

ORDINANCE NO. 2090

AN ORDINANCE APPROVING A MASTER LICENSE AGREEMENT (“MLA”) WITH VERIZON WIRELESS, INC. FOR THE INSTALLATION OF SMALL CELL EQUIPMENT IN PUBLIC RIGHTS-OF-WAY

WHEREAS, Verizon Wireless, Inc. seeks consent to install small cell antenna equipment as a way to address network gaps and improve broadband capacity for wireless consumers throughout the Borough of South Plainfield; and

WHEREAS, the Borough has determined that reduction of network gaps and improvement of broadband data transmission capacity proposed by Verizon Wireless, Inc. will benefit personal wireless service consumers in the Borough of South Plainfield; and

WHEREAS, the Borough has determined that its Public Rights-of-Way, such as they are or may be, themselves constitute a valuable resource, finite in nature, for the benefit of the public, and which therefore must be managed carefully; and

WHEREAS, the Federal Telecommunications Act preserves local government’s ability to “manage the public Rights-of-Way... on a competitively neutral and non-discriminatory basis.” 47 U.S.C. 253(c); and

WHEREAS, the Federal Telecommunications Act preserves local government’s authority over the, “placement, construction and modification of personal wireless service facilities.” 47 U.S.C. 332(c)(7)(A); and

WHEREAS, the Federal Telecommunications Act makes it unlawful for local government to prohibit or have the effect of prohibiting the provision of personal wireless service. 47 U.S.C. 332(c)(7)(B)(i)(II); and

WHEREAS, New Jersey municipalities may give consent for the placement of Small Cell Equipment on poles lawfully erected within the public Rights-of-Way pursuant to N.J.S.A. 48:3-19.

WHEREAS, pursuant to the foregoing laws, and in furtherance of their respective goals and objectives, the Borough and Verizon Wireless, Inc. have developed a mutually acceptable Master License Agreement (“MLA”) to allow Verizon Wireless, Inc. to install its small cell antenna equipment within the Borough’s public Rights-of-Way where deemed necessary and appropriate to reduce network gaps and improve broadband capacity for wireless consumers, and subject to reasonable conditions.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of South Plainfield, County of Middlesex, State of New Jersey adopts the following sections:

SECTION 1. The terms and conditions of the MLA with Verizon Wireless, Inc. are approved. A copy of the MLA in substantially final form is attached to this ordinance as **Exhibit 1**. A copy of the fully executed agreement will be substituted for Exhibit A upon receipt of all signatures.

SECTION 2. The Mayor of the Borough of South Plainfield is authorized to execute the attached MLA, in substantial form, incorporated into this ordinance for all purposes.

SECTION 3. The Borough Engineer or the Borough Engineer's designee is authorized to execute any documents and Supplemental Licenses as may be necessary to carry out the intent of this ordinance.

SECTION 4. Pursuant to N.J.S.A. 54:30A-124 and the terms of the MLA with Verizon Wireless, Inc., the Borough shall recover reasonable fees for actual services incurred in the review of the MLA with Verizon Wireless, Inc. and any Supplemental Licenses issued therefrom. Verizon Wireless, Inc. shall make a two thousand (2,000) dollar deposit toward anticipated municipal expenses which shall be placed in an escrow account. If said escrow account contains insufficient funds to enable the Borough to perform its review, the chief financial officer shall provide Verizon Wireless, Inc. a notice of insufficient balance. In order for review to continue, Verizon Wireless, Inc. shall, within a reasonable time, post a deposit to the account in an amount to be mutually agreed upon.

This Ordinance shall take effect upon final passage and publication in accordance with New Jersey law.