

**GLADSTONE CITY COUNCIL MEETING**  
**CITY HALL COUNCIL CHAMBERS**  
**September 27, 2016 – 6:30 PM**

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**5:00 p.m.** – Joint Work Session with Planning Commission – Transportation System Plan Update (no attachments)

**6:30 p.m.**  
CALL TO ORDER  
ROLL CALL  
FLAG SALUTE

**AGENDA ADDITIONS OR CORRECTIONS**

**BUSINESS FROM THE AUDIENCE**

Visitors: Presentations not scheduled on the Agenda are limited to three (3) minutes. Longer presentations should be submitted to the Assistant City Administrator two weeks prior to the Tuesday City Council meeting. Cards are available in the back of the room for anyone who wishes to comment.

**CONSENT AGENDA - None**

**CORRESPONDENCE – None**

**REGULAR AGENDA**

1. Presentation on Water Environment Services (WES) Solids Handling Project – Greg Geist (no attachments)
2. Public Hearing: Z0460-16-Z, Zone Change from R-7.2 to R-5, single-family residential, Gladstone Assembly of God, 6460 Glen Echo Ave, Marnella Homes
3. Public Hearing – Text Amendments Related to Marijuana & Ordinance 1470 - Regulating Marijuana Facilities as Conditional Uses in the Light Industrial Zone
4. Z0435-14-PDR – Verizon’s Request for Land Use Extension for a Wireless Communications Tower Located on Portland Ave
5. Second reading of Ordinance 1469 – Exclusive Franchise for Gladstone Disposal Company

**BUSINESS CARRIED FORWARD**

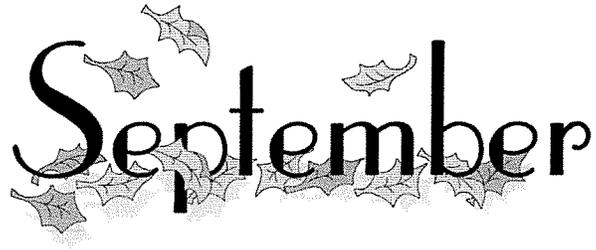
6. Dedication on Funding of Right of Way and Business License Revenues (no attachments)
7. Town Hall Meeting Scheduled for October 19th

**BUSINESS FROM THE AUDIENCE** – This is the second opportunity for the Audience to address Council on any item not on the Agenda.

**BUSINESS FROM THE COUNCIL**

**ADJOURN**

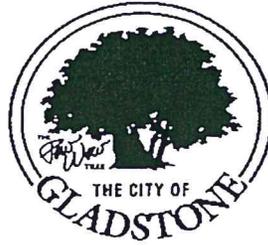




September

**REGULAR AGENDA**





## SUMMARY

**FILE NUMBER:** Z0460-16-Z

**APPLICANT:** Marnella Homes

**PROPOSAL:** Zone change from R-7.2, Single Family Residential to R-5, Single Family Residential. There is no comprehensive plan change involved as both current and proposed zones are within the same land use category. It is the minimum lot size that is the subject of this request.

The site is approximately 2.42 acres in size (as recently adjusted) and used as play area and open space in conjunction with existing church and school activities on adjoining property in the same ownership. There are no identified significant natural features, and all necessary public facilities are in place to serve the proposal.

**PLANNING COMMISSION HEARING:** The Planning Commission held a public hearing on September 20<sup>th</sup>, 2016. After a brief staff report to include explanation as to why staff is unable to recommend approval, the applicant(s) gave a presentation discussing the approval criteria as well as reasons for the request. Discussion ensued between the PC and the applicants, centered largely on the issues of public need and interest, and impact to the area – how would 5,000 square foot lots compare to existing in the vicinity? 86 trees are shown as being removed. What kind of impact might that have? Opposition testimony (2) was presented. A letter in opposition that had been submitted into the file earlier was read into the record. Concerns seemed focused on loss of trees, increased traffic and that approval of the request would create lots smaller than typical for the area. See (draft) minutes for detail. Ultimately the Planning Commission voted to recommend denial of the request, based largely on perception applicant did not prove public need, or adequately address how the proposal would not negatively impact neighborhood characteristics including typical lot size.

**PLANNING COMMISSION ACTION:** The Planning Commission, on a 4-1 vote, recommended Denial of Z0460-16-Z.

### **ATTACHMENTS:**

- Staff report
- Minutes from the Planning Commission hearing
- Exhibits which include original application materials

\* Planning Commission minutes from Sept 20, 2016 are being transcribed at the deadline to print this packet. The draft minutes will be available before the Council meeting

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# City of GLADSTONE

## STAFF REPORT/RECOMMENDATION TO PLANNING COMMISSION

Files: Z0460-16-Z

Date: September 9, 2016

Hearing(s): September 20, 2016 (PC), September 27, 2016 (Council)

### I. GENERAL INFORMATION

- A. Proposal: Zone change from Residential, R7.2 to Residential, R5.
- B. Legal Description: T2, R2E, Section 17CC, Tax Lots 3900, 4000
- C. Location: 6460 Glen Echo Avenue
- D. Current/proposed Plan designation: Single Family Residential
- E. Current/proposed Zone designation: R7.2, Single Family Residential/R5 Single Family Residential
- F. Site Description: Total property size (two separate, adjoining parcels) is approximately 4.40 acres. A church and associated buildings/uses are in place. This proposal involves adjusting the common boundary between the two pieces such that the church and classroom buildings are on one parcel. A zone change is proposed for the other parcel, from R7.2 to R5 to allow for subdivision into fourteen (14) new lots for future single-family residential use.

The site is approximately 600 feet east of the Portland Avenue Corridor. Gladstone High School lies to the southwest. Predominant land use in the vicinity of the subject is single-family residential structures on individual lots.

### II. INTRODUCTION

The subdivision proposal and property line adjustment applications are dealt with through separate staff reports and decisions. There is no Comprehensive Plan

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525 Portland Avenue  
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FAX: (503) 650-8938  
E-Mail: (last name)@  
ci.gladstone.or.us  
Website:  
www.ci.gladstone.or.us

**Municipal Court**  
525 Portland Avenue  
Gladstone, OR 97027  
(503) 656-5224 ext. 1  
E-Mail: municourt@  
ci.gladstone.or.us

**Police Department**  
535 Portland Avenue  
Gladstone, OR 97027  
(503) 655-8211  
Website:  
www.ci.gladstone.or.us

**Fire Department**  
555 Portland Avenue  
Gladstone, OR 97027  
(503) 557-2776  
Website:  
www.ci.gladstone.or.us

**Public Library**  
135 E. Dartmouth  
Gladstone, OR 97027  
(503) 656-2411  
FAX: (503) 655-2438  
E-Mail: qiref@lincc.lib.o

**Senior Center**  
1050 Portland Avenue  
Gladstone, OR 97027  
(503) 655-7701  
FAX: (503) 650-4840

**City Shop**  
18595 Portland Avenue  
Gladstone, OR 97027  
(503) 656-7957  
FAX: (503) 722-9078



amendment requested or required, as the proposed zone change remains within the Residential Plan category. This zone change request is subject to Chapter 17.68, Amendments and Zone Changes, of Title 17 of the Gladstone Municipal Code.

The applicant has submitted information to address the applicable criteria. Those materials are incorporated by reference herein.

### III. FINDINGS AND CONCLUSIONS

Planning staff has reviewed this request in reference to the applicable provisions GMC. Based upon this review, staff makes the following findings and conclusions:

#### A. Zone Change

1. Chapter 17.68 establishes the approval criteria for a zone change. Chapter 17.68 requires that the applicant “must show by a preponderance of the evidence” the following:

*17.68.050(1) Granting the request fulfills a public need, the greater departure from present development policies or land use patterns, the greater the burden of the applicant.*

As noted, this proposal does not involve a change in land use categories. The site is currently planned for residential use. It is the minimum lot size that is the subject of this request. Current zone requires 7,200 square foot minimum lots size. The proposed R5 zone would allow for lot size of 5,000 square feet. Given the 1.90 net acres proposed for change – an additional three (3) lots would be allowed by changing from R7.2 to R5.

Applicant responds to this criterion as follows: “...fulfills a public need by assisting the larger region in addressing its housing shortage. The Portland region’s increasing housing demand has outpaced the community’s ability to produce supply and, as a result, it has significantly driven up housing costs. Allowing the property owners to build homes at slightly higher densities will help the community produce additional supply to meet demand and reduce costs to a more affordable level. Though this change on its own will not have a major impact on the region’s overall housing supply and costs, it will contribute to the greater effort of addressing the housing shortage affecting the community and the region.” Applicant further notes that “...R7.2 to R5 would be a minor departure from present development policies/land use patterns.” See application materials for complete responses to this and other applicable criteria.

Generally speaking, staff is in agreement with applicant on these points. Housing, particularly that of the affordable variety is becoming more of a concern in the metro area. That said, staff is of the opinion this proposal would result in relatively significant departure from present land use patterns, in this case typical lot size. Yes, the area in question is generally residential in nature, but that residential use appears to be occurring on properties averaging closer to 7,200 square feet, e.g. what the current zone allows.

While the applicant may have established there is a public need for more housing - whether the applicant has met their burden to support allowing lots of 5,000 square feet in this area of predominantly 7,200 square foot properties is a question to be considered by the Planning Commission. Based on information existing in the file staff is unable to arrive at that finding.

**This criterion requires further consideration.**

*17.68.050(2) The public need is best carried out by granting the petition for the proposed action, and that need is best served by granting the petition at this time.*

Applicant presents discussion on this criterion in the submitted materials, to include – “This application contributes to the greater regional effort to produce more housing supply to help meet the rising housing demand and reduce costs. This need is best served by granting the petition now because recent shortages across the metro areas have already driven up costs according to recent data provided by the Regional Multiple Listing Service and reported in a May 2016 article by the Portland Tribune. Additionally, regional population projections produced by Metro show continued growth in the years to come, with 725,000 more people and a total population of 3 million by 2035. Therefore, all communities within the region should work now, in any small manner, to expand the housing supply, helping to ensure a more affordable housing market in upcoming years.”

Staff does not disagree with the applicant’s contention additional housing stock is and will continue to be necessary in the metro area. Other factors are involved, however. Whether or not any of that additional housing potential should be located *on the subject property* is the issue at hand with this application. **This criterion requires further consideration.**

*17.68.050(3) The proposed action is consistent with the Comprehensive Plan and Metro’s Functional Plan (Metro Code 3.07).*

The Gladstone Comprehensive Plan identifies the subject property as Residential. No change in land use category is proposed at this time. The Housing section of the Land Use Planning Element provides policies and implementation strategies for residential use in Gladstone. This to ensure meeting the ultimate housing goal of the City: *“To meet the housing needs of all segments of the population through optimum utilization of housing resources for the construction, rehabilitation and maintenance of a diversity of housing types at appropriate locations, price ranges and rent levels, while preserving and enhancing the integrity and identity of existing residential neighborhoods.”* Policies (4) and implementation strategies are listed. Applicant provides discussion (see application materials.)

Of the four Policies listed, it is the first that appears to most apply relative to this request. “Provide a choice of housing type, density and price range.” This proposal appears to support that policy. Combined with the fact there is no land use category change;

**The proposal is consistent with the Comprehensive Plan.**

Applicant discusses the request relative to Metro’s Functional Plan. Please review submitted materials.

The Metro Functional Plan provisions relevant to this proposal are as follows:

*Title 1, Housing and Employment Accommodation:* The proposed zone change will provide for potential increase in residential density. Title 1 is met.

*Title 3, Water Quality, Flood Management and Fish and Wildlife Conservation:* The site in question is not identified as a Water Quality or Flood Management Area, nor are there any Fish and Wildlife overlays. Title 3 is noted here for purpose of recognizing such overlays do not exist on the subject property.

*Title 7, Affordable Housing:* The general intent of this Title is to ensure housing is provided for households of all income levels. This application involves a Zone change request to increase potential density of single-family residential homes on individual lots. No change in housing type is proposed (e.g. no apartments, etc.) By providing for additional lots/home, potential for different prices of home is increased.

*Title 12, Protection of Residential Neighborhoods:* This Title deals with protecting residential neighborhoods from air and water pollution, noise and crime and to provide adequate public services. The subject proposal

would result in increased density in the area, and the removal of many trees. The Planning Commission should discuss how this proposal furthers "Protection of *Residential Neighborhoods*."

***Title 13, Nature in Neighborhoods:*** Title 13 strives to conserve, protect and restore ecologically viable streamside corridor systems integrated with upland wildlife habitat and the urban landscape.

Based on vegetation types seen when walking the site it is apparent water is present if not at the surface at least near to it, this across the relatively undisturbed southern portion. There may be a spring near the easternmost property line. Regardless, many trees, shrubs etc exist on site, forming a variety of habitats. As noted above, this proposal would result in increased density over that now allowed, and the removal of most of the large plants present. The Planning Commission should discuss how this proposal meets the intent of Title 13. (added since original staff report)

With satisfaction of Titles 12 and 13, this criterion can be met.

- 17.68.050(4)** *Proof of significant change in a neighborhood or community or a mistake in the planning or zoning for the property under consideration, when relevant.* Applicant contends a significant increase in housing demand has occurred in the Portland metro area in recent years, and further discusses housing costs. It is applicant's contention that in order to temper rising housing costs increased densities are warranted. Applicant further notes that a zone change on the subject property from R7.2 to R5 will help address the public need while maintaining the surrounding neighborhood's single-family residential character.

Generally speaking staff agrees with applicant's discussion on this point. A significant change has occurred: housing demand in the metro area has increased over that projected originally and along with it costs have gone up for available housing. The trend is expected to continue.

**This criterion is satisfied.**

- 17.68.050(5)** *The property and affected area is presently provided with, or concurrent with development can be provided with, adequate public facilities, including, but not limited to, transportation systems.* The subject property is an area served by adequate public facilities, including adequate transportation systems. **This criterion is met.**

Notice of this proposed zone change was sent to affected agencies as well as area property owners, dated August 31, 2016. At time of this staff report no comments have been received. Staff understand the relatively short time-line between notice and first public hearing and expects comments to be available at or prior to the Planning Commission hearing.

#### **IV. RECOMMENDATION**

The Planning Commission is authorized to make a recommendation to the City Council on Zone changes, pursuant to Subsections 17.94.060(1)(b) and (c) of the GMC. At time of this report staff is unable to recommend approval. Applicant may present additional information during the hearings process.





MEMORANDUM

TO: Honorable Thomas Mersereau  
Gladstone City Councilors

FROM: David Doughman, City Attorney's Office

SUBJECT: Text Amendments Related to Marijuana

DATE: September 21, 2016

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The Gladstone City Council will consider the attached ordinance at its September 27, 2016 meeting. The planning commission recommends the council approve the ordinance.

Gladstone previously banned virtually all marijuana facilities from operating in the city. These include medical marijuana dispensaries as well as recreational dispensaries. State law permitted the city to enact the ban, on the condition that Gladstone voters approve or reject the ban on November 8.

If the voters reject the ban on November 8 (i.e. allow marijuana facilities in Gladstone), the city will want to have regulations in place as to where such facilities may go in the city and what process the city will use to review and approve such facilities.

I have intentionally kept the attached regulations short and sweet. As conditional uses, the city will have significant discretion in approving an application for a marijuana facility in the future.

As a legislative amendment to the development code, the council will need to follow the procedure outlined below. I will attend the September 27 meeting and will be available to guide the council through the process and answer any questions it may have.

- 1 Open the public hearing
- 2 Call for any abstentions from city councilors
- 3 Call for any conflicts of interest from councilors (ask whether any councilor believes the proposed amendment may affect him/her financially)
- 4 Call for staff report
- 5 Call for public testimony (remind them to stand at podium & state their name & address)
- 6 Call for staff recap / recommendation
- 7 Call for motion to close or continue the hearing
- 8 Discussion by council
- 9 Call for first reading of ordinance by title only
- 10 Call for second reading of ordinance by title only if council so desires and vote on first reading is unanimous

**RECOMMENDATION:** hold a hearing and approve the ordinance.



ORDINANCE NO. 1470

***AN ORDINANCE AMENDING TITLE 17 OF THE GLADSTONE MUNICIPAL CODE  
REGULATING MARIJUANA FACILITIES AS CONDITIONAL USES IN THE LIGHT  
INDUSTRIAL ZONE***

**THE CITY OF GLADSTONE ORDAINS AS FOLLOWS:**

Section 1. Chapter 17.24.040 (conditional uses in the LI zone) of the Gladstone Municipal Code is amended as follows (deleted language is ~~struck through~~; new language is underlined):

“In an LI zoning district, the following uses and their accessory uses are allowed subject to GMC Chapter 17.70 (conditional uses):

\*\*\*

- (5) Medical marijuana ~~facility~~ dispensary (as authorized by Oregon law)
- (6) Marijuana processing sites (as authorized by Oregon law)
- (7) Marijuana producers (as authorized by Oregon law)
- (8) Marijuana processors (as authorized by Oregon law)
- (9) Marijuana wholesalers (as authorized by Oregon law)
- (10) Marijuana retailers (as authorized by Oregon law)”

Section 2. These uses will only exist as a conditional use in the LI zoning district and no other zoning district if Gladstone electors vote to reject Gladstone Measure 3-481 on November 8, 2016. Therefore, the amendments in Section 1 of this ordinance will only be operative if Measure 3-481 is rejected and the amendments will not be codified until that time.

**ADOPTED BY THE COMMON COUNCIL OF THE CITY OF GLADSTONE THIS \_\_\_\_\_  
DAY OF \_\_\_\_\_, 2016.**

ATTEST:

\_\_\_\_\_  
Thomas Mersereau, Mayor

\_\_\_\_\_  
Jacque Betz, Assistant City Administrator



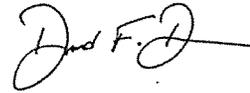
MEMORANDUM

TO: Honorable Thomas Mersereau  
Gladstone City Councilors

FROM: David Doughman, City Attorney's Office

SUBJECT: Verizon Request for Permit Extension

DATE: September 20, 2016



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At its September 27 meeting, the Gladstone City Council will consider a request from Verizon Wireless to extend an approval the city issued in April of 2015. The underlying application involves Verizon co-locating antennae on an existing PGE pole and increasing the height of the pole by 20 feet. The decision was valid for one year (to April 24, 2016) subject to the council's ability to grant an additional one year extension. Neither the code nor the decision requires an extension to be granted before the approval expires. Thus, Verizon is asking the council to retroactively approve a one-year extension from the original expiration date.

As described in Mr. Michael Connors' letter to the council, Verizon asserts it has been delayed in completing the colocation based on factors out of its control.

Legally speaking, the council is not obligated to approve Verizon's request. I discussed with Mr. Connors the discretion the council has in considering Verizon's request and the fact that the city has adopted new wireless facility standards since April 2015. Based on a brief review, it appears the new standards would similarly permit Verizon's application.

I will attend the September 27 meeting and will be able to answer any questions the council may have that evening.





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Suite 235  
Portland, OR 97204

**E. Michael Connors**  
503-205-8400 main  
503-205-8401 direct

[mikeconnors@hkcllp.com](mailto:mikeconnors@hkcllp.com)

September 7, 2016

**VIA EMAIL**

City Council  
c/o Clay Glasgow, City Planner  
City of Gladstone  
City Hall  
525 Portland Avenue  
Gladstone, Oregon 97027

Re: Verizon Wireless – Approved Wireless Communication Facility on Utility Pole  
Planning File No. Z0435-14-PDR  
Request for Extension

Dear Mayor and Councilors:

This firm represents Verizon Wireless (“Verizon”) with regard to the above-referenced application to collocate wireless communication antennas on a PGE utility pole located in the right-of-way with associated ground mounted equipment on the adjacent private property (the “Application”). As you may recall, the City Council approved the Application pursuant to the Findings and Final Order, dated April 24, 2015. Condition of approval no. 1 from the City Council’s decision provides that the approval is valid for one year, but it expressly allows for an extension to this time period.<sup>1</sup> Pursuant to condition of approval no. 1, Verizon hereby requests that the City Council grant an extension until April 24, 2017 to allow it to construct the wireless communications facility.

Despite concerted efforts on Verizon’s part to obtain the building permit and commence construction prior to the initial one-year deadline, Verizon was delayed in filing for the building permits primarily for reasons out of its control. Most of the delay was a result of PGE’s process for approving a co-location proposal on its utility pole, which is a complicated and lengthy process, and delays by PGE’s outside vendors.

Verizon contacted PGE and began working with them on this site as early as September 8, 2014, well before the City concluded its review of the Application. Verizon spent three months doing its due diligence, designing and drawing up the plans per PGE’s requirements. On December 3,

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<sup>1</sup> Condition of approval no. 1 provides: “This approval shall remain valid for one year from the date of final approval. If substantial construction has not occurred by that time, approval shall become void unless an extension is granted.”

2014, more than four months before the City Council's approval, Verizon submitted the required PGE application and supporting information for PGE's review. On January 8, 2015, PGE requested additional information. On January 22, 2015, Verizon resubmitted the PGE application and drawings with the additional requested information. In response to more information requested by PGE, Verizon submitted the final application and related information for PGE's approval on March 8, 2015. On April 8, 2015, PGE informed Verizon that the application was complete and PGE was putting it out to bid for the structural analysis and pole design costs, which are part of PGE's requirements. Therefore, Verizon submitted the final PGE application and PGE initiated its process before the City Council approved the Application.

Unfortunately, the subsequent PGE process took significantly longer than either Verizon or PGE anticipated. Despite Verizon's efforts to push the process along, PGE did not receive the required pole engineering and design quote from its vendor (Black and Veatch) until July 20, 2015 – more than four months after Verizon submitted the final PGE application. On August 24, 2015, PGE advised Verizon that it needed a check to cover the cost of the pole engineering. After receiving the check from Verizon, PGE initiated the pole engineering process on September 25, 2015. The pole engineering process and final pole engineering report were not completed until June 14, 2016 – almost nine months after the pole engineering process was complete.

Although Verizon did not have all of the information it needed to submit for building permits, it initiated the building permit process with the City on April 18, 2016. Verizon attempted to formally submit its building permit application on June 1, 2016, but was informed by City staff that there was a potential issue with the timing based on condition of approval no. 1.

Based on the express language in condition of approval no. 1, Verizon is entitled to request an extension to the initial one-year approved time period. We discussed this issue with the City planning staff and City attorney and they agreed that condition of approval no. 1 allows for an extension if it is approved by the City Council since the City Council was the final decision-maker for the Application.

To enable Verizon to construct this facility as approved by the City Council, Verizon is requesting an extension under condition of approval no. 1 to allow it until April 24, 2017 to obtain the building permit and commence substantial construction of the facility. Verizon is requesting this extension because it was unable to even submit for building permits prior to the expiration of the initial one-year period for reasons that were largely beyond its control as explained in this letter. Since the City Council approved the Application and this is the type of preferred collocation proposal that the City encourages applicants to pursue, we believe the City Council should grant the extension request. The PGE process is largely concluded and Verizon is confident it can obtain the building permit and commence substantial construction of the facility before the April 24, 2017 deadline.

Page 3  
September 7, 2016

It is our understanding that the City Council will consider this extension request at its September 13, 2016 meeting. Verizon will be at that meeting to address the City Council, provide additional information and answer any questions. We appreciate your consideration of our request and hope that the City Council will approve it so that Verizon can construct this collocation facility.

Very truly yours,

HATHAWAY KOBACK CONNORS LLP

E Michael Connors

EMC/pl

cc: Verizon Wireless  
Jacob Hamilton, Virtual Site Walk



BEFORE THE CITY COUNCIL  
CITY OF GLADSTONE, OREGON

IN THE MATTER OF AN APPEAL FROM  
THE PLANNING COMMISSION

FILE NO. Z0435-14-PDR

Verizon Wireless, APPLICANT

FINDINGS AND FINAL ORDER

APPLICATION APPROVED WITH  
CONDITIONS

April 24, 2015

**I. General information.**

- A. Proposal: This is a proposal to co-locate wireless communication antennae on a PGE utility pole in the right-of-way for Portland Avenue (extend and/or replace pole to increase height from 60 feet to 80 feet.) Ground mounted equipment cabinets are shown as being located on adjacent private property.
- B. Legal description: T 2S, R 2E, Section 20BD, Tax Lot 8500.
- C. Location: in front of and at 725 Portland Avenue.
- D. Zone: C-2; Community Commercial.
- E. Comprehensive Plan designation: Commercial.
- F. Site information: The subject site is at an existing power pole located in the right-of-way along Portland Avenue, one block north of the Fire Station and City Hall on the same side of the street. The ground mounted equipment cabinets are proposed to be located on adjacent property that has a house in place but is currently used for commercial purposes.
- G. Vicinity description: This is a mixed-used area, with both commercial and residential uses in place. This proposal involves locating wireless communication antennae on a PGE utility pole along Portland Avenue. PGE utility poles line the length of Portland Avenue.
- H. Procedural background: The Planning Commission held two public hearings for the application, on January 20 and February 17, 2015, and heard extensive public testimony. The Planning Commission unanimously approved the application subject to six (6) conditions of approval. The appellant, David Catto, timely appealed the Planning Commission's decision to the City Council. The appellant and other interested parties submitted oral and written testimony at the hearing. The Council closed the record, considered the evidence and testimony entered into the record, and deliberated. The City Council concluded that the application

complies with the applicable approval criteria, denied the appeal, affirmed the Planning Commission's decision and approved the application subject to a modification to one of the conditions of approval, as detailed in this order.

## II. Findings and Conclusion.

This request is subject to the applicable approval criteria contained in Chapter 17.18, C-2, Community Commercial District; Chapter 17.61, Wireless Telecommunication Facilities; Chapter 17.94, Hearings; and the Development Standards of Title 17 of the Gladstone Municipal Code (GMC).

The Gladstone City Council reviewed the application and the Planning Commission's decision in regards to the applicable provisions of the GMC. Based upon this review, the City Council makes the following findings and conclusions:

- A. GMC Chapter 17.18 addresses the C-2, Community Commercial District. GMC Section 17.18.020 identifies uses permitted outright in the Community Commercial District. GMC Section 17.18.020(9) provides that the following uses and their accessory uses are allowed outright: "Community service facility such as a fire station, library, community center, park, **utility facility** or meeting hall." (Emphasis added). The GMC definition of "utility facility" includes "buildings, structures or any constructed portion of a system that provides for the production, transmission, conveyance, delivery or furnishing of services including, but not limited to, heat, light, water, power, natural gas, sanitary sewer, stormwater, **telephone** and cable television." GMC 17.06.548. (Emphasis added). Therefore, this proposal qualifies as a utility facility and is an outright allowed use in the C-2, Community Commercial District.
- B. GMC Section 17.61.120 strongly encourages collocation of antennas on existing structures and requires the applicant to "exhaust all practicable collocation options" before proposing a new transmission tower. The application satisfied this requirement because the proposal is to collocate on an existing structure.
- C. The City authorizes a collocated wireless telecommunication facility when the applicant demonstrates that the applicable approval criterion identified in GMC Subsections 17.61.060-090, and 17.61.190, are satisfied. The City Council concludes that the application satisfies these approval criterion as follows:
  1. 17.61.060 – *Site size; no minimum lot size shall apply when a telecommunication facility is collocated on an existing building or structure. Telecommunication facilities collocated on existing towers or reconstructed existing towers shall not decrease the setback of the existing tower. For the purposes of this section, an increase in tower circumference to accommodate collocated facilities shall not be deemed to decrease setbacks.*

Response: The City Council finds that since this is a proposal to collocate telecommunication facilities on an existing structure there is no minimum lot or site size required. This is not a proposal to collocate on an existing tower, nonetheless the setbacks will not be decreased and any increase in the circumference of a replacement pole shall not be deemed a decrease in the setback per this Subsection. **This criterion is satisfied.**

2. 17.61.070 – *Suitable facilities for collocation. (1) towers or attachments may be placed on existing structure such as athletic field light poles, utility towers and tall buildings provided that the addition of the antenna equipment will not interfere with the normal operation of the utilities or existing transmission facilities and the collocated facility complies with the height limit in GMC 17.61.080; and (2) existing structure may be replaced or structurally enhanced when necessary to permit collocation as long as the setback of the reconstructed structure is not decreased as described in GMC 17.61.060 and as long as the height of the reconstructed facility complies with the height limit contained in GMC Section 17.61.080 as applied to the existing structure prior to replacement or reconstruction.*

Response: This is a proposal to collocate on an existing structure that will be replaced and/or structurally enhanced. The applicant proposes to extend and/or replace the existing pole and increase the height from 60 feet to 80 feet, with the wireless antennas to be located at approximately 73 feet. The applicant states that the additional height is necessary to provide enough separation from the existing PGE utility equipment to allow uninterrupted and normal operation of the facility and that a replacement pole will likely be required to accommodate the additional height and weight. The replacement pole will not decrease the setback described in GMC Section 17.61.060 and the additional 20 feet in the height of the pole complies with the height limit contained in GMC Section 17.61.080. **This criterion is satisfied.**

3. 17.71.080 – *Collocated facilities are exempt from the height limits of the underlying zoning district, but shall be no more than ten feet (10') taller than the existing telecommunication structure in a residential zone or no more than twenty feet (20') taller than the existing structure in a commercial or industrial zone.*

Response: The existing structure is located in the C-2 zone, a commercial zone. The application proposes increasing the height of the existing pole by 20 feet. **This criterion is satisfied.**

4. 17.61.090 - *Visual Impact. (1) all ancillary facilities shall be screened, hidden or disguised; (2) antennae shall be screened, hidden or disguised, or shall be painted or colored to blend into the structure or surroundings; and (3) a proposed collocated facility that does not comply*

*with GMC Sections 17.61.100 through 17.61.180 shall be processed as a new facility.*

Response: The applicant proposes to screen the ancillary facilities and paint the antennas to blend into the structure or surroundings. The applicant proposes to install a six (6) foot high sight-obscuring fence surrounding the ancillary equipment cabinets for screening. A three (3) foot wide landscape buffer was originally proposed, consisting of medium and small trees as well as medium and small shrubs on the SW and SE borders of the fenced-in equipment enclosure, to provide additional screening. The Planning Commission imposed an additional condition of approval requiring increased vegetative screening for the ground-mounted equipment, to be reviewed by the planning staff. The City Council modified an additional condition of approval imposed by the Planning Commission, requiring the replacement of the diesel generator in the equipment cabinets with an electric battery back-up power to minimize the impact of the equipment cabinet on the adjacent property. The proposed antennas and associated equipment will be shades of gray, dark gray, brown and off-white and blend in with the pole and surroundings. This is a collocated facility that complies with the applicable sections of the GMC and therefore should not be processed as a new facility. **This criterion is satisfied.**

5. 17.71.190 – *Collocated facilities. In addition to standard required application material, the applicant shall submit the following information in conjunction with an application for a collocated facility: (1) documentation demonstrating that the collocated facility will comply with non-ionizing electromagnetic radiation (NEIR) emissions standards adopted by the FCC; and (2) documentation addressing the specific criteria for compliance contained in GMC Sections 17.61.100 through 17.61.180.*

Response: The applicant provided a copy of the non-ionizing electromagnetic radiation (NEIR) emissions report (Exhibit A) and demonstrated that the collocated facility will comply with the NEIR emissions standards adopted by the FCC. The applicant also provided documentation addressing the specific criteria applicable to this collocation proposal contained in GMC Section 17.61.100 through 17.61.180. **This criterion is satisfied.**

Based on the applicant's testimony and the additional written materials it submitted into the record, the City Council believes the above cited standards are met. No participants questioned or objected to the applicant's response as to how it would satisfy these criteria. Therefore, the application complies with the applicable approval criteria

D. David Catto appealed the Planning Commission's decision pursuant to a written appeal, dated March 11, 2015. The City Council evaluated the appeal and rejects the appeal for the following reasons:

1. The appeal does not challenge the Planning Commission's determination that the application complies with the applicable approval criteria. The application must be approved or denied based on the applicable approval criteria. The applicable approval criteria for collocation proposals are set forth in GMC Sections 17.61.060 through 17.61.100, and 17.61.190. Since the appeal does not challenge the Planning Commission's decision regarding the approval criteria, there is no basis for reversing the Planning Commission's decision and denying the application.
2. The appeal is based almost entirely on GMC Section 17.61.020, which sets forth the purpose for GMC Chapter 17.61. GMC Section 17.61.020 merely provides the purpose behind the specific design and siting standards adopted in GMC Sections 17.61.060 through 17.61.120, and does not contain approval criteria. Since GMC Section 17.61.020 does not contain approval criteria, the application cannot be denied under this Section. Additionally, the application is presumed to be consistent with the purpose statements because it complies with the specific design and siting standards applicable to a collocation facility. Even if GMC Section 17.61.020 contained approval criteria, the application complies with these criteria for the reasons provided below.
3. The appeal claims that the proposed facility does not comply with GMC Section 17.61.020(1) because it will be 20 feet taller than the existing utility pole and surrounding structures and trees. GMC Section 17.61.020(1) does not limit the height of collocated facilities to the height of the existing pole or the surrounding structures and trees. Since wireless communication antennas operate via line-of-sight communication with surrounding antennas in the network, the antennas must be placed on a structure that is taller than the surrounding structures and trees to maintain that line-of-sight. Additionally, GMC Section 17.61.080, which specifically regulates the height limit for collocated facilities, expressly allows the existing structure to be increased 20 feet in height in commercial and industrial zones. The proposed facility cannot be inconsistent with GMC Section 17.61.020(1) since it strictly complies with the height limits set forth in GMC 17.61.080.
4. The appeal claims that the utility pole and antennas do not comply with GMC Section 17.61.090 because they cannot blend in with the "ever changing" sky color. GMC Section 17.61.090 does not apply to the utility pole itself – it only applies to ancillary facilities and antennas. The ancillary facility in this case, the equipment cabinet, will be screened and hidden by the sight-obscuring six (6) foot high fence and landscape buffer.

GMC Section 17.61.090(2) provides that antennas can be “painted or colored to blend into the structure or surroundings,” which is what the applicant proposed in this case. The assertion in the appeal that it is effectively impossible to satisfy this requirement because the sky changes colors depending on the weather misinterprets this standard. GMC Section 17.61.090(2) does not require the antennas to be painted to match the sky’s changing colors nor is it intended to impose standards that would be impossible to satisfy.

5. The appeal claims that the proposed facility does not satisfy GMC Section 17.61.020(2) because it could damage the adjacent structures. The appeal misinterprets this provision and is contrary to the evidence in the record. GMC Section 17.61.020(2) provides that the objective of avoiding potential damage to adjacent properties is satisfied “through structural standards and setback requirements.” There is substantial evidence in the record that the proposed facility will satisfy the structural standards and setbacks, and therefore it satisfies GMC Section 17.61.020(2). The appeal does not contest this evidence or provide any evidence to the contrary.

6. The appeal claims that the proposed facility does not satisfy GMC Section 17.61.020(3) because it only allows for the applicant’s antennas. This provision only applies to towers, not utility pole collocations. Towers are defined as transmission towers, not existing utility poles. GMC Section 17.61.050(11)-(14). Even if it did apply to utility poles, the requirement for existing towers is limited to those “that are physically capable of sharing.” There is substantial evidence in the record that the existing utility pole is not physically capable of accommodating additional carriers due to the need to provide separation between the antennas and utility facilities, and the height limit. Requiring the applicant to provide more room to accommodate other carriers would only increase the height of the pole, number of antennas and visual impacts.

7. The appeal claims that approving the application will open up the City “to single use cell towers for all 82 registered cell carrier providers.” This application does not involve a single use cell tower. It involves collocation on an existing structure, a design/siting approach that is strongly encouraged under GMC Chapter 16.71 because it avoids the need for new transmission towers that have greater impacts on surrounding properties. Nor does the City’s approval of the application mean that it must approve every future collocation proposal. All future proposals must satisfy the applicable criteria in GMC Chapter 16.71.

E. Some parties raised additional issues at the April 14 public hearing. The City Council evaluated these issues and rejected them for the following reasons:

1. Some parties argued that the applicant should be required to consider alternative sites. GMC Chapter 16.71 does not require the applicant to consider alternative sites. If the application complies with the applicable approval criteria, it must be approved regardless of opposition from community members.
2. Some parties argued that the application should be denied because there is no need for this facility. GMC Chapter 16.71 does not require the applicant to demonstrate that there is a need for this facility. Regardless, the applicant provided substantial evidence that the proposed facility is necessary to provide additional capacity for data traffic in this area and no evidence to the contrary was submitted. Additionally, there is no reason for the applicant to pursue this facility if it was not necessary since it is a significant cost for the applicant.
3. Some parties argued that the application must be reconsidered because the adjacent property is allegedly zoned R-5, residential. The City's zoning map shows the adjacent property zoned as C-2. Regardless, even if the adjacent property was zoned R-5 there is no prohibition against siting a collocation facility adjacent to a R-5 zoned property. The person who raised this issue failed to explain why the application cannot be approved if the adjacent property is zoned R-5.
4. Some parties argued that the tree next to the subject utility pole may have to be removed. The applicant is not proposing that the tree be removed. Regardless, the application's compliance with the approval criteria is not contingent upon the tree remaining. The City Council concluded that it does not have the authority to require the applicant to maintain this tree since the applicant does not have control over the tree.
5. Some parties argued that the application should be denied because some surrounding properties might be eligible for historic designation. The fact that some properties could be eligible for historic designation in the future does not mean that they are designated as historic properties or that they prohibit wireless communication facilities in the surrounding areas. Neither GMC Chapter 17.61 nor any other provision in the GMC prohibits or restricts wireless communication facilities based on surrounding properties that might be eligible for historic designation. To the extent impacts on historic properties are considered, those impacts are considered as part of the SHPO and NHPA process. The applicant is proposing a collocation with significant mitigation measures that will minimize any impacts on historical properties. Since Portland Avenue is already lined with utility poles, additional visual impacts from this proposed facility will be negligible in comparison to the existing visual impacts from the numerous utility poles.

6. Some parties expressed concerns about possible interference with police or fire department frequencies given the close proximity to these public buildings. The applicant's facilities are on dedicated frequencies established by the FCC and will strictly comply with those frequencies. There is no evidence that the applicant's frequencies interfere with public safety frequencies and the applicant provided testimony that these types of facilities are regularly located on or near police/fire stations in order to provide better service for these emergency responders.
7. Some parties raised health and safety concerns due to RF emissions. The applicant's NIEA emissions report demonstrates that the proposed facility complies with all RF emissions requirements. While some parties speculated about potential health risks, none provided evidence to support their claims. GMC Chapter 17.61 does not contain RF emission standards or allow the consideration of alleged safety or health effects. The Federal Telecommunications Act prohibits the City from regulating wireless service facilities based on concerns about the environmental or safety effects of RF emissions since those standards have been mandated at the federal level.
8. Some parties expressed concern about the visual and noise impact of the equipment cabinets. The equipment cabinets comply with the setback, fencing and landscaping requirements. The equipment cabinet will be screened with a sight-obscuring six (6) foot high fence and substantial landscape buffer. The City Council is requiring the replacement of the diesel generator with an electric battery back-up power to minimize the noise impacts. The equipment cabinet will comply with the applicable noise regulations.

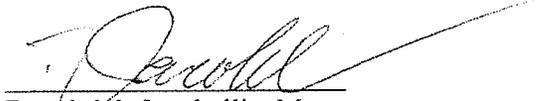
### **III. Order and conditions of approval.**

ORDER: Based on the above findings, and subject to the following conditions of approval, the City Council denies the appeal and approves the application.

1. This approval shall remain valid for one year from the date of final approval. If substantial construction has not occurred by that time, approval shall become void unless an extension is granted.
2. Additional vegetative screening to be added as discussed to provide additional buffering of ground-mounted equipment. Planting plan to be appropriate for the purpose and as approved by Planning staff. Vegetation to be maintained by operator for entire life of use.
3. Ground-mounted equipment area to be surrounded with sight-obscuring, six (6') high cyclone fence with slats.

4. Replace proposed diesel generator with electric battery back-up power.
5. Sound level of all equipment, including back-up power facility to satisfy the Gladstone Noise Ordinance.
6. Emergency contact information to be on file and up-to-date with City of Gladstone at all times.

Signed this 22 day of April, 2015.

  
\_\_\_\_\_  
Dominick Jacobellis, Mayor

#### **APPEAL TO THE LAND USE BOARD OF APPEALS (LUBA)**

Any person who appeared before the City Council, either orally or in writing, may appeal this decision to the Land Use Board of Appeals. An appeal to the Land Use Board of Appeals must be made within 21 days of this order's date and must comply with ORS 197.830 and LUBA's rules at OAR Chapter 661, division 10. A notice filed thereafter will not be timely filed and LUBA will dismiss the appeal.



# City of Gladstone Staff Report

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Report Date: September 21, 2016  
Meeting Date: September 27, 2016  
To: Gladstone City Council  
From: Eric Swanson

## AGENDA ITEM

Proposed Franchise Fee change to the Solid Waste Ordinance

## History/Background

The City of Gladstone is one of the only Cities in the region that does not receive a Solid Waste Franchise Fee based on gross revenue. The Gladstone City Council briefly discussed this at the Right Of Way Ordinance hearing and work session in May of 2016 and was told this item would be brought back for later discussion.

## Proposal

In addition to changing the fee structure this Ordinance would allow the City or the franchisee to enforce the franchise on any 3<sup>rd</sup> party Solid Waste providers that would attempt to violate this exclusive franchise. This is currently the arrangement in the existing Ordinance. Additionally we have amended the Ordinance to allow for cost recovery of attorney's fees for the prevailing party and a penalty equal to the lost revenue to the Franchisee. The current provision is cost prohibitive to enforce this provision. This protects the City's interest as a third party violators do not pay a franchise fee to the City.

## Options

Gladstone Disposal is proposing a straight increase of 5% across all categories or a weighted option that would increase business rates and reduce residential rates.

## Cost Impact

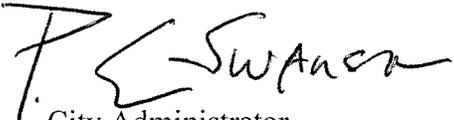
Current revenue in the City is roughly 1.695 million (assuming \$205,000.00 Metro tipping fee is not included as pass through). Five percent fee on 1.69 million would be approximately \$84,750.00 of new revenue for the City minus the \$360.00 current annual fee.

## Recommended Staff Action

**SECOND READING OF ORDINANCE** Approve Ordinance No. 1469 to change the solid waste franchise fee to 5% of gross revenue derived within the City of Gladstone. Effective date of January 1, 2017.

Department Head  
Signature

Date

  
City Administrator  
Signature

Date



**ORDINANCE NO. 1469**

***AN ORDINANCE AMENDING ORDINANCE NO. 1383 AND THE EXCLUSIVE FRANCHISE FOR GLADSTONE DISPOSAL COMPANY***

Section 1. Section 8 of Ordinance No. 1383 is amended as follows (new language is **bolded** and repealed language is ~~struckthrough~~): “The Franchisee shall pay to the City a franchise fee of ~~\$360~~ **five percent (5%) of Franchisee’s gross revenues** each year for the term of this Franchise, until such time as the Council, in its discretion **and as authorized by law**, establishes a new franchise fee; provided, however, that any increase of the franchise fee shall be implemented only after giving due consideration to Section 12 of this Ordinance, concerning the Franchisee’s Rate of Service. In consideration of such franchise fee, the Franchisee shall provide Service to the City and to churches located within the City at no charge. The franchise fee shall be payable annually, and shall be due no later than December 15, of each year. The magnitude of the franchise fee and extent to which the Franchisee provides Service at no charge, as required by this Section 8, shall be taken into consideration by the Council in setting the Franchisee’s Rates for Service pursuant to Section 12, hereof.”

Section 2. Subsection 3.4 of Ordinance No. 1383 is amended as follows: “The City may enforce the provisions of this Ordinance by administrative or civil action, as it may deem necessary to obtain compliance with this Ordinance. Violation of any provisions of this Ordinance shall constitute a civil infraction, subject to the code enforcement jurisdiction of the City. **Franchisee shall (in addition to all other legal rights and remedies it may otherwise possess) have a cause of action against a person offering or providing Service in the City in any court of competent jurisdiction, including injunctive relief. In addition to injunctive relief, Franchisee may seek to recover from any person offering or providing services in the City a sum equal to the amount Franchisee would otherwise charge for provision of the proffered service in the City. The prevailing party in an action brought under this section shall be entitled to recover their costs, (including attorney fees and expert witness fees) at trial and on appeal.**”

Section 3. No other changes are made to Ordinance No. 1383 except those in sections 1 and 2, above, and Ordinance No. 1383 is otherwise reaffirmed in its entirety.

ADOPTED by the Gladstone City Council this \_\_\_\_ of \_\_\_\_\_, 2016.

ATTEST:

\_\_\_\_\_  
Thomas Mersereau, Mayor

\_\_\_\_\_  
Jacque Betz, Interim Assistant City Administrator



**BUSINESS  
CARRIED  
FORWARD**



# TOWN HALL MEETING



**Thursday,  
October 19, 2016**

**Time: 6:30—8:30 p.m.  
(Doors Open at 6:00 p.m.)**

**Gladstone Senior Center  
1050 Portland Avenue**

Gladstone City Council is inviting residents to attend a Town Hall meeting. City Council topics of discussion include: Update on Accomplishments from October 2015 Town Hall & Strategic Plan Update, Planned Civic Building Capital Improvements (City Hall/Library & Police Department), FY 2016-17 Budget Update, Status of On-Going Master Plans & Studies (Parks, Sewer, TSP, Pavement Management, Downtown Revitalization, Trolley Trail Replacement Feasibility), Urban Renewal Map (minor/major) Revisions, Library Capital IGA Dispute with Clackamas County, Completed Dahl Beach/Bulkhead Project at Meldrum Bar in Cooperation with the Port of Portland, Regional Wastewater Governance, Summary of six November 2016 Ballot Measures, Technology Plan, Demonstration of New City Website—features, feedback. Bring questions or comments for City Council. City staff and elected officials will also be available to answer one on one questions after the meeting is adjourned. Please help us get the word out by telling your friends and neighbors about the meeting.

