



# Small Cell Telecommunications Technology Issue Brief

**Cities oppose sweeping pre-emption of city authority included in HB 1921/SB 5711**

Every community wants a faster cellular network - it's good for citizens, businesses, government operations, and the economy. Cities recognize that new wireless technology and facilities are coming. It is critical that local governments are not impeded in their ability to balance community interests with the desire for more advanced communications services.

Companion bills, HB 1921/SB 5711, have been brought forward by telecommunication service providers looking to begin the rollout of small cell networks and 5G wireless technology. Unfortunately, the bills contain a far-reaching proposal that preempts local governments on matters pertaining to management of public rights-of-way, access to municipally owned properties, land use controls, permitting timelines, and associated costs.

This sweeping preemption proposal is simply unnecessary. Many of cities have adopted new codes to accommodate small cell facilities, are working on new codes, or are already in the process of working with providers to install equipment. A consortium of 26 cities has developed a draft model ordinance to streamline small cell facility deployment.

## Strong cities need:

**Local control to balance community interests with the need for new telecommunications infrastructure.**

This includes: 1) the ability to regulate access to municipally owned poles, light standards or other facilities; 2) authority for permitting and siting processes that considers community aesthetics and concerns; and 3) ability to recover the full cost of managing rights of way and issuing and enforcing permits.

## More details

### Access to rights of way

Rights of way are big, expensive, and complex pieces of critical public infrastructure that contain the facilities that serve vehicle traffic and pedestrians, as well as major underground and overhead utilities such as natural gas, electric, water, sewer, stormwater, telephone, wireless telecommunications, and street lighting. The public rights of way provide a gateway to local businesses and uphold unique aesthetic standards as desired by each community. Rights of way are purchased and maintained at taxpayer expense.

This bill could be interpreted to give a right to providers to install new or replacement poles throughout cities, even in open space, parks, residential districts, shorelines or other environmentally fragile areas, or in locations where utility lines have been undergrounded at great tax payer expense.

### Access to municipally owned poles, light standards or other facilities

The erection of taller poles should not be within the sole discretion of telecommunications providers. Allowing a provider to determine appropriate height of a pole undermines decades of community planning and aesthetic policies implemented by cities in order to promote tourism, reduce light pollution, increase property values, and diminish unsightly visual impact on residents and businesses. If usage of municipal owned poles is not appropriate, cities currently have the discretion to put in taller or new poles. Therefore, restricting this discretion would be a significant loss of local control over infrastructure in the rights of way.

[more details on back](#)

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# More details cont.

## Access to city-owned property outside the rights of way

This proposal is a clear taking of a local government's property rights. Currently, a city (like any other property owner) has the right to determine when and where it will grant a lease. Importantly, cities maintain park property to provide outdoor community spaces to their citizens. Unencumbered access to city property would have a negative impact on community parks and outdoor spaces.

## Permitting and siting process

This bill appears to give preference to siting small cell telecommunications facilities over other types of permits. It puts small cell siting applications ahead of other telecommunications services. In addition to moving this type of utility to the "front of the line," the proposal makes no exception for siting in shorelines, critical areas, downtown areas or historic districts. There should be no blanket authority to site these facilities, and they should not be given preferential treatment.

Furthermore, the extremely tight timelines proposed in this draft do not take into consideration the necessary and appropriate public process, or other extenuating but related circumstances. In addition, the timelines create further complication for cities as they conflict with existing timelines in state and federal law.

## Costs

There is no need for a legislatively mandated cost formula for charging for pole attachments. The current statutory language regarding utility poles, in place for decades, has been upheld by the courts on a number of occasions, affirming the rates are fair, just and reasonable.

In addition, a cap placed on application and processing fees ignores the bargain struck between providers and cities under RCW 35.21.860. The cap proposed by this legislation is not based on actual costs for cities or an appropriate value for city-owned poles. It also would incentivize carriers to deploy on city-owned poles rather than on utility-owned poles that already have existing infrastructure to handle small cell deployment. If providers believe the charges for ground rental or pole attachments are too high, RCW 35.21.860 includes a binding arbitration process.

## Aesthetic considerations

There are two provisions in the proposed legislation that create significant unintended consequences. The first allows without application, permit or fee, strand mounted facilities. This would allow boxes that may be as long as two feet to sit in the middle of a wireline, possibly in the middle of streets, over sidewalks, and blocking residential and commercial views without any city oversight.

Secondly, the proposed legislation includes a restriction against imposing any concealment, stealth or aesthetic requirements. This is directly in contradiction to the allowance by the FCC to impose concealment requirements on telecommunications facilities. The removal of concealment requirements eliminates the collaboration currently happening nationally between cities and the telecommunications carriers (for example the City of Spokane and the City of Cincinnati). With the proposed restriction on concealment requirements, the carriers will have no incentive to collaborate with the cities on decorative light standards or other camouflaging methods.



## What is a small cell?

A typical installation consists of one or two small antennas placed high on a utility pole with an equipment box located lower on the pole. Each small cell is connected to the network via fiber.

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