



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 10/04/2022

ITEM NO: 1

DATE: September 29, 2022
TO: Mayor and Town Council
FROM: Gabrielle Whelan, Town Attorney
SUBJECT: Study Session to Discuss Potential Master License Agreement for
Telecommunications Facilities in the Public Right-of-Way.

RECOMMENDATION:

Consider Request for Master License Agreement for Telecommunications Facilities in Public Right-of-Way and Provide Direction to Town Staff.

BACKGROUND:

The Town has received a request from a telecommunications provider for a Master License Agreement. A Master License Agreement would authorize the installation of "small cell" infrastructure on Town streetlights on designated Town streets. The reason for the request is that 5G service requires the installation of "small cells" within close proximity to one another. The "small cell" infrastructure consists of an antenna and battery box affixed to a Town streetlight pole.

Currently, state law authorizes telecommunications providers to use public right-of-way for infrastructure, including "small cell" facilities (Public Utilities Code Section 7901.). As a general rule, public right-of-way extends twenty feet from the center of the street in each direction. As a result, cities and towns will occasionally receive applications for installations in what can be perceived as a property owner's front yard if there is a right-of-way easement that extends into the front yard.

While state law authorizes the use of public right-of-way, cities and towns retain the right to regulate the "time, place, and manner" of telecommunications facilities in the public right-of-

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Reviewed by: Assistant Town Manager, Town Attorney, and Interim Finance Director

BACKGROUND (continued):

way (Public Utilities Code Section 7901.1; 47 U.S.C. Section 332(c)(7)). Permissible “time, place, and manner” regulations include aesthetic considerations.

The Town currently processes applications for telecommunications installations on a case-by-case basis in accordance with Town Code Sections 29.20.205 and following. “Small cell” installations on private property are subject to the permitting requirements for an administrative land use permit approved by the Community Development Director. Factors that are taken into consideration include conformance with General Plan, Zoning Code, and any applicable guidelines. Decisions are appealable to the Planning Commission.

DISCUSSION:

The benefits of a Master License Agreement are that it would allow the Town to pre-approve specified locations and the appearance of these “small cell” installations. Telecommunications providers have expressed that, if they are able to utilize streetlight poles, they are less likely to seek approval for independent installations in portions of the public right-of-way that may front residential properties.

One question that often comes up is whether a city or town can charge for the use of its streetlight poles. The Federal Communications Commission (FCC) currently authorizes a charge of \$270 per pole. The Town can charge a higher amount if the Town can demonstrate that its costs to allow the installations exceed that amount.

Another question that frequently arises on this topic is the Town’s ability to regulate radio frequency (RF) emissions. Currently, federal law allows cities and towns to require confirmation that the RF emissions meet standards established by the FCC. However, cities and towns do not have the ability to adopt standards for RF emissions that differ from those established by the FCC.

If the Town were to pursue a Master License Agreement, the Town would also need to amend its telecommunications ordinance and develop a new permitting program.

CONCLUSION:

Staff is seeking input from the Town Council regarding its interest in pursuing a Master License Agreement for telecommunications providers that would authorize the use of designated streetlight poles within the public right-of-way. If the Town Council would like to pursue this project, Town staff will prepare an amendment to the Town’s telecommunications ordinance, develop a new telecommunication permitting program, develop aesthetic standards, and

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CONCLUSION (continued):

negotiate a master license agreement. Each of these items will return to the Town Council for future consideration.

COORDINATION:

The Town Attorney's Office, Town Manager's Office, Community Development Department, and Parks and Public Works Department coordinated this report.

FISCAL IMPACT:

FCC rules authorize the Town to charge \$270 per streetlight pole annually, but this charge is to cover necessary staff time to oversee and monitor the installations so no fiscal impact to the Town is expected.

ENVIRONMENTAL ASSESSMENT:

Because the Town Council is providing preliminary direction to staff at this point, this study session is not a project defined under CEQA.