



DATE: September 13, 2018

TO: Council Technology Application Committee

FROM: Director of Information Technology
Interim Director of Public Works

SUBJECT Review of Proposed Wireless Ordinance and Master License Agreement Terms and Conditions

RECOMMENDATION

That the Council Technology Application Committee (CTAC) reviews and comments on the proposed Public Right of Way Telecommunications Antenna and Facilities Ordinance (“Wireless Ordinance”) and associated terms and conditions of the draft Master License Agreement (“MLA”). Specifically, staff seeks direction from CTAC regarding the standards and requirements outlined in this staff report and attached proposed ordinance and Master License Agreement terms and conditions.

SUMMARY

The City’s existing regulations for telecommunications antenna and facilities were passed in July of 1997. Over the past two years, telecommunication companies have signaled their intention to deploy small cell sites to expand 5G coverage. To complicate matters, the State and Federal legislatures have considered legislation that would constrict the ability of the City to regulate and charge lease revenue for small-cell wireless sites within the Public Right of Way.

This item includes a proposed updated Wireless Ordinance (Attachment II) to accommodate the anticipated requests from telecommunication providers as well as a Master License agreement to ensure the City receives fair compensation for use of the Public Right of Way and that said use is done in a consistent and equitable manner across telecommunication providers.

BACKGROUND

The City’s existing regulations for telecommunications antenna and facilities was passed in July of 1997. Over the past two years, telecommunication companies have signaled their intention to deploy small cell sites to expand 5G coverage. 5G technology is designed to densify coverage within a given community by placing a cell site in intervals of 800 feet, where feasible. Understanding this, the City is anticipating an increase in applications for

small cell facilities in the public right of way (PROW). These telecommunication companies have begun this process with municipalities throughout the state.

Telecommunication companies prefer to install wireless facilities in the PROW since installations on private property will oftentimes be more expensive, or less viable for the buildout of a robust network. The City owns and maintains upwards of 4,700 streetlight poles throughout the community, which present themselves as the prime opportunity for telecommunication companies to complete their 5G networks.

In addition to telecommunication companies beginning to deploy this new technology throughout the State, they have lobbied the State and Federal government to implement laws that severely constrict an individual city's home rule authority in the regulation and assessment of fees for these small cell sites. Last year, SB649 attempted to eliminate local discretionary review of small cell sites, treating their installation as a use by-right in all zones. This year, the United States Senate is considering S.3157 (Thune & Schatz). In its current form, this bill would force local governments to lease out publicly owned infrastructure, eliminate reasonable local environmental and design review, and eliminate the ability for local governments to negotiate fair leases or public benefits for the installation of small cell wireless equipment. At the date of the drafting of this report, this bill has been tabled for the year.

Given that the City's authority to regulate these sites has been under assault by the State and Federal legislatures, time is of the essence for the City to establish updated regulations and to enter into long term lease agreements with telecommunication companies prior to any future iterations of SB649 or S.3157 returning.

In June 2018, the City entered into an agreement with Magellan Advisors following a competitive request for proposals process, to develop and update the City's wireless telecommunications regulations, right of way ordinance, and master license agreements with telecommunication companies.

Representatives from Magellan Advisors will be present at this meeting to answer any questions the CTAC may have.

Small Cell Definitions

Small cells are antenna and related equipment that telecommunication providers deploy to increase their overall network capacity and to extend wireless coverage. They are considerably smaller than their counterpart, Macrocells, which usually take the form of a much larger cell tower site, antenna, or mast. Given their size, small cells lend themselves toward deployment on utility poles, streetlights, and other exterior structures.

They are a vital component to the deployment of new highspeed wireless networks. Demand for quality, reliable wireless networks is increasing rapidly due in part to the "Internet of Things" where everyday items and services from cars, home appliances, real-time arrivals for buses, and basic fundamental items such as cell phones and computers function on a

connection to the internet and Wi-Fi. The deployment of a robust smart cell network is required for the continued growth and use of these items.

DISCUSSION

Current Policy and Procedure

Hayward Municipal Code, Chapter 10, Article 13 establishes the standards for the appropriate siting and change in location of any telecommunication antenna or related facility. The regulations aim to protect the city from adverse effects of telecommunications facilities including any negative environmental impacts, any related visual blight, and ensure a competitive and broad range of telecommunication services and infrastructure.

These regulations cover three classes of antenna ranging from residential satellite dishes to telecommunication towers of varying heights, with many of these sites existing on private property. Depending on class, a permittee would have to receive approval of a Site Plan Review application from the Director of Development Services, an Administrative Use Permit from the Director of Development Services, or a Conditional Use Permit from the Planning Commission. The regulations do not provide a reasonable level of clarity on small cell sites, as this technology is new, and the ordinance was last revised in 1997.

Proposed Policy and Procedure

The proposed ordinance (Attachment II) would govern all telecommunication antennas and related facilities within the PROW. It would be separate from the existing Antenna and Telecommunications Facilities Ordinance of the Planning Code.

The proposed ordinance intends to manage the short and long-term use of the PROW and City infrastructure within the PROW. Under these regulations, all applications for a Wireless Communication Facility (WCF) will be submitted to and ultimately approved by the Public Works Department.

Applications may be for a single facility, modification to an existing facility, co-location facility, aerial mounted wireless/wi-fi equipment, and carrier/cell on wheels (COW). For each of these, the applicant will need to provide a site plan, load calculations, details on the specific equipment to be installed, and photo or computer simulations of the proposed facility before and after installation.

Public Noticing

The City will be required to notice properties within a 500-foot radius for macro and micro cell sites.

Discretionary Review

WCF PROW Permit applications will be subject to discretionary review by the Public Works Department if they are for:

1. New installation of any form of WCF at any location where there is not currently a WCF
2. New installation of any form of WCF where there is a WCF for another carrier
3. Modification to an existing WCF
4. Addition of a new wireless carrier to an existing and eligible WCF that do result in substantial changes
5. Existing wireless projects that do result in a change to the existing site, substantial or not, that add new antennas or increase output of the WCF.

Discretionary review requires public noticing of 500-foot radius and include a 14-day public comment period. The ordinance provides the criteria for approval under Discretionary Review. Following Discretionary Review and approval, the applicant will need to secure the applicable building and encroachment permits.

Administrative Review

WCF PROW permit applications will be subject to Administrative Review by the Public Works Department if they are for:

1. Routine maintenance to an existing WCF
2. Minor modification to an existing WCF
3. Optional pre-submittal applications (which include a tolling of the shot clock)
4. Co-location involving the addition of a new wireless carrier to an existing and eligible WCF on an existing base station that will not result in a substantial change to the existing facility
5. Existing wireless projects that replace existing equipment with like kind, number, and size equipment and do not increase the output of the WCF.

Administrative Review does not require public noticing and will be treated as an “over-the-counter” permit and will be approved by the Public Works Director or their designee.

Pre-Submittal Review

The Ordinance provides applicants the opportunity to request pre-submittal consultations where the applicant can ask questions, and receive guidance and verbal feedback on a proposal. These reviews will include “tolling agreements” where the applicant agrees that the pre-submittal review does not constitute formal review of their application and that any applicable review time limits will not begin until a formal application is submitted.

All applications will have to pay a processing fee as determined by the City’s Master Fee Schedule. Applicants may appeal a decision by the Public Works Director to the City Manager.

Permits will be issued for a term of ten (10) years with two five (5) year extensions. Extensions will be contingent on the applicant maintaining compliance with the original permit(s).

Proposed Master License Agreement

In order to address the anticipated rollout of 5G technology and existing demands from 4G within the City, staff has developed an updated Master License Agreement (MLA) to provide a consistent and comprehensive approach to any requests from telecommunication providers. These MLAs will help the City align its own infrastructure within the PROW with the demands for access from telecommunication providers.

The MLA will not grant rights to any individual City streetlight or pole. They will, however, establish the guiding procedures, terms, and conditions which the City will require of a telecommunication provider during their deployment of small cell sites. These providers will need to execute permits for their individual sites as described in the proposed Wireless Ordinance.

Term

MLAs will have a minimum term of ten (10) years with two five (5) year option extensions.

Lease Rate

Under the MLA, the telecommunication lessee will have to pay an initial base annual rent of \$2,500 that will increase at a rate of 4% each year thereafter. Furthermore, the agreement includes a "Favored Nations Clause" that states that if the telecommunications entity pays an annual rent greater than the City's rate within the Counties of Alameda (less Oakland), Santa Clara (less San Jose), and Santa Cruz, that the City's lease rate will automatically increase to that higher amount.

Processing Payments

The telecommunication provider will have to pay a base fee plus time and materials for the staff costs associated with processing their MLA and associated pole licenses.

Protection from Future Laws

Each MLA will include a provision stating that "no occurrence or situation arising under any current or future Law, whether foreseen or unforeseen and however extraordinary, will relieve Licensee from its obligations under the Agreement or give Licensee any right to terminate this Agreement in whole or in part." Once entered into a contract, no law from the State or Federal government will be able to supersede the lessee's obligations under the MLA.

Fiber-In-Lieu of Payment

The MLA grants the Public Works Department the discretion to negotiate, as partial consideration paid to the City, a minimum of six strands of fiber and associated conduit that licensee owns to support each licensed pole. The agreement also stipulates that at the end of the term of the MLA, the licensee shall grant to the City by quitclaim or bill of sale title to any fiber strands, conduits, and pull boxes owned by Licensee that the City desires to use at no cost to the City.

Municipal Preference

The MLA requires that in situations where the Licensee has the option to install equipment to either City owned poles or similar third-party poles, that the licensee shall use good faith efforts to attach to City poles.

Commencement of Installation

All installations under a given MLA shall be completed within one year following the mutual execution of an applicable Encroachment Permit.

Security Deposits

Licensee shall pay a security deposit of \$25,000 for the life of the agreement to cover any fees and costs to remedy any default by the licensee over the term of the MLA.

ECONOMIC IMPACT

The proposed regulations will improve the City's ability to address the anticipated increase in small cell applications. This will in-turn result in a quicker deployment of cutting-edge wireless technology leading to more robust wireless broadband services and technologies for the community. Making it easier for telecommunications to complete this work will result in better service to businesses and residents. Additionally, the fiber-in-lieu opportunities will increase the City's municipal fiber goals by helping to build out the "last mile" connections identified in the Fiber Master Plan.

FISCAL IMPACT

There is no immediate fiscal impact associated with implementing this ordinance and MLA. However, given the rent and in-lieu considerations within the MLA, the City stands to earn upwards of \$2,500 annually on each of the leased City-owned light poles. This resulting new potential revenue access to dark fiber could help to fund the additional buildout of the City's municipal dark-fiber network.

STRATEGIC INITIATIVES

This agenda item supports the Complete Communities Strategic Initiative. The purpose of the Complete Communities Strategic Initiative is to create and support structures, services, and amenities to provide inclusive and equitable access with the goal of becoming a thriving and promising place to live, work and play for all.

Goal 1: Improve quality of life for residents, business owners, and community members in all Hayward neighborhoods.

Objective 4: Create resilient and sustainable neighborhoods.

Goal 3: Develop a regulatory toolkit for policy makers

Objective 1: Update, streamline, and modernize zoning & codes.

NEXT STEPS

Staff will incorporate the feedback on the draft ordinance and MLA and present the updated documents to Council for adoption at a later date.

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