MEMORANDUM

To: Kurt Triplett, City Manager

From: Rob Jammerman, Public Works Development Engineering Manager
Kathy Brown, Director of Public Works
Michael Olson, Director of Finance and Administration
Stephanie Croll, Senior Assistant City Attorney

Date: December 15, 2017

Subject: ADOPTION OF COMMUNICATIONS MASTER USE PERMIT FOR SEATTLE SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS FOR SMALL CELL NETWORK FACILITIES

RECOMMENDATION:

It is recommended that the City Council adopts the attached Ordinance, which grants a Communications Master Use Permit to Seattle SMSA Limited Partnership d/b/a Verizon Wireless (“Verizon”). The agreement will grant Verizon the use of the City rights-of-way and certain utility easements throughout a portion of the city for wireless communications purposes, specifically small cell network facilities. This ordinance would become a template for similar Master Use Permits for other wireless providers.

BACKGROUND DISCUSSION:

On December 12, 2017, the City Council held the first reading of the attached Ordinance, which grants a Communications Master Use Permit to Verizon. A question was raised during the first reading regarding the regulation of visual impacts. Planning and Public Works Department staff have prepared the attached memo outlining those regulations.

Staff is seeking direction on whether the supplemental memo provides the information the Council was seeking. Assuming the information will be sufficient, staff has submitted the Verizon Wireless Master Use permit for the second reading at the January 2nd, 2018 City Council Meeting. If the Council is not ready for final action, the ordinance can be brought back to a future Council meeting.

Under RCW 35A.47.040, the City Council may not adopt an ordinance or resolution adopting a franchise until five days after its introduction. Now that the applicable five day period has passed, City staff recommends that the Council adopts the attached Ordinance at the January 2, 2018 meeting.
MEMORANDUM

To: Kurt Triplett, City Manager

From: Rob Jammerman, Development Engineering Manager
       Jeremy McMahan, Planning Manager

Date: December 13, 2017

Subject: Small Cell Wireless Regulations

The first reading the Verizon Wireless Communications Master Use Permit (MUP) was received by the City Council at the December 12, 2017 Council Meeting. The MUP process is the permit that allows communication companies, such as Verizon Wireless, to install their facilities in the public right-of-way. MUPs are the same as the franchise agreements that we use with utility companies such as Puget Sound Energy, Frontier, and Comcast. During the review of the MUP, the Council asked for more information related to the City’s ability to regulate the visual impacts of wireless equipment in the City.

Kirkland Zoning Code “Chapter 117 – Wireless Service Facilities” contains the regulations that the Planning and Building Department relies on for review of new Wireless Service Facilities and modifications to existing Facilities. Wireless Service Facilities are required to obtain a Zoning Permit prior to installation of new facilities, or prior to modifying an existing facility. In addition to Chapter 117 dimensional standards such as height and protrusions from towers and/or base stations, the following excerpts from Chapter 117 specifically address the review and regulation of wireless visual impacts:

- **KZC 117.65.1**: Context – The location and design of a cell site shall consider its visual and physical impact on the surrounding neighborhood and shall, to the extent feasible, reflect the context within which it is located.
- **KZC 117.65.2**: Design Compatibility – WSF shall be architecturally compatible with the surrounding buildings and land uses or otherwise integrated, through location, design, and/or concealment technology, to blend in with the existing characteristics of the site and streetscape to the maximum extent practical.
- **KZC 117.65.3(a-e)**: Concealment Technology – One (1) or more of the following concealment measures must be employed unless the City determines through the applicable review process that alternative measures would be more appropriate given the contextual setting of the WSF:
  
  a. For wireless service towers:

  If within an existing stand of trees, the tower shall be painted a dark color, and be made of wood or metal. A greenbelt easement is required to ensure permanent retention of the surrounding trees.

  Towers in a more open setting shall have a backdrop (for example, but not limited to, trees, a hillside, or a structure) on at least two (2) sides, be a color compatible with the backdrop,
be made of materials compatible with the backdrop, and provide architectural or landscape screening for the remaining sides. If existing trees are the backdrop, then a greenbelt easement is required to ensure permanent retention of the surrounding trees. The greenbelt easement shall be the minimum necessary to provide screening and may be removed at the landowner’s request in the event the facility is removed.

Antennas shall be integrated into the design of any tower to which they are attached. External projections from the tower shall be limited to the greatest extent technically feasible. Where antennas are completely enclosed within the tower, the need for the backdrop described in the preceding paragraph may be reduced or eliminated, depending on the tower design and context.

b. For rooftop antennas or antennas mounted on other structures:

Omni-directional antennas mounted on the roof shall be of a color compatible with the roof, structure or background.

Other antennas shall use compatible colors and architectural screening or other techniques approved by the City.

Antennas shall be integrated into the design of the structure to which they are attached. External projections from the structure shall be limited to the greatest extent technically feasible.

c. Antennas mounted on one (1) or more building facades shall:

(1) Use color and materials to provide architectural compatibility with the building;

(2) Be mounted on a wall of an existing building in a configuration as flush to the wall as technically possible; and

(3) Not project above the wall on which it is mounted.

d. Where feasible, cable and/or conduit shall be routed through the inside of any new tower, utility pole, or other support structure. Where this is not feasible, or where such routing would result in a structure of a substantially different design or substantially greater diameter than that of other similar structures in the vicinity or would otherwise appear out of context with its surroundings, the City may allow or require that the cable or conduit be placed on the outside of the structure. The outside cable or conduit shall be the color of the tower, utility pole, or other support structure, and the City may require that the cable be placed in conduit.

e. Alternative measures for concealment may be proposed by the applicant and approved by the City, if the City determines through the applicable review process that the optional measures will be at least as effective in concealing the WSF as the measures required above.

- **KZC 117.65.10**: Views – WSF, including towers, must be located and oriented in such a way as to minimize view blockage.
- **KZC 117.65.11**: Lights, Signals and Signs – No signals, lights or signs shall be permitted on towers unless required by the FCC or the FAA.
- **KZC 117.70.6** (for equipment): Equipment Mounted on Poles or Towers

a. Electronic and other associated equipment may be mounted on utility poles or towers. The location and vertical clearance of such structures shall be reviewed by the Public Works Department and verified by the underlying utility owner to ensure that the structures will not pose a hazard to other users of the right-of-way.
b. Electronic and other associated equipment mounted on utility poles or towers shall be located in a manner that minimizes clutter and visual impact.

c. Electronic and other associated equipment mounted on utility poles or towers shall be of a similar color to that of the pole or tower to which it is attached, unless alternative measures are approved by the City as part of the applicable review process.

• **KZC 117.70.7** (for equipment): Compatibility – Equipment structures shall be designed to be compatible with the surrounding area in which they are located. For example, in a residential area, a sloped roof or wood siding may be required.

• **KZC 117.70.8** (for equipment): Concealment – One (1) or more of the following concealment measures must be employed unless the City determines through the applicable review process that alternative measures would be more appropriate given the contextual setting of the equipment or equipment structure:

  a. Locating within a building or building appendage constructed in accordance with all applicable City codes;

  b. Locating on top of a building, with architecturally compatible screening;

  c. Locating underground; or

  d. Locating above ground with a solid fence and landscaping subject to the limitations of KZC 117.75(3).

In addition to the regulatory requirements listed above, Verizon Wireless also seeks to be a good neighbor when siting their wireless facilities. The following are some examples of how they have approached facility siting:

• Verizon instructs its site acquisition consultants, who are responsible for selecting the small cell pole locations, to choose the least visibly impactful location. For example, if there is a pole squarely in front of a home, a window, or a view, the consultant is asked to see if there are alternative locations that could meet the engineering objectives.

• Verizon has worked collaboratively with Kirkland staff on its first set of small cells, with several iterations of the pole design until the city was comfortable that it fit with the community.

• During Verizon Wireless’s design discussions for the first group of poles, the city received feedback from a neighbor. Verizon Wireless’s consultant responded by talking with the neighbor about their concerns and was able to alter the design to address the neighbor’s concerns.

We anticipate that this provides the information the Council was seeking. We will submit the Verizon Wireless Master Use permit for the second reading at the January 2nd, 2018 City Council Meeting. If the Council has additional questions or is not ready for final action, the ordinance can be brought back to a future Council meeting.

Cc: Kathy Brown, Public Works Director  
    Eric Shields, Planning and Building Director  
    Allison Zike, Planner
ORDINANCE Q-4633

AN ORDINANCE OF THE CITY OF KIRKLAND GRANTING SEATTLE SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS, A DELAWARE LIMITED PARTNERSHIP, A NON-EXCLUSIVE COMMUNICATIONS MASTER USE PERMIT FOR THE RIGHT, PRIVILEGE, AND AUTHORITY TO MAKE USE OF THE PERMIT AREA FOR COMMUNICATIONS PURPOSES.

WHEREAS, Seattle SMSA Limited Partnership d/b/a Verizon Wireless ("Grantee") has requested that the City grant it the right to install, operate and maintain a wireless communications system within the public rights of way of the City; and

WHEREAS, the City Council finds it desirable for the welfare of the City and its residents that such a non-exclusive permit be granted to Grantee; and

WHEREAS, the City Council has the authority under state and local law to grant permits for the use of its street rights of way; and

WHEREAS, the City is willing to grant the rights requested by Grantee subject to certain terms and conditions.

NOW, THEREFORE, The City Council of the City of Kirkland do ordain as follows:

Section 1. Definitions. For purposes of this Communications Master Use Permit (the "Permit"), the terms defined in Kirkland Municipal Code ("KMC") 26.08.020 shall apply. In addition, the terms below have the following meanings:

A. "Affiliate" means an entity which owns or controls, is owned or controlled by, or is under common ownership with Grantee.

B. "City" means the City of Kirkland, a municipal corporation of the State of Washington.

C. "Small Cell Wireless" means a personal wireless services facility that meets both of the following qualifications: (i) each antenna is located inside an antenna enclosure of no more than three cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet; and (ii) primary equipment enclosures are no larger than seventeen cubic feet in volume. The following associated equipment may be located outside the primary equipment enclosure and if so located, are not included in the
calculation of equipment volume (but remain included in the definition of Small Cell Facilities): Electric meter, concealment, telecomm demarcation box, ground-based enclosures, battery back-up power systems, grounding equipment, power transfer switch, and cut-off switch. Small Cell Facilities shall also include all necessary cables, transmitters, receivers, equipment boxes, backup power supplies, power transfer switches, electric meters, coaxial cables, wires, conduits, ducts, pedestals, antennas, electronics, and other necessary or convenient appurtenances used for the specific wireless communications facility. Equipment enclosures with equipment generating noise that exceed the noise limits allowed in the Codes or associated permit are excluded from “Small Cell Facilities.” Services do not include personal wireless services and associated facilities that fall outside of the definition of Small Cell Facilities (i.e. macro facilities).

D. “Facilities” means all appurtenances or tangible things owned, leased, operated, or licensed by the Grantee, including but not limited to wireless communications antennas, transmitters, receivers, equipment boxes, backup power supplies, power transfer switches, cut-off switches, electric meters, coaxial cables, fiber optic cables, wires, telecom demarcation boxes and related materials and equipment; and any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing. Said facilities shall be used for the sole purpose of providing a small cell network.

E. “Communications Master Use Permit” or “Permit” shall mean the initial authorization or renewal thereof, granted by the City, through this Ordinance, or a subsequently adopted Ordinance, which authorizes the use of rights-of-way in the Permit Area for construction and operation of the Grantee’s Facilities for the purpose of offering communications service.

F. “Permit Area” means the geographic area as set forth in Exhibit A attached hereto and incorporated herein by reference.

G. “Person” means an individual, partnership, association, joint stock company, trust, corporation, limited liability company or governmental entity.

H. “Rights-of-way” means any highway, street, shoulder, landscape area between sidewalk and curb or shoulder, alley, sidewalk, utility easement (unless the City’s use of the utility easement is solely restricted to another use or other uses), or other public rights-of-way for motor vehicles or any other uses under the City’s control and/or in its jurisdictional boundaries. It does not include (1) state highways; (2) structures, including poles and conduits located within the right-of-way; (3) federally granted trust lands or forest board trust lands; (4) lands
owned or managed by the state Parks and Recreation Commission; (5) federally granted railroad rights-of-way acquired under 43 U.S.C. 912 and related provisions of federal law that are not open for motor vehicle use; or (6) parks or other public property not used as a public right-of-way, including the Cross Kirkland Corridor.

I. “Communications Service” means the transmission of information in electronic or optical form, including, but not limited to, voice, video, or data, whether or not the transmission medium is owned by the provider itself. Communications Service includes wireless communication services and telephone service, but does not include cable TV or commercial video service or over-the-air broadcasts to the public at large from facilities licensed by the Federal Communications Commission or any successor thereto.

Section 2. Permit Area and Authority Granted.

A. Facilities within Permit Area. The City does hereby grant to Grantee the right, privilege, authority and Permit to use Rights-of-way in the Permit Area to construct, support, attach, connect and stretch Facilities between, maintain, repair, replace, relocate, upgrade, remove, enlarge, operate and use Facilities in, upon, over, under, along and across Rights of way in the Permit Area for purposes of Communications Services, to the extent not inconsistent with Section 4 herein.

B. Permission Required to Enter Onto Other City Property. Nothing contained in this Ordinance is to be construed as granting permission to Grantee to go upon any other public place other than Rights-of-Way within the Permit Area in this Ordinance. Permission to go upon any other property owned or controlled by the City must be sought on a case by case basis from the City.

C. Amendments to the Permit area may be proposed by the Grantee during the term of this Permit. The Public Works Director shall review the amendment request to determine if it should be granted or if a new Master Use Permit is necessary.

Section 3. Construction and Maintenance.

A. Grantee's Facilities shall be located, relocated and maintained within the Permit Area so as not to unreasonably interfere with the free and safe passage of pedestrian and vehicular traffic and ingress or egress to or from the abutting property and in accordance with the laws of the State of Washington. Whenever it is necessary for Grantee, in the exercise of its rights under this Permit, to make any excavation in the right of way, Grantee shall obtain prior approval from the City of Kirkland Public Works Department, pay the applicable permit fees, and obtain any necessary permits for the excavation work. Grantee shall meet the
City's specifications per the Kirkland Municipal Code ("KMC") and the Public Works Pre-Approved Plans and Policies.

Section 4. Location and Relocation of Facilities.

A. Grantee shall place any new Facilities underground where existing telecommunications and cable facilities are located underground. Provided, however, this requirement shall not apply to that specific portion of the Facilities that are required to remain above ground in order to be functional. Any new Facilities to be located above-ground shall be placed on existing utility poles and shall be small cell type equipment in a form substantially similar to that pictured in Exhibit B, attached hereto. No new utility poles, ground mounted equipment or overhead utility lines shall be installed in connection with placement of new above-ground facilities except as otherwise approved by the City under this Permit or under a separate permit.

In order to minimize negative visual impact to the surrounding area, The Public Works Director may deny a request to install above ground small cell wireless facilities (antennas and associated facilities) if more than one hundred (100) cubic feet of above ground wireless facilities exist within a one hundred fifty foot (150') radius of the proposed facility location.

B. At the City’s request, all Facilities shall be concealed or enclosed as much as technologically feasible in an equipment box, cabinet or other unit, in a design substantially similar to that pictured in Exhibit B. All external cables and wires shall be sheathed or enclosed in conduit so that wires are not visible or visually minimized to the extent feasible.

Grantee shall construct Grantee’s conduits and standoffs (collectively, the “conduits”) that are attached to the utility poles in accordance with KMC requirements and, whenever technologically feasible, shall install Grantee’s Conduits so as to minimize the visible impact of such conduits.

C. All Facilities on a utility pole (except stand-offs and conduits) shall be installed at least ten (10) feet above ground and shall not exceed seventeen (17) cubic feet unless otherwise approved by the Public Works Director.

D. Grantee shall keep and maintain all small cell equipment installed in the public right-of-way in commercially reasonable condition and repair throughout the term of this Permit. Any equipment that is vandalized, damaged or marked with graffiti shall be repaired and/or cleaned within fourteen (14) days of receipt of written notice.

E. The City may require Grantee to relocate Facilities within the Right-of-Way when reasonably necessary for construction, alteration,
repair or improvement of the Rights-of-Way for the purpose of public
health, welfare and safety, at no cost to the City, except as may be
required by KMC 26.36.050. The City's decision to require the relocation
of Grantee's facilities shall be made in a reasonable, uniform and non-
discriminatory manner. Pursuant to the provision of Section 5, Grantee
agrees to protect and save harmless the City from any customer or third-
party claims for service interruption or other losses in connection with
any such change or relocation.

F. The Grantee shall indemnify, hold harmless and pay the costs
of defending the City against any and all claims, suits, actions, damages,
or liabilities for delays on City construction projects caused by or arising
out of the failure of the Grantee to relocate its facilities in a timely
manner; provided, that the Grantee shall not be responsible for
damages due to delays caused solely by the City, or circumstances
beyond the control of the Grantee.

G. In the event that the City orders the Grantee to relocate its
facilities for a project which is primarily for private benefit, the private
party or parties causing the need for such project shall reimburse the
Grantee for the cost of relocation in the same proportion as their
contribution to the total cost of the project, pursuant to RCW
35.99.060(4).

H. In the event of an unforeseen emergency that creates a
threat to public safety, health or welfare, the City may require the
Grantee to relocate its facilities at its own expense, any other portion
of this Section notwithstanding.

Section 5. Indemnification.

A. Grantee agrees to indemnify, defend, and hold the City
harmless as set forth in KMC 26.40.030. In addition, Grantee shall
indemnify, defend and hold the City, its agents, officers, employees,
volunteers and assigns harmless from and against any and all claims,
demands, liability, loss, cost, damage or expense of any nature
whatsoever, including all costs and reasonable attorney's fees, made
against them on account of injury, sickness, death or damage to persons
or property which is caused by or arises out of, in whole or in part, the
acts, failures and/or omissions of Grantee or its agents, servants,
employees, contractors, subcontractors or assigns arising out of this
Permit. Provided, however, such indemnification shall not extend to
injury or damage caused by the sole negligence or willful misconduct of
the City, its agents, officers, employees, volunteers or assigns.

B. In the event any such claim or demand be presented to or
filed with the City, the City shall promptly notify Grantee thereof, and
Grantee shall have the right, at its election and at its sole cost and
expense, to settle and compromise such claim or demand, provided further, that in the event any suit or action be initiated against the City based upon any such claim or demand, the it shall likewise promptly notify Grantee thereof, and Grantee shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election.

Section 6. Default.

A. If Grantee shall fail to comply with any of the provisions of this Permit, unless otherwise provided in this Permit, the City may, in addition to the remedies provided in KMC Chapter 26.44, serve upon Grantee a written order to comply within thirty (30) days from the date such order is received by Grantee. If Grantee is not in compliance with this Permit after expiration of the thirty (30) day period, the City may act to remedy the violation and may charge the reasonable costs and expenses of such action to Grantee. The City may act without the thirty (30) day notice in case of an emergency. If any failure to comply with this Permit by Grantee cannot be corrected with due diligence within said thirty (30) day period, then the time within which Grantee may so comply shall be extended for such time as may be reasonably necessary and so long as Grantee works promptly and diligently to effect such compliance. If Grantee is not in compliance with this Permit, and is not proceeding with due diligence in accordance with this section to correct such failure to comply, then the City may in addition, by ordinance and following written notice to Grantee, declare an immediate forfeiture of this Permit.

B. In addition to other remedies provided in KMC Chapter 26.44, this Permit, or otherwise available at law, if Grantee is not in compliance with requirements of the Permit, and if a good faith dispute does not exist concerning such compliance, the City may place a moratorium on issuance of pending Grantee right-of-way use permits until compliance is achieved.

Section 7. Nonexclusive Permit. This Permit is not and shall not be deemed to be an exclusive Permit. This Permit shall not in any manner prohibit the City from granting other and further permits over, upon, and along the Permit Area, provided such other permits do not unreasonably interfere with Grantee’s use and placement of its Facilities in any Rights-of-Way and/or Permit Area. This Permit shall not prohibit or prevent the City from using the Permit Area or affect the jurisdiction of the City over the same or any part thereof. Nothing within this Section limits Grantee’s obligations to indemnify, defend and hold the City harmless as provided in Section 5 herein.
Section 8. Permit Term.

A. This Permit is and shall remain in full force and effect for a period of ten (10) years from and after the effective date of the Ordinance, provided that the term may be extended for two (2) additional five (5) year terms upon the agreement of Grantee and the City not more than one hundred eighty (180) days and nor less than ninety (90) days from the expiration of the current Permit; and provided further, however, Grantee shall have no rights under this Permit nor shall Grantee be bound by the terms and conditions of this Permit, unless Grantee shall, within thirty (30) days after the effective date of the Ordinance, file with the City its written acceptance of this Permit, in a form acceptable to the City Attorney. When an extension is proposed by the Grantee, the Grantee shall provide proof to the City that all existing Facilities are in compliance with design standards set forth herein as illustrated in Exhibit B.

B. If the City and Grantee fail to formally renew this Permit prior to the expiration of its term or any extension thereof, this Permit shall automatically continue in full force and effect until renewed or until either party gives written notice at least one hundred eighty (180) days in advance of intent not to renew this Permit.

Section 9. Compliance with Codes and Regulations.

A. The rights, privileges and authority herein granted are subject to and governed by this Ordinance and all other applicable ordinances and codes of the City of Kirkland (collectively, the "Codes"), as they now exist or may hereafter be amended, including but not limited to the provisions of Kirkland Municipal Code Title 26, Title 19, Title 5, and Kirkland Zoning Code Title 117. Nothing in this Ordinance limits the City's lawful power to exercise its police power to protect the safety and welfare of the general public. Any location, relocation, erection or excavation by Grantee shall be performed by Grantee in accordance with applicable federal, state and city rules and regulations, including the City's Public Works Pre-Approved Plans and Policies, and any required permits, licenses or fees, and applicable safety standards then in effect (collectively, "Regulations"). Notwithstanding the foregoing, Codes and Regulations shall not include any amended law, rule or regulation or newly created law, rule or regulation that violates Grantee's rights to continue or modify existing non-conforming uses, or any other changes to laws, rules or regulations, which do not apply to previously constructed real estate improvements or wireless communication facilities.

B. In the event that any territory served by Grantee is annexed to the City after the effective date of this Permit, such territory shall be
governed by the terms and conditions contained herein upon the effective date of such annexation.

Section 10. Undergrounding. New Facilities shall be installed underground pursuant to Section 4 of this Permit. Grantee acknowledges the City’s policy of undergrounding of Facilities within the Permit Area. Grantee will cooperate with the City in the undergrounding of Grantee’s existing Facilities with the Permit Area. If, during the term of this Permit, the City shall direct Grantee to underground Facilities within any Permit Area, such undergrounding shall be at no cost to the City, except as may be provided in RCW Chapter 35.99. Grantee shall comply with all federal, state, and City regulations on undergrounding. If the City undertakes any street improvement which would otherwise require relocation of Grantee's above-ground facilities, the City may, by written notice to Grantee, direct that Grantee convert any such Facilities to underground Facilities. Notwithstanding anything to the contrary contained herein, the undergrounding requirement shall not apply to that portion of the Facilities that are required to remain above ground in order to be functional, but the Grantee will be responsible for providing such needed facilities to maintain the above ground function.

Section 11. Record of Installations and Service.

A. With respect to excavations by Grantee and the City within the Permit Area, Grantee and the City shall each comply with its respective obligations pursuant to Chapter 19.122 RCW and any other applicable state law.

B. Upon written request of the City, Grantee shall provide the City with the most recent update available of any plan of potential improvements to its Facilities within the Permit Area; provided, however, any such plan so submitted shall be for informational purposes within the Permit Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Permit Area. The City agrees to keep confidential any such plans to the extent permitted by law.

C. As-built drawings and maps of the precise location of any Facilities placed by Grantee in any Right of Way shall be made available by Grantee to the City within 10 (ten) working days of the City’s written request. These plans and maps shall be provided at no cost to the City and shall include hard copies and/or digital copies in a format specified by the City.

Section 12. Shared Use of Excavations and Trenches.

A. If either the City or Grantee shall at any time after installation of the Facilities plan to make excavations in the area covered by this
Permit and as described in this Section, the party planning such excavation shall afford the other, upon receipt of written request to do so, an opportunity to share such an excavation, provided that: (1) such joint use shall not unreasonably delay the work of the party causing the excavation to be made or unreasonably increase its costs; (2) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties. In addition, pursuant to RCW 35.99.070, the City may request that Grantee install additional conduit, ducts and related access structures for the City pursuant to contract, under which Grantee shall recover its incremental costs of providing such facilities to the City.

B. The City reserves the right to require Grantee to joint trench with other permittees if both entities are anticipating trenching within the same general area and provided that the terms of this Section are met.

Section 13. Insurance.

A. Grantee shall procure and maintain for the duration of this Permit, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of work under this Permit by Grantee, its agents, representatives or employees in the amounts and types set forth below. Any policy of insurance shall be written on an occurrence basis.

(1) Commercial general liability insurance shall be written on ISO occurrence form or its equivalent and shall cover liability arising from bodily injury (including death) and property damage; including premises operation, products and ongoing and completed operations and explosion, collapse and underground coverage extensions. Commercial General Liability insurance shall be written with limits of $5,000,000 per occurrence and $10,000,000 general aggregate and a $2,000,000 products completed operations aggregate limit. The City shall be included as an additional insured as their interest may appear under this Permit using ISO Additional Insured-Completed Operations endorsement or a substitute endorsement or endorsements providing at least as broad coverage;

(2) Commercial Automobile liability insurance covering all owned, non-owned and hired vehicles. Coverage shall be at least as broad as ISO form. Commercial Auto Liability shall be written with a combined single limit of $1,000,000 per accident for bodily injury and property damage; and
(3) Worker's compensation within statutory limits and employer's liability insurance with limits of $1,000,000 for each accident/disease/policy limit.

B. The insurance policies required by this section shall be maintained at all times by the owner.

C. Upon receipt of notice from its insurer(s) Grantee shall endeavor to provide the City with thirty (30) days prior written notice of cancellation of any policy required herein.

D. Grantee's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance or insurance pool coverage maintained by the City shall be in excess of Grantee's insurance and shall not contribute with it.

E. Grantee shall furnish the City with certificates of the foregoing insurance coverage and a copy of the additional insured endorsement, before issuance of the Permit.

F. Grantee shall have the right to self-insure any or all of the above-required insurance. Any such self-insurance is subject to approval by the City.

G. Grantee's maintenance of insurance as required by this Permit shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or otherwise limit City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

H. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

I. Failure on the part of the Grantee to maintain the insurance as required shall constitute a material breach of the Permit, upon which the City may, after giving five business days' notice to the Grantee to correct the breach, immediately terminate the Permit.

Section 14. Assignment.

A. All of the provisions, conditions, and requirements herein contained shall be binding upon Grantee, and no right, privilege, license or authorization granted to Grantee hereunder may be assigned or otherwise transferred without the prior written authorization and approval of the City, which the City may not unreasonably withhold, condition or delay. Notwithstanding the foregoing, Grantee, without the consent of, but upon notice to the City, may assign this agreement in whole or in part to: (a) an Affiliate (as defined in this Permit); or (b) the
surviving entity in the event of a merger or acquisition of substantially all of Grantee’s assets.

B. Grantee may lease the Facilities or any portion thereof to another or provide capacity or bandwidth in its Facilities to another, provided that: Grantee at all times retains exclusive control over such Facilities and remains responsible for locating, servicing, repairing, relocating or removing its Facilities pursuant to the terms and conditions of this Permit.

Section 15. Abandonment and Removal of Facilities. Grantee’s Facilities may be considered abandoned pursuant to KMC Ch. 26.20. In the event of abandonment, the parties shall refer to their options in KMC 26.20.

Section 16. Miscellaneous.

A. If any term, provision, condition or portion of this Permit shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Permit which shall continue in full force and effect. The headings of sections and paragraphs of this Permit are for convenience of reference only and are not intended to restrict, affect, or be of any weight in the interpretation or construction of the provisions of such sections of paragraphs.

B. Grantee shall pay for the City’s reasonable administrative costs in drafting and processing this Ordinance and all work related thereto, provided that such costs shall not exceed Ten Thousand Dollars ($10,000). Grantee shall further be subject to all permit fees associated with activities and the provisions of any such permit, approval, license, agreement of other document, the provisions of this Permit shall control.

C. Failure of either party to declare any breach or default under this Permit or any delay in taking action shall not waive such breach or default, but that party shall have the right to declare any such breach or default at any time. Failure of either party to declare one breach or default does not act as a waiver of that party’s right to declare another breach or default.

Section 17. Notice. Any notice or information required or permitted to be given to the parties under this Permit may be sent to the following addresses unless otherwise specified:

City:
City of Kirkland
Public Works Director
123 Fifth Ave.
Kirkland, WA 98033
Grantee:
Seattle SMSA Limited Partnership
d/b/a Verizon Wireless
Attn: Network Real Estate
180 Washington Valley Road
Bedminster, New Jersey 07921

With a copy to:
Seattle SMSA Limited Partnership
d/b/a Verizon Wireless
Attn: Pacific Marker General Counsel
15505 Sand Canyon Ave.
Irvine, CA 92618

Notice shall be deemed given upon receipt in the case of personal
delivery, three days after deposit in the United States Mail in the case
of regular mail, or the next day in the case of overnight delivery.

Section 18. Effective date. This Ordinance, being in compliance
with RCW 35A.47.040, shall be in force and effect five days from and
after its passage by the Kirkland City Council and publication pursuant
to Section 1.08.017 Kirkland Municipal Code in the summary form
attached to the original of this ordinance and by this reference approved
by the City Council.

Passed by majority vote of the Kirkland City Council in open
meeting this 2nd day of January, 2018.

Signed in authentication thereof this 2nd day of January, 2018.

Mayor

Attest:

Kathi Anderson, City Clerk

Publication Date: January 8, 2018

Approved as to Form:

Kevin Raymond, City Attorney
Description:

North to NE 116th Street
East to Kirkland City Limits
South to Kirkland City Limits
West to the Kirkland City Limits/Lake Washington
Exhibit B

1 TYPICAL (N) LIGHT POLE ELEVATION

SCALE: NTS (11x17)
Exhibit B

(P) VERIZON ANTENNA TIP HEIGHT
39.7' AGL

(P) FLUSH MOUNTED VERIZON ANTENNA
(TYP OF 3) & MOUNT; PAINT TO MATCH

(P) 10'2" SHAPEPARE POLE EXTENSION

(E) OH UTILITY LINES @ 29.2' AGL

(D) OH UTILITIES @ 21.0' AGL

(P) STREET LAMP @ 28.2' AGL

(P) POWER ROUTE BY PSR;
PSR WILL DETERMINE
SOURCE & ATTACHMENT

(P) CONDUIT STAND OFF
BRACKET PER PSR
STANDARDS

(E) OH COMMUNICATION
LINES @ 21.0 & 22.2' AGL

(F) FIBER BY VERIZON TO BE LOCATED
WITHIN COMMUNICATION SPACE
(MIN. 40' BELOW POWER)

(F) VERIZON ANCILLARY EQUIP., MOUNTED
WITHIN SHROUD; PAINT TO MATCH

(F) FIBER TOP BOX MOUNTED
TO SIDE OF SHROUD

(P) VERIZON BASE OF
ANCILLARY EQUIP.
13.7' AGL

(F) AC POWER DISCONNECT
BOX MOUNTED TO POLE

(E) GUY WIRE

(E) FSE POLE

(E) UTILITY CABINET @ 4.5' AGL

(E) STREET LEVEL
0.0' AGL

NODE #4
PSE POLE #: 225547 / 166547
LATITUDE: 47.984972° N
LONGITUDE: 122.201309° W
TOP OF (E) POLE: 29.7' AGL

2 NODE 4 POLE EXTENSION
SCALE: 3'16" = 1'-0" (11X17)
Exhibit B

- (E) Top of Utility Pole: 65.0' AGL
- (E) OH Utility Line: 65.0' AGL
- (E) Guy Line: 60.0' AGL
- (E) OH Utility Line: 57.0' AGL
- (E) Guy Line: 53.0' AGL
- (E) OH Utility Line: 49.0' AGL

- (P) Verizon Antenna Tip Height: 43.0' AGL
- (P) Flush Mounted Verizon Antenna (top of 3) & Mount to Match
- (P) Power Route by PSE: PSE will determine source & attachment
- (P) Consist Stand Off Bracket per PSE Standards
- (E) OH Communication Lines: @ 27.5' - 3.0' AGL
- (P) Fiber by Verizon to be located within communication space (min. 40' below power)
- (P) Verizon Ancillary Equipment, mounted within shroud: paint to match
- (P) Fiber FDP Box mounted to side of shroud
- (P) AC Power Disconnect Box mounted to pole
- (P) Verizon Base of Ancillary Equipment: 13.0' AGL

- (E) PSE Pole

Node # 6
PSE Pole #: 225645 / 166426
Latitude: 47.694942° N
Longitude: 122.194735° W
Top of (E) Pole: 65.0' AGL

Scale: 1/8" = 1'-0" (13x17)
AN ORDINANCE OF THE CITY OF KIRKLAND GRANTING SEATTLE SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS, A DELAWARE LIMITED PARTNERSHIP, A NON-EXCLUSIVE COMMUNICATIONS MASTER USE PERMIT FOR THE RIGHT, PRIVILEGE, AND AUTHORITY TO MAKE USE OF THE PERMIT AREA FOR COMMUNICATIONS PURPOSES.

SECTIONS 1 - 17. Issues a right of way Master Use Permit to Seattle SMSA Limited Partnership D/B/A Verizon Wireless, a Delaware Limited Partnership for wireless communications purposes and sets forth the terms and conditions of the Permit.

SECTION 18. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the 2nd day of January, 2018.

I certify that the foregoing is a summary of Ordinance O-4633 approved by the Kirkland City Council for summary publication.

Kathi Anderson, City Clerk
ORDINANCE 0-4699

AN ORDINANCE OF THE CITY OF KIRKLAND AMENDING ORDINANCE 0-4633 GRANTING SEATTLE SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS ("GRANTEE") A NON-EXCLUSIVE COMMUNICATIONS MASTER USE PERMIT FOR SMALL CELL WIRELESS COMMUNICATIONS FACILITIES, AND REPLACING EXHIBIT A OF 0-4633 TO EXPAND GRANTEE'S PERMIT TO ENCOMPASS ALL RIGHTS-OF-WAY WITHIN THE CITY LIMITS OF KIRKLAND.

WHEREAS, the City of Kirkland, Washington ("City") granted Seattle SMSA Limited Partnership d/b/a Verizon Wireless ("Grantee") the right to install, operate, and maintain a small cell wireless communications system within the public rights-of-way of the City pursuant to Ordinance 0-4633 adopted January 2, 2018; and

WHEREAS, Exhibit A to O-4633 limited the Permit Area to a small portion of the City where Verizon was initially deploying small cell wireless communications; and

WHEREAS, the City desires to amend O-4633 to revise and expand the definition of the Permit Area to encompass all rights-of-way within the entire City limits.

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1.  

1. Permit Area. Exhibit A attached to O-4633 is hereby deleted in its entirety and replaced with Exhibit A-1 attached to this ordinance and incorporated herein by reference. It is the intent of the City and Grantee that the Permit Area, as defined in O-4633, shall encompass all rights-of-way within the City limits of the City of Kirkland.

2. Other Terms and Conditions Remain. In the event of any inconsistencies between O-4633 and this ordinance, which shall be known as the "First Amendment," the terms of this First Amendment shall control. Except as expressly set forth in this First Amendment, O-4633 otherwise is unmodified and remains in full force and effect.

Section 2. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

Section 3. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.
Passed by majority vote of the Kirkland City Council in open meeting this 17th day of September, 2019.

Signed in authentication thereof this 17th day of September, 2019.

PennySweet, Mayor

Kathi Anderson, City Clerk

Kevin Raymond, City Attorney

Publication Date: September 23, 2019