

CITY PLANNING COMMISSION AGENDA
February 20, 2020

STAFF: MORGAN HESTER
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FILE NO:
CPC CA 20-00019 – LEGISLATIVE
CPC CA 20-00020 – LEGISLATIVE
CPC CA 20-00023 – LEGISLATIVE

PROJECT: WIRELESS COMMUNICATION FACILITIES (WCF) AND ELIGIBLE FACILITIES REQUESTS

(CPC CA 20-00019) An ordinance amending Chapter 7 (Planning, Development and Building) of City Code establishing standards for Wireless Communication Facilities (WCF), including Small Cell Facilities

(CPC CA 20-00020) An ordinance amending Chapter 7 (Planning, Development and Building) of City Code establishing standards for Eligible Facilities Requests

(CPC CA 20-00023) An ordinance amending Chapter 7 (Planning, Development and Building) of City Code revising all references to include Small Cell Facilities and Wireless Communication Facilities (WCF) from Commercial Mobile Radio Service (CMRS)

APPLICANT: CITY OF COLORADO SPRINGS - PLANNING AND DEVELOPMENT AND OFFICE OF INNOVATION

PROJECT SUMMARY:

Code Change Description: The proposed ordinances amend City Code Chapter 7 related to wireless communication facilities (WCF), currently referenced as CMRS (Commercial Mobile Radio Service), and Small Cell Facilities. The ordinances will both amend existing regulations for WCFs and establish regulations specific to Small Cell Facilities. The ordinances also codify requirements that are compliant with the Federal Spectrum Act (47 USC § 1455).

A more detailed summary of the language is found in the following sections of this report. The full language of the proposed ordinance amendments are attached.

BACKGROUND

The Land Use Review (LUR) Division of the Planning Department, with assistance from the Office of Innovation and the Office of the City Attorney, have collaborated to bring three ordinance amendments forward, specifically Chapter 7, Part 3 of Article 2 and Part 6 of Article 4, of the Zoning and Subdivision Ordinance.

The first amendment, CPC CA 20-00019, repeals and reorganizes CMRS (Commercial Mobile Radio Service) regulations by renaming to WCF (Wireless Communication Facilities) and incorporating standard modifications, including Small Cell Facilities.

The second amendment, CPC CA 20-00020, adds a new Part 7 to Article 4 by establishing Eligible Facilities Requests, regulations specific to modifications to marco cell sites, or more simply referenced as cell towers on private property, in accordance with Federal regulations. The third amendment, CPC CA 20-00023, cleans up references throughout Chapter 7 that will no longer be applicable after the adoption of the proposed ordinances.

The Telecommunications Act of 1996 establishes that no local government can prohibit an entity from providing telecom service to municipalities. Colorado state law and federal regulations require that municipalities act on applications for deployment within a reasonable period of time – usually 90 or 150 days. The intent of these amendments are to establish compliance with FCC regulations and state statutes.

Wireless Communications Facilities (WCF) and Small Cell Facilities (Reference – Ordinance_WCF)

Wireless Communications Facilities (WCF)

Wireless Communication Facilities (WCFs) that are not small cell facilities are typically located on private property and are subject to zoning requirements including dimensional standards. As defined in the proposed ordinance, varying types of WCFs are permitted in residential and non-residential zoning districts.

Regulations specific to WCFs are largely remaining the same aside from minor revisions to provide clarity to existing standards. Notable changes include –

Renaming of the four application types –

- CM1 – Conditional Use request that is heard through City Planning Commission, 1,000' notification radius from proposed WCF
- CM2 – Administrative review in accordance with Development Plan application and review procedures
- CM3 – Expedited administrative review in accordance with Development Plan application and review procedures
- CM4 – Eligible Facilities Requests (new addition)
- CM5 – Small Cell Facilities

Changes to 7.2.302 'Definitions of use types' –

- Removal of Commercial Mobile Radio Service (CMRS) Facility and replaced with Wireless Communications Facility (WCF). Facility types have been outlined within the definition for clarity.

WCF Setbacks and Separation –

- Current Code
 - Freestanding facilities shall be located no closer than a distance equal to 5 times their height from residentially zoned properties or used for single-family purposes
- Proposed Changes
 - Towers shall meet the greater of the following minimum setbacks from all property lines
 - Setback for a principal building within the applicable zoning district
 - 25% of the facility height, including WCFs and equipment, or
 - 5 times the town height, including antennas, if the town is in or adjacent to a residential district of school site, unless a conditional use is approved

Affidavits

- Required in the event a facility is abandoned or unused for a period of 12 months, outlining that the applicant and property owner are responsible for its removal.

Creation of PART 6: WIRELESS COMMUNICATIONS FACILITIES (WCF) REGULATIONS to provide additional clarity by restructuring existing regulations –

- 7.4.601: PURPOSE AND INTENT:
- 7.4.602: PERMIT REQUIREMENTS:
- 7.4.603: DEFINITIONS:
- 7.4.604: APPLICABILITY:
- 7.4.605: OPERATIONAL STANDARDS:
- 7.4.606: ZONES ALLOWED:
- 7.4.607: PROCESSING OF WCF APPLICATIONS:
- 7.4.608: REVIEW PROCEDURES AND REQUIREMENTS:
- 7.4.609: SITE SELECTION REQUIREMENTS:
- 7.4.610: DESIGN STANDARDS:

Small Cell Facilities

As defined through State regulations, a Small Cell Facility is a WCF where the antenna is housed within an enclosure of no bigger than three cubic feet in volume. If not enclosed, all infrastructure must fit within an imaginary enclosure of the same size. Primary enclosures are no larger than seventeen cubic feet in volume.

Pursuant to Colorado law, Telecommunication Providers have the right to locate Small Cell Facilities on light poles and traffic signals within the public Rights-of-Way. Zoning regulations do not apply to Small Cell Facilities. Additionally, local governments must approve Small Cell sites before Providers can deploy. Standards specific to Small Cell Facilities currently do not exist; however, applications for approximately 100 new facilities with the ROW have been reviewed and approved based on existing Code. The ordinances being brought forward are in response to the Federal regulations and provide a way for Staff at the local level to manage applications and deployment of this new technology.

FCC 18-133 requires that local governments with aesthetic standards publish those standards. Section 7.6.610 'Design Standards' establishes the allowance for additional design standards, through administrative regulations, to be enacted. These requirements are required to be objective and posted in advance. Although the standards are not adopted through Ordinance, Design Standards have been published to the newly created Telecommunications website, housed on the Office of Innovation website. The Design Standards establish requirements such as stealth design techniques (color/material/texture match to surrounding infrastructure), no artificial lighting, spacing and height limitations. City and Colorado Springs Utilities Staff worked closely together to ensure all proposed requirements met existing standards of existing pole inventory and would not be a structural determinant to infrastructure.

Although Staff maintains an internal database of all applications that have been reviewed and approved, Providers will be required to annually provide a map of existing and future facilities through this proposed ordinance amendment.

The application process for Small Cell sites begins with the execution of a Master License Agreement (MLA) between the telecom Provider and the City/CSU through the Office of Innovation. This document outlines standards and expectations that both the City/CSU and the Provider must comply with throughout the time the infrastructure is within the City ROW. To make an application, a Provider will submit a Site Supplement License, as outlined in the MLA,

not a Revocable Permit, as the sites are not revocable in nature. In the event a site does need to be revoked, there is specific language outlined in the MLA as to what that process entails. The review process is largely the same as that of the Revocable Permits, specifically how the permit is submitted and reviewed by City divisions/departments. State regulations establish a mandatory shot clock of 90 days, which has been in effect but will now be codified through this proposed amendment.

Appeals specific to Small Cell Facilities are not possible due to review time constraints and the requirement that municipalities must allow for the infrastructure within the right-of-way, echoing what has been established in the Telecommunications Act of 1996. However, through the establishment of published Design Standards and coordination with review Staff, Providers have been able to address concerns due to siting and aesthetics with applications that have been approved thus far. This differs for appeals regarding applications on private property (WCFs) as the land use does not have regulations requiring that local jurisdictions allow WCFs anywhere as they are subject to zoning and dimensional regulations on private property; therefore, appeals are possible for WCFs.

Eligible Facilities Requests (Reference – Ordinance_Eligible Facilities)

The Eligible Facilities Requests Ordinance provides codified regulations regarding the following – (1) Modifications to non-small cell facility sites in compliance with the Middle Class Tax Relief and Job Creation Act of 2012, Section 6409, (2) defines ‘Substantial Change’ similarly to what is codified in Section 6409, (3) establishes submittal requirements and the review process, and (4) establishes shot clocks for reviewing applications and associated “tolling”.

Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 mandates that a State or local government approve certain siting requests for modifications and collocations of equipment on an existing tower or base station that does not result in a substantial change of the sizing of the tower or base station. A substantial change is defined as a modification that substantially changes the physical dimensions of a support structure.

The shot clock for review is established as 60 days (pursuant to Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012). The review period begins once the application is filed and may be tolled by mutual agreement or in the event, the application is incomplete. ‘Tolling’ essentially starts and stops the review time; for example, if an application is made and on day 5 review Staff identifies the application is incomplete, the shot clock will pause at 55 days, and will restart once the submittal is complete. To further elaborate, the jurisdiction must provide written notice within 30 days of receipt of the application if anything is still required. The review period continues running once the application is complete.

Due to the constrained 60-day time frame for Eligible Facilities Requests, appeals are not feasible; therefore, the ‘Reconsideration’ clause (7.4.703(E) ‘Review Procedures and Requirements’) has been proposed as an opportunity for applicants to request a denial to be revisited if sufficient evidence that Staff made an error in their review.

Cleanup Ordinances (Reference – Ordinance_Land Use Tables)

CPC CA 20-00023

This proposed amendment cleans up all references in the permitted, conditional, and accessory use sections throughout Chapter 7, ensuring the new language is captured throughout the Code.

CPC CA 20-00024

This proposed amendment establishes that Small Cell Facilities may be located within City rights-of-way, pursuant to requirements of Chapter 7, by creating a new Section to Part 2, Article 2, of Chapter 3 (Public Property and Public Works). Note that this ordinance language has not been included in this Staff Report and a motion for this amendment will not be made by the City Planning Commission as it is regulated outside of the Chapter 7 Zoning and Subdivision Ordinance. This will be heard at City Council when all proposed ordinances move forward.

STAKEHOLDER PROCESS AND INVOLVEMENT

City Planning, Office of Innovation, and the Office of the City Attorney have worked with Telecommunication Providers in the establishment of clearer telecommunication regulations since early 2019. This includes the two proposed amendments to Chapter 7, a Master License Agreement that must first be executed between the City/CSU and Provider prior to the installation of Small Cell infrastructure, and Small Cell Design Standards.

On August 26, 2019, representatives from the three Divisions/Departments presented at City Council Work Session to provide an overview on 5G technology including what the technology is and how it works, what Federal and State regulations are in place, and information on forthcoming City regulations.

The language that has been proposed has been tailored to Colorado Springs as permitted through FCC and State regulations. Small Cell Facilities cannot be precluded from locating with the public rights-of-way and the proposed regulations are sensitive to what can and cannot be regulated at the local jurisdiction level.

ANALYSIS OF REVIEW CRITERIA/MAJOR ISSUES/COMPREHENSIVE PLAN & MASTER PLAN CONFORMANCE:

Summary of Ordinance 20-00019

The two proposed ordinance options are attached as **Ordinance_WCF**. The amendment is related to Part 3 (Land Use Types and Classifications) of Article 2 (Basic Provisions, Definitions, and Land Use Types and Classifications) and repealing and reordaining Part 6 (Commercial Mobile Radio Service (CMRS) Regulations) of Article 4 (Site Development Standards) of Chapter 7 (Planning, Development and Building). The new language is located in the following sections:

7.2.302: DEFINITION OF USE TYPES:

And

PART 6: WIRELESS COMMUNICATIONS FACILITIES (WCF) REGULATIONS

7.4.601: PURPOSE AND INTENT:

7.4.602: PERMIT REQUIREMENTS:

7.4.603: DEFINITIONS:

7.4.604: APPLICABILITY:

7.4.605: OPERATIONAL STANDARDS:

7.4.606: ZONES ALLOWED:

7.4.607: PROCESSING OF WCF APPLICATIONS:

- 7.4.608: REVIEW PROCEDURES AND REQUIREMENTS:
- 7.4.609: SITE SELECTION REQUIREMENTS:
- 7.4.610: DESIGN STANDARDS:

Summary of Ordinance 20-00020

The proposed ordinance is attached as **Ordinance_Eligible Facilities**. The addition is related to Part 7 (Eligible Facilities Requests) of Article 4 (Site Development Standards) of Chapter 7 (Planning, Development and Building). The new language will be included as follows –

PART 7: ELIGIBLE FACILITIES REQUESTS

- 7.4.701: PURPOSE AND INTENT:
- 7.4.702: DEFINITIONS:
- 7.4.703: REVIEW PROCEDURES AND REQUIREMENTS:

Summary of Ordinance 20-00023

The proposed ordinance is attached as **Ordinance_Land Use Tables**. The addition is related to Article 3 (Land Use Zoning Districts) of Chapter 7 (Planning, Development and Building). The new language will be located in the following sections –

- 7.3.103: PERMITTED, CONDITIONAL, AND ACCESSORY USES:
- 7.3.203: PERMITTED, CONDITIONAL, AND ACCESSORY USES:
- 7.3.509: NNA – NORTH NEVADA AVENUE OVERLAY:
- 7.3.602: REQUIREMENTS:
- 7.3.705: MIXED USE PERMITTED, CONDITIONAL, AND ACCESSORY USES:

STAFF RECOMMENDATION:

CPC CA 20-00019 - CODE AMENDMENT

Recommend to the City Council adoption of an ordinance amending Part 3 (Land Use Types and Classifications) of Article 2 (Basic Provisions, Definitions, and Land Use Types and Classifications) and repealing and reordaining Part 6 (Commercial Mobile Radio Service (CMRS) Regulations) of Article 4 (Site Development Standards) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended, pertaining to Wireless Communication Facilities.

CPC CA 20-00020 - CODE AMENDMENT

Recommend to the City Council adoption of an ordinance creating Part 7 (Eligible Facilities Requests) of Article 4 (Site Development Standards) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended, pertaining to Eligible Facilities Requests.

CPC CA 20-00023 - CODE AMENDMENT

Recommend to the City Council adoption of an ordinance amending Article 3 (Land Use Zoning Districts) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended, pertaining to Wireless Communication Facilities and Eligible Facilities Requests.