



## Staff Communication

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**File #:** PC Reso 03-2017, **Version:** 1

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Agenda Date: April 10, 2017

**Subject:**

An ordinance to amend the city's zoning code Title 10, with respect to commercial mobile radio service and to expand the city's regulations to include wireless communications facilities

Presented By: Brandon Dittman, Acting City Attorney and Jocelyn Mills, Community Development Director
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**BACKGROUND:**

Recently, it has come to light that Littleton's zoning code, specifically in regards to commercial mobile radio service, is in need of an update to bring the code into compliance with current state and federal regulations around wireless telecommunication facilities. Also, the city has been approached by wireless telecommunication providers and infrastructure providers regarding the deployment of wireless communications within city rights-of-way. The current code also does not address how to manage such requests.

In 2009, the Federal Communications Commission (FCC) adopted a "Report and Order" known as the "Shot Clock Order" interpreting Section 332 of the Telecommunications Act of 1996. The Shot Clock Order requires that the local jurisdiction must act on an application for the collocation of additional antennas to existing infrastructure within ninety (90) days and an application for the construction of new infrastructure within one-hundred and fifty (150) days. The proposed code changes implement the Shot Clock Order.

In 2014, the Federal Communications Commission (FCC) adopted a second Report and Order known as the "Colocation Order" which interprets Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012. The Colocation Order prohibits local governments from denying eligible facilities' requests (EFRs) to modify existing wireless towers or base stations if the modification does not substantially change the dimensions of the facilities. As the colloquial name suggests, the Collocation Order primarily concerns the collocation of wireless facilities. The final rules created a new shot clock for EFRs whereby local jurisdiction must administratively approve of a completed EFR within sixty (60) days of filing. The proposed code changes implement the Colocation Order.

Recently, various wireless telecommunication providers and infrastructure providers have begun deploying "small cell" wireless communication facility technology. Small cells are a new generation of wireless technology which prioritizes data bandwidth at the expense of coverage area. While the "small" in small cell refers to the facility's coverage area, it is often the case that small cells have a small enough footprint to be placed within right of way either on existing vertical assets or on standalone poles. Small cell technology is a precursor to "5G" technology and will likely comprise of the majority of wireless siting requests going forward. Numerous companies have approached Colorado communities, including Littleton, requesting that small cell

facilities be placed in the right-of-way. Like many cities, Littleton's current code does not address the placement of WCFs in the right-of-way.

In 2017, the Colorado General Assembly introduced House Bill 1193 which addresses the deployment of small cells in the right of way. The bill is in final form and is close to passage. Importantly, the bill gives developers a use by right to deploy small cells in the right-of-way. This right is subject to local police powers and zoning codes. Currently, Littleton has no zoning regulations applicable to these facilities. If the city does not adopt zoning regulations applicable to small cells by the bills effective date on July 1, 2017, developers will have unfettered ability to deploy small cell facilities of any kind in the right-of-way. The proposed code changes create zoning regulations applicable to all WCFs in the right of way including important restrictions on the height and spacing of such facilities.

Taken together, the proposed code changes will comprehensively ensure that the city is meeting its obligations for siting WCFs under state and federal law while maximizing local control in areas where the law permits regulation by local jurisdictions.

#### **STAFF ANALYSIS:**

Littleton's existing code on Commercial Mobile Radio Service is outdated and in need of being updated to meet the current state and federal requirements described above. In addition, the advent of small cell technology has made it important to update the code to address issues the siting of wireless communications facilities within city rights-of-way.

Based on the need to ensure the city meets state and federal requirements for wireless telecommunications, the proposal is to establish a new chapter dedicated to the topic, within the city's zoning code. The proposed ordinance would repeal Section 10-4-11 (Commercial Mobile Radio Service) and replace it with a new chapter, Chapter 16. Additionally, updated and new definitions are proposed for Section 10-1-2, and further clarification is suggested in the Conditional Use chapter of the code for radio transmission and broadcast structures (10-8-2 (C)).

#### **OPTIONS/ALTERNATIVES:**

Discussions regarding updating and amending the city's codes for wireless are:

1. Keep the existing code as is without any update to it.
2. Recommend approval to city council on the proposed ordinance.

#### **STAFF RECOMMENDATION:**

Staff recommends planning commission recommend approval to city council on the proposed amendments to the zoning code regarding Commercial Mobile Radio Services, and to expand the city's regulations to include wireless telecommunications facilities

#### **PROPOSED MOTION:**

*The planning commission may take the following actions on the application: approve; approve with conditions; continue to a date certain. A sample motion is provided for each option.*

#### **MOTION TO APPROVE AND/IF NECESSARY, WITH CONDITIONS**

I move to approve PC Resolution 03-2017 to amend the city's zoning code regarding the Commercial Mobile Radio Services, and to expand upon the city's regulations to include wireless telecommunication facilities, which forwards a favorable recommendation to city council, [with the following condition(s):]

- 1.
- 2.
- 3.

The foregoing approval is based on findings that:

1. Littleton's existing code on Commercial Mobile Radio Service is outdated and in need of being updated to meet current state and federal requirements.
2. The advent of small cell technology has made it important to update the code to address issues the siting of wireless communications facilities within city rights-of-way.
- 3.
- 4.

***MOTION TO CONTINUE TO A DATE CERTAIN***

I move to continue PC Resolution 03-2017 to amend the city's zoning code regarding the Commercial Mobile Radio Services, and to expand upon the city's regulations to include wireless telecommunication facilities, to \_\_\_\_\_ (insert date) in order to \_\_\_\_\_.

Attachments:

1. PC Draft Resolution
2. Draft Ordinance
3. Existing City Code 10-4-11