



Legislation Text

File #: 19-565, **Version:** 1

CITY COUNCIL AGENDA ITEM

ACTION REQUESTED:

Pass the ordinance amending Title 1, Chapter 6, Article A of the Naperville Municipal Code to provide the City Manager authority to enter into right-of-way use agreements as required by 9-1B-1 of the Naperville Municipal Code

DEPARTMENT: Transportation, Engineering and Development

SUBMITTED BY: Tim Felstrup, Project Manager

BOARD/COMMISSION REVIEW:

N/A

BACKGROUND:

The Naperville Municipal Code (9-1B) provides that a right-of-way use agreement is required whenever a company desires to locate non-cable or telephone telecommunications facilities in the City's right-of-way. The Naperville Municipal Code requires a right-of-way use agreement contain the following:

1. Five-year term with renewal and termination options;
2. Unless prohibited by preemptive law, an annual license fee of \$1.50 per each linear foot of newly installed facilities or \$.50 per linear foot for facilities located in existing excess or surplus facilities (notably, certain telecommunications retailers that are statutorily required to collect and remit to the City a six percent (6%) tax from retail customers have argued that they are preempted from annual license fees and have not been required to pay more than the statutory tax, which is significantly higher than the standard license fee);
3. Obligation to cooperate with the City and move facilities if necessary;
4. Liability indemnification as well as insurance and construction/performance surety requirements.

DISCUSSION:

The City has approximately thirty (30) pending applications from one wireless provider for placement of fiber and conduit in the City's right-of-way. The City anticipates an increase in right-of-way applications and corresponding right-of-way agreements as telecommunications providers establish 5G infrastructure, because fiber infrastructure is necessary to service small wireless facilities. City Council previously granted the City Manager authority to enter into pole attachment agreements for small wireless facilities. By granting the authority for the City Manager to enter into right-of-way agreements, it will allow staff to efficiently manage the applications. A model right-of-way use agreement is appended hereto.

The most recent Council approved right-of-way use agreements were on May 21, 2019, authorizing the City Manager to execute a right-of-way agreement with CenturyLink for the placement of new fiberoptic lines and conduit in the City's right-of-way and on March 5, 2019, authorizing the City Manager to execute a right-of-way agreement with MCImetro (Verizon) for placement of new fiberoptic lines and conduit in the City's right-of-way and for maintenance of a previously installed fiber optic network purchased from WOW in 2017. In the past three years, City Council has approved approximately ten right-of-way use agreements. All have been approved unanimously on the consent agenda without any Council raising any concerns. Due to the number and standardized nature of these agreements along with the business applicants' urgency to install fiber in the right-of-way, staff recommends Council expand the City Manager's statutory authority to allow the City Manager to enter into right-of-way use agreements as required by 9-1B-1 of the Naperville Municipal Code.

On May 21, 2019 City Council conducted the first reading of the amendment with some discussion on the City's approach to dark fiber management.

FISCAL IMPACT:

None.