

Wireless Communications Facilities Code Amendment

City Council - November 13, 2018

Consultant:

Brandon Dittman, Esq., *Kissinger & Fellman P.C.*

City Staff Representative:

Mike Tylka, *AICP, Senior Planner*

- Recognizable and Well-Planned Community





Purpose and Background

- Amend sections of the Municipal Code including the Land Use and Development Code relating to 'Telecommunications Facilities' and 'Commercial Mobile Radio Service (CMRS) facilities'.
- Complete overhaul to Section 17-20-140 with a renaming to Wireless Communications Facilities (WCF Code).
- Primary reason for amendment is due to small cells and a new law (CO House Bill 17-1193).
- Additional changes outline items dealing with design, concealment, collocation, landscaping, and placement in the public rights-of-way (ROWs) for all types of equipment and facilities.



Background

- Staff has been receiving calls from industry professionals asking about our regulations and two meetings were held with potential applicants.
- Small cells will be constructed in the near future in Brighton.
- Staff is working with United Power to prepare for deployment as they own poles in the City ROW.
- Staff is working with our consultant to develop a template Master License Agreement.

Criteria to Consider

- ✓ Follows amendment process outlined in Section 17-8-90 of the *Land Use and Development Code*.
- ✓ Complies with Colorado House Bill 17-1193 and is not in conflict with any provision therein.

WCF Code Amendment Proposal

Repeal of 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.

WCF Code Amendment Proposal

Section 17-20-140 (Part of Article 17-20 Development Standards) – Commercial Mobile Radio Service (CMRS) facilities

- Staff is recommending that this section be repealed and replaced. This includes a title change in the section to Wireless Communications Facilities (WCFs). Eight sub-sections are proposed for this amended section.

WCF Code Amendment Proposal

Proposed Subsections of Section 17-20-140:

- (a) Purpose and Intent.
- (b) Permit Required.
- (c) Definitions.
- (d) Applicability.
- (e) Operational Standards.
- (f) Design Standards.
- (g) Review Procedures and Requirements.
- (h) Approval Criteria.

WCF Code Amendment Proposal

Section 17-32-30 – 'Table of uses'

- Staff is proposing that the categories related to CMRS facilities in the current Land Use Table be repealed and replaced.

Current

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	M U C	M U R 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	C
	Wall- mounted or building roof						C		C	X	X	X	#			X	X	X	X	X	X	X	X	X	X	X	X	X	X

Proposed

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							
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	C

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.

Public Notice and Comment

- 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).
- As of the date of the staff report, no formal comments have been received by the Planning Division responding to the public notice.

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.

Options for City Council

- ❖ City Council has the following four options before it. It may:
 - Approve the Ordinance as drafted;
 - Approve the Ordinance with specific changes;
 - Deny the Ordinance as drafted with specific findings to justify such action; or
 - Continue the item to be heard at a later specified date.