

December 5, 2016

CITY COUNCIL STUDY SESSION ITEM

SUBJECT

Discussion of the Transportation and Land Use approvals associated with the Verizon Wireless small cell project, and pending Council action for execution of a Right-of-Way Use Agreement with Verizon Wireless.

STAFF CONTACTS

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POLICY ISSUES

Section 332(c)(7) of the Federal Telecommunications Act requires the City to not prohibit provision of personal wireless service.

Revised Code of Washington (RCW) 35.99.040(2) states that although the City can regulate the placement of small cell facilities through local zoning, such regulation may not result in an outright prohibition of all wireless facilities.

Bellevue City Code (BCC) Chapter 6.04.010 requires a telecommunications provider to obtain a Right-of-Way Use Agreement to occupy City rights-of-way for purposes of providing telecommunications services.

The City Council Vision Priorities describe Bellevue as a “Smart City” with a clean, high-quality environment and excellent and reliable infrastructure that supports our vibrant and growing city, including high-tech connectivity. This sentiment is echoed in the Comprehensive Plan to “maintain Bellevue’s competitive advantage and attraction as a highly connected community” (Policy UT-51).

The Bellevue Comprehensive Plan recognizes that wireless communication facilities will be deployed in all areas of the City to provide coverage and capacity consistent with the changing use of wireless technology. However, the plan also supports the minimization of attendant visual impacts by utilizing criteria for the design and location of such facilities (Policy UT-83). Refer to Attachment A for a complete listing of Comprehensive Plan policies that apply to wireless communication facilities.

DIRECTION NEEDED FROM COUNCIL

ACTION



DIRECTION



INFORMATION ONLY



Council consideration of the Verizon Wireless Right-of-Way Use Agreement is anticipated to occur at the December 12, 2016 Regular Session. This Study Session item is intended to provide Council background and context regarding the agreement, and to answer broader questions raised by the community regarding approvals required for the Verizon Wireless small cell project deployment.

BACKGROUND/ANALYSIS

Over the last few months, Bellevue residents have contacted Council voicing concerns about deployment of the Verizon Wireless small cell project. Verizon Wireless has made application for three projects in Bellevue that are the source of these resident concerns: Factoria/ Newcastle (project known as Newtoria), North Bellevue (project known as Archerline), and Downtown (project known as Starbel). These projects are proposed to upgrade the Verizon Wireless communications infrastructure to provide enhanced wireless reception to areas that larger macro cell sites do not adequately cover, and to begin infrastructure buildout for its 5G data delivery service.

Administrative Conditional Use Permits are under review for the Newtoria and Archerline projects by the Development Services Department (DSD). At the same time, Verizon Wireless has also applied for a Right-of-Way Use Agreement requiring Council approval to allow small cell infrastructure on Puget Sound Energy (PSE) poles and City-owned light poles located in the right-of-way. A Draft Right-of-Way Use Agreement, which has been negotiated with Verizon Wireless, is available in the Council Office Document Library, as well as maps depicting the locations of the three Verizon Wireless projects.

Verizon Wireless must obtain both Transportation and Land Use approvals to accomplish the installation of small cell technology. The final Right-of-Way Use Agreement (the Transportation approval) is anticipated to be brought forward for Council consideration on December 12th, 2016. The Land Use considerations are outlined in this memo to add context to the overall approval process required for Verizon Wireless to install small cell facilities. In addition, Verizon Wireless must execute a Master Lease Agreement (MLA) with the City (for approval by Council) before deployment on City-owned light poles is permitted.

Regulatory Authority and Application Status:

To comply with the Federal, State, and Bellevue code for the placement of small cell technology in the City's right of way, Verizon Wireless is required to:

- Submit a complete Right-of-Way Use agreement application, per RCW 35.99.030 and BCC 6.04.020;
 - *Verizon submitted a complete application on August 3, 2016, starting a 120 day-state mandated "shot clock" for review and approval by the City. This shot clock may be extended by mutual agreement "Where the master permit requires action of the legislative body of the city or town and such action cannot reasonably be obtained within the one hundred twenty day period." RCW 35.99.030(1)(b)(ii).*

- Execute a Right-of-Way Use Agreement with the City, per BCC 6.04.010. Right-of-Way Use Agreements are similar in form and content to a franchise agreement or master permit;
 - *Anticipated for Council consent calendar December 12, 2016.*
 - *There is no public process that precedes approval of a Right-of-Way Use Agreement.*
- Obtain required Land Use permits for the utilization of utility support structures (e.g. PSE poles and city light standards) within the right-of-way, per WAC Chapter 480-54, RCW Chapter 80.54 and Land Use Code (LUC) section 20.20.195.
 - *Development Services approved an Administrative Conditional Use (ACU) for the Archerline project on October 27, 2016, which is currently under appeal to the Hearing Examiner.*
 - *Issuance of a decision on the Newtoria project ACU is anticipated by in early 2017.*
- Obtain Right-of-Way Use permits for any and all work conducted in the City rights-of-way per Chapter 14.30 BCC. Right-of-way use permits are used to manage use, construction and traffic control.
 - *Permits for construction work in the right-of-way to be reviewed and issued once the Right-of-Way Use Agreement is executed and ACUs are approved.*

Verizon Wireless has pursued parallel paths in obtaining required Transportation and Land Use approvals, and policy issues raised by this approach are discussed in greater detail below.

Right-of-Way Use Agreement Council Considerations:

Verizon Wireless submitted a complete Right-of-Way Use Agreement application on August 3, 2016 with the Transportation department. This started a 120-day statutory “shot clock” for the City to enter into a Right-of-Way Use Agreement with Verizon by December 1, 2016 (short extensions are contemplated to accommodate Council scheduling). The Right-of-Way Use Agreement is a requirement for any telecommunications carrier or provider that desires to “...occupy or otherwise use city rights-of-way for the purpose of providing telecommunication services.”

The City is compelled by Federal and State regulations to provide Verizon Wireless (or any commercial mobile service provider) with the ability to provide personal wireless services (such as small cell) within the City. Section 332(c)(7) of the Federal Telecommunications Act requires the City to not prohibit provision of personal wireless service, and any decision to deny a facility must be supported by substantial evidence. Also, RCW 35.99.040(2) states that although the City can regulate placement of such facilities through its local zoning, such regulation may not result in an outright prohibition of all wireless facilities. Lastly, the Washington Utilities and Transportation Commission (WUTC) recently adopted rules (WAC 480-54 and RCW 80.54) requiring PSE to allow small cell attachments to their facilities unless there is insufficient pole capacity and the provider does not want to replace the pole to increase that capacity.

These laws are ultimately designed to restrict legislative power to outright reject placement of wireless communications facilities in the right-of-way. However, the Right-of-Way Use Agreement is a form of contract (like a franchise), and City Staff have spent considerable time negotiating the terms of the Right-of-Way Use Agreement to protect the City's interests within the scope of its authority. The terms of the Agreement will be outlined in the agenda memo supporting the Council's action that is anticipated for the consent calendar December 12, 2016. Highlights of the terms include the right to use specific City rights-of-way for personal wireless services, the associated fee, length of agreement and renewal options, non-exclusivity, provisions for relocation of facilities should that be necessary, and restoration requirements.

Land Use Considerations:

With respect to Land Use, the process and the limits of the City's regulatory authority were described in a September 26, 2016 memorandum to Council. This memorandum has been included for ease of reference as Attachment B. The City's Land Use Code does allow the imposition of conditions to dictate design, but it cannot be administered in a manner that precludes wireless deployment. The Archerline project has received the required ACU, and the appeal period was completed on November 10, 2016. Two appeals of the ACU were timely filed to the City's Hearing Examiner. The ACU for the Newtoria project has not been approved, as the City has asked Verizon Wireless to update the visual simulations that were prepared in support of the application. The ACU for Newtoria is anticipated to be approved in early 2017.

Wireless communication facilities have been regulated with specificity in Bellevue since 1998 when macro cell sites were first being deployed by wireless communication providers. The last major update to the regulations was undertaken in 2003, and the small cell and 5G technologies now proposed for deployment were not contemplated at that time. An update to the Land Use Code (LUC) has been identified as necessary in the code amendment docket, and will be recommended for prioritization in the upcoming work program to be discussed with Council in early 2017.

Strategy Moving Forward:

In the interim period before the LUC is updated, the Right-of-Way Use Agreement itself is being proposed as the mechanism to dictate design parameters and create design and location predictability for the public and for the providers when deployment is proposed on PSE poles (such as in the Newtoria and Archerline projects). Representative photo simulations of deployments proposed on PSE utility poles are included in the Draft Right-of-Way Use Agreement, which is available in the Council Office Document Library. A Master Lease Agreement will be used to prescribe design outcomes when deployment is proposed on City-owned structures/light poles (such as the Starbel project).

Verizon Wireless has included the Starbel project in their Right-of-Way Use Agreement application. Starbel is different, because Verizon wants to use City-owned street light poles in the Downtown to support the small cell infrastructure. The City has much more control over the approval of small cell on City-owned assets such as street light poles, because Federal and State laws do not require the City to provide access to its own property.

Locating on City light poles is a mechanism for cellular service providers to deploy in areas that do not have above-ground electrical utility infrastructure; and, the Downtown is a particularly desirable deployment location because cellular service is in high demand by a great number of people. City staff are in the process of developing a MLA template that could be used with Verizon Wireless and other

telecommunication providers for access to City street light poles, subject to Council's approval. A MLA template (including design parameters) is anticipated to be ready for Council consideration sometime in 2017.

Other Information:

Astound Broadband is anticipated to provide the communication connections (backhaul) for the Newtoria and Archerline projects. Astound already has a Right-of-Way Use Agreement with the City, and has submitted for Right-of-Way Use permits to provide backhaul for these projects. Approval of these permits is pending. This backhaul work could result in some disturbance to the right-of-way and traffic disruption during construction.

ALTERNATIVES

- 1) Proceed with current strategy regarding the Verizon Wireless small cell deployment project, and bring the Right-of-Way Use Agreement forward for Council consideration at the December 12, 2016 Regular Session Consent Calendar.
- 2) Do not proceed with current strategy and provide alternative direction to staff.

RECOMMENDATION

Alternative 1.

ATTACHMENTS

- A. Applicable Comprehensive Plan Policies
- B. September 26, 2016 memo to Council RE: Verizon Small Cell Wireless Project

AVAILABLE IN COUNCIL DOCUMENT LIBRARY

Draft Right-of-Way Use Agreement