



Staff Report

Meeting Date: June 30, 2020

From Shelley Denison, Associate Planner

SUBJECT: 20-012 DCA 5G Small Cell Code Change

Background:

File No. 20-012 DCA proposes an additional section to Title 12 (12.20) of Sandy's Municipal Code to regulate the siting and franchising of 5G small cell "stealth" facilities. New cellular technology has developed with the addition of 5G wireless technology. Rather than requiring cell towers, 5G requires small cell "stealth" facilities. These facilities can be sited on existing utility poles within a city. Because of this, cities are given some degree of legal leeway to regulate the siting and franchising of small cell facilities.

The municipal code does not currently contain any regulatory language related to small cell facilities. The purpose of this proposed Chapter 12.20 is to establish reasonable and nondiscriminatory policies and procedures for the placement of small wireless facilities in the right-of-way within the City's jurisdiction, consistent with and to the extent permitted by federal and state law, in order to provide public benefit consistent with the preservation of the integrity, safe usage, and reasonable aesthetic qualities of the City rights-of-way and the City as a whole.

Recommendation:

Staff recommends the Planning Commission forward a recommendation of approval for the proposed code addition to the City Council.

Code Analysis:

N/A

Budgetary Impact:

N/A

12.20 SMALL WIRELESS FACILITIES

12.20.010 – Purpose and Scope

- (A) Purpose. The purpose of this Chapter is to establish reasonable and nondiscriminatory policies and procedures for the placement of small wireless facilities in the right-of-way within the City’s jurisdiction, consistent with and to the extent permitted by federal and state law, in order to provide public benefit consistent with the preservation of the integrity, safe usage, and reasonable aesthetic qualities of the City rights-of-way and the City as a whole.
- (B) Intent. In enacting this Chapter, the City is establishing uniform standards consistent with federal law to address the placement of small wireless facilities and associated poles in the rights-of-way, including without limitation, to manage the public right of way in order to:
- (1) prevent interference with the use of streets, sidewalks, alleys, parkways and other public ways and places;
 - (2) prevent the creation of obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
 - (3) prevent interference with the facilities and operations of facilities lawfully located in rights-of-way or public property;
 - (4) protect against environmental damage, including damage to trees;
 - (5) preserve the character of the community, Historic Districts or areas with Decorative Poles; and
 - (6) facilitate technology advancements, such as deployment of small wireless facilities, to provide the benefits of wireless services.

12.20.020 - Definitions

- (A) “Accessory equipment” means antenna equipment as defined in 47 C.F.R. § 1.6002(c), as may be amended or superseded, which defines the term to mean equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.¹

¹ The FCC uses the term “antenna equipment” to mean the non-antenna accessory equipment associated with a small cell. The City finds this term confusing because using “antenna equipment” to describe equipment that is not antenna appears contrary to term on its face. In fact, the FCC’s full definition of “antenna equipment” refers to 47 C.F.R. § 1320(d), which includes a definition for “antenna” that is essentially a combination of “antenna” and “antenna equipment” as defined in 47 C.F.R. § 1.6002. The reference to § 1320(d) has been omitted from the definition and the City uses “accessory equipment” in this Chapter 12.20 to avoid confusion.

- (B) “Antenna” means the same as defined in 47 C.F.R. § 1.6002(b), as may be amended or superseded, which defines the term to mean an apparatus designed for the purpose of emitting radiofrequency (RF) emission, to be operated or operating from a fixed location pursuant to Federal Communication Commission authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under 47 C.F.R. Part 15.
- (C) “Antenna facility” means the same as defined in 47 C.F.R. § 1.6002(d), as may be amended or superseded, which defines the term to mean an antenna and associated accessory equipment.²
- (D) “Applicable codes” means, without limitation, uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or state or local amendments to those codes that are of general application and consistent with state and federal law.
- (E) “Applicant” means any person duly authorized to submit an application as or on behalf of a wireless provider.
- (F) “Application” or “applications” means a request(s) submitted by an applicant for permission to collocate small wireless facilities on an existing, modified, new or replacement structure.
- (G) “City structure” means a structure in the rights of way owned, managed or operated by the City including, but not limited to streetlights, traffic signals, utility poles and other structures.
- (H) “Collocate” or “collocation” means the same as defined in 47 C.F.R. § 1.6002(g), as may be amended or superseded, which defines that term to mean (1) mounting or installing an antenna facility on a preexisting structure, and/or (2) modifying a structure for the purpose of mounting or installing an antenna facility on that structure.
- (I) “Day” means calendar day. For purposes of the FCC shot clock, a terminal day that falls on a holiday or weekend shall be deemed to be the next immediate business day.
- (J) “Decorative pole” means a city structure that is specially designed and placed for aesthetic purposes.
- (K) “Historic district” means a group of buildings, properties, or sites that are either: (1) listed in the National Register of Historic Places or formally determined eligible for listing by

² As written, the definition uses the term “accessory equipment” in-lieu of “antenna equipment” for the reasons stated in the previous footnote.

the Keeper of the National Register in accordance with Section VI.D.1a.i-v of the Nationwide Programmatic Agreement codified at 47 C.F.R. Part 1, Appendix C; or, (2) a locally designated historic district.

- (L) “Permissions” means those authorizations needed for deployment of Small Wireless Facilities.
- (M) “Person” means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the City.
- (N) “Pole” means a type of structure in the rights-of-way that is or may be used in whole or in part by or for wireline communications, electric distribution, lighting, traffic control, signage, or similar function, or for collocation of small wireless facilities consistent with applicable codes; provided, such term does not include a tower, building or electric transmission structures.
- (O) “Right-of-way” means the same as provided in Chapter 12.02.050.
- (P) “Routine maintenance” means inspections, testing, repair, and modifications that maintain functional capacity, aesthetic and structural integrity of a small wireless facility and/or the associated pole or structure. Any work on a small wireless facility that would not require a permit (e.g., a traffic control permit, building permit, encroachment permit, etc.) qualifies as routine maintenance. As an illustration and not a limitation, routine maintenance would include, without limitation, one-for-one antenna or accessory equipment replacements but would not include technology upgrades that alter or add to the RF emissions from the antenna facility. Similarly, routine maintenance would include, without limitation, the installation of minor brackets or braces to harden an antenna facility but would not include the replacement or reinstallation of the underlying support structure.
- (Q) “Small wireless facility” means a facility that meets each of the following conditions per the 47 C.F.R § 1.6002(l), as may be amended or superseded:
 - (1) The facilities (i) are mounted on structures 50 feet or less in height including the antennas, 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; and
 - (2) Each antenna associated with the deployment, excluding associated accessory equipment, is no more than three cubic feet in volume; and

- (3) All other wireless equipment associated with the structure, including wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume; and
- (4) The facilities do not result in human exposure to radio frequency in excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).
- (P) “Structure” means the same as defined in 47 C.F.R. § 1.6002(m), as may be amended or superseded, which defines that term as “a pole, tower, or base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of service).”
- (Q) “Technically feasible” means that the proposed placement, location or design for a small wireless facility can be implemented without a material reduction in the intended service objective of the small wireless facility.
- (R) “Wireless Provider” means either (1) any person who provides “personal wireless services”, as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded; or (2) any person, including a person authorized to provide communications service in the state, that builds or installs wireless communication transmission equipment, wireless facilities, but does not provide personal wireless services.

12.20.030 – Applications and Fees

- (A) Application Required. Except as otherwise provided in this Chapter, no person shall place any small wireless facility in the right-of-way without first filing an application for the facility and obtaining all permits necessary for the installation.
- (B) Application Requirements.

An application filed pursuant to this Chapter shall be on forms provided by the City and, at a minimum, contain the following:

- (1) The applicant’s name, address, telephone number, and e-mail address;
- (2) The names, addresses, telephone numbers, and e-mail addresses of all duly authorized representatives and consultants, if any, acting on behalf of the applicant with respect to the filing of the application;
- (3) A general description of the proposed small wireless facility and associated pole, if applicable. The scope and detail of such description shall be appropriate to the

nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the physical work proposed;

- (4) Site plans and engineering drawings to scale that identify the proposed small wireless facility;
 - (5) A statement that the small wireless facility shall comply with all applicable codes, regulations and standards, including a certification in a form acceptable to the City that the small wireless facility will comply with applicable FCC regulations for human exposure to RF emissions.
 - (6) The applicant shall not be required to provide more information to obtain a small wireless facility permit than is required of other entities who install small wireless facilities in the rights-of-way.
- (C) Routine Maintenance. Routine maintenance in connection with an existing small wireless facility shall be permitted, subject only to any traffic control, encroachment or other regulatory authorizations as may be required for the specific scope of work. Notwithstanding anything to the contrary in this chapter, the applicant and/or permittee conducting routine maintenance shall not be relieved of its obligations to comply with all generally applicable health and safety regulations.
- (D) Application Fees. Application fees in accordance with applicable state and federal law shall be set by resolution of the City Council.

12.20.040 – Decisions; Notice of Decision

- (A) Findings for Denial. The City must process all applications on a nondiscriminatory basis and may deny an application subject to this Chapter if the proposed small wireless facility:
- (1) Materially and demonstrably interferes with the safe operation of traffic control equipment;
 - (2) Materially and demonstrably interferes with sight lines or clear zones for transportation or pedestrians;
 - (3) Materially fails to comply with the Americans with Disabilities Act or similar federal, state, or local laws, standards and regulations regarding pedestrian access or movement;
 - (4) Fails to comply with applicable codes, standards and regulations, including the City's design standards; or
 - (5) Fails to comply with the provisions in this Chapter.

- (B) Time for Final Action; Notice of Final Action. The City shall act on an application within the applicable shot clock and advise the applicant in writing of its final action. If the final action is to deny the application,³ The written notice shall state the reasons for denial, with reference to specific code provisions, ordinance, application instructions or otherwise publicly-stated procedures on which the denial was based, and send the notice to the applicant within five (5) days after the City denies the application or before the applicable shot clock expires, whichever occurs first.
- (C) Batched Applications. Applicants may submit batched applications as provided under applicable law, and the City shall act on such applications as provided in 12.20.040 (B) and consistent with applicable law. A batched application that includes only collocations on existing structures shall be subject to a 60-day timeline. A batched application that includes only new support structures shall be subject to a 90-day timeline. A batched application that includes both collocations and new support structures shall be subject to a 90-day timeline

12.20.050 – Special Design Requirements

- (A) Decorative Poles. Subject to the City’s discretion, a wireless provider may be permitted to collocate on or replace a decorative pole when necessary to collocate a small wireless facility; provided that any such replacement pole shall, to the extent feasible, replicate the design of the pole being replaced.
- (B) Underground District. [NOTE: ACCORDING TO THE FCC ORDER, UNDERGROUNDING REQUIREMENTS ARE SUBJECT TO THE SAME CRITERIA AS OTHER AESTHETIC STANDARDS. AESTHETIC REQUIREMENTS (INCLUDING UNDERGROUNDING) MUST BE (1) REASONABLE; (2) NO MORE BURDENSOME THAN REQUIREMENTS IMPOSED ON OTHER INFRASTRUCTURE DEPLOYMENTS; (3) OBJECTIVE; AND (4) PUBLISHED IN ADVANCE.

IN THIS REGARD, A REQUIREMENT THAT ALL ELEMENTS OF ALL WIRELESS FACILITIES BE DEPLOYED UNDERGROUND WOULD AMOUNT TO AN EFFECTIVE PROHIBITION GIVEN THE PROPAGATION CHARACTERISTICS OF WIRELESS SIGNALS EMITTED FROM ANTENNAS. CITIES ARE ENCOURAGED TO REVIEW CURRENT UNDERGROUNDING REQUIREMENTS AND WORK WITH THEIR ATTORNEYS/ROW SPECIALISTS TO MAKE SURE THOSE REQUIREMENTS ARE NOT IN CONFLICT WITH THE FCC ORDER.]

- (C) Historic District. Small wireless facilities or poles to support collocation of small wireless facilities located in Historic Districts shall be designed to have a substantially

³ Note that a “final action” for the purposes of federal regulations is not the same as a “final decision” for the purposes of Oregon state law.

similar appearance, including coloring and design elements, if technically feasible, of other poles in the rights-of-way within 500 feet of the proposed installation.

12.20.060 – Effect of Construction/Work Permit

- (A) Authority Granted. A permit from the City authorizes an applicant to undertake only certain activities in accordance with this Chapter and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the rights-of-way.

- (B) Permit Duration.
 - (1) The build-out period for a permit for construction granted pursuant to this Section shall be valid for a period of one year after issuance.
 - (2) The permit authorizing the use shall be coterminous with the applicable right-of-way license, franchise or other agreement granting the applicant access to the rights-of-way.
 - (3) The installed facility is subject to applicable relocation requirements, termination for material non-compliance after notice and a reasonable opportunity to cure, and an applicant’s right to terminate a permit at any time.

12.20.070 – Removal, Relocation or Modification of Small Wireless Facility in the ROW

- (A) Notice. The City shall provide the permittee reasonable advance written notice whenever the City has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the rights-of-way (collectively, “City work”). The City shall specify a reasonable time for such removal, relocation, change or alteration in its notice, taking into account the nature and scope of the work involved and the urgency of the City’s need for such work to be performed. Within the time specified in the written notice from the City, the permittee shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small wireless facilities within the rights-of-way in order to accommodate the City work.

- (B) Emergency Removal or Relocation of Facilities. The City retains the right and privilege to cut or move any small wireless facility located within the rights-of-way of the City in the event of an emergency, as the City may determine to be necessary, appropriate or useful in response to any imminent danger to public health, safety, or property. If practicable under the circumstances, the City shall notify the permittee and provide the permittee an opportunity to move its own facilities prior to cutting or removing a facility and shall notify the permittee promptly when practicable after cutting or removing a small wireless facility.

- (C) Abandonment of Facilities. Within 90 days after a small wireless facility is abandoned, the permittee shall completely remove the small wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable codes. In the event that the permittee does not complete the obligations under this condition, or cause them to be completed, within said 90-day period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee shall be liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.
- (D) Damage and Repair. The City may require a permittee to repair all damage to the rights-of-way directly caused by the activities of the permittee or third parties acting under the permittee's direction and restore the rights-of-way to its the condition that existed before the damage occurred. All such repair work shall be performed in accordance with applicable laws and to the City Public Works Director's satisfaction. If the permittee fails to make the repairs within 30 days after written notice, the City shall have the right (but not the obligation) to affect those repairs, and the permittee shall be liable for all costs and expenses incurred by the City in connection with such repairs.

12.20.080 – Collocation on City Structures in the ROW

- (A) Collocation on City Structures. Small wireless facilities may be collocated on city structures in the rights-of-way pursuant to this Chapter. No person will be permitted an exclusive arrangement or an arrangement which excludes otherwise qualified applicants to attach to city structures in the rights-of-way. A person who purchases or otherwise acquires a City structure is subject to the requirements of this section.
- (B) Make-Ready. The rates, fees, terms and conditions for the make-ready work to collocate a small wireless facility on a pole owned or controlled by the City must be nondiscriminatory, competitively neutral and be subject to the following:
 - (1) The City or any person owning, managing, or controlling the poles owned by the City will provide a good faith estimate for any make-ready work reasonably necessary to make a specific city pole suitable for attachment of the requested small wireless facility, including pole replacement if necessary, within 60 days after receipt of a completed request. Make-ready work including any pole replacement shall be completed within 60 days of written acceptance of the good faith estimate by the applicant.
 - (2) The City or any person owning, managing, or controlling the poles owned by the city shall not require more make-ready work than required to meet applicable codes or may be reasonably necessary to avoid interference with other attachments on the pole. Fees for make-ready work shall not include costs related

to pre-existing or prior damage and non-compliance, unless such fees are necessary to accommodate the proposed attachment on the pole. Fees for make-ready work including any pole replacement shall not exceed actual and direct costs, or the amount charged to others for similar work and shall not include any contingency based consultant fees or expenses of any kind.

12.20.090 – Rates for ROW and Collocation on City Structures in the ROW

- (A) The recurring rate for use of the ROW and attachment of small wireless facilities to a City structure in the ROW shall be subject to the following requirements:
- (1) Annual Rate. A person authorized to place small wireless facilities and any related pole in the rights-of-way will pay to the City compensation for use of the rights-of-way and collocation on city structures in the ROW a rate in accordance with applicable state and federal law and set by resolution of the City Council.
 - (2) Cease Payment. A person authorized to use the ROW and/or city structures for a small wireless facility may remove its facilities at any time from the rights-of-way and city structures in the ROW with the required permits and cease paying the City compensation as of the date of the complete removal of the facilities and restoration of the site to the condition that existed prior to the deployment.