



City of Lawrence

CITY MANAGER'S OFFICE

DIANE STODDARD
INTERIM CITY MANAGER

City Offices
PO Box 708 68044-0708
www.lawrenceks.org

6 East 6th St
785-832-3000
FAX 785-832-3405

CITY COMMISSION

MAYOR
MIKE AMYX

COMMISSIONERS
LESLIE SODEN
STUART BOLEY
MATTHEW J. HERBERT
LISA LARSEN

February 5, 2016

Senator Robert Olson
Chair, Utilities Committee
Room 548 South, Statehouse
Topeka, KS 66612

Re: Senate Bill 401

Dear Senator Olson and Senate Utilities Committee Members:

On behalf of the City of Lawrence, I would like to express our opposition to Senate Bill 401. Enactment of the bill would seriously erode cities' ability to regulate and manage the public rights-of-way. As technology changes, cities are constantly being asked to locate more and more utilities and infrastructure in what are already congested public rights-of-way. Currently, the City of Lawrence is at the forefront of bringing wireless and fiber technology to its citizens. However, the City has done so in a carefully planned and monitored fashion that is also competitively neutral.

Senate Bill 401 states that a wireless services provider "shall have the right to construct, maintain and operate wireless support structures, small cell wireless facilities or distributed antenna systems along, across, upon or under the public right-of-way." Such blanket authority is contrary to Article 12, Section 5 of the Constitution of the State of Kansas, conferring Home Rule Authority on Kansas cities, and runs contrary to the substantial investments that cities make in their roads and rights-of-way.

The City of Lawrence permits wireless antenna systems and distributed antenna systems in its right-of-way already. The City has worked successfully in partnership with such providers to locate their infrastructure and co-locate infrastructure in the City's rights-of-way to the mutual benefit of all parties. Allowing providers unfettered access to the City's rights-of-way will cause congestion in already congested rights-of-way and, unchecked, will present real and serious danger to users of those rights-of-way, including motorists, cyclists, and pedestrians.

SENATE UTILITIES COMMITTEE



We are committed to providing excellent city services that enhance the quality of life.

DATE:

2-9-16

ATTACHMENT #

15

In addition to harming the City's ability to regulate and manage its rights-of-way, the proposed bill undermines its ability to plan for its future growth and development. A number of the proposed provisions significantly erode the City's zoning authority and its ability to work with providers to find suitable locations that balance and meet the needs of the provider and the neighborhoods in which such facilities are proposed. As written, the proposed bill grants providers almost untrammelled rein in cities, eliminating the City's ability to determine whether there exists the need for new or expanded facilities, reducing the City's ability to properly mitigate impacts, not the least of which relate to aesthetics and safe fall-zones, and limiting the way these unique structures might be required to locate on a site for the safety and welfare of surrounding property owners. The City of Lawrence, accordingly, would object to the following provisions of proposed Senate Bill 401:

- (f) To ensure uniformity across the state with respect to consideration of every application, an authority shall not:
 - (1) Require an applicant to submit information about, or evaluate an applicant's business decisions with respect to, the applicant's designed service, customer demand for service or quality of the applicant's service to or from a particular area or site;
 - (2) require information that concerns the specific need for the wireless support structure, including if the service to be provided from the wireless support structure is to add additional wireless coverage or additional wireless capacity. An authority may not require proprietary, confidential or other business information to justify the need for the new wireless support structure, including propagation maps and telecommunications traffic studies;
 - (3) evaluate an application based on the availability of other potential locations for the placement of wireless support structures or wireless facilities, including but not limited to the option to collocate instead of construct a new wireless support structure or for substantial modifications of a support structure;
 - (4) dictate the type of wireless facilities, infrastructure or technology to be used by the applicant, including but not limited to requiring an applicant to construct a distributed antenna system or small cell facility in lieu of constructing a new wireless support structure or discriminate between different types of infrastructure or technology;

- (5) ~~(10)~~ impose any requirements or obligations regarding the presentation, appearance or function of the wireless facilities and equipment, including but not limited to those relating to any kinds of materials used and those relating to arranging, screening or landscaping of facilities if such regulations or obligations are unreasonable;
- (6) ~~(13)~~ impose any compliance measures for radio frequency emissions or exposure from wireless facilities that comply with federal communications commission rules for radio frequency; and
- (7) ~~(12)~~ impose a setback or fall zone requirement for a wireless support structure that is different from a requirement that is imposed on other types of commercial structures;

Additionally, the highlighted portion of section (i), as set forth below, needs clarification in that it seems to prohibit the City from requiring a building permit for small cell facilities, where one would otherwise be required to ensure that safe methods of construction are used for any structural, electrical, or mechanical change to a building or structure, which is fundamentally necessary for the protection of the health, safety, and welfare of the community.

- (i) Subject to the provisions of this section and applicable federal law, an authority may continue to exercise zoning, land use, planning and permitting authority within their territorial boundaries with regard to the siting of new or the modification of wireless support structures, wireless facilities, small cell facilities or utility poles except that **no authority shall have or exercise any jurisdiction, authority or control over the construction, installation or operation of any small cell facility or distributed antennae system located in an interior structure or located on privately owned property or property not otherwise owned or controlled by the authority.**

In conclusion, because it deprives the City of its constitutional right to Home Rule Authority with respect to their regulation and management of rights-of-way, severely diminishes the City's ability to plan future growth and development, and negatively impacts the City's fundamental obligation to protect the health, safety, and welfare of its citizens, the City of Lawrence respectfully urges you to reject Senate Bill 401.

Sincerely,



Diane Stoddard
Interim City Manager