



Legislation Text

File #: ID-408-18, Version: 1

City of Brighton

500 S. 4th Avenue
Brighton, CO 80601



Meeting Minutes - Draft

Tuesday, November 20, 2018

7:00 PM

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 7:00 p.m.

A. Pledge of Allegiance to the American Flag

Local Cub Scouts and Boy Scouts led the recitation of the Pledge of Allegiance to the American Flag.

B. Roll Call

Present: 6 - Mayor Kreutzer, Mayor Pro Tem Edwards, Councilmember Blackhurst, Councilmember Humbert, Councilmember Johnston, and Councilmember Wallin

Not Present: 3 - Councilmember Baca, Councilmember Mills, and Councilmember Pollack

2. APPROVAL OF REGULAR AGENDA

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

Aye: 6 - Mayor Kreutzer, Mayor Pro Tem Edwards, Councilmember Blackhurst, Councilmember Humbert, Councilmember Johnston, and Councilmember Wallin

Absent: 3 - Councilmember Baca, Councilmember Mills, and Councilmember Pollack

3. CONSENT AGENDA

A. Approval of the October 16, 2018 City Council Minutes

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

Aye: 6 - Mayor Kreutzer, Mayor Pro Tem Edwards, Councilmember Blackhurst, Councilmember Humbert, Councilmember Johnston, and Councilmember Wallin

Absent: 3 - Councilmember Baca, Councilmember Mills, and Councilmember Pollack

4. CEREMONIES

A. Introduction of Cub Scout Den 5, Pack 61

Mayor Kreutzer recognized the Boy Scouts from Pack 376 Den 1 and Cub Scouts Pack 61 Den 5. Mayor thanked all of the scouts for meeting with him prior to the meeting.

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

Curt Bauers, Arvada, Colorado. Mr. Bauers expressed his concern regarding the City's Water Enterprise, the residential water rates and management of the Utilities Department.

Mike Boutwell, Brighton. Mr. Boutwell expressed his concern regarding the LED headlights on the police vehicles and expressed the need for speed limit signs in the alleys.

6. PUBLIC HEARINGS

A. 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 (PUBLIC HEARING CONTINUED FROM NOVEMBER 13, 2018)

Mayor Kreutzer read the title of the Ordinance into the record and explained that this public hearing was continued from November 13, 2018.

City Manager Philip Rodriguez explained that staff was directed by Council to consider some of the recommendations from the industry members to present at this meeting. City Manager Rodriguez introduced Senior Planner Mike Tylka.

Senior Planner Mike Tylka introduced Brandon Dittman, Kissinger & Feldman, the City's Code consultant. This item was continued from the November 13, 2018 City Council meeting to allow staff more time to work with the communications industry professionals to go over certain provisions of the proposed amendment. Staff is not proposing any changes from the last presentation for the recommendations on Sections 12-16-200 through 12-16-270 or Section 17-32-30. The providers did not submit any comments on those sections. Planner Tylka presented the proposed amendments in Section 17-20-140.

(a) Purpose and Intent, industry professions have taken issue with the use of 'aspirational language' in two parts. Staff does not feel this change is necessary as the language does not state an advantage to one technology over another, and the Code does not prevent small cells in residential areas.

(c) Definitions, Staff has changed the definition of 'existing tower' to eliminate the ability for conflicting interpretations, but has not changed the definition of 'small cell wireless facility', because the current draft uses state law definition. Industry representatives expressed two concerns regarding the definition of 'substantial change'. The first concern was that the draft's use of adding in alternative tower structure in the right-of-way was unnecessary and could cause conflicts with the classifications of structures in certain federal law. Staff drafted this language to assist the City's administration of the Code and feels it does not impede the application of any federal law. The second concern was that the draft's use of language describing undermining concealment elements. Staff's position is that the language used in the draft comes directly from an FCC order explaining the intent of what 'defeat' means. This guidance language is consistent with the intent of the FCC's report and order and is proven unnecessary in the past due to some creative interpretations of 'defeat' by some industry representatives.

(e) Operational Standards, Staff has removed the last line regarding federal requirements from the draft as to not cause confusion as to who has the authority to remove WCF's if they violate a federal law. AT&T felt that some of the language would cause confusion if standards should be applied retroactively. Staff added in the phrase "in effect at the time of original installation or modification" to eliminate the concern. There was concern regarding the proposed removal period, staff had no problem increasing the removal period from thirty days to sixty days.

(f) Design Standards, T-Mobile took issue with the draft's inclusion of undergrounding of equipment as

they stated that it is not technically feasible. Staff believes that undergrounding is an option in some situations, and the City's consultant has assisted in sites where undergrounding was an option. Staff's proposed draft simply mentions that undergrounding may be an option and should be taken into consideration. Staff wants to move as much equipment as possible from the right-of-way for safety purposes. Industry representatives expressed concern that the use of the language of 'particular sensitivity' was too subjective for purposes for the need for heightened camouflaging. The City's consultant and attorney feels that the draft's language is defensible. Staff has amended the draft language to ensure that colocation is carried out to the extent technically feasible. There was discussion regarding removing the landscaping requirements and exempting small cells from all requirements. Staff agrees that there may be a circumstance where the visual impact of a WCF might be minimal, so staff has added in language to address this where the Community Development Director may reduce or waive this requirement if warranted. AT&T would like small cells to be completely exempt from setback requirements. Staff's position is that setback requirements will not practically be a problem for small cells in the right-of-way, in that there needs to be certain requirements for site lines, site triangles and ADA access. These requirements cannot be waived. Concern was raised that the draft pushed rooftop antennas too far away from the edge of structures. Staff feels that rooftop screen must be required. Staff has added in language that pushing equipment back from view shall be done to the "greatest extent technically feasible". The height of roof-mounted panel antenna has been requested to be increased by industry professionals, one to 10' the other to 8'. Staff has amended the draft to 8'. Staff has agreed with industry professionals that the earlier drafted height extension limit of 5' can be increased to 8' in the right-of-way if the pole is under 40' in total height. Staff does not support the industry representative with calls to eliminate or reduce the 600' spacing requirement in the right-of-ways for WCF's. Staff did add language to allow for the Community Development Director to reduce the requirement if the applicant demonstrates technical reasons with documentation or other factors such as topography or adjacent uses, as long as the intent of reducing visibility and visual clutter of WCF's is still met. Staff has clarified language to ensure to the users that that the 350 sq. ft. requirement of accessory equipment shall be allowed for each carrier as it relates to a specific WCF.

(g) Review Procedures and Requirements, Industry representatives would like to remove the requirement that the applicant provide a list of both the applicant's existing sites in the City, as well as proposed sites for outside of the City within one mile of its boundaries. Staff does not support removing this provision. The industry strongly objected to staff asking for information on futures sites. Staff has removed this provision from the draft and added language to state that the inventory will only be required from an applicant once per year in which they have submitted an application. Language has been added to further outline and clarify administrative review. T-Mobile stated they would like thirty days instead of ten days from the time of notification to repair any damage. Staff has made this revision.

(h) Approval Criteria, Staff has updated the 5' to 8' extension, the 600 sq. ft. spacing has not changed, but language was added giving the Director the ability to reduce the spacing requirement if warranted.

After the packet deadline, an AT&T representative raised two additional items they are requesting for consideration. The two items were not in the draft proposal sent to Council in advance of the meeting. The items needed to be further reviewed by the City's consultant team as the changes required further review of the federal history on the primary issues of these two changes. The first is a request that the definition of colocation be changed to a new definition in subsection (c). The second is in Subsection [g][4](b) Review Procedures and Requirements. This is being proposed as it directly relates to the definition of 'colocation'. Staff supports these two changes and have submitted a revised Ordinance for City Council consideration.

Public notice was carried out in accordance with requirements in the Code. Planning Commission recommended approval of the amendment. Staff recommends approval of the amended proposed Ordinance, as it will meet the needs of the residents and the communications providers. The proposal meets the Code's review criteria and is not in conflict with House Bill 17-1193.

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

Councilmember Humbert asked if there is a second reading for this Ordinance. Planner Tylka explained that there is. Councilmember Humbert asked if the public would have a chance to comment on the changes. Mayor Kreutzer explained that they would.

Councilmember Blackhurst thanked staff for doing such a great job getting this done in such a short

timeframe. Councilmember Blackhurst asked if the revised Ordinance has incorporated the last two requests from AT&T. Planner Tylka explained that it does, the City Attorney and consultant are comfortable with these changes.

Mayor Kreutzer appreciates the job that was done by staff to consider the concerns of the industry representatives and concerns of the City. Mayor Kreutzer is comfortable with the changes.

Mayor Kreutzer closed the public hearing at 7:35 p.m.

Motion by Councilmember Johnston, seconded by Councilmember Blackhurst, to approve the revised Ordinance as presented by staff. Motion passed by the following vote:

Aye: 6 - Mayor Kreutzer, Mayor Pro Tem Edwards, Councilmember Blackhurst, Councilmember Humbert, Councilmember Johnston, and Councilmember Wallin

Absent: 3 - Councilmember Baca, Councilmember Mills, and Councilmember

Pollack

7. ORDINANCES FOR INITIAL CONSIDERATION

8. RESOLUTIONS

A. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, APPROVING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF BRIGHTON, BROMLEY EAST CHARTER SCHOOL, AND EAGLE RIDGE ACADEMY CHARTER SCHOOL FOR A JOINT SCHOOL RESOURCE OFFICER PROGRAM, AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

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

City Manager Rodriguez introduced Chief of Police Paul Southard.

Chief of Police Paul Southard introduced Dr. David Shadwell, Executive Director of Bromley East Charter School. This Memorandum of Understanding (MOU) is for a proposed joint School Resource Officer (SRO) Program with Bromley East Charter School and Eagle Ridge Academy High School. These schools would like to have the services of the Brighton Police Department. The Police Department currently has SRO's in six 27J Schools. An SRO provides more than enforcement and security; they provide educational resources for students and parents. The proposed funding will be shared 50/50 between the City and the two schools, with each share being \$51,062.50 per year. The City and schools will equally divide the cost of school related overtime. These funds have been provided for in the 2019 budget. The term of the MOU will be eighteen months commencing January 8, 2019 and ending June 30, 2020. Staff recommends approval of the MOU. Chief Southard answered questions from Council regarding:

- There being one officer to be divided between two schools.*

Motion by Councilmember Wallin, seconded by Councilmember Humbert, to approve Resolution 2018-122. Motion passed by the following vote:

Aye: 6 - Mayor Kreutzer, Mayor Pro Tem Edwards, Councilmember Blackhurst, Councilmember Humbert, Councilmember Johnston, and Councilmember Wallin

Absent: 3 - Councilmember Baca, Councilmember Mills, and Councilmember

Pollack

B. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON,

COLORADO, APPROVING LODGING TAX GRANTS AND ALLOCATIONS FROM THE LODGING TAX FUND IN THE AMOUNT OF THREE HUNDRED TEN THOUSAND DOLLARS (\$310,000) FOR CALENDAR YEAR 2019; DESIGNATING THE RECIPIENTS AND AMOUNTS OF SAID GRANTS AND ALLOCATIONS; AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENTS WITH THE RECIPIENTS OF THE 2019 ALLOCATION ON BEHALF OF THE CITY

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

City Manager Rodriguez introduced the Lodging Tax Advisory Committee Chair Todd Brummond.

Lodging Tax Advisory Committee Chair Todd Brummond explained that there has been a change made to the allocation process this year. In August 2018, City Council approved a change that allocated 40% of the Lodging Tax budget to the Brighton Economic Development Corporation (EDC), 40% to the Brighton Cultural Arts Commission (BCAC) and 20% categorized as other. The Lodging Tax Advisory Committee (LTAC) will consider allocation of the 20%. For 2019, EDC will receive \$120,000.00, the BCAC will receive \$120,000.00 and the LTAC will consider grants for \$70,000.00 for a total of \$310,000.00. There was \$10,000.00 taken from the reserves to assist in funding some programs. The LTAC is recommending grant awards to the Chamber of Commerce, \$40,000.00; Brighton Youth Commission - Image Summit, \$20,000.00; Brighton Youth Commission - SPEAK Week, \$7,500.00; and District Plan Wayfinding, \$2,500.00. There were requests totaling \$173,200.00 with \$70,000.00 available. It is the hope that some groups will collaborate with the EDC or the BCAC to get funding for their projects in the future. The EDC and the BCAC will make presentations to the LTAC at the beginning of each year to share the projects they will be funding. At the end of each year, they will share their results with the LTAC to ensure that the funds are being used for their intended purpose. In March/April, the LTAC will meet to update the grant application. In July, the grant application will be published and promoted. In August the LTAC meet to allocate budget, review applications and refer funds. In October the LTAC, EDC and BCAC will evaluate the allocated grant applications. In November, the budget will be presented to City Council. In December, there will be final communication to applicants and end of year presentations by EDC and BCAC. Mr. Brummond and City Manager Rodriguez answered questions from Council regarding:

- The LTAC not phasing out annual requests.*
- The process updated to track receipts so the funds are being used properly.*
- The issue that happened in the past with the Lodging Tax funds.*
- The hotel that will be opening in 2019.*
- The amount of taxes the new hotel will bring in.*
- The amount of the grant SPEAK Week received last year.*

Councilmember Wallin asked that the Resolution be amended to award the Brighton Youth Commission - SPEAK Week an additional \$7,500.00 for a total of \$15,000.00.

Motion by Councilmember Wallin, seconded by Councilmember Humbert, to approve Resolution 2018-123 as amended. Motion passed by the following vote:

Aye: 6 - Mayor Kreutzer, Mayor Pro Tem Edwards, Councilmember Blackhurst, Councilmember Humbert, Councilmember Johnston, and Councilmember Wallin

Absent: 3 - Councilmember Baca, Councilmember Mills, and Councilmember

Pollack

9. UTILITIES BUSINESS ITEMS

Resolutions

A. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON,

COLORADO, CHANGING AND RATIFYING CERTAIN FEES AND CHARGES ASSESSED BY THE CITY OF BRIGHTON WATER ACTIVITY ENTERPRISE FOR THE FISCAL YEAR 2019

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

City Manager Rodriguez explained that as part of the 75 Day Work Plan the City will freeze the water rates until the new rate model is developed. City Manager Rodriguez introduced Urban and Policy Director Ryan Johnson.

Urban and Policy Director Ryan Johnson presented Utility fees that will be amended for 2019. The current shut off process for utility billing includes a \$25.00 imposed fee after a five calendar day grace period, a \$45.00 disconnection fee imposed after forty-seven days, and a \$60.00 lien fee. Staff reviewed the late fee for surrounding communities. Those fees range from \$5.00 to \$15.00; most fees are about \$10.00. The City of Brighton previously had a door hanger included in the process, the \$25.00 fee helped with the cost of that service. The City no longer places door hangers for late payments so there is not a justification for the \$25.00 fee. Staff is working on the implementation of a system that can provide text alerts and robo calls for billing reminders. Staff is proposing to change the late fee from \$25.00 to \$10.00; the anticipated 2019 collection would be \$111,032.00. These changes will begin on January 1, 2019. Staff recommends approval of the Resolution. Director Johnson and City Manager Rodriguez answered questions from Council regarding:

- The City collecting \$111,000 with a \$10.00 fee.*
- The implementation date of the \$25.00 fee.*
- The fund where the collected late fees are applied.*
- The late fees offsetting other costs that could lead to rate increases.*
- These funds used for utility purposes in the Utility fund.*
- The fees being used to offset the costs of the Utility department.*

Curt Bauers, Arvada, Colorado. Mr. Bauers stated that the fee reduction is positive, but expressed his concern that the reduction of \$140,000.00 would cost all water customers.

Motion by Councilmember Humbert, seconded by Mayor Pro Tem Edwards, to approve Resolution 2018-124. Motion passed by the following vote:

Aye: 6 - Mayor Kreutzer, Mayor Pro Tem Edwards, Councilmember Blackhurst, Councilmember Humbert, Councilmember Johnston, and Councilmember Wallin

Absent: 3 - Councilmember Baca, Councilmember Mills, and Councilmember

Pollack

10. GENERAL BUSINESS

11. REPORTS

A. By the Mayor

Mayor Kreutzer asked City Council to schedule time with Sheryl for the studio update. Mayor Kreutzer attended the ACC meeting, the ADCO Mayor's Luncheon, and the Homelessness Awareness Panel. The Festival of Lights event is December 8th.

B. By Department Heads

C. By the City Attorney

D. By the City Manager

City Manager Rodriguez updated City Council on the 75 Day Work Plan.

12. REPORTS BY COUNCIL ON BOARDS & COMMISSIONS

Councilmember Blackhurst attended the Link meeting.

Mayor Pro Tem Edwards attended the ACC meeting, the Chamber gala and the Senior Advisory Board meeting.

Councilmember Humbert attended the Diversity Equity & Inclusivity Council Homelessness Panel Discussion and the Almost Home fundraiser. Shop Local Saturday takes place November 30th.

Councilmember Johnston attended the CML Policy Board meeting.

13. EXECUTIVE SESSION

14. ADJOURNMENT

**Motion by Councilmember Humbert, seconded by Councilmember Blackhurst, to adjourn at 9:02 p.m.
Motion passed by the following vote:**

Aye: 6 - Mayor Kreutzer, Mayor Pro Tem Edwards, Councilmember Blackhurst,
Councilmember Humbert, Councilmember Johnston, and Councilmember Wallin

Absent: 3 - Councilmember Baca, Councilmember Mills, and Councilmember

Pollack

CITY OF BRIGHTON, COLORADO

Kenneth J. Kreutzer, Mayor

ATTEST:

Natalie Hoel, City Clerk

Approval Date