8.F.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

Image of Staff Flagstaff

To: The Honorable Mayor and Council

From: Anja Wendel, Senior Assistant City Attorney AW

Co-Submitter: Gary Miller

Date: 05/29/2019

Meeting Date: 06/04/2019

TITLE:

Consideration and Adoption of Resolution No. 2019-22: A resolution of the Flagstaff City Council, approving a Model Uniform Video Service License Agreement and Application and Affidavit for Uniform Video Service License, as required by state law; providing for delegation of authority and establishing an effective date.

STAFF RECOMMENDED ACTION:

1) Read Resolution No. 2019-22 by title only
2) City Clerk reads Resolution No. 2019-22 by title only (if approved above)
3) Adopt Resolution No. 2019-22

Executive Summary:

The Arizona legislature adopted a law that establishes a new licensing system for use of public rights-of-way to provide video services. A copy of the law, Senate Bill 1140/Chapter 331, is attached. The law does not repeal existing laws, but allows an incumbent cable operator (Suddenlink here in Flagstaff) to terminate its existing cable services license agreement and receive a new video service license from and after December 31, 2019.

Cities are required to adopt a standard form of uniform video service license agreement, and application and affidavit for uniform video service license agreement, on or before July 1, 2019. The League of Arizona Cities and Towns has sent us proposed forms which match the state law, and these forms are attached.

Financial Impact:

Any financial impact is speculative at this time.

The licensee (Suddenlink) pays a license fee of 5% of gross revenues. The definition of "gross revenues" has been changed by the new law. If Suddenlink terminates its existing license, and is issued a new license, the revenue will change. The City has asked Suddenlink for information on what it believes the financial impact might be, if issued a new license.

Policy Impact:

None.

Connection to Council Goal, Regional Plan and/or Team Flagstaff Strategic Plan:

None.

Has There Been Previous Council Decision on This:

No.

Options and Alternatives:

1. Approve standard forms per law (recommended);
2. Approve different standard forms (not recommended, the forms match state law);
3. Do not approve standard forms (not recommended, because inaction is subject to a legal challenge).

Background and History:

May 16, 2017 Council Meeting: City Council renewed Suddenlink's cable services license, under City Code Chapter 3-09. The license is dated September 22, 2017 and is for a term of ten (10) years.

Key Considerations:

The new law provides that cities shall adopt forms per the new law by July 1, 2019.

A preliminary analysis comparing the current cable services licensing laws vs. the new video services licensing law is attached for informational purposes only. City staff is still evaluating the new law.

The Arizona Constitution, Article 2, Section 25 states: "No bill of attainder, ex-post facto law, or law impairing the obligation of a contract, shall ever be enacted." It is possible a municipality may challenge the legality of the new law to the extent it purports to allow a licensee to terminate an existing license. However, the new video services licensing law clearly applies on a prospective basis to new contracts, and therefore, it is appropriate to adopt the proposed forms as required by law.

Expanded Options and Alternatives:

None.

The City and League of Arizona Cities and Towns provided comments on SB 1140 during the legislative process in an effort to protect local community interests as best as possible.

Attachments:

Res 2019-22
Application
License
Video services new law
Comparison of Cable Laws