

**Legislation Text**

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**File #:** ID# 17-121, **Version:** 1

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Agenda Date: May 2, 2017

**Subject:**

An Ordinance on First Reading, 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

<b>Presented By:</b> Ken Fellman, Acting City Attorney and Jocelyn Mills, Community Development Director
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**POLICY QUESTION:**

Does city council support amendments to the city's zoning code regarding commercial mobile radio service and to expand the city's regulations to include wireless telecommunication facilities?

**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 Colocation 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.

The draft ordinance was presented to Planning Commission at their April 10, 2017 meeting. On a vote of 7 to 0, Planning Commission recommended approval to city council on the proposed ordinance.

#### **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)).

Planning Commission recommended approval of the draft ordinance at their April 10, 2017 meeting. In further analysis of the draft, staff has since added additional clarity to the draft to zoning districts, to also include planned developments (PD) into the draft, since a portion of Littleton is zoned with PDs. To be as clear as possible, staff has added PD into the draft in order for zone districts and PDs to be referenced similarly.

#### **STAFF RECOMMENDATION:**

Staff recommends city council approve on first reading, the draft amendments to the zoning code regarding Commercial Mobile Radio Services, and to expand the city’s regulations to include wireless telecommunications facilities

#### **PROPOSED MOTION:**

*I move to approve on First Reading, Ordinance 09-2017*

Attachments:

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