



Legislation Text

File #: 18-244, **Version:** 1

Staff Report for a City Council Resolution to Approve Master License Agreements for Small Cell Pole Attachment Installations with Mobilitie and ExteNet Systems, and for Acceptance of Administrative and License Fees Pursuant to the Master License Agreement

SUMMARY AND RECOMMENDATIONS

Staff recommends that the City Council approve Master License Agreements for Small Cell Pole Attachment Installations, which include the following:

- Adoption of two Resolutions, one approving a Master License Agreement (MLA) for Small Cell Pole Attachment installations with Mobilitie LLC, and one approving a MLA for Small Cell Pole Attachment installations with ExteNet Systems (California) LLC;
- Acceptance of administrative and license fees pursuant to the MLA;
- Authorization for the City Manager to execute the MLAs; and
- Authorization for the City Manager to execute all subsequent Pole Licenses.

The MLAs will allow both wireless infrastructure and wireless service providers to install cellular equipment on City-owned street lights and similar City-owned utility poles. The Pole Licenses will provide authority for the City to scrutinize and permit each equipment installation and charge the providers appropriate processing and license fees. The processing fees will be governed by the City's adopted Fee Schedule, whereas the license fees are unique to each licensee and therefore independent of the Fee Schedule.

BACKGROUND

Historically, large telecommunication antennas ("macro towers") have been installed to support wide geographic areas and thousands of devices at once. However, these antennas are expensive to build and operate. 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 beginning to supplement their current 4G networks with small cellular base stations ("small cells") to increase bandwidth and capacity on their networks. A small cell is generally considered any device that is not a "macro" site and acts 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 street lights and similar municipal vertical assets are ideal for cost effective installations. Wireless infrastructure companies build and maintain "neutral" wireless network infrastructure that they in turn can lease through partnership agreements to wireless service providers. . Additionally, some wireless service providers choose to build and maintain their own

infrastructure to providing mobile and cellular services.

City staff worked with two wireless infrastructure providers, Mobilitie LLC (“Mobilitie”) and ExteNet Systems (California) LLC (“ExteNet”), to draft MLAs that will govern and regulate the deployment of small cells throughout the City with these companies. AT&T, a wireless service provider, also approached the City, and discussions are currently ongoing.

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 safe use of the public right-of-way, the authority to regulate the aesthetic qualities of the facilities and the appropriateness of the size and location of equipment within each neighborhood. The authority also grants the City the right to charge fees associated with these installations.

However, small cell regulations have not been without tension. In 2017, Governor Brown vetoed legislation at the state level that would have preempted local authority. Earlier this year, similar legislation was introduced in the United States Senate, but has since been withdrawn. Currently, the Federal Communications Commission (FCC) is reviewing proposed regulations that could also preempt local authority.

In an alternative approach to state or national regulations, City Staff has negotiated directly with wireless providers. As these negotiations are highly customized and unique, Staff recommends adopting separate MLAs with each provider. Despite this fact, however, many aspects are consistent between each MLA. For example, the MLAs outline various requirements to protect community aesthetics, health, safety and welfare in the public right-of-way. The MLAs are consistent with the City’s goals, and will establish the legal relationship and framework under which a wireless telecommunications provider may apply to the City for permits to install small cells on City assets. In addition, each small cell installation will be governed by a site-specific Pole License.

The key terms and conditions of all MLAs include the following:

- The standard term of the MLA is ten years, but options for automatic and optional five (5) year renewal terms may be included;
- Pursuant to the MLA, 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, including a City-issued Encroachment Permit, 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 first;
- The annual License Fee per City-owned pole is \$2,000 in 2018. The License Fee will automatically escalate by 3 percent each year;
- If fiber-optics are installed to support small cell connectivity, each MLA requires the licensee to dedicate fiber optic strands exclusively for municipal use;
- Providers will work in good faith with City Staff to ensure coexistence with other City wireless facilities, such as public Wi-Fi and Climatec-installed lighting equipment; and
- The MLA imposes aesthetic requirements, design guidelines, and a public input process for

residential neighborhoods and sensitive populations.

Staff is working to support these wireless infrastructure providers to the fullest extent possible in order to deliver enhanced wireless services and benefits to the community. The benefits will include increased capacity and bandwidth, while minimizing aesthetic impacts and visual clutter.

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.

Committee Review and Actions

- Informational presentation 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.

Environmental Review

Pursuant to the California Environmental Quality Act of 1970, Public Resources Code §21000, et seq., as amended and implementing State CEQA Guidelines, Title 14, Chapter 3 of the California Code of Regulations (collectively, "CEQA"), the adoption of a MLA is not considered a "project" pursuant to CEQA Guidelines Section 15378 and Public Resources Code Section 21065. The adoption of this type of an agreement is not the activity that may cause a direct or reasonably foreseeable indirect physical change to the environment. In the alternative, the MLA is exempt pursuant to Section 15061(b)(3) "Review for Exemptions" of the CEQA Guidelines in that there is no potential that the agreement may have a significant effect on the environment. Moreover, any site-specific future projects subject to the MLA would necessitate further environmental review on a case by case basis. Accordingly, no further environmental review is required.

Legal Analysis

The City Attorney's Office worked with the Engineering & Transportation Department and the Information Technology Department to negotiate and draft the agreement. The City Attorney's office will review each Master License Agreement for Small Cell Pole Attachment Installation together with the Pole License form and associated permit application materials prior to the City Manager's approval.

Fiscal Impacts

Processing charges for staff will be assessed according to the City's adopted Fee Schedule. Schedule A-4 of each MLA prescribes an annual License Fee for Pole Licenses with an automatic yearly escalator. Schedule A-4 also prescribes a Default Fee Schedule for various violations of the MLA. The MLA requires the Licensee to post a Security Deposit to guarantee the Licensee's performance.

Budget Authority

No City funds will be expended to support this Program.

Attachment to Related Legislative Files

- Master License Agreement for Small Cell Pole Attachment Installation between the City of San Leandro and Mobilitie LLC.
- Master License Agreement for Small Cell Pole Attachment Installation between the City of San Leandro and ExteNet Systems (California) LLC.

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