



# MEDINA, WASHINGTON

## AGENDA BILL

Monday, July 11, 2022

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**Subject:** Ordinance Approving 5-year Telecommunications Franchise with T-Mobile

**Category:** Public Hearing

**Staff Contacts:** Emily Miner, Assistant City Attorney, Ryan Osada, Public Works Director, Steve Wilcox, Development Services Director

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### **Background:**

Wireless providers are continually expanding their networks and utilizing new technologies to meet increased demand. To do this, providers are now deploying new small cell 4G and 5G wireless communication facilities to boost capacity and improve data speeds. In September 2018, the Federal Communications Commission (FCC) adopted an Order and passed regulations intended to expedite deployment of these small wireless networks nationwide.

In response, the City adopted a new code chapter (MMC 16.38) that regulates small wireless facilities (SWF). This included updates for the permitting, location, and design/aesthetics of SWF within the parameters of federal law. The new regulations provide the City with the initial tools to effectively respond to the changes in the wireless industry and meet federal requirements in preparation for the coming deployment of the 5G networks.

To deploy SWF in the City's right-of-way, an applicant must first obtain a franchise. The City is authorized through local, state and federal statutes to grant and renew franchises (see Chapter 15.06 MMC, and RCW 35A.47.040).

Franchises are a contract between the City and an entity seeking access to the right-of-way, and must be approved by City Council. The franchise contains negotiated provisions including term length, restoration requirements, obligation to obtain associated permits, compliance with other local, state, and federal regulations, and insurance and indemnification provisions.

Once Council approves a franchise, the next step is for the applicant to apply for a SWF permit pursuant to Chapter 15.14 MMC. This permit allows the applicant to deploy their equipment at on specific poles in specific locations. The SWF permit is an administrative permit approved by staff, similar to a ROW permit, that ensures the applicant is complying with the aesthetic design standards adopted by the City in MMC 16.38.070 and 16.38.080.

### **Key Facts:**

The City received an application for a new franchise from T-Mobile for a telecommunication system in Medina in October 2021.

T-Mobile is looking to deploy small wireless facilities within the City's rights-of-way and per MMC 15.14.010 and MMC 16.38.040(C), a franchise is the first step in the process.

City staff, in consultation with the City Attorney's Office, have negotiated the attached draft franchise with T-Mobile. This draft franchise is based on a template franchise that has been used by other local jurisdictions and has been thoroughly vetted and negotiated. It requires compliance with the applicable provisions of the MMC as well as state and federal law. Furthermore, it does not permit T-Mobile to operate a broadcast cable system or install macro wireless facilities within the rights-of-way of the City. Additionally, this franchise does not allow T-Mobile to use any City property outside the ROW, or structures owned by the City, without a separate lease or license agreement with the City

Under RCW 35A.47.030, franchises require two readings before City Council. Additionally, per MMC 15.06.030, a public hearing is required. The purpose of this first reading is to present the draft franchise to Council for review, hold a public hearing, and accept public comment at the public hearing. Staff will bring the franchise back for a second reading and vote at the next regularly scheduled meeting.

**Financial Impacts:**

Pursuant to RCW 35.21.860 and federal law, the City is precluded from imposing franchise fees upon a "telephone business", as defined in RCW 82.16.010, and on "service providers" as defined in RCW 35.99.010, for use of the right-of-way. Given that T-Mobile warrants that their operations are those of a telephone business company and service provider as defined in these statutes, the City may not collect franchise fees based on gross revenue generated in Medina by T-Mobile on these activities. T-Mobile is subject to the City's utility tax as set forth in Chapter 3.60 of the Medina Municipal Code. The City may also assess full administrative costs for processing the franchise application and right-of-way permits for new system improvements.

**Attachments:**

1. Ordinance No. **XX** – 5-year Telecommunications Franchise with T-Mobile

**Budget/Fiscal Impact:** Various

**Recommendation:** Move to a second reading.

**City Manager Approval:**



**Proposed Council Motion:** N/A

Time Estimate: 20 minutes