

CITY COUNCIL OF THE CITY OF OXNARD

RESOLUTION NO. 15,477

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OXNARD TO ADOPT A STANDARD MASTER LICENSE AGREEMENT FOR WIRELESS INSTALLATION ON MUNICIPAL FACILITIES AND SITE PERMIT PROCESS AND DESIGN STANDARDS FOR SMALL CELL FACILITIES ON MUNICIPAL FACILITIES IN THE PUBLIC RIGHT-OF-WAY.

WHEREAS, the City of Oxnard desires to comply with all mandates regarding public utilities as imposed upon it by state and federal law; and

WHEREAS, on October 15, 2018, the Federal Communications Commission (FCC) published an Administrative Order in the Federal Register, declaring that small cell wireless facilities (SWFs) are permitted by right on City-owned property in the public right-of-way (ROW), subject to the requirements of the FCC's Administrative Order and "reasonable" City regulations and fees; and

WHEREAS, the FCC's Administrative Order: 1) reiterates existing law which states that Cities may not take any action which would "prohibit or have the effect of prohibiting" the development of wireless networks; 2) finds that allowing attachment of SWFs to publicly owned assets in the ROW with a Master Lease Agreement (MLA) avoids an effective prohibition of broadband deployment; and 3) specifies that any regulations be made publicly available prior to any applications for permits; and

WHEREAS, in order to maintain an aesthetically pleasing community environment, protect the safety and welfare of Oxnard residents, minimize degradation of the residential character of neighborhoods, and require the best available design to eliminate visual impacts while ensuring that adequate public services and facilities are constructed to accommodate the needs of Oxnard residents, the city of Oxnard chooses to use its police power and land use planning authority to regulate SWFs, and establishes a standard MLA and Site Permit Process and Design Standards for Small Cell Facilities on Municipal Facilities (Design Standards) to enter with a telecommunications equipment installer; and

WHEREAS, the City's public ROW are a uniquely valuable public resource, closely linked with the City's character, making the MLA and Design Standards of wireless installations in the public ROW necessary to protect and preserve the aesthetics in the community; and

WHEREAS, being authorized to do so, the City wishes to establish design and development standards applicable to wireless installations in the public ROW; and

WHEREAS, it is in the public interest for the City to establish reasonable, uniform, and comprehensive design and development standards for the installation of wireless facilities; and

WHEREAS, the City of Oxnard wishes to protect and preserve the quality of the life throughout the City, through effective land use and planning; and

WHEREAS, the design and requirements would provide greater direction and assure a degree of consistency in wireless facility design and configuration; and

WHEREAS, on March 23, 2021, the Public Works and Transportation Committee of the City of Oxnard (“Committee”) reviewed the standard MLA and to regulate SWF (the “Project”); and

WHEREAS, the Committee voted 3-0 to recommend to the City Council adoption of the MLA and accompanying documents, inclusive of the Design Standards; and

WHEREAS, in accordance with the California Environmental Quality Act (CEQA) the MLA, inclusive of the Design Standards, are exempt from CEQA pursuant to Section 15303 (New Construction or Conversion of Small Structures) as the MLA would facilitate installation of small new equipment and facilities to City owned municipal facilities such as street lights and traffic signals. Additionally, the Telecommunications Act of 1996 establishes specific thresholds and guidelines for wireless radio frequency emission levels that are acceptable by the FCC. The Act expressly prohibits local governments from regulating personal wireless service facilities on the basis of the environmental effects of radio frequency emissions. The Federal government has assumed jurisdiction in this area and MLA participants will have licenses with the Wireless Telecommunications Bureau. The MLA, inclusive of the Design Standards have no potential to cause any effect on the environment; therefore, CEQA does not apply to this project pursuant to CEQA Guidelines Section 15061; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF OXNARD:

SECTION 1. The recitals above are each incorporated by reference and adopted as findings of the City Council.

SECTION 2. The City Council, in accordance with CEQA, determines that the MLA, inclusive of the Design Standards, are exempt from CEQA pursuant to Section 15303 (New Construction or Conversion of Small Structures).

SECTION 3. Based on the findings set forth herein, the City Council of the City of Oxnard adopts the standard Master License Agreement, inclusive of the Site Permit Process and Design Standards for Small Cell Facilities on Municipal Facilities attached to this Resolution as follows:

- Attachment A: Master License Agreement
 - Exhibit 1: Defined Terms
 - Exhibit 2: Form of Site Permit
 - Exhibit 3: Pole Locations/ License Area
 - Exhibit 4: Form of Acknowledgment Letter

Attachment B: Site Permit Process and Design Standards for Small Cell Facilities
on Municipal Facilities

SECTION 4. The City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Oxnard on this
20th day of July, 2021, by the following vote:

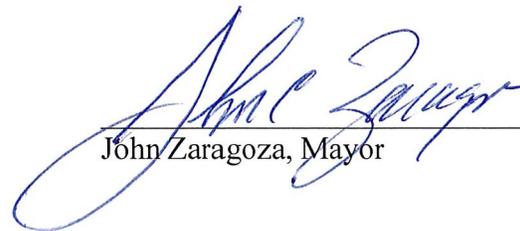
AYES: Councilmembers Basua, Lopez, MacDonald, Madrigal, Perello, Teran and
Zaragoza.

NOES: None.

ABSENT: None.

ABSTAIN: None.

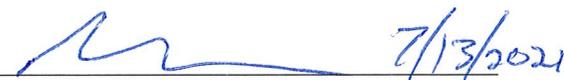
RECUSE: None.


John Zaragoza, Mayor

ATTEST:


Rose Chaparro, City Clerk

APPROVED AS TO FORM:


Stephen M. Fischer, City Attorney

Site Permit Process and Design Standards for Small Cell Facilities on Municipal Facilities

1. An application for a Site Permit for small cell facilities shall be deemed incomplete unless it includes all information deemed required by the Community Development Department to review the application. The Community Development Department shall prepare or cause to be prepared a detailed list of required information and shall make such list publicly available to facilitate the timely processing of applications.

This material shall include, but is not necessarily limited to, the following:

- a. An application, in a form to be provided by the Community Development Department, that includes all requested information; and
 - b. A map showing the location of the proposed small cell facility; and
 - c. A photo showing the proposed location of the small cell facilities; and
 - d. A photo simulation demonstrating that the small cell facilities will comply with the design standards described herein; and
 - e. Documentation identifying the owner of the Structure and demonstrating that the small cell facilities conform to the design and co-location restrictions of the Structure owner(s).
 - f. Construction details, including a structural analysis signed by qualified Professional Engineer(s), demonstrating that the Structure will be structurally sound, as defined in these regulations, and will not have a significant risk of structural failure after installation of the small cell facilities; and
 - g. Details regarding the connection of electrical and communications transmission lines to the site; and
 - h. Details relating to any closures of roads or sidewalks that will be necessary due to the proposed construction; and
 - i. A study demonstrating that the small cell facility's radiofrequency emissions will be in compliance with FCC regulations; and
 - j. Proof of insurance pursuant to City specifications as may be amended from time-to-time to defend, indemnify, and hold harmless the City for its facility, and name the City and its officers and employees as additional insured by endorsement and consistent with the adopted Master License Agreement; and
 - k. Any applicable permit review fees as adopted by City Council.
2. The Community Development Department shall review the application to confirm compliance with City Ordinances and regulations. Small cell facilities (facility) shall be designed, installed and located so as to minimize adverse visual impacts

and shall not contain advertising material of any kind. The facility must not cause severe negative visual impact as determined by the City. Installation of small cell facilities shall conform to the following minimum design standards:

- a. All wireless communication facilities shall not contain advertising material of any kind.
- b. All wireless communication facilities shall be located entirely on the pole, unless technically infeasible.
- c. An antennae(s) shall be mounted on top of the pole with an antenna shroud.
- d. The antennae shroud shall not impinge the removal of the mast arm.
- e. If permitted by Southern California Edison (SCE) or the applicable utility provider and to the extent technically feasible, the facility power must be connected to a SCE or such utility provider smart meter.
- f. The SCE disconnect switch shall be attached to the pole at a minimum and a maximum height of 8 to 10 feet, respectively, above grade.
- g. The facility, including the antennae shroud and brackets, must match the color of the pole and the material must be constructed out of non-reflective materials.
- h. The facility must be high quality, safe, and fire resistant.
- i. The facility must not interfere with City operations, i.e. sign and signal visibility, traffic signals and surveillance camera operations or systems communications.
- j. The facility must be designed in accordance with the requirements for streetlight facilities and appurtenances including hardware, corrosion protection, signs, and labels and matching finish.
- k. Small cell facilities shall be constructed of, painted, or otherwise treated with anti-graffiti materials, including, but not limited to, graffiti resistant paints or finishes. Graffiti on small cell facilities, including Structures and Equipment, shall be removed within forty-eight hours of being reported. All Structures shall have a decal or permanent sticker (maximum 6 square inches) with the small cell facilities operator's graffiti abatement contact information affixed. A pole identification number shall be installed where it can be easily visible.
- l. Small cell facilities may not include any type of lighted signal, lights, or other illumination, except as required by federal or state law.
- m. Structural analysis shall be prepared and stamped by a qualified Professional Engineer. The analysis shall include plans and specifications that shall include, at a minimum, the size, weight, mounting method, method of providing electrical power (including placement of any cables), , method of attaching to the Structure if required for electrical power, and

compliance with manufacturer's specification for such Structure. Licensee shall not overload the structural member of any Structure so as to cause any undue or serious stress or strain to the Structure, or any part thereof, and shall demonstrate compliance with specifications issued by the manufacturer of such Structure, if applicable. The City shall have the right to make a determination whether the Structure, or any part thereof, is being overloaded so as to cause undue or serious stress or strain on the Structure or any part thereof. The decision of the City shall be final and binding on the Licensee. If in the opinion of the City the stress or strain may endanger or injure the Structure, or any part thereof, Licensee agrees, at its sole cost, to immediately relieve the stress or strain by lightening the load, provide structural reinforcement in a manner satisfactory to City or install a replacement Structure. If any of Licensee's Network Equipment and facilities fails to meet applicable requirements, Licensee shall promptly, at its own cost, replace such equipment and facilities with compliant equipment and facilities.

- n. Before issuance of a permit, proposals for small cell facilities attached to a structure in the right-of-way must demonstrate that the proposed small cell facilities will comply with all of the following:
 - i. All work shall be done in a manner consistent with the City's Fiber Master Plan as adopted by the City Council on May 5, 2020, and as may be amended subsequently.
 - ii. All fiber and electrical infrastructure shall be installed underground, except where connection may be made to preexisting, immediately adjacent overhead electrical, telephone, or other wire/fiber service via a service drop, unless technically infeasible. Applicants may not add new overhead electrical or fiber lines except when immediately adjacent to existing lines.
 - iii. Except for Antennas and any Equipment necessary to screen said Antennas, all Equipment must be screened, unless technically infeasible. Whenever feasible, as determined by the Community Development Director, Equipment shall be installed in an underground vault. Underground vault vents must be flush to the ground. If an underground installation is infeasible, as determined by the Community Development Director, Equipment shall be attached to the Structure and screened from view, unless technically infeasible. Screening shall be accomplished in a manner consistent with the design of the Structure – in the case of decorative or architecturally enhanced street lights or other Structures, the screening shall incorporate design elements of the

existing Structure. Above-ground cabinets not mounted on a Structure are prohibited, unless approved by the Community Development Director.

- iv. The small cell facilities Antenna(s) shall be screened with a solid, opaque covering that has been colored to blend with the structure upon which the facility is mounted and other streetscape or surrounding features. The covering shall be no larger than is reasonably necessary to fully enclose the antennas and shall not exceed twice the width of the existing structure immediately abutting the location where the small cell facility would be attached or increase the height of the Structure by more than 20%. When mounted on architecturally enhanced Structures (such as decorative street lights), the small cell facilities and its coverings shall be designed so that the aesthetic quality of the Structure has been preserved. For reasons of public safety, including routine and emergency maintenance, installation on any part of a Structure supporting signs or devices used to control or direct vehicle, pedestrian, or other traffic is prohibited.
- v. If an applicant proposes to replace an existing Structure in order to accommodate a small cell facility, the new Structure shall match the height, width, appearance, and neighborhood characteristics of the original Structure. Any previous function of the previous structure (such as a street light) shall be incorporated into the replacement structure in accordance with current City standards.
- vi. New Structures may not be constructed or utilized unless it is demonstrated conclusively by the Applicant that no existing structure can accommodate the small cell facilities, that replacement of the existing structure is infeasible, and that these regulations would otherwise “effectively prohibit” the provision of wireless service if the new Structure is not permitted. The height and width of the structure without the Antenna or covering shall be equal to the height and width of the nearest City street light mounted on a City-owned Structure. The new Structure shall also incorporate design elements of the existing nearby Structure in the design of the new Structure. Small cell facilities on new Structures shall meet the same design guidelines as those installed on existing structures.
- vii. Wires and cables must enter Structures from below ground and must run inside the Structure. All electrical connections to the facilities shall be metered separately from City’s electrical service

and shall have a separate shut-off device located at the Structure which allows for power to be shut off to the small cell facilities without impacting any other operations of the Structure upon which the small cell facilities are mounted. City staff shall be provided access to this shut-off device so that power may be quickly shut off in an emergency situation.

- viii. The installation shall not interfere with the public's use and enjoyment of the public right-of-way or the continued good functioning of existing subterranean infrastructure. Applications shall demonstrate that, at a minimum:
 1. Applicant's proposal will allow parking and appurtenant door opening adjacent to the Structure.
 2. Applicant's proposal will comply with all American Association of State Highway and Transportation Officials (AASHTO) sight distance requirements for the health, safety, and welfare of pedestrians and drivers.
 3. Applicant's proposal will not block or interfere with the use, maintenance and/or repair of fire hydrants, street lights and other existing facilities.
 4. Applicant's proposal will not restrict sidewalk access or parking when access panels and doors are open.
 5. Applicant's proposal will comply with all state, federal and local regulations regarding Americans with Disability Act (ADA) accessibility, providing a minimum of four feet width for sidewalk pedestrians with a cross slope not to exceed 2%.
3. If an application is found to be incomplete or not in compliance with these regulations, City shall notify the applicant and provide a written list of the reasons for the finding(s) of incompleteness and/or noncompliance. The applicant may correct any identified deficiencies and resubmit the application for further review, upon which the City will again review the materials and either approve the application or provide notice as described above.
4. The City may issue to an Applicant a Site Permit for a small cell facility once it has been demonstrated to the satisfaction of the Community Development Department that the requirements specified herein have been met. Following this approval, the Applicant shall do the following:
 - a. The Applicant shall provide contact information to the City for the construction and the ongoing operation of the site.

- b. The Applicant shall pay to the City of Oxnard all required fees.
 - c. The Applicant shall perform the work at the site in a manner that enables City staff to inspect the work being performed. The Community Development Department shall specify in writing the inspections that need to be performed and shall cause these inspections to be performed. The Applicant or their representative shall notify the City when their work is ready for inspection. The Community Development Department may require additional funds to be paid if the work is of such quality as to necessitate a number of inspections that the Community Development Department deems to be excessive.
 - d. Upon completion of the small cell facilities, the Applicant shall provide to the City a radiofrequency study to verify that the proposed facility is operating in accordance with the standards set by federal law at the time of the study. If the study concludes that the radiofrequency emissions exceed federal standards for such emissions, the facility shall be shut down immediately and shall not resume operation until it is demonstrated to the satisfaction of the Community Development Department that the facility will operate in accordance with federal law.
 - e. In the event that these steps are not completed within six months of the issuance of the Site Permit, the Community Development Department may revoke the small cell facilities Site Permit.
5. The City may include in a small cell facilities Site Permit such conditions, in addition to those already set forth in state and federal law, as may be required to govern the construction, installation, or maintenance of small cell facilities in the Public Rights-of-Way, and to protect and benefit the public health, safety, and welfare. Such conditions may also govern the installation and use of equipment that is not located on a Structure, but that is deemed necessary for the use and maintenance of a permitted small cell facility.
6. If the Applicant believes that the application of any particular provision of these regulations to a particular application would have the impact of “effectively prohibiting” the provision of wireless service, the Applicant may appeal the denial of any application to the Director of the Community Development Department within ten days of such denial. This appeal shall include, in addition to the information included in the application, a narrative identifying the provision which allegedly has this impact, provides an analysis demonstrating why application of the provision would “effectively prohibit” the installation, and provides an analysis demonstrating that no reasonable alternative exists for the provision of wireless telecommunications service. The Community Development Department may

approve the application if it finds that the application of the provision to this particular location would “effectively prohibit” the provision of wireless services. The Community Development Department may request, and Applicant shall provide, any information deemed reasonably necessary by the Community Development Department to make an informed decision. Appeals shall be limited to determining whether the application of a particular provision of these regulations would “effectively prohibit” the provision of wireless service if enforced, and for no other claim or reason. The Community Development Director may deny the application if he/she finds that the Applicant has not successfully proven that the application of these regulations would “effectively prohibit” the provision of wireless services. The City may charge a fee to cover its actual costs in administering an appeal under this Section.

7. Applicant shall ensure the installation of small cell facilities meet conditions as may be required to control the construction, installation, maintenance, repair and removal of such facilities in a public right-of-way so as to protect and benefit the public health, safety, and welfare. The terms and conditions of any such permit issued shall be subject to these requirements and limited to those areas consistent with the City’s authority under applicable law. These conditions shall include, but not be limited to, the following:
 - a. Normal and routine access to, and use, operation, maintenance and repair of small cell facilities that does not impact vehicle or pedestrian traffic patterns shall be considered as part of the permitted installation, and no new permit shall be required for any such access, use, operation, maintenance or repair.
 - b. A new permit shall be required for upgrades, relocations, and/or modifications of the installed facilities, unless the City Engineer or his/her designee determines that such upgrade, relocation, and/or modification is minor, insignificant, and insubstantial. Permittee may replace approved Equipment with like-kind, similar Equipment, without obtaining a new permit if such like-kind, similar Equipment serves a substantially equivalent function, is the same or smaller in size, has the same or fewer number of antennas than approved by the City, and presents a substantially similar appearance to the Equipment it replaces. All modifications and replacements remain subject to these requirements and non-discretionary structural and safety codes.
 - c. On an annual basis, the Applicant or their successor shall provide documentation demonstrating that insurance has been maintained on all small cell facilities (including Structures) in accordance with City specifications, as may be amended from time-to-time.

8. A permit for the installation of a small cell facilities may be transferred to a successor, assign, or affiliate of the permittee, provided that any transferee holds and provides evidence of all required FCC and any other required governmental approvals or licenses necessary to provide telecommunication services.