

Proposed Small Cell Legislation

Areas of Agreement

- **Need for small cells.** Local governments recognize that their citizens and businesses value robust cell phone coverage and high speed wireless broadband services. Because of this, local government supports the installation of small cells in the right-of-way that help carriers add capacity to their networks. *not sure this Council will agree*
- **Right to access the right-of-way.** Public right-of-way is entrusted to local governments to manage for the benefit of its residents and businesses by ensuring that anything placed in the right-of-way is there safely and does not block motorists' line of sight. Structures in the right-of-way along streets are vulnerable to being run into, so these structures must be regulated.
- **Stream-lined permitting.** Because the wireless services are important to residents and the industry is competitive, local government recognizes that the industry needs to be able to deploy its technology as quickly as possible. Local government must have the staff resources to process these and rates and fees are the funding mechanism for such.
- **Clear explanations from government of the small cell approval process.** Local government recognizes that it should provide good customer service, which includes having efficient processes and standard agreements so that industry knows exactly what it must do and when in order to deploy its small cells.
- **Nondiscrimination between providers.** When two providers are in the same business and are competing against one another, local government should not favor one over the other (unless federal or state law requires that it do so). At a local level, the agreements between the providers should be substantially similar in all material aspects. *co-location?*
- **Allowing a particular size and number of antenna/radio pairs.** As long as the local government can have design standards that can impose stealth or concealment elements to the small cell antennas/radios in areas where this is necessary, a guideline for the size and number is not objectionable. There are going to be areas in cities and counties where appearance and height of the verticality are not as much of an issue as they are in a residential neighborhood or in a downtown or historic district.
- **Reasonable rates and fees.** While the industry may want to be able to use the right-of-way and poles for little or no fee, this is unreasonable and counterproductive to industry's goal of efficient government processes. Although permit fees are not popular, they are the mechanism that allows the government to have sufficient staff to process permits expeditiously. Allowing a city to receive fair and reasonable compensation for use of the public right-of-way by a for-profit commercial enterprise gives the city the resources needed to effectively manage such public right-of-way. Arizona's constitution has a prohibition against the gifting of public property, so tax payers have a right to expect that all users of the right-of-way pay their fair share for the use of such public property. (Article 9, Section 7 of the Arizona Constitution) Tax money is used for street lights and poles and thus local government should only seek to receive fair rental value from them.

Major Concerns

- The legislation is being placed in Chapter 11 relating to counties, but its language makes it applicable to cities, which will cause potential conflict with the Cox small cell legislation. It is simply bad public policy to enact legislation that will create a free for all in the right-of-way. A modified bill that protects both sides' interests should be achievable if the sponsor is open to it. *see as diff bullet*
- Legislation should be limited to small cells in the right-of-way, not elsewhere. Macro sites should not be included.
- **Increased visual blight that will decrease property values and the desirability of a community.** Residents and businesses value communities that do not allow visual blight that sacrifices beautiful views or causes safety issues for the sake of technology. A community can have both if it is allowed to address the aesthetics that require that small cell antennas and equipment be concealed as much as possible to blend in with the surrounding area. If proposed small cell legislation passes without these protections then local government loses the ability to prevent visual clutter to ensure a city's beauty, which is important for resident quality of life, tourism and economic development. A visually pleasant community enhances property values and is good for local businesses. As such, local governments need to be able to impose reasonable restrictions that will allow providers to add capacity to their networks, but protects consumers from the harmful effects caused by unfettered access to place unsightly antennas and equipment anywhere in the city. Fiscally viable and healthy communities strengthen the ability of the State of Arizona to govern in partnership with the residents that we both serve.
- **Appearance and Size of Antennas/Radios:** Wireless antennas and related equipment can potentially vary widely in size and appearance. Antennas can be up to 6 feet tall and up to 2 to 3 feet wide. Additionally, radios and other equipment are needed at each location. Because small cell antenna and related equipment can be concealed, the City should have the ability to require that the antennas be concealed and that the structures be as stealth as possible so as to blend in with the existing character of the various areas where they are to be located. Residents expect their communities to be well-maintained and aesthetically pleasing, not cluttered with ugly antennas everywhere. Residents also expect to be allowed to give input when a cell site goes into their neighborhood.
- **All locations in the right-of-way automatically being allowed for small cells and a single permit only being required.** Local government needs to be able to retain its police power for the public welfare and safety by managing the appearance and specific locations of where wireless facilities are placed. *coordination of multiple vendors & multiple utilities*
- **Required placement where radio emissions shoot directly into a residential unit:** Public right-of-way is not just along arterial streets, but also extends into neighborhoods next to people's homes. Citizens have a right to expect that local government will require carriers to comply with federal radio frequency emission standards when small cells are placed in the public right-of-way. Nor should the State take away the city's ability to require compliance with the federal radio frequency emissions safety standards for wireless facilities that may be placed right outside the windows of someone's home.

conceal on screen equipment box

- New poles and structures automatically allowed.** Since there is existing verticality in the form of street lights in most public right-of-way, these should be the first structures used for the small cells. The City should have the ability to allow new structures only through the waiver provisions of its undergrounding ordinance. A local government should not be required to allow a small cell tower/pole to be placed anywhere without regard for the structural safety of the public right-of-way in a given area. Different cities have different types of traffic signal poles, some of which may not be appropriate for the installation of a small cell. The city should have the ability to disallow the attachment of a small cell on a traffic signal structure if a street light pole would be more appropriate. *it's not just a safety issue*
- Pole height exceeding 35 feet in certain areas.** The installation of new 50 to 60 foot pole(s) or other structure to support the small cell antennas and related equipment within a neighborhood or other area may not be appropriate where existing street lights are only 25 to 35 feet high. Zoning regulations that would normally offer protections to City residents may not apply to public right-of-way, which typically has not had cell towers installed in it. Unlike traditional cell towers that emit radio waves far distances, small cells have a much more limited range, so many more of them will need to be installed to meet future technology needs.
- Impairment of existing small cell agreements.** In fact, cities currently have agreements with small cell providers that have been negotiated and agreed upon. The legislation should not impair existing contracts by having a retroactive provision that preempts such agreements in violation of the Arizona constitutional protection that the State will not enact a law that impairs the obligation of a contract. (Article 2, Section 25 of the Arizona Constitution).
- Impairment of existing properly enacted reasonable fees.** The legislation would invalidate local governments' current fee structures, which are presumed to be unreasonable (in the absence of any evidence that they are). \$ 20.00 per pole per year is not a reasonable fee because street lights and traffic signals are not like utility poles and the make ready work is not analogous.
- Right-of-way user and residents' protections eliminated.** Local governments enter into master licensing agreements with users of the right-of-way to ensure that the right-of-way is properly managed and that there are proper protections in place. Forbidding information on an application that is needed erodes such protections. Legislation that would prevent or preempt such protections will have unintended consequences. Current agreements cover the following:

 - o > - merger & assignment
 - > - term and renewals
 - > - expiration and termination
 - > - insurance & indemnification
 - > - letter of credit or bond
 - > - where they can be installed and what can be installed (replacement, 3rd party poles)
 - > - emergencies
 - > - relocation
 - > - operation and abandonment
 - > - breach for non-compliance