GLADSTONE PLANNING COMMISSION MINUTES

Council Chambers February 13, 2019

1. **Meeting called to Order- Roll Call.** Chair McGee called the meeting to order at 6:00 pm.

Commissioners present were:	Chase Cookson Mike Ebenroth Alicia Hommon Gary Markenson Jennifer McGee, Chair Kim Murch Larry Whitton
Not present:	Nathan Hernandez Katie Middleton James New Shari Poindexter Bill Turnage
Also present:	Kyle Yarber, Councilman Austin Greer, Assistant to the City Manager/Planning Administrator Cheryl Lamb, Administrative Assistant

2. **Pledge of Allegiance to the United States of America.**

3. **Approval of Previous Meeting Minutes: January 22, 2019.** Chair McGee asked if there was a motion to approve the minutes from the January 22, 2019 meeting. Mr. Whitton moved to approve the minutes; Ms. Hommon seconded. The minutes were approved, 7-0.

4. **2018 Work Plan.** Mr. Greer asked the Commissioners to review the 2018 Work Plan and let him or Mr. Napoli know if they have any questions.

5. **2019 Work Plan.** Mr. Greer asked the Commissioners to review the 2019 Work Plan and let him or Mr. Napoli know if they have any questions.

As Mr. Corcoran had not arrived, Chair McGee moved to Item 7 on the agenda.

7. **Communications from City Council.** Councilman Yarber shared that he was at Jefferson City at the Legislative Conference which he attended with Assistant City Manager, Bob Baer. They were able to visit with several area State Reps and State Senators. They were able to address some concerns regarding tax collection, legislation regarding court appearances and the State capping what local municipalities can do with sales tax, which should be decided by local voters as it is going for their services.

8. **Communications from City Staff.** Mr. Greer shared that the next meeting will be on March 4, 2019.

9. **Communications from Planning Commission Members.** Mr. Markenson informed the Commission that March 16th is the annual Gladstone Rotary Club Pancake and Sausage Breakfast. All of the money goes to local charities. He had tickets available for purchase after the meeting.

6. **Small Cell Ordinance changes.** City Attorney Padriac Corcoran presented a slide show on telecommunications specifically about small wireless facilities and the changes that state and federal law have had on how the city can regulate these wireless facilities. (A copy of the presentation and new ordinance are attached.)

Mr. Corcoran said that the first couple of slides show what they are looking at when it comes to small cell. He referred to photos on the overhead. The small wireless facilities can only communicate at most 2,000 feet. They jump around to get to a macro tower, which are our big towers that you see on North Oak and one at 69th. Those send the signal to the national network. Estimated deployment is sixty (60) per square mile.

Mr. Markenson asked if the estimated deployment of sixty (60) per square mile was per carrier.

Mr. Corcoron confirmed that was correct.

Mr. Markenson then asked how many carriers serve the area.

Mr. Corcoron stated that there are four (4). In our denser areas like North Oak, Antioch, downtown Linden, the places where there are a lot of people on their phones. Another way to look at it is 15 per square mile for less dense areas times four (4) which gets you to sixty (60) times the square mileage of the city, which is nine (9) miles exactly. There would be 540 of them deployed within the city in the next five years. This is a high estimate.

Mr. Markenson asked how many municipal-like stations have these towers on them.

Mr. Corcoron said that there are currently none in the City of Gladstone.

Mr. Markenson asked how many were on city buildings, water towers.

Mr. Corcoron replied that there are no small wireless facilities. There are macro towers on the water towers. He referred to his slides for clarification. On the right you see why this is happening. You see reduced latency, increased capacity, limit coverage and what they term bathroom coverage, which means coverage throughout your house or fixed wireless in your home; Google Fiber or Time Warner. Reduced latency has to do with self-driving cars. If you have a self-driving car that is only self-driving because it is connected to wireless it can't ever not be on wireless. If it's not on wireless, it crashes. The self-driving car is a forward example but explains why they are starting to build out now. Currently, the buildout you'll see in phase one is what is called pothole fixing. If you are driving and talking to someone on the phone, which you shouldn't be doing unless you have a handset, and your call drops, that's a pothole. Right now the first fixes are finding those potholes, putting something up in them and actually broadcasting 4G from that small wireless facility.

He shared two wireless examples on the overhead. The one on the right is near Winsted's, next to it. The one on the left is a block away. These are two really good examples of the type of deployment we want to encourage. Getting back to your macro micro small wireless example, the small wireless antenna under Missouri law is only six (6) cubic feet. The macro tower is a full array of about ten (10) foot of antennas. They are significantly smaller. He pointed out two briefcase-size things; those are the battery powers for the antenna. Those are associated pole equipment. On the pole itself there are six (6) cubic foot antenna and two (2) briefcase-size batteries. He then shared bad examples on the overhead. This is what they want to discourage. These are from Mobility in California. Mobility has the contract to do all of Sprint's buildout. They haven't proposed things like this yet. The one they proposed a year and a half ago looked

more like our previous examples. These are things to be aware and the previous regulations and what they attempt to stop.

Mr. Corcoran shared the laws that they have to deal with when dealing with small wireless facilities.

Mr. Murch asked about the location of the facilities and what they would do if there was no underground wiring and there wasn't a pole.

Mr. Corcoran said they would request to put up their own pole.

Mr. Murch asked if there could only be one carrier per pole.

Mr. Corcoran shared that is definitely something they will try to enforce as we don't want two of them stacked on top of each other. They could do that, they could put them to the sides, but we want one per pole on the top, if it has to happen at all. It is physically possible for them to do that but our code doesn't allow it.

Mr. Murch asked if our current code addresses these things.

Mr. Corcoran said that the code we have now wouldn't allow it. The code we have now is illegal starting January 14th (2019). We just haven't had anyone come in and do anything. Currently, when someone puts up a macro tower they come in to get a special use permit. We are no longer allowed to require special use permits. We can't have any zoning review at all. It has to be in our right-of-way codes.

Mr. Murch asked if we have any kind of concept in this nine (9) square miles of how much of it is underground versus above ground.

Mr. Corcoran shared that what they have been doing when providers come in, we have small wireless facilities, but they also have to lay fiber. We are actually encouraging underground facilities. If they do come in to get a new pole, we have laws about where that pole can go; spacing requirements of 150', there are additional design and concealment requirements. We know how much is underground and we are encouraging more to go underground. The goal for North Oak is essentially to not have anything above ground except light poles. He doesn't know if that if feasible at this point.

Some carriers have been receptive to putting their fiber underground. Some, AT&T, will not be. They use Southwestern Bell's statewide franchise that was granted to them in the 20's. They use that to go into all city right-of-ways without any permits or approvals. Mr. Corcoran covered the statutory items in FCC 18-133 and HB-1991. He shared that there are 500 pages of information in them. They go all the way back to the 1996 Telecommunications Act. Our more up-to-date ones are the FCC Declaratory Ruling in Third Order on FCC 18-133 and then Uniform Wireless Deployment Act, which is our Missouri law on this matter.

He went through the statutory items first. FCC 18-133 preempts any local legal requirements that effectively prohibit service including wireless infrastructure deployments. What happens is you look at the local code and state law and you look at FCC 18-133. If any of the local stuff is more burdensome on a provider, it is preempted by FCC 18-133. This was all thrown out by the Missouri legislature in the last legislative session, so our state law is stricter than city authority. There is also more language about what they consider effectively prohibiting. Materially inhibits or limits is their new kind of rule. With that they have also said that "expensive infrastructure". If we charge somebody $1,000 per linear foot of stuff in our right-of-way, that's too much and that will materially inhibit and would fall under FCC 18-133. This

is the first time they have taken a monetary view of inhibiting the permission of service. There could possibly 540 of these within the city. If we charged everybody $5,000 a piece, the carriers wouldn't be able to buildout. That is their argument. They made $68 billion last year and he believes they would be able to afford it.

The other thing FCC 18-133 does is affects timelines. We have 60 days to review an application for the attachment of a small wireless facility; if they asked to attach to one of our city poles. The city only has 60 days to review all permits, buildings, right-of-ways, everything in 60 days. If they do a new structure, we have 90 days. The FCC order doesn't preempt zoning but those timelines alone preempt zoning. It would be extremely difficult to get a permit application in, review it on the staff level, notice out for a hearing for a special use permit, have that hearing, have the written report done and back to them within 60 days. The current one for new macro towers is 120 days. When Commissioner Piot put that in he knew exactly what he was doing. Not only locally in the state of Missouri but nationally, with what people were charging for attachment to city infrastructure, he disagrees with the FCC. He thinks it was more than reasonable for cities to charge a $68 billion industry $500 a month to put something on one of our poles that tax payers paid for. They didn't agree with him. So now our fees must be reasonably approximate to the costs the city incurs, objectively reasonable to pass to the applicant, and no higher than fees charged to competitors in similar circumstances. Reasonably approximate means however long it takes him or Alan or Austin time to review. Objectively reasonable means we can't pass on to them a fee for Scott having to oversee everybody. No higher than fees charged to competitors. There were some cities that were working deals with Verizon specifically. Two good examples that actually came to him were Verizon deployments. They were charging Verizon less because Verizon was doing (inaudible) and then charging AT&T more because AT&T was taking advantage of its position as a subsidiary of Southwestern Bell and putting up really bad deployments.

Our application fees can be $500 for non-reoccurring fees. That would be the application fee and then our rate, which would be a yearly reoccurring fee, is $100 for a thousand. We have our $270, which would be our rate. That is what they view as presumptively reasonable. Now if providers want to put a small wireless facility on North Oak, or they want to put a small wireless facility in downtown Manhattan, they are paying $270 max.

HB-1991 is a little bit more restrictive than FCC 18-133. It completely preempts the zoning authority as you will see here; "not subject to zoning review or approval" except under very limited circumstances which that would be in historic districts or places zoned primarily for single family prior to August 28th. It also sets timelines. Its timelines are even shorter than the FCC's timelines. The city has 15 days to review an application and to see if it is incomplete. If we don't say that it's incomplete within 15 days, it is deemed complete. We have 45 days to approve an application for an attachment and 60 days for a new facility. If we do not meet those timelines, it is deemed approved. If something gets lost in the mail and they can claim that it actually got here somehow, and it doesn't meet any of our requirements, they can just go put it up. We handle that in the ordinance, or try to at least.

Application fees are somewhat similar. The FCC is $500 for five (5) which would be $100 per small wireless facility. Here it is $100 per small wireless facility, so the same. Then we have $500 for a new pole. Our reoccurring fees are $150, which is lower than the FCC even. Then for city facilities we can actually negotiate with them somewhat and charge them reasonable nondiscriminatory rates, fees and terms. He doesn't see them coming in to put something on City Hall when they can go on the light pole next to it for less and not have to deal with it.

We have some retained authority. The FCC lets the city use aesthetic requirements that are reasonable, no more burdensome than those on other types of infrastructure deployments, objective, and published in

advance. We have four (4) criteria; reasonable, objective, no more burdensome and published in advance. HB-1991 limited that even more. We can't have aesthetic requirements except for decorative poles. We can only have concealment requirements. He takes concealment to be less than aesthetic. Our concealment requirements can be reasonable, objective, and cost effective. For decorative poles, we can require the provider to try to meet the decorative element of the pole. He doesn't perceive them trying to go on the decorative poles. They can put up whatever pole they want 50 feet away and try to do that.

Undergrounding under the FCC has the same criteria as aesthetic requirements. He isn't sure if the FCC didn't understand the undergrounding requirements, but they said we couldn't require undergrounding of an antenna. HB-1991 allows us to deny co-locations and new poles if they don't meet our undergrounding requirements. There needs to be ability for them to appeal that. Under the current ordinance, the appeal would go to the City Engineer as they are the ones who understand the subject matter better than anyone else in the city. They still have to show good cause as to why they can't underground their antennas. Since Verizon has agreed to go underground, we always have them to back us up. If Verizon has gone underground then Sprint and T-Mobile come in and try to go above ground, our argument would be that if we let you go above ground then we are discriminating against Verizon because we made go underground, which is legal under Missouri right-of-way laws.

Spacing under the FCC is treated the exact same as aesthetic requirements. Under Missouri law we can deny a co-location or a new pole because of the failure to meet our spacing requirements. There needs to be an appeal process. That appeal would also go to the City Engineer. Our current spacing requirement in the ordinance is 150 feet. That is typical of what most cities are going with. We originally discussed 300 feet and mapped it out and realized that would have the effect of prohibiting the provision of wireless services within the city.

Mr. Corcoran ended the presentation and asked for any questions.

Mr. Markenson asked what we can require to go underground except wires.

Mr. Corcoran replied that is exactly what we can require is for the wires go underground. On high priority corridors, North Oak and 72nd Street, we might require vaults for the associated ground equipment. That is typically part of these. He shared a picture showing associated ground equipment on the overhead. The city did vaults for Google Fiber.

Mr. Markenson questioned if they can construct these towers in commercial and non-residentially zoned areas in the city's right-of-way.

Mr. Corcoran confirmed that was correct.

Mr. Markenson asked if we can control the spacing between them and certain concealment.

Mr. Corcoran confirmed that spacing, undergrounding and concealment are the three main areas of retained authority that we can use to control the aesthetics.

Mr. Markenson asked if, in Gladstone, most of the small cell facilities are on light poles.

Mr. Corcoran replied that there are no small cells in the city currently. There is a proposal from Mobility from a year ago that was a replacement pole. The city will encourage the replacement of the current wood light poles with the metal light poles. Part of the ordinance requires that the provider has a pre-

application meeting with the city and during that meeting we will try to sell them on doing metal poles. We can make it faster and cheaper.

Mr. Markenson asked if, in Gladstone, our cell phones go just through the macro towers.

Mr. Corcoran confirmed that is correct.

Mr. Markenson questioned if that would not be good in the future because they want more coverage.

Mr. Corcoran said that 5G signal doesn't go as far as 4G does. The macro tower serves an area of 2-3 miles. The small wireless, which does 5G, the 5G signal can only travel 2,000 feet. So they need more of those small 5G ones throughout the city and that is why they have done this.

Mr. Markenson confirmed that the existing macro towers don't have enough capacity.

Mr. Corcoran said they can't handle it. Their antennas can't produce 5G wireless signals that broadcast as far as necessary. If they were only on the macro towers, you would have 5G at the base of the pole and nowhere else.

Mr. Ebenroth asked how it would affect residential neighborhoods.

Mr. Corcoran replied that residential neighborhoods were still allowed to use our zoning review approval under Missouri law. From their conversations with most of the providers, AT&T is probably three years away from getting anything from them. Verizon is probably a 1 ½ to 2 years away. Sprint and T-Mobile, who knows; they aren't really proposing a lot of buildout. In our residential areas we are still going to do zoning review and approval in R1 Residential. That will probably look like an administrative review on the city's end because we still have the 45 and 60 day timelines. That is a very quick turnaround to organize everything. We will be a little bit stricter when they go into R1 and will probably require no associated ground equipment and require that it be a steel-side cobra-head with an antenna that is grey that matches the pole, runs in the middle of the pole, and has just those two boxes. AT&T is the one we have to be concerned about. Mike Chambers, who is their lobbyist, was at the last Council meeting and showed us some examples of what they have done in Independence. What they are doing is having Southwestern Bell through their statewide franchise put up a wood pole in a residential area, and then they are going on top and putting a black antenna on top it, and running cables down the side of it, and they have a big box that it is attached to.

Mr. Ebenroth confirmed that they won't be using existing light poles.

Mr. Corcoran shared that AT&T is the one that won't because Southwestern Bell is only charging them a dollar to go on their poles because it is the same company. Southwestern Bell has a state-wide franchise that was granted to them to build out telephone service in the state of Missouri in the 20's. It is still remains active even though multiple people have tried to get the franchise taken away.

Mr. Murch asked what kind of revenue is there for the city for this.

Mr. Corcoran said that if you do the $150 times 540, around $89,000 range at full build-out. What we were originally going to charge was $500 so it would be significantly more than that. It might end up at full build-out be a revenue loser because they might be able to take down some of the macro towers that are on city water towers. They pay significantly more than $150 a year to be on those. A bit of a revenue bump, probably not enough to cover the cost that Alan will spend reviewing this, and then potentially a revenue decrease in 5-10 years.

Mr. Murch asked what kind of liability is there to the city to have them there if somebody hits one or takes one out with their car.

Mr. Corcoran shared that we require that the carrier has insurance, and state law allows us to require that the carrier has insurance on the pole up to the sovereign immunity cap, $2.8 million. If anybody hit that pole and the pole collapsed on them and they argued it was because the small wireless facility, the carriers insurance, that they have added the city to, would cover it and the city would not be held individually liable or their insurance would not be held liable.

Mr. Murch asked what happens in five years when this technology is advanced beyond all of this.

Mr. Corcoran stated that the hope is that in five years these get even smaller.

Mr. Murch said we would have all these poles sitting around and now we don't need any of them.

Mr. Corcoran shared that there are abandonment bonds in the ordinance so it will be up to $75,000 of a bond that is held by the city. So if they abandon it and don't use it for a year, we provide them written notice, and the city can call on the bond and use the bond proceeds to take down the pole. The goal is to attempt to make them put street lights where we don't currently have street lights or where neighbors want street lights. If that does occur, the only thing we have to take down is the actual antenna and the boxes on the sides. We would keep the pole and claim it as city-owned at that point. The city owns about 1,000 poles and KCP&L owns the other 3,000 poles in the city. KCP&L is not subject to any of the law that we discussed tonight. It is not letting wireless providers go on their street lights, and is trying to require them to go just on to the power poles, the wood poles with the powerlines running on them. He feels that is a worse idea. He doesn't feel that contractors who aren't powerline contractors should be on poles working next to power lines. That is KCP&L's prerogative.

Mr. Murch shared that he is still unsure about when you say they are allowed 60 per square mile. He wasn't sure how we would measure a square mile. If he looks at North Oak and they put 60 of them per square mile down North Oak times four. That would be one every five feet.

Mr. Corcoran said we would deny all of those because it would violate the spacing requirement.

Mr. Murch said that basically every 150 feet down North Oak you could have a pole.

Mr. Corcoran shared that right now there is one every 200 feet.

Mr. Murch asked if that was on both sides of the street.

Mr. Corcoran said the east side currently has one every 200 feet. The entire point is that they are going to try to encourage co-locating on current city facilities and charging them less, making the timelines shorter, making the application fees shorter, to encourage city facilities. The only person that they have had any trouble with is AT&T. Verizon has already come in and showed us where they going to put their small wireless facilities. Their current plan is for five total on North Oak. They are all going on city light poles, everything is undergrounded.

Mr. Murch asked him to clarify that co-locating, you are talking about four carriers can put four antennas on one pole.

Mr. Corcoran said he is talking about one carrier on one pole. Co-location, previous to this year, meant you were putting an antenna on something that already has an antenna on it. Now, with small wireless,

co-location means they are putting an antenna on a current pole. That is what co-location means. Under our ordinance and under engineering and building codes, they can't do more than one. Under building codes he doubts that the engineering would work to put two on there. They aren't going to allow two on a pole. Unfortunately, our hands are tied here. They worked with our legislators to try to get a win. He was a member of the MML team that was talking with legislators drafting our model ordinances. Carriers have better lobbyists and they have a lot more. MML has two lobbyists; they brought on a third for this. Sprint probably has 10 in Jeff City.

Mr. Markenson shared that AT&T probably has 20 or 30.

Mr. Corcoran said that AT&T is the only one who has lobbyists specifically for local government. He has never seen that from another business. Ours is Mike Chambers. He does the Northland, St. Joe, and some of the east side of the metro. Sprint doesn't have any lobbyists that come to City Council meetings and talks. The idea is that they will be providing a new service that the citizens want, that the city, in the end wants. We don't want to be the only city in metro that doesn't have 5G. As long as they play by our rules and kind of do something that isn't atrocious, we are probably fine with it. We would have liked to not have these significant caps on our revenue on facilities and properties that the city and the citizens purchased. Here we are. FCC 133 has been called the largest corporate bailout in history because it saved the telecommunications industry close to $600 million a year over the next 20-30 years. You can add that up to see the revenue loss to cities because of it.

Mr. Ebenroth asked it that would impact franchise taxes.

Mr. Corcoran said that cities are not allowed to charge franchises to telecommunications companies. We have business license taxes. We are seeing decreases in that and it is because, if you look at your phone bill, you will see that you're actual telephone service is about $10 a month and that your data is about $80 a month. The current argument from the carriers is that data is not telephone service. He thinks it's kind of crazy since the only way you access it is through your telephone. They have seen decreasing gross receipts for the past four years. There is currently a law suit that just went to the Missouri Supreme Court and we should be getting a decision here soon that hopefully is beneficial to cities and says that data is subject to gross receipts. If it is, the city of Gladstone would be the next city that is involved in litigation against Sprint, T-Mobile, all of those. If you look at the city's gross receipts, we are seeing a 20% decrease year over year. He doesn't think that anyone's phone bill has gone down 20%.

Mr. Markenson asked who the plaintiff is in that.

Mr. Corcoran said it is the cities of Aurora, Oak Grove, and Cameron. He knows it is those three because he also represents those three.

Mr. Markenson asked what attorneys put that together. He asked if it was Vogel.

Mr. Corcoran confirmed it was Dan Vogel. That litigation has been going on for seven (7) years. Their clients that are involved in that litigation hope that they get a decision at this point; that it's not kicked back down to a lower courts and then cities are involved in ten years of litigation over what is telephone service. Even if that lawsuit does turn out in favor of cities, Sprint, T-Mobile, AT&T and Verizon aren't going to start voluntarily making payments. They're not going to make back payments.

Mr. Markenson asked if they're asking for back taxes.

Mr. Corcoran said that they should be. Their lobbyists went down and had a statutory change that cities can only go back three years for back taxes on telecommunications.

Mr. Markenson said that is a lot of money.

Mr. Corcoran agreed. He said the general estimates they've seen from cities similar in size to Gladstone are about $200,000 worth of underpayments in a year. There are some cities they represent where T-Mobile actually says they only collected $15 in money that was subject to gross receipts. They actually had a $.96 payment to a city of 10,000 people. That was pretty bold and daring.

Mr. Murch asked if there was any ancillary benefit to involving the 911 system.

Mr. Corcoran shared that currently there wasn't. Missouri is behind the times on the 911 system in general. The benefits that we'll see from 5G are connectivity, fewer dropped calls. The latency, when you pick up your phone and you click on something and it takes a little bit of time to load, that would eventually go down to zero. Once it goes to fixed wireless, which means they are your only wireless provider, you don't have Wi-Fi at your house, then the city would want to be one of the more connected cities so that businesses would use it, our citizens could use it. That's why you have actually seen Google Fiber has pulled back from their investment into actual hardline fiber. They are also repositioning to go to the fixed wireless arena. That could be potentially another carrier here.

Mr. Corcoran asked the Commissioners if they wanted to take a look at the new ordinance. It goes over exactly what they talked about here. The first section is our undergrounding and spacing requirements. The second section and the first section incorporate the "whereas" clauses that he drafted. The next section is our actual new article relating to small wireless facilities. It restates a lot of state law, but the key points to note are the concealment requirements and section 6.115.1402B; those are our concealment requirements. You will see we have requirements for concealment for the actual facility itself including shape and color. Then we have the associated pole equipment which does require it to be in a vault or for it to be green. Then replacement poles and we have our decorative poles stuff. The indemnification insurance and performance bond is the next section to take a look at. To try to get around our potential slip-ups where something gets by the 15, 45 or 60 day windows, "k" in that same section is our deemed approved facilities. "Should the city fail to act within the time required applicable law, any small wireless facility collocated on an existing structure or any installation, modification, or replacement of a utility pole shall be done in compliance with each and every provision of this article." He thinks they will argue the applicability of that. He will say that they will argue that this entire ordinance is in violation of every law that they have ever seen; that's what they do every time.

Mr. Markenson said they have lots of lawyers as well as lobbyists.

Mr. Corcoran said that when the city did its right-of-way code six months ago; this goes in the right-of-way code. This doesn't affect the zoning code because we can't have zoning reviewer approval, There is a catch-all where it does say "zoning authority retained" which would be our fallback if it goes over height requirements from state law and our ordinance, or is in a R1 residential district. That's when you, your authority, would step in. He seriously doubts we will do special use permits for those; just do the timelines. We might be back with you in four to five months to do some more code changes to the actual zoning ordinance. He doesn't know how often they're going to be going to R1 to start off with. R1 is typically not dense enough and they don't want to deal with the headaches. The thing he's learned over the past three years is that the carriers want to get this through as quickly as they can, with as minimal pushback as they can, for as cheap as they can. The main operative section is what he believes to be the most important is the last one, section 5 Fast-Track Small Wireless Facility Deployment. That is the city

encouraging these two examples. If you do something like these two, the city will approve it on an expedited 20 day timeline instead of a 45 or 60 day. We'll charge you less because there's no associated ground equipment so they're taking up less space on the right-of-way; there is less stuff for us to review. The rate for co-location goes down because they are using less of public property because there is no associated ground equipment. The kind of general requirements to that are:

(1) Only one small wireless facility shall be permitted per structure in the rights-of-way;

(2) The small wireless antenna and associated pole equipment shall be of the same or similar color as the pole on which it is to be attached;

(3) All wires and cables associated with the small wireless facility shall be installed on the interior of the pole; and

(4) No associated ground equipment shall be authorized; and

(5) No small wireless facility shall be located in a manner which obstructs or causes a safety concern for vehicle or pedestrian traffic; and

(6) If the proposed structure the applicant proposes to locate its small wireless facility is not structurally sound, but the director finds such to be a desired location, the director of public works can require the applicant to install a new substantially similar structure at its cost.

Mr. Corcoran believes there will a significant amount of replacements. The banners that the city has put up on poles, even those sometimes fail wind engineering. If a laminated piece of fabric makes the engineering unsound for poles, he assumes a six cubic foot antenna and an 8 cubic foot piece of pole equipment will also make it structurally unsound.

Mr. Corcoran asked for questions. He shared that it is a lot to process. He's had two years to process it. The Commissioners have had 50 minutes. He asked what they think of the ordinance. It isn't the typical zoning thing where a recommendation from the Commission is required. The Council would like to know their thoughts or potential recommendation on anything. They are looking at approval for the first meeting in March. There is a pending application where someone has reached out to the city inquiring on what city codes are regarding this and they didn't tell us where it is but they did send us their construction drawings and it would meet Fast-Track Small Cell Wireless. We don't know who it is. It's coming from a wireless infrastructure provider which is less favorable. We would actually like it if there were less of those people applying to the city because when they put an antenna up, the antenna cannot be used for two years. It is essentially an ugly thing in the right-of-way that provides no benefit. Under our ordinance we do require that it provides service within a year or they have to take it down.

Mr. Cookson appreciates the cleverness with which we are approaching it given the limitations.

Mr. Corcoran said that the example he has given other Boards, Commissions and City Councils is that typically cities regulate with a stick. You do something we don't like and we hit you with a stick so you stop doing it whether it's a fine or just saying no. Now we have to regulate with a carrot. We have to say you can do it cheaper and faster if you do it in a way that we at least kind of like.

Mr. Markenson asked for clarification that the new state law take affect this coming January.

Mr. Corcoran stated that is took affect January 1st but the city didn't have any pending applications so state law says that everybody had to adopt ordinances either two months after August 28th, or two months after a provider came in and requested. The interesting thing about that statute that said we had to do it within two months of August 28th was that statute itself didn't become effective until January 1st. As soon as we got any interest, which came in about two weeks ago, we immediately jumped up our timeline to try to get this done. The FCC order went effective January 14th. He expects more things to come from the FCC. The current chairman of the FCC is an ex-attorney for AT&T and lobbyist for the telecommunications industry as a whole. He won't be seeing things from the city's side. FCC 18-133 brought up an unpublished ruling by the FCC from twenty years ago and used that as the basis for the entirety of the order.

Mr. Corcoran asked if there was a recommendation from the Commission.

Mr. Markenson said they are all sort of nodding. To really do that, they would have to read the whole thing very carefully and they just received it tonight. He didn't think that anyone really . . .

Mr. Corcoran said he thought that what the Council wanted; that the approach and what they are doing and how we are going to do it was acceptable to the Commission. Unfortunately, the typical authority that the Commission has over wireless infrastructure deployment has essentially been cut due to HB-1991. Previous to this, all of these would have required a special use permits under city code. We would have been having special use permit hearings, five of them every month for the next five years.

10. **Adjournment.** Mr. Markenson motioned to adjourn; Mr. Cookson seconded.

Chair McGee adjourned the meeting at 6:55pm.

Respectfully submitted:

Cheryl Lamb, Recording Secretary — Approved as corrected _____

Jennifer McGee, Chair — Approved as submitted ✓