



Legislation Text

File #: 23-350, **Version:** 1

Adopt a Resolution to Approve a Master License Agreement with Cingular Wireless PCS, LLC for Small Cell Pole Attachment Installations and Approving and Authorizing the City Manager to Enter Substantively Similar Agreements with Other Providers

SUMMARY AND RECOMMENDATIONS

Small cell antenna installations allow wireless infrastructure and wireless service providers to attach cellular antennas to existing infrastructure, such as City-owned streetlights and similar City-owned utility poles. Staff negotiated a Master License Agreement with Cingular Wireless PCS, LLC to govern the installation of small cells on City poles in the Public Right-of-Way.

Staff recommends the City Council approve a Resolution approving and authorizing the City Manager to execute the Master License Agreement.

BACKGROUND

Mobile device usage has grown rapidly in recent years, requiring more bandwidth and placing heavy demand on existing network infrastructure. As a result, mobile service providers are supplementing their 4G networks with small cellular base stations (“small cells”) to increase bandwidth and capacity on their networks. A small cell is similar to a mobile hot spot in that it covers a small area with high-density usage.

These 4G small cells, and the evolution to 5G wireless technology, depend on closely spaced antennas for which streetlights and similar municipal vertical assets are ideal for cost effective installations. Wireless infrastructure companies build and maintain this small cell network infrastructure that they in turn can lease through partnership agreements to wireless service providers. Some wireless service providers choose to build, maintain, and operate their own small cell infrastructure.

Analysis

Under existing federal and state law, local municipalities retain certain authority to regulate wireless telecommunications facilities in the public right-of-way. This includes the authority to charge providers attachment and application fees, to regulate the aesthetic qualities of the facilities, the appropriateness of the size and location of equipment within each neighborhood, and allow for site-by-site analysis of permit applications.

On September 26, 2018, the FCC adopted regulations that preempt certain local authority over small cell deployments. The order sets rates municipalities can charge, provides strict “shot clocks” limits for permit applications, and establishes other restrictions on the ability of municipalities to regulate and prevent small cell deployments.

On August 12, 2020, the Ninth Circuit Court of Appeals issued a decision in *City of Portland v. Federal Communications Commission* (Case No. 18-72689) that largely upheld the FCC Order, including the safe harbor rate of \$270/pole/year.

Staff has developed a framework within these regulations. The key terms and conditions of the MLA include the following:

- The licensee is required to obtain individual Pole Licenses for every pole where small cell facilities are proposed;
- Individual Pole Licenses require the licensee to obtain all applicable and necessary regulatory approvals, prior to becoming effective;
- Cingular Wireless must remit a \$4,000 Application Processing Payment to the City to cover Staff and Legal costs;
- The standard term is ten years, with multiple renewals available thereafter;
- 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 first;
- The annual License Fee per City-owned pole is \$270 in 2021 (note: under a “Contingent Event,” such as new legislation that modified, enhances, or somehow changes the FCC Order, the MLA provides that the annual fee will increase to \$1,500 per year (or greater depending on the year of the Contingent Event));
- License Fees in either case will automatically escalate by 3 percent each year.

The recommended Resolution would also authorize the City Manager to execute a Master License Agreement under the same substantive terms with other providers (other than Cingular Wireless).

Current Agency Policies

- Advance projects and programs promoting sustainable economic development, including transforming San Leandro into a center for innovation.
- Maintain and enhance San Leandro’s infrastructure.

Previous Council Actions

- At the September 28, 2020 City Council Meeting, the Council approved a Master License Agreement with Verizon Wireless.
- At the January 7, 2019 City Council meeting, the Council approved a template Master License Agreement and Urgency Ordinance to Amend Encroachment Requirements Relating to Small Cell Wireless Telecommunications Facilities to Become Effective Immediately.
- At the December 3, 2018 City Council meeting, the Council approved a Master License Agreement with ExteNet Systems.
- At the September 17, 2018 City Council meeting, the Council discussed the proposed small cell agreements with ExteNet and Mobilitie and voted to send the items back to the City Council Facilities and Transportation Committee.

Committee Review and Actions

- At the July 8, 2020 City Council Facilities & Transportation Committee meeting, the Committee suggested that more effort be done to promote competition for small cell agreements and to protect against monopolization of City assets. To that effect, Staff began having earnest discussions with two additional cellular providers and, in addition, enhanced language to ensure a given permit will expire after one year of inactivity as a measure to protect against exploitative or monopolistic behavior.
- At the November 11, 2018 Facilities & Transportation Committee meeting, the Committee moved the Agreements to be considered by the full City Council
- Prior informational presentation by Mobilite at the March 1, 2017 Facilities and Transportation Committee meeting.

Applicable General Plan Policies

- Policy CSF-4.1 Telecommunications. Collaborate with telecommunication service providers, the business community, and investors to foster access to emerging information and communication technology.

Attachment

- A - Reso Master License Agreement between Cingular Wireless and the City of San Leandro
- B - Master License Agreement Draft

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