City of Sherwood Oregon

Home of the Tualatin River National Wildlife Refuge

CITY COUNCIL MEETING PACKET

FOR

Tuesday, September 20, 2022

Sherwood City Hall
22560 SW Pine Street
Sherwood, Oregon

6:30 pm City Council Work Session

7:00 pm City Council Regular Meeting

This meeting will be live streamed at
https://www.youtube.com/user/CityofSherwood

City of Sherwood Oregon

Home of the Tualatin River National Wildlife Refuge

AGENDA

SHERWOOD CITY COUNCIL
September 20, 2022

6:30 pm City Council Work Session

7:00 pm City Council Regular Session

Sherwood City Hall
22560 SW Pine Street
Sherwood, OR 97140

This meeting will be live streamed at
https://www.youtube.com/user/CityofSherwood

6:30 PM WORK SESSION

1. **Solid Waste Annual Rate Update**
   (Craig Sheldon, Public Works Director)

7:00 PM REGULAR SESSION

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL**
4. **APPROVAL OF AGENDA**
5. **CONSENT AGENDA**
   - A. **Approval of August 24, 2022 City Council Meeting Minutes** (Sylvia Murphy, City Recorder)
   - B. **Approval of September 6, 2022 City Council Meeting Minutes** (Sylvia Murphy, City Recorder)
   - C. **Resolution 2022-073, Authorizing the City Manager to enter into a contract with Bureau Veritas for the Americans with Disabilities Act (ADA) Transition Plan**
     (Craig Sheldon, Public works Director)
   - D. **Resolution 2022-074, Authorizing City to Enter into an Intergovernmental Agreement to Pursue Litigation Against the State Concerning the Adoption of Administrative Rules**
     (Alan Rappleyea, Interim City Attorney)
   - E. **Resolution 2022-075 Amend Previous Resolutions and Adopt New Engineering Design and Standard Details for Small Wireless Facilities** (Bob Galati, City Engineer)
6. **CITIZEN COMMENTS**
7. **PRESENTATIONS**
   - A. **Recognition of Sherwood High School Students Academic and Athletic Achievements**
     (Keith Mays, Mayor)
8. **CITY MANAGER REPORT**
9. **COUNCIL ANNOUNCEMENTS**
10. **ADJOURN**

How to Provide Citizen Comments and Public Hearing Testimony: Citizen comments and public hearing testimony may be provided in person, in writing, or by telephone. Written comments must be submitted at least 24 hours in advance of the scheduled meeting start time by e-mail to Cityrecorder@Sherwoodoregon.gov and must clearly state either (1) that it is intended as a general Citizen Comment for this meeting or (2) if it is intended as testimony for a public hearing, the specific public hearing topic for which it is intended. To provide comment by phone during the live meeting, please e-mail or call the City Recorder at Cityrecorder@Sherwoodoregon.gov

or 503-625-4246 at least 24 hours in advance of the meeting start time in order to receive the phone dial-in instructions. Per Council Rules Ch. 2 Section (V)(D)(5), Citizen Comments, “Speakers shall identify themselves by their names and by their city of residence.” Anonymous comments will not be accepted into the meeting record.

How to Find out What's on the Council Schedule: City Council meeting materials and agenda are posted to the City web page at www.sherwoodoregon.gov, generally by the Thursday prior to a Council meeting. When possible, Council agendas are also posted at the Sherwood Library/City Hall and the Sherwood Post Office.

To Schedule a Presentation to the Council: If you would like to schedule a presentation to the City Council, please submit your name, phone number, the subject of your presentation and the date you wish to appear to the City Recorder, 503-625-4246 or Cityrecorder@Sherwoodoregon.gov

ADA Accommodations: If you require an ADA accommodation for this public meeting, please contact the City Recorder’s Office at (503) 625-4246 or Cityrecorder@Sherwoodoregon.gov at least 48 hours in advance of the scheduled meeting time.

SHERWOOD CITY COUNCIL MEETING MINUTES
22560 SW Pine St., Sherwood, Or
August 24, 2022

SPECIAL SESSION

1. **CALL TO ORDER:** Council President Rosener called the meeting to order at 7:02 pm.

2. **COUNCIL PRESENT:** Council President Tim Rosener, Councilors Doug Scott and Kim Young. Councilor Taylor Giles participated remotely. Mayor Keith Mays and Councilor Renee Brouse were absent.

3. **STAFF PRESENT:** City Manager Keith D. Campbell, IT Director Brad Crawford, Associate Planner Eric Rutledge, Planning Manager Erika Palmer, Police Captain John Carlson, Interim City Attorney Carrie Richter, Interim City Attorney Alan Rappleyea, and City Recorder Sylvia Murphy.

4. **APPROVAL OF AGENDA:**

   MOTION: FROM COUNCILOR YOUNG TO APPROVE THE AGENDA. SECONDED BY COUNCILOR SCOTT. MOTION PASSED 4:0, ALL PRESENT MEMBERS VOTED IN FAVOR (MAYOR MAYS AND COUNCILOR BROUSE WERE ABSENT).

5. **NEW BUSINESS**

   A. Resolution 2022-070, Declaring a Sherwood City Council Seat Vacant

   Council President Rosener recapped that Councilor Garland had resigned his position as a City Councilor, leaving his seat vacant. He explained that the first step in filling the vacancy was to declare the seat as vacant via a resolution. City Manager Keith Campbell reported that Councilor Garland had resigned his seat on August 19th and explained that the City Charter stated that a seat on City Council became vacant upon a declaration from Council after the incumbent had resigned from office. He outlined that the Sherwood Municipal Code stated that upon becoming aware of the vacancy, City Council must promptly declare the vacancy. He stated that the Code also indicates that if 13 months or more remained in the term, then an election must be held at the next available election date and reported that the vacancy would be filled via the November 8, 2022 election. Mr. Campbell stated that there were no financial impacts for this resolution and explained that the city would declare that there were four open Council seats for the November 8, 2022 election and the candidate that received the fourth highest number of votes shall be appointed to the remainder of Councilor Garland's term. Interim City Attorney Alan Rappleyea explained that the deadline to file for the November 8th election was 5:00 pm on August 30th and explained that it would help save the city money to fill the vacancy via the November 8th election so the city would not have to hold a special election. Council President Rosener commented that the City Charter also required that the vacant Council seat be filled within 45 days, and the city would still do so, but whoever won in the November election would be sworn

in in January 2023. Interim City Attorney Rappleyea recommended that Council choose the person most likely to be elected in November, so the candidate had time to familiarize themselves with Council duties.

MOTION: FROM COUNCILOR YOUNG TO APPROVE RESOLUTION 2022-070, DECLARING A SHERWOOD CITY COUNCIL SEAT VACANT. SECONDED BY COUNCILOR SCOTT. MOTION PASSED 4:0, ALL PRESENT MEMBERS VOTED IN FAVOR (MAYOR MAYS AND COUNCILOR BROUSE WERE ABSENT).

Council President Rosener addressed the next agenda item and recessed the meeting from 7:08 pm to 7:17 pm due to technical issues.

6. PUBLIC HEARING

A. Appeal Hearing for LU 2022-012 SP / MM / CUP / PLA Chestnut Inn and Parkway Village South Self Storage

Interim City Attorney Carrie Richter read aloud the public hearing statement. She asked if Council was able to be unbiased? She asked if Council had any conflicts of interest? She asked if Council had any ex parte contacts? Councilor Scott replied that he did not have any conflicts of interest or any ex parte contact. Councilor Young replied that she had no bias nor any financial interest, and she had not discussed the application, but she was previously made aware of the Applicant's future vision for their property when on a tour of the Langer's Entertainment Center facility. Councilor Giles replied that he had no bias, but he had visited the site previously as a patron. Council President Rosener replied that he did not have any financial or other conflicts and he was also previously made aware of the Applicant's future vision for their property when on a tour of the Langer's Entertainment Center facility and stated he had discussed the application with city staff. Interim City Attorney Richter addressed the audience and asked if anyone in attendance wished to question any of the disclosures from Council?

Susan Claus, 22211 SW Pacific Highway, came forward and asked what specifically about the application Council President Rosener had discussed with city staff? Interim City Attorney Richter replied that conversations with staff did not qualify as ex parte contact and did not need to be disclosed. Ms. Claus asked for clarification about staff discussions with Council. Ms. Richter explained that questions from Council to staff were not a part of the public record as a part of this proceeding and asked Council President Rosener if he would be able to decide based on the applicable approval criteria and the record as it was created before the Planning Commission? Council President Rosener replied that he was able to do so and clarified that the extent of the conversation consisted of asking staff if the application for the project had been submitted prior to the application having been submitted to the Planning Commission.

Jim Claus, 22211 SW Pacific Highway, came forward and asked if anyone on Council was an attorney? Interim City Attorney Richter clarified that the purpose of this part of the public hearing was to discuss the disclosure of ex parte contact. Mr. Claus asked if Council had seen any part of the file that was not a part of this meeting? Council members stated they had not. Mr. Claus asked if Council had reviewed the file with "knowledge of the professional standards on variances or exceptions?" Ms. Richter asked Mr. Claus how that question related to the disclosure of ex parte contact? Mr. Claus replied that it had to do with bias and stated that since no one on Council was an attorney, what Council did was "use your education and your bias to decide." He asked if Council had seen any part of the file that was not a part of this meeting that would affect their bias? Councilor Scott replied no. Council President Rosener replied no and commented that these questions did not seem to be a part of the process. Councilor Young replied that she would not reply to the question because it had nothing to do with ex parte contact. Mr. Claus stated that it was to establish bias,

not ex parte contact. Council President Rosener explained that the purpose of this part of the public hearing was to question ex parte contact disclosure and if he wanted to provide public comment later, there would be time to do so. Mr. Claus recapped that since no one on Council was an attorney, nor were they professional land use planners, their "total acceptance of this application is just contact with staff. I think that's a yes. Now, I want a yes on the record." Interim City Attorney Richter recapped that the question of if Council had reviewed anything that was not included in the record with respect to this application had been asked and Council had answered that they had not reviewed anything other than the record. Councilor Scott stated that he had not discussed the application with anyone on staff or otherwise and the only materials he had seen were the documents in the official record. Councilor Giles stated that he had only reviewed the packet that was sent out and was available on the city's website as well as the additional testimony (see record, Exhibit A) provided by Associate Planner Eric Rutledge to Council prior to this meeting. He continued that he had not discussed anything with staff and had not attended the Planning Commission meeting when this application was discussed. Councilor Young stated that the only documents she had seen were the ones in the official record. Council President Rosener stated that he had not reviewed any materials that were not a part of the official record and he had also read the additional testimony that had been provided by Associate Planner Rutledge prior to this meeting. He stated that he had had a brief conversation with staff asking if the application had been submitted prior to the application being submitted to the Planning Commission.

Jim and Susan Claus, 22211 SW Pacific Highway, came forward and Mr. Claus asked if all Council had seen was "what Coie Perkins has produced for you, is that correct?" Councilor Young replied that Council had seen what staff had prepared and sent to Council. Mr. Claus stated that "you've got Coie Perkins material here too, I assume you've read that." Councilor Young replied that staff had provided Council with all of the records. Mr. Claus again asked if Council had reviewed the material provided by Perkins Coie? Council President Rosener stated that the question had been asked and answered and the Perkins Coie materials were a part of the record that Council was provided. Mr. Claus asked if Council had seen the comments about him in the letter from Perkins Coie attorney Seth King? He continued that according to the letter, Mr. Claus was "some clown that just walked in off the street—that was to bias your response to us." Ms. Claus asked if each Councilor had reviewed the entire record prior to this hearing? Interim City Attorney Richter replied that Council had answered the question by saying they had reviewed the record. Ms. Claus stated she wanted each Councilor to state their answer. Council President Rosener replied that the question had been asked and answered and every Councilor had said they had reviewed the record and it could be left at that. Ms. Claus stated that reviewing the record was different than reading the entire record and again asked if each Councilor had read the entire record before the hearing? Ms. Richter stated that it was time to move on and Council President Rosener stated he agreed. Ms. Claus asked if what Council was saying by stating it was time to move on, was that each of them had reviewed the entire record before this appeal? Council President Rosener stated the question had been asked and answered. Ms. Claus asked if each Councilor had reviewed the entire record prior to this hearing? Council President Rosener replied that Council had reviewed the record. Ms. Claus asked if each Councilor had reviewed the entire record prior to this hearing? Interim City Attorney Richter stated that it was time to move on to the staff report. Ms. Claus stated that it was then Council's position that they had "reviewed, but you didn't read the whole record." Council President Rosener stated that that was not Council's position. Ms. Claus stated that it was then Council's position that they had read the entire record. Council President Rosener stated that he did not want words put in his mouth and asked that Associate Planner Eric Rutledge proceed with his staff report. Ms. Claus again asked if each Councilor had reviewed the entire record? Council President Rosener stated it had been asked and answered.

Associate Planner Eric Rutledge presented the "LU 2022-012 SP, MM, CUP, LLA Chestnut Inn and Parkway Village South Self-Storage Land Use Appeal Hearing" PowerPoint presentation (see record, Exhibit B) and provided an overview of the application summary. He explained that the proposal was for a 100-room hotel

and a 690-unit self-storage building. He stated that it was a Type IV land use action and the zoning was Light Industrial and provided an overview of the applicable SZCDC (Sherwood Zoning and Community Development Code) criteria on page 3 of the presentation. He stated that staff had received two pieces of testimony, one from Seth King, attorney for the Applicant and one from Jeffrey Kleinman, attorney for the Appellant (Exhibit A) after the release of the staff report both of which had been forwarded to Council prior to this meeting. Mr. Rutledge provided an overview of the site location and stated that the site was at the corner of Century Drive and Langer Farms Parkway and explained that all the lots outlined in red would be impacted by the modification. He outlined the site's zoning and surrounding land uses and recapped that the site was in a Light Industrial PUD and the zoning was Industrial to the north, south, and east of the site. To the west of the site was High Density Residential, Institutional Public, and Retail Commercial. He outlined the map on page 7 and gave an overview of the existing and proposed site map on page 7 of the presentation. He explained that the color purple was what had been approved through the 2017 site plan application and constructed and included the entertainment center, parking in front of the entertainment center, and the drive aisles. He reported that yellow delineated what had been approved but not constructed and noted that the applicant was able to apply for building permits at any time for items shown in yellow. He clarified that as part of the 2017 site plan approval, those things included Phase II of the entertainment center and the retail pads along the frontage of the streets. He reported that blue and green was what was proposed and would be new development that the Planning Commission had approved as part of the 2022 site plan application and modification. He outlined that blue was the hotel and green was the self-storage with parking in between and provided an overview of the site plan rendering on pages 9-10 of the presentation. Mr. Rutledge addressed Appeal Issue #1 and explained that the Appellant argued that the Planning Commission had misapplied the provisions of the current and applicable past versions of the SZCDC, ORS 92.040, and the city's previous PUD and subdivision approvals in approving the application. He explained that the Planning Commission had determined that self-storage was not a permitted use under the current Light Industrial Zone, however, because of ORS 92.040 and the previous land use approvals issued on the property, self-storage was permitted on the property until August 28, 2022. He explained that the Planning Commission had based their decision on ORS 92.040 which stated that "After September 9, 1995, when a local government makes a decision on a land use application for a subdivision inside an urban growth boundary, only those local government laws implemented under an acknowledged comprehensive plan that are in effect at the time of application shall govern subsequent construction on the property unless the applicant elects otherwise." He read aloud Subsection 3 which stated that "A local government may establish a time period during which decisions on land use applications under subsection (2) of this section apply. However, in no event shall the time period exceed 10 years, whether or not a time period is established by the local government." Associate Planner Rutledge stated that it was staff's opinion that the statute outlined that the local government could establish a time period in which this provision would apply, but in no case could that provision exceed 10 years. He addressed the SUB 12-02 Langer Farms Subdivision and explained that it was a 5-lot subdivision on the east side of Langer Farms Parkway and was approved in 2012. He explained that the code that was in effect at the time of the subdivision's approval was different than the current code for Light Industrial zoning. He explained that SZCDC 16.32.020(h) was in effect at the time of the subdivision submittal and stated that "Approved PUDs may elect to establish uses which are permitted or conditionally permitted under the base zone text applicable at the time of final approval of the PUD." He explained that the Applicant wished to take advantage of the approved uses provided by the code that were in effect at the time of the PUD approval and would permit self-storage. Associate Planner Rutledge recapped that the code that was in effect at the time that the PUD was approved allowed self-storage in the Light Industrial zone. He stated that the subdivision was approved in 2012 and the code that was in effect at that time stated that approved PUDs could elect to use the uses that were in effect at that time, or at the time of the final PUD. He explained that the ORS stated that only those local government laws in effect at the time of the subdivision shall govern subsequent construction on the property unless the applicant elected otherwise. He explained that staff viewed this as the applicant having the right to utilize the code in effect at the time of the 2012 subdivision

approval which allowed them to also go back to the PUD uses in effect at that time which included self-storage. Mr. Rutledge addressed Appeal Issue #2 and recapped that the Appellant argued that the Planning Commission had applied two different versions of the SZCDC to approve the application, an older code version for one use and the current code version for the other use. He stated that the Planning Commission had found that ORS 92.040(2) stated "After September 9, 1995, when a local government makes a decision on a land use application for a subdivision inside an urban growth boundary, only those local government laws implemented under an acknowledged comprehensive plan that are in effect at the time of application shall govern subsequent construction on the property unless the applicant elects otherwise." and the Planning Commission had acknowledged that the Applicant had "elected otherwise for the proposed hotel use." He explained that the hotel use was permitted under the 2022 code, but not in the 2012 code. He explained that ORS 227.175(2) supported allowing two different code versions to be applied and read the statute aloud and explained that it was staff's opinion that the city had an obligation to process the two applications together consistent with the Applicant's election. He commented that the statute's wording of "…unless the applicant elects otherwise" seemed to allow for the splitting of the uses under two different codes of two different times and was further supported under ORS 227.175(2). He outlined that the Applicant had done the subdivision in 2012, and he felt it was within the Applicant's right, to apply for this in either in 2017 or 2022 and say they were not electing otherwise and that they wished to use the code in effect at the time of the subdivision in 2012. He explained that in staff's opinion, the city would have had to allow the uses in the 2012 code, which included the Light Industrial zoning that permitted self-storage. He continued that if the Applicant had not elected otherwise, the city would have applied all the other standards that were in effect in 2012 such as dimensional standards, landscaping, off-street parking, etc. Mr. Rutledge stated that the city generally preferred not to revert to an older code, and so the approach in this application was to have the Applicant agree to the 2022 site planning criteria as it related to everything else besides the self-storage use and reported that the Applicant had agreed to these terms in their submittal and their narrative. He outlined that previous City Attorney Josh Soper had said that the Applicant could have chosen not to do that and just come in under the 2012 code. Mr. Rutledge added that he felt it was possible that the Applicant could have applied for the self-storage use under the 2012 code and the city would have processed it under the 2012 code. He continued that the Applicant could have then come back after receiving approval for the self-storage use and stated that they were not electing otherwise under the ORS, and they wished to come in under the 2022 code, and the city would have processed that as well. He referred to the ORS that required the city to consolidate applications and commented that staff processed them together to save applicants from having to go through different steps. He explained that consolidating applications was something that occurred regularly, and the main purpose was to bring in lower-level applications with the highest-level applications so that the applications went to the Planning Commission. He explained that this prevented applicants from having to do separate applications for each piece of development. Mr. Rutledge outlined the benefits of having the Applicant come in under the applicable 2022 standards on page 14 of the presentation. He addressed Appeal Issue #3 and stated that the Appellants argued that the Planning Commission had erred for each reason asserted in the letters and emails submitted by Jim Claus and/or Susan Claus in the record, and the Appellants asserted each argument raised as grounds for appeal of the Planning Commission's decision. Associate Planner Rutledge outlined that staff had reviewed the testimony in detail, both when it was submitted and on the appeal, to the extent that they felt that any of the issues needed to be addressed. He explained that staff had addressed those issues in the staff report and staff focused on the procedural concerns. He stated that if staff had identified and agreed with any issues in the appeal, staff would have no problem saying so. He stated that staff had made a close review and had found no issues to raise on appeal. He stated that it was staff's recommendation that Council affirm the Planning Commission's decision and approve the application. He outlined Council's alternatives on page 17 of the presentation and noted that the first alternative should not say "tentatively." Councilor Scott asked if it was accurate to say that the Applicant could have chosen to apply for the self-storage and the hotel as separate applications? And clarified, that in such a case, the Applicant could have chosen to apply the old standard or the current standard for each

application, and separately the city would have allowed for the application of the 2012 standards for one application and the 2022 standards for the other application? He continued that the applications were combined because of the consolidation language, Oregon law, and the city's procedures and best practices for efficiencies, but otherwise the applications would stand on their own and would have had the separate standards applied to each? He continued that just because they were consolidated, it did not mean that that flexibility went away. Associate Planner Rutledge replied that was correct. Interim City Attorney Richter replied that it was a process issue. Councilor Young commented that she had had the same question as Councilor Scott, but the presentation had answered her question. Mr. Rutledge replied that combining the applications "made the most sense" and commented that staff was pleased that the Applicant was open to coming in under the current code. Councilor Giles commented that combining the applications sounded like it saved money because it was more efficient. He asked hypothetically, that if this was a single lot, would an applicant be able to apply two different standards? Mr. Rutledge replied that the Applicant was able to do so because they were two different lots and explained that it was the combination of two state laws that made this a unique situation. He referred to Councilor Giles' hypothetical question and explained that if that had been requested, staff would have tried to determine a way to come in under one code. He continued that for this application, all the lots that were either modified or had a new site plan for all came in under the current Development Code standards except for the self-storage use.

Council President Rosener opened the public hearing and called the Appellant forward.

Attorney for the Appellant Jeff Kleinman, 1207 SW 6th Avenue Portland, Oregon 97204, stated that he disagreed with the Planning Commission's decision. He commented that the Applicant's requests were similar to a buffet in that they wanted to pick and choose what standards they wanted applied. He outlined that there were four decisions and agreements. In the 1995 PUD approval, self-storage was permitted but motel use was not. He referred to the August 2010 express written development agreement between the city and the Langers in which the parties agreed in writing that the 1995 zoning provisions would apply. He referred to the 2012 subdivision approval and the relevant 2017 approval and stated that the Applicant believed they could pick the favorable standards they wanted and ignore the standards they did not want applied. He outlined that the Applicant could choose to apply under the 1995 provisions, but they would not be permitted to build a motel, or they could apply under the 2017 provisions where a motel would be allowed, but they would not be permitted to build the self-storage facility. He stated that the Applicant could choose one or the other, but not both. Mr. Kleinman stated the Appellant disagreed with the characterization of the 2012-02 subdivision approval as something that could be relied upon, as it was the 2017 subdivision that controlled development. He commented that this subdivision could benefit from the provision of ORS 92.040 which allowed for a 10-year look back, but the code at that time also did not allow storage facilities. He outlined that the Applicant had asserted that the Appellants were trying to collaterally attack prior decisions of the city and explained that the Appellant was not doing so, they were trying to compel the Applicant and the city to recognize those prior decisions and to apply and enforce them. He referred to the 10-year timeline provided by ORS 92.040 and explained that it could not be "trumped by the language of the code that was repealed…in 2012…that's been relied on" and referred to SZCDC 16.32.020(h)" and stated that that appeared to have created a 17-year look back period. He stated that regardless, the limit would be 10 years under the statute, so the ability to go back to the 1995 zoning would have ended in 2005. Mr. Kleinman voiced that he was not overly concerned about the applications getting processed together, the issue was that the Applicant was picking and choosing which approval standards they wanted to comply with. Councilor Giles asked if these were two separate applications and the Applicant could decide to utilize the current code or the code from the time period 10 years prior, would the Appellant have an issue with that? Mr. Kleinman replied that there was an issue with that scenario. Councilor Giles asked if the two sites were owned by two different people who could decide to utilize the current code or the code from the time period 10 years prior, would there be an issue there? Mr. Kleinman replied that the code provision Councilor Giles referred to was

repealed in 2012 and could not supplant the language from ORS 92.040 which would only allow the Applicant to opt to go back 10-years, not 17 years. He continued that it did not matter who the applicant was or how many applicants it was or how many parcels it was for, ORS 92.040 "did not allow, would not allow, will not allow" a look back of more than 10 years, and therefore no one would get the benefit of the 1995 zoning. Susan Claus asked if Councilor Giles believed that anyone who came in for a land use planning application could use whichever code they wanted to? Councilor Giles replied that he did not believe that and stated that as he understood it, "some things get grandfathered in and you can't change the rules…mid-game." He clarified that he wanted to understand that if this was a single lot with the applications being processed separately, would the Appellant still have an issue with it? Mr. Kleinman replied that their answer would be the same. Councilor Scott commented that he did not understand that position. He outlined that if he owned the lot that was the site of the proposed motel and Councilor Giles owned the lot that was the site to be self-storage, and Councilor Scott chose to be brought in under the 2022 code so he could build the hotel, that would somehow also force Councilor Giles to use the 2022 code for developing his lot? Mr. Kleinman replied that was not correct and stated that their argument was that the applicable law "is what it is." He provided an example of someone applying for a use that was allowed today on their property, then they were entitled to do so. He stated that no one was entitled to go back to 1995 because the maximum look back was 10 years, not 27 years. Councilor Scott commented that that was not the question, his question had to do with the consolidating of the applications, not the timeline question. Mr. Kleinman replied that it did not matter to him if the applications were consolidated. Councilor Scott commented that the consolidating of the applications was one of the issues in the appeal the Appellant had raised. Mr. Kleinman replied that "it makes no difference whether they're combined or not." Councilor Scott asked why that was included as an appeal issue then? Mr. Kleinman replied that he had not drafted that, and he was focused on the issues he was most familiar with.

Jim and Susan Claus came forward and Mr. Claus said that when he discussed moving to Oregon with an attorney, they had discussed how Oregon was a statutory state, but the state was "more restrictive on the First Amendment and government and we're good on compensation…" He told a story of the state having to pay money for violating a citizen's First Amendment rights after the assassination of President Lincoln. He commented that the Bill of Rights had not been formally adopted until the 1950s and commented about Oregon and the First Amendment. He asked why an armed police officer attended Council meetings? He stated that it was to discourage free speech and so did the attitudes of Council. Mr. Claus said that it was an "enormous" amount of money to get to this point and when the environment was unfriendly "you were against the town." He stated that his family had donated the principal land for the refuge and had also donated Stella Olsen Park and the downtown theater and he was treated like "an enemy of the public." He stated that sooner or later it would be revealed who had used urban renewal money to fund Cedar Brook Way. Mr. Claus stated that there was a case in 1927 of Ambler Realty Co. versus the Village of Euclid and commented on zoning and misuse. He commented on rational relationships and the need to conform to the law or prove that the law was incorrect. He commented that the burden of proof was on Council. Mr. Claus stated that there was no true free speech at this meeting because it was "chilled" by the presence of a police officer in the room. He stated that he and Ms. Claus had been treated as if they were antagonistic and the Clauses were the biggest donors to the city. He stated that the city had been antagonizing litigation. He referred to a case involving Cambridge and commented that the front of the collector street in the application was to be 25 mph and stated that the street was already dangerous, and the city would be putting more traffic on the road next to a residential district. Mr. Claus stated that the city was incorrect, and the street should not be labeled as a collector road but a neighborhood street and commented that the traffic circle was dangerous. He commented that the applications would allow for a 100-room motel and storage that was four times the allowable density and no one had tried to determine what the effects on the neighborhood would be. He stated that one of the first steps the city should have done when determining whether to issue a variance was to determine if the variance would affect the general plan. He referred to the land that was used for Stella Olsen Park and stated

that the Clauses had given that land to the city and he was “getting tired of you giving it away in the way Walmart came in here.” He stated that that was Light Industrial ground, the same as the Home Depot lot, and the same group of people were involved in this situation. Mr. Claus stated that the city had ignored the 100-year-old case law that Mr. Kleinman had brought to the city and pertained to this situation. He referred to the Tualatin River Wildlife Refuge and commented that it had never been expanded and that it was to be a non-hunting refuge, but the county was not maintaining that designation. Mr. Claus commented that the city should seek legal advice.

Attorney for the Applicant Seth King, 1120 NW Couch Street 10th Floor Portland, Oregon 97209, came forward. Mr. King asked that Council deny the appeal and affirm the decision made by the Planning Commission. He stated he agreed with the staff report, with one qualification. He stated that Appeal Issues #1 and #2 were closely related, so he would address them together. He said that Appeal Issues #1 and #2 had to do with how ORS 92.040 applied to the Langer Family PUD and commented that Council had recently looked at that issue at the Sentinel Storage II land use appeal hearing in July, and Council had determined that the PUD and the phases were subject to a subdivision that was approved in 2012. He explained that the approved subdivision was inside an urban growth boundary, which therefore triggered the applicability of the statute that allowed for a 10-year time period for the applicant to develop consistent with the standards in effect at the time of their original application, unless the applicant elected otherwise. He recapped that that was what Council had determined in the July hearing and it was the same interpretation that the Planning Commission had used in this case, and if Council denied the appeal, they would be making a decision that was consistent with the decision they had made in the land use appeal hearing in July. Mr. King referred to Mr. Kleinman’s assertion of “picking and choosing on the buffet” and explained that what was happening was allowed per the statute, which allowed applicants to develop consistent with the standards in effect at the time of the subdivision application unless they elected otherwise. He spoke on the two separate applications being consolidated and processed together and explained that the applications could have gone through separately, but they had been consolidated for ease of processing. He continued that the Applicant was choosing to have one application processed under the standards that were in effect at the time of the 2012 subdivision and the other application processed under standards in effect at the time of the site plan and conditional use permit application. Mr. King referred to Mr. Kleinman’s earlier comments as well as his comments in Exhibit A and recapped that Mr. Kleinman took issue with the time period and vesting that could occur. Mr. King explained that this type of issue was also discussed by Council at the land use appeal hearing in July and Council had determined that the city had not adopted an ordinance establishing a shorter period of time, thus they relied upon the statute to determine that the vesting would be valid for a 10-year period of time. Mr. King outlined that Mr. Kleinman disagreed with that assertion, and that the city had not adopted any legislation and the statute did not create or mandate a particular time period and suggested that the time period for vesting should be consistent within the order of approval and the time period that it provided. Mr. King stated that that position was not consistent with the legislative intent of the statute. He stated that the purpose of the statute was that the state legislature had determined that there were cities within the state that were allowing developers to move forward with subdivisions and to create lots based on the idea that they could develop them consistent with the standards in effect at the time they moved forward with the subdivision. He continued that after the developers had moved through the subdivision process and had recorded and created the lots, they found that cities had changed the standards in the meantime and were now requiring that they develop the remaining lots under the new standards. He explained that that was why the Home Builders Association went to the state legislature and was why ORS 92.040 and Subsection 2 were adopted by the legislature to protect developers from local governments. Mr. King referred to Mr. Kleinman’s argument regarding time periods and argued that that was not consistent with the legislative intent because it would allow local governments to define the time period inappropriately. He recapped that the city had not established a time period, which resulted in the default 10-year period under the statute. He spoke on the 2017 subdivision. He explained that when the city adopted that subdivision, which specifically

stated in the decision that the property had been the subject of a subdivision in 2012 and that the subdivision had vested those standards for a 10-year period and that those standards would continue to apply. Mr. King reported that that was a finding and conclusion that was adopted by the city and stated that he had cited the instances where that point was referenced in the decision in his letter to Council (Exhibit A). He explained that that decision was not challenged and became final when it went into effect and was the basis that people had been relying on. He referred to the Appellant's argument that "2017 reset the clock" and the standards in effect in 2017 should apply instead and explained that the Applicant viewed those arguments as a collateral attack because the city had determined in the 2017 decision that the 2012 standards would apply. Mr. King referred to Mr. Kleinman's argument that the statute would only allow a 10-year look back, not a 27-year look back and stated that Mr. Kleinman had misconstrued the statute. He explained that the statute allowed the vesting of standards that were in effect at the time of a subdivision application, and in this case, those standards allowed for a further look back to the time of the PUD that was adopted in 1995. He recapped that for the above reasons, he felt that the Appellants had not presented any argument or evidence that would demonstrate that the Planning Commission had erred and that there was no basis to reverse the Planning Commission's decision. He asked that Council affirm the Planning Commission's decision and outlined that he had made additional arguments in his letter to Council (Exhibit A) and asked that Council adopt those responses into their findings consistent with the staff recommendation. Councilor Scott asked if the PUD in question was the same PUD that was subject to the previous appeal in July? Mr. King replied that was correct. Council President Rosener asked if there was anyone else who wished to provide testimony on the matter? Hearing none Council President Rosener proceeded to rebuttals.

Mr. Kleinman stated that there was a fundamental disagreement between Mr. King and himself as to the law that applied in this situation. He referred to Mr. King's comments regarding the purpose of ORS 92.040 and the testimony provided by the Home Builders Association representatives and realtors. He stated that Mr. King understood the statute to mean that it created a safe harbor of a maximum look back of 10 years. He continued that Mr. King's interpretation of the statute meant that if you were approved for a subdivision, then you were entitled to develop pursuant to the development standards in effect at the time, in this case 1995 standards, but for only 10 years thereafter. He stated that it allowed 10 years pursuant to the argument that Mr. King made, but it did not allow 22 years under any circumstances. He commented that this was not a "free lunch for developers" and that if you had a development proposal, you had 10 years to continue to rely upon the standards in effect at the time of approval, in this case 1995. He stated that otherwise you would be subject to the regulations in effect at the time of the development application. He argued that the Applicant was trying to rely on the approved 1995 PUD in order to build the motel. He continued that the Applicant also relied upon the 2017 subdivisions decision which re-adopted the findings of the 2012 subdivision decision which related back to the 1995 development standards. Mr. Kleinman stated that you could not do that and explained that this was not a collateral attack as he was trying to ensure that the law was properly applied and enforced. He argued that if you were relying upon a statute with a 10-year look back, it did not matter what the extensible findings were in the 2012 or 2017 subdivisions. He continued that the Applicant did not get to supplant the 10-year limit and stated the Applicant was relying on a 1995 decision and window to utilize the 1995 standards that had expired. Councilor Giles asked for clarification regarding Mr. Kleinman's rebuttal to Mr. King's statements regarding timelines. Mr. Kleinman explained that the code provision that Mr. King had relied upon was repealed in 2012 and would have allowed for the supplanting of the 10-year look back. He stated that it had no force and effect when it came to estate law which only allowed a 10-year look back. He continued that in 2012, the city repealed the local provision that allowed a menu of choices and commented it was still gone in 2017 and it was still gone now. He stated that it was never effective vis-à-vis the state's 10-year limit, and it had now been gone for over 10 years in Sherwood. He stated that and impermissible stacking and reliance upon a code provision that had not been in existence for 10 years was occurring. Councilor Giles commented that he was still unclear because as he understood it, after the provision was repealed, land that was already in-process or grandfathered in, was permitted to use either

the rules that were in effect when it was originally approved or the new rules. Mr. Kleinman explained that what the Applicant was attempting to do was to argue that there was language in the 2012 decision that would allow them to "run forward" in reliance on the old code provision, which to him was never at full force and effect regarding the state's 10-year limit by state law. He continued that the Applicant was then also relying on the 2017 decision that cited the 2012 decision where the 1995 standards were allowed to be in effect. Mr. Kleinman recapped that if the Applicant wanted to use the 1995 standards, then the motel would not be permitted and if the Applicant wanted to use the current standards, then the self-storage units would not be permitted and asked that consistency be used. He stated that the 2017 decision outlined that what happened in 2012 allowed the applicant to go back to 1995 and would also allow applicants to do similarly "forever" and that was not the law. He stated that he felt that the correct way to proceed was to either use the standards from 2017 when the subdivision was approved or the standards from 2022 when the new application was submitted. He referred to arguments made by the Appellants at a previous Planning Commission hearing regarding if employment was generated out of a storage facility located in Light Industrial zoning and clarified that Light Industrial zoning was intended to provide employment. He stated that one of the main objectives of the Comprehensive Plan was to provide employment in Light Industrial, and a storage facility did not provide much employment. He asked Council to think about if they wished to give up Light Industrial property to a non-employment use.

Susan Claus came forward and stated that one of the "big problems" was that the city had trouble with providing living-wage jobs in town and putting self-storage on land that was dedicated for employment did not make sense. She stated that Council was the elected and many of the Planning Commission members were new and did not know the whole process. She commented that Planning Commissioners were not supposed to be the stewards of the town, Council was.

Mr. King came forward and referred to the look back period issue and statement that the code provision allowing an applicant to elect uses in effect at the time of PUD approval had not been in effect for 10 years and stated that that was correct. He continued that it had not been in effect for 10 years, but it had been in effect at the time of the 2012 subdivision and that was what made it a standard that would be vested and would continue to apply to development on the site unless the Applicant elected otherwise. He addressed the Appellant's argument regarding the site generating employment and commented that this was addressed extensively in their letter to Council and summarized that the Comprehensive Plan provision at issue was only applicable to the hotel use because it only applied through the conditional use permit criteria and did not apply to the storage facility. Mr. King stated that the Applicant had thoroughly explained in the application materials how the proposed development would further diversify the city's local economy. Councilor Young commented that if the 1995 code was only supposed to be allowed for 10 years, that would have expired in 2005, but then in 2012 the Planning Commission had allowed the 1995 code and asked if Mr. King was arguing that the 10 years started in 2012? Mr. King replied that the 10 years provided under ORS 92.040 started in 2012 with the subdivision approval. Councilor Young clarified that that was because it could go back to the time that the PUD was created. Mr. King replied that there was a separate code provision that the city had in effect in 2012 that allowed an applicant to elect uses that were allowed at the time of the final PUD approval, which was 1995. Councilor Young clarified that the clock then started in 2012, and that was why the Applicant had up to August 28, 2022. Mr. King replied that was correct.

Council President Rosener closed the public hearing and asked for comments and deliberation from Council.

Associate Planner Eric Rutledge referred to the question of the 10-year look back period rule and how the Applicant was permitted to use the 1995 code and explained that when the subdivision occurred in 2012, the code that was in effect at that time allowed an applicant to go back to uses in effect when the PUD was approved. He continued that if an applicant was allowed to utilize the law in effect in 2012, staff would review

the code from that time and go from there. He stated that the 2012 code clearly said that applicants could go back to the uses in effect when the final PUD was approved, so it was not 10 years from 1995, it was 10 years from 2012 and it was that 2012 code that allowed applicants to go back to the standards from the year the PUD was approved. Mr. Rutledge referred to the Appellant's argument that an applicant could then do this repeatedly and stated that staff did not agree with that assertion. He clarified that in both staff's and the Planning Commission's opinion, the Applicant had until August 28, 2022 to get approval because that was when the 10-year subdivision approval rule expired, and that was why the Applicant was applying for approval now. Councilor Scott asked if it mattered if the appeal went beyond the August 28th deadline? Mr. Rutledge replied that the application had already been approved, so if the appeal went beyond the August 28th deadline and then the approval of the application was upheld, it did not affect the deadline. Councilor Scott clarified that if the approval was overturned, either here or somewhere else, the Applicant would be out of time to submit a new application. Mr. Rutledge replied that was correct. Councilor Young clarified that the hotel use was permitted under the current code and the Applicant did not necessarily need to be applying for the hotel right now. Mr. Rutledge replied that the hotel was permitted under the city's current code. Council President Rosener asked if Council upheld the approval, was that considered modifying the PUD? Associate Planner Rutledge replied that it would not modify the PUD, it would modify the 2017 site plan. Council President Rosener asked if that would set another 10-year clock? Mr. Rutledge replied that it would not and clarified that if the Applicant came back in the future to re-parse out the lot, the rules in effect today would apply. He added that the ability for applicants to go back to PUD uses was no longer in the code, so if the Applicant wanted to do another subdivision today, they could not go back to the 1995 code. Councilor Young commented that a PUD could have been created in 1975, but no subdivision took place until 2012, and asked if the Applicant could have chosen to use the 1975 standards if they wanted to? Mr. Rutledge replied that was correct based on staff's reading of the language in effect in 2012 and he read the 2012 code aloud. Councilor Scott commented that before that rule was changed, any applicant with a site plan approval could have gone back to the code that was in effect at the time of approval or even 10 years forward. Council President Rosener asked if the crux of the disagreement between the Applicant and the Appellant was determining when the 10-year clock started? Mr. Rutledge replied that he believed the main argument was that the 10-year clock did not even apply in this case and whether you could utilize two different codes. Councilor Young commented that it sounded like Mr. Kleinman agreed that the hotel was potentially permittable, but the self-storage facility was not. Councilor Scott commented that there were three issues in the appeal and addressed the issue of the 10-year clock. He said that it was his understanding that the question being raised around the 10-year look back period to 1995 was the "exact same question that was raised previously on the exact same PUD that was at issue before" and commented that he had not heard or read any new testimony that changed the facts from the last time. He stated that it was clear to him that this was allowable. Councilor Scott addressed the issue of combining the applications and commented that he felt that Mr. Kleinman had had multiple opportunities to make a compelling case regarding that issue and he had not heard any. He stated that it seemed very clear and obvious to him that if the two applications came in separately, there would have been no issue, and the fact that staff had combined them to process them did not create a procedural problem. Councilor Scott addressed the third issue regarding the argument of the procedural issues that may or may not have happened through the planning process and stated that he would have to rely on staff's assertion that staff had done their due diligence. He commented that he had not heard any testimony from the Appellant regarding that issue at this hearing, so he had nothing to rely on beyond staff's testimony that they had followed proper protocols. He stated that in his view, Council should affirm the Planning Commission's decision. Councilor Young stated she agreed with Councilor Scott regarding the first issue that the same standards applied as it did for the last appeal on the same subdivision. She addressed the second issue and stated that she had previously not understood how two different codes could apply to the same application and explained that Associate Planner Rutledge's explanation had answered her questions regarding that issue. She addressed the third issue and stated she agreed that the issue was not addressed at this meeting and would have to rely on staff's statements. Councilor Giles

commented that it sounded like some major code holes were fixed in 2012 and it was not Council's job to try and go back and fix that. He stated that Council's job was to look at the standards of this case and review the materials that were provided. He stated that he also had not understood how two different codes could apply to the same application and commented that it was common sense that if someone was given the opportunity to choose the most advantageous option for themselves, they would do so. He stated that he was in favor of affirming the Planning Commission's decision. Council President Rosener stated that he also had not understood how two different codes could apply to the same application and commented that it made sense to do so because he could see the mayhem it would create if projects had to be divided up into separate applications due to technicalities. Council President Rosener addressed Appeal Issue #1 and stated that he did not hear anything that changed his opinion. He stated it was Council's job to review the materials and be prepared for these meetings and to apply the law. He commented that there was a misconception out there that Council could do as they pleased, but the law was the law and Council had to abide by that. He stated that Council should uphold the Planning Commission's decision. Council President Rosener asked for further discussion or a motion from Council.

MOTION: FROM COUNCILOR SCOTT THAT THE CITY COUNCIL AFFIRM THE PLANNING COMMISSION'S DECISION AND APPROVE THE APPLICATION FOR THE REASONS SET FORTH IN THE PLANNING COMMISSION FINDINGS REPORT DATED JULY 12, 2022, THE CITY COUNCIL STAFF REPORT DATED AUGUST 17, 2022 AS WELL AS THE AUGUST 23, 2022 LETTER FROM THE APPLICANT'S ATTORNEY, MR. SETH KING. IN THE EVENT OF ANY CONFLICT BETWEEN THESE MATERIALS, THE CITY COUNCIL STAFF REPORT AND LETTER FROM MR. KING SHALL CONTROL. SECONDED BY COUNCILOR YOUNG. MOTION PASSED 4:0, ALL PRESENT MEMBERS VOTED IN FAVOR (COUNCILOR BROUSE AND MAYOR MAYS WERE ABSENT).

7. ADJOURN:

Council President Rosener adjourned the meeting at 9:08 pm.

Attest:

Sylvia Murphy, MMC, City Recorder

Keith Mays, Mayor

SHERWOOD CITY COUNCIL MEETING MINUTES
22560 SW Pine St., Sherwood, Or
September 6, 2022

WORK SESSION

1. **CALL TO ORDER:** Mayor Mays called the work session to order at 6:02 pm.

2. **COUNCIL PRESENT:** Mayor Keith Mays, Council President Tim Rosener, Councilors Renee Brouse and Kim Young. Councilor Taylor Giles participated remotely. Councilor Doug Scott was absent.

3. **STAFF PRESENT:** City Manager Keith D. Campbell, Interim City Attorney Alan Rappleyea, Public Works Director Craig Sheldon, City Engineer Bob Galati, Finance Director David Bodway, Community Services Director Kristen Switzer, IT Director Brad Crawford, and City Recorder Sylvia Murphy.

4. **TOPICS:**

A. DEIA Statement Discussion

City Manager Keith Campbell presented the "City of Sherwood DEIA Statement" PowerPoint presentation (see record, Exhibit A) and provided an overview. He recapped that Resolution 2022-021 adopted the City Council Pillars, Goals, and Deliverables and explained that Deliverable 6:8 was "Creating a City Statement for DEIA." He explained that staff and stakeholders had met to discuss potential DEIA statements. City Manager Campbell explained that the city's DEIA statement should be simple, easy to remember, and the statement should have a purpose and power behind it. He recapped the DEIA statements from other neighboring cities on pages 4-7 of the presentation. He outlined that the proposed Sherwood DEIA statement read, "The City of Sherwood expressly supports and endorses a culture of appreciation for the inherent value of all persons within the community." Mayor Mays stated that he liked the statement. Mr. Campbell explained that the proposed statement attempted to be simple, straightforward, and all-encompassing without having to get too specific and asked for Council feedback. Mayor Mays stated that he appreciated the thought and time put into the statement. Councilor Young stated that she liked that the statement was "short, concise, simple." Councilor Giles stated that he felt that the phrasing of "The City of Sherwood expressly supports and endorses…" was "clunky" and he was in favor of the phrasing of "The City of Sherwood supports the culture and inherit value of all persons within the community." Council President Rosener replied that he liked the phrasing in the original statement because the word "support" was ambiguous whereas "expressly" was clearer in its intent and commented that he liked the proposed statement. Discussion occurred. Councilor Giles commented that he wished to amend the language of the statement to sound more natural. City Manager Campbell put forward the phrasing of, "The City of Sherwood expressly supports the inherent value of all persons within the community." and asked for Councilor Giles's feedback. Councilor Giles replied that he wanted something along the lines of "…expressly supports and appreciates and values all of the cultures within our community." Councilor Brouse commented that the statement should convey that the city was creating a culture of appreciation for other cultures. Councilor Giles asked for more information on what a

"culture of appreciation" meant, and Councilor Brouse explained. Council discussed how aspirational the DEIA statement should be and Councilor Brouse commented that if the DEIA statement contained too high of aspirations, and then the city was unable to meet those aspirations, it was setting the city up for failure. Mr. Campbell explained that the goal when drafting the DEIA statement was to make it as simple as possible, with as few words as were needed, but to also be broad and all-encompassing and the proposed statement was a result of that work. Council agreed that no document was perfect and that it was a "living and breathing thing" and the DEIA statement could be updated in the future if needed. City Manager Campbell recapped next steps and explained that the statement would be put on a future City Council agenda for adoption.

B. 5G Facility Standards

City Engineer Bob Galati presented the "Adoption of 5G Facility Standard Details for the Engineering Design and Standard Details Manual" PowerPoint presentation (see record, Exhibit B) and provided an overview of the presentation outline. He provided background and recapped that Small Wireless Facility Design Standards were adopted by Council via Resolution 2019-045 and Exhibit A of the resolution specified several instances of facility pole design requirements, but those exhibits were not attached to the resolution because the design details were still being developed at the time of adoption. He continued that those design details had since been completed and were ready to be adopted by Council and to be added to the Engineering Design and Standard Details Manual. Mr. Galati provided an overview of the proposed design standards to be added to the manual on pages 4-6 of the presentation. He outlined that each light pole type would have a cabinet at the base that was 27 cubic feet, which met the federal criteria and met the area needed for providers to establish their equipment. He reported that the pole was 14 inches in diameter. Mayor Mays commented that these poles were much smaller than they had projected in 2019. City Engineer Galati explained that he was mindful of the aesthetics of the pole when an antenna was placed on top of it. He explained that the options were to have a tapered pole or to uniformly maintain the pole diameter. He continued that by maintaining a uniform diameter, the pole would differ from 5G poles found in other communities. He referred to the SmartStack pole which had been approved in several other communities and were 18-20 inches in diameter. Mr. Galati explained that the cabinet at the base of the pole was over six feet tall, and the pole would be designed to be more consistent with the rest of the streetscape. Council President Rosener asked if the city would need to change the right-of-way requirements and if the light pole design would work if it was placed in a median? Mr. Galati replied that the city would not need to change their right-of-way requirements and that the proposed design standards were specifically designed to ensure that the poles would work when placed in a median. Council President Rosener asked if a maximum decibel level needed to be established to control the noise levels from the poles? City Engineer Galati replied that he was unsure of what level of noise the poles would produce. Mayor Mays stated a maximum noise level should be specified in the code that was appropriate for neighborhoods. Discussion regarding the potential noise levels of the poles occurred. Mr. Galati explained that his goal was to get the design standards established so when the poles did come into the city, staff could ask questions and find out more details, like the decibel of noise the poles produced. Mayor Mays asked if there would be requirements on when taller poles could be used? Mr. Galati replied that there would be conditions to be met to use the taller poles and explained that staff would be reviewing each application to determine if the equipment in the application was appropriate to use for the site. Council asked if stipulating that only the shorter poles could go into neighborhoods needed to be put into the Municipal Code? Mr. Galati replied that the Municipal Code referenced the design standards, and if the stipulations were in the manual, they could be changed as needed. Mayor Mays asked if the design manual would specify when a 30-foot pole or a 40-foot pole could be used? City Engineer Galati replied that those details could be added to the manual. Mayor Mays referred to sight distance limits and asked if there would be stipulations regarding how close 5G poles could be placed next to a stop sign or intersection in the manual? Mr. Galati replied that it was possible that the 5G poles would be located near intersections and discussion occurred. Mr. Galati commented that having the 5G poles

near intersections and stop signs could pose a sight distance problem. He continued that the manual would state that engineering approval of the layout would be required, which would prevent any sight distance issues from occurring. He added that if Council wished, a set distance, such as a 50-foot radius, could be added to the manual that prohibited 5G poles from that area. Councilor Young commented that having a set distance would solve a lot of the sight distance issues and save engineering staff time. Mr. Galati replied he would add those things to the manual. Councilor Giles asked if the 5G pole designs were standardly available light pole designs? City Engineer Galati replied that the pole extension was a standard PGE pole and was cited in the standards. He continued that how companies would attach the pole to the cabinet and how the cabinet was attached to the pedestal was the company's issue to solve. Councilor Giles asked if these design standards were making it more difficult for companies to bring 5G into Sherwood? Mayor Mays replied that hopefully other cities would see what Sherwood was doing and follow our lead. Mr. Galati commented that Sherwood was ahead of the game when it came to having design standards for 5G light poles and spoke on what other communities were facing when bringing in 5G light poles. Council President Rosener explained that five years ago, the FCC made a ruling that removed much of the authority from cities to manage the process and Sherwood was trying to maintain a level of control over the process as 5G moved forward. Council President Rosener asked how the new poles would be metered? City Engineer Galati replied that he was not sure how the metering would work but he had included two separate electrical feeds in the design, one for the public streetlight and the other for the 5G power supply. He explained that this was similar to what other cities had done. Discussion regarding how high-density business sectors, schools, and areas around schools would likely be the initial rollout locations for the 5G poles occurred. Mr. Galati provided an overview of the light pole foundation details on page 6 of the presentation and discussion occurred. Council President Rosener voiced that it seemed likely that there would be a push for more studies on the issue of radio waves and safe distances and commented that the results of those studies could impact the rollout of 5G light poles. Council President Rosener asked if a car crashed into one of the poles, who was liable? City Engineer Galati replied that the provider was liable, not the city. He explained that the pole was running off the city's system and it was the city's cabinet, and the city maintained the light and the design of the light pole. Mayor Mays commented that carriers were allowed to use the 5G code to put in the 5G light poles, but only put 4G equipment inside. Mr. Galati replied that he was not aware of any 5G equipment that was currently on the market except for experimental equipment. Mayor Mays referred to two 5G poles that had been submitted for approval and asked if they had been approved? Mr. Galati replied that those poles were no longer in the system as they were not built within the specified timeframe. He recapped that the design standards were for four pole designs and outlined that the new information to be added to the manual would include details on the pole design, materials, color/anything that impacted the style, and plaque requirements. Council President Rosener asked if it was possible to dictate where the pole could go on a property? Mr. Galati replied that he was unable to dictate where the poles could go on a property beyond stating that the poles had to be located on the property, per FCC rules. He continued that adding the 50-foot radius restriction around stop signs and intersections was permittable because it was a safety issue. Discussion occurred. He outlined next steps and explained that Council would need to adopt a resolution amending Resolution 2019-045 as well as amending the Engineering and Standard Details Manual to include the new design details. Discussion regarding the need to first adopt the resolution to establish a baseline for design, then work could continue on the design manual to incorporate critical issues. Council stated they were pleased with the presented design standards. Mayor Mays asked when the resolution would be presented to Council? Mr. Galati replied that it would be on the next City Council agenda.

5. ADJOURNED:

Mayor Mays adjourned the work session at 6:45 pm and convened a regular session.

REGULAR SESSION

1. **CALL TO ORDER:** Mayor Mays called the meeting to order at 7:00 pm.

2. **COUNCIL PRESENT:** Mayor Keith Mays, Council President Tim Rosener, Councilors Renee Brouse and Kim Young. Councilor Taylor Giles participated remotely. Councilor Doug Scott was absent.

3. **STAFF PRESENT:** City Manager Keith D. Campbell, Interim City Attorney Alan Rappleyea, Police Captain Jon Carlson, Finance Director David Bodway, Public Works Director Craig Sheldon, Community Services Director Kristen Switzer, IT Director Brad Crawford, and City Recorder Sylvia Murphy.

4. **APPROVAL OF AGENDA:**

   MOTION: FROM COUNCILOR YOUNG TO ADD AN ITEM B UNDER PRESENTATIONS. SECONDED BY COUNCILOR BROUSE.

   MOTION: FROM COUNCILOR YOUNG TO APPROVE THE AMENDED AGENDA. SECONDED BY COUNCILOR BROUSE. MOTION PASSED 5:0, ALL PRESENT MEMBERS VOTED IN FAVOR (COUNCILOR SCOTT WAS ABSENT).

   Record Note: The Item B business was not specified, only that there would be another presentation.

5. ***C*ONSENT AGENDA:**

   A. **Approval of August 16, 2022 City Council Meeting Minutes**
   B. **Resolution 2022-071, Authorizing the City Manager to execute a construction contract for the SW Lee Drive and SW 3rd Street Pavement Rehabilitation Project**

   MOTION: FROM COUNCILOR BROUSE TO APPROVE THE CONSENT AGENDA. SECONDED BY COUNCILOR YOUNG. MOTION PASSED 5:0, ALL PRESENT MEMBERS VOTED IN FAVOR (COUNCILOR SCOTT WAS ABSENT).

   Mayor Mays addressed the next agenda item.

6. **CITIZEN COMMENTS:**

   There were no citizen comments and Mayor Mays addressed the next agenda item.

7. **PRESENTATIONS:**

   A. **Recognition of Eagle Scout Award Recipient**

   Mayor Mays recognized Calen Kezziah for his achievement of attaining the rank of Eagle Scout and invited him to attend a future Council meeting.

   B. **Recognition of OMA 2022 Mayors Leadership Award – Large City Recipient Mayor Mays**

Council President Rosener reported that Mayor Mays had won the 2022 Oregon Mayors Association Mayors Leadership Award in the Large City category. He stated that Patty Mulvihill from the LOC was in attendance to present Mayor Mays with the award. Ms. Mulvihill came forward and explained that she also served as the Secretary for the OMA and the OMA Board of Directors had asked that she speak on their behalf as they had to attend their own city meetings. She provided a history of the OMA and stated the organization's goal was to "convene, network, train, and empower Oregon's mayors" and stated that Mayor Mays had been a long-standing member of the OMA and had been very involved in the organization's success. She explained that the Mayors Leadership Award was a prestigious award and was given to mayors in recognition of the valuable contributions that mayors throughout Oregon made to their community. She continued that the award was intended to acknowledge the mayors in Oregon who had provided consistent and continuing leadership which facilitated dynamic change in their cities. The award was given to mayors who had dedicated their time and energy in the pursuit of helping their communities reach their full potential. She explained that recipients were limited to persons who had distinguished themselves from other Oregon mayors over the duration of their tenure in office. Ms. Mulvihill explained that the OMA specifically wanted to recognize Mayor Mays for his work in Sherwood as it was the place where he had completed the bulk of his work, it was where he resided, and it was his community. She provided an overview of Mayor Mays's public service career. She outlined that he had spent 24 years serving both Sherwood, the Metro region, and the state. She recapped some of the projects Mayor Mays had overseen in his time serving the city and stated they included the construction of the new City Hall and library, Cannery Plaza and splash pad, the city's first skate park, rebuilding the Veterans Memorial, starting, and managing two urban renewal districts, and establishing one of the first COVID relief grant programs for businesses in April 2020. Ms. Mulvihill thanked Mayor Mays for his work for Sherwood, the Metro region, the OMA, and the LOC. Mayor Mays thanked Council President Rosener for nominating him. He stated that it was a team effort and the success that was seen in the community reflected the entire City Council, city staff, and city volunteers. He stated that it was important to listen to each other, elevate good ideas, show compassion for each other, be creative, and advocate for your town. Councilor Giles recapped the story of him meeting Mayor Mays when Councilor Giles was submitting his paperwork to run for City Council and Mayor Mays spoke with him and answered some of his questions. He stated that Mayor Mays had been generous with both his time and knowledge when Councilor Giles had asked questions. He thanked Mayor Mays for his service and thanked him for the help he had given him as a new Councilor. Councilor Young stated that she had noticed a difference in the trajectory of Council and the vision for the city under Mayor Mays's guidance and that his previous experience and knowledge were invaluable. Councilor Brouse stated that Mayor Mays was a great leader, and she appreciated all that he had done for the community. Council President Rosener stated that he wished that every city councilor in the state had the opportunity to be mentored by Mayor Mays and thanked Mayor Mays for his years of service. Mayor Mays stated that his time in office was born out of an inspiration to serve, and the inspiration to serve came from his family. Council President Rosener indicated a reception for Mayor Mays would be held after the regular meeting in the lobby and refreshments would be served.

Mayor Mays addressed the next agenda item and the City Recorder read aloud the public hearings statement.

8. PUBLIC HEARING:

A. Resolution 2022-072, Updating the City of Sherwood Stormwater System Development Charges Methodology and Amending the Fee Schedule

Finance Director David Bodway recapped that Council had held a work session in December 2021 and the Galardi Rothstein Group was hired to perform an analysis of Sherwood's Stormwater system development charges (SDCs). He explained that the general methodology used to calculate Stormwater SDCs began with

an analysis of system planning assumptions to determine the growth capacity needs and how they would be met through existing system available capacity and capacity expansion. He recapped that Council reviewed the proposed stormwater SDC methodology at the work session in December 2021 and stated that written notice of the proposed changes was provided to meet the 90-day notice period and the SDC methodology was available to review 60-days prior to the public hearing. Consultant Deb Galardi with Galardi Rothstein Group presented the "Stormwater SDC Methodology Public Hearing" PowerPoint presentation (see record, Exhibit C) and explained that SDCs were comprised of three components. The first component was the project list and was the master plan list of capital improvement projects (CIP). She explained that per state law, the project list was required to show the project description, cost, and timing as well as the percent eligible for improvement SDC funding. She explained that the SDC methodology was the framework for determining the growth costs for both the projects on the project list as well as the existing facility costs, which was the reimbursement fee. She continued that when that framework was applied to the project list, the SDC schedule was created and was comprised of charges that would then be assessed to different types of development. She explained that growth costs were determined by reviewing the existing facilities, which established the reimbursement fee and the valuation of the existing facilities reflected inflated value based on the time they were put into service to now less any developer contributions. After that, determining the available capacity for future growth was calculated and was based on the project list in the Master Plan and additional water quality/hydromodification projects. She explained that projects in the infrastructure system were sometimes built larger than needed at the time to accommodate future growth and cities could recover some of those costs and commented those recoupable costs were estimated to be roughly 20% from future development. Ms. Galardi explained that costs included in the SDCs were the costs related to the increased capacity for growth and commented that those amounts varied from 0-100%. Ms. Galardi addressed compliance costs and stated that compliance costs included the cost of the SDC methodology development, a portion of the master planning that went into developing the project list, and the accounting costs incurred by the city and explained that the state statutes permitted SDC revenue to be spent on the costs of complying with the statutes. She stated that total growth improvement costs totaled $9.4 million and included the cost of condition projects, stormwater management, water quality/hydromodification facilities on future streets, Public Works facility, and master planning. She addressed the Stormwater SDC components on page 5 of the presentation and reported that the full cost of the Reimbursement Fee was $204 per Equivalent Service Unit (ESU). She explained that an ESU was defined as 2,640 square feet of impervious area and impervious area was how they estimated the potential runoff from a property. She reported that the Improvement Fee was $1,222 per ESU and the Compliance Fee was $36 per ESU for a total of $1,462 per ESU for the city's portion. She explained that there was also a regional SDC that was charged by Clean Water Services and was $585 per ESU but Clean Water Services generally credited at 100% for new development that met or exceeded Clean Water Services standards. Ms. Galardi outlined that under the revised methodology and credit policy, the potential credit was 45% for the water quality portion of the cost and resulted in a net SDC of $804 per ESU and explained that this was a system wide SDC. She provided an overview of the SDC comparison chart on page 6 of the presentation. Ms. Galardi outlined the process for updating the SDCs in the future and explained that the project list could be updated at any time, but a 30-day notice would be required if it resulted in an SDC increase and a public hearing could be required if requested by the public. An update to the SDC methodology would necessitate a public hearing and a 90-day notice to interested parties and a 60-day methodology review period. She stated that the SDC schedule could be changed annually based on the construction costs index and was not considered changing the methodology. Mayor Mays opened the public hearing and asked for public comment on the proposed resolution. Hearing none he closed the public hearing and asked for discussion or a motion from Council.

MOTION: FROM COUNCILOR YOUNG TO ADOPT RESOLUTION 2022-072, UPDATING THE CITY OF SHERWOOD STORMWATER SYSTEM DEVELOPMENT CHARGES METHODOLOGY AND AMENDING

THE FEE SCHEDULE. SECONDED BY COUNCILOR BROUSE. MOTION PASSED 5:0, ALL PRESENT MEMBERS VOTED IN FAVOR (COUNCILOR SCOTT WAS ABSENT).

Mayor Mays addressed the next agenda item.

9. CITY MANAGER REPORT:

City Manager Campbell congratulated Mayor Mays on his award. Mayor Mays reported that he had had a community member ask that residents observe proper crossing conduct when crossing Edy by the Ridges schools.

10. COUNCIL ANNOUNCEMENTS:

Councilor Giles urged teachers to encourage their students to get involved in school activities. He encouraged students to join the cross-country team. He reported that the Planning Commission would meet next Tuesday.

Councilor Brouse reported she attended the Housing Advisory Committee meeting where they celebrated Washington County Program Manager Jennie Proctor's retirement. She reported she attended the opening of The Valfre at Avenida in Forest Grove. She reported that the Library Advisory Board would meet on September 21st. She reported that the Senior Advisory Board was continuing their work on making Sherwood a senior friendly city. She reported that a fundraiser for the PEARLS program would be held on September 17th.

Councilor Young reported she was unable to attend the Police Advisory Board meeting where they discussed the results of various community surveys and discussed future staffing needs. She reported that the YMCA would be closed for several days for repairs. She reported that she had been invited to attend a meeting along with a Tualatin and Tigard City Councilor where they will discuss their city's goals, transportation, and housing.

Council President Rosener reported he attended the Oregon Broadband Advisory Council meeting.

Mayor Mays reported he was unable to attend the last LOC meeting. He wished everyone a successful and safe first week of school and asked that drivers be mindful of pedestrians.

11. ADJOURN:

Mayor Mays adjourned the regular session at 7:42 pm and indicated the council would meet in an executive session.

EXECUTIVE SESSION

1. **CALL TO ORDER:** The executive session was called to order at 8:02 pm.

2. **COUNCIL PRESENT:** Council President Tim Rosener, Councilors Kim Young and Renee Brouse. Councilor Taylor Giles participated remotely. Mayor Keith Mays and Councilor Doug Scott were absent.

3. **STAFF PRESENT:** City Manager Keith Campbell and Interim City Attorney Alan Rappleyea.

4. TOPICS

A. ORS 192.660(2)(h), Legal Counsel

5. ADJOURN:

The executive session was adjourned at 8:12 pm.

Attest:

Sylvia Murphy, MMC, City Recorder

Keith Mays, Mayor

City Council Meeting Date: September 20, 2022

Agenda Item: Consent Agenda

TO: Sherwood City Council

FROM: Craig Sheldon, Public Works Director
Through: Keith D. Campbell, City Manager, and Alan Rappleyea, Interim City Attorney

SUBJECT: **Resolution 2022-073, Authorizing the City Manager to enter into a contract with Bureau Veritas for the Americans with Disabilities Act (ADA) Transition Plan**

Issue:
Should City Council authorize the City Manager to enter into a contract with Bureau Veritas for the Americans with Disabilities Act Transition Plan?

Background:

More than 55 million Americans (18% of our population) have disabilities, and they, like all Americans participate in a variety of programs, services, and activities provided by their State and local governments. By the year 2030, approximately 71.5 million baby-boomers will be over the age of 65 and will need accessible services and surroundings that meet their age-related needs.

People with disabilities may be excluded from participating in basic civic activities like using the public transportation systems, serving on a jury, voting, seeking refuge at an emergency shelter, accessing parks or being able to attend community events with family and friends. The Americans with Disabilities Act (ADA) is a Federal civil rights law that prohibits discrimination against people with disabilities. Under this law, people with disabilities are entitled to all of the rights, privileges, advantages, and opportunities that others have when participating in civic activities.

The ADA protects the rights of people who have a physical or mental barrier that limits their ability to perform one or more major life activities, such as breathing, walking, reaching, reading, thinking, seeing, hearing, talking, or working.

To increase the City's effectiveness at serving individuals with disabilities the City of Sherwood will perform an audit of its policies, practices, and procedures and identify how those align with best practices. The City will evaluate the existing public facilities it is responsible for, taking advantage of the data already gathered as much as is possible. The end goal of this project is an ADA Title II Transition Plan (ADA Transition Plan) which outlines improvements as well as their priorities, triggers, timelines and planning level cost estimates. The Transition Plan will be developed consistent with the ADA Title II Technical Assistance Manual in an orderly, efficient, and transparent process.

On July 20, 2022 and July 22, 2022, a request for proposal was advertised in the Daily Journal of Commerce and on the City's webpage. We received one proposal from Bureau Veritas. We reviewed the proposal based on:

- Capabilities & Approach
- Key Personnel & Qualified Staff
- Project Schedule
- References & Past Experience
- Cost

Based on the review of the proposal received, Bureau Veritas is the most responsive to the City's request.

Bureau Veritas will assist the City in preparing a Transition Plan with regards to Title II compliance and applicable federal and state regulations for City facilities. The Plan will cover four main areas: public right of ways (ROW), programs, services, and buildings. They will work with the City to define standards, conduct and assist in an evaluation identifying potential deficiencies limiting accessibility and prioritize with a schedule and rough cost estimates to achieve compliance. They will also facilitate the public outreach necessary for the successful adoption of the plan.

Financial Impacts:
Their proposed cost to complete the work is $202,148.50. Staff is asking for a contingency of 5% ($10,107.00) for a total of $212,255.50. The cost of the Transition Plan is included in the 2022/23 budget.

Recommendation:
Staff respectfully recommends City Council approval of Resolution 2022-073, Authorizing the City Manager to enter into a contract with Bureau Veritas to complete an American with Disabilities Act (ADA) Transition Plan.

City of Sherwood Oregon
Home of the Tualatin River National Wildlife Refuge

RESOLUTION 2022-073

AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH BUREAU VERITAS FOR THE AMERICANS WITH DISABILITIES ACT (ADA) TRANSITION PLAN

WHEREAS, Section 504 of the Rehabilitation Act of 1973 obligates state and local governments to ensure that persons with disabilities have equal access to any programs, services, or activities receiving federal financial assistance; and

WHEREAS, the Americans with Disabilities Act (ADA) of 1990 is a civil rights statue that prohibits discrimination against people who have disabilities; and

WHEREAS, Title II of the ADA specifically addresses the subject of making City services and facilities accessible to those with disabilities; and

WHEREAS, state and local government, public entities or agencies are required to perform self-evaluations of their current facilities, relative to the accessibility requirements of the ADA Transition Plan; and

WHEREAS, it is in the best interest of the City to adopt the ADA Transition Plan.

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1. The City Manager is hereby authorized to enter into a contract with Bureau Veritas in the amount of $202,148.50 with a contingency in the amount of 5% ($10,107.00) to cover any unforeseen costs, for a total amount not to exceed $212,255.50.

Section 2. This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 20th day of September 2022.

_____
Keith Mays, Mayor

Attest:

_____
Sylvia Murphy, MMC, City Recorder

City Council Meeting Date: September 20, 2022

Agenda Item: Consent Agenda

TO: Sherwood City Council

FROM: Alan Rappleyea, Interim City Attorney

SUBJECT: **Resolution 2022-074, Authorizing City to Enter into an Intergovernmental Agreement to Pursue Litigation Against the State Concerning the Adoption of Administrative Rules**

Issue:

Shall the City Council authorize the City Manager to sign an Intergovernmental Agreement (IGA) with various Cities in Oregon concerning the State's adoption of administrative rules?

Background:

The Oregon Department of Land Use adopted its Climate Friendly and Equitable Communities administrative rules on July 21, 2022, in response to an Executive Order No. 20-04 adopted March 10,2020 from Governor Kate Brown. A number of cities are seeking other cities to join them in the appeal and split the costs. The cities are concerned that the adoption of the rules failed to follow the required procedures.

These are very broad rules that will affect how the City permits development. One concern is that the State is dictating how local governments shall act without regard to effect on communities or cost. Oregon land use system is based on a principle of broad goals which the local governments can implement and not be micromanaged by the State. Staff believe that creating climate friendly and equitable cities is extremely important but have significant concerns about how this is implemented by the State. The legislature allotted $768,000 to assist local governments in this work and the cities needs significantly greater assistance from the State.

The following cities are already signatories to the IGA: City of Springfield, City of Medford, City of Keizer, City of Happy Valley, City of Cornelius, City of Hillsboro, City of Troutdale, City of Gresham, City of Tualatin and City of Grants Pass.

Financial Impacts:

The City will be responsible for approximately 7% of the cost of the litigation.

Recommendation:

Staff respectfully recommends City Council approval of Resolution 2022-074, Authorizing City to Enter into an Intergovernmental Agreement to Pursue Litigation Against the State Concerning the Adoption of Administrative Rules.

City of Sherwood Oregon
Home of the Tualatin River National Wildlife Refuge

RESOLUTION 2022-074

AUTHORIZING CITY TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT TO PURSUE LITIGATION AGAINST THE STATE CONCERNING THE ADOPTION OF ADMINISTRATIVE RULES

WHEREAS, following the Governors Executive Order 20-04 adopted March 10, 2020, the Department of Land Conservation and Development adopted administrative rules addressing the climate and equity; and

WHEREAS, the City has concerns that the rules were not adopted properly, are too restrictive and do not provide enough flexibility for individual cities to address these important concerns; and

WHEREAS, other cities across the State share these concerns are seeking legal action to address these concerns; and

WHEREAS, in order to share costs for this legal action, the parties have developed an Intergovernmental Agreement (IGA).

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1. The City authorizes the City Administrator to sign the IGA attached as Exhibit A.

Section 2. This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 20th day of September 2022.

_____
Keith Mays, Mayor

Attest:

_____
Sylvia Murphy, MMC, City Recorder

INTERGOVERNMENTAL AGREEMENT
JOINT LITIGATION OF
CLIMATE FRIENDLY & EQUITABLE COMMUNITIES RULES

This agreement is made by and between the following local governmental units in Oregon: City of Springfield, City of Medford, City of Keizer, City of Happy Valley, City of Cornelius, City of Hillsboro, City of Troutdale, City of Gresham, City of Tualatin, City of Grants Pass and any other city within the state of Oregon that executes this Agreement after its effective date ("Parties").

EFFECTIVE DATE: September 2, 2022

RECITALS

A. ORS 190.010 provides that units of local government may enter into agreements for the performance of any and all functions and activities that any party to the agreement, its officers, or agents have authority to perform. This agreement is not intended to form an intergovernmental entity under ORS 190.010(5).

B. On July 21, 2022 the Land Conservation and Development Commission adopted amendments to the Oregon Administrative Rules Chapter 660, divisions 8, 12 and 44, commonly referred to as the Climate Friendly and Equitable Communities Rules ("Rules"), which impose mandates upon each of the parties, although the extent of those mandates and applicability of specific provisions in the Rules may vary among the parties.

C. The Parties' governing bodies have approved hiring special legal counsel to petition the Oregon Court of Appeals for legal review of the Rules on behalf of the parties ("Litigation"). The Parties and their legal counsel believe that the Litigation presents legal and factual issues that are common to the Parties and that the Parties have a mutual joint interest in seeking joint legal review of the Rules.

D. The Parties and their legal counsel believe that it is in their best interests to hire special legal counsel to jointly represent the parties in the Litigation. The parties believe that it is in their best interest to confidentially share documents, factual information, mental impressions, legal analysis, and other information that may be subject to attorney-client privilege, work product doctrine, or other privilege or rule of confidentiality. When shared confidentially between Parties to this Agreement in furtherance of their joint interests, this information shall be defined as "Joint Litigation Information" under this Agreement.

E. The Parties acknowledge that they have previously engaged in confidential communications or have confidentially shared information in connection with the Litigation that constitutes Joint Litigation Information. The Parties intend that such information is Joint Litigation Information and will be protected under this Agreement.

F. The parties intend to maintain confidentiality of Joint Litigation Information and that sharing Joint Litigation Information does not waive any privilege, protection, or immunity that might otherwise apply to such Joint Litigation Information pursuant to the "common interest" doctrine in ORS 40.225(2)(c)).

G. The Parties intend to enter into a representation agreement with the law firm Northwest Resource Law to act as special counsel to the parties in the Litigation ("Special Counsel"). The City of Springfield will coordinate payments to the Special Counsel. The parties intend to reimburse the City of Springfield for costs arising out of the Litigation according to the proportional size of each party's general operating expenses for the last two fiscal years, as represented in Exhibit A.

H. The Parties further intend to coordinate their public communications strategy regarding the Litigation and intend to contract with a communications consultant Anna Richter Taylor of ART Public Affairs for that purpose ("Public Communications Consultant"). The costs associated with communications consultant will also be allocated to each Party based on the share assigned to each party in Exhibit A.

NOW, THEREFORE, in consideration of the foregoing recitals, which are expressly made a part of this Agreement, the parties agree as follows:

1. Joint Communications Strategy. Each party agrees to coordinate their communications with third parties through a Public Communications Consultant. Such third parties may include but are not limited to members of the news media or the Oregon legislature.

2. Joint Litigation. Each party agrees to be named as petitioner in petitioning for review of the Rules with the Oregon Court of Appeals. Each party agrees to use reasonable efforts to support the Litigation, consistent with this Agreement. Each party further agrees to maintain confidentiality of Joint Litigation Information and that sharing Joint Litigation Information does not waive any privilege, protection, or immunity that might otherwise apply to such Joint Litigation Information pursuant to the "common interest" doctrine in ORS 40.225(2)(c)).

3. Parties Responsibilities.

a. The City of Springfield will:

i. Process and pay Special Counsel an initial retainer and any subsequent legal expenses and costs related to the Litigation on behalf of all parties;

ii. Within 30 days of paying the initial retainer and any subsequent legal expenses and costs, invoice each other party for its portion of the legal expenses and costs based on the share assigned to each party in Exhibit A;

iii. Process and pay a Public Communications Consultant on behalf of all parties, to provide the scope of services outlined in Exhibit B;

iv. Within 30 days of paying an invoice from the Public Communications Consultant, invoice each other party of its portion of the cost for services based on the share assigned to each party in Exhibit A.

b. Other local government parties will:

i. Pay City of Springfield within 30 days of its invoice for legal expenses and costs for the Litigation based on the share assigned to each party in Exhibit A; and

ii. Pay City of Springfield within 30 days of its invoice for Public Communications Consultant services as described in Exhibit B based on the share assigned to each party in Exhibit A.

c. All parties will:

i. Designate a city attorney from each party who will meet together, as needed, as a joint legal advisory committee to advise Special Counsel on matters related to the Litigation;

ii. Designate one representative from each party who will meet together, as needed, as a joint communications advisory committee to advise the Public Communications Consultants on matters regarding public relations and legislative strategies; and

iii. Act consistently with the joint public relations and legislative strategies for any Party's individual public communications and communications with the legislature regarding the Rules or Litigation.

iv. The joint communications advisory committee and joint legal advisory committees will keep each other apprised of significant aspects of the legal and communications strategies related to the Litigation.

4. Term. This agreement is effective as of September 1, 2022 until conclusion of the Litigation, including but not limited to any subsequent appeals to the Oregon Supreme Court following a decision by the Oregon Court of Appeals.

5. Non-Disclosure of Confidential Information.

a. A Party who receives Joint Litigation Information pursuant to this Agreement shall not disclose the Joint Litigation Information to anyone, without the written consent of the Party to this Agreement who was the source of the Joint Litigation Information. However, Joint Litigation Information may be freely exchanged between and among a Party's employees, agents, and elected officials; Party's counsel and employees of the law firm of that Party's counsel; a Party's lobbyist and employees of the lobbyist firm; Special Counsel and employees of the law firm of Special Counsel; and the Public Communications Consultant. This agreement does not obligate a Party to disclose or exchange Joint Litigation Information with any other Party.

b. If any person or entity requests Joint Litigation Information from a Party that was supplied by another Party, through discovery procedures, by subpoena, public records request, or in any other manner, then the Party receiving the request shall promptly notify the Party who supplied the Joint Defense Information of such request. The Party who receives the request shall assert, or permit other Parties to assert, all privileges, protections, records exemptions, and immunities with respect to the requested Joint Defense Information.

c. Nothing in this Agreement prevents a Party from disclosing information obtained independently from a source other than Joint Litigation Information, such as information obtained from a source other than a Party to this Agreement. Nothing

in this Agreement prevents a Party from disclosing information properly obtained through discovery even if the information had been designated as "Confidential" under this Agreement.

d. The Parties or their counsel shall take reasonable precautions to ensure that anyone permitted access to Joint Litigation Information will abide by the terms of this Agreement prior to receiving such access and that such person is further advised that such information is privileged, confidential and subject to the terms of this Agreement.

6. No New Attorney-Client Relationships Created. The Parties acknowledge that actual or potential conflicts of interest may exist among them. The Parties do not intend for this Agreement to create an attorney-client relationship or fiduciary relationship between any Party and counsel for another Party, except for Special Counsel (subject to a separate representation agreement between the Parties and Special Counsel). The fact that counsel for a Party is subject to this Agreement shall not be used as a basis for seeking to disqualify such counsel from representing any Party or anyone else in this or any other proceeding. No counsel who is subject to this Agreement shall be disqualified from examining or cross-examining any person, including Parties to this Agreement, because of the terms of this Agreement or information received pursuant to this Agreement.

7. Withdrawal/Termination.

a. Voluntary Withdrawal. A Party may voluntarily withdraw from this Agreement at any time and for any reason, upon 60 days' notice in writing to the other parties.

b. Mandatory Withdrawal. A Party and that Party's counsel shall promptly withdraw from this Agreement upon their determination that there no longer exists a common interest between the withdrawing party and the other Parties to this Agreement. Upon such determination, the Party and counsel subject to mandatory withdrawal shall no longer solicit, participate in, review or otherwise gather or use Joint Litigation Information, and shall promptly provide written notice of the Party's withdrawal to all other Parties to this Agreement.

c. Agreement Continues in Effect. A Party who has withdrawn from this Agreement remains subject to the obligations described in this Agreement with respect to Joint Litigation previously exchanged or disclosed and for payment of legal or consultant expenses incurred prior to that party's withdrawal. The remaining parties will agree to confer on a written amendment to Exhibit A to reallocate expenses incurred after a party's withdrawal. A Party's withdrawal from this Agreement shall not constitute a waiver of any privilege, immunity, or protection from discovery with respect to Joint Litigation Information.

d. Waiver of Potential Conflicts. All Parties agree that if any Party chooses to withdraw from this Agreement and/or from representation by Special Counsel, as a result of a potential conflict or otherwise, they will waive conflicts so as to permit Special Counsel to continue to represent the remaining Parties to this Agreement.

e. Return or Destruction of Joint Litigation Information. A Party who has withdrawn from this Agreement shall promptly return to the other Parties all Joint Litigation Information, or promptly provide written confirmation that all Joint Litigation

Information has been destroyed, at the option of the other Parties. This paragraph is subject to and modified by the terms of any protective order entered by the court and any applicable requirements of the Oregon Public Records Law.

8. Modifications/Additional Parties. Any modifications to this Agreement must be mutually agreed upon in writing and signed by all parties. Additional local government parties may be added to this Agreement by written amendment to the proportional cost shares in Exhibit A.

9. Administration. Each party designates the person listed on the signature page as its representative for purposes of administering this Agreement. Either party may change its designated representative by giving written notice to the other parties.

10. Assignment. No party shall assign this Agreement, in whole or in part, or any right or obligation hereunder, without the written approval of all other parties.

11. Compliance with Laws and Regulations. Every party shall comply with all applicable federal, state, and local laws, rules, ordinances, and regulations at all times, including but not limited to applicable provisions of the Americans with Disabilities Act of 1990, 42 USC Section 12101 et seq. and Section 504 of the Rehabilitation Act of 1973.

12. Notices. Any notices permitted or required by this Agreement shall be deemed given when personally delivered or upon deposit in the United States mail, postage fully prepaid, certified, return receipt requested, addressed to the representative designated in Paragraph 4. Either party may change its address by notice given to the other in accordance with this paragraph.

13. Integration. This Agreement embodies the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein. This Agreement shall supersede all prior communications, representations, agreements, either oral or written, between the parties.

14. Waiver. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver or relinquishment by either party of the right to such performance in the future nor of the right to enforce any other provision of this Agreement.

15. Interpretation. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Oregon.

16. Indemnification. To the extent legally possible and subject to the limits of the Oregon Tort Claims Act, each of the parties must indemnify and hold the other parties, their officers, agents, and employees, harmless from and against any and all claims, actions, liabilities, costs, including attorney fees and other costs of defense, arising out of or in any way related to any act or failure to act by the indemnifying party's officers, agents, and employees.

17. Status. In providing the services specified in this Agreement (and any associated services) the parties are public bodies and maintain their public body status as specified in ORS 30.260. The parties understand and acknowledge that each party retains all immunities and privileges granted them by the Oregon Tort Claims Act (ORS 30.260 through 30.300) and any and all other statutory rights granted as a result of their status as local public bodies.

18. Construction of Agreement. This Agreement shall not be construed more favorably to any party due to the preparation of this Agreement or a portion of the agreement by that party. The headings and subheadings in this Agreement are for convenience, do not form a part of this Agreement, and shall not be used in construing this Agreement.

19. Multiple Counterparts. This Agreement any subsequent amendments may be executed in several counterparts, facsimile or otherwise, all of which taken together will constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement and any amendments so executed will constitute an original.

[SIGNATURES ATTACHED SEPARATELY]

EXHIBIT A
Cost Sharing

The City of Springfield serves as billing agent for the Special Counsel and for Public Communications Consultant Services among the Parties.

The City of Springfield will invoice each party for services based on the Cost Shares column below. Each Party's cost share is based upon the total budgeted operating expenses for the jurisdiction's last two fiscal years, less any funds in the budget that are pass-through funds not reflective of actual operating expenses, and less any funds deriving from the American Rescue Plan Act of 2021. In consideration for the City of Springfield serving as billing agent, Springfield's costs are offset by 5%. The "Population" and "Initial Retainer" columns are provided for reference only; the Initial Retainer is based upon an initial retainer of $40,000 paid to Special Counsel by City of Springfield.

CITY	POPULATION (2020)	LAST TWO YEARS OPERATING BUDGET	COST SHARE	INITIAL RETAINER
SPRINGFIELD	62,729	$187,694,348	**13.0%**	$5,200
KEIZER	39,408	$36,482,508	**2.6%**	$1,060
MEDFORD	82,098	$198,266,539	**14.4%**	$5,757
HAPPY VALLEY	22,049	$35,543,960	**2.6%**	$1,032
CORNELIUS	12,767	$25,428,458	**1.8%**	$739
GRESHAM	110,456	$274,208,200	**19.9%**	$7,961
HILLSBORO	108,026	$382,155,343	**27.7%**	$11,095
TROUTDALE	16,433	$26,338,567	**1.9%**	$765
TUALATIN	27,601	$72,767,900	**5.3%**	$2,113
GRANTS PASS	37,938	$148,761,656	**10.8%**	$4,319

EXHIBIT B

Scope of Public Communications Services

On behalf of all Parties, the City of Springfield will contract with Anna Richter Taylor of ART Public Affairs to provide the following services related to the Parties' appeal of the Rules:

- Lead the public affairs strategy and plan development with city representatives and legal counsel. The plan will include goals, strategy, tactics, audiences, roles/responsibilities, and a timeline aligned with legal goals and timelines.

- Create communications collateral in coordination with joint communications advisory committee and legal counsel for use with city officials, state officials, media, and other stakeholders.

- Manage weekly meetings of the joint communications advisory committee and, when appropriate, support coordination between joint communications advisory committee and joint legal advisory committee, before the lawsuit is filed and throughout the legal process.

- Support proactive media relations engagement as part of the overall strategy and crisis communications response.

- As necessary, support legislative strategy leading up to and during the session.

City Council Meeting Date: September 20, 2022

Agenda Item: Consent Agenda

TO: Sherwood City Council

FROM: Bob Galati, City Engineer
Through: Keith D. Campbell, City Manager and Craig Sheldon, Public Works Director

SUBJECT: Resolution 2022-075, Amend Previous Resolutions and Adopt New Engineering Design and Standard Details for Small Wireless Facilities

---

Issue:
Shall the City Council amend previous resolutions and adopt new engineering design and standard details for Small Wireless Facilities?

Background:
With Resolution 2019-045 (adopted on May 21, 2019), Council established municipal code language and engineering design and standard details for small wireless facilities. With Resolution 2019-068 (adopted on August 20, 2019), Council amended the engineering design and standard details to conform to the latest used municipal/industry standards.

Since the adoption of Resolution 2019-068, City staff has continued working on updating the engineering design and standard details for the various street light pole types currently used in the city. Staff's intent is to have Council review and approve the updated engineering design and standard details for these Small Cell Wireless Facilities poles for use within the city. The approved pole engineering design and standard details will ultimately be included with the Engineering Design and Standard Details Manual as adopted details.

Adoption of this resolution will amend previously adopted language and engineering design standards and details and replace them with the amended language and engineering design standards and details attached to the resolution Exhibits LT-1 through LT-7.

In addition, staff anticipates that some refinement of these exhibits may be necessary over time based on experience with installations as well as changes in technology; any necessary revisions will be brought back to Council for approval at a later date.

Financial Impacts:
No direct financial impacts.

Recommendation:
Staff respectfully recommends City Council approval of Resolution 2022-075, amend previous resolutions and adopt new engineering design and standard details for Small Wireless Facilities.

City of Sherwood Oregon
Home of the Tualatin River National Wildlife Refuge

RESOLUTION 2022-075

AMENDING PREVIOUS RESOLUTIONS AND ADOPTING NEW ENGINEERING DESIGN AND STANDARD DETAILS FOR SMALL WIRELESS FACILITIES

WHEREAS, with Resolution 2019-045 (adopted on May 21, 2019), Council established municipal code language and engineering design and standard details for small wireless facilities; and

WHEREAS, with Resolution 2019-068 (adopted on August 20, 2019), Council amended the engineering design and standard details to conform to the latest used municipal/industry standards; and

WHEREAS, since the adoption of Resolution 2019-068, City staff has continued working on updating the engineering design and standard details for the various street light pole types currently used in the city; and

WHEREAS, the intent is to have Council review and approve the updated engineering design and standard details for the Small Cell Wireless Facilities poles used within the city; and

WHEREAS, the approved Small Cell Wireless Facilities pole engineering design and standard details will be included in the Engineering Design and Standard Details Manual as adopted details; and

WHEREAS, adoption of this resolution will amend all previously adopted municipal code language and engineering design standards and details, and replace them with the amended municipal code language and engineering design standards and details attached to this resolution as Exhibits LT-1 through LT-7; and

WHEREAS, it appears to Council that such revisions are necessary and appropriate.

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1. The engineering design and standard details attached hereto as Exhibit A, which includes Exhibits LT-1 through LT-7 are hereby approved and replaces previously adopted small cell wireless facility engineering design and standard details in their entirety.

Section 2. The City Manager is hereby directed and authorized to adopt rules and to take such actions as may be necessary to implement this Resolution.

Section 3. This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 20th of September, 2022.

Keith Mays, Mayor

Attest:

Sylvia Murphy, MMC, City Recorder

Small Wireless Facility Design Standards

A. Definitions and Applicability

1. These design standards apply to Small Wireless Facilities ("SWF") installed in the public right-of-way pursuant to SMC 12.02 unless the applicant obtains approval of a deviation pursuant to Section F. SWF are defined as facilities that meet the following:
   a. The proposed facilities meet one or more of the following height parameters:
      i. Are mounted on structures 50 feet or less in height including their antennas as defined in 47 C.F.R. Section l.1320(d), or
      ii. Are mounted on structures no more than ten percent (10%) taller than other adjacent structures, or
      iii. Do not extend existing structures on which they are located to a height of more than 50 feet or by more than ten percent (10%), whichever is greater.
   b. Each antenna or antenna enclosure shall not exceed three (3) cubic feet in volume, and the total volume of multiple antennas on one structure shall not exceed fifteen (15) cubic feet.
   c. The total volume of all installed equipment external to the pole (including, but not limited to cabinets, vaults, boxes) shall not exceed twenty-eight (28) cubic feet. This maximum applies to all equipment installed at the time of original application and includes any equipment to be installed at a future date.
   d. The facilities do not result in human exposure to radio frequency radiation in excess of the applicable safety standards specified in the FCC's Rules and Regulations [47 CFR section l.1307(b)].

B. General Requirements

1. Dimensional requirements set forth herein shall be superseded by any more restrictive dimensional requirements set forth in an approved SWF light pole design details (as set forth in attached Exhibits LT-2 through LT-7) or approved SWF standalone pole design (as set forth in attached Exhibits LT-1, and LT-5 through LT-7), as applicable.
2. Ground-mounted equipment in the right-of-way is prohibited. If a deviation from these design standards allowing for ground-mounted equipment is approved, then such equipment shall be concealed in a cabinet, in street furniture, or with landscaping.
3. Replacement light poles, and standalone poles, and the installation thereof, shall comply with the Americans with Disabilities Act (ADA), city construction and sidewalk clearance standards, and city, state and federal laws and regulations in order to provide a clear and safe passage within the right-of-way. Further, the location of any replacement light pole, or standalone pole, must comply with applicable traffic requirements, not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices), and not adversely affect public health, safety, or welfare.
4. Replacement light poles shall be located as near as feasible to the existing light pole, as determined by the City Engineer based on the required photometric analysis, unless otherwise required by these design standards. The abandoned light pole must be removed within thirty (30) days after installation of the replacement light pole and either disposed of by the applicant or delivered to City, as directed by the City Engineer.
5. Any replacement light pole shall substantially conform to the color, material and design of the existing light pole unless a different color, material, and/or design is required by these design standards.
6. To the extent technically feasible, antennas, equipment enclosures, and all ancillary equipment, boxes, and conduit shall be colored or painted, with graffiti-resistant paint, prepared and powder

coated consistent with Section 00593 of the 2022 ODOT Standard Specifications, to match the color of the surface of the pole on which they are attached.

7. No advertising, branding (including manufacturer decals), or other signage is allowed except as permitted as a concealment technique pursuant to the design standards or as follows:
   a. Safety signage as required by law placed in accordance with legal requirements; and,
   b. All poles to which an SWF is attached must be posted with the SWF owner's name, City-assigned pole number, and 24-hour emergency telephone number. This information must be posted on a sign that is a maximum of three (3) inches wide by one and a half (1.5) inches tall, in engraved lettering that is fifteen one- hundredths (0.15) of an inch tall, on a solid black background. The sign must be curved to mount flush to the pole and mounted five (5) feet above the ground on side of the pole that is not facing the street. These requirements may be superseded by requirements set forth in an approved SWF light pole design (as set forth in the attached Exhibits LT-2 through LT-7) or approved SWF standalone pole design (as set forth in attached Exhibits LT-1, and LT-5 through LT-7) as applicable.
8. Antennas and antenna equipment shall not be illuminated except as required by a federal or state authority.
9. When external equipment is permitted, all connection points between external and internal equipment must be concealed.
10. All cables and connectors for telephone, data backhaul, electric, and other similar utilities must be routed underground in conduits. Underground cables and wires must transition directly into the pole base without any external doghouse.
11. Generators, including backup generators, are not permitted in the ROW.
12. Disconnect switches must be present and accessible by City and local utility staff for each SWF installation, and, if a meter is required, disconnect switches shall be stacked above or below the meter, instead of attached to the side of the meter, if permitted by the electric utility.
13. All SWF installations shall comply with the National Electric Safety Code (NESC) and National Electric Code (NEC) standards and with ANSI/TIA 222-G-2 to Class II standard.
14. When the City is not the owner of the pole on which a SWF is installed, the SWF installation must also comply with any requirements of the pole owner. The applicant must provide documentation of the approval of the pole owner with its application to the City.
15. SWF proposed to be installed in the ROW shall be sited according to the following priorities, in descending order of preference. If an applicant proposes to install a SWF in any location other than a first priority location, the applicant must provide evidence demonstrating why a higher priority location is not suitable for use. For purposes of this subsection, streets shall have the classification set forth in the Sherwood Transportation System Plan.
   a. First priority: principal arterials;
   b. Second priority: arterial streets;
   c. Third priority: collector streets;
   d. Fourth priority: neighborhood routes;
   e. Fifth priority: local streets.
16. SWF must be installed, and maintained by the SWF owner, in a manner that does not:
   a. Obstruct, impede, or hinder the usual travel, or public safety, on the public ROW.
   b. Obstruct the legal use of the public ROW by others.
   c. Violate or conflict with any laws, including but not limited to City of Sherwood Ordinances and standards.
   d. Obstruct, impede, or hinder any operations of the City's infrastructure or systems, including but not limited to Smart City equipment, street light equipment, traffic signal equipment, etc.

C. Small Wireless Facilities Attached to Existing or Replacement Light Poles.

1. Small wireless facilities attached to existing or replacement light poles shall conform to the following design criteria:
    a. **External Equipment.** When external equipment is permitted under these design standards, the antennas and associated equipment enclosure must appear as an integral part of the light pole or be mounted as close to the light pole as feasible and must be reasonably related in size to the intended purpose of the facility and reasonable expansion for future technologies, not to exceed the volumetric requirements described in Section A. If the equipment enclosure is mounted on the exterior of the light pole, the applicant is limited to one (1) equipment enclosure per pole and is required to place the equipment enclosure behind any banners or signs that may be on the light pole. All external equipment, other than antennas, must be enclosed within this equipment enclosure. Conduit, fiber, and all wiring and cabling must be fully concealed within the light pole.
    b. **Concealed Equipment.** When concealed equipment is required under these design standards, all equipment (excluding disconnect switches), conduit and fiber must be fully concealed within the light pole. The antennas must appear as an integral part of the light pole or be mounted as close to the light pole as feasible.
2. Applications for small wireless facilities attached to replacement light poles must include an accompanying photometric analysis that meets the Illuminating Engineering Society (JES) RP-08-14 for street lighting. The photometric analysis must be sealed by a Professional Engineer in the State of Oregon.
3. Small wireless facilities are only permitted on existing or replacement light poles in geographic areas for which a SWF light pole design has been approved. A description of the areas for which SWF light pole designs have been approved is attached hereto as Exhibit LT-Map. Approved SWF light pole designs are attached hereto as Exhibits LT-1 through LT-7.
4. The height of any replacement light pole may not extend more than 10 feet above the height of the existing light pole.
5. The diameter of a replacement light pole shall comply with the city's sidewalk clearance requirements.

D. Small Wireless Facilities Installed with Standalone Poles.

Small wireless facilities may be attached to standalone poles, installed by the wireless provider, subject to the following criteria:

1. Antennas, antenna equipment and associated equipment enclosures (excluding disconnect switches), conduit and fiber shall be fully concealed within the structure, unless such concealment is not technically feasible, or is incompatible with the standalone pole design, then the antennas and associated equipment enclosures must appear as an integral part of the structure or mounted as close to the standalone pole as feasible, and must be reasonably related in size to the intended purpose of the facility and reasonable expansion for technologies, not to exceed the volumetric requirements in Section A.
2. To the extent technically feasible, all standalone poles and standalone pole-mounted antennas and equipment shall be painted or colored with flat, non-reflective colors or shades that are compatible with other infrastructure in the right-of-way and/or blend with the visual environment.
3. Standalone poles shall be no more than forty (40) feet in height.
4. Small wireless facilities are only permitted on standalone poles in geographic areas for which a SWF standalone pole design has been approved. A description of the areas for which SWF

standalone pole designs have been approved is attached hereto as Exhibit LT-Map. Approved SWF standalone pole designs are attached hereto as Exhibits LT-1, and LT-5 through LT-7.

5. Standalone poles are only permitted when the applicant can demonstrate that installation on an existing or replacement light pole is not technically feasible or otherwise not possible due to a lack of owner authorization, safety considerations, or other similar reasons.

E. Small Wireless Facilities Attached to Utility Poles with Overhead Lines, Aerial Cable Spans, Traffic Signal Poles, and Other Structures in the ROW

1. Due to the City's requirements relating to transitioning to undergrounding of all utilities, which do not allow new utilities of any kind to be installed on utility poles with overhead lines except for certain electric lines which cannot be undergrounded, and due to aesthetic and safety concerns, SWF are not permitted on utility poles with overhead lines, aerial cable spans (including aerial span power connections), traffic signal poles, or any other structures in the ROW, other than those specifically permitted by these design standards.
2. Notwithstanding the foregoing, in areas of the City where utility poles with overhead lines exist, but separate light poles do not exist, SWF may be attached to such utility poles, subject to the following criteria:
    a. If the pole is not owed by the City the installation must comply with all pole owner requirements.
    b. The existing pole may be replaced with a taller pole or extended for the purpose of accommodating a small wireless facility, provided that the replacement or extended pole does not exceed fifty (50) feet in height or a height that is ten (10) percent taller than the adjacent poles, whichever is less. The replacement or extended pole height may be increased only if required by the pole owner, and such height increase is the minimum amount necessary to provide sufficient separation and/or clearance from electrical and wireline facilities. Replacement poles and extensions must either match the color and materials of the replaced pole or be the standard new pole used by the pole owner in the City.
    c. Antennas (to the extent technically feasible), equipment enclosures, and all conduits must match the material, color, and design of the surface of the pole or existing equipment to which they are attached.
    d. Antennas and all other equipment must be mounted as close to the pole as is technically feasible and as is consistent with pole owner requirements.
    e. No antenna may extend horizontally more than twenty (20) inches past the outermost mounting point.
    f. All equipment must be placed in a single enclosure reasonably related in size to the intended purpose of the facility and reasonable expansion for future technologies. The equipment enclosure must be placed behind any banners or signs that may be on the pole. All external equipment, other than antennas, conduit, fiber, and other wiring, must be enclosed within this equipment enclosure.
    g. All cables and wiring must be enclosed in conduits, if allowed by the pole owner. The number of conduits must be minimized to the number technically necessary to accommodate the small wireless facilities.

F. Deviations from Design Standards.

I. An applicant may obtain a deviation from these design standards if compliance with the standard: (a) is not technically feasible; (b) unreasonably impedes the effective operation of the small wireless facility; (c) unreasonably impairs a desired network performance objective; or (d) otherwise materially inhibits or limits the provision of wireless service. The City may also

approve a deviation from these standards when it finds the applicant's proposed design provides equivalent or superior aesthetic value when compared to strict compliance with these standards.

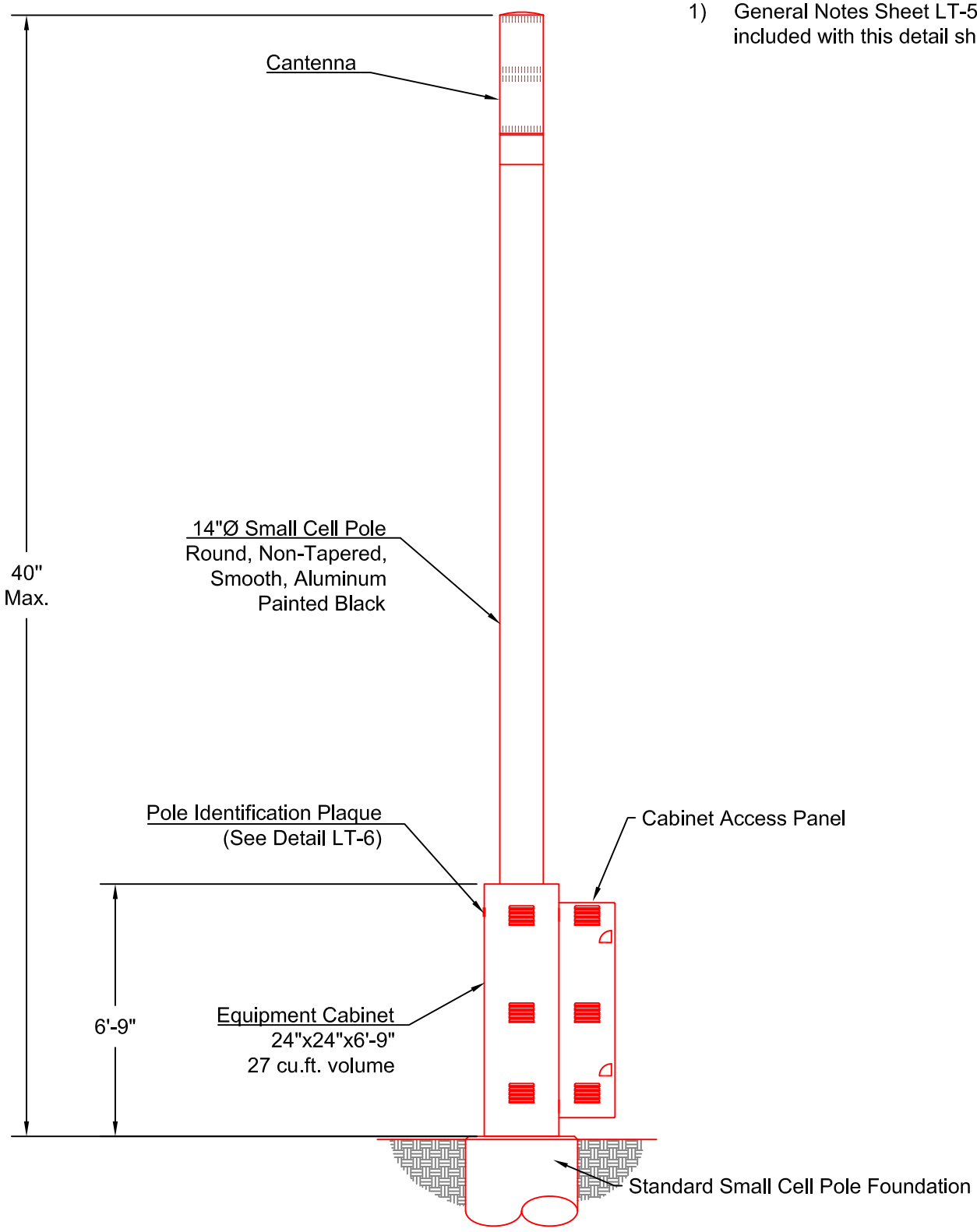
2. Requests for deviation must be narrowly tailored to minimize deviation from the requirements of these design standards.
3. The City Manager, or designee, has authority to approve all requests for deviation from these design standards only to the minimum extent required.

G. Conflicting Design Requirements

In circumstances where the design requirements of the pole owner and the City are different, the more stringent of the two shall prevail. City design requirements that are in direct conflict with the pole owner's requirement may be waived by the City Manager, or designee.

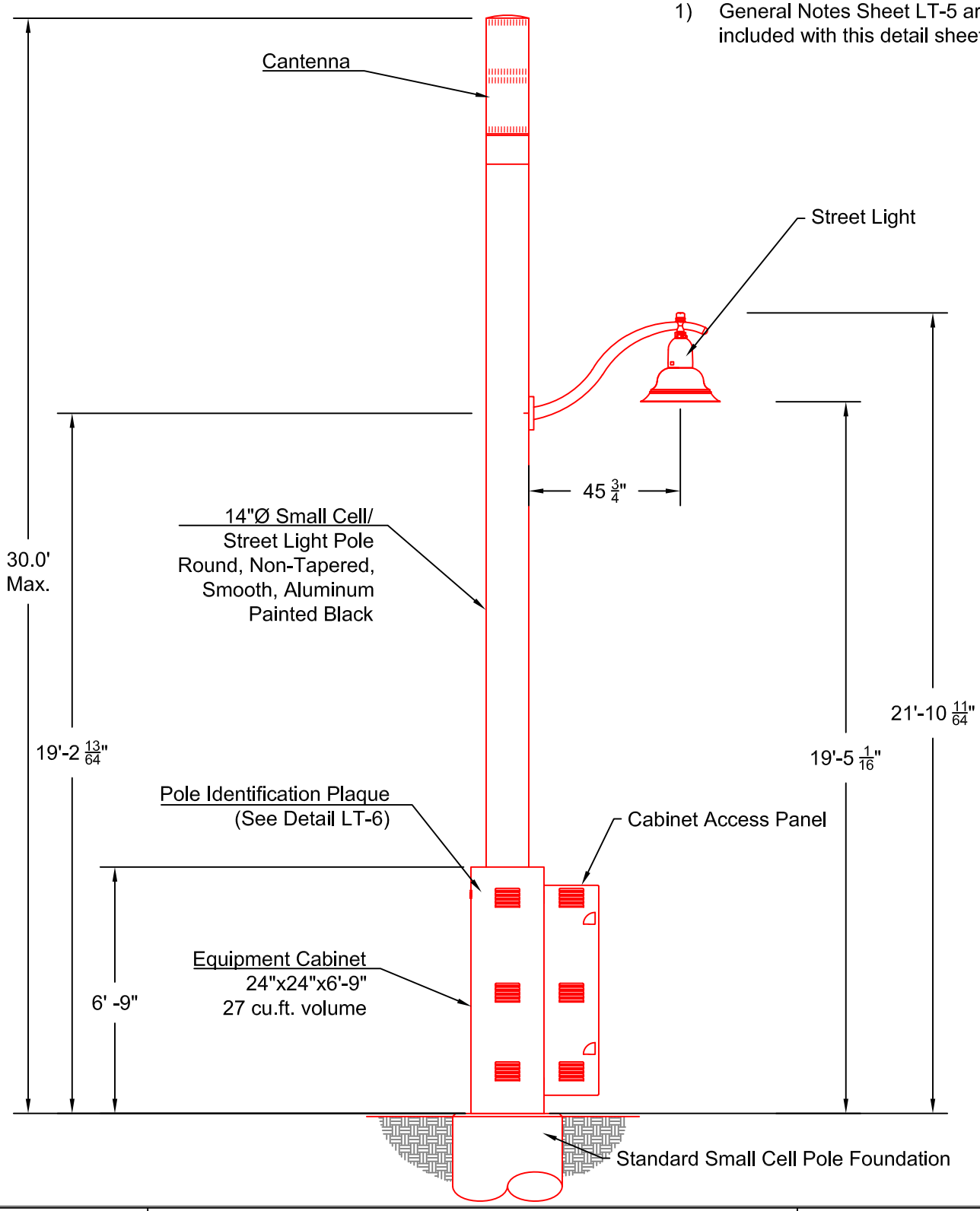
Notes:

1) General Notes Sheet LT-5 are included with this detail sheet.



	STANDARD DRAWING TITLE	DRAWING NUMBER
City of Sherwood Oregon	SMALL CELL POLE CONFIGURATION	LT-1
Any alteration of this drawing may not be associated in any way with the City of Sherwood Standard Drawings.	SCALE: N.T.S.	DATE: 07/28/2022

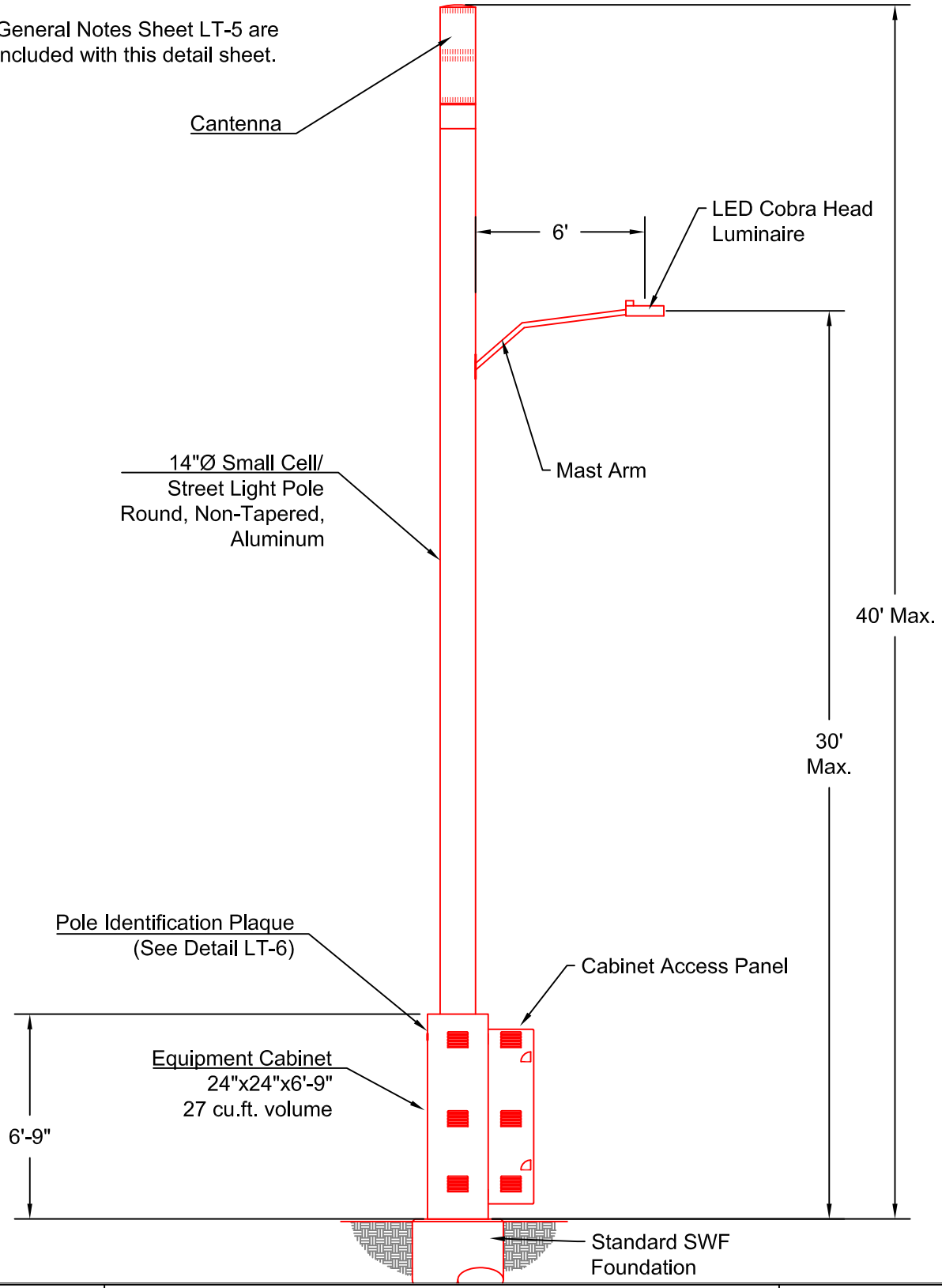
Notes:
1) General Notes Sheet LT-5 are included with this detail sheet.



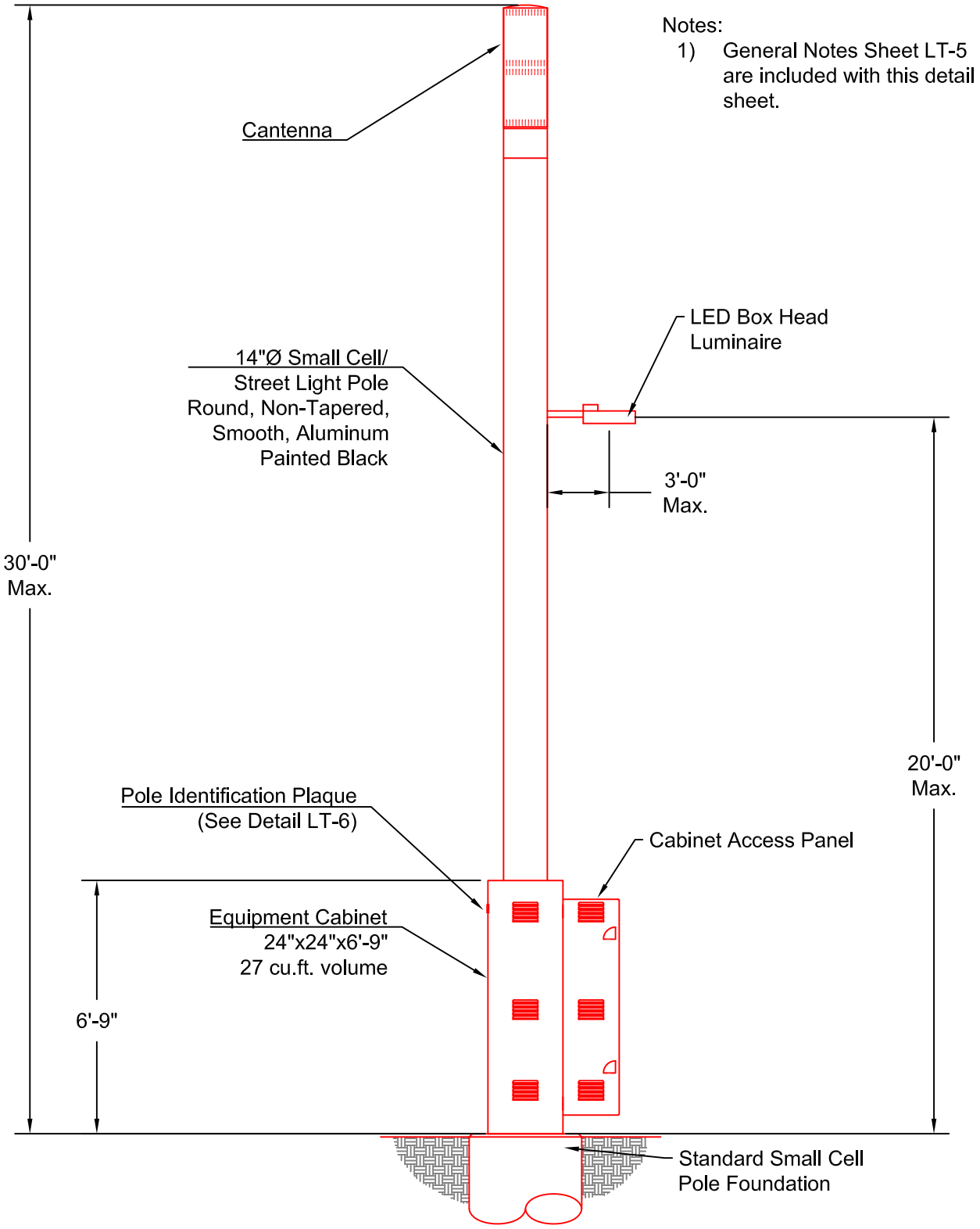
	STANDARD DRAWING TITLE	DRAWING NUMBER
City of Sherwood Oregon	STREET LIGHT POLE - WESTBROOKE STYLE WITH SMALL CELL CONFIGURATION	LT-2
Any alteration of this drawing may not be associated in any way with the City of Sherwood Standard Drawings.	SCALE: N.T.S.	DATE: 07/22/2022

Notes:

1) General Notes Sheet LT-5 are included with this detail sheet.



	STANDARD DRAWING TITLE	DRAWING NUMBER
City of Sherwood Oregon	STREET LIGHT POLE - COBRA HEAD STYLE WITH SMALL CELL CONFIGURATION	LT-3
Any alteration of this drawing may not be associated in any way with the City of Sherwood Standard Drawings.	SCALE: N.T.S.	DATE: 07/27/2022



	STANDARD DRAWING TITLE	DRAWING NUMBER
City of Sherwood Oregon	STR`EET LIGHT POLE - BOX HEAD STYLE WITH SMALL CELL CONFIGURATION	LT-4
Any alteration of this drawing may not be associated in any way with the City of Sherwood Standard Drawings.	SCALE: N.T.S.	DATE: 07/27/2022

NOTES:

1. All anchor bolt hardware shall be concealed.
2. All electrical wiring and fiber in upper pole shall be separated by owner.
3. All small wireless facility equipment shall be housed internal to the pole/cabinet and hidden behind the cantenna.
4. Applicant shall submit calculations for pole foundation meeting the following criteria:
   - 4.1. Wind load shall by 125 mph ultimate.
   - 4.2. Maximum dead load at top of foundation (including pole, equipment cabinet, shrouds, and small cell cantenna, wiring and equipment) is assumed to be 2,600 lbs.
   - 4.3. AASH to risk category with MCAN recurrence interval is 700 years.
5. Any existing hardscape damaged during the installation of the small wireless facility, shall be removed and replaced to the extents determined by the City, using materials meeting City standards, to conditions of equal or better than existing as determined by the City.
6. Separate conduits shall be provided for City streetlight electrical, City fiber, small wireless facility electrical, and small cell wireless facility carrier fiber.
7. All conduit, landscaping, and concrete or asphalt restoration shall be installed in accordance with City standards.
8. All foundations shall have grounding in accordance with NEC requirements.
9. Anchor bolts, anchor plates, anchor nuts and washers shall be galvanized in accordance with ASTM A-153.
10. All street lighting materials (including pole, shroud, and foundation) shall meet or exceed PGE Approved Street Lighting Equipment for New Installations, Outdoor Lighting Services - (Current Edition) standards and specification.
11. New Small Wireless Facility pole colors shall match existing street light pole color or as approved by City Engineer.
12. A photometric analysis conforming to IES RP-08-14, shall accompany each small cell pole submittal where street lighting is affected. Photometric analysis must be stamped by a Professional Engineer licensed to practice in the State of Oregon.
13. Small Wireless Facility applicants shall submit detailed drawings, materials specifications, and installation specifications to the City Engineer for review and approval, prior to installation of any facility within the City ROW. Drawings, specifications, and any accompanying reports or calculations shall be stamped by a Professional Engineer licensed to practice in the State of Oregon.
14. Small Cell Wireless Facility installations shall conform to specification listed the City Engineering Design and Standard Details Manual, and requirements listed in City of Sherwood Resolution 2019-045 (Adopting Design Standards for Small Wireless Facilities.

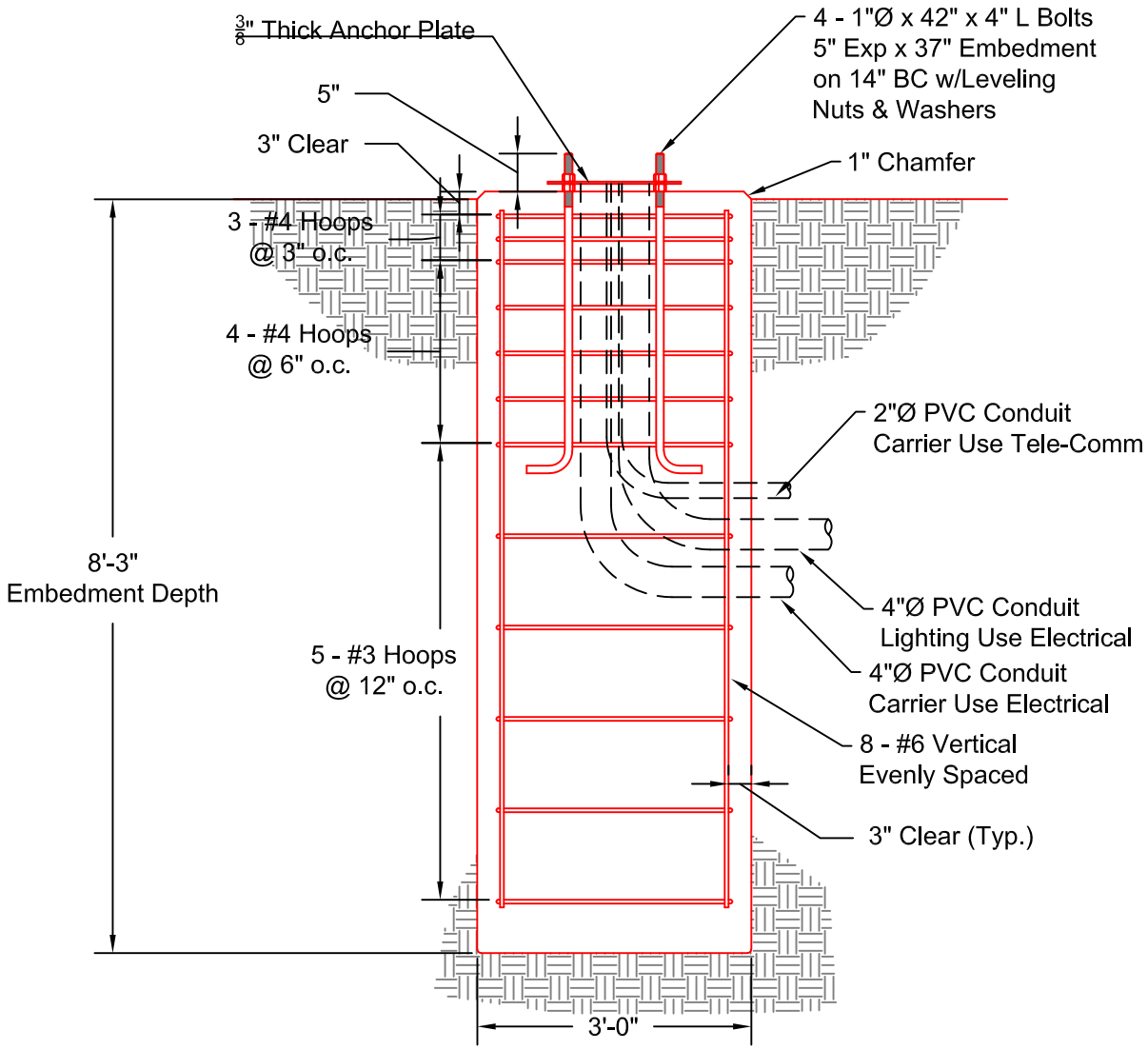
City of Sherwood Oregon	STANDARD DRAWING TITLE	DRAWING NUMBER
	SMALL CELL TOWER GENERAL DETAIL NOTES	LT-5
Any alteration of this drawing may not be associated in any way with the City of Sherwood Standard Drawings.	SCALE	DATE
	N.T.S.	07/27/2022

SMALL CELL POLE IDENTIFICATION PLAQUE

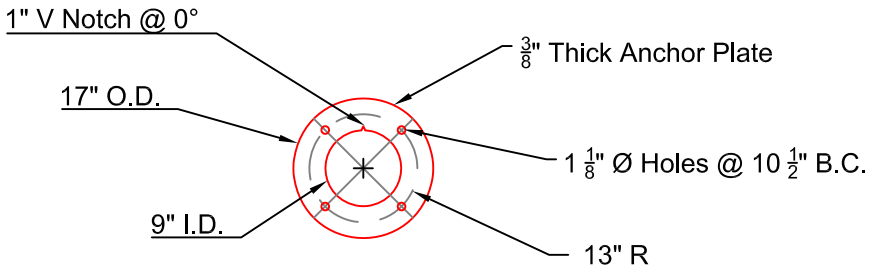
NOTES:

1. Plaque to be 16-gauge stainless steel, curved to match pole diameter.
2. Lettering to be stamped into plaque
3. Text height shall be 0.15"
4. Plaque to be painted black
5. Mounted on sidewalk facing side of pole, 5-feet above grade.

	STANDARD DRAWING TITLE		DRAWING NUMBER
City of Sherwood Oregon	SMALL CELL TOWER IDENTIFICATION PLAQUE DETAIL & NOTES		LT-6
	Any alteration of this drawing may not be associated in any way with the City of Sherwood Standard Drawings.	SCALE	DATE
		N.T.S.	07/27/2022



FOUNDATION SECTION



ANCHOR BOLT PLATE

	STANDARD DRAWING TITLE	DRAWING NUMBER
City of Sherwood Oregon	SMALL CELL/STREET LIGHT POLE FOUNDATION DETAIL	LT-7
Any alteration of this drawing may not be associated in any way with the City of Sherwood Standard Drawings.	SCALE: N.T.S.	DATE: 07/27/2022