



MEMORANDUM

City of Beaverton

Community Development Department

To: Interested Parties
From: City of Beaverton Planning Division
Date: October 14, 2020
Subject: **Notice of Decision for DI2020-0002 AT&T Small Cell Director's Interpretation**

Please find attached the Notice of Decision for **DI2020-0002 AT&T Small Cell Director's Interpretation**. Pursuant to Section 50.40.11.E of the Beaverton Development Code, the decision for **DI2020-0002 AT&T Small Cell Director's Interpretation** is final, unless appealed within twelve (12) calendar days following the date of the decision. The procedures for appeal of a Type 2 Decision are specified in Section 50.65 of the Beaverton Development Code. The appeal shall include the following in order for it to be accepted by the Director:

- The case file number designated by the City.
- The name and signature of each appellant.
- Reference to the written evidence provided to the decision-making authority by the appellant that is contrary to the decision.
- If multiple people sign and file a single appeal, the appeal shall include verifiable evidence that each appellant provided written testimony to the decision-making authority and that the decision being appealed was contrary to such testimony. The appeal shall designate one person as the contact representative for all pre-appeal hearing contact with the City. All contact with the City regarding the appeal, including notice, shall be through this contact representative.
- The specific approval criteria, condition, or both being appealed, the reasons why a finding, condition, or both is in error as a matter of fact, law or both, and the evidence relied on to allege the error.
- The appeal fee of \$250.00, as established by resolution of the City Council.

The appeal closing date for DI2020-0002 AT&T Small Cell Director's Interpretation is 4:30 p.m., October 26, 2020.

The complete case files including findings, conclusions, and conditions of approval, if any, are available for review. The City of Beaverton has declared a State of Emergency due to COVID-19 and the Community Development Division is closed to the public until further notice. The Community Development Department is evaluating temporary changes to processes and procedures to respond appropriately to the COVID-19 State of Emergency and is committed to ensuring that the land use review process continues to fulfill the requirements of state and local law while protecting the health and wellbeing of the community. For more information about the case file, please contact Sambo Kirkman, Senior Planner at (503) 526-2557 or skirkman@beavertonoregon.gov



NOTICE OF DECISION

DATE: October 14, 2020

TO: All Interested Parties

FROM: Sambo Kirkman, Senior Planner

PROPOSAL: **DI2020-0002 AT&T Small Cell Director's Interpretation**

LOCATION: The site is in the public right-of-way in the planter area adjacent to 9350 SW Nimbus Avenue.

SUMMARY: The applicant, New Cingular Wireless PCS, LLC, for AT&T, requests the Director interpret the Beaverton Development Code regarding the review of PGE equipment as part of a small cell wireless facility application. Specifically exempting Wireless Facility land use review of PGE owned and operated equipment connecting to small cell facilities within the right-of-way.

APPLICANT: New Cingular Wireless PCS, LLC
Kristy Weaver
16331 SW 72nd Way
Redmond, WA 98052

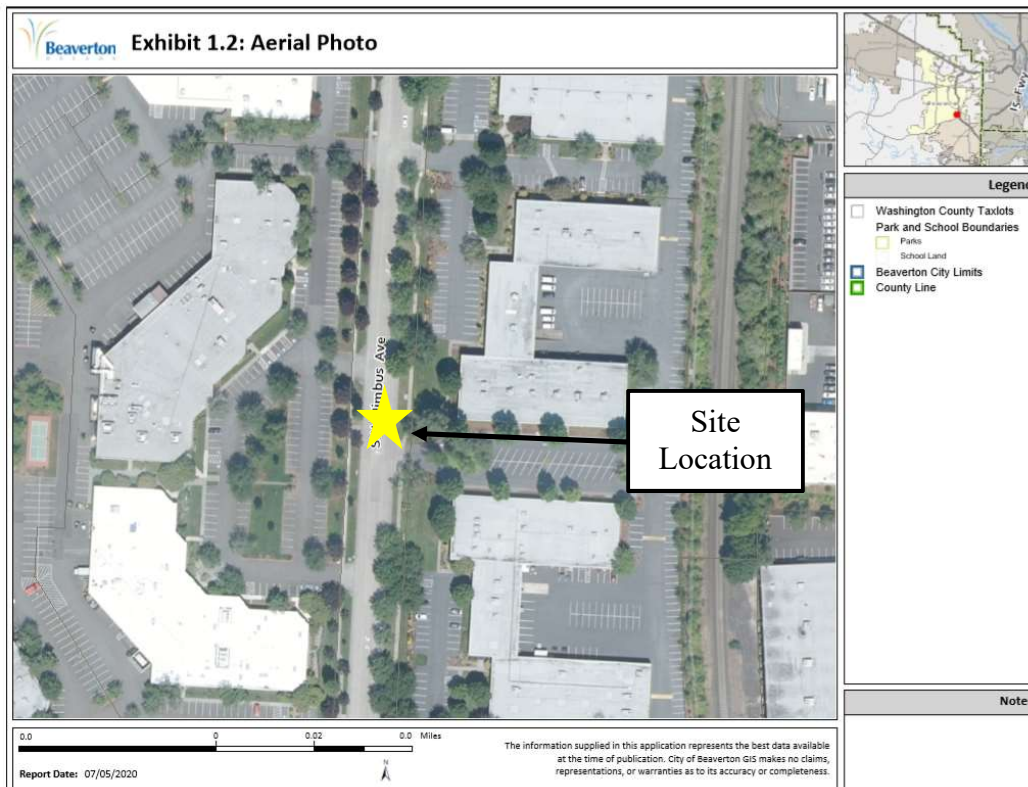
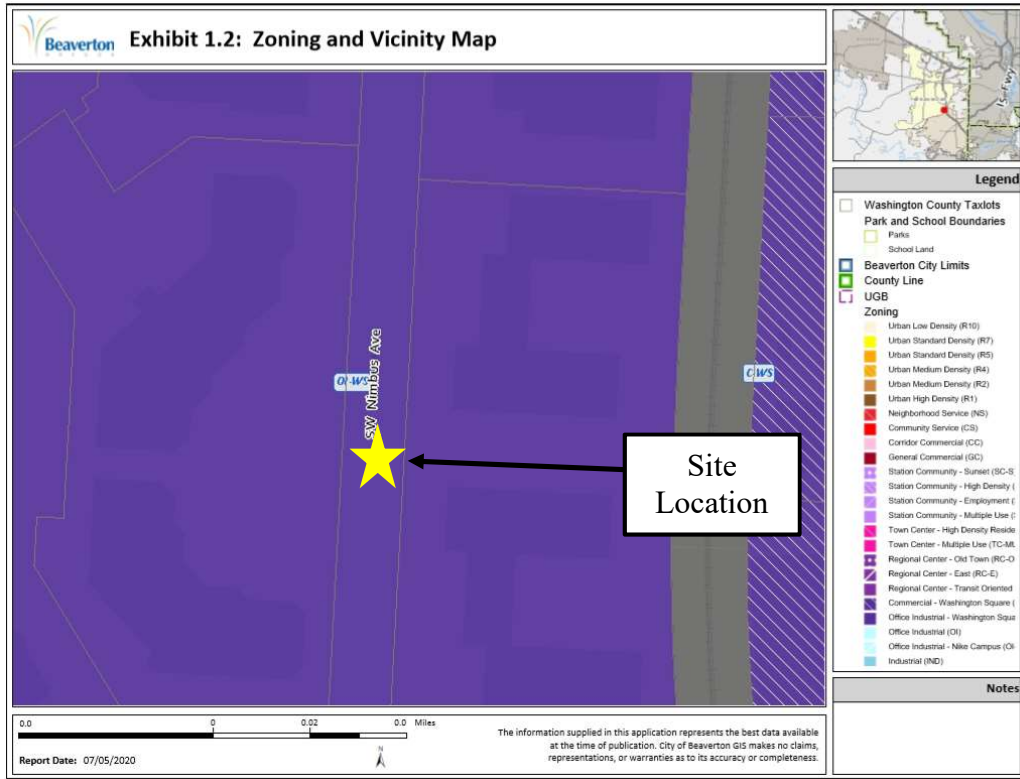
APPLICANT'S:
REPRESENTATIVE J5 Infrastructure Partners
Meredith Hewett
6732 SW Terri Ct.
Portland, OR 97225

APPLICABLE
CRITERIA: Director's Interpretation, Section 40.25.15.1.C

DECISION: **APPROVAL of DI2020-0002 AT&T Small Cell Director's Interpretation**, subject to conditions identified at the end of this report.

AUTHORIZATION: *Cheryl Twete*
Cheryl Twete, Community Development Director

ZONING/VICINITY/AERIAL MAP



BACKGROUND FACTS

Key Application Dates

Application	Submittal Date	Application Deemed Complete	120-Day*
DI2020-0002	Aug 4, 2020	Aug 19, 2020	Dec. 17, 2020

*Pursuant to Section 50.25.9 of the Beaverton Development Code this is the latest date, by which a final written decision on the proposal can be made.

Existing Conditions Table

Zoning	Office Industrial – Washington Square (OI-WS)	
Current Development	Right-of-Way	
Site Size & Location	The site is in the public right-of-way in the planter area adjacent to 9350 SW Nimbus Avenue	
NAC	Greenway	
Surrounding Uses	Zoning: North: OI-WS South: OI-WS East: OI-WS West: OI-WS	Uses: North: OI-WS South: OI-WS East: OI-WS West: OI-WS
	South: OI-WS	South: Commercial
	East: OI-WS	East: Commercial
	West: OI-WS	West: Commercial

Development of New Small Cell Regulations Underway

In 2017, the city adopted updates to its Wireless Facility regulations to amend the process for collocation and develop standards and processes for review of facilities in the right of-way (ROW). Based on feedback from the service providers and the upcoming changes to the federal regulations by the Federal Communications Commission (FCC), staff began looking at further updates to the permitting process and design standards to the city's Wireless Facilities regulations in the Summer of 2018.

In September 2018, the Federal Communication Commission (FCC) adopted new regulations limiting city control of wireless communication facilities, specifically small cell installation. City staff's work expanded to developing new regulations and processes that will address regulatory changes made by the FCC. Currently, review of a small cell facility in the right-of-way requires completing an interim Small Cell Application that the City created to comply with FCC rules until a permanent approach is adopted, and one component of this application is obtaining land use approval through the Wireless Facility application.

The draft approach being developed by staff includes removing review of small cell wireless facilities in the right-of-way from the Beaverton Development Code (BDC) Wireless Communications Facilities Regulations and creating a separate regulatory document to govern these installations. The BDC will continue to govern some aspects of wireless installations not located in the right-of-way.

This Director’s Interpretation has been requested to address the Small Cell Facility approved near 9350 SW Nimbus Avenue, specifically to clarify whether associated PGE equipment is within the scope the existing Wireless Facility land use application.

Table of Contents

		<u>PAGE NO.</u>
Attachment A	DI2019-0004 Director’s Interpretation	DI1-D4

Exhibits

Exhibit 1.	Materials submitted by Staff
Exhibit 1.1	Vicinity Map (page SR-2 of this report)
Exhibit 1.2	Zoning Map (page SR-2 of this report)
Exhibit 2.	Public Comment
No Comments Received	
Exhibit 3.	Materials submitted by the Applicant
Exhibit 3.1	Submittal Package including plans (on file at City Hall)

**ANALYSIS AND FINDINGS
DIRECTOR'S INTERPRETATION
AT&T Small Cell
DI2020-0002**

Section 40.25.15.1.C. of the Development Code identifies the approval criteria for evaluating and rendering a decision on all Director's Interpretation applications.

The approval criteria are as follows:

1. The proposal satisfies the threshold requirements for a Director's Interpretation application.

The applicant requests that the Director interpret Beaverton Development Code Section 60.70 *Wireless Communications Facilities* and Chapter 90 regarding the review of PGE equipment as part of a small cell wireless facility application. Specifically, it is requested that of PGE owned and operated equipment connecting to small cell facilities within the right-of-way be exempted from Wireless Facility application land use review. This request relates to the approval of the small cell facility on SW Nimbus for AT&T (WF2020-0011). This request meets Threshold 1 for a Director's Interpretation:

1. *A request that the Director interpret the Development Code in writing.*

Therefore, the Director finds that the proposal meets the criterion for approval.

2. All City application fees related to the application under consideration by the decision-making authority have been submitted.

The fee for a Director's Interpretation application has been paid.

Therefore, the Director finds that the proposal meets the criterion for approval.

3. That the interpretation is consistent with the City's Comprehensive Plan and other provisions within this Code.

The applicant has requested that the City interpret the Beaverton Development Code (BDC) regarding the review of PGE equipment as part of a small cell wireless facility application.

Relevant Comprehensive Plan Sections

The applicant states there are no provisions in the City's Comprehensive Plan relevant to their request. The Director concurs with the applicant's assertion. While Chapter Five *Public Facilities and Services Element* of the Comprehensive Plan addresses some utilities, both Wireless Communication Facilities and electrical services are not identified in this Chapter as a public facility relevant to the policies in this Comprehensive Plan chapter.

Relevant Beaverton Development Code Sections:

The sections of the Beaverton Development Code that are relevant to this request are below:

60.50.25.8 Uses Requiring Special Regulations

8. Utilities: The erection, construction, alteration, or maintenance by public utility or municipal or other governmental agencies of any electrical, gas, steam, potable and non-potable water transmission or distribution systems, collection, communication, supply or disposal system, including poles, towers, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment and accessories in connection therewith, but not including buildings, shall be Permitted in any district

60.70.35.19. Specific Development Standards for WCF in Public Road Right-of-Way

M. Equipment cabinets shall be placed completely within underground vaults. No at-grade or pole-mounted equipment cabinets, equipment in the public right-of-way, or on any equipment on private property (above or below grade) abutting the structure is permitted. The mounting of equipment to the structures shall conform to the following:

1. The smallest antennas, equipment, and equipment cabinets to satisfy engineering requirements and service objectives shall be utilized.
2. All cabling and wiring shall be placed completely underground or on the interior of the structure, tower or pole. Collocates to poles that existed on or before the date of adoption of this text amendment, that cannot accommodate cabling run on the interior, may have cables attached to the exterior, provided that they are painted to match the color of the structure.
3. Mounting hardware and accessory equipment shall be painted to match the color of the structure, tower or pole.

Chapter 90: Definitions

Utility. For the purposes of this code, a utility includes but is not limited to a local exchange carrier or an electric, gas, water, or other public utility, and who owns or controls poles, ducts, conduits, or rights of way used, in whole or in part, for any wire or cable communications [ORD 4312; July 2004]

Wireless Communication Facility (WCF). [ORD 4248; May 2003] A non-staffed facility for the transmission of radio frequency (RF) signals, usually consisting of an equipment shelter, cabinet or other enclosed structure housing electronic equipment; a support structure; and antenna systems or other transmission and reception devices. This includes cellular towers, cellular antennas, satellite dishes, and microwave dishes.

The Director concurs with the applicant's assertion that the equipment installed, operated, and maintained by Portland General Electric is not part of a Wireless Communication Facility. As the applicant states:

- The PGE equipment addressed by the applicant in the approval of a small cell facility (WF2020-0011) is a power transformer that in error was discussed as part of a WCF approval.
- While the PGE transformer will provide correct levels of power to the small cell facility, it is part of the PGE infrastructure and not the WCF.
- Pursuant to BDC Section 60.50.25.8, utilities are permitted in all zoning districts, this would include PGE infrastructure.

The Director notes that BDC definitions include electrical services as a utility and PGE is the electrical service provider for the City. Standards that apply to WCF in the right-of-way address equipment associated with supporting the antennas but does not specifically address power sources to the facility. Components of the WCF described in Chapter 90 of the BDC do not include equipment provided by a separate utility provider and therefore would not be part of WCF application approval.

The PGE transformer is described as equipment that powers the WCF like transformers that provide power to other uses throughout the city. Land use review associated with PGE infrastructure typically include Design Review applications for equipment located on private property and not within the public right-of-way. The City's Utility Undergrounding regulations (BDC 60.65) are implemented through Land Division and Design Review applications. The Utility Undergrounding regulations in the BDC do not apply to PGE equipment within the public right-of-way. However, these facilities may be evaluated by Site Development through a Right-of-Way Permit application.

Summary

Based on the analysis above and the information submitted by the applicant, the Director concludes that equipment in the right-of-way owned, operated, and maintained by PGE is not part of the WCF and therefore would not be part of the land use review component of a Small Cell Application, specifically the Wireless Facilities application in the BDC.

However, equipment in the right-of-way owned, operated, and maintained by PGE may be subject to review under other components of the Small Cell Application.

Therefore, the Director finds that the proposal meets the criterion for approval.

- 4. When interpreting that a use not identified in the Development Code is a permitted, a conditional, or prohibited use, that use must be substantially similar to a use currently identified in the subject zoning district or elsewhere in the Development Code.**

The applicant has not requested an interpretation of a use not identified in the Development Code, because Wireless Communication Facilities are currently identified in the code.

Therefore, the Director finds that the approval criterion is not applicable.

- 5. The proposal contains all applicable submittal requirements as specified in Section 50.25.1 of the Development Code.**

All applicable submittal requirements for the Director's Interpretation application have been submitted. The application was deemed complete by the city on August 19, 2020.

Therefore, the Director finds that the proposal meets the criterion for approval.

- 6. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.**

The necessary documents related to the Director's Interpretation have been submitted.

Therefore, the Director finds that the proposal meets the criterion for approval.

CONCLUSION

Based on the facts and findings stated above, the Community Development Director interprets that equipment within the public right-of-way, owned, operated and maintained by PGE that connects to a small cell facility is not considered part of the Wireless Communication Facility and is exempt from the Wireless Facility land use review component of the Small Cell Application. However, it may be subject to review under other components of the Small Cell Application.

CONDITIONS OF APPROVAL

No conditions of approval are being proposed with DI2020-0002 AT&T Small Cell Director's Interpretation.