



February 5, 2016

Senate Committee on Utilities
300 SW 10th St.
Topeka, KS 66612

Dear Senators:

You may find my perspective as Derby's Zoning Administrator helpful as you consider the potential impacts of SB 401.

Derby enjoys a great community partnership with McConnell Air Force Base. Its planes are a common and welcome sight over Derby. In support of McConnell's mission, Derby has enacted zoning within the City to ensure compatibility with the Air Force's recommended land use guidelines. These provisions are more restrictive than current FAA regulations, and Derby has been recognized by base commanders and Pentagon officials as setting the standard for supporting critical base operations through zoning. This community partnership and Derby's active support of MAFB were cited as factors in successfully bringing the KC-46A refueling tankers to MAFB. SB 401 removes the ability of the City to enforce zoning in protected areas extending from the ends of the MAFB runway.

SB 401 suggests a "one size fits all" approach to zoning, plan review, and permitting that is unworkable and impractical. Commercial development, commercial land use, and commercial structures within Derby have few, if any, similarities to wireless communication structures. Consideration of an application for most types of land use is driven by the individual facts of the application and requires accurate information. SB 401 prohibits a city from requiring information necessary to appropriately evaluate an application.

SB 401 repeats the "one size fits all" approach to a city's management of right-of-way (ROW) and facility use. The proposed bill does not speak to vehicular traffic and bike path "clear zones," define what would be considered a hindrance on "usual travel," or establish who determines such a standard. SB 401 fails to acknowledge any distinction as to how different structures, and their locations, may impact traffic safety; fails to consider the potential impacts on other ROW users; and equates the essential services of Derby's water and stormwater utilities to the services of a private, profit-driven telecommunication services provider. This "one size fits all" approach does not work in philosophy or practice.

Finally, SB 401 far exceeds the scope of the protections provided by the Telecommunications Act. More importantly, it ignores and creates conflict with provisions of K.S.A. 17-1902. The long-standing protections found in K.S.A. 17-1902 and federal law have been successful in ensuring that personal wireless service is widely available throughout the state. SB 401 appears to create an expansion of rights far beyond K.S.A. 17-1902 and federal law and will create

SENATE UTILITIES COMMITTEE

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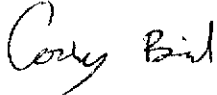
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unnecessary conflict in an already complex interaction between state, federal, and local laws. The concerns which SB 401 proposes to address have not been experienced by Derby in working with telecommunications providers. SB 401 raises too many unanswered questions to be passed at this time.

Please do not vote in favor SB 401. Your consideration of this perspective is most appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Cody Bird".

Cody Bird
Zoning Administrator