

# AGENDA ITEM SUMMARY

July 17, 2018

City Council

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## STAFF

Clay Frickey, City Planner  
Brad Yatabe, Legal

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## SUBJECT

Second Reading of Ordinance No. 089, 2018, Approving the Addition of Permitted Use Associated with the Century Wireless Telecommunications Facility and Addition of Permitted Use Project Development Plan #170017.

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## EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on July 3, 2018, approves the Century Wireless Telecommunications Addition of Permitted Use request (APU) being made in conjunction with PDP170017. The APU allows the addition of wireless telecommunication facilities as a permitted use on a parcel of land located in the Low Density Residential (RL) zone district. Wireless telecommunication facilities are not a permitted use in the RL. PDP170017 proposes a 55-foot tall wireless telecommunications facility disguised as a bell tower at 620 West Horsetooth Road.

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## STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

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## ATTACHMENTS

1. First Reading Agenda Item Summary, July 3, 2018 (w/o attachments) (PDF)
2. Ordinance No. 089, 2018 (PDF)

## AGENDA ITEM SUMMARY

July 3, 2018

City Council

### STAFF

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Brad Yatabe, Legal

### SUBJECT

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Items Relating to Consideration of the Century Wireless Telecommunications Facility Addition of Permitted Use Request.

### EXECUTIVE SUMMARY

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A. Public Hearing and First Reading of Ordinance No. 089, 2018, Approving the Addition of Permitted Use Associated with the Century Wireless Telecommunications Facility and Addition of Permitted Use Project Development Plan #170017.

**OR**

B. Public Hearing and First Reading of Ordinance No. 090, 2018, Denying the Addition of Permitted Use Associated with the Century Wireless Telecommunications Facility and Addition of Permitted Use Project Development Plan #170017.

The purpose of this item is to decide whether to approve, approve with conditions, or deny the Century Wireless Telecommunications Addition of Permitted Use request (APU) being made in conjunction with PDP170017. The APU would allow the addition of wireless telecommunication facilities as a permitted use on a parcel of land located in the Low Density Residential (RL) zone district. Wireless telecommunication facilities are not a permitted use in the RL. PDP170017 proposes a 55-foot tall wireless telecommunications facility disguised as a bell tower at 620 West Horsetooth Road.

### STAFF RECOMMENDATION

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Staff recommends approval of Century Wireless Telecommunications Facility Addition of Permitted Use, PDP170017.

### BACKGROUND / DISCUSSION

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PDP170017 proposes the installation of a 55-foot tall wireless telecommunications facility at 620 West Horsetooth Road. The applicant proposes to disguise the facility as a bell tower. 620 West Horsetooth Road is a 5.12-acre property containing the Southside Baptist Church. Single-family detached homes border the property to the north, west, and east. Horsetooth Road runs along the south side of the parcel. Wireless telecommunications facilities are not an allowed use in the zone in which this project is located. Ordinance No. 080, 2015, amended the Land Use Code to require City Council approval for Addition of Permitted Use applications in eight residential zone districts. One of the zone districts in this list is the Low Density Residential zone district.

Regulations from the Federal Communications Commission (FCC) also apply to wireless telecommunication facility applications. The Wireless Telecommunications Act of 1996 contains regulations that limit how municipalities can regulate wireless telecommunication facilities. Cities may not ban wireless telecommunication facilities or zone their city in such a way to de facto ban wireless telecommunication facilities. Cities also may not deny applications for wireless telecommunication facilities based on health impacts. The area between College Avenue and Shields Street along Horsetooth Road contains few parcels that have zoning that allow wireless telecommunications facilities. The applicant has been unable to obtain a lease with property owners for land zoned to allow a telecommunications facility.

Historically, staff has not invoked section 3.5.1 of the Land Use Code dealing with architectural compatibility for wireless telecommunication facilities. Building is a defined term in the Land Use Code. The definition of a building is as follows:

*Building shall mean any permanent structure built for the shelter or enclosure of persons, animals, chattels or property of any kind, which is governed by the following characteristics:*

- (1) is permanently affixed to the land;*
- (2) has one (1) or more floors and a roof; and*
- (3) is bounded by either open space or the lot lines of a lot.*

The proposed wireless telecommunications facility does not have a roof and does not provide shelter. Section 3.5.1, therefore, does not apply since the wireless telecommunications facility does not meet the definition of a building. Section 3.8.13(C)(15) requires stealth technology for all wireless facilities and equipment. This addresses compatibility issues by requiring wireless projects to blend into their surroundings.

#### **Compliance with APU Criteria**

In order to grant an APU, the proposal must meet a set of criteria outlined in Section 1.3.4(C)(1) of the Land Use Code. The project complies with these criteria as follows:

*A. Section 1.3.4(C)(1)(a) - Such use is appropriate in the zone district to which it is added*

Wireless telecommunications equipment is a use allowed in all zones. Wireless telecommunications equipment is defined as, "... equipment used to provide wireless telecommunication service, but which is not affixed to or contained within a wireless telecommunication service facility, but is instead affixed to or mounted on an existing building or structure that is used for some other purpose," per the definitions found in Article 5 of the Land Use Code. What this implies is that equipment that facilitates improved wireless connectivity is allowed citywide. The difference between wireless telecommunications equipment and a facility is that the facility is a freestanding structure for the sole purpose of providing wireless connectivity. The difference between the two uses is design, not function. As such, the proposed use is appropriate in the RL zone.

*B. Section 1.3.4 (C)(1)(b) - Such use conforms to the basic characteristics of the zone district and the other permitted uses in the zone district to which it is added*

Per Section 4.4(A) of the Land Use Code, the purpose of the RL zone is, "...for predominately single-family residential areas located throughout the City which were existing at the time of adoption of this Code."

As established in the previous section, wireless telecommunications equipment is an allowed use in the RL zone. This means uses allowing for improved wireless connectivity are not inherently in conflict with the other uses allowed in the zone. The purpose statement of the zone district indicates that it encompasses predominately single-family residential areas developed prior to City Plan and the Land Use Code. Since wireless telecommunications uses are accessory to principle uses and provide a needed service for residents of a neighborhood, a wireless telecommunications facility conforms to the basic characteristics of the RL zone so long as the facility is designed in harmony with the existing neighborhoods surrounding the site.

C. Section 1.3.4(C)(1)(c) - The location, size and design of such use is compatible with and has minimal negative impact on the use of nearby properties

The applicant proposes this facility in this location due to the need for cell phone coverage in this portion of the City. Per the propagation maps supplied by the applicant, cell phone coverage is poor in this area of Fort Collins. Two websites dedicated to providing crowd sourced cell coverage maps, Open Signal and Sensorly, back up this claim (attachment 4). The Wireless Telecommunications Act of 1996 requires municipalities to permit cell towers. Municipalities may determine where in the community these towers are located but may not de facto ban cell towers through zoning (attachment 5).

Atlas Towers submitted a narrative describing their attempts to locate on parcels with more appropriate zoning to fill the coverage gap in this area. Atlas identified 19 areas in which to secure a lease within their search ring. Most of the properties in the applicant’s search ring have RL, Urban Estate (UE), Low Density Mixed-Use Neighborhood (LMN), or Medium Density Mixed-Use Neighborhood (MMN) zoning. None of these zone districts allows wireless telecommunications facilities. Seven parcels within the search ring have Neighborhood Commercial (NC) zoning, which does allow wireless telecommunications facilities. Atlas Tower described their attempts in securing a lease on these NC-zoned properties in their project narrative. There is also only one co-location possibility in this area. Crown Castle owns a tower located at the southeast corner of Horsetooth Road and Shields Street. This tower does not have capacity for an additional carrier.

Given the remaining parcels in the search ring, only two are located on large lots that could accommodate a wireless telecommunications facility: Southside Baptist Church and the LMN parcel owned by Jack Worthington. The Worthingtons were not interested in a lease. This leaves the Southside Baptist Church as the only appropriately-sized property willing to accommodate a cell tower lease in this area. Staff finds Atlas made a bona fide attempt to secure a lease with properties located in the NC zone and could not secure a lease.

Land Use Code Section 3.8.13(C)(2) and 3.8.13(C)(15) require wireless telecommunications facilities to fit into the context surrounding the site and to also use stealth technology to hide the facility to the extent reasonably feasible. Southside Baptist Church is a single-story building with a steeple on the east end of the building. The building is 20-feet tall at its highest point excluding the steeple. The steeple is approximately 20-feet tall, rising to 40 feet. Section 3.8.13(C)(15) indicates bell towers are an appropriate method of meeting the stealth technology requirement. Per the APU criteria, the method of stealth technology must also harmonize with the surrounding context.

The context around the church is one of an established residential area. Subdivisions predominated by single-family detached homes surround the church on all sides. Most structures in the vicinity are one-story with some two-story apartment, condominium, and commercial buildings east and west of the site. These structures are all modestly scaled and fit the predominantly residential character of the area.

Atlas Tower proposes to locate the bell tower immediately adjacent to the church on the east side. This location is near the center of the site along the east-west axis and towards the south end of the site. Horsetooth Road runs along the south property line of the site. By locating the tower in the southern half of the site, the proposed tower has less of an impact on homes abutting the site on the north. A central location on the east-west axis minimizes impacts on properties abutting the site on the east and west. **Staff finds the location of the proposed tower on the site is appropriate and minimally impacts neighboring properties.**

Church buildings are commonly amongst the tallest and largest structures within neighborhoods. Bell towers and steeples often accompany church structures and add to their height. The table below contains the height of various churches located in residential zones throughout the City along with the heights of their associated steeples or bell towers.

Name of Church	Address	Zone District	Building Height
Faith Church	3920 S Shields St.	MMN	48' (85' including cross)
Calvary Baptist	2420 Laporte Ave.	LMN	32' (78'-6" to top of

			steeple, 50' bell tower)
Westminster Presbyterian	1709 W Elizabeth St.	RL	13'-8" (approx. 40' to top of steeple)
First United Methodist	1005 Stover St.	Neighborhood Conservation - Low Density (NCL)	47' (62' to top of bell tower roof, 81' to top of cross)
The Bridge Church	833 S Taft Hill Rd.	MMN	Approximately 30' (approx. 60' to top of steeple)
<b>Southside Baptist</b>	<b>620 W Horsetooth Rd.</b>	<b>RL</b>	<b>20' (55' bell tower)</b>

The size and scale of the churches noted in the table vary but generally have bell towers or steeples of a similar height to the bell tower proposed at Southside Baptist Church. Southside Baptist, however, is a shorter building compared to these other churches. The proposed tower is also bulkier than the aforementioned bell towers and steeples. This combination of factors creates the perception of a larger structure.

**When considering all of the above issues, staff finds the proposed tower is compatible with the surrounding neighborhoods in a way that is similar to other churches with tall bell towers and steeples.**

While the proposed tower is bulkier than many other bell towers and steeples in the community, the proposed tower is also shorter than other bell towers and steeples. As stated earlier, Section 3.8.13(C)(15) states bell towers are an appropriate way to meet the stealth technology requirement. Bell towers are common on church properties so the design is appropriate. The applicant has also proposed a location on the site to minimize the impact of this tower on abutting properties. This proposed tower will also not impact the use of adjacent properties. **For these reasons, staff finds the proposal meets Criterion C.**

*D. Section 1.3.4(C)(1)(d) - Such use does not create any more offensive noise, vibration, dust, heat, smoke, odor, glare or other objectionable influences or any more traffic hazards, traffic generation or attraction, adverse environmental impacts, adverse impacts on public or quasi-public facilities, utilities or services, adverse effect on public health, safety, morals or aesthetics, or other adverse impacts of development, than the amount normally resulting from the other permitted uses listed in the zone district to which it is added*

Cell towers do not create any more offensive noise, vibration, dust, heat, smoke, odor, glare or other objectionable influences or any more traffic hazards, traffic generation or attraction, adverse environmental impacts, adverse impacts on public or quasi-public facilities, utilities or services, adverse effect on public health, safety, morals, or other adverse impacts of development, than the amount normally resulting from the other permitted uses listed in the zone district to which it is added.

*E. Section 1.3.4(C)(1)(e) - Such use will not change the predominant character of the surrounding area*

The predominant character of the surrounding area is that of an established, residential neighborhood. Just as the bell towers and steeples on churches in other parts of the community do not define the character of their neighborhoods, nor shall the proposed bell tower define the character of this neighborhood.

*F. Section 1.3.4(C)(1)(f) - Such use is compatible with the other listed permitted uses in the zone district to which it is added*

As established for Criterion A, wireless telecommunications equipment is an allowed use. This means the design of a wireless telecommunications facility is the principal consideration for establishing compatibility with the surrounding neighborhood. As discussed for Criterion C, staff finds the proposed bell tower achieves compatibility with the zone district through its location on the site and design.

*G. Section 1.3.4(C)(1)(g) - Such use, if located within or adjacent to an existing residential neighborhood, shall*

*be subject to two (2) neighborhood meetings, unless the Director determines, from information derived from the conceptual review process, that the development proposal would not have any significant neighborhood impacts. The first neighborhood meeting must take place prior to the submittal of an application. The second neighborhood meeting must take place after the submittal of an application and after the application has completed the first round of staff review*

Staff conducted two neighborhood meetings for this proposal. The first neighborhood meeting occurred on March 23, 2017, prior to submittal of a development application. Staff convened a second neighborhood meeting on January 31, 2018, after the first round of staff review. The following section of this staff report contains an overview of these neighborhood meetings.

*H. Section 1.3.4(C)(1)(h) - Such use is not a medical marijuana business as defined in Section 15-452 of the City Code or a retail marijuana establishment as defined in Section 15-603 of the City Code*

The proposed use is a Wireless Telecommunications Facility, which satisfies this criterion.

In addition to these criteria, Section 1.3.4(C)(3)(c) also requires Addition of Permitted Use applications to not be detrimental to the public good, comply with the standards in Section 3.5.1, and not be specifically listed as a prohibited use in the zone district. The proposed wireless telecommunications facility is not detrimental to the public good. As mentioned earlier, Section 3.5.1 applies to buildings. Wireless telecommunications facilities do meet the definition of a building and so this standard is not applicable. The RL zone district does not have any uses that are expressly forbidden, so this application also meets this standard.

### **BOARD / COMMISSION RECOMMENDATION**

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At its May 17, 2018, Planning and Zoning Board meeting, the Board voted 4-1 to recommend approval of the application with a condition limiting the overall height of the structure to 45 feet. The Board found the application would meet the APU criteria in Land Use Code Section 1.3.4(C)(1) if the proposed tower were reduced in height to 45 feet.

### **PUBLIC OUTREACH**

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Per Land Use Code Section 1.3.4(C)(1)(g), all projects subject to an APU in or adjacent to a residential neighborhood shall be subject to two neighborhood meetings. One of the meetings must be held before submittal of a formal development application with the City and one must be held after the first round of staff review. In compliance with this code section, the applicant held the first neighborhood meeting on March 23, 2017, at Southside Baptist Church. Thirty-seven neighbors attended the meeting. After this meeting, the applicant submitted their development application with the City on May 9, 2017. The applicant held the second neighborhood meeting on January 31, 2018. Twelve neighbors attended this meeting. Neighbors raised the following issues at these meetings:

- Concern about negative health effects due to radio frequency emissions
- The proposed design is too bulky and out of scale with the neighborhood
  - Preference for a more tapered, artistic design
- Preference for a different location in a non-residential area

### **ATTACHMENTS**

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1. Staff report and attachments provided to the Planning & Zoning Board, May 17, 2018 (PDF)
2. Verbatim transcript of Planning & Zoning Board hearing for Century (PDF)
3. Letters received prior to June 20, 2018 (PDF)
4. Powerpoint presentation (PDF)

ORDINANCE NO. 089, 2018  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
APPROVING THE ADDITION OF PERMITTED USE ASSOCIATED  
WITH THE CENTURY WIRELESS TELECOMMUNICATIONS  
FACILITY PROJECT DEVELOPMENT PLAN #170017

WHEREAS, Project Development Plan #170017 (“PDP#170017”) proposes the placement of a wireless telecommunications facility in the Low Density Residential zone district (“R-L zone”) on the parcel located at 620 West Horsetooth Road, parcel number 9726379901 (the “Parcel”); and

WHEREAS, wireless telecommunications facilities are not an allowed use in the R-L zone; and

WHEREAS, a request pursuant to Land Use Code (“LUC”) Section 1.3.4(C)(3), Addition of Permitted Use, has been made in conjunction with PDP#170017 for the addition of wireless telecommunications facilities as an allowed use on the Parcel (the “APU”); and

WHEREAS, pursuant to LUC Section 1.3.4(C)(3), the Planning and Zoning Board (“P&Z”) shall make a recommendation to Council regarding the APU, Council shall be the decision maker on the APU by ordinance, and P&Z shall be the decision maker on the primary application, PDP#170017; and

WHEREAS, pursuant to LUC Section 1.3.4(C)(1)(g), and in satisfaction of such requirement, two neighborhood meetings were held regarding the APU with the first meeting held prior to the submittal of the development application on March 23, 2017, and the second meeting held after submittal of the development application and completion of the first round of staff review on January 31, 2018; and

WHEREAS, pursuant to LUC Section 1.3.4(C)(1)(h), and in satisfaction of such requirement, the proposed use is not a medical marijuana business as defined in City Code Section 15-452 or a retail marijuana establishment as defined in City Code Section 15-603; and

WHEREAS, pursuant to LUC Section 1.3.4(C)(3)(c) regarding the requirement that the proposed use of telecommunications facilities is specifically prohibited in the R-L zone, and in satisfaction of such requirement, wireless cell facilities are not specifically listed as a prohibited use in the R-L zone; and

WHEREAS, at its May 17, 2018, regular meeting, P&Z held a hearing on the APU and recommended to Council by a vote of 4 to 1 that Council approve the APU with a condition limiting the proposed wireless telecommunications facility to a maximum 45-foot height; and

WHEREAS, LUC Section 1.3.4(C)(3) sets forth the criteria, as further described below, that must be satisfied for Council to approve the APU.

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

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

Section 2. That the Council, after holding a public hearing on July 3, 2018, at which members of the public, the APU applicant, and City staff provided evidence and argument, and after considering the P&Z recommendation on the APU and the record of the P&Z hearing, hereby approves the requested APU to add wireless telecommunication facilities as a use specifically limited to the Parcel located in the R-L zone.

Section 3. That the Council, based on the evidence and information which was provided and presented to the Council at the hearing in this matter, makes the following findings of fact and conclusions of law:

(1) The APU satisfies the criteria set forth in LUC Section 1.3.4(C)(1) as follows:

(a) Such use is appropriate in the R-L zone.

(b) Such use conforms to the basic characteristics of the R-L zone and the other permitted uses in the R-L zone.

(c) The location, size and design of such use is compatible with and has minimal negative impact on the use of nearby properties.

(d) Such use does not create any more offensive noise, vibration, dust, heat, smoke, odor, glare or other objectionable influences or any more traffic hazards, traffic generation or attraction, adverse environmental impacts, adverse impacts on public or quasi-public facilities, utilities or services, adverse effect on public health, safety, morals or aesthetics, or other adverse impacts of development, than the amount normally resulting from the other permitted uses listed in the R-L zone.

(e) Such use will not change the predominant character of the surrounding area.

(f) Such use is compatible with the other listed permitted uses in the R-L zone.

(g) The LUC requirement for two neighborhood meetings regarding the APU was fulfilled with the first meeting held prior to the submittal of the development application on March 23, 2017, and the second meeting held after submittal of the development application and completion of the first round of staff review on January 31, 2018.

(h) Such use is not a medical marijuana business as defined in City Code Section 15-452 or a retail marijuana establishment as defined in City Code Section 15-603.

- (2) The APU is not detrimental to the public good;
- (3) The APU complies with the applicable requirements and criteria contained in LUC Section 3.5.1; and
- (4) The APU is not specifically listed as a "prohibited use" in the R-L zone.

Section 4. That the Council's approval of the APU in this Ordinance is based upon the development proposal described in PDP#170017 and the associated APU request, the testimony and evidence presented at the July 3, 2018, APU hearing, and the P&Z recommendation and hearing record. Unless otherwise specified as a condition of approval of the APU, any changes to the use or to its location, size, and design, in a manner that changes the predominant character of or increases the negative impact upon the surrounding area, will require the approval of a new addition of permitted use under the LUC.

Introduced, considered favorably on first reading, and ordered published this 3rd day of July, A.D. 2018, and to be presented for final passage on the 17th day of July, A.D. 2018.

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Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Passed and adopted on final reading on the 17th day of July, A.D. 2018.

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Mayor Pro Tem

ATTEST:

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City Clerk