



MEDINA, WASHINGTON

AGENDA BILL

Monday, September 12, 2022

Subject: T- Mobile Telecommunications Franchise

Category: Ordinance/Consent

Staff Contact(s): Emily Miner, Assistant City Attorney; Ryan Osada, Public Works Director; Steve Wilcox, Development Services Director

Background

As discussed during the July 12, 2022, Council meeting, the City received an application for a new telecommunications franchise from T-Mobile in October of last year.

City staff, in consultation with the City Attorney's Office, 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

Pursuant to RCW 35A.47.030, franchises require two readings before City Council. Additionally, per MMC 15.06.030, a public hearing is required. On July 11, 2022, Council held a first reading and a public hearing. Public comment was received from a T-Mobile representative in support of Council approving the franchise. No other public comments regarding the franchise were received during the hearing.

After the public hearing, Council asked for further clarification regarding: (1) the testing requirements in section 15.9 of the draft franchise, (2) the bond amount in section 19.3 of the draft franchise, and (3) the anticipated coverage and capacity targets for the T-Mobile sites. Answers to the questions are provided below:

1. Testing Requirements: section 15.9 of the draft franchise has been clarified to confirm that the City may inspect and test the facilities at any time, however, T-Mobile will only reimburse the City for costs related to the annual inspection. This revision makes clear that the City can conduct additional inspections while addressing T-Mobile's concern regarding the uncertainty of being financially responsible for unlimited reimbursement costs.
2. Bond Amount: the bond amount in section 19.3 of the draft franchise directly correlates with the requirements of MMC 15.10.270. This code provision sets the bond amount at \$20,000.

3. Coverage/Capacity Targets: T-Mobile has provided additional information regarding its anticipated coverage and capacity targets. That information is attached.

Decision Framework

State and federal law, as well as the City's code, govern the terms and conditions under which the City may grant or deny a franchise. Pursuant to the federal Telecommunications Act, no state or local statute or regulation may "prohibit or have the effect of prohibiting" the ability of an entity to provide telecommunications service. 47 U.S. Code § 253. However, federal law does allow local governments to manage telecommunication service providers' access to the public rights-of-way provided such policies are non-discriminatory.

Per MMC 15.06.030, and in accordance with RCW 35.99.030, the franchise application may only be denied based on certain criteria listed in the MMC. If the franchise application is denied, a written determination setting forth the reasons for the denial must be issued.

Attachment(s)

1. Ordinance No. 1013 Grant T-Mobile a 5-Year Telecommunications Franchise
2. T-Mobile propagation Maps

Budget/Fiscal Impact: 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. However, T-Mobile is subject to the City's utility tax as set forth in Chapter 3.60 of the MMC. The City may also assess full administrative costs for processing the franchise application and associated permits for new system improvements.

Recommendation: Adopt Ordinance No. 1013.

City Manager Approval:



Proposed Council Motion: I move to adopt Ordinance No. 1013 granting T-Mobile a 5-year telecommunications franchise.