



AGENDA REPORT

Information Technology

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| DATE: | May 17, 2022 |
| TO: | Mayor Butt and Members of the City Council |
| FROM: | Sue Hartman, Director of Information Technology, |
| Subject: | Pole License Agreement for Small Cell Sites on City Infrastructure |
| FINANCIAL IMPACT: | The Pole License Agreement will generate an annual fee of \$270 per pole used by AT&T. The fee will escalate three percent (3%) annually. It is anticipated that AT&T will utilize approximately 100 City-owned poles over the next five years. The revenue received will be posted to account 01262117-364855. |
| PREVIOUS COUNCIL ACTION: | N/A |
| STATEMENT OF THE ISSUE: | The Information Technology Department is requesting City Council approval of a Pole License Agreement with New Cingular Wireless PCS, LLC that establishes the procedures, terms, and conditions under which New Cingular Wireless is permitted to deploy “small cell” facilities on City-owned streetlights, traffic signals, and other vertical infrastructure. |
| RECOMMENDED ACTION: | ADOPT a resolution approving a Pole License Agreement with New Cingular Wireless PCS, LLC, that establishes the procedures, terms, and conditions under which New Cingular Wireless is permitted to deploy “small cell” facilities on City-owned streetlights, traffic signals, and other vertical infrastructure, for a term of ten years – Information Technology Department (Sue Hartman 510-620-6874). This item was continued from the May 3, 2022, meeting. |

DISCUSSION:

Small Wireless Facilities

In general, small wireless facilities (or “small cells”) are low power wireless facilities that are used to enhance wireless network capacity. Unlike macro cell sites (i.e., traditional, large cell towers and rooftop installations) that provide broad wireless coverage, small cells are placed closer together and closer to the user. Given the abundance and location of streetlights, traffic signals, and utility poles, these structures have become the ideal support structures for wireless providers to deploy new small cells.

Dozens of small cells have already been deployed throughout the City and industry trends suggest that this will continue. As the owner of a substantial number of streetlights, wireless providers have requested the City’s permission to install small cells on City-owned poles. New Cingular Wireless PCS, LLC (d/b/a “AT&T”) is the most recent provider to request attachment rights to the City’s poles.

Accordingly, City staff recommends that the City adopt a Pole License Agreement (“PLA”) for facilities deployed on City-owned infrastructure to control the duration, terms, and scope of AT&T’s use. The PLA would contain standardized terms and conditions for the attachment of facilities to City-owned poles. The PLA would not replace the permitting requirements in the City’s municipal code and policies related to the deployment of small wireless facilities and would be required as part of a complete application for such permits when an applicant seeks to use City-owned poles.

Federal Communications Commission Report and Order

On September 26, 2018, the Federal Communications Commission adopted a Declaratory Ruling and Third Report and Order in the Matter of Accelerating Broadband Deployment by Removing Barriers to Infrastructure Investment (“FCC Order”). The FCC Order established a new classification for small wireless facilities that imposes substantial restrictions on state and local governments’ ability to regulate these facilities.

The FCC Order limits the extent to which local agencies may impose fees on small wireless facility deployments on City-owned infrastructure. Local fees must be a reasonable approximation of the local jurisdiction’s costs and no higher than the fees charged to similarly situated competitors in similar situations. The fee limits apply to the following:

- Processing small wireless facility applications;
- Use of the public right-of-way; and
- Attachment rights to structures in the public right-of-way that are owned or controlled by local governments.

Prior to the FCC Order, local jurisdictions were able to negotiate compensation with wireless providers for access to municipal-owned poles. After the FCC Order, local governments are required to offer cost-based access or \$270 per pole per year. The

City currently has one active agreement with ExteNet Systems that was entered into before the FCC Order was adopted.

Pole License Agreement (PLA) Terms

The PLA provides the terms and conditions by which wireless providers will be able to attach small cells on City-owned infrastructure. The PLA does not apply to any infrastructure that the City does not own (e.g., electric utility poles), but all small wireless facilities must obtain the applicable permits required under the Richmond Municipal Code and the City's small wireless facility regulations.

Here is a summary of the key terms of the PLA:

1. *License Area and Use.* The PLA defines the area by which only a "small wireless facility" shall be installed, pursuant to the approved plans. This PLA does not limit the City's right to use the subject pole for its own use and the Licensee shall not impede any municipal functions. The use of permitted area is limited to the construction, installation, operation, and maintenance of the small wireless facility.
2. *Term.* The initial term of the PLA would be for ten years from the effective date with an option to renew.
3. *Fees.* The annual license fee is \$270.00 per pole per year, escalated three percent (3%) annually, for consistency with the presumptively reasonable license fees allowed under the FCC Order.
4. *Construction, Installation, and Modification.* The PLA requires the Licensee to seek any required regulatory approvals, including applicable City permits, prior to installing any equipment in the licensed area. The installation must also be in conformance with the approved plans and the Licensee is responsible for all direct and indirect costs in connection with designing, purchasing, and installing all equipment and securing any required approvals. This section also provides procedures to the extent that the Licensee seeks to change, install new, or modify any existing equipment within the licensed area.
5. *Maintenance Obligations.* The Licensee is required to maintain all of its equipment in good, safe, and orderly condition at all times, and shall promptly repair any damage to any of its equipment whenever repair or maintenance is required. The Licensee is also required at its sole cost and expense to repair damage or alterations caused either directly or indirectly by the Licensee or its agents.
6. *Rearrangement and Relocation.* In the event the City needs to perform work such as change the street grade, width, or location that impacts the small wireless facility, the City reserves the right to request a rearrangement or relocation of the equipment at Licensee's expense. This section also covers issues that may arise when the City needs to accommodate third parties with rights to use space within the public rights-of-way.
7. *Utilities.* The Licensee would be required to secure its own utility services for the small wireless facility and any supporting equipment; however, the City shall make a good faith effort to ensure its utility infrastructure is available.

FINANCIAL IMPACT:

In accordance with FCC regulations, the PLA will generate an annual fee of \$270 per pole used by AT&T. The fee will escalate three percent (3%) annually. Carriers are expected to deploy dozens of sites within the City over the next five years. In addition, AT&T has agreed to reimburse the City for the City's costs to prepare and negotiate the PLA. To maintain a fair and balanced competitive environment, the City would require such cost reimbursement from AT&T's competitors or potential competitors that negotiate an agreement for the right to attach to City-owned poles.

DOCUMENTS ATTACHED:

Attachment 1 – Resolution No. 2022-_____
Attachment 2 – Pole License Agreement
Attachment 3 – FCC Report and Order