



City Council Agenda

Mayor
Christine Lundberg

City Council
Sean VanGordon, Ward 1
Hillary Wylie, Ward 2
Sheri Moore, Ward 3
Dave Ralston, Ward 4
Marilee Woodrow, Ward 5
Bob Brew, Ward 6

City Manager:
Gino Grimaldi
City Recorder:
Amy Sowa 541.726.3700

City Hall
225 Fifth Street
Springfield, Oregon 97477
541.726.3700
Online at www.springfield-or.gov

The meeting location is wheelchair-accessible. For the hearing-impaired, an interpreter can be provided with 48 hours notice prior to the meeting. For meetings in the Council Meeting Room, a "Personal PA Receiver" for the hearing impaired is available. To arrange for these services, call 541.726.3700.

Meetings will end prior to 10:00 p.m. unless extended by a vote of the Council.

All proceedings before the City Council are recorded.

March 25, 2013

5:30 p.m. Work Session
Jesse Maine Room

CALL TO ORDER

ROLL CALL - Mayor Lundberg ____, Councilors VanGordon ____, Wylie ____, Moore ____, Ralston ____, Woodrow ____, and Brew ____.

1. Water Quality Facilities in Subdivisions – Compliance Issues.
[Meghan Murphy/Bill Hamann/Brian Conlon] (30 Minutes)
2. Amendments to the Springfield Development Code (SDC) Section 4.3-145 – Wireless Telecommunication Systems Facilities; and Certain Terms Found in Section 6.1-110 – Meaning of Specific Words and Terms, Which Apply to Section 4.3-145.
[Mark Metzger] (30 Minutes)

ADJOURNMENT

6:30 p.m. Executive Session
(Estimated Time)
Pursuant to ORS 192.501(6), ORS 192.660(2)(e), ORS 40.225, and ORS 192.502(1)
Jesse Maine Room

CALL TO ORDER

ROLL CALL - Mayor Lundberg ____, Councilors VanGordon ____, Wylie ____, Moore ____, Ralston ____, Woodrow ____, and Brew ____.

1. Potential Sale of City Property.
[John Tamulonis]

(15 Minutes)

ADJOURNMENT

AGENDA ITEM SUMMARY

Meeting Date: 3/25/2013
Meeting Type: Work Session
Staff Contact/Dept.: Meghan Murphy, DPW
Bill Hamann, DPW
Brian Conlon, DPW
Staff Phone No: 541-744-3385
Estimated Time: 30 minutes
Council Goals: Promote and Enhance our Hometown Feel while Focusing on Livability and Environmental Quality

**SPRINGFIELD
CITY COUNCIL**

ITEM TITLE: WATER QUALITY FACILITIES IN SUBDIVISIONS – COMPLIANCE ISSUES**ACTION****REQUESTED:** No action is required. This material is for information only.

ISSUE**STATEMENT:** Since the early 1990's the City's Development Code has required the installation of stormwater management systems (both structural and non-structural Water Quality Facilities (WQFs) in public and private developments through the development review and approval process. Staff has found that business owners are generally proactive and willing to maintain their WQFs. In contrast, achieving compliance for WQFs in subdivisions and maintaining City owned WQFs has been more problematic. Seasonal staff resources may be needed to more effectively manage these facilities.

ATTACHMENTS: 1. Council Briefing Memorandum

**DISCUSSION/
FINANCIAL
IMPACT:**

The purpose of stormwater management is to, by mimicking natural hydrology, improve water quality, and collect and effectively convey stormwater runoff. The WQF Management Program was implemented in 2010 and is an inspection and compliance program to ensure that both public and private systems are effectively maintained. There are currently 38 WQFs that the Environmental Services and Operations Divisions oversee and regulate; 10 City owned and maintained WQFs, 10 Private WQFs with negotiated maintenance agreements (City to maintain system functionality), and 18 private WQFs where systems maintenance is the responsibility of the homeowners associations (HOAs). Many of these WQFs, such as detention ponds in multiple lot subdivisions, are in poor functional condition and need attention.

Achieving compliance for WQFs that serve multiple properties in subdivisions has been much more challenging. Many homeowners and residents were unaware of the HOA's responsibility to maintain their WQFs. Another problem is that many HOAs are administratively dissolved or non-functioning making communication and enforcement difficult. HOAs often lack the funding and knowledge to properly maintain these facilities. Staff continues to dedicate many hours pursuing formal compliance solutions and facilitating WQF education and outreach to meet regulatory obligations.

MEMORANDUM

City of Springfield

Date: 2/19/2013

To: Gino Grimaldi, City Manager **COUNCIL**

From: Meghan Murphy, ESD Water Resources Tech **BRIEFING**
Bill Hamann, ESD Water Programs Manager
Brian Conlon, Operations Division Manager

Subject: WATER QUALITY FACILITIES IN **MEMORANDUM**
SUBDIVISIONS – COMPLIANCE ISSUES

ISSUE:

Since the early 1990's the City's Development Code has required the installation of stormwater management systems (both structural and non-structural Water Quality Facilities (WQFs)) in public and private developments through the development review and approval process. Staff has found that business owners are generally proactive and willing to maintain their WQFs. In contrast, achieving compliance for WQFs in subdivisions and maintaining City owned WQFs has been more problematic. Seasonal staff resource is needed to more effectively manage these facilities.

COUNCIL GOALS/**MANDATE:**

Promote and Enhance our Hometown Feel while Focusing on Livability and Environmental Quality.

BACKGROUND/DISCUSSION:

The Water Quality Facility (WQF) Management Program was implemented in 2010 and continues to be managed by the Water Resources Section of Environmental Services. Over that time, business owners who have gone through the program have generally been willing and eager to maintain their WQFs. The program has been successful in achieving compliance with WQFs that serve single properties.

Achieving compliance for private WQFs that serve multiple properties in subdivisions has been much more challenging. Many homeowners and residents were unaware of the Homeowners Association (HOAs) responsibility to maintain their WQFs. Another problem is that many HOAs are administratively dissolved or non-functioning making communication and enforcement difficult. HOAs often lack the funding and knowledge to properly maintain these facilities. Staff continues to dedicate many hours pursuing formal compliance solutions and facilitating WQF education and outreach to meet regulatory obligations.

Regulatory Context: The City of Springfield Stormwater Management Plan (SWMP) establishes goals, policies, and implementation actions that will achieve the City Council's long term objectives and ensure compliance with the City's National Pollutant Discharge Elimination System Phase II Municipal Separate Storm Sewer (MS4) permit.

In support of the SWMP's Minimum Control Measure #5 (Post-Construction Stormwater Management for New Development and Redevelopment), City staff developed the WQF Management Program. This program's goal, according to the City's MS4 permit, is to "ensure adequate long-term operation and maintenance of Best Management Practices (BMPs) and ensure adequate enforcement of the ordinance or alternative regulatory program."

Program Background & Elements: The City requires the installation of stormwater management systems (both structural and non-structural) in private developments through the development review and approval process. The purpose of stormwater management is to mimic natural hydrology, improve water quality, and to collect and effectively convey stormwater runoff. The WQF Management Program is an inspection and compliance program to ensure that both public and private systems are maintained over time.

Staff inspects facilities every three to four years and determines the condition of each WQF. The property owner and manager are mailed the inspection results, maintenance recommendations, required corrective actions (for non-functional facilities), inspection logs, maintenance checklists and fact sheets for each type of facility, a native plant poster, an invasive plant booklet, and stormwater program information. Staff then works with the property owner/manager to bring the facility into compliance.

Education is the first step in gaining compliance. If property owners repeatedly fail to respond or to maintain their facility, they may be in violation of the Land Use Decision, Development Agreement, and/or Stormwater Treatment Facilities Operation and Maintenance Agreement associated with their property. They may be subject to a civil citation.

History of WQFs in Subdivisions: In 2002, staff recommended to Council that WQFs in subdivisions be owned and maintained by the City. Council determined that there was too much risk to take on ownership and responsibility for all WQFs in subdivisions and left it up to staff to determine, for each facility, whether it should be owned by the City or HOA. Council also determined that those owned by the HOA should enter into a maintenance agreement and easement with the City, which council adopted in 2002 through the Engineering Design Standards and Procedures Manual (EDSPM).

For reference, the City of Springfield 2002 EDSPM Section 3.01 states:

“.. it is the general intent of the City of Springfield to provide maintenance by the City to assure the proper functioning of all portions of a stormwater system which provide stormwater drainage or water quality service to multiple properties, including the public right-of-way, including water quality and detention ponds which serve such purposes. All such facilities shall, therefore, be designed in accordance with all requirements of design and maintenance access as laid out in this Section 3.00 Stormwater Quality or Section 4.00 Stormwater Capacity of this Manual or as specifically directed by the City Engineer. or portions of the system which remain in private ownership, such as those water quality or detention ponds owned by homeowners associations in subdivisions, the City maintenance rights and responsibilities will be laid out in an agreement with the underlying facility owner. It is NOT the intent of the City that storm drainage or water quality facilities which serve single ownerships, or for some other reason are not deemed to be “public” in nature, be maintained by the City. These shall be maintained by the private owners of the facilities.”

The 2012 version of the EDSPM Section 3.01 is similar, but the sentence about facilities that serve multiple properties has been removed.

Post-2002 Update: This has resulted in a variety of ownership and maintenance responsibilities. Some facilities in subdivisions are owned and maintained by the City. Others are owned and maintained by HOAs. In addition, many facilities in subdivisions do not have signed maintenance agreements with the City. Several of these facilities are maintained by City

Operations staff by default if the HOA is defunct, which is an unfunded increase in Operations staff work load.

Residents throughout the City pay the same stormwater user fee rate to maintain and operate the public stormwater system. Additionally, where private WQFs are maintained by HOAs in subdivisions exist, HOA members are expected to pay dues to maintain these facilities.

Facilities in subdivisions accept public (i.e. street) runoff, thus the City has a responsibility to ensure these facilities function long term, regardless of who owns the land. The City also needs to meet its MS4 permit requirements, which regulates runoff from municipal properties (like streets).

Staff supports the idea of the City's Operations Division eventually taking over maintenance and ownership (or easement) for existing facilities that accept public runoff or serve multiple properties. This would impact approximately 18 sites with existing WQFs.

Potential benefits of City maintenance/ownership include:

- Facilities become amenities to the community
- Improve wildlife habitat and surface and ground water quality
- Reduce flooding potential
- Reduce enforcement issues - No fining of residents/HOA
- The WQFs are maintained

Potential costs include:

- Increase of Operations staff time
- Increased summer crew labor
- Sediment removal, vegetation, etc.
- Land value if purchased
- Possible increased equipment needs

Staff proposes \$40,000 in additional funding from the Stormwater Operations Fund to begin an effort to maintain these facilities. Funding would be used primarily to increase the summer temporary work force so that they could perform these duties. In addition, staff is in the process of developing a collection of tools and other materials which could be housed in a small trailer and used to provide supplies to volunteer programs wherein citizens could take on some of these management tasks under general guidance and direction of City staff. Pending Council approval of the program concept, the Budget Team recommends that this program be funded in the City Manager's proposed FY 2014 budget.

RECOMMENDED ACTION:

No action is required. This material is for background information only. Operation and management of the public and private WQFs is a complex issue, staff will return with an update and evaluation of the seasonal work program and its effectiveness if approved in FY14.

AGENDA ITEM SUMMARY

Meeting Date: 3/25/2013
Meeting Type: Work Session
Staff Contact/Dept.: Mark Metzger
Staff Phone No: 541-726-3775
Estimated Time: 30 minutes
Council Goals: Mandate

**SPRINGFIELD
CITY COUNCIL**

ITEM TITLE: AMENDMENTS TO THE SPRINGFIELD DEVELOPMENT CODE (SDC) SECTION 4.3-145—WIRELESS TELECOMMUNICATIONS SYSTEMS FACILITIES; AND CERTAIN TERMS FOUND IN SECTION 6.1-110—MEANING OF SPECIFIC WORDS AND TERMS, WHICH APPLY TO SECTION 4.3-145.

ACTION REQUESTED: No action required. Councilors are requested to review the attached memorandum in preparation for a discussion of Development Code standards guiding the installation of wireless telecommunications system (WTS) facilities. Proposed amendments to these standards will come before the Council for a first reading and public hearing on April 1.

ISSUE STATEMENT: Staff has prepared a package of amendments to Section 4.3-145 of the Development Code which address Council concerns with the City’s siting and design standards for WTS facilities and particularly cell towers. The amendments are scheduled to come before Council in a first reading and public hearing on April 1.

ATTACHMENTS: 1. Annotated Version of Proposed Amendments to Section 4.3-145
2. Staff Report

**DISCUSSION/
FINANCIAL
IMPACT:** On October 22, 2012, staff met in work session with Council to discuss its concerns with current policies regulating the siting and design standards for WTS facilities. At that meeting, staff proposed an approach to resolving Council’s concerns. Council approved the approach and directed staff to develop amendments to the Development Code to implement desired changes.

Attachment 1 is an annotated version of the amended Section 4.3-145. The amended section replaces the existing section and amends the Section 6.1-115 ‘relocate’ terms specific to WTS facilities to Section 4.3-145.

Key changes found in the amended Section 4.3-145 include provisions for:

- Council notification and Planning Commission review of all new cell tower installations; and
- Establishing minimum setbacks for towers from streets; and
- Requiring cell tower applicants to fund a peer review of certain applications where towers are proposed in or near residential areas.

Attachment 2 is a staff report which examines the proposed amendments for their consistency with the criteria found in SDC Section 5.6-115 for approving Development Code amendments.

Annotated Version of the Proposed Amendments to Section 4.3-145 of the Springfield Development Code

I. BACKGROUND

On October 22, 2012, the City Council asked staff to prepare amendments to the Springfield Development Code that would remedy certain concerns with the existing policies that guide the location and appearance of cell towers and related Wireless Telecommunications System (WTS) facilities. The Council request to review the WTS standards was a reminder that SDC Subsection 4.3-145 G. intended that WTS regulations be periodically reviewed to ensure “contemporaneity with technological changes made in this industry.”

In preparing the amendments to the current regulations it was imperative that proposed changes comply with the approval criteria for Development Code amendments found in SDC Section 5.6-115. These criteria state that in “reaching a decision on these actions, the Planning Commission and the City Council shall adopt findings which demonstrate conformance to the following:

- A. The Metro Plan;
- B. Applicable State statutes; and
- C. Applicable State-wide Planning Goals and Administrative Rules.”

The staff report provides findings that support a conclusion that proposed amendments comply with the approval criteria. The local and state policies mentioned in the approval criteria have little to say about how communities regulate the location and appearance of WTS facilities. The Federal Telecommunication Act of 1996 (TCA) recognizes the right of local governments to regulate the siting of WTS facilities to minimize the intrusion of the facilities on local neighborhoods. The TCA placed certain limits on those local siting standards (listed below). Those limitations have shaped the proposed WTS amendments.

The Telecommunications Act of 1996 (TCA) – The stated purpose of the TCA is to “promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunication consumers and encourage the rapid deployment of new telecommunications technologies.” In carrying out this purpose, the TCA implements three important (but somewhat competing) principles:

- 1) The siting of wireless telecommunications facilities must comply with local zoning and land use regulations; and
- 2) Local jurisdictions must not unreasonably discriminate among providers of functionally equivalent services but may distinguish applications based upon different visual, aesthetic and safety concerns; and
- 3) The local regulations must not result in the actual or effective prohibition in the provision of personal wireless services.

During the 16 years that have elapsed since the enactment of the TCA, a multitude of Federal cases have explained or elaborated the meaning and application of the three principles (not always consistently). As a result, a great deal of uncertainty exists as to what local jurisdictions can and cannot do, and what cell tower providers can expect. However, the most recent cases from the Ninth Circuit Court of Appeals (Includes Oregon) give much clearer guidelines for reviewing tower applications.

MetroPCS, Inc. v. City and County of San Francisco, 400 F.3rd 715 (2005) – The court said that denial of an individual application may constitute an ‘effective denial’ of wireless services if:

- a) The provider establishes a significant gap in service by showing that it is prevented from filling a significant gap in its own coverage; and
- b) The manner in which the carrier proposes to fill the gap is the least intrusive choice.

The court said the gap in service must be truly ‘significant’ and not merely ‘dead spots’ within a greater service area. Aside from this comment, the opinion does not provide a clear test for when a gap is considered significant. Instead the court noted such determinations are “extremely fact-specific inquiries that defy any bright-line legal rule.

The second element of the ‘effective prohibition’ rule requires the provider to show a particular site is least intrusive based upon different visual, aesthetic and safety concerns implemented through local review standards and criteria.

In choosing the term ‘least intrusive’ the court rejected the rule that would require showing the site is the only ‘viable option’ to close the service gap. Instead, the provider must show a good faith effort has been made to identify and evaluate less intrusive alternatives (e.g., less sensitive sites, alternative system designs, alternative tower designs, co-location of antennas, etc.). In reviewing local decisions under the MetroPCS test, the court said decisions may not be overturned when supported by a reasonable amount of evidence (that is, substantial evidence) that appropriately addresses local regulations.

Finally, the MetroPCS court said local governments shall not regulate placement, construction or modification of WTTs on the basis of environmental effects of radio frequency emissions once facilities comply with Federal rules concerning such emissions.

T-Mobile USA, Inc. v. City of Anacortes, 572 F.3rd 987 (2009) – The court clarified and extended the MetroPCS holding as it relates to how a provider satisfies the burden of showing a particular site meets the least intrusive test. Even when a local jurisdiction’s record contains substantial evidence supporting denial under local approval criteria, the denial may nevertheless violate the TCA as an ‘effective prohibition of service’ when the carrier makes out a prima facie case the proposed site is least intrusive after comparing the site against other potentially available and technologically feasible alternatives for closing the significant gap. When this happens, the burden shifts to the local jurisdiction to show the existence of some other potentially available and technologically feasible alternatives to the proposed location. In short, once a provider establishes a prima facie case, the City cannot deny the tower application unless it shows there are other viable sites available to the provider. By doing so, the City avoids an effective prohibition under the TCA.

Amendments to the TCA – Two subsequent amendments to the TCA need to be mentioned in conjunction with the proposed amendments. 1) The new law now requires all new towers to have back up power supplies as a matter of homeland security planning. 2) Local jurisdictions must complete new tower applications within 150 days. Co-location applications must be approved within 90 days. Failure to meet these deadlines gives the tower applicants the right to transfer application review to Federal District Court.

II. PROPOSED AMENDMENTS TO SDC SECTION 4.3-145

The following proposed amendments to SDC Section 4.3-145 are adapted from recently adopted regulations that were prepared by the City of Bend and by Josephine County. Both of these jurisdictions have updated their regulations to be consistent with current case law and the most recent Federal wireless telecommunications facilities regulations. Commentary explaining the new regulations is shown in *italicized font*.

Section 4.3-145 Wireless Telecommunications System (WTS) Facilities

Commentary. The current wireless telecommunications facilities regulations do not have a “Purpose” Section. This Subsection is new and provides the rationale for wireless telecommunications facilities regulations in Springfield and specifically supports limiting the siting of new facilities by using co-location or other means.

- A.** Purpose. This Section is intended to:
- 1.** Implement the requirements of the Federal Telecommunications Act of 1996;
 - 2.** Provide a uniform and comprehensive set of standards and review procedures for the placement, operation, alteration and removal of WTS facilities;
 - 3.** Allow new WTS facilities where necessary to provide service coverage and there is a demonstrated need that cannot be met through existing facilities;
 - 4.** Maximize the use of existing WTS facilities in order to minimize the need to construct additional facilities;
 - 5.** Encourage the siting of new WTS facilities in preferred locations;
 - 6.** Lessen impacts of new WTS facilities on surrounding residential areas; and
 - 7.** Minimize visual impacts of new WTS facilities through careful design, configuration, screening, and innovative camouflaging techniques.

Commentary. This Subsection is new and is consistent with other SDC Sections that discuss Applicability.

- B.** Applicability/Conflicts.

1. Applicability. This Section applies within Springfield’s city limits and its Urban Services Area. No WTS facility may be constructed, altered (to include co-locations) or replaced, unless exempt, without complying with the requirements of this Section. Exempt facilities are listed in Subsection D below.
2. Conflicts. In cases where:
 - a. The development standards of this Section conflict with other Sections of this Code, these standards will prevail.

EXCEPTION: In the Glenwood Riverfront, the WTS standards regarding type and height of the antenna will apply. All other aspects of the application submittal and review process specified in this Section will apply.
 - b. These development standards conflict with Federal and/or State regulations, the Federal and/or State regulations will prevail.

Commentary. This Subsection is new. Currently there are no regulations for pre-existing WTS towers other than they should be capable of co-location.

- C. Pre-existing WTS Facilities.
 1. WTS facilities that lawfully existed prior to the adoption of this Ordinance shall be allowed to continue their use as they presently exist.
 2. Routine maintenance will be permitted on lawful pre-existing WTS facilities as specified in Subsection 4.3-145D.1.
 3. Lawfully existing WTS facilities may be replaced as specified in Subsection 4.3-145D.2.

Commentary. This Subsection is an expansion of current regulations that exempt only ham radios and satellite dishes. Note: Criteria is proposed for the replacement of an existing WTS facility with only a building permit as specified in proposed Subsection D.2. If all of these criteria cannot be met, the replacement will be considered as new construction and require Planning Commission (Type III) review as specified in Subsection H.3.

- D. Exemptions. The following shall be considered exempt structures or activities under, however, all other applicable Federal, State and City permits will be required:
 1. Emergency or routine repairs or routine maintenance of previously approved WTS facilities.
 2. Replacement of existing previously approved WTS facilities.
 - a. A WTS facility may be replaced if it:
 - i. Is in the exact location of the facility being replaced;

- ii. Is of a construction type identical in height, size, lighting and painting;
 - iii. Can accommodate the co-location of additional antennas or arrays;
 - iv. Does not increase radio frequency emissions from any source; and
 - v. Does not intrude or cause further intrusion into a setback area.
 - b. Those WTS facilities that cannot meet the replacement standard in Subsection 4.3-145D.2.a. will be treated as new construction, requiring Type I or III review as specified in Subsection 4.3-145H.
3. Industrial, scientific and medical equipment operating at frequencies designated for that purpose by the Federal Communications Commission.
 4. Essential public telecommunications services - military, Federal, State, and local government telecommunications facilities.
 5. Amateur and citizen band radio transmitters and antennas.
 6. Military or civilian radar operating within the regulated frequency ranges for the purpose of defense or aircraft safety.
 7. Antennas (including, but not limited to: direct-to-home satellite dishes;, TV antennas; and wireless cable antennas) used by viewers to receive video programming signals from direct broadcast facilities, broadband radio service providers, and TV broadcast stations.
 8. Low-powered networked telecommunications facilities including, but not limited to microcell radio transceivers located on existing utility poles and light standards within public right-of-way.
 9. Cell on Wheels (COW), which are permitted as temporary uses in nonresidential Metro Plan or 2030 Springfield Refinement Plan designations for a period not to exceed 14 days, or during a period of emergency as declared by the City, County, or State.

Commentary. These WTS definitions are primarily from Bend's Ordinance and are more up-to-date and precise than Springfield's definitions. These definitions are new and are proposed to be placed in this Section, rather than in Chapter 6—Definitions because they are specific to wireless telecommunications facilities and for customer convenience. The current WTS definitions in Chapter 6 are proposed to be deleted.

E. Definitions. The words and phrases used in this Section shall have the following meanings:

Approval Authority.

1. Type I Review. Staff has the authority to approve new co-locations, equipment replacement, and applications for low visibility and stealth WTS facilities.

2. Type III Review. The Planning Commission and the City Council are the Approval Authority for applications to construct high and medium visibility WTS facilities within the city limits.
3. Type III Review. The Hearings Official, by agreement with Lane County, is the Approval Authority for high and medium visibility WTS facilities located outside the city limits but within the Springfield Urban Growth Boundary.

Antenna. Any system of wires, poles, rods, reflecting discs or similar devices designed for telephonic, radio, facsimile, data, or television telecommunications through sending and/or receiving of electromagnetic waves when the system is either external to or attached to the exterior of a structure. Antennas include, but are not limited to: devices having active elements extending in any direction; and directional beam-type arrays having elements carried by and disposed from a generally horizontal boom that may be mounted up and rotated through a vertical mast or tower interconnecting the boom and antenna support. All of the latter elements are part of the antenna.

Antenna height. The vertical distance measured from the ground surface at grade to the tip of the highest point of the antenna on the proposed structure.

Antenna support. Any pole, telescoping mast, tower, tripod or any other structure that supports a device used in the transmitting and/or receiving of electromagnetic waves.

Camouflaged. Any WTS facility that is designed to blend into the surrounding environment. Examples of camouflaged facilities include, but are not limited to: architecturally screened roof-mounted antennas; building-mounted antennas painted to match the existing structure; antennas integrated into architectural elements; towers made to look like trees; and antenna support structures designed to look like flag poles or light poles.

Carrier. A company authorized by the FCC to build and/or operate a WTS facility.

Co-location. The use of a single WTS tower for the placement of multiple antennas or related telecommunications equipment often involving different carriers.

Equipment building, shelter or cabinet. A cabinet or building used to house associated equipment used by providers at a WTS facility. Associated equipment includes, but is not limited to: air conditioning; and emergency generators.

Façade mounted antenna. An antenna architecturally integrated into the façade of a building or structure.

Facility. A WTS facility.

Faux tree. A WTS tower camouflaged to resemble a tree.

Guyed tower. A WTS tower that is supported, in whole or in part, by guy wires and ground anchors.

High visibility. The following WTS facilities are examples of high visibility facilities:

1. Monopoles, lattice towers and guyed towers.
2. Any WTS facilities that do not meet the definition of stealth, low visibility, or moderate visibility.

Lattice tower. A guyed or self-supporting three or four sided, open, steel frame support structure used to support WTS equipment.

Low visibility. The following are examples of low visibility WTS facilities that shall not exceed the height limit of the base zone and shall not increase the height of an existing WTS facility:

1. Whip antennas not exceeding 6 feet in length or height, including mounting, and measuring no more than 3 inches in diameter, located on existing structures including, but not limited to, water storage tanks, high-voltage transmission towers, utility towers and poles, sign standards, and roadway overpasses, with equipment cabinets that are screened from view.
2. Facilities, including equipment cabinets that are screened from view through the use of architectural treatments, including, but not limited to: cupolas; steeples; and parapets; and are consistent with existing development on adjacent properties.
3. Additions to existing permitted low-visibility facilities, if the additions themselves meet the definition of low visibility and are designed to minimize visibility the WTS facility.
4. Changes to an existing building that are consistent with the building's architectural style and the equipment cabinets are not visible.

Maintenance. Emergency or routine repairs or replacement of transmitters, antennas, or other components of previously approved WTS facilities that do not create a significant change in visual appearance or visual impact.

Microcells. These devices provide additional coverage and capacity where there are high numbers of users within urban and suburban macrocells. The antennas for microcells are mounted at street level, typically on the external walls of existing structures, lamp-posts, and other street furniture. Microcell antennas are usually smaller than macrocell antennas, and when mounted on existing structures, can often blend into building features. Microcells provide radio coverage over distances, typically between 100 meters and 1,000 meters, and operate at power levels substantially below those of macrocells.

Moderate visibility. The following WTS facilities are examples of moderate visibility facilities:

1. Panel-shaped antennas not exceeding 8 feet in length or height that are flush-mounted to an existing building façade or other existing structure on at least one edge, or extend a maximum of 24 inches from the building façade or other structure at any edge, do not exceed the height of the building or other structure, and are designed to blend with the color, texture, and design of the existing building or structure, with equipment cabinets that are screened from view.

2. WTS facilities that are camouflaged, including, but not limited to: faux trees; flag poles; and light poles, provided that the equipment building, shelter, or cabinet for the facility is screened or camouflaged.

Monopole. A WTS facility consisting of a single pole constructed for purposes of supporting one or more antennas without guy wires or ground anchors.

Panel or directional antenna. An antenna or array of antennas designed to concentrate a radio signal in a particular area.

Residential Zoning District. Any Springfield zoning district where single-family and or multi-family dwelling units are intended to be the dominate land use.

RF. Radio Frequency.

Roof mounted antenna. Any antenna with its support structure placed directly on the roof of any building or structure.

Screened. Concealed from view with a sight obscuring fence, wall or vegetation.

Service area. The area served by a single WTS facility.

Side-mounted antennas. Those antennas that are mounted on the side of a tower structure at any height, and including both the antennas and equipment with protective radome coatings. This term also includes microwave dish antennas, solid or not, located at 150 feet or lower on a tower structure, regardless of the dish diameter. The term does not include solid microwave dish antennas exceeding 6 feet in diameter that are located above 150 feet on a tower structure.

Small top-mounted antennas. Any antenna mounted on the top of a tower structure where the antenna is 20 feet or less in height and 6 inches or less in outside diameter.

Speculation tower. An antenna support structure designed for the purpose of providing location mounts for WTS facilities, without a binding written commitment or executed lease from a service provider to utilize or lease space on the tower at the time the application is submitted.

Stealth. WTS facilities including, but not limited to: microcells; antennas; equipment cabinets; and any other ancillary equipment that cannot be seen from any street or any adjacent property, improved or unimproved, and that do not result in any apparent architectural changes or additions to existing buildings. The addition of landscaping, walls, fences, or grading as screening techniques does not make an otherwise visible WTS facility a stealth facility.

Telecommunications. The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Tower or WTS tower. Any mast, pole, monopole, guyed tower, lattice tower, free standing tower, or other structure designed and primarily used to support antennas.

Whip antenna means an antenna that transmits or receives signals in 360 degrees. Whip antennas are typically cylindrical in shape, less than 3 inches in diameter and no more than 6 feet long, including the mounting.

Wireless Telecommunications System (WTS) facility. Any facility that transmits and/or receives electromagnetic waves, including, but not limited to, antennas, dish antennas, microwave antennas, and other types of equipment for the transmission or receipt of these signals, including, but not limited to: telecommunications towers and similar supporting structures; equipment cabinets or buildings; parking areas; and other accessory development. This definition also includes any facility that transmits radio or television signals. This definition does not apply to Amateur Radio Stations as defined by the Federal Communications Commission, Part 97 of the Commission's Rules.

Commentary. The Federal Telecommunications Act of 1996 (FTA) limits the siting standards which local governments can place on WTS facilities. Section F acknowledges that there may be rare instances where an applicant may prove that Springfield's prohibits them from providing wireless service to an area. In such cases the City will work to require the least intrusive means of providing services within rules of the FTA.

F. General Standards. The Federal Telecommunications Act of 1996 establishes limitations on the siting standards that local governments can place on WTS facilities. Section 704 of the Act states that local siting standards shall not:

- 1) "unreasonably discriminate among providers of functionally equivalent services"
- 2) "prohibit or have the effect of prohibiting the provision of personal wireless services."

All applications for WTS facilities are subject to the standards in this section to the extent that they do not violate federal limitations on local siting standards. Where application of the standards found in this section constitutes a violation, the least intrusive alternative for providing coverage shall be allowed as an exception to the standards.

Commentary. Subsections 1-3 are expressions of existing regulations. They limit the siting of new WTS towers by requiring collocation where possible and by requiring the carrier to demonstrate need for a new one. Subsection 4 has been modified and requires the carrier to identify the least intrusive alternative for providing coverage. Newer technology can be used to serve gaps in coverage without new towers. Some of these alternatives include small whip antennas that can be mounted to existing utility poles.

1. Design for Co-location. All new towers shall be designed to structurally accommodate the maximum number of additional users technically practicable.
2. Demonstrated Need for New WTS Facilities. Applications shall demonstrate that the proposed WTS facility is necessary to close a significant gap in service coverage or capacity for the carrier and is the least intrusive means to close the significant gap.

3. Lack of Coverage and Lack of Capacity. The application shall demonstrate that the gap in service cannot be closed by upgrading other existing facilities. In doing so, evidence shall clearly support a conclusion that the gap results from a lack of coverage and not a lack of capacity to achieve adequate service. If the proposed WTS facility is to improve capacity, evidence shall further justify why other methods for improving service capacity are not reasonable, available or effective.
4. Identify the Least Intrusive Alternative for Providing Coverage. The application shall demonstrate a good faith effort to identify and evaluate less intrusive alternatives, including, but not limited to: less sensitive sites; alternative design systems; alternative tower designs; the use of repeaters; or multiple facilities. Subsection 5 defines the type of WTS facilities that are allowed in each zoning district.
5. Location of WTS Facilities by Type. Subsection 4.3-145 E. defines various types of WTS facilities by their visual impact. These are: high visibility, moderate visibility, low visibility and stealth facilities. Table 4.3-1 lists the type of WTS facilities allowed in each of Springfield's zoning districts.

Table 4.3-1

Zoning Districts	Types Allowed
Special Heavy Industrial Heavy Industrial Light-Medium Industrial Quarry Mining Operations	High visibility Moderate visibility Low visibility Stealth
Zoning Districts	Types Allowed
Community Commercial Campus Industrial Booth Kelly Mixed Use Major Retail Commercial Mixed Use Employment Mixed Use Commercial Medical Service	Low visibility Moderate visibility Stealth
Zoning Districts	Types Allowed
Neighborhood Commercial General Office Low Density Residential Medium Density Residential High Density Residential Mixed Use Residential Public Land and Open Space	Low visibility Stealth

Commentary. Subsections 6 and 7 are new regulations. They are intended to reduce the visual impact of clusters of towers within close proximity of one another. Subsection 7 sets a minimum distance of 2000 feet between towers.

6. Maximum Number of High Visibility WTS Facilities. No more than one high visibility facility is allowed on any one lot/parcel.

EXCEPTION: The Approval Authority may approve exceeding the maximum number of high visibility facilities per lot/parcel if one of the following findings is made:

- a. Co-location of additional high visibility facilities is consistent with neighborhood character,
 - b. The provider has shown that denial of an application for additional high visibility WTS facilities would have the effect of prohibiting service because the proposed facility would fill a significant gap in coverage and no alternative locations are available and technologically feasible, or
 - c. The provider has shown that denial of an application for additional high visibility WTS facilities would unreasonably discriminate among providers of functionally equivalent services.
7. Separation between Towers. No new WTS tower may be installed closer than 2,000 feet from any existing or proposed tower unless supporting findings can be made under Subsections 4.3-145F.2., 3. and 4 by the Approval Authority.

Commentary. Subsection 8 is new and provides more specific regulation for the location of new wireless telecommunications towers that abut residentially zoned properties. This Subsection addresses the City Council's concerns regarding the placement of WTS towers.

8. WTS Facilities Adjacent to Residentially Zoned Property. In order to ensure public safety, all towers located on or adjacent to any residential zoning district shall be set back from all residential property lines by a distance at least equal to the height of the facility, including any antennas or other appurtenances. The setback shall be measured from that part of the WTS tower that is closest to the neighboring residentially zoned property.

Commentary. Subsection 9 extends new protection to historic buildings located outside of the Historic Overlay District.

9. Historic buildings and structures. No WTS facility shall be allowed on any building or structure, or in any district, that is listed on any Federal, State or local historic register unless a finding is made by the Approval Authority that the proposed facility will have no adverse effect on the appearance of the building, structure, or district. No change in architecture and no high or moderate visibility WTS facilities are permitted on any building or any site within a historic district. Proposed WTS facilities in the Historic Overlay District are also subject to the applicable provisions of Section 3.3-900.

Commentary. Subsection 10 provides new setback standards for equipment location. This addresses the problem that resulted in the placement of towers just behind the sidewalks on Olympic Street across from WalMart and on Centennial just east of Mohawk Blvd.

- 10.** Equipment Location. The following location standards shall apply to WTS facilities:
- a.** No WTS facility shall be located in a front, rear, or side yard building setback in any base zone and no portion of any antenna array shall extend beyond the property lines.
 - b.** Where there is no building, the WTS facility shall be located at least 30 feet from a property line abutting a street.
 - c.** For guyed WTS towers, all guy anchors shall be located at least 50 feet from all property lines.

Commentary. Subsection 11 is the same as current tower height standards.

- 11.** Tower Height. Towers may exceed the height limits otherwise provided for in this Code. However, all towers greater than the height limit of the base zone shall require Discretionary Use approval through a Type III review process, subject to the approval criteria specified in Subsection 4.3-145 I.

Commentary. Subsection 12 is new and provides specific standards for accessory structures, especially those in residential and public land designations.

- 12.** Accessory Building Size. All accessory buildings and structures built to contain equipment accessory to a WTS facility shall not exceed 12 feet in height unless a greater height is necessary and required by a condition of approval to maximize architectural integration. Each accessory building or structure located on any residential or Public Land and Open Space zoned property is limited to 200 square feet, unless approved through the Discretionary Use process.

Commentary. Subsections 13-17 are new standards. They provide specific and easily understood standards for these topics.

- 13.** Visual Impact. All WTS facilities shall be designed to minimize the visual impact to the greatest extent practicable by means of placement, screening, landscaping, and camouflage. All facilities shall also be designed to be compatible with existing architectural elements, building materials, and other site characteristics. The applicant shall use the least visible antennas reasonably available to accomplish the coverage objectives. All high visibility and moderate visibility facilities shall be sited in a manner to cause the least detriment to the viewshed of abutting properties, neighboring properties, and distant properties.
- 14.** Minimize Visibility. Colors and materials for WTS facilities shall be non-reflective and chosen to minimize visibility. Facilities, including support equipment and buildings, shall be painted or textured using colors to match or blend with the primary background, unless required by any other applicable law.
- 15.** Camouflaged Facilities. All camouflaged WTS facilities shall be designed to visually and operationally blend into the surrounding area in a manner consistent with existing

development on adjacent properties. The facility shall also be appropriate for the specific site. In other words, it shall not "stand out" from its surrounding environment.

16. Façade-Mounted Antenna. Façade-mounted antennas shall be architecturally integrated into the building design and otherwise made as unobtrusive as possible. If possible, antennas shall be located entirely within an existing or newly created architectural feature so as to be completely screened from view. Façade-mounted antennas shall not extend more than 2 feet out from the building face.
17. Roof Mounted Antenna. Roof mounted antennas shall be constructed at the minimum height possible to serve the operator's service area and shall be set back as far from the building edge as possible or otherwise screened to minimize visibility from the public right-of-way and adjacent properties.

Commentary. Subsection 18 is new and requires compliance with photo simulations. This is not an additional step. Planning staff performs a site visit prior to occupancy for all Site Plan applications. The current regulations only require a photo simulation as a submittal requirement but do not address compliance with photo simulations.

18. Compliance with Photo Simulations. As a condition of approval and prior to final staff inspection of the WTS facility, the applicant shall submit evidence, e.g. photos, sufficient to prove that the facility is in substantial conformance with photo simulations provided with the initial application. Non-conformance shall require any necessary modification to achieve compliance within 90 days of notifying the applicant.

Commentary. Subsection 19 is new. The current regulations do not contain noise standards.

19. Noise. Noise from any equipment supporting the WTS facility shall comply with the regulations specified in OAR 340-035-0035.

Commentary. Subsections 20-23 are new. The current regulations do not address these topics.

20. Signage. No signs, striping, graphics, or other attention-getting devices are permitted on any WTS facility except for warning and safety signage that shall:
 - a. Have a surface area of no more than 3 square feet;
 - b. Be affixed to a fence or equipment cabinet; and
 - c. Be limited to no more than two signs, unless more are required by any other applicable law.
21. Traffic Obstruction. Maintenance vehicles servicing WTS facilities located in the public or private right-of-way shall not park on the traveled way or in a manner that obstructs traffic.
22. Parking. No net loss in required on-site parking spaces shall occur as a result of the installation of any WTS facility.

23. Sidewalks and Pathways. Cabinets and other equipment shall not impair pedestrian use of sidewalks or other pedestrian paths or bikeways on public or private land.

Commentary. Subsection 24 is modified to be more specific than the current regulations concerning lighting.

24. Lighting. WTS facilities shall not include any beacon lights or strobe lights, unless required by the Federal Aviation Administration (FAA) or other applicable authority. If beacon lights or strobe lights are required, the Approval Authority shall review any available alternatives and approve the design with the least visual impact. All other site lighting for security and maintenance purposes shall be shielded and directed downward, and shall comply with the outdoor lighting standards in Section 4.5-100, unless required by any other applicable law.

25. Landscaping. For WTS facilities with towers that exceed the height limitations of the base zone, at least one row of evergreen trees or shrubs, not less than 4 feet high at the time of planting, and spaced out not more than 15 feet apart, shall be provided in the landscape setback. Shrubs shall be of a variety that can be expected to grow to form a continuous hedge at least 5 feet in height within 2 years of planting. Trees and shrubs in the vicinity of guy wires shall be of a kind that would not exceed 20 feet in height or would not affect the stability of the guys. In all other cases, the landscaping, screening and fence standards specified in Section 4.4-100 shall apply.

26. Prohibited WTS Facilities.

- a. Any high or moderate visibility WTS facility in the Historic Overlay District.
- b. Any WTS facility in the public right-of-way that severely limits access to abutting property, which limits public access or use of the sidewalk, or which constitutes a vision clearance violation.
- c. Any detached WTS facility taller than 150 feet above finished grade at the base of the tower.

Commentary. Subsection 27 is new and is intended to prevent the construction of WTS towers purely for speculation.

27. Speculation. No application shall be accepted or approved for a speculation WTS tower, i.e., from an applicant that simply constructs towers and leases tower space to service carriers, but is not a service carrier, unless the applicant submits a binding written commitment or executed lease from a service carrier to utilize or lease space on the tower.

- G. Application Submittal Requirements. All applications for a WTS facility shall provide the following reports, documents or documentation:

Commentary. Subsection 1 lists the submittal requirements for Low Visibility and Stealth WTS facilities. By definition, these facilities have a very small visual impact on surrounding properties and are generally attached to existing facilities. Consequently fewer submittal elements are required.

1. Submittal Requirements for Low Visibility and Stealth Facilities (Type I review). All applications for low visibility and stealth WTS facilities shall submit the following reports and documentation:

Commentary. Subsection a. requires a more detailed narrative than current regulations and places the burden on the applicant to explain the potential impacts of the proposed facility. Some of the required information is more detailed than current regulations.

- a. Narrative. The application shall include a written narrative that describes in detail all of the equipment and components proposed to be part of the WTS facility, including, but not limited to: towers; antennas and arrays; equipment cabinets; back-up generators; air conditioning units; lighting; landscaping, and fencing.
- b. Geographic Service Area. The applicant shall identify the geographic service area for the proposed WTS facility, including a map showing all of the applicant's and any other existing sites in the local service network associated with the gap the facility is meant to close. The applicant shall describe how this service area fits into and is necessary for the service provider's service network.

The service area map for the proposed WTS facility shall include the following:

- i. The area of significant gap in the existing coverage area;
 - ii. The service area to be effected by the proposed WTS facility;
 - iii. The locations of existing WTS tower facilities where co-location is possible within a 5 mile radius of the proposed WTS facility.
- e. Co-location. An engineer's analysis/report of the recommended site location area is required for the proposed WTS facility. If an existing structure approved for co-location is within the area recommended by the engineer's report, reasons for not collocating shall be provided demonstrating at least one of the following deficiencies:
 - i. The structure is not of sufficient height to meet engineering requirements;
 - ii. The structure is not of sufficient structural strength to accommodate the WTS facility, or there is a lack of space on all suitable existing towers to locate proposed antennas.

- iii. Electromagnetic interference for one or both WTS facilities will result from co-location; or
 - iv. The radio frequency coverage objective cannot be adequately met.
- f. Plot Plan. A plot plan showing: the lease area; antenna structure; height above grade and setback from property lines; equipment shelters and setback from property lines; access; the connection point with the land line system; and all landscape areas intended to screen the WTS facility.
- h. RF Emissions. An engineer's statement that the RF emissions at grade, or at nearest habitable space when attached to an existing structure, complies with FCC rules for these emissions; the cumulative RF emissions if co-located. Provide the RF range in megahertz and the wattage output of the equipment
- i. Description of Service. A description of the type of service offered including, but not limited to: voice; data; and video, and the consumer receiving equipment.
- j. Provider Information. Identification of the provider and backhaul provider, if different.
- m. Zoning and Comprehensive Plan Designation. Provide the zoning and applicable comprehensive plan (e.g. Metro Plan, 2030 Springfield Refinement Plan) designation of the proposed site and the surrounding properties within 500 feet.
- n. FCC, FAA or Other Required Licenses and Determinations. Provide a copy of all pertinent submittals to the FCC, FAA or other State or Federal agencies including environmental assessments and impact statements, and data, assumptions, calculations, and measurements relating to RF emissions safety standards.

Commentary. Subsection 2 lists the submittal requirements for Moderate and High Visibility WTS facilities. These facilities include the common monopole towers as well as WTS facilities disguised as faux trees, flag poles and other designs that have a significant visual impact on neighboring properties. Submittal requirements for Moderate and High Visibility facilities are processed as a Type III Discretionary Use application which also requires Site Plan Review. Applications for Moderate and High Visibility facilities will be reviewed and approved by the Planning Commission.

- 2. Submittal Requirements for Moderate and High Visibility Facilities (Type III review). Applications for moderate and high visibility WTS facilities shall require all of the required materials for low visibility and stealth WTS facilities specified in Subsection 4.3-145G.1. In addition to the applicable Site Plan and Discretionary Use application requirements, WTS applications shall require the applicant to address the following:

- a. Height. Provide an engineer's diagram showing the height of the WTS facility and all of its visible components, including the number and types of antennas that can be accommodated. Carriers shall provide evidence that establishes that the proposed WTS facilities are designed to the minimum height required from a technological standpoint to meet the carrier's coverage objectives. If the WTS facility tower height will exceed the height restrictions of the applicable base zone, the narrative shall include a discussion of the physical constraints, e.g., topographical features, making the additional height necessary. The narrative shall include consideration of the possibility for design alternatives, including the use of multiple sites or microcell technology that would avoid the need for the additional height for the proposed WTS facility.
- b. Construction. Describe the anticipated construction techniques and timeframe for construction or installation of the WTS facility to include all temporary staging and the type of vehicles and equipment to be used.
- c. Maintenance. Describe the anticipated maintenance and monitoring program for the antennas, back-up equipment, and landscaping.
- d. Noise/Acoustical Information. Provide the manufacturer's specifications for all noise-generating equipment including, but not limited to air conditioning units and back-up generators, and a depiction of the equipment location in relation to abutting properties.
- e. Landscaping and Screening. Discuss how the proposed landscaping and screening materials will screen the site at maturity.

Commentary. Subsection f. expands on current regulations and places the burden on the applicant to co-locate where possible.

- f. Co-location. In addition to the co-location requirements specified in Subsection 4.3-145G.1.e., the applicant shall submit a statement from an Oregon registered engineer certifying that the proposed WTS facility and tower, as designed and built, will accommodate co-locations, and that the facility complies with the non-ionizing electromagnetic radiation emission standards as specified by the FCC. The applicant shall also submit:
 - i. A letter stating the applicant's willingness to allow other carriers to co-locate on the proposed facilities wherever technically and economically feasible and aesthetically desirable;
 - ii. A copy of the original Site Plan for the approved existing WTS facility updated to reflect current and proposed conditions on the site; and
 - iii. A depiction of the existing WTS facility showing the proposed placement of the co-located antenna and associated equipment. The depiction shall note the height, color and physical arrangement of the antenna and equipment.

- g. Lease. If the site is to be leased, a copy of the proposed or existing lease agreement authorizing development and operation of the proposed WTS facility.
- h. Legal Access. The applicant shall provide copies of existing or proposed easements, access permits and/or grants of right-of-way necessary to provide lawful access to and from the site to a City street or a State highway.
- i. Lighting and Marking. Any proposed lighting and marking of the WTS facility, including any required by the FAA.
- j. Utilities. Utility and service lines for proposed WTS facilities shall be placed under ground.
- k. Alternative Site Analysis. The applicant shall include an analysis of alternative sites and technological design options for the WTS facility within and outside of the City that are capable of meeting the same service objectives as the proposed site with an equivalent or lesser visual or aesthetic impact. If a new tower is proposed, the applicant shall demonstrate the need for a new tower, and why alternative locations and design alternatives, or alternative technologies including, but not limited to microcells and signal repeaters, cannot be used to meet the identified service objectives.

Commentary. This Subsection expands on current regulations requiring visual impact analysis.

- l. Visual Impact Study and Photo Simulations. The applicant shall provide a visual impact analysis showing the maximum silhouette, viewshed analysis, color and finish palette, and screening for all components of the proposed WTS facility. The analysis shall include photo simulations and other information necessary to determine visual impact of the facility as seen from multiple directions. The applicant shall include a map showing where the photos were taken.

Commentary. Subsection 6 is new. It allows the Director to require the applicant to fund a peer review of certain technical analysis that is beyond the expertise of city staff to evaluate. This requirement will not apply to all new facilities, only those Moderate and High Visibility facilities. The Director will have discretion in requiring peer review. Peer review will primarily be used to confirm that the applicant has adequately considered less impactful alternatives to erecting new tower facilities in the vicinity of residential or sensitive commercial areas.

- 3. Independent Consultation Report.
 - a. Review and approval of WTS facilities depends on highly specialized scientific and engineering expertise not ordinarily available to Springfield staff or to residents who may be adversely impacted by the proposed development of these facilities. Therefore, in order to allow the Approval Authority to make an informed decision on a proposed WTS facility, the Director may require the applicant to fund an independent consultation report for all new Moderate and

High visibility facilities. The consultation shall be performed by a qualified professional with expertise pertinent to the scope of the service requested.

- b. The scope of the independent consultation shall focus on the applicant's alternatives analysis. The consultant will evaluate conclusions of applicant's analysis to determine if there are alternative locations or technologies that were not considered or which could be employed to reduce the service gap but with less visual or aesthetic impact. There may be circumstances where this scope may vary but the overall objective shall be to verify that the applicant's proposal is safe and is the least impactful alternative for closing the service gap.
- c. The applicant shall be informed of the Director's decision about the need for an independent consultation at the time of the Pre-Submittal Meeting that is required under Section 5.1-120 (C). It is anticipated that the independent consultation will be required when the applicant proposes to locate a Moderate or High visibility WTS facility in a residential zoning district or within 500 feet of a residential zoning district. Other instances where a proposed WTS facility may have a visual or aesthetic impact on sensitive neighborhoods could also prompt the Director to require an independent consultation.

Commentary. The review process described in Subsection H for WTS facilities is determined by the visibility of the facility. This is a new approach. Under the current regulations, the review process is determined primarily by the zoning district in which a WTS facility is being placed. Under the proposed new regulations, the level of visibility determines the review process. Stealth and Low Visibility facilities will be reviewed under a Type I staff review. A Type III review process is required for Moderate and High Visibility facilities. Type III review comes before the Planning Commission as a Discretionary Use application. Current regulation ties the review type to the zoning district where towers are to be installed. The proposed language ties the review to the relative visibility of the proposed structure.

- H. Review Process. The review process is determined by the type of WTS facility or activity that is proposed. High or moderate visibility WTS facilities, defined in Subsection 4.3-145E., require Type III Planning Commission or Hearings Official review. Low visibility or stealth facilities, and the co-location of new equipment of existing facilities are allowed under a Type I staff review with applicable building or electrical permits. Routine equipment repair and maintenance do not require planning review; however, applicable building and electrical permits are required.
 1. Development Issues Meeting. A Development Issues Meeting (DIM) as specified in Subsection 5.1-120(A.) is required only for high and moderate visibility WTS facility applications. Applicable development standards as specified in Subsection 4.3-145F. and submittal requirements as specified in Subsection 4.3-145G., will be discussed at the DIM.

Commentary. The Type I process is a decision of the Director, without public notice. This type of review will apply to Stealth and Low Visibility facilities (see Subsection 4.3-145E for a definition of these facilities) and to applications for replacement or repair of equipment on existing towers.

- 2.** Type I Review Process. The following WTS facilities are allowed with the approval of the Director with applicable building and electrical permits:
- a.** Stealth and low visibility WTS facilities, as defined in Subsection 4.3-145E., in any zoning district.
 - b.** Façade mounted antennas or low powered networked telecommunications facilities, e.g., as those employing microcell antennas integrated into the architecture of an existing building in a manner that no change to the architecture is apparent and no part of the WTS facility is visible to public view.
 - c.** Antennas or arrays that are hidden from public view through the use of architectural treatments, e.g., within a cupola, steeple, or parapet which is consistent with the applicable building height limitation.
 - d.** New antennas or arrays including side-mounted antennas and small top-mounted antennas that are attached to an existing broadcast communication facility located in any zone. No more than three small top-mounted antennas shall be placed on the top of any one facility without a Type III review.
 - e.** To minimize adverse visual impacts associated with the proliferation and clustering of towers, co-location of antennas or arrays on existing towers shall take precedence over the construction of new towers, provided the co-location is accomplished in a manner consistent with the following:
 - i.** An existing tower may be modified or rebuilt to a taller height to accommodate the co-location of additional antennas or arrays, as long as the modified or rebuilt tower will not exceed the height limit of the applicable zoning district. Proposals to increase the height of a tower in a residential zoning district, or within 500 feet of a residential zoning district shall be reviewed under a Type III process. The height change may only occur one time per tower.
 - ii.** An existing tower that is modified or reconstructed to accommodate the co- location of additional antennas or arrays shall be of the same tower type and reconstructed in the exact same location as the existing tower.
 - f.** WTS facilities proposed within the public right-of-way on an existing utility or light pole in any zoning district, so long as they meet all of the following:
 - i.** The antennas do not project more than 24 inches above the existing utility pole support structure;
 - ii.** No more than a total of 2 antennas or antenna arrays are located on a single pole; and

- iii. The equipment cabinet is no larger than 6 cubic feet and is concealed from public view by burying or screening by means other than walls or fences.
- g. Co-location of antennas or arrays on existing WTS facilities.
- h. The Director will use the applicable criteria specified in Subsection 4.3-145 I. to evaluate the proposal.

Commentary. The Type III process requires public notice and a hearing before the Planning Commission as a Discretionary Use review. This type of review will apply to Moderate and High Visibility facilities (see Subsection 4.3-145E for a definition of these facilities). In essence each new tower facility, even faux trees and other facilities that are intended to be less visible, shall be reviewed by the Planning Commission. The exception is when a tower is proposed for a site outside of the city limits but inside the UGB. Such applications are reviewed by the Lane County Hearings Official.

- 3. Type III Review Process. The Planning Commission or Hearings Official review and approve a Discretionary Use application and a concurrently processed Site Plan Review application for the following WTS facilities:
 - a. High visibility and moderate visibility WTS facilities.
 - b. All other locations and situations not specified in Subsections 4.3-145H. 2. and 3.
 - c. The Planning Commission or Hearings Official will use the applicable criteria specified in Subsection 4.3-145 I. in place of the Discretionary Use criteria in Section 5.9-120 to evaluate the proposal.

Commentary. The Council asked for notification of tower applications. In rare instances the Council may choose to elevate an application to direct Council review. This is likely to be very rare since a land use appeal of a Council decision goes direct to the Oregon Land Use Board of Appeals. Allowing the Planning Commission to fulfill its role in reviewing Discretionary applications allows for appeals to go to the Council, maintaining more local influence over land use decisions.

- 4. Council Notification and Possible Review.
 - a. A briefing memorandum shall be prepared and submitted to the City Council upon receipt of an application for a High or Moderate visibility or any other WTS facility subject to review by the Planning Commission. By action of the City Council, an application for a facility proposed within the city limits may be elevated for direct City Council review. In those instances where an application is elevated for direct review, the City Council shall be the Approval Authority and will use the applicable criteria specified in Subsection 4.3-145 I. in place of the Discretionary Use criteria in Section 5.9-120 to evaluate the proposal.

- b. By agreement with Lane County, the Hearings Official shall be the Approval Authority for applications outside of the city limits but inside of the Springfield Urban Growth Boundary. The Hearings Official will use the applicable criteria specified in Subsection 4.3-145 I. in place of the Discretionary Use criteria in Section 5.9-120 to evaluate the proposal.

I. Approval Criteria.

- 1. Low Visibility and Stealth WTS Facility Applications. The Director shall approve the low visibility and stealth WTS facility applications upon a determination that the applicable standards specified in Subsection 4.3-145F. and the submittal requirements specified in Subsection 4.3-145G. are met.
- 2. Moderate and High Visibility WTS Facility Applications. The Approval Authority shall approve moderate visibility and high visibility WTS facility applications upon a determination that the applicable standards specified in Subsection 4.3-145F. and the submittal requirements specified in Subsection 4.3-145G. are met. Through the Discretionary Use review, the Approval Authority shall also determine if there are any impacts of the proposed WTS facility on adjacent properties and on the public that can be mitigated through application of other Springfield Development Code standards or conditions of approval as specified in Subsection 4.3-145J.

- J. Conditions of Approval. For Type III applications, the Approval Authority may impose any reasonable conditions deemed necessary to achieve compliance with the approval criteria as allowed by SDC Section 5.9-125.

Commentary. Subsection K expands upon the current regulation requiring the submittal of a facilities maintenance schedule.

- K. Maintenance. The property owner and the carrier in charge of the WTS facility and tower shall maintain all equipment and structures, landscaping, driveways and mitigating measures as approved. Additionally:
- 1. All WTS facilities shall maintain compliance with current RF emission standards of the FCC, the National Electric Safety Code, and all State and local regulations.
 - 2. All equipment cabinets shall display a legible operator's contact number for reporting maintenance problems.

Commentary. Subsection L is new. The proposed text is similar to other City inspection needs elsewhere in the SDC.

L. Inspections.

- 1. The City shall have the authority to enter onto the property upon which a WTS facility is located to inspect the facility for the purpose of determining whether it complies with the Building Code and all other construction standards provided by the City and Federal and State law.

2. The City reserves the right to conduct inspections at any time, upon reasonable notice to the WTS facility owner. In the event the inspection results in a determination that violation of applicable construction and maintenance standards established by the City has occurred, remedy of the violation may include cost recovery for all City costs incurred in confirming and processing the violation.

Commentary. *Subsection M expands upon the current regulation stating that an abandoned facility must be removed within 90 days.*

M. Abandonment or Discontinuation of Use. The following requirements apply to the abandonment and/or discontinuation of use for all WTS facilities:

1. All WTS facilities located on a utility pole shall be promptly removed at the operator's expense at any time a utility is scheduled to be placed underground or otherwise moved.
2. All operators who intend to abandon or discontinue the use of any WTS facility shall notify the City of their intentions no less than 60 days prior to the final day of use.
3. WTS facilities shall be considered abandoned 90 days following the final day of use or operation.
4. All abandoned WTS facilities shall be physically removed by the service provider and/or property owner no more than 90 days following the final day of use or of determination that the facility has been abandoned, whichever occurs first.
5. The City reserves the right to remove any WTS facilities that are abandoned for more than 90 days at the expense of the facility owner.
6. Any abandoned site shall be restored to its natural or former condition. Grading and landscaping in good condition may remain.

Commentary. *Subsection N replaces current Subsection 4.135G. that states: "The provisions of this Section shall be reviewed no sooner than 3 years nor later than 5 years from their date of adoption. This review ensures contemporaneity with technological changes made in this industry."*

N. Review of WTS Facilities Standards. In the event that the Federal or State government adopts mandatory or advisory standards more stringent than those described in this Section, staff will prepare a report and recommendation for the City Council with recommendations on any necessary amendments to the City's adopted standards.

III. PROPOSED AMENDMENTS TO SDC SECTION 6.1-115—DEFINITIONS

Commentary. *Chapter 6 (specifically Section 6.1-115) contains the definitions of many planning terms used in the Development Code. Certain terms in Chapter 6 are used exclusively for the WTS policies found in Section 4.3-145. For the convenience of the reader, these WTS-specific definitions are being*

moved from Chapter 6 to the new Section 4.3-145 E. The terms shown below are proposed for removal from Chapter 6.

Section 2. SDC Section 6.1-115 is amended to remove the following terms. The definition for Wireless Telecommunication System is modified to reference SDC Section 4.3-145 E where most of the deleted terms have been located and new terms added.

~~**Acceptable Site.** For purposes of siting wireless telecommunications systems facilities, any land planned and zoned Community Commercial, Booth-Kelly Mixed Use or Campus Industrial.~~

~~**Antenna.** The specific device used to capture an incoming and/or transmit an outgoing radio frequency signal. This definition includes omni-directional (whip) antennas; directional (panel) antennas; parabolic (microwave dish) antennas; and ancillary antennas (i.e., GPS). All other transmitting or receiving equipment not specifically described in this definition are regulated in conformity with the type of antenna which most closely resembles the equipment.~~

~~**Attached WTS Facility.** An existing pole, tower or other structure capable of accommodating a WTS facility antenna, whether originally intended for the use or not.~~

~~**Collocation.** Two or more WTS providers utilizing a structure or site specifically designed and/or approved for the multiple use, and including equipment shelters.~~

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~~**Conditionally Suitable Site.** For purposes of siting wireless telecommunications systems facilities, any land planned and zoned Neighborhood Commercial, Major Retail Commercial, General Office, Low Density Residential, Medium Density Residential, High Density Residential and the Medical Services, Hillside Development, Willamette Greenway and Urbanizable Fringe Overlay Districts.~~

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~~**Detached WTS Facility.** A pole, tower or other structure designed and intended to support WTS facility antennas.~~

~~**Equipment Shelters.** For purposes of siting wireless telecommunications systems facilities, the buildings, structures, cabinets or vaults used to house and protect the equipment necessary to connect/relay radio signals from cell site to cell site and to land line systems. Associated equipment, for example, air conditioning or emergency generators is considered appropriate within this definition.~~

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~~**Lattice Tower.** For purposes of siting wireless telecommunications systems facilities, a WTS support structure which consists of metal crossed strips or bars and which supports antennas and related equipment for one or more WTS provider.~~

~~**Monopole.** For purposes of siting wireless telecommunications systems facilities, a WTS support structure which consists of a single tapered steel pole and which supports antennas and related equipment for one or more WTS provider.~~

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~~**Preferred Site.** For purposes of siting wireless telecommunications systems facilities, any land planned and zoned Special Heavy Industrial, Heavy Industrial, Light Medium Industrial, Quarry and Mine Operations or Public Land and Open Space.~~

Stealth Design. A variety of techniques used to disguise or mitigate the visual presence of WTS support structures, including, but not limited to screening by mature trees (75 percent or more of pole beneath tree canopy), mimicking common features of the urban landscape (including, but not limited to: light poles, church steeples and trees), painting antennas to match the color of supporting building walls, or roof mounting behind parapets.

Wireless Telecommunications Facilities. The site, structures, equipment and appurtenances used to transmit, receive, distribute, provide or offer wireless telecommunications services. This includes, but is not limited to antennas, poles, towers, cables, wires, conduits, ducts, pedestals, vaults, buildings, electronics and switching equipment.

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Wireless Telecommunications Systems (WTS). The sending and receiving of radio frequency transmissions and the connection and/or relaying of these signals to land lines and other sending and receiving stations (cell sites), and including cellular radiotelephone, personal communications services, enhanced/specialized mobile radio, and commercial paging services. Terms and definitions associated with WTS facilities, and the standards that regulate their siting and design are found in SDC Section 4.3-145 E.

Type IV Amendment to the Springfield Development Code Staff Report

Project Name: Amendment to the Springfield Development Code replacing SDC 4.3-145—Wireless Telecommunication System (WTS) Facilities

Nature of Application: To replace SDC Section 4.3-145 with a new policy section guiding the development and maintenance of WTS facilities. The proposed replacement section updates Springfield's policies to address issues concerning placement, appearance and the approval process for cell towers.

Case Number: TYP412-00001

Project Location: City-wide legislative action

Date of Initiation: December 28, 2013

Date of DLCD Notice of Proposed Amendment: December 28, 2012

Date of Newspaper Notice: February 1, 2013

Date of Mailed Notices: February 7, 2013

I. Executive Summary

Section 4.3-145 G of the Springfield Development Code (SDC) states that the city's WTS policies should be periodically updated to ensure "contemporaneity with technological changes made in this industry." March 2012, staff met in work session with Council to discuss cell tower siting and related WTS policies. A number of concerns were expressed by Council that required follow up action.

Staff prepared an assessment of SDC Section 4.3-145 and recommended an approach to remedying Council's concerns. These were presented to Council in an October 22, 2013 work session. At the October meeting, the Council approved the recommended remedies and asked staff to prepare amendments to the Springfield Development Code to implement the approved remedies.

The proposed amendments to Section 4.3-145 analyzed in this document respond to the direction given by Council. The amendments seek to implement the "remedies" discussed at the October 22nd meeting.

In preparing these amendments it was imperative that proposed changes comply with the approval criteria for Development Code amendments found in SDC Section 5.6-115. These criteria state that in *"reaching a decision on these actions, the Planning Commission and the City Council shall adopt findings which demonstrate conformance to the following: A) The Metro Plan; B) Applicable State statutes; and C) Applicable State-wide Planning Goals and Administrative Rules."*

This staff report is intended to provide a factual base for decision makers to rely upon in determining whether the amendments conform to the decision criteria. **It is the opinion of staff that the findings contained in this report provide a substantive basis for decision makers to make a determination that these amendments conform to the decision criteria found in SDC Section 5.6-115 for approving Development Code amendments.**

On February 20, 2013, the Planning Commission conducted a public hearing concerning the amendments to Section 4.3-145 and voted unanimously to recommend that Council approve the new WTS policies. No public comment was received at the hearing and no written comments were received by staff. In addition to the required newspaper notice of the hearing, mailed notice was sent to all property owners with towers and all service providers who could be identified on existing towers serving Springfield.

The State statutes and Administrative Rules mentioned in the approval criteria have little to say about how communities regulate the location and appearance of WTS facilities. The Federal Telecommunication Act of 1996 (TCA) recognizes the right of local governments to regulate the siting of WTS facilities to minimize the intrusion of the facilities on local neighborhoods. The TCA placed certain limits on those local siting standards (listed below). Those limitations have shaped the proposed WTS amendments.

The Telecommunications Act of 1996 (TCA) – The stated purpose of the TCA is to “promote competition and reduce regulation in order to secure lower process and higher quality services for American telecommunication consumers and encourage the rapid deployment of new telecommunications technologies.” In carrying out this purpose, the TCA implements three important (but somewhat competing) principles:

- 1) The siting of wireless telecommunications facilities must comply with local zoning and land use regulations; and
- 2) Local jurisdictions must not unreasonably discriminate among providers of functionally equivalent services but may distinguish applications based upon different visual, aesthetic and safety concerns; and
- 3) The local regulations must not result in the actual or effective prohibition in the provision of personal wireless services.

The staff report also demonstrates that the proposed amendments comply with the provisions of the Federal Telecommunications Act of 1996 as they apply to the limitations placed on local jurisdictions with respect to local siting standards.

As mentioned above, Council approved the remedies recommended for addressing its concerns with cell tower siting and review and directed staff to prepare implementing amendments to Section 4.3-145. The proposed amendments to SDC 4.3-145 implement the approach presented to Council. The proposed remedies represent a wholesale change in the review process and various additional standards. The nature of these changes prompted staff to replace Section 4.3-145 rather than try to surgically amend individual subsections of the existing code.

The remainder of this document analyzes the proposed amendment of Section 4.3-145 of the Springfield Development Code (SDC) with respect to the criteria for approving such amendments found in SDC Section 5.6-115.

III. Procedural Requirements

Procedural requirements for amending the Springfield Development Code (SDC) are described in Sections 5.6-100 and 5.1-140 of the SDC.

SDC Section 5.6-105 indicates that the Planning Director, Planning Commission, City Council or a resident of the City can initiate amendments to the SDC. Such amendments are reviewed under a "Type IV" procedure (Section 5.6-110) and require public hearings before the Planning Commission and the City Council. Type IV procedures are detailed in Section 5.1-140 of the SDC. The proposed revision to SDC Section 4.3-145 was initiated by the Director.

SDC Section 5.2-110 (B) requires that legislative land use decisions be advertised in a newspaper of general circulation, providing information about the legislative action and the time, place and location of the hearing.

Findings:

- Finding #1.** The City of Springfield initiated the proposed amendment to Section 4.3-145. The amendment is not site-specific and falls under the definition of a legislative action.
- Finding #2.** A "DLCD Notice Proposed Amendment" was e-mailed with mailed copies following to the Oregon Department of Land Conservation and Development (DLCD) on December 28, 2012 alerting the agency to the City's intent to amend SDC Section 4.3-145. The notice was mailed more than 35 days in advance of the first evidentiary hearing as required by ORS 197.610 (1). No comment has been received from the Department concerning the amendments.
- Finding #3.** Notice of the public hearing concerning this matter was published on Thursday, February 1, 2013 in the Register Guard, advertising the hearing before the Springfield Planning Commission on February 19, 2013 and the Springfield City Council on April 1, 2013. The content of the notice followed the direction given in Section 5.2-115 of the SDC for legislative actions.
- Finding #4.** Mailed notice was sent on February 7, 2013 to property owners where towers are located and to providers, advertising the hearing before the Springfield Planning Commission on February 20, 2013 and the Springfield City Council on April 1, 2013. The content of the notice followed the direction given in Section 5.2-115 of the SDC for legislative actions.
- Finding #5.** ORS 197.047(4) requires the local government to mail a notice to every landowner whose property would be "rezoned" as a result of an amendment to planning policies that would limit or prohibit land uses previously allowed in the affected zone.

Finding #6. The proposed amendments to the Springfield Development Code allow WTS facilities in all zoning districts, as does the current policy. New towers located in some zoning districts or near (within 500 feet) of residential zoning districts may be required by the amended policies to employ stealth measures to reduce the visual and aesthetic impacts of these facilities. Mailed notice to landowners is therefore not required under the provisions of ORS 197.047(4). Mailed notices to the owners of record for existing cell tower facilities and representatives of cell tower providers who have submitted building permit applications for collocation of new WTS facilities or the repair/replacement of equipment on existing tower facilities were mailed on January 24, 2013.

Finding #7. On February 20, 2013, the Planning Commission conducted a public hearing concerning the amendments to Section 4.3-145 and voted unanimously to recommend that Council approve the new WTS policies. No public comment was received at the hearing and no written comments were received by staff. In addition to the required newspaper notice of the hearing, mailed notice was sent to all property owners with towers and all service providers who could be identified on existing towers serving Springfield.

Conclusion:

Procedural requirements described in Sections 5.6-100 and 5.1-140 of the SDC have been followed. Notice requirements established by DLCDD and the Oregon Revised Statutes for amending the Development Code have also been followed.

IV. Decision Criteria and Findings

SDC Section 5.6-115 describes the criteria to be used in approving an amendment to the SDC. It states that in reaching a decision, the Planning Commission and the City Council must adopt findings which demonstrate conformance with “1) the Metro Plan; 2) applicable State statutes; and to 3) applicable State-wide Planning Goals and Administrative Rules.”

Criterion #1 “Conformance with the Metro Plan”

Findings:

Finding #6. The Metro Plan does not address telecommunication facilities or cell towers specifically as it does other urban infrastructure and services. “Communication facilities” are briefly mentioned as a key urban service. The Metro Plan Glossary defines “Key Urban Facilities and Services” on page V3. “Communication facilities” are listed among the “Minimum level” Key Urban Services.

Finding #7. The Metro Plan supports the orderly and efficient extension of key urban services and facilities. Metro Plan Policy G.1 states: “Extend the minimum level and full range of key urban facilities and services in an orderly and efficient manner consistent with the growth management policies in Chapter II-C, relevant policies in this chapter, and other Metro Plan policies.” Pg. III-G-4

Finding #8. The Metro Plan places the cost of extending services on the developer. Metro Plan Policy G.36 states: “Require development to pay the cost, as determined by the local

jurisdiction, of extending urban services and facilities. This does not preclude subsidy, where a development will fulfill goals and recommendations of the *Metro Plan* and other applicable plans determined by the local jurisdiction to be of particular importance or concern.” Pg. III-G-15

Finding #9. The Metro Plan intends that both public and private facilities be designed and located in a way that minimizes their impact on neighborhoods. Metro Plan Policy E.4 states: “Public and private facilities shall be designed and located in a manner that preserves and enhances desirable features of local and neighborhood areas and promotes their sense of identity.” PG. III-E-3

Finding #10. The Metro Plan requires cities to address environmental design considerations in their development regulations. These design elements include aesthetics. Regulations should ensure that development is aesthetically compatible existing and anticipated neighboring uses, particularly residential uses. Metro Plan Policy E.6 states: “Local jurisdictions shall carefully evaluate their development regulations to ensure that they address environmental design considerations, such as, but not limited to, safety, crime prevention, aesthetics, and compatibility with existing and anticipated adjacent uses (particularly considering high and medium density development locating adjacent to low density residential).” Pg. III-E-3

Finding #11. The Metro Plan intends that planning standards allow for flexibility and creative solutions to design problems. Metro Plan Policy E.8 states: “Site planning standards developed by local jurisdictions shall allow for flexibility in design that will achieve site planning objectives while allowing for creative solutions to design problems.” Pg. III-E-3

Finding #12. The focus of the proposed amendments to SDC Section 4.3-145 is on facilitating the location of needed WTS facilities while minimizing the visual and aesthetic impacts of these facilities on nearby neighborhoods, particularly residential and certain commercial zoning districts that are sensitive to these impacts. This focus is described in the Purpose statement found in Section 4.3-145 (A), and is implemented through the General Standards that are listed in Section 4.3-145 (F).

Conclusion

While wireless telecommunication system facilities (i.e. cell towers) are not specifically mentioned, communication facilities are listed among those key urban services recognized by the Metro Plan. The Metro Plan intends that key services and facilities be extended in an orderly and efficient manner with the developer bearing the cost.

The design and location of public and private facilities are intended to be sensitive to the impacts they may have on neighborhoods. Communities are required to include design elements in their development regulations that will protect neighborhoods from the impacts of urban facilities which include communications facilities. These regulations should allow the developer a measure of flexibility in addressing the impacts their facilities may have.

The proposed new Section 4.3-145 provides for the extension of WTS facilities as needed to allow wireless service coverage throughout the city. In accordance with Federal law, needed wireless facilities

are not precluded from any zoning district. Design measures are required to minimize the visual and aesthetic impact of these facilities on residential and commercial areas in Springfield. The new standards offer protection without being overly prescriptive.

Stealth measures are required to locate high impact facilities like towers in sensitive neighborhoods. The definition of “stealth” does not require a specific design approach, but instead allow the developer to propose a design that mitigates anticipated impacts. The effectiveness of the design in mitigating impacts is the measure what is evaluated.

Based on the findings shown above, staff concludes the proposed amendments to SDC Section 4.3-145 are consistent with the applicable portions of the Metro Plan.

Criterion #2 “Conformance with Applicable State Statutes”

Findings

Finding #13. Oregon Revised Statute Chapter 759—Telecommunications Utility Regulation is the primary body of state law regulating telecommunications. The chapter is focused on the regulation of utility providers. No elements of this chapter limit local governments from implementing zoning and construction standards for the siting of WTS facilities.

Finding #14. ORS 759.015—Legislative findings on universal telecommunications service, states that “it is the goal of the State of Oregon to secure and maintain high-quality universal telecommunications service at just and reasonable rates for all classes of customers and to encourage innovation within the industry by a balanced program of regulation and competition. The Public Utility Commission shall administer the statutes with respect to telecommunications rates and services in accordance with this policy. [Formerly 757.810]”

The proposed amendments to SDC Section 4.3-145 do not interfere with the provision of high-quality telecommunications or with the state regulation of telecommunication providers by the Public Utility Commission.

Finding #15. ORS 759.016—Legislative findings on broadband services, states:

(1) That it is the goal of this state to promote access to broadband services for all Oregonians in order to improve the economy in Oregon, improve the quality of life in Oregon communities and reduce the economic gap between Oregon communities that have access to broadband digital applications and services and those that do not, for both present and future generations; and

(2) That the goal set forth in subsection (1) of this section may be achieved by:

(a) Expanding broadband and other telecommunications services;

(b) Creating incentives to establish and expand broadband and other telecommunications services;

(c) Undertaking telecommunications planning at the local, regional and state

levels that includes participants from both the public and the private sectors;

(d) Removing barriers to the full deployment of broadband digital applications and services and providing incentives for the removal of those barriers; and

(e) Removing barriers to public-private partnerships in areas where the private sector cannot justify investments. [2003 c.775 §1]

Note: 759.016 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 759 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Finding #16. The proposed amendments to SDC Section 4.3-145 do not conflict with the goals stated in ORS 759.015 and 759.016. The amendments seek to make wireless services available to all areas of Springfield while minimizing the impact of WTS facilities on residential neighborhoods and certain commercial areas that are sensitive to the visual impacts of such facilities. The siting standards found in Section 4.3-145 F do not conflict with the state telecommunications goals.

Finding #17. Criterion #2 is concerned with the conformance of the proposed amendments with state laws. It should be noted that while state law does not limit local governments from establishing siting standards, the Federal Telecommunications Act of 1996 establishes some limitations on siting standards. The Act does not *“limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities”* except for the following limitations:

“(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof-- (I) shall not unreasonably discriminate among providers of functionally equivalent services; and (II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

“(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

“(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

“(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

“(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph

may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.”¹

Finding #18. SDC Section 4.3-145 (A), the proposed amendments were written to conform to the Telecommunication Act of 1996 and to provide a uniform and comprehensive set of standards and review procedures for the placement, operation, alteration and removal of WTS facilities.

Finding #19. SDC Section 4.3-145 (F) states “The Federal Telecommunications Act of 1996 establishes limitations on the siting standards that local government can place on WTS facilities. Section 704 of the Act states that local siting standards shall not:

- 1) “unreasonably discriminate among providers of functionally equivalent services”
- 2) “prohibit or have the effect of prohibiting the provision of personal wireless services.”

All applications for WTS facilities are subject to the standards in this section to the extent that they do not violate federal limitations on local siting standards. Where application of the standards found in this section constitutes a violation, the least intrusive alternative for providing coverage shall be allowed as an exception to the standards.”

Conclusion

The Oregon Revised Statutes (Chapter 759) regulates telecommunications utilities. No elements of ORS 759 restrict the regulation of the location or construction of WTS facilities by local governments. The amendments are consistent with the applicable elements of OAR Chapter 579.

Based on the findings included above, the proposed amendments to SDC Section 4.3-145 do not conflict with any applicable state statutes. It is the conclusion of staff that the proposed amendments comply with this criterion.

In addition to applicable state statutes, the proposed amendments defer to the regulatory limitations place on local jurisdictions with respect to siting standards found in the Federal Telecommunications Act of 1996.

Criterion #3 “Applicable State-wide Planning Goals and Administrative Rules”

Compliance with Oregon Administrative Rules

¹ Sec. 704. Facilities Siting; Radio Frequency Emission Standards. (A) National Wireless Telecommunications Siting Policy- Section 332(C) (47 U.S.C. 332(C)).

Findings

Finding #18. OAR 860 Division 60 contains those administrative rules that govern telecommunications as regulated by the Oregon Public Utility Commission. This division implements ORS 579. A search of this chapter reveals no rules that apply to the siting of WTS facilities. The proposed amendments to SDC Section 4.3-145 do not conflict with these administrative rules.

Compliance with Statewide Planning Goals

Goal 1 – Citizen Involvement. Goal 1 calls for "the opportunity for citizens to be involved in all phases of the planning process."

Finding #19. The proposed amendments to SDC Section 4.3-145 were the subject of legislative public hearings advertised in the Register Guard on Thursday, February 1, 2013. The Planning Commission is scheduled to consider the amendments in a public hearing on February 19, 2013. The City Council is scheduled to hold a public hearing on April 1, 2013.

Finding #20. Although not required by this legislative action, on February 7, 2013, mailed notice was sent to property owners with cell towers on their land and to service providers who have located on Springfield towers.

Goal 2 – Land Use Planning. Goal 2 outlines the basic procedures of Oregon's statewide planning program. It says that land use decisions are to be made in accordance with a comprehensive plan, and that suitable "implementation ordinances" to put the plan's policies into effect must be adopted.

Finding #21. The Eugene-Springfield Metropolitan Area General Plan (Metro Plan) is the acknowledged comprehensive plan that guides land use planning in Springfield. Various adopted refinement plans and specific area plans provide more detailed direction for planning under the umbrella of the Metro Plan.

Finding #22. The SDC implements the policies and direction of the Metro Plan. The proposed amendments to SDC Section 4.3-145 will modify the siting standards and review process for Wireless Telecommunication System facilities. There is no specific mention of WTS facilities in the Metro Plan. While the Metro Plan does not specifically address siting standards for WTS facilities, Communications Facilities are listed as a key urban facility and service. Findings #1-#7 of this report (pg. 5) show that the proposed amendments to SDC 4.3-145 are consistent with the Metro Plan and its policies.

Goal 3 – Agricultural Land. Goal 3 defines "agricultural lands." It then requires counties to inventory such lands and to "preserve and maintain" them through farm zoning.

Finding #23. This goal does not apply within adopted, acknowledged urban growth boundaries. The City of Springfield does not have any agricultural zoning districts. These amendments do not apply outside the urban growth boundary and, because of limitations on commercial and industrial development without full urban services, generally do not apply outside the city limits. All land in the City's urban transition area carries City

zoning. An exception to this goal was taken in 1982 when the comprehensive plan was acknowledged.

Goal 4 – Forest Land. This goal defines forest lands and requires counties to inventory them and adopt policies and ordinances that will "conserve forest lands for forest uses."

Finding #24. This goal does not apply within adopted, acknowledged urban growth boundaries. The City of Springfield does not have any forest zoning districts. These amendments do not apply outside the urban growth boundary and, because of limitations on commercial and industrial development without full urban services, generally do not apply outside the city limits. All land in the City's urban transition area carries City zoning. An exception to this goal was taken in 1982 when the comprehensive plan was acknowledged.

Goal 5 – Open Spaces, Scenic and Historic Areas, and Natural Resources. Goal 5 covers more than a dozen natural and cultural resources such as wildlife habitats and wetlands. It establishes a process for each resource to be inventoried and evaluated.

Finding #25. The amendment to SDC Section 4.3-145 does not repeal, replace or void existing Metro Plan policy or Development Code regulations with respect to any identified natural resources. No changes to supporting ordinances or policy documents adopted to comply with Goal 5 are affected by these amendments.

Goal 6 – Air, Water and Land Resources Quality. This goal requires local comprehensive plans and implementing measures to be consistent with state and federal regulations on matters such as groundwater pollution.

Finding #26. The amendment to SDC Section 4.3-145 does not repeal, replace or void existing Metro Plan policy or Development Code regulations with respect to any identified air, water or land resource issues. No changes to supporting ordinances or policy documents adopted to comply with Goal 6 are affected by these amendments.

Goal 7 – Areas Subject to Natural Disasters and Hazards. Goal 7 deals with development in places subject to natural hazards such as floods or landslides. It requires that jurisdictions apply "appropriate safeguards" (floodplain zoning, for example) when planning for development there.

Finding #27. All sites within Springfield that are subject to these hazards (floodplain, erosion, landslides, earthquakes, weak foundation soils) are inventoried through a variety of sources. The proposed amendment does not remove or exempt compliance with other Code standards that may apply to development.

Goal 8 – Recreational Needs. This goal calls for each community to evaluate its areas and facilities for recreation and develop plans to deal with the projected demand for them.

Finding #28. Willamalane Park and Recreation District is the entity responsible for park planning, development and maintenance in the urban transition area as well as the city limits. The proposed amendments do not alter policies encouraging the provision of

recreational facilities or the incorporation of community open space in development design.

Goal 9 – Economic Development. Goal 9 calls for diversification and improvement of the economy. It asks communities to inventory commercial and industrial lands, project future needs for such lands, and plan and zone enough land to meet those needs.

Finding #29. The amendment to SDC Section 4.3-145 does not repeal, replace or void existing Metro Plan policy or Development Code regulations with respect to any economic development issues. No changes to supporting ordinances or policy documents adopted to comply with Goal 9 are affected by these amendments.

Goal 10 – Housing. This goal specifies that each city must plan for and accommodate needed housing types, such as multifamily and manufactured housing.

Finding #30. The amendment to SDC Section 4.3-145 does not repeal, replace or void existing Metro Plan policy or Development Code regulations with respect to any housing issues. No changes to supporting ordinances or policy documents adopted to comply with Goal 10 are affected by these amendments.

Goal 11 – Public Facilities and Services. Goal 11 calls for efficient planning of public services such as sewers, water, law enforcement, and fire protection.

Finding #31. OAR-660-011-0005 (5) defines “Public Facilities” to include “water, sewer, and transportation facilities, but does not include buildings, structures or equipment incidental to the direct operation of those facilities.” Wireless telecommunication facilities are not listed among those public facilities that must be included in local public facilities plans. This goal does not apply to the proposed amendments.

Goal 12 – Transportation. The goal aims to provide "a safe, convenient and economic transportation system."

Finding #32. OAR 660-012-0060 requires evaluation of a comprehensive plan or land use regulation amendment to determine if an amendment to the Springfield Development Code significantly affects a transportation facility.

Finding #33. The proposed amendments do not: change the functional classification of an existing or planned transportation facility; change standards implementing a functional classification system; allow types of levels of use which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or reduce the level of service of a facility below the minimum acceptable level identified in the Metropolitan Area Transportation Plan (TransPlan).

Goal 13 – Energy Conservation. Goal 13 declares that "land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles."

Finding #34. The amendments to SDC Section 4.3-145 do not repeal, replace or void existing Metro Plan policy or Development Code regulations with respect to energy conservation. No changes to supporting ordinances or policy documents adopted to comply with Goal 13 are affected by these amendments.

Goal 14 – Urbanization. This goal requires cities to estimate future growth and needs for land and then plan and zone enough land to meet those needs.

Finding #35. The amendment to SDC Section 4.3-145 does not repeal, replace or void existing Metro Plan policy or Development Code regulations with respect to Springfield’s inventory of buildable lands. No changes to supporting ordinances or policy documents adopted to comply with Goal 14 are affected by these amendments.

Goal 15 – Willamette River Greenway. Goal 15 sets forth procedures for administering the 300 miles of greenway that protects the Willamette River.

Finding #36. The proposed amendment to SDC Section 4.3-145 does not change the obligation to comply with the City’s existing standards for development with respect to the Willamette River Greenway. The Greenway provisions allow development of permitted uses in the underlying zone, provided that all other Greenway requirements are satisfied. The City’s adopted, acknowledged Greenway ordinance will not be changed.

Finding #37. Existing WTS standards allow for the placement of WTS facilities within the Willamette Greenway Boundary but require measures to minimize the visual impact of such facilities. The proposed SDC Section 4.3-145 (F), Table 4.3-1 allows for the installation of “Low visibility” and “Stealth” facilities. WTS facilities will continue to be subject to the standards found in the Willamette Greenway Development Overlay District. Applications for new tower facilities require public hearing and discretionary review by the Planning Commission.

Goals 16 through 19 – Estuarine Resources, Coastal Shorelands, Beaches and Dunes, and Ocean Resources. There are no coastal, ocean, estuarine, or beach and dune resources within the City’s jurisdiction. These goals do not apply in Springfield.

Conclusion

The proposed amendment to SDC Section 4.3-145, based on the findings included above, are consistent with Oregon Administrative Rules and Oregon’s Statewide Planning Goals. It is the conclusion of staff that the proposed amendments comply with this criterion.

V. Conclusion and Recommendation of Staff

Based on its findings with respect to the criteria defined in SDC Section 5.6-115 for approving amendments to the Springfield Development Code, staff finds the proposed amendments to SDC Section 4.3-145 to be consistent with these criteria and recommend approval of the proposed amendments.