of the railing area.
- E. Alternate Front Setback Requirement. In any zoning district where established front yards are less than the minimum required front yard for such district, the Zoning Administrator may grant modifications to the front yard setback of new principal buildings on the subject property provided:
 - 1. The minimum front yard setback is at least equal to the average setback of the principal buildings located on the lots abutting said subject property; or
 - 2. Sixty percent (60%) or more of the principal buildings, within a numbered block on the same side of the street as the subject property, are set back less than the required zoning front yard setback; the average setback of the existing nonconforming structures may be used to establish the minimum front yard of all properties fronting on that side of the street.
- F. Setbacks for Flag Lots. The setback requirements for flag lots are determined by the underlying zoning district the lot is within. The front setback requirement shall be measured by drawing a radius of the front setback distance from the center of the flagpole portion of the lot where it enters the main portion of the lot as shown in Figure 2 below.

(Ord. 2015-01, 01/20/2015)

FIGURE 1

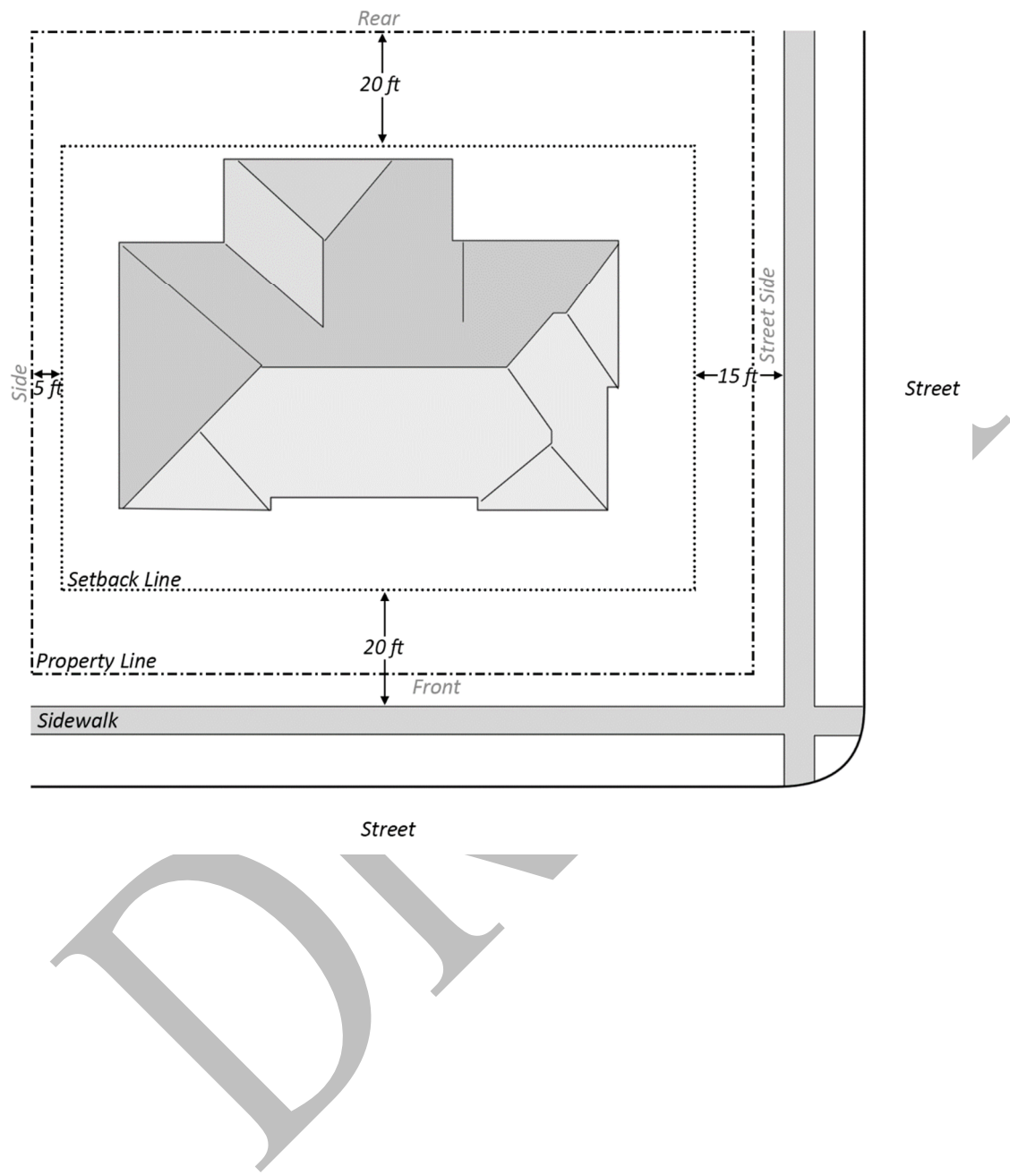
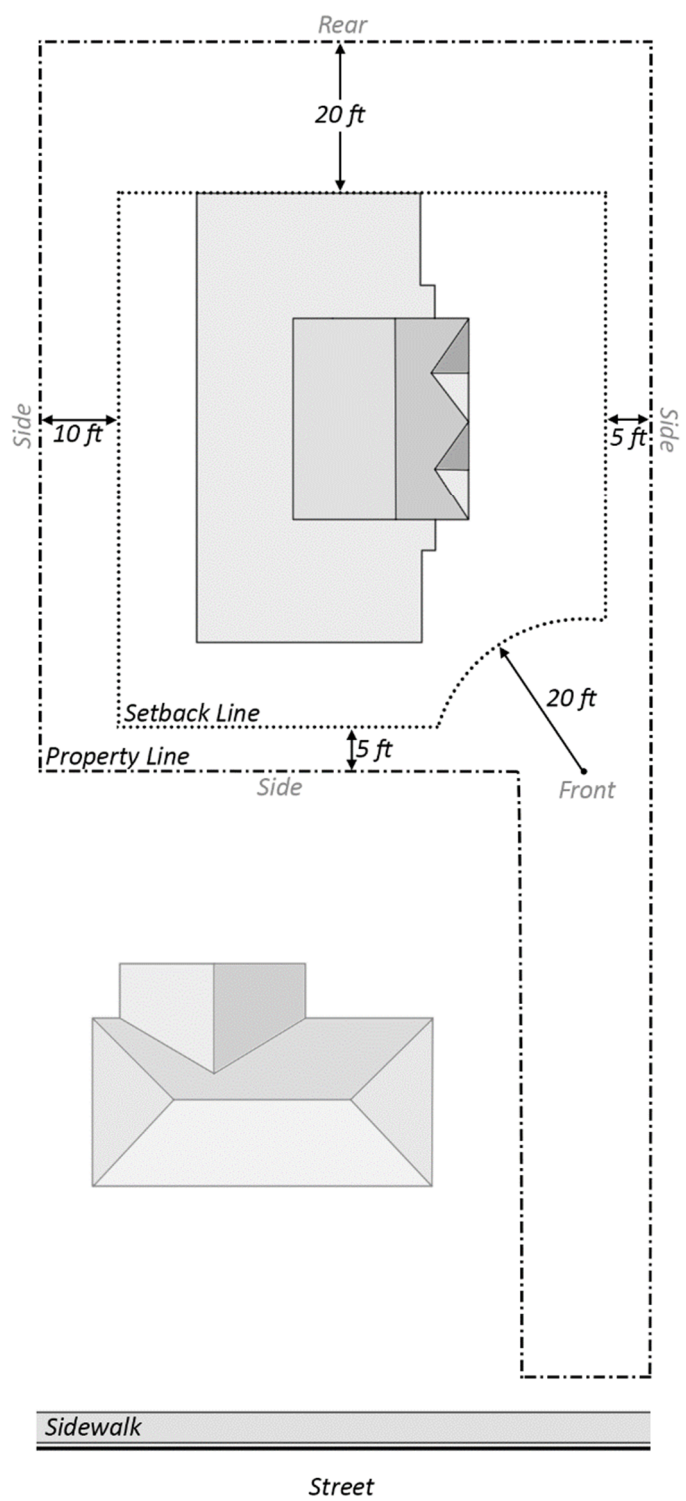


FIGURE 2



Sec. 4-5. — Access to Lots and Buildings.

— Except as provided below, every lot shall abut a public street right-of-way (other than an alley) for a minimum distance of forty feet (40').

1. ~~Lots on cul-de-sacs and vehicle turnarounds shall abut a public street right-of-way for a minimum distance of twenty feet (20').~~

2. ~~Approved flag lots shall abut a public street right-of-way for a minimum distance of twenty feet (20'), and the flagpole portion of flag lots shall not exceed one hundred fifty feet (150') in length and shall not be less than twenty feet (20') in width at any point.~~

3. ~~Approved twinhome lots shall abut a public street right-of-way for a minimum distance of twenty feet (20'). Approved townhouse lots shall abut a public street right-of-way for a minimum distance equal to the minimum lot width of the applicable Zoning District.~~

4. ~~Legal lots of record that have been approved by the City Council prior to the adoption of this Zoning Code and which do not abut a public street right-of-way shall be excepted from this requirement where sufficient permanent legal access is available (via public right-of-way, private access easement, or other legal means) to provide safe and convenient access for servicing, fire protection, and required off-street parking.~~

5. ~~Lots within the Agriculture/Forestry (AF), Farm Ranch (FR), and Suburban Residential (SR) Zoning Districts where access is provided by a permanent access easement of no less than twenty feet (20') in width at any point.~~

6. ~~Flag poles and access easements within the Agriculture/Forestry (AF), Farm Ranch (FR), and Suburban Residential (SR) Zoning Districts may be greater than one hundred fifty feet (150') in length as long as sufficient Fire Department access is provided. —~~

SECTION 2: SEVERABILITY. Provisions of this Ordinance shall be deemed severable and the invalidity of any provision of this Ordinance shall not affect the validity of remaining provisions. The remaining sections of Title 4 shall be in full force and effect.

SECTION 3: EFFECT ON OTHER ORDINANCES. Where the definitions contained in this Ordinance are in conflict with relevant portions of the City of Moscow, Idaho, Municipal Code, the definitions contained within those portions of the Moscow Municipal Code will be unaffected until such time, if any, as they are amended to be consistent with this Ordinance.

SECTION 4: EFFECTIVE DATE. This Ordinance shall be effective upon its passage, approval, and publication according to law.

PASSED by the City Council and APPROVED by the Mayor this _____ day of _____, 2019.

Bill Lambert, Mayor

ATTEST:

Laurie M. Hopkins, City Clerk

DRAFT