



**CITY OF DUNDEE**  
**CITY COUNCIL MEETING**  
**Meeting will be Teleconferenced**

801 N. Highway 99W, Dundee, OR 97115

City Hall Phone: (503) 538-3922 Website: [www.DundeeCity.org](http://www.DundeeCity.org)

*The Mission of City Government is to provide essential, quality public services in support of the livability, safety and viability of the Dundee community.*

AUGUST 18, 2020 7:00 PM.

1. Open Regular City Council Meeting
2. Amendments to the Agenda, if any
3. Public Comment: Each speaker will be allowed up to 5 minutes to speak after being recognized by the Mayor. Councilors will generally not respond to comments except to ask clarifying questions. Council may direct concerns raised by the speaker to the City Administrator or place the issue of concern on the agenda for Council discussion.
4. Consent Agenda: The following items are considered to be routine and will be enacted by one motion. There will be no separate discussion of these items unless a Council member (or a citizen through a Council member) so requests, in which case the item will be removed from the Consent Agenda and considered separately. If any item involves a potential conflict of interest, Council members should so note before adoption of the Consent Agenda.
  - 4.1 City Council Minutes, August 4, 2020 Pages 1 - 18  
*Action Required: Motion to Accept the Consent Agenda*
5. Old Business:
  - 5.1 Council Order - Appeal Decision, Verizon Wireless CU/SDR 20-06 Pages 19 - 44  
*Action Requested*
  - 5.2 FD Captain Position - Salary Schedule Change Pages 45 - 52  
*Action Requested*
  - 5.3 Cooperative Improvement Agreement – Hwy99 Improvements Project Pages 53 - 64  
*Action Requested*
6. New Business:
  - 6.1 Owner's Appeal to Tenant Utility Charges Pages 65 - 70  
*Action Requested*
7. Council Concerns & Committee Reports
8. Mayor's Report
9. City Administrator Report
10. Public Comment: Each speaker will be allowed up to 5 minutes to speak after being recognized by the Mayor. Councilors will generally not respond to comments except to ask clarifying questions.
11. Adjourn

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Pending Business:

1. Public Works
  - 1.1 Highway 99W Street Lighting
  - 1.2 ODOT Phase B Highway 99W Improvements
  - 1.3 Water Line Relocation Project
  
2. Planning/Land Use
  - 2.1 Dundee Riverside District Code Amendment
  - 2.2 Exterior Lighting – Code Update/Street Light Standards
  - 2.3 Helipad Standards
  - 2.4 Vacation Rentals Code Amendment
  - 2.5 Pending Type II or Type III Land Use Applications:  
none
  
3. City Council
  - 3.1 Update SDC Methodologies
  - 3.2 LID 2013-01 Final Assessment Ordinance
  - 3.3 Storm Drain Master Plan Update
  
4. Parks & Trails
  - 4.1 Harvey Creek Trail Property Rehabilitation
  - 4.2 WWTP Nature Park
  
5. Next Available Ordinance & Resolution No's.
  - 5.1 Ordinance No. 572-2020
  - 5.2 Resolution No. 2020-13

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to the Administrative Assistant at City Hall (503) 538-3922.

**CITY COUNCIL MEETING  
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**City of Dundee**  
**City Council Meeting Minutes**  
**August 4, 2020**

**Call to Order**

Mayor David Russ called the meeting to order at 7:01 P.M. over ZOOM teleconferencing meeting platform.

**Council and Staff Attendance**

Attendance Via ZOOM: Mayor David Russ; Councilors Tim Weaver, Storr Nelson, Jeannette Adlong, Kristen Svicarovich, Ted Crawford and Patrick Kelly. Staff Attendance via Zoom: Rob Daykin, City Administrator; Tim Ramis, City Attorney; Jim Jacks, Interim City Planner; Greg Reid, City Engineer; Chuck Simpson, Public Works Superintendent; Melody Osborne, Administrative Assistant; and Melissa Lemen, Administrative Assistant.

**Public Attendance**

Attendance Via ZOOM: Mike Connors, Attorney at Law, Hathaway Larson, LLP, 1335 NW Lovejoy, Suite 950, Portland, OR 97209; Tammy Hamilton, Acom Consulting; Fred Gregory; Rebecca Minifie; Barb Jones; Camille Bahar; Raj Bahar; Jamie Davis; Todd Dallof; as well as four unidentifiable callers who listened to the meeting.

**Agenda Changes**

An Executive Session was added to the meeting agenda: In accordance with ORS 192.660 (2)(h) to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed. Following the Executive Session, City Council will reconvene to discuss a business item regarding the interim fire chief position.

**Public Comment**

None.

**Public Hearing: Appeal of Planning Commission Decision on Verizon Wireless Cell Tower Application CU/SDR 20-06**

Mayor Russ opened the public hearing at 7:02 P.M.

**Call for Declaration of Conflict, Bias, or Ex-Parte contact by any members of this body:**

Councilor Crawford declared that there was some brief discussion at the Tourism Committee meeting on July 22, 2020, about potentially composing a letter in opposition of the cell tower. He stated that he explained to the Committee that the topic could not be discussed and that if the Tourism Committee members individually wanted to submit letters they could do that, though it would not be discussed by the Committee as a whole.

Councilor Svicarovich declared that she has driven past the subject property as well as the monopine pole located in Newberg. She stated that she is also a member of several Facebook community groups where she has read social media posts. She stated that her deliberation and decision tonight will be based on materials, testimony and the Development Code.

Councilor Weaver declared that one nonresident citizen contacted him though he stated that he referred that person to the meeting tonight where City Council would consider from testimony and evidence submitted.

Mayor Russ stated for the record that Rebecca Minifie did begin providing some brief testimony at the July 7, 2020 City Council meeting during regular public comment; all City Council members were present. It was also noted that all City Council members have driven past the subject property given its location.

There were no objections to a Councilor participating in this hearing or objections to the jurisdiction of the City Council to hold this hearing.

**Staff Report:** Interim City Planner Jim Jacks read the legal statements into record, and then provided a summary of the staff report with the City Council and audience. Planner Jacks reviewed that the conclusion of the Staff Report is that the criteria are met and Staff are still recommending that the cell tower be approved; the issue tonight is the Planning Commission denial based on aesthetics, visibility and building mass. Planner Jacks reviewed City Council's options tonight in detail. He explained that the issues of aesthetics, visibility and building mass are subjective and that different parties can come to different conclusions about subjective criteria. Planner Jacks reiterated that the Staff recommends that the City Council not affirm the Planning Commission decision and instead approve the cell tower application with the conditions of approval set forth in the Staff Report. Planner Jacks stated that all of the material in the packet for tonight's meeting is entered into the record.

C. Crawford inquired about whether a proposal by Verizon to present a different cell tower design would be discussed at the meeting tonight. Planner Jacks explained that this would be up to the City Council; the information is contained in the packet of materials. Planner Jacks next briefly reviewed the three potential options provided for the cell tower by the applicant, as well as offered clarification that City Council would also have the ability to request and/or include other appropriate conditions of approval if they so desired.

**Applicant Presentation:** Mike Connors, Attorney at Law, Hathaway Larson, LLP, 1335 NW Lovejoy, Suite 950, Portland, OR 97209, introduced himself as well as Tammy Hamilton, Acom Consulting, who prepared and submitted the application and is present and available to answer questions.

Connors provided some background information on the site before he addressed the appeal issue before Council. He discussed that this is a proposal for a wireless communications facility at the Dundee Fire Station. Connors reviewed that earlier this year Council authorized the execution of a ground lease for this site pending approval through the land use application process. He discussed that Verizon identified the need for a new facility to address both a significant gap in capacity and a significant gap in coverage. Connors explained that a gap in coverage means that there are certain areas within the City where there are moderate to weak signals that will result in break-up in coverage while using a device, dropped calls, inability to make calls or receive a signal. He explained that capacity addresses the volume of calls and data. He discussed that increasingly over the years our reliance on wireless facilities has increased exponentially; that increase in volume has significantly increased the volume of data that needs to be transferred over the system in order for it to be able to work. Connors explained that in this case there is a significant gap in capacity in the sense that the system is overloaded. There are three towers that are located nearby in Newberg, Dayton and Lafayette that are over capacity; this tower is intended in part to offload some of that capacity. He explained that, similar to a coverage gap, if there's an overload in capacity there are similar results including dropped calls, inability to get a signal, and there may be interruption in internet service on a device being used for something other than a call, etc. Connors discussed that especially in today's world, and with the COVID-19 pandemic situation, people are more and more relying on these kinds of devices working from

home and places outside of their normal office where there may be a land line. He discussed that there are also important considerations for things like the need to have reliable 911 access, especially since for many people their cell phone is their exclusive phone line that they have; it is important that both coverage and capacity have reliable coverage on a consistent basis.

Connors discussed that one thing they introduced late is that they did a quick text campaign to Verizon users in the Dundee area zip code yesterday. The results showed 42 people who responded to the text asking whether they felt there was a need for improved wireless coverage in the Dundee area, and noted that this issue was before the City Council. The results showed 42 in favor and 3 said no. Connors reviewed that these results show that there is some flavor for the fact that there are people in the community that do want to improve their coverage. He explained that part of the reason that they do the text campaign is for those people who oppose these kinds of facilities, they are going to make sure that they are in attendance at a hearing and their voice be heard; a lot of people who support it assume that it will be handled by he and Verizon and they don't necessarily take the time to show up for a hearing like this and so they like to complete a text campaign.

Connors reviewed that once Verizon determined there was a need for a facility here, the next step was selecting a site. He explained that the first part of the site selection process is their radio frequency (RF) engineers determine based on the need where the tower needs to be located to address the coverage and/or capacity need. Connors discussed that their search ring was concentrated in the downtown area because it is best for it to be in an area of denser population where there would be the highest amount of usage. In the selected location there is both a higher density and also, it's in close proximity to Highway 99 where the largest concentration of the use is among those two areas. He also discussed the importance of proper spacing as it relates to a capacity issue; proper spacing for the other towers that this particular tower is going to be supporting. Connors explained that the RF engineers try to locate that sweet spot that provides enough separation so that it can avoid both of those issues. He discussed that once it was determined where the search ring was, the first thing that Verizon does is to look at alternatives to building a new tower. He explained that they looked first at some colocation options and unfortunately here the closest existing tower is an AT&T tower approximately 1.3 miles from the site which is too far outside of the search ring and not able to meet the objectives of the site. Connors explained that next they looked at existing buildings and utility poles to see if there was an opportunity to collocate on one of them. He reviewed that there are not very many building at the height needed; the utilities similarly are from 20-60 feet and are below what is needed though additionally are not structurally able to handle Verizon equipment on the poles nor the ground equipment required. Connors explained that this lead to Verizon selecting the Dundee Fire Station site for a few reasons including the fact that it's located well within the search ring, it's surrounded by the railroad tracks, light industrial and commercial zoning and has some buffers from the residential zone which he stated that they typically try to stay away from and the City code encourages them to do so. He explained that the particular zone for the fire station is the public (P)-zone; wireless communication facilities and towers are allowed as a special use in this zone. He also pointed out that this is one of the few zones where a tower is allowed as a special use whereas almost all of the other zones require there be a conditional use. Connors informed that they do have a conditional use application that's part of the package here because, although towers are allowed in the P-zone as a special use, and although City code specifically exempts towers and similar unoccupied structures from the height limits, it does require that a tower that exceeds the 45 foot height limit of the base zone be required to go through a conditional use process. He explained that another consideration is that they have a willing property owner; the City was willing to lease Verizon a portion of the property. Connors pointed out that they thought this was a good site because they would be able to locate the tower behind the Dundee Fire Station at least screen a portion of the tower from certain viewpoints. He explained that

moving forward with their application, they took a couple of opportunities to go through the Planning Commission process in an attempt to try to have a proposal that they could support. He reviewed that their first proposal was for a 95 foot monopole tower (which is not a stealth designed to look like a tree nor a more visually intrusive lattice tower), a slender pole with the antennas located at the top. He explained that during the public process for that original application proposal they received a lot of push back and concern from the public and the Planning Commission, so they went back to the drawing board and came back with a new proposal for a 74 foot monopole (the height of the antenna tip), which was determined to still achieve the coverage and capacity objectives but at the minimum height. Connors discussed the feedback they received during that Planning Commission process including that it was too utilitarian as well as an issue related to the noise because there was an emergency generator (typical for their facilities) and there was some concern that was going to create some noise impacts. He reviewed that next they came back and moved forward with the proposal that was before the Planning Commission, a tower with a 74 foot antenna tip height and designed as a stealth monopole, which was a proposal they thought would be responsive to the requests and concerns that were heard at the prior hearing. He pointed out that the emergency generator was also removed to take the noise issue off the table. Connors explained that at the Planning Commission they found that Verizon met basically all of the approval criteria except determined that they did not satisfy Section 17.404.030(A1). He explained that this is part of the conditional use general approval criteria, which basically requires a finding that the site is adequate based on a variety of factors including mass, visibility and aesthetics. Connors reviewed that the Planning Commission determined, after hearing all of the testimony, that they failed to satisfy that criteria because they felt that the tower was not appropriate based on its mass, visibility and aesthetics. Discussion ensued. Connors explained that the reason that they filed the appeal this time instead of going back to the Planning Commission is because they have really tried all of the mitigation options that are available. He noted that Planning Commission didn't provide a lot of feedback or questions about potential pole options and they didn't realize that was how they felt until deliberation took place. Connors discussed that they have taken their best effort to try to address the issues at the Planning Commission and have come before the City Council to lay out some of the options which they've identified that can be selected from to determine which of the design options they believe is most appropriate to fit in in this particular location. He explained that the scope of the appeal in front of Council is really limited to that one issue of satisfying that conditional use criteria based on the mass, visibility and aesthetics, which they believe that it does. Connors explained that Staff had concluded that they satisfied the criteria before the Planning Commission. He also referenced additional information contained in the Staff Report and provided by Planner Jacks which recommends that City Council approve the application and that they comply with the criteria. Connors stated that the reason they believe that they do comply with the criteria and that Council should support their appeal and approve the application begins with the zone. He reviewed that it's a public use zone, a special use, and one of the few zones where a conditional use is not required for all towers. He also pointed out his belief that this is really the crux of the flaw in the Planning Commissions' reasoning and essentially the opponents as well who have submitted their letters, the belief that the particular property in question is not an appropriate property for this kind of a use. Connors discussed that they presume that Council does not necessary feel that there is no way to design a tower to satisfy the criteria because if that is how Council felt the City would not have authorized executing a lease with Verizon for this; but it's also a position that they believe is inconsistent with the Code. He reiterated that the Code specifically allows these kind of facilities, exempts them from the typical height restriction of 45 feet, and allows for those that exceed 45 feet to be permitted as a conditional use. Connors explained that if the Planning Commission and the opponents in the community have expressed concern are basically saying that there is no way to design this in a way for this tall of a tower to be appropriate on this location they are really saying that the Code shouldn't permit this but it does. Discussion ensued. He also discussed that if the conditional use

criteria itself is reviewed, one must look beyond only subsection A-1 in isolation because subsection A-2 and subsection B also talk about visual impacts; those codes discuss the need to reasonable mitigate or minimize the visual impacts. Connors emphasized that it is impossible to construct these kinds of facilities in a way that will have no visual impact. Discussion ensued and Connors pointed out that the real question under City Code is have they reasonably minimized or mitigated the visual impacts, which they believe they have and done so to the greatest extent that they can and still be able to meet the objectives for the site. He reviewed that they are proposing a minimum height tower in this case, which the Code does not require them to do. He offered clarification that for the monopine design, the overall structure is 80 feet; the antenna tip is at 74 feet with the crown of the tree placed on top of it. Connors discussed that if this is compared with some of the towers in the surrounding area, such as the ones that they are looking to offload through this capacity purpose in Dayton, Newberg or Lafayette, those towers range from 154 feet to 170 feet in height. He discussed their belief that they have minimized the visual impact to the maximum extent possible by going with the minimum height that can achieve their objectives, and a height that is significantly shorter than other towers in the area.

Connors discussed the stealth design and noted that a lot of jurisdictions like to see that design; this design can be more expensive to build and more difficult to maintain though Verizon was willing to do that in this case in the hopes that this would address some of the concerns that they heard during the public process. He referenced photos provided in the appeal packet which show some actual photographs of actual monopine facilities, including one in Newberg. He also explained that they have provided options which they felt would be available for Council to choose over a standard monopine if they desire. Connors described the first option, a more slender design of the monopine. He explained that the monopine that they originally proposed is a little bit fuller because it's intended to look more like a realistic tree; following comments received from the Planning Commission and community members during that hearing process talk about the mass and the visual impacts, they are now offering the more slender monopine design option that's available, as shown in the example from Newberg. Connors reviewed that the other option they have proposed is the monopole, which is basically that more slender pole variation with the antennas at the top. He explained that this option provides the least mass and the least visual impact.

In addition to the design of the tower, Connors explained that there are other mitigation measures that were proposed. He discussed that placing the tower behind the fire station to try to provide a little bit of a buffer though they understand this does not obscure the tower altogether given its height, though the photos do show the visual buffer at least for the lower portion of the tower. Connors discussed that they also agreed to place some robust landscape buffering here which is a significant amount more (perhaps almost double) of what is required by the Code, and to provide a little bit of a visual buffer at the base of the tower where equipment is located. He pointed out that they also made sure that the tower was well in excess of the setback requirements as well. Discussion ensued. Connors discussed that based on all of those elements as part of their proposal, they believe that they truly have mitigated the impacts to the greatest extent that they think is possible. He pointed out that when looking at the visual impacts, these also have to be looked at within the context of the surrounding landscape and the visual impacts of today; there are a number of utility poles and lines which can really be seen in some of the photos provided. He encouraged Council to review the photos provided. Connors also shared his belief that similar to the utility poles, once the tower is in place for awhile it will blend in more with the landscape and won't be as significant of an issue. Discussion ensued and Connors discussed that they feel they have done basically everything they possibly can to mitigate concerns, and pointed out that there has to be some means to be able to approve a wireless communications tower in this location; if they have done everything possible and somebody can't suggest what else they would need to do and still be able to meet their objectives, then he suggested that what he thinks they are

really saying is that no tower could ever be allowed on this property, and that there is no way to design or propose this in a way that would satisfy the criteria which they don't believe is consistent with the Code. Discussion ensued and Connors pointed out that what he thinks that a lot of those who are opposed to the project, and what was seen at the Planning Commission, was not so much that there was something in the Code that says they can't place the tower, but is really just more of a personal opinion of it not being the right site for this. Connors stated that this is a Code rule based driven decision; if the evidence is applied to the rules in this case, they believe that they do comply.

Connors discussed the Federal Telecommunications Act which provides some local jurisdictions some discretion, though there are limits to the discretion. He explained that one of those limits are that a local jurisdiction cannot decide an application in a way that has the effect of prohibiting wireless service in the City. He discussed that if Council were to adopt the Planning Commissions' rationale, he feels that it would violate the Federal Telecommunications Act and preclude being able to satisfy the criteria in any way. Connors reviewed that comments were received about alternative sites outside of the City and he explained why those alternative sites don't work because they don't achieve the objectives which is the whole purpose of building the tower. He asked Council to review the evidence, look at the Code, and appreciate and hopefully believe that they have done everything they can to mitigate the visual impacts while also providing some options for Council to choose from. He reviewed that the Planning Commission determined that they complied with all of the other criteria and the Staff believes they have already complied with all of the criteria; Council has a basis to approve the project and he asked that they would do that.

Mayor Russ inquired about capacity and connectivity and asked about when they start to have capacity issues if that affects connectivity to which Connors affirmed. He also inquired about whether the proposed tower signal would reach to the river; Dundee will be expanding that direction and residents in that area would also need coverage. Though Connors indicated it is his belief that it will, though noted he is not the RF engineer. M. Russ inquired about whether Verizon ever considered the water reservoir at the top of the hill which could also be projected off of the backside. Connors discussed that this was considered though referenced their application and noted that the search ring area is located right in the town proper; anytime they have gone back to their RF engineer to discuss other alternatives, including the water reservoir which is well outside of that search ring area, they have basically said that would not address or achieve the objectives for the site.

Councilor Svicarovich asked for verification that the monopine pole in Newberg is the slender version of this type of tower which Connors affirmed. C. Svicarovich also inquired about the height of the monopine tower in Newberg. Connors indicated that the tower is somewhere between 154-170 foot range, though he cannot recall specifically. C. Svicarovich asked for confirmation that this would mean that roughly speaking, the tower in Newberg would be twice the height of the one being proposed in the City of Dundee to which Connors affirmed. C. Svicarovich asked for confirmation, with regard to the utility poles, that they are indeed 60 feet in height – above ground height of the transmission poles that are on 99W and that doesn't include the embedment depth of the 60 foot pole. Connors confirmed that this is correct and apologized that he misspoke that the range of the height for the utility poles is anywhere from 20-60 feet, though the ones referenced are the larger poles. C. Svicarovich discussed that the larger poles in the downtown are the transmission lines and recalled several discussions at Council; she stated that it is her belief that these poles may never be able to be undergrounded and are pretty much a permanent fixture in the downtown. She pointed out that the proposed tower would then be approximately 20 feet above the existing transmission lines which Connors also confirmed.

Councilor Adlong inquired about whether Verizon had any other kinds of designs that were a stealth design beside a pine tree design. She stated that the pine trees proposed, both the thin version and the original version, basically don't exist in this part of Oregon which makes it stand out as something different. She supported that if it looked more similar to a Douglas fir tree it would blend in better. Connors discussed that Verizon doesn't manufacture the stealth trees themselves; independent companies make them, and he doesn't know the reason why there are a limited range of options which are available. He explained that monopine is the typical kind of option that they use in this particular geographic area and is what the same type as the tower located in the City of Newberg. He pointed out that this is the type of stealth tree design which they think is the best and most appropriate in this area. Additional discussion ensued. C. Adlong inquired about the additional landscaping they've proposed to add at the base as a screen. She discussed that there was some kind of evergreen landscaping included and asked if there is an intent to make those large trees eventually or remain shorter on the ground to screen the fencing. Connors confirmed that the landscaping would be provided to predominantly screen the ground area; there is no intent to have the trees grow over time where they would provide more of a screen for the tower itself.

Councilor Crawford referenced the diagram shown on page 70, a non-tree version of the tower, he inquired about whether a 5G antenna ray is included between two others. Connors explained that the tower is a 4G facility only with no 5G associated with this tower.

Councilor Weave referenced statements about the back-up generator for the tower being removed and inquired about what will happen when the power goes out. Connors explained that removing the generator was a decision that Verizon made because the issue that was created with the emergency generator was that it made it difficult for them to be able to comply with the noise standards. He discussed that although the generator would only be infrequently or periodically turned on, mostly just to test it and keep it running, the noise standards are written such that you have to satisfy those standards at the highest noise level that would be possible. He explained that they tried a number of different designs to try to attenuate the noise and it just was proving too difficult and was a controversial aspect of the project and so a decision was made to remove that in order to avoid having to deal with some sort of noise variance or people having another issue that they would have concern with. C. Weaver pointed out that the fire station is an emergency services building and does have a back-up generator as well. Connors explained that part of the issue is that when Verizon has an emergency generator, they only have the equipment cabinet and have limited capability to buffer that noise; more buffering can be provided with a building.

Councilor Nelson asked what the nighttime lighting emissions would be for the tower facility. Connors explained that there is no light on the facility; the lighting is just in the equipment area itself and is downward facing so that the lighting doesn't protrude out to neighboring properties. There is no aviation related lighting for this kind of facility, in part because of its shorter height.

### **Public Testimony**

Rebecca Minifie, 809 SE Elm Street, introduced herself and stated that by her account 86 residents of Dundee wrote in opposition letters, including the major business owners in the central business district. She referenced the text message that Verizon sent to their customers this week asking if they would approve of a wireless facility at the fire station, and voiced concern for this "misleading" text with no mention of the actual cell tower or proposed height. Minifie asked Council to take into consideration the difference in effort that it takes to respond "yes" to a text versus taking the time to write a letter to the City. Discussion ensued and Minifie pointed out that the cell tower opponents took the time to write in about a permanent change to the aesthetics to the City. Minifie stated that Verizon also neglected to provide the names and addresses for each

of the citizens who responded. She pointed out that if opponents were required to provide this information to the City it should be required of Verizon as well and asked that Council not allow a double standard. Minifie stated that the cell tower will affect each and every citizen that lives in Dundee, not only Verizon customers. She stated that the cell tower would be a huge and permanent mar on the downtown we have worked to beautify for years. She shared with Council that this proposal and the cell tower meetings have been very stressful for her and her family this summer. She discussed the importance of this decision to she and her family and will impact whether her family stays in the City or moves; Minifie stated that she can't in good conscience raise her two children three blocks from a cell tower. She voiced her opinion that this decision will affect Dundee families and businesses, and the beauty of Dundee for decades to come and asked the Council to uphold the Planning Commissions' decision.

Fred Gregory, introduced himself and his wife, Viola, and indicated that they have lived in Dundee for two years. He explained that Dundee appealed to them because of its charm and rural setting. Gregory discussed that they live on the hill and stated that the proposed cell tower would be an eye sore that would never go away from their perspective. He explained that they are Verizon customers and did not receive the discussed text. He stated that had their family received the text Verizon would have received 3 more no votes. He stated that they very much oppose the proposed cell tower, not from a legal perspective, as he stated that he is sure that they have met all of what is legally required, but from a human perspective of what's right and what's good for the community as well as what's appealing to those who love Dundee. Gregory stated that just because it's legal, doesn't necessarily mean that it's right. He asked Council to reject this appeal for the cell tower in the middle of Dundee which he stated will forever change its complexion.

Keeley O'Brien had previously requested to provide public testimony at the hearing but was not found to be in attendance.

#### **Applicant Rebuttal of Testimony Presented**

Connors recognized the text campaign versus opposition form letter and discussed that while he feels it's important to understand that there are going to be people on both sides of the issue, it's not a popularity contest or a matter of determining where more people stand on this issue. He discussed that it's not really a matter of what's popular or taking a poll to find out who wants what, it's really a matter of does the applicant satisfy the approval criteria that City Council has established in the Code. He discussed that there must be some infrastructure to provide service to the increasing number of those using available wireless devices; a system must be built to accommodate all of the traffic that we all need. With regard to design options, Connors encouraged Council to express their concerns and desires, though feel they have provided all of the options that they thought would mitigate the visual impacts.

Connors asked that if Council does decide to approve the application, he would request an opportunity to be able to draft some findings for their consideration. He explained that it's fairly common in Oregon as an applicant and noted that there are a number of different parties who have indicated that, if necessary, they would appeal any kind of approval beyond the City.

#### **Closing Legal Announcements**

City Attorney Ramis stated that his only comment is to agree with the theme that Mayor Russ touched on initially, which is that this is a decision based upon previously adopted criteria. He stated that the responsibility of the Council is to apply the criteria; it is not an opportunity to rewrite the Code. C. Atty Ramis explained that if Council does not like the way that the Code is written or think that there should be different provisions with respect to a cell tower regulation, that needs to be in a separate legislative proceeding and your not able to rewrite the Code in this proceeding. Brief additional discussion ensued.

M. Russ inquired about whether C. Atty Ramis has found that the applicant has misstated the Dundee Municipal Code or the Federal Telecommunications Act in any of their statements to which C. Atty Ramis indicated that he has not.

### **Final Comments from Staff and Recommendations**

Planner Jacks discussed that as indicated in the Staff Report to the City Council for this evening, Staff recommends that the application for the conditional use be approved, and that the application for the site development be approved with a couple of conditions included in the Staff Report addressing minor issues.

C. Svcarovich reviewed that the applicant mentioned wanting to be a part of writing any findings related to the decision that would be made tonight. She inquired about whether that is considered a common practice and something that Planner Jacks would be comfortable with and something that Council should consider. C. Atty Ramis explained that if the applicant had not suggested it, he would be suggesting it. He explained that it seems to him that because the burden of defending the case (if there were a LUBA appeal) falls on the shoulders of the applicant, it makes the most sense to have the applicant bear the labor in drafting those findings. C. Atty Ramis explained that from his perspective it's typical practice and he would be comfortable with it.

Mayor Russ closed the public hearing at 8:18 P.M.

### **Council Deliberation**

C. Svcarovich provided a point of clarification regarding C. Adlong's previous comment about the monopine. She pointed out that pine trees are native to the Willamette Valley and discussed that there is a Willamette Valley ponderosa pine that is actually located in several places in the Willamette Valley, including a conservation restoration effort to have those trees come back into the valley. C. Svcarovich discussed that there is actually a large stand of Willamette Valley ponderosa pines off of Hwy 18 near the Willamette Valley Vineyard. She pointed out that pine trees are native to the valley and noted that the size of the pine tree that's being proposed is actually in kind to the pine trees that are native to the valley; the trees that grow in the valley typically reach a height of up to 110 feet. C. Svcarovich discussed that pine trees have always been in the valley, though many have been removed as part of farming practices, but there are several stands across the valley.

M. Russ stated that he's heard these arguments before and that his opinion is that if a cell tower must be placed, just a regular tower tends to blend into the sky more than a metal tree. He discussed that he personally opposes making decisions outside of the law in order to gain notoriety; discussion ensued. M. Russ pointed out that the applicant has been very cooperative and seems very committed to provide the cell tower not only in the best way they can provide it to us, but just to do it. He discussed that the downtown area uncharacteristically has few trees so there is not a lot to blend with. He stated his belief that in the end, placing the tower behind the fire station which provides some height, and as the downtown fills in the cell tower will disappear into the landscape. M. Russ stated that considering the laws as they stand and the Dundee Municipal Code which exempts towers, he feels this indicates an intent of the writers that they wanted to make opportunity available for people in the City. M. Russ suggested Council give consideration to the mitigation options provided by the applicant. He also expressed concern about the increased demand for cellular service, a critical utility, and expressed his belief that people on the west side of town are having some issues with their cell service. He acknowledged the importance of wireless communication for students and tourists as well, and voiced support that if the law allows for the towers, it needs to be supported.

C. Adlong discussed that what is at hand is a conditional use that has different items which need addressed. She explained that one of the uses is a subjective decision having to do with the mitigation and aesthetics of the town. Discussion ensued. C. Adlong indicated her belief that the Planning Commission understood what they were doing when they made their decision and voiced her respect of that decision. She shared her belief that whatever decision the City Council takes tonight will be within the law.

C. Nelson voiced that he agrees with C. Adlong. He explained that if the City laws and codes didn't think that these subjective qualities of aesthetics (including building mass and visibility) were important, they wouldn't have included them in the Code. He stated his belief that the vast amount of opposition received regarding this is a clear indication that this is a very important part of that Code. He discussed that though the energetic last minute group of opposition caught the applicant off guard with their denial, he believe it does affirm that the aesthetics, the building mass and the visibility is a very important criteria and it is subjective but allows Council to make these decisions.

C. Weaver voiced that he agrees with everyone tonight. He discussed that it appears to him that Verizon has made some significant strides forward in trying to make compromise on this tower; detailed review of some of their mitigation efforts provided. C. Weaver voiced concern about wireless services being compromised and expressed concern about the generator situation if the power goes out. He discussed the importance of communication for EMS as well the importance of communication for everyone as the future continues to move in this direction. He pointed out that the cell tower issue is inevitable and noted that he wouldn't be surprised to see this issue surface again in the City because of added use. He voiced appreciation of the testimony provided tonight. C. Weaver voiced support of the cell tower location at the fire station, at an emergency services center location.

C. Crawford voiced support that if a communication array is to be placed in Dundee, next to the fire station would be one of the most obvious places. He discussed that around the County at police departments and fire stations there are communication rays sticking 40-50 feet above every one; and at the McMinnville Fire Station there is a tower likely 120 feet tall right in the middle of town. C. Crawford pointed out that this is a relatively small communication array and discussed his belief that it will not stick out given all of the visual clutter that is around the fire station now. He also explained that he is a big advocate for beautifying Dundee and is the Chairman of the Tourism Committee. He voiced support that placing the tower behind the fire station will not be a major detraction to what Dundee looks like. He voiced that he is not in favor of the pine tree variety and would support the slender tower and making the smallest footprint possible.

C. Kelly discussed that he has been listening on and off and is still on the road at present. He noted that he was impressed with all of the turnout from the citizens and he was glad to hear them vocalize their concerns with the tower. He voiced that though the size of the proposed tower isn't as tall as some, he does not agree with the placement of it in the center of the City.

C. Nelson discussed that the City has spent a lot of time, effort and money to underground utilities when and were it is feasible. Though he voiced that he realizes the PGE poles and Verizon will not ever be underground, he pointed out his belief that the aesthetics, the building mass and the visibility aren't in line with what the City wants and needs there. C. Nelson suggested that perhaps Verizon's design criteria are in excess of what would be allowed ultimately on this site; maybe two smaller towers in different locations could suffice. He expressed appreciation for the efforts Verizon has made in lowering the height and the additional screen, though voiced his opinion that this isn't the site for a large structure like this.

C. Svicarovich voiced her belief that the Code pretty well outlines in the wireless communication facility section that collocation is preferred over two locations. Discussion ensued and she pointed out that Verizon would be providing additional space on that pole for someone else to collocate, which she can't help but think is also requiring them to have a taller pole. Though she voiced that she can appreciate the concept of two poles, she firmly believes the Code is dictating that it shall be one pole and there needs to be space for collocation on that pole which is making that pole even taller.

C. Adlong voiced her disappointment that Verizon is not present tonight and try to provide a bit more though she did voice appreciation of the mitigation efforts. She voiced that her hope is that Verizon try to reciprocate by trying to use more technology to get the pole even lower.

M. Russ discussed that in the City code there is an exemption from height restrictions for the towers. He pointed out that this clearly implies that the code writers intended to allow towers of some sort. Discussion ensued.

C. Crawford inquired about whether it is known when the height exemption was put into the Code for cell towers. C.A. Daykin discussed that the exemption to the building height standards for projections predated the regulation that was developed in 2007 for wireless facilities. Discussion ensued and C. Crawford discussed his belief that a cell tower cannot be blocked solely for aesthetic reasons included in the Telecommunications Act. C. Atty Ramis explained that the issue is the effect; if the effect of an aesthetic standard is to prevent service in the area, though simply having it in the Code is not itself prohibitive. C. Atty Ramis informed that an application can be denied based on aesthetics; if the effect, however, is to prevent service in the area then there would be a problem under the Federal Act.

**A motion** was made and seconded to not affirm the Planning Commission condition and approve the application with the conditions of approval set forth in the Staff Report to be modified by the applicant in preparation for defense. A detailed discussion ensued about the type of pole favored by Council. **The motion** was amended to include the monopole design with a matte gray finish diminish reflection. C. Nelson inquired about why Council didn't see more public support for the proposed cell tower. M. Russ shared that from his personal perspective, people that are positive or in favor of something aren't inclined to voice their support as much someone in opposition might. M. Russ pointed out that public opinion isn't the important factor in this situation, the law is the important factor. C. Nelson asked for confirmation that M. Russ is saying that the part of the law that includes subjective aesthetics, building mass and visibility isn't as important as other parts of the law which M. Russ voiced he does not agree with. **The motion** passed 4:3 with M. Russ, C. Weaver, C. Svicarovich and C. Crawford voting in favor; C. Adlong, C. Nelson and C. Kelly voting nay.

C. Atty Ramis suggested the Mayor choose a specific date in the future for a final adoption for the findings and the final order and ask the applicant to prepare findings for Council's consideration. C.A. Daykin explained that the City is running up against a 120-day modified rule and requested that the applicant also provide the City additional time to complete the process which Atty Connors agreed to do. He suggested choosing a date to consider adoption of the written decision and based on that available date select what kind of extension would accommodate that. C.A. Daykin indicated that the next City Council meeting is August 18, 2020.

C. Weaver noted that his preference would have been to hold the public hearing in-person in a public place rather than via Zoom teleconferenced meeting, and voiced appreciation of Staff for organizing tonight's City Council meeting and voiced appreciation of those in attendance. M. Russ thanked those in attendance.

## Consent Agenda

A **motion** was made and seconded to approve Consent Agenda Item 5.1 City Council Minutes, July 21, 2020 and Item 5.2 Financial Report Ending June 30, 2020. **The motion** passed unanimously.

## Old Business

### H&H Paving Change Order No. 1

C.A. Daykin informed that the paving contractor began work on Red Hills Drive this week. C.E. Reid detailed a couple of issues that occurred. He explained that there was a private storm drainpipe which hadn't been identified and was buried in the brush which will be redirected. C.E. Reid also discussed that at the drainage crossing Red Hills Road across at the bottom where it meets Ninth Street there was a thrust block for the water system; the block was impeding the pipe in such a manner that the pipe crossing Red Hills Drive at Ninth Street wasn't able to be lowered as low as he'd hoped. He explained that this affected where he was able to place the ditch inlet to accept the drainage coming down Red Hills Drive. Discussion ensued. Though there have been some drainage changes in that location he is hopeful that the swale idea will still make it a little bit further around the corner and do a good job; there may be a little bypass on that ditch inlet which would go into the Ninth Street ditch likely during very extreme rain events. C.E. Reid informed that no soft spots were found on Red Hills Drive and there was also no base rock. He pointed out that they are now ahead 4 inches of base rock in the bid to regrade (mostly for regrading down low), but the material is so hard and dense that he's recommending only using the 4 inches over the native material that's there, especially given budget constraints due to other projects. It was noted that this would still provide a street which will last a long time. C.E. Reid discussed the change order and explained that it is for repairing asphalt areas outside of the Red Hills roadwork area and primarily just where there are soft spots which are starting to alligator and fall apart, and to accomplish the repair work before the areas are slurry sealed.

C. Nelson pointed out that the change order costs seem appropriate compared to the small nature and size of a lot of the repairs. C.E. Reid discussed that one of the big repairs is located on Dogwood Drive. He explained that when the area was paved approximately 4 years ago there were a couple of driveways on the uphill side where the asphalt was applied a little too high; there is now a little drainage that is crossing over Dogwood Drive and impacting some of the downhill driveways. C.E. Reid discussed that part of the change order costs include repairing those areas in order to achieve a better cross slope and hopefully keep drainage from crossing Dogwood Drive and impacting the downhill residences. **A motion** was made and seconded to authorize Change Order No.1 to H&H Paving for asphalt street repairs estimated at \$14,450.81. **The motion** passed unanimously.

C.E. Reid discussed that the lighting materials for the highway streetlight project have been delayed until mid-August for the poles as well as some of the other parts of the materials. He explained that NorthStar has apologized for the delay and indicated the delay is as a result of the manufacturer. C.E. Reid discussed that all of the electrical meter bases have been installed and the undergrounding completed to get the power over to the lighting system now. He explained that the base across from Second Street at the driveway to Arco is a new base sticking up out of the ground; he asked them to raise it because he's planning for the future sidewalk and planter area which will be present after ODOT completes work in that area next year. C.E. Reid also explained that the second meter base at Tenth Street will be installed to tie in that side of town. He noted that presently they are just waiting for materials from the manufacturer. C.E. Reid discussed that the new bases have already been installed at the fire station and confirmed that all of the other bases that were in question will work. Additional brief discussion ensued. C.E. Reid

pointed out that the new inflated price of the banner arms seems extreme; NorthStar has indicated that banner arms purchased from other manufacturers will look very nice on the poles and be obtainable at a much better price which C.E. Reid will pursue.

### **Upland Reservoir Property ROW Dedication**

C.A. Daykin discussed the details contained in his agenda report beginning on page 33 of the packet. He explained that in an effort to remedy the complexity of the property ownership in the described location, City Staff is proposing dedicating a portion of that property to right-of-way purposes by way of the proposed Dedication Deed. C.A. Daykin explained that in order to complete the process, a proper survey description of the property will need to be completed. Additional discussion ensued and C.A. Daykin explained that if City Council approves this concept, he would like to consolidate the two different tax lots (01003 and 02400) first, next take the information to complete the dedication process, and then provide that information to complete the initiative that City Council supported to have the zone changed to the P-zone for that property.

M. Russ inquired about whether parking issues could then be enforced on the City property. C.A. Daykin explained that this could be done depending on how Council would like to proceed: the area could be fenced off, signs could be placed, or even tickets could be issued on vehicles violating parking restrictions in the area.

Upon review of the plat map provided, C. Adlong pointed out that she is now aware that the property owner at 02300 removed the vegetation that existed between it and lot 01003, though the vegetation was actually located on lot 01003. She explained that the removal included some beautiful madrone trees and noted that an RV is now being parked in this area. Brief additional discussion ensued regarding the properties in this area. C. Adlong suggested that a walking path connecting Upland Drive down to Seventh Street would be a great addition to the community. It was noted that the property along the driveway is jointly owned by the three neighboring properties to connect to their driveways.

**A motion** was made and seconded to authorize the Mayor to sign the Dedication Deed of a portion of City owned property as public right of way. **The motion** passed unanimously.

C. Adlong raised the topic again of parking on the reservoir property. C.A. Daykin explained that adding some security fencing on the reservoir has been discussed. He also explained that during his research he found that the reservoir was built in 1963-1964; at a Council meeting in 1964 there was discussion about placing a fencing on top of the reservoir. C.A. Daykin pointed out that securing the property is important per Federal guidelines. Chuck Simpson discussed that parked cars in the area make it difficult for them to access the reservoir for emergency repair work on the well. He explained that up near the well house there is an extended parking area that's not shown on the plat map; this parking area would allow access for a well truck when maintenance work is required. M. Russ suggested that the addition of a couple of bollards and a chain across that area could prevent people from accessing that area. Simpson explained that there are two water lines and a storm line, and PGE has routed power through the area which reaches the short section of Red Hills Drive as well. M. Russ suggested that bollards and a chain installed in the area of the tree removal (which C. Adlong was concerned about) could be accomplished in this area as well. C. Svicarovich supported that once the area is surveyed and property lines identified, a conversation with property owners may be helpful prior to the City taking the more definitive action of placing a fence. C.A. Daykin offered to complete additional research and provide Council with additional options once the information is obtained. C.A. Daykin affirmed that Staff did speak with the homeowner briefly when they first started completing some excavation work which was not located on their property.

C. Adlong voiced the importance of providing some consideration in the future for having the area be an access point for some sort of a pedestrian path. M. Russ discussed that he does not support a fence in this location as he feels it would not be aesthetically pleasing in this location and somewhat intrusive as well; bollards would allow for people to walk past as well as bicyclists and animals. C. Svicarovich also voiced support of a pedestrian path connection point in this location as well. C. Crawford inquired about whether one possible option might be to bring the private driveway into the street system in exchange for a pedestrian trail right-of-way in this location. M. Russ indicated that he could talk to the two adjacent property owners (his neighbors) who share the private driveway to find out their opinions on the idea.

## **New Business**

### **Sewer Manhole Repair Quote**

Chuck Simpson, Public Works Superintendent, discussed that there are a couple of cracked manholes which are leaking profusely in the wintertime and briefly reviewed his memo on page 43. **A motion** was made and seconded to approve the repair of two sewer manhole covers by Underground Tech in the amount of \$6250. **The motion** passed unanimously.

## **Council Concerns and Committee Reports**

C. Nelson voiced his appreciation of Council's input and participation at tonight's meeting.

## **Mayor's Report**

None.

## **City Administrator's Report**

C.A. Daykin informed that the \$300,000 funds transfer was made to PERS for establishment of a side account for the City that is eligible for the 25% match amount from the State. He explained that just prior to the deadline he received an email from the PERS representative indicating that there would soon be state legislation which would repeal that legislation. C.A. Daykin explained that fortunately for Dundee, he had already begun the process and the transfer processed successfully; those who are waiting until a later date to make their transfer may not be able to as the State may be withdrawing those incentive funds for other purposes.

## **Executive Session**

The City Council entered into Executive Session at \_\_\_\_\_ P.M. in accordance with ORS 192.660 (2)(h) to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed. Executive Session ended at 10:15 P.M. and City Council reconvened.

### **Interim Fire Chief Position**

C.A. Daykin discussed the proposal being brought to City Council to continue an interim fire chief position. He explained that Amy Hanifan has been filling the position from the City of McMinnville Fire Department though has responsibilities and duties she needs to return to at the end of this week. C.A. Daykin explained that he did contact the Western Fire Chiefs Association to assist the City of Dundee in the process of finding a replacement interim fire chief. He discussed that they have always done a placement of permanent fire chiefs but have only recently begun placement of interim fire chiefs as well; the City of Dundee will be one of the first to participate in this new program. C.A. Daykin discussed that Brent VanKeulen is associated with the organization and is present tonight. A copy of the proposal was received and was emailed to City Council members prior to the meeting tonight.

Brent VanKeulen introduced himself and explained that the Western Fire Chiefs Association (WFCA) is a division of the International Association of Fire Chiefs and represents California, Oregon and Washington and is the main network for fire chiefs within the State. He informed that he has been a member for 6-7 years. VanKeulen explained that WFCA sent him to provide a recommendation for an interim position in Dundee, as well as to consider the position while completing the initial needs assessment. He reviewed that he has provided a needs assessment as well as a proposal to be the Interim Fire Chief for the City of Dundee. VanKeulen discussed that the primary method he used in determining the needs assessment was interviews; he also reviewed some documents pertaining to budget, response and volume. VanKeulen explained that he is familiar with the Dundee Fire Department because in his former job at Tualatin Valley Fire & Rescue; he was the Chief Officer that handled all aspects of the Newberg Discovery Session, the functional consolidation contract period and the implementation of service to Newberg. He noted that he is also familiar with Dundee because he did a lot of work with WAACA and the City of Newberg's dispatch center around the communications. VanKeulen explained that he's pretty familiar with Dundee operationally. He noted that part of what he found that is still true is that the Department has the capability to respond with a single engine company to most service requests. He pointed out that in his opinion and experience it is pretty impressive how fast the first unit gets out the door with a volunteer and partial daytime paid staff. He explained that the staff present during the day augments the volunteer availability during the work week, which he noted is a national trend; it is becoming more and more difficult for volunteer firefighters to be available during the work week.

VanKeulen discussed that the Dundee Fire Department is in a place of increased administrative needs, driven primarily by McMinnville Fire Department leading a consulting report evaluating consolidations of several different fire agencies within Yamhill County, including Dundee as a participant in that Study. He explained that he broke out the needs of the Dundee Fire Department into the two categories of administrative needs and operational needs. VanKeulen reviewed the highlights of each category, as contained in his report. He discussed that the Dundee Fire Department is in a really good position right now to maintain some flexibility while there are changes going on in the County. He discussed his belief that having an interim fire chief and not making any permanent decisions right now really will serve the community well so that as the City looks forward strategic decisions could be made to potentially change the course of where the fire department is headed into the future that could align it for the greatest community good. VanKeulen explained that to support the present operational needs in Dundee, his assessment is that only a part-time administrative Chief is needed. He discussed that in his proposal he has proposed a rate that leaves some funding available to help support the operations. He explained that it is his belief that some supervision is needed during the day which would be like a station Captain in a very traditional role. VanKeulen discussed that most of the paid staff is working all in one position, and there are more duties and jobs within the fire department which are outside of that position. He voiced support for the need of continuation of volunteer coordination and discussed that his proposal is for about a 3 to 4-month window where things can continue to be evaluated and the best strategic decisions can be made from there.

M. Russ inquired about whether Interim Chief Hanifan agrees with VanKeulen's assessment to which she affirmed. Chief Hanifan explained that while she does feel she was able to fill both duly as an operational responder and as a Chief, she acknowledged that there is another method to that which she also voiced support of. M. Russ inquired about VanKeulen's proposed rate which he explained is based on the present scope of work and the time required of him; as things evolve and get more or less complicated (as the scope of work changes) then he would make the necessary adjustments. He also noted that he does have some flexibility in his schedule which would allow for him to increase his hours, if needed. C.A. Daykin explained that in addition to

what VanKeulen is paid, the City would also be paying an additional 10% fee to WFCA, though the fee would stop if the term of employment extends beyond 12 months. C.A. Daykin offered clarification that there would be a separate agreement with Brent VanKeulen and a separate agreement with WFCA. M. Russ voiced support of the proposal. C.A. Daykin discussed that if Council is favorable of this proposal, VanKeulen would likely start this week working alongside Interim Chief Hanifan during her final days at the Department.

The consensus of Council was to move forward with both Agreements at this time. C.A. Daykin discussed that he would need to execute these separate agreements. He explained that though there is a draft copy of the WFCA Agreement, he has not been presented with VanKeulen's employment contract yet. C.A. Daykin explained that upon being presented with the contract, he would review it with the City Attorney and make sure that it meets the needs of the City.

C. Crawford inquired about where VanKeulen will be traveling from to which he noted to be West Linn; his travel expenses to and from the Department were noted to be covered as well.

C.A. Daykin explained that he has also asked VanKeulen to review the job descriptions for the Department given that there are firefighters and a Chief position only at this time. VanKeulen had previously explained to C.A. Daykin that there are a lot of different positions in between given the myriad of duties and responsibilities. C.A. Daykin pointed out that now they may wish to elevate one of the firefighters to be a station Captain and thus a job description would need to be created for the position as well as a fair wage determined. C.A. Daykin explained that this would be brought back to Council for their approval.

## **Public Comment**

None.

The meeting was adjourned at 10:33 P.M.

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David Russ, Mayor

Attest:

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Rob Daykin, City Administrator/Recorder



DUNDEE CITY COUNCIL ORDER  
FILE NO. CU 20-06, SDR 20-07

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AN ORDER APPROVING A CONDITIONAL USE AND A SITE DEVELOPMENT REVIEW FOR A  
WIRELESS COMMUNICATIONS FACILITY AT THE DUNDEE FIRE STATION AT 801 N  
HIGHWAY 99W, TAX LOT 00800 ON MAP 3325CC.

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RECITALS:

1. Tammy Hamilton of ACOM Consulting, Inc., for Verizon Wireless (applicant) submitted Conditional Use and Site Development Review applications to construct a wireless communications facility at 801 N Highway 99W (Tax Lot 800 on Assessor's Map 3325CC) in the SE corner of the Dundee Fire Station property. The property is zoned Public (P).
2. The request was to construct an 80-foot high stealth wireless communications monopine structure. A 74-foot antenna tip height would allow for 6-feet of branches above the antennas to mimic a natural tree. The tower and equipment will cover a 507 square foot area. The structure and equipment cabinets will be enclosed within a 232 square foot fenced area with a 5-foot landscape area to the west, south and east, in the SE corner of the Dundee Fire Station.
3. The Dundee Planning Commission held a public hearing on June 17, 2020 to consider the proposal and received public testimony. The hearing was continued to July 1, 2020 and the Commission received additional testimony, closed the public hearing and deliberated.
4. On July 1, 2020 the Planning Commission passed an oral motion denying the Conditional Use application on the grounds the applicant did not satisfy DMC 17.404.030(A)(1) due to the building mass, visibility and aesthetic considerations, and therefore also denied the Site Development Review application.
5. On July 6, 2020 the Planning Commission's oral motion was reduced to a written decision and signed. The parties were provided a Notice of Decision with an appeal deadline of July 20, 2020.
6. On July 14, 2020 the City received an appeal form and explanation from the applicant appealing the Planning Commission Order. The applicant proposed alternative tower designs, including a 74-foot monopole tower, for the City Council to consider as part of the appeal.
7. On August 4, 2020 the City Council conducted a public hearing on the appeal, received a packet of materials prior to the hearing, and at the hearing heard a summary of the staff report, considered the applicant's testimony and the public testimony, closed the public hearing and deliberated.
8. On August 4, 2020 the City Council passed an oral motion approving the Conditional Use and Site Development Review applications, finding the applicable Development Code criteria for approval were met and determined the 74-foot monopole design was the most appropriate for this site, subject to conditions of approval.



**EXHIBIT A**  
**CITY COUNCIL FINDINGS**  
**CU 20-06/SDR 20-07, Verizon Cell Tower**

The applicant Verizon Wireless submitted a Site Development Review application and concurrent Conditional Use application (the "Application") to construct an 80-foot stealth wireless communications tower designed to mimic the appearance of a pine tree (Monopine) in the SE corner of the Dundee Fire Station site. A 74-foot antenna tip height would allow for 6-feet of branches above the antennas to mimic the shape of a natural tree. The wireless communication tower and ground equipment will be located within an 8-foot by 29-foot (232 square feet) area which will be enclosed by a 6-foot high chain link fence with vinyl slats. A 12-foot wide rolling access gate will be on the north side for access to the facility. In addition to the fencing, landscaping will be provided to screen the equipment from surrounding properties.

The Dundee Fire Station property is in the Public (P) Zone. A wireless communication facility is allowed as a special use in the P zone unless it exceed 45 feet, in which case a conditional use approval is required under DMC 17.202.030(C)(m). The applicant filed a Conditional Use application because the tower exceeds 45 feet.

The Planning Commission conducted a duly noticed public hearing on June 17, 2020 and at the request of a testifying party it was continued to July 1, 2020. On July 1, after receiving additional written and oral testimony, the Planning Commission passed an oral motion followed by a written decision dated July 6, 2020 denying the Application on the ground that it did not satisfy DMC 17.404.030(A)(1) due to the building mass, visibility and aesthetic considerations. The Planning Commission concluded that the Application complied with the remaining approval criteria.

On July 15, 2020, the applicant appealed the Planning Commission's decision to the City Council. As part of the appeal, the applicant proposed multiple alternative tower designs to address the Planning Commission's concerns, including a 74-foot monopole tower, for the city council to consider as part of the appeal.

The City Council conducted a duly noticed de novo public hearing on August 4, 2020 and considered additional oral and written testimony. The City Council voted to reverse the Planning Commission's decision and approved the Application based on the monopole design for the wireless communication tower proposed by the applicant as part of the appeal. The City Council hereby adopts the following findings of fact and conclusions in support of its decision.

## **1. Applicable Dundee Municipal Code Criteria – Conditional Use & Site Development Review**

### **17.404 – Conditional Use Permits**

#### **17.404.030 Criteria, Standards, and Conditions of Approval**

*By means of a Type III procedure, the planning commission shall approve, approve with conditions or deny an application, including requests to enlarge or alter a conditional use, based on findings of fact with respect to all of the criteria and standards in subsections (A) through (C) of this section.*

#### *A. Use Criteria.*

*1. The site size, dimensions, location, topography and access are adequate for the needs of the proposed use, considering the proposed building mass, parking, traffic, noise, vibration, exhaust/emissions, light, glare, erosion, odor, dust, visibility, safety, and aesthetic considerations.*

**Finding: 1.** The site size, dimensions, location, topography and access are adequate for the needs of the proposed wireless communication facility, considering the proposed building mass, parking, traffic, noise, vibration, exhaust/emissions, light, glare, erosion, odor, dust, visibility, safety, and aesthetic considerations for the following reasons.

The applicant's 3/18/20 Narrative, p. 24, addresses the adequacy of the site size, dimensions, location, topography and access. The wireless structure and related ground equipment are proposed on the 1.48-acre (64,468 square feet) Dundee Fire Station site. The proposed enclosure for the structure and related equipment is 232 square feet (8-feet x 29-feet). The total lease area with the 5-foot landscape buffer is 507 square feet (13-feet x 39-feet) which is 0.7 percent of the site area. From the north side of the 507 square foot lease area the site slopes down to the south and it is proposed to be brought up to the same level as the north side using a retaining wall which will be filled in and backfilled on the outer side.

The railroad tracks abut the subject property on the east. The site is in the Public (P) Zone, and the surrounding area is commercial zoning (CBD Zone) between 99W and the tracks, and industrial zoning (LI Zone) on the east side of the tracks.

The facility will be behind the Dundee Fire Station, in the southeast corner of the site, away from public streets. Screening (fencing and landscaping) for the ground equipment is proposed to mitigate visual and noise impacts. All of the proposed improvements will fit within the fenced and leased areas.

The facility will not be manned and will result in only one to two trips per month for maintenance, and therefore will generate a minimal amount of traffic. Given the infrequency of the maintenance visits, no parking is required for the use. A 12-foot wide access easement is provided through the fire station parking lot to the facility. The site is adequate for the traffic and parking needs of the proposal.

The site is adequate to accommodate the proposed facility with respect to noise impacts. The applicant demonstrated that the facility will satisfy the noise standards. The Dundee Municipal Code limits noise to 60 dBA during daytime hours and 55 dBA at night. The prior proposal in 2018 included an emergency generator and the acoustical report include sound mitigation for the generator. The 2020 application does not include a generator and, therefore, the sound mitigation for the generator is not now needed, nor is it required. The applicant submitted an updated Noise Study from SSA Acoustics, dated June 19, 2020. The June 19 Noise Study was performed consistent with the noise standards set forth in Oregon Administrative Rules 340-035-0035(3)(b) and DMC Chapter 8.28. The June 19 Noise Study demonstrates that the facility complies with the applicable noise standards with a noise barrier as the noise levels will be 53 dBA at the nearest receiving property. The June 19 Noise Study also demonstrates that the noise barrier can be accommodated within the project area, including the proposed fencing and landscaping.

The wireless communication facility is an unmanned facility that will generate minimal or no vibration, exhaust/emissions, light, glare, erosion or odor.

Some parties argued that the wireless communication facility will have alleged health and safety impacts due to the RF emissions. The City Council is prohibited from considering RF emissions under the Federal Telecommunications Act. The Federal Telecommunications Act prohibits a local government from adopting a decision based even partially on the health and safety effects of RF emissions. Therefore, the City Council cannot and did not base its decision on RF emissions. The Applicant submitted a RF emissions study that demonstrated the wireless communications facility will emit significantly less RF emissions than the FCC standard.

The applicant's 3/18/20 Narrative, p. 24, indicates the location is necessary because there is a significant gap in coverage and capacity, the area has poor wireless service and a new facility will allow seamless coverage for users in town and along Highway 99W. The site is very near the center of Verizon's search area to fill the coverage and capacity gaps. The location in the back corner of the site place the facility away from 99W and other roads to the east and it will be behind the fire station to minimize the view from Hwy 99W.

The applicant's 3/18/20 Narrative, pp. 4 - 12, address site selection and design in terms of improving coverage and capacity. The site's location is adequate for the proposed use.

The applicant's 3/18/20 Narrative, p. 24, indicates the facility will use the existing access from 99W into the Fire Department parking lot with a 12-foot wide easement running to the facility. The facility will be monitored remotely and will be visited 1 or 2 times per month for maintenance. The access is adequate for the proposed use.

The applicant's materials addressed building mass, visibility and aesthetics. The applicant initially proposed an 80-foot tall stealth monopine to mimic the appearance of a pine tree. A 74-foot antenna tip height will allow for 6-feet of branches above the antennas to mimic the shape of a natural tree. The applicant provided substantial evidence in the record from the applicant's RF engineer demonstrating that 74-feet is the minimum height necessary to meet the coverage and capacity objectives for this site. The height allows for co-location of another provider, which will minimize the number of future facilities needed in the area. Photo

simulations from several vantage points in the area showed how the proposed structure will look in relation to existing trees, structures, and utility poles. The base and ground equipment will be surrounded by a 6-foot chain link fence with slats and a 5-foot wide landscape buffer with a mix of deciduous and evergreen trees, shrubs and groundcover.

The Planning Commission concluded that the site size, dimensions, location, topography and access are adequate for the needs of the proposed wireless communication facility for all of the factors set forth in DMC 17.404.030(A)(1) except for the building mass, visibility and aesthetic considerations. The Planning Commission determined that the monopine tower will be the only tall slender shaped structure along Highway 99W, people who see the monopine will know it is a cell tower, the tree branches will not adequately mask the underlying cell tower and it would only be appropriate in an area with more immediate surrounding trees. Therefore, the Planning Commission determined that the monopine stealth tower has too large of a building mass, would be too visible and would not be aesthetically pleasing.

On appeal, the applicant argued that the Planning Commission erred in interpreting and applying DMC 17.404.030(A)(1), but the applicant also proposed alternative design options for the City Council to consider. Given that the City code does not require a specific design and the aesthetic criteria are subjective, and the Planning Commission did not inquire about design alternatives, the applicant proposed two additional design options for the City Council to consider for the appeal. The first option was a slimmer version of the 80-foot monopine design which is less bulky than the original monopine proposal. The second option was a 74-foot monopole option. Although the monopole option is not a stealth option, it is shorter and significantly less bulky than any of the monopine options. The applicant provided photosims to show how these design alternatives would look in the surrounding area and included architecture drawings for the monopole design in the event the City Council choose that option.

After considering the Planning Commission's decision, the appeal and the oral and written testimony of the parties, the City Council concludes that the applicant demonstrated compliance with DMC 17.404.030(A)(1) and believes the 74-foot monopole tower will result in the least building mass and visibility, and is the most aesthetically pleasing design of the options available. The City Council disagrees with the Planning Commission and concludes that the monopole tower complies with the building mass, visibility and aesthetic factors set forth in DMC 17.404.030(A)(1) for the following reasons.

A wireless communication facility is an appropriate use for this property given the zoning and existing use. DMC 17.202.020 and Table 17.202.020 specifically allow a wireless communication tower in the Public (P) zone as a special use, when most zones require a conditional use approval. The only reason the applicant was required to file a conditional use application is that DMC 17.202.030(C)(m) requires a tower in excess of 45 feet to obtain conditional use approval. Nonetheless, the DMC contemplates that this type of use is an appropriate use in this zone. Additionally, the City Council finds that a wireless communication facility is compatible with the Dundee Fire Station because antennas and similar communication equipment are fairly common with an emergency service facility such as the Dundee Fire Station. The Planning Commission's suggestion that a wireless communication facility cannot satisfy DMC 17.404.030(A)(1) at this location regardless of its design is inconsistent with DMC 17.202.020 and Table 17.202.020.

The applicant mitigated or minimized the visual impacts of the wireless communication facility

to the extent reasonably possible. The City Council interprets DMC 17.404.030(A)(1) within the context of the other relevant approval standards and criteria. Based on the language in DMC 17.404.030(A)(2) and DMC 17.404.030(B), an applicant is required to mitigate or minimize the mass and visibility of the proposed development to the extent reasonably possible to satisfy DMC 17.404.030(A)(1), not avoid visual impacts altogether. The applicant did mitigate and minimize the mass and visibility of the tower to the extent reasonably possible. The applicant limited the tower to the minimum height necessary to achieve its objectives, proposed multiple design options, located the tower behind the Fire Station to minimize the view of the base of the tower, provided fencing with privacy slats and significant landscaping for an additional visual buffer. The City Council finds that a proposal that minimizes the bulk and visibility to the extent reasonably possible satisfies the building mass and visibility considerations under DMC 17.404.030(A)(1).

The wireless communication facility cannot be denied under DMC 17.404.030(A)(1) based on its height. DMC 17.202.040(B) exempts a tower from the maximum height limit applicable in this zone. Although DMC 17.202.030(C)(m) requires a tower in excess of 45 feet to obtain conditional use approval, the DMC clearly contemplates and allows for a tower in excess of 45 feet. The tower is also significantly shorter than a typical Verizon wireless communications tower for this area. Existing Verizon towers in this area (Newberg, Dayton and Lafayette) range in height from 154 to 170 feet. The Planning Commission's suggestion that the tower cannot satisfy DMC 17.404.030(A)(1) because it is too tall is inconsistent with DMC 17.202.040(B) and DMC 17.202.030(C)(m).

The applicant proposed multiple design options and the City Council concludes that the monopole design is the least bulky and visible, and most aesthetically pleasing among the available options. The City Council agrees that a monopine design may not be the most appropriate or aesthetically pleasing design given the lack of tall mature trees in the immediate area of the site. The monopole is a more appropriate design for this site, is less bulky and will be 6 feet shorter. The monopole will be a non-reflective gray color to blend in better with the sky. No parties proposed other design options that would be more appropriate for this site. The City Council does not believe DMC 17.404.030(A)(1) can be interpreted in a manner that precludes all design options for a use that is allowed in the subject zone. The City Council concludes that the monopole design is the most aesthetically pleasing option reasonably available.

The City Council disagrees that the wireless communication tower will be visually dominant or stick out like a sore thumb. The monopole is a slimmer design option that is not too bulky or visible in comparison to the surrounding structures. There are several utility poles in the surrounding area, including transmission poles that are approximately 60 feet in height. The monopole will be similar in design and height to these utility poles. The City Council's conclusion is supported by the photosims provided by the applicant. This criterion is met.

*2. The negative impacts of the proposed use, if any, on adjacent properties and on the public can be mitigated through application of other code standards, or other reasonable conditions of approval.*

**Finding:** The City Council interprets DMC 17.404.030(A)(2) to require an applicant to mitigate or minimize the negative impacts of the proposed development to the extent reasonably possible, not to avoid all negative impacts. The City Council concludes that the applicant mitigated or

minimized the negative impacts of the wireless communication facility on adjacent properties and on the public to the extent reasonably possible for the following reasons.

The applicant's 3/18/20 Narrative, p. 24, addresses the visual and noise impacts which are the primary negative impacts of the proposed facility. The applicant proposed a 74-foot tall monopole, which is the minimum height necessary to meet coverage needs. The height allows for co-location of another provider, which will minimize the number of future facilities needed in the area. Photo simulations from several vantage points in the area have been provided showing how the proposed structure will look in relation to existing trees, structures, and utility poles. The monopole design limits the structure's mass. The tower is proposed behind the Fire Station to minimize the view from Hwy 99W. The base and ground equipment will be surrounded by a 6-foot chain link fence with slats and a 5-foot wide landscape buffer with a mix of deciduous and evergreen trees, shrubs and groundcover. The City Council also incorporates its findings in response to DMC 17.404.030(A)(1) to address the ways in which the applicant has mitigated the visual impacts of the facility.

The proposed equipment includes support cabinets. The cabinets will run 24 hours a day. The closest property to the facility site is the abutting land to the south which is zoned Central Business District (CDB). It is vacant, except for an older unoccupied concrete industrial building.

The applicant demonstrated that the facility will satisfy the noise standards. The Dundee Municipal Code limits noise to 60 dBA during daytime hours and 55 dBA at night. The prior proposal in 2018 included an emergency generator and the acoustical report include sound mitigation for the generator. The 2020 application does not include a generator and, therefore, the sound mitigation for the generator is not now needed, nor is it required.

The applicant submitted an updated Noise Study from SSA Acoustics, dated June 19, 2020. The June 19 Noise Study was performed consistent with the noise standards set forth in Oregon Administrative Rules 340-035-0035(3)(b) and DMC Chapter 8.28. The June 19 Noise Study demonstrates that the facility complies with the applicable noise standards with a noise barrier as the noise levels will be 53 dBA at the nearest receiving property. The June 19 Noise Study also demonstrates that the noise barrier can be accommodated within the project area, including the proposed fencing and landscaping.

Some parties argued that the wireless communication facility will have negative impacts on the surrounding area because it is too close to the Central Business District ("CBD"). The DMC does not prohibit or limit the location of a wireless communication facility within a certain proximity to the CBD District. In fact, wireless communication towers are allowed as a conditional use in the CBD zone. DMC Table 17.202.020. Therefore, there is nothing improper about proposing a wireless communication facility on a property that is adjacent to CBD zoned properties. To the extent the DMC attempts to protect certain zones from proximity to wireless communication towers, it does so for residential zoned properties and dwellings, not CBD zoned properties or commercial uses. The DMC does not contain any similar restrictions or protections for CBD zoned property.

Some parties argued that the Application should be denied because the wireless communication facility will impact the property values in the surrounding area and the City as a whole. The City

Council does not interpret DMC 17.404.030(A)(2) or any other relevant approval criteria as requiring the consideration of the impacts on property values. If the City Council intended DMC 17.404.030(A)(2) to address property values, it would have stated so expressly. The lack of any specific reference to property values in DMC 17.404.030(A)(2) or any other relevant approval criteria means that the City Council did not intend to consider such impacts. Additionally, the City Council does not believe there is substantial evidence that the facility will reduce property values. The parties submitted general evidence, not specific evidence, supporting the claim that the wireless communication facility will negatively impact property values. The City Council concludes that generalized claims of impacts on property values are insufficient and must be specific to the proposed facility and the area. Finally, the City Council rejects this argument because it would make it impossible to site a wireless communication facility if it was presumed that all such facilities reduce property values and any such reduction is precluded under the applicable approval criteria. These parties argued that the presence of a wireless communications tower in general, not this specific proposal, reduces the property values of surrounding properties. If the City Council accepted this argument, no wireless communication tower could satisfy this criterion.

Some parties argued that the Application should be denied due to alleged health and safety impacts of the RF emissions from the wireless communications facility. The City Council is prohibited from considering RF emissions under the Federal Telecommunications Act. The Federal Telecommunications Act prohibits a local government from adopting a decision based even partially on the health and safety effects of RF emissions. Therefore, the City Council cannot and did not base its decision on RF emissions. The Applicant submitted a RF emissions study that demonstrated the wireless communications facility will emit significantly less RF emissions than the FCC standard. This criterion is met.

*3. All required public facilities, including water, sanitary sewer, and streets, have adequate capacity or are to be improved to serve the proposal, consistent with city standards.*

**Finding:** The applicant's 3/18/20 Narrative, p. 25, addresses the public facilities. The proposed facility is unmanned and only requires electrical and telephone services. There are adequate electrical and telephone services available. Water and sewer are not needed. Highway 99W is adequate to accommodate the 1-2 maintenance trips to the facility each month. This criterion is met.

*4. A conditional use permit shall not allow a use that is prohibited or not expressly allowed under DMC Division 17.200; nor shall a conditional use permit grant a variance without a variance application being reviewed with the conditional use application.*

**Finding:** Wireless communication facilities are permitted as a special use within the P (Public) zone. A conditional use permit is required only for facilities exceeding the 45-foot height limit. DMC 17.202.030(C)(m) specifically allows a tower in excess of 45 feet in the Public (P) zone pursuant to a conditional use application. The conditional use permit is for the overall height of 74-feet. The applicant has applied for conditional use approval. A variance is not being requested or required. This criterion is met.

*B. Conditions of Approval. The city may impose conditions that are found necessary to ensure that the use is compatible with other uses in the vicinity, and that any negative impact of the proposed use on the surrounding uses and public facilities is minimized. These conditions include, but are not limited to, one or more of the following:*

- 1. Limiting the hours, days, place and/or manner of operation;*
- 2. Requiring site or architectural design features which minimize environmental impacts such as noise, vibration, exhaust/emissions, light, glare, erosion, odor and/or dust;*
- 3. Requiring larger setback areas, lot area, and/or lot depth or width;*
- 4. Limiting the building or structure height, size, lot coverage, and/or location on the site;*
- 5. Designating the size, number, location and/or design of vehicle access points or parking and loading areas;*
- 6. Requiring street right-of-way to be dedicated and street improvements made, or the installation of pathways or sidewalks, as applicable;*
- 7. Requiring landscaping, screening, drainage, water quality facilities, and/or improvement of parking and loading areas;*
- 8. Limiting the number, size, location, height and/or lighting of signs;*
- 9. Limiting or setting standards for the location, type, design, and/or intensity of outdoor lighting;*
- 10. Requiring berms, screening or landscaping and the establishment of standards for their installation and maintenance;*
- 11. Requiring and designating the size, height, location and/or materials for fences;*
- 12. Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas, drainage areas, historic resources, cultural resources, and/or sensitive lands;*
- 13. Requiring improvements to water, sanitary sewer, or storm drainage systems, in conformance with city standards; and*
- 14. The planning commission may require renewal of conditional use permits annually or in accordance with another timetable as approved pursuant to this chapter. Where applicable, the timetable shall provide for periodic review and renewal, or expiration, of the conditional use permit to ensure compliance with conditions of approval; such periodic review may occur through an administrative or quasi-judicial land use review process.*

**Finding:** The applicant mitigated or minimized the impacts of the wireless communication facility to the extent reasonably possible to ensure that the use is compatible with other uses in the vicinity, and negative impacts on the surrounding uses and public facilities are minimized. The applicant limited the tower to the minimum height necessary to achieve its objectives,

proposed multiple design options, located the tower behind the Fire Station to minimize the view of the base of the tower, provide fencing with privacy slats and significant landscaping for an additional visual buffer. The City Council concludes that the monopole design is the best design available and will minimize the visual impacts. To screen the ground equipment, a 6-foot chain link fence with slats and a 5-foot wide landscape area is proposed on the eastern, western, and southern sides of the fence enclosure. The applicant's acoustical report notes that if an emergency generator were proposed such as with the prior application, a noise barrier would be needed to satisfy the Dundee noise requirements, but a generator is not proposed in this application, therefore, a noise barrier for a generator is not needed. None of the other conditions in DMC 17.404.030(B) are necessary or appropriate to ensure that the facility is compatible with other uses in the vicinity, and that negative impacts are reasonably mitigated. The City Council also incorporates its findings in response to DMC 17.404.030(A)(1) and (2) to address the ways in which the applicant has mitigated the impacts of the facility. This criterion is met.

*C. Conditional Use Permit Supplemental Requirements. The requirements for compliance with permit conditions and permit expiration are the same as for site development review under DMC 17.402.070.*

**Finding:** The applicant's 3/18/20 Narrative, p. 26, acknowledges the requirements are the same as for site development review. The requirements for compliance with permit conditions and permit expiration shall be the same as for site development review under DMC 17.402.070. This criterion is met.

**17.402 – Site Development Review**  
**17.402.050 Approval criteria.**

*A. Approval Criteria. An application for a Type II site development review shall be approved if the proposal meets all of the following criteria. The city decision-making body may, in approving the application, impose reasonable conditions of approval, consistent with the applicable criteria.*

- 1. The application is complete, in accordance with DMC 17.402.040;*

**Finding:** The application was substantially complete for review. This criterion is met.

- 2. The application complies with all of the applicable provisions of the underlying zone and overlay zone(s), including but not limited to: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other applicable standards;*

**Finding:** The proposed wireless facility complies with the applicable development standards in the Public Zone (P) as follows:

**17.202.010 Purpose**

- 1. Public Zone (P). The P zone provides for public and semi-public uses, where such uses do not unreasonably disrupt or alter other areas of the community.*

**Finding:** The applicant's proposal is consistent with the purpose statement in DMC 17.202.010(l). DMC 17.202.010(l) is a purpose statement, not an approval criterion. The reference

to ensuring that uses do not unreasonably disrupt or alter other areas of the community is accomplished by locating the Public (P) zone in areas in which the types of uses allowed in this zone will not unreasonably disrupt or alter other areas of the community. It is not intended to require an applicant to prove that a specific use allowed in the Public (P) zone will not unreasonably disrupt or alter other areas of the community. Table 17.202.020 identifies Wireless Communication Facilities as Public and Institutional Uses. Wireless communication facilities are listed as a special use in the P zone and a conditional use application is only required in this case because the tower exceeds 45 feet. The Application complies with all of the relevant approval criteria. This criterion is met.

***17.202.030 Dimensional Standards (for the P zone)***

- A. Lot Size: 5,000 square feet*
- B. Setback Requirements: 20 front; none for side or rear yard*
- C. Maximum Building Height: 45 feet; telecommunications structures in excess of 45 feet in height allowed with conditional use permit*
- D. Minimum Lot Dimensions (Feet): None*
- E. Maximum Lot Coverage (% of Lot): None*

**Finding:** The property is located in the Public (P) Zone, which has the following requirements: 5,000 square foot minimum lot size; 20 foot front setback and no lot width, depth, frontage, or coverage standards. The parcel is approximately 64,468 square feet, which meets the lot size standard. The facility will be set back more than 20 feet from the front property line, meeting the standard. DMC 17.202.040(B) exempts a tower from the maximum height limit applicable in this zone, but DMC 17.202.030(C)(m) requires a tower in excess of 45 feet to obtain conditional use approval. The tower in this case will be 74 feet, the applicant filed a conditional use application and demonstrated compliance with the conditional use criteria. This criterion is met.

- 3. The proposal includes required upgrades, if any, to existing development that does not comply with the applicable land use district standards, pursuant to Chapter 17.104 DMC, Nonconforming Situations;*

**Finding:** The site is developed with the Dundee Fire Station, approved in 2013 (SDR 13-01). There are no nonconforming situations to upgrade. This criterion is met.

- 4. The proposal complies with all of the site design and development standards of this code, as applicable;*

**Finding:** The proposal complies with or has been conditioned to comply with all applicable site design and development standards as outlined in this report under "Additional Standards". This criterion is met.

- 5. The proposal meets all existing conditions of approval for the site or use, as required by prior land use decision(s), as applicable. Note: compliance with other city codes and requirements, though not applicable land use criteria, may be required prior to issuance of building permits.*

**Finding:** All existing conditions of approval for the site are related to the Dundee Fire Station approval (SDR 13- 01), and they have been satisfied. This criterion is met.

**Additional Standards**

**17.202 – Zoning Regulations**

**17.202.050 Fence Standards**

**A. General Standards.**

- 1. Fences and walls shall not be constructed of nor contain any material that could cause bodily harm, such as barbed wire, broken glass, spikes, electric or any other hazardous or dangerous materials; this includes link fencing with barbed ends at the top or sides; except that fences topped with barbed wire are allowed in agricultural and public zones.*
- 2. Electric fences and barbed wire fences in agricultural zones intended to contain or restrict cattle, sheep, horses or other livestock, and lawfully existing prior to annexation to the city, may remain.*
- 3. Every fence shall be maintained in a condition of reasonable repair and shall not be allowed to become and remain in a condition of disrepair including noticeable leaning, missing sections, broken supports, non-uniform height, and uncontrolled growth of vegetation.*
- 4. Fences shall comply with requirements of the clear vision area for streets and driveways.*
- 5. In no instance shall a fence extend beyond the property line.*
- 6. In the C and CBD zones, chain link fencing may not be used between a public street and a maximum setback line, with the following exceptions:*
  - a. In the C zone, black fused and bonded vinyl coated chain link fencing may be used, subject to subsection (B) of this section.*
  - b. In the CBD zone, black fused and bonded vinyl coated chain link fencing may be used if screened from view from the street by a sight-obscuring hedge of equal height, subject to subsection (B) of this section.*
- 7. In the LI zone, fences taller than six feet in height shall not be chain link. Fences over six feet in height shall be screened by a sight obscuring hedge.*

**Finding:** The proposed structure and ground equipment will be enclosed by a 6- foot tall chain link fence with slats. The fence will not include dangerous materials, be electric, be within the clear vision area, or extend beyond the property line. The requirements for fences in the C, CBD, and LI zones do not apply because the site is in the Public Zone. This criterion is met.

**17.203 – Special Use Standards**

**17.203.170 Wireless Communication Facilities**

**B. Review Procedure.** *In addition to the applicable application requirements for site development review, all of the following information shall be submitted:*

*1. An evaluation of the feasibility of co-location of the subject facility as an alternative to the requested permit. The feasibility study must include:*

*a. The location and ownership of the existing telecommunication structures within the cell service area and not to exceed two miles.*

*b. Written verification and other documentation revealing the availability and/or cooperation shown by other providers to gain access to existing sites/facilities to meet the needs of the applicant.*

*c. The tower type and height of potential collection facilities.*

*d. Anticipated capacity of the wireless communication facility, including number and type of antennas that can be accommodated.*

*e. The specific reasons as to why co-location is or is not feasible.*

**Finding:** The applicant provided the information required by this section. The applicant's 3/18/20 Narrative, Section IV, pp. 4 – 12, provide the results of a wireless facility search "...to improve a significant capacity deficiency in its 3G and 4G LTE coverage in the City of Dundee" (p. 4). A "search ring" was identified in the area needing additional capacity (p. 5). The search results included the location, height, and ownership of the registered facilities. The closest facility was noted 1.3 miles away to the southwest on SE Fulquartz Landing Road (p. 7)(south of Hess Creek at the intersection of Fulquartz Landing Road and the RR tracks).

The applicant's 3/18/20 Narrative, Figure 4, p. 10, shows the coverage area of the closest existing Verizon tower in Newberg. The coverage in the Dundee area is shown in green and yellow. Green "...represents a high RF signal strength which generally provides good coverage inside vehicles and buildings. Yellow represents moderate RF signal strength that generally provides good service inside vehicles and moderate service inside buildings" (p. 10). The Dundee area is shown in yellow, moderate service (Figure 4).

The applicant's 3/18/20 Narrative, Figure 5, p. 11, shows the coverage in the Dundee area with the proposed tower. The Dundee area is shown in green, good service. The Narrative indicates the proposed tower would meet the applicant's coverage objective for the Dundee area.

The applicant's 3/18/20 Narrative, Table 1, p. 8, considered co-location on existing telecommunication facilities and concluded, "Colocation on existing telecommunication facilities: This tower is outside of the search area and already being utilized by Verizon" [Table 1, p. 8, 1), a)]. The Narrative also considered "upgrade to existing towers" [Table 1, p. 8, 1) b)],

“Existing alternative structures” [Table 1, p. 8, 1 c)], “Rooftop Installations” [Table 1, P. 8, 1 d)], and “Utility Structures (i.e., power poles, high tension power lines, etc.)” [Table 1, p. 8, 2)]. No other existing, non-wireless structures have the height or structural capacity needed to serve the area. Existing buildings in the area are not tall enough (mainly one story) and utility poles ranging from 20 – 60 feet cannot provide the coverage without multiple facilities. Where the poles were replaced with taller poles, there would be no space for ground equipment because the poles are in the 99W public right-of-way. For these reasons, co-location is not feasible.

In addition to the 3/18/20 Narrative, Table 1, p. 8, the applicant’s materials include “RF Usage and Facility Justification, OR1 Dundee” prepared by Verizon Wireless, October 15, 2019. It is eight color unnumbered pages. The seventh page, “Coverage Comparison With Existing Tower,” (the AT&T tower at the corner of Fulquartz Landing Road and the RR tracks), shows how co-locating on the Fulquartz site would affect capacity in the Dundee area. It shows the current coverage and the coverage with Verizon co-locating on the AT&T tower would be, essentially, the same, and it concludes, “Existing tower located 1.3 miles SE [SW] of Dundee city will not improve coverage or capacity offload of existing sites.” This criterion is met.

*2. Alternatives for locating or relocating support structures within 250 feet of the proposed location.*

**Finding:** The applicant’s 3/18/20 Narrative, pp. 8 & 16, states that there are no nearby structures with sufficient height and/or structural integrity to meet the coverage and capacity objectives. Moving the tower east would put it closer to a residential area. Locations north and south would be on the same site or another adjacent site which would have similar impacts as the proposed location. Further west would put the tower along Hwy 99W, closer to pedestrian areas. The proposed location is away from most of the nearby streets, behind the Fire Station, and within a surrounding area zoned for commercial and industrial uses. This criterion is met.

*3. Analysis of the visual impacts of the proposed facility on residential dwellings within 250 feet of the proposed site, and an assessment of potential mitigation measures, including relocation.*

**Finding:** The applicant submitted photo simulations from several vantage points to show the visual impacts of the proposed facility, including the original monopine design, slim monopine design and monopole design. Views 1 – 4 are along 99W and View 5 is looking west from 785 SE Locust Street (the NE quadrant of Locust and 8<sup>th</sup>). The applicant mitigated or minimized the visual impacts of the wireless communication facility to the extent reasonably possible. The applicant limited the tower to the minimum height necessary to achieve its objectives, proposed multiple design options, located the tower behind the Fire Station to minimize the view of the base of the tower, providing fencing with privacy slats and providing significant landscaping for an additional visual buffer. The City Council concludes that the monopole design is the best design available and will minimize the visual impacts. To be less noticeable, the applicant is proposing the facility on a site abutted by commercial and industrial zoned properties, and behind the Dundee Fire Station near the railroad tracks and away from most public streets. The City Council also incorporates its findings in response to DMC 17.404.030(A)(1) and (2) to

address the ways in which the applicant has mitigated the impacts of the facility.

Some parties argued that the applicant should locate the wireless communications facility on an alternative site outside of town. There is no basis for requiring Verizon to find an alternative site as wireless communication towers are allowed as a special use in the Public (P) zone. None of the applicable approval criteria require Verizon to consider or give preference to a different location or zone. The wireless communication facility satisfies the applicable approval criteria. Additionally, the applicant demonstrated that the alternative sites noted by these parties are well outside the search ring and therefore cannot satisfy the coverage and capacity objectives. Moving the tower to another location will also impacts residential dwellings closer to the alternative location. This criterion is met.

*C. Approval Criteria. In addition to any other applicable requirements, the decision to approve or deny the placement of a wireless communication tower shall be based on all of the following:*

- 1. Co-location is not feasible on existing structures, including other wireless communication facilities.*

**Finding:** The applicant demonstrated that co-location on an existing structure is not feasible. The applicant provided documentation of other wireless facilities within the area. The only existing wireless communication facility in the area is an AT&T wireless facility 1.3 miles away. The applicant demonstrated that the AT&T tower is too far from the search ring and will not accomplish the coverage and capacity objectives for this site. The applicant's RF engineer analyzed the existing AT&T tower and showed why it will not satisfy either the coverage or capacity objectives for this site.

One party argued that the applicant failed to consider collocating on an existing tower that is supposedly 0.53 miles from the proposed site, but that tower does not exist. That party appears to be referring to a misstatement from an earlier application for a tower on this site. In the previous application process, the City staff clarified that there is no such tower. Therefore, there is no existing tower within 0.53 miles of the site.

The applicant also considered alternative structures, buildings and utility poles. No existing, non-wireless structures have the height or structural capacity necessary to support the antennas or provide the required coverage and capacity objectives. Existing buildings in the area are not tall enough (mainly one story) and utility poles ranging from 20 – 60 feet which are not tall enough to provide the required coverage. Even if the existing utility poles were replaced with taller poles, there would be no space for ground equipment because they are in the 99W public right-of-way. For these reasons, co-location is not feasible. This criterion is met.

- 2. The wireless facility shall be located and designed to preserve the ability for co-location of at least one additional user on all structures exceeding 35 feet in height, if feasible.*

**Finding:** The proposed monopole is 74 feet tall and is designed to allow for one additional antenna facility. This criterion is met.

*3. Based on the visual analysis and mitigating measures, the location and design of a freestanding wireless communication facility shall be conditioned to minimize visual impacts from residential areas through the use of setbacks, building heights, bulk, color, landscaping and similar visual considerations.*

**Finding:** The location and design of the wireless communication facility will minimize visual impacts from residential areas through the use of setbacks, building heights, bulk, color, landscaping and similar visual considerations. The applicant limited the tower to the minimum height necessary to achieve its objectives and proposed multiple design options. The monopole will be a non-reflective gray color. The applicant provided a survey confirming that the facility is more than 328 feet from the nearest residentially zoned property, well outside the required setback. Photo simulations of the proposed facility were provided by the applicant. Views are provided from several locations, including the residential area to the east of the site. A 6-foot high chain link fence with privacy slats and excess landscaping is proposed to screen ground equipment from view. The facility was located behind the Fire Station to minimize the visual impacts, near the RR tracks and away from most public streets. The simulation shows the facility in comparison to existing buildings, trees, and utility poles. The design minimizes the visual impacts from residential areas. The City Council also incorporates its findings in response to DMC 17.404.030(A)(1) and (2) to address the ways in which the applicant has mitigated the impacts of the facility. This criterion is met.

*4. The design minimizes identified adverse impacts of the proposed use to the extent feasible.*

**Finding:** The applicant minimized the adverse impacts of the wireless communication facility to the extent feasible. The applicant's 3/18/20 Narrative, p. 24, addresses the visual and noise impacts which are the primary impacts of the facility. The 74-foot tall monopole is the minimum height necessary to meet coverage needs. The height allows for co-location of another provider, which will minimize the number of future facilities needed in the area. Photo simulations from several vantage points in the area have been provided showing how the proposed structure will look in relation to existing trees, structures, and utility poles. The monopole design limits the structure's mass. The tower is proposed behind the Fire Station to minimize the view from Hwy 99W. The base and ground equipment will be surrounded by a 6-foot chain link fence with slats and a 5-foot wide landscape buffer with a mix of deciduous and evergreen trees, shrubs and groundcover.

The proposed equipment includes support cabinets. The cabinets will run 24 hours a day. The closest property to the facility site is the abutting land to the south which is zoned Central Business District (CDB). It is vacant, except for an older unoccupied concrete industrial building.

The applicant demonstrated that the facility will satisfy the noise standards. The Dundee Municipal Code limits noise to 60 dBA during daytime hours and 55 dBA at night. The prior proposal in 2018 included an emergency generator and the acoustical report include sound

mitigation for the generator. The 2020 application does not include a generator and, therefore, the sound mitigation for the generator is not now needed, nor is it required. The applicant submitted an updated Noise Study from SSA Acoustics, dated June 19, 2020. The June 19 Noise Study was performed consistent with the noise standards set forth in Oregon Administrative Rules 340-035-0035(3)(b) and DMC Chapter 8.28. The June 19 Noise Study demonstrates that the facility complies with the applicable noise standards with a noise barrier as the noise levels will be 53 dBA at the nearest receiving property. The June 19 Noise Study also demonstrates that the noise barrier can be accommodated within the project area, including the proposed fencing and landscaping.

Some parties argued that the Application should be denied because the wireless communication facility will impact the property values in the surrounding area and the City as a whole. The City Council does not interpret DMC 17.203.170(C)(4) or any other relevant approval criteria as requiring the consideration of impacts on property values. If the City Council intended DMC 17.203.170(C)(4) to address property values, it would have stated so expressly. The lack of any specific reference to property values in DMC 17.203.170(C)(4) or any other relevant approval criteria means that the City Council did not intend to consider such impacts. Additionally, the City Council does not believe there is substantial evidence that the facility will reduce property values. The parties submitted general evidence, not specific evidence, supporting the claim that the wireless communication facility will negatively impact property values. The City Council concludes that generalized claims of impacts on property values are insufficient and must be specific to the proposed facility and the area. Finally, the City Council rejects this argument because it would make it impossible to site any wireless communication facilities. These parties argued that the presence of a wireless communications tower in general, not this specific proposal, reduces the property values of surrounding properties. If the City Council accepted this argument, no wireless communication tower could satisfy this criterion.

The City Council also incorporates its findings in response to DMC 17.404.030(A)(1) and (2) to address the ways in which the applicant has mitigated the impacts of the facility. This criterion is met.

*5. Structures greater than 35 feet in height shall be at least 300 feet from any residentially (R) zoned property.*

**Finding:** The proposed wireless facility is 74 feet tall. The applicant's 3/18/20 Narrative, p. 17, noted that the nearest residentially zoned property is over 300 feet to the east measured from the property line. Staff used GIS maps and Yamhill County assessor's maps to verify the distance. In response to a claim by a party that the applicant did not sufficiently demonstrate the 300-foot distance, the applicant submitted a survey confirming that the tower is more than 328 feet from the nearest residentially zoned property.

One party argued that the measurement should include one-half of the right-of-way adjacent to the residential properties. The City Council rejects this interpretation. DMC 17.203.170(C)(5) does not require the measurement to include City right-of-way adjacent to the residential properties.

DMC 17.203.170(C)(5) applies to “residentially (R) zoned property,” not public rights-of-way. DMC 17.201.020 distinguishes between “Rights-of-way” and “parcel, lots and tracts.” DMC 17.201.020(A) & (B). Nor would it make sense to include City right-of-way because DMC 17.203.170(C)(5) is intended to minimize the impacts of towers on residential property owners, not the City right-of-way. This criterion is met.

### ***17.302 Landscaping and Screening***

#### ***17.302.050A Minimum Landscape Area in C, CBD, LI and P Zones.***

- 1. In the CBD, LI, and P zones, a minimum of 10 percent of the gross lot area shall be landscaped.*
- 2. In the C zone, a minimum of 15 percent of the gross lot area shall be landscaped.*
- 3. In a commercial zone pedestrian courtyards, plazas, walkways, fountains, benches, sculptures, or decks may be included within the required landscaping percentage if they are designed in conjunction with planting of street trees and potted plants and, upon design review, these features are found consistent with the purpose and intent set forth in this code.*
- 4. Landscaping required under other sections of this code, including, but not limited to, parking lot landscaping pursuant to DMC 17.302.060 and landscaping within front setback areas pursuant to DMC 17.202.060(C), may be included in and counted towards the required landscaping percentage. If landscaping required under other sections of this code exceeds 10 percent of the gross lot area, the full amount of landscaping required under other sections shall still be required.*
- 5. The required landscape area for all zones must be visible from the public right-of-way.*

**Finding:** The property is in the P (Public) zone and therefore subsections (1), (4) and (5) apply. According to the staff report for the Dundee Fire Station (SDR 13-01), approximately 14,546 square feet of the 1.48 acre site is landscaped. The 8-foot by 29-foot fenced enclosure will reduce the landscaping by 232 square feet. The landscape plan shows that approximately 20% of the site will still be landscaped, which exceeds the minimum 10% required in the P Zone. Additional screening for the ground equipment is provided. The applicant proposed a 6-foot high chain link fence with privacy slats and a 5-foot wide landscape area outside the fence for that purpose. Existing and proposed landscaping is visible from the public right-of-way. This criterion is met.

#### ***17.302.060 Screening and Buffering***

*A. Required Screening. Screening shall be used to eliminate or reduce the visual impacts of the uses in subsections (A)(1) through (7) of this section:*

- 1. Commercial and industrial uses when abutting residential uses;*
- 2. Industrial uses when abutting commercial uses;*

3. *Service areas and facilities, including garbage and waste disposal containers, recycling bins, and loading areas;*
4. *Outdoor storage areas;*
5. *At- and above-grade electrical and mechanical equipment, such as transformers, heat pumps, and air conditioners;*
6. *Rooftop mechanical equipment;*
7. *Any other area or use as required by this code.*

**Finding:** Table 17.202.020 identifies “Wireless Communication Facilities” as “Public and Institutional Uses.” The proposed wireless facility includes ancillary ground equipment, so screening is required to screen the ground equipment. The applicant proposed a 6-foot high chain link fence with privacy slats and a 5-foot wide landscape area outside the fence. The fence and landscaping will reduce the visual impacts of the ground equipment in particular and the lower portion of the tower. This criterion is met.

*B. Methods of Screening. Screening shall be accomplished by the use of sight-obscuring plant materials (generally evergreens), earth berms, walls, fences, building parapets, building placement, or other design techniques, as appropriate to the site given its visibility from adjacent uses and rights-of-way.*

**Finding:** The applicant has proposed a 6-foot high chain link fence with privacy slats and a 5-foot wide area outside the fence with a mix of evergreen and deciduous trees, shrubs, and ground cover to screen the ground equipment from adjacent properties and rights-of-way. This criterion is met.

*D. Required Buffers. Buffering shall be used to mitigate adverse visual impacts, dust, noise or pollution, and to provide for compatibility between dissimilar adjoining uses.*

**Finding:** As stated elsewhere in these findings, the applicant did mitigate the adverse visual and noise impacts of the wireless communication facility. Dust and pollution are not expected from the facility because it is a passive use. Wireless communication facilities are classified as public and institutional uses, which the same category as the Fire Station, and they are not dissimilar from the adjoining commercial uses. This criterion is met.

*E. Methods of Buffering. Where buffering is determined to be necessary, one of the following buffering alternatives shall be employed:*

1. *Planting Area. Width not less than 15 feet, planted with the following materials:*
  - a. *At least one row of deciduous or evergreen trees staggered and spaced not more than 15 feet apart; and*
  - b. *At least one row of evergreen shrubs which will grow to form a continuous hedge at*

*least five feet in height within one year of planting; and*

*c. Lawn, low-growing evergreen shrubs or evergreen ground cover covering the balance of the area.*

*2. Berm plus Planting Area. Width not less than 10 feet, developed in accordance with the following standards:*

*a. Berm form shall not slope more than 40 percent (2.5H:1V) on the side away from the area screened from view (the slope for the other side (screened area) may vary); and*

*b. A dense evergreen hedge shall be located so as to most effectively buffer the proposed use; and*

*c. Combined total height of the berm plus the hedge shall be at least five feet within one year of planting.*

*3. Wall plus Planting Area. Width must not be less than five feet developed in accordance with the following standards:*

*a. A masonry wall or fence not less than five feet in height; and*

*b. Lawn, low growing evergreen shrubs, and evergreen ground cover covering the balance of the area.*

*4. Other methods that produce an adequate buffer considering the nature of the impacts to be mitigated, as approved by the review authority.*

**Finding:** The applicant has proposed a 6-foot high chain link fence with privacy slats and a 5-foot wide area outside the fence with a mix of evergreen and deciduous trees, shrubs, and ground cover to screen the ground equipment from adjacent properties and rights-of-way. This meets the requirements of buffer alternative Number 3. This criterion is met.

#### **17.302.080 Landscape Installation and Maintenance**

*All landscaping required by this code shall be continually maintained pursuant to this section. Appropriate methods of care and maintenance of landscaped plant material shall be provided by the owner of the property, including necessary watering, weeding, pruning, mowing, and replacement, as applicable, in a substantially similar manner as was approved by the city or as otherwise required by applicable city regulations. The following standards apply to all landscaping required by this code:*

*A. Clear Vision. No sight-obscuring plantings exceeding 24 inches in height shall be located within any required clear vision area as defined in DMC 17.301.040.*

*B. Pedestrian Areas. Landscape plant materials shall be kept clear of walks, pedestrian paths,*

*and seating areas; trees shall be pruned to a minimum height of eight feet over pedestrian areas and to a minimum height of 15 feet over streets and vehicular traffic areas.*

*C. Utilities. Landscape plant materials shall be selected and maintained so that they do not generally interfere with utilities above or below ground.*

*D. Nursery Standards. Required landscape plant material shall be installed to current nursery industry standards. Landscape plant materials shall be properly guyed and staked to current industry standards as necessary. Stakes and guy wires shall not interfere with vehicular or pedestrian traffic.*

*E. Plant Selection. Plant materials shall be suited to the conditions under which they will be growing. As an example, plants to be grown in exposed, windy areas where permanent irrigation is not to be provided should be sufficiently hardy to thrive under these conditions. Plants should have vigorous root systems and be sound, healthy, and free from defects, diseases, and infections.*

*F. Deciduous Trees. Deciduous trees, where required to provide shade (e.g., over parking lots or walkways), shall be fully branched and have a minimum caliper of two inches a minimum height of eight feet at the time of planting. Deciduous trees intended to serve as ornamental (nonshade) trees may be smaller, but shall not be less than one and one-half inch caliper, at time of planting.*

*G. Evergreen Trees. Evergreen trees shall be a minimum of six feet in height, fully branched, at time of planting.*

*H. Shrubs. Shrubs shall be supplied in minimum one-gallon containers or eight-inch burlap balls with a minimum spread of 12 to 15 inches.*

*I. Ground Cover. Ground cover shall consist of not less than 50 percent live plant material. Such plants shall be spaced in accordance with current nursery industry standards to achieve covering of the planting area, with rows of plants staggered for a more effective covering. Ground cover plants shall be supplied in a minimum four-inch size container or equivalent if planted 18 inches on center; and nonliving material used for ground cover shall be limited to compost, bark chips, and other city-approved pervious materials.*

*J. Irrigation. Except in wooded areas, wetlands, flood plains, or along natural drainage channels or stream banks, where the city may waive irrigation requirements, all developments are required to provide appropriate methods of irrigation for the landscaping. Sites with more than 1,000 square feet of total landscaped area shall be irrigated with automatic sprinkler systems to ensure the continued health and attractiveness of the plant materials. Hose bibs and manually operated methods of irrigation may be used for landscaped areas totaling less than 1,000 square feet. Sprinkler heads shall be located and installed to not cause any hazard to the public.*

*K. Protection of Plants. Landscape plant material shall be protected from damage due to heavy equipment during construction. After construction, landscape plant material and irrigation shall be protected from damage due to heavy foot traffic or vehicular traffic by protective tree grates, bollards, raised curbs, wheel stops, pavers or other suitable methods.*

*L. Performance Guarantee. Except where the review authority requires installation of landscaping prior to issuance of building permits, all landscaping required by this code and approved by the city shall be installed prior to issuance of a final occupancy permit unless security equal to 110 percent of the cost of the landscaping is filed with the city assuring such installation within six months of occupancy. The applicant will obtain cost estimates for landscape materials and installation to the satisfaction of the review authority prior to approval of the security. "Security" may consist of a faithful performance bond payable to the city, cash; certified check, time certificate of deposit, assignment of a savings account, or other such assurance of completion as approved by the city attorney.*

*M. Maintenance Guarantee. The developer or builder, as applicable, shall guarantee all landscape material for a period of one year from the date of installation. A copy of the guarantee shall be furnished to the city by the developer.*

*N. Final Inspection. The city planning official, prior to the city returning any security provided under this chapter, shall make the final landscape inspection. Any portions of the plan not installed, not installed properly, or not properly maintained shall cause the inspection to be postponed until the project is completed. If the installation of the landscaping is not completed properly within six months of such postponement, or within an extension of time authorized by the city, the city may use the security to complete the installation. Any portion of the security that remains after installation of the landscaping shall be returned to the applicant. [Ord. 521-2013 § 3 (Exh. A)].*

**Finding:** The proposed landscape plans, L-1 and L-2, demonstrate how the landscape installation and maintenance standards are met. Plant materials meet the minimum requirements for spacing, size, and installation. The landscaping is not located in an area that will interfere with pedestrian/vehicular traffic or impede clear vision. Root barriers are proposed where trees are four feet or less from underground utilities and pipes. A watering schedule is provided, and long-term water catchment features will be installed to provide additional irrigation. Native and drought tolerant plants are proposed to improve performance. The landscape plan Note #2 states that plants are under a 1-year warranty. To ensure the landscape material is guaranteed for a period of 1-year from the date of installation, a condition of approval has been imposed requiring the applicant to provide a copy of the guarantee prior to the issuance of building permits. This criterion is met.

### ***17.305 Public Improvements and Utilities***

#### ***17.305.050 Storm drainage***

*C. General Requirement. All stormwater runoff shall be conveyed to a public storm sewer or natural drainage channel having adequate capacity to carry the flow without overflowing or otherwise causing damage to public and/or private property. The developer shall pay all costs associated with designing and constructing the facilities necessary to meet this requirement.*

*D. Plan for Storm Drainage and Erosion Control. No construction of any facilities in a development included in subsection (B) of this section shall be permitted until an engineer registered in the state of Oregon and approved by the city prepares a storm drainage and erosion control plan for the project. This plan shall contain at a minimum:*

- 1. The methods to be used to minimize the amount of runoff, siltation, and pollution created from the development both during and after construction.*
- 2. Plans for the construction of storm sewers, open drainage channels, and other facilities that depict line sizes, profiles, construction specifications, and other such information as is necessary for the city to review the adequacy of the storm drainage plans.*
- 3. Design calculations shall be submitted for all drainage facilities. These drainage calculations shall be included on the site plan drawings and shall be stamped by a licensed professional engineer in the state of Oregon. Peak design discharges shall be computed using the rational formula and based upon the design criteria outlined in the public works design standards for the city.*

**Finding:** The proposed improvements will add less than 2000 square feet of impervious surface to the site (232 square feet) which will not require additional water quality or detention improvements. The proposed improvements will impact two on-site storm pipes in the southeast corner of the site. The applicant shows one of the pipes being relocated outside of the improvement area and connection of the other pipe (parallel to the railroad tracks) being reconnected to the relocated pipe. However, the configuration of the relocated pipe requires two bends and cleanouts that may increase maintenance for the Fire Station. The new impervious area is shown to drain to an area drain that connects to the relocated pipe.

A condition of approval has been imposed requiring the applicant to reconfigure the existing storm system to accommodate the proposed improvements. This requirement includes: relocation of one pipe and outfall as shown on the proposed plan and reconnection of a second pipe extending along the railroad tracks; re-grade the new impervious to drain to the existing, adjoining impervious area, provide a curb cut in the existing curb to improve flow to the existing water quality facility; provide section, details and grades for the interface between the existing concrete curb/slab and proposed improvements; consider reconfiguration of the outlet pipes to eliminate one of the bends and cleanouts by replacing pipe from existing ditch inlet; coordinate the final design with the City Engineer and Fire Chief; and add rip-rap outlet protection and re-grade the existing drainage channel to accommodate the new outfall. This criterion is met.

*E. Development Standards. Development subject to this section shall be planned, designed, constructed and maintained in compliance with the city of Dundee public works design standards.*

**Finding:** The proposed development has been planned, designed, constructed and maintained in compliance with the city of Dundee public works design standards. The applicant has proposed and is conditioned to reconfigure (re-route existing pipes) the existing storm system to accommodate the proposed improvements. The applicant shall field verify existing private and public utilities within the work area and coordinate with or relocate as needed. There are existing communications utilities extending to the Fire Station from the northwesterly corner of the site along Highway 99W that may conflict with the proposed utility extensions in this area. This criterion is met.

## **Conclusion**

For the reasons set forth in these findings and conclusion, the City Council concludes that the proposed wireless communication facility meets the applicable criteria for approval for conditional use permit and site development review, subject to the conditions of approval as stated in Exhibit B.

**EXHIBIT B**  
**CONDITIONS OF APPROVAL**  
**CU 20-06/SDR 20-07 Verizon Cell Tower**

Based on the findings in Exhibit A, the proposed development meets the applicable criteria contained in the Dundee Development Code and is **approved**, subject to completion of the conditions of approval:

The applicant must provide the following for review and approval prior to construction of improvements:

1. To ensure the landscape material is guaranteed for a period of one year from the date of installation, the applicant shall provide a copy of the guarantee prior to the issuance of building permits.
2. Utility Improvements: The applicant shall provide engineered plans for the Engineering Department's approval addressing the items listed below. All plans must be in accordance with the Dundee Public Works Design Standards. Note that utility lines may not cross property lines except by easement, and the utilities for one parcel may not serve development on another parcel.
3. Stormwater: The applicant is required to reconfigure the existing storm system to accommodate the proposed improvements. This includes: relocation of one pipe and outfall as shown on the proposed plan and reconnection of a second pipe extending along the railroad tracks. Re-grade the new impervious to drain to the existing, adjoining impervious area, provide a curb cut in the existing curb to improve flow to the existing water quality facility. Provide section, details and grades for the interface between the existing concrete curb/slab and proposed improvements. Consider reconfiguration of the outlet pipes to eliminate one of the bends and cleanouts by replacing pipe from existing ditch inlet. Coordinate the final design with the City Engineer and Fire Chief. Add rip-rap outlet protection and re-grade the existing drainage channel to accommodate the new outfall.
4. Property Line & Constructability: The improvements shall be set back from the property line to allow for construction or obtain an easement from adjoining rail property to accommodate construction.

The applicant must complete the following prior to final building inspection:

5. Install utilities as required by the approved utility plan and obtain the necessary City permits prior to construction.
6. Construct all improvements according to the approved construction plans.

**Development Notes (not conditions of approval)**

Public Works Requirements: This project is subject to compliance with all Dundee Public Works Design Standards. The applicant shall field verify existing private and public utilities within the work area and coordinate with or relocate as needed. There are existing communications utilities extending to the Fire Station from the northwesterly corner of the site along Highway 99W that may conflict with the proposed utility extensions.

Existing improvements: All landscaping or other improvements disturbed by the work shall be restored to their original condition or better.

During construction contact Portland & Western Railroad if equipment is operated within 50 feet of the railroad tracks. Contact information: Dennis Hannah, Permit Specialist, [dhannahs@gwrr.com](mailto:dhannahs@gwrr.com), (505) 508-7940.

## AGENDA REPORT

To: Mayor Russ and City Council  
From: Rob Daykin, City Administrator  
Date: August 18, 2020  
Re: Fire Department Captain Position

Interim Fire Chief Brent VanKeulen reviewed the duties and responsibilities of the career staff and determined that Firefighter Myers is working out of class by performing duties outlined in the attached proposed draft Captain job description. I discussed the appropriate placement of this new position on the City's salary schedule with Chief VanKeulen and he concurred with an initial range of 38, same as the Wastewater Treatment Plan Operator in terms of responsibilities over significant physical assets and operational matters. This would still be a non-exempt position, i.e. hourly wage and eligible for overtime. However, the separate "duty officer" pay that supplemented the firefighter position for the enhanced responsibilities will not apply to the Captain position. The net monthly pay increase will be about \$644. Upon Council's approval of the new job description and placement at range 38, it is our intention to promote Firefighter Myers to the Captain position effective September 1, 2020.

Chief VanKeulen is also recommending promoting one of the existing firefighters to the fire engineer position. The fire engineer position has not been filled since the departure of Brandan McGarr several years ago. I requested Chief VanKeulen to review the 2018 draft Fire Engineer job description prior to looking filling that position. Chief VanKeulen will attend the August 18 meeting to update Council on his findings and present his recommendations.

Recommendation: Motion to approve the Fire Department Captain job description and authorize the placement of the Captain position at Range 28 on the salary schedule.





**POSITION DESCRIPTION:** CAPTAIN  
**DEPARTMENT:** FIRE

**SUPERVISED BY:** FIRE CHIEF  
**SUPERVISES:** FIREFIGHTER, ENGINEER, VOLUNTEERS

**EMPLOYMENT STATUS:** NON-EXEMPT

**GENERAL DESCRIPTION**

Plans, supervises and participates in firefighting readiness, suppression, emergency assistance and administrative activities of the city fire station.

**ESSENTIAL JOB FUNCTIONS**

*The list of duties is a representative sample of the work appropriate to this class and does not include all of the duties that may be assigned to a particular position. The incumbent may perform a combination of some or all of the following duties:*

All essential functions included in the class specification for engineer and firefighter.

Serves as officer in charge of personnel, apparatus, and operations of a station and an assigned shift.

Supervises, leads, and is responsible for maintaining department professional standards of conduct.

Responsible for maintaining positive relations between community and assigned station.

Responsible for adherence to scheduled duty shifts and vacation leave rosters of personnel under their supervision.

Prepares plans and assignment schedules for all fire station shifts for the cleaning, repair and maintenance of fire equipment, apparatus buildings, fixtures, furniture and grounds, and the periodic testing of fire equipment and apparatus.

Prepares and manages station budget proposals as well as prepares reports and keeps records.

Accounts for station supplies, equipment and activities.

Assures annual compliance of OSHA and other state and federal required competency demonstrations for all fire and EMS respondents under his or her supervision.

Calls additional alarms at emergency locations as needed.

Refers unusual fire hazards to the attention of the Fire Chief.

Participates in applicant screening and evaluation and in hiring decisions as needed.

Exercises responsibility for initiating disciplinary actions as prescribed by rules of the city and the fire department.

Serves on department committees as assigned.

Performs other duties as assigned.

## **MINIMUM QUALIFICATIONS**

### **Knowledge:**

- Knowledge of fire suppression and prevention techniques, practices and methods.
- Knowledge of the operation and maintenance of the various types of apparatus and equipment used by fire departments.
- Knowledge of safety standards and operational procedures used in firefighting activities; full understanding of the department's Run Passport/Accountability system.
- Knowledge of the community geography and street system and location of major buildings.
- Knowledge of emergency medical practices and CPR procedures.
- Knowledge of hazardous materials response.
- Knowledge of the National Incident Management System (NIMS).
- Knowledge of building construction, fire protection systems including sprinkler and alarm systems and hydrant locations.

### **Skills:**

- Skill in the safe use of firefighting tools and equipment.
- Skills in the basic operation of standard office equipment and personal computers utilizing computerized application software as required for the position.

### **Abilities:**

- Ability to apply principles and techniques of modern firefighting prevention, suppression, investigation and all other aspects of firefighting.
- Ability to maintain an adequate level of physical fitness to perform the essential functions of the job as indicated by successful completion of the department's annual fitness test.

- Ability to maintain composure, think clearly, and interpret orders and directions under emergency and daily operations.
- Ability to respond at any time during the day or night to an emergency scene.
- Ability to operate an emergency vehicle, a radio and an MCT.
- Ability to safely wear a self-contained breathing apparatus (SCBA) and to quickly don and properly adjust PPE.
- Ability to use firefighting tools and equipment.
- Ability to comply with the safety requirements of the position.
- Ability to perform strenuous manual tasks and to withstand exposure to variable weather conditions.
- Ability to perform tasks in a safe and efficient manner and to instruct others in safe work procedures.
- Ability to provide lead direction to others while performing firefighting related functions.
- Ability to multi-task and deal with frequent interruptions.
- Ability to read maps.
- Ability to maintain accurate, legible records.
- Ability to communicate effectively in oral and written format to coworkers and the general public and display professional, courteous behavior.
- Ability to establish and maintain effective working relationships with coworkers and the general public.

### **EDUCATION, TRAINING AND EXPERIENCE**

Required: Education equal to graduation from high school with three years of experience in a paid or volunteer department.

Preferred: An associate degree in fire science or a related field.

### **LICENSING AND OTHER REQUIREMENTS**

Required: Possession of a valid Oregon Driver's license; NFPA Firefighter I and Oregon EMT Basic certification; NFPA HazMat Operations Level Responder certification, NFPA Wildland/Urban Interface Firefighter certification; NFPA Firefighter II certification; NFPA Instructor I; NFPA Driver & Pump Operator certification.

Preferred: NFPA Fire Officer I, Wildland Taskforce Leader, ICS 100, 200, 300, & 400

### **PHYSICAL AND MENTAL DEMANDS**

Frequent repetitive motions including, but not limited to, hand, wrist and finger movements; daily talking, hearing and seeing, sitting, walking, reaching, standing, climb or balance, stoop, kneel, crouch or crawl, bend and twist, and taste and smell.

Employee must have the physical capacity to advance water filled hose lines up to 2.5 inches in diameter from fire apparatus to occupancy which may involve negotiating multiple flights of stairs, ladders and other obstacles. Exerting up to 25 pounds of force routinely, up to 50 pounds frequently and up to 200 pounds occasionally to lift, drag,

carry, push, pull or otherwise move objects. Must meet NFPA standards for health and fitness.

Specific vision abilities required by this job include close vision, distance vision, color vision, peripheral vision, depth perception and the ability to adjust focus. The ability to work at night.

Persons with disabilities may be able to perform the essential duties of this class with reasonable accommodation, which will be evaluated on an individual basis and depend, in part, on the specific requirements of the job, the limitations related to the disability and the ability to the City to accommodate the limitation.

### **WORKING CONDITIONS**

The work environment characteristics described here are representative of those an employee encounters while performing the essential job functions of this class. Usual office working conditions: noise level in the work area is typical of most office environments with telephones, frequent interruptions, and background noises.

While performing the duties of this job in an outdoor setting, the employee operates emergency vehicles and is routinely exposed to traffic, loud noise, wet or humid conditions, dehydration, extreme weather conditions, moving mechanical parts, falling debris and unstable structures, vibration, high precarious places, areas in which movement is restricted, fumes, smoke or airborne particles, toxic or caustic chemicals, the risk of electrical shock and exposure to contagious diseases and blood borne pathogens.

Physical exertion is required to perform the essential job duties: the employee is also required to wear and use full protective clothing and a self-contained breathing apparatus weighing approximately 35 pounds, all of which restrict physical movement and cause increased workload to the employee's respiratory system, while performing the essential functions of the job.

Position may cause employee to engage with upset or emotional people occasionally.

*This job description does not constitute an employment agreement between the City and the employee and is subject to change by the City as the needs of the City and requirements of the job change.*

Revised: 9/1/2020

# Salary Schedule for FY 2020-21 - July 1 to December 31

| Position                  | Range | Step 1  | Step 2  | Step 3  | Step 4  | Step 5  | Step 6  | Step 7  | Step 8  | Step 9  |
|---------------------------|-------|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| <b>MONTHLY EQUIVALENT</b> |       |         |         |         |         |         |         |         |         |         |
| Fire Chief                | 45    | \$5,289 | \$5,422 | \$5,557 | \$5,696 | \$5,838 | \$5,984 | \$6,134 | \$6,287 | \$6,445 |
| PW Supervisor             | 44    | \$5,160 | \$5,289 | \$5,422 | \$5,557 | \$5,696 | \$5,838 | \$5,984 | \$6,134 | \$6,287 |
| Office Manager            | 42    | \$4,912 | \$5,035 | \$5,160 | \$5,289 | \$5,422 | \$5,557 | \$5,696 | \$5,838 | \$5,984 |
| VWTP Operator             | 38    | \$4,450 | \$4,561 | \$4,675 | \$4,792 | \$4,912 | \$5,035 | \$5,160 | \$5,289 | \$5,422 |
| Utility Worker III        | 31    | \$3,743 | \$3,837 | \$3,933 | \$4,031 | \$4,132 | \$4,235 | \$4,341 | \$4,450 | \$4,561 |
| Fire Engineer             | 31    | \$3,743 | \$3,837 | \$3,933 | \$4,031 | \$4,132 | \$4,235 | \$4,341 | \$4,450 | \$4,561 |
| Firefighter               | 29    | \$3,563 | \$3,652 | \$3,743 | \$3,837 | \$3,933 | \$4,031 | \$4,132 | \$4,235 | \$4,341 |
| Admin Assistant           | 28    | \$3,476 | \$3,563 | \$3,652 | \$3,743 | \$3,837 | \$3,933 | \$4,031 | \$4,132 | \$4,235 |
| Utility Worker II         | 27    | \$3,391 | \$3,476 | \$3,563 | \$3,652 | \$3,743 | \$3,837 | \$3,933 | \$4,031 | \$4,132 |
| Utility Worker I          | 23    | \$3,072 | \$3,149 | \$3,228 | \$3,309 | \$3,391 | \$3,476 | \$3,563 | \$3,652 | \$3,743 |

|                          |    |          |          |          |          |          |          |          |          |          |
|--------------------------|----|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| <b>ANNUAL EQUIVALENT</b> |    |          |          |          |          |          |          |          |          |          |
| Fire Chief               | 45 | \$63,473 | \$65,059 | \$66,686 | \$68,353 | \$70,062 | \$71,813 | \$73,609 | \$75,449 | \$77,335 |
| PW Supervisor            | 44 | \$61,924 | \$63,473 | \$65,059 | \$66,686 | \$68,353 | \$70,062 | \$71,813 | \$73,609 | \$75,449 |
| Office Manager           | 42 | \$58,941 | \$60,414 | \$61,924 | \$63,473 | \$65,059 | \$66,686 | \$68,353 | \$70,062 | \$71,813 |
| VWTP Operator            | 38 | \$53,397 | \$54,732 | \$56,100 | \$57,503 | \$58,941 | \$60,414 | \$61,924 | \$63,473 | \$65,059 |
| Utility Worker III       | 31 | \$44,921 | \$46,044 | \$47,195 | \$48,375 | \$49,585 | \$50,824 | \$52,095 | \$53,397 | \$54,732 |
| Fire Engineer            | 31 | \$44,921 | \$46,044 | \$47,195 | \$48,375 | \$49,585 | \$50,824 | \$52,095 | \$53,397 | \$54,732 |
| Firefighter              | 29 | \$42,757 | \$43,826 | \$44,921 | \$46,044 | \$47,195 | \$48,375 | \$49,585 | \$50,824 | \$52,095 |
| Admin Assistant          | 28 | \$41,714 | \$42,757 | \$43,826 | \$44,921 | \$46,044 | \$47,195 | \$48,375 | \$49,585 | \$50,824 |
| Utility Worker II        | 27 | \$40,696 | \$41,714 | \$42,757 | \$43,826 | \$44,921 | \$46,044 | \$47,195 | \$48,375 | \$49,585 |
| Utility Worker I         | 23 | \$36,869 | \$37,791 | \$38,735 | \$39,704 | \$40,696 | \$41,714 | \$42,757 | \$43,826 | \$44,921 |

|                          |    |         |         |         |         |         |         |         |         |         |
|--------------------------|----|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| <b>HOURLY EQUIVALENT</b> |    |         |         |         |         |         |         |         |         |         |
| Fire Chief               | 45 | \$30.52 | \$31.28 | \$32.06 | \$32.86 | \$33.68 | \$34.53 | \$35.39 | \$36.27 | \$37.18 |
| PW Supervisor            | 44 | \$29.77 | \$30.52 | \$31.28 | \$32.06 | \$32.86 | \$33.68 | \$34.53 | \$35.39 | \$36.27 |
| Office Manager           | 42 | \$28.34 | \$29.05 | \$29.77 | \$30.52 | \$31.28 | \$32.06 | \$32.86 | \$33.68 | \$34.53 |
| VWTP Operator            | 38 | \$25.67 | \$26.31 | \$26.97 | \$27.65 | \$28.34 | \$29.05 | \$29.77 | \$30.52 | \$31.28 |
| Utility Worker III       | 31 | \$21.60 | \$22.14 | \$22.69 | \$23.26 | \$23.84 | \$24.43 | \$25.05 | \$25.67 | \$26.31 |
| Fire Engineer            | 31 | \$21.60 | \$22.14 | \$22.69 | \$23.26 | \$23.84 | \$24.43 | \$25.05 | \$25.67 | \$26.31 |
| Firefighter              | 29 | \$20.56 | \$21.07 | \$21.60 | \$22.14 | \$22.69 | \$23.26 | \$23.84 | \$24.43 | \$25.05 |
| Admin Assistant          | 28 | \$20.05 | \$20.56 | \$21.07 | \$21.60 | \$22.14 | \$22.69 | \$23.26 | \$23.84 | \$24.43 |
| Utility Worker II        | 27 | \$19.57 | \$20.05 | \$20.56 | \$21.07 | \$21.60 | \$22.14 | \$22.69 | \$23.26 | \$23.84 |
| Utility Worker I         | 23 | \$17.73 | \$18.17 | \$18.62 | \$19.09 | \$19.57 | \$20.05 | \$20.56 | \$21.07 | \$21.60 |

Per Resolution No. 2018-18, ranges are adjusted on January 1, 2021

2.48% COLA for 2020-21

## Salary Schedule for FY 2020-21 - January 1 to June 30

| Position                  | Range | Step 1  | Step 2  | Step 3  | Step 4  | Step 5  | Step 6  | Step 7  | Step 8  | Step 9  |
|---------------------------|-------|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| <b>MONTHLY EQUIVALENT</b> |       |         |         |         |         |         |         |         |         |         |
| Fire Chief                | 46    | \$5,422 | \$5,557 | \$5,696 | \$5,838 | \$5,984 | \$6,134 | \$6,287 | \$6,445 | \$6,606 |
| PW Supervisor             | 44    | \$5,160 | \$5,289 | \$5,422 | \$5,557 | \$5,696 | \$5,838 | \$5,984 | \$6,134 | \$6,287 |
| Office Manager            | 43    | \$5,035 | \$5,160 | \$5,289 | \$5,422 | \$5,557 | \$5,696 | \$5,838 | \$5,984 | \$6,134 |
| WWTP Operator             | 39    | \$4,561 | \$4,675 | \$4,792 | \$4,912 | \$5,035 | \$5,160 | \$5,289 | \$5,422 | \$5,557 |
| Utility Worker III        | 32    | \$3,837 | \$3,933 | \$4,031 | \$4,132 | \$4,235 | \$4,341 | \$4,450 | \$4,561 | \$4,675 |
| Fire Engineer             | 32    | \$3,837 | \$3,933 | \$4,031 | \$4,132 | \$4,235 | \$4,341 | \$4,450 | \$4,561 | \$4,675 |
| Firefighter               | 30    | \$3,652 | \$3,743 | \$3,837 | \$3,933 | \$4,031 | \$4,132 | \$4,235 | \$4,341 | \$4,450 |
| Admin Assistant           | 29    | \$3,563 | \$3,652 | \$3,743 | \$3,837 | \$3,933 | \$4,031 | \$4,132 | \$4,235 | \$4,341 |
| Utility Worker II         | 28    | \$3,476 | \$3,563 | \$3,652 | \$3,743 | \$3,837 | \$3,933 | \$4,031 | \$4,132 | \$4,235 |
| Utility Worker I          | 24    | \$3,149 | \$3,228 | \$3,309 | \$3,391 | \$3,476 | \$3,563 | \$3,652 | \$3,743 | \$3,837 |

|                          |    |          |          |          |          |          |          |          |          |          |
|--------------------------|----|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| <b>ANNUAL EQUIVALENT</b> |    |          |          |          |          |          |          |          |          |          |
| Fire Chief               | 46 | \$65,059 | \$66,686 | \$68,353 | \$70,062 | \$71,813 | \$73,609 | \$75,449 | \$77,335 | \$79,268 |
| PW Supervisor            | 44 | \$61,924 | \$63,472 | \$65,059 | \$66,686 | \$68,353 | \$70,062 | \$71,813 | \$73,609 | \$75,449 |
| Office Manager           | 43 | \$60,414 | \$61,924 | \$63,472 | \$65,059 | \$66,686 | \$68,353 | \$70,062 | \$71,813 | \$73,609 |
| WWTP Operator            | 39 | \$54,732 | \$56,100 | \$57,503 | \$58,941 | \$60,414 | \$61,924 | \$63,472 | \$65,059 | \$66,686 |
| Utility Worker III       | 32 | \$46,044 | \$47,195 | \$48,375 | \$49,585 | \$50,824 | \$52,095 | \$53,397 | \$54,732 | \$56,100 |
| Fire Engineer            | 32 | \$46,044 | \$47,195 | \$48,375 | \$49,585 | \$50,824 | \$52,095 | \$53,397 | \$54,732 | \$56,100 |
| Firefighter              | 30 | \$43,826 | \$44,921 | \$46,044 | \$47,195 | \$48,375 | \$49,585 | \$50,824 | \$52,095 | \$53,397 |
| Admin Assistant          | 29 | \$42,757 | \$43,826 | \$44,921 | \$46,044 | \$47,195 | \$48,375 | \$49,585 | \$50,824 | \$52,095 |
| Utility Worker II        | 28 | \$41,714 | \$42,757 | \$43,826 | \$44,921 | \$46,044 | \$47,195 | \$48,375 | \$49,585 | \$50,824 |
| Utility Worker I         | 24 | \$37,791 | \$38,735 | \$39,704 | \$40,696 | \$41,714 | \$42,757 | \$43,826 | \$44,921 | \$46,044 |

|                          |    |         |         |         |         |         |         |         |         |         |
|--------------------------|----|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| <b>HOURLY EQUIVALENT</b> |    |         |         |         |         |         |         |         |         |         |
| Fire Chief               | 46 | \$31.28 | \$32.06 | \$32.86 | \$33.68 | \$34.53 | \$35.39 | \$36.27 | \$37.18 | \$38.11 |
| PW Supervisor            | 44 | \$29.77 | \$30.52 | \$31.28 | \$32.06 | \$32.86 | \$33.68 | \$34.53 | \$35.39 | \$36.27 |
| Office Manager           | 43 | \$29.05 | \$29.77 | \$30.52 | \$31.28 | \$32.06 | \$32.86 | \$33.68 | \$34.53 | \$35.39 |
| WWTP Operator            | 39 | \$26.31 | \$26.97 | \$27.65 | \$28.34 | \$29.05 | \$29.77 | \$30.52 | \$31.28 | \$32.06 |
| Utility Worker III       | 32 | \$22.14 | \$22.69 | \$23.26 | \$23.84 | \$24.43 | \$25.05 | \$25.67 | \$26.31 | \$26.97 |
| Fire Engineer            | 32 | \$22.14 | \$22.69 | \$23.26 | \$23.84 | \$24.43 | \$25.05 | \$25.67 | \$26.31 | \$26.97 |
| Firefighter              | 30 | \$21.07 | \$21.60 | \$22.14 | \$22.69 | \$23.26 | \$23.84 | \$24.43 | \$25.05 | \$25.67 |
| Admin Assistant          | 29 | \$20.56 | \$21.07 | \$21.60 | \$22.14 | \$22.69 | \$23.26 | \$23.84 | \$24.43 | \$25.05 |
| Utility Worker II        | 28 | \$20.05 | \$20.56 | \$21.07 | \$21.60 | \$22.14 | \$22.69 | \$23.26 | \$23.84 | \$24.43 |
| Utility Worker I         | 24 | \$18.17 | \$18.62 | \$19.09 | \$19.57 | \$20.05 | \$20.56 | \$21.07 | \$21.60 | \$22.14 |

Per Resolution No. 2018-18, ranges are adjusted on January 1, 2021

2.48% COLA for 2020-21

# AGENDA REPORT

To: Mayor Russ and City Council  
From: Rob Daykin, City Administrator  
Date: August 18, 2020  
Re: Cooperative Improvement Agreement – Hwy 99W Improvements Project

Per the direction of Council, City Engineer Reid prepared bid specifications for the installation of conduits and water lines for inclusion with ODOT's Highway 99W Improvements project. The conduits are for the future undergrounding of PGE and telecommunication lines, and for future installation of irrigation to serve the new landscaped areas along the highway that are established as part of this project. The water lines represent the restoration of water lines crossing the highway and new water lines per the recommendations of the water line relocation study by MurraySmith. All of this work will be the financial responsibility of the City. Under the proposed Cooperative Improvement Agreement, the City will provide a deposit to ODOT based on the estimated construction cost of the improvements in the amount of \$241,320. However, if actual bids received cause the work to be higher than the estimated amount then the City will be invoiced the difference by ODOT. If actual costs are below the deposit amount, then the City will be refunded the unused balance.

The water line costs are pretty much in line with the City's budget, however, the cost of the conduits estimated at \$163,460 is not covered. Undergrounding is a stated goal of the Dundee Urban Renewal Plan and staff recommends that the conduits be financed by a loan between the City and the Urban Renewal Agency. If Council concurs, then staff will prepare a loan agreement for consideration at the September 2 meeting.

Recommendation: Motion to authorize the city administrator to sign the Cooperative Improvement Agreement pending review and approval by the city attorney.



**COOPERATIVE IMPROVEMENT (UTILITY) AGREEMENT**  
**Project Name OR99W: 1<sup>st</sup> to Parks**

**THIS AGREEMENT** is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State;" and the City of Dundee, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

**RECITALS**

1. **OR99W**, is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).
2. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. State, by ORS 366.220, is vested with complete jurisdiction and control over the roadways of other jurisdictions taken for state highway purposes. By the authority granted by ORS 373.020, the jurisdiction extends from curb to curb, or, if there is no regular established curb, then control extends over such portion of the right of way as may be utilized by State for highway purposes. Responsibility for and jurisdiction over all other portions of a city street remains with the Agency.
4. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.
5. State is conducting a project to repave OR99W. It includes upgrading sidewalks, crosswalks, pedestrian signals, street lights, landscape and storm water facilities. While the highway is under construction, State will use this opportunity to restore existing water line crossings of 99W, adding new water line crossings of 99W, and adding new conduits in the highway ROW to accommodate irrigation of landscape areas that are part of the highway improvements project, and adding new conduits to facilitate future undergrounding of PGE electrical lines and telecommunication lines that run under the highway, all of which are non-reimbursable.

**NOW THEREFORE**, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

## **TERMS OF AGREEMENT**

1. Under such authority, State and Agency agree that State or its contractor shall install Agency's non reimbursable water lines and conduits located within the highway, as required to complete State's paving project, hereinafter referred to as "Project." The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.
2. The Project will be financed at an estimated cost of \$241,320 in Agency funds. The estimate for the total Project cost is subject to change. Agency shall be responsible for all waterline associated work as described in Exhibit B, attached hereto, and by this reference made a part hereof.
3. Agency and State shall coordinate Change Order(s) affecting the Utility's facilities. The fillable Contract Change Order, form 734-1169, is available at the following web site:

Highway - Construction Section ODOT Construction Forms

4. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.

## **AGENCY OBLIGATIONS**

1. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.
2. Agency shall upon receipt of a fully executed copy of this Agreement and upon a subsequent letter of request from State, forward to State an advance deposit or irrevocable letter of credit in the amount of \$241,320 for the Project, said amount being equal to the estimated total cost for the work performed by State at Agency's request under State Obligations, paragraph 2. Agency agrees to make additional deposits as needed upon request from State. Depending upon the timing of portions of the Project to which the advance deposit contributes, it may be requested by State prior to Preliminary Engineering, purchase of right of way, or approximately 4-6 weeks prior to Project bid opening.
3. Upon completion of the Project and receipt from State of an itemized statement of the actual total cost of State's participation for the Project, Agency shall pay any amount which, when added to Agency's advance deposit, will equal 100 percent of actual total State costs for the Project. Any portion of said advance deposit which is in excess of the State's total costs will be refunded or released to Agency.
4. All Agency water lines and conduit and appurtenances installed by State or its contractor will require inspections by Agency. Agency personnel will work directly with State personnel. Agency shall not contact or communicate with State's

contractor without State's consent. Agency will provide all necessary documentation to State. State shall present to Agency any Contract Change Order for review and written approval by Agency.

5. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
6. Agency, if a City, by execution of Agreement, gives its consent as required by ORS 373.030(2) and ORS 105.760 to any and all changes of grade within the Agency limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the Project covered by the Agreement.
7. Agency's Project Manager for this Project is Greg Reid, (city.engineer@dundeecity.org, PO Box 220, 620 SW 5thSt, Dundee, OR 97115) or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

#### **STATE OBLIGATIONS**

1. State, or its consultant, shall conduct the necessary field surveys, environmental studies, traffic investigations, preliminary engineering and design work required to produce and provide final plans, specifications and cost estimates for the Project; identify and obtain all required permits; perform all construction engineering, including all required materials testing and quality documentation; prepare all bid and contract documents; advertise for construction bid proposals; award all contracts; pay all contractor costs, provide technical inspection, project management services and other necessary functions for sole administration of the construction contract entered into for this Project.
2. State shall, upon execution of the agreement, forward to Agency a letter of request for an advance deposit or irrevocable letter of credit in the amount of \$241,320 for payment of water line and conduit facilities. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete Project.
3. Upon completion of the Project, State shall either send to Agency a bill for the amount which, when added to Agency's advance deposit, will equal 100 percent of the total state costs for Project or State will refund to Agency any portion of said advance deposit which is in excess of the total State costs for Project.

State/Agency  
Agreement No. 34387

4. State shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
5. All employers, including State, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. State shall ensure that each of its contractors complies with these requirements.
6. State shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, State expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
7. State's Project Manager for this Project is Tammy Saldivar, State Utility Liaison, ODOT – Technical Services, 4040 Fairview Ind. Drive SE, MS#2 Salem OR 97302, 503-986-3658, Tammy.Saldivar@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

## **GENERAL PROVISIONS**

1. This Agreement may be terminated by either Party upon thirty (30) days notice, in writing and delivered by certified mail or in person.
2. Either Party may terminate this Agreement effective upon delivery of written notice to the other Party, or at such later date as may be established by that Party, under any of the following conditions:
  - a. If the other Party fails to provide the services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If the other Party fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from the other Party fails to correct such failures within ten (10) days or such longer period as the other Party may authorize.

- c. If either Party fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow that Party, in the exercise of its reasonable administrative discretion, to continue to advance this Project or the terms of this Agreement.
  - d. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or Agency is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
5. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
6. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State

on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

7. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
8. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
9. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

State/Agency  
Agreement No. 34387

City of Dundee, by and through its elected officials

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_  
Counsel

Date \_\_\_\_\_

**Agency Contact:**

Greg Reid  
PO Box 220  
620 SW 5<sup>th</sup> St  
Dundee, OR 97115  
city.engineer@dundeecity.org

**State Contact:**

Tammy Saldivar, State Utility Liaison  
ODOT – Technical Services  
4040 Fairview Ind. Drive SE MS#2  
Salem OR 97302  
503-986-3658  
Tammy.Saldivar@odot.state.or.us

**STATE OF OREGON**, by and through its Department of Transportation

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General (If Over \$150,000)

Date \_\_\_\_\_



EXHIBIT B3

K17882 - OR99W: 1ST ST. - PARKS DR. (DUNDEE) SEC.

City of Dundee Utilities - Bid Items & Costs

**Revised Quantities & Costs 7-29-2020**

|  | R01A | R02A | R03A | R04A | R05A | R06A | R07A | TOTALS               | UNIT \$ | COST             |
|--|------|------|------|------|------|------|------|----------------------|---------|------------------|
| <b>Hwy Water Crossings</b>               |      |      |      |      |      |      |      |                      |         |                  |
| 1140-0500000F                            |      |      | 73   |      |      |      |      | 73                   | \$120   | \$8,760          |
| 1140-0500000F                            |      |      | 12   |      |      |      |      | 12                   | \$110   | \$1,320          |
| 1140-0500000F                            |      |      |      | 62   | 118  |      |      | 118                  | \$100   | \$11,800         |
| 1140-0500000F                            |      |      | 2    |      | 5    |      |      | 67                   | \$90    | \$6,030          |
| 1140-0650000E                            |      |      |      |      | 2    |      |      | 2                    | \$850   | \$1,700          |
| 1140-0650000E                            |      |      | 2    |      | 2    |      |      | 2                    | \$650   | \$1,300          |
| 1140-0610000E                            |      |      | 2    |      |      |      |      | 2                    | \$1,200 | \$2,400          |
| 1140-0610000E                            |      |      |      | 1    | 1    |      |      | 2                    | \$900   | \$1,800          |
| 1140-0670000E                            |      |      | 1    |      |      |      |      | 1                    | \$500   | \$500            |
| 1140-0670000E                            |      |      |      |      | 2    |      |      | 2                    | \$400   | \$800            |
| 1150-XXXX                                |      |      | 3    |      |      |      |      | 3                    | \$450   | \$1,350          |
| 1140-XXXX                                |      |      | 1    |      | 1    |      |      | 1                    | \$350   | \$350            |
| 1140-XXXX                                |      |      | 1    |      |      |      |      | 1                    | \$350   | \$350            |
| 1150-0100000E                            |      |      | 1    |      |      |      |      | 1                    | \$300   | \$600            |
| 1160-0100000E                            |      |      | 1    |      |      |      |      | 1                    | \$3,500 | \$3,500          |
| 1150-0700000E                            |      |      |      |      | 1    |      |      | 1                    | \$5,000 | \$5,000          |
| 1150-0700000E                            |      |      |      | 1    |      |      |      | 1                    | \$2,500 | \$2,500          |
| 1150-0700000E                            |      |      |      | 1    |      |      |      | 1                    | \$5,000 | \$5,000          |
| 1150-0700000E                            |      |      |      |      | 2    |      |      | 2                    | \$6,000 | \$12,000         |
| 1160-0102000E                            |      |      |      | 1    | 0    |      |      | 1                    | \$350   | \$350            |
| 1160-0103000E                            |      |      |      | 1    | 1    |      |      | 2                    | \$450   | \$900            |
| 1170-0111000E                            |      |      |      |      | 1    |      |      | 1                    | \$400   | \$400            |
| 1170-0107000E                            |      |      |      | 4    | 2    |      |      | 6                    | \$50    | \$4,000          |
| 1170-0109000F                            |      |      |      | 80   |      |      |      | 80                   | \$50    | \$4,000          |
| 1170-0109000F                            |      |      |      |      |      |      |      | 70                   | \$45    | \$3,150          |
|  |      |      |      |      |      |      |      | <b>Total</b>         |         | <b>\$77,860</b>  |
| <b>Franchise and Irrigation Conduits</b> |      |      |      |      |      |      |      |                      |         |                  |
| JUNCTION BOX                             |      | 1    | 2    |      |      |      |      | 3                    | \$450   | \$1,350          |
| ADJUST EXISTING JUNCTION BOX             |      |      | 1    |      |      |      |      | 1                    | \$350   | \$350            |
| CONCRETE WALKS                           |      |      | 48   |      | 212  | 80   |      | 340                  | \$10    | \$3,400          |
| CONCRETE CURB                            |      |      |      |      | 28   | 16   |      | 44                   | \$35    | \$1,540          |
| 0445-052004AF                            |      |      |      | 80   |      |      |      | 80                   | \$35    | \$2,800          |
| 0445-052004AF                            |      |      | 516  | 126  | 562  |      | 152  | 1356                 | \$30    | \$40,680         |
| 0445-052004AF                            |      |      | 972  |      |      |      |      | 972                  | \$25    | \$24,300         |
|  |      |      |      |      |      |      |      | <b>Total</b>         |         | <b>\$74,420</b>  |
| <b>Electrical Conduits</b>               |      |      |      |      |      |      |      |                      |         |                  |
| 0970-XXXX                                |      |      | 316  | 200  | 154  |      |      | 670                  | \$40    | \$26,800         |
| 0970-XXXX                                |      |      | 316  | 200  | 154  |      |      | 670                  | \$35    | \$23,450         |
| 0970-XXXX                                |      |      | 125  | 524  | 268  | 110  |      | 1293                 | \$30    | \$38,790         |
|  |      |      |      |      |      |      |      | <b>Total</b>         |         | <b>\$89,040</b>  |
|  |      |      |      |      |      |      |      | <b>Overall Total</b> |         | <b>\$241,320</b> |

To be done by City Public Works



# AGENDA REPORT

To: Mayor Russ and City Council  
From: Rob Daykin, City Administrator  
Date: August 18, 2020  
Re: Owner Appeal to Tenant's Utility Charges

John Carroll arranged to have his tenant, Jacob Lauer, at 661 SE Locust Street to receive the City's utility bill directly. Attached is a sample application form noting the owner's obligation. The tenant was one month behind in March 2020 and was scheduled for a 24-hour doorhanger shutoff warning, however, due to the COVID pandemic and economic impact to many persons in the community Council suspended shutoffs. The last payment made by the tenant was in early March that was the result of a payment arrangement to avoid shut off in the prior month. Council continued the suspension of shutoffs until July 2020, but the tenant had already vacated the premises by June 23. Following application of the \$125 deposit, the remaining balance of \$485.31 was invoiced to the owner, John Carroll.

Per City policy the owner is responsible for unpaid charges of his/her tenant. It is likely that if the City had threatened to or actually shut off water for non-payment of delinquent charges the amount of the final unpaid balance while not zero, would have been significantly less if the tenant did not comply. Mr. Carroll plans on attending the August 18 meeting to present his appeal and answer any questions Council may have. Following consideration of the appeal, Council should make a motion regarding their decision.

Recommendation: Motion to grant (or deny) an adjustment to the final charges incurred by Jacob Lauer at 661 SE Locust Street in the amount of \$\_\_\_\_\_.



To whom it may concern,

My name is John Carroll I am the home owner located at 661 SE Locust St. Dundee, OR. 97115. I have had renters living in the house since June of 2019. It has come to my attention that the tenants did not pay their water bill of \$485.31. I was unaware that the tenants were not paying the water bill as of March 2020. The water service should have been suspended for nonpayment, and I should have been notified. If they claimed that they could not pay because of COVID-19 I believe that if I am responsible for the bill I should have been notified. Due to the tenants not providing documentation of no income to the city of Dundee nor to me, and my suspicions that the tenants actually did have income during this time, I believe that I should not be held responsible for this bill.

This situation has had a negative financial impact on me. Since the tenants vacated the house at the end of June, I have had to clear the house of many loads of garbage, and furniture. The entire house had to be repaired. I also lost months of rental income. I am retired and live on a fixed income.

Please consider relieving me of the charges from March to the end of June.

Thank you for your consideration,

John Carroll





