



Legislation Text

File #: Ordinance 09-2017, **Version:** 4

Agenda Date: 06/06/2017

Subject:

An ordinance on second 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

<p>Presented By: Ken Fellman, Acting City Attorney and Jocelyn Mills, Community Development Director</p>

POLICY QUESTION:

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

BACKGROUND:

Littleton's zoning code, specifically in regards to commercial mobile radio service, needs updating to comply with state and federal regulations regarding Wireless Communication Facilities (WCF). In addition, the city has been approached by wireless telecommunication and infrastructure providers interested in deployment of wireless communications within city rights-of-way. The current code 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 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 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 a completed EFR within sixty (60) days of filing. The proposed code changes implement the Colocation Order.

Recently, various wireless telecommunication and infrastructure providers have begun deploying "small cell" WCF 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 be 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 passed House Bill 1193 which addresses the deployment of small cells in the right of way. The bill was signed into law by Governor Hickenlooper on April 18, 2017 (and is provided as an attachment). Importantly, the bill gives telecommunication providers 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 for small cells by the bill's effective date of July 1, 2017, telecommunication providers 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 its April 10, 2017 meeting. On a vote of 7 to 0, Planning Commission recommended approval to city council on the proposed ordinance.

The first reading of the ordinance was approved by City Council on May 2, 2017. Previously, the second reading had been scheduled for May 16, 2017 and was continued by Council in order for staff to meet with representatives from the wireless community, primarily AT&T to better understand their concerns.

STAFF ANALYSIS:

Littleton's existing code on Commercial Mobile Radio Service is outdated and doesn't meet the 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 concerning 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 establishes 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 16 (Wireless Communications Facilities WCF). 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 its April 10, 2017 meeting. In further analysis of the draft, staff added clarity to zoning districts to also include planned developments (PD) 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.

Also, staff recently met with AT&T representatives and the attached proposed ordinance represents additional changes, based on their input and to further ensure Littleton's code addresses the appropriate federal and state regulations regarding wireless telecommunication facilities. Council is also receiving a confidential memo from the Acting City Attorney describing the substantive edits in more detail.

STAFF RECOMMENDATION:

Staff recommends city council approve the 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 second reading Ordinance 09-2017 amending 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.