



Legislation Text

File #: 18-667, **Version:** 1

Staff Report for City Council to Approve a Master License Agreement for Small Cell Wireless Facilities Installation and for Use of Associated Facilities; Authorize the City Manager to Execute the Agreement; Establish the Small Cell Administrative and License Fees; and to Discuss, Consider, and Take Possible Action on Introduction and Adoption of an Urgency Ordinance Amending Articles 1, 2, and 3 of Chapter 5-1, "Encroachments", of Title 5 of the San Leandro Municipal Code to include regulations for Small Cell Wireless Facilities and Related Infrastructure in the Public Right-of-Way and Finding this Action to be Exempt from Environmental Review Under CEQA Guidelines Sections 15061(B)(3), 15301, 15303, and 15305.

SUMMARY AND RECOMMENDATIONS

Staff recommends that the City Council adopt a resolution approving the Master License Agreement (MLA) for Small Cell Wireless Facilities and Associated Facilities, approving administrative and license fees proposed pursuant to the Agreement, and authorizing the City Manager to execute the Agreement.

Staff also recommends the City Council introduce and adopt an Urgency Ordinance of the City of San Leandro amending Articles 1, 2, and 3 of Chapter 5-1, "Encroachments", of Title 5 of the City of San Leandro Municipal Code to include regulations for Small Cell Wireless Facilities and Related Infrastructure in the Public Right-of-Way and finding this action to be exempt from environmental review under CEQA Guidelines Sections 15061(B)(3), 15301, 15303, and 15305.

BACKGROUND

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.

In response to increases in cellular data use, mobile service providers have begun to supplement their current 4G networks, and prepare for 5G, by deploying small cellular base stations ("small cells"). These deployments depend on closely spaced antennas for which street lights and other municipal vertical assets are ideal for installation sites.

On September 26, 2018, the Federal Communications Commission (FCC) issued a new Declaratory Ruling and Third Report and Order ("Order" or "FCC Order") which will significantly impact local regulation of small cell wireless telecommunications facilities. On October 15, 2018, the Order was incorporated into the Federal Register, establishing the new rules and thus preempting certain local regulations applicable to small cell facilities. On January 14, 2019, the Order is scheduled to take

effect.

The San Leandro Municipal Code currently does not focus specifically on wireless telecommunications facilities and related infrastructure within the public right-of-way, and standards have not been adopted to reflect the development of wireless telecommunications technologies such as small cell wireless facilities and DAS systems (Distributed Antenna Systems), which are now the preferred method of providing wireless telecommunications services.

Analysis

City staff has been negotiating with wireless companies to develop individual agreements by which providers could attach small cell equipment onto City-owned assets, such as street lights (“City Poles”). On December 3, 2018, following discussions with the City Council and the City Council Facilities and Transportation Committee, the Council approved a Master License Agreement with ExteNet Systems, a wireless infrastructure provider, to install small cells on City Poles.

However, the FCC Order adopted on September 26, 2018, was intended to preempt some local authority over small cell deployments. The Order is intended to facilitate the spread, growth, and accumulation of small cell facilities over a short period of time. To effectuate this policy, the Order establishes a “shot clock” period for cities to review, comment upon, consider, and make a final determination upon small cell applications at 90 days for new facilities and 30 days for co-located and modified facilities.

To create a single set of rules for all providers that reduces the administrative burden on the City and promotes a level playing field among competitor licensees, staff recommends the City Council adopt a framework in the form of a MLA that providers must execute in order to access City-owned infrastructure.

Staff also undertook a thorough analysis to ascertain costs relating to the procurement, construction, installation, and maintenance of City Poles and found that the City-owned infrastructure suitable for installing equipment associated with enhancing wireless telecommunications services contains not only the poles located within the public right-of-way, but also conduits, pull-boxes, power circuits, panels, electricity, and other related facilities, also located in the public right-of-way (“Associated Facilities”).

The key terms and conditions of the resultant framework, provided in the MLA, are:

- Master License Term - The term of the Master License is five (5) years. During this period, licensees can seek individual licenses under the terms offered in the MLA. After the initial five-year term, the Master License will automatically renew for subsequent 1-year terms, subject to each parties’ option not to renew for any reason, with prior written notice to the other party.
- Pole and Associated Facilities License Term - The term for each Pole License is coterminous with the initial term or subsequent renewal terms of the Master License. In other words, each Pole License and Associated Facilities License will remain effective as long as the Master License remains in effect. If the Master License is terminated or not renewed, all Pole and Associated Facilities Licenses granted pursuant to the Master License will terminate regardless of their effective dates.

- License Fee - Annual License Fee per City-owned pole and per City Associated Facility will be in accordance with the Pole License Fee and the Associated Facilities License Fee as set forth pursuant to the City's Master Fee Schedule currently in effect, as adopted by the City Council.

In addition:

- Providers must work in good faith with City staff to ensure coexistence with other City wireless facilities, such as Public Wi-Fi and Climatec equipment;
- Providers must agree to radiofrequency indemnification terms; and
- The MLA imposes aesthetic requirements, design guidelines, and a public input process for residential neighborhoods and sensitive communities.

The San Leandro Municipal Code currently does not specifically address the unique legal and practical issues that arise in connection with wireless telecommunications facilities deployed in the public right-of-way. The lack of regulations that are specific to the siting of wireless telecommunications facilities in the public right-of-way combined with the Order's regulations to hasten the spread and development of small cell facilities could potentially jeopardize the health and safety of the public by allowing applications for small cell facilities to be submitted, which are subject only to the regulations from the Order. There would not be sufficient time for the City to develop regulations specific to the siting of wireless telecommunications facilities in the public right-of-way before shot-clock timelines mandated the approval of applications.

Applications could be approved by law without local authority being properly, appropriately, and within the confines of federal and state laws exercised by the City. This would, in turn, result in wireless telecommunications facilities being constructed and operated without local controls for the life of the facility. This raises far-reaching local concerns in traffic and pedestrian safety, aesthetics, protection and preservation of public property, and the health, safety, and welfare of the general public.

As a result, staff further recommends that the City Council introduce and adopt an Urgency Ordinance of the City of San Leandro amending Articles 1, 2, and 3 of Chapter 5-1, "Encroachments", of Title 5 of the City of San Leandro Municipal Code to include regulations for Small Cell Wireless Facilities and Related Infrastructure in the Public Right-of-Way and finding this action to be exempt from environmental review under CEQA Guidelines Sections 15061(B)(3), 15301, 15303, and 15305.

The Ordinance would define what a "Small Cell Wireless Facility" is and characterize deploying, installing, or locating Small Cell Wireless Facilities in the public right-of-way as well as using, accessing, or connecting to conduits, circuits, panels, or related infrastructure in connection with the deployment, installation, or location of Small Cell Wireless Facilities to be an Encroachment, and thus subject to the City's Encroachment Permit requirements. In addition, installation of Small Cell Wireless Facilities would be subject to consent of property owners, and providers would be required to conform to general guidelines and design criteria established in order to maintain the quality of life, public safety, health, well-being, and aesthetic character of the City.

In order to develop this regulatory framework, Staff reviewed the City Council's recently approved MLA with ExteNet Systems, the FCC Order, Master License Agreements executed by other Bay Area cities, and the Model Code published by The National League of Cities (NLC) and National

Association of Telecommunications Officers and Advisors (NATOA), incorporating the best practices of each.

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 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 agreements and voted to send the items back to the City Council Facilities and Transportation Committee for further discussion.

Committee Review and Actions

- Informational presentation and discussion at the November 14, 2018 City Council Facilities and Transportation Committee meeting. The draft MLA with ExteNet was subsequently modified to incorporate changes designed to address questions and concerns raised by the Committee, including: a five-year term structure rather than ten year; Indemnification for the City against any damages relating to radiofrequency (RF) emissions; methods to prevent monopoly behavior among providers; and stronger protections for City wireless infrastructure. These changes have been included in the proposed Master License Agreement.
- Informational presentation at the March 1, 2017 City Council 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

- Establishment of a Program and execution of the MLA is not considered a "project" according to the California Environmental Quality Act, Public Resources Code §21065.

Legal Analysis

- The City Attorney's office reviewed and approved as to form the Master License Agreement for Small Cell Pole Attachment Installation together with the Pole License form and associated permit application materials. The City Attorney's Office prepared the Urgency Ordinance for staff review and City Council introduction and approval.

Fiscal Impacts

- Processing charges, Pole License Fees, Associated Facilities License Fees, and Administrative Fees will be assessed according to the City's adopted Fee Schedule. Schedule A-4 of the MLA 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.

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