

HAYWARD CITY COUNCIL

RESOLUTION NO. 21-_____

Introduced by Council Member _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD APPROVING THE MUNICIPAL FACILITY LICENSE AGREEMENT TEMPLATE FOR THE ATTACHMENT OF WIRELESS FACILITIES TO CITY-OWNED VERTICAL INFRASTRUCTURE IN THE PUBLIC RIGHT-OF-WAY, AND AUTHORIZING THE CITY MANAGER TO EXECUTE MASTER FACILITY LICENSE AGREEMENTS WITH QUALIFIED COMPANIES IN SUBSTANTIAL CONFORMANCE WITH THE TEMPLATE AND UPON APPROVAL BY THE CITY ATTORNEY AS TO FORM

WHEREAS, the Telecommunications Act of 1996 (TCA) recognized that cities have authority to regulate personal wireless service facilities, but limited the scope of such regulation; and

WHEREAS, the TCA prevents cities from prohibiting or effectively prohibiting these facilities and requires cities to act on applications for these facilities within a reasonable timeframe; and

WHEREAS, Congress passed Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 on February 22, 2012, generally requires that a state and local government “may not deny, and shall approve” certain applications for substantial changes to existing sites that modify transmission equipment at an existing wireless tower or base station; and

WHEREAS, in 2014 the Federal Communications Commission (FCC) adopted regulations interpreting Section 6409(a) that established an expedited timeframe for the review of proposed modifications and defined key terms in the statute that control whether the local agency may deem that a modification causes a substantial change; and

WHEREAS, new regulations issued by the FCC in 2018 that apply to “small wireless facilities” generally preempt subjective land-use regulations, preempt local regulations that prohibit or effectively prohibit the provision of wireless services, and impose expedited review timeframes to provide applicants with a judicial remedy when the State or local government fails to approve or deny the request within the timeframes established by the FCC; and

WHEREAS, California Public Utilities Code sections 7901 and 7901.1 grant telephone corporations a limited right to use the public rights-of-way for facilities, which

includes personal wireless service facilities, necessary to provide telephone services, as long as such installations do not “incommodate” or interfere with public use of the public right-of-way and are subject to the City’s aesthetic regulations and reasonable controls imposed by the City as to time, place, and manner in which the public right-of-way is accessed; and

WHEREAS, the City’s existing regulations and licensing arrangements, which are applicable to any installations in the public right-of-way, are not most protective of the City’s authority and must be updated to comply with current federal and state laws; and

WHEREAS, the City Council desires to protect and promote public health, safety, and welfare, and also balance the benefits that flow from robust, advanced wireless services with the City’s local values, which include, without limitation, the public’s use of the City’s rights-of-way, the aesthetic character of the City, its various neighborhoods and community without (1) prohibiting or effectively prohibiting any personal wireless service provider’s ability to provide personal wireless services; (2) prohibiting or effectively prohibiting any personal wireless service provider’s ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules or regulations; (3) unreasonably discriminating among providers of functionally equivalent services; (4) denying any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC’s regulations concerning such emissions; (5) prohibiting any collocation or modification that the City may not deny under federal or state law; or (6) otherwise authorizing the City to preempt any applicable federal or state law or regulation; and

WHEREAS, the adoption of this resolution is necessary to ensure that the City’s regulation of personal wireless facilities in the public right-of-way is consistent with federal and state laws, does not unreasonably interfere with public use of the public right-of-way, and preserves public peace, health, and safety, to the extent allowed under federal and state laws.

BE IT RESOLVED that the City Council of the City of Hayward approves the municipal facility license agreement template for the attachment of wireless facilities to City-owned vertical infrastructure in the public right-of-way, which is included as Attachment III to the staff report and incorporated herein by reference, and authorizes the City Manager to execute master facility license agreements with qualified companies in substantial conformance with the template and upon approval by the city attorney as to form.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2021.

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
 MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
 City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward