

PLANNING & ZONING COMMISSION



Wendy McClure
Commission Chair

~Meeting Minutes~
June 24, 2020

Mike Ray
Staff Liaison

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<http://id-moscow.civicplus.com/agendacenter>

McClure called the meeting to order at 7:01 p.m.

MEMBERS PRESENT: in person: Wendy McClure, Chair; Rich Beebe, Scott Gropp, Mike Nelsen, Nels Reese, Victoria Seever, Dennis Wilson

via Zoom: Joel Hamilton, Robb Parish

MEMBERS ABSENT: None

ALSO IN ATTENDANCE: Mike Ray, Sandra Kelly, Anne Peterson

1. Approval of minutes from June 10, 2020 [ACTION ITEM]

Wilson moved approval of the minutes as presented, seconded by Seever. Motion carried by acclamation.

2. Public Comment

None.

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

- a. *Proposal for rezone of a 30-acre parcel of land located at approximately 2800 South Highway 95 within the Area of City Impact. – LUP2020-0012*

Hamilton moved approval of the document as presented, seconded by Parish. Motion carried unanimously.

4. Public Hearing: Legislative Hearing Providing for the Repeal of Moscow City Code Title 5, Chapter 1; Providing for the Amendment of Moscow City Code Title 4, Chapter 1, Chapter 4, and the Addition of Chapter 12; Providing for Amendments to the Bulk and Placement Regulations Table; Providing for the Addition of Traditional and Conservation Subdivision Options; and Providing for the Establishment of Procedures and Standards for Lot Line Adjustments, Lot Divisions and Subdivision Plats [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.

McClure noted the ordinance amendment has been under review for about a year and includes review and recommendations from a citizen subcommittee comprised of a developer, a land use attorney, an engineering design professional and two representatives from this Commission. Ray reviewed all proposed revisions, noting that the Commission chose to accept some of the subcommittee's recommendations but rejected others, leading to the present version of the ordinance amendment.

Reese requested a short explanation of how the proposed ordinance was an improvement over the existing one. Ray said key improvements included streamlining the lot line adjustment and lot division processes, two new forms of subdivision development that promote more connectivity and preservation of open space, and charts which simplify much of the information. McClure wondered if the open space subdivision might need additional specifics for how to identify conservation areas. Ray said the Parks & Recreation Commission would provide necessary input as each subdivision is reviewed and Planning & Zoning could also set conditions.

McClure opened the public hearing at 7:38 p.m.

David Hall, 1534 Wallen Road, commented that under the conservation subdivision it might be important and useful to identify native Palouse prairie land.

Public hearing closed at 7:39 p.m. Seever suggested inserting Hall's suggestion within Section 4.4.C.d. Hamilton concurred, although he acknowledged that there is probably very little native Palouse prairie remaining within the current City limits. Reese said rather than continue with any wordsmithing, he thought the amendment should move forward. Reese moved that the proposed ordinance amendment be forwarded to Council as presented. Wilson seconded the motion which carried unanimously.

5. 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. The draft ordinance was presented to the Sustainable Environment Commission at their regular meeting on June 16, 2020 to discuss a unified recommendation with the Planning and Zoning Commission. The SEC voted to recommend that the Planning and Zoning Commission proceed with the current ordinance and the SEC will continue to research health effects and the changing legal landscape to potentially make recommendations in the future.

Ray reminded Commissioners that current City code doesn't address the new small cell facilities or set any design standards. It requires a Conditional Use Permit for any new towers/poles, but would allow small cell installations by right in all zoning districts. The draft ordinance defines "small wireless facility", addresses standards, co-location options, and size/height limitations, and creates a permitting system to facilitate processing of applications within required time periods.

Ray shared a memo outlining the City Attorney's legal opinion of what the City could allowably include within its small cell ordinance, and more importantly what the City would NOT be allowed to codify. (Memo attached.) Ray and McClure recently attended the Sustainable Environment Commission to discuss having the two Commissions present a unified recommendation. Ultimately, SEC decided to let P&Z move forward with the draft ordinance addressing safety and aesthetic concerns, and the SEC would continue to research and monitor the changing legal landscape on RF emissions and potential health effects. Gropp asked who's responsible for verifying an existing pole has the appropriate engineering to accommodate additional equipment. Ray replied that it would be the cellular provider's job to provide the necessary engineering review and documentation. Parish asked if the City Attorney had reviewed the comments provided by Pullman citizen George Bederian, and Ray replied that he would obtain her feedback on Bederian's information for the next meeting. Seever expressed concern about a proliferation of shrouds all over downtown buildings. Ray said the draft already limits one tower per support structure/building. Kelly asked if installations could be prohibited on historic buildings. Cell providers must obtain building owner

permission to affix towers or shrouds, but Moscow has no Historic District ordinances that would protect certain buildings, such as Lewiston which has a heritage overlay district that includes a review process for any type of addition, alteration or construction within the district. McClure noted that the Moscow Historic Preservation Commission's mission includes the ability for such oversight but no overlay district currently exists. Seever asked if the City can prohibit small cell installations within a certain distance from residential uses. Ray said he would confirm with the City Attorney, but he didn't think so because there are already telephone and light poles near residential uses, and small cell antennae cannot be distinguished differently based on health concerns. Parish stated his desire for Moscow's ordinance to be as restrictive as possible within the FCC guidelines.

5. Transportation Commission Meeting Report

The Commission has not met since March.

6. Announcements

Seever shared that Chuck Bond recently reiterated to her his appreciation for the Commission's help in addressing the litter, parking and trespassing problems he had been experiencing at his property near the Identity project.

Commissioners agreed to cancel the July 8th meeting.

The meeting adjourned at 8:21 p.m.

Wendy McClure, Chair

Minutes Approved On

JUL 22 2020


Clerk/Deputy Signature



ATTORNEY-CLIENT PRIVILEGED LEGAL MEMORANDUM

DATE: June 12, 2020
TO: Mike Ray, Planning Manager
FROM: Mia Bautista, City Attorney
RE: Municipality Limitations regarding Deployment of 5G Small Wireless Facilities
C: Gary J. Riedner, City Supervisor
Bill Belknap, Deputy City Supervisor

QUESTION PRESENTED

Whether there are limitations placed on municipalities regulation of 5G Small Wireless Facilities in the Cities Rights of Way? Specifically, whether the City is permitted to deny an application for a 5G Small Wireless Facility based on concern for adverse health effects due to RF emissions?

SHORT ANSWER

Yes, the City has limitations regarding the requirements and restrictions we place on the deployment of Small Wireless Facilities within our city limits and in our rights-of-way.

No, the City is not permitted to deny an application for a 5G Small Wireless Facility based on concern for adverse health effects as long as the applicant is complying with the FCC's existing regulations regarding RF emissions. The City is also not permitted to outright deny the deployment of Small Wireless Facilities within our city limits.

RELEVANT STATUTES AND REGULATIONS

47 U.S.C. 224, 253 and 332(c)(7)

Federal Communications Commission, Declaratory Ruling and Third Report and Order, In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure

Investment, WT Docket No. 17-79 and WC Docket No. 17-84, Adopted September 26, 2018, FCC 18-133 (116 pages).

Federal Communications Commission, Declaratory Ruling and Third Report and Order, In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79 and WC Docket No. 17-84, Adopted August 2, 2018, FCC 18-111 (140 pages).

DEFINITION – SMALL WIRELESS FACILITY

The FCC relies upon the following definition of “Small Wireless Facilities,” consistent with section 1.1312(e)(2), encompasses facilities that meet the following conditions:

(1) The facilities—

- (i) are mounted on structures 50 feet or less in height including their antennas as defined in section 1.1320(d), or
- (ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or
- (iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in section 1.1320(d)), is no more than three 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 28 cubic feet in volume;

(4) The facilities do not require antenna structure registration under part 17 of this chapter;

(5) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and

(6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in section 1.1307(b).

BACKGROUND

The history of the implementation and evolution of telecommunication regulations is extensive, which is evidenced by the lengthy Declaratory Rulings of the Federal Communications Commission (FCC). This legal memorandum is not intended to be an in-depth review and analysis of the FCC’s authority to issue authoritative interpretations of the relevant United States Code

(USC), or an in-depth analysis of the numerous issues discussed, but to focus on the limited questions presented.

The Federal Communications Commission (FCC), under the leadership of Chairman Pai, has made it clear that it “is pursuing a comprehensive strategy to Facilitate America’s Superiority in 5G Technology (the 5G FAST Plan). The Chairman’s strategy includes three key components: (1) pushing more spectrum into the marketplace; (2) updating infrastructure policy; and (3) modernizing outdated regulations.” -fcc.gov/5G

The FCC believes that we are on the brink of a technological revolution and failure to speed up the implementation and deployment of enhanced 4G and 5G networks could have negative effects on job and economic growth. The FCC found regulatory requirements were unnecessarily impeding deployment of wireless broadband networks and took steps to remove or reduce those impediments to serve a greater public interest with its Declaratory Rulings. The Declaratory ruling contained in FC 18-133, is intended to clear the different and conflicting views regarding the scope and nature of the limits imposed on state and local governments through USC Sections 253 and 332.

DISCUSSION

The Commission has observed that, “Each local government may believe it is simply protecting the interests of its constituents. The telecommunications interests of constituents, however, are not only local. They are statewide, national and international as well. We believe that Congress’ recognition of this fact was the genesis of its grant of preemption authority to this Commission.” (FCC 18-133, Pg. 22-23).

The Commission provided significant legal and legislative history to support its interpretation of the applicable United States Code regarding what particular requirements would be preempted and addressed various court rulings interpreting the same statutes. The Declaratory Rulings address fees and other state and local requirements that govern the deployment of small facilities.

The FCC’s Third Report and Order and Declaratory Ruling, FCC 18-111, explains that 47 USC 224, grants the FCC with broad authority “to regulate attachments to utility-owned and controlled poles, ducts, conduits, and rights-of-way.” The Act further authorizes the FCC to “prescribe rules to: ensure that the rates, terms, and conditions of pole attachments are just and reasonable; require utilities to provide nondiscriminatory access to their poles, ducts, conduits, and rights of way to telecommunications carriers...” (Pg. 4).

The FCC Declaratory order, FCC 18-111, specifically states “Section 253(a) of the Act specifies that ‘[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.’ Notwithstanding that clear admonition, some states and localities have adopted moratoria on the deployment of telecommunications services or telecommunications facilities, including explicit refusals to authorize deployment and dilatory tactics that amount to *de facto* refusals to allow deployment. To provide regulatory certainty and further deployment, we issue this Declaratory Ruling making clear that such state and local moratoria violate section

253(a) and strike at the heart of the ban on barriers to entry that Congress enacted in that provision.” (Pg. 84)

The FCC Declaratory Order also states “As the Eighth Circuit has explained, section 253(a) of the Act provides ‘a rule of preemption[]’ that articulates a reasonably broad limitation on state and local governments’ authority to regulate telecommunications providers.”¹ Section 253(b) provides an exception for state requirements that are competitively neutral, consistent with section 254 of the Act, and “necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.”² Section 253(c) provides another set of exceptions to the limits on state and local authority by specifying that nothing in section 253 “affects the authority of a State or local government to manage their public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for the use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.” Section 253(d) requires the Commission, after notice and comment, to preempt the enforcement of specific state or local requirements that are contrary to section 253(a) or (b) “to the extent necessary to correct such violation or inconsistency.”³ Pursuant to section 253(d), the Commission has preempted both state and local actions that prohibit or have the effect of prohibiting the ability of any entity to provide telecommunications services, such as a locality’s denial of franchise applications from a new competitor,⁴ provisions in state

¹ *Level 3 Commc’ns, LLC v. City of St. Louis, Mo.*, 477 F.3d 528, 531–32 (8th Cir. 2007) (*Level 3*).

² 47 U.S.C. § 253(b); see also *Western Wireless Corp. Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act of 1934*, File No. CWD 98-90, Memorandum Opinion and Order, 15 FCC Rcd 16227, 16231–32, para. 9 (2000).

³ 47 U.S.C. § 253(d). In the discussion below, we discuss the relation between subsections (d) and (a) and find that the former does not preclude us from issuing this *Declaratory Ruling* under subsection (a). See *infra* section IV.B.3.

⁴ See *Classic Telephone, Inc.; Petition for Preemption, Declaratory Ruling and Injunctive Relief*, CCBPol 96-10, Memorandum Opinion and Order, 11 FCC Rcd 13082, 13101, para. 36 (1996) (*Classic Telephone*).

codes that protect rural incumbents,⁵ and a state grant of an exclusive license to provide telecommunications services.” (Pg. 84)

Declaratory Ruling FCC 18-111, makes it clear that USC Section 253(a) bars state and local moratoria on telecommunication services and facility deployment because they “prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.”

47 U.S.C. 253 in its entirety states,

§253. REMOVAL OF BARRIERS TO ENTRY

(a) In general

No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

(b) State regulatory authority

Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 of this title, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

(c) State and local government authority

Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

(d) Preemption

If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b) of this section, the Commission shall

⁵ See *Public Utility Commission of Texas et al., Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995*, CCBPol 96-14 et al., Memorandum Opinion and Order, 13 FCC Rcd 3460, 3466, para. 13 (1997) (*Public Utility Comm'n of Texas*); *Silver Star Telephone Company, Inc. Petition for Preemption and Declaratory Ruling*, CCB Pol 97-1, Memorandum Opinion and Order, 12 FCC Rcd 15639, 15658, para. 42 (1997), *aff'd sub nom. RT Commc'ns, Inc. v. FCC*, 201 F.3d 1264 (10th Cir. 2000) (*RT Commc'ns*).

⁶ See *Connect America Fund (Sandwich Isles Communications, Inc.) Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary and Sections 36.611 and 69.2(hh) of the Commission's Rules*, WC Docket No. 10-90, CC Docket No. 96-45, Memorandum Opinion and Order, 32 FCC Rcd 5878, 5888, para. 26 (2017).

preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

(e) Commercial mobile service providers

Nothing in this section shall affect the application of section 332(c)(3) of this title to commercial mobile service providers.

(f) Rural markets

It shall not be a violation of this section for a State to require a telecommunications carrier that seeks to provide telephone exchange service or exchange access in a service area served by a rural telephone company to meet the requirements in section 214(e)(1) of this title for designation as an eligible telecommunications carrier for that area before being permitted to provide such service. This subsection shall not apply—

(1) to a service area served by a rural telephone company that has obtained an exemption, suspension, or modification of section 251(c)(4) of this title that effectively prevents a competitor from meeting the requirements of section 214(e)(1) of this title; and

(2) to a provider of commercial mobile services.

(June 19, 1934, ch. 652, title II, §253, as added Pub. L. 104–104, title I, §101(a), Feb. 8, 1996, 110 Stat. 70.)

In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79 and WC Docket No. 17-84, Declaratory Ruling and Third Report and Order, Adopted September 26, 2018, FCC 18-133, the Commission stated.

“9. In the Declaratory Ruling, we note that a number of appellate courts have articulated different and often conflicting views regarding the scope and nature of the limits Congress imposed on state and local governments through Sections 253 and 332. We thus address and reconcile this split in authorities by taking three main actions.

10. First, we express our agreement with the U.S. Courts of Appeals for the First, Second, and Tenth Circuits that the “materially inhibit” standard articulated in 1997 by the Clinton-era FCC’s California Payphone decision is the appropriate standard for determining whether a state or local law operates as a prohibition or effective prohibition within the meaning of Sections 253 and 332.

11. Second, we note, as numerous courts and prior FCC cases have recognized, that state and local fees and other charges associated with the deployment of wireless infrastructure can unlawfully prohibit the provision of service. At the same time, courts have articulated various approaches to determining the types of fees that run afoul of Congress’s limits in Sections 253 and 332. We thus clarify the particular standard that governs the fees and charges that violate Sections 253 and 332 when it comes to the Small Wireless Facilities at issue in this decision.⁹ Namely, fees are only permitted to the extent that they are nondiscriminatory and represent a reasonable approximation of the locality’s reasonable costs. In this section, we also identify specific fee levels for the deployment of Small Wireless Facilities that

presumptively comply with this standard. We do so to help avoid unnecessary litigation over fees.

12. Third, we focus on a subset of other, non-fee provisions of local law that could also operate as prohibitions on service. We do so in particular by addressing state and local consideration of aesthetic concerns in the deployment of Small Wireless Facilities, recognizing that certain reasonable aesthetic considerations do not run afoul of Sections 253 and 332. This responds in particular to many concerns we heard from state and local governments about deployments in historic districts.” (Pg. 3-4)

Excerpts that address the Commission’s ruling on Radio Frequency (RF) emissions, fees, aesthetics, underground infrastructure, and spacing requirements are included below.

RF Limitations:

The Declaratory Ruling made it clear that the Small Wireless Facilities are subject to the same RF emissions exposure limits that are already in place. This Ruling does not modify the RF exposure limits for Small Wireless Facilities. The City is not permitted to deny an application for a Small Wireless Facility if the RF exposure limits are within the approved range already established.

Fees:

The Declaratory Ruling’s decision regarding fees is as follows:

Based on our review of the Commission’s pole attachment rate formula, which would require fees below the levels described in this paragraph, as well as small cell legislation in twenty states, local legislation from certain municipalities in states that have not passed small cell legislation, and comments in the record, we presume that the following fees would not be prohibited by Section 253 or Section 332(c)(7): (a) \$500 for non-recurring fees, including a single up-front application that includes up to five Small Wireless Facilities, with an additional \$100 for each Small Wireless Facility beyond five, or \$1,000 for non-recurring fees for a new pole (i.e., not a collocation) intended to support one or more Small Wireless Facilities; and (b) \$270 per Small Wireless Facility per year for all recurring fees, including any possible ROW access fee or fee for attachment to municipally-owned structures in the ROW. (FCC 18-133, Pg 45).

Aesthetics:

The Declaratory Ruling addressed aesthetic requirements and concluded that, “aesthetics requirements are not preempted if they are (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance.” (FCC 18-133, Pg. 45). The Declaratory Ruling further explains that “in order to establish that they are reasonable and reasonably directed to avoiding aesthetic harms, aesthetic requirements must be objective—i.e., they must incorporate clearly-defined and ascertainable standards, applied in a principled manner—and must be published in advance. ‘Secret’ rules that require applicants to guess at what types of deployments will pass aesthetic muster substantially increase providers’ costs without providing any public benefit or addressing any public harm. Providers cannot design

or implement rational plans for deploying Small Wireless Facilities if they cannot predict in advance what aesthetic requirements they will be obligated to satisfy to obtain permission to deploy a facility at any given site.” (FCC 18-133, Pg. 45).

Underground Infrastructure:

Imposing a regulation that all infrastructure be deployed underground would likely amount to an effective prohibition and not permitted, but there may be circumstances that would justify requiring such. (FCC 18-133, Pg. 46).

Minimum Spacing:

Imposing minimum spacing requirements are permitted so long as they are reasonable aesthetic requirements, safety requirements, or any other articulable reasonable basis that is made publicly available in advance. (FCC 18-133, Pg. 46). Consideration should be given to the current practice of spacing requirements, if we make the minimum spacing requirements more restrictive than our current practice we need to be able to articulate the reasonable basis for the difference.

CONCLUSION

The City is allowed to:

- 1) Develop application criteria and processes, so long as the criteria and processes are reasonable, clearly defined and ascertainable;
- 2) Develop reasonable and targeted construction standards;
- 3) Charge the presumptively reasonable fees set by the FCC or set fees that are nondiscriminatory and represent a reasonable approximation of the City’s reasonable cost;
- 4) Implement reasonable and not overly burdensome aesthetic restrictions/requirements that may include factors such as:
 - a. Technically feasible;
 - b. Compatibility with nearby land uses;
 - c. Traffic safety;
 - d. Coordinate various uses;
 - e. Protect integrity of historic, cultural, and scenic resources;
 - f. Minimum spacing; and
 - g. Underground infrastructure in specific circumstances.

The City is not allowed to:

- 1) Place a moratoria on the deployment of 5G Small Wireless Facilities in our community;
 - a. No express moratoria where we implement laws, regulations, or legal requirements that expressly by their terms, prevent or suspend the acceptance, processing or approval of applications or permits.
 - b. No de facto moratoria, where our local actions would effectively halt or suspend the application process.
- 2) Deny an application for installing 5G Small Wireless Facilities on the basis it will produce RF emissions;

- 3) Implement criteria or standards that will “materially inhibit” the deployment of Small Wireless Facilities.

Please note there are cases pending and additional actions pending with the FCC that may impact some of the conclusions reached in this memo. I will continue to follow the progress of those cases and watch for any additional guidance or orders the FCC may publish. I do not believe the fact that there is pending lawsuits or matters scheduled before the FCC should slow us down from moving forward with finalizing and implementing our ordinance, application and permitting process.

**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 REZONE OF A THIRTY (30) ACRE AREA OF LAND LOCATED AT APPROXIMATELY 2800 SOUTH HIGHWAY 95 FROM THE AGRICULTURE FORESTRY (AF) ZONE TO THE FARM RANCH (FR) ZONE WITHIN THE AREA OF CITY IMPACT OF THE CITY OF MOSCOW, IDAHO.

WHEREAS, the applicant filed an application for a Rezone in the Moscow Area of City Impact on April 30, 2020; and

WHEREAS, this matter came before the Moscow Planning and Zoning Commission during a duly noticed public hearing on June 10, 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 thirty (30) acre area of land generally located at approximately 2800 S Highway 95 within the Area of City Impact.
4. The subject property is currently undeveloped and being utilized as agricultural property.
5. The subject property is surrounded by primarily agricultural land to the east, Early Bird Building Supply to the north, a rural residential house to the west, and a private drive that provides access to six houses to the south.
6. Within the 2019 Moscow Comprehensive Plan, which has been adopted within the Area of City Impact, the subject property is currently designated as Rural and Agricultural.
7. According to the 2019 Comprehensive Plan, Rural and 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, Public Utilities, Services, and Growth 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 and adjacent properties immediately to the east, west, and north are currently zoned Agriculture/Forestry (AF). Properties to the south are located outside of the Area of City Impact in Latah County.
9. The applicant is proposing to rezone the 30-acre area from the Agriculture/Forestry (AF) Zone to the Farm Ranch (FR) Zone.
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, market and community gardens, group child care facilities, public parks and recreation facilities, and bed and breakfast inns.

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. **The proposed rezone is consistent with Comprehensive Plan goals, objectives, and implementation actions.** The proposed rezone is consistent with the 2019 Comprehensive Plan Land Use Designation of Rural and Agricultural.
2. **The proposed rezone would provide for the logical and orderly location of land uses and community services and facilities.** The proposed FR Zone is compatible with the surrounding land uses which are primarily agricultural or rural residential in character.
3. **The uses expected to occur as a result of the rezone will be compatible with the surrounding area.** The proposed zoning is consistent with adjacent zoning districts and will create a logical

and orderly zoning configuration for the subject area. The adjacent properties in all directions are all primarily agricultural and residential.

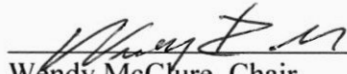
4. **The size, type, and density of development expected to occur as a result of the rezone will not place an undue burden upon delivery of services provided by any political subdivision within the planning jurisdiction.** The proposed zoning and uses are suitable for the area and will not unduly burden the neighborhood of public infrastructure.
5. **The size, type, and density of development expected to occur as a result of the rezone can be adequately served by the existing transportation network, public facilities and services.** The subject property has street access via Highway 95, which can adequately serve any proposed development allowed in the FR Zone. Currently there is insufficient public utility services in the area and the Commission finds that annexation should not be required at this time.

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 rezone request for the thirty (30) acre property from the Agriculture Forestry (AF) Zone to the Farm Ranch (FR) Zone to Latah County with no conditions.

PASSED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF MOSCOW this

24 day of June, 2020.



Wendy McClure, Chair
Planning and Zoning Commission