

BACKGROUND: Since the introduction of 2G digital wireless technology in the 1990's, there have been two successive generations of wireless technology (3G and 4G) where each new generation was faster and had more capabilities than prior generations. Up to this point with 4G and earlier technologies, the transmission of digital signals, because of longer radio wavelength, could occur using cell towers and roof-top equipment which were spaced fairly far apart. With the latest 5G technology, with its shorter radio wavelength, transmission sites need to be much closer together and closer to the ground. 5G is becoming the new world standard given its promise of much faster speeds (some claim up to 600 times faster than 4G), and ability to handle more simultaneous users and devices. In addition, 5G will improve the wireless service speeds for devices such as smartphones as well as within homes and businesses.

5G will enable households with the ability to wirelessly connect to the Internet through smartphone, television, desktop, tablet, laptop, refrigerator, virtual reality devices, and many other internet enabled devices. The increased speeds that will allow households the ability to simultaneously connect more devices. It will enable better work from home broadband capabilities, as well as provide better home entertainment and operation of numerous household devices. For businesses, the greater speed will also be of benefit and will likely become the expected norm for business operations. 5G will also create competition for current broadband providers, albeit it will likely be considered a premium product and not likely less expensive than fiber broadband. It may however, temper the future pricing of household and business fiber-based broadband service.

In 2017, the Virginia General Assembly enacted Chapter 15.1 of Title 56, titled "Wireless Communications Infrastructure." Chapter 15.1 governs the process and terms under which local governments may permit wireless providers to use local rights-of-way and other local government property. In 2017 and 2018, the General Assembly also adopted a set of statutes setting comprehensive rules for local zoning of wireless facilities. In 2018, the Federal Communications Commission (FCC) issued a series of orders aimed at promoting the deployment of 5G systems nationwide. In combination, the Virginia legislation and the FCC orders greatly limited local governments' power to regulate 4G and 5G pole location, established strict permit time processing parameters for local governments (i.e., shot clocks), and limited fees charged by local governments. Subsequently, a federal appellate court restored to local governments some control over the design of 4G and 5G facilities, but the bulk of the federal rules and all of the Virginia legislation remain in effect. The appeal of the FCC regulations has not concluded, but even if the FCC rules are entirely rescinded the City will remain subject to analogous requirements in the Virginia Code. The following franchise proposal complies with both Virginia law and the current FCC regulations, without binding the City if the FCC regulations are later overruled by the federal courts.

In October 2019, City Council approved license agreements with Cellco Partnership d/b/a Verizon Wireless and New Cingular d/b/a AT&T and in June 2020, City Council approved a license agreement with Crown Castle to allow these companies to deploy and install their small cell facilities on designated third-party owned wooden poles within the City. In July 2020, pursuant to these companies' requests, the license agreements were amended to allow these companies to install facilities on additional third-party owned wooden poles in the City's public rights-of-ways. In addition, City Council approved a pilot project for Verizon to test a prototype metal pole for the installation of small cell facilities in the City's rights-of-ways. At that time, we advised that the companies and City Staff were negotiating franchise agreements to replace the existing license agreements. The advantages of the franchise agreements as compared to the license agreements are terms greater than five years and the ability for the company to install their facilities on structures other than wooden poles. In accordance with applicable federal and state law, this proposed Ordinance initiates the franchise process. This ordinance, which sets the broad parameters for a telecommunications facility franchise agreement and authorizes the solicitation of proposals, is required by section 15.2-2100, et seq., of the Code of Virginia (1950), as amended, to permit the companies to occupy the City's rights-of-ways for a term of greater than 5 years.

Following public notice, public hearing and final adoption of the Ordinance on October 17, 2020, the City is required to issue a public notice soliciting bids that must run for two consecutive weeks in a newspaper of general circulation. It is proposed that the franchise agreements (there are likely to be at least three proposals) will be awarded at the December 8, 2020 City Council meeting, and set for public hearing, final approval and authorization of the City Manager to execute all required documents following the public hearing on Saturday, December 12, 2020.

As stated above, the proposed telecommunications facility franchise agreement replaces the existing license agreements for the three companies that were granted small cell license agreements. In addition, since this is a solicitation for a nonexclusive franchise, there may be other companies who respond to this request for proposal for telecommunications facility franchise and City Staff will review their proposals.

The significant terms of the proposed Telecommunications Facility Franchise Agreement are as follows:

1. Term: In accordance with applicable state and federal laws, the proposed term of the franchise is an initial term of ten years, with three automatic extensions of five years, each. The 10-year initial length and subsequent three 5-year increments structure is set by State law. If the franchisee wishes to extend the term and is not in default of the agreement.
2. The franchisee will have the right to deploy “approved” equipment throughout the City. Approved equipment is defined by the franchise as equipment that has been previously approved by the City as a Standard Design pole, which is a design that has been approved by the City or is a design that the company has sought specific review of and has received approval of the City. Notwithstanding the granting of franchise agreements, the companies will still have to file applications with the City with respect to the proposed equipment they are seeking to install in the public rights-of-ways. In addition, the companies are subject to the City’s aesthetic requirements and all requirements and conditions of installing equipment in the City’s historic districts. In addition, the City will exercise control over the location of the poles within its rights-of-ways. In particular, the installation of “standalone” poles. For example, the City will allow only one new standalone structure on a block face of less than 300 feet in length. For blocks that are longer than 300 feet, the City may consider the installation of 2 poles. The City also has guidelines regarding the installation of any new standalone pole to insure that it does not impede visibility, travel, public safety, traffic control devices or access to fire hydrants, public transportation and the like and that it will not impede the existing tree canopy.
3. The companies will be required to remove their facilities at the end of the franchise agreement. In addition, if the City determines that any of the facilities need to be removed or relocated to protect the public health, safety or welfare, the companies will be required to do so, at their expense.
4. Compensation: Similar to the license agreements, pursuant to state law, the City is entitled to a onetime administrative fee of \$750. In addition, the City is entitled to the state mandated application fee of \$100 for each application up to five on one permit and then a fee of \$50 for each additional application.

FISCAL IMPACT: State mandated \$750 administrative fee. Application fees to be collected pursuant to state law, \$100 per application (up to 5) then \$50 per additional application.

ATTACHMENTS:

Attachment 1: Proposed Ordinance

Attachment 2: Proposed Telecommunications Facility Franchise Agreement

Attachment 2: Additional Terms and Specifications for Franchise Ordinance

STAFF:

Joanna C. Anderson, City Attorney

Emily A. Baker, P.E., Deputy City Manager

Karen S. Snow, Senior Assistant City Attorney

Yon Lambert, Director, Transportation & Environmental Services

Lalit Sharma, Acting Deputy Director, Transportation & Environmental Services

Karl Moritz, Director, Planning & Zoning

Tony LaColla, Division Chief, Planning & Zoning