

MINUTES
City of Newport Planning Commission
Work Session
Newport City Hall Council Chambers by Video Conference
October 12, 2020
6:00 p.m.

Planning Commissioners Present by Video Conference: Jim Patrick, Lee Hardy, Bob Berman, Jim Hanselman, Bill Branigan, Mike Franklin, and Gary East.

PC Citizens Advisory Committee Members Present by Video Conference: Dustin Capri, Greg Sutton, and Braulio Escobar.

City Staff Present: Community Development Director (CDD) Derrick Tokos; and Executive Assistant, Sherri Marineau.

1. **Call to Order.** Chair Patrick called the Planning Commission work session to order at 6:02 p.m.
 2. **Unfinished Business.** None were heard.
 3. **New Business.**
- A. **City of Newport COVID-19 Virtual, Hybrid, and In-Person Meeting Policy.** Tokos reviewed the meeting policy that was shared with the Commission. He noted that they could accommodate four Commissioners in the Council Chambers at a time during meetings. Tokos explained that they would accommodate people who wanted to attend meetings in person as well. He asked the Commissioners how they felt about participating in person or through video. Patrick was happy to come in when there were meetings other than the work session meetings. Hanselman thought the Zoom meetings were functioning well. He felt that if there was a significant hearing it would be more appropriate to have more Commissioners present than just Chair Patrick. It would be more personable to be onsite to speak to people in person. Berman thought that Zoom meetings were fine when it was just the Commissioners playing a part in the meetings. He didn't know if it was important for the Commission to be onsite but it would be much better to have people giving testimony in person. Berman noted not many people who had given testimony so far had done it through video. He was fine to stay at his home to do Zoom video meetings. Berman thought that people could be asked to testify in person. Branigan thought the meetings were working well as they were. Because he fell in a high risk category for getting COVID, he felt better staying offsite. Sutton reported that he had been doing the video meetings on his iPhone and wanted to be able to be onsite for the meetings. Escobar noted the Zoom meetings worked for him.

Patrick asked if Sutton could have his own laptop during meeting if he attended in person. Tokos explained they could set a computer up at the witness table for him to use, and then if any public wanted to make comment they would have a computer to use.

Hardy didn't have a problem with Zoom meetings. She thought people giving live testimony should be there in person. Franklin agreed with Hardy. Tokos noted that what he heard was that Patrick would attend when the public was participating, and they would encourage people to attend in person if they felt secure to do so. Tokos explained that the special meeting that was being held on October 15th would strictly be a video meeting.

- B. **Draft Regulations for Small Wireless Facilities (5G Implementation).** Tokos reviewed the draft rules and explained that it made sense to break this up into different pieces so the Commission had a chance to look closer at each piece. The first part would be the ordinance piece that put into place a permitting and review process for 5G deployment. The second part would be the design guidelines. The third part would be a fresh look at land use regulations that applied to macro facilities, other than small wireless deployments.

Tokos reported that there were no small wireless 5G deployments in the City of Newport yet. Central Lincoln Public Utility District (CLPUD) owned most of the poles in the right-of-way (ROW) and they had not been

approach either. They were thinking about the implementation and put together a packet of construction standards that were shared with the Commission in the packets. Tokos explained that NMC Chapter 9.25 fell into the ROW provisions and franchise agreements. They tried to model it on the League of Oregon Cities (LOC) model code.

Tokos reviewed the Chapter 9.25 draft. Branigan asked how they determined 50 feet when it came to the definition of small wireless facilities. Tokos explained this was the threshold the FCC established. This would pick up most of the utility poles. If they wanted to put them on towers it would be different and would be a part of the macro and land pieces. Berman asked if this was limited to small wireless facilities as designed. Tokos confirmed it was because it was all they were obligated to allow within the ROW. Berman asked what Chapter 9.25.045(B) was referencing and asked if there was a definition missing to say what was regulated by the Chapter. Tokos would clarify this. Berman requested that they clarify what would get 90 days and 150 days. Tokos thought there could be some things that could be removed. Berman suggested that numbers 2 and 4 could be removed. Patrick noted that the CLPUD standards said that in some cases they would have to go over 50 feet to meet their requirements. He questioned if they would have to do a conditional use for this. Berman noted that there were discussions on poles owned by the city but no discussion on poles not owned by the city. He asked if the design standards only applied to city poles or if they applied to CLPUD poles as well. Tokos explained that they applied to both. City poles were now being leased and there were additional provisions because they were putting these on city poles, not CLPUD poles. This included making sure what they were doing didn't compromise the structural integrity of the pole. Tokos explained that these were things they wouldn't look at if it was a CLPUD pole. Berman asked if CLPUD was able to come up with their own standards. Tokos reported they could. The city needed to make sure they were in sync with CLPUD and would be continuing the discussion with them.

Patrick asked if the 50 feet was measured from the top of the ground, not the top of a building. Tokos confirmed this was correct.

Gary East joined the meeting at 6:25pm.

Branigan asked where the small wireless that would be going on the sides of buildings by private owners would fit in. Tokos thought this would be picked up in the land use regulations.

Tokos reviewed the permit requirements for putting wireless on poles. Patrick asked if this included ones on buildings. Tokos explained the code was not set up to extend outside of the ROW. Unless the building was in a ROW, they would not. Tokos reviewed the routine maintenance and replacement exemption. He noted this would allow the City to have a record on file if someone later felt they were having health issues related to the deployment of small wireless. It would show what the provider indicated they were complying with. Berman asked if there was any documentation on what the actual output was compared to the designed output. Tokos wasn't sure how that was measured. They could look into what exactly would be involved in this, but he didn't think it would be the city who would handle it. The FCC would be over it because it was a compliance issue. Berman asked if someone would complain to the FCC not the city. Tokos confirmed this was correct and FCC made it clear the city was not allowed to regulate for RF emissions, that was their purview. Patrick didn't see where anything was included for decommissioning. Tokos explained this would fall under the franchise agreements that took care of abandonment and decommissioning.

Tokos reported that the model code was substantially similar to the routine maintenance exemption. He pulled it out because it was a little too discretionary to determine what constituted what was "substantially similar in size." Berman thought it was silly to open things up to an agreement. He felt wireless that was the same or smaller in size, weight and height was better. Berman questioned if size should be changed to volume. Hanselman noted volume and cubic feet had been previously used in the code, and he thought it was appropriate to use volume. Berman thought it should say "in the same position on the pole" so they didn't replace something that was lower on the pole with something that would be placed on top of the pole. Escobar noted the model code said it would be at the same height. Patrick thought it should say it should be the same size volume. Berman thought it should say same or smaller in volume, weight and installed height. Sutton noted there were two heights referenced, one was the unit height and the other was the location height. Tokos clarified that the unit height was the height on the pole. He noted that what he was hearing was to go with volume based, and

whatever they were replacing it with didn't have to be exactly the same dimensions, as long as it was the same uniform dimensions for volume, weight and location on the pole.

Tokos reviewed the approval criteria next and explained that the Commission had to approve these unless they had a good reason not to. They needed to have criteria so they could apply the city code and had a way to approve applications. Tokos reported they had to accept batch applications. Berman asked if they could specify a max number on locations. Tokos would look into this. He thought the model code might have some language for this. Tokos explained that the FCC small cell order allowed applicants to submit applications in batches without numerical limits. They considered batch applications based on common design elements as well as other measures to promote efficiency. Tokos didn't know how problematic this would be. If they evaluated it and it worked on a particular pole, such as a decorative pole, how it operated on one decorative pole would probably be pretty consistent throughout.

Tokos reviewed the decorative poles and historic districts next. Patrick noted it said they would require them to collocate whenever possible, but the CLPUD standards said only one antenna per pole. Tokos didn't see this being an issue on the huge poles on Marine Science Drive and was different from decorative poles. Tokos reported CLPUD owned decorative poles in Nye Beach. The city owned most of the ones on the Bayfront, Marine Science Drive, and SE 40th Street by the Community College. Berman asked if CLPUD could limit these on their poles. Tokos wasn't sure if they could but he would talk to them about it.

Hanselman asked if the city would offer more than one franchise. Tokos reported they would and the city had already been approached by three companies for franchises but they hadn't been executed. Hanselman thought this would suggest the possibility of multiple antennas and transmitters on the same poles. Tokos wasn't sure CLPUD could get away with collocation under the FCC provisions. Patrick thought CLPUD had standards on how many risers could be on poles. Tokos thought this was why they would have to go with the FCC provisions because there would have to be a technical or engineering reason why they wouldn't allow more than one on a pole. He thought this would make it difficult in some cases to make the argument.

Tokos asked if the Commission thought that "similar appearances" should be clarified in the design guidelines. Patrick thought all they could ask was if it was a black pole it should be black, and if it was a silver pole it should be silver. Tokos would look at the design guidelines to see if there was a way to clarify this for the decorative poles. Berman noted this only referred new poles and asked if they expected a lot of new poles to go in. Tokos noted they seemed to have many poles but it depended on how much of this was deployed. Berman asked if new poles would be the city's or CLPUD poles. Patrick noted there was an option in the CLPUD standards to replace a pole and make it taller. He didn't know how they would be able to do this on the Bayfront poles to make them look the same when the lights were short and they wanted to go up to 50 feet. Tokos thought they could install a new CLPUD pole under their agreement and noted they had options.

Berman pointed out that the document said new poles were required to support the collation of small wireless. He asked if new poles were required to support the code. Tokos explained that a new pole would be required if they wanted to collocate on an existing pole and it couldn't support it.

Branigan noted in Europe they developed software for providers to share networks and asked if it was possible for the city to require providers to use a shared network. Tokos didn't think this was possible under the current FCC framework. He noted that if someone wanted to piggyback off of someone else's bandwidth this didn't evoke any codes. Tokos would look at an "other than small wireless" piece.

Tokos reviewed the permit review procedures next. He thought a 30 day review timeline was enough time to the review. Tokos noted he would talking to the City Attorney about whether or not they needed the authority granted section in the code.

Tokos reviewed permit duration next. Berman asked why they were getting specific about commercial power communications and thought it should just be "caused by events outside the reasonable control of the wireless provider" to leave it open. Tokos explained he used the model code. Berman thought a blanket statement of "outside the control" should be used. Hanselman asked if they ever ran onto trouble when they used the

suggestion of "reasonable" opportunity, time or control. Tokos explained this was starting to get into legal terms and thought they might want to hold off on using the language.

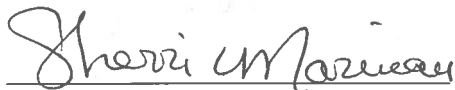
Tokos reviewed the collocation and City owned poles. Berman suggested changing "person" to something like "company." Tokos noted collocation would have an additional charge on it and there were limits on the maximum charge on these by device for the aggregate annual rate. There wasn't any thought given yet on what the appropriate fee would be yet. Tokos would be looking into what most jurisdictions were charging for these fees. The city should probably stay within the State parameters otherwise the burden would be higher to justify what the number was. Berman asked if the collocation fee would only apply to city poles. Tokos confirmed this was correct. Berman asked what would apply if someone deployed a network on CLPUD poles. Tokos explained they would pay a franchise for a right to be in the city's ROW just like CLPUD did, but they wouldn't pay for a collocate. Patrick asked what happened if they put collocations on a school pole. Tokos explained this would be outside of the ROW and they would need a land use decision.

Tokos noted he would refine the draft and show it to the Commission at round two. He asked if the Commission thought this was reasonable. Hanselman was good with what they discussed at the meeting. Braulio asked if the devices affixed to a building would be small wireless cells. Tokos explained they could be and it would be picked up in the land use regulations, not the ROW. Escobar asked if this would cover the areas where utilities were provided underground rather than on the pole. Tokos explained there would be decorative lighting poles in areas where there were underground utilities, and they would still have to have street lighting. If these weren't suitable they would be on a building or other structure.

C. **DLCD Regional Housing Needs Analysis Report and Outreach.** Tokos reported that the documents provided to the Commission were informational. He noted that this was being done for Lincoln County. Tokos encouraged the Commission to take a look at the materials. The next Housing and Buildable Lands update would happen in possibly two years. The State would look at this in terms of housing strategies and informed needs.

4. **Adjourn.** The meeting adjourned at 7:12 p.m.

Respectfully submitted,



Sherri Marineau,
Executive Assistant