



**TOWN OF LOS GATOS
SPECIAL MEETING OF THE TOWN COUNCIL: STUDY SESSION
AGENDA
OCTOBER 04, 2022
TELECONFERENCE
6:00 PM**

*Rob Rennie, Mayor
Maria Ristow, Vice Mayor
Mary Badame, Council Member
Matthew Hudes, Council Member
Marico Sayoc, Council Member*

PARTICIPATION IN THE PUBLIC PROCESS

How to participate: The Town of Los Gatos strongly encourages your active participation in the public process, which is the cornerstone of democracy. If you wish to speak to an item on the agenda, please follow the participation instructions on page 2 of this agenda. If you wish to speak to an item NOT on the agenda, you may do so during the “Verbal Communications” period, by following the participation instructions on page 2 of this agenda. The time allocated to speakers may change to better facilitate the Town Council meeting.

Effective Proceedings: The purpose of the Town Council meeting is to conduct the business of the community in an effective and efficient manner. For the benefit of the community, the Town of Los Gatos asks that you follow the Town’s meeting guidelines while attending Town Council meetings and treat everyone with respect and dignity. This is done by following meeting guidelines set forth in State law and in the Town Code. Disruptive conduct is not tolerated, including but not limited to: addressing the Town Council without first being recognized; interrupting speakers, Town Council or Town staff; continuing to speak after the allotted time has expired; failing to relinquish the podium when directed to do so; and repetitiously addressing the same subject.

Deadlines for Public Comment and Presentations are as follows:

- Persons wishing to make an audio/visual presentation on any agenda item must submit the presentation electronically, either in person or via email, to the Clerk’s Office no later than 3:00 p.m. on the day of the Council meeting.
- Persons wishing to submit written comments to be included in the materials provided to Town Council must provide the comments as follows:
 - For inclusion in the regular packet: by 11:00 a.m. the Thursday before the Council meeting
 - For inclusion in any Addendum: by 11:00 a.m. the Monday before the Council meeting
 - For inclusion in any Desk Item: by 11:00 a.m. on the day of the Council Meeting

***Town Council Meetings Broadcast Live on KCAT, Channel 15 (on Comcast) on the 1st and 3rd Tuesdays at 7:00 p.m.
Rebroadcast of Town Council Meetings on the 2nd and 4th Mondays at 7:00 p.m.
Live & Archived Council Meetings can be viewed by going to:
www.LosGatosCA.gov/TownYouTube***

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN THIS MEETING, PLEASE CONTACT THE CLERK DEPARTMENT AT (408) 354-6834. NOTIFICATION 48 HOURS BEFORE THE MEETING WILL ENABLE THE TOWN TO MAKE REASONABLE ARRANGEMENTS TO ENSURE ACCESSIBILITY TO THIS MEETING [28 CFR §35.102-35.104]

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IMPORTANT NOTICE

This meeting is being conducted utilizing teleconferencing and electronic means consistent with Government Code Section 54953, as Amended by Assembly Bill 361, in response to the state of emergency relating to COVID-19 and enabling teleconferencing accommodations by suspending or waiving specified provisions in the Ralph M. Brown Act (Government Code § 54950 et seq.). Consistent with AB 361 and Town of Los Gatos Resolution 2021-044, this meeting will not be physically open to the public and the Council will be teleconferencing from remote locations. Members of the public can only participate in the meeting by joining the Zoom webinar (log in information provided below).

PARTICIPATION

To provide oral comments in real-time during the meeting:

- **Zoom webinar:** Join from a PC, Mac, iPad, iPhone or Android device: Please click this URL to join: <https://losgatosca.gov.zoom.us/j/84018408927?pwd=RldOYlVjTXlVTStHYzJDR2k4VUs2Zz09>
Passcode: 372765. You can also type in 840 1840 8927 in the “Join a Meeting” page on the Zoom website at <https://zoom.us/join>.
- **Join by telephone:** Join by Telephone: Dial: USA 877 336 1839 US Toll-free or 636 651 0008 US Toll. Conference code: 686100

When the Mayor announces the item for which you wish to speak, click the “raise hand” feature in Zoom. If you are participating by phone on the Zoom app, press *9 on your telephone keypad to raise your hand. If you are participating by calling in, press #2 on your telephone keypad to raise your hand.

When called to speak, you will be asked to provide your full name and your town/city of residence. This identifying information is optional and not a requirement for participation. Please limit your comments to three (3) minutes, or such other time as the Mayor may decide, consistent with the time limit for speakers at a Council meeting.

If you wish to speak to an item or items on the Consent Calendar, please state which item number(s) you are commenting on at the beginning of your time.

If you are unable to participate in real-time, you may email to PublicComment@losgatosca.gov the subject line “Public Comment Item #__” (insert the item number relevant to your comment) or “Verbal Communications – Non-Agenda Item.” Comments received by 11:00 a.m. the day of the meeting will be reviewed and distributed before the meeting. All comments received will become part of the record.

REMOTE LOCATION PARTICIPANTS *The following Council Members are listed to permit them to appear electronically or telephonically at the Town Council meeting: MAYOR ROB RENNIE, VICE MAYOR MARIA RISTOW, COUNCIL MEMBER MARY BADAME, COUNCIL MEMBER MATTHEW HUDES, and COUNCIL MEMBER MARICO SAYOC. All votes during the teleconferencing session will be conducted by roll call vote.*

RULES OF DECORUM AND CIVILITY

To conduct the business of the community in an effective and efficient manner, please follow the meeting guidelines set forth in the Town Code and State law.

The Town does not tolerate disruptive conduct, which includes but is not limited to:

- addressing the town Council without first being recognized;
- interrupting speakers, Town Council, or Town staff;
- continuing to speak after the allotted time has expired;
- failing to relinquish the microphone when directed to do so;
- repetitiously addressing the same subject.

Town Policy does not allow speakers to cede their commenting time to another speaker.

Disruption of the meeting may result in a violation of Penal Code 403.

MEETING CALL TO ORDER

ROLL CALL

VERBAL COMMUNICATIONS *(Members of the public are welcome to address the Town Council on any matter that is listed on the agenda. To ensure all agenda items are heard and unless additional time is authorized by the Mayor, this portion of the agenda is limited to 30 minutes and no more than three (3) minutes per speaker. In the event additional speakers were not able to be heard during the initial Verbal Communications portion of the agenda, an additional Verbal Communications will be opened prior to adjournment.)*

OTHER BUSINESS *(Up to three minutes may be allotted to each speaker on any of the following items.)*

1. Study Session to Discuss Potential Master License Agreement for Telecommunications Facilities in the Public Right-of-Way.

ADJOURNMENT

Writings related to an item on the Town Council meeting agenda distributed to members of the Council within 72 hours of the meeting are available for public inspection at the front desk of the Los Gatos Town Library, located at 100 Villa Avenue, and are also available for review on the official Town of Los Gatos website.

Note: The Town of Los Gatos has adopted the provisions of Code of Civil Procedure §1094.6; litigation challenging a decision of the Town Council must be brought within 90 days after the decision is announced unless a shorter time is required by State or Federal law.



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 10/04/2022

ITEM NO: 1

DATE: September 29, 2022
TO: Mayor and Town Council
FROM: Gabrielle Whelan, Town Attorney
SUBJECT: Study Session to Discuss Potential Master License Agreement for
Telecommunications Facilities in the Public Right-of-Way.

RECOMMENDATION:

Consider Request for Master License Agreement for Telecommunications Facilities in Public Right-of-Way and Provide Direction to Town Staff.

BACKGROUND:

The Town has received a request from a telecommunications provider for a Master License Agreement. A Master License Agreement would authorize the installation of "small cell" infrastructure on Town streetlights on designated Town streets. The reason for the request is that 5G service requires the installation of "small cells" within close proximity to one another. The "small cell" infrastructure consists of an antenna and battery box affixed to a Town streetlight pole.

Currently, state law authorizes telecommunications providers to use public right-of-way for infrastructure, including "small cell" facilities (Public Utilities Code Section 7901.). As a general rule, public right-of-way extends twenty feet from the center of the street in each direction. As a result, cities and towns will occasionally receive applications for installations in what can be perceived as a property owner's front yard if there is a right-of-way easement that extends into the front yard.

While state law authorizes the use of public right-of-way, cities and towns retain the right to regulate the "time, place, and manner" of telecommunications facilities in the public right-of-

PREPARED BY: Gabrielle Whelan, Town Attorney
Bridgette Falconio, Administrative Technician

Reviewed by: Assistant Town Manager, Town Attorney, and Interim Finance Director

BACKGROUND (continued):

way (Public Utilities Code Section 7901.1; 47 U.S.C. Section 332(c)(7)). Permissible “time, place, and manner” regulations include aesthetic considerations.

The Town currently processes applications for telecommunications installations on a case-by-case basis in accordance with Town Code Sections 29.20.205 and following. “Small cell” installations on private property are subject to the permitting requirements for an administrative land use permit approved by the Community Development Director. Factors that are taken into consideration include conformance with General Plan, Zoning Code, and any applicable guidelines. Decisions are appealable to the Planning Commission.

DISCUSSION:

The benefits of a Master License Agreement are that it would allow the Town to pre-approve specified locations and the appearance of these “small cell” installations. Telecommunications providers have expressed that, if they are able to utilize streetlight poles, they are less likely to seek approval for independent installations in portions of the public right-of-way that may front residential properties.

One question that often comes up is whether a city or town can charge for the use of its streetlight poles. The Federal Communications Commission (FCC) currently authorizes a charge of \$270 per pole. The Town can charge a higher amount if the Town can demonstrate that its costs to allow the installations exceed that amount.

Another question that frequently arises on this topic is the Town’s ability to regulate radio frequency (RF) emissions. Currently, federal law allows cities and towns to require confirmation that the RF emissions meet standards established by the FCC. However, cities and towns do not have the ability to adopt standards for RF emissions that differ from those established by the FCC.

If the Town were to pursue a Master License Agreement, the Town would also need to amend its telecommunications ordinance and develop a new permitting program.

CONCLUSION:

Staff is seeking input from the Town Council regarding its interest in pursuing a Master License Agreement for telecommunications providers that would authorize the use of designated streetlight poles within the public right-of-way. If the Town Council would like to pursue this project, Town staff will prepare an amendment to the Town’s telecommunications ordinance, develop a new telecommunication permitting program, develop aesthetic standards, and

PAGE 3 OF 3

SUBJECT: Telecommunications Master License Agreement

DATE: September 29, 2022

CONCLUSION (continued):

negotiate a master license agreement. Each of these items will return to the Town Council for future consideration.

COORDINATION:

The Town Attorney's Office, Town Manager's Office, Community Development Department, and Parks and Public Works Department coordinated this report.

FISCAL IMPACT:

FCC rules authorize the Town to charge \$270 per streetlight pole annually, but this charge is to cover necessary staff time to oversee and monitor the installations so no fiscal impact to the Town is expected.

ENVIRONMENTAL ASSESSMENT:

Because the Town Council is providing preliminary direction to staff at this point, this study session is not a project defined under CEQA.



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 10/04/2022

ITEM NO: 1

ADDENDUM

DATE: October 3, 2022
TO: Mayor and Town Council
FROM: Gabrielle Whelan, Town Attorney
SUBJECT: Study Session to Discuss Potential Master License Agreement for Telecommunications Facilities in the Public Right-of-Way.

REMARKS:

The following information is provided in response to Council Member questions:

- *Would the Master Agreement ultimately allow more predictable installation?*

Yes, the Master Agreement will allow for more control over the location of the installation. This will help staff by providing clear agreement with the telecom companies over where the installations are acceptable. This relieves staff of the burden of assessing each location individually and considering the appropriateness.

- *While it appears there will be more upfront work for staff to create a Master License Agreement (MLA) and work through the details, will this eliminate work downstream?*

It will relieve staff of the need to assess locations one by one, but individual installations will still require a permit on a case-by-case basis to consider structural conditions, compatibility with existing town infrastructure (e.g., many poles at key intersection have Police Department cameras that would have precedent over telecom) and the like.

- *It appears that the \$270 per year per pole charge will be collected to cover staff time to oversee and monitor the installations. Does that mean we take over the maintenance of these installations? Do we have the capacity to do this?*

PREPARED BY: Gabrielle Whelan, Town Attorney
Nicolle Burnham, Parks and Public Works

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Parks and Public Works Director

PAGE 2 OF 2

SUBJECT: Telecommunications Master License Agreement

DATE: October 3, 2022

REMARKS (continued):

The Town would not be responsible for maintaining the communications infrastructure, but would still own and operate and maintain the actual poles. There may be opportunity during development of the MLA to ask the telecom to cost share on future pole maintenance.

- *Would this Master Agreement apply to any applicants or would it have to be specifically created for each telecommunication provider?*

Town staff would prepare a Master License Agreement template that could be used with each provider.