

Public Works / Finance Committee



Regular Meeting ~Agenda~

Laurie M. Hopkins
City Clerk

www.ci.moscow.id.us

208.883.7015

Monday, October 12, 2020

3:00 PM

Council Chambers
206 E. Third St.

REGULAR AGENDA

1. Approval of September 28, 2020 Public Works / Finance Committee Minutes (ACTION ITEM) - Taylor Riedner

Minutes presented for approval.

PROPOSED ACTIONS: Approve minutes, amend minutes, or provide staff further direction.

2. Disbursement Report September 2020 (ACTION ITEM) - Sarah Banks

Staff will present the Accounts Payable Report for the month ending September 2020.

ACTION: Sign the Disbursements Report for the month of September 2020.

3. Ordinance Amending Title 4, Chapter 3 of Moscow City Code Regarding Amendments to the Telecommunications Code to Establish Standards for Small Wireless Facilities (ACTION ITEM) - Mike Ray

Telecommunications service providers are currently in the process of deploying new cellular wireless technology, referred to as 5G/small cell, throughout the developed world. 5G/small cell high speed deployment 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. 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. 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 at some point in the future, Staff has worked with the Planning and Zoning Commission to draft an ordinance that addresses 5G/small cell installations in the telecommunications code. The proposed ordinance would define small wireless facilities, re-organize certain sections, make minor grammatical changes, and insert small wireless facility standards. On September 9, 2020, the Planning and Zoning Commission conducted a public hearing upon the proposed ordinance and recommended approval to City Council with a minor modification. The proposed ordinance has been scheduled for a public hearing before City Council at the Council's upcoming October 19, 2020 meeting.

PROPOSED ACTIONS: Recommend forwarding the proposed ordinance for public hearing at the Council's upcoming October 19, 2020 meeting; or provide staff further direction.

REPORTS

Construction Project Update - Bill Belknap

ADJOURN

NOTICE: Moscow City Council and committee meetings are 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.

Public Works / Finance Committee



Regular Meeting ~Minutes~

Laurie M. Hopkins
City Clerk

www.ci.moscow.id.us

208.883.7015

**Monday,
September 28, 2020**

3:00 PM

**Council Chambers
206 E. Third St.**

The meeting was called to order at 3:00 p.m.

PRESENT: Brandy Sullivan, Sandra Kelly, Gina Taruscio

OTHERS: Mayor Bill Lambert, City Council Member Art Bettge

STAFF: Gary Riedner, Mia Bautista (virtual), Bob Buvel, Nate Suhr, Brian Nickerson, Bill Belknap (virtual), Jen Pfiffner (virtual), Todd Drage, Laurie Hopkins (virtual), Taylor Riedner (virtual)

REGULAR AGENDA

1. Approval of September 14, 2020 Public Works / Finance Committee Minutes (ACTION ITEM) - Taylor Riedner

Minutes presented for approval.

PROPOSED ACTIONS: Approve minutes, amend minutes, or provide staff further direction.

The minutes were approved as presented.

2. Steve Vachon Troy Road Right-of-Way Dedication (ACTION ITEM) - Bob Buvel

The Idaho Transportation Department (ITD), the City of Moscow and Steve Vachon have been in negotiations to add a second eastbound lane to the Troy Road leg of the south couplet along Mr. Vachon's street frontage at 211 Troy Road (the former site of Stubb's Seed Service). Mr. Vachon has agreed to dedicate the additional right-of-way the second lane will require.

PROPOSED ACTIONS: Recommend acceptance of the right-of-way dedication, or recommend rejection of the dedication, or provide staff further direction.

Buvel introduced the item as written above and explained the dedication is the length of the property, which is from Hwy 95 and Hwy 8 intersection to just short of Electrical Specialist. Vachon had planned to develop the property and the addition of a second turn lane would assist in preventing accidents of vehicles turning into his driveway. With Vachon selling the property, the City can acquire the right-of-way for a joint ITD/City future project to widen the roadway. The Committee recommended acceptance and that it be placed on the Council consent agenda.

3. Moscow City-Wide Sidewalk Replacement Project FY2020 Bid Results and Contract Award (ACTION ITEM) - Nate Suhr

The 2020 Moscow City-Wide Sidewalk Replacement Project will construct sidewalk and pedestrian ramp improvements in various locations with City funds and will perform additional sidewalk replacements under the Property Owner Assistance Program at the owner's expense. An electronic bid solicitation for this year's Sidewalk Program was issued to four area contractors on September 4th, 2020, giving them two weeks to respond. The project was advertised with known

quantities for City funded jobs and with four homeowner jobs as additional alternatives to allow homeowners the opportunity to accept or reject offered prices.

Three responsive bids were received on September 18th, 2020. Of the responsive bids received, numbers ranged from \$58,039.80 to \$112,591.02 for the Base Bid and Additional Alternatives A-D. McCall's Classic Construction of Clarkston, Washington submitted the low bid on the project of \$58,039.80. The Engineer's Estimate for the Base Bid and Additional Alternatives A-D was \$60,530.49.

PROPOSED ACTIONS: Recommend the acceptance of the low bid including Base Bid and Additional Alternatives A and C and the rejection of Additional Alternatives B and D from McCall's Classic Construction, Inc., award the contract in the amount of \$54,709.60, and authorize staff approval of construction change orders in an amount not to exceed 10% of the contract amount (\$5,470.96) or provide staff further direction.

Suhr introduced the item as written above. This program helps homeowners who may struggle to find a contractor. Declining interest in the program prompted staff to modify the program. Property owners would have a fixed date to participate in the program. Staff suggests Spring so that bidding could be in the Fall when construction season is over. Another change would be a limited number of contracts with the requirement to include estimated pricing. This would allow the homeowners to view prices to determine whether to participate. Two property owners opted out of the program resulting in staff recommendation to reject alternatives B and D. The benefits to homeowners include City project administration, adherence to City Code, traffic control, installations, and bulk bid pricing. The homeowners reimburse the city for their portion of the construction cost. If a sidewalk is problematic, the City encourages homeowners to fix the damaged property as the property owner is responsible for their adjacent sidewalk. If necessary, the City can repair the property and bill the owner. If it becomes a public safety hazard, the city would step back and figure out how to address the issue. The Committee recommended approval and that it be placed on the Council consent agenda.

4. Third Street LHSIP Utility Waivers (ACTION ITEM) - Nate Suhr / Alisa Anderson

The Third Street Local Highway Safety Improvement Program Grant Phase I & II projects will replace broken and non-compliant sidewalks, adjust curbs to improve drainage, and install lighting to improve the illumination at the intersections on Third Street from Jackson Street to Lieullen Street. As part of the construction process, franchise utility companies operating within the City are required to sign waivers and/or given an opportunity to provide input on the scope of work. Recently, many of the franchise utility companies have become uncomfortable signing the waivers which has resulted in the need to conduct the public hearing. Staff is proposing to conduct the public hearing at the upcoming City of Moscow Council meeting on October 5th.

PROPOSED ACTIONS: Approve holding the utility waiver public hearing at the City Council Meeting on October 5, 2020; or provide staff further direction.

Suhr introduced the item as written above. This utility hearing allows the opportunity for utility companies to provide feedback and/or object to the project. Once the utility hearing is held, if there is no objection, the project may proceed. The Committee approved the utility hearing be placed on the Council regular agenda.

5. Authorization for Purchase of Mask Fitting Machine (ACTION ITEM) - Brian Nickerson

The Moscow Volunteer Fire Department is requesting the authorization to purchase a mask-fitting machine, the Quality Guard Mask Fit Test Machine, which allows the Department to conduct annual required certifications for the fitting of Self-Contained Breathing Apparatus (SCBA). Previous certifications have been accomplished by borrowing a testing machine from a vendor, which is dependent upon availability of the machine. The Department's response to the COVID-19 pandemic has required members of the Department to wear N95 face masks. The borrowed testing machine does not have the ability to test N95 masks, while the requested machine has that capability. In addition, the purchase of the machine will provide mask-fitting services to other City departments, as well as opportunities for other local emergency services departments. Staff has determined that as an apparatus necessary to assist in the City's COVID-19 response, it is appropriate to seek reimbursement from the City's CARES Act allocation.

PROPOSED ACTIONS: Recommend approval of the purchase of the Quality Guard Mask Fit Testing Machine, and seek reimbursement through the City's CARES Act allocation, or provide staff further direction.

Chief Nickerson presented the item as written above adding with new residents and volunteers coming and going, masks need to be tested multiple times a year. The machine was not budgeted so rather than bringing forward in the open budget process, staff has been reviewing whether it would qualify for CARES Act funding. If this item fails to be reimbursed by the CARES Act funding, it will come back to the Council for discussion. The Committee recommended approval and that it be placed on the Council consent agenda.

REPORTS

Families First Coronavirus Response Act Update – Jen Pfiffner

Pfiffner explained the Families First Coronavirus Response Act is a requirement for organizations to provide two types of leave, the Emergency Paid Sick Leave Act and the Emergency Family Medical Leave Expansion Act. The City is required to provide two weeks paid sick leave at the employee's regular rate of pay when they are unable to work due to COVID-related items. Another requirement is to provide two weeks at 2/3 of the employee's regular rate of pay if they are taking care of an immediate family member. Also required is up to an additional 10 weeks of pay, expanded family and medical leave at 2/3 employee's rate of pay if unable to work due to bona fide need to take care of a child. The telecommuting policy approved by the City Council on September 8 is the preferred method to allow employees to take care of work and their family, or quarantining needs. The Families First Act is a requirement of the federal government and is a process, not a policy, therefore is being presented as a report.

ADJOURN

The meeting adjourned at 3:32 p.m.

COMMITTEE STAFF REPORT

DATE: Monday, October 12, 2020



RESPONSIBLE STAFF

ADDITIONAL PRESENTER(S)

OTHER RESOURCES

AGENDA ITEM TITLE

Disbursement Report September 2020 (ACTION ITEM) - Sarah Banks

DESCRIPTION

Accounts Payable Report for the month ending September 30 ,2020. A summary of the major expenditures has been approximated by category and represents 97% of the total expenditure of \$3,706,541.08.

Payroll	\$1,152,854.00
Professional Services	\$286,335.00
Sanitation	\$379,310.00
Capital Outlay	\$379,229.00
Capital Outlay - Improvements	\$31,740.00
Capital Outlay - Vehicles	\$114,928.00
Capital Outlay -Buildings	\$849,291.00
Supplies	\$87,750.00
Utilities	\$79,899.00
Contractual Payments	\$190,897.00
ACH Wells Fargo	\$36,883.00
Total	\$3,589,116.00

STAFF RECOMMENDATION

Sign the Disbursements Report for the month of September 2020.

PROPOSED ACTIONS

ACTION: Sign the Disbursements Report for the month of September 2020.

FISCAL IMPACT

PERSONNEL IMPACT

ATTACHMENTS

1. Disbursement Report September 2020
2. Revenue Report 2020
3. Cash and Investments Sept 2020

DISBURSEMENTS REPORT FOR SEPTEMBER 2020												
DATE	FUND NAME	ACCOUNTS PAYABLE	ACCOUNTS PAYABLE	ACCOUNTS PAYABLE	ACCOUNTS PAYABLE	ACCOUNTS PAYABLE	ACCOUNTS PAYABLE	ACCOUNTS PAYABLE ACH	VOID CHECKS	PAYROLL	PAYROLL	GRAND TOTALS
BATCH #		9/3/2020	9/10/2020	9/15/2020	9/16/2020	9/17/2020	9/24/2020	9/14/2020 9/28/2020	10/1/2020	9/11/2020	9/25/2020	
CHECK #'s		00001.09.2020	00002.09.2020	00005.09.2020	00006.09.2020	00003.09.2020	00007.09.2020	00004.09.2020 00008.09.2020	00001.10.2020	00100.09.2020	00200.09.2020	
		95781-95844	95845-95922	95923	95924	95925-95988	95989-96097	September CC ACHs	96098	21295-21303	21304-21312	
Fund #												
101	GENERAL	17,657.97	39,697.87	400.00		17,352.50	8,336.56	13,005.08		337,283.40	348,012.60	781,745.98
105	STREETS	27,528.31	4,368.38			2,626.75	1,972.98	705.61		27,531.68	28,259.95	92,993.66
120	RECREATION AND CULTURE	11,269.89	12,759.37			7,062.59	17,216.00	4,275.02		61,581.29	70,887.39	185,051.55
121	MSD COMM. PLAY FIELDS	888.37	202.60				2,897.50	1,727.67		2,817.40	2,919.08	11,452.62
123	1912 CENTER		8,844.70				38.04					8,882.74
128	TRANSIT CENTER	186.40				793.43	1,035.72					2,015.55
220	WATER	58,485.13	12,480.52			26,471.50	9,260.53	2,296.11		50,894.32	51,065.67	210,953.78
230	SEWER	91,151.84	96,629.61			45,391.80	46,395.86	3,566.44	(20,378.88)	47,913.94	47,976.54	358,647.15
240	SANITATION	16.00	96,809.21			265,362.75		37.32		5,516.94	5,615.23	373,357.45
290	FLEET	28,455.45	55,714.34			6,889.50	45,615.48	1,199.56		11,861.57	11,991.69	161,727.59
295	INFORMATION SYSTEMS	9,489.11				46,329.13	6,212.55	9,858.56		20,383.58	20,341.38	112,614.31
320	WATER CAPITAL PROJECTS		251,541.41			446.25	25,134.03					277,121.69
330	SEWER CAPITAL PROJECTS					446.25	8,382.48					8,828.73
340	SANITATION CAPITAL PROJ											0.00
350	CAPITAL PROJECTS	846,229.43	92,775.21		23,973.50	5,447.60	7,625.61	211.95				976,263.30
355	LID CONSTRUCTION											0.00
380	HAMILTON - PARKS & REC											0.00
590	BONDS & INTEREST											0.00
890	URBAN RENEWAL AGENCY											0.00
941	PAYROLL CLEARING FUND						144,884.98					144,884.98
	TOTAL	1,091,357.90	671,823.22	400.00	23,973.50	424,620.05	325,008.32	36,883.32	(20,378.88)	565,784.12	587,069.53	3,706,541.08

WIRE Transfers:

_____ Brandy Sullivan

_____ Gina Taruscio

_____ Sandra Kelly

_____ Sarah L. Banks, Finance Director

RECEIPTS REPORT FOR September 2020

Fund #	FUND NAME	Taxes	Franchise Fees	Licenses & Permits	Intergovernmental	Charges for Services	Fines & Penalties	Investment Income	Refunds & Reimbursements	Contributions & Donations	Other	Grand Total
101	GENERAL	8,876.50	93,287.32	58,920.39	4,335.02	133,239.60	14,825.28	5,118.07	36,617.96	0.00	5,420.26	360,640.40
105	STREETS	1,352.17	0.00	0.00	51,741.10	24,562.62	0.00	1,376.94	162.00	0.00	0.00	79,194.83
120	RECREATION AND CULTURE	0.00	0.00	0.00	0.00	12,302.66	0.00	0.00	4,106.93	20,000.00	-28.52	36,381.07
121	MSD COMMUNITY PLAY FIELDS	0.00	0.00	0.00	5,405.12	0.00	0.00	0.00	0.00	0.00	0.00	5,405.12
123	1912 CENTER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
128	TRANSIT CENTER	0.00	0.00	0.00	0.00	1,438.71	0.00	0.00	0.00	0.00	0.00	1,438.71
220	WATER	0.00	0.00	0.00	0.00	743,900.22	0.00	2,400.34	-144,233.88	0.00	0.00	602,066.68
230	SEWER	0.00	0.00	0.00	0.00	641,308.89	0.00	4,825.56	421.20	0.00	0.00	646,555.65
240	SANITATION	0.00	0.00	0.00	0.00	418,237.18	0.00	2,042.21	2,000.00	0.00	0.00	422,279.39
290	FLEET	0.00	0.00	0.00	0.00	98,169.31	0.00	2,622.87	0.00	0.00	0.00	100,792.18
295	INFORMATION SYSTEMS	0.00	0.00	0.00	0.00	117,298.00	0.00	1,678.61	2,973.34	0.00	0.00	121,949.95
320	WATER CAPITAL PROJECTS	0.00	0.00	0.00	236,954.45	0.00	0.00	5,356.42	0.00	0.00	0.00	242,310.87
330	SEWER CAPITAL PROJECTS	0.00	0.00	0.00	0.00	0.00	0.00	9,225.86	0.00	0.00	0.00	9,225.86
340	SANITATION CAPITAL PROJECTS	0.00	0.00	0.00	0.00	0.00	0.00	4,566.47	0.00	0.00	0.00	4,566.47
350	CAPITAL PROJECTS	0.00	0.00	0.00	8,802.70	0.00	0.00	8,139.96	0.00	0.00	632.91	17,575.57
355	LID CONSTRUCTION	0.00	0.00	0.00	0.00	0.00	0.00	19.20	0.00	0.00	-106.12	-86.92
380	HAMILTON P&R	0.00	0.00	0.00	0.00	0.00	0.00	1,283.16	0.00	0.00	0.00	1,283.16
590	BOND & INTEREST	1,430.36	0.00	0.00	0.00	0.00	0.00	202.26	0.00	0.00	0.00	1,632.62
595	LID FUNDS	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	TOTAL	11,659.03	93,287.32	58,920.39	307,238.39	2,190,457.19	14,825.28	48,857.93	-97,952.45	20,000.00	5,918.53	2,653,211.61

City of Moscow
Cash and Investments
Balances as of 9/30/2020

Fund		Year to Date Balance
General Fund	\$	7,029,611.51
Street Fund	\$	1,895,332.08
Culture & Recreation	\$	1,336,237.59
MSDCPF	\$	175,615.04
1912 Fund	\$	51,713.13
Transit Center	\$	81,404.09
Water Fund	\$	3,300,042.89
Sewer / WRRF	\$	4,818,577.39
Sanitation Fund	\$	2,811,060.22
Fleet Fund	\$	3,610,321.07
Information Systems	\$	2,310,570.34
Water Capital	\$	7,372,994.25
Sewer Capital	\$	12,699,198.28
Capital Projects	\$	11,199,254.31
Sanitation Capital	\$	6,285,645.20
LID construction	\$	26,433.31
Hamilton	\$	2,315,167.70
Bond & Interest	\$	47,241.34
LID Funds	\$	25,124.55
Payroll Service	\$	794,863.32
Total Cash & Investments	\$	68,186,407.61

COMMITTEE STAFF REPORT

DATE: Monday, October 12, 2020



RESPONSIBLE STAFF

Michael Ray, Assistant CD Director/Planning Manager

ADDITIONAL PRESENTER(S)

OTHER RESOURCES

AGENDA ITEM TITLE

Ordinance Amending Title 4, Chapter 3 of Moscow City Code Regarding Amendments to the Telecommunications Code to Establish Standards for Small Wireless Facilities (ACTION ITEM) - Mike Ray

DESCRIPTION

Telecommunications service providers are currently in the process of deploying new cellular wireless technology, referred to as 5G/small cell, throughout the developed world. 5G/small cell high speed deployment 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. 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. 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 at some point in the future, Staff has worked with the Planning and Zoning Commission to draft an ordinance that addresses 5G/small cell installations in the telecommunications code. The proposed ordinance would define small wireless facilities, re-organize certain sections, make minor grammatical changes, and insert small wireless facility standards. On September 9, 2020, the Planning and Zoning Commission conducted a public hearing upon the proposed ordinance and recommended approval to City Council with a minor modification. The proposed ordinance has been scheduled for a public hearing before City Council at the Council's upcoming October 19, 2020 meeting.

STAFF RECOMMENDATION

Recommend forwarding the proposed ordinance for public hearing at the Council's upcoming October 19, 2020 meeting.

PROPOSED ACTIONS

PROPOSED ACTIONS: Recommend forwarding the proposed ordinance for public hearing at the Council's upcoming October 19, 2020 meeting; or provide staff further direction.

FISCAL IMPACT

PERSONNEL IMPACT

N/A

ATTACHMENTS

1. Ordinance
2. Staff Memo

3. Legal Memo
4. P&Z Minutes
5. Public Comments

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, which is the basis for updating the City's telecommunication regulations; and

WHEREAS, the implementation of 5G technology will bring significantly 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 by which it transmits data, 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 in order 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 October 19, 2020 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 co-location 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) or any rule that subsequently replaces FCC Rule 1.1307(b).
 - j. *Telecommunications facilities*. Antenna towers, antenna support structures, antennas and their ancillary facilities that are used to provide commercial wireless communications or telecommunications services.
 - k. *Temporary Antenna Tower*. An antenna tower established for the purpose of providing telecommunications 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.
- 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.
- d. Security. Every telecommunications facility shall be protected from unauthorized access by appropriate security measures.
- e. Lighting. ~~No~~Every antenna ~~and/or~~ antenna tower shall ~~not~~ be lighted unless required by the Federal Aviation Administration or other state or federal agency having such authority, and such lighting shall not be more than the minimum required by such agency.
- f. Noise Reduction. ~~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).~~
- g. Signage. The placement of signage on antenna towers is prohibited, except for the placement of security signage, which shall not exceed six (6) square feet on each side of the antenna tower and shall not be located higher than six feet (6') above grade. Additionally, one security sign not to exceed one (1) square foot may be provided on each fifty feet (50') of wall or fence enclosing the facility.
- h. ~~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.~~
- 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.
- 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.
- 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.
- 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.
 - v. Antenna tower design. New small wireless antenna towers shall consist of a ten inch (10") galvanized straight steel pole, powder coated black over zinc paint, with a foundation base of sixteen inches (16") in diameter designed to accommodate all necessary supporting equipment and a top antenna shroud of no more than fourteen inches (14") in diameter. All tower components and antenna shrouds shall be painted a matching black color.

7. Permits Required

- a. A building permit shall be required to construct, install, relocate, replace, or alter any antenna tower. An administrative zoning permit shall be required to locate or replace any antenna on an antenna tower or antenna support structure or for the installation of a small wireless facility. A Conditional Use Permit shall be required as specified in Section 4 herein.
- b. An application for any of the above-mentioned permits shall include or be accompanied by all of the information necessary to determine and document compliance with the regulations established herein. Where no application or permit form exists, the application shall be in the form of a letter signed and dated by the applicant, and the permit issuance shall be in the form of a letter of approval signed and dated by the Zoning Administrator or a dated signature by the Zoning Administrator on the applicable site plan.
- c. Specific permit application submittal requirements shall be determined by the Zoning Administrator and may include, but are not limited to, the following:
 - i. Permit application.
 - ii. Site plan.
 - iii. Elevation drawing(s) of the antenna tower or antenna support structure, antenna(s) and ancillary facilities.
 - iv. Photo simulations from three different perspectives of the installation site illustrating the anticipated visual appearance of the proposed wireless facility (not required for small wireless facilities).
 - v. Description of proposed and required lighting including light locations. Documentation of required lighting, as specified in Section 5.c. herein, may be deferred until prior to issuance of building permit if not available at time of application submittal.
 - vi. Any plans necessary to depict structural requirements.
 - vii. Description of the number and types of antennas being proposed, as well as the expected or known capacity of the antenna tower in terms of the number of antennas the antenna tower can accommodate.
 - viii. Antenna tower or antenna location study specifying the search process by which the proposed site was chosen.
 - ix. Antenna tower inventory as specified in Section ~~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 by a certified radio frequency engineer demonstrating compliance with ~~current~~ non-ionizing electromagnetic radiation (NIER) 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. Once the facility is constructed, the City reserves the right to require additional NIER and RF emissions testing by a certified radio frequency engineer to verify that the facility is in compliance with FCC standards.
 - xii. Current FCC license to operate.
 - xiii. Documentation of a review by the Federal Aviation Administration (FAA) and/or the Aviation Division of the Idaho Transportation Department (ITD). Such documentation may be deferred until prior to issuance of building permit if not

available at time of application submittal.

- xiv. Name and address of the property owner, telecommunications service provider, and owner of the telecommunications facility on the permit application, and a written statement of approval of the application by the property owner.
 - xv. Description of proposed security measures as required in Section 5.b.d. 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.
8. Findings for Conditional Use Permit.
- a. Before a Conditional Use Permit for an antenna tower may be issued, the applicant must demonstrate, and the Zoning Board of Adjustment must find, compliance with all of the following:
 - i. No existing antenna towers or antenna support structures within the necessary geographic area for the applicant's antenna tower meet the applicant's requirements considering (a) height, (b) structural integrity, or (c) that there are other prohibitive conditions that render existing antenna towers or antenna support structures within the applicant's required geographic area unsuitable.
 - ii. That the design of the antenna tower, including the antennas and ancillary facilities, minimizes visual impact and otherwise complies with provisions and intent of this Section.
 - iii. That the proposed antenna tower location minimizes the number and/or size of antenna towers or antenna support structures that will be required in the area.
 - iv. That the applicant has not previously failed to take advantage of reasonably available shared use opportunities or procedures provided by this Ordinance or otherwise.
 - v. These findings shall be required in addition to those required for the Reasoned Statement of Relevant Criteria and Standards provided in Section 4-8-4 of the Zoning Code.
9. Abandonment and Removal.
- a. All telecommunications facilities shall be removed by the owner of the facility, by the operator of the facility, and/or by the property owner within six (6) months of the time that the facility has substantially ceased being used to provide telecommunications services to the public. Removal shall not be required when the owner or operator of the facility has, within the aforementioned six (6) months, filed with the City a written request to reuse the antenna tower and the City has approved such request. Such written request shall detail the circumstances that justify why the antenna tower should not be removed, why it will be unused for six (6) months or more, and shall commit to a date certain, not to exceed twelve (12) months from the date of last use, by which time the antenna tower will again provide telecommunications services to the public. Before issuance of an antenna tower permit, the applicant for any antenna tower permit shall provide to the City financial security, such as but not limited to an open-ended bond, to ensure removal of the antenna tower and ancillary facilities after the facility is no longer being used to provide telecommunications services to the public.
10. Affirmative Duty to Keep City Informed.
- a. All telecommunications service providers having telecommunications facilities in the jurisdiction of the City shall be required to report in writing to the Zoning Administrator

any change in the status of their operations. Change in status shall include, but is not limited to, the following:

- i. Change in or loss of license from the FCC to operate.
 - ii. Receipt of notice of failure to comply with the regulations of any other authority having jurisdiction over the business or facility.
 - iii. Change in ownership of the company that owns the telecommunications facilities or that provides telecommunications services.
 - iv. Loss or termination of lease with the property owner or the owner of the telecommunications facilities.
 - v. Abandonment of a facility or non-use of a facility for a period of six (6) months or longer.
- b. All telecommunications service providers having facilities in the jurisdiction of the City shall file with the Zoning Administrator an annual written statement verifying continued use of each of their facilities in the City's jurisdiction as well as continued compliance with state and federal agency regulations.

...

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

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

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

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

Bill Lambert, Mayor

ATTEST:

Laurie M. Hopkins, City Clerk

Memo

To: Mayor and City Council

From: Mike Ray, AICP - Planning Manager

Date: October 6, 2020

Re: Amendment of Moscow City Code Title 4, Chapter 3 Regarding Amendments to the Telecommunications Code to Establish Standards for Small Wireless Facilities

Telecommunications service providers are currently in the process of deploying new cellular wireless technology, referred to as 5G/small cell, throughout the developed world. Historically, cellular communication systems were designed to transport voice communications, which were easily handled with tall, high-power communications towers. As technology has evolved and wireless data demand has grown, those legacy towers have become overwhelmed with wireless data traffic. 5G/small cell high speed deployment 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. 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.

In 2001, the City first adopted regulations and development standards specific to telecommunications facilities and antenna towers. Since 5G/small cell technology was not in existence at that time, the City's existing telecommunications code does not distinguish between the larger macrocell towers and small cell facilities. Since the existing code only contemplates macrocell towers, the co-location (locating an antennae and equipment on an existing structure such as a utility or light pole) is permitted by-right throughout the City without any standards. Therefore, there are currently no aesthetic, public safety, and visual clutter standards that would apply to small cell facilities in the existing code. In implementing a small cell program, the following objectives have been identified: Provide reasonable access to provide desired services; minimize visual clutter upon utility poles; ensure installations are as aesthetically pleasing as possible; ensure that installations do not obstruct sidewalks and roadways and do not interfere with light fixture function; create a permitting system that can facilitate processing of applications within the allotted time period; and coordinate with utility and street light owners.

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. Under the Telecommunications

Act, local jurisdictions have to provide telecommunications providers reasonable access within the public right-of-way and cannot effectively deny their ability to provide service. Additionally, local governments are prohibited from regulating wireless communications facilities based upon radio frequency (RF) emissions and effectively prohibiting delivering telecommunications services.

In September of 2018, the FCC issued a Declaratory Ruling that was intended to streamline the permitting of 5G/small cell deployments. The FCC ruling included maximum fees that can be charged for small cell applications and right-of-way use, new “shot clock” decision time frames for small cell applications (60 days for a co-location upon an existing utility pole and 90 days for a new standalone small cell tower), and a new appeal process for shot clock violations. The City Attorney has provided a legal memo regarding the regulations and limitations that pertain to the deployment of 5G/small cell facilities which is attached to this memo. The legal memo provides an analysis on RF limitations, fees, aesthetics, underground infrastructure, and minimum spacing of small cell facilities.

With the likelihood of 5G/small cell deployment in Moscow at some point in the future, Staff has worked with the Planning and Zoning Commission to draft an ordinance that addresses 5G/small cell installations in the telecommunications code. The proposed ordinance would define small wireless facilities, re-organize certain sections, make minor grammatical changes, and insert small wireless facility standards. The small wireless facility standards would apply to the installation of new small wireless facility antennas or the co-location on existing support structures. There are three categories of installations: Co-location upon existing antenna support structures; replacement combination light and antenna towers; and new small wireless facility antenna towers.

Co-location upon existing antenna support structures would be a permitted use and would be subject to standards such as height of antennas, shrouding of antennas and supporting equipment, maximum number of shrouds, shroud mounting method, and prohibiting the obstruction of lighting. Replacement combination light and antenna towers would apply to existing support structures such as light poles that would be replaced with a combination small wireless facility and the originally intended function (i.e. light pole). Standards for this type of installation would include requiring the replacement to be the same quality, color, design, style, and height as the existing structure, designed to internally accommodate all supporting equipment, and restricting the replacement of historic fixtures. New small wireless facility antenna towers would only apply to new towers and would be subject to standard such as maximum height, fully enclosed antenna and equipment shrouding, limiting the maximum number of shrouds, setting a minimum spacing distance between small cell antenna towers, and requiring a specific tower design.

While the Planning and Zoning Commission was researching and working on the draft 5G/small cell ordinance over the past year, the Sustainable Environment Commission was also discussing the RF emissions concerns that both commissions had received public comments on. The draft ordinance was presented to the Sustainable Environment Commission at their regular meeting on June 16, 2020 by Staff and the

Chair of the Planning and Zoning Commission to discuss a potential unified recommendation. After a lengthy discussion, the SEC voted to recommend that the P&Z 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 when appropriate.

On September 9, 2020, the Planning and Zoning Commission conducted a public hearing upon the proposed ordinance and recommended approval to City Council with a minor modification. The proposed ordinance has been scheduled for a public hearing before City Council at the Council's upcoming October 19, 2020 meeting.



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.

PLANNING & ZONING COMMISSION



Wendy McClure
Commission Chair

p&z@ci.moscow.id.us

~Meeting Minutes~
September 9, 2020

Mike Ray
Staff Liaison

208.883.7008

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

McClure called the meeting to order at 7:01 PM

MEMBERS PRESENT: in person: Wendy McClure, Chair; Mike Nelsen, Robb Parish, Victoria Seever, Dennis Wilson

via Zoom: Joel Hamilton

MEMBERS ABSENT: Rich Beebe, Nels Reese

STAFF IN ATTENDANCE: Mike Ray, Sandra Kelly, Jennifer Fleischman

1. Approval of Minutes from August 12, 2020 [ACTION ITEM]

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

2. Public Comment

None.

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.

Ray presented about amendment of Moscow City Code. Gave brief background of cellular communication systems while reviewing historical and current cellular tower styles housed in Moscow. Provided images of proposed 5G cell tower modifications and addressed visual clutter concerns. Outlined Small Cell Program objectives:

- Provide reasonable access to provide desired services
- Minimize visual clutter upon utility poles
- Ensure installations are as aesthetically pleasing as possible

- Ensure that installations do not obstruct sidewalks and roadways and do not interfere with light fixture function
- Create a permitting system that can facilitate processing of applications with allotted time period dictated by FCC
- Coordinate with utility and street light owners

Presented on the background of the Telecommunications Act and the FCC new ruling that was intended to streamline the permitting of 5G small cell deployments. This affects the maximum fees that can be charged for small cell applications and right-of-way use, decision time frames for small cell applications, and appeal process for violations.

Existing telecommunications code was briefly touched on, noting that small cells are not currently addressed in the City Code. Staff provided a draft Small Cell Ordinance Amendment with several stipulations that would change current code to include Small Cell regulation rules:

- Defining Small Wireless Facilities and Facility standards
- Addresses co-location standards upon existing support structures
- Replacement of existing antenna support structures
- New small wireless facility antenna tower standards

Sustainable Environment Commission recommended that the P&Z Commission continue with the Small Cell Ordinance draft provided by Staff. SEC would move forward with a recommendation in the future if the legal landscape changes and health concerns are allowed to be addressed.

Ray indicated that a lot of the public comments have been implemented into the draft Ordinance. One common concern was also changed to add more clarification addressing the FCC regulations regarding radio frequency compliance. An amended draft ordinance incorporating the additional requirements was distributed for the Commission's consideration.

McClure asked if the FCC standards should change and become more stringent, should that be addressed in the Ordinance. Ray indicated that the Ordinance would accommodate any changes to the FCC as it speaks to the current regulations. Staff recommendation is to forward the proposed draft Ordinance to City Council.

McClure mentioned that the majority of the negative public comments have been in regards to health and safety, and requesting small cells not be placed in residential zones, however the City doesn't appear to have the liberty to prevent that and asked if that was Staff's impression as well. Ray responded affirmatively.

Wilson asked about the 40ft limit for the poles, which Ray indicated would be from grade. Hamilton said he liked the additions that Staff made to the draft Ordinance and McClure agreed.

Public hearing opened at 7:25pm.

Public hearing closed at 7:25pm.

Seever brought up the concerns about the health effects and how little the Commissioners can do in changing current FCC regulations. Parish commends the Commissioners on doing so much work to create an Ordinance that tries to limit Small Cell within the current parameters set by FCC and proposes coming back to address this Ordinance again in the future to see if anything else can be improved.

Seever thanked Mia Bautista, City Attorney, for working so hard on handling this issue. McClure agrees that everything was done that the Commission and City could do in regards to the ordinance.

Hamilton moved to recommend approval of the draft Ordinance with the proposed redline adjustments, seconded by Nelson. Motion was approved with acclamation.

5. 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.

Ray presented background on Public Art Lighting, including proposal by artists to add lighting to current art installation in Moscow. Art installation pictures and lighting plans were shown. A memo from Arts Department to support lighting for other art installations around town was also reviewed. The current outdoor lighting ordinance requires that all lights be full cut-off, with some exceptions in residential areas.

Seever requested a definition of “full cut-off” and Ray explained the stipulations. Non-residential full cut-off lighting is exempted in limited scenarios. There is a possibility of addressing amendments to the code for lighting of public art that could be woven into the current exemptions.

Parish expressed approval of having lighting for public artwork. Suggested an exemption in the code may be the easiest way to make the change. Seever and McClure both agree as well. Hamilton advocates for the black sky initiatives and is worried about the public response to allowing more up-lighting options. Would like to see an option of having the light focused more closely on the artwork instead of spreading into the sky. Discussion about the “slippery slope” of where art lighting stops and other lighting exceptions will start. McClure asked Ray if it would be better to have a conditional use application. Staff said it is an option to have Board of Adjustment review all lighting applications, but not advisable because of the simplicity of such proposals.

Ray clarified that this exemption would only cover city owned art projects. Parish suggested this be sent to the City Attorney to make sure that it would be legal to have exclusive exemptions to city owned art. Ray said he would bring it to the City Attorney. Discussion around public art versus private art installations. Hamilton would like to see shrouding suggestions to prevent light pollution. Gropp will research some options and report back. Ray mentioned that the Arts Department would be heavily involved in any art installation project and lighting for it.

Subject will be placed on the agenda until next meeting, where Staff will provide draft language.

4. 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.

Ray requested this topic be tabled until next meeting.

5. Transportation Commission Meeting Report

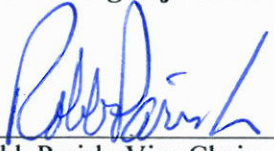
Transportation Commission meeting September 10. Working on paring down ex-officio memberships and reviewing City's Capital Improvement plan. Will be electing officers since the Chair and Vice Chair positions have recently become vacated.

6. Announcements

Welcomed two new staff: Jennifer Fleischman as Deputy City Clerk, and David Harlan as Digital Media Specialist. Thanked Mayor Bill Lambert for note and tumblers presented to Commissioners.

Seever announced that the Commission survey has been sent out.

The meeting adjourned at 7:53 PM



Robb Parish, Vice Chair

To: Mike Ray, Staff Liaison, Moscow Planning and Zoning Commission

From: George Bedirian

Subject: Comments on Small Cell Facility Draft Ordinance

Date: September 8, 2020

The preamble to the Small Cell Facility Draft Ordinance articulates the City's desire “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”; “to protect and promote the public health, safety and welfare of the community”; and “to protect and promote the character of the City.” Needless to say, these are important and laudable goals. However, in its overwhelming emphasis on issues relating to the deployment of wireless infrastructure in a manner that adheres to FCC regulations, the draft foregoes a number of opportunities to strengthen the protections it seeks to advance.

With the following comments, I would like to offer a number of recommendations with an eye to enabling the ordinance to provide a more robust array of protections to the well being of the community and its environment..

Regarding compliance with FCC RF emissions standards:

Section 7 of the draft, “Permits Required,” states (7.c.xi) that applicants for building permits must provide “documentation of such compliance. Later, Section 10.b requires service providers to provide “an annual written statement verifying continued . . . compliance with state and federal agency regulations,” which would presumably include adherence to FCC emissions standards. In both these instances, no mention is made of what the source of these assurances should be, implying that the source could well be the applicant/provider.

Rather than relying solely on service providers to monitor and certify themselves, perhaps it would serve the public interest better if the city were to add a second layer of protection, as it were, by reserving the right to retain a qualified independent radio frequency engineer to conduct, at random intervals, unannounced tests, the reasonable costs of which would be borne by the carrier, of wireless installations to certify FCC emissions standard compliance.

A third level of protection would be to require performance bonds of carriers. I discuss this more fully in the final section of these comments.

Regarding the siting of wireless infrastructure throughout the city:

The draft ordinance contemplates the placement of wireless infrastructure across all zones without hindrance or without recognizing any distinction among zones in terms of the primary types of activities conducted and their relative aesthetic and emotional impacts. But the city could move some way toward recognizing these distinctions, promoting the public welfare, and perhaps allaying some concerns about safety, by making a good faith effort to steer the placement of infrastructure by expressing in the ordinance preferences as to its location. This could be as simple as stating location preferences, from most preferred to least preferred, in industrial zones, commercial zones, mixed commercial and industrial zones, and residential zones. Or it could be more nuanced, linking relative preferences to specific zones within any or all of the aforementioned categories.

In addition to location preferences, the city could articulate preferences regarding the configuration of wireless infrastructure. In fact, in expressing a preference for co-locating facilities, it has already taken a step in this direction. Again, an order of preference from most to least preferred

could look like this: collocation with existing facilities, roof-mounted, building-mounted, mounted on an existing pole, mounted on a new or replacement pole, mounted on a new telecommunication tower.

Regarding building permit application requirements:.

Referring again to Section 7, paragraph c lists a number of items applicants for building permits might be required to provide at the discretion of the Zoning Administrator, who might also require additional unnamed supporting material. I propose that the following be included among the named items required of building permit applicants:

A traffic control plan demonstrating the protective measures that will be employed during installation/construction of facilities to prevent injury or damage to persons and property and to minimize disruptions to the free flow of pedestrian and vehicular traffic.

Documentation demonstrating good faith efforts to locate and configure facilities in accordance with any expressed location or configuration preferences.

Documentation that all property owners within 250 feet of any proposed installation(s) have been notified of the filing of an application for a permit within five days of such filing.

An executed indemnification agreement holding the city and its agents harmless against claims and actions to attack, set aside, void, or annul an approval of the city concerning the permit and the project.

All required documentation to demonstrate either full compliance with National Environmental Policy Act requirements or the basis for any claimed exemption from those requirements, plus proof that each exempt installation meets prescribed requirements.

Regarding additional requirements:

The ordinance should also include the following requirements:

Payment of an application and processing fee and a deposit for consultant review if applicable.

Provision of a performance bond as a guarantee that no installation, including any co-located equipment, exceeds or will exceed allowable FCC limits for RF exposure as determined by a qualified independent RF engineer. The bond should remain in effect until the covered facility is removed. In addition to covering removal, it should also cover maintenance and landscaping obligations.

A provision that the application for a building permit, including all related documents, shall be made available for public inspection and copying.

A provision to establish an effective setback for installation in commercial and industrial zones with a 1,000 foot setback from any of the following: Residential zones, mixed use zones, schools, daycare facilities, medical facilities, nursing homes, parks, playgrounds, sports facilities, houses of worship.

Carriers should be required to repair any damage to infrastructure, from streets and sidewalks to underground utilities and sewer lines, resulting from installation of wireless facilities.

Carriers should be required, as new technology becomes available, to replace larger, more visually intrusive facilities with smaller, less visually intrusive ones.

A provision requiring proof and documentation that the applicant and corporate operator of any proposed small cell antenna have obtained liability insurance which does not include a "pollution" exclusion.

A requirement to provide adequate fall zones for each small cell facility to minimize the possibility of damage or injury resulting from pole collapse or failure, ice or debris fall, etc.

Finally, if at all feasible, carriers should be required to locate all small cell equipment not to be installed on or inside a pole to be located underground.

I hope you find these recommendations worthy of consideration.

Michael Ray

From: Romney Boehm <florafairy@earthlink.net>
Sent: Wednesday, September 09, 2020 3:13 PM
To: Planning & Zoning Commission; Michael Ray
Subject: 5G regulations, comments

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

To the Moscow Planning and Zoning Commission and Mike Ray,

I have heard that you have been open to hearing from people with concerns about 5G, and I appreciate that. I hope you can find ways to include our concerns in your proposals.

It feels so counterintuitive to have federal regulations that say we can't protect our own health, the health of our community, and future generations. Yet, there are such regulations that apply to 5G, at this time. The things I have heard indicating the possible and probable health risks of EMFs and 5G have sounded very alarming to me. I find myself not knowing how to write about these concerns. At this time, with so many voices in the news, so many commentaries and opinions, and people thinking... who to believe..., I wonder how can I be a voice that is listened to and taken seriously?

Then I wonder... what if we weren't allowed to think that COVID-19 was or could be dangerous? What if all sorts of medical workers and researchers around the world weren't receiving support and encouragement to study it? What if the City and citizens weren't allowed to take precautions on behalf of our health in our concerns about the virus?

I try to break down different words. "Health concerns" can translate to "suffering". It can also, in some cases, become "life or death". I can break down all the things I've heard connected to EMF and 5G, their possible affects on people... neurological and psychological, reproductive, cardiac, stroke, cancer. There are way more illustrative ways to consider these words.

Along these lines is why I care about these regulations. And why I think EMF and 5G need to be studied more by independent researchers before rolling them out more. And why I wish that people were given the chance to make informed choices... real choices, on something like this. Wishing that we'd be allowed the chance to learn and to protect ourselves.

Please consider the following for inclusion in your proposal for regulating 5G in Moscow:

1. A provision to allow installation only in commercial and industrial zones not in or within 1,000 feet of residential zones and mixed use zones.
2. A provision to establish an effective setback for installation in commercial and industrial zones with a 1,000 foot setback from any of the following: Residential zones, mixed use zones, schools, daycare facilities, medical facilities, nursing homes, parks, playgrounds, sports facilities, houses of worship.
3. A provision authorizing the City to conduct random, unscheduled and independent testing of any wireless antennas installation to ensure compliance with the Federal Communications Commission's radio

frequency radiation guidelines for the general public, to be paid for by the applicant or corporate entity operating the antenna;

4. A provision requiring certification and documentation that any proposed small cell installation(s) addresses an existing and significant gap in coverage in the service area;

5. A provision requiring photo simulations of the proposed installation(s) from the perspective of any property owner within 250 feet.

6. A provision that all property owners within 250 feet of any proposed installation(s) have been notified of the filing of an application for a permit within five days of such filing, and that the application, including all related documents, shall be made available for public inspection and copying.

7. A provision requiring proof and documentation that the applicant and corporate operator of any proposed small cell antenna have obtained liability insurance which does not include a "pollution" exclusion.

Thanks you for your consideration,

Romney Boehm
732 Logan St.
Moscow, ID

Michael Ray

From: David Hall <david_hall@hotmail.com>
Sent: Wednesday, September 09, 2020 12:14 PM
To: Planning & Zoning Commission; Michael Ray
Subject: Comments on small cell ordinance hearing before P&Z tonight

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

Public hearing regarding proposed ordinance regulating small cell equipment
Moscow Planning and Zoning Commission
Wednesday, September 9, 2020
Moscow City Hall Council Chambers

I continue to be confused about which parts within the ordinance apply to installations in the public rights-of-way and which to private property. And what applies to small cell versus large cell installations.

Allow small cell installation only in commercial and industrial zones not in or within 1,000 feet of residential zones and mixed use zones. Pullman's draft ordinance does consider zones.

Provide an effective setback for installation in commercial and industrial zones with a 1,000 foot setback from any of the following: residential zones, mixed use zones, schools, daycare facilities, medical facilities, nursing homes, parks, playgrounds, sport facilities. A draft of Pullman's ordinance has restrictions on deployment for a few of these.

Require the applicant to submit a sworn declaration regarding an engineer's analysis of radio frequency emissions. Require periodic randomized testing of cumulative emissions, paid by the telecommunications company. Pullman's draft ordinance so stipulates.

Require certification and documentation that any proposed small cell installation addresses an existing significant gap in coverage in the service area.

Please look into and address the legal issue of not allowing the public to be "incommoded" by operations in the public right of way.

Let the City Council and the public know what liabilities the City is leaving itself open to. General terms within the Master License Agreement template should be open to review.

David Hall, 1334 Wallen Road, Moscow

Michael Ray

From: deegregory1@twc.com
Sent: Wednesday, September 09, 2020 9:42 AM
To: Planning & Zoning Commission
Subject: 5G

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I don't believe 5G antennas should be installed at all, but where they are, they should NOT be close to residents' homes.

Michael Ray

From: Terri <terrismid@roadrunner.com>
Sent: Tuesday, September 08, 2020 10:19 AM
To: Planning & Zoning Commission; Michael Ray
Subject: 5G regulations

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Hello Committee Members,

I am being extra cautious about going places with the upsurge in Covid 19 cases lately, so I won't be at the P & Z meeting tomorrow, but I wanted to write and share my thoughts. I am very concerned about 5G coming into Moscow. I've done a lot of reading and attended talks by two different radiation specialists. I know the telecommunications companies are saying 5G is safe, but the tobacco companies said the same thing about cigarettes. What I've learned leads me to believe it is not safe at all.

I know the lobbyists for the telecom industry have gotten a regulation passed that says cities can't stop them from expanding services into their town. I'm dismayed that those big corporations have used their power and money to take away our city's ability to make the best choices for their citizens, and I know this ties your hands to some degree. But I'm asking you to please do what you can within those regulations to help protect our citizens - restricting 5G from neighborhoods, parks, school zones, etc.

Thank you for looking out for the well-being of our community in the best way you are able.

Yours truly, Terri Schmidt

711 S. Jefferson, Moscow

Michael Ray

From: Toni Salerno <benedetta333@icloud.com>
Sent: Tuesday, September 08, 2020 7:50 AM
To: Michael Ray
Subject: 5G

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Moscow absolutely does NOT want 5G! There are verified potential health and environmental consequences from it and you would be extremely negligent to push it forward without doing the necessary research apart from the people pushing it!

Sent from my iPhone

Michael Ray

From: Nancy Chaney <nancy.chaney@outlook.com>
Sent: Tuesday, September 08, 2020 5:45 PM
To: Michael Ray
Cc: Wendy McClure
Subject: Public comments on P&Z agenda item 3, Sept 9, 2020

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Dear Planning and Zoning Commissioners:

Thank you for considering my earlier remarks, and for your careful consideration of amendments to MCC Title 4, Chapter 3, to establish standards for small wireless facilities. The FCC rule on 5G diminishes local control, intimidates policymakers, and puts you in a difficult spot. Accordingly, much of Moscow's draft is narrowly focused on aspects where you appear to have the most latitude: Aesthetics, lighting, noise, and preventing equipment from falling on people or structures. It's trickier to introduce language that would require periodic random independent measurement of RF emissions, and to set aggregate limits in circumstances of collocation, cumulatively over extended periods of time. That doesn't mean you shouldn't try.

Other cities around the country have figured out ways to set additional reasonable limits on 5G. (Mill Valley CA, Arlington VA, and Boulder CO Codes are good examples.) At the very least, please document unregulated concerns through "Whereas..." recitations in resolutions or reasoned statements, to lay a foundation for eventual intervention, once federal exposure standards (incredibly, still based on 1996 technology) are updated.

Pullman is working on a draft too. Their Section 17.36.050 about permit applications (p. 36-14) item 2(g) requires the applicant to submit a sworn declaration regarding an engineer's analysis of RF emissions. A model ordinance, pasted below and attached to Pullman's working draft, would require periodic randomized testing of cumulative emissions, paid by the telecom (5(a) Section 3.2). See Item E, below.

- (g) The applicant shall submit a sworn declaration under penalty of perjury signed by an RF Engineer with knowledge of the proposed project affirming that the small wireless facility ~~cell-deployment~~ will be compliant with all FCC and any other applicable regulations in connection with human exposure to radio frequency emissions for every frequency at which the small wireless ~~cell-facility~~ and associated wireless backhaul will operate. An existing franchisee applying for a small wireless facility ~~cell-permit~~ for small wireless facility ~~cell-deployment~~ shall provide an RF certification for all facilities included in the deployment.

From the model ordinance:

E. Certification by an independent certified radio-frequency (RF) engineer that cell installation will be in compliance with the FCC standards for RF emissions relate to the general public, including aggregate emissions for all co-located equipment;

A June 2020 article by an FCC appointee and expert in RF radiation justifies updates to regulatory standards and more frequent and comprehensive testing: <https://www.isemag.com/2020/06/telecom-rf-radiation-5g-safety/> A 2015 letter from Senator Blumenthal and Congresswoman Eshoo describes hazards of workers' unwitting exposure to RF radiation, and could as importantly apply to constant multiple input-multiple output (MIMO)/beamforming RF exposure by the lay public:

<https://www.blumenthal.senate.gov/imo/media/doc/Blumenthal%20Eshoo%20RF%20Letter%20to%20FCC%2020150917.pdf> It may be too soon to understand unintended adverse consequences of 5G (to health, property values, fee structure, etc.), but we must remain alert to the possibilities.

Thank you for considering these comments.

Sincerely,

Nancy Chaney
1333 Ponderosa Dr.
Moscow ID 83843

Michael Ray

From: Lauren Wuthrich <lauren.wuthrich@gmail.com>
Sent: Thursday, September 10, 2020 4:14 PM
To: Planning & Zoning Commission
Subject: Comments regarding 5G antennae

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To whom it may concern,

I would like to submit my comments regarding placing 5G antennas within 50 feet of homes in Moscow, Idaho. I think the idea of installing brand new, untested technology that carries safety concerns within 50 feet of someone's home is not only unthoughtful, but unconstitutional. Where there is risk, there must be a choice. The FCC and big telecom companies have bulldozed citizens rights to choose what level of radiation they are exposed to on a daily basis. In my opinion, enough is enough. I sincerely hope the 5G antennae are kept far, far away from people's living spaces. In fact I'd like to see them banned altogether, but that's not what this email is about. Thank you so much for reading my comments!

Sincerely,
Lauren Wuthrich

Michael Ray

From: Cory Payne <corykpayne@gmail.com>
Sent: Wednesday, September 09, 2020 6:08 PM
To: Planning & Zoning Commission
Subject: No small cell 5G towers in Idaho

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I do not agree with the installation of 5G cell towers. There has been no research on the health impacts of the millimeter wave being used in 5G tech. The FCC guidelines for wireless secret are long out dated. They only consider the potential tissue temperature increase and do not look at the many other proven health impacts of RF and EMF technology.

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Thanks!
Cory Payne

Michael Ray

From: Jolene McManus <simplyhearing2@gmail.com>
Sent: Wednesday, September 09, 2020 7:08 PM
To: Planning & Zoning Commission
Subject: 5G cell towers.
Attachments: E7BDAB46-C851-4DC7-828A-E5DC6FB20081.jpeg; E3D5D195-AEAF-4307-A70D-6E06DF2FE717.jpeg; 2DDF7B59-9FAC-433A-A41D-74CB16884256.jpeg; 60395845-DE5D-4A6D-961B-AB61409473BC.jpeg; B9D2AA2D-8305-4D29-B61B-63EAEA8D04ED.jpeg

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Dear City of Moscow,

Please choose the health of your people and protect them from harmful EMFs emitted, by 5G towers.

There is profound evidence proving; it's deadly affects. Please see attachments. Thank you.

Sincerely,
Jolene McManus
Latham County Resident