

ORDINANCE No. 187328

Amend franchise granted to NewPath Networks, LLC to build and operate telecommunications services within City streets (Ordinance; amend Ordinance No. 180376)

The City of Portland ordains:

Section 1. The Council finds:

1. In August 2006, the City Council granted a franchise to NewPath Networks, LLC, to build and operate telecommunications services within the City's streets. Ordinance No. 180376.
2. The franchise has been extended three times, by Ordinance No. 184797 in 2011, Ordinance No. 185775 in 2012, and Ordinance 186949 in 2015 and will expire in February 2017.
3. NewPath Networks' agreement should be amended to maintain consistency with other carriers' agreements, specifically regarding right-of-way siting and acknowledgement of administrative rules promulgated by the City governing process.
4. The wireless industry is deploying technology called small cells and distributed antenna systems (DAS). Small cells and DAS are shorter range systems designed to complement the macro cell network. These technologies are smaller than traditional cell sites and are deployed where suitable in flexible configurations to provide capacity and coverage to existing networks. Small cells and DAS will be used to increase coverage capacity in targeted high traffic areas and extend coverage to hard-to-reach locations.
5. The City of Portland supports the implementation of small cell and DAS infrastructure as a means to increase broadband capacity within the City. Through the Broadband Strategic Plan, the Portland Plan and the City's draft Comprehensive Plan, the City has identified broadband service and infrastructure as vital for a prosperous and vibrant community. Both fiber and wireless are technologies that work together to create this critical infrastructure. Consumer habits support the increasing importance of a mobile network. The Pew Research Center estimates that 90% of adults in the U.S. have a cell phone, and two-thirds of those adults use their phones to go online. The National Center for Health Statistics estimates that 45% of U.S. households have dropped their landline completely and only have cell phones. The Federal Communications Commission reports that about 70% of 9-1-1 calls are placed from cell phones.
6. NewPath Networks advised the City that it desires to deploy small cells and DAS within the public right-of-way in Portland in the near future. Because the technologies are relatively new and have not been previously deployed in Portland rights-of-way, the City is evaluating the technologies and the potential impact on infrastructure within the city.
7. The current requirements and processes for siting wireless in the right-of-way are based on "traditional" cell site technology where each wireless site operates as a complete, self-

supporting unit and is comprised of longer range antennas attached to the top of an existing utility pole with supporting equipment located on the pole, vaulted in the right-of-way or located on adjacent private property. The City's current siting standards and pre-application processes do not account for these small cell and DAS technologies and equipment.

8. NewPath Networks has submitted a written request asking the City to amend its franchise agreement to allow for a limited pilot trial program for siting small cells and DAS within the public right-of-way. A copy of this letter is attached to this Ordinance as Exhibit A, and is incorporated by reference.
9. In its letter to the City, NewPath Networks indicated that it is willing to partner with the City and utility pole owners to create a limited pilot project for siting small cells and DAS on a limited basis within the City right-of-way. Under the proposed limited pilot project, the fees, locations, designs and processes for small cell and DAS installations will be determined jointly by NewPath Networks, the City and where applicable, utility pole owners. Over the course of the pilot, proposed configurations and application process will be documented. The installations will allow the partners to gain practical understanding of the technologies and implications for the City and utility pole owners. The City will use this understanding to help inform long-term decisions about small cell and DAS installations, the role of these technologies in the public right-of-way, and potential impacts on the community.
10. The Office for Community Technology recommends that the City Council amend NewPath Network's current franchise agreement to create a limited small cell and DAS pilot program that will allow parties to gain practical experience in small cell and DAS technologies and limited deployment.

NOW, THEREFORE, the Council directs:

- a. Section 6.D of Ordinance 180376 shall be amended by substituting the following section for the existing Section 6.D:

D. Facility and Structure standards. This section establishes standards for attaching Facilities to Structures in the Streets. Unless otherwise specified, all references in this subsection 6.D to the existing or allowed height of a Structure or utility pole are measured from ground level.

1. Structure selection

- a. Grantee shall co-locate wireless Facilities on existing buildings, water towers or tanks, or on Original or Replacement Structures in the Streets.
- b. The Streets are prioritized for siting wireless Facilities. The categories for Streets may be identified by referring to the City's official map of Wireless Street

Priorities. Grantee must attach Facilities onto Structures in the Streets in the following order of priority:

- i. Priority 1 Streets (generally freeways, highways, and streets in industrial areas), before using poles on
- ii. Priority 2 Streets (generally high traffic volume streets), before using poles on
- iii. Priority 3 Streets (generally medium traffic volume streets), before using poles on
- iv. Priority 4 Streets (generally low traffic volume residential streets).

If Grantee selects a Structure to support its Facilities on a Priority 4 street, Grantee shall provide RF contour maps (in color) illustrating the calculated coverage using the proposed antennas at the target signal level, plus and minus 5 dBm, and the calculated coverage areas for all existing adjacent cell sites, to support the rejection of other Structures. If other Structures were ruled out for non-RF coverage reasons, Grantee shall identify and explain those reasons.

- c. For all Structures except those in Priority 1 Streets, Grantee must place antennas and Facilities first on Structures that carry high voltage transmission power lines before placing them on any other Structure. For the purposes of this subsection 6.D, "high voltage transmission" means lines with capacity for transmitting electricity of 57,000 volts or greater.

2. Original Structures. Facilities may be attached to Original Structures in the Streets, provided:

- a. The requirements in 6.D.1 are met;
- b. Facilities do not jeopardize the physical integrity of the Structure;
- c. Antennas and antenna mounting devices below the top of the Structure shall be mounted flush with the Structure or on extension arms that shall not be greater than one (1) foot in length.
- d. Antennas and antenna mounting devices above the top of the Structure:
 - i. Mounting devices and antennas other than omni-directional or "whip" antennas shall be concealed within a canister or unicell-style cylinder, the diameter of which shall be no greater than twelve inches (12) more than the diameter of the Structure as measured six (6) feet from the butt of the Structure.
 - ii. The combined height of the antennas and mounting device on a Structure that carries high voltage transmission lines shall not project more than:

(A) Twenty (20) feet above the Structure if the Structure is in a Priority 2 or 3 Street.

(B) Fifteen (15) feet above the Structure if the Structure is 1) in a Priority 4 Street, and 2) less than or equal to fifty (50) feet in height; or

(C) Twenty (20) feet above the Structure if the Structure is 1) in a Priority 4 Street, and 2) more than fifty (50) feet in height.

(D) The combined height of the antenna and mounting device on Structures in Priority 1 Streets is not regulated.

iii. The combined height of the antennas and mounting device on a Structure that does not carry high voltage transmission lines shall not project more than:

(A) Fifteen (15) feet above a Structure in a Priority 2 or 3 Street; or

(B) Ten (10) feet above a Structure in a Priority 4 Street.

(C) The combined height of the antennas and mounting device on Structures in Priority 1 Streets is not regulated.

e. All Facilities mounted on an Original Structure shall be camouflaged by being painted, coated, or given a surface application to conform to the color and surface of the Structure. If cabinets require a special heat-reducing paint finish, they must be camouflaged with a neutral color such as beige, off-white, or light gray; and

f. The dimensions of equipment cabinets mounted on poles in Priority 1, 2, and 3 Streets are not regulated. The height plus width plus depth of equipment cabinets mounted on poles in Priority 4 Streets shall be no more than 120 lineal inches combined.

g. The Original Structure is not replaced with a taller Structure, except as authorized in Section 6.D.3.

3. Replacement Structures. For purposes of this Section "Replacement Structure" shall mean a Structure that a) replaces an existing Structure or Original Structure to accommodate Facilities; and b) does not result in an increase in the total number of utility or guy poles in the Streets except as otherwise approved by the City Engineer. Facilities may be attached to Replacement Structures in the Streets, provided:

a. The Replacement Structure is of sufficient integrity to support the Facilities;

b. The Replacement Structure must comply with the requirements of 6.D.1.a and b, and 6.D.2.e and f;

c. For all Structures except those in Priority 1 Streets, Grantee shall place antennas and Facilities first on Structures that carry high voltage transmission power lines before placing them on any other Structure. For the purposes of this subsection, "high voltage transmission" means either power lines with capacity for transmitting electricity of 57,000 volts or greater, or a skipped pole between high voltage transmission power lines. Skipped poles are defined in subsection 6.D.3.e.ii, below.

d. Color. Prior to installation, if the Replacement Structure is not made entirely of wood, it shall be camouflaged by being painted, coated, or given a surface application to conform to the color of the Original Structure.

e. Replacement Height Limits. A Structure or Original Structure may be replaced with a Replacement Structure that is taller than the Original Structure. The total combined height of a Replacement Structure and any mounting devices shall be no greater than that allowed in Table 1, below.

i. Guy poles. Guy poles are shorter than the utility poles they support. On Priority 1, 2, and 3 streets a guy pole may be replaced as if it is the same height as the pole it supports using Table 1, below. On Priority 4 streets a Guy pole may be replaced up to the height of the pole it supports.

Example 1: A 20 foot guy pole that supports a 30 foot utility pole in a Priority 3 Street may be replaced as if it is 30 feet tall. Therefore, the pole may be replaced with a pole up to a maximum of 45 feet tall ($30' + 50\%$ of $30'$);

Example 2: A 20 foot guy pole that supports a 30 foot utility pole in a Priority 4 Street may be replaced up to a maximum of 30 feet.

ii. Skipped poles. There are Streets where runs of taller poles (typically high voltage transmission) and shorter poles (typically low voltage distribution or communication) are located on the same side of the Street. Where the shorter pole is situated adjacent and between two taller poles in the same run, the shorter pole is known as a "skipped pole." A skipped pole may be replaced with a pole of the same height as the adjacent taller poles.

Example: A 45 foot pole is situated adjacent and between two 65 foot poles on the same side of a Priority 4 Street. The 45 foot pole may be replaced as if it were 65 feet tall using Table 1, below. Therefore, it may be replaced with a pole 80 feet tall ($65' + 15'$). If the 45 foot pole is on the opposite side of the Priority 4 Street from the taller poles, it may not be replaced as if it were 65 feet tall; it may only be replaced up to a height of 60 feet ($45' + 15'$).

Table 1

Maximum Combined Additional Height Allowed for Replacement Structures and Antenna Mounting Devices (All figures are in feet over the height of the existing Structure measured from ground level)	
Street Type	Additional Height
Priority 1 (freeways, highways, and streets in industrial areas)	80 feet
Priority 2 (high traffic volumes)	Lesser of 40 feet or 50% of the height of the pole
Priority 3 (medium traffic volumes)	Lesser of 35 feet or 50% of the height of the pole
Priority 4 (low traffic volumes; residential streets)	Lesser of 15 feet or 45% of the height of the pole

f. Antennas above the top of the Replacement Structure and Mounting Device. Antennas shall not project more than three (3) feet above the maximum allowable height of the Replacement Structure and mounting device. Example: A 35 foot pole on a Priority 4 Street may be replaced with a pole and mounting device, the top of which is no more than 50 feet tall, and the measurement to the top of the antennas shall be no more than 53 feet.

g. Replacement Structure Engineering. In the event that a Structure needs to be replaced to provide structural capacity to support the Facility, Grantee must provide to the City a written statement from the pole owner that the Replacement Structure is no greater in width than the engineering minimum required by the Oregon Public Utility Commission.

h. Street Trees. If a Structure in a Priority 4 street is proposed for replacement, Grantee shall submit the sum of One Thousand Dollars (\$1,000) to the Bureau of Parks to fund street tree planting. Grantee shall consult with the owner of the Structure and the Bureau of Parks to determine if a tree could be planted in the parking strip such that a mature tree canopy could develop around the Replacement Structure to reduce the visual impact of the Replacement Structure to the abutting property. If it is not feasible to plant a tree to achieve this result, then the Park Bureau will deposit the funds into its Tree Damage Fund.

4. Notice and Meeting. In the case of Grantee Facilities not otherwise co-located with existing Facilities, and proposed in or within 400 feet of a Priority 4 Street, Grantee shall provide written notice and conduct an informational neighborhood meeting according to applicable rules promulgated by the City. The meeting shall occur at least 30 days before Grantee submits its application to the City to place Facilities on a Structure.

5. Grantee may connect its Facilities in the Streets to Facilities located on property adjacent to the Streets in accordance with applicable City Code sections and with the prior written permission of the adjacent property owner. Grantee may locate any Facilities, such as cabinets, at grade within the Streets, pursuant to applicable City Code and administrative rules.

6. Grantee may make excavations in the City Streets for any Facility needed for the maintenance or extension of its Telecommunications System. Subject to obtaining permits from the City. Prior to doing such work, Grantee must apply for, and obtain, appropriate permits from the City, and give appropriate notices to any franchisees, licensees, or permittees of the City, or bureaus of the City, or other units of government owning or maintaining facilities that may be affected by the proposed excavation.

7. In the event that emergency repairs are necessary for Grantee's underground Facilities in the Streets, Grantee shall immediately notify the City of the need for such repairs. Grantee may immediately initiate such emergency repairs, and shall apply for appropriate permits the next business day following discovery of the emergency. Grantee must comply with all Charter and ordinance provisions relating to such excavations or construction, including the payment of permit or license fees.

8. Locates. Grantee shall comply with the requirements of the Oregon Utility Notification Law, codified at ORS 757.542 to 757.562 and 757.993 (2013), and the rules and regulations promulgated thereunder.

9. Small cells and distributed antenna systems. Grantee has asked the City to grant additional authority for a pilot program to install small cell and Distributed Antenna Systems ("DAS") equipment in the Streets. Grantee's proposed pilot is consistent with the City's goals in its Broadband Strategic Plan, in improving digital accessibility and inclusion. During the course of the pilot, the parties will compile information and evaluate procedures and methods of identifying and locating sites, in an iterative process of improvement. In this pilot program, Grantee may install and maintain small cells or DAS on existing Structures in the Streets. In administering the pilot program, the City may adopt standards for "small cell" and "DAS" facilities, and any terms in implementing this pilot program. Small cell and DAS facilities will be specifically exempt from Sections 3.A, 3.B, and 6.D.1 – 6 of this Agreement, but are otherwise subject to all other remaining terms and conditions of this Agreement. The location, design, processes, fees and any other terms and conditions for installing small cell and DAS facilities within the Streets will be determined jointly by the Office for Community Technology, Grantee, and when applicable, the utility pole owner.

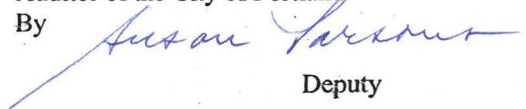
Grantee shall apply for and obtain all permits and permissions necessary from the City, the utility pole owners, and any other required entities for the construction, installation and operation of small cells and DAS. All construction and maintenance of small cells and DAS shall be the responsibility of Grantee, regardless of who performs the installations and/or construction.

- b. All other terms and conditions of Ordinance 180376, as amended by Ordinance 186949, shall remain unchanged.
- c. On or before the thirtieth (30th) day after this ordinance becomes effective, NewPath Networks shall file in the Office of the Auditor of the City of Portland a written acceptance of this ordinance, executed by NewPath Networks and meeting the approval of the City Attorney. Any failure on the part of NewPath Networks to file such written acceptance within such time shall be deemed an abandonment and rejection of this ordinance, and shall be construed to be an acceptance of all the terms contained in this ordinance.

Passed by the Council: SEP 09 2015

Mayor Charlie Hales
Prepared by:
JL/BEW
July 31, 2015

Mary Hull Caballero
Auditor of the City of Portland
By


Deputy

Amend franchise granted to NewPath Networks, LLC to build and operate telecommunications services within City streets (Ordinance; amend Ordinance No. 180376)

INTRODUCED BY Commissioner/Auditor: Mayor Charlie Hales	CLERK USE: DATE FILED <u>AUG 28 2015</u>
COMMISSIONER APPROVAL Mayor—Finance and Administration - Hales Position 1/Utilities - Fritz Position 2/Works - Fish Position 3/Affairs - Saltzman Position 4/Safety - Novick	Mary Hull Caballero Auditor of the City of Portland By: <u><i>Susan Lawrence</i></u> Deputy
BUREAU APPROVAL Bureau: OMF/BRFS, Revenue CAO: Fred Miller CFO, Bureau Head: Kenneth L. Rust Division Head: Thomas W. Lannom Prepared by: Jennifer Li Date Prepared: August 10, 2015 Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/> Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> City Auditor Office Approval: required for Code Ordinances City Attorney Approval: required for contract, code, easement, franchise, comp plan, charter Council Meeting Date: September 2, 2015	ACTION TAKEN: SEP 02 2015 PASSED TO SECOND READING SEP 09 2015 9:30 A.M.

AGENDA	FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:																																		
TIME CERTAIN <input type="checkbox"/> Start time: _____ Total amount of time needed: _____ (for presentation, testimony and discussion) CONSENT <input checked="" type="checkbox"/> REGULAR <input type="checkbox"/> Total amount of time needed: _____ (for presentation, testimony and discussion)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th></th> <th style="width: 15%; text-align: center;">YEAS</th> <th style="width: 15%; text-align: center;">NAYS</th> </tr> <tr> <td>1. Fritz</td> <td style="text-align: center;">✓</td> <td></td> </tr> <tr> <td>2. Fish</td> <td style="text-align: center;">✓</td> <td></td> </tr> <tr> <td>3. Saltzman</td> <td style="text-align: center;">✓</td> <td></td> </tr> <tr> <td>4. Novick</td> <td style="text-align: center;">✓</td> <td></td> </tr> <tr> <td>Hales</td> <td style="text-align: center;">✓</td> <td></td> </tr> </table>		YEAS	NAYS	1. Fritz	✓		2. Fish	✓		3. Saltzman	✓		4. Novick	✓		Hales	✓		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>1. Fritz</td> <td style="text-align: center;">✓</td> <td></td> </tr> <tr> <td>2. Fish</td> <td style="text-align: center;">✓</td> <td></td> </tr> <tr> <td>3. Saltzman</td> <td style="text-align: center;">✓</td> <td></td> </tr> <tr> <td>4. Novick</td> <td style="text-align: center;">✓</td> <td></td> </tr> <tr> <td>Hales</td> <td style="text-align: center;">✓</td> <td></td> </tr> </table>		1. Fritz	✓		2. Fish	✓		3. Saltzman	✓		4. Novick	✓		Hales	✓	
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