



CITY OF BEND

**CITY COUNCIL ISSUE SUMMARY**

<b>MEETING DATE:</b> March 4, 2020	<b>SUBJECT:</b> Ordinance granting a non-exclusive telecommunications franchise to SQF, LLC  <b>STAFF MEMBER:</b> John Printz <b>DEPARTMENT:</b> Finance
<b>ACTION REQUIRED:</b> <input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input checked="" type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: 03/04/2020 <input checked="" type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: 03/18/2020 <input type="checkbox"/> Resolution <input type="checkbox"/> Information/Direction <input type="checkbox"/> Consent Agenda ( <i>adopted by motion</i> )	<b>ADVISORY BOARD/COMMISSION RECOMMENDATION:</b> <input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not applicable <b>Comments:</b>

**RECOMMENDED MOTION:**

(First Reading) I move for first reading of the ordinance granting a non-exclusive telecommunications franchise to SQF, LLC.

(Second Reading) I move for second reading and adoption by roll call vote of the ordinance granting a non-exclusive telecommunications franchise to SQF, LLC.

**ISSUE / COUNCIL DECISION & DISCUSSION POINTS:**

- The City grants telecommunications franchises to those who apply and agree to comply with City code and standards.
- The FCC has issued an order that places standards and limitations on a city's ability to regulate the use of its rights-of-way, including limiting franchise fees for small cell wireless facilities to \$270 annually per facility and prohibiting fees based on a percentage of revenue. The proposed franchise agreement is intended to comply with the federal rules, but also contains provisions that would apply if the FCC decision is overturned (See Section 9 of the Franchise Agreement).

**BACKGROUND:**

Franchises are issued by ordinance, so the Council has to take action to approve a franchise. A franchise agreement sets the terms by which the franchisee occupies rights-of-way, and

therefore is a useful tool in assuring that franchises comply with City standards and policies relating to right-of-way use.

The ordinance contains a modified effectiveness provision that gives the City the option to void the ordinance in the event the franchise agreement is not signed by the franchisee within 30 days of the adoption of the ordinance. The previous version voided the ordinance automatically if it was not signed within the time period.

The federal Communications Act places limits on the type of regulations local governments can include in franchise agreements with telecommunications carriers. For example, the Communications Act prohibits local regulations that unreasonably discriminate between providers of equivalent services and local regulations that prohibit or have the effect of prohibiting the provision of personal wireless service. The City has multiple existing franchises for small cell wireless facilities with other providers, and is required under the Communications Act to treat applications for franchises from other equivalent providers with equal consideration.

The City's franchise agreement with SQF, LLC provides for an annual fee of \$270 per small cell wireless facility as required by the FCC order. In the event the FCC order is lifted or overturned, the fee will be 7% of SQF, LLC's gross revenues. SQF, LLC will have to go through development application and approval for each site, as well as receive approval from the owner of any existing facility (e.g., light pole) to which it wishes to attach a small cell facility.

#### **CURRENT YEAR BUDGET IMPACTS IDENTIFIED BY DEPARTMENT:**

The franchisee will be required to pay a franchise fee, although it will be at the reduced rate mandated by the FCC. This will result in some additional revenue for the City, but not a significant amount. SQF, LLC must pay a franchise fee on an annual basis to City the sum of \$270 per small wireless facility while the FCC order is in place, or 7% of SQF, LLC's gross revenues per quarter if the FCC order is not in effect. SQF, LLC anticipates siting anywhere from 0-100 facilities (\$0 to \$27,000 per year total under the FCC order).

#### **DEPARTMENT DIRECTOR REVIEW:**

**Reviewed by:** Sharon Wojda      **Date:** February 13, 2020

#### **FINANCIAL REVIEW:**

**Reviewed by:** Melissa Bradley      **Date:** February 07, 2020

#### **LEGAL REVIEW:**

**Reviewed by:** Michael Selkirk      **Date:** February 04, 2020

#### **COMMUNITY OUTREACH PROCESS AND POTENTIAL IMPACTS:**

The franchise does not authorize installation of any facility at any specific location. Installations must be approved through the City's development application process.

#### **ATTACHMENTS:**

- Ordinance
- Franchise Agreement