

**WORLD CLASS WIRELESS COMMENTS TO
LICENSE AGREEMENT FOR PRIVATE PROPERTY**

**THE PURPOSE OF THIS DOCUMENT IS TO HIGHLIGHT THE DIFFERENCES IN
LICENSING OBJECTIVES BETWEEN A LICENSE TO A PRIVATE PROPERTY
OWNER AS COMPARED TO A LICENSE TO USE THE City WAYS OR CITY
PROPERTY**

World Class Wireless, LLC respectfully submits these comments and proposed revisions to the draft License Agreement. The draft License Agreement seems like a reasonable framework for regulating the licensing of the use of the City’s public rights of way and other City property for the attachment of use of Communication Facilities. However, the conditions that are appropriate to impose for someone seeking permission to use public property are, in many instances, not appropriate to impose on a private landowner’s use of its own property. WCW appreciates the efforts that the City has made to address a number of these issues in the draft. The comments below are intended to address the major areas where clean-up is still needed to distinguish between the proper treatment of the use of private property, as opposed to public property. If the City Council has any questions about these proposed revisions, we would welcome the opportunity to answer any such questions.

SECTION	PROPOSED CHANGES IN REDLINE	REASON	STAFF RECOMMENDATION
3.1.1 Topic: Reasons the License term will not renew	The Communications Licensee or City has not provided written notice of its intent to terminate the Agreement no less than sixty (60) <u>one-hundred eighty (180)</u> days prior to the expiration of the initial term; and	The City should have no reason to terminate a license on private property unless Licensee is in default, which is already addressed elsewhere. Otherwise, the License should automatically renew unless Licensee chooses to terminate.	Staff does not agree to this change. It is standard in an agreement that both parties have to agree to renew. In this case, the Agreement will automatically renew, however the City should have the same ability to not renew an agreement. The amount of time seems unnecessarily and prohibitively long.
3.3.1 Topic: Events upon Termination	Remove the Communications Licensee’s Communications Facilities from the City Ways or other property at its sole cost and expense within sixty (60) days from the expiration date,	The City cannot “repurpose” a Communication Facility on private property against the desires of the land owner. Thus, the ability to repurpose should apply only to facilities in the City	The City has removed the term “re-purpose” as it has been further defined in the City Code but does not recommend this change. The only time the City would have to remove Communication

	<p>otherwise, <u>if the Communications Facility is located on the City Way</u>, the City may at its discretion re-purpose (if located on the City Ways) or remove said facility pursuant to Section 10.9 herein; or</p>	<p>Way, This same change should be applied wherever “repurpose” rights are referenced.</p>	<p>Facilities is if the Property Owner has breached the Agreement and has not removed the Equipment themselves. If the City has to go to the lengths to remove inoperable or illegal Equipment, it should be able to repurpose the Equipment.</p>
<p>3.3.2 Topic: Events upon Termination</p>	<p>Without cost or charge to the City abandon the Communications Licensee’s Communications Facilities in place, but only if the City first approves the proposed abandonment, in writing; including conditions applicable to the abandonment, or, <u>if the Communications Facility is located on the City Way</u>, -the City may at its discretion re-purpose (if located on the City Ways) or remove said facility pursuant to Section 10.9 herein; or</p>	<p>Same issue. See explanation for Section 3.3.1 re “repurpose”</p>	<p>See Staff recommendation for Section 3.3.1</p>
<p>3.4.1 Topic: Termination</p>	<p>A termination for cause means 1) The Communications Licensee fails to cure a material default of this Agreement within thirty (30) days after it receives the City’s notice of default, or, if the default can be cured and such cure reasonably requires</p>	<p>Subparagraph 1 uses the term “specified period” which is not defined. It would be more appropriate to use the term “reasonable period of time” which has a recognized meaning in the case law.</p>	<p>Staff is agreeable to the change to “reasonable time”</p>

	<p>more than thirty (30) days to achieve, fails to commence and thereafter diligently continue such cure to completion within the specified <u>a reasonable</u> period <u>of time</u>; or 3) In the event the Communications Licensee installs or causes to be installed an Unauthorized Communication Site of the Communications Licensee proceeds to another agency, court or venue to secure permission to install or cause to be installed an Unauthorized Communication Site, the City shall have the right to immediately terminate this agreement.</p>	<p>The redacted section of Subparagraph 3 would deprive a private owner of availing <u>itself</u> of state or federally regulated rights. If the City is preempted, this should not void the License.</p>	<p>Staff does not recommend this changes as it interprets this Section differently. It does not preempt the applicability of regulated rights (See Section 3.5), rather, the Licensee cannot avoid or bypass the City process and requirements by going to another agency. This ensures that the City’s process is always followed and that another agency not aware of the City’s process doesn’t grant installation on property within the City’s jurisdiction.</p>
<p>4.2.1 Topic: Scope of Site-Specific Permit</p>	<p>License Only. Nothing in this Agreement or in a Site-Specific Permit shall be deemed to grant, convey, create, or vest in the Communications Licensee a property right or perpetual interest in City-owned land or in the City Ways including, without limitation, any fee interest, leasehold interest, easement, or franchise right. This Agreement however, does not limit the Licensee’s rights over its private property. Any interpretation of this</p>	<p>The general point of preserving the City’s interests is fine. However, a private property owner is still entitled to be given easements necessary to access utilities or other facilities in the City Ways.</p>	<p>Staff does not agree to this change as it goes too far. As with all other utilities or uses within the public right-of-way, the Permit grants the right to use the public right-of-way. Granting a specific easement is too broad and not given to any other requestor.</p>

	<p>license or a Site-Specific Permit by a Court, which would purport to create any fee, leasehold, easement, or franchise interest in the Communications Licensee over City-Ways shall, twenty-four (24) hours after such determination, result in the Communications Licensee's forfeiture of any and all rights under this Agreement or any Site-Specific Permit. For the avoidance of doubt, this does not apply to except such easements granted by the City in connection with this Agreement to allow access to utilities or facilities in the public right of way.</p>		
<p>4.2.3 Topic: Scope of Site-Specific Permit</p>	<p>Modification of Site-Specific Permit. The City may for consideration of the public health, safety, and welfare including, without limitation: safety, reliability, security, and engineering reasons, terminate or otherwise modify the scope of the Communications Licensee's non-exclusive Site-Specific Permits, with respect to Communications Facilities located in the City Ways, upon sixty (60) days written notice to the Communications</p>	<p>There are no public health or safety reasons that should apply to a Communication Facility on private property that would lead to a modification of the Site Specific Permit. This might happen on shared poles or City structures on the City Ways.</p>	<p>This Section has removed as it has been moved to the City Code. This proposed change is moot.</p>

	Licensee. If the City exercises its rights under this subsection it will use reasonable efforts to find one or more alternative locations for the Communications Licensee to install its Communications Facilities.		
5.1 Topic: Other Rights And Obligations Of Licensee	General. During the term of this Agreement, <u>should Communications Licensee wish to materially modify the form, fit, or function of any Communications Facility.</u> Communications Licensee may request, in writing, the City's approval and authorization to add, attach, install, move, repair, replace, or otherwise <u>materially</u> alter or change the Communications Licensee's Communications Facilities in a manner consistent with this Agreement. All written requests for this purpose shall be filed with the City Representative, who may revise the Site-Specific Permit for such work subject to appropriate reasonable conditions.	Minor changes, including replacement or repairs of like-for-like equipment, should not require further approval for Communication Facilities on private property, as long as those changes do not materially alter the Site Specific Permit.	Staff does not recommend this change. Staff is agreeable to the replacement or repairs of like-for-like equipment. However, the term "materially" goes broader than just like-for-like equipment.
5.4 Topic: Routine Work	Routine Work. Except in emergencies requiring restoration within twenty-four (24) hours of loss of	Similar to 5.1 above, an owner of private property should be able to	This Section has removed as it has been moved to the City Code. This proposed

	<p>function of the Communications Licensee's Communications Facilities, the Communications Licensee shall give not less than ten (10) days written notice to the City Representative whenever the Communications Licensee intends to perform any work on or about the City Ways or City Facilities or on Poles. located on City owned property. The City Representative's permission to perform the work shall not be unreasonably withheld or delayed.</p>	<p>make emergency and routine repairs or maintenance without notice to the City. Notice would be necessary when working in the City Ways, which would already be covered by a right of way permit.</p>	<p>change is moot.</p>
<p>6.3 Topic: Fees</p>	<p>Annual License Fee. The Communications Licensees shall pay, on an annual basis, an Annual License Fee for each Site-Specific Location as determined by the City Representative based on the amount listed on the Fee schedule set forth in Appendix A. ... Communications Licensee's failure to remove within the time required will authorize the City at its discretion to re-purpose (if located on the City Ways) or remove said facility pursuant to Section 10.9 herein.</p>	<p>As the City is not seeking to recover costs with regard to the siting of a Communications Facility on private property, WCW suggests that the fee should not change. The qualification in the redline relates to the "repurpose" language in Section 3.3.1</p>	<p>Staff is not clear on the change regarding siting.</p> <p>The City has removed the term "re-purpose" as it has been further defined in the City Code. See Staff's comment to Section 3.3.1</p>

<p>6.6 Topic: Non-Payment of Fees</p>	<p>Failure to Pay. Communications Licensee's failure to pay any costs or Annual License Fees under this Agreement within thirty (30) days of the due date shall constitute a material default. ... Communications Licensee's failure to remove within the time required will authorize the City at its discretion to re-purpose (if located on the City Ways) or remove said facility pursuant to Section 10.9 herein.</p>	<p>See explanation for "repurpose" language in Section 3.3.1</p>	<p>The City has removed the term "re-purpose" as it has been further defined in the City Code. See Staff's comment to Section 3.3.1</p>
<p>7.5 Topic: Permit in City Ways</p>	<p>Site-Specific Permit Issuance in City Ways. The approval of the Site-Specific Permit Application requesting to attach to a City pole, or to install a new pole in a City Way, shall authorize Communications Licensee to proceed to obtain all generally applicable, ministerial permits that are required of all occupants of the Public Rights-of-Way, if required (collectively, "ROW Permit")....</p>	<p>This whole section is clearly drafted to deal with Communications Facilities in the City Ways or on City poles, and City structures, not facilities on private property.</p>	<p>Staff agrees to this change and has added a new Section 7.4 regarding Site Specific Permits for Non-City Ways.</p>
<p>8.1 Topic: Installment and Replacement of Communications Facilities</p>	<p>Provision of Personal Communication Service. -City Ways or other property (other than private property owned by the Communication</p>	<p>A private property owner does not need the City's permission to access its privately held property with 24/7 rights as it already</p>	<p>Staff is agreeable to the overall intent of this change and has modified the section accordingly.</p>

	<p><u>Licensee, where access rights are presumed)</u> may be used by Communications Licensee, seven (7) days a week, twenty-four (24) hours a day, only for the attachment, installation, construction, use, maintenance, operation, repair, reinstallation, reattachment, modification, replacement, removal and upgrade of Communications Facilities approved by a Site-Specific Permit by Communications Licensee from time to time for Communication Services and not for any other purpose whatsoever. This Agreement shall include new types of Communications Facilities that may evolve or be adopted using wireless technologies. Communications Licensee shall, at its expense, comply with all applicable federal, state, and local laws, ordinances, rules and regulations in connection with the use of City Ways or other property.</p>	<p>has those rights by virtue of its property ownership.</p>	
<p>8.2 Topic: Co-location</p>	<p>Co-Location. Communications Licensee shall exercise all reasonable efforts to locate its Communications</p>	<p>Colocation does not work for certain kinds of use like WCW's, where the Communications Facility is for one</p>	<p>This Section has removed as it has been moved to the City ROW Code. This proposed change is therefore moot.</p>

	<p>Facilities on or within existing structures or Poles. Licensee shall not install new Licensee Poles in a City Way or other City property unless Communications Licensee demonstrates that either <u>all</u> of the following criteria are satisfied: (1) Communications Licensee certifies that a new Pole in the City Way or other property are necessary to fill a coverage or capacity gap in Communications Services, <u>and</u> (2) there are no other existing structures in the City Way or other property or buildings near the City Way or other property that are available and capable of supporting the Communications Licensee's Communications Facilities. However <u>But, if Licensee is locating its Communication Facility on privately held property, the Licensee need only demonstrate that it has a business need to locate its Communication Facility at such location. that there is a business case for the exclusive use of the privately held Communication Facility...</u> or (3) other business use of the Communications</p>	<p>business purpose or has peculiar technical advantages no available on a colocation site.</p>	
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	Licensee necessitates exclusive use of the Pole or structure.		
8.4.1 Topic: Installation on New Poles	Allow for the maximum number of antenna co-locations on the new Pole, which the Communications Licensee shall make available at a fair market rate. However <u>But, this requirement shall not apply to a Communication Facility on private property held land if the Pole has only enough space to accommodate Communication Licensee's current and planned future needs</u> uses or if such co-location would be competitively disadvantageous to Communication Licensee does not desire to provide access to unrelated third parties.	The Pole/Structure WCW is seeking to permit is a small facility only capable of meeting WCW's specific business requirements. Section 8.4.1 clearly envisions larger Poles that could be multi-purposed.	This Section has removed as it has been moved to the City ROW Code. This proposed change is therefore moot.
8.7 Topic: Cooperation	Licensee Cooperation. Communications Licensee shall fully cooperate with the City, its franchisees, or any prior communications licensees occupying the City Way during the installation and operation of its Communications Facilities so as to minimize conflicts, avoid damage, and threats to the public property,	Licensees are required to landscape the Communication Facilities on their private property and should not need City authorization to maintain such landscaping. This is no different than other maintenance requirements for private property	This Section has removed as it has been moved to the City ROW Code. This proposed change is therefore moot.

	<p>health, safety and welfare. The Communications Licensee shall not trim or cut trees, shrubbery or other vegetation on City Ways without authorization from the City Representative.</p>	<p>owners.</p>	
<p>8.15 Topic: Location</p>	<p>Location of Communications Licensee’s Communications Facilities. A granted Site-Specific Permit shall not extend to any pole or conduit to which the attachment and/or installation of the Communications Licensee’s Communications Facilities would result in the forfeiture of the rights by the City or the imposition of additional obligations or liabilities upon the City. If the existence of the Communications Licensee’s Communications Facilities in or on City Ways would result in a forfeiture, the Licensee at its sole cost and expense shall promptly remove the Communications Licensee’s Communications Facilities within sixty (60) days from the date of written notice from the City demanding the</p>	<p>Same comment regarding “repurpose” as in Section 3.1</p>	<p>The City has removed the term “re-purpose” as it has been further defined in the City Code. See Staff comments to Section 3.1</p>

	removal. If the Communications Licensee's Communications Facilities are not timely removed, the City may at its discretion re-purpose (if located on City property) or remove said facility pursuant to Section 10.9 herein.		
10.8 Topic: Security	Letter of Credit Security. Prior to the commencement of any work with respect to a Tower (as defined in Chapter 19 of the City of Aurora Code of Ordinances) under this Agreement, the Communications Licensee shall post a Restoration LOC and a Removal LOC for each Site-Specific Location that will contain a Tower in an amount not less than the amount listed on the Fee schedule set forth in Appendix A.	There should be a <i>de minimus</i> threshold for private property owners where no security is required. If the City wants security on every Licensee, WCW would prefer making a cash deposit with the City as small letters of credit are cumbersome to secure.	This Section has removed as it has been moved to the City Code. This proposed change is therefore moot.
13.4 Topic: Assignment	Assignment. This Agreement is personal to only the Communications Licensee and no other Entity. The Communications Licensee may not directly or indirectly assign, transfer, or convey to another Entity this Agreement, or any of the rights and obligations of the Communications	Unless the transferee is unfit to hold a License, Licensee ought to be able to transfer its License as long as the transferee agrees to comply with the terms of the License.	Staff is agreeable to this change, with the provision that the Licensee shall provide notice of the transfer and obtain City approval, which will not be unreasonably withheld.

	<p>Licensee established by this Agreement without written approval of the City.... The preceding sentences of this Section 14.2 notwithstanding, the Communications Licensee may assign or transfer this Agreement to its parent corporation or any subsidiary corporation or affiliate or successor in interest, provided that such parent corporation, subsidiary corporation, affiliate, or successor in interest first agrees, in writing, to be fully bound by this Agreement and the exhibits and to assume all of the Communications Licensee's obligations and liabilities hereunder, whether arising before or after the date of such assignment or transfer. The City Representative shall be notified of assignment or transfer.</p> <p><u>Notwithstanding the foregoing, if Licensee sells or otherwise transfers all or substantially all of its assets, then, upon the provision of written notice to the City, Licensee may assign or otherwise transfer this Agreement and the rights and obligations hereunder without the approval of the City so long as the transferee is</u></p>		
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not statutorily unfit to hold such a license. For the avoidance of doubt, if Licensee owns the underlying land at any site specific location, the mere sale or other transfer of the land shall not affect this License.
~~However, the underlying land may also be assigned/transferred, subject to any successor in interest without authorization from the City/transferee agreeing to assume the responsibilities under the License.~~