



**CITY OF NOVI CITY COUNCIL
AUGUST 31, 2020**

SUBJECT: Consideration of approval of a resolution setting fees for wireless facilities, wireless support structures, and utility poles in the public right-of-way.

SUBMITTING DEPARTMENT: City Attorney

BACKGROUND INFORMATION: Chapter 32.5, Article III, "Wireless Facilities in Right-of-Way," was adopted by the City Council on April 1, 2019. The Ordinance establishes requirements, standards, and regulations for access to and use of public right-of-way for wireless communications facilities, including small cell wireless facilities which will eventually provide the infrastructure for 5 G networks. The Ordinance was adopted in response to new state and federal regulations which established the standards and procedures that now allow wireless providers access to and use of public-right-of-way for wireless communications facilities.

Chapter 32.5 provides that permit application and annual fees for the approved wireless facilities will be established by Resolution of the City Council. The fees established in the attached Resolution are consistent with and mirror the fees established by state and federal law.

RECOMMENDED ACTION: Approval of a Resolution setting fees for wireless facilities, wireless support structures, and utility poles in the public right-of-way.

STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF NOVI

**RESOLUTION ESTABLISHING FEES FOR WIRELESS FACILITIES, WIRELESS SUPPORT
STRUCTURES, AND UTILITY POLES IN PUBLIC RIGHT-OF-WAY**

RESOLUTION NO. _____

At a regular meeting of the City Council of the City of Novi, County of Oakland, State of Michigan, held in the City Council Chambers on _____, at 7:00 o'clock p.m., with those present and absent being:

PRESENT: _____

ABSENT: _____

the following preamble and resolution were offered by Councilperson _____ and supported by Councilperson _____:

WHEREAS, on April 1, 2019, the Novi City Council adopted an Ordinance to amend the Novi Code of Ordinances, Chapter 32.5, Telecommunications, to add a new Article III, Wireless Facilities in Right-of-Way, to establish requirements, standards, and regulations for access to and use of public right-of-way for wireless facilities that are not telecommunication facilities under Article II of Chapter 32.5, referred to as the "Ordinance" in this Resolution; and

WHEREAS, the Ordinance requires the payment of permit application, review and inspection fees, and recurring annual fees in amounts established by City Council Resolution; and

WHEREAS, just as the Ordinance was adopted in response to new and differing State and Federal regulations without waiving the City's constitutional and proprietary rights and interests in its public right-of-way, in adopting this Resolution to establish the fees as called for by the Ordinance, the City Council is not waiving those rights and interests in attempting to comply with the directives and guidance provided by those State and Federal regulations; and

WHEREAS, the City does not accept that the maximum annual fees for collocation in a public right-of-way established under Michigan Public Act No. 365 of 2018 ("Act") are fair and reasonable or a reasonable approximation of the City's costs of maintaining, protecting, and managing its public right-of-way, including accurate records of all installations within it, which will only increase with the large number of wireless facilities, wireless support structures, and new and replacement utility pole deployments expected; and

WHEREAS, under the Federal Communications Commission ("FCC") Rules and Declaratory Ruling identified in the Ordinance, the overall height of wireless support structures or utility poles and collocated small wireless facilities required to be approved, and the recurring annual fees recognized as presumptively valid, are each higher than allowed by the Act; and

WHEREAS, the City reasonably approximates that its annual costs of maintaining, protecting, and managing its public right-of-way for each small wireless facility in it will be at least \$270.00; and

WHEREAS, the City does not accept that the maximum permit application fees established under the Act will cover the City's administrative and possible consultant costs to properly review and act on each permit application within the varying times allowed by the State and Federal regulations; and

WHEREAS, although the Ordinance calls for annual fees to be paid prior to permit issuance, for administrative efficiency the City has determined to have all subsequent annual fees by wireless providers payable in advance prior to January 1 of each calendar year, with the amount of the annual fee paid prior to permit issuance to be prorated from the date of payment through the end of the calendar year; and

WHEREAS, although this Resolution has been adopted with the intention of establishing fees consistent and in compliance with differing State and Federal regulations, the City recognizes that there should be a procedure available for wireless providers to challenge or request a waiver or modification of a fee.

IT IS THEREFORE RESOLVED that the City Council hereby establishes the following fees to be payable to the City under Article III, Wireless Facilities in Right-of-Way, in Chapter 32.5, Telecommunications, of the Novi Code of Ordinances:

PERMIT APPLICATION FEES

New Collocations, Eligible Facilities Requests, and New or Replacement Utility Poles

Single collocation of small wireless facility on existing structure or utility pole	\$ 200.00
Single collocation of small wireless facility and new or replacement structure or utility pole	\$ 300.00
Eligible Facilities Request	\$ 200.00
Collocation of other than small wireless facility on existing structure or utility pole	\$ 300.00
New and Replacement Utility Poles not involving small wireless facilities	\$ 500.00
Multiple collocations of substantially similar small wireless facilities on similar structure or utility poles by same wireless provider. (*Amount is for each collocation up to 20; fee for 20 collocations would be \$2,000.00)	\$ 100.00*

Collocations in existence on March 11, 2019

Single collocation of wireless facility on existing structure or utility pole	\$ 200.00
Multiple collocations of substantially similar wireless facilities on similar structures or utility poles by same wireless provider. (*Amount is for each collocation up to 20; fee for 20 collocations would be \$2,000.00.)	\$ 100.00*

ANNUAL FEES FOR EACH WIRELESS FACILITY AT A LOCATION

Collocations of wireless facilities that existed on March 11, 2019, as documented in City records or by an after-the-fact permit application filed no later than May 31, 2019. (The annual fee for collocations not documented to have existed as required shall be \$125 for collocation on structures or poles not more than 40 feet in height and \$270 for collocation on structures and poles exceeding 40 feet in height.)	\$ 20.00
Collocations of small wireless facilities on structures or utility poles not exceeding 40 feet in height that existed on March 11, 2019.	\$ 20.00
Collocations of small wireless facilities on new structures or utility poles that did not exist on March 11, 2019, and do not exceed 40 feet in height.	\$ 125.00
Collocations of small wireless facilities on new structures or utility poles that did not exist on March 11, 2019, and that exceed 40 feet in height.	\$ 270.00

IT IS FURTHER RESOLVED that the annual fees shall be paid in advance on a calendar year basis, with the amount of the annual fee that must be paid prior to permit issuance to be a prorated amount of the annual fee in the above schedule, representing the portion of the year from the date of payment through the end of the calendar year, with all subsequent annual fees payable in advance prior to January 1 of each calendar year.

IT IS FURTHER RESOLVED that there shall be no proration of the annual fees to be paid for collocations of wireless facilities that existed on March 11, 2019.

IT IS FURTHER RESOLVED that an administrative late charge equal to 5% of an annual fee that is not paid by the date it is due shall be payable to the City within one month of the due date, and that for each month or portion of a month after that in which the annual fee remains delinquent, an additional 1% administrative late charge shall be payable to the City.

IT IS FURTHER RESOLVED that a wireless provider directly affected by a fee established by this Resolution may file a written challenge to or request for waiver or modification relief from the fee with the City Clerk for placement on the next available City Council regular meeting Agenda for consideration, with the following procedures and standards to apply:

1. The filing of a challenge or request for relief does not suspend the obligation to pay the fee.
2. A challenge or request for relief must demonstrate that the fee prohibits or has the effect of prohibiting the wireless provider from providing personal wireless services contrary to Federal law, that the fee is discriminatory and not a reasonable approximation of the City's objectively reasonable costs under Federal law, or that the fee is otherwise in violation of State or Federal law.
3. A challenge or request for relief shall identify the Federal and State laws upon which it is based and identify what the wireless provider claims the City must do to bring the fee into compliance with those laws.

4. The City Council shall provide a wireless provider filing a challenge or request for relief with an opportunity to be heard at a City Council meeting, after which the City Council shall make a decision on the challenge or request. The City Council's decision shall be placed in written form, which may be at a meeting subsequent to when the decision was made.

5. In making its decision on a challenge or request for relief from a fee, the City Council shall consider each claim presented by the wireless provider and may consider other factors consistent with the State and Federal laws the City is attempting to comply with or that are based on the City's Charter, Ordinances, and rights and interests in the public right-of-way.

AYES:
NAYES:
ABSENT:
ABSTENTIONS:

RESOLUTION DECLARED ADOPTED _____, 2020.

STATE OF MICHIGAN)
)ss.
COUNTY OF OAKLAND)

I, the undersigned, the duly qualified and acting City Clerk of the City of Novi, County of Oakland, State of Michigan, do hereby certify that this Resolution was adopted by the City Council of the City of Novi at a regular meeting held on _____, 2020.

IN WITNESS WHEREOF, I have hereunto set my official signature, this ____ day of _____, 2020.

CORTNEY HANSON, City Clerk
City of Novi