



Legislation Text

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TO: Mayor and Town Council

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DATE: May 9, 2019

CONTACT:

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AGENDA TITLE:

Discussion and Direction regarding Master License Agreement for Small Wireless Facilities in the Public Right-of-Way (“MLA”)

BACKGROUND:

At its Executive Session on March 14, 2019 the Council received legal advice on issues relating to adoption of an MLA for Small Wireless Facilities (“SWF”) in the Public Right-of-Way. This Work Study Session is for Council to review the draft MLA and to provide direction on any suggested revisions.

Master License Agreement for Small Wireless Facilities in the Public Right-of-Way

A. STATUTORY REQUIREMENTS

In 2017, the state legislature enacted comprehensive legislation regarding use of public right-of-way (“ROW”) by a wireless provider (see A.R.S. § 9-591 et seq.; the “SWF Legislation”). In response, in August of 2017, the Town Council took the following actions to implement certain statutory requirements:

- Revised Town Code Section 2-5-2 by adding subsection I “Small Wireless Service Facilities Located in the Rights-of-Way;” and
- Amended the Special Use Permit section of the Zoning Ordinance, Section 1102.2(E), regarding Utility Poles
- Adopted fees consistent with the SWF Legislation

These revisions implemented the required non-zoning (administrative) approval process for applications for small wireless facilities located in the Town’s ROW, revised Town requirements for SWFs to replace utility poles, and implemented the statutorily-mandated fees for use of the ROW for SWFs).

A separate requirement of the 2017 SWF Legislation is to make available standard terms for use of the public ROW for SWFs. The Town intends to set forth its standard terms and conditions by adopting a “Master License Agreement for Small Wireless Facilities in the Public Right-of- Way.”

B. ADMINISTRATIVE APPROVAL PROCESS FOR SMALL WIRELESS FACILITIES To obtain administrative approval of a SWF in the Town's right of way, the wireless provider must: 1) have entered into a license agreement with the Town; and 2) have an approved Administrative Small Wireless Facility Permit for each SWF site.

Master License Agreement. The MLA is intended as the Town's standard terms and conditions. Once the Town Council approves the MLA form and authorizes execution by the Town Manager, wireless providers may execute the form MLA without further Council action. (Council approval would be required if a wireless provider seeks customized license terms.)

Administrative Small Wireless Facility Permit. Approval of an Administrative Small Wireless Facility Permit is required for each individual SWF site. Only SWFs that meet the Town's design and aesthetics criteria are eligible for administrative approval; i.e., sites that utilize a 24-foot Faux Cactus or comply with the alternative design standards for installations on utility poles (traffic signals, light poles, and electrical poles). The Town's administrative approval process is set forth in Town Code Section 2-5-2(l) and culminates in a meeting of the Planning Commission wherein the Commission may either approve or deny the application. If denied, an applicant may cure deficiencies and resubmit the application for a final determination by the Planning Commission.

C. KEY PROVISIONS OF THE MLA

The SWF Legislation requires municipalities to be "competitively neutral in regard to other users of the [Town's] right of way." Toward that end, the provisions of the draft MLA are largely drawn from the Town's 2010 Right-of-Way License Agreement with NewPath Networks, LLC (now Crown Castle) for installation of the 42-node DAS telecommunications system in the Town's right of way. The NewPath license allowed for installation of both nodes (antennas and communications equipment) and fiber segments in the right of way. The MLA for SWF provides only for installation of antennas and communications equipment in the right of way.

The key provisions of the MLA include:

- Length of Term - 10 years with one 10-year extension. Extension is required unless Licensee not in compliance with MLA and Administrative Small Wireless Facility Permit
- Annual license payments -
 - Per each SWF site in ROW - \$50 per year
- Application fee - \$750
- Construction of SWF site
 - no major road closings during rush hour; one lane closed at a time only
 - a 180-day construction period for each site - measured from date of issuance of the administrative permit for the particular site
 - a specified contract administrator available 27/7 will be designated by Licensee to interface with Town's contract administrator
- Letter of Credit - to be used to repair damage to ROW, lack of maintenance, unperformed relocations or removals
 - Amounts on sliding scale:
 - 1-10 SWF - \$30,000
 - 11-20 SWF - \$60,000
 - 21-35 SWF - \$105,000
 - 36-60 SWF - \$180,000

- 61-100 SWF - \$300,000
 - And so on for additional SWFs
 - No performance bond requirement
- Operation Requirements
 - Limited to permitted use to operate SWF in specific Use Area
 - Non-exclusive right to use
 - Reserved rights to Town to use and allow competing activities
 - Licensee must relocate at Town's request for competing activities/users
 - Keep in good repair
- Insurance in the amounts of a \$10,000,000 commercial general liability and \$2,000,000/4,000,000 auto to be maintained at all times
- Assignability - certain assignments pre-approved but requires notice to Town and execution of assumption of MLA by assignee
 - Complete assignment of MLA to Qualified Operator
 - Complete assignment to affiliated entity
 - Merger or consolidation with Qualified Operator
- Noise - comply with Town Code requirements during construction and operation; allows burglar alarms and safety devices
- Lighting - comply with Town Code requirements
- Other standard terms regarding condemnation, record-keeping, audits, indemnity, and compliance with laws are included

It is recommended that the Town Council review the terms of the MLA and provide direction on any suggested revisions.

NEXT STEPS

After receiving Council suggested revisions, staff will make the changes to the MLA requested by the Council and present a final copy to the Council for adoption and use in connection with an application for an Administrative Small Wireless Facility Permit.

ATTACHMENTS:

Draft of Master License Agreement for Small Wireless Facilities in the Right-of-Way