



City Council

Approval of Ordinance Granting a Master Use Permit for Noel Communications, Inc

Agenda Date: 8/4/2014
Agenda Item Number: 4.G
File Number: 14-0648

Type: ordinance **Version:** 3 **Status:** Passed

Title

Approval of Ordinance Granting a Master Use Permit for Noel Communications, Inc

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve on second reading the Ordinance granting a Master Use Permit to Noel Communications, Inc.

Report

Issue:

Whether the City Council should adopt the Ordinance granting Noel Communications Inc. a Master User Permit to install fiber optic lines in the City of Olympia.

Staff Contact:

Fran Eide, P.E., City Engineer, Public Works Engineering, 360.753.8422

Presenter(s):

None. Consent Calendar item.

Background and Analysis:

The background and analysis have not changed from first to second reading.

RCW 35.99.030 provides the statutory basis for the process by which the City can grant a Master Use Permit. The attached Olympia Municipal Code provides the specific legal criteria upon which the City may approve or deny the master use permit. The proposed Ordinance is based upon the staff's analysis of the applicable criteria which was presented prior to the public hearing, held on July 8, 2014.

State law requires prompt review of the permit unless additional review time is agreed to by the applicant. In staff's view the application meets the criteria, therefore staff recommends approval of the permit and attached ordinance.

Fees and Taxes.

State law only authorizes fees that are directly related to receiving and approving the permit, to inspecting plans and construction activity, or to the preparation of a detailed statement pursuant to SEPA. The City cannot require additional conduit or fiber for City purposes as a condition of the master use permit. The City and an applicant could negotiate for fiber or conduit for the benefit of the City. However, such negotiations would need to be free and voluntary, with mutual agreement between the parties. Staff does not see a legal basis for a delay of a master use permit for these types of negotiations.

RCW 35.21.860 prohibits franchise fees on this proposed use, in contrast to cable franchise fees, which are allowed to be charged. In addition, the City is also prohibited by federal law from taxing internet services. Although the federal prohibition is set to expire this year, Congress may act to renew the prohibition.

Neighborhood/Community Interests (if known):

Work on the initial installation of new fiber optic lines is expected to begin in August. Assuming the Ordinance is approved, Noel will make application for the construction permit to complete installation of the new lines. Work is expected to take approximately 2 days to complete.

The applicant will be required to follow all applicable codes and standards, including for traffic control and restoration of affected areas. Construction activities will inconvenience neighborhoods during construction. However, emergency vehicles will not be delayed by construction activities.

Businesses within the community may benefit from access to an additional telecommunications service provider.

Options:

1. Move to approve the Ordinance granting a Master Use Permit to Noel Communications Inc. This allows Noel to proceed with their plan to extend new telecommunication lines to the Department of Enterprise Systems (DES) building in the vicinity of the Jefferson Street roundabout on schedule.
2. Move to approve the Ordinance granting a Master Use Permit to Noel Communications Inc. with additional conditions identified by Council.
3. After making findings based on the record before the Council, do not approve the ordinance approving a Master Use Permit for Noel Communications Inc. The State of Washington, Department of Enterprise Systems will have to find an alternate fiber optic service provider.

Financial Impact:

Noel Communications Inc. paid a \$5,000 application fee. There is no annual fee, because RCW 35.21.860 limits fees to administrative review of the master use permit and inspection. A renewal fee will be paid to the City in the future if the applicant chooses to continue to occupy the City's right of way.