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City of Brighton

500 S. 4th Avenue  
Brighton, CO 80601



Meeting Minutes - Draft

Tuesday, November 13, 2018

6:00 PM

Special City Council Meeting

## Council Chambers

### City Council

**MAYOR - KENNETH J. KREUTZER**

**MAYOR PRO-TEM - JW EDWARDS**

**COUNCIL MEMBERS:**

**LYNN BACA, CLINT BLACKHURST, MARK HUMBERT,  
MATT JOHNSTON, GREGORY MILLS, MARY ELLEN POLLACK,  
KIRBY WALLIN**

#### 1. CALL TO ORDER

*Mayor Kreutzer called the meeting to order at 6:02 p.m.*

##### A. Pledge of Allegiance to the American Flag

*Councilmember Pollack led the recitation of the Pledge of Allegiance to the American Flag.*

##### B. Roll Call

**Present:** 8 - Mayor Kreutzer, Mayor Pro Tem Edwards, Councilmember Baca, Councilmember Blackhurst, Councilmember Humbert, Councilmember Mills, Councilmember Pollack, and Councilmember Wallin

**Not Present:** 1 - Councilmember Johnston

*Councilmember Johnston arrived at 6:38 p.m.*

#### 2. APPROVAL OF REGULAR AGENDA

**Motion by Councilmember Blackhurst, seconded by Councilmember Humbert, to approve the Regular Agenda as presented. Motion passed by the following vote:**

**Aye:** 8 - Mayor Kreutzer, Mayor Pro Tem Edwards, Councilmember Baca, Councilmember Blackhurst, Councilmember Humbert, Councilmember Mills, Councilmember Pollack, and Councilmember Wallin

**Absent:** 1 - Councilmember Johnston

#### 3. CONSENT AGENDA

**A. Approval of the October 2, 2018 City Council Minutes**

- B. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, APPROVING THE INTERGOVERNMENTAL AGREEMENT AMONG THE CITIES OF BRIGHTON, COMMERCE CITY, NORTHGLENN, THORNTON, WESTMINSTER AND THE ADAMS COUNTY SHERIFF'S OFFICE FOR THE PROVISION OF MUNICIPAL COURT VIDEO SERVICES, AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT**

Resolution No: 2018-118

- C. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, ACCEPTING THE REQUEST OF UTILITIES TO "PIGGYBACK" ON A FORMAL SOLICITATION BY THE CITY OF THORNTON FOR THE PURCHASE OF WATER METERS FROM BADGER METER, INC, AND APPROVING A PURCHASE ORDER BE ISSUED FOR THE PURCHASE OF WATER METERS IN AN AMOUNT NOT TO EXCEED SEVENTY-SEVEN THOUSAND, ONE HUNDRED SEVENTY-SEVEN DOLLARS (\$77,177.00) AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE PURCHASE ORDER**

*Councilmember Baca asked that Item 3C be removed from the Consent Agenda and moved to Utilities Business Items to become Item 10A.*

**Motion by Mayor Pro Tem Edwards, seconded by Councilmember Humbert, to approve the Consent Agenda as amended. Motion passed by the following vote:**

**Aye:** 8 - Mayor Kreutzer, Mayor Pro Tem Edwards, Councilmember Baca, Councilmember Blackhurst, Councilmember Humbert, Councilmember Mills, Councilmember Pollack, and Councilmember Wallin

**Absent:** 1 - Councilmember Johnston

**4. CEREMONIES**

**A. Small Business Saturday Proclamation**

*Mayor Kreutzer read the Proclamation into the record and presented it to Naomi Colwell, President/CEO of the Brighton Chamber of Commerce.*

**Motion by Councilmember Humbert, seconded by Councilmember Pollack, to approve the Proclamation. Motion passed by the following vote:**

**Aye:** 8 - Mayor Kreutzer, Mayor Pro Tem Edwards, Councilmember Baca, Councilmember Blackhurst, Councilmember Humbert, Councilmember Mills, Councilmember Pollack, and Councilmember Wallin

**Absent:** 1 - Councilmember Johnston

**B. Recognition of the City of Brighton Law Enforcement Records Department**

*Mayor Kreutzer read a Proclamation from the State of Colorado into the record.*

*Chief Southard introduced the Police Department Records staff.*

## **5. PUBLIC INVITED TO BE HEARD ON MATTERS NOT ON THE AGENDA (Speakers limited to five minutes)**

*Curtis Bauers, Arvada, Colorado. Mr. Bauers expressed his concern regarding issues with the Utilities Department and water rates.*

## **6. PUBLIC HEARINGS**

### **A. AN ORDINANCE OF THE CITY OF BRIGHTON, COLORADO, APPROVING THE AMENDMENT OF SPECIFIED SECTIONS OF THE BRIGHTON MUNICIPAL CODE RELATED TO OIL AND GAS FACILITIES (FIRST READING)**

*Mayor Kreutzer read the title of the Ordinance into the record.*

*Mayor Kreutzer opened the public hearing at 6:22 p.m. and City Clerk Natalie Hoel verified the required postings and publications (October 24, 2018 in the Brighton Standard Blade) for this public hearing were completed.*

*City Manager Philip Rodriguez introduced Senior Planner Josh Tetzlaff and Oil and Gas Legal Counsel Matt Sura.*

*Senior Planner Josh Tetzlaff presented the Code amendment to Section 17-64 of the Land Use and Development Code to ban class 2 injection wells within the City. In June 2018, City Council placed a 6-month moratorium on all injection wells within city limits. City Council directed staff to research the potential effects of injection wells. Staff presented this research to City Council in September 2018. At that time staff was directed by Council to bring language back banning injection wells within the City. Planning Commission voted unanimously to recommend approval of the Code amendment. The language in the Resolution would ban injection wells and other hazardous disposal methods within Brighton. Staff recommends adding Section 17-64-75 "Prohibited Facilities". This section bans injection wells within the City. other changes are being recommended to ensure the Code is consistent with this ban. The definition section will be updated to make it clear that injection wells are banned. A few other changes are being recommended to update Code references. These updates are found in Section 17-64-30 and 17-64-120(5). Notice of this hearing was published in the Brighton Standard Blade on October 24, 2018. Staff has not received any comments regarding this Code amendment. Due to the proposed Code meeting the request of City Council and updating references, staff recommends approval of the amendment.*

*Mayor Kreutzer asked if anyone in the audience had questions for the applicant, there was none.*

*Mayor Kreutzer asked if anyone in the audience wished to speak on behalf of the request, there was none.*

*Mayor Kreutzer asked if anyone in the audience wished to speak against the request, there was none.*

*Mayor Kreutzer asked if any correspondence had been received, there was none.*

*Mayor Kreutzer asked if there were questions from City Council.*

*Councilmember Blackhurst asked if this Code amendment would affect anything but oil and gas injection wells. At this time there are injection wells related to the reverse osmosis process. Would this Code amendment affect the existing wells or future wells for that purpose? Special Counsel Matt Sura explained that it would. The following facilities are prohibited in the City including injection wells for disposal of oil and gas production waste, disposal pits, centralized expiration and production waste facilities, and subservice disposal facilities. Councilmember Blackhurst explained that the City does have a water treatment facility in the eastern part of the City that uses injection wells for disposing of the brine. This could have the same impact as the product from oil and gas injection. Planner Tetzlaff explained that the injection wells for this facility are not located on a parcel located within the city limits of Brighton. Councilmember Blackhurst asked if there should be a concern that the injection wells are located at the City's border. Planner Tetzlaff explained that the City*

could be concerned with that facility the same as there would be concern regarding an oil and gas injection well located on the border of Brighton. Staff would like to work with the community that is proposing an injection well site near Brighton to work out an agreement to keep the injection well away from Brighton's border.

Councilmember Mills does not want Brighton to be known as anti-energy if this Code amendment is approved. Brighton supports the oil and gas industry; there is just a desire to keep the injection wells out of the City.

Councilmember Baca explained that the City was concerned about injection wells in the City's growth areas. Councilmember Baca asked if the City could ask for cooperation from the surrounding agencies regarding these injection wells. Planner Tetzlaff explained that staff has begun reaching out to the entities around Brighton in hopes of drafting an IGA to ask for cooperation and get something in writing. Staff does not know how this process would work. Community Development Director Holly Prather explained that she met with the Weld County Planning Director on October 31, 2018 regarding the completion of an IGA or a Coordinated Planning Agreement (CPA). Director Planner was told that the City could request that the Weld County Commissioners approve language in a CPA regarding land uses that Brighton does not deem appropriate in its Urban Growth Boundary. This would have to be a dialogue between the Weld County Commissioners and the City Council. This would require a work session with City Council and the Commissioners, which could possibly take place in January or February of 2019. Staff is in the process of working with the appropriate staff members from Adams County regarding this issue.

Mayor Kreutzer reported that he, Councilmember Mills and Councilmember Humbert attended a Weld County Commissioners meeting where a zoning change on a parcel of land next to Brighton was being considered. The request was to zone a portion of the land from agricultural to industrial; this would allow an injection well to be placed on the site. The Commissioners appeared to feel that these types of operations should be placed in an industrial area. This area would be zoned industrial and would therefore be a good place for this facility, even though it is next to the City of Brighton boundary. After the meeting, representatives from Brighton and Weld County felt it would be best if both entities work together on these types of issues. It is important for the City of Brighton and the Weld County Commissioners to meet and work together in the future. It does not appear anything can be done by Brighton to stop this injection well.

Mayor Kreutzer closed the public hearing at 6:35 p.m.

**Motion by Councilmember Blackhurst, seconded by Councilmember Humbert, to approve the Ordinance. Motion passed by the following vote:**

**Aye:** 8 - Mayor Kreutzer, Mayor Pro Tem Edwards, Councilmember Baca, Councilmember Blackhurst, Councilmember Humbert, Councilmember Mills, Councilmember Pollack, and Councilmember Wallin

**Absent:** 1 - Councilmember Johnston

**B. AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AMENDING SECTION 17-20-100 OF THE BRIGHTON MUNICIPAL CODE RELATED TO SIGNS (FIRST READING)**

Mayor Kreutzer read the title of the Ordinance into the record.

Mayor Kreutzer opened the public hearing at 6:36 p.m. and City Clerk Natalie Hoel verified the required postings and publications (October 24, 2018 in the Brighton Standard Blade) for this public hearing were completed.

City Manager Rodriguez introduced Senior Planner Mike Tylka.

Senior Planner Mike Tylka introduced Code Consultants Gerald Dahl with Murray Dahl Beery & Renaud, LLP and Martin Landers with Plan Tools, LLC. Staff recommends appealing the current Sign Code and replacing it in its entirety with new text, tables and graphics. The proposed amendment is necessary in order to eliminate

content-based regulations that were deemed inappropriate by the U.S. Supreme Court via its ruling *Reed v. Town of Gilbert*. This decision found that the Town of Gilbert's Code dealing with signs was unconstitutional as it contained content-based regulations and therefore, was invalid. In their decision, the Court noted that varieties of signs are problematic as the applicable restrictions and requirements typically relied on the subject matter or the message of the sign. The Court ruled that regulations relating to the content and or type of sign are unconstitutional as the same relate to core First Amendment protected speech.

Municipalities across the country have had to evaluate their Sign Codes since the Court's ruling. Brighton has content-based regulations in its current Sign Code. The necessary changes require reworking the entire Sign Code as these references are interwoven throughout. This provided the City with the opportunity to reformat the entire Sign Code in order to add graphics and make other improvements to create a more user-friendly document. These revisions should make the Sign Code easier to read for the typical business owner or property owner. This new Code should cut down on staff time explaining the current Code as the new graphics would be easy to use for the average person. This Code amendment process has followed the process outlined in Section 17-8-90 of the Land Use and Development Code. It complies with and is not in conflict with the U.S. Supreme Court's ruling in *Reed v. Town of Gilbert* requiring content-based signage and free speech.

There are twenty-two subsections in the proposed amendment. Most allowed size and heights would remain the same. There are not any major changes to general policies for requirements for most signs. The categories are different and none is content-based. Clarifications are made for each type of sign per recommendation by the team. This amendment is needed because the current Sign Code does have content-based signage. Cities can regulate the time, place and manner of signs, but not content. Planner Tylka presented the proposed use of tables in the amended Code for residential and non-residential signs. Each type of sign would be designated as permanent or temporary. Each type would be broken down as to size, area and height requirements. The amendment will simplify the sign measurement requirements. The proposed amendment includes purpose, intent, definitions, application, non-conforming signs, enforcement, violations and penalties, required sign permits, permit procedures, comprehensive sign plan, criteria for bonus sign area, exempt signs, prohibited signs, permitted signs by district, permanent signs, temporary signs, sign measurement, sign design, sign construction and installation, sign maintenance, sign removal and alteration and abandoned signs. Billboards have been removed from the amended Code.

The planning Commission heard this request on October 9, 2018 and unanimously recommended approval at their October 23, 2018 meeting. Staff and the consultants went through the Code amendment paragraph by paragraph with the Planning Commission. Notice of the public hearing was published in the Brighton Standard Blade on October 24, 2018. Staff has not received any formal comments regarding this request.

As the federal Court decisions are made that affect the power of local municipalities to exercise their police powers, it is important that the City have regulations that mirror the decisions as to not leave the City open to new legal challenges. Staff believes the proposed Code amendment accomplishes this goal. Staff recommends approval of this request.

Gerald Dahl reported that he has enjoyed working with staff on this project. Mr. Dahl represents a number of cities and they have had to react to the Supreme Court's decision regarding signs. The content-based portions of the Sign Code have been removed but the structure in the Code remains. Sign Codes provide entitlements to existing businesses and owners of signs, those entitlements remain in the amended Code.

Mayor Kreutzer asked if anyone in the audience had questions for the applicant, there was none

Mayor Kreutzer asked if anyone in the audience wished to speak on behalf of the request, there was none.

Mayor Kreutzer asked if anyone in the audience wished to speak against the request, there was none.

Mayor Kreutzer asked if any correspondence had been received, there was none.

Mayor Kreutzer asked if there were questions from City Council.

Councilmember Pollack asked if this would change any signs that are currently in place for businesses. Mr. Dahl explained that any signs that were legal before would remain as a legal non-conforming use.

Mayor Pro Tem Edwards asked if a vehicle hits a sign and it is damaged beyond repair, what the process to fix the sign is. Mr. Dahl explained that if it is a non-conforming sign and the damage is minor, the sign could be fixed. If the damage exceeds 50% of the replacement value, the sign would have to be replaced using the new Code requirements.

Councilmember Mills asked if a business owner wanted to alter their sign, what would be the process. Mr. Dahl explained that a change of copy does not trigger a permit; it is not based on content. If there is a change in structure to increase the size of the advertising copy, the City regulates how big the sign can be. This would trigger a need for a sign permit. The dimensional standards are largely the same as the current standards. Martin Landers explained that the amended Code has expanded some of the things that property owners and business owners can do without a sign permit.

Mayor Kreutzer found the amendment to be concise and that adding illustrations is helpful.

Mayor Kreutzer closed the public hearing at 6:58 p.m.

**Motion by Mayor Pro Tem Edwards, seconded by Councilmember Humbert, to approve the Ordinance. Motion passed by the following vote:**

**Aye:** 8 - Mayor Kreutzer, Mayor Pro Tem Edwards, Councilmember Baca, Councilmember Blackhurst, Councilmember Humbert, Councilmember Johnston, Councilmember Pollack, and Councilmember Wallin

**No:** 1 - Councilmember Mills

**C. AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AMENDING CERTAIN SECTIONS OF ARTICLE 12 AND ARTICLE 17 OF THE BRIGHTON MUNICIPAL CODE RELATED TO TELECOMMUNICATIONS FACILITIES AND COMMERCIAL MOBILE RADIO SERVICE FACILITIES (FIRST READING)**

Mayor Kreutzer read the title of the Ordinance into the record.

Mayor Kreutzer opened the public hearing at 6:59 p.m. and City Clerk Natalie Hoel verified the required postings and publications (October 24, 2018 in the Brighton Standard Blade) for this public hearing were completed.

City Manager Rodriguez introduced Senior Planner Mike Tylka.

Senior Planner Mike Tylka introduced Brandon Dittman with Kissinger & Fellman, Code Consultant on this proposal. This proposal would repeal Sections 12-16-200 through 12-16-270 dealing with Telecommunication Facilities and Section 17-20-140 titled Commercial Mobile Radio Service (CMRS) facilities and replacing it in its entirety with new text including a new title Wireless Communications Facilities (WCF Code). This proposal would amend the Table of Uses Section 17-32-30 as it pertains to Wireless Communications Facilities (WCF's).

The purpose for this amendment is due to Colorado House Bill 17-1193 that addresses small cells. These facilities can typically be placed on utility poles or other structures in the right-of-way. If the City does not have further regulations, it would only be subject to those set by the new state law. Other municipalities have codified their own standards for small cells; this has allowed them greater control over the placement, design, and the ability to address property, maintenance and safety concerns. Staff is proposing that the Code be brought up to date and outline how to set standards for these types of facilities. Staff would like to take the opportunity to outline further standards for design, concealment, colocation, landscaping and placement of all facilities dealing with communications in the public rights-of-way and throughout the City.

Staff has held three meetings in the past year with potential providers of small cell technology in Brighton. There is some urgency to adopt standards so the City would not be held only to the state standards if an

application were to be submitted today. Multiple providers have indicated that the small cells will be coming to the City and other Front Range municipalities. Staff has been working with United Power to prepare for deployment, as they own the poles in the City right-of-way. An outline has been made to determine how the City and United Power will work together to permit these facilities. This will start with a Master License Agreement between the provider and the City to work closely with the provider's agreement with United Power.

The permitting of these facilities on the United Power poles will first require the provider to get approval from United Power. The Master License Agreement will then be worked out with the City. If the facility is not going on a United Power pole, but still in the right-of-way, the Master License Agreement will still be needed with the City. This Code amendment process has followed the process outlined in the Land Use and Development Code. This amendment complies with and is not in conflict with Colorado House Bill 17-1193.

The eight sections of Article 12-16 that staff is proposing to repeal in their entirety deal with Telecommunications Facilities that have been preempted by federal law or would be best covered by a Master License Agreement. Staff is proposing repeal and replacement of the entire Section 17-20-140 titled Commercial Mobile Radio Service facilities. In its place, staff proposing to add the following eight new subsections to Section 17-20-140, which will now be called Wireless Communications Facilities: Purpose and Intent, Permit Required, Definitions, Applicability, Operational Standards, Design Standards, Review Procedures and Requirements, and Approval Criteria. The Purpose and Intent section outlines that the objective of these regulations is to ensure that the equipment needed for the necessary technology is appropriately located in such a way as to be concealed and as unobtrusive as possible. The Permit Required section ensures that WCF's go through the appropriate City review via the permit process. The Definitions section defines the terms that are applicable when reviewing WCF's. A majority of these terms are new to the Municipal Code. The Applicability section goes through the circumstances where the WCF regulations would be applied to a proposed project. The Operational Standards section addresses how these requirements interact with federal regulations and how these structures would be sited in the right-of-way or on public property. The remaining sections list out the specifics for each type of facility in detail including how to get the WCF approved and what standards have to be met. The Design Standards section sets the standards for camouflage, concealment, hazardous materials, colocation, lighting, noise, landscaping, fencing and other design related criteria. The proposal outlines the standards for WCF applications that are proposed to be adjacent to a residential area and goes into depth for design standards for various types of WCF's. Accessory equipment standards are addressed in the amendment. The Review Procedures and Process Requirements are covered in depth and the submittal requirements have been outlined. A new process in this Code is outlining the process for eligible facilities requests. These will allow staff to have clear standards and processes to follow when parties are looking to add equipment to existing facilities. The approval criteria for WCF's is outlined in depth and the design standards are outlined for each type of facility. The standards for the base station and the required distances for the wireless communications facilities in the right-of-way are addressed. Each type of facility would be reviewed according to the standards that match the type of facility. Language has been added for requirements addressing distance of towers from schools and public buildings.

Staff is proposing to repeal and replace the CMRS facilities in the Land Use Table, Section 17-32-30, Table of Uses. The current Table of Uses has two specific uses, freestanding towers and wall or building mounted roof equipment. This will be replaced with four groupings with the new classifications including roof and wall mounted WCF, small cell WCF and alternative structures within the right-of-way, alternative tower structures not within the right-of-way, and towers. Staff is not proposing any change for use in zone districts for roof or wall mounted equipment. This is because it is mandated by the new Colorado state law that small cells within the right-of-ways be a use by right in all zone districts. The proposed grouping of small cells and alternative structures in the right-of-way reflect this reality. The grouping of alternative tower structures not within the right-of-way allows these structures as a conditional use in the R-3, Downtown, Mixed Use, Commercial Office, and C-1 zoning districts. These are proposed to be allowed as use by right in both industrial zones, higher intensity commercial zones and the public and institutional zones. This is being done to direct cellular structures to be constructed as alternative tower structures that are governed by higher design regulations that will better blend into surrounding areas. Staff is recommending changes from the current Land Use Table for the tower grouping classification. Staff is proposing that towers no longer be allowed as conditional uses in the Downtown and C-1 districts as these structures do not conform to the intent of these districts. Staff is recommending that towers remain subject to conditional use approval in the higher intensity Mixed Use and Commercial areas, as well as Industrial, Public and Institutional use districts.

The Planning Commission considered this item at their September 25, 2018 meeting and recommended approval at their October 9, 2018 meeting. Notice of the public hearing was published in the Brighton Standard Blade on October 24, 2018. As a courtesy, the major providers of cellular communications facilities in the area and their site selective consultants were provided with the draft submitted to City Council in advance of the packet publication.

As technologies change, it is important that the City have regulations that are able to meet both the needs of residents and communication providers. Staff believes the proposed Code amendment accomplishes these goals. Staff recommends approval of this amendment.

Brandon Dittman with Kissinger & Fellman explained that this has been a long process. Federal and state law have evolved rapidly regarding cellular towers. Several court cases that could change regulations are being considered at this time, so there will be a need for changes in the future.

Mayor Kreutzer asked if anyone in the audience had questions for the applicant, there was none.

Mayor Kreutzer asked if anyone in the audience wished to speak on behalf of the request.

Chris Harrington with Sherman and Howard, Denver, Colorado on behalf of Verizon. Mr. Harrington is in support of the amendment but has some recommendations for changes. These changes were outlined in a letter sent to staff. The changes are related to separation, height and the definition of Substantial Change. The current separation requirement included in the Code requires a 600' separation between facilities unless there is an attachment to other vertical infrastructure in the right-of-way. Mr. Harrington recommends adding discretionary authority where the decision maker would have some discretion in a situation where the site would need to be located closer in certain circumstances. Greater height allows carriers the possibility for colocation. Mr. Harrington is recommending the height be amended from 5' higher than surrounding infrastructure to 8' higher, or 40' total height. If the height were not increased, there would be a need for more towers in the right-of-way. Even the greater height would not ensure that colocation could be done. Regarding his request for modifications in the definitions for Substantial Change, for the most part the language mirrors the FCC regulations, but some of the language is not in the FCC regulations and appears to add confusion. Mr. Harrington requests that part of the language be struck from the amendment.

Liz Walker, Centennial, Colorado, representing AT&T. Ms. Walker explained that she provided timely comments to the proposed amendment to staff regarding harmonizing the Code with federal and state law. The draft Ordinance may benefit from some additional collaboration. Ms. Walker is requesting a continuance of this item so the issues raised by AT&T could be further discussed with staff.

Mike Boutwell, Brighton, Colorado. Mr. Boutwell is all for helping people through technology, but feels that technology is taking lead over health. Mr. Boutwell asks that health issues be addressed before approval of this item. Further consideration of this item is needed.

Mayor Kreutzer asked if anyone in the audience wished to speak against the request, there was none.

Mayor Kreutzer asked if staff would like to answer or rebut any of the comments.

Planner Tylka reported that as a courtesy staff provided the draft amendment that was approved by the Planning Commission to the service providers in advance of the packet preparation. Comments were returned by some of the parties. Changes were not made to the documents prepared for City Council after they were approved by staff for the agenda packet. Staff was able to review the comments from the providers. Staff feels that some of those proposed changes do not affect the text in the proposed amendment. Staff and the providers will not agree on a couple things. Planner Tylka suggests going through the proposed changes from the providers at this time so staff can bring those changes to Council at second reading of the Ordinance.

Mr. Dittman addressed some of the comments from the providers. Regarding the comments from Verizon and the separation of small cell facilities: What staff wants to avoid in the right-of-ways is pole clutter for all of the various providers, city needs and utility needs. Staff wants to ensure a reasonable separation for these uses in the right-of-way. These poles need to be deployed in a way that is aesthetically pleasing and safe for the public. Verizon suggested adding some discretionary language around this where the Director of Community Development could waive separation requirements in certain instances. Staff does feel this is reasonable and

it has been done in other cities. The issue regarding height of the poles is the most contentious issue regarding small cell facilities in the right-of-way. If there is less height, there could be a need for more facilities. Staff's position is that this is a policy call on behalf of the City. Brighton has been generous in creating a maximum height of 40'; the debate is the amount of attachment height to existing facilities and if it should be 5' or 8'. Mr. Dittman explained that 5' is workable, but it is always easier for providers to have more. The language concerning substantial change, this language is important because it comes from federal law. In the Middle Class Tax Relief Act in 2012, the FCC interpreted Section 6409. What the FCC rulings were trying to do was create a new class of facilities called Eligible Facilities Requests where non-substantial modifications to existing facilities be processed more quickly and with less government oversight. The definition of Substantial Change determines when something is eligible for a more expedited review or it falls within another category of facility like a new facility or a non-substantial change colocation. The initial part of the definition comes directly from federal law. The FCC Report and Order states that the interpretive language for the definition regarding substantial change means that when it states "to defeat" a concealment effect, or camouflage on existing site, it means that it undermines it. It weakens that concealment element. The language is different because it is interpretive of what "defeat" means, it complies with what the FCC says the FCC meant. Staff feels it is important to include it here, as it has been included throughout the county. Those that work in the industry understand what "defeat" means.

Staff has reviewed all of the AT&T concerns and have agreed with 90% of the issues raised. Because of the timing of the packet preparation, these changes could not be made to the draft ordinance prior to the meeting. These do not change the whole of the code they just clarify some issues.

Regarding the health issues from wireless facilities, the federal government has preempted local government from considering health impacts. Local government can ask that providers comply with federal law. If the provider certifies that they are complying with federal law with respect to interference and radio emissions, the local jurisdiction can go no further. This area is not appropriate for City Council to consider at this time. Any complaints can be filed with the FCC to determine if the interference is harmful. The FCC has the rulemaking authority and sets the standards.

Mayor Kreutzer asked if any correspondence had been received, there was none.

Mayor Kreutzer asked if there were questions from City Council.

Councilmember Wallin asked if a provider were going to need extra height, they would most likely be looking to colocate or increase service. What would be the significance of that request as long as the maximum height would not exceed 40'? Mr. Dittman explained that in this situation, the carriers are asking to attach to an existing facility in the right-of-way. The City would prefer that everything in the right-of-way be approximately the same height. There is a concern that if an area had 20' streetlights, there could be a 40' streetlight and then a 20' streetlight in the same right-of-way. Staff felt that a 5' increase could allow the streetscapes to remain consistent. This is an area that Council could determine what is best for the City. Other wireless facilities could not colocate on a small cell facility, the frequencies are too high and they would interfere with each other.

Councilmember Blackhurst feels it would be hard to determine the difference between 5' or 8' if it were added to a 20' light pole. If the extra 3' would allow for less poles, the extra height is an arbitrary number. Mr. Dittman explained that because this is such a new technology, the carriers do not know what 3' would give them in terms of additional coverage. Councilmember Blackhurst appreciates the Code being written to keep the height under 40'. If the 3' being requested by the carrier will have a significant improvement, this could be considered by Council.

Councilmember Mills asked if this would affect anyone using ham radios or just wireless cell phone communication. Mr. Dittman explained that the Code is written so it would apply to all facilities, but the applicability section of the Code limits it to them complying with federal law. If a person is an existing ham radio operator, it is a legal non-conforming use. The City would not be using any additional enforcement.

Mayor Pro Tem Edwards appreciates the explanation of the FCC ruling on health issues and that City Council does not have any control. Mayor Pro Tem Edwards feels that Council should move forward with the recommendations by staff and counsel in a timely manner.

Councilmember Johnston asked if there is a way to meet with the providers to compromise on some of these issues if the Ordinance is passed at first reading. Planner Tylka explained that staff and Mr. Dittman have worked on making changes to incorporate some of the issues that were raised by the providers but there are a couple points that staff and the providers do not agree on. There will be time to discuss these prior to the final reading of the Ordinance.

City Attorney Jack Bajorek explained that there has been a lot of discussion about first and second reading. City Council has the option of approving the Ordinance as it was presented tonight or making amendments to it tonight, or taking any action it deems fit. If Council approves and asks for changes at second reading, there would not be any direction for what should be published in the newspaper. A motion could be made to amend the Ordinance and that could be approved at first reading, or Council could make a motion to continue the public hearing.

Mayor Kreutzer is not comfortable voting on this Ordinance tonight, as it is too messy. There are too many unanswered questions and Mayor Kreutzer asked if the public hearing could be continued to next meeting. City Manager Rodriguez explained that the public hearing could be continued to next week and asked what changes Council would like to see made to the Ordinance. Mayor Kreutzer asked that the proposed changes from staff be incorporated into the Ordinance for next week. Mayor Kreutzer understands that the health issues cannot be considered by City Council, but would like to hear that these facilities are safe. Mr. Dittman and staff have incorporated the comments from the providers into a document that is ready to be presented next week.

**Motion by Councilmember Humbert, seconded by Councilmember Mills, to continue the Public Hearing to November 20, 2018. Motion passed by the following vote:**

**Aye:** 9 - Mayor Kreutzer, Mayor Pro Tem Edwards, Councilmember Baca, Councilmember Blackhurst, Councilmember Humbert, Councilmember Johnston, Councilmember Mills, Councilmember Pollack, and Councilmember Wallin

Mayor Kreutzer asked for a break at 7:56 p.m.

Mayor Kreutzer reconvened the meeting at 8:06 p.m.

**7. ORDINANCES FOR INITIAL CONSIDERATION**

**8. ORDINANCES FOR FINAL CONSIDERATION**

**A. AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, APPROVING THE ZONE CHANGE OF APPROXIMATELY 64.517 ACRES OF LAND GENERALLY LOCATED IN THE SOUTH ONE-HALF OF THE SOUTHEAST ONE-QUARTER OF SECTION 20, TOWNSHIP 1 NORTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF BRIGHTON, COUNTY OF WELD, STATE OF COLORADO, FROM A ZONING DESIGNATION OF LIGHT INDUSTRIAL (I-1) TO A ZONING DESIGNATION OF HEAVY INDUSTRIAL (I-2) AND AMENDING THE ZONING MAP ACCORDINGLY**

Mayor Kreutzer read the title of the Ordinance into the record.

City Manager Rodriguez explained that this is the final reading of the Ordinance and there have not been any changes since first reading.

Mayor Kreutzer asked if there were any comments from the audience on the second reading of the Ordinance, there were none.

**Motion by Councilmember Johnston, seconded by Councilmember Wallin, to approve Ordinance**

**2295. Motion passed by the following vote:**

**Aye:** 9 - Mayor Kreutzer, Mayor Pro Tem Edwards, Councilmember Baca, Councilmember Blackhurst, Councilmember Humbert, Councilmember Johnston, Councilmember Mills, Councilmember Pollack, and Councilmember Wallin

**B. AN ORDINANCE OF THE CITY OF BRIGHTON, COLORADO, APPROVING THE DESIGNATION OF THE BRIGHTON TRAIN DEPOT AS AN HISTORIC LANDMARK AND SETTING FORTH OTHER DETAILS RELATED THERETO**

*Mayor Kreutzer read the title of the Ordinance into the record.*

*City Manager Rodriguez explained that this is the final reading of the Ordinance and there have not been any changes since first reading.*

**Motion by Councilmember Humbert, seconded by Councilmember Mills, to approve Ordinance 2296. Motion passed by the following vote:**

**Aye:** 9 - Mayor Kreutzer, Mayor Pro Tem Edwards, Councilmember Baca, Councilmember Blackhurst, Councilmember Humbert, Councilmember Johnston, Councilmember Mills, Councilmember Pollack, and Councilmember Wallin

**9. RESOLUTIONS**

**A. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO AMENDING CERTAIN ACCOUNTS IN THE GENERAL FUND, CEMETERY FUND, CAPITAL IMPROVEMENT FUND, PARKS AND RECREATION CAPITAL IMPROVEMENT FUND, WATER ENTERPRISE FUND, WASTEWATER ENTERPRISE FUND, CEMETERY PERPETUAL CARE FUND AND FLEET INTERNAL SERVICE FUND; APPROPRIATING MONEY FOR EXPENDITURES AND EXPENSES IN THE AMOUNT OF THREE HUNDRED FIVE THOUSAND NINE HUNDRED TEN DOLLARS (\$305,910) FOR THE GENERAL FUND, THREE THOUSAND TWO HUNDRED DOLLARS (\$3,200) FOR THE CEMETERY FUND, A REDUCTION OF ONE HUNDRED NINETY ONE THOUSAND FOUR HUNDRED NINETY-SEVEN DOLLARS (\$191,497) FOR THE CAPITAL IMPROVEMENT FUND, ONE HUNDRED FIFTY SIX THOUSAND NINE HUNDRED FIFTEEN DOLLARS (\$156,915) FOR THE PARKS AND RECREATION CAPITAL IMPROVEMENT FUND, FIFTY FOUR THOUSAND SIX HUNDRED SEVENTY EIGHT DOLLARS (\$54,678) FOR THE WATER ACTIVITY ENTERPRISE FUND, ONE HUNDRED TWENTY SEVEN THOUSAND TWO HUNDRED SEVENTY EIGHT DOLLARS (\$127,278) FOR THE WASTEWATER ENTERPRISE FUND, AND TWENTY FOUR THOUSAND THREE HUNDRED FORTY EIGHT DOLLARS (\$24,348) FOR THE FLEET INTERNAL SERVICE FUND; AND SETTING FORTH OTHER DETAILS RELATED THERETO**

*Mayor Kreutzer read the title of the Resolution into the record.*

*City Manager Rodriguez introduced Director of Urban and Public Policy Ryan Johnson.*

*Director of Urban and Public Policy Ryan Johnson presented the proposed budget amendments. Some revenue items need to be appropriated and some funds need to be formally re-appropriated to other funds. The revenue items include \$267,310.00, Insurance Recoveries; \$19,325.00, Grant Revenue; \$54,678.00, Water Fund Balance; \$122,278.00, Wastewater Fund Balance; and \$156,915.00, Parks and Recreation CIP*



No: 1 - Councilmember Johnston

## 10. UTILITIES BUSINESS ITEMS

### A. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, ACCEPTING THE REQUEST OF UTILITIES TO “PIGGYBACK” ON A FORMAL SOLICITATION BY THE CITY OF THORNTON FOR THE PURCHASE OF WATER METERS FROM BADGER METER, INC., AND APPROVING A PURCHASE ORDER BE ISSUED FOR THE PURCHASE OF WATER METERS IN AN AMOUNT NOT TO EXCEED SEVENTY-SEVEN THOUSAND, ONE HUNDRED SEVENTY-SEVEN DOLLARS (\$77,177.00) AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE PURCHASE ORDER

*This item was removed from the Consent Agenda, Item 3C.*

*Mayor Kreutzer read the title of the Resolution into the record.*

*Director of Infrastructure Michael Woodruff answered questions from Council regarding:*

- *The meters being used for replacement to help with electronic data collection and billing.*
- *The Badger meters being standard for the City.*
- *Badger being able to extend their pricing for Thornton to Brighton.*
- *The number of meters being purchased.*

**Motion by Councilmember Johnston, seconded by Councilmember Pollack, to approve Resolution 2018-119. Motion passed by the following vote:**

**Aye:** 9 - Mayor Kreutzer, Mayor Pro Tem Edwards, Councilmember Baca, Councilmember Blackhurst, Councilmember Humbert, Councilmember Johnston, Councilmember Mills, Councilmember Pollack, and Councilmember Wallin

## 11. GENERAL BUSINESS

### A. Audit Selection Committee

*City Manager Rodriguez explained that the City would need to find new auditors because the contract with the previous auditors has expired. An Audit Selection Committee will be created to select the new auditors. The committee will consist of members of City Council, staff and the community. Twenty-nine residents submitted applications to fill the two open seats.*

*Mayor Kreutzer, Councilmembers and the City Attorney discussed the best way to select the community members.*

*City Councilmembers presented their choices for the community members for the Audit Selection Committee. The following community members have been selected to serve on the Committee:*

- *Kevin Kildow - Ward 4*
- *Stacey McVay - Ward 1*

*The following Councilmembers have been selected to serve on the Committee:*

- *Councilmember Mills - Ward 2*
- *Councilmember Blackhurst - Ward 3*

## 12. REPORTS

**A. By the Mayor**

*Mayor Kreutzer asked City Council to turn in their judge evaluations. Mayor Kreutzer attended the National League of Cities conference, the School District 27J Joint Meeting with Commerce City, the 100<sup>th</sup> Anniversary of the Independence of Poland.*

**B. By Department Heads**

*General Services Director Karen Borkowski Surine spoke about open enrollment for employees and recognized City Manager Rodriguez for being named a Northern Colorado 40 under 40 recipient.*

**C. By the City Attorney**

**D. By the City Manager**

**13. REPORTS BY COUNCIL ON BOARDS & COMMISSIONS**

*Mayor Pro Tem Edwards attended the National League of Cities conference.*

*Councilmember Wallin attended the SCFD Grant Awards, the Lodging Tax Grant Committee meeting and the National League of Cities conference.*

*Councilmember Blackhurst attended the Youth Commission meeting and the Link meeting.*

*Councilmember Mills attended the BURA meeting, the Sports Complex Naming Ceremony, the I-76 Commerce Center Open House, the Brighton EDC Pitch Contest and the School District 27J Joint Meeting with Commerce City.*

*Councilmember Humbert attended the National League of Cities conference.*

**14. EXECUTIVE SESSION**

**15. ADJOURNMENT**

**Motion by Councilmember Wallin, seconded by Councilmember Mills, to adjourn at 9:35 p.m.  
Motion passed by the following vote:**

**Aye:** 9 - Mayor Kreutzer, Mayor Pro Tem Edwards, Councilmember Baca,  
Councilmember Blackhurst, Councilmember Humbert, Councilmember Johnston, Councilmember Mills, Councilmember Pollack, and Councilmember Wallin

**CITY OF BRIGHTON, COLORADO**

\_\_\_\_\_  
Kenneth J. Kreutzer, Mayor

**ATTEST:**

\_\_\_\_\_  
Natalie Hoel, City Clerk

Approval Date