

RESOLUTION NO. 2019-12

RESOLUTION ESTABLISHING FEES APPLICABLE TO SMALL CELL WIRELESS FACILITIES LOCATED WITHIN THE CITY OF FOREST GROVE RIGHT-OF-WAY

WHEREAS, on September 26, 2018, the Federal Communications Commission ("FCC") adopted FCC Declaratory Ruling and Third Report and Order 18-133 (the "FCC Order") which significantly limits the City's authority to manage and regulate its rights-of-way ("ROW") in the context of Small Cell Wireless Facility ("SWF") infrastructure deployment by the private sector, including limiting the City's ability to impose fees for use of the City ROW and public property within the City ROW; and

WHEREAS, under the FCC Order, application and review fees for SWF infrastructure proposed to be sited in the City ROW, as well as ongoing annual fees, are required to be a reasonable approximation of costs incurred by the City in processing applications and hosting SWF infrastructure; and

WHEREAS, the FCC Order requires that if the sum total of all non-recurring fees, such as up-front application fees, exceeds \$500 for up to five SWF and \$100 for each additional SWF to be sited on existing infrastructure in the City ROW, or \$1,000.00 for a new pole to be installed in the City ROW to support a SWF, that the applicable fee(s): 1) be limited to a reasonable approximation of the City's costs, 2) that those costs themselves are reasonable, and 3) that the costs are non-discriminatory; and

WHEREAS, the FCC Order requires that if the sum total of all recurring annual fees, such as ROW access fees and attachment fees, exceeds \$270 per year per SWF, that the applicable annual fee: 1) be a reasonable approximation of the City's costs, 2) that those costs themselves are reasonable, and 3) that the costs are non-discriminatory; and

WHEREAS, the City Council finds that presumptive fees established in the FCC Order do not represent a reasonable approximation of the City's actual costs for processing applications for SWF infrastructure, nor do they represent a reasonable approximation of the City's costs for hosting SWF infrastructure in its ROW; and

WHEREAS, City staff has undertaken an analysis to establish a reasonable approximation of the City's costs for processing applications for SWF infrastructure in the City ROW, as well as for hosting SWF infrastructure in its ROW; and

WHEREAS, City staff estimates the City's cost for processing new SWF installation applications to be \$759.00 per proposed SWF; and

WHEREAS, City staff estimates annual recurring costs for hosting a SWF in the ROW to be \$808.25; and

WHEREAS, based on the estimates of City staff, the City Council finds that it is in the public interest to establish the fees set forth below; and

WHEREAS, a duly-noticed Public Hearing was held on March 18, 2019.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FOREST GROVE AS FOLLOWS:

Section 1: The SWF application fee shall be \$759.00 per proposed SWF site in the City ROW. The one-time application fee applies both to SWF infrastructure proposed to be attached to existing infrastructure as well as to SWF infrastructure to be supported by a new pole.

Section 2: The City will process applications for siting SWF on existing structures in the ROW within 60 days, and applications to site SWF infrastructure on a new structure located in the ROW within 90 days of receiving a complete application. If an applicant desires an expedited review of an SWF application, and staff determines that it can perform an expedited review, the applicant may request an expedited SWF review and submit an expedited SWF review fee of \$500 per proposed SWF site. The City will conduct the expedited review within 30 days of receipt of a complete application for SWF infrastructure proposed to be sited on existing structures, and within 45 days of receipt of a complete application for SWF infrastructure proposed to be sited on a new structure in the ROW.

Section 3: If the City does not have the capacity to perform the application review in the timeline required by the FCC Order and must hire a consultant to meet any applicable timelines, the applicant will be charged the City's actual cost for engaging the consultant so as to comply with applicable timelines.

Section 4: Recurring annual fees shall be \$808.00 per SWF sited in the City ROW.

Section 5: The City shall compare its actual costs incurred to the fees established by this Resolution when a sufficient number of applications have been processed to assess the accuracy of the cost estimates provided by City staff, adjust the fees as necessary to more accurately reflect the City's costs, and to consider the impact of any legal challenges to the validity of the FCC Order.

Section 6: The above rates shall become effective March 19, 2019.

Section 7: This resolution is effective immediately upon its enactment by the City Council.

PRESENTED AND PASSED this 18th day of March, 2019.



Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 18th day of March, 2019.



Peter B. Truax, Mayor



A place where families and businesses thrive.

CITY RECORDER USE ONLY:	
AGENDA ITEM #:	9
MEETING DATE:	3-18-2019
FINAL ACTION:	RESO 2019-12

CITY COUNCIL STAFF REPORT

TO: City Council

FROM: Jesse VanderZanden, City Manager

MEETING DATE: March 18, 2019

PROJECT TEAM: Paul Downey, Administrative Services Director
Keith Hormann, Light & Power Director

SUBJECT TITLE: Resolution Establishing Fees for Small Cell Wireless Facilities

ACTION REQUESTED: Ordinance Order Resolution Motion Informational

X all that apply

ISSUE STATEMENT: The Federal Communications Commission (FCC) has issued an Order addressing design standards and fees for small cell wireless facilities (SWF) located in City right-of-way (ROW). This staff report addresses the fee portion of the Order. The City can collect fees other than those set by the Order if the City meets the requirements in the Order to establish different fees. The City has completed the process to establish different fees and has drafted a resolution setting those fees for Council consideration.

BACKGROUND: Staff has presented information about the FCC Order and the City establishing different fees at two work sessions including one on February 25, 2019. As part of the staff report, staff has prepared a presentation which summarizes the major points to be presented tonight.

FISCAL IMPACT: The fiscal impact of the proposed fees is unknown because the revenue is dependent on the number of SWF applications received and number of SWF installed in the ROW. Currently, the City has no applications to place any of those facilities in the ROW.

STAFF RECOMMENDATION: Staff recommends the City Council approve the attached resolution establishing fees for small cell wireless facilities.

ATTACHMENT(s):

Presentation of Small Cell Wireless Facilities Fee Resolution
Resolution Establishing Fees for SWF



Small Cell Wireless Fee Resolution

Paul Downey, Admin. Services Director

Keith Hormann, L&P Director

March 18, 2019

Purpose of Fee Resolution

- FCC has issued an Order that sets out design standards and fees for small cell wireless facilities located in the right-of-way unless the City has established its own design standards and fee. Purpose of this resolution is to:
 - Establish fees that recover the City's cost of administering small cell wireless facilities that may be built in the public right-of-way (ROW)
 - Provide a mechanism for expedited review of applications including fees to cover costs when additional help is necessary to review applications

FCC Order on Fees

- Per the FCC Order to use fees other than the fees listed in the Order, the fees must be:
 - A reasonable approximation of the local government's costs to process the application and manage the right-of-way
 - Set so only objectively reasonable costs can be factored into fees
 - Not higher than fees charged to similarly-situated competitors in similar situations

FCC Order on Fees

- Per the FCC Order, fees can be based on the following costs:
 - Staff review of application
 - Provider's use of the right-of-way
 - Maintaining the right-of-way
 - Maintaining structures in the right-of-way

Proposed Fees

- Staff is proposing fee types similar to what other cities in Washington County are establishing:
 - One-time application fee, per attachment
 - Expedited review fee
 - Pass-through consultant fee
 - Annual attachment fee, per attachment per year

Application Fee

- Staff is proposing an application fee of \$759 per application based on staff time (salaries and benefits) and overhead.
- Staff is estimating 8 hours of staff time per application with tasks to potentially include:
 - Coordination with utility providers during application process
 - Review of application – first and second reviews if changes
 - Site visits including construction overview and inspection
 - Coordination with pole owner if pole is not owned by City
 - Various administrative tasks

Expedited Review Fee

- Under the FCC Order, the City has 60 days to review an application for an existing pole and 90 days if a new pole is required
- If faster review is requested, staff is proposing an additional \$500 fee per application. This fee would be voluntary and would allow providers to request a faster timeframe for review. Staff is proposing to complete the review in no more than $\frac{1}{2}$ of the days allowed by the FCC Order.
- Fee would pay for the accelerated review and the administrative burden of rescheduling other work assignments.

Consultant Fee

- Pass through cost incurred by City – actual consultant fee incurred without any markup for staff time to manage consultant contract.
- This fee would allow the City to recover all costs incurred to hire and manage a consultant if needed to comply with the review timeline required by the FCC Order.
- Consultants may be required when the volume of license applicants is greater than staff's capacity to review them at the time of application.

Annual Attachment Fee

- Staff is proposing an annual attachment fee of \$808 per application based on staff time (salaries and benefits) and overhead
- Staff is estimating 8.5 hours per attachment with tasks to include:
 - Maintaining the right of way itself (hardscaping and landscaping)
 - Maintenance of poles
 - Tree trimming around aerial lines
 - Tracking attachments in the right of way
 - Coordination with the utility provider regarding facilities in ROW
 - Coordinate potential traffic impacts when maintenance is done

Summary of Proposed Fees

- Proposed Application Fees:
 - Application Fee: \$759 per application
 - Expedited Review Fee: \$500 per application
 - Consultant Fee: Cost incurred
- Proposed Attachment Fees:
 - Annual Attachment Fee: \$808 per attachment
 - Preparing Poles, Repairs or Assistance Beyond Regular Maintenance: Actual labor, equipment, and material costs incurred.

Date: March 18, 2019

Agenda Item: #9

Subject: Small Cell Tower Wireless Facilities Fees

Request to Testify at Public Hearing

Public Hearings – Public hearings are held on each matter required by state law or City policy. Anyone wishing to testify should sign in for the Public Hearing prior to the meeting. The presiding officer will review the complete hearing instructions prior to testimony. The presiding officer will call the individual or group by the name given on the sign-in form. When addressing the Council, please move to the witness table (center front of the room). Each person should speak clearly into the microphone and must state name and an address for the record. All testimony is electronically recorded. In the interest of time, Public Hearing testimony is limited to three minutes unless the presiding officer grants an extension. Written or oral testimony is heard prior to any Council action.

Please sign-in below to testify.

PROPONENTS: *(Please print legibly)*

First & Last Name:

Address: **City, State & Zip Code:**

OPPONENTS: *(Please print legibly)*

First & Last Name:

Address: **City, State & Zip Code:**

OTHERS: *(Please print legibly)*

First & Last Name:

Address: **City, State & Zip Code:**



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AFFIDAVIT OF PUBLICATION

State of Oregon, County of Washington, SS I, Charlotte Allsop, being the first duly sworn, depose and say that I am the Accounting Manager of the **Forest Grove News Times**, a newspaper of general circulation, serving Forest Grove in the aforesaid county and state, as defined by ORS 193.010 and 193.020, that

**City of Forest Grove
NOTICE OF PUBLIC HEARING
ADOPTING SMALL CELL WIRELESS FACILITIES
DESIGN AND GENERAL CONSTRUCTION
STANDARDS AND FEES
FOR THE CITY OF FOREST GROVE**

Ad#: 97618

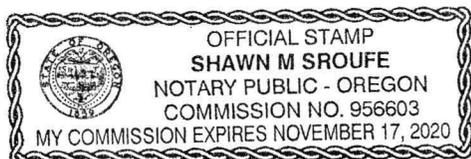
A copy of which is hereto annexed, was published in the entire issue of said newspaper(s) for 1 week(s) in the following issue(s):
03/13/2019

Charlotte Allsop (Accounting Manager)

Subscribed and sworn to before me this 03/13/2019.

NOTARY PUBLIC FOR OREGON

Acct #: 104052
Attn: Anna D. Ruggles
FOREST GROVE, CITY OF
PO BOX 326
FOREST GROVE, OR 97116



**NOTICE OF PUBLIC HEARING
ADOPTING SMALL CELL WIRELESS FACILITIES
DESIGN AND GENERAL CONSTRUCTION
STANDARDS AND FEES
FOR THE CITY OF FOREST GROVE**

NOTICE IS HEREBY GIVEN, that the Forest Grove City Council will hold a **Public Hearing** on **Monday, March 18, 2018**, at **7:00 p.m.** or thereafter, in the Community Auditorium, 1915 Main Street, Forest Grove, to consider adopting Small Cell Wireless Facilities Design and General Construction Standards and establishing fees applicable to small cell wireless facilities located within the City of Forest Grove right-of-way. The resolutions, upon approval by the City Council, would be effective immediately.

This hearing is open to the public and interested parties are encouraged to attend. A copy of the staff report and proposed resolutions are available for inspection prior to the hearing at the City Recorder's Office or by visiting the City's website at www.forestgrove-or.gov. Written comments or testimony may be submitted at the hearing, e-mailed to aruggles@forestgrove-or.gov, or sent to the attention of the City Recorder's Office, P. O. Box 326, 1924 Council Street, Forest Grove, OR 97116, prior to the hearing. For further information, please call the City Recorder's Office at 503.992.3235.

Anna D. Ruggles, CMC, City Recorder
City of Forest Grove
Publish March 13, 2019.

FGNT97618