

LEWISTON CITY COUNCIL

WORKSHOP AGENDA

Tuesday, November 12, 2019

City Council Chambers

6:00 pm Workshop

Pledge of Allegiance to the Flag.

WORK SESSION

1. Recycling Committee – Recycling Reform for Maine – 15 minutes
2. Update of City Tree Planting Programs – 15 minutes
3. Small Cell Ordinance – 20 minutes

EXECUTIVE SESSION

- ES1. Executive Session pursuant to MRSA Title 1, 405(6) (c) to discuss an Economic Development issue of which the premature disclosure of the information would prejudice the competitive bargaining position of the City.

LEWISTON CITY COUNCIL
WORKSHOP AGENDA
TUESDAY, November 12, 2019
6:00 PM

1. Recycling Committee – Recycling Reform for Maine – 15 minutes

The Recycling Committee has requested an opportunity to seek the support of the City Council for a Resolve, supporting recycling reform for Maine, particularly support for an extended producer responsibility (EPR) program for Packaging. During its last session, the legislature adopted LD 1431, which requires the Department of Environmental Protection to develop legislation to establish such a program and to assist municipalities in financing packaging waste disposal and recycling programs for such packaging. See attached information.

2. Update of City Tree Planting Programs – 15 minutes

Several Councilors have asked staff to review our current tree planting programs and, if possible, consolidate them all into a single policy. These programs include any actual budget for street tree replacement, a 50/50 program that is no longer funded but which split the costs of new public trees requested by a resident on a 50/50 basis, and the City's Treebate program. From time to time, the City has also provided trees at no cost to be planted on private property where such plantings cannot be supported in the public right of way. The attached policy attempts to pull all of these programs together in a single location to make them more easily accessible to the public.

3. Small Cell Ordinance – 20 minutes

Cellular providers are in the process of installing what are known as "small cell" facilities to either fill in areas of coverage gap or excess demand or, eventually, to provide 5G service. These small cells are most often installed on the top of shared use utility poles. As we move toward 5G, these facilities, which have limited range, will have to be placed within 300 to 900 feet, depending on surrounding buildings and topography. Given that the trend appears to be for each major cell provider to install its own small cells, we are looking at the potential for as many as 3-5 such installations within a relatively confined area. Such installations may also be required in historic districts and/or areas where utility infrastructure is required to be underground, raising aesthetic concerns. At the same time, the City has consistently confronted issues associated with the placement of utility poles in our right of way. While this is a right granted to utilities at no cost, it does impact city expenses since we do require that these installations be permitted. Until recently, the State limited what could be charged for a so-called pole permit to \$10, far less than our actual costs to issue the permit. Given this, and working with a template provided by Maine Municipal Association, staff has drafted an ordinance that will allow us, within some rather strict limitations imposed by the Federal Communications Commission, to exercise some regulation of pole and small cell placement. A draft ordinance is attached. In addition, we will be recommending that a new fee structure be established for both pole and small cell location permits in accordance with fee guidance provided by the FCC.

4. Executive Session – Economic Development



Fall 2019

To Maine's Municipal Officials,

Thank you for operating a recycling program in your town. Maine people overwhelmingly want access to recycling. We recognize the cost burden of managing municipal solid waste through your annual budget, and we know that market changes for recycled commodities are currently upending many of Maine's recycling programs. That is why we are asking you to join a new statewide effort to reform recycling in Maine by shifting the cost burden away from taxpayers.

At the request of the Legislature, the Maine Department of Environmental Protection will submit legislation by December 16, 2019, that would help solve this problem by establishing equitable, non-taxpayer-funded municipal recycling programs for packaging waste. This type of "extended producer responsibility" law has the power to:

- **Save Maine municipalities between \$16 and \$17.5 million each year.** Cities and towns would be reimbursed for any recycling costs by the corporations and brand owners that produce packaging into our state, like is done all over the world. Towns would still have control over their recycling programs; and could keep any revenues generated.
- **Protect our recycling programs and make them more resilient to market changes.** Right now, many municipalities are being forced to stop, cut back, or pay more for their recycling programs because of the expense. The key to making our recycling programs more sustainable is to change who pays for them.

How you can help: One simple way that your municipality can show support for [Recycling Reform for Maine](#) is by adopting the attached resolution language. Please send to sarah@nrcm.org by December 31, 2019. We will compile the documents and present them to the Legislature's Joint Standing Committee on Environment and Natural Resources, who will consider this policy in the winter and spring of 2020.

You can visit www.recyclingreform.org to find more information on this very important policy initiative; including a list of towns that have already supported the resolution. Please feel free to contact me with any questions.

Sincerely,

Sarah K. Nichols, NRCM Sustainable Maine Director
(207) 430-0170 or sarah@nrcm.org



RECYCLING REFORM FOR MAINE

More Effective • More Sustainable • More Equitable

Whereas, Maine's communities are struggling to maintain, expand, and in some cases are eliminating, recycling programs due to rising costs and difficult-to-manage materials; and

Whereas, product packaging, which includes plastic, metal, glass, and cardboard, constitutes approximately 30-40% of the materials managed by weight in Maine's municipal waste management programs; and

Whereas, Maine taxpayers currently unfairly bear 100% of the cost and pay an estimated \$16 million to \$17 million each year to finance the management of this material through fragmented and increasingly expensive disposal or recycling options; and

Whereas, producers of product packaging have little incentive to minimize wasteful packaging or increase access to recycling; and there is no organized coordination between the producers of packaging and municipalities that are responsible for disposing of or recycling the packaging materials; and

Whereas, producers of product packaging have taken some or all responsibility for the management of post-consumer packaging in other parts of the world, including all European Union member states and five provinces in Canada, and, as a result, have greatly increased recycling rates, expanded infrastructure investment, created jobs, and reduced taxpayer costs;

Now, Therefore Be It Resolved,

We, Maine's municipalities, support an Extended Producer Responsibility (EPR) for Packaging law as endorsed by the Legislature in 2019 through the passage of the Resolve, To Support Municipal Recycling Programs (LD 1431). We believe that this policy will work to make recycling in Maine:

More effective: Producers of packaging materials would have a direct economic incentive to produce less-wasteful packaging that can easily and profitably be managed by municipal recycling programs. Having shared responsibility between those who create the waste and those who manage the waste would foster recycling system improvements and enable greater participation in recycling across Maine;

More sustainable: An EPR law for packaging is an insurance policy for Maine municipalities when global recycling markets are unfavorable. The current approach to recycling is not resilient to fluctuations in the global recycling market. When commodity prices fall unexpectedly, towns and cities may be forced stop or restrict their programs; and

More equitable: Maine's cities, towns, and taxpayers are currently footing the bill for a problem they didn't create. With recycling reform, taxpayers will no longer pay for the cost of recycling since the net costs of recycling would be reimbursed—and the packaging manufacturers that produce less-wasteful, more recyclable packaging would pay less than those who do not. This is a much more equitable way to distribute costs.

PLEASE NOTE: Legislative Information *cannot* perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Resolve, To Support Municipal Recycling Programs

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, many of Maine's communities are struggling to maintain or improve, or in some cases are eliminating, recycling programs, and the State has not yet achieved the 50% state recycling goal established in state law in 1989; and

Whereas, packaging, which includes plastic, steel, aluminum, glass and cardboard, constitutes approximately 30 to 40% of the materials managed by weight in waste management programs in the State; and

Whereas, Maine taxpayers currently bear 100% of the responsibility and pay an estimated \$16 million to \$17 million each year to finance the management of packaging through fragmented and increasingly expensive municipal disposal or recycling options; and

Whereas, producers of packaging have little incentive to design packaging to minimize waste, reduce toxicity or maximize recyclability, and there is no organized coordination between the producers of packaging and municipalities that are responsible for disposing of or recycling the packaging; and

Whereas, producers of packaging have taken some or all responsibility for the management of post-consumer packaging in other parts of the world, including in all European Union member states and 5 provinces in Canada, with some programs dating back 30 years, and as a result have greatly increased recycling rates and infrastructure investment, created jobs and reduced taxpayer costs; and

Whereas, development of a stewardship program for packaging must be initiated before the 90-day period expires in order for an extended producer responsibility law for packaging to be developed and submitted in time to be considered in the next legislative session; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Sec. 1 Development of product stewardship law for packaging. Resolved: That the Department of Environmental Protection shall develop legislation establishing an extended producer responsibility law for packaging in the State. The proposed legislation must, to the greatest extent practicable, adhere to the product stewardship framework law established in the Maine Revised Statutes, Title 38, chapter 18 and must:

1. Include a definition of "packaging" that covers, at a minimum, materials used to wrap or protect consumer goods, including food and personal care products, and containers and packaging used in the shipping, storage, protection and marketing of consumer products;

2. Include a definition of "producer" that clearly identifies the person ultimately financially responsible;

3. Include exemptions for small producers and for product packaging that is already covered under Maine's beverage container redemption law;
4. Allow producers to voluntarily participate in the program if not required by the law;
5. Provide for the establishment of a nonprofit stewardship organization of producers of packaging to support the State's municipal solid waste management programs. The agreement establishing the stewardship organization must require producers to:
 - A. Cover at least 80% of the cost of recycling packaging material sold in the State that is required to be recycled;
 - B. Provide per capita reimbursement payments to municipalities for nonrecyclable packaging to help municipalities cover the cost of packaging needing disposal; and
 - C. Invest in waste reduction and recycling education and infrastructure;
6. Require that the stewardship organization establish an equitable funding scheme among covered producers that encourages better packaging design in which:
 - A. Producers pay higher fees for packaging materials sold into the market that are not readily recyclable, are made of multiple materials or are toxic, in order to discourage the creation of materials needing disposal; and
 - B. Producers pay lower fees for packaging materials sold into the market that are of higher value reusable components and that contain higher percentages of recycled content to ensure that the stewardship program supports a strong recycling economy;
7. Describe the preferred methods to be used for regular data collection and reporting and recycling rate and contamination calculations in order that:
 - A. There is transparency and accountability in assessing the success of the program;
 - B. The costs of collecting and reporting data are paid for by the stewardship organization; and
 - C. There is consistency with internationally accepted standards and there is sufficient information to evaluate the effectiveness of the program;
8. Create incentives for municipalities and producers to reach predetermined performance goals based on reporting and data collection as described in subsection 7; and
9. Establish a method by which producers can protect themselves against producers that fail to register with a program. These methods may include private right of action, requirements that online retailers of packaging be responsible for paying into a fund in support of the program if the products they sell are from producers who are not part of the stewardship program or other strategies that ensure fairness and full compliance.

Sec. 2 Proposed legislation. Resolved: That the Department of Environmental Protection shall submit proposed legislation pursuant to section 1 to the Joint Standing Committee on Environment and Natural Resources no later than December 16, 2019. The joint standing committee is authorized to report out a bill relating to the proposal to the Second Regular Session of the 129th Legislature.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

SUMMARY

This resolve requires the Department of Environmental Protection to develop proposed legislation to establish a new product stewardship program requiring producers of packaging to assist Maine municipalities in managing and financing packaging waste disposal and recycling programs in the State. The proposed legislation is required also to incentivize producers of packaging to design packaging to be recycled or made of recycled content to strengthen the recycling markets. The resolve requires the department to submit the proposed legislation to the Joint Standing Committee on Environment and Natural Resources no later than December 16, 2019.

Tree Planting Policy

City of Lewiston

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1.0 Purpose

Trees enhance the urban, suburban and rural environment of Lewiston by reducing stormwater runoff and absorbing rainfall, reducing soil erosion, exchanging gases, and conserving energy. These are especially true when trees are strategically placed along streets and around buildings. The purpose of this policy is to provide for healthy streetscapes and provide incentives to the owner-occupants of single family and multi-family properties to plant additional trees on their properties.

2.0 Policy Statement

It is the City's policy to encourage planting trees on public and private property when it is to the benefit of the resident and the City. This policy covers three areas:

- 1) Replacing street trees within the right-of-way that have become diseased, damaged, or otherwise create a hazard to public health or property. The addition of trees within the right-of-way is intended to provide a more consistent streetscape and enhancement of public property. Replacement may be with another species having a more suitable habit (growth pattern) for the specific location.
- 2) Trees placed outside the right-of-way or off City property where the City has a stated plan and interest in developing or improving a streetscape.
- 3) A program encouraging property owners to plant trees within the public view on owner occupied single family and multi-family properties.

3.0 Trees Planted on Public Property by the City

3.1 Applicability

Like all living things, trees have a limited lifespan and can become diseased or damaged by storms and human activities, necessitating their removal. Trees may also affect the operation of street infrastructure and utilities. When trees are removed or missing from the streetscape, trees will be replaced if there is sufficient budget and there are no technical or safety reasons not to replace the trees.

3.2 Procedure

Whenever a tree is planted or removed from the City right-of-way, the City Arborist will evaluate the location for the suitable replacement trees or to add additional trees. He/she will consider the location, safety, potential space conflicts, other area trees, and the potential for disease and make a determination of whether a tree should be planted and what species is appropriate for the setting.

Tree Planting Policy

City of Lewiston

3.3 Assessment and Budget

Annually, the City Arborist will assess the City's tree health and condition using his/her experience from the preceding years, evaluate trends, and make a recommendation for a tree replacement budget to the Public Works Director. The Public Works Director will carry a recommendation to the City Administrator and Council for consideration.

4.0 Trees Planted on Private Property by the City

4.1 Applicability

At times, the right-of-way layout/geometry, utility locations, American with Disability Act requirements, or other features will not accommodate trees in the public right-of-way. In cases where the City has determined there is a public interest to enhance the streetscape with trees, it will seek permission for planting on private property. This determination will typically be in the form of a specific budgeted project that may be an add-on to a City paving or road reconstruction project, sidewalk project, neighborhood enhancement project or a standalone treescape project.

4.2 Rights for Planting and Maintenance

As the project is developed, the Project Engineer and/or the City Arborist will contact the applicable owners to get an initial indication of their willingness to allow the City to plant and maintain a tree(s) on their property for the duration of its life and grant the City an easement to do so.

Once the project is funded and the owner has indicated a willingness to allow the City to plant and maintain a tree or trees on their property, then the City will draft and execute an easement for the life of the tree(s). If the tree(s) must be replaced in the future, it will be by mutual agreement between the City and the then current property owner. For City planted trees, the owner has no obligation to maintain the tree other than to take care not to willfully damage the tree(s). The City will be responsible for any pruning and eventual tree removal, but not leaf raking.

5.0 Tree Planted on Private Property by the Owner (Treebate)

5.1 Eligibility

The treebate program is available to property owners who occupy either a single family or multi-family property on which they receive a homestead exemption.

Tree Planting Policy

City of Lewiston

5.2 Amount of Treebate

The City will credit the property owner's stormwater fee for 50% of the invoiced cost of purchasing and or planting a qualifying tree up to a maximum of \$100. Applicants are eligible for no more than one tree per year.

5.3 Qualifying Trees

To qualify, trees must be deciduous, non-invasive, and have a caliper measurement of at least 1.5 inches. (Caliper is a measure of the diameter of the trunk 6 inches above the soil surface.) A list of pre-qualifying tree species can be found in Attachment A. Other trees can potentially qualify upon written approval from the City Arborist prior to purchase and planting.

5.4 Application

In order to qualify for a guaranteed Treebate, residents must complete the application form found in Attachment B in advance of purchasing the tree to ensure city participation. Notice of approval by the City Arborist will constitute an assurance to the applicant that funds are available for the purchase and or planting.

A tree that does not meet the requirements of the program will not be eligible for reimbursement.

5.4 Planting Location Requirements

In general, trees must be planted in a location where they are visible from the public right-of-way and within 100 feet of the primary residential structure. Trees must be planted at least:

- (a) forty (40) feet from all intersections and traffic signs/signals
- (b) ten (10) feet from abutting properties or structures.
- (c) thirty (30) feet from existing trees.
- (d) ten (10) feet from utility poles, hydrants, and driveways.

Consideration must be given to avoid future tree/utility conflicts, both overhead and underground. Note that private underground utilities (such as water and sewer service lines and electrical feeds) and underground irrigation systems are the responsibility of the property owner. The City Arborist will assist upon request.

Tree Planting Policy

City of Lewiston

Sufficient care must be taken to protect the tree from potential damage by vehicles, equipment, and the public.

5.5 Fruit Trees.

Fruit trees must be planted outside the City right-of-way such that all falling fruit stays on the privately owned property.

5.6 Procedure for Claiming Treebate

Once a tree has been purchased and planted, the resident must provide the City with a copy of the invoice or other acceptable proof of payment specifying the species of tree purchased and trunk caliper along with a picture of the planted tree. Treebate claims should be submitted to: City Arborist, City of Lewiston, Department of Public Works, 103 Adams Ave., Lewiston, ME 04240, Phone: (207) 513-3003.

After review, the applicant will be notified whether or not they have qualified for a Treebate.

5.7 Planting and Care Guide

The City Arborist, at the contact information above, may assist with the helping a property owner choose a location and with proper planting and care guidelines.

Tree Planting Policy

City of Lewiston

APPENDIX A

RECOMMENDED TREES

BOTANICAL NAME: *Acer rubrum*

COMMON NAME: Red Maple

Zone 3, 40-60' in height, spread less than or equal to height. Very tolerant of soils, however, prefers slightly acid, moist conditions.

Cultivars: 'Armstrong' - Narrow Spirelike Crown; 'Autumn Blaze;' 'Red Sunset'

BOTANICAL NAME: *Acer saccharum*

COMMON NAME: Sugar Maple

Zone 3, 60 - 75' in height. Spread is 2/3's or equal to the height. Prefers well drained moderately moist, fertile soil, a slightly acid soil seems to result in greater growth, not extremely air pollution tolerant.

Needs ample, unrestricted space to grow.

Cultivars: 'Green mountain' - Upright oval crown, performs better than species in dry restricted growing areas.

BOTANICAL NAME: *Cladrastis lutes* COMMON

NAME: Yellowwood

Zone 3, 30 - 50' in height with a spread of 40 to 50 feet. Tolerates high pH soils as well as acid situations. Requires well drained soils. Fragrant white flowers in spring. Bright yellow foliage in spring gradually change to bright green in summer and yellow in fall.

BOTANICAL NAME: *Fraxinus americana*

COMMON NAME: White ash

Zone 3, 50 - 80' in height with a spread of similar proportions. Prefers deep, moist, well drained soils but also withstands soils which are not excessively dry and rocky.

BOTANICAL NAME: *Fraxinus pennsylvanica*

COMMON NAME: Green ash

Zone 3, 50 - 60' in height by about 1/2 that in spread. Very adaptable tolerates high pH, salt, drought, and sterile soils.

Cultivars: 'Honeyshade' - Glossy foliage; 'Marshall's Seedless' - Vigorous growth with less insect problems than the species.

BOTANICAL NAME: *Ginkgo biloba*

COMMON NAME: Ginko

Zone 4, 50 - 80' in height, variable spread 30' plus. Prefers sandy, deep, moderately moist soil but grows in almost any situation. Air pollution tolerant; a durable tree for difficult to landscape situations. Extremely free of pest.

BOTANICAL NAME: *Gleditsia triacanthos* var. *inermis*

COMMON NAME: Thornless Honeylocust

Zone 4, 40 - 60' in height, with comparable spread. Prefers rich, moist soils of a limestone origin, however, it withstands a wide range of conditions including dry soils, high pH and salt spray. Cultivars: 'Fairview' - Rapid grower; strong sturdy habit of growth; wide upright; 'Shade master' - tall straight trunk with graceful arching branches.

BOTANICAL NAME: *phellondendron amurense*

COMMON NAME: Amur Corktree

Tree Planting Policy

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Zone 3, 30 - 45' in height with equal spread. Does well on many types of soils, withstands acid or alkaline conditions.

Cultivars: 'Red spire' - Compact upright form, hardiest; 'Autumn Blaze' - Wider than Red spire

BOTANICAL NAME: *Pyrus calleryana* 'bradford' COMMON

NAME: Bradford Callery Pear

Zone 4, 30 - 50' in height with a 20 - 35' spread. Adaptable to many different soils, tolerates dryness and pollution. White flowers in spring, glossy green foliage, turns scarlet in fall.

BOTANICAL NAME: *Quercus palustris* COMMON

NAME: Pin Oak

Zone 4, 60-70' in height with a crown spread of 30-40'. Strong pyramid shape, tolerant of poor soils. Very common street tree.

BOTANICAL NAME: *Sophora japonica*

COMMON NAME: Japanese Pagoda tree

Zone 4, 50 - 75' in height with comparable spread. Prefers loamy well-drained soil. White mildly fragrant blossoms in spring.

Cultivars: 'Fastigrata' - Upright growth habit; 'Regent' - Fast growth rate.

BOTANICAL NAME: *Syringa reticulata* x Ivory Silk

COMMON NAME: Japanese Tree Lilac

Zone 3, 20-30' in height, 15 -25' in crown width. PLANT SINGLE STEM ONLY. One of the most trouble free street trees, this is not a standard lilac shrub. Excellent specimen tree or in groups. Waxy green leaves with fragrant creamy white flowers in late June. Good choice for small or tight areas without much room. Does not tolerate wet soils.

BOTANICAL NAME: *Tilia cordata*

COMMON NAME: Little Leaf Linden

Zone 3, 60 - 70' in height and 1/2 to 2/3's that in spread. Prefers moist, well drained soil, pH adaptable and pollution tolerant. Dark glossy green foliage changing to yellow in fall.

BOTANICAL NAME: *Ulmus Americana* 'Princeton'

COMMON NAME: Princeton Elm

Zone 3, 60 - 80' in height and 40-50' in crown spread. American Elm cultivar, vigorous and good resistance to Dutch Elm Disease.

BOTANICAL NAME: *Ulmus Homestead*

COMMON NAME: Homestead Elm

Zone 4, 60 - 70' in height and 30-40' in crown spread. Fast growing tree, good tolerance to poor soil, heat and insects and disease.

FRUIT TREES: Must be rated for zone 4 or lower.

Tree Planting Policy City of Lewiston

APPENDIX B

TREEBATE APPLICATION FORM

Date: _____
Name: _____
Address: _____
Phone: _____
Email: _____
Species:

- | | |
|--|--|
| <input type="checkbox"/> Red Maple | <input type="checkbox"/> Sugar Maple |
| <input type="checkbox"/> Yellowwood | <input type="checkbox"/> White Ash |
| <input type="checkbox"/> Green Ash | <input type="checkbox"/> Ginko |
| <input type="checkbox"/> Thornless Honeylocust | <input type="checkbox"/> Amur Corktree |
| <input type="checkbox"/> Pin Oak | <input type="checkbox"/> Bradford Callery Pear |
| <input type="checkbox"/> Japanese Pagoda Tree | <input type="checkbox"/> Japanese Tree Lilac |
| <input type="checkbox"/> Little Leaf Linden | <input type="checkbox"/> Princeton Elm |
| <input type="checkbox"/> Homestead Elm | |

Other¹ (Please specify): _____

SUBMIT THIS FORM TO: City Arborist, City of Lewiston Department of Public Works, 103 Adams Ave., Lewiston, ME 04240. Ph: (207) 513-3003

YOU WILL BE NOTIFIED ONCE YOUR APPLICATION HAS BEEN REVIEWED. ELIGIBILITY FOR STORMWATER UTILITY CREDITS ARE GRANTED ON THE BASIS OF FUND AVAILABILITY. ONCE APPROVED AND PLANTED, PLEASE ATTACH ALL RECEIPTS (showing species, trunk caliper, and price paid) and a photo of the planted tree and submit to the City Arborist at the contact above.

¹ Specify the other variety desired; our City Arborist will review your request to determine whether it is appropriate and be back in contact with you.

Chapter 71

Above Ground Power, Fiber, and Telecommunications

Article 1

Utility Poles in the Right of Way

Section 71-10 Scope, Authority to Regulate, and Utility Poles in City Right of Way

The City of Lewiston's street rights-of-way are a critical City asset serving many purposes including, vehicular traffic, bicycle traffic, pedestrian traffic, hosting utilities and providing an aesthetic to the City. It is in the City's interest to manage these rights-of-way to balance these uses in a manner that best serves its citizens, their safety, wellbeing and prosperity. The purpose of this Article is manage above ground utility poles in a manner that achieves this balance and meets State and Federal law for utility accommodation and Americans With Disabilities Act (ADA) requirements.

This Ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, Section 1 of the Maine Constitution; the provisions of Title 30-A M.R.S.A., Section 3001 (Home Rule), the provisions of the Planning and Land Use Regulation Act, Title 30- A M.R.S.A., Section 4312 et seq. Also specific to above ground utilities Public Utilities, Regulation of Facilities in the Public Way, Title 35-A, Chapter 25.

Sec. 71—11. Definitions.

"Make-ready work" means the rearrangement or transfer of existing facilities, replacement of a pole, complete removal of any pole replaced or any other changes required to make space available for an additional attachment to a shared-use pole.

Sec. 71—12. Permitting New Poles

Permitting new poles shall be done through the City Clerk in accordance with MRSA 35-A, Chapter 12, Section 250. Applications must include:

- Name address of the applicant,
- Proposed date of installation,
- Purpose and use of the new installation,
- Co-located utilities anticipated,
- Location sketch of the new installation with field-measured distances to key features such as curbs, catch basins, underground utilities, trees, buildings and sidewalk features, where applicable,

- Minimum height of wires and other fixtures,
- Proposed guy wires or anchors including their proposed location.
- Acknowledgment that the proposed location has been marked in the field for review,
- Proposed date of installation, and
- Other site-specific pertinent and reasonable information requested by the Public Works Director.

The application shall include payment for a review fee established by policy adopted by the City Council and listed in a schedule in the City's Master Policy 81, Miscellaneous Fees and Penalties.

The City Clerk will coordinate a review with the Director of Public Works and other Departments, as appropriate, and will issue a written permit or denial within 30 days of receiving a complete application.

Sec. 71—13. Sidewalks and ADA

Poles associated with public utilities may only be placed within a sidewalk if such placement maintains a minimum 60 inches of unobstructed sidewalk width and is not inconsistent with the Federal American with Disabilities Act design features.

An applicant for a pole permit may seek a waiver from this requirement upon a showing to the Public Works Director that there exists no practicable alternative that would allow for maintaining utility services to adjacent properties. Upon such a showing, the Director may reduce the minimum width of unobstructed sidewalk to no less than 48 inches. Any guy wires or other appurtenances associated with utility poles and extending over any sidewalk must provide for a minimum 7 feet of clearance above the sidewalk.

A violation of this section shall be subject to a minimum fine as established by policy adopted by the City Council and listed in a schedule in the City's Master Policy 81, Miscellaneous Fees and Penalties. Additionally the Utility will be required to relocate any object violating these standards and repair any damage done to the sidewalk or maintained lawn.

Sec. 71—14. Replacement Poles and Unsafe Conditions

Replacement poles do not require a new permit, under most circumstances. However, to maintain the right-of way for all allowed uses, free flow of pedestrian and vehicular traffic, the replacement pole must not infringe on other uses of the right of way. Replacement poles must meet the requirements in Section 71-13 Sidewalks and ADA. If a replacement pole is proposed that will further infringes on the standards above, then the New Pole Permit will be required per Sec. 71—12. Permitting New Poles. In no case shall a new or replacement pole restrict access less than ADA design standards.

Replaced poles must be removed from the right of way and sidewalk and lawn repairs made within 180 days of placement of the replacement pole. All coordination with collocated utilities is the responsibility of the pole Owner.

If the Public Works Director detects a potentially unsafe condition related to a pole installation, guy wire or anchor the pole Owner will be notified in writing. The pole Owner shall respond to the Public Works Director within 30 days of their assessment and/or any plans to mitigate the potential safety condition.

A violation of this section shall be subject to a minimum fine as established by policy adopted by the City Council and listed in a schedule in the City's Master Policy 81, Miscellaneous Fees and Penalties

Sec. 71-15 Municipal Space on Existing or New Poles

In accordance with An Act to Establish Municipal Access to Utility Poles Located in the Municipal Rights-of-Way, MRSAs Title 35-A, Chapter 25, section 2524 and other applicable State law, space shall be made available on each pole, below the electric power company's wires and above the telephone and or cable television company's lines or cables. This space shall be reserved on all poles planted within the City Right of Way. This space shall be available to the City purposes, free of charge.

The purpose of safeguarding access to infrastructure essential to public health, safety and welfare, an Owner of a shared-use pole and each entity attaching to that pole is responsible for that Owner's or entity's own expenses for make-ready work to accommodate the City attaching its facilities to that shared-use pole.

Sec 71-16 Permit Revocations Highway and Sidewalk Projects

The City of Lewiston will notify in writing Utilities owning poles, guy wires and anchors within the City's right-of-way, who will need to relocate their facilities because of a highway or sidewalk construction project, no less than 180 days prior to commencement of construction. City Engineers will work with the Utility as the project is designed. It is the pole Owner's responsibility to coordinate with all co-located utilities. All costs for the pole, guy wire or anchor relocation shall be the responsibility of the pole Owner and collocated utilities.

If the poles are not moved within the 180 days or date agreed to in writing between the Owner and Director of Public Works, the City Clerk may revoke the pole permits for the subject poles and may assess the pole Owner a daily fine established by policy adopted by the City Council and listed in in a schedule in the City's Master Policy 81, Miscellaneous Fees and Penalties.

Article 2

Small Cell Wireless Telecommunications Facilities Siting Ordinance

Sec. 71-20. Authority and Purpose

This ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, Section 1 of the Maine Constitution; the provisions of Title 30-A M.R.S.A., Section 3001 (Home Rule), the provisions of the Planning and Land Use Regulation Act, Title 30- A M.R.S.A., Section 4312 et seq. Also Specific to Small Wireless Facilities Title 30- A M.R.S.A., Section 4362 An Act to Facilitate Deployment of Small Cell Wireless Facilities in Maine and Public Utilities, Regulation of Facilities in the Public Way Title 35-A, Chapter 25.

The purpose of this ordinance is to provide a process and a set of standards for the construction and placement of small cell wireless telecommunications facilities along municipal rights of way and on other properties within the municipality's jurisdiction in order to:

- Implement a municipal policy concerning siting of small cell wireless telecommunications facilities;
- Establish clear guidelines, standards and periods for the exercise of municipal authority to regulate small cell wireless telecommunications facilities;
- Allow competition in small cell wireless telecommunications service while minimizing redundant facilities;
- Encourage the provision of advanced telecommunications services to the largest number of businesses, institutions and residents of Lewiston;
-
- Ensure protection of the public health, safety and welfare;
- Encourage the colocation of small cell wireless telecommunications facilities ;• Further the goals and policies of the comprehensive plan, while promoting orderly development of the city with minimal impacts on existing uses;
- Protect the scenic and visual character of the community;
- Ensure aesthetic requirements are reasonable, no more burdensome than those applied to other
- Comply with the 2012 Spectrum Act and the Telecommunications Act of 1996 as each is amended.

In the event that applicable federal or state laws or regulations conflict with the requirements of this ordinance, the wireless provider shall comply with the requirements of this ordinance to the maximum extent possible without violating federal or state laws or regulations.

Sec. 71-21. Definitions

The terms used in this ordinance shall have the following meanings:

“Alternative Tower Structure” Clock towers, bell steeples, joint use utility poles, light poles, water towers, electrical transmission line towers, smokestacks, existing buildings, and similar mounting structures that may support, or camouflage or conceal the presence of an Antenna(s).

“Antenna/Antenna Array” A system of one or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals. These include, but are not limited to, omnidirectional antennas (whips or rods), directional antennas (panels) and parabolic antennas (dish or disc).

“Antenna Height” means the vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure, even if said highest point is an antenna. Measurement of tower height shall include antenna, base pad, and other appurtenances and shall be measured from the finished grade of the facility site. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

“Colocation” means the use of a wireless telecommunications facility by more than one wireless telecommunications provider or the use of a utility facility, such as a pole, by multiple public utilities including wireless telecommunications providers.

“Decorative Pole” means a municipal pole that is specially designed and placed for aesthetic purposes.

“Designated Scenic Resource” means that specific location, view, or corridor, as identified as a scenic resource in the municipality’s Comprehensive Plan or by a State or federal agency, that consists of:

1. a three dimensional area extending out from a particular viewpoint on a public way or within a public recreational area, focusing on a single object, such as a mountain, resulting in a narrow corridor, or a group of objects, such as a downtown skyline or mountain range, resulting in a panoramic view corridor; or
2. lateral terrain features such as valley sides or woodland as observed to either side of the observer, constraining the view into a narrow or particular field, as seen from a viewpoint on a public way or within a public recreational area.

“Expansion” means the addition of antennas, towers, or other devices to an existing structure or replacing existing installations with larger ones.

“FAA” means the Federal Aviation Administration, or its lawful successor.

“FCC” means the Federal Communications Commission, or its lawful successor.

“Height” means the vertical measurement from a point on the ground at the mean finish grade adjoining the foundation as calculated by averaging the highest and lowest finished grade around the building or structure, to the highest point of the building or structure. The highest point shall exclude farm building components, flagpoles, chimneys, ventilators, skylights, domes, water towers, bell towers, church spires, processing towers, tanks, bulkheads, or other building accessory features usually erected at a height greater than the main roofs of buildings.

“Historic or Archaeological Resources” means resources that are:

1. Listed individually in the National Register of Historic Places or eligible for listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs approved by the Secretary of the Interior;
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by Secretary of the Interior through the Maine Historic Preservation Commission; or
5. Areas identified by a governmental agency, such as the Maine Historic Preservation Commission, as having significant value as an historic or archaeological resource and any areas identified in the municipality’s Comprehensive Plan, which have been listed or are eligible to be listed on the National Register of Historic Places.

“Historic District” means a geographically definable area possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united by past events or aesthetically by plan or physical development and identified in the municipality’s Comprehensive Plan or designated by the municipal legislative body for revitalization or preservation. Such historic districts may also comprise individual elements separated geographically, but linked by association or history.

“Historic Landmark” means any improvement, building or structure of particular historic or architectural significance to the municipality relating to its heritage, cultural, social, economic or political history, or which exemplifies historic personages or important events in local, state or national history identified in the municipality’s Comprehensive Plan, which have been listed or are eligible to be listed on the National Register of Historic Places.

“Line of Sight” means the direct view of the object from the designated scenic resource.

“Parabolic Antenna” (also known as a satellite dish antenna) means an antenna which is bowl-shaped, designed for the reception and or transmission of radio frequency communication signals in a specific directional pattern.

“Principal Use” means the use other than one which is wholly incidental or accessory to another use on the same premises.

“Public Recreational Facility” means a regionally or locally significant facility, as defined and identified either by State statute or in the municipality’s Comprehensive Plan, designed to serve the recreational needs of municipal property owners.

“Small Cell Wireless Telecommunications Facility” means a subset of Wireless Telecommunications Facilities that includes antenna, radio, power source and meter, disconnect switch, fiber optic cable, and supporting equipment, where each antenna of which could fit within an enclosure of no more than 3 cubic feet and of which all associated wireless equipment, other than concealment elements, has a cumulative volume of no more than 28 cubic feet. (Also referred to throughout this ordinance as “small cell facility”).

“Small Cell Facility - Colocated” A Small Cell Wireless Telecommunications Facility that is installed on an Alternative Tower Structure instead of a new support structure.

“Targeted Market Coverage Area” means the area which is targeted to be served by the proposed telecommunications facility.

“Unreasonable Adverse Impact” means that the proposed project would produce an end result which is excessively out-of-character with the designated scenic resources affected, including existing buildings, structures, and features within the designated scenic resource and which would significantly diminish the scenic value of the designated scenic resource.

“Viewpoint” means that location which is identified either in the municipality’s Comprehensive Plan or by a federal or State agency and which serves as the basis for the location and determination of a particular designated scenic resource.

“Wireless Telecommunications Facility” means a facility that transmits, receives, distributes, provides or offers telecommunications services, radio or television signals, or any other spectrum-based transmissions/receptions, together with the facility’s associated antennas, microwave dishes, horns, cables, wires, conduits, ducts, lightning rods, electronics and other types of equipment for the transmission, receipt, distribution or offering of such signals; wireless communication towers, antenna support structures, and other structures supporting said equipment and any attachments to those structures including guy wires and anchors, equipment buildings, generators, parking areas, utility services, driveways and roads and other accessory features.

“Wireless Telecommunications Facility—Colocated” means a Wireless Telecommunications Facility that is installed on an Alternative Tower Structure instead of a new tower structure.

Section 71-22 Applicability and Exemptions

This ordinance applies to all construction and expansion of small cell wireless telecommunications facilities, as defined herein, unless specifically exempted. It includes any existing small cell wireless telecommunication facilities in existence at the time this ordinance goes into effect.

The following are exempt from the provisions of this ordinance:

- A. *Emergency Wireless Telecommunications Facility.* Wireless communication facilities for emergency communications by public officials or any municipal or quasi-municipal organization currently serving the municipality of Lewiston.

B. *Amateur (ham) radio stations.* Amateur (ham) radio stations licensed by the FCC.

C. *Maintenance or repair.* Maintenance or repair of a wireless telecommunications facility and related equipment, provided that there is no change in the height or any other dimension of the facility.

D. *Temporary wireless telecommunications facility.* Temporary wireless telecommunications facilities, in operation for a maximum period of one hundred eighty (180) days.

Section 71-23. Review and Approval Authority

No person shall install, construct, or expand any small cell wireless telecommunications facility within the City of Lewiston without obtaining the approval in the form of a written permit from the City Clerk in the form of a location permit for:

- 1) any expansion or modification of an existing wireless telecommunications facility that increases the height or width of the facility;
- 2) accessory use of an existing wireless telecommunications facility;
- 3) colocation of a wireless telecommunications facility on an existing wireless telecommunications facility or alternative tower structure; or
- 4) installation of new or modification of existing small cell wireless telecommunications facilities.

The City Clerk shall review applications for small cell wireless telecommunications facilities and make written findings on whether the proposed facility complies with this ordinance. The City Clerk is authorized to call upon other city staff to assist in making this determination.

. No small cell facility shall be constructed or expanded without a location permit issued by the City Clerk. Within 180 days of this ordinance becoming affective, the owners of all existing small cell telecommunications facilities within the city of Lewiston must apply for an after-the-fact permit(s). The Application fees shall be waived for existing facilities.

Notwithstanding any provision in any municipal ordinance to the contrary, small cell facilities and colocated small cell facilities shall be a permitted use in all zoning districts.

Nothing in this ordinance authorizes a person to locate or collocate small wireless facilities on property owned by a private party, including but not limited to wireless support structures and joint use utility poles, or property owned or controlled by the federal government, state government, or subdivision thereof, or the municipality, without the consent of the property owner.

71-24. Application.

All persons seeking permitting under this ordinance shall submit an application as provided below. The City Clerk shall be responsible for ensuring that notice of the application is provided to the Directors of Public Works and Planning and Code Enforcement.

Applications for permit approval by the City Clerk must include the following materials and information:

- A. Documentation of the applicant's right, title, or interest in the property where the facility is to be sited, including name and address of the property/facility owner and the applicant.
- B. A copy of the FCC license for the facility or a signed statement from the owner or operator of the facility attesting that the facility complies with current FCC regulations.
- C. The location where each proposed small cell facility or utility pole would be installed, including photographs of the location and its immediate surroundings depicting the utility poles or structures on which each proposed small cell facility would be mounted or the location where utility poles or structures would be installed, including a depiction of the completed facility, a location map and elevation drawings of the proposed facility, and any other proposed structures, showing color, and identifying structural materials.
- D. Identifying information including: (a) name, address, telephone number, and email address of the applicant and, where colocation is sought, of the owner(s) of the utility pole if different than the applicant; (b) utility pole, building or facility number or other identifying marking; and (c) address of nearest property;
- E. In instances where a stand-alone facility is proposed, the applicant must provide evidence demonstrating that no existing facility owned by the applicant or by others with whom the applicant, or others utilizing similar installations to those of the applicant, has previously co-located facilities can be utilized to provide the service proposed by the applicant, the evidence for which may consist of any one or more of the following:
 1. Evidence that no existing facilities are located within the targeted market coverage area as required to meet the applicant's engineering requirements; or
 2. Evidence that existing facilities do not have sufficient height or cannot be increased in height at a reasonable cost to meet the applicant's engineering requirements; or
 3. Evidence that existing facilities do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
 4. Evidence that the applicant has made diligent good faith efforts to negotiate colocation on existing facilities, buildings, or structures in the vicinity of the

proposed location and has been denied access or met with unreasonable terms for colocation; or

5. Technical evidence that colocation on an existing facility would impede the functional operation of the applicant's proposed small cell facility or an existing wireless telecommunication facility to an extent that would significantly impair the function of the existing or proposed facility.
- F. For proposed new small cell facility support structures including, but not limited to, new utility poles, a signed statement that commits the owner of the facility and his or her successors in interest to:
1. Respond in a timely, comprehensive manner to a request for information from a potential colocation applicant in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
 2. Negotiate in good faith for shared use by third parties;
 3. Allow shared use if an applicant agrees in writing to pay reasonable charges for colocation;
 4. Require no more than a reasonable charge for shared use based on community rates and generally accepted accounting principles. This charge may include, but is not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance, financing, return on equity, depreciation, and all of the costs of adopting the installation or equipment to accommodate a shared user without causing electromagnetic interference.
- G. A form of surety acceptable to the municipality to guarantee payment for the costs of removing the facility if it is abandoned.

A written commitment to notify the municipality within thirty (30) days of cessation of use of any approved facilities and to remove such facilities within ninety (90) days of termination of use.

71-25. Fees.

All fees below shall be set by the City Council in a schedule located in the City's Master Policy 81, Miscellaneous Fees and Penalties.

Application Fee. An application for City Clerk approval shall include payment of an application fee. This fee includes typical cost for city staff review of a complete application and issuance of a permit. The application shall not be considered complete until this fee is paid.

Attachment Fee. An application for attachment to municipal facilities shall include payment of any applicable fees for new and/or renewed attachments. This fee includes typical cost for city staff review of a complete application, review by a professional engineer and issuance of a permit..

After-the-Fact Application Penalty. Where a small cell telecommunications facility has been installed without the required municipal permit, in addition to meeting the application requirements and paying the required fees, the applicant will be subject to a penalty. I. Permit applications for small cell telecommunication facilities in place when this ordinance became effective will not be charged an Application Fee or After-the-Fact Allocation Penalty unless an owner of such a facilities does not submit the appropriate applications within 180 days of this ordinance becoming affective. In that case both Application Fee or After-the-Fact Allocation Penalty shall apply.

71-26. Notice of Incomplete Application.

Within ten (10) working days of receipt of an application, the City Clerk shall review the application and determine if the application meets the submission requirements. If the application is incomplete, the City Clerk shall notify the applicant in writing, specifying the additional materials, information, or action required to complete the application.

71.27. Objection and Comment.

The opportunity to file objection and comment on applications for placement of wireless facilities in the municipal right of way shall be afforded pursuant to Title 35-A, section 2503.

71-28. Approval. Within thirty (30) days of receiving a complete application for approval, the City Clerk shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based. The City Clerk shall approve the application if the City Clerk finds the following:

- A. The small cell facility does not interfere with the safety and convenience of travel over the public right of way or other existing uses of the public right of way and shall not interfere with municipal emergency service communication equipment;
- B. The small cell facility is matched to the greatest extent practicable to the preexisting condition of the utility pole or nearby utility poles, including color and scale;
- C. No part of the small cell facility projects from the utility pole further than four (4) feet from its existing height and width and all such projections shall be a minimum of

seven (7) feet above ground level, including utility meters. Where the applicant can show that no feasible alternative exists, installations below 7 feet must be separately approved in advance by the Director of Public Works or designee and be sited in such a manner as to not impede the normal and regular use of the public right of way by pedestrians, vehicles, or regular maintenance activities.

- D. The permittee agrees to comply with all local ordinances and state and federal laws;
- E. The permittee is able to satisfy the requirements detailed in Section 7.

The time period for approval may be extended upon agreement between the applicant and the City Clerk.

71-29. Permit Duration.

Location permits issued pursuant to this ordinance shall expire if construction of the proposed facility is not commenced within 12 months of the permit date or if construction is suspended for more than six months. The City Clerk is not required, but may agree, to extend the period within which construction must commence

71-30. Standards of Review

All small cell wireless telecommunications facilities, regardless of location, are required to comply with applicable municipal policies and ordinances. Applications for the placement of small cell facilities must comply with the standards in this section in order to obtain approval from the City Clerk.

A. Location on Municipal Property. Proposals to locate new small cell wireless telecommunications facilities on municipal property, or to expand or replace existing small cell facilities on municipal property other than the municipal right of way, must:

- 1) Provide satisfactory evidence of non-interference with the current or intended use of the property where the facility or expansion is to be sited;
- 2) Provide adequate liability insurance coverage in amounts and types required by the municipality;

3) Include an agreement with the municipality, including any provisions deemed by the municipality to be necessary to ensure the protection of the public interest, as well as reasonable and lawful terms of compensation for the use of the municipal property.

B. Attachment. For facilities proposed as an expansion, accessory use, or colocation to a structure legally existing at the time the application is submitted, including compliance with the Americans with Disabilities Act, the attachment may not cause the existing structure to become non-conforming, nor may the attachment increase the non-conformance of a structure that is otherwise legally non-conforming.

C. Permission. The applicant has sufficient right, title, or interest to locate the proposed facility on the new or existing structure.

D. Height. The proposed facility increases the height of existing structures by no more than _____ (#) feet.

E. Conformance. The proposed facility shall be constructed with materials and muted colors that match or blend with the surrounding natural or built environment, and existing non-invasive plants and natural land forms on the site shall be preserved, to the maximum extent reasonably practicable. Additionally, small cell facility owners and operators shall comply with:

1. Any existing requirements that have been imposed by a contract between the municipality and a private property owner that concerns design or construction standards applicable to utility poles and ground-mounted equipment located in the right-of-way;

2. Spacing requirements in applicable codes and ordinances concerning the location of ground-mounted equipment located in the right-of-way;

F. Preservation. The proposed facility, to the greatest degree practicable, shall have no unreasonable adverse impact on districts, sites, buildings, structures or objects, significant in American history, architecture, archaeology, engineering or culture, that are:

1. Listed, or are eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800); or

2. Included within a nationally or locally designated historic district or district of special sensitivity, such as areas where the city requires utilities to be located underground or where they are excluded from placing poles or above ground installations. Installations in such areas must first provide proof that no reasonable and economically feasible alternatives exist; or
3. In an area programmed by the City through its Comprehensive Plan, or designated by its legislative body, for revitalization that includes, but is not limited to, current or future streetscape improvements.

Small cell facility installations in the areas described above shall comply with written design standards that are generally applicable to installations such as decorative utility poles, or conform to reasonable stealth, concealment and aesthetic requirements established by or deemed acceptable to the municipality to the extent that such requirements or similar requirements apply to other occupiers of the rights-of-way, including but not limited to those adjacent to an historic landmark or in a historic district. Installations within an historic district or adjacent to an historic structure must apply for and receive a separate certificate of appropriateness from the City's Historic Preservation Commission.

Where overhead utilities lines have been put underground such that there are decorative street light poles and no other utility poles, small cell facilities must be incorporated into Options A or B:

Option A. The interior or base of the existing decorative pole without change to the outward appearance of the pole; or

Option B. New streetlight poles of substantially similar design that can accommodate the small cell facilities.

Under option B, unless the applicant and Director of Public Works are able to agree to mutually agreeable terms of ownership, maintenance, and replacement, the applicant shall be responsible for the cost of installing, maintaining, and operating the requisite new streetlight poles.

Under either option A or B, the volume of the base of the small cell facility is limited to 25 cubic feet.

- G. Lighting.** A new small cell facility must be illuminated only as necessary to comply with FAA or other applicable state and federal requirements. However, security lighting may be used as long as it is shielded to be down-directional to retain light within the boundaries of the site, to the maximum extent practicable.
- H. Structural Integrity.** Owners of new small cell facilities are responsible for ensuring ongoing compliance of their facilities with all applicable structural engineering standards adopted, enforced, or recognized by the State of Maine.
- I. Visual Impact.** The proposed small cell facility will have no unreasonable adverse impact upon designated scenic resources within the municipality, as identified either in the municipality's Comprehensive Plan, or by a State or federal agency.
- J. Frequency Emissions Compliance.** The applicant shall certify compliance with all applicable FCC radio frequency emissions regulations as a requirement of its permit application.

71-31. Conditions of Approval

- A. Standard Conditions.** The following standard conditions of approval shall be a part of any approval or conditional approval issued by the City Clerk. Reference to the conditions of approval shall be clearly noted on the final approved plan and shall include agreement by the owner of the small cell wireless telecommunications facility, and successors and assignees, to comply with the conditions set forth in this section.
- B. Interference with Municipal Services Prohibited.** New small cell wireless telecommunications facilities shall not interfere with municipal services including, but not limited to, emergency communications networks, municipal wireless internet, traffic signals, and other municipal smart infrastructure systems.
- C. New Location Order.** New small cell wireless telecommunications facilities must be located according to the following order. The City Clerk may permit applications at a subsequent local level only once the applicant has demonstrated, to the Directors of Public Works and Planning and Code or their designee's satisfaction, the existence of a basis on which the prior location order level(s) is not obtainable due to one or more of the conditions cited in Section 6.2(G) of this ordinance.
 - 1. Colocation on existing wireless telecommunications facility support structures including but not limited to towers;
 - 2. Colocation on an existing joint use pole or other joint use structures;

3. Location on other existing structures including, but not limited to, buildings, provided such installation preserves the character and integrity of those structures;
4. Location on municipal buildings or facilities, or location on a new pole to be installed by the applicant, depending on the municipality's preference.

This section may be waived or modified by the City Clerk upon approval of the Directors of Public Works and Planning and Code.

- D. Maintenance and Repair.** The owner of a small cell facility permitted pursuant to this ordinance, or the owner's designee, shall maintain and repair, at its sole cost and expense, the facilities and shall repair, at its sole cost and expense, any damage caused by the facility or work related to the facility to municipal streets, sidewalks, curbs, gutters, trees, parkways, poles, utility lines and systems, sewer or water systems or lines, or other municipal property, when the damage is caused by the small cell facility, or the small cell facility owner's ancillary facilities, or employees or contractors performing work on behalf of the small cell facility owner or owner's designee. The wireless provider shall restore damaged property to substantially the same condition in which it existed prior to the damage.
- E. Decorative Poles.** The Director of Public Works or designee may require applicants wishing to place their facilities on decorative poles to replace the decorative pole when necessary to colocate a small cell facility, and any replacement pole must reasonably conform to the design aesthetics of the decorative pole being replaced. The Director of Public Works or designee may impose non-discriminatory design criteria on decorative poles prior to the installation of the replacement pole.
- F. Relocation and Removal.** Upon the written direction of the municipality, the owner of a small cell facility permitted pursuant to this ordinance, or the owner's designee, at its sole cost and expense, shall relocate or remove the small cell facility and any related equipment that is interfering with or is likely to interfere with emergency or routine municipal maintenance activities or with other work planned to be undertaken by the city within the right-of-way or city owned property.
- G. Additional Conditions.** Where necessary to ensure that an approved project meets the criteria of this ordinance, the City Clerk may impose additional reasonable conditions of approval.
- H. Amendment.** Any changes or modifications to approved applications must be approved by the City Clerk in accordance with section 5.

71-32. Abandonment

Any small cell wireless telecommunications facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned.

- A. **Notice.** Owners of small cell facilities shall provide written notice to the City Clerk if it sells or transfers ownership of its small cell facilities within the jurisdiction of the municipality. Such notice shall include the name and contact information of the new facility owner. Transfers of ownership shall be subject to a fee to be established by the City Council

The City Clerk may notify the owner of abandoned facilities in writing and order the removal of the facility within ninety (90) days of the date of mailing of the written notice. The owner of the facility shall have thirty (30) days from the receipt of the notice to demonstrate to the City Clerk that the facility has not been abandoned.

- B. **Removal.** If the owner fails to show that the facility is in active operation, the owner shall have sixty (60) days to remove the facility. If the facility is not removed within this time period, the municipality may remove the facility at the owner's expense. The owner of the facility shall pay all site reclamation costs deemed necessary and reasonable to return the site to its pre-construction condition.
- C. **Surety.** If a surety has been given to the municipality for removal of the facility, the owner of the facility may apply to the City Clerk to release the surety when the abandoned facility and related equipment are removed to the satisfaction of the Director of Public Works or designee.

D. Unclaimed Property. In the event city is unable to identify the owner of an abandoned small cell wireless telecommunications facility or is unable to establish reliable communication with an owner who has been identified, the municipality may remove the facility thirty (30) days after posting notice of the municipality's intent to remove the facility on the municipality's website and including the intent to remove on the city council meeting agenda. **71-32 Administration and Enforcement**

The City Clerk or designee shall enforce this ordinance. If the City Clerk or designee finds that any provision of this ordinance has been violated, the Clerk shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. The City Clerk shall order correction of the violation and may take any other legal action to ensure compliance with this ordinance including, but not limited to, the violation provisions of Section 11.

71-33. Violation

The City Clerk may terminate an existing permit based on failure to comply with this ordinance. The City Clerk must document the basis for the termination, including the specific provisions of this ordinance on which the termination is based, and send the documentation to the small cell facility owner of record with the municipality on or before the day the City Clerk issues the

termination. The owner may cure the deficiencies identified by the City Clerk within 30 days of the day the Clerk issues the termination notice and may request reinstatement of the permit subject to the terms existing prior to the termination. The City Clerk shall respond to the request for reinstatement within 10 working days of receiving the request. If the request is denied by the City Clerk, the permit holder may appeal the decision in accordance with the provisions of Section 12.

The municipal officers, or their authorized agent, may enter into administrative consent agreements for the purpose of eliminating violations of this ordinance and recovering fines without court action. Such agreements shall not allow a violation of this ordinance to continue unless the removal of the violation will result in a threat to public health or safety or substantial environmental damage.

71-34. Appeals

Any person aggrieved by a decision of the City Clerk under this ordinance may appeal the decision to the Board of Appeals. Written notice of an appeal must be filed with the Board of Appeals within thirty (30) days of the decision. The notice of appeal shall clearly state the reason for appeal.

71-35. Penalties

Any person who owns or controls any property that violates this ordinance shall be fined in accordance with Title 30-A M.R.S.A., section 4452. Each day such violation continues after notification by the City Clerk shall constitute a separate offense.

71-36. State and Federal Jurisdiction

It is the responsibility of applicants to separately obtain all requisite approvals necessary from the state and federal governments for location of facilities on property, including but not limited to rights of way, within state or federal jurisdiction. The municipality shall not be liable for facilities located in state or federal jurisdiction.

71-37. Conflict and Severability

- A. Conflicts with other Ordinances.** Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance or of any other ordinance, regulation, or statute, the more restrictive provision shall apply.
- B. Severability.** The invalidity of any part of this ordinance shall not invalidate any other part of this ordinance.

Ed Barrett

From: Dale F. Doughty
Sent: Thursday, November 7, 2019 4:37 PM
To: Ed Barrett; Denis D'Auteuil
Subject: Rough fees and penalties.

**Master Policy #81
CITY DEPARTMENT MISCELLANEOUS FEES AND PENALTIES**

Chapter 71, Above Ground Power, Fiber, and Telecommunications

Article 1. Utility Poles in the Right of Way

New Pole Permit Application Review, Section 71-12.....\$50.00/pole
Obstructing a Sidewalk or ADA, Section 71-13.....\$50.00/day/facility
Failure to Remove Abandoned Poles, Section 71.14.....\$50.00/day/facility
Failure to Relocate Poles, Section 71-16.....\$50/day/facility

Article 2. Small Cell Wireless Telecommunications Facilities Siting Ordinance

Facility Application Review Fee, Section 71-25\$250.00 (1-5 facilities in a single permit)
Facility Application Review Fee, Section 71-25.....\$50.00 (each additional facility beyond 5)
Non-permitted facilities requiring an after-the-fact permit, Section 71-25.....\$50.00/day/facility from discovery

- I did not add any annual fees at this time.

*Respectfully,
Dale F. Doughty, C.G.
Public Works Director
Lewiston, Maine*

LEWISTON CITY COUNCIL
MEETING OF NOVEMBER 12, 2019

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. ES-1

SUBJECT:

Executive Session pursuant to MRSA Title 1, section 405 (6) (c) to discuss an Economic Development issue of which the premature disclosure of the information would prejudice the competitive bargaining position of the City.

INFORMATION:

The Maine State Statutes, Title 1, section 405, define the permissible grounds and subject matters of executive sessions for public meetings.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

State statutes define the purposes for entering into an executive session .

EPB/kmm

REQUESTED ACTION:

1	2	3	4	5	6	7	M
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To enter into an Executive Session pursuant to MRSA Title 1, section 405 (6) (c) to discuss an Economic Development issue of which the premature disclosure of the information would prejudice the competitive bargaining position of the City.