



## Legislation Text

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**File #:** 58252, **Version:** 1

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### **Fiscal Note**

The revenues from this license (starting at \$30,000 per year, subject to a 4% annual escalator) will be deposited to the General Fund.

### **Title**

Authorizing the grant of License to Cellco Partnership d/b/a Verizon Wireless for the installation of a telecommunications monopole tower and associated equipment at 15 Van Deusen Street, the site of a City Traffic Engineering warehouse and storage yard. (13th AD)

### **Body**

WHEREAS, Cellco Partnership d/b/a Verizon Wireless (“Verizon”) has requested that the City allow it to erect a telecommunications monopole tower, as well as to place ancillary ground equipment near the base of such tower, at 15 Van Deusen Street, the site of a Traffic Engineering warehouse and storage yard; and

WHEREAS, staff from the City’s Traffic Engineering Radio Shop have reviewed Verizon’s request and are able to accommodate the placement of the Tower and ground equipment at the site; and

WHEREAS, as 15 Van Deusen Street is a Traffic Engineering administrative parcel located within a larger parcel designated as “Goodman Park Ice Rink,” staff from the Parks Division have also reviewed and approve of the proposed license; and

WHEREAS, the terms of a license have been negotiated between Verizon and Real Estate and Traffic Engineering staff, which allows Verizon to erect, install, operate and maintain a monopole tower and associated telecommunications equipment at the site; and

WHEREAS, in addition to monetary consideration for granting the license to Verizon, the City shall have the future right to locate its own equipment on the Tower, subject to certain terms and conditions, with no fee payable to Verizon for such use; and

WHEREAS, the City Attorney’s office has reviewed and approved the license as to form.

NOW, THEREFORE, BE IT RESOLVED that the Common Council hereby authorizes the grant of a license (“License”) to Cellco Partnership d/b/a Verizon Wireless (“Licensee”) for the erection of a monopole tower and the installation, operation and maintenance of telecommunications facilities thereon and on the ground near the base of the proposed tower to be located at 15 Van Deusen Street (“Property”), as described in attached Exhibit A and generally shown on attached Exhibit B. The License shall be on the following general terms and conditions:

1. Term. The initial term of the License shall be fifteen (15) years. The Licensee shall have the right to renew the License for three (3) subsequent five (5) year terms, subject to the terms and conditions of the License.
2. Use.
  - a. The Licensee’s use of the Premises shall be limited to the construction of a tower (“Tower”) and the placement, construction, operation, maintenance, repair, replacement and removal of up to nine (9) telecommunications antennas (“Antenna” or “Antennas”) occupying no more than eighty

(80) cubic feet. The Licensee shall also be permitted to install additional antennas or ancillary equipment on the Tower (together referred to as "Ancillary Equipment"). The Antennas and Ancillary Equipment are hereinafter collectively referred to as the "Equipment."

- b. The Licensee shall also be permitted to place, construct, operate, maintain, repair, replace and remove communications cabinets and a generator (collectively, "Cabinets") on ground space near the base of the Tower ("Premises"), together with wiring and conduit necessary to connect the Equipment on the Tower and the Cabinets and to provide necessary utility service thereto. The Tower, Equipment and Cabinets are more fully depicted on attached Exhibit C.
3. Administrative Fees.
  - a. The Licensee shall pay to the City a one-time administrative fee of Two Thousand Five Hundred and no/100 Dollars (\$2,500.00), which shall be due and payable within sixty (60) days of the full execution of the License and which shall be non-refundable, as payment of the City's costs of negotiating and processing the License.
  - b. The Licensee shall pay to the City an administrative fee of Two Thousand and no/100 Dollars (\$2,000.00) for each subsequent amendment to the License, if any.
4. License Fee.
  - a. The Licensee shall pay to the City a base annual fee ("Base Antenna Fee") of Thirty Thousand and no/100 Dollars (\$30,000.00) for the right to install up to nine (9) Antennas occupying no more than eight (80) cubic feet of air space on the Tower and for the use of the ground space of the Premises. The Base Antenna Fee shall increase annually by four percent (4%) effective as of each anniversary of the Effective Date of the License. The fee adjustment described in this paragraph shall continue throughout any renewal period(s) following the initial fifteen (15) year term of the License.
  - b. The Licensee shall pay an annual "Additional Fee" of One Hundred and no/100 Dollars (\$100.00) per cubic foot of space on the Tower occupied by the Ancillary Equipment, which Additional Fee shall be indexed at a rate of four percent (4%) annually, calculated retroactively for each full year since the Effective Date. The fee adjustment described in this paragraph shall continue throughout any renewal period(s) following the initial fifteen (15) year term of the License.
5. Utilities. In addition to the installation of utility facilities within the Premises, the Licensee shall also have the right to install underground utility facilities within the 20' Wide Access and Utility Easement denoted in Exhibit B (page 2). No above-ground facilities, cabinets or pedestals shall be permitted within such Easement area. The Licensee shall be responsible for arranging for the installation of all utility services for the Licensee's use and shall be responsible for payment of such utility services.
6. City Equipment Permitted on Tower. The City shall have the right to locate its own equipment on the Tower, subject to the following terms and conditions:
  - a. No fee shall be charged by the Licensee for the City's use of the Tower.
  - b. The City shall first provide to the Licensee both a structural study and interference report demonstrating that the Tower can structurally support the City's equipment and that the City's equipment will not interfere with that of the Licensee's.
  - c. Plans and specifications for the City's equipment shall be subject to the prior review and approval

of the Licensee, which approval shall not be unreasonably withheld.

d. The City shall observe and promptly and effectively comply with all applicable statutes, rules, orders, ordinances, requirements and regulations of the City, the County of Dane, the State of Wisconsin, the federal government and any other governmental authority having jurisdiction over the Premises with regard to the installation of City equipment on the Tower.

7. Assignment and Sublicensing. The Licensee shall not assign, lease, sublease, or in any way transfer the License or sublicense the Premises, or any portion thereof, or otherwise allow a third party to use the Premises, without the prior written consent of the City. Said consent may be withheld at the sole discretion of the City. Notwithstanding the foregoing, the Licensee shall be permitted to assign the License without the City's consent to any entity which controls, is controlled by, or is under the common control of the Licensee, or to any entity resulting from any merger or consolidation with the Licensee, or to any partner of the Licensee, or to any partnership in which the Licensee is a general partner, or to any person or entity which acquires all of the assets of the Licensee as a going concern.

8. Termination

a. The City shall have the right to revoke the License as follows: (i) at any by giving the Licensee a minimum of thirty (30) days written notice specifying the nature of the default in the event the Licensee defaults in the performance of any term or condition of the License; and (ii) at any time following the expiration of the initial fifteen (15)-year term, by giving the Licensee a minimum of one (1) year's prior written notice of revocation in the event the Premises, in the sole discretion of the governing body of the City, are desired for any public purpose or use, which use shall exclude the Licensee's permitted use under the License and any similar private use by any additional telecommunications provider.

b. The Licensee shall have the right to terminate the License at any time by giving the City a minimum of one (1) year's written notice of termination.

9. Hazardous Substance Indemnification. The Licensee represents and warrants that its use of the Premises will not generate any hazardous substance, and it will not store or dispose on the Premises nor transport to or over the Premises any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. The Licensee further agrees to hold the City harmless from and indemnify the City against any release of such hazardous substance and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof, which was caused by the Licensee or any of its employees or agents. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease or damage to or loss of use of real or personal property. This paragraph shall survive termination and assignment or transfer of the License.

10. Indemnification. The Licensee shall be liable to and agrees to indemnify, defend and hold harmless the City, and its officers, officials, agents, and employees, against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the acts or omissions of

the Licensee and/or its officers, officials, agents, employees, assigns, guests, invitees, or subcontractors, in the performance of the License, whether caused by or contributed to by the negligent acts of the City, its officers, officials, agents, or employees. This paragraph shall survive termination and assignment or transfer of the License.

11. Insurance. The Licensee shall carry commercial general liability insurance covering as insured the Licensee and including the City, its officers, officials, agents and employees as additional insureds, with a minimum limit of \$1,000,000 per occurrence. This policy shall also be endorsed for contractual liability in the same amount, and shall apply on a primary and noncontributory basis. Upon receipt of notification from its insurer(s), the Licensee shall provide the City thirty (30) days advance written notice of cancellation of the policy during the term of the License. As evidence of this coverage, the Licensee shall furnish the City with a certificate of insurance on a form approved by the City, and if requested by the City Risk Manager, the Licensee shall also provide copies of additional insured endorsements or policy. If the coverage required above expires while the License is in effect, the Licensee shall provide a renewal certificate to the City for approval.
12. Special Conditions.
  - a. No exterior storage of materials or equipment is permitted on the Property beyond the limits of the Premises. Notwithstanding the foregoing, the Licensee shall be allowed to utilize the "Construction Staging Area" denoted on Exhibit B (page 2) for exterior storage of materials, equipment and vehicles during periods of initial construction, removal, or significant alteration of the Tower, Equipment or Cabinets.
  - b. Parking shall be permitted within the "Licensee Parking Area" denoted on Exhibit B (page 2). No overnight parking or storage of vehicles shall be permitted.
  - c. No storage of material, equipment or vehicles is permitted within the Premises, except the temporary and orderly placement of items in conjunction with maintenance, repair, replacement or removal activities.
  - d. The Tower, Equipment, Cabinets and all other site improvements shall be constructed and located on the Premises in accordance with plans and specifications approved by the City. Any modifications to the Tower shall be subject to the written approval of the City, as owner of the Property, and any other required governmental approvals before the Licensee may begin the modification of the Tower.
  - e. In the event of any modifications to the Equipment, the Licensee shall complete and submit to the City an Equipment Modification Form, together with all requisite studies and reports. In the event a modification should result in a change to the License Fee calculation, the parties agree to enter into an amendment to the License for the purpose of updating the fee schedule. Notwithstanding any provision of this paragraph to the contrary, the Licensee shall have the right to make additions, alterations or improvements to the Licensee's equipment housed within any Cabinets on the Premises.
  - f. The Licensee shall be responsible for and pay all costs associated with the construction, maintenance, repair, and replacement of the Tower, Equipment, Cabinets and all other site improvements located upon the Premises.
  - g. In the event the City requires the expertise of a third party engineer/consultant to review the construction of the Tower and/or installation of the Licensee's Equipment and/or Cabinets, or any future modifications to the Licensee's Tower, Equipment and/or Cabinets, the Licensee shall be

required to reimburse the City for costs incurred by the City as a result of hiring said engineer/consultant.

- h. Within thirty (30) days following the installation of the Tower, Equipment and Cabinets, the Licensee shall provide the City with an as-built construction drawings showing the actual location of the Tower, Equipment and Cabinets installed on the Premises. Said drawings shall be accompanied by a complete and detailed inventory of all Equipment installed on the Tower and ground area of the Premises.
- i. The Licensee shall, at its own expense, keep and maintain the Premises in a presentable condition consistent with good business practice and in a manner consistent with the preservation and protection of the general appearance and value of other premises in the immediate vicinity. Maintenance responsibilities include, but shall not be limited to, any required paving, general repairs, removal of garbage and debris, snow removal, landscape and upkeep. No exterior storage of materials, equipment or vehicles is permitted on the Premises, except the temporary and orderly placement of items in conjunction with maintenance, repair or construction activities.
- j. The Licensee agrees to join and maintain membership in Diggers Hotline and secure and maintain the services of a competent locating service. That membership in Diggers Hotline and contracting of a locating service shall be continuous and uninterrupted throughout the term of the License.
- k. The Licensee shall have non-exclusive, unlimited access, 24 hours a day, 7 days a week, 365 days a year, to the Premises. Vehicular and pedestrian access to the Premises shall be restricted to the 20' Wide Access and Utility Easement denoted on Exhibit B (page 2). Vehicular parking shall be restricted to the Licensee Parking Area denoted on Exhibit B (page 2). The City shall be responsible for maintenance and plowing of said areas, but makes no warranty or guaranty with regard to the timeliness of such work being performed.
- l. At all times during which the Licensee has access to the Premises, the Licensee will take all reasonable steps to ensure that all enclosures, gates, ladders and any other access ways to the Premises are properly secured when not in use in order to prevent unauthorized access to the Premises. The Licensee shall be assessed a penalty of Two Thousand and no/100 Dollars (\$2,000.00) for each instance of non-compliance with the requirements of this paragraph.

BE IT FURTHER RESOLVED that the Mayor and City Clerk be authorized to execute the License and any and all other documents necessary to complete this transaction.