

RESOLUTION NO. 88-2020

A RESOLUTION OF THE CITY OF WESTWOOD, KANSAS, ESTABLISHING FEES FOR LOCATION OF SMALL CELL FACILITIES IN THE CITY'S RIGHT-OF-WAY, FOR ATTACHMENT OF SMALL CELL FACILITIES TO THE CITY'S PROPERTY, AND FOR THE USE OF EXCESS CITY CONDUIT; TO PARTIALLY REPEAL RESOLUTION 68-2018 ONLY AS FAR AS SMALL CELL FACILITIES

WHEREAS, the City of Westwood is the chief steward of the public rights-of-way and possesses a duty to its citizens to manage the rights-of-way and incursions into the rights-of-way in recognition that the right-of-way is a limited resource, to balance the needs of all users of the public rights-of-way, and to preserve and promote the public health, safety, and welfare; and

WHEREAS, K.S.A. 12-2001(t) allows a city to assess a wireless services provider or infrastructure provider (each hereafter referred to as a "provider") a fixed right-of-way access fee for each small cell facility that the provider deploys that requires the use of the City's public right-of-way (provided such fee is not based upon the provider's gross receipts); and

WHEREAS, the City of Westwood possesses a proprietary interest in and is responsible to its citizens for the use, management, function, maintenance, and structure of public facilities owned by the City, to use such facilities to the benefit of its citizens, to ensure just and fair compensation for permitting the use of the City's facilities, and to protect public finances for the use of or collocation upon public facilities; and

WHEREAS, the City of Westwood has received requests from external entities to attach or collocate small cell facilities and related equipment to the City's street light poles and other property; and

WHEREAS, the City of Westwood plans to enter into agreements with providers to allow the deployment of small cell facilities in the City's right-of-way; and

WHEREAS, the City is not required to make available the use of its light poles and conduits to other entities; the City is willing to do so for an annual rental fee when the use by such other entities does not interfere with the City's intended use of the facilities, will minimize incursions into the public right-of-way, and will not create any other public health, safety or welfare concern.

THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WESTWOOD, KANSAS, AS FOLLOWS:

Section 1. The following small cell facility right-of-way access fees and streetlight attachment fees and charges are established based on the descriptions listed below. These fees/charges shall be administered in a competitively neutral and non-discriminatory manner. All fees/charges will be rounded to the nearest dollar.

Small Cell Facility Right-of-Way Access and Streetlight Attachment

Fee Category	Type of Fee	Fee Amount
ROW Access for small cell facility on an existing structure (e.g. existing utility pole)	Recurring Annual ROW Access Fee	\$25 per site
	Non-Recurring One-Time Fee	An amount equal to the fee for a ROW Permit as set by separate City Resolution. To reimburse the City for costs incurred for review of the permit application and site design approval.
ROW Access for small cell facility on new monopole	Recurring Annual ROW Access Fee	\$565 per site* (Includes \$25 ROW access fee and \$540 license fee for new monopole in ROW)
	Non-Recurring One-Time Fee	An amount equal to the fee for a ROW Permit as set by separate City Resolution. To reimburse the City for costs incurred for review of the permit application and site design approval.
Attachment of small cell facility to city streetlight	Recurring Annual ROW Access Fee	\$565 per site* (Includes \$25 ROW access fee and \$540 license fee for new monopole in ROW)
	Non-Recurring Fees:	
	ROW Permit Application Fee	An amount equal to the fee for a ROW Permit as set by separate City Resolution. To reimburse the City for costs incurred for review of the permit application and site design approval..
	Make-Ready Fee	The amount of the costs of all actual work done or contracted for by the City for any make-ready or other work done

		to accommodate permittee's small cell facility. Includes reasonable material, labor, engineering and administrative and overhead costs.
	Inspection Fee	The amount of the costs of all actual work done or contracted for by the City for any necessary inspections. Includes reasonable material, labor, engineering and administrative and overhead costs.
Unauthorized Attachment Penalty		Any unauthorized attachment must be removed upon notice by City and the provider will be charge three times the annual rental fee as penalty.
Failure to Timely Transfer, Abandon, or Remove Facilities Penalty		1/5 Annual Attachment Fee amount per day, per site during the first 30 days The Annual Attachment Fee amount per day, per site during second 30 days and thereafter

* The FCC issued a Declaratory Ruling on September 27, 2018, in WT Docket Nos. 17-79 and 17-84 (FCC 18-133, 33 FCC Rc'd 9088) ("FCC Ruling") in which the FCC seeks to limit attachment, franchise and/or other small cell ROW access fees to the "reasonable approximation" of a local jurisdiction's cost for processing applications and managing deployment in the right-of-way, but then also establishes a "safe harbor" annual fee of \$270/site. The City disputes the FCC's authority to establish such fee limitations and notes several jurisdictions have filed legal challenges to the FCC Ruling. Given this status, until and unless a court of competent jurisdiction issues a final, non-appealable order vacating the FCC Ruling or its fee limitations, a provider may opt to pay the City only \$270/site towards the Annual Fees (items 2 or 3 above) provided it first agrees in writing that, in the event the FCC Ruling or its fee limitations are vacated without any further appeal, the provider shall pay any outstanding balance for said Annual Fees within 60 days thereof.

Section 2. Limitations, Regulations, and Design Standards. Nothing in this Resolution shall obligate the City to allow the use of any specific pole or facility by any entity. Each light pole attachment must be specifically approved by the City's Public Works Director (or his or her designee), and must meet all design, installation, and maintenance criteria established by the Public Works Director and consistent with applicable safety, engineering, and building standards. Each conduit installation must be specifically approved by the City's Public Works Director (or his or her designee), and must meet all design, installation and maintenance criteria established by the City. Payment of the above-cited fees/charges shall not exempt any entity from any applicable federal, state or local franchise, zoning, building code, permit or other requirements,

ordinances or regulations, including, but not limited to, the City's Right-of-Way Ordinance, building and electrical codes, Manual of Infrastructure Standards, and Zoning Ordinance, all as amended.

Section 3. Effective Date. This Resolution shall take effect and be in full force immediately after its passage by the Governing Body.

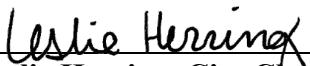
THIS RESOLUTION IS ADOPTED by the Governing Body of the City of Westwood, Kansas, this 10th day of December, 2020.

CITY OF WESTWOOD, KANSAS



David E. Waters, Mayor


ATTEST:



Leslie Herring, City Clerk

(Seal)

APPROVED AS TO FORM ONLY:



Ryan Denk, City Attorney