

186626

ORDINANCE No.

Amend right-of-way use agreement granted to New Cingular Wireless PCS, LLC for mobile telecommunications services (Ordinance; amend Ordinance No. 185789)

The City of Portland ordains:

Section 1. The Council finds:

1. In 2012, the City Council approved an ordinance granting a three year right-of-way use agreement to New Cingular Wireless PCS, LLC (AT&T Mobility) to provide mobile telecommunications services in Portland. Ordinance No. 185789. The agreement became effective on February 22, 2013.
2. On April 3, 2013, the City Council amended AT&T Mobility's agreement to clarify remittance dates for annual payments. Ordinance No. 185955.
3. The wireless industry is deploying technology called small cells and distributed antenna systems (DAS). Small cells and DAS are shorter range systems designed to complement the macro cell network. These technologies are smaller than traditional cell sites and are deployed where suitable in flexible configurations to provide capacity and coverage to existing networks. Small cells and DAS will be used to increase coverage capacity in targeted high traffic areas and extend coverage to hard-to-reach locations.
4. The City of Portland supports the implementation of small cell and DAS infrastructure as a means to increase broadband capacity within the City. Through the Broadband Strategic Plan, the Portland Plan and the City's draft Comprehensive Plan, the City has identified broadband service and infrastructure as vital for a prosperous and vibrant community. Both fiber and wireless are technologies that work together to create this critical infrastructure. Consumer habits support the increasing importance of a mobile network. The Pew Research Center estimates that 90% of adults in the U.S. have a cell phone, and two-thirds of those adults use their phones to go online. The National Center for Health Statistics estimates that 39% of U.S. households have dropped their landline completely and only have cell phones. The Federal Communications Commission reports that about 70% of 9-1-1 calls are placed from cell phones.
5. AT&T Mobility advised the City that it desires to deploy small cells and DAS within the public right-of-way in Portland in the near future. Because the technologies are relatively new and have not been previously deployed in Portland rights-of-way, the City is evaluating the technologies and the potential impact on city infrastructure.
6. The current requirements and processes for siting wireless in the right-of-way are based on "traditional" cell site technology where each wireless site operates as a complete, self-supporting unit and is comprised of longer range antennas attached to

the top of an existing utility pole with supporting equipment located on the pole, vaulted in the right-of-way or located on adjacent private property. The City's current siting standards and pre-application processes do not account for these small cell and DAS technologies and equipment and do not necessarily address them in an appropriate fashion.

7. In January 2014, the City began a process of reviewing its current wireless right-of-way siting and pre-application process. Staff anticipates that the RFP contract process will be concluded sometime around the fall of 2014. At the end of that evaluation, City staff will prepare and submit recommendations to Council for permit and process amendments and improvements to the current program, including how to integrate new technologies into the current process. Implementation of these improvements will require amendments or new agreements with all wireless carriers who are currently authorized to operate within the City.
8. AT&T Mobility has submitted a written request asking the City to amend its right-of-way use agreement to allow for a limited pilot trial program for siting small cells and DAS within the public right-of-way. A copy of AT&T Mobility's letter is attached to this Ordinance as Exhibit A, and is incorporated by reference. City staff recommends the Council approve the amendments related to the limited pilot project to accommodate AT&T Mobility's interests identified in this letter.
9. In its letter to the City, AT&T Mobility indicated that it is willing to partner with the City and utility pole owners to create a limited pilot project for siting small cells and DAS on a limited basis within the City right-of-way. Under the proposed limited pilot project, the fees, locations, designs and processes for small cell and DAS installations will be determined jointly by AT&T Mobility, the City and where applicable, utility pole owners. The installations will allow the partners to gain practical understanding of the technologies and implications for the City and utility pole owners. The City will use this understanding to help inform long-term decisions about small cell and DAS installations, the role of these technologies in the public right-of-way, and potential impacts on the community.
10. The Office for Community Technology recommends that the City Council amend AT&T Mobility's current right-of-way use agreement to create a limited small cell and DAS pilot program that will allow parties to gain practical experience in small cell and DAS technologies and limited deployment.

NOW, THEREFORE, the Council directs:

- a. Section 6.D of Ordinance 185789 shall be amended by adding a new subsection 6.D.9 to create a limited pilot program for the installation of small cells or DAS in the right-of-way as follows:
 9. Small cells and distributed antenna systems. Grantee may install and maintain small cells or distributed antenna systems (DAS) on existing Structures in the

Streets. Small cell and DAS facilities are specifically excepted from Sections 3.A, 3.B, and 6.D.1 – 8 of this Agreement, but are otherwise subject to all other remaining terms and conditions of this Agreement. The location, design, processes, fees and any other terms and conditions for installing small cell and DAS facilities within the Streets will be determined jointly by the Office for Community Technology, Grantee, and when applicable, the utility pole owner. Grantee shall apply for and obtain all permits and permissions necessary from the City, the utility pole owners, and any other required entities for the construction, installation and operation of these small cells and DAS. All construction and maintenance of these small cells and DAS shall be the responsibility of Grantee, regardless of who performs the installations and/or construction.

- b. All other terms and conditions of Ordinance 185789, as amended by Ordinance 185955, shall remain unchanged.
- c. Solely for convenient reference, the final, comprehensive right-of-way use agreement that incorporates the 2013 amendment from Ordinance 185955 and this Ordinance is attached as Exhibit B. In case of any conflict in terms, the original Ordinance No. 185789, as amended by Ordinance No. 185955 and directives a and b above of this Ordinance, shall control.
- d. On or before the thirtieth (30th) day after this ordinance becomes effective, AT&T Mobility shall file in the Office of the Auditor of the City of Portland a written acceptance of this ordinance, executed by AT&T Mobility and meeting the approval of the City Attorney. Any failure on the part of AT&T Mobility to file such written acceptance within such time shall be deemed an abandonment and rejection of this ordinance, and shall be construed to be an acceptance of all the terms contained in this ordinance.

Passed by the Council: JUN 04 2014

LaVonne Griffin-Valade
Auditor of the City of Portland

By:



Deputy

Mayor Charlie Hales
Prepared by: JL/BW
April 30, 2014

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Agenda No.
ORDINANCE NO. 186626
 Title

Amend right-of-way use agreement granted to New Cingular Wireless PCS, LLC for mobile telecommunications services (Ordinance; amend Ordinance No. 185789)

<p>INTRODUCED BY Commissioner/Auditor: Mayor Charlie Hales</p>	<p>CLERK USE: DATE FILED <u>MAY 23 2014</u></p>
<p>COMMISSIONER APPROVAL</p> <p>Mayor—Finance and Administration - Hales</p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety - Novick</p>	<p>LaVonne Griffin-Valade Auditor of the City of Portland</p>
<p>BUREAU APPROVAL</p> <p>Bureau: Revenue Bureau OMF CAO: Fred Miller <i>Fred Miller</i> Bureau Head: Thomas W. Lannon <i>thl</i></p>	<p>By: <i>Susan Parsons</i> Deputy</p>
<p>Prepared by: JL Date Prepared: April 29, 2014</p>	<p>ACTION TAKEN: MAY 28 2014 PASSED TO SECOND READING JUN 04 2014 9:30 A.M.</p>
<p>Financial Impact & Public Involvement Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p>	
<p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>	
<p>City Auditor Office Approval: required for Code Ordinances</p>	
<p>City Attorney Approval: required for contract, code, easement, franchise, comp plan, charter</p>	
<p>Council Meeting Date May 28, 2014 <i>may 28, 2014</i></p>	

AGENDA
<p>TIME CERTAIN <input type="checkbox"/></p> <p>Start time: _____</p> <p>Total amount of time needed: _____ (for presentation, testimony and discussion)</p>
<p>CONSENT <input type="checkbox"/></p>
<p>REGULAR <input checked="" type="checkbox"/></p> <p>Total amount of time needed: 15 (for presentation, testimony and discussion)</p>

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz	✓	
2. Fish	2. Fish	✓	
3. Saltzman	3. Saltzman	✓	
4. Novick	4. Novick	✓	
Hales	Hales	✓	