

IMPACT STATEMENT

Legislation title: Authorize the Office for Community Technology and the Portland Bureau of Transportation to enter into an agreement with AT&T related to the permitting of small cellular technology in the public right of way to enable 5G deployment

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Purpose of proposed legislation and background information:

This resolution authorizes the Office for Community Technology and the Bureau of Transportation to enter into agreements with AT&T for franchising and permitting small cellular infrastructure. This action allows the City to partner with AT&T even while litigation is pending over the Federal Communications Commission's small cell rules which go into effect in January, 2019.

Financial and budgetary impacts:

- \$1,250,000 in up-front payments from AT&T to the City for approximately 150 small wireless facilities in the form of annual right-of-way fees and as a credit against approximately 150 Wireless Small Cell permit fees to accelerate process improvements needed to support the deployment of small wireless facilities. The funds will be allocated to the Office for Community Technology and the Bureau of Transportation to cover the cost of AT&T's deployment in accordance with the City's core principles.
- AT&T will pay \$750 per year, with an annual inflation escalator of 3%, per small wireless facility on City-owned poles for the initial ten-year term of the Master Lease Agreement.
 - The City will automatically adjust the lease rates if another wireless provider receives a lower rate.
 - The Agreement shall have commercially reasonable terms.
 - The Agreement shall have language that allows for the potential of in-kind services/contributions in lieu of rent payments.
 - The City and AT&T may extend the Agreement for up to two additional five-year terms. The City's agreement to extend will not be unreasonably withheld.
- AT&T will pay \$1,250 per year, with an annual inflation escalator of 3%, per small wireless facility located in the right of way for the initial ten-year initial of the Franchise Agreement.
 - The City will automatically adjust the right-of-way rate if another wireless provider receives a lower rate.
 - The Franchise shall have commercially reasonable terms.
 - The Franchise shall have language that allows for the potential of in-kind services/contributions in lieu of rent payments.

- The City and AT&T may extend the Franchise for up to two additional five-year terms. The City’s agreement to extend will not be unreasonably withheld.
- The annual escalator does not apply to facilities where fees have been prepaid as part of the initial \$1,250,000 payment. In year six for each affected facility, the annual right-of-way rate will be calculated as if the annual escalator had been applied to each of the preceding years.

Community impacts and community involvement:

The Digital Equity Action Plan is intended to bridge the digital divide that exists for disadvantaged members of our communities by providing access to the internet and digital literacy training. Through this agreement, AT&T has agreed to fund \$200,000 to support digital inclusion work by a local non-profit of their choice. This agreement is a direct result of City Council adopting the DEAP and the Office for Community Technology moving forward to implement the plan in conjunction with PBOT. In addition, as noted above, there will be \$1,250,000 in up-front payments from AT&T to the City to cover the cost of deployment in accordance with the City’s core principles. Finally, AT&T has committed to pay for such mutually agreed-upon necessary structural or electrical improvements to the City’s infrastructure that is related to AT&T’s deployment of small wireless facilities.

100% Renewable Goal:

Some upgrades to City electric infrastructure could occur.

Budgetary Impact Worksheet

Does this action change appropriations?

- YES: Please complete the information below.
- NO: Skip this section

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount

PBOT

PORTLAND BUREAU OF TRANSPORTATION

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Chloe Eudaly Commissioner Chris Warner Interim Director

37405

December 13, 2018

ATTACHMENT A

TO: Mayor Ted Wheeler
Commissioner Amanda Fritz
Commissioner Nick Fish
Commissioner Dan Saltzman
Commissioner Chloe Eudaly

FROM: Anne Hill

CC: Elisabeth Perez
Maja K. Haium
Jennifer Li

SUBJECT: APPROVAL OF ACTIONS RELATED TO A WIRELESS FRANCHISE AND A MASTER LEASE AGREEMENT BY AND BETWEEN THE CITY OF PORTLAND AND NEW CINGULAR WIRELESS PCS, LLC RELATED TO SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHT OF WAY

I. RECOMMENDATION

Authorize OCT and PBOT to negotiate and execute the following:

1. A Temporary Revocable Permit (Revocable Permit) between the City and New Cingular Wireless PCS, LLC (AT&T) to allow for installation of small wireless facilities in the public right of way within sixty (60) days of an adopted resolution; and
2. A wireless franchise agreement (Franchise) between the City and AT&T by June 30, 2019; and
3. A Master Lease Agreement (Agreement) between the City and AT&T related to the leasing of small wireless facilities on City-owned poles in the right of way within sixty (60) days of an adopted resolution; and
4. Coordination of support from AT&T to a local non-profit of AT&T's choice for digital inclusion work within the City.



II. OUTCOMES

Approval of the recommendation results in:

1. **Improved wireless voice and data coverage and quality** for residents, businesses and guests through the deployment of AT&T small wireless facilities throughout the City; and
2. **Future revenue stream** of approximately \$1.25M in two up-front payments for annual right-of-way and wireless-permit fees for approximately one-hundred fifty (150) small wireless facilities; and
3. **Future-oriented City infrastructure** for next generation mobile connectivity.

III. ANALYSIS

City of Portland – AT&T Common Interest Negotiation

As directed by Mayor Wheeler and Commissioner Eudaly, the City proactively engaged AT&T in negotiations to find common interests that could be the basis of an agreement.

City interests in accelerating broadband deployment include:

- **Digital Inclusion** – providing high-speed internet in an equitable manner to all Portlanders, especially to those in communities of color and low-income populations; and
- **Managing the right of way** – the City allows public and private utilities to deliver essential services to City constituents, such as water, electricity and internet access; and
- **Securing fair and reasonable compensation** – utilities that profit from use of the public right of way should offer fair value in return to further the City’s access and affordability goals; and
- **Supporting the Digital Equity Action Plan (DEAP)** – bridging the digital divide that exists for disadvantaged members of our communities by providing access to the internet and digital literacy training; and
- **Ensuring public well-being** – continuing to improve and protect the public health, safety and welfare of Portlanders and increasing first-responder efficiency; and
- **Advancing Smart City goals** – orienting the City’s digital infrastructure to support Smart City initiatives including sensor connectivity, infrastructure and applications.

AT&T interests in accelerating broadband deployment include:

- **Wireless network improvements** – enhancing network speed, capacity and reliability for Portland residents, businesses, visitors and first responders; and
- **Predictability** – delivering consistent permit reviews, service level intervals and output volumes to maximize engineering and installation efficiency; and
- **Reduced deployment cost** – allowing more infrastructure investment within fixed capital budgets; and
- **Incremental success** – building a trusting relationship with incremental successes.

Common Interest Based Agreement

Through exploration of each party's interests in accelerating broadband deployment, the following common interests and terms were mutually agreed upon.

- Economic development goals are advanced through:
 - Deployment of small wireless facilities capable of increasing mobile data speeds.
- Digital Inclusion deployment goals are advanced through:
 - \$200,000 to support digital inclusion work by a local non-profit of AT&T's choice.
- Speed and predictability goals are achieved through:
 - \$1,250,000 in up-front payments from AT&T to the City for approximately 150 small wireless facilities in the form of annual right-of-way fees and as a credit against approximately 150 Wireless Small Cell permit fees to accelerate process improvements needed to support the deployment of small wireless facilities.
- Reduced network deployment cost goals are achieved through:
 - Predictability goals defined above.
- Structural or electrical improvements to City infrastructure:
 - AT&T has committed to pay for mutually agreed-upon improvements related to the deployment of its small wireless facilities, if necessary.

Agreement Specific Business Terms

- AT&T will make a \$1,250,000 payment to the City as follows:
 - Fifty percent (\$625,000) within sixty (60) calendar days following final execution of the Agreement and effective date of the Revocable Permit; and
 - Fifty percent (\$625,000) within sixty (60) calendar days following the effective date of the Franchise; and
 - A portion of the funds will act as a credit that Wireless Small Cell permits will be billed against; and
 - In the unlikely event the Franchise is not in effect by August 1, 2019, the City shall refund to AT&T unexpended payments advanced.
- AT&T will pay \$750 per year, with an annual inflation escalator of three percent (3%), per small wireless facility on City-owned poles for the initial ten (10)-year term of the Agreement.
 - The City will automatically adjust the lease rate if another wireless provider receives a lower rate.
 - The Agreement shall have commercially reasonable terms.
 - The Agreement shall have language that allows for the potential of in-kind services/contributions in lieu of lease payments.
 - The City and AT&T may extend the Agreement for up to two (2) additional five-(5) year terms. The City's agreement to extend will not be unreasonably withheld.

- AT&T will pay \$1,250 per year, with an annual inflation escalator of three percent (3%), per small wireless facility located in the right of way for the initial ten (10)- year term of the Franchise.
 - The City will automatically adjust the right-of-way rate if another wireless provider receives a lower rate.
 - The Franchise shall have commercially reasonable terms.
 - The Franchise shall have language that allows for the potential of in-kind services/contributions in lieu of right-of-way payments.
 - The City and AT&T may extend the Franchise for up to two (2) additional five-(5) year terms. The City’s agreement to extend will not be unreasonably withheld.
 - The annual escalator does not apply to the first five (5) years for each facility where right-of-way rates have been prepaid as part of the initial \$1,250,000 payment. In year six (6) for each affected facility, the annual right-of-way rate will be calculated as if the annual escalator had been applied to each of the preceding years.
- The City will make a good-faith effort to review wireless-permit applications in the required timeframe and, when accepted, issue the permits within the sixty (60)-day permitting service-level standard. AT&T and the City will work in good faith with each other to pursue the issuance of one-hundred fifty (150) wireless permits in 2019, with the following targets:
 - Fifty (50) permits issued before June 30, 2019; and
 - Fifty (50) permits issued between July 1, 2019 and September 30, 2019; and
 - Fifty (50) permits issued between October 1, 2019 and December 31, 2019.

Policy Implications

Both the City and AT&T’s interests will be served by executing a Franchise, Revocable Permit and Agreement.

Evaluation and Follow-Up

OCT and PBOT will manage the relationship between the City and AT&T, including each party’s compliance with the Franchise and Agreement.

OCT and PBOT will develop a Franchise and an Agreement. OCT and PBOT will bring the Revocable Permit, Franchise, applicable rates and code changes for review and approval from Council.

The Federal Communications Commission (FCC) does not allow local authorities to deny public right-of-way small wireless facility installations for health concerns.

More information can be found on the FCC and American Cancer Society websites regarding the regulation and standards of radiation levels.

FCC: <https://www.fcc.gov/engineering-technology/electromagnetic-compatibility-division/radio-frequency-safety/faq/rf-safety>

American Cancer Society: <https://www.cancer.org/cancer/cancer-causes/radiation-exposure/cellular-phone-towers.html>

Coordination

This memo was coordinated by the City Attorney's Office, OCT, PBOT and BTS.

V. COST SUMMARY/IMPLICATIONS

Additional revenue from wireless franchises and small wireless facility leases is anticipated as deployment activity increases and will be recognized through future budget actions based on actual activity.