

February 7, 2023



AGENDA ITEM SUMMARY

City Council

STAFF

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SUBJECT

Items Related to Code Amendments to Update and Align Wireless Communication Facility Regulations with the Wireless Telecommunications Master Plan

EXECUTIVE SUMMARY

- A. Second Reading of Ordinance No. 011, 2023, Amending the Fort Collins Land Use Code to Update Standards for Wireless Communications Facilities Consistent with the Wireless Telecommunications Master Plan.
- B. Second Reading of Ordinance No. 012, 2023, Amending the Code of the City of Fort Collins to Update Standards for Wireless Communications Facilities in Public Highways Consistent with the Wireless Telecommunications Master Plan.

The purpose of the update to the Wireless Communication section of the Land Use Code and corresponding revisions to the City Code is to ensure City standards and requirements for wireless communication development proposals align with the goals, policies, and implementation strategies of the recently adopted Wireless Telecommunications Master Plan and current state and federal regulatory standards. Doing so will enable the City to fully exercise its regulatory authority during the review and siting of new wireless communication infrastructure throughout the community. The Planning and Zoning Commission has reviewed and recommended approval of the revised City Code and Land Use Code language. These Ordinances were unanimously adopted on First Reading on January 17, 2023.

To avoid confusion with the Codifier in accurately updating the Land Use Code, a new Section 47 has been added to Ordinance No. 011, 2023, to specifically state that the definitions of "Wireless telecommunication equipment", "Wireless telecommunication facility" and "Wireless telecommunication services" are deleted from Section 5.1.2 of the Land Use Code. This is not a substantial change to the Code language Council approved on First Reading.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinances on Second Reading.

BACKGROUND / DISCUSSION

Federal Communication Commission (FCC) rulemaking and Colorado statutory revisions enacted from 2017 through 2018 significantly altered local land use control over wireless communication facility siting and operations. Consistent with those revised standards for local review of land use applications

involving wireless communication facilities, the City amended Chapter 23 of the City Code to manage permits to locate wireless communication facilities on public highways and City-owned infrastructure in public rights-of-way.

In 2018, the City Council also appropriated \$50,000 as part of the 2019-2020 biennial budget to fund the completion of the City's first Wireless Telecommunications Master Plan (the "Plan"). The City retained Cityscape Consultants, Inc., an independent wireless communication consultant that specifically works with local government on wireless policy, to assist staff with analysis and creation of the Plan. A technical advisory committee, comprised of City staff and community members, also met throughout the process to review planning materials and provide feedback for the Plan's development. The City began the formal Plan development process in Spring 2020 in three phases:

Phase 1 - Research and Assessment of Existing Conditions

The first phase framed Plan priorities and explored key issues, based on previous neighborhood concerns and stakeholder feedback received through several contentious neighborhood meetings. During this phase, City staff researched, cataloged, and assessed all wireless communication facilities by visiting each site.

Phase II - Choices and Strategies

The second planning phase documented existing wireless communication conditions and developed simulated coverage and capacity maps. The resulting analysis identified gaps that are assumed to be filled one day by wireless communication infrastructure. With this information, City staff developed a targeted outreach strategy to engage the public in areas that are expected to see future development. Staff conducted facilitated conversations, surveys, and one-on-one meetings with stakeholders to discuss the trade-offs that may be faced when developing wireless communication sites in areas of the community that may currently lack strong wireless coverage and capacity.

Phase III - Plan Development

During the development phase of the Plan, Cityscape developed content with staff which was then curated through successive reviews by the technical advisory committee, City boards and commissions, community members, and other wireless stakeholders.

The Plan identified several opportunities and challenges the City will face as the community grows, wireless communication technology progresses, and wireless subscribers consume more data. This Plan will serve as the basis for the City to implement targeted Land Use Code amendments that address the design, location, and an updated development process for constructing wireless telecommunication facilities. The vision for the future is based on feedback received from various community members, technical experts, boards, and commissions and summarized in the following vision statements:

- Provide context-sensitive concealment elements that are compatible with surrounding natural and architectural environments.
- Use limited public lands, such as parks, civic buildings, and golf courses to allow greater community control over placement and design, protect the community from visual impacts and improve coverage in hard-to-reach residential areas.
- Promote greater transparency from the wireless industry by requiring applicants to demonstrate radio frequency emission compliance with any new or existing wireless development.
- Maintain cohesive small wireless facility design standards which require undergrounding of equipment to protect the community's visual quality.
- Continually monitor, update, and publish the City's database of existing wireless communication facilities as a tool to promote collocation.

Staff presented on the Plan progression during Planning and Zoning Commission work sessions on March 26, May 14, and June 11, 2021. Additionally, staff presented on the Plan progress and draft strategies to the Golf Board on April 14, 2021, and the Parks and Recreation Board on April 28, 2021, and May 26, 2021, both of which expressed support for the Plan.

At the September 16, 2021, Regular Hearing, the Planning and Zoning Commission unanimously recommended that the Council adopt the Wireless Telecommunications Master Plan. Council then unanimously adopted the Plan as an element of the City Plan on October 19, 2021 (Ordinance No. 130, 2021).

Staff returned to Council at the January 25, 2022, work session to present on the key strategies of the Plan and request feedback on which strategies to prioritize. Councilmembers asked staff at the work session to explore options to revise/refine existing design standards for wireless communication facilities, as that component of City regulations had implications for other policy items, such as the possibility of permitting facilities in residential zone districts or on City-owned properties.

Following the January 2022 work session, staff worked with the City Attorney’s Office and outside legal counsel to review the Land Use Code standards for compliance with FCC regulations, and to explore options to further align the Land Use Code with the policies of the Wireless Telecommunication Master Plan as adopted and prior work session input. Staff returned to Council on August 23, 2022 to seek final feedback on the following policy questions:

- Should wireless communication facilities be permitted on non-residential properties in residential zone districts?
- Should certain City-owned properties be available for the siting of wireless communication facilities?
- Does Council support the use of “context-based “standards to regulate wireless communication facility design?

Council’s feedback at the August 2022 work session indicated support for all three questions with the recognition that the context-based design approach would provide the best approach to cater the design of facilities to proposed project areas. Staff presented these same questions at the Planning and Zoning Commission work session on September 9, 2022. The Commission voiced support for staff’s approach at that work session, and specifically cited the ability to review facilities proposed in residential zone districts as important.

Wireless Code Update

The Wireless Telecommunication Master Plan identified several opportunities and challenges the City will face as the community grows, wireless communication technology progresses, and wireless subscribers consume more data. The Plan serves as the basis for targeted Land Use Code (LUC) amendments that address the design, location, and updated review processes for constructing wireless communication facilities.

The following table identifies the key strategies recommended in the Plan to fulfill the community vision for wireless communication infrastructure, and a summary of the affiliated LUC amendment being proposed to achieve the Plan strategies.

Strategy	Description	LUC Change	LUC Section
Further incentivize roof or wall mounted installations.	Recalibrate or develop process incentives in the Land Use Code when wall or roof mounted equipment is proposed on existing structures.	Review type for collocated/attached wireless communication facilities will be changed to a Basic Development	Article 4 – Districts

Strategy	Description	LUC Change	LUC Section
	Examples may include expedited review times or final approval by the CDNS director without a public hearing.	Review (BDR) in all zone districts except for the Downtown and its sub-districts.	
Review processes for siting wireless proposals in residential zone districts.	Explore process that would allow facilities in residential districts while keeping a stringent set of baseline standards that control the location, design, height, and placement of wireless facilities	Wireless Communication Facilities are a permitted use when located on a non-residential parcel in the UE, LMN, MMN, and HMN zone districts. Facilities are subject to a Type 2 Review by the Planning and Zoning Commission in Residential Zone Districts.	Article 4 - Divisions 4.2 (B)(3), 4.5(B)(3), 4.6(B)(3), 4.7(B)(3) – Permitted Uses subject to Type 2 Review
Develop design standards and expectations for wireless facilities.	Explore the use of a design guidelines document for large wireless facilities, like what currently exists for small cell placement of facilities.	A new standard has been added regarding Compatibility Requirements for facilities. This includes the establishment of an Area of Adjacency around proposed facilities to inform the design of facilities.	Division 3.8.13(D)(18)
Update the City's Land Use Code to comply with Federal and State timing requirements.	Decision timelines and required rules concerning local government's review and decision processes for macro cell and small wireless facilities should be included in the City's Land Use Code.	A section detailing the timelines and shot clocks for wireless proposals will be added to the Code.	Division 3.8.13(G)
Amend zoning standards to match federal definitions.	Rules and application approval timelines would reduce the number of inconsistencies that exist in the current zoning policies and allow for streamlined staff processing.	The terminology and definitions for wireless communications proposals will be updated to reflect FCC terminology.	Division 5.1.2 - Definitions

Additional conforming changes and revisions staff identified include:

- Definitions for wireless communication facilities, collocation, base station, concealment, camouflage, eligible facilities request, substantial change, tower, etc.
- Changing review type for non-collocated facilities from an Administrative (Type 1) Review to a Basic Development Review in the Industrial (I), Employment (E), Service Commercial (CS), and Harmony Corridor (HC) zone districts.
- Change references to “Wireless Telecommunication Facilities” to “Wireless Communications Facilities” throughout the LUC.

- Change references to “Wireless Telecommunication Equipment” to “Wireless Communications Facilities, Collocated” throughout the LUC.
- Details regarding which types of towers, antennas, and facilities are exempt from the standards found in the LUC.
- Requirement that non-collocated wireless communication facilities in residential zone districts must be located on a non-residential parcel.
- Requirement for applicants to provide a Radio Frequency Emissions certification indicating that their facility shall comply with federal standards.
- Standard that explicitly states applicants shall, to the maximum extent feasible, use Concealment Design Techniques, as the term is defined in federal rulemaking.

While staff is not recommending revised consideration of site facility practices on certain City-owned properties as an LUC amendment, staff nevertheless recommends amending those proprietary practices in response to feedback received from Council, the Commission, and the public. Staff recommends keeping those policy practices outside of the LUC to allow for the greatest flexibility in exercising the City’s proprietary interests.

Lastly, staff is proposing a separate but affiliated update to Article VII of Chapter 23 of the City Code related to Small Cell Facilities in the Public Right-of-Way. The primary reason for updating Article VII is to ensure consistency in FCC terminology and definitions across both the City Code and the LUC. The existing separation between regulations in the City Code and in the LUC correlates to the City’s proprietary authority over Small Cell Facilities found in the public right-of-way versus its regulatory authority over wireless communication facilities as a permitted use on private property. While merging both sets of regulations under one code was potentially feasible, staff found that maintaining the existing separation allows for greater convenience in applying the different Code requirements in their respective contexts.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

At the November 17, 2022, regular hearing, the Planning and Zoning Commission unanimously recommended that Council adopt the proposed changes to the Wireless Communications sections of the Land Use Code and corresponding updates to the City Code. Attached is a written recommendation from the Commission to the Council stating their recommendation of approval.

CITY FINANCIAL IMPACTS

Funding has already been allocated for the Code and LUC updates and implementation, along with funding for the development of the Wireless Telecommunications Master Plan, which occurred in 2021. Outside legal counsel assisted with the Code and LUC update work during Q2 and Q3 2022.

- Prior Appropriated Funds - \$50,000
 - Cityscape Consultants, Inc. - \$40,100 (Plan Development)
 - Outside Counsel - \$9,900 (Code Update)

PUBLIC OUTREACH

A significant component of outreach for the Plan and recommended Code and LUC updates was a survey conducted from mid-March to mid-April 2021. The survey gathered interested stakeholder input on their experiences and opinions about the current state of wireless communication connectivity and aesthetics of infrastructure in the City. The City received over 300 responses to the survey, the entirety of which can be reviewed in Appendix B of the Plan. Survey results and commentary from participants

affirmed the gaps in coverage and capacity identified in the Plan consultant's analysis. An abbreviated summary of the survey results is listed below:

- Aesthetics in terms of height, color and appearance are of greatest importance to the community.
- 198 (81.5%) of respondents live and work in Fort Collins year-round.
- 209 (85.3%) respondents indicated the quality of wireless communication service is important to them.
- 238 respondents rely on a mobile device for personal use/entertainment; 177 also rely on it for work and 41 of those polled rely on it for school.
- 105 (42.9%) respondents indicated their network coverage at home is poor; 26 (10.6%) indicated it was excellent.
- 160 (67.8%) respondents indicated they would prefer taller communication facilities with multiple collocation possibilities, as opposed to shorter and potentially more towers and other communication facilities.
- 229 (93.9%) respondents indicated they support locating concealed wireless communication facilities on City-owned property.

The outreach conducted along with the subsequent feedback received from Council and the Commission guided staff's proposed amendments to the Wireless Communication standards in the Code and LUC.

ATTACHMENTS

First Reading attachments not included.

1. Ordinance A for Consideration
2. Ordinance B for Consideration