

PLANNING & ZONING COMMISSION



Wendy McClure
Commission Chair

~Agenda~

Mike Ray
Staff Liaison

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208.883.7008

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

Wednesday
September 9, 2020

7:00 PM

Council Chambers
206 E 3rd Street

Call to order

1. Approval of minutes from August 12, 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. Public Hearing: Legislative Hearing Providing for the Amendment of Moscow City Code Title 4, Chapter 3; Providing for the Amendment of the Telecommunications Code to Establish Standards for Small Wireless Facilities [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.

ACTION: After conducting the public hearing and consideration of testimony received, recommend approval of the proposed Ordinance to City Council with no conditions; or recommend approval of the Ordinance with modifications; or recommend denial of the Ordinance; or take such other action deemed appropriate.

4. Public Art Lighting Discussion [ACTION ITEM]:

With the installation of the recent public art project, there has been some discussion amongst Staff regarding the lighting of public art in the City. Currently the majority of lighting is required to be full cut-off with up-lighting only permitted in certain circumstances. The Art Department would like to request that the Commission review the current lighting ordinance to see if there's a possibility of providing an exemption from the full cut-off requirement for public art.

ACTION: Discuss the potential code amendment and provide staff further direction if necessary.

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.

5. Review of Draft Sign Code Status [ACTION ITEM]:

The Supreme Court Case, Reed vs. Town of Gilbert, in 2015 clarified when municipalities may impose content-based restrictions on signage. There are various places within the Sign Code which apply content-based restrictions and need to be amended to comply with the Supreme Court's ruling. Staff has started to convert portion of the sign code into table format and will review the progress with the Commission.

ACTION: Review the draft Sign Code 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~
August 12, 2020

Mike Ray
Staff Liaison

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McClure called the meeting to order at 7:05 p.m.

MEMBERS PRESENT: in person: Robb Parish, Vice Chair; Rich Beebe, Mike Nelsen, Nels Reese, Victoria Seever, Dennis Wilson

via Zoom: Joel Hamilton, Wendy McClure

MEMBERS ABSENT: Scott Gropp

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

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

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

2. Public Comment

None.

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

- Proposed Preliminary Subdivision Plat of a 2.49-acre area to create twenty-seven (27) townhouse parcels ranging from 634 to 638 square feet in size; one (1) Multi-Family Residential (R-4) parcel of 0.37 acres in size; and three (3) Central Business (CB) parcels ranging from 0.20 to 0.29 acres in size, referred to as the Gateway on Sixth Addition.*
- Proposed Planned Unit Development (PUD) of a 1.41-acre area to construct twenty-seven (27) townhouse dwellings and a 4-story multi-family building containing eighteen (18) dwelling units with enclosed parking on the ground floor.*
- Proposed Rezoning of a combination of Motor Business (MB), Multiple Family Residential (R-4), and Central Business (CB) to the Multiple Family Residential (R-4) Zone; proposed Rezoning of from a combination of the CB and R-4 Zones to the CB Zone; and proposed Rezoning from the University (U) Zone to the R-4 Zone and Motor Business (MB) Zone.*

Commissioners had no questions or concerns. Hamilton moved approval of all three documents, seconded by Beebe. Motion carried unanimously.

5. Final Review of 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. The public hearing for the proposed ordinance has been scheduled for the September 9, 2020.

With regard to input received from members of the public, Seever thought staff should proceed with suggested corrections as to form and consistency without consulting the Commission. Some comments would actually be better addressed in the Master Service Agreements rather than ordinance. Non-commercial towers are specifically excluded so ham radio towers won't fall under the telecommunications ordinance. Ray provided clarification that a CUP would be required for macro cell towers over 35 feet in height and for small cell towers over 40 feet. Applicants will be responsible to secure their own tower sites., with unauthorized access (trespassing) being enforced through the Police Department. Ray said applicants would be required to show FCC emission compliance at the time of approval, but on-going tracking of that would be a huge strain on staff resources. Parish reminded the audience there will be continued opportunity for public comment at the Commission's hearing on September 9, 2020 and subsequent Council hearing. McClure thanked Chaney and Hall for their input but acknowledged some of it is outside the Commission's purview.

4. Transportation Commission Meeting Report

No report. The Commission is scheduled to meet September 10.

5. Announcements

The August 26th meeting has been cancelled.

The meeting adjourned at 7:26 p.m.

Wendy McClure, Chair

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 AMENDMENT OF THE TELECOMMUNICATIONS CODE TO ESTABLISH STANDARDS FOR SMALL WIRELESS FACILITIES; 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, in 2001 the City first adopted regulations and development standards specific to telecommunications facilities and antenna towers; and

WHEREAS, since the telecommunications code was initially established there have been federal laws, regulations, and court decisions that have impacted the way telecommunications facilities are permitted and regulated; and

WHEREAS, the implementation of 5G technology will bring much higher data speeds and traffic through the use of higher-frequency radio waves, which have a shorter range than the frequencies used by previous cell phone towers; and

WHEREAS, since small wireless facilities have a shorter range, they require a greater number of facilities which are typically located in the public right-of-way; and

WHEREAS, with the number and frequency of small cell facilities that are needed to create a 5G network, the City wishes to encourage the location and co-location of transmission equipment on existing structures, to reduce visual clutter, promote public safety, and reduce impacts to the existing built environment; and

WHEREAS, the City's existing telecommunications code does distinguish between macrocell facilities and small wireless facilities; and

WHEREAS, establishing predictable and balanced regulations within the authority reserved for local governments is in the best interest of the City; and

WHEREAS, the City desires to update the telecommunications code to protect and promote the public health, safety and welfare of the community, to reasonably regulate wireless communication facilities aesthetics, and to protect and promote the character of the City in a manner consistent with State and Federal laws and regulations; and

WHEREAS, on September 9, 2020, the Planning and Zoning Commission conducted a public hearing upon the amendments contained herein and recommended approval to the City Council; and

WHEREAS, on _____, the City Council conducted a public hearing and considered and adopted the amendments contained herein;

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; and
 - 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. 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).

h.j. Telecommunications facilities. Antenna towers, antenna support structures, antennas and their ancillary facilities that are used to provide commercial wireless communications or telecommunications services.

i.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. The installation of lattice towers is prohibited, except as permitted as lattice towers that qualify and are permitted as temporary antenna towers subject to Section 4.d. herein. Replacement, relocation or alteration of non-conforming lattice towers shall be subject to the Nonconformity Regulations in Section 4-1-~~6-7~~ of this Zoning Code.

b. 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.

c. ~~Co-location shall be a permitted use if the property upon which such antenna is located is within one of the following Zoning Districts: U, RO, NB, RTO, CB, GB, MB, or I. An antenna may be co-located as a permitted use on existing antenna towers and antenna support structures in all zoning districts if the antenna extends no more than eighteen feet (18') above, and projects no more than eight feet (8') horizontally away from the existing tower or support structure. Colocation shall also be a permitted use on nonconforming antenna towers if the antenna extends no more than eighteen feet (18') above, and projects no more than eight feet (8') horizontally away from, the nonconforming antenna tower. 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.

- d. 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.
 - a.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 adjacent property lines in all other zones by at least a distance equal to one-half (1/2) the height of the antenna tower.
 - b.d. Security. Every telecommunications facility shall be protected from unauthorized access by appropriate security measures.
 - e.e. Lighting. NoEvery antenna andor 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.
 - d.f. Noise Reduction. In any SR, R-1, R-2, R-3, or R-4 Zoning District, and in all other Zoning Districts when the adjacent property is zoned SR, R-1, R-2, R-3, or R-4 or occupied by a dwelling, hospital, school, library, or nursing home or similar use, 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). 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 not more than forty-five decibels (45 dB).
 - e.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.
 - f.h. Antenna towers shall be separated from the property line of any adjacent property zoned SR, R-1, R-2, R-3, or R-4 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.
 - g.i. 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 ~~SR, R-1, R-2, R-3, and R-4 Zoning Districts~~ residential zoning district 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 for temporary use by authorized personnel. The parking area and driveway to it shall consist of asphalt, concrete, or gravel.
 - vi. ~~Ancillary facilities located above ground for antennas in or directly adjacent to any SR, R-1, R-2, R-3, or R-4 Zoning District shall be set back a minimum of twenty-five feet (25') from any SR, R-1, R-2, R-3, or R-4 zoned property, unless the applicant can demonstrate that the specific proposal will present no greater adverse visual and audio impacts to surrounding properties. Above ground ancillary facilities in any other Zoning District shall be located a minimum of fifty feet (50') from any SR, R-1, R-2, R-3, or R-4 zoned property, unless the applicant can demonstrate that the specific proposal will present no greater adverse visual and audio impacts to surrounding properties.~~ 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.
- h.j. 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 ~~5.j.i6.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.

~~i.k.~~ i.k. 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 ~~the Area of City Impact 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.

~~j.l.~~ j.l. 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 as identified by a list maintained by the Community Development Department.~~ 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 ~~Zoning Administrator decision or Board of Adjustment 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. ~~Additionally, the Zoning Administrator shall cause notice of any required public hearing for a proposed antenna tower to be mailed to owners of property within six hundred feet (600’) of the permit application site not less than sixty (60) days prior to the public hearing.~~

6. Small Wireless Facility Standards.

- a. Applicability. These standards shall apply to the installation of new small wireless facility 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 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 with 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 to 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 as the existing support structure excluding the top mounted small wireless facility antenna which may exceed the height of the existing antenna support structure and 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 fixtures 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 requirement shall not apply to co-locations upon existing antenna support structures or replacement combination light and small wireless antenna towers.
- i.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.

6.7. 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 5.k.6.e herein.
 - x. Notarized written commitment to allow co-location/shared use as specified in Section 5.j.i6 herein (not required for small wireless facilities).
 - xi. Documentation demonstrating compliance with non-ionizing electromagnetic radiation (NIE) 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.bd herein.
 - xvi. A tree protection plan prepared by a certified arborist if the installation of the wireless telecommunication facility will be located within the canopy of a street

tree, or within a ten-foot radius of the base of such a tree.

7.8. 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.

8.9. 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.

9.10. 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



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.⁶” (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.