



Department of Public Works  
1685 Main Street, Room 116  
Santa Monica, CA 90401

# Memorandum

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**To:** Personal Wireless Service Providers and Interested Parties

**From:** Susan Cline, Director of Public Works (JC)

**Date:** February 20, 2020

**Subject:** Attachment Fee for Small Wireless Facility Attachments to City-Owned Infrastructure in the Public Right-of-Way

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On September 27, 2018, the Federal Communications Commission (FCC) released Declaratory Ruling and Third Report and Order FCC 18-133 (the "Order"), which became effective January 14, 2019. Among other things, the Order limits the ability of local governments to charge fees that are greater than a reasonable approximation of costs for attachment of Small Wireless Facilities (as that term is defined in the Order) to municipally owned structures in the public right-of-way (hereinafter referred to as "municipal wireless attachments"). The purpose of this memo is to explain the basis for the City of Santa Monica's (City's) reasonable approximation of costs for these municipal wireless attachments in compliance with the Order, as set forth in Table 1, below.

**TABLE 1: SMALL WIRELESS FACILITY ATTACHMENT FEES**

Fee Type	Fee Amount
Attachment of one (1) Small Wireless Facility to a municipally owned structure in the public right-of-way (e.g., streetlight pole)	\$816.84/year

Paragraphs 78-80 of the Order establish a "safe harbor" for certain recurring and non-recurring fees, such as an annual fee for municipal wireless attachments. Paragraph 80 of the Order expressly provides that a locality could prevail in charging fees higher than the safe harbor fees by showing that such fees, "are (1) a reasonable approximation of costs, (2) those costs themselves are reasonable, and (3) are nondiscriminatory." The information provided below finds that the fee stated in Table 1 complies with the Order.

## **Requirement 1: Fees are a reasonable approximation of costs**

To determine a reasonable approximation of costs (on an annual basis) for municipal wireless attachments, City staff determined the various activities that could reasonably be performed on administering, monitoring, and otherwise maintaining municipal wireless attachments. The scope of these activities, listed below, were limited to municipal wireless attachments and are not duplicative of the regulatory permit fees established by the City (e.g., Wireless Facility Permit fee, 6409(a) Permit fee, Wireless Telecommunications Construction Permit fee, etc.). Stated another way, these activities would be performed at a loss and financial burden to the City in the absence of the annual attachment fee as stated in Table 1:

1. Administration of pole attachment agreements;
2. Inspection and monitoring of pole attachments;
3. Coordination with wireless facility owners/operators for de-energization and re-energization of wireless facilities to accommodate City maintenance of municipally owned structures;

The annual attachment fee is based upon a reasonable approximation of the City's staff costs. The City considered the *average* City staff time that would be devoted to a municipal utility attachment per year. Such practice is consistent with how the City establishes other cost-based fees. *As such, these fees are a reasonable approximation of costs.*

**Requirement 2: Those costs themselves are reasonable**

The fee stated in Table 1 is based on the cost of staff time incurred to the City to administer, monitor, and otherwise maintain municipal wireless attachments. *As such, the costs, themselves, are reasonable.*

**Requirement 3: The fees are non-discriminatory**

Pursuant to section 14.17 of those Master Small Cell License Agreements (MLAs) maintained between the City and various telecommunications providers, this memorandum shall serve as notice of the City's agreement to promptly change the annual license fee to the amount stated in Table 1 and in accordance with the requirements set forth in the Order, subject to the limitations as set forth below.

Licensees wishing to modify their MLA with the City are instructed to contact Thomas Check, Civil Engineering Associate, at [thomas.check@smgov.net](mailto:thomas.check@smgov.net) or via US Mail at:

Thomas Check  
1685 Main St, Rm 116  
Santa Monica, CA 90401

This memorandum shall also serve as notice to all qualified parties that wish to enter an MLA with the City of the fee for municipal wireless attachments, subject to the limitations set forth below.

The fee set in Table 1 will be subject to annual adjustment by the amount authorized by the City Council for other cost-based fees.

**Pole Attachment Agreements**

Any wireless service provider seeking to obtain a wireless attachment on a City owned pole shall enter into a Pole Attachment Fee Amendment in form attached hereto, which shall act as a modification to the provisions of the MLA governing attachment fees.

Upon full execution of the Pole Attachment Fee Amendment, the annual attachment fee in Table 1 shall supersede and modify the attachment fee set forth in the corresponding licensee's MLA until the earlier of (i) termination of the MLA by its own terms or (ii) administrative or judicial determination invalidating the Order, or portions thereof, relating to attachment fees. In the event that the Order, or portions thereof, relating to attachment fees are invalidated by administrative or judicial determination, the attachment fees as set forth in Table 2, below, shall be applicable to each MLA, retroactively, to the effective date of the Pole Attachment Fee Amendment.

<b>TABLE 2: ANNUAL LICENSE FEE SCHEDULE</b>	
<b>Date Range</b>	<b>Annual License Fee</b>
01/01/2017 – 12/31/2021	<b>\$2,500.00</b>
01/01/2022 – 12/31/2026	<b>\$2,760.00</b>
01/01/2027 – 12/31/2031	<b>\$3,048.00</b>

## POLE ATTACHMENT FEE AMENDMENT

This Pole Attachment Fee Amendment to the Master Small Cell License Agreement (“Fee Amendment”), entered into as of \_\_\_\_\_, 2020 (“Execution Date”), by and between the City of Santa Monica, a municipal corporation (“City”), and \_\_\_\_\_, LLC, a Delaware limited liability Company (“\_\_\_\_\_”) is made with reference to the following:

### RECITALS

- A. On or about \_\_\_\_\_, the City and \_\_\_\_\_ entered into that Master Small Cell License Agreement, dated \_\_\_\_\_, which granted \_\_\_\_\_ a nonexclusive revocable license to install, operate, and maintain Equipment for personal wireless service facility installations within the ROW, and specifically on City-owned streetlight poles subject to obtaining individual Site Permits (“Original Agreement”).
- B. The City and \_\_\_\_\_ desire to modify the Original Agreement.

### TERMS AND CONDITIONS

Now, therefore, the undersigned parties do hereby mutually agree to modify the Original Agreement as follows:

1. Exhibit D, attached hereto, shall be incorporated into the Original Agreement by this reference.
2. Section 5.1 of the Original Agreement entitled “Annual License Fee” shall be deleted in its entirety and replaced with the following:

**5.1 Annual License Fee.** Licensee shall, upon the date an individual Site Permit is issued, pay to the Licensor, on an annual basis, an amount as set forth by the Annual License Fee Schedule attached hereto as Exhibit C or Exhibit D, as determined pursuant to section 14.18, for each Pole (“Annual License Fee”).

3. Section 14.18 shall be added to the Original Agreement as follows:

**14.18 Determination of Annual License Fee.** The parties agree that the Annual License Fee as set forth in Exhibit D complies with the provisions set forth in the Declaratory Ruling and Third Report and Order FCC 18-133 (the “Order”) released by the FCC on or about September 27, 2018, and that the Annual License Fee as set forth in Exhibit D shall remain in effect until the earlier of (i) termination of the Agreement by its own terms or (ii) administrative or judicial determination invalidating the Order, or portions thereof, relating to attachment fees. In the event that the Order, or portions thereof, relating to attachment fees are invalidated by administrative order or judicial determination, the attachment fees as set forth in Exhibit C shall become effective and apply, retroactively, to the effective date of the Fee Amendment.

14. Except as expressly modified by this First Modification, all other terms and conditions of the Original Agreement shall be and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Fee Amendment as of the date and year first written above.

ATTEST:

CITY OF SANTA MONICA,  
a municipal corporation

\_\_\_\_\_

By: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

By: \_\_\_\_\_

**EXHIBIT D**  
**Alternative Annual License Fee Schedule**

The Annual License Fee shall be \$816.84 and shall be revised annually on July 1 by an amount equivalent to how other cost-based fees are adjusted and authorized by the City Council.