

**LEWISTON CITY COUNCIL AGENDA
CITY COUNCIL CHAMBERS
JANUARY 21, 2020**

6:00 p.m.

- ES-1. Executive Session regarding consultation with the City Attorney.
- ES-2. Executive Session regarding consultation with the City Attorney.

6:45 p.m. Workshop

- A. Sidewalk Plow Route Adjustment

7:00 p.m. Regular Meeting

Pledge of Allegiance to the Flag

Lewiston Youth Advisory Council Update

Acceptance of the minutes of the January 7, 2020 meeting.

Public Comment period – Any member of the public may make comments regarding issues pertaining to Lewiston City Government (3 minutes per speaker; maximum time for all comments is 15 minutes)

ALL ROLL CALL VOTES FOR THIS MEETING WILL BEGIN WITH THE COUNCILOR OF WARD 2.

REGULAR BUSINESS:

1. Public Hearing and Final Passage for Ordinance, Amending Chapter 18, Article VI, Section 18-96(f) to the Code of Ordinances – Registration Process Requirement for Multi-Family Buildings.
2. Public Hearing and Final Passage for Ordinance, Adopting a New Chapter 71, to the Code of Ordinances Regulating Above Ground Power, Fiber, and Telecommunications Installations, Including Utility Poles in the Public Right.
3. Public Hearing and Final Passage for Ordinance, Amending Appendix A of the Zoning and Land Use Code Relating to Solar Energy Systems.
4. Resolve, Amending Master Policy 81 – Miscellaneous Fees and Penalties – Code of Ordinances Chapter 71 – Above Ground Power, Fiber, and Telecommunications.
5. Order, Authorizing the City Administrator to Execute the Lease between the City of Lewiston and the Department of Public Safety, Maine Drug Enforcement Agency (MDEA).
6. Amendments to the Traffic Schedule regarding parking prohibited on a portion of Newman Street.
7. Reports and Updates
8. Any other City Business Councilors or others may have relating to Lewiston City Government.
9. 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.
10. Executive Session pursuant to MRSA Title 1, section 405(6)(A) to discuss a personnel matter.

LEWISTON CITY COUNCIL
WORKSHOP AGENDA
TUESDAY, JANUARY 21, 2020
6:00 PM

1. Executive Session – Legal Issue – 30 Minutes
2. Executive Session – Legal Issue – 15 Minutes
3. Sidewalk Plow Route Adjustments – 10 Minutes

Public Works has received a number of requests to modify our current sidewalk plow routes and would like to review these with the City Council. Please see the attached memo from Public Works Director, Dale Doughty. An electronic map of the currently approved sidewalk plowing routes can be found at:

[https://www.lewistonmaine.gov/DocumentCenter/View/288/Sidewalk-Plowing-Map?bidId=.](https://www.lewistonmaine.gov/DocumentCenter/View/288/Sidewalk-Plowing-Map?bidId=)

IMMEDIATELY FOLLOWING THE REGULAR AGENDA

1. Executive Session – Economic Development
2. Executive Session – Personnel Issue

LEWISTON CITY COUNCIL
MEETING OF JANUARY 21, 2020

AGENDA INFORMATION SHEET: AGENDA ITEM NO. ES-1

SUBJECT:

Executive Session regarding consultation with the City Attorney.

INFORMATION:

The Maine State Statutes, Title 1, section 405, define the permissible grounds and subject matters of executive sessions for public meetings. Discussing a legal matter with the City Attorney is a topic permitted under the statutes.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The state statutes outline the issues allowed to be discussed in an executive session.

EA BKmm

REQUESTED ACTION:

1	2	3	4	5	6	7	M
---	---	---	---	---	---	---	---

To enter into an Executive Session pursuant to MRSA Title 1, section 405(6)(E) to discuss a legal matter with the City Attorney.

**LEWISTON CITY COUNCIL
MEETING OF JANUARY 21, 2020**

AGENDA INFORMATION SHEET: AGENDA ITEM NO. ES-2

SUBJECT:

Executive Session regarding consultation with the City Attorney.

INFORMATION:

The Maine State Statutes, Title 1, section 405, define the permissible grounds and subject matters of executive sessions for public meetings. Discussing a legal matter with the City Attorney is a topic permitted under the statutes.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The state statutes outline the issues allowed to be discussed in an executive session.

EAB/kmm

REQUESTED ACTION:	1	2	3	4	5	6	7	M
--------------------------	---	---	---	---	---	---	---	---

To enter into an Executive Session pursuant to MRSA Title 1, section 405(6)(E) to discuss a legal matter with the City Attorney.



PUBLIC WORKS DEPARTMENT

Dale F. Doughty, Director

January 16, 2020

To: Ed Barrett

Re: Side Walk Plowing

Public Works understands the importance of the pedestrian mode of transportation in Lewiston. For many, it is their primary mode of transportation within the City. We want to provide the best level of service we can, given available resources.

Currently, Public Works plows and salts/sands approximately 52 miles of sidewalk each storm. I will provide Councilors a paper map at the workshop on January 21, 2020. However, at any time the current sidewalk plow routes may be found in the Cities GIS map Gallery at:

<https://www.lewistonmaine.gov/DocumentCenter/View/288/Sidewalk-Plowing-Map?bidId=>

Each storm is different in timing, duration, and the amount of ice and snow; therefore, the our response timing and strategy are different. We remove snow and place a salt/sand mixture on the sidewalks with 4 sidewalk units. Each of these units may be equipped with a plow or blower unit depending on the amount and character of the snow. Three units are equipped with a small hopper for the application of sand/salt. We have also retained 2 older units, as spares, to fill in when one or more of the primary machines are in need of repair. The two spares are worn and cannot be used as primary units, only being used for the short term in a pinch. Sidewalk plows/blower travel at between 1 and 5 miles per hour during operations. For a heavy storm, that is 13 hours per cycle per unit. Often two or more cycles are required late in and after a storm. On average, it takes 1 to 3 days to clear all 52 miles of sidewalk, and we may be required to revisit some sidewalks to reclear them or apply sand/salt for additional days.

Some issues we encounter that may delay clearance of sidewalks include:

- Warm days and cold night cause melting and refreezing. This may be especially problematic when snow or ice banks get high, preventing water from running off the pavement before refreezing.
- Driveway and Parking lots being plowed into the sidewalks. Often, people deposit snow and ice into the sidewalk when clearing their property. This is in violation of City Ordinance and State Law. Although our supervisors contact owners, and most comply, this could result in fines. At times, we need to take a piece of heavy equipment to remove deposited snow and ice to reduce the amount in order for the sidewalk plows to pass.
- For long duration storms, staffing side walk plows late in the storm may be challenging
- Utility poles, poorly parked cars, and other obstructions not only slow the process but cause significant damage to the sidewalks plows. Sidewalk plows are subject to frequent damage and failure because of the environment they work in and that is why 2 older spares are retained.
- Plastic shopping bags, wood, trash and other debris can break shear pins and often entangle in the mechanisms causing plows to return to the City garage for repair, further delaying the operation.
- Personnel used in street snow fighting are also utilized in sidewalk clearance.

As is clear from the above discussion, resources, the character of storms, staffing, and the number and extent of obstructions dictate how quickly sidewalks can be cleared after a given storm.

This City is ever changing; therefore, we should revisit the routes periodically. We also receive citizen requests for additional service from time to time. Each route change requires City Council approval, as each change may affect the overall service Public Works provides to the City. The following are several requested changes:

Mollison Way - Mollison Way from Fair St. to Main St is approximately 0.53 miles in length and has a sidewalk on one side. This is one of the areas in the City where changes have prompted us to look at routing. There is a fair amount of foot traffic in this area, especially early morning and during lunch time. The Transit committee has made a route change in the area that will most likely increase the need for a cleared sidewalk. Currently, bus routes go through Mollison Way and stop at a point on Mollison Way to allow passengers on and off the bus. Coming up in early 2020, busses will no longer be going into Mollison Way and instead will be utilizing the bus stop at the entrance of Mollison Way on Main St. This will result in even more foot traffic from workers and clients of businesses on Mollison Way.

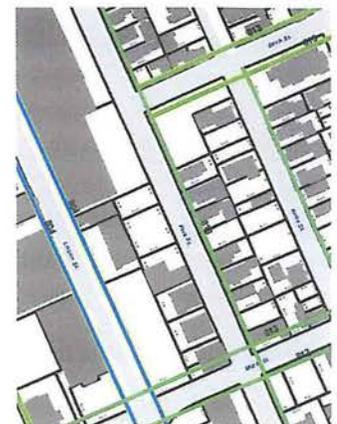
PW can address the sidewalk on Mollison Way in one of two ways:

- 1) Because there are few obstructions, we could lift the wing of the street plow slightly after a storm and push the snow bank to the back of sidewalk. This will have no to minimal impact on the routes of the sidewalk plows, but will not provide the same level of service a sidewalk plow would.
- 2) We could alter the sidewalk plow route on Main Street. Although this would provide a higher level of service for Mollison Way, it would impact the level of service on other routes and should be done through a reduction in lower priority routes. PW has several such routes it could suggest.

Holland Street- Dirigo Federal Credit Union has requested that we add the north side of Holland Street to our route. This would add about 550 feet to the route, as it would require a trip up and then back. Currently the sidewalk on the south side of Holland St. is plowed and there is the ability for workers and patrons to walk within the facility's plowed area. Public Works does not recommend that we add this segment at this time. However, PW could suggest some trade-off mileage if that is the guidance from City Council. The adjacent map shows the adjacent sidewalk plow routes in the area.



Park Street- A Building Manager for several apartments along Park Street, between Birch St. and Maple St. has asked that we add a segment of sidewalk along the southwest side of Park Street. Currently, the northeast side of Maple St., adjacent to several other residential buildings, is plowed. The map to the right shows the current plow route configuration. Public works does not recommend that we add this segment at this time. However, PW could suggest some trade-off mileage if that is the guidance from City Council.



This workshop is intended to introduce the City Council to several sidewalk-plowing subjects. With your input, PW will come back with some clear recommendations. PW is also reviewing all sidewalk plow routes and may develop several recommendations to improve the cycle time and efficiency for next season.

Respectfully,
Dale F. Doughty, C. G.

LEWISTON CITY COUNCIL

MEETING OF JANUARY 21, 2020

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 1

SUBJECT: Public Hearing and Final Passage of Ordinance, Amending Chapter 18, Article VI, Section 18-96 (f) to the Code of Ordinances – Registration Process Requirement for Multi-Family Buildings.

INFORMATION: In October of 2019 and in accordance with the recommendations of the Ad-Hoc Rental Registration Committee, the City Council adopted an ordinance establishing a new fee rental registration program. Under this program, every multi-family building with three or more rental units must be registered. The intent of the ordinance is to, first, ensure that the City has current information on the ownership and management of such buildings and the information necessary to contact the appropriate party for emergency and non-emergency purposes and, second, to improve the detailed information that is available to us about our rental housing stock. Initial registration of these properties is required by March 1st.

Since the ordinance was adopted, we have been working toward its implementation. One element of this is developing the rental registration application, with our efforts to do so guided by the specific requirements of the ordinance. We have determined that one requirement, found in Section 18-96 (f), is excessively burdensome. As currently written, information must be separately provided for each rental unit in the building including the floor it is on, unit number or designation, bedroom count, and whether or not it is occupied. For larger properties, this could require a separate line on the application form for each and every unit. The amendment being proposed would simplify this requirement. Owners would have to report the number of floors, number of units by bedroom count (e.g., 4 1 bedroom; 2 2 bedroom; 1 3 bedroom), and the number of vacant units. All of this information can be provided on one line of the form.

A second change would eliminate the requirement that the applicant report the map and lot number. This duplicates the information provided by the real estate tax identification number.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

EAB/kmm

REQUESTED ACTION:

1	2	3	4	5	6	7	M
---	---	---	---	---	---	---	---

To conduct the public hearing and to approve final passage of an Ordinance, Amending Chapter 18, Article VI, Section 18-96 (f) to the Code of Ordinances – Registration Process Requirement for Multi-Family Buildings.

Ordinance, Amending Chapter 18, Article VI, Section 18-96 (f) to the Code or Ordinances – Registration Process Requirement for Multi-Family Buildings.

The City of Lewiston Ordains that Chapter 18, Article VI, Section 18-96 (f) of the Code of Ordinances, Registration Process Requirement for Multi-Family Buildings, is hereby amended as follows:

18-96. Registration Process and Requirements.

A registration application shall be made to the City Clerk's Office on a form furnished by the City Clerk and shall include the following information:

- (a) Name, business or residence address, cell and primary telephone numbers, and email address of the Legal Owner or owners of the building;
- (b) Name, business or residence address, cell and primary telephone numbers, and email address of the Business Operator of the building;
- (c) Name, business or residence address, cell and primary telephone numbers, and email address of the Property Manager of the building. This is the individual with whom the City will schedule inspections and who takes responsibility for maintaining the building, including responding to emergencies occurring during business hours. This individual may be the Legal Owner or the Business Operator
- (d) Emergency Contact. The name, business or residence address, cell and primary telephone numbers, and e-mail address for the city's primary contact for after hours emergencies at the building.
- (e) Street address, ~~map and lot,~~ and real estate tax identification number of the building.
- (f) Number and type of dwelling units within the building. For each dwelling-unit~~building,~~ the number of floors~~number,~~ number of units by bedroom count, unit number and/or letter and/or designation, bedroom count, and the number of vacant units~~whether the unit is or is not occupied~~ must be provided.
- (g) The year the building was constructed and documentation, if any, of the buildings lead free or lead safe status.
- (h) Whether the building has a monitored or supervised fire alarm or sprinkler system.

Any Changes to the information required in (a), (b), (c), and (d) that occur more than thirty days in advance of the date of the next required registration must be reported to the city clerk within fifteen days of its occurrence.

All owners must allow on-site inspections of their buildings by the city including, without limitations, all rental units. Failure to allow such inspections will result in revocation of the building's registration.

All Multi-family buildings must be registered prior to March 1, 2020.

Additions are underlined; Deletions are ~~struck through~~.

Ordinance, Adopting a New Chapter 18, Article VI to the Code or Ordinances – Registration Requirement for Multi-Family Buildings.

The City of Lewiston Ordains that a new Article VI to Chapter 18 of the Code of Ordinances is hereby adopted as follows:

CHAPTER 18. BUILDINGS AND BUILDING REGULATIONS

Article VI. Registration Requirement for multi-family buildings

18-91. Purpose; intent.

The city has a large number of multi-family buildings, many of which are older and present property owners and managers significant challenges regarding upkeep and maintenance while placing a significant burden on the city’s code enforcement efforts. The number of real estate proprietorships, partnerships, and corporations that own buildings in the city, sometimes managed through property management companies, creates challenges to the proper enforcement of the city’s fire, building, and property maintenance codes, all of which are designed to ensure the public safety and welfare of residents.

The purpose of this article is to: require disclosure of the ownership of these buildings; identify those responsible for maintaining them and responding to violations identified through city inspections; ensure the city has access to contact information on the individual who is responsible for responding to emergencies; provide basic information on these buildings to allow the city to effectively develop and implement housing policies and programs; and provide residents, including both owners and renters, accurate, complete, and transparent data about the city’s Multi-Family housing stock. Information priorities include:

- (a) Accurate, up-to-date, and complete ownership, management, and contact information for every Multi-Family building;
- (b) An accurate inventory of dwelling unit quantity and configuration; and
- (c) An accurate assessment of certain items that impact the health and safety of dwelling units.

18-92. Definitions.

The following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise. Terms not defined in this article, which are defined in articles adopted by reference, have the meanings ascribed to them as stated in those articles.

Business Operator: A specific individual person, not a corporation or partnership, with a legal ownership interest in a property who makes financial, maintenance, and policy decisions.

Emergency Contact: The individual who responds to emergency after hour calls from tenants and public safety personnel.

Legal Owner: The individual or legal entity, such as an LLC or LP, holding the deed to the property.

Multi-Family Building: A detached building in common ownership interest containing three (3) or more dwelling units designed for residential use and occupancy by three (3) or more families living independently of one another, including mixed use buildings, that is not a single-family dwelling, excluding Boarding and Lodging Houses or such other buildings that are separately licensed by the City or the State of Maine.

Property Management Company, Property Manager: An individual or business entity, which may be the Building Owner, Business Operator, or a party that has no ownership stake in a property, that serves as property manager on behalf of and at the direction of the Business Operator or Legal Owner; an individual or business entity that maintains and repairs the physical property and often manages tenant relationships and routine matters involving the property. The Property Manager serves as the primary contact for the City, its inspectors, and tenants.

Rent: Payments made for the use of a premises, including, but not limited to, money, services, trade, or a combination thereof; or the sharing of housing expenses with persons not part of the homeowner's immediate family.

18-93. Applicability; exceptions.

- (a) The provisions of this article apply to all Multi-Family Buildings except as noted in (b).
- (b) The provisions of this article do not apply to single family dwelling units; dwelling units in cooperative, condominium, or townhouse buildings where no one entity owns more than two dwelling units; lodging houses, hotels, motels, or bed and breakfasts; hospitals; convalescent, rest, or nursing homes; residential care or congregate care facilities or other institutional beds or rooms used for medical or mental health treatment services otherwise licensed by the city or state; or mobile home parks.

18-94. Registration required.

All Multi-Family buildings in which rental housing is located must be individually registered with the city, at no cost, under the terms of this article. No person, including without limitation a legal owner, owner's associate, real estate broker, associate real estate broker, real estate agent, business operator, or property manager, shall allow any rental housing unit to be occupied, or let or offer to another any Multi-Family rental housing unit for occupancy, or charge, accept or retain rent for any dwelling unit, unless the Legal Owner, the Business Operator, or the Property Manager has registered under the terms of this article. Any person carrying on such a business activity without registering is in violation of this article.

A registration certificate will be issued to the Legal Owner of the building named on the approved registration form or, at the request of the Legal Owner, to the Property Manager. One certificate will be issued for each building. The certificate for each building shall include emergency contact information for that building.

The registration certificate, or a facsimile thereof, shall be posted and shall remain posted in close proximity to the main entrance of the structure in an area that is easily accessible to tenants during the full period the registration is in effect.

Such registration is voided upon the sale or transfer of the building to a new owner.

18-95. Renewal; term.

Before March 1 of each year, the Legal Owner, the Business Operator, or the Property Manager shall submit a registration application for each Multi-Family building. Within 60 days of purchasing or transferring the ownership of such building, or converting a building into a Multi-Family property including through the addition of more units, the Legal Owner, the Business Operator, or the Property Manager shall register the building. Newly constructed Multi-Family buildings must be registered within 30 days of the date the city issues a certificate of occupancy. All registrations expire at the end of February.

18-96. Registration Process and Requirements.

A registration application shall be made to the City Clerk’s Office on a form furnished by the City Clerk and shall include the following information:

- (a) Name, business or residence address, cell and primary telephone numbers, and email address of the Legal Owner or owners of the building;
- (b) Name, business or residence address, cell and primary telephone numbers, and email address of the Business Operator of the building;
- (c) Name, business or residence address, cell and primary telephone numbers, and email address of the Property Manager of the building. This is the individual with whom the City will schedule inspections and who takes responsibility for maintaining the building, including responding to emergencies occurring during business hours. This individual may be the Legal Owner or the Business Operator
- (d) Emergency Contact. The name, business or residence address, cell and primary telephone numbers, and e-mail address for the city’s primary contact for after hours emergencies at the building.
- (e) Street address, map and lot, and real estate tax identification number of the building.
- (f) Number and type of dwelling units within the building. For each dwelling unit, the floor number, unit number and/or letter and/or designation, bedroom count, and whether the unit is or is not occupied must be provided.
- (g) The year the building was constructed and documentation, if any, of the buildings lead free or lead safe status.
- (h) Whether the building has a monitored or supervised fire alarm or sprinkler system.

Any Changes to the information required in (a), (b), (c), and (d) that occur more than thirty days in advance of the date of the next required registration must be reported to the city clerk within fifteen days of its occurrence.

All owners must allow on-site inspections of their buildings by the city including, without limitations, all rental units. Failure to allow such inspections will result in revocation of the building’s registration.

All Multi-family buildings must be registered prior to March 1, 2020.

18-97. Rejection of Registration

The city clerk may reject any registration application where the application is incomplete or has been determined to include inaccurate information. Buildings with rejected registrations will be considered unregistered.

18-98. Unregistered multi-family buildings.

Any person failing to register a multi-family building or failing to comply with any other requirement of this article shall be in violation of this article and subject to a civil penalty enforced by the code enforcement office and a fine as established by the city council.

Unregistered multi-family buildings are not eligible for any City administered state, federal, or city-sponsored loans or grants or other city-sponsored or provided programs that are available through separate applications and which are not universally provided to all multi-family buildings.

18-99. Appeals.

The Zoning Board of Appeals shall hear appeals of orders, decisions, or determinations made relative to application and interpretations of this article. Appeals to the Zoning Board of Appeals shall be submitted as otherwise set forth in City Code regarding administrative appeals, subject to the payment of any fees as may be determined by the municipal officers from time to time.

18-100. Severability.

If any clause, sentence, paragraph, section, article, or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgement shall not affect impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section, article, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

LEWISTON CITY COUNCIL

MEETING OF JANUARY 21, 2020

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 2

SUBJECT: Public Hearing and Final Passage for Ordinance, Adopting a New Chapter 71 to the Code of Ordinances Regulating Above Ground Power, Fiber, and Telecommunications Installations, Including Utility Poles in the Public Right-of-Way.

INFORMATION: Cellular providers are in the process of installing what are known as "small cell" facilities to either fill in areas of excess demand, where a coverage gap exists, or, eventually, to provide 5G service. These small cells are most often installed on or on top of shared use utility poles. As we move toward 5G, these facilities, which have limited range, will have to be placed within as close as 300 feet to each other, 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 35 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. We currently have no regulations in place to govern such installations, other than a simple requirement that they obtain a pole permit to be located in our right-of-way.

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 by state law, it does impact the city since these poles are in our right of way, we must grant them a permit, and we often have to work around them to undertake routine maintenance efforts such as sidewalk plowing. 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 over pole and small cell placement. 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.

A draft ordinance is attached.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

EAB/KMM

REQUESTED ACTION:

1	2	3	4	5	6	7	M
---	---	---	---	---	---	---	---

To approve final reading of an Ordinance, Adopting a New Chapter 71 to the Code of Ordinances Regulating Above Ground Power, Fiber, and Telecommunications Installations, Including Utility Poles in the Public Right-of-Way and Repealing Section 66-8 (b) of the Code dealing with Placement of Poles within the Right of Way.

ORDINANCE, Adopting a New Chapter 71 to the Code of Ordinances Regulating Above Ground Power, Fiber, and Telecommunications Installations, Including Utility Poles in the Public Right-of-Way and Repealing Section 66-8 (b) of the Code Dealing with Placement of Poles Within the Right of Way.

THE CITY OF LEWISTON HEREBY ORDAINS:

Chapter 71 of the Code of Ordinances of the City of Lewiston is hereby adopted in its entirety as follows:

CHAPTER 71

ABOVE GROUND POWER, FIBER, AND TELECOMMUNICATIONS

This Chapter 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.

ARTICLE I. UTILITY POLES IN THE RIGHT OF WAY

Sec. 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 to 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.

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 and address of the applicant,
- 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 of such applications 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 satisfaction of 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 54 inches at locations where no other structures or obstructions are present that would otherwise limit the ability to plow city sidewalks and no less than 48 inches where other existing obstructions exist that prohibit sidewalk plowing. Any guy wires or other appurtenances associated with utility poles and extending over any sidewalk must provide for a minimum 9 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 as a result of such work.

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, including the 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 infringe on the standards above, then a New Pole Permit will be

required per Section 71-12. Permitting New Poles. In no case shall a new or replacement pole restrict access to 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 identifies 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 such notice with their plans to mitigate the potential safety condition. After an acceptable plan is approved by the Public Works Director, the work must be completed within thirty days unless the Public Works Director grants and extension related to winter conditions. Prior to correction, the Owner is required to take the necessary steps to provide such temporary measures as are necessary to ensure public safety.

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, MRSA 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 for municipal purposes, free of charge including no make ready fees.

In order to safeguard 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 Utilities owning poles, guy wires and anchors within the City's right-of-way of the need to relocate their facilities due to a highway or sidewalk construction project, in writing 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 a 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.

Secs. 71-17-19. Reserved.

ARTICLE II. 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 Article 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 co-location 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 telecommunication infrastructure deployments, and are made publicly available in advance; and
- 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 means 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 means 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.

Co-location 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 the 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 a 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 - Co-located means 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 that 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—Co-located means a Wireless Telecommunications Facility that is installed on an Alternative Tower Structure instead of a new tower structure.

Sec. 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.

Sec. 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 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. co-location 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 effective, 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 co-located small cell facilities shall be a permitted use in all zoning districts.

Nothing in this ordinance authorizes a person to locate or co-locate 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.

Sec. 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 co-location 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; or
 4. Evidence that the applicant has made diligent good faith efforts to negotiate co-location on existing facilities, buildings, or structures in the vicinity of the proposed location and has been denied access or met with unreasonable terms for co-location; or
 5. Technical evidence that co-location 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 co-location 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 co-location;
 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.

Sec. 71-25. Fees.

All fees outlined 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 submitted to the City Clerk for approval shall include payment of an application fee. This fee includes typical costs 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, the applicant will be subject to a penalty in addition to meeting the application requirements and paying the required fees.

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 Application Penalty unless an owner of such a facilities does not submit the appropriate applications within 180 days of the effective date of this ordinance. In such case, both Application Fee and the After-the-Fact Allocation Penalty shall apply.

Sec. 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.

Sec. 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.

Sec. 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 six (6) inches 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 71-30.

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

Sec. 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

Sec. 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 co-location to a structure legally existing at the time the application is submitted, 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, including compliance with the Americans with Disabilities Act,.
 - 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 four (4) feet six (6) inches.
 - 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 a historic district or adjacent to a 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.

Sec. 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 71-24 E of this ordinance.
1. Co-location on existing wireless telecommunications facility support structures including but not limited to towers;
 2. Co-location 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 owner's 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 co-locate 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 71-23.

Sec. 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.

Sec. 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 71-33.

Sec. 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 71-34.

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.

Sec. 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.

Sec. 71-35. Penalties.

Any person who owns or controls any property that violates this Chapter 71 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.

Sec. 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.

Sec. 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.

The City of Lewiston Further Ordains that Section 66-8 (b) of the Code of Ordinances is hereby repealed as follows:

Sec. 66-8. Alterations in sidewalks; installing posts, poles, or trees.

~~(b) — Poles associated with public utilities may only be placed within a sidewalk if such placement maintains a minimum 60 inches of unobstructed sidewalk width. 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 guide 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 a policy adopted by the City council in addition to a requirement to relocate any object violating these standards and repairing any damage done to the sidewalk.~~

Additions are underlined; deletions are ~~struck through~~.

LEWISTON CITY COUNCIL

MEETING OF JANUARY 21, 2020

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 3

SUBJECT: Public Hearing and Final Passage for Ordinance, Amending Appendix A of the Zoning and Land Use Code Relating to Solar Energy Systems.

INFORMATION:

As a result of recent changes in state law, considerable interest exists in potentially establishing solar energy systems in Lewiston, either to provide for community solar projects or to produce energy for sale into the electrical grid. The purpose of this amendment is to clarify the development and review process for solar energy projects in the City and to streamline the permitting of such projects. Our Code establishes the uses allowed in each district. Because solar energy systems are not currently listed as an allowed use, a solar energy project can be permitted as a conditional use only if the Board of Appeals or the Planning Board determine that the proposed solar energy system is "substantially similar to and compatible with permitted or conditional uses" in the relevant district. This amendment will stipulate that solar energy systems are conditional uses in every district, would provide clarity to applicants for such projects, and would remove the extra step of requiring applicants to demonstrate similarity before applying for a conditional use permit.

The Planning Board has held a public hearing and voted to recommend this amendment to the Council for approval.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

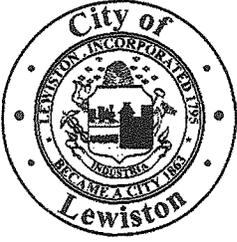
The City Administrator recommends approval of the requested action.

EAB/1cmm

REQUESTED ACTION:

1	2	3	4	5	6	7	M
---	---	---	---	---	---	---	---

To approve final reading of an Ordinance, Amending Appendix A of the Zoning and Land Use Code Relating to Solar Energy Systems.



CITY OF LEWISTON

Department of Planning & Code Enforcement

TO: Mayor Cayer and Lewiston City Council
FROM: James Buzzell, Land Use Planner
DATE: January 7, 2020
RE: Planning Board Action

The Planning Board took the following action at their meeting held on December 23, 2019 regarding a text amendment to the Lewiston Code of Ordinances, Appendix A, Zoning and Land Use Code, Articles II and XI providing for the definition and regulation of Solar Energy Systems.

The following motions were made:

MOTION:

by Lucy Bisson pursuant to Article VII, Section 4 and Article XVII, Section 5 of the Zoning and Land Use Code to send a favorable recommendation to the City Council to amend Article II (Definitions) and Article XI (District Regulations), Sec. 22(c) of the Zoning and Land Use Code by adding solar energy definitions and permitting Solar Energy Systems as a conditional use in all districts. Second by Kristine Kittridge

VOTED: 7-0



EXECUTIVE DEPARTMENT

Edward A. Barrett, City Administrator
Denis D'Auteuil, Deputy City Administrator

January 2, 2020

To: Honorable Mayor and members of the City Council
Fr: Edward A. Barrett
Su: Solar Energy Amendment – Land Use Development Code – Land Use Table

Some background and information on the City's Land Development Code may be helpful for the new members of the Council as they consider the proposed solar energy amendment on Tuesday's agenda. You will note that this amendment includes a change to the City's Land Use Table. Given the size and complexity of that table, it is virtually impossible to read on a reasonably sized hard copy. It's easier to follow in an electronic copy where it can be expanded.

The Land Development Code is an appendix to our Code of Ordinances and can be found at: <https://www.lewistonmaine.gov/114/City-Ordinances>. The Land Use Table can be found on page 8 of the document at: <https://www.lewistonmaine.gov/DocumentCenter/View/249/Article-XI?bidId=>. The purpose of this table is to set out in one place the allowable uses within the City's various zoning districts, separated by those that are permitted by right and those that require review and conditional use permission from the Planning Board. For example, the Low Density Residential District allows single family residences on individual lots as a use permitted by right. In that same district, a campground is a conditional use that must be reviewed and approved by the Planning Board, which is required to apply a set of conditional use standards set out in the code.

Since the solar amendment makes a change in this Land Use Table, it must be included in the ordinance amendment. The amendment, which substitutes the newly defined "Utility Structures" for the previously defined "power transmission lines, substations, telephone exchanges, microwave towers, or other public utility or communications use" is circled in red.

Please note that the Code also includes a second similar table, the Space and Bulk Table, that can be found on page 13 of the same document referenced above. This table deals with the development requirements in each zoning district such as minimum lot size; front, side, and rear setbacks from the property line; required road frontage; and maximum building height. These standards are used in the development review process to ensure that the project complies with the space and bulk standards of our Code. The proposed solar amendment does not require a change to this table, so it is not include in the agenda material.

I hope this background is helpful because both of these tables frequently come into play when the Council and Planning Board review proposed amendments to the Land Development Code.

{W6790167.1}

City Hall, 27 Pine Street, Lewiston, ME 04240 • Tel. (207) 513-3121 • TTY/TDD (207) 513-3007 • Fax (207) 795-5069

Email: ebarrett@lewistonmaine.gov • ddauteuil@lewistonmaine.gov

Web Page: www.lewistonmaine.gov



CITY OF LEWISTON

Department of Planning & Code Enforcement

TO: Planning Board
FROM: James Buzzell, Land Use Planner
DATE: December 23, 2019
RE: Solar Text Amendment

A text amendment to Article II, Section 2 and Article XI, Section 22 (c) of the Zoning and Land Use Code.

DESCRIPTION AND PURPOSE OF TEXT AMENDMENT

The purpose of the proposed text amendment is to simplify the process for approving applications for solar energy systems by listing such uses under the “Utility structures” subsection of the land use chart. The amendment would also add solar energy definitions to Article II, Section 2.

Solar energy systems are not listed within any land use category in the Land Use Table under Article XI, Section 22 (c). A solar energy project could only be issued a conditional use permit if the Board of Appeals or the Planning Board determined that the project was “substantially similar” to another permitted or conditional use in the relevant district. The effect is to create a preliminary step before the application for a conditional use permit.

STAFF COMMENTS

While this amendment simplifies the application process for a conditional use permit, it does not establish additional performance standards for solar projects outside of those already established under Article X, Section 3. Standards for conditional use permits. Roof-mounted solar devices or systems and all solar devices or systems serving a residential use on a single lot will be considered accessory uses, as per the amended definition of *utility structures*. Regulating non-residential solar energy projects as conditional uses will provide the reviewing authority the necessary basis for assessment.

STAFF RECOMMENDATION

The Staff recommends the Planning Board forward a favorable recommendation to the City Council to adopt the proposed amendments.

ACTION NECESSARY

Make a motion pursuant to Article VII, Section 4 and Article XVII, Section 5 of the Zoning and Land Use Code to send a favorable recommendation to the City Council to amend Article II, Section 2, and Article XI, Section 22 (c) as presented in this report.

12.23.2019

AN ORDINANCE PERTAINING TO SOLAR ENERGY SYSTEMS

THE CITY OF LEWISTON HEREBY ORDAINS:

Appendix A of the Code of Ordinances of the City of Lewiston, Maine, is hereby amended as follows:

APPENDIX A
ZONING AND LAND USE CODE
ARTICLE II. DEFINITIONS

Sec. 2 Definitions

Solar energy device means a structure or part of a structure, including but not limited to solar collectors or photovoltaic panels, which provides for the collection, storage, conversion, and distribution of solar energy.

Solar energy system means a complete assembly of one or more solar energy devices and associated mounting hardware or equipment, including but not limited to racking, cables, inverters, transformers, batteries, a substation, or power lines which provides for the collection, storage, conversion, and distribution of solar energy.

Solar energy system, ground mounted means any solar energy system that is structurally mounted to the ground and is independent of any other structure or building.

Solar energy system, roof mounted means any solar energy system that is mounted on the roof a building or structure.

Utility structures means buildings which house or service utility services, including but not limited to structures such as radio towers, transmitting stations, substations, transmission lines, telephone exchanges, microwave towers and solar energy devices or systems, or satellite dishes serving more than a residential use on a single lot. Solar energy devices or systems or satellite dishes serving a residential use on a single lot shall be considered accessory to such use. Roof-mounted solar energy devices or systems shall be considered accessory uses.

ARTICLE XI. DISTRICT REGULATIONS

Sec. 22. Land Use Requirements

(c) *Land Use Table* (See attached Land Use Chart)

REASONS FOR THE PROPOSED AMENDMENT

The purpose of this amendment is to clarify the development and review process for solar energy projects in the City and to streamline the permitting of such projects. Article XI Sec. 22(c) establishes the uses allowed in each district. Because solar energy systems are not listed in Article XI Sec. 22(c), a solar energy project can be permitted as a conditional use under Article V Sec. 3(g) only if the Board of Appeals or the Planning Board determined that the proposed solar energy system was “substantially similar to and compatible with permitted or conditional uses” in the relevant district.

By adopting this amendment to stipulate that solar energy systems are conditional uses in every district, the City would provide clarity to applicants for such projects and would remove the extra step of requiring applicants to demonstrate similarity before applying for a conditional use permit.

CONFORMANCE WITH 2017 COMPREHENSIVE PLAN

The proposed text amendment is compatible with the 2017 Legacy Lewiston Comprehensive Plan for the following reasons:

- By eliminating a step in the application process for solar energy projects this amendment makes it easier to “promote a healthful and sustainable business environment by investing actively in efficient infrastructure...” (Vision Statement and Guiding Principles, page 116)
- By streamlining the permitting process for solar energy projects, the proposed amendments anticipate the near-term growth in demand for renewable energy in “recognition of the shift in the market that favors authenticity, social, and environmental responsibility...” (Prioritize Economic Vitality, Market Shifts, page 164)
- By defining a solar energy system as a conditional use, the proposal follows the Comprehensive Plan’s mandate to “actively invite new investment and create the critical mass of economic energy needed to launch the City into a new era of growth and productivity.” (Prioritize Economic Vitality, page 164)

Land Use Table: All Zoning Districts 12.12.19	Rural Agricultura I (RA)	Low Density Residential (LDR)	Suburban Residential (SR)	Medium Density Residential (MDR)	Riverfront (RF)	Neighborn ood Conservati on "A" (NCA)	Neighborn ood Conservati on "B" (NCB)	Office Residential (OR)	Downtown Residential (DR)	Institutiona l Office (IO)	Community Business (CB)	Highway Business (HB)	Centerville (CV) ²⁶	Office Service (OS)	Industrial (I)	Urban Enterprise	Mill (M)	Resource Conservati on (RC) (18)	Groundwat er conservati on overlay district (GC) ²⁸	No Name Pond Conservati on Overlay District (NNP) ⁽²⁹⁾	Mobile Home Park overlay district (MH) ³⁰
Institutional																					
Religious facilities	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P					
Cemeteries	P	P	P	P		P	P														
Congregate care/assisted living facilities, institutions for the handicapped, nursing or convalescent homes, group care facilities				C	P		C	P	P	P	P	P	P		P	P					
Hospitals, medical clinics,					P		C	P	C	P	P	P	P		P	P					
Museums, libraries, and non-profit art galleries and theaters					P				P	P	P	P	P			P					
Academic institutions, including buildings or structures for classroom, administrative, laboratory, dormitories, art, theater, dining services, library, bookstores, athletic facilities and student recreational uses, together with buildings accessory to the foregoing permitted principal buildings or				C(13)	P		C(13)	C	P	P(12)(24)	P	P	P	P	P	P					
Civic and social organizations							C	P		C			P								
Public community meeting and civic function buildings including auditoriums					P				P	P			P				P				
Residential																					
Single-family detached dwellings on individual residential lots	P(8)	P	P	P		P	P(2)	P	P(11)	P(2)											
Mobile homes on individual residential lots	P(8)			P(35)																	
Two-family dwellings				P		P(37)	P	P	P(11)			P(14)									
Multifamily dwellings in accordance with the standards of Article XIII				P(34)	P(11)		P	P	P(11)	P	P		P		P	P					
Single-family attached dwelling in accordance with the standards of Article XIII	C			P(34)	P(11)		P	P	P(11)	P											
Mixed single-family residential developments in accordance with the standards of Article XIII	C	P		P			P														
Mixed residential developments in accordance with the standards of Article XIII		P		P			P	P													
Mixed use structures					P(11)		P	P	P(11)	P	P	P	P		P	P					
Lodging houses							P	P	P(11)												
Home occupations	P	P	P	P		P	P	P	P		P				C						
Bed and breakfast establishments as a home occupation	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P					
In-law apartments in accordance with the standards of Article XII	P	P	P	P		P	P	P	P				P								
Single family cluster development	P	P	P	P																	
Family day care home	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P					
Shelters							C														
Dormitories												P									
Natural Resource																					
Agriculture	P(8)																	P			
Farm Stands	P																				
Forest management and timber harvesting activities in accordance with the standards of Article XIII	P	P	P	P		P	P	P			P	P	P	P	P			P			
Earth material removal	C													C	C						
Community gardens(20)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P					
Water dependent uses, e.g. docks and marinas					P													P	C		
Non-residential structures for educational, scientific or nature interpretation purposes, containing a maximum floor area of not more than ten thousand (10,000) square feet																					
Recreation																					
Campgrounds	C																	C			
Public or private facilities for nonintensive outdoor recreation	C	C	C	C	P	C	C	C	C									P	P		
Commercial outdoor recreation and drive-in theaters					P			P			C	C	C	C	P				P(32)		
Fitness and recreational sports centers as listed under NAICS Code 713940					P			P			P	P	P	P	P						

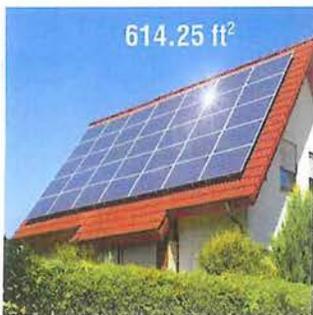
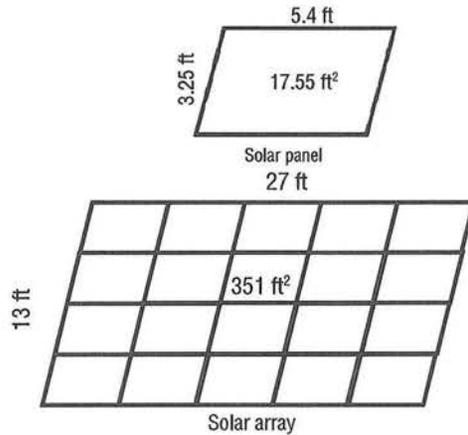
Supplemental Information for Solar Discussion

Residential

Not concerned with performance standards for roof-mounted systems at this time.

Considering the implications of ground mounted systems.

Average monthly kWh consumption in Maine is 531. For 100% offset, a home would require a Photovoltaic system of approximately 5900 Watts, or 24 panels.



These structures are well below the thresholds which would subject them either to development review or to performance standards.

- What is the appropriate scale and height?
- Will they be mounted on polls for better sun access?
- Screening and buffering
- Glare

Utility-scale

Additional standards for large-scale solar energy systems:

- Operations & Maintenance Plan
 - Provisions for safe access as well as maintenance of installation
- Signage
 - Minimum requirement to identify the owner and provide 24-hour emergency contact phone number
- Emergency Services
 - Cooperation with fire department and appointment of person responsible for public safety inquiries
- Installation Conditions
- Stormwater
- Removal
 - Removal one year after discontinued use
 - Physical removal of all system components
 - Disposal of all solid and hazardous waste in accordance with waste disposal regulations
 - Stabilization or revegetation



LEWISTON CITY COUNCIL

MEETING OF JANUARY 21, 2020

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 4

SUBJECT: **Resolve**, Amending Master Policy 81 – Miscellaneous Fees and Penalties – Code of Ordinances Chapter 71 – Above Ground Power, Fiber, and telecommunications.

INFORMATION:

The City Council is currently considering a new ordinance that would regulate utility poles in the public right of way as well as the installation of small cell telecommunications units. This ordinance would also establish application fees for such installations and fines and penalties for violation of provisions of the ordinance such as improper placement of a pole.

Fees and penalties are routinely established by the City Council through adopting or amending one of the City's Master policies, in this case our Master Policy 81, Miscellaneous Fees and Penalties. The full policy is available at:
<https://www.lewistonmaine.gov/DocumentCenter/View/548/081-MiscellaneousCityFees?bidId=>

As proposed, applications to install a utility pole would carry a fee of \$500 for up to five poles in a single permit and \$100 for each additional beyond five. This would also apply to applications for small cell installations and tracks Federal Communications Commission guidance as to acceptable fee amounts.

A variety of penalties are also established based on the nature of the violation. These range from \$100 per day for failure to correct an unsafe installation after notice to \$1,000 for improper location of a pole within a sidewalk. Where no specific penalty is provided, the penalty prescribed by state law applies. Generally, that penalty would be a minimum fine of \$100 and a maximum of \$2,500 per day.

A complete listing of the proposed fees and penalties can be found in the attached resolve.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

ERB/kmm

REQUESTED ACTION:

1	2	3	4	5	6	7	M
---	---	---	---	---	---	---	---

To approve the **Resolve**, Amending Master Policy 81 – Miscellaneous Fees and Penalties – Code of Ordinances Chapter 71 – Above Ground Power, Fiber, and telecommunications.



COUNCIL RESOLVE

Resolve, Amending Master Policy 81 – Miscellaneous Fees and Penalties – Code of Ordinances Chapter 71 – Above Ground Power, Fiber, and telecommunications.

Be it Resolved by the City Council of the City of Lewiston that Master Policy 81 is hereby amended by deleting and adding the following:

To be deleted:

~~Chapter 66 Streets and Sidewalks – Utility Pole in Sidewalk – Penalties A violation of this provision of the Code shall be subject to a \$1,000 fine in addition to the requirement that the pole be relocated and that any damage done to the sidewalk be repaired. Failure to remove and repair within a 10 day period shall result in an additional fine of \$1,000. Further \$1,000 fines shall accrue for each subsequent ten day period during which the pole remains and/or the sidewalk is not repaired. Fines for continuing violations beyond the 10 day period may be waived by the Director of Public Works during any period when, in the Director's opinion, such work is deemed impracticable due to winter weather conditions. Note: These penalties are outlined in the City Code of Ordinances Chapter 66 Streets and Sidewalks, Article I In General.~~

To be added:

Chapter 71 – Above Ground Power, Fiber, and Telecommunications

Article 1 – Utility Poles in the Right of Way

Section 71-12. Permitting New Poles

Facility Application Review Fee, \$500 for up to five facilities in a single permit and \$100 for each additional facility beyond 5.

After the Fact Application Penalty: \$500 for up to five facilities in a single permit and \$100 for each additional facility beyond 5.

Section 71-13. Utility Pole in Sidewalk -- Penalties

A violation of this provision of the Code shall be subject to a \$1,000 fine in addition to the requirement that the pole be relocated and that any damage done to the sidewalk be repaired. Failure to remove and repair within a 10 day period shall result in an additional fine of \$1,000. Further \$1,000 fines shall accrue for each subsequent ten day period during which the pole remains and/or the sidewalk is not repaired. Fines for continuing violations beyond the 10 day period may be waived by the Director of Public Works during any period when, in the Director's opinion, such work is deemed impracticable due to winter weather conditions.

Section 71-14.

Failure to remove replaced poles within 180 days: \$100 per day

Failure to Correct Unsafe Installation after Required Notice: \$100 per day

Section 71-16.

Failure to remove poles within 180 days of notice or date agreed to in writing between the Pole owner and the Public Works Director and receipt of notice of permit revocation: \$500 per day

Chapter 71 – Above Ground Power, Fiber, and Telecommunications

Article 2. Small Cell Wireless Telecommunications Facilities Siting Ordinance

Section 71-25. Fees.

Facility Application Review Fee, \$500 for up to five facilities in a single permit and \$100 for each additional facility beyond 5.

After the Fact Application Penalty: \$500 for up to five facilities in a single permit and \$100 for each additional facility beyond 5.

Other violations of Chapter 71, Article 1 and/or Article 2, not specifically set forth in this policy 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

Deletions are ~~struck through~~; Additions are underlined.

LEWISTON CITY COUNCIL

MEETING OF JANUARY 21, 2020

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 5

SUBJECT: Order, Authorizing the City Administrator to Execute the Lease Between the City of Lewiston and Department of Public Safety, Maine Drug Enforcement Agency (MDEA).

INFORMATION:

The City owns the building at 85 Park Street that was recently vacated by the State Court System's Violations Bureau. During the last budget process, the City Council authorized renovating this facility for law enforcement related purposes. Please see the attached January 2019 memo from Chief O'Malley that outlined this proposal.

Work is currently underway on the building and we anticipate that the various operations to be consolidated at this location will be able to move in shortly. As a part of this effort, the Maine Drug Enforcement Agency, which currently works out of no cost space at the Armory, has agreed to help support the operation of the new space through a lease agreement.

MDEA will be leasing 1,715 square feet of space at \$15,000 per year for a five year term with renewal options. A copy of that agreement is attached. This lease is consistent with the information provided to the City Council last January and during the last budget process when approval to renovate the building for these purposes was granted.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

EAB/Kmm

REQUESTED ACTION:

1	2	3	4	5	6	7	M
---	---	---	---	---	---	---	---

To approve the Order, Authorizing the City Administrator to Execute the Lease Between the City of Lewiston and Department of Public Safety, Maine Drug Enforcement Agency (MDEA).



CITY OF LEWISTON, MAINE

January 21, 2020

COUNCIL ORDER

Order, Authorizing the City Administrator to Execute the Lease Between the City of Lewiston and Department of Public Safety, Maine Drug Enforcement Agency (MDEA).

WHEREAS, MDEA seeks rental space to conduct drug enforcement operations in the City of Lewiston; and

WHEREAS, the property and building located at 85 Park Street was vacated by the State of Maine Violations Bureau in FY2019; and

WHEREAS, the City Council approved funding during the FY20 budget deliberations to renovate portions of 85 Park Street in order for the Police Department to relocate some department activities and task force to this property; and

WHEREAS, the leased space is for 1,715 square feet for a 5 year period with renewal options; and

WHEREAS, the City will receive \$15,000 annually in rental income;

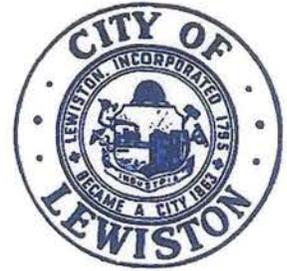
NOW, THEREFORE, BE IT ORDERED by the CITY COUNCIL of the CITY of LEWISTON,

That the City Administrator be authorized to finalize and execute the Lease Between the City of Lewiston and Department of Public Safety, Maine Drug Enforcement Agency.



POLICE DEPARTMENT

Brian T. O'Malley
Chief of Police



January 28, 2019

FM: Chief Brian O'Malley
TO: Lewiston City Council

RE: 85 Park Street – Violations Bureau

The City currently owns the building at 85 Park Street that was recently vacated by the State Court System's Violations Bureau. As outlined below, we are requesting that the City Council authorize this facility being put back to use for law enforcement related purposes.

The Lewiston Police Department has experienced numerous issues with the current police department building. One of the issues is a lack of space for the officers. The Lewiston Police Department also has officers assigned to various task forces that assist in combating crime that occurs in Lewiston with the assistance of state and federal law enforcement officers. These task forces are currently housed in a variety of different locations.

Currently, there are Lewiston police officers assigned to the Maine Drug Enforcement Agency, and these officers work out of office space at the Lewiston Armory building on Central Ave. There is a Lewiston police officer assigned to the Central Maine Violent Crimes Task force, which is a collaborative effort with ATF. They focus on the federal prosecution of gun violence. These officers are located at the public works operations center at 195 River Road. The police department budgets \$4,600 to public works for the use of this space. There is another officer assigned to HIDTA, the High Intensity Drug Trafficking Area program, which is a program with DEA. HIDTA was set up to reduce drug trafficking and production in the United States. This officer and the other members of HIDTA are in need of office space in Lewiston.

The Lewiston Police Department also has a selective enforcement team (SET) made up of a detective and two patrol officers when fully staffed. These officers work out of an office at the police department. I have also been approached by the FBI with a request for office space to allow an FBI agent assigned to the Violent Gang Safe Streets Task Force to work out of Lewiston. This task force is designed to eliminate threats and violence by working collaboratively with local law enforcement.

The goal is to have all of these task forces located in the same building so they can all work together collaboratively and focus on crime occurring here in Lewiston. Ideally, I would like to have all of the agencies and task force agents at the Police Department, but this is not possible with our current building. I have spoken with Roy McKinney, Director of Maine Drug Enforcement Agency, and he is in agreement with the consolidation for these task force agents and has agreed to provide \$15,000 annually for the space the MDEA agents would occupy.



171 Park St • Lewiston, Maine • 04240 • Phone 207-513-3137 • Fax 207-795-9007
www.lewistonpd.org



Professionalism

Integrity

Compassion

Dedication

Pride

Dependability



POLICE DEPARTMENT

Brian T. O'Malley
Chief of Police



While the building is currently unoccupied, it does require certain services and expenditures for utilities, minor repairs, and supplies. For this year, those expenses are \$9,823. A proposed budget for law enforcement use is as follows:

Utilities	
\$17,000 (-MDEA credit of \$15,000)	(\$8,731.00)
Cleaning Service	
Based on FY19 cost	\$28,776.00
Repairs to Equipment	
(Delete Oxford Networks com lines)	(\$228.00)
Repairs to Building	
Interior painting program	\$3,000.00
Buildings and Structures	
Install video system	\$4,983.00
Re-key interior doors	\$1,000.00
Create Hall first floor to secure MDEA	\$19,326.00
Install dark fiber to building	<u>\$24,884.00</u>
Subtotal	\$73,010.00
*Renovate for basement shower	\$6,566.00
*Basement vehicle access	\$52,626.00
*Add dry/interior sprinkler system	<u>\$25,000.00</u>
Subtotal	\$84,192.00
*Phase two / lower priority	
Overall impact	\$157,202.00

Assuming that the phase two improvements are not immediately taken into account and recognizing that the cost of operating and maintaining a vacant building is estimated at \$20,939 for next year, the facility can be transitioned to law enforcement purposes at a net budget increase of \$63,253.

A new service request will be included in the proposed budget for FY20; however, we would like to receive preliminary feedback from the Council on whether there is support for such a proposal.

Chief Brian O'Malley



171 Park St • Lewiston, Maine • 04240 • Phone 207-513-3137 • Fax 207-795-9007
www.lewistonpd.org



Professionalism Integrity Compassion Dedication Pride Dependability

LEASE

between

CITY OF LEWISTON

and

**THE STATE OF MAINE
Department of Administrative & Financial Services
Bureau of General Services
on behalf of the
DEPARTMENT OF PUBLIC SAFETY
MAINE DRUG ENFORCEMENT**

This Lease made and entered into _____, by and between City of Lewiston, whose address is 27 Pine Street, Lewiston, Maine 04240, for themselves, their heirs, executors, administrators, successors and assigns (hereinafter called the "Lessor") and the State of Maine, Department of Administrative & Financial Services, Bureau of General Services, whose address is 77 State House Station, Augusta, Maine 04333-0077 on behalf of the Department of Public Safety, Maine Drug Enforcement. (hereinafter called the "Department"). WITNESSETH:

1. **GRANT:** The parties hereto, for the consideration hereinafter mentioned, covenant and agree that the Lessor does hereby rent to the Department the following premises, viz:

2. **PREMISES:** A portion of the municipal building located at 85 Park Street, Lewiston, Maine, consisting of approximately 1,715 square feet of interior space plus common space.

3. **TERMS:** To use said above described interior space beginning on approximately January 21, 2020 and ending on December 31, 2025, commencing upon written acceptance of the Leased Premises by the Department. Acceptance by the Department shall be in the form set forth in Commencement Notice (Exhibit B), attached hereto and made a part hereof.

Department shall have use of all common areas including but not limited to hallways, bathrooms, and lobby.

4. **NON-ASSIGNABILITY:** The Department shall not assign this Lease in any event, and shall not sublet the demised premises, except to a desirable tenant with the prior written approval of the Lessor.

5. **HOLDOVER:** At termination date of this Lease or any extension or renewal thereof, the Department may continue in possession on a month-to-month basis by paying the specified monthly rental until one party shall give the other written notice of termination. Such notice shall be given at least sixty (60) days before the premises are to be vacated. Should such an extension expire prior to the end of a month, the rental shall be apportioned to the date specified in the notice.

6. **RENTAL:** YIELDING AND PAYING THEREFORE,

YEAR	S.F.	COST P.S.F	ANNUAL RENT	MONTHLY RENT
Commencement -12/31/25	1,715	\$8.74635	\$15,000.00	\$1,200.00

In arrears, in accordance with the State’s usual accounting procedures, commencing with the first month of occupancy as established by the provisions of paragraph 3.

7. **RENEWAL:** The Department shall have the option at its sole discretion to renew this Lease for five (5) terms of two (2) years or any portion thereof, upon the same terms and conditions, except for rent.

8. **COVENANTS OF THE DEPARTMENT:** The Department does hereby covenant and agree with the Lessor that it will:

- (a) Pay the said rent at the times and in the manner aforesaid;
- (b) Use and occupy said premises in a careful and proper manner, maintain the cleanliness and remove debris;
- (c) Not use the premises for any purpose other than a governmental purpose;
- (d) Be responsible for any and all loss or damage caused to any and all personal property of the Department or under the control of the Department located, in, on, or about the demised premises, unless the loss or damage is as a result of the negligence or willful acts or omissions of the Lessor;
- (e) Provide and pay for telephone, security, telecommunications equipment and material; and
- (f) Seek Lessor approval prior to making leasehold improvements to the space.

9. **COVENANTS OF THE LESSOR:** And the Lessor, on its part, and at its own expense, covenants and agrees with the Department that it will:

- (a) Maintain and keep the premises in tenantable condition, including heating, ventilation and air conditioning system;

- (b) Pay total charges for electricity, heat, water & sewer and property taxes;
- (d) Allow agency personnel and clients to use public bathroom in the building;
- (e) Comply with **ASHRAE 62-2001 Standards** for ventilation; and
- (f) Provide Janitorial Services for the common areas and trash removal.

10. TERMINATION: In the event of a material violation of the terms of this agreement by either party, and upon failure of that party to bring itself into compliance with the terms of this agreement upon thirty (30) days notice of the violation by the other party, such other party shall have the right to terminate this agreement upon a further thirty (30) days notice. The failure of either party to give notice of a material violation shall in no event constitute a waiver of any of the terms of this agreement.

11. NOTICES: Any notices required or permitted hereunder shall be in writing and shall be sent certified mail, return receipt requested, addressed to Lessor or Department, as the case may be, at the addresses specified herein below or at such address as a party hereto may have therefore specified by written notice hereunder.

Lessor:
 City of Lewiston
 27 Pine Street
 Lewiston, ME 04240

Department:
 Administrative and Financial Services
 Bureau of General Services
 77 State House Station
 Augusta, ME 04333-0077

Contact: Heather Hunter
 Telephone: 207-513-3017
hhunter@lewistonmaine.gov

Contact: Todd Cummings
 Phone: 207-624-7357
Todd.cummings@maine.gov

on behalf of the Police Department

on behalf of the Department of Public Safety
 Maine Drug Enforcement Agency

Contact: Brian O'Malley
 Phone: 207- 513-3137
bomalley@lewistonmaine.gov

Agency Contact: Roy McKinney
 Phone: 207- 626-3852
Roy.E.Mckinney@maine.gov

without hindrance or interruption by Lessor whether they are claiming by, through, or under the Lessor.

14. AMERICANS WITH DISABILITIES ACT (ADA): The premises are to be free of architectural barriers and must comply with all Federal and State laws which protect people with disabilities including, but not limited to, the Americans with Disabilities Act of 1990 and the Maine Human Rights Act, M.R.S.A., Title 5, Sec. 4551 et seq. The State shall not discriminate and shall comply with applicable laws prohibiting discrimination on the basis of race, color, religion, sex, sexual orientation, including transgender status or gender

expression, national origin or citizenship status, age, disability, genetic information or veteran status.

15. NON-APPROPRIATION: Notwithstanding any other provisions of this Lease, if the State of Maine ("State") does not receive sufficient funds to fund this Lease Agreement and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the Department is not obligated to make payments under this Lease agreement. In the event of non-appropriation of funds as described in this section, Department may terminate this Lease agreement upon Thirty (30) days written notice to the Lessor.

16. CONDITIONS: Notwithstanding any other conditions in this agreement, it is hereby understood that this lease shall become effective and occupancy of the premises will occur only when and if there is mutual agreement that the necessary construction or renovations have been completed to the mutual satisfaction of both the Department and the Lessor and that the premises are ready to be occupied. The rental shall begin as of the date of mutual acceptance of the premises.

17. ENTIRE AGREEMENT. This Agreement sets forth the entire agreement of the parties, and replaces and supersedes any previous agreement between the parties on the subject, whether oral or written, express or implied. This Agreement may be amended or modified only by a writing signed by both parties.

18. FORCE MAJEURE. Neither party to this Agreement shall be liable for non-performance of any obligation under this Agreement if such non-performance is caused by a Force Majeure. "Force Majeure" means an unforeseeable cause beyond the control of and without the negligence of the party claiming Force Majeure, including, but not limited to, fire, flood, other severe weather, acts of God, labor strikes, interruption of utility services, war, acts of terrorism, and other unforeseeable accidents.

In WITNESS WHEREOF, this Lease has been duly executed by the parties hereto as of the day and year first above written.

CITY OF LEWISTON

Date

**DEPARTMENT OF PUBLIC SAFETY
MAINE DRUG ENFORCEMENT AGENCY**

Roy E. McKinney, Director

Date

**DEPARTMENT OF ADMINISTRATIVE & FINANCIAL SERVICES
BUREAU OF GENERAL SERVICES**

Elaine Clark, Deputy Commissioner

Date

LEWISTON CITY COUNCIL
MEETING OF JANUARY 21, 2020

AGENDA INFORMATION SHEET: AGENDA ITEM NO. 6

SUBJECT:

Amendments to the Traffic Schedule regarding parking prohibited on a portion of Newman Street.

INFORMATION:

City public safety personnel along with Public Works are recommending, for the purposes of increased safety and visibility, the elimination of on-street parking on a portion of the odd numbered side of Newman Street. The residents are in support of this recommended change.

Please see the memorandum from Sergeant St. Laurent for additional information.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

EAB/kmm

REQUESTED ACTION:

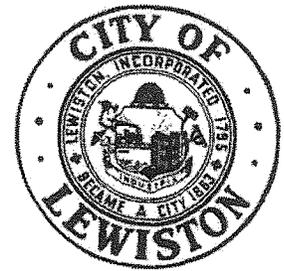
1	2	3	4	5	6	7	M
---	---	---	---	---	---	---	---

To adopt the proposed amendments to the Traffic Schedule to prohibit parking on the odd –numbered side of the street for portions of Newman Street.



POLICE DEPARTMENT

Sgt. Derrick St. Laurent
Administration / Accreditation



TO: Traffic Schedule Control Committee
FROM: Sergeant Derrick St. Laurent
SUBJECT: Parking Amendment (No Parking-Newman St./approaching East Ave.)
DATE: January 2, 2020

Public Works entered a contract with Glidden Paving & Excavation to replace old water lines and reconstruct several roadways throughout the City during this past construction season. One of the streets that received a full reconstruction was Newman Street, where the street opening width at the intersection of East Avenue was reduced and granite curb was installed on both sides of the street.

Recently, Public Works received a suggestion from a Newman Street resident that people are parking up against the granite curb on the odd-numbered side thus reducing the available street width for vehicles to enter and exit Newman Street. City engineers took a visit to assess the situation and believe the best course of action to address this issue would be to install a "No Parking Here to Corner" sign on the odd-numbered side of Newman Street, 66 feet northwest from the extension of the gutter line on East Avenue.

The Lewiston Police Dept. has also received similar complaints from residence and bus drivers, especially during the winter months.

<p>ADD: Newman St. NO PARKING Section 9 Code 70-56</p> <p>Newman St- odd-numbered side of Newman Street, 66 feet northwest from the extension of the gutter line on East Avenue</p>	
--	--

If this amendment is approved, this would require Public Works Department to add/remove sign(s) and/or marking(s) designating the above change. Prior to any changes, warnings would be placed on vehicles and placed in buildings, advising residence of the pending change.

Respectfully Submitted,

Sgt. Derrick St. Laurent
Lewiston Police Department



LEWISTON CITY COUNCIL
MEETING OF JANUARY 21, 2020

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 9

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.

EAB/kmm

REQUESTED ACTION:

1	2	3	4	5	6	7	M
---	---	---	---	---	---	---	---

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.

**LEWISTON CITY COUNCIL
MEETING OF JANUARY 21, 2020**

AGENDA INFORMATION SHEET: AGENDA ITEM NO. 10

SUBJECT:

Executive Session pursuant to MRSA Title 1, section 405(6)(A) to discuss a personnel matter.

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:

Entering into executive session is permitted and defined under Maine State Statutes.

GAB/kmm

REQUESTED ACTION:

1	2	3	4	5	6	7	M
---	---	---	---	---	---	---	---

To enter into an Executive Session pursuant to MRSA Title 1, section 405(6)(A) to discuss a personnel matter.