Moscow City Council

Regular Meeting
~Agenda~

Laurie M. Hopkins
City Clerk

www.ci.moscow.id.us

208.883.7015

Monday, October 19, 2020 | **7:00 PM** | **Council Chambers 206 E. Third St.**

The Moscow Mayor, City Council and Staff welcome you to tonight's meeting. This meeting is open to the public, but is subject to social distancing protocols as recommended in Governor Little's Stay Healthy Guidelines, so the number of attendees at any one time may be limited, and masks will be required of attendees. If you do not have a mask, a disposable mask will be provided. We appreciate and encourage public participation. For regular agenda items, an opportunity for public comment is sometimes provided after the staff report. However, the formality of procedures varies with the purpose and subject of the agenda item; therefore, the Mayor may exercise discretion in deciding when to allow public comment during the course of the proceedings and limitations may be placed on the time allowed for comments. Citizens wishing to comment on business that is not on the agenda will be provided the opportunity to do so during the public comment item on the agenda. If you plan to address the Council, you will find a list of "Tips for Addressing the Council" in the door pocket outside the City Council Chambers. Pursuant to the Governor's Proclamation relating to the conduct of public meetings during the COVID-19 crisis, the meeting will be broadcast. Citizens wishing to comment on business on the agenda are encouraged to communicate with the Mayor and City Council by phone or email (council@ci.moscow.id.us) in order to respect social distancing protocol. Please note that Moscow City Council meetings are televised, videotaped and/or recorded. Thank you for your interest in City government.

PLEDGE OF ALLEGIANCE

PROCLAMATION – DOMESTIC VIOLENCE ACTION MONTH

CONSENT AGENDA

1. All Consent Items (ACTION ITEM)

A. Approval of Moscow City Council October 5, 2020 Minutes - Laurie M. Hopkins

Minutes presented for approval.

ACTION: Approve minutes.

B. Disbursement Report September 2020 - Sarah L. Banks

Staff presented the September, 2020 Accounts Payable Report to Public Works/Finance Committee on October 12, 2020. The Committee received the report and approved the disbursements as presented.

ACTION: Receive the Disbursements Report.

C. Compensation and Benefit Structure Personnel Policies - Jen Pfiffner

Updates to the City of Moscow Personnel Policies continue. Compensation and Benefit Structure includes policies addressing employee classification, salary administration, compensation, benefits, and work period. Policy sections will continue to be presented for review. The current Personnel Policy manual will remain in place until all policies have been reviewed and approved. This was reviewed by the Administrative Committee on October 12, 2020 and recommended for approval.

ACTION: Approve the Compensation and Benefits Structure Personnel Policies.

REGULAR AGENDA

2. Staff Recognition Report - Gary J. Riedner

3. Mayors Appointments (ACTION ITEM)

4. Public Comment and Mayor's Response Period (limit 15 minutes)

5. Citizen Commission Report – Parks and Recreation Commission – Dwight Curtis / Robby Cooper

6. Public Hearing: 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. This item was reviewed by the Public Works/Finance Committee on October 12, 2020.

PROPOSED ACTIONS: After conducting the public hearing and consideration of testimony received, approve the proposed Ordinance under suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary; or consider the Ordinance on first reading; or reject the Ordinance; or take such other action deemed appropriate.

7. CARES Act and COVID Update - Gary J. Riedner

REPORTS

City Council

Mayor

Staff

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.

DOMESTIC VIOLENCE ACTION MONTH PROCLAMATION

WHEREAS, domestic violence violates an individual's dignity, security, and humanity and is a crime with sweeping effects on our community's safety and health; and,

WHEREAS, survivors should have help to find the compassion and healing they deserve, and perpetrators of violence should be held accountable for their actions; and

WHEREAS, all residents of Moscow should feel safe and at peace in their homes; and

WHEREAS, our youth deserve information and education on healthy relationships, boundaries, and consent; and

WHEREAS, Alternatives to Violence of the Palouse is committed to ending violence in our community through prevention education, and has been providing services to those affected by violence for over 39 years; and

WHEREAS, a local coalition of organizations exists to directly confront domestic violence, including law enforcement officers, victims' advocates, prosecutors, healthcare providers, faith leaders, and concerned Moscow residents; and

WHEREAS, the City of Moscow is an important partner in ATVP's vision to create a community that is safe, equitable, and free from oppressions that lead to domestic violence.

NOW, THEREFORE, I, Bill Lambert, Mayor for the City of Moscow, do hereby proclaim the month of October 2020 as

Domestic Violence Action Month

in the City of Moscow, and I encourage all citizens to reflect and to honor victims and survivors of domestic violence in our community, and also use this month to take action towards ending violence on the Palouse.

DATED this 19th day of October, 2020.

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Bill Lambert, Mayor

Moscow City Council

Regular Meeting
~Minutes~

Laurie M. Hopkins
City Clerk

www.ci.moscow.id.us

208.883.7015

Monday, October 5, 2020 **7:00 PM** **Council Chambers**
206 E. Third St.

The meeting was called to order at 7:00 p.m.
PRESENT: Mayor Bill Lambert, Art Bettge, Sandra Kelly, Maureen Laflin, Brandy Sullivan, Gina Taruscio, Anne Zabala (virtual)
STAFF: Gary J. Riedner, Mia Bautista (virtual), Bill Belknap (virtual), Tyler Palmer (virtual), Brian Nickerson (virtual), David Schott, Nate Suhr, James Fry, Laurie M. Hopkins (virtual)

PLEDGE OF ALLEGIANCE

Mayor Lambert led the Pledge of Allegiance.

PROCLAMATION – ARBOR DAY

Mayor Lambert read the Arbor Day proclamation. David Schott encouraged citizens to plant a tree in honor of Arbor Day. The Moscow Tree Commission will be planting apple trees at Harvest Park.

CONSENT AGENDA

1. All Consent Items (ACTION ITEM)

A. Approval of Moscow City Council September 21, 2020 Minutes - Laurie M. Hopkins

Minutes presented for approval.

ACTION: Approve minutes as presented.

B. Moscow City-Wide Sidewalk Replacement Project FY2020 Bid Results and Contract Award - 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. This was reviewed by the Public Works/Finance Committee on September 28, 2020 and recommended for approval.

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

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project of $58,039.80. The Engineer's Estimate for the Base Bid and Additional Alternatives A-D was $60,530.49.

ACTION: Accept 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).

C. Steve Vachon Troy Road Right-of-Way Dedication - Bob Buvel

The Idaho Transportation Department, 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.

ACTION: Accept the right-of-way dedication.

Bettge moved and Laflin seconded to approve the consent agenda as presented. Roll Call Vote: Ayes: Unanimous. Nays: None. Abstentions: None. Motion carried.

REGULAR AGENDA

2. Staff Recognition Report - Gary J. Riedner

Riedner commended staff for their hard work during this COVID situation. There has been a group of kind citizens thanking City employees with cards and treats. Staff greatly appreciates it.

3. Mayors Appointments (ACTION ITEM)

None offered.

4. Public Comment and Mayor's Response Period (limit 15 minutes)

Heather Stout (Moscow) thanked the Mayor and Council for the decision to continue the mask order and close Farmers Market to protect the Moscow community. She expressed concern for the vendors as for some this is their only time to sell. Many vendors had to throw out vegetables due to the armed protesters and singers. She requested City Council to find out what average total sales garnished for one day at the market and read it into the record.

5. Citizen Commission Report – Parks and Recreation Commission – Dwight Curtis / Robert Cooper

The report was delayed for 2 weeks.

6. Utility Hearing for Local Highway Safety Improvement Program Third Street PH 1 & 2 (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 Lieuallen Street. As part of the construction process, franchise utility companies with infrastructure in the public right of way may be required to relocate portions of their infrastructure to accommodate the project. To this end the franchise utility companies have been notified of the proposed project and given the opportunity to sign waivers and/or given an opportunity to provide input on the scope of

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work. Recently, many of the franchise utility companies have become uncomfortable signing the waivers which has resulted in the need to conduct a utility hearing to allow the utility providers an opportunity to provide comments upon the proposed project.

PROPOSED ACTIONS: Conduct the utility hearing and upon consideration of testimony, affirm the requirement that the franchise utility companies accommodate the project and relocate the utility facilities (if needed) or as required during construction, for the Third Street Safety Project Phases I & II (Key Numbers 20430 & 21997); or take other action as deemed appropriate.

Suhr introduced the item as written above.

Darrel Hart, Avista project coordinator for Moscow area, said there a couple poles that need right-of-way but willing to work with City to accommodate that.

There was no representative from Ziply or Spectrum. The comment will be passed onto the project engineers and there is no action required of Council.

7. 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. This was reviewed by the Public Works/Finance Committee on September 28, 2020 and recommended for approval.

PROPOSED ACTIONS: Approve the purchase of the Quality Guard Mask Fit Testing Machine, and seek reimbursement through the City's CARES Act allocation, or take such other action deemed appropriate.

Nickerson introduced the item as written above adding borrowing a machine causes scheduling issues as well. Staff has been reviewing the purchase for 3-4 years. With the CARES Act option, and the need to mask fit everyone on an annual basis for both masks, staff thought it was a great opportunity. OHSA and NFPA require annual testing and maintaining of one style of mask. If more concerns arise, more testing can be done. The purchase will be applied for preauthorization through CARES Act reimbursement. Sullivan was concerned about a possible motion, her understating purchase if preapproval, request preapproval first and only purchase if preapproval was authorized.

Sullivan moved to pursue pre-approval for funding through the CARES Act allocation and once received, proceed with purchasing the mask fitting equipment without further Council action. Taruscio seconded. Roll Call Vote: Ayes: Unanimous. Nays: None. Abstentions: None. Motion carried.

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The Federal CARES Act distributed $1.25 billion to the State of Idaho for COVID-19 relief, with Moscow's distribution at $887,100 (population based) to be used for reimbursement of city expenses in dealing with COVID. This reimbursement includes personnel costs of emergency personnel. The funds are not dependent on a city having an emergency order in place. No reimbursement has been received. Staff is accumulating expenses and will send in for reimbursement no later than November 11, 2020.

8. Palouse Basin Aquifer Committee Alternative Water Supply Management Contract (ACTION ITEM) - Tyler Palmer

For several years the Palouse Basin Aquifer Committee (PBAC) has been evaluating water supply alternatives to relieve pressure on the existing aquifers. A comprehensive analysis report has identified the most promising alternatives. PBAC has identified the need to retain a consultant to provide professional management services to further refine the alternatives, and to assist PBAC in developing a proposal to the Idaho Water Resource Board (IWRB) to fund the $60-$86 million project. Although PBAC has the funding for the contract, PBAC relies upon its contributing partner agencies to provide administrative services for contracts. PBAC has requested the City of Moscow to issue the RFP and provide administrative services for the consultant agreement. This came before City Council Administrative Committee on March 9, 2020 and received the unanimous consensus of the Committee and was to be placed on the City Council consent agenda. Unfortunately, due to an administrative oversight, it was not scheduled and approved by City Council. In the meantime, the RFP was issued, and PBAC selected a successful consultant, Alta Science and Engineering of Moscow. Staff has prepared a Professional Services Agreement between the City and Alta, as well as a Financial Agreement between PBAC and the City. The Financial Services Agreement obligates PBAC to be responsible for the funding of the City-Alta agreement. The funding from PBAC has already been received by the City.

PROPOSED ACTIONS: (1) Approve the Financial Agreement between the Palouse Basin Aquifer Committee and the City of Moscow; and
(2) Approve the Professional Services Agreement between the City of Moscow and Alta Science and Engineering; or
(3) Take such other action deemed appropriate.

Palmer introduced the item as written above. The Council had no questions. Sullivan moved and Bettge seconded to approve the Financial Agreement between the Palouse Basin Aquifer Committee and the City of Moscow. Roll Call Vote: Ayes: Unanimous. Nays: None. Abstentions: None. Motion carried. Bettge moved and Taruscio seconded to approve the Professional Services Agreement between the City of Moscow and Alta Science and Engineering. Roll Call Vote: Ayes: Unanimous. Nays: None. Abstentions: None. Motion carried.

REPORTS

City Council

Moscow Urban Renewal Agency – Sullivan reported they are moving forward exploring the southeast industrial park.

Historic Preservation Commission – Bettge reported the Commission got caught up on projects.

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Fair and Affordable Housing Commission – Taruscio reported finalized response to housing study and looking at ways to gather citizen data that isn't survey work.

SMART Transit – Taruscio said they are still working on a third route.

Planning & Zoning Commission – Kelly said the Commission is discussing lighting and will take a field trip to see how to keep light sky at the same time.

Councilmembers spoke on other meetings and events.

Mayor

Mayor Lambert attended an Airport Board meeting. Flights for August are down 52% from the previous year. The airport is running two flights a day and will add as it picks up. Also took part in an airport design project meeting and saw different terminals built over the last decade and how something similar could fit in Pullman/Moscow. Mayor Lambert thanked the citizens of Moscow. The City is trying to keep businesses open, keep the University open and we will work through this together.

Staff

Council tasked staff for objective criteria to gauge health of community. Riedner met with Carol Moehrle, Public Health. They are constantly reviewing information to see if the methodology they are using correctly reflects what is going on. Criteria used to gauge risk is new daily cases per 10,000 population, number of confirmed hospital admissions, and test results. The rates in the last week have been quite high. Staff will continue researching and report back when more information is available.

ADJOURN

By consensus of the Council, the meeting adjourned at 7:44 p.m.

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Bill Lambert, Mayor

ATTEST:

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Laurie M. Hopkins, City Clerk

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CITY COUNCIL STAFF REPORT

DATE: Monday, October 19, 2020

RESPONSIBLE STAFF	REVIEWED BY
Sarah Banks, Finance Director	

ADDITIONAL PRESENTER(S)	OTHER RESOURCES

AGENDA ITEM TITLE

Disbursement Report September 2020 - Sarah L. 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

Receive the Disbursements Report.

PROPOSED ACTIONS

ACTION: Receive the Disbursements Report.

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

	FUND NAME	ACCOUNTS PAYABLE	ACCOUNTS PAYABLE	ACCOUNTS PAYABLE	ACCOUNTS PAYABLE	ACCOUNTS PAYABLE	ACCOUNTS PAYABLE	ACCOUNTS PAYABLE ACH	VOID CHECKS	PAYROLL	PAYROLL	GRAND TOTALS
DATE		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	
BATCH #		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	
CHECK #'s		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	Licensee & 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**

CITY COUNCIL STAFF REPORT

DATE: Monday, October 19, 2020

RESPONSIBLE STAFF	REVIEWED BY
Jen Pfiffner, Assistant City Supervisor	

ADDITIONAL PRESENTER(S)	OTHER RESOURCES

AGENDA ITEM TITLE

Compensation and Benefit Structure Personnel Policies - Jen Pfiffner

DESCRIPTION

Updates to the City of Moscow Personnel Policies continue. Compensation and Benefit Structure includes policies addressing employee classification, salary administration, compensation, benefits, and work period.

Policy sections will continue to be presented for review. The current Personnel Policy manual will remain in place until all policies have been reviewed and approved.

STAFF RECOMMENDATION

Approve the Compensation and Benefits Structure Personnel Policies.

PROPOSED ACTIONS

ACTION: Approve the Compensation and Benefits Structure Personnel Policies.

FISCAL IMPACT

PERSONNEL IMPACT

ATTACHMENTS

1. Compensation and Benefit Structure

EMPLOYEE CLASSIFICATION

For various reasons, employee status must be organized by classes to administer employee policies, benefits, or otherwise address employment issues.

Employee Classification for Employment Status

1. All employees of the City, including part-time and temporary employees, are at-will employees, except;
2. Appointed Officials: The city clerk, treasurer, and other officials appointed according to Idaho Code § 50-204 (or relevant City ordinance) may only be removed according to Idaho Code § 50-206 (or relevant City ordinance).

Employee Classification for Benefit Purposes

The classification of the position an employee holds with the City may affect the status of obligations or benefits associated with his/her employment. The primary classes of employees are:

1. **Elected Officials**
    a. Elected Officials are not considered regular employees. Elected Officials receive salaries and employment benefits as identified in a resolution adopted by the City Council.
2. **Full-Time Regular Employees**
    a. Employees whose employment is sustained and continuing and whose typical work week consists of at least 40 hours are eligible for employee benefits provided by the City.
    b. Employees whose employment is sustained and continuing and whose typical work week consists of at least 30 hours may receive benefits to vary proportionately with the number of hours typically worked for a full-time regular employee. The number of hours worked may also affect the employee's obligation to participate in specific mandatory state benefit programs. Certain benefits may not be available because qualifying thresholds have not been reached.
3. **Part-Time Regular Employees**
    a. Employees whose employment is sustained and continuing and whose typical work week consists of 19 hours or less regularly are considered part-time regular employees. Part-time employees receive no benefits provided to regular employees, except those required by law or authorized by the City Council.
4. **Full- or Part-Time Temporary Employees**
    a. Employees who work on an irregular, seasonal, or temporary basis are temporary. Temporary employees receive no benefits provided to regular employees, except those required by law or authorized by the City Council.
5. **Actively Managed Performance System Employees**
    a. All employees except law enforcement officers.
6. **Step & Grade Employees**
    a. Law enforcement officers

Employee Classification per Fair Labor Standards Act (FLSA)

1. **Exempt Employees** - Employees who are exempt from the overtime provisions of the FLSA.

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2. **Non-Exempt Employees -** Employees who are subject to the minimum wage and overtime pay provisions of the FLSA.

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SALARY ADMINISTRATION

It is the policy of the City to pay compensation that is nondiscriminatory and competitive. However, all compensation policy decisions must take into consideration the City's overall financial condition.

The Human Resources Department is responsible for coordinating the continuing internal review of all compensation and ensuring that each job is evaluated and assigned the appropriate job grade. This review should determine whether compensation accurately and fairly reflects each position's responsibilities and the individual's job performance.

When considered appropriate, the Human Resources Department will conduct compensation surveys to include other comparable employers with similar positions. These surveys and additional available information will be used to set the market value for each position in the City's pay structure.

The City of Moscow has two compensation systems in place. The Step & Grade System applies to sworn law enforcement employees. The Actively Managed Performance System (AMPS) applies to all other employees. Both systems are intended to compensate employees for their knowledge and experience.

Components of the Step & Grade System include:

- New employees are generally hired at Step A. Supervisors may recommend higher starting rates depending on their experience or skill level or other competitive considerations. These recommendations are to be reviewed and approved before implementation by the appropriate Supervisor and the City Supervisor, in consultation with the Human Resources Department.
- Employee performance as reflected in the employee's annual evaluation;
- The employee's years of service (determines position in the step system);
- The funding of Step & Grade adjustments as budgeted by the City Council;
- The funding of cost of living adjustments as budgeted by City Council.

Components of AMPS include:

- New employees generally will be hired at 85% of the determined market value for the position. Supervisors may recommend higher starting rates depending on their experience or skill level or other competitive considerations. These recommendations are to be reviewed and approved before implementation by the appropriate Supervisor and the City Supervisor, in consultation with the Human Resources Department.
- Annual salary increases are determined according to the City's Actively Management Performance System (AMPS) evaluation process for both 6-month introductory periods and annual evaluations thereafter to include cost of living adjustment and performance increase.

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COMPENSATION

Establishment of Employee Compensation

Employees are compensated subject to the City Council's decisions as annual budgets are approved and, as such, are subject to increase, reduction, or status quo maintenance for any time period. Final decisions regarding compensation policy rest with the City Council.

Compliance with State and Federal Pay Acts

The City will comply with all state and federal pay acts governing compensation of its employees.

Right to Change Compensation and Benefits

The City may change general compensation for any reason deemed appropriate by the City Council. Compensation may also be adjusted based upon job performance and the availability of funds to maintain a solvent city budget. Hours worked may be reduced, or employees may be laid off as necessary to meet budgetary constraints or as work needs change.

Any employee concerned about his/her compensation, rate of pay, payroll status, deductions, etc., must communicate such concerns to their Supervisor in writing to be acknowledged and forwarded to the Human Resources Department to be maintained in the employee's personnel file.

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BENEFITS

The City will provide its employees with various health and retirement benefits consistent with the City's resources and in accordance with City programs. Information and summary communications intended to explain these benefit plans will be furnished to all plan participants and beneficiaries on a timely and continuing basis by the Human Resources Department. The City reserves the right to modify, amend, or terminate its benefits at any time as they apply to all current, former, and retired employees, and eligible dependents.

Medical Benefit Coverage

1. **Elected Officials**
    a. Elected Officials receive employment benefits as identified in a resolution adopted by the City Council.
2. **Full-Time Regular Employees**
    a. Employees whose employment is sustained and continuing and whose typical work week consists of at least 40 hours are eligible for employee benefits provided by the City to include full coverage for the employee and 50% of dependent coverage paid by the City of Moscow.
    b. Employees whose employment is sustained and continuing and whose typical work week consists of at least 30 hours may receive benefits to vary proportionately with the number of hours typically worked for a full-time regular employee. The number of hours worked may also affect the employee's obligation to participate in specific mandatory state benefit programs. Certain benefits may not be available because qualifying thresholds have not been reached.
3. **Part-Time Regular Employees**
    a. Part-time employees receive no benefits, except those required by law or authorized by the City Council.
4. **Full- or Part-Time Temporary Employees**
    a. Temporary employees receive no benefits, except those required by law or authorized by the City Council.

Insurance coverage generally becomes effective on the first day of the calendar month following the date of hire. Employees (and covered dependents) who would otherwise lose health coverage because of "qualifying event" as defined by the benefit provider, including but not limited to, termination of employment, divorce, loss of dependent status, are eligible to continue coverage under terms established by the federal law known as COBRA (Consolidated Omnibus Budget Reconciliation Act of 1985). Changes to dependent coverage may be made when a qualifying event such as those mentioned above, occurs. Changes to benefit elections may be made annually at open enrollment.

Retirement

All regular full-time and part-time (20 hours or more per week) employees are enrolled in the Public Employees Retirement System of Idaho (PERSI). Employee contributions are made by the employee and the City on a percentage of salary determined by PERSI.

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WORK PERIOD

Per the Fair Labor Standards Act (FLSA), an employee's workweek is a fixed and regularly recurring period of 168 hours - seven consecutive 24-hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of the day. Different workweeks may be established for different positions or groups of employees (FLSA, 29 U.S.C § 207(k)).

Work Periods for the City of Moscow are as follows:

- Non-Exempt, Non-Law Enforcement/Fire Personnel Work Period – Seven (7) Days
    - Begins at midnight on Sunday of each week
    - Concludes at 11:59 p.m. of the succeeding Saturday
- Exempt Personnel
    - Not applicable under FLSA guidelines
- Sworn Law Enforcement Officers and Fire Personnel Work Period – Fourteen (14) Days
    - Begins at midnight on Sunday of the first week of the pay period
    - Concludes at 11:59 p.m. on the concluding Saturday of the pay period

Averaging of hours over two or more defined work periods is not permitted.

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CITY COUNCIL STAFF REPORT

DATE: Monday, October 19, 2020

RESPONSIBLE STAFF	REVIEWED BY
Michael Ray, Assistant CD Director/Planning Manager	Public Works/Finance Committee
ADDITIONAL PRESENTER(S)	**OTHER RESOURCES**

AGENDA ITEM TITLE

Public Hearing: 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. This item was reviewed by the Public Works/Finance Committee on October 12, 2020.

STAFF RECOMMENDATION

After conducting the public hearing and consideration of testimony received, approve the proposed Ordinance under suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary.

PROPOSED ACTIONS

PROPOSED ACTIONS: After conducting the public hearing and consideration of testimony received, approve the proposed Ordinance under suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary; or consider the Ordinance on first reading; or reject the Ordinance; or take such other action deemed appropriate.

FISCAL IMPACT

PERSONNEL IMPACT

N/A

ATTACHMENTS

1. Ordinance
2. Staff Memo
3. Legal Memo
4. P&Z Minutes
5. Public Hearing Notice
6. Public Comments
7. Chaney Comments
8. Hall Comments
9. Staff Memo - Chaney Hall Response

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 they transmit 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 wireless 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

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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 with minor modifications; 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~~ is used to provide commercial telecommunications services. This Section shall not apply to noncommercial antenna towers ~~exclusively used~~used exclusively 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

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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 wires.

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) is 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~~Facilities*. Antenna towers, antenna support structures, antennas and their ancillary facilities that are used to provide commercial wireless communications or telecommunications services.

k. *Temporary Antenna Tower*. An antenna tower established for the purpose of providing tele-communications services on a temporary basis for a special event or to temporarily replace an antenna tower while it is being repaired.

4. General Use Regulations

a. 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') feet 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

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within all zoning districts when located upon existing antenna towers and antenna support structures if the antenna extends no more than fifteen (15) feet above, and projects no more than eight (8) feet 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, as determined by the Zoning Administrator.

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~~'~~) feet in height shall be permitted within five hundred ~~feet~~ (500~~'~~) feet 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~~'~~) feet 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 no 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~~'~~) feet above grade. Additionally, one security sign not to exceed one (1) square foot may be provided on each fifty (50) lineal feet ~~(50')~~ of wall or fence enclosing the facility.

~~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.~~

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h. Aesthetic Considerations.

i. Antenna towers shall be painted a neutral color consistent with the natural or built environment of the subject site and the surrounding area unless otherwise required by ~~the Federal Aviation Administration or~~ any ~~other~~ State or Federal agency having such authority.

ii. Equipment shelters or cabinets shall have an exterior finish compatible with the natural or built environment of the subject site and the surrounding area and shall also comply with any design guidelines applicable to the particular zoning district in which the facility is located.

iii. Antennas and cables shall be of a color identical to or closely compatible with that of the structure to which they are attached unless otherwise required by the Federal Aviation Administration or any applicable state or federal agency. Telecommunications facilities located above ground in or directly adjacent to any ~~SR, R-1, R-2, R-3, and R-4 Zoning Districts~~ residential zoning district shall be surrounded by a minimum six (6)- 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 (6)- 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, R2, 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 (50) feet from any adjacent property that is either located within a residential zoning district or utilized for residential purposes, unless the applicant can demonstrate that the specific proposal will present no greater adverse visual and audio impacts to surrounding properties.

i. Co-~~Location~~ 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

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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~~'~~) feet 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.i~~6.a.~~ above shall be submitted to the Zoning Administrator by the antenna tower applicant. The failure of the owner of an antenna tower built with a capacity for shared use to negotiate in good faith with potential users shall be unlawful and shall be a violation of this Ordinance and, among other remedies of the City, shall be just cause for the withholding of the issuance of future antenna tower permits to such an owner as well as revocation of antenna tower permits for any antenna tower on which co-location is refused or unreasonably hindered.

j. Antenna Tower Inventories. Prior to the issuance of any permit to install, relocate, replace or alter any antenna tower, the tower owner shall furnish the Zoning Administrator an inventory of all of the owner's antennas and antenna towers in the City of Moscow and ~~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.

k. Notice of Antenna Tower Permit Applications. The applicant for any new antenna tower permit shall have a copy of the application and a summary containing the height, design, location, type and frequency of antennas delivered by certified mail to all known and potential antenna tower users within the service area ~~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 at which 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

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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 (5) feet above and two (2) feet 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 (8) feet 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 (14) feet 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 (16) inch maximum width.
         (b) Top mounted. If the antenna shroud is located on top of the antenna support structure, the outer diameter shall be fourteen (14) inch maximum and the antenna shroud shall be no more than five (5) feet tall, including antenna, radio

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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 (40) feet 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 fifty feet (250') from any other 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 (10) inch galvanized straight steel pole, powder coated black over zinc paint, with a foundation base of sixteen (16) inches in diameter designed to accommodate all necessary supporting equipment and a top antenna shroud of no more than fourteen (14) inches in diameter. All tower components and antenna shrouds shall be painted a matching black color.

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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.~~ee~~. 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.j.~~6.c.~~ herein.
      x. Notarized written commitment to allow co-location/shared use as specified in Section 5.i.i~~6~~ 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

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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.

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

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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

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City of Moscow
Community Planning & Design

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

Mike Ray
Staff Liaison

208.883.7008

~Meeting Minutes~
September 9, 2020

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 Lightning 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

NOTICE OF PUBLIC HEARING

Legislative Hearing Providing for the Amendment of Title 4, Chapter 3 of Moscow City Code Regarding Amendments to the Telecommunications Code

A public hearing at which you may be present and speak will be conducted before the Moscow City Council at which time the following proposals will be considered:

> 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.

The City of Moscow Planning and Zoning Commission conducted a public hearing on the proposed ordinance on September 9, 2020 and recommended approval to City Council.

HEARING DATE: Monday, October 19, 2020

HEARING LOCATION: Council Chambers on the Second Floor of Moscow City Hall
206 East Third Street, Moscow, Idaho

MEETING TIME: 7:00 p.m.

Note: Meeting start time is not necessarily indicative of hearing start time for the proposal advertised in this notice. Multiple hearings and/or agenda items may make it difficult to determine hearing start time, which could occur late in the meeting.

The file containing information on this matter is available for public review at the Community Development Department located in the Paul Mann Building at 221 East Second Street, Moscow, Idaho. Call 883-7035 to get a meeting agenda and further information about the matter.

Verbal testimony at the hearing is generally limited to three (3) minutes time. Minor amounts of written materials (less than two (2) pages) may be submitted to the hearing body at any time prior to the close of comments, as determined by the hearing body. More in-depth written materials require at least five (5) calendar days for review prior to the hearing. You may obtain further information about the public hearing process and procedures on the City's Website at: http://id-moscow.civicplus.com/593/Public-Hearing-Notices

Laurie M. Hopkins, Moscow City Clerk

Jennifer Fleischman, Deputy City Clerk

Publish: September 19, 2020

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

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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 <terrischmidt@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

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.

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

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.

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 emissio relate to the general public, including aggregate emissions for all co-locatec 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

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 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.

--

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

Nancy Chaney 1333 Ponderosa Dr. Moscow ID 83843 nchaney@moscow.com (208) 882-9350

Oct. 12, 2020

Public Works-Finance Committee
Moscow City Council

Dear Committee Members:

Today's PW/F agenda includes development of recommendations for amendments to the City's Telecommunications Code, to establish Standards for Small Wireless Facilities. I offer the following comments on the draft ordinance in advance of the public hearing before the full council on Oct. 19.

The fourth WHEREAS (p. 1 of 11) in recitations is grammatically incorrect. Change "…by which *it* transmit*s*…" to "…by which *they transmit*…" for subject-verb agreement. (Facilities (plural) = they (not it) > transmit (not transmits)

The fifth WHEREAS (p. 1 of 11) in recitations speaks to "the number and *frequency* of "*small cell* facilities." In this case, does "frequency" refer to EMF transmission or to *spacing* of equipment? Also, I'm assuming that the preferred language is "small wireless facilities," not "small cell…"

The ninth WHEREAS (p. 2 of 11) in recitations regarding P&Z's recommendation for approval assumes adoption of the draft amendments without modification. I suggest rephrasing this paragraph to reflect the reality that minor and/or non-substantive changes (or even substantive ones) may result over the course of deliberation, and subsequent to the public hearing on Oct. 19.

Section 1-H(2)(c) (p. 3 of 11): "…other structures for antenna mounting…" seems unduly vague and broad, so could have unintended consequences. I suggest more restrictive phrasing about what you mean by "other structures."

Section 1-H(3)(i)(iii) (p. 3 of 11): Reconcile "equipment" and "are" (to "is") for subject-verb agreement.

Section 1-H(3)(i)(iv) (p. 3 of 11)**:** Does the reference to Part 17 of FCC regulations require more detail, like the date of that document, which of the FCC regulations you mean (by title), or where it may be found?

Section 1-H(3)(j) (p. 3 of 11): This definition of *telecommunications facilities* seems circular, saying the term refers to equipment for providing (undefined) "telecommunications services," or (also undefined) "wireless communications."

Section 1-H(3)(k) (p. 3 of 11): What is the timeframe for a "temporary" antenna tower? (Note: That term is eventually defined in Section 1-H(4)(d), but even then doesn't specify what a "reasonable" amount time is, or who makes that determination.

Section 1-H(4)(d) (p. 4 of 11): Because the "time reasonably needed" is so vague, I suggest at least adding the phrase, "…as determined by the City's Zoning Administrator."

Section 1-H(5)(b) (p. 4 of 11): Is the minimum setback of 100ft. arbitrary? Could a tower conceivably exceed 100ft? Those aspects should probably be addressed here.

Section 1-H(5)(c) (p. 4 of 11): Why is it even helpful to specify that separation from adjacent property lines in all zones other than residential zones be at least "one-half (1/2) the height of the antenna tower?" It seems comparably dangerous if a tower fell on a house, as much as on a daycare in a commercial zone. The intent of that requirement isn't clear. Neither is it obvious that the council couldn't require a greater separation, if practicable.

Section 1-H(5)(d) (p. 4 of 11): "Appropriate security measures" should be "*as determined by the Zoning Administrator*." Please add that clarification, lest the applicants be allowed to decide for themselves what measures are appropriate.

Section 1-H(5)(f) (p. 4 of 11): Specify that the 45dB noise limit is measured cumulatively (all co-located equipment together) and does not otherwise violate the City's noise ordinance (which includes elements like incessancy and annoyance to reasonable persons).

Section 1-H(5)(g) (p. 4 of 11): Specify "…each 50 *lineal* feet of wall…"

Section 1-H(5)(i)(iii) (p. 5 of 11): Last sentence of this paragraph should specify, "…or at an alternate *PROXIMAL* location…"

Section 1-H(5)(j) (p. 5 of 11): The phrase "…make antenna tower available for use by *others*…" is too broadly accommodating. It would better be more narrowly described as "other commercial telecommunications providers," of something similar.

Section 1-H(5)(l) (p. 6 of 11): I have three suggestions* for this paragraph. *"…within the service area" is too vague, especially when 5G functions as a gigantic network, involving multiple service providers. *This paragraph also references "the public hearing *where* the application will be considered." It might read better to say "at which," rather than "where." *The stipulation that, "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" seems an impossible task. I think I know what is intended by the statement, but am not sure it can be accomplished in a mobile cellular network. Accordingly, you might rephrase that, relative to proximity of property owners and public notice (paid by the telecom??) for transitory (end) users.

Section 1-H(6)(c)(ii) (p. 7 of 11): The requirement for gray "or other similar color" might better include qualifiers like "unobtrusive" and/or "neutral."

Section 1-H(6)(c)(iii) (P. 7 of 11): The exception allowing one additional shroud per pole when the antenna is located within the second shroud may have unintended consequences by precluding subsequent co-locators from housing their antennas within shrouds on those poles.

Section 1-H(6)(c)(iv) (P. 7 of 11): I'm unclear about the newly-introduced terminology, "utility cable owner" in this paragraph. Who is that? The allowance of strand-mounted aerial cables seems to warrant an explanation about your rationale for disallowing guy wires, which I'm guessing relates to public safety, not obstructing passage (or incommoding) along public rights-of-way, and the visual blight of guy wires. Why are strand-mounted aerial cables less of a blight, and could they pose additional hazards to birds, etc.?

Section 1-H(6)(c)(iv)(a) (P. 7 of 11): It seems like the clearance above sidewalks should be higher than eight feet. How did you determine that limit, given that the clearance over roadways is 14 feet? (Could this paragraph be problematic, as it may apply to locations where awnings, suspended ornamental lighting, and overhead signage might be allowed? Who would prevail; the telecom or the small business?)

Finally, note in the City Attorney's memo of June 12 (included in your packets, as part of the public record) that the FCC Declaratory Order allows for the protection of "public safety and welfare" (See p. 4 and p. 5). That seems to leave open the opportunity for the council to do that, to the fullest extent allowed by law. Thanks for keeping it in mind as you improve the draft ordinance.

Sincerely,

Nancy Chaney

Review of draft standards for small wireless facilities
presented to the Moscow Public Works / Finance Committee

Lose the redundant numerology throughout (i.e., "fifty feet (50')"). At least be consistent: 3.i.i(a) has "Fifty (50) feet" but 4.b has "thirty-five feet (35')." Do the numerals come before or after the units?

H. Telecommunications Facilities

H1. Applicability [p. 2]
"...any of which are used..." → "...any of which is used..." *["any" is singular]*
"...exclusively used..." → "...used exclusively..."

H3.h. Monopole. [p. 3]
"...guys." → "...guy wires." *[compare 5.a]*

H3.k. Temporary Antenna Tower. [p. 3]
Remove hyphen in "tele-communications"

H4.c. [p. 3]
Is it "Except for small wireless facilities which are subject to the standards contained in Section 6 herein, ..." *or* "Except for small wireless facilities, which are subject to the standards contained in Section 6 herein, ..."? *The added comma makes a significant change in meaning of the sentence. Without the added comma, some facilities are subject to the standards, and some are not. With the comma, it indicates that all small wireless facilities are subject to the standards.*

H5.f. Noise Reduction. [p. 4]
"...not more than ~~forty-five decibels (~~45 dB~~)~~." → "...no more than 45 dB."
For an installation in the right-of-way, where is this measured?

~~H5.h.~~ [p. 4]*As this paragraph is removed completely, the following paragraphs must be renumbered*

H5.i. → H5.h. Aesthetic Considerations. [p. 4]
H5.i.i. Antenna towers shall be painted…[p. 5]
"...required by the Federal Aviation Administration or any other State..." →
"...required by ~~the Federal Aviation Administration or~~ any ~~other~~ State..."
H5.h.vi. Ancillary facilities located above ground…
"...will present no greater adverse visual and audio impacts…" *Greater than what?*

H5.j. → H5.i. Co-Location Consent [p. 5]
"Co-Location" → "Co-location" *[Compare 3.f and 6.c.]*
H5.j.ii. New Antenna Towers. [p. 6]
"Subsection 5.j.i" → "Subsection 5.i.i"

H5.k. → H5.j. Antenna Tower Inventories. [p. 6]

H5.l. → H5.k. Notice of Antenna Tower Permit Application. [p. 6]
Retain requirement to notify neighbors.

H6. Small Wireless Facility Standards

H6.a. Small Wireless Facility Standards [p. 7]

"The City Council may adopt additional small wireless facility ~~design and construction~~ standards by Resolution..."

H6.c.iv(a) Side mounted. [p. 7]

"sixteen inch" *or* "sixteen-inch"? *[See H6.c.iv(b)]*

"Side mounted equipment shrouds shall be located in such a manner as to **not obstruct pedestrian access** on adjacent sidewalks."

This can be expanded to restrict installations that would incommode the public:

> ***5. General Telecommunication Facility Development Standards***
>
> *a. Endangerment, Interference.* ***No person or entity shall install****, use or maintain* ***any facility which in whole or in part rests upon, in or over any public right-of-way, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons*** *or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use,* ***or when such facility unreasonably interferes with or unreasonably impedes the flow of pedestrian or vehicular traffic*** *including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location. [****Physicians for Safe Technology****. mdsafetech.org/cell-tower-and-city-ordinances]*
>
> *See page 4 for more openings to consider the effects of installations on public health and the environment.*

H6.e.iv. Minimum spacing between small wireless facility antenna towers… [p. 8]

"...no closer than two hundred and fifty feet (250') from another small wireless facility antenna tower." →

"...no closer than two hundred ~~and~~ fifty feet ~~(250')~~ from any other small wireless facility antenna tower."

H7.c.v. Description of proposed and required lighting… [p. 9]

"Section 5c" → "Section 5e." *Section 5.c. is Antenna tower setback.*

H7.c.viii. Antenna tower or tower location study… [p. 9]

Add a requirement that they show a gap in service at the location.

H7.c.ix. Antenna tower inventory… [p. 9]

"Section 5.k" → "Section 5.j"

H7.c.x. Notarized… [p. 9]

"Section 5.j" → "Section 5.i"

H7.c.xi. Documentation… [p. 9]

Report results to the City (in a reasonable amount of time).

H7.c.xiv. Name and address… [p. 10]

"...a written statement of approval of the application by the property owner."
How does this work for an application for installation on City right-of-way?

H8.a.v. These findings shall be required… [p. 10]
This paragraph should be a continuation of H8.a. It is not one of the required findings.

Do you need to reference somewhere the required adherence to the Master License Agreement?

= = = = = =

See next page for considerations regarding safeguarding the health and safety of Moscow's citizens.

installations must not incommode the public

5. General Telecommunication Facility Development Standards

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A win for cities occurred April 4, 2019 in a California court, as a battle for local control of cell tower placement continues. San Francisco challenged the FCC interpretation of the 1996 Telecommunication Acts rules which state that phone companies **cannot install equipment that may "incommode the public use of the road.**" ...

Plaintiffs' position is that 'incommode' means only physical obstruction of travel in the public right-of-way. The City, on the other hand, points out that **the dictionary definition of 'incommode' is broader and includes 'inconvenience, discomfort, and disturbance beyond mere blockage**.' …

Judge Corrigan notes, "Obstructing the path of travel is one way that telephone lines could disturb or give inconvenience to public road use. But **travel is not the sole use of public roads; other uses may be incommoded beyond the obstruction of travel**. (T-Mobile West, at pp. 355-356.) For example, lines or **equipment might** generate noise, **cause negative health consequences**, or create safety concerns. **All these impacts could disturb public road use**, or disturb its quiet enjoyment."

[**Physicians for Safe Technology**. mdsafetech.org/cell-tower-and-city-ordinances]

Telecommunications Act Section 253(b) provides a "safe harbor" to protect the ability of states and localities to regulate zoning and construction of wireless facilities:

> 253(b) State regulatory authority: **Nothing in this section shall affect the ability of a State to impose … requirements necessary to... protect the public safety and welfare, … and safeguard the rights of consumers**. [Section 253 of the Communications Act, 47 U.S.C.]
>
> "...**localities can enforce "generally applicable** building, structural, electrical, and **safety codes and** [] **other laws codifying objective standards reasonably related to health and safety**." [2014 Infrastructure Order, 29 FCC Rcd at 12951, para. 202.]"

Section 1.1307(a) requires an applicant to submit an environmental assessment if a facility "may significantly affect the environment," which includes facilities that may affect historic properties, endangered species, or critical habitats. [47 CFR § 1.1307(a).]"

David Hall
1334 Wallen Road
Moscow, ID

City of Moscow
Community Planning & Design

Memo

To: Mayor and City Council

Cc: Gary Riedner, City Supervisor; Mia Bautista, City Attorney; Bill Belknap, Deputy City Supervisor of Community Planning and Design

From: Mike Ray, AICP - Planning Manager

Date: October 14, 2020

Re: Small Wireless Facilities Ordinance Public Comments

On Monday, October 12, 2020, Staff gave a report to the Public Works/Finance Committee regarding amendments to the City's Telecommunications Code to insert standards for Small Wireless Facilities. Earlier that day there were public comments submitted from Mrs. Nancy Chaney and Mr. David Hall in regards to the proposed ordinance. Staff had not had a chance to fully review the comments prior to the meeting, although most appeared to be grammatical in nature. Staff has since thoroughly reviewed the comments and amended the ordinance where appropriate. Below are the comments that were received as well as Staff's response to each comment. The proposed ordinance has been revised and will be included in the Council's packet for the public hearing on October 19, 2020.

Comment 1:
The fourth WHEREAS (p. 1 of 11) in recitations is grammatically incorrect. Change "…by which it transmits…" to "…by which they transmit…" for subject-verb agreement. (Facilities (plural) = they (not it) > transmit (not transmits)
Response: Corrected.

Comment 2:
The fifth WHEREAS (p. 1 of 11) in recitations speaks to "the number and frequency of "small cell facilities." In this case, does "frequency" refer to EMF transmission or to spacing of equipment? Also, I'm assuming that the preferred language is "small wireless facilities," not "small cell…"
Response: This refers to spacing of equipment. The terms have been changed for consistency.

Comment 3:
The ninth WHEREAS (p. 2 of 11) in recitations regarding P&Z's recommendation for approval assumes adoption of the draft amendments without modification. I suggest rephrasing this paragraph to reflect the reality that minor and/or non-substantive changes

(or even substantive ones) may result over the course of deliberation, and subsequent to the public hearing on Oct. 19.
Response: The ordinance has been amended to clarify that the P&Z recommendation was to recommended approval with modifications.

Comment 4:
Section 1-H(2)(c) (p. 3 of 11): "…other structures for antenna mounting…" seems unduly vague and broad, so could have unintended consequences. I suggest more restrictive phrasing about what you mean by "other structures."
Response: This is a purpose statement, not a regulation, and it is Staff's opinion that the way it is stated is adequate.

Comment 5:
Section 1-H(3)(i)(iii) (p. 3 of 11): Reconcile "equipment" and "are" (to "is") for subject-verb agreement.
Response: Corrected.

Comment 6:
Section 1-H(3)(i)(iv) (p. 3 of 11): Does the reference to Part 17 of FCC regulations require more detail, like the date of that document, which of the FCC regulations you mean (by title), or where it may be found?
Response: Small Wireless Facility is defined by the FCC and the definition used in the proposed ordinance is the same. Staff sees no reason to reference it further.

Comment 7:
Section 1-H(3)(j) (p. 3 of 11): This definition of telecommunications facilities seems circular, saying the term refers to equipment for providing (undefined) "telecommunications services," or (also undefined) "wireless communications."
Response: Staff sees no issue with this definition.

Comment 8:
Section 1-H(3)(k) (p. 3 of 11): What is the timeframe for a "temporary" antenna tower? (Note: That term is eventually defined in Section 1-H(4)(d), but even then doesn't specify what a "reasonable" amount time is, or who makes that determination.
Response: This will be a case-by-case basis, but generally within the building code temporary structures are limited to 180 days. Staff believes the language within Section 1-H(4)(d) is sufficient.

Comment 9:
Section 1-H(4)(d) (p. 4 of 11): Because the "time reasonably needed" is so vague, I suggest at least adding the phrase, "…as determined by the City's Zoning Administrator."
Response: Added.

Comment 10:
Section 1-H(5)(b) (p. 4 of 11): Is the minimum setback of 100ft. arbitrary? Could a tower conceivably exceed 100ft? Those aspects should probably be addressed here.

Response: The 100' is an existing regulation that applies to larger macrocell towers. This does not apply to small wireless facilities and Staff does not believe this would need to be changed.

Comment 11:
Section 1-H(5)(c) (p. 4 of 11): Why is it even helpful to specify that separation from adjacent property lines in all zones other than residential zones be at least "one-half (1/2) the height of the antenna tower?" It seems comparably dangerous if a tower fell on a house, as much as on a daycare in a commercial zone. The intent of that requirement isn't clear. Neither is it obvious that the council couldn't require a greater separation, if practicable.
Response: Again, this is an existing regulation for macrocell towers that does not apply to small wireless facilities. The intent of the separation is because of the height of the tower compared to the average height of structures in a residential area, not because it my fall on a house. These towers are engineered and required to have an engineer stamp the construction drawings to certify that they are structurally sound. The required wind loads of Moscow are part of that calculation.

Comment 12:
Section 1-H(5)(d) (p. 4 of 11): "Appropriate security measures" should be "as determined by the Zoning Administrator." Please add that clarification, lest the applicants be allowed to decide for themselves what measures are appropriate.
Response: This regulation largely applies to macrocell towers, and the owner of the tower determines their own security, not Staff.

Comment 13:
Section 1-H(5)(f) (p. 4 of 11): Specify that the 45dB noise limit is measured cumulatively (all co-located equipment together) and does not otherwise violate the City's noise ordinance (which includes elements like incessancy and annoyance to reasonable persons).
Response: Staff does not believe this section needs to be amended.

Comment 14:
Section 1-H(5)(g) (p. 4 of 11): Specify "…each 50 lineal feet of wall…"
Response: Added.

Comment 15:
Section 1-H(5)(i)(iii) (p. 5 of 11): Last sentence of this paragraph should specify, "…or at an alternate PROXIMAL location…"
Response: Staff believes it is appropriate to retain the flexibility to decide alternate locations that may not be in close proximity to the wall.

Comment 16:
Section 1-H(5)(j) (p. 5 of 11): The phrase "…make antenna tower available for use by others…" is too broadly accommodating. It would better be more narrowly described as "other commercial telecommunications providers," of something similar.
Response: Staff does not have any concern with the existing language.

Comment 17:
Section 1-H(5)(l) (p. 6 of 11): I have three suggestions* for this paragraph. *"…within the service area" is too vague, especially when 5G functions as a gigantic network, involving multiple service providers. *This paragraph also references "the public hearing where the application will be considered." It might read better to say "at which," rather than "where." *The stipulation that, "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" seems an impossible task. I think I know what is intended by the statement, but am not sure it can be accomplished in a mobile cellular network. Accordingly, you might rephrase that, relative to proximity of property owners and public notice (paid by the telecom??) for transitory (end) users.
Response: One suggested change has been made, but Staff does not believe the other proposed changes are warranted.

Comment 18:
Section 1-H(6)(c)(ii) (p. 7 of 11): The requirement for gray "or other similar color" might better include qualifiers like "unobtrusive" and/or "neutral."
Response: Unobtrusive is subjective and Staff does not have concerns with the proposed language.

Comment 19:
Section 1-H(6)(c)(iii) (P. 7 of 11): The exception allowing one additional shroud per pole when the antenna is located within the second shroud may have unintended consequences by precluding subsequent co-locators from housing their antennas within shrouds on those poles.
Response: The goal here is to reduce clutter and aesthetics. If co-location is a possibility, there's certainly an option to replace the pole and have all the equipment contained within the pole instead of on the exterior.

Comment 20:
Section 1-H(6)(c)(iv) (P. 7 of 11): I'm unclear about the newly-introduced terminology, "utility cable owner" in this paragraph. Who is that? The allowance of strand-mounted aerial cables seems to warrant an explanation about your rationale for disallowing guy wires, which I'm guessing relates to public safety, not obstructing passage (or incommoding) along public rights-of-way, and the visual blight of guy wires. Why are strand-mounted aerial cables less of a blight, and could they pose additional hazards to birds, etc.?
Response: The utility cable owner is the utility company that owns the cable that is connected to the antenna support structure. Guy wires are much closer to the ground and present safety and aesthetic concerns, as a result, Staff does not believe it would be appropriate to allow them to be attached to guy wires. Below is an image of the strand mounted shroud, as the proposed regulations detail.

Figure 1-2: Type 1B - Strand Mounted Shroud

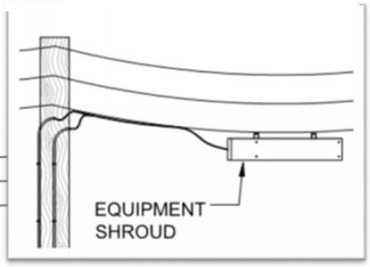
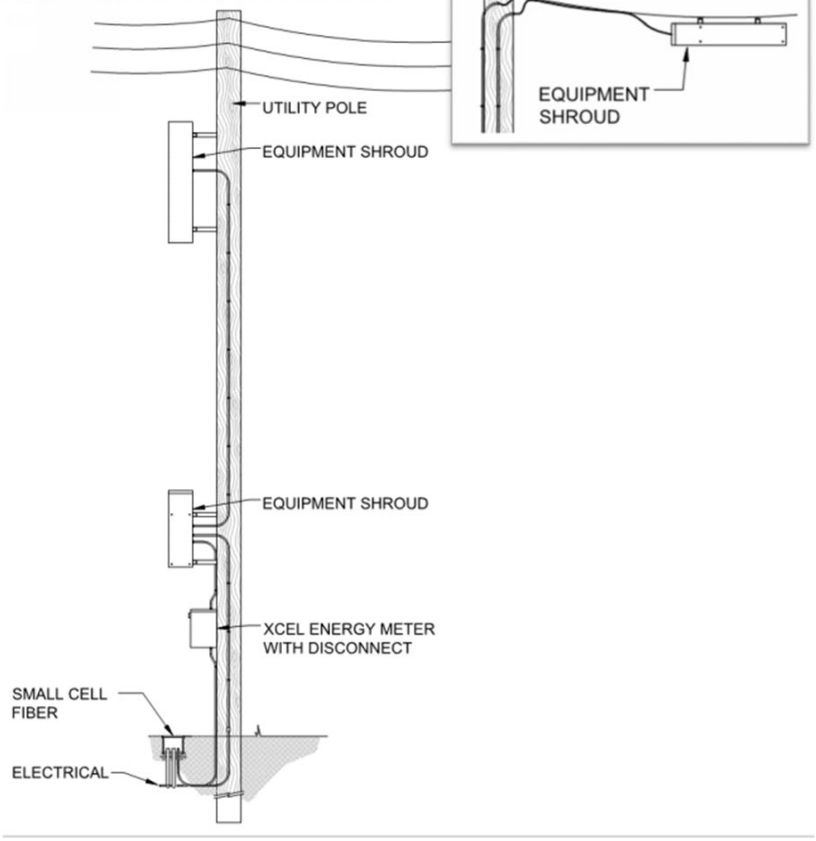


Figure 1-3: Type 1A - Utility Pole Mounted Shroud



Comment 21:
Section 1-H(6)(c)(iv)(a) (P. 7 of 11): It seems like the clearance above sidewalks should be higher than eight feet. How did you determine that limit, given that the clearance over roadways is 14 feet? (Could this paragraph be problematic, as it may apply to locations where awnings, suspended ornamental lighting, and overhead signage might be allowed? Who would prevail; the telecom or the small business?)
Response: The standard clearance height throughout the City is 8' for sidewalks and 14' for streets. The antenna support structures are likely to be far enough away from any building or awning, but this would be reviewed on a case-by-case basis by the Engineering Department.

Comment 22:
Finally, note in the City Attorney's memo of June 12 (included in your packets, as part of the public record) that the FCC Declaratory Order allows for the protection of "public safety and welfare" (See p. 4 and p. 5). That seems to leave open the opportunity for the council to do that, to the fullest extent allowed by law. Thanks for keeping it in mind as you improve the draft ordinance.
Response: None required.

Comment 23:
Lose the redundant numerology throughout (i.e., "fifty feet (50')"). At least be consistent: 3.i.i(a) has "Fifty (50) feet" but 4.b has "thirty-five feet (35')." Do the numerals come before or after the units?
Response: Corrected.

Comment 24:
H. Telecommunications Facilities

H1. Applicability [p. 2]
"...any of which are used..." → "...any of which is used..." *["any" is singular]*
"...exclusively used..." → "...used exclusively..."
Response: Corrected.

Comment 25:
H3.h. Monopole. [p. 3]
"...guys." → "...guy wires." *[compare 5.a]*
Response: Added.

Comment 26:
H3.k. Temporary Antenna Tower. [p. 3]
Remove hyphen in "tele-communications"
Response: The hyphen is actually a deletion, there was apparently a space previously.

Comment 27:
H4.c. [p. 3]
Is it "Except for small wireless facilities which are subject to the standards contained in Section 6 herein, ..." *or* "Except for small wireless facilities, which are subject to the standards contained in Section 6 herein, ..."? *The added comma makes a significant change in meaning of the sentence. Without the added comma, some facilities are subject to the standards, and some are not. With the comma, it indicates that all small wireless facilities are subject to the standards.*
Response: Comma added.

Comment 28:
H5.f. Noise Reduction. [p. 4]
"...not more than ~~forty-five decibels~~ (45 dB)." → "~~.~~..no more than 45 dB." Corrected.
For an installation in the right-of-way, where is this measured?
Response: This would likely be measured at the source, but there is likely no noise generated from small cell installations. The noise typically associated with telecommunications facilities are ground generators, which are not a part of small cell installations.

Comment 29:
H5.h. [p. 4]*As this paragraph is removed completely, the following paragraphs must be renumbered*
Response: Corrected.

Comment 30:
H5.i. → H5.h. Aesthetic Considerations. [p. 4]
Response: Corrected.

Comment 31:
H5.i.i. Antenna towers shall be painted…[p. 5]
"...required by the Federal Aviation Administration or any other State..." → "...required by the ~~Federal Aviation Administration or~~ any ~~other~~ State..."
Response: Deleted.

Comment 32:
H5.h.vi. Ancillary facilities located above ground…
"...will present no greater adverse visual and audio impacts…" *Greater than what?*
Response: Greater than an ancillary facility set 50' back.

Comment 33:
H5.j. → H5.i. Co-Location Consent [p. 5]
"Co-Location" → "Co-location" *[Compare 3.f and 6.c.]*
Response: Corrected.

Comment 34:
H5.j.ii. New Antenna Towers. [p. 6] "Subsection 5.j.i" → "Subsection 5.i.i"
Response: Corrected.

Comment 35:
H5.k. → H5.j. Antenna Tower Inventories. [p. 6]
Response: Corrected.

Comment 36:
H5.l. → H5.k. Notice of Antenna Tower Permit Application. [p. 6] Corrected.
Retain requirement to notify neighbors.
Response: A new antenna tower requires a CUP. A CUP requires property owners within 600' to be notified. This is just eliminating redundant language.

Comment 37:
H6. Small Wireless Facility Standards
H6.a. Small Wireless Facility Standards [p. 7]
"The City Council may adopt additional small wireless facility ~~design and construction~~ standards by Resolution..."

Response: This is intended to say design and construction standards, similar to the City's Standard Construction Drawings for streets and facilities.

Comment 38:
H6.c.iv(a) Side mounted. [p. 7]
"sixteen inch" *or* "sixteen-inch"? *[See H6.c.iv(b)]*
Response: Corrected.

Comment 39:
"Side mounted equipment shrouds shall be located in such a manner as to not obstruct pedestrian access on adjacent sidewalks."
Response: The standards contained within this section would prevent the public from being incommoded by the installation.

This can be expanded to restrict installations that would incommode the public:

5. General Telecommunication Facility Development Standards

a. Endangerment, Interference. No person or entity shall install, use or maintain any facility which in whole or in part rests upon, in or over any public right-of-way, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facility unreasonably interferes with or unreasonably impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location. [Physicians for Safe Technology. mdsafetech.org/cell-tower-and-city-ordinances]

See page 4 for more openings to consider the effects of installations on public health and the environment.

Comment 40:
H6.e.iv. Minimum spacing between small wireless facility antenna towers… [p. 8]
"...no closer than two hundred and fifty feet (250') from another small wireless facility antenna tower." →
"...no closer than two hundred and fifty feet (250') from any other small wireless facility antenna tower."
Response: Corrected.

Comment 41:
H7.c.v. Description of proposed and required lighting… [p. 9]
"Section 5c" → "Section 5e." *Section 5.c. is Antenna tower setback.*
Response: Corrected.

Comment 42:
H7.c.viii. Antenna tower or tower location study… [p. 9]
Add a requirement that they show a gap in service at the location.
Response: Staff believes the language is sufficient as it currently exists.

Comment 43:
H7.c.ix. Antenna tower inventory… [p. 9] "Section 5.k" → "Section 5.j"
Response: Corrected.

Comment 44:
H7.c.x. Notarized… [p. 9]
"Section 5.j" → "Section 5.i"
Response: Corrected.

Comment 45:
H7.c.xi. Documentation… [p. 9]
Report results to the City (in a reasonable amount of time).
Response: It is Staff's opinion this section is fine as it currently exists.

Comment 46:
H7.c.xiv. Name and address… [p. 10]
"...a written statement of approval of the application by the property owner."
How does this work for an application for installation on City right-of-way?
Response: The property owner portion would likely not be applicable since the property would be located in the right-of-way.

Comment 47:
H8.a.v. These findings shall be required… [p. 10]
This paragraph should be a continuation of H8.a. It is not one of the required findings.
Response: Corrected.

Comment 48:
Do you need to reference somewhere the required adherence to the Master License Agreement?
Response: Reference to the MLA does not need to be included in the ordinance.

Additional General Comments:
See next page for considerations regarding safeguarding the health and safety of Moscow's citizens.

installations must not incommode the public

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> [**Physicians for Safe Technology**. mdsafetech.org/cell-tower-and-city-ordinances]

Telecommunications Act Section 253(b) provides a "safe harbor" to protect the ability of states and localities to regulate zoning and construction of wireless facilities:

253(b) State regulatory authority: Nothing in this section shall affect the ability of a State to impose … requirements necessary to... protect the public safety and welfare, … and safeguard the rights of consumers. [Section 253 of the Communications Act, 47 U.S.C.]

"...localities can enforce "generally applicable building, structural, electrical, and safety codes and [] other laws codifying objective standards reasonably related to health and safety." [2014 Infrastructure Order, 29 FCC Rcd at 12951, para. 202.]"

> Section 1.1307(a) requires an applicant to submit an environmental assessment if a facility "may significantly affect the environment," which includes facilities that may affect historic properties, endangered species, or critical habitats. [47 CFR § 1.1307(a).]"