



Zayo Franchise Ordinance 20-16 First reading

August 4, 2020

Background

- Zayo approached the City approximately one year ago requesting a franchise agreement.
- Zayo desires to install new wireline facilities (fiberoptic) which will initially serve existing facilities which currently have dated/slow connections. This agreement would not allow small wireless facilities – just wireline.
- The application was received in January 2020 and, following some revisions, was deemed complete early February 2020.
- The City and Zayo negotiated the franchise agreement before you tonight.



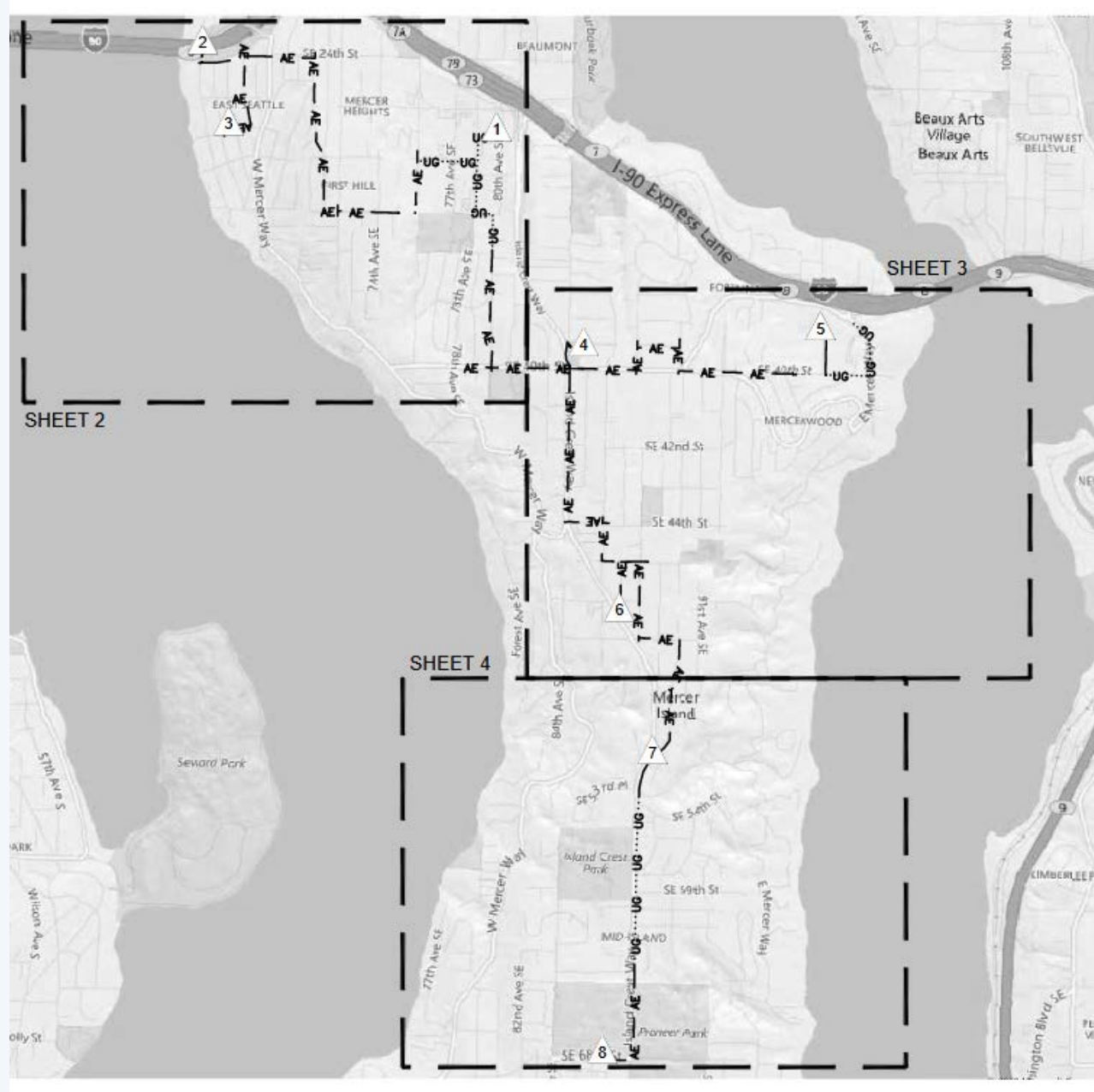
Additional Information

- Pursuant to RCW 35A.47.040, the City has the authority to issue franchise agreements that allow the franchisee general access to the City's rights-of-way.
- Zayo will still need to apply for and receive all necessary permits for any and all installations; the franchise is only the first step.
- The City has a number of franchises with a range of companies and utilities.
 - Comcast - Cable
 - Centurylink – Broadband
 - Crown Castle – Small Wireless Facilities
 - Power, gas, garbage collection, etc.



Proposed Initial Deployment

- Connects 8 existing locations with high speed fiber data connections.
- Additional deployments would be covered by this Franchise Agreement.



Common Questions

1. Is this Franchise consistent with the treatment of other franchisees? Yes. This franchise was drafted with the existing Crown Castle franchise (most recently approved similar franchise) in mind and seeks to treat these similarly situated entities the same.



Common Questions

2. Can the City charge an ongoing fee for the franchise? No. RCW 35.21.860 prohibits the imposition of a franchise fee on businesses like Zayo.
3. Will Zayo be responsible for the City's costs in reviewing and approving this Franchise? Yes. Zayo is responsible for actual administrative expenses incurred by city that are directly related to receiving and approving the franchise. RCW 35.21.860. Zayo provided a \$7,500 fee deposit check at the outset of this process. Actual administrative costs will be deducted from this fee deposit. If money is left over, it is returned to Zayo. If the actual administrative costs exceed this amount, Zayo will be billed by the City.



Common Questions

4. Can the City deny the request for Franchise? Yes, but it would be challenging and is strongly discouraged. First, if it were denied it would need to be supported by substantial evidence contained in a written record. RCW 35.99.030. The impacted entity – Zayo here – can challenge in court and get injunctive relief. There is competitive equity between telecom entities. So, because there are existing franchises, the City should not deny another entrant – that makes the playing field unequal and would cause a legal challenge.



Common Questions

5. What discretion does the City have to modify the draft franchise? The draft franchise before Council was prepared by the City and negotiated with Zayo. If Council wanted to further modify the agreement it could direct staff to engage in further negotiations with Zayo. However, due to competitive equity, prior franchise agreements have “set the table” for some provisions and others may be controlled by state and federal law restrictions.



Next Steps

Set ordinance 20-16 for second reading and adoption on September 1.

