

EXHIBIT B

RESOLUTION 20-____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA ADOPTING THE DESIGN STANDARDS AND GUIDELINES FOR SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHT-OF-WAY, THE SMALL WIRELESS FACILITY FEE SCHEUDLE, AND THE SMALL WIRELESS FACILITY LICENSE AGREEMENT FOR FACILITIES IN THE PUBLIC RIGHT-OF-WAY

WHEREAS, Section 253 of the Federal Telecommunications Act of 1996 (47 U.S. Code § 253) recognizes “the authority of ... local government to manage the public rights-of-way,” provided that local regulation may not effectively prohibit a company’s ability to provide telecommunications service; and

WHEREAS, Section 253(c) of the Telecom Act preserves the authority of State or local government to “require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government”; and

WHEREAS, Section 332(c)(7) of the Telecom Act prohibits local regulations that “unreasonably discriminate among providers of functionally equivalent services”; and

WHEREAS, Article XI, Section 9 of the California Constitution allows cities to establish conditions and regulations over the use of the public right-of-way to supply utility services; and

WHEREAS, California Government Code sections 37350 et seq., provides that a city may purchase, lease, receive, hold, enjoy, and control its property for the common benefit; and

WHEREAS, California Public Utilities Code Section 7901 and Section 7901.1 authorizes telephone corporations to construct “telephone lines along and upon any public road or highway” within California and “erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway” subject to the City’s reasonable control over time, place, and manner, which applies to all entities in an equivalent manner”; and

WHEREAS, significant changes in Federal and State law that affect local authority over wireless communications facilities (WCFs) and Small Wireless Facilities (SWFs) have occurred, including but not limited to the following:

- On November 18, 2009, the Federal Communications Commission (FCC) adopted a declaratory ruling FCC 09-99 (the 2009 Shot Clock), which established presumptively reasonable timeframes for State and local governments to act on applications for WCFs.
- On February 22, 2012, Congress adopted Section 6409(a) of the Middle Class Tax Relief and Job Creation Act (Section 6409(a)), which mandated that State and local governments approve certain modifications and collocations to existing WCFs, known as eligible facilities requests.
- On October 17, 2014, the FCC adopted a report and order (FCC 14-153) that, among other things, implemented new limitations on how State and local governments review applications covered by Section 6409(a), established a deemed approval remedy for Eligible Facilities Request applications when the local reviewing authority fails to act within 60 days, and also further restricted generally applicable procedural rules under the 2009 Shot Clock.
- On October 9, 2015, the State of California adopted Assembly Bill No. 57 (Quirk), which deemed approved any WCF applications when the local reviewing authority fails to act within the 2009 Shot Clock timeframes.
- On August 2, 2018, the FCC adopted a Third Report and Order and Declaratory Ruling (FCC 18-111) that formally prohibited express and de facto moratoria for all telecommunications services and facilities under 47 U.S.C. § 253(a).
- On September 26, 2018, the FCC adopted the Declaratory Ruling and Third Report and Order (FCC 18-133) in the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment ("FCC Third Order") that, among other things, (a) creates a new regulatory classification for SWFs; (b) requires State and local governments to provide all necessary approvals or deny the applications for SWFs within 60 days or 90 days for existing structures and new structures respectively; (c) establishes that "fees are only permitted to the extent that they represent a reasonable approximation of the local government's objectively reasonable costs, and are non-discriminatory"; (d) provides that a failure to act within the applicable timeframe presumptively constitutes an effective prohibition; and (e) that local aesthetic requirements "are not preempted if they are (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance"; and

WHEREAS, on ____, 2020 the City Council amended Chapter 19.27 of the Commerce Municipal Code by revising Section 19.27.030 entitled "Antennas Requiring Conditional Use Permit", and added Section 19.27.100 entitled "Wireless Telecommunication Facilities In The Public Right-Of-Way" and Section 19.27.110 entitled "Design Guidelines for Small Wireless Facilities" granting authority to the City

Council to adopt design standards and guidelines regulating SWFs in the public right-of-way. Section 19.27.110 also allows the Director of Public Works, in consultation with the City Engineer, to implement rules and promulgations to interpret and implement the standards and guidelines, as well as develop, implement, or modify any policies, regulations, conditions, forms, or documents necessary to regulate Small Wireless Facilities in the public right-of-way” to allow for greater flexibility and responsiveness to the new Federal and State laws while still preserving the City's traditional authority over time, place, and manner to the maximum extent practicable; and

WHEREAS, consistent with the authority granted in Section 19.27.110 of the Commerce Municipal Code, the City Council desires to establish the Design Standards and Guidelines for Small Wireless Facilities in the Public Right-of-way (“Design Standards”); and

WHEREAS, consistent with the authority granted in Section 19.27.100 of the Commerce Municipal Code, the City Council desires to establish the Small Wireless Facility Fee Schedule (“Fee Schedule”) in compliance with the FCC Third Order, which also provides flexibility in the event the FCC Third Order is overturned; and

WHEREAS, the City Council desires to adopt a Small Wireless Facilities License Agreement for Facilities in the Public Right-of-Way template (“ROW License”) for City owned properties, a carrier executed copy of which must be submitted as part of the application, in order to prevent the expiration of the applicable shot clocks due to delays in negotiations; and

WHEREAS, a notice of public hearing was published in _____, a newspaper of general circulation on _____, 2020; and

WHEREAS, the City Council held a duly noticed public hearing on the Resolution, reviewed and considered the Agenda Report, other written reports, public testimony and other information contained in the record.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMMERCE DOES HEREBY RESOLVE, DECLARE AND DETERMINE AS FOLLOWS:

SECTION 1. The facts set forth in the recitals are true and correct and are hereby incorporated as substantive findings in this Resolution.

SECTION 2. The Agenda Report, public testimony, and other information contained in the record, are an adequate and appropriate evidentiary basis to approve and adopt the Resolution for the following reasons and findings:

- a. The adoption of this Resolution will not result in the effective prohibition of wireless service.
- b. The Design Standards are objective, reasonable, and applied in a non-discriminatory manner.

- c. The Application Fee included in the Fee Schedule represents the actual costs incurred by the City in processing applications and the Annual License Fee falls within the safe harbor provisions of the FCC Third Order.
- d. The adoption of the ROW License will reduce the amount of time spent negotiating license agreement, expedite the permit process, and assist the City in meeting shot clock deadlines.

SECTION 3. The Resolution is consistent with the applicable Federal, State, and local laws. The Resolution also conforms to the City's General Plan, by supporting the referenced policies in the following manner:

- a. Provide new services to meet the needs of the labor force and attach new business and industry to the City (Community Development Policy 5.2).
- b. Improve efficiency of the City's transportation and circulation system through the use of 5G technology in smart cars and smart traffic applications (Transportation Policy 1.8).
- c. Improve wireless coverage and capacity ensuring that law enforcement services continue to meet the public safety needs of the community (Safety Policy 2.1).

SECTION 4. The Resolution will not be detrimental to the public interest, health, safety, convenience or welfare, and is exempt from the California Environmental Quality Act ("CEQA"), under the common sense exemption listed under §15061(b)(3) whereas the activity in question can be seen with certainty that there is no possibility that it will have a significant effect on the environment.

SECTION 5. The City Council hereby adopts the Design Standards attached hereto as Exhibit A, and authorizes the Director of Public Works, in consultation with the City Engineer, to implement rules and promulgations to interpret and implement such standards and guidelines, as well as develop, implement, or modify any policies, regulations, conditions, forms, or documents necessary to regulate Small Wireless Facilities in the public right-of-way.

SECTION 6. The City Council hereby adopts the Fee Schedule, attached hereto as Exhibit B, in accordance with the justification for such fees attached hereto as Exhibit C.

SECTION 7. The City Council hereby adopts the ROW License template, attached hereto as Exhibit D, and authorizes the City Manager to execute agreements for the use of the City property in the Public Right-of-Way that substantially conform to the ROW License template.

SECTION 8. This Resolution shall take effect concurrently with the effective date of Ordinance No. ____

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2020

Ivan Altamirano, Mayor

ATTEST:

Lena Shumway, City Clerk

Exhibit A

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