

Summary of Transportation Fees for Wireless Facilities in the Public Right of Way

Executive Summary

In 2019, a Federal Communications Commission (FCC) order limited local governments' authority to regulate Small Wireless Facilities (SWF) in the public right of way (ROW). In response, the City of Bellevue amended Title 6 of city code and adopted a template Master License Agreement to comply with the FCC ruling and order and support the growing interest of wireless carriers to install SWFs in Bellevue. As the SWF program developed, the city adopted the pole reservation permit and associated fee to continue to support and manage interest in SWF deployment throughout Bellevue. The city also developed options and a fee structure for wireless carriers to use city-owned electrical facilities to power SWF equipment. These two fees are currently being charged to carriers but have not been formally adopted by ordinance. Separately, annual lease fees for wireless communication facilities in the public right of way are charged annually and also have not been formally adopted by ordinance. Accordingly, the Transportation Department proposes to adopt three fees related to wireless infrastructure in the public right of way.

Background Information

The Federal Communications Commission (FCC) issued a declaratory ruling and order effective on January 14, 2019, that limited local governments' authority to regulate Small Wireless Facilities (SWF) in the public right of way (ROW). The order clarified that the Communications Act of 1996 (47 U.S.C. Section 251 et seq.) prohibits local governments from imposing requirements that materially inhibit the deployment of wireless infrastructure. Local governments, however, may require fair and reasonable compensation from telecommunications providers for use of the ROW. (See 47 U.S.C. Section 253(a)-(c)).

The FCC order mandated specific processing times and proposed presumptively reasonable safe harbor fees for small wireless deployments. Local governments may establish fees greater than the presumptively reasonable fees, but fees cannot exceed a reasonable approximation of the locality's costs for processing applications and for managing deployments in the right-of-way. Under federal law, the fees must be fair and reasonable, charged on a competitively neutral and nondiscriminatory basis, and publicly disclosed. See 47 U.S.C. Sec. 253.

In response to the 2019 FCC order and consistent with RCW 35.99, Bellevue City Council adopted Ordinance 6454 and Resolution 9543 on January 22, 2019, which amended Title 6 of Bellevue City Code to align with FCC requirements. The city adopted a Master License Agreement (MLA) template to be used by telecommunications carriers who wish to deploy SWFs in the public ROW. The Master License Agreement establishes the framework for charging the annual pole lease fee for telecommunications carriers to attach SWF equipment to city-owned facilities within the public ROW. The annual pole lease fee for SWFs is based on a presumptively reasonable fee amount set forth in the 2019 FCC ruling and order and adjusted

Attachment B

annually for CPI. Subsequent code amendments followed in 2019 and 2023 to reflect the evolving regulatory and technological developments in SWF deployment. The pole reservation fee and city facilities access fee, the subject of this action, are not within the scope of fees controlled by the 2019 FCC order.

Following adoption of the MLA template, wireless carrier's interest in deploying SWFs in the public ROW in Bellevue grew. In response to the overwhelming interest from the carriers to lease city-owned poles for co-located SWF equipment, the city developed a pole reservation permit and associated fee. The pole reservation permit is an optional permit the carrier can apply for that reserves the city-owned pole for a 180-day period. It precludes another carrier from applying for a SWF permit at the same location. The pole reservation does not obligate the wireless carrier to submit an official SWF permit application but allows them time during the 180-day pole reservation term to conduct the necessary scoping, studies and pre-application work to develop the official SWF permit application. The pole reservation permit minimizes conflicts among wireless carriers aiming to lease the same pole. The pole reservation fee is derived from the annual SWF pole lease fee.

The city also provides the option for wireless carriers to splice into and use the city's electrical facilities to power the privately owned and maintained SWF equipment. This recurring fee is only assessed if a carrier elects to use the city's electrical facilities; it is not a fee for attachment to city-owned property in the ROW (e.g., an annual pole lease fee) and is outside of the scope of the 2019 FCC ruling and order. If a wireless carrier elects to use city electrical facilities to power their SWF equipment, they have the option to splice directly into the city's electrical circuit, install carrier-owned wire into a city-owned electrical conduit or install a privately owned breaker into a city-owned electrical service cabinet and use privately owned facilities to power the SWF equipment. These access types provide options depending on the site-specific conditions at each SWF location and are described in the circuit access agreement. Although an optional strategy for powering SWFs, all existing SWFs in Bellevue that are mounted to city streetlight poles currently use city electrical facilities, which provides a cost-effective option for carriers to power their SWF equipment.

Although Title 6 of Bellevue City Code was amended to align with federal requirements for small cell technology, the requirements for Wireless Communication Facilities (WCF) installation in the public ROW did not change. Any telecommunications carrier that desires to occupy or otherwise use city ROW for the purpose of providing telecommunications services shall have a valid Right of Way Use Agreement (RUA) with the city (BCC 6.04.010). Thus, any wireless carrier that proposes to install a WCF in the public ROW must have a current RUA. WCFs in the public ROW are governed by Bellevue's Land Use Code, section 20.20.195. This section of city code lays out the requirements for the deployment of communication facilities to protect the aesthetic character of Bellevue, promote reliable and equitable access for citizens to multiple channels of communication and is adaptable to technological and regulatory change.

Calculation of Fees

City Electrical Facility Access Fee

The City Electrical Facility Access Fee was established in 2022 at an annual rate of \$1,000 per year per SWF served or per breaker connection, depending on the type of electrical connection at each SWF site. The fee is adjusted annually using the Consumer Price Index, which is a 5-year rolling average of annual percentage increase in the Consumer Price Index for all Urban Consumers (Seattle-Tacoma-Bellevue, WA) as of October of the relevant years, consistent with section 6.2.5 of the Master License Agreement. The 2025 City Electrical Facility Access Fee can be found in the Fees Related to Small Wireless and Wireless Communication Facilities in the Public Right of Way Table of the agenda memo and is listed below in the summary of proposed changes. Subsequent years' City Electrical Facility Access Fees are calculated during the prior year after the October rates are posted. For example, the 2026 access fee will be calculated in November of 2025.

Pole Reservation Fee

The pole reservation fee is based off the annual pole lease fee and is calculated using the daily rate of the annual pole lease fee, multiplied by the 180-day reservation term. The annual pole lease fee is adjusted annually using the average Consumer Price Index, which is a 5-year rolling average of annual percentage increase for all Urban Consumers (Seattle-Tacoma-Bellevue, WA) as of October of the relevant years, consistent with section 6.2.5 of the Master License Agreement. The 2025 Pole Reservation Fee can be found in the Fees Related to Small Wireless and Wireless Communication Facilities in the Public Right of Way Table of the agenda memo and is listed below in the summary of changes. Subsequent years' pole lease fees, and thus Pole Reservation Fees, are calculated during the prior year after the October rates are posted. For example, the 2026 Pole Reservation Fee will be calculated in November of 2025.

WCF Annual Lease Fee

The annual lease fee for WCFs in the public ROW was recently updated in February of 2025 using a comparable analysis of WCF lease rates across the region. The WCF annual lease fee shown in the Fees Related to Small Wireless and Wireless Communication Facilities in the Public Right of Way Table of the agenda memo and below in the summary of proposed changes will, as of now, only apply to new WCFs in the public ROW. All existing WCFs in the ROW are subject to the rates at which they are currently under per the terms of each site-specific site license addendum. The WCF Annual Lease Fee will automatically increase at 3% annually and future new WCF leases will be brought in under the current lease rate.

Summary of Proposed Changes

The Transportation Department proposes three fees related to leasing wireless facilities in the public ROW. These fees are currently being charged to wireless carriers but have not been formally adopted by ordinance. The fees are depicted in the Fees Related to Small Wireless and Wireless Communication Facilities in the Public Right of Way Table of the agenda memo and are listed below:

1. Small Wireless Facility Circuit Access Fee: \$1,151.77 for 2025
2. Small Wireless Facility Pole Reservation Fee: \$166.75 for 2025
3. Wireless Communication Facility in the Right-of-Way Lease Fee: \$13,200 for new WCF sites

Both the Circuit Access Fee and WCF lease fee are charged to carriers on an annual basis. The Pole Reservation Fee is charged on a per-occurrence basis and is invoiced to the wireless carrier upon issuance of the pole reservation permit.