

Department of Community Development

Reference: Wireless Communications Facilities Code Amendment

To:	Mayor Kenneth J. Kreutzer and Members of City Council
Through:	Philip A. Rodriguez, City Manager Marv Falconburg, AICP, Assistant City Manager Holly Prather, AICP, Community Development Director
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PURPOSE

City staff is requesting that the City Council amend the current regulations regarding telecommunications facilities and commercial mobile radio service facilities. The recommendation by City staff is to repeal Sections 12-16-200 through 12-16-270 that deal with 'Telecommunication Facilities', to repeal Section 17-20-140 titled 'Commercial Mobile Radio Service (CMRS) facilities' and replace it in its entirety with new text that includes a new title of 'Wireless Communications Facilities' (WCFs), and to amend the 'Table of uses' in Section 17-32-30 as it pertains to WCFs. City staff discussed their intentions at a joint Study Session of the Planning Commission and City Council on March 27, 2018 and has been working with a consultant from the law firm of Kissinger & Fellman PC to draft the proposed amendment. As City Code can only be modified via ordinance, City staff is bringing forward the code amendment in ordinance form to be voted on by the City Council.

STRATEGIC FOCUS AREA

Recognizable and Well-Planned Community

BACKGROUND

The *Municipal Code* contains provisions for CMRS facilities that were last amended in 2008 in Article 17 and for Telecommunication Facilities in Article 12 that were last amended in 2007. The proposed amendment is viewed as necessary in order to provide clear codified regulations regarding small cell sites. These can be thought of generally as "mini-cell towers" typically placed on utility poles in the rights-of-way (ROWs).

In 2017, Governor Hickenlooper signed Colorado House Bill 17-1193 which set State standards for small cell placement. Without specific regulations for small cells, the City is obligated to follow the guidelines and timeframes set by the State. Other Colorado municipalities have worked to further outline their own standards for small cells, on top of the State's, and this has allowed them greater control over their placement, design, and ability to address property, maintenance, and safety concerns.

City staff desires to outline camouflage and concealment matters, collocation, landscaping, and placement in the public rights-of-way for all types of equipment and facilities related to wireless communications. Additionally this gives staff the opportunity to recommend further clarifications

to the existing Code including submittal requirements for all WCFs and new classification categories for all WCFs.

In updating the 'Table of Uses', staff is looking to clarify the review and approval process for each type of WCF. In recommending the repeal of multiple sections in Article 12, staff is looking to remove Code sections that are preempted by federal law or would be better covered in a lease or license agreement.

CRITERIA BY WHICH COUNCIL MUST CONSIDER THE ITEM

Section 17-8-90 of the *Land Use and Development Code* addresses amendments to the Code, and allows the Community Development Director, City Manager, Planning Commission, and City Council the option to initiate text amendments. This section further outlines the process for review, recommendation, and adoption.

SUMMARY OF FINDINGS / STAFF ANALYSIS

This Code amendment is being proposed as there are new technologies and equipment that the current Code does not address. This includes small cell wireless facilities for which the City needs to address or these will only be subject to recently passed State law. It is in the best interest of Brighton for these to be addressed in our Code so that the City can further regulate their design and placement. Staff is also taking the opportunity to reclassify certain types of structures such as Alternative Tower Structures.

Staff has included items in this amendment that have been commented on by Members of Council at prior public hearings. These items include providing further information at the time of application on collocation, a narrative and map of the applicant's existing and proposed sites, and areas of future need. In terms of placement, the amendment provides language on the placement of WCFs adjacent to residential uses and lays out setbacks for WCFs from a residential district or school site.

Below are brief summaries of the proposed changes that staff is recommending.

Sections 12-16-200 through 12-16-270 (Division 2 – Telecommunications Facilities of Article 12-16 – Use of Public Places)

Section 12-16-200 – Penalties; civil remedies.

Section 12-16-210 – Policy; use of public property for telecommunications facilities.

Section 12-16-220 – Priority of users.

Section 12-16-230 – Minimum requirements.

Section 12-16-240 – Special requirements.

Section 12-16-250 – Permit; application.

Section 12-16-260 – Termination.

Section 12-16-270 – Reservation of right.

As mentioned, staff is recommending the repeal of the above sections of Article 12-16 as most are preempted by federal law or address items that would be better covered in a lease or license agreement between the City and a communications provider. Staff is in the process of drafting a Master License Agreement (MLA) template that will be used when future providers look to place WCFs within Brighton.

Sec. 17-12-140 – Commercial mobile radio service (CMRS) facilities (Part of Article 17-20 Development Standards)

Staff is recommending that this section be repealed and replaced in its entirety. This includes a title change of the section to Wireless Communications Facilities (WCFs). Eight sub-sections are proposed for this amended section. Purpose and intent are covered in the first and it outlines that the objective of these regulations is to ensure the equipment needed for this necessary technology is appropriately located in such a way as to be concealed and as unobtrusive as possible. The second subsection outlines that WCFs will need to go through the appropriate City review and approval process via a permit. The third defines all terms that are applicable when reviewing WCFs. The majority of these terms are new to Brighton's Code. The next section addresses applicability as it outlines the circumstances in which the WCF regulations are applicable and how they will be applied to a proposed WCF project. Operational Standards are then covered such as federal regulations, use within the ROW or on public property, operation and maintenance of WCFs, and abandonment and removal.

The remaining three subsections thoroughly list out specifics for each type of facility and detail how to get a WCF approved. The first of these covers design and sets the standards for camouflage/concealment, hazardous materials, collocation, lighting, noise, landscaping, fencing, and other design related criteria. Additionally it outlines standards for WCF applications that are proposed to be located adjacent to residential uses and goes in depth into design standards for the various types of WCFs. These standards expand upon our current standards. Accessory equipment standards are also addressed.

Review procedures and requirements are then outlined that detail what the applicant will be required to provide for the City review and approval process. Submittal requirements are added here that are not in the current Code to help staff and Council determine if a facility is needed in a particular location and if it can or cannot be collocated. A new concept is also introduced that outlines the process for Eligible Facilities Requests. This will allow staff to have clear standards and processes to follow when parties are looking to add equipment to existing facilities. Additionally, this sub-section outlines how WCFs must be in compliance with applicable law.

Lastly, approval criteria for each type of WCF are outlined that will be evaluated in addition to the Design Standards of Subsection (e). These standards address issues such as the maximum protrusion from buildings for base stations and the distances of WCFs from each other in the ROWs. Each type of facility will be reviewed according to the standards that match their type of facility.

Sec. 17-32-30. – 'Table of uses'

Staff is proposing that the categories related to CRMS facilities in the current Land Use Table (Sec. 17-32-30 – 'Table of uses') be repealed and replaced with the table depicted below.

Staff is recommending that the title of the Use Category be changed from 'Commercial Mobile Radio Service Facility' to 'Wireless Communications Facility'. Staff is also recommending that the two Specific Uses of 'Freestanding tower' and 'Wall-mounted or building roof' be replaced with four groupings of Specific Uses that align with the types presented in the proposed WCF Code Amendment. The proposed use groupings are 'Roof- and Wall-mounted WCF', 'Small Cell WCF and Alternative Tower Structure within the ROW', 'Alternative Tower Structure not within the ROW', and 'Tower'.

Staff is not proposing any change in use for zone districts for roof or wall-mounted equipment. As it is mandated by Colorado State Law that Small Cells within the ROW be a use-by-right in all zone districts, the proposed grouping of Small Cells and Alternative Tower Structures in the ROW reflects this reality. The grouping of Alternative Tower Structures not within the ROW allows these

structures as a conditional use in the R-3, DT, MU-NC, CO, and C-1 zoning districts. These are proposed to be allowed as use-by-rights in both industrial zones, the higher intensity commercial zones, and the public and institution zones. This is perhaps the largest proposed change in the proposed Table of Uses as the current table treats all towers, alternative or not, as conditional uses. This is being done to direct cellular structures to be constructed as Alternative Tower Structures that are governed by higher design regulations and can better blend into the surrounding areas. As for the Tower grouping, staff is recommending changes from the current uses table for this classification. Staff is proposing that Towers no longer be allowed as conditional uses in the DT and C-1 districts as these structures do not conform with the intent of these districts. Other than those changes to the Use Table for Towers, staff is recommending that they remain subject to a conditional use approval in the higher intensity, mixed use and commercial areas, as well as the industrial, public, and institutional zone districts.

Current Table of Uses:

Use Categories	Specific Uses	Zone Districts																										
		R E	R 1	R 1 A	R 1 B	R 2	R 3	M H	D T	M U N C	M U C C	M U R / E C	P U D	S 4 C R	S 4 G W	C O	C 1	C 2	C 3	B P	I 1	I 2	M E	F C	P L	O P / E N	A / R	A / E
		X = Use by Right						C = Conditional Use				S = Special Use				T = Temporary Use						None = Prohibited						
Commer- cial Mobile Radio Service Facility	Freestanding tower								C		C	C	#				C	C	C	C	C	C	C	C	C	C	C	C
	Wall- mounted or building roof						C		C	X	X	X	#			X	X	X	X	X	X	X	X	X	X	X	X	X

Proposed Table of Uses:

Use Categories	Specific Uses	Zone Districts																										
		<i>R E</i>	<i>R 1</i>	<i>R 1 A</i>	<i>R 1 B</i>	<i>R 2</i>	<i>R 3</i>	<i>M H</i>	<i>D T</i>	<i>M U N C</i>	<i>M U C C</i>	<i>M U R / E C</i>	<i>P U D</i>	<i>S 4 C R</i>	<i>S 4 G W</i>	<i>C O</i>	<i>C 1</i>	<i>C 2</i>	<i>C 3</i>	<i>B P</i>	<i>I 1</i>	<i>I 2</i>	<i>M E</i>	<i>F C</i>	<i>P L</i>	<i>O P E N</i>	<i>A / R</i>	<i>A / E</i>
		X = Use by Right						C = Conditional Use					S = Special Use				T = Temporary Use				None = Prohibited							
PUBLIC, INSTITUTIONAL USES																												
Wireless Communications Facility	Roof- and Wall-mounted WCF						C		C	X	X	X	#			X	X	X	X	X	X	X	X	X	X	X	X	X
	Small Cell WCF and Alternative Tower Structure within the ROW	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
	Alternative Tower Structure not within the ROW						C		C	C	X	X	#			C	C	X	X	X	X	X	X	X	X	X	X	X
	Tower										C	C	#					C	C	C	C	C	C	C	C	C	C	C

Development Review Committee (DRC) Review:

The DRC and referral agencies have reviewed the code amendment and all comments have been evaluated and considered. A complete list of comments and the agencies who made them are available upon request. Additionally staff has sent the proposed amendment to representatives of the major communications providers and their site location firms. These included Verizon Wireless, Mobilitie, AT&T Wireless, Crown Castle, Zayo Group, T-Mobile, and the Wireless Policy Group LLC.

PUBLIC NOTICE AND INQUIRY

According to Section 17-8-90 of the *Land Use and Development Code*, a notice was published in the *Brighton Standard Blade* on October 24, 2018 as outlined in Section 17-8-30(f)(2). Please see all public notice attachments for further detail. As of the date of this staff report, no formal comments have been received as a result of the notification of the public hearing.

PLANNING COMMISSION RECOMMENDATION

The Planning Commission initially heard the request on September 25, 2018 at a public hearing and recommended unanimous approval at their October 9, 2018 meeting (see the attached Resolution #18-13).

STAFF RECOMMENDATION

As technologies continue to change, it is important that the City has regulations that are able to meet both the needs of residents and communications providers. Staff believes the proposed code amendment accomplishes these goals.

Staff finds that the proposal meets the review criteria found in Section 17-8-90 of the *Land Use and Development Code*, and therefore recommends approval of this amendment.

A draft resolution has been provided to the Council should it decide to proceed with the code amendment as presented.

OPTIONS FOR COUNCIL CONSIDERATION

The City Council has four options when reviewing this amendment. City Council may:

- 1.) Approve the Ordinance on first reading as drafted;
- 2.) Approve the Ordinance on first reading with specific changes;
- 3.) Deny the Ordinance as drafted with specific findings to justify the denial; or
- 4.) Continue the item to be heard at a later, specified date.

ATTACHMENTS

- Draft City Council Ordinance with Exhibit A (Text of the Proposed Code Amendment to Section 17-12-140)
- Copy of the Planning Commission Recommendation (Resolution #18-13)
- Newspaper Notice
- Newspaper Publication Proof
- Draft City Staff PowerPoint