

# AGENDA ITEM SUMMARY

September 5, 2017

City Council

## STAFF

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Tyler Marr, Policy and Project Analyst  
Judy Schmidt, (legal)

## SUBJECT

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Second Reading of Ordinance No. 105, 2017, Imposing a Moratorium Until December 31, 2017, Upon the Acceptance of Applications for the Installation of and/or the Issuance of Right-of-Way Permits for New Antennas, Small Cell Facilities, Towers and Wireless Service facilities by any Third Party in City Rights-of-Way in any Zone District.

## EXECUTIVE SUMMARY

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This Ordinance, unanimously adopted on First Reading on August 22, 2017, considers a moratorium until December 31, 2017, on the installation of cellular facilities in public rights-of-way. This would allow the City time to draft and implement appropriate regulations on such installations while still complying with HB 17-1193, which expanded the right of companies to utilize the right of way for small cell installations.

## STAFF RECOMMENDATION

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Staff recommends adoption of the Ordinance on Second Reading.

## BACKGROUND / DISCUSSION

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In response to questions and requests asked by City Council during first reading, staff has provided the following timeline for developing regulations for small cellular facilities:

September:

- Public outreach (to both residents and third party companies). Staff plans to hold at least one informational meeting for members of the public and publish an FAQ on the City's website. Outreach to relevant carriers and infrastructure companies will continue.
- Staff will continue work on Master Lease Agreements (MLAs) with interested companies
- Staff will finalize draft regulations for presentation to boards and commissions

October:

- Staff will present proposed regulations to relevant boards and commissions, such as the Planning and Zoning Board and Energy Board.
- If a tentative agreement is reached on an MLA with a company, staff will schedule and bring to Council for consideration

November:

- November 7<sup>th</sup> - staff plans to bring regulations for Council consideration on First Reading

## *Agenda Item 2*

- November 21<sup>st</sup> -Second Reading of the regulations, should they be adopted on First Reading

### **ATTACHMENTS**

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1. First Reading Agenda Item Summary, August 22, 2017 (w/o attachments) (PDF)
2. Ordinance No. 105, 2017 (PDF)

## AGENDA ITEM SUMMARY

August 22, 2017

City Council

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### STAFF

Tyler Marr, Policy and Project Analyst

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### SUBJECT

First Reading of Ordinance No. 105, 2017, Imposing a Moratorium Until December 31, 2017, upon the Acceptance of Applications for the Installation of and/or the Issuance of Right-of-Way Permits for New Antennas, Small Cell Facilities, Towers and Wireless Service facilities by any Third Party in City Rights-of-Way in any Zone District.

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### EXECUTIVE SUMMARY

The purpose of this item is to consider a moratorium until December 31, 2017, on the installation of cellular facilities in public rights-of-way. This would allow the City time to draft and implement appropriate regulations on such installations while still complying with HB 17-1193, which expanded the right of companies to utilize the right of way for small cell installations.

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### STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

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### BACKGROUND / DISCUSSION

On July 1, 2017 HB 17-1193, went into effect. This legislation expands the right of cellular infrastructure companies to locate "small cell" facilities in the City's right-of-way, through either the construction of standalone poles or via attachment of facilities on existing City-owned infrastructure within the right-of-way, such as street light poles or traffic signal poles. Examples of these types of facilities will be included in staff's presentation to Council on this item.

Staff has been working to determine the scope of the impact this legislation could have on the right-of-way in Fort Collins, while also beginning conversations with carriers and infrastructure companies around Master Lease or License Agreements (MLAs). These MLAs would lease space on City-owned infrastructure within rights-of-way to companies to install small cell radios and antennae within certain aesthetic and structural parameters agreed to in each document.

While staff believes that the MLA route will address most of the concerns likely generated from the installation of these facilities, there is no guarantee or requirement that companies will agree to pursue this route. This means that companies could choose to erect standalone poles and small cell facilities in the right-of-way. The City does not currently have a process for accepting applications for these types of facilities within rights-of-way and it is unclear that existing regulations would adequately address potential safety and aesthetic concerns, including height of stand-alone poles, of such facilities.

Because of these concerns and at the direction of the Leadership Planning Team (LPT), staff has brought forth a moratorium applying to installation by third parties of any cellular infrastructure in the right-of-way, which, if approved, would expire on January 1, 2018, or the effective date of new regulations if earlier. Staff believes this time will be sufficient to develop and bring forth for Council consideration regulations that will be consistent with HB17-1193, other City ordinances and Community expectations. This moratorium excludes the following things:

- Small cell facilities and other wireless telecommunications equipment which are outside of the City's rights-of-way. These facilities are already regulated under the City Code and Land Use Code.
- Facilities installed in the public rights-of-way by or on behalf of the City. This would include equipment such as smart meter antennas installed by Light and Power or its contractor.
- Facilities installed pursuant to an MLA that protects public safety as approved by Council. Staff will continue working on terms of an MLA with interested parties whether or not this moratorium is approved. This exclusion leaves the door open that should an agreement be reached, those companies would be able to proceed with their plans as a sign of good faith from the City.

Staff will plan to bring City Code changes or Land Use Code changes, or both back to Council in November or early December to address safety and aesthetic concerns of third-party wireless communication facilities in public right-of-way and to establish a process for reviewing applications.

The Legislative Review Committee discussed HB17-1193 at its July 11<sup>th</sup> meeting and two of the three members present did not believe a moratorium was necessary at this time. The committee instructed staff to continue to build relationships with the involved companies and begin work on developing appropriate regulations. Staff has active contacts with the three companies who have thus far expressed interest and will continue to focus on maintaining and strengthening relationships with them.

#### **CITY FINANCIAL IMPACTS**

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This item is not expected to incur costs.

#### **ATTACHMENTS**

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1. PowerPoint Presentation (PDF)

ORDINANCE NO. 105, 2017  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
IMPOSING A MORATORIUM UNTIL DECEMBER 31, 2017 UPON THE  
ACCEPTANCE OF APPLICATIONS FOR THE INSTALLATION OF,  
AND/OR THE ISSUANCE OF RIGHT-OF-WAY PERMITS FOR NEW  
ANTENNAS, SMALL CELL FACILITIES, TOWERS AND WIRELESS SERVICE  
FACILITIES BY THIRD PARTIES IN CITY RIGHTS-OF-WAY IN ANY ZONE DISTRICT

WHEREAS, the City has comprehensive regulations regarding the placement of towers, monopoles, antennae, and “macro” wireless communication equipment and facilities in Divisions 3.8.13, 3.9.9 and Article 4 of the Fort Collins Land Use Code; and

WHEREAS, during the 2017 legislative session, the Colorado General Assembly passed and the Governor signed into law HB17-1193, which expands access to public rights-of-way and City-owned infrastructure in the rights-of-way (such as street light poles or traffic signals) for placement of small cell wireless communication facilities, makes such facilities a use by right in all zone districts, and limits local government regulation of such placements; and

WHEREAS, notwithstanding the expanded access to municipal rights-of-way and City-owned infrastructure in such rights-of-way for small cell wireless communication facilities, HB17-1193 also preserves the local government's right to exercise police powers to regulate the placement of such facilities, subject to certain limitations; and

WHEREAS, HB17-1193 became effective on July 1, 2017; and

WHEREAS, City departments and property owners have raised concerns that placement of new wireless communication facilities in public rights-of-way presents a risk to public safety due to: potential conflicts with existing or planned infrastructure; technical interference with traffic and public safety systems; incompatibility with existing adjacent uses; unpredictable impacts to city electric utility system and traffic control system reliability and equipment; and decreased property values; and

WHEREAS, the City does not currently have a clearly defined process for considering requests from third parties to install small cell facilities in public rights-of-way under existing provisions of the City Code and Land Use Code (“LUC”) and existing LUC provisions do not adequately comply with HB17-1193 and, therefore, require review and updating to adequately address the potential impact of small cell facilities on the orderly and safe design and operation of public rights-of-way; and

WHEREAS, prior to passage of HB17-1193, City staff entered into negotiations with service providers to agree upon and enter into a voluntary license or similar agreement to permit the installation of small cell facilities within the public rights-of-way and/or on public infrastructure located therein in a manner that protects the orderly and safe design and operation of public rights-of-way and infrastructure, known as “master lease or license agreements” (“MLAs”); and

WHEREAS, Council desires to facilitate voluntary negotiations and cooperation with third-party providers through the mechanism of one or more MLAs approved by Council while it considers and adopts a clearly defined process for accepting applications from third parties to install small cell facilities in the City's public rights-of-way and/or on the City's public infrastructure, including appropriate modifications to the City Code and LUC; and

WHEREAS, Council desires, in good faith, to exclude from the moratorium under this Ordinance any MLA with a third party provider approved by Council; and

WHEREAS, to promote the orderly and safe design and operation of public rights-of-way and wireless communication infrastructure to serve the community effectively, the City Council also finds it necessary and reasonable to impose a moratorium upon the acceptance of applications for and installation of new wireless facilities in public rights-of-way by any third party and on the issuance of any associated right-of-way permits for the placement of third-party wireless communication equipment or related structures in public rights-of-way during the pendency of which moratorium, except for small cell and wireless communications equipment or related equipment and structures installed under an MLA approved by Council; and

WHEREAS, City staff shall develop and present to the Council for consideration legislative changes which may include, but need not be limited to: (a) "design standards" for small cell wireless equipment, attachments, and associated structures in all zone districts; and (b) appropriate regulations to limit the size, density, and maintenance of small cell and micro wireless facilities and associated structures by third parties in City rights-of-way; and

WHEREAS, the City's power to impose this limited moratorium is among its home rule powers granted to it in Article XX of the Colorado Constitution; and

WHEREAS the Council has determined that said moratorium shall continue in effect through the 31<sup>st</sup> day of December, 2017, or until said design standards and additional regulations are adopted by the City Council and become effective, whichever shall first occur.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That a moratorium is hereby imposed upon the City's acceptance of applications for and installation of new wireless communication facilities in public rights-of-way by any third party and on the issuance of any associated right-of-way permits for the placement of third-party wireless communication equipment or related structures in public rights-of-way, unless such installation is accomplished under an MLA approved by Council.

Section 3. That the placement of new antennas, wireless service facilities, small cell facilities, micro wireless facilities or poles or towers in public rights-of-way in the City of Fort

Collins by any third party is prohibited unless such installation is accomplished under an MLA approved by Council.

Section 4. That the terms “antenna,” “small cell facility,” “micro wireless facility”, “tower” and “wireless service facility” shall have the same meaning as set forth in HB17-1193, Section 2.

Section 5. That the City Manager is hereby directed to analyze, during the term of the moratorium enacted in this Ordinance, the following issues and, in consultation with the City Attorney, develop for Council consideration such additional design standards and regulations for wireless communication facilities within public rights-of-way as may be necessary and appropriate to address said issues:

- a. Protection of the City's public infrastructure, including but not limited to public rights-of-way and publicly-owned structures located therein, to preserve orderly and safe design and operation of such facilities and structures and the public health, safety, and welfare;
- b. Compatibility of wireless communication architecture with the orderly and safe design and operation of public rights-of-way and adjacent neighborhoods, in terms of mass, bulk, scale, height, and character;
- c. Size, dimension, weight, spacing, and placement height for wireless communication equipment;
- d. Visual and access impact for the traveling public and property owners along City rights-of-way;
- e. Prioritization of attachment to structures and available methods and locations for new wireless communication equipment in public rights-of-way;
- f. Impact on privacy of new wireless communications equipment along residential rights-of-way; and
- g. Other impacts on the orderly and safe design and operation of public right-of-way and publicly-owned structures located therein.

Section 6. That this moratorium shall not apply to the issuance of permits for or installation of improvements and equipment for small cell facilities and other wireless telecommunication equipment:

- a. to be located outside of the City's public rights-of-way, which shall continue to be subject to the existing provisions of the City Code and LUC;
- b. authorized by approved development plans (and associated permits) that constitute a vested property right under Colorado law;
- c. installed in the public rights-of-way by or on behalf of the City for its own use; or
- d. that is accomplished under an MLA approved by Council.

Section 7. That this Ordinance is necessary to protect the public health, safety, and welfare of the residents of the City, and covers matters of local and municipal concern.

Section 8. That the moratorium established in Sections 2 and 3 of this Ordinance shall be effective as of the effective date of this Ordinance and remain in effect through December 31, 2017, or until said design standards are adopted by the City Council and become effective, whichever shall first occur; and

Section 9. That any violation of the prohibitions in Section 3 of this Ordinance during the term set forth in Section 8 shall constitute a misdemeanor criminal offense punishable as provided in Section 1-15 of the Code of the City of Fort Collins.

Introduced, considered favorably on first reading, and ordered published this 22nd day of August, A.D. 2017, and to be presented for final passage on the 5th day of September, A.D. 2017.

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Mayor

ATTEST:

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Interim City Clerk

Passed and adopted on final reading on the 5th day of September, A.D. 2017.

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Mayor

ATTEST:

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Chief Deputy City Clerk