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### REPORT TO COUNCIL

#### SUBJECT

Authorize the City Manager or His Designee to Execute a Small Cell License Agreement with New Cingular Wireless PCS, LLC, d/b/a AT&T Wireless and Delegate Authority for Term Extensions and Find the Project Categorically Exempt under CEQA

#### BACKGROUND

Over the past year, AT&T and other wireless carriers have approached the City with requests to deploy small cell facilities within the public right-of-way on City owned street lights as these existing vertical infrastructures are ideally suited to support small cell networks to enhance broadband services throughout the community.

Small cells are wireless telecommunication devices that consist of radio receivers, antennas and other associated power and electronics. Small cells base station equipment can range in sizes upwards of eight cubic feet while antennas can range in size upwards of three cubic feet. Small cells produce considerably less emissions than typical macro-cell towers, and help to mitigate and manage the use of the wireless frequency spectrum. A macro-cell's range is typically between two and three kilometers, given small cells typically use low-power radios and smaller antennas that have a shorter signal propagation range. This requires the small cells to be spaced closer together and closer to the user in order to deliver high capacity data services.

The City adopted wireless telecommunications zoning regulations in 1997, with a focus on wireless projects on private property. Since that time, there has been rapid growth and revolutionary changes in the wireless telecommunications fields, requiring increased demand and reliability for data coverage and capacity. As more consumers are accessing services that are associated with the "Internet of Things" (e.g., smart phones, home security, internet shopping, control of home devices and future autonomous vehicles), the demand for data capacity and speed is rapidly rising with no plateau anticipated. Zoning Regulations were updated in 2014 to better address telecommunications facilities in the public right-of-way.

To date, the City has not allowed small cell wireless technology on City-owned assets. Wireless providers have been directed to utilize other vertical infrastructure, most notably, wooden joint utility poles, located in the public right-of-way. However, the City has limited control over the aesthetics associated with hanging equipment off these poles, as they are not City-owned. Allowing the wireless carriers to utilize City structures gives the City more ability to regulate consistent size and look of equipment on streetlights throughout the City.

Wireless providers are reacting to customer demands and are now in the process of deploying the infrastructure to meet current data demands and to prepare for consumer deployment of fifth

generation wireless systems (i.e., 5G - small cell) technology as it becomes available (estimated in 2021). This new small cell infrastructure will be located primarily on existing vertical infrastructure in the public right of way and tend to move away from the large towers located on private property. Wireless providers noted that new locations for wireless installations on private property are limited and more difficult to negotiate and permit. Given the increasing cost and frequent public concern and resulting delay associated with leases on private property, the wireless providers have been looking for alternatives to allow continued expansion, leading them to advocate for less expensive and more streamlined deployment on utility poles and other City-owned facilities in the City's rights-of-way. The City owns over 9,000 street lights in the right-of-way.

### **FCC Rules**

On September 26, 2018, the Federal Communications Commission ("FCC") voted to approve a declaratory ruling and report and order (FCC Order 18-133) (Attachment 2), enacting new regulations over small cell wireless facility deployment and management of local rights of way. The FCC has jurisdiction over interstate telecommunications facilities.

The Order that went into effect on January 14, 2019, preempts and limits cities' ability to regulate the use of city-owned vertical infrastructure for small cell facilities in several important ways, including:

- Reducing the time limit for cities to process applications for small cells to either 60 or 90 days, depending on whether they are being mounted on an existing or new structure;
- Limiting application fees and rents for access to the rights-of-way and municipal infrastructure to cost and establishing safe harbor amounts;
- Limiting aesthetic review and requirements (including undergrounding and historic/environmental requirements) to those that are "reasonable," objective and comparable to requirements for other rights of way users;
- Requiring cities to publish such aesthetic requirements in advance.

These new regulations severely limit the City's ability to negotiate favorable terms for leasing its vertical infrastructure to carriers. The regulations are currently under appeal in the Ninth Circuit; however, the court did not grant an injunction and therefore the FCC Order is currently in effect. A house bill introduced by Representative Anna Eschoo (D-California) entitled the Accelerating Wireless Broadband Development by Empowering Local Communities Act of 2019 (H.R. 530) is also under legislative review to overturn the FCC's regulations. The proposed Small Cell License Agreement has provisions for the parties to meet and confer should the FCC Order be reversed, altered or stayed in federal court.

### **EXISTING POLICY**

Council Policy 7.2.1 - Telecommunications: The purpose of this policy is to enable the City to retain and maintain regulatory authority with the confines of the state and federal legislation.

Sunnyvale Municipal Code (SMC) Section 19.54.160 - Telecommunication Facilities in the Public ROW: The wireless telecommunication facilities ordinance (SMC Chapter 19.54) adopted by the City Council in 2013 includes SMC Section 19.54.160, which regulates telecommunication facilities in the public right-of-way. The regulations adopted by the City Council in 2012 require applications for wireless communication the public ROW to be submitted to the Planning Division. This changed the practice prior to 2012, where all such applications were processed by the Department of Public

Works through consideration of an encroachment permit.

### **ENVIRONMENTAL REVIEW**

Pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15302, the replacement of existing facilities located on the same site as the structure replaced and Section 15303, the installation of small new equipment in small structures, the installation of small cell facilities on existing street light poles is categorically exempt from environmental review.

### **DISCUSSION**

The City has been in discussions with New Cingular Wireless PCS, LLC, d/b/a AT&T Wireless to enter in a Small Cell License Agreement. The proposed Small Cell License Agreement would be used as a Master License Agreement (MLA) to provide a consistent and comprehensive approach to any requests from other wireless carriers wishing to deploy small cells in the City. It is anticipated that once this first MLA agreement is executed, other telecom carriers will also want to execute similar agreements with the City.

#### **General Overview**

The MLA does not grant possessory rights to any individual City owned streetlight, but establishes guiding procedures, terms, and conditions in which a telecom provider may request a site license supplement for deployment of a small cell site. The MLA contains the uniform terms and conditions applicable to all wireless facilities on City owned streetlights, and each individual site license supplement identifies a specific site location with detail plans and equipment to be deployed. Wireless carriers are still subject to obtaining all necessary applications and permits to (i.e., planning applications and encroachment permits) and subject to City's Wireless Telecommunication Facilities ordinance (SMC Section 19.54.160).

Sunnyvale is part of a working group primarily consisting of nearby cities focused on consistency amongst small cell deployments. Several nearby cities, most notably Cupertino, Fremont, and Campbell, have already executed MLA agreements with telecom carriers. Sunnyvale's MLA is largely consistent with these other city agreements.

#### **Term**

The MLA will have a minimum term of ten (10) years with the option to extend two (2) additional periods of five (5) years.

In addition, each Site License Supplement shall be a period of ten (10) years and may be extended for two (2) successive five (5) year renewals.

#### **Base Rent**

The annual rent will be set at \$270 per pole per year, adjusted annually by 2%.

#### **Processing**

Upon approval of the MLA, the telecom carrier is required to complete the City's process of review by the Planning Division and Public Works Engineering as well as obtaining an encroachment permit for the installation.

#### **Design Standards**

Small cells facilities will be of the same or substantially similar design as shown in Exhibit B - Initial

Approved Antenna Design of the Small Cell License Agreement.

### **FISCAL IMPACT**

The Small Cell License Agreement is expected to generate revenue through annual rent for each small cell attachment to City's street light infrastructure (base rent \$270 per site adjusted annually by 2%). The initial fiscal impact of this License will be minimal with the assumption that 24 poles will be utilized by AT&T for their initial build-out. This would result in a total annual revenue to the City's General Fund of \$6,480 in the first year.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

### **ALTERNATIVES**

1. Authorize the City Manager or his designee to execute the Small Cell License Agreement in substantially the same form as in Attachment 1 to the report, with New Cingular Wireless PCS, LLC, d/b/a AT&T Wireless and authorize the City Manager or his designee to extend the term for two (2) additional five (5) year terms and make a finding that the action is exempt from CEQA pursuant to CEQA Guidelines Sections 15302 and 15303.
2. Do not authorize the City Manager or his designee to execute the Small Cell License Agreement with New Cingular Wireless PCS, LLC, d/b/a AT&T Wireless.
3. Provide staff direction regarding the negotiation of different terms.

### **STAFF RECOMMENDATION**

Alternative 1: Authorize the City Manager or his designee to execute the Small Cell License Agreement, in substantially the same form as in Attachment 1 to the report, with New Cingular Wireless PCS, LLC, d/b/a AT&T Wireless and authorize the City Manager or his designee to extend the term for two (2) additional five (5) year terms, and make a finding and make a finding that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15302 and 15303.

Using City street light poles offers several advantages over the current practice of using wooden power poles as a host for small cell installations. Street light poles are typical hollow allowing wiring to be concealed and a more consistent installation depending on pole type. In some cases, poles will be replaced which renews City assets at no cost to the City. City poles offer new options for areas with coverage gaps, taking pressure off the limited number of wooden poles, particularly where utilities have been undergrounded.

Prepared by: Arnold Chu, Senior Engineer  
Reviewed by: Jennifer Ng, Assistant Director, Public Works  
Reviewed by: Chip Taylor, Director, Public Works  
Reviewed by: Jaqui Guzmán, Deputy City Manager  
Approved by: Kent Steffens, City Manager

### **ATTACHMENTS**

1. Small Cell License Agreement
2. FCC Order 18-133