



Legislation Text

File #: 17-1242, **Version:** 1

Report regarding a resolution approving a Master License Agreement for small cell wireless facilities installation; approving administrative and license fees proposed pursuant to the Agreement; authorizing the City Manager to execute the Agreement; and authorizing the Finance Director to amend the Master Fee Schedule. (*Sailesh Mehra, Chief Planner and Jason Rosenberg, City Attorney*)

RECOMMENDATION

Staff recommends that the City Council adopt a resolution approving the Master License Agreement for small cell wireless communication facilities, approving administrative and license fees proposed pursuant to the Agreement, authorizing the City Manager to execute the Agreement, and authorizing the Finance Director to amend the Master Fee Schedule.

BACKGROUND

Under existing federal and state law, local municipalities retain certain authority to regulate wireless telecommunication facilities in the public right-of-way, including the authority to impose discretionary permit requirements and require reasonable compensation..

In October, 2017, the City adopted an ordinance which regulated wireless telecommunication facilities by adding a chapter to specifically address small cell wireless communications facilities (SCWF) presence in the City. That ordinance established a comprehensive set of requirements and standards to regulate SCWF development, siting, installation, operation, and cessation. These requirements aim to protect and promote public safety, community welfare, and municipal aesthetics consistent with the goals, objectives, policies of the General Plan and in conformance with federal and state law. The ordinance defines relevant terms in SCWF regulation; prescribes permitted facilities and license areas; imposes standard requirements for all SCWF installation, operation, maintenance and cessation of operation; requires SCWF applicants to obtain a ministerial permit in compliance with permit criteria; and establishes a permit review and approval process. The ordinance also provides for a mechanism for the City and the carrier or licensee to enter into a Master License Agreement for SCWF installations on City-owned poles or other structures.

DISCUSSION

Staff has drafted a Master License Agreement (MLA) in order to establish the legal relationship and framework under which a carrier or licensee may apply to the City for and obtain a revocable, non-possessionary privilege to use the License Area identified in Pole Licenses. The MLA is Exhibit A to the associated resolution.

The MLA outlines design and noise requirements to protect community aesthetics, health, safety and welfare in the public right-of-way, consistent with the City's goals, while conforming to the limitations set by state law. It further specifies approved locations and any site constraints and installation, operation, and maintenance

requirements specific to those pole locations. Moreover, the adopted ordinance, as well as the MLA ensures that staff has oversight with regard to aesthetics and potential noise issues.

The key terms and conditions of the MLA are as follows:

- The term of the MLA is ten (10) years, and renewable for subsequent five (5)-year intervals, subject to each party's option to not renew upon one hundred and eighty (180) days' notice to the other party;
- Pursuant to the MLA, licensees are required to obtain individual licenses for every pole where small cell facilities are proposed;
- Individual pole licenses require the licensees to obtain all applicable and necessary regulatory approvals prior to becoming effective;
- The term of each pole license will be from the effective date through the term of the MLA or the earlier termination of the MLA, whichever occurs sooner;
- Annual License Fee per City-owned pole is \$1,500. The License Fee will escalate by 3 percent on each anniversary of the month after each Pole License becomes effective; and
- The MLA also imposes additional requirements of installation guidelines and design review compliance.

With these guidelines in place, the City is striving to minimize aesthetic impacts and visual clutter with the installation of potentially scores of SCWF throughout the City, including in residential districts, while simultaneously exercising control over City owned structures within the Right of Way. The City's intent is to screen all antennas within a "stealth" enclosure or radome. With respect to the ancillary equipment, the carriers must vault the equipment. If vaulting is not possible, then the equipment may be mounted on the pole, as long as it is screened and painted. When the City receives applications for such facilities, staff from different departments will also visit each location and explore additional screening opportunities, which may include installation of landscaping. The City is also sensitive to introduction of new noise-generating equipment as part of these SCWF. Often times the ancillary equipment heats up from normal operation and in order to reduce the temperature within that equipment enclosure a cooling fan will commence. The City will require that all noise-generating equipment be housed in a noise-rated enclosure and shall comply with the City's noise ordinance.

Lastly, the City has created a comprehensive application checklist when preparing multiple sites for an application (Attachment 1). This checklist was designed to assist the application in submitting a thorough application, which will be in compliance with the City's ordinances and guidelines, but it will also help staff process these applications efficiently and expeditiously, while maintaining the aesthetic and noise requirements described in the ordinance and MLA.

Environmental Review

Adoption of the resolution approving the form of the MLA will not result in any new environmental impact since the additions, refinements and clarifications set forth in the proposed ordinance, as related to small cell

wireless communication facilities, are minor in nature. The proposed ordinance is not subject to the requirements of the California Environmental Quality Act (CEQA) pursuant to California Code of Regulations Title 14, Chapter 3, section 15303, class 3, “New Construction or Conversion of Small Structures”. If the City sees an incremental increase in number of applications and SCWF, it may consider doing additional CEQA analysis on a case by case basis.

FISCAL IMPACT

The adopted MLA would implement two types of deposits and an annual rental or attachment fee relating to the permitting of SCWF. SCWF applicants would be subject to pay a Right-of-Way Pole Usage Fee, which would be based on one or more of the following rates: (1) A Master Licensing Agreement Deposit in the amount of \$4,000; (2) an annual attachment rate of \$1,500 for the total usable space that would be occupied by SCWF on a City-owned light pole and its anchor; or (3) a one-time reimbursement deposit of \$950 for actual costs incurred by the City for rearrangements performed at the request of the SCWF applicant. In addition to pole attachment rates, the SCWF applicants would also be required to enter into a reimbursement agreement for legal services and environmental consultants, as well as pay an application fee that covers staff time on a cost reimbursement basis.

The draft template Master License Agreement, along with a proposed fee structure for pole location fees are attached to the associated resolution as Exhibit A and Exhibit B.

CONCLUSION

Staff recommends that the City Council adopt a resolution approving the Master License Agreement for small cell wireless communication facilities, approving administrative and license fees proposed pursuant to the Agreement, authorizing the City Manager to execute the Agreement, and authorizing the Finance Director to amend the Master Fee Schedule.

Attachments:

1. Small Cell Facilities Checklist
2. PowerPoint Presentation