

**CANBY CITY COUNCIL
WORK SESSION MINUTES
September 16, 2020**

Due to COVID-19 Pandemic, the Mayor and City Councilors attended the meeting virtually. The public was asked to view the meeting live on CTV Channel 5 or on YouTube. Seating was available in the Council Chambers in compliance with the Governor's Executive Order regarding social distancing.

PRESIDING: Mayor Brian Hodson.

COUNCIL PRESENT: Tim Dale, Greg Parker, Sarah Spoon, and Shawn Varwig.

COUNCIL ABSENT: Traci Hensley

STAFF PRESENT: Joseph Lindsay, Interim City Administrator and City Attorney; Erik Forsell, Associate Planner; Ryan Potter, Senior Planner; and Melissa Bisset, City Recorder.

OTHERS PRESENT: Planning Commissioners Jeff Mills, Jennifer Trundy, and Michael Hutchinson.

CALL TO ORDER: Mayor Hodson called the Work Session to order at 6:06 p.m.

DISCUSSION REGARDING SMALL CELL TECHNOLOGY/ 5 G

Erik Forsell, Associate Planner, reviewed the proposed telecommunications code amendments. He explained these changes were being done now because wireless data usage continued to expand, almost at an exponential rate, and small (microcell) installations were one of the methods to address the demand for increased capacity, speeds, and usage. Without design and application standards, telecommunications companies could install facilities without any review from the City of Canby staff. These changes were intended to institute reasonable time, place, and manner requirements on new telecommunications deployment in the City of Canby. Federal laws and regulations severely limited a local jurisdiction from prohibiting the deployment of small (microcell) installations. The federal laws and regulations included:

- ▶ Communications Act of 1934;
- ▶ Telecommunications Act of 1996;
- ▶ Provisions of the Middle-Class Tax Relief and Job Creation Act of 2012 (Commonly Referred to as the Spectrum Act); and
- ▶ FCC 18-133 (Small Cell Order)

Much of the newer generation telecommunications equipment would be deployed in the public rights-of-way on a much smaller scale than traditional cell towers. It was still unclear to what extent this might happen but it was better to anticipate and prepare than be left without a way to regulate the time, place, and manner of the deployment.

He then reviewed the proposed changes:

- ▶ Create a separate section of the Development Code specifically for all types of Telecommunications.
- ▶ Text amendments that allowed the City to regulate deployment of telecommunications facilities in the public right-of-way and on public and private real property.
- ▶ Ensure code amendments were at low risk to legal challenge and were consistent with Federal law.
- ▶ Provide requirements and restrictions that allowed for deployment of new telecom facilities but also reduced impacts.
- ▶ Include important 'shot clock' requirements for City staff to make decisions on telecommunications facilities.
- ▶ Provide a standardized application and review process.
- ▶ Include severability clauses should law, rules, or precedence change.

The model code was gleaned from: National Association of Cities, League of Oregon Cities, Oregon City, and Lane County. The Code was meant to be legally defensible while still allowing for regulation and review. Strict code regulations were being challenged by larger cities like San Francisco. The purpose of the Work Session was to give a high level code review to keep the Planning Commission and City Council informed on progress, questions for staff, and recommendations and direction from the Council and Commission before submitting text amendments as a formal process. He thought they had a good draft version and if they saw any major issues or something did not make sense, this was a good time to relay those and staff could address them. Right now they were shooting for an early October Planning Commission meeting.

Commissioner Trundy asked about the differences between the 3 cubic foot apparatus and the 28 cubic foot apparatus. Mr. Forsell said the 3 cubic feet was the antenna itself and the 28 cubic feet was the maximum allowed per federal law for the ancillary equipment. That included the distribution box, cooling box, and any other equipment that was required to project the wireless signal. The code strongly encouraged the providers to locate the equipment underground if possible or to shroud it if it had to remain above ground.

Commissioner Trundy asked if each antenna had to have the larger portion or did it cover several. Mr. Forsell said there was not one 28 cubic foot apparatus for each antenna. The facilities could not be placed in a way that would obstruct the sidewalk, block ADA access, or otherwise hamper motorists, pedestrians, or people in the right-of-way. It would be challenging

to place those in a way that would work. He did not think there would be a proliferation of 28 cubic foot equipment throughout the City.

Commissioner Hutchinson said there were two types of antennas. The smaller one was omnidirectional and was housed inside the box. The larger one was a grid of the smaller ones that could get twice the distance. They worked well for line of site conditions such as along highways and looked like giant prisms. In the City where there were trees and other structures, smaller ones would be used more frequently.

Councilor Varwig asked if the unit worked with all of the different companies or would one unit only work for one specific company. Would there be several antennas on one pole? Would they also see several boxes sitting next to each other?

Mr. Forsell said the code strongly encouraged the companies to do colocation, which meant to have as many of the antennas as possible on as few poles as possible. That also meant not building a lot of new poles and the equipment going on a couple of poles rather than spread out through many different poles. A company would need to place their antennas on a structure that already had antennas. He did not think the companies shared the antennas.

Joseph Lindsay, Interim City Administrator and City Attorney, said in prior discussions there were companies who were trying to pick the prime areas to sell the signal and others that wanted to increase service to their customers. There were different strategies for different companies.

Councilor Varwig did not want to see a bunch of poles with different small cell towers on each one. Mr. Forsell said that was the intent of these code amendments and for the colocation requirement. If they had to build a new pole, there had to be evidence and a reason for it.

Commissioner Hutchinson asked how that worked for cities who had all the utilities underground and had no poles. Mr. Lindsay said they could be attached to buildings and other structures. The City was not allowed to use that as a reason for not allowing these facilities.

Commissioner Mills supported the idea of creating a new dedicated chapter for telecommunications. He encouraged staff to ensure that each section of code was clear whether they were talking about macro or micro.

Councilor Parker said the fee structure looked fine. He thought they should do everything they could to encourage undergrounding including the application for an exception. There was a provision that after a year these units could be declared abandoned and removed and to the extent that they could he would like to require those who put them in to take them down.

Mr. Forsell agreed with the undergrounding component. If they could encourage/require them to place as much of their equipment as possible underground and hold the line on that, it would be a

reasonable way to regulate this type of development. He thought it would be good to include a section on removal. He could explore tying the bond to the removal. Mr. Lindsay said if someone was vacating their franchise agreement then they would have to remove their facilities within so many days.

Council President Dale asked if they were compelled to allow a company to use one of the City's lightpoles. Mr. Forsell said yes and no, they were required to allow the ability for companies to place their equipment in the City, but there was some leeway about where it could be located.

Mr. Lindsay said Oregon City had fancy, classic streetlights that were excluded. This was the reason to create a code with design standards so if they did not want these facilities on certain structures, applicants would not ask and would look for something else nearby.

Council President Dale wanted to preserve the historical feel of some areas, especially on First and Second Streets. He asked what their control was for private property. Mr. Forsell said this code intended to include the public rights-of-way, private property, and public property. The code would attempt to place the same design standards on private property as on public property with the intent of applicants not skirting the issue and attaching on a private structure that was six inches out of the public right-of-way. It was also to make sure they did not avoid any concealment requirements, volumetric requirements, height, etc. There would be time, place, and manner restrictions on the deployment of these microcells on private structures as well as public.

Council President Dale wanted to make sure they included the aggregate height standards, such as not being able to put a 5G cell tower on top of the Dahlia building if it was above 60 feet. Mr. Forsell said that was possible and height restriction standards in the code were intended to avoid that type of scenario. He would include more explicit language about it.

Council President Dale was not against a mobile 5G being brought in for a certain event or in case of emergency. He echoed the concerns about allowing overheading. There was a strong precedent that it not be allowed.

Mr. Lindsay said these companies would try to go to public rights-of-way first because it was less expensive than private. They would still have to follow the design standards that were set in the code.

Mr. Forsell said the next step was to take the code amendments to a Planning Commission meeting in October and if approved, the code amendments would come to City Council.

Commissioner Mills thought this should come to the Planning Commission as a Work Session first. Mr. Forsell would look into scheduling a Work Session.

Mayor Hodson agreed it was important to vet these code amendments to get it right. They needed to make sure the wording around temporary 5G did not allow them to become permanent fixtures.

The meeting was adjourned at 7:00 p.m.



Melissa Bisset, CMC
City Recorder



Brian Hodson
Mayor