



AGENCY: City Council
MEETING DATE: August 12, 2019
DEPARTMENT: City Manager
PRESENTED BY: Tabatha Miller
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AGENDA ITEM SUMMARY

TITLE:

Receive Report, Conduct Public Hearing and Consider Adoption of City Council Resolution Adopting Fees for Services Related to Processing Applications for Small Wireless Facilities and Ongoing Use of City Rights-of-Way for Small Wireless Facilities

ISSUE:

The City of Fort Bragg charges fees to offset the cost of providing certain services. On April 12, 2019, at a special meeting, the City Council adopted a Resolution establishing Aesthetic Guidelines for Development of Wireless Communication Facilities. The special meeting was called so that the Guidelines could be in place prior to the April 15, 2019, deadline, as set forth by the Federal Communications Commission (FCC) Declaratory Ruling and Third Report and Order ("Declaratory Ruling" or "Ruling") which adopted new rules pertaining to the deployment of "small wireless facilities."

The FCC regulations allow cities to collect fees that reasonably approximate the city's cost of licensing and permitting small wireless facilities and rental of municipally-owned structures for placing equipment. The FCC has established fees that are presumptively reasonable for both one-time and recurring fees. The fees proposed and set forth in the attached Resolution are consistent with the presumptively reasonable fees established by FCC and also California law, which provides for fees that are limited to the cost to provide the service.

ANALYSIS:

Section 253(c) of the federal Telecommunications Act of 1996 provides that cities may require telecommunication providers to pay "fair and reasonable compensation" for use of public rights-of-way, but requires that the amounts of any such compensation be "competitively neutral", "nondiscriminatory" and "publicly disclosed." Section 253(c) also preempts local regulations that prohibit or have the effect of prohibiting the ability of any entity to provide telecommunications services." In the Declaratory Ruling, the FCC interpreted "fair and reasonable compensation" to mean that a city may only "charge fees that recover a reasonable approximation of the state or local government's actual and reasonable costs." The FCC's ruling applies to both the one-time fees that cities charge for processing applications for small wireless facilities in the right-of-way (including consultant fees) and ongoing fees (i.e., rent) that cities might charge for use of small wireless facilities in the right-of-way.

Since these fees are new to the City, the time and cost of providing the services is estimated. To err on the conservative side, staff proposes to use the fees the FCC presumptively assumes are reasonable or when appropriate, actual costs through the use of a Developer Deposit Account (DDA).

Increases to fees and charges for miscellaneous City services are also governed by California Government Code Section 66018. Miscellaneous fees and charges are also limited to the amount necessary to cover the cost to provide the service. If fees in excess of the cost are collected they must be used to reduce the cost of the service charge. Staff will evaluate the actual costs to provide the services during the next City-wide fee review and update and if appropriate, adjustments to the FCC's presumptively reasonable fees can be made.

Section 66018 requires a public hearing to be noticed and held prior to adoption of the fee increases.

RECOMMENDED ACTION:

After conducting a public hearing, a motion to adopt City Council Resolution for fees for services related to processing applications for small wireless facilities and ongoing use of City rights-of-way for small wireless facilities.

ALTERNATIVE ACTION(S):

1. Conduct public hearing and make minor modifications to the fees proposed in the resolution.
2. Conduct public hearing and direct staff to provide additional information or make changes to the resolution for action at a future meeting.

FISCAL IMPACT:

The impact of collecting the fees is unknown but should have a small but positive effect on the City's budget as the cost of providing these services will be offset.

GREENHOUSE GAS EMISSIONS IMPACT:

There is no expected impact on greenhouse gas emissions from collection of fees.

CONSISTENCY:

Adoption of fees associated with licensing, permitting and renting City-owned facilities for small cell services is consistent with the City Council financial policy of requiring full cost recovery for services provided.

IMPLEMENTATION/TIMEFRAMES:

The new fees cannot become effective until at least 60 days after adoption of the Resolution pursuant to California Government Code Section 66017(a). If adopted by Council on August 12, 2019, the fees will be effective October 11, 2019.

ATTACHMENTS:

1. Resolution
2. Exhibit A to Resolution (Fee Listing)
3. Public Hearing Notice

NOTIFICATION:

N/A