



## Legislation Text

File #: [21-0380], Version: 1

### **Extend and Provide Option to Expand Territory of the Encroachment and Lease Agreement for Town Right-of-Way along Cleland Drive for Continued Use as a Cellular Tower Site.**

**Staff:**

Scott Clark, Executive Director  
Amy Oland, Director

**Department:**

Technology Solutions  
Business Management

**Overview:** The attached resolution would authorize the Manager to extend the lease agreement period and offer Tenant an option to expand the encroachment of this Cellular Tower in the Town right-of-way space on Cleland Drive to NCWPCS MPL 31 - YEAR SITES TOWER HOLDINGS LLC, successor to Crown Castle International Corp.



**Recommendation(s):**

That the Council adopt the attached resolution that would authorize the Manager to execute an amendment to the encroachment and lease agreement of Town right-of-way along Cleland Drive to Tenant for two successive five (5) year terms commencing on July 1, 2026, and providing an option to expand the leased territory by a maximum of 432 square feet.

**Background:** This encroachment and lease agreement originally expired November 12, 2006 and was renewed January 23, 2006 for a ten-year term. The ten-year encroachment and lease agreement expired June 30, 2016 and was renewed in 2013 for a ten-year term to end on June 30, 2026. The lease amount began at \$1,950 per month (\$23,400 per year) with an annual 3% increase over the previous year. The Town is currently receiving \$2,398 per month (\$28,779 per year).

North Carolina General Statute 160A-372 states that property may be rented or leased by municipality pursuant to a resolution of the Council authorizing the execution of the lease, adopted at a regular meeting. Extension and expansion of the Lease requires Council authorization. We believe that the arrangement has worked well for both parties. If the Council agrees, we would amend the lease on the following terms:

- The amendment would extend the existing lease up to two additional five (5) year terms to end June 30, 2036.
- The lease would provide an option for Tenant to expand the territory of the lease up to an additional 432 square feet as set out in Appendix A to the lease. The per-square-foot lease rate would be the same as for the existing leased territory.
- Tenant has also agreed to refresh the paint on the surrounding fencing and to plant screening plants to improve the aesthetics.  
Construction in the expansion area is subject to all Town ordinances and rules.
- The new lease amount would begin at \$29,900 per year with an annual increase of 3% over the previous year paid in one lump sum at the beginning of the year:
  - Year 1: \$29,900.00
  - Year 2: \$30,797.00
  - Year 3: \$31,720.91

- Year 4: \$32,672.54
- Year 5: \$33,652.71
  
- If the Tenant expands the leased territory, the lease amount would increase proportionally.
- The new term of the lease would commence on July 1, 2026. The amended lease would end on June 30, 2036 if not terminated sooner.

**Fiscal Impact/Resources:** The new lease amount would begin at \$29,900 per year with an annual increase of 3% over the previous year paid in one lump sum at the beginning of the year.



**Attachments:**

- Resolution
- Third Amendment to Structure and Encroachment Agreement - Cleland RD (BU 840608)

**A RESOLUTION AUTHORIZING THE TOWN MANAGER TO AMEND AN ENCROACHMENT AND LEASE AGREEMENT FOR TOWN RIGHT-OF-WAY ALONG CLELAND DRIVE WITH NCWPCS MPL 31 - YEAR SITES TOWER HOLDINGS, SUCCESSOR IN INTEREST TO NEW CINGULAR WIRELESS PCS (2021-05-05/R-5)**

WHEREAS, Cleland Drive is a Town of Chapel Hill maintained road with Town right-of-way; and

WHEREAS, New Cingular Wireless PCS (now succeeded by NCWPCS MPL 31 - YEAR SITES TOWER HOLDINGS LLC) leased Town right-of-way on Cleland Drive for purposes of operating a cellular communications site under a lease with the Town of Chapel Hill that expired on November 12, 2006; and

WHEREAS, New Cingular Wireless PCS (now succeeded by NCWPCS MPL 31 - YEAR SITES TOWER HOLDINGS LLC) leased Town right-of-way on Cleland Drive for purposes of operating a cellular communications site under a lease with the Town of Chapel Hill that expired on June 30, 2016; and

WHEREAS, Crown Castle International Corp. (now succeeded by NCWPCS MPL 31 - YEAR SITES TOWER HOLDINGS LLC) leases Town right-of-way on Cleland Drive for purposes of operating a cellular communications site under a lease with the Town of Chapel Hill that is due to expire on June 30, 2026 (existing lease);

WHEREAS the Town and NCWPCS MPL 31 - YEAR SITES TOWER HOLDINGS LLC ("Tenant") desire to enter into an amendment to the existing lease extending the term of the lease for two additional five (5) year terms and providing Tenant the option of expanding the leased territory by a maximum of 432 square feet at the same lease rate per square foot; and

WHEREAS, the North Carolina Statute 160A-272 authorizes the Town to lease or rent Town property pursuant to a resolution of the Council authorizing the execution of the lease or rental agreement adopted at a regular Council meeting upon 10 days' public notice, which has been provided.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Chapel Hill that the Council hereby authorizes the execution of an amendment to the encroachment and lease agreement for Town right-of-way along Cleland Drive to NCWPCS MPL 31 - YEAR SITES TOWER HOLDINGS LLC for two additional periods of five (5) years to commence July 1, 2026 and expire June 30, 2036, if not terminated sooner, with an option to extend the leased territory by a maximum of 432 square feet with proportionate rent increases.

This the 5th day of May, 2021.

---

**The Agenda will reflect the text below and/or the motion text will be used during the meeting.**

By adopting the resolution, the Council authorizes the execution of an amendment to the encroachment and lease agreement for Town right-of-way along Cleland Drive to NCWPCS MPL 31 - YEAR SITES TOWER HOLDINGS LLC for two additional periods of five additional years to commence July 1, 2026 and expire June 30, 2036, with an option to extend the leased territory by a maximum of 432 square feet.