



Memorandum

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TO: Robert Herr, Chief Infrastructure Officer

FROM: Ed McGuire, PE Public Works Director *EDM*

DATE: November 15, 2021

SUBJECT: Licensed Location Authorization Annual Fee

The Public Works Department conducted a review of the above-referenced fee and provides the following background and discussion in support of a recommendation to reduce the annual fee to \$565.00 effective upon publication.

Background and Discussion

In 2018, the Federal Communications Commission issued two orders dealing with a wide range of issues affecting the deployment of wireless telecommunications facilities in the City's right-of-way as part of the FCC's efforts to speed the deployment of so-called 5G wireless infrastructure. The second order, among other topics, requires that any City fees associated with wireless infrastructure must be non-discriminatory and reasonably approximate the City's objectively reasonable costs. According to the FCC and the industry, this cost-based approach would have the cumulative effect of accelerating the deployment of next generation networks nationwide, including in the City of Henderson. After publication of these orders, Public Works worked with the City Attorney's Office to review the City's internal processes and procedures and requirements for telecommunications use of City right-of-way and municipal facilities. Together, Public Works and the CAO developed a framework to ensure compliance with emerging federal requirements that enables the City to meet the anticipated increase in demand for accelerated deployments of fiber optic and wireless telecommunications infrastructure with quality services in a financially responsible manner.

As a result of this collaboration and with extensive input from providers, the City amended the Henderson Municipal Code in June 2019 to add Title 17 (Right-of-Way Management, Telecommunication Facilities) to provide for (1) the streamlined processing of use agreement and license authorization applications, and (2) the establishment of fees which are intended to recover costs relating to application process and the deployment of facilities in the right-of-way and on City facilities. Title 17 delegates authority to the City Manager to adjust the codified fees provided that any such adjustments must be made publicly available and the adjusted amounts may not exceed those set forth in the HMC. Public Works publishes the current schedule of fees for the telecommunications program on the City's website pursuant to this authority.

During the preparation of Title 17, Public Works analyzed the direct and actual costs that would be incurred by the City under the telecommunications program. Staff then documented the calculation of fees, which are in amounts that the team reasonably believed would "make it whole" under the program as required by the FCC. Public Works discussed industry comments and questions regarding the proposed fees and the back up in a workshop attended by representatives of various industry stakeholders while making staff available for any direct inquiries. Public Works then followed up with a modified,

proposed final set of fees that were addressed at a second industry workshop attended by industry stakeholders. The City received no comments or concerns regarding the lawfulness or consistency of the proposed final fees with federal law. In fact, no concerns or questions of any kind were raised by the industry at that workshop or the subsequent two-week period that was made available to the industry prior to the finalization of the fees in September 2019. The final schedule of fees set forth a Licensed Location Authorization Annual Fee of \$1,200.00.

The onset of the COVID-19 pandemic and corresponding increase in the number of remote workers and distance-learners underscored the importance of access to affordable, high quality internet and wireless services to residents and businesses across the City. We developed a pair of incentives for larger-scale deployment of wireless installations in the City of Henderson to advance the recognized public interests in “universal” service and support for residents located in underserved and disadvantaged areas identified by the federal government. Under the incentive program, providers could have realized a up to a 50% discount on all wireless installations depending on the number and location of those installations. Staff held an industry workshop in May 2021. Industry expressed little or no interest in the proposed incentives. Several industry stakeholders expressed the view that the interests supported by the proposed incentives would be better served by aligning the City’s annual Licensed Location Authorization fee with rates in neighboring jurisdictions or the presumptively reasonable rate established by the FCC.

Public Works conducted review of the Licensed Location Authorization Annual Fee. The review included a reconsideration of the back up previously disclosed to the industry and the underlying calculations. Public Works considered the fees and cost analysis, if any, of our neighboring jurisdictions in Southern Nevada. We also took into account comments (whether formal or informal) received from the industry and the City’s experience with application activity since the finalization of the fees in September 2019. Among our various findings, we confirmed the validity of the 2019 cost analysis, but determined, however, the cost-based annual fee published by the City has not resulted in any notable increase in applications for wireless deployments as contemplated by the FCC and in connection with the adoption of HMC 17. We also discovered that the City’s costs associated with application processing exceed the amounts of the fees received by the City.

Recommendations

Based on the foregoing, my recommendations are as follows:

1. To fulfill the intent of Title 17 and otherwise support the rapid deployment of wireless telecommunications facilities, the published License Location Authorization Annual Fee should be adjusted as a matter of policy to \$565.00 (subject to HMC 17.03.010(F));
2. Power cannot be made available to Licensees without a substantial financial impact to the City. If and when regulatory action is taken to address private commercial power usage behind City meters, Public Works will review the matter at such time; and
3. The City will continue to monitor cost and effort related to the telecommunications program and will adjust as necessary.