

**CITY OF NEWPORT**

**ORDINANCE NO. 2180**

**AN ORDINANCE AMENDING CHAPTERS 10.10, 10.15 OF THE NEWPORT MUNICIPAL CODE AMENDING SIGNAGE ALLOWANCES AND CHAPTERS 14.01, 14.03, AND 14.10 RELATED TO DEVELOPMENT STANDARDS FOR COMMUNICATION FACILITIES OUTSIDE OF RIGHTS-OF-WAY**

(NEWPORT FILE NO. 5-Z-20)

**Findings:**

1. In February of 2020 the Newport City Council received testimony from individuals interested in seeing the City update its regulations related to wireless facilities. The City Council was aware that the League of Oregon Cities (“LOC”) was developing a model ordinance for the deployment of 5G small wireless facilities and there was general agreement that the City should evaluate its wireless regulations once the model ordinance was released.
2. LOC released a Small Wireless Facilities Model Ordinance and Design Guidelines in June of 2020, followed by a Frequently Asked Questions (FAQ) brochure on Small Wireless Facilities in August of 2020.
3. The Newport Planning Commission and Commission Advisory Committee held a work session on August 10, 2020 to consider the LOC Model Ordinance and recent Federal Communication Commission rulings and elected to prepare updates to the Newport Municipal Code in two parts, with the first component being focused on establishing a permitting process for small wireless facilities in public rights-of-way, and the second being amendments to land use regulations that apply to wireless infrastructure outside of rights-of-way.
4. Following a favorable Planning Commission recommendation, the City Council addressed the first part with the approval of Ordinance No. 2176 regulating the deployment of small wireless facilities within rights of-way, along with a corresponding set of design guidelines adopted with Resolution No. 3909. This left the second part to be addressed, that being a package of amendments to the City’s land use regulations that apply to wireless facilities outside of the right-of-way, the subject of this ordinance.
5. The Planning Commission and Commission Advisory Committee, on November 23, 2020, met in a work session to review Newport’s existing regulations, locations of key wireless facilities inside the City, Federal Communications Commission (FCC) limitations, and regulatory approaches taken by other cities, and provided staff with feedback on changes they wanted to see worked into a draft set of amendments.

6. A draft package of amendments was presented to the Planning Commission and Commission Advisory Committee at a January 25, 2021 work session where the group reviewed the changes to confirm they adequately addressed the issues identified in November. Being satisfied that the amendments accurately reflected desired outcomes, the Planning Commission formally initiated the legislative amendment process.

7. The City of Newport regulates wireless infrastructure as “communication facilities,” permitted in C-1, C-3, I-1, I-2, I-3 and P-1 zone districts. They are not permitted in residential, tourist-commercial, or water-related/water-dependent zones. Height limitations for wireless communication towers are 100-feet in P-1, C-1, and C-3 zones and 150-feet in industrial zones. Height buffers, tied to structural setbacks, limit the permissible height of towers that are proximate to residential areas. The City’s airport restricted area overlay also limits the height of towers or other structures within the approach surfaces of the Newport Municipal Airport for safety purposes. This ordinance retains these provisions for communication facilities other than small wireless, and adds development standards for the siting of new communication facilities.

8. This ordinance further creates a definition for small wireless facilities, and will allow such facilities in all commercial and industrial zones, subject to compliance with design standards that apply to similar deployments within rights-of-way. Small wireless facilities would be subject to conditional use review in the City’s water-related zone district, which includes portions of the Bayfront, and they would be prohibited in water-dependent zones.

9. Specific changes made by this ordinance are summarized as follows:

a. NMC Chapters 10.10 and 10.15, are amended to prohibit the placement of signage on standalone antennas, cell towers, electrical transmission towers, utility poles and related structures. An exception is made for warning and safety signage, provided such signs do not exceed three square feet in surface area.

b. NMC Chapter 14.01, a definition is added for small wireless facilities, which is consistent with the definition contained in Ordinance No. 2176.

c. NMC Chapter 14.03, language is added to the “communication facilities” land use category classifying small wireless facilities as “basic utilities” subject to compliance with City Council adopted design standards. The commercial and industrial land use table in this same chapter is amended to reflect this change, and to include a new requirement that communication facilities located on historic structures be reviewed and approved through a conditional use permitting process.

d. NMC Chapter 14.10, includes new cross-references to clarify that height limits are subject to the residential height buffer and airport zone limitations. This chapter has also been amended to include new standards for freestanding communication facilities (namely towers) requiring documentation that collocation on existing structures within

2,000 feet has been considered and is technologically unfeasible before a new tower can be built. Additionally, any new tower will have to include engineering analysis showing that it is capable of accommodating collocation of at least two additional providers. Applications for new communication facilities will need to include a copy of the applicant's FCC license and/or construction permit, including documentation showing that applicant is complying with FCC radio-frequency (RF) emissions safety standards. Lastly, this chapter includes security fencing requirements for structures that exceed a zone districts building height limits (typically 35-ft or 50-ft), and the requirement that communication facilities on historic buildings or sites is subject to conditional use review

10. A public hearing before the Planning Commission was held on March 22, 2021 to consider the proposed amendments and, after considering evidence and argument in the record, the Commission recommended the City Council adopt the changes.

11. The City Council held a public hearing on April 5, 2021 regarding the question of the proposed amendments and, after considering evidence and argument in the record, voted in favor of their adoption with the change requested by the Commission, concluding that the amendments are necessary and further the general welfare of the community.

12. Information in the record, such as affidavits of mailing and publication, demonstrate that appropriate public notification was provided for both the Planning Commission and City Council hearings.

**THE CITY OF NEWPORT ORDAINS AS FOLLOWS:**

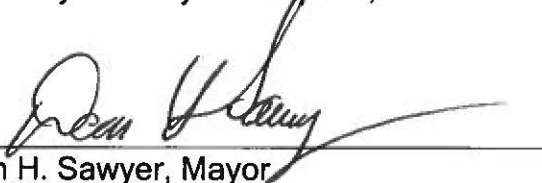
**Section 1.** The above findings are hereby adopted in support of the amendments below.

**Section 2.** Chapters 10.10, 10.15, 14.01, 14.03, and 14.10 of the Newport Municipal Code are hereby amended as set forth in the attached Exhibit "A."

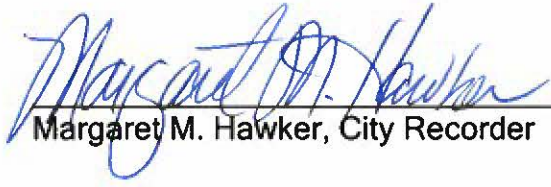
**Section 3.** This ordinance shall take effect 30 days after its adoption.

Date adopted and read by title only: April 5, 2021

Signed by the Mayor on April 8, 2021.

  
\_\_\_\_\_  
Dean H. Sawyer, Mayor

ATTEST:

  
Margaret M. Hawker, City Recorder

(New language is shown with a double underline, and text to be removed is depicted with ~~strikethrough~~. Staff comments, in italics, are provided for context and are not a part of the proposed amendments.)

## CHAPTER 10.10 SIGNS

\*\*\*

### 10.10.045 Prohibited Signs

No sign shall be constructed, erected, or maintained:

\*\*\*

L. That are attached to standalone antennas, cell towers, electrical transmission towers, telephone or electric line poles and other public utility types of structures or structural parts, where allowed by this Ordinance, except for warning and safety signage as provided in Section 10.10.060.

### 10.10.060 Partially Exempt Signs

A. The following signs are exempt from the permit requirement and, except as expressly provided to the contrary, do not count towards maximum display area:

\*\*\*

8. Warning and safety signage attached to standalone antennas, cell towers, electrical transmission towers, telephone or electric line poles and other public utility types of structures or structural parts with a surface area of no more than three square feet.

## CHAPTER 10.15 AGATE BEACH SIGN REGULATIONS

### 10.15.020 Exempt Signs

The following signs and devices shall not be subject to the provisions of this chapter.

\*\*\*

I. Warning and safety signage attached to standalone antennas, cell towers, electrical transmission towers, telephone or electric line poles and other public utility types

of structures or structural parts with a surface area of no more than three square feet.

*Staff: The changes above are intended to prohibit signage on communication facilities unless it is needed for safety purposes. The Planning Commission expressed an interest in seeing such language at its 11/23/20 work session. Section 10.10 applies to all areas in the city limits except for the Agate Beach Neighborhood, which is addressed under Section 10.15.*

## TITLE XIV - ZONING

\*\*\*

### 14.01.020 Definitions

As used in this ordinance, the masculine includes the feminine and neuter, and the singular includes the plural. The following words and phrases, unless the context otherwise requires, shall mean:

\*\*\*

Small wireless facility means a facility that meets each of the following conditions per 47 C.F.R § 1.6002(l), as may be amended or superseded:

- A. The facilities (i) are mounted on structures 50 feet or less in height as measured from adjacent finished ground elevation, 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 above the finished ground elevation or by more than 10 percent, whichever is greater; and
- B. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume; and
- C. 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

D. 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).

*Staff: Definition has been added to the zoning code so that it can be distinguished from other communication facilities.*

\*\*\*

#### 14.03.060 Commercial and Industrial Districts.

The uses allowed within each commercial and industrial zoning district are classified into use categories on the basis of common functional, product, or physical characteristics.

\*\*\*

#### E. Institutional and Civic Use Categories

\*\*\*

##### 1. Basic Utilities and Roads

- a. Characteristics. Basic utilities and Roads are infrastructure services which need to be located in or near the area where the service is provided. Basic Utility and Road uses generally do not have regular employees at the site. Services may be public or privately provided.
- b. Examples. Examples include water and sewer pump stations; sewage disposal and conveyance systems; electrical substations; water towers and reservoirs; water quality and flow control devices. Water conveyance systems; stormwater facilities and conveyance systems; telephone exchanges; suspended cable transportation systems; bus stops or turnarounds; local, collector and arterial roadways; and highway maintenance.
- c. Exceptions.
  - i. Services where people are generally present, other than bus stops or turnarounds, are classified as Community Services or Offices.

- ii. Utility offices where employees or customers are generally present are classified as Offices.
- iii. Bus barns are classified as Warehouse and freight movement.
- iv. Public or private passageways, including easements for the express purpose of transmitting or transporting electricity, gas, oil, water, sewage, communication signals, or other similar services on a regional level are classified as Utility Corridors.

\*\*\*

## 8. Communication Facilities

- a. Characteristics. Includes facilities designed to provide signals or messages through the use of electronic and telephone devices. Includes all equipment, machinery, structures (e.g. towers) or supporting elements necessary to produce signals.
- b. Examples. Examples include broadcast towers, communication/cell towers, and point to point microwave towers.
- c. Exceptions.
  - i. Receive only antennae are not included in this category.
  - ii. Radio and television studios are classified in the Office category.
  - iii. Radio Frequency Transmission Facilities that are public safety facilities and small wireless facilities are classified as Basic Utilities. Small wireless facilities shall be subject to design standards as adopted by resolution of the City Council.

*Staff: This change will classify small wireless facilities as "Basic Utilities" making them a use that is permitted in the C-2 zone. This will also make them permissible, subject to conditional use review, in the W-2 zone. All other communication facilities will continue to be prohibited in C-2*



*and W-2 zoned areas. At its 11/23/20 work session, the Commission expressed a desire to stick with existing land use parameters for communication facilities, except small wireless, which it wanted to treat similar to the new rules that apply to small wireless deployments in rights-of-way. These changes carry out that intent. Small wireless outside rights-of-way will be subject to design standards, just like deployments within rights-of-way.*

14.03.070 Commercial and Industrial Uses.

The following list sets forth the uses allowed within the commercial and industrial land use categories.

"P" = Permitted uses.

"C" = Conditional uses; allowed only after the issuance of a conditional use permit.

"X" = Not allowed.

		C-1	C-2* <sup>1</sup>	C-3	I-1	I-2	I-3
1.	Office	P	X	P	P	P	X
2.	Retails Sales and Service						
	a. Sales-oriented, general retail	P	P	P	P	P	C
	b. Sales-oriented, bulk retail	C	X	P	P	P	C
	c. Personal Services	P	C	P	P	C	X
	d. Entertainment	P	P** <sup>2</sup>	P	P	C	X
	e. Repair-oriented	P	X	P	P	P	X
3.	Major Event Entertainment	C	C	P	P	C	X
4.	Vehicle Repair	X	X	P	P	P	X
5.	Self-Service Storage	X	X	P	P	P	X
6.	Parking Facility	P	P	P	P	P	P
7.	Contractors and Industrial Service	X	X	P	P	P	P
8.	Manufacturing and Production						
	a. Light Manufacturing	X	X	C	P	P	P
	b. Heavy Manufacturing	X	X	X	X	C	P
9.	Warehouse, Freight Movement, & Distribution	X	X	P	P	P	P
10.	Wholesale Sales	X	X	P	P	P	P
11.	Waste and Recycling Related	C	C	C	C	C	C
12.	Basic Utilities and Roads <sup>3</sup>	P	P	P	P	P	P
13.	Utility, Road and Transit Corridors	C	C	C	C	C	C
14.	Community Service	P	C	P	P	C	X
15.	Daycare Facility	P	C	P	P	P	X

16.	Educational Institutions						
	a. Elementary & Secondary Schools	C	C	C	X	X	X
	b. College & Universities	P	X	P	X	X	X
	c. Trade/Vocational Schools/Other	P	X	P	P	P	P
17.	Hospitals	C	C	C	X	X	X
18.	Courts, Jails, and Detention Facilities	X	X	P	C	X	X
19.	Mining						
	a. Sand & Gravel	X	X	X	X	C	P
	b. Crushed Rock	X	X	X	X	X	P
	c. Non-Metallic Minerals	X	X	X	X	C	P
	d. All Others	X	X	X	X	X	X
20.	Communication Facilities <sup>4</sup>	P	X	P	P	P	P
21.	Residences on Floors Other than Street Grade	P	P*	P	X	X	X

*\*Uses in excess of 2,000 square feet of gross floor area are Conditional Uses within the Historic Nye Beach Design Review District. Residential Uses within the Historic Nye Beach Design Review District are subject to limitations as set forth in NMC Chapter 14.30.*

*\*\* Recreational Vehicle Parks are prohibited on C-2 zoned property within the Historic Nye Beach Design Review District.*

1. Any new or expanded outright permitted commercial use in the C-2 zone district that exceeds 2,000 square feet of gross floor area. New or expanded uses in excess of 2,000 square feet of gross floor area may be permitted in accordance with the provisions of Chapter 14.34, Conditional Uses. Residential uses within the C-2 zone are subject to special zoning standards as set forth in Section 14.30.100.

2. Recreational Vehicle Parks are prohibited on C-2 zoned property within the Historic Nye Beach Design Review District.

3. Small wireless facilities shall be subject to design standards as adopted by City Council resolution.

4. Communication facilities located on historic buildings or sites, as defined in Section 14.23, shall be subject to conditional use review for compliance with criteria outlined in Sections 14.23 and 14.34.

*Staff: Footnotes 1 and 2 reference existing code provisions and were previously identified with asterisks. Footnote 3 reinforces the requirement that small wireless facilities are subject to design standards and Footnote 4 points out that Conditional Use Review is required for communication facilities on historic sites or buildings. The Commission requested such language at its 11/23/20 work session.*

## CHAPTER 14.10 HEIGHT LIMITATIONS AND COMMUNICATION FACILITY STANDARDS

### 14.10.010 Height Limitations

A building, structure, or portion thereof hereafter erected shall not exceed the height listed in Table A for the zone indicated except as provided for in [Sections 14.10.020](#), General Exceptions to Building Height Limitations and [14.10.030](#), Special Exceptions to Building Height Limitations.

### 14.10.020 General Exceptions to Building Height Limitations

- A. The following types of structures or structural parts are not subject to the building height limitations of this Code as long as the square footage of said structure or structural part is no greater than 5% of the main building foot print as shown on the site plan, or 200 square feet, whichever is less: chimneys, cupolas, church spires, belfries, domes, transmission towers, smokestacks, flag poles, radio and television towers, elevator shafts, conveyors and mechanical equipment.
- B. No structure or structural part excepted under Subsection (A) from the building height limitations of this Code, whether freestanding or attached to another structure or structural part, may exceed the maximum allowable height by more than 25% unless approved by the Planning Commission per section 14.10.030.
- C. Standalone antennas, cell towers, electrical transmission towers, telephone or electric line poles and other public utility types of structures or structural parts, where allowed by this Ordinance, are limited in height to 50 feet in R-1, R-2, R-3, R-4, W-1, W-2, and C-2 zones; 100 feet in the P-1, C-1 and C-3 zones; 150 feet in the I-1, I-2 and I-3 zones, [except as modified by height buffer provisions of Section 14.18.010 or the airport zone height limitations of Section 14.22.030](#). A taller structure or structural part referenced under this subsection may be allowed upon the issuance of a conditional use permit per [Section 14.33](#)–[Section 14.34](#) of this Code.

*Staff: These changes add cross-references to other, existing applicable provisions to assist staff and others. The height buffer provisions limit the height of communication facilities when located close to residential*

*areas. The airport zone height limits are for safety purposes, protecting the approach zones to the Municipal Airport.*

- D. A stand-alone structure or portion of a building designed for vertical evacuation from a tsunami where the property upon which the structure or building is located is situated south of the Yaquina Bay Bridge within the "XXL" tsunami inundation area boundary, as depicted on the maps titled "Local Source (Cascadia Subduction Zone) Tsunami Inundation Map Newport North, Oregon" and "Local Source (Cascadia Subduction Zone) Tsunami Inundation Map Newport South, Oregon" produced by the Oregon Department of Geology and Mineral Industries (DOGAMI), dated February 8, 2013 (i.e. the tsunami inundation maps), provided:
1. Evacuation assembly areas shall provide at least 10 square feet of space per occupant. Vertical-evacuation assembly areas that are incorporated into a building shall be sized to accommodate the occupant load of the assembly spaces in building plus half of the occupant load of the remainder of the building; for stand-alone structures, the assembly area shall be sized to accommodate the occupant load of nearby building(s) and/or assembly area(s) to which it is associated; and
  2. Ingress/egress to the evacuation assembly area shall be signed in a manner consistent with state and/or federal guidelines for the identification of such facilities; and
  3. Plans and specifications, stamped by an architect or engineer licensed in the State of Oregon, establish that the structure is of sufficient height and has been designed to withstand an earthquake and wave forces attributable to an "XXL" tsunami event as depicted on the tsunami inundation maps; and
  4. An architect or engineer licensed in the State of Oregon is retained by the applicant or land owner to perform structural observations during the course of construction. Prior to issuance of a building permit, the observer shall submit a written statement identifying the frequency and extent of the structural observations to be performed. At the conclusion of the work and prior to issuance of a certificate of occupancy, the structural

observer shall submit a statement that the site visits were performed and that any deficiencies identified as a result of those observations were addressed to their satisfaction.

- E. Except as provided in Section 14.10.020(D), no structure or structural part excepted under this section from the building height limitations of this Code may be used for human habitation.

#### 14.10.030 Special Exceptions to Building Height Limitations

Any person seeking a special exception to the building height limitations of this Code shall do so by applying for an adjustment or variance as described in [Section 14.33](#) of this Code, and consistent with [Section 14.52](#), Procedural Requirements.\*\*

#### [14.10.040 Communication Facilities](#)

[New communication facilities shall satisfy the following standards:](#)

- A. [Building plans for freestanding communication facilities shall be accompanied by a colocation feasibility study that satisfies the following requirements.](#)
  - 1. [Documents that colocation on existing structures within a radius of at least 2,000 feet has been considered and is technologically unfeasible or unavailable. Such documentation shall identify the reasons why colocation is not an option, which may include structural support limitations, safety considerations, lack of available space, failure to meet service coverage needs, or unreasonable economic constraints. Separate documentation shall be provided for each existing communication facility located within a 2,000 foot radius of where the new freestanding facility is proposed; and](#)
  - 2. [Is supported by engineering analysis establishing that the support structure is designed to accommodate colocation of at least two additional providers either outright or through future modification to the structure.](#)

- B. Communication facilities located on historic buildings or sites, as defined in Section 14.23, shall be subject to conditional use review for compliance with criteria outlined in Sections 14.23 and 14.34.
  
- C. A copy of the applicant's FCC license and/or construction permit shall be submitted, if an FCC license and/or construction permit is required for the proposed facility, including documentation showing that the applicant is in compliance with all FCC RF emissions safety standards.
  
- D. Freestanding communication facilities that exceed the maximum building height of the zone district, as set forth in Section 14.10.10, Table A, shall be enclosed by security fencing not less than six feet in height.

*Staff: The standards above are intended to implement the targeted changes the Commission requested at its 11/23/20 work session. If adopted, applicants looking to construct freestanding communication facilities will be required to document that they explored collocation opportunities and have designed the facility to accommodate collocation by other providers. They will also be required to show that they have demonstrated to the FCC that the facility conforms to federal RF emission requirements. The conditional use permit requirement, noted in the above chart, is codified in this section. The last provision requires security fencing if the freestanding structure exceeds the typical height limits in Table A. There was some interest in dealing with abandoned poles. That is not typically addressed in land use codes, and the City's nuisance and building code authority is likely sufficient to address the issue should it come up in the future. The requirement under A(1) that separate documentation be provided establishing that collocation is not an option on each existing communication facility within a 2,000 foot radius of a new freestanding facility was added at the request of the Commission at the 3/22/21 hearing.*