



Legislation Details (With Text)

File #: 61911 **Version:** 1 **Name:** Small Cell License
Type: Resolution **Status:** Passed
File created: 8/25/2020 **In control:** BOARD OF PUBLIC WORKS
On agenda: 10/6/2020 **Final action:** 10/6/2020
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Title: Authorizing the Mayor and City Clerk to enter into various master license agreements using the standard master license agreement (“Standard MLA”) with telecommunication providers (“Licensees”) allowing for the use of City-owned traffic signal poles and street light poles within the City’s right-of-way for the attachment of small cell infrastructure equipment providing small cell communications service.

Sponsors: Satya V. Rhodes-Conway

Indexes:

Code sections:

Attachments: 1. Exhibit A - Small Cell License.pdf

Date	Ver.	Action By	Action	Result
10/6/2020	1	COMMON COUNCIL	Adopt Unanimously	Pass
9/24/2020	1	DIGITAL TECHNOLOGY COMMITTEE	Return to Lead with the Recommendation for Approval	Pass
9/2/2020	1	BOARD OF PUBLIC WORKS	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
9/1/2020	1	BOARD OF PUBLIC WORKS	Referred	
9/1/2020	1	COMMON COUNCIL	Refer	Pass
8/25/2020	1	Economic Development Division	Referred for Introduction	

The proposed resolution authorizes execution of various master license agreements (MLA) with telecommunications providers. For each license supplement issued under a Standard MLA, the Licensee shall pay to the City an annual fee (“License Fee”) of Two Hundred Fifty and no/100 Dollars (\$250.00). The License Fee shall increase every five (5) years by ten percent (10%), effective as of each five (5)-year anniversary of the effective date of each master license agreement entered into using the Standard MLA. A \$500.00 fee is payable by the Licensee to the City at the time of submission of a pole attachment application to process the application, review the pole site, perform make-ready work and conduct post-installation inspections. Revenue from the license fee will be deposited into the General Fund.

Authorizing the Mayor and City Clerk to enter into various master license agreements using the standard master license agreement (“Standard MLA”) with telecommunication providers (“Licensees”) allowing for the use of City-owned traffic signal poles and street light poles within the City’s right-of-way for the attachment of small cell infrastructure equipment providing small cell communications service.

WHEREAS, telecommunication providers are in the process of building “5G” cellular networks nationwide and in the City, which technology, through the use of numerous “small cell” installations, will greatly increase bandwidth and the digital capabilities of network users; and

WHEREAS, small cell technology cannot cover large geographic areas as each installation has a range of 10 meters to a few kilometers, so hundreds of installations are likely required to meet the needs of each telecommunications provider’s network; and

WHEREAS, it is anticipated that in Madison alone, providers may need to install thousands of small cells in order to meet market demands; and

WHEREAS, through a series of orders and statutory amendments, the Federal Communications Commission (“FCC”) and the State of Wisconsin (“State”) have significantly scaled back the City’s ability to regulate its right-of-ways as it relates to small cell installations; and

WHEREAS, the City objected to any preemption of its authority to regulate its right-of-ways, but the FCC and State have given the City no alternative but to proceed under the current laws and regulatory framework; and

WHEREAS, small cell providers have the ability to install stand-alone poles within the City’s right-of-ways for their equipment which, given the numerous competing providers and limited space available, particularly in the central portion of the City, has the significant potential to clutter the right-of-ways with telecommunications equipment; and

WHEREAS, the City owns, operates and maintains traffic signal poles and street light poles (collectively, the “Poles”) within the public right-of-way in the City, which poles are largely in desirable locations and could be altered or replaced to support the installation of small cell equipment; and

WHEREAS, several telecommunications providers have expressed a desire to install, maintain and operate wireless communication facilities (including but not limited to antennas, remote radio units and associated cabling and wiring) (collectively, “Attachments”) in and/or upon certain Poles, which practice is common within the industry; and

WHEREAS, the City has enacted a small cell ordinance (MGO Sec. 10.053) and implemented Interim Small Cell Design Guidelines to regulate the placement of and to maintain the general aesthetics of small cell installations in the City’s right-of-way, however there are federal and state limits on the degree of regulation the City may exercise, particularly regarding location and concealment; and

WHEREAS, in order to limit right-of-way clutter and exercise some limited control over small cell installations in the right-of-way, including by requiring greater concealment of small cell installations than would otherwise be allowed, the City is willing to grant telecommunications providers (“Licensees”) non-exclusive, revocable licenses under which the City may authorize the placement or installation of the Licensees’ Attachments on specified Poles; and

WHEREAS, the City and Licensees desire to enter into agreements utilizing the Standard MLA, attached to this resolution as Exhibit A, to define the general terms and conditions which would govern their relationship with respect to Poles on which the City may wish to permit the Licensees to install, maintain and operate communications facilities as hereinafter set forth; and

WHEREAS, the City and Licensees will enter into a supplement to each agreement using the Standard MLA (“License Supplement”), the form of which is attached to the Standard MLA as Exhibit B, with respect to any particular Pole which the Parties agree to license; and

WHEREAS, the electricity required to power small cell installations will be metered separately from the power source for the City’s Poles and paid for directly by the telecommunications providers; and

WHEREAS, the terms of the Standard MLA have been negotiated between the Office of Real Estate Services, the City Attorney’s Office and the anticipated Licensees; and

WHEREAS, City Engineering staff and City Traffic Engineering staff have reviewed and approved the terms and conditions of the Standard MLA; and

WHEREAS, it is in the City's best interests to offer telecommunications providers access to the City's Poles as a way to reduce right-of-way clutter and to exercise some control over these small cells installations.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Clerk are authorized to execute various master license agreements with telecommunications providers, substantially on the terms and conditions detailed in the Standard MLA, attached to this resolution as Exhibit A.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are hereby authorized to execute, deliver and record such documents and to take such other actions as shall be necessary or desirable to accomplish the purposes of this Resolution.

BE IT FURTHER RESOLVED that the Risk Manager and the City Attorney are authorized to approve individual changes to the insurance related provisions of the master license agreements to address any individualized concerns of the telecommunications providers, provided that the City's risk is not increased and the City's protection is not decreased.