



## MEMORANDUM

TO: Mayor and City Council  
FROM: Howard S. Lazarus, City Administrator  
DATE: June 14, 2018  
SUBJECT: Recommended City Position of State Regulation of Small Wireless Communications Facilities

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**PURPOSE:** This memorandum recommends a position to Council concerning pending State regulation of small wireless facilities.

**BACKGROUND:** Small cells are low-powered cellular radio access nodes that operate as base stations, receiving and sending signals. Small cells typically support a single carrier, operate on one or two frequency bands, and require minimal power to operate. However, small cells typically have a range of fewer than two miles, and transmit less power than a remote radio unit or digital antenna system. This means that many small cells must be deployed for them to be effective.

The industry believes a dense network of small cells placed on existing infrastructure ultimately will eliminate the need for further cell tower construction. Small cell technology also is important for deployment of advanced, or "fifth generation," wireless systems, called 5G networks, as well as for the development and implementation of autonomous vehicles and the development of "smart cities" (urban areas that use different types of electronic data collection sensors for various purposes, such as managing traffic lights or monitoring water systems).<sup>1</sup>

Many believe that small cell technology in Michigan will provide wireless consumers with faster and more reliable connections, bring economic growth and development to local communities, and make Michigan's wireless infrastructure a competitive frontrunner among other states. To accomplish this, with industry urging, the Senate has passed a bill (SB 0637) to create a regulatory framework for deployment of small cell facilities that would establish a uniform permitting process for providers seeking access to pole structures in rights-of-way, improve mobile networks in congested urban areas, and expand high-speed broadband service in rural areas.<sup>2</sup>

While SB 0637, if passed into law, would, on the positive side, impose standardized requirements on providers and generate revenues, it would also grant providers a number of rights, impose numerous obligations on the City, and significantly preempt City regulation of the placement of these facilities, all for the stated purposes of (a) increasing investment in wireless networks that will benefit the citizens of the state; (b) increasing investments that enhance global competitiveness; and (c) streamlining the

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<sup>1</sup> Senate Fiscal Agency Bill Analysis, Senate Bill 637 (Substitute S-2 as passed by the Senate), May 3, 2018.

<sup>2</sup> Ibid.

process of permitting, construction, modification, maintenance, and operation of wireless facilities in the public right of way. In particular, if enacted into law, SB 0637 would generally bar the City from:

- Prohibiting, regulating, or charging for the collocation of small cell wireless facilities;
- Entering into an exclusive agreement for use of a right-of-way (ROW) for work on utility poles or the collocation of small cell wireless facilities; and,
- Charging wireless providers a rate or fee for the use of an ROW.<sup>3</sup>

With the Senate's passage of the SB 0637, the House Energy Committee began hearings on the legislation but, as of the writing of this memorandum, has suspended hearings until September, creating an opportunity for the City of Ann Arbor to provide additional input. I have confirmed that the Michigan Municipal League has taken a neutral stance on this legislation, protecting the advancements that have made in modifying the initial proposed legislation but also recognizing that the bill still contains many components that are objectionable to local governments.

The City Council, through its Policy Agenda Committee, has adopted a position to oppose unreasonable actions from the state that restrict and impose upon local authority. The Council has also adopted policies that promote equity and equal access for the community.

**ANALYSIS:** SB 0637 runs counter to Council-adopted positions, as discussed below:

- Regulation of the public right of way (ROW) is a fundamental power of local governments like the City, to exercise on behalf of their residents. It is wholly appropriate, and beneficial, for local units of government to regulate uses of the ROW through license agreements. So doing, they can address and ensure:
  - Collocation of facilities on a single pole, which prevents the proliferation of poles.
  - Telecommunications companies (telecoms) provide additional capacity for municipal uses, which is an essential component of these types of private uses of a public asset.
  - Aesthetics of installations in the ROW other than in historic or residential districts. Allowing for reasonable regulation of the form and design of the devices will force better engineering from the telecoms.
  - Establishment of fiscal responsibility to remove small cell facilities (including poles) and restore the ROW when the devices become functionally obsolete or inoperable.
  - Free WIFI services in public areas as a condition of the license agreement, which is both a competitive and equity issue.
- If passed into law, SB 0637 would severely limit or destroy the City's ability to seek these goals.
- Municipal entities will not unreasonably act to make their communities economically unattractive to telecoms. However, it is wholly reasonable for municipalities to participate in the economic benefits and profits telecoms will reap from providing high speed wireless services. Regulation and licensing of the ROW is one of the few remaining economic options local governments retain that have not already been eliminated or restricted by State action.

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<sup>3</sup> Ibid.

- The need to make access to telecommunications services widely available carries with it a social equity component. As stated below, the telecoms do not readily or voluntarily seek to provide areas where they will not see a return on their investment. Without a requirement to serve the general community, telecoms will work in their own financial interest and expand the digital divide that separates our communities.
- Over the long term, as telecommunications move toward wireless communications away from cable connections, the primary funding mechanism for local access television networks will evaporate. Transferring this source of income to emerging technologies that require use of a public access is wholly appropriate.

The recurring theme is that the effect of SB 0637 is to privatize benefits and socialize costs. Telecoms are private entities with obligations to their investors, not the public. Eliminating the ability for local governments to access a share of the tremendous benefits that the telecoms will realize is not in the public interest.

From a legal perspective, local regulation of communications facilities—and State preemption of the same—is a “complex and broad area of law, which means it’s difficult to discuss without specific facts.”<sup>4</sup> That said, in the case of small wireless facilities, the City’s Attorney’s Office has reviewed applicable state statutes and has advised that, absent SB 0637, the City has the ability to regulate these facilities in the public ROW.

**RECOMMENDATIONS:** The City of Ann Arbor City Council should adopt a resolution (copy attached) to oppose SB 0637’s preemption of local authority to regulate the placement of small wireless facilities and to request that elected officials who represent the City’s constituents in State government oppose passage when the bill is taken up again.

**ATTACHMENT**

1 - Resolution in Opposition to SB 0637 – Small Wireless Facilities

- cc: S Postema, City Attorney  
M Rechten, Senior Assistant City Attorney  
C Hupy, Public Services Area Administrator  
D Delacourt, Community Services Area Administrator  
L Wondrash, Communications Manager  
J Beaudry, City Clerk  
S Higgins, Strategic Planning Coordinator

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## **RESOLUTION TO OPPOSE SB 0637 – SMALL WIRELESS FACILITIES**

Whereas, Regulation of the public right of way (ROW) is a fundamental power of the City, as a local government, to exercise on behalf of its residents.

Whereas, It is wholly appropriate for local governments to achieve such regulation through, among other things, license agreements.

Whereas, Through such agreements, local governments have the ability to, among other things:

- Require colocation of facilities on a single pole, which prevents the proliferation of poles.
- Require telecommunications companies to provide additional capacity for municipal uses, which is an essential component of these types of private uses of a public asset.
- Address the aesthetics of installations in the ROW outside of historic or residential districts (allowing for reasonable regulation of the form and design of the devices will force better engineering).
- Establish fiscal responsibility for removal of small cell facilities (including poles) and restoration of the ROW when the devices become functionally obsolete or inoperable.
- Require free WIFI services in public areas, which is both a competitive and equity issue.

Whereas, SB 0637, if enacted into law, would severely preempt and therefore limit these regulatory powers.

Whereas, Increasing access to telecommunications services is a social equity priority that providers do not voluntarily meet unless required to do so by regulation. Accordingly, any deprivation of the City's regulatory power will exacerbate the "digital divide" separating its residents.

Whereas, As telecommunications providers move toward wireless communications and away from cable connections, the primary funding mechanism for local access television networks will evaporate, and transferring this source of income to emerging technologies that require use of a public access is wholly appropriate.

**RESOLVED**, The City Council of the City of Ann Arbor opposes enactment of SB 0637 and directs the City Administrator to communicate the City's opposition to elected officials at the State government who represent the City's residents.