



Staff Report

File #: 18-215

Version: 1

Date: 5/14/2018

Item #: 7.1c.

TO: Mayor and City Council

THROUGH: Steve Powers, City Manager

FROM: Ryan Zink, Franchise Administrator

SUBJECT:

Right-of-Way Use Agreement with New Cingular Wireless, PCS, LLC.

Ward(s): All Wards

Councilor(s): All Councilors

Neighborhood(s): All Neighborhoods

ISSUE:

Shall the City Council authorize the City Manager to execute the Right-of-Way Use Agreement between the City of Salem and New Cingular Wireless, PCS, LLC; and advance Ordinance Bill No. 7-18, granting a Right-of-Way Use Agreement to New Cingular Wireless, PCS, LLC for placement of wireless facilities in the City rights-of-way, to second reading?

RECOMMENDATION:

Authorize the City Manager to execute the Right-of-Way Use Agreement between the City of Salem and New Cingular Wireless, PCS, LLC; and advance Ordinance Bill No. 7-18, granting a Right-of-Way Use Agreement to New Cingular Wireless, PCS, LLC for placement of wireless facilities in the City rights-of-way (ROW), to second reading.

SUMMARY AND BACKGROUND:

The City has been approached by four companies, including New Cingular Wireless, regarding the deployment of small cell equipment in the City's ROW. Small cell wireless antennas cover small service areas and provide additional capacity and coverage to existing networks in high traffic or densely populated areas.

The terms for Cingular's (more commonly known as AT&T) use of the ROW in Ordinance No. 7-18 (Attachment 1) are contained in the Right-of-Way Use Agreement with Cingular (Attachment 2). Research and consultation with other governmental agencies and wireless providers resulted in the

recommended agreement. The Agreement will be used for wireless providers to be granted access to the City's ROW for the deployment of small cell wireless technology. The small cell model also integrates with the existing traditional wireless cell network ROW use model.

FACTS AND FINDINGS:

Small cell is an umbrella term for low-powered radio access nodes designed to complement the larger, traditional wireless cell networks. Small cells have shorter range antennas and generally use smaller equipment than traditional macro cell sites. Small cells are deployed by wireless companies where there is a specifically identified need based on monitored subscriber usage (e.g., dropped calls and data failures).

All wireless equipment, including small cells, when installed in the ROW are to be placed on existing or replacement poles, as regulated by the design and construction standards provided for in Salem Revised Code (SRC) Chapter 703 of the Unified Development Code (Wireless Communications Facilities). Unless installed for use as a streetlight, no new poles are allowed in Salem's ROW. In addition to the Right-of-Way Use Agreement (Agreement), wireless providers must gain permission from the pole owner(s) prior to attaching equipment to the pole. Applicants wishing to place small cells on City-owned poles will be required to obtain an encroachment license and pay fees for the use of City infrastructure.

The initial duration of the newly developed Agreement is five years, with the option of two five-year renewals (total of 15 years). As consideration for the use of the ROW, the City will receive a one-time installation and application fee of \$2,000 per structure. For each structure on a local or collector street, an additional one-time installation and application fee of \$2,000, and a \$2,000 fee for tree planting will apply. The annual ROW use fee for attached facilities to each structure in the ROW is: 1) \$6,580 for macro wireless facilities; 2) \$1,250 for small cell facilities; and 3) \$1,579 for each ground facility. The minimum annual ROW use fee is \$10,000. The right-of-way use fees will adjust annually by 4 percent. There is a \$5,000 charge for the cost of pre-agreement negotiation and administration. With the exception of the fee for small cell facilities, the fees are within the original regulatory model used for traditional wireless deployment.

The Agreement with Cingular follows the new small cell agreement, with the exception of one minor difference caused by Cingular's self-insured status. The language in Cingular's Agreement limits exposure to its self-insured policy to the amounts required in the Agreement.

Section 332(c)(7) of the Federal Communications Act preempts local decisions based directly or indirectly on the environmental effects of radio frequency (RF) emissions, to the extent that the provider is in compliance with the FCC's RF rules.

RYAN ZINK
FRANCHISE ADMINISTRATOR

Attachments:

1. Ordinance Bill No. 7-18
2. Ord. No. 7-18 Exhibit (ROW Use Agreement)