



**CITY OF BELLE ISLE, FLORIDA
CITY COUNCIL AGENDA ITEM COVER SHEET**

Meeting Date: August 15, 2017

To: Honorable Mayor and City Council Members

From: B. Francis, City Manager

Subject: Micro Cell Equipment Moratorium

Background: In June, the City Council approved Resolution 17-09 which was a resolution requesting Governor Scott to veto legislation which would strip cities of the ability to regulate the placement of unsightly and potentially unsafe wireless communications equipment on city property, in city rights of way.

The legislation passed and is now the Advanced Wireless Infrastructure Deployment Act. The legislation would bar local governments from prohibiting or regulating the placement of "small" or "micro" wireless facilities on or next to existing cellphone towers and utility poles within municipally owned rights of way and also prohibit local governments from imposing minimum distances between small wireless equipment.

Belle Isle is now being asked to pass another resolution to band with other small Central Florida communities which call for the wireless telecommunications industry to work collaboratively with local governments to promote effective technology infrastructure consistent with the community values of their customers.

Also, until the City can determine the problems that this new legislation poses, if any, the City should pass a resolution that places a 180-day moratorium on the acceptance/processing of all applications, of any form, and the issuance of any permits, of any form, relating to the placement or installation of "small" or "micro" wireless facilities on or next to existing cellphone towers and utility poles within municipally owned rights of way as defined by law, within the City's public rights-of-way for a period not to exceed one hundred and eighty (180) days. This moratorium would to allow staff time to undertake a thorough analysis of the City's current regulations, State and Federal Laws, and to carefully review, consider, modify, and process for adoption and implementation, reasonable non-discriminatory rules and regulations regarding the placement or installation of "small" or "micro" wireless facilities, as defined by law, within the City's public rights-of-way

Staff Recommendation: Council adopts the Resolution and .

Suggested Motion: I move that we adopt Resolution 17- 17 opposing the placement or installation of “small” or “micro” wireless facilities on or next to existing cellphone towers and utility poles within municipally owned rights of way. I further move to adopt Resolution 17- 18 that places a 180-day moratorium acceptance/processing of all applications, of any form, and the issuance of any permits, of any form, relating to the placement or installation of “small” or “micro” wireless within City owned rights of way.

Alternatives: Not adopting the resolutions might risk local control over rights-of-way in the future.

Fiscal Impact: Undetermined at this time.

Attachments: Resolution 17-17 And Resolution 17-18 and information from FLC.



2017 Legislative Issue Briefs



Wireless Communications Infrastructure

Priority Statement:

The Florida League of Cities OPPOSES efforts to strip cities of the ability to regulate the placement of unsightly and potentially unsafe wireless communications equipment on city property, in city rights of way.

Talking Points:

Florida's communities embrace the latest innovations in technology to improve the lives of our citizens. But it's outrageous for giant corporations to be empowered to trample on the authority and responsibility of our local elected officials to protect public safety and the aesthetics of our communities. That's exactly what will happen if telecom companies are given open and unchecked access to disrupt public equipment and our rights-of-way – paid for with our tax dollars.

1. The Florida Legislature is considering SB 596/HB 687, a bad bill that could become a dangerous new law. It would:
 - Blatantly interfere with the ability of hundreds of communities to protect public safety and maintain their local, unique look and feel.
 - Allow unchecked proliferation of new poles and equipment that could jeopardize public safety by interfering with pedestrians, enticing kids to climb recklessly, creating additional debris in a hurricane, and tying up space that should be reserved for police/fire radio antennas.
 - Nullify the wisdom of Florida cities to bury utility lines. Those communities would be forced to allow ugly, invasive towers up to 60 feet high on public-access land.
 - Accept refrigerator-sized equipment glommed onto existing structures or sidewalks in public rights-of-way, creating a permanent eyesore.
2. The bill leaves taxpayers defenseless:
 - It amounts to a corporate handout, allowing giant for-profit companies to install infrastructure on publicly owned structures at almost no cost to them – they make the smallest investment possible, building on the backs of the taxpayers.
 - Taxpayers would be burdened with the expense of making sure plans for towers meet building codes – even if the wireless companies later drop those plans.
 - Once the telecom companies move on to the next technology, communities would be stuck cleaning up the abandoned equipment – now junk – that they leave behind.
3. The legislation stomps out local decision-making:
 - It would strip decision-making from the hands of the local community's elected officials.
 - Big Telecom would win its way for its private agenda – and stick everyone else as the loser.

Contact: Megan Sirjane-Samples, Legislative Advocate – 850-701-3655 - msirjanesamples@flcities.com

- Telecom companies would be given preferential treatment to “cut in line” in the local permit review process, making everyone else second-class citizens.

There’s time to stop this statewide plan that could disrupt every local community. Before this bad bill becomes a dangerous law, state legislators need to step up, speak out, and fight for the best interests of the local constituents who sent them to Tallahassee – rather than boost the agenda and profits of giant corporations.

Background:

Wireless communications infrastructure, which ranges in size from a small suitcase to a refrigerator, is seen as a key enabler of high-speed mobile broadband, particularly in crowded, urban areas where the macro network can’t keep up with demand. Similarly, small cells can provide the level of network density needed to support as-yet-unstandardized “5G” services.

Several states are considering legislation pushed by telecommunications providers that would apply to the deployment of small cell communications devices on municipal infrastructure. Generally, the legislation being pursued throughout the nation would:

- Prohibit local governments from regulating the placement of small cell wireless infrastructure;
- Establish unrealistic time frames and conditions on local government permitting of wireless communication attachments to local government infrastructure;
- Restrict the fee that may be charged for the use of a city structure for a wireless communications attachment to a nominal \$15 per year, which does not provide consideration for the use of taxpayer-owned public rights of way or cover maintenance costs for the use of city structure; and
- Ignore local governments’ need to underground utilities infrastructure for safety and aesthetics, while allowing an unlimited number of new poles in the rights of way with no regard to zoning regulations.

Adoption of this legislation would set a terrible precedent for local control. Decisions about the safety and aesthetics of municipal infrastructure would be taken out of the hands of local decision makers and placed into the hands of corporations with no local interest. Potential profit would be the sole factor in determining the placement of such infrastructure.

The proposed legislation commandeers publicly owned electric poles, light poles and buildings paid for by taxpayers for the benefit of a for-profit industry, without any regard to the unique characteristics and needs of each individual municipality. This legislation will enable the proliferation of small wireless facilities that are not only unsightly, but could be potentially unsafe, particularly during a strong storm.

Status:

CS/CS/CS/SB 596 (Hutson) and **CS/HB 687** (La Rosa), as originally filed, preempted local government control of taxpayer-owned rights of way for placement of “small” or “micro” wireless antennas and equipment. Among their various provisions, the bills bar local governments from prohibiting or regulating the placement of “small” or “micro” wireless facilities on or next to existing cellphone towers and utility poles within municipally owned rights of way. The bills also prohibit local governments from imposing minimum distances between small wireless equipment.

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Local governments are given limited authority to limit the height of poles and antennas to no more than 10 feet above the tallest utility pole within 500 feet, or 60 feet if there is currently no pole in the vicinity. The infrastructure can be as big as six cubic feet in volume (for instance, 2 feet by 3 feet). All other wireless equipment associated with the facility cumulatively can be as big as 28 cubic feet in volume (the approximate size of a small refrigerator). The bills would allow an application submitted to a local government for a permit to collocate small wireless facilities to be automatically approved after 60 days if a local government does not approve or deny it within that timeframe. The bill was amended in committee to exclude the Florida Department of Transportation, deed-restricted retirement communities that have more than 5,000 residents and have underground utilities for electric transmission or distribution and municipalities that are located on a coastal barrier island that has a land area of less than five square miles and fewer than 10,000 residents.

CS/CS/CS/SB 596 was amended in committee to increase the price per attachment per year from \$15 to \$100. The amendment provides an additional 30 days after the date of the permit request to negotiate an alternative location for the equipment or facilities. In addition, the bill was amended to restrict the height of a small wireless facility to no more than 10 feet above the utility pole. Unless waived by the local government, the height for a new utility pole is limited to the tallest existing utility pole located in the right-of-way. If there is no utility pole within 500 feet of the proposed location, then the new utility pole can be no taller than 50 feet. An applicant seeking to collocate small wireless facilities can file a consolidated application and receive a single permit for the collocation of no more than 30 small wireless facilities. The amendment allows for some minimum design standards and for the wireless communications provider and the local government to negotiate those design standards at the local level. CS/CS/CS/SB 596 passed the Senate Rules Committee unanimously on April 19 and is now ready for action by the full House. CS/HB 687 passed the House Energy and Utilities Subcommittee (12-2) and is now in the House Commerce Committee, its last stop before going to the floor for a vote by the full House.

Revised: 4/21/17

RESOLUTION NO. 17-17

A RESOLUTION OF THE CITY OF BELLE ISLE, FLORIDA, OPPOSING THE EROSION OF HOME RULE AUTHORITY EFFECTED BY THE ADVANCED WIRELESS INFRASTRUCTURE DEPLOYMENT ACT; SUPPORTING THE HOME RULE AUTHORITY GRANTED AND GUARANTEED LOCAL GOVERNMENTS BY THE FLORIDA CONSTITUTION; ENCOURAGING THE FLORIDA LEGISLATURE TO RETURN FULL HOME RULE AUTHORITY TO LOCAL GOVERNMENTS WITH RESPECT TO WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; EXPRESSING SOLIDARITY WITH OTHER LOCAL GOVERNMENTS OF ORANGE COUNTY, FLORIDA, IN SUPPORTING TECHNOLOGICAL ADVANCEMENT WHILE PRESERVING THE AUTHORITY OF LOCAL GOVERNMENTS TO ENACT REGULATIONS THAT PRESERVE AND PROTECT LOCAL COMMUNITY VALUES AND INTERESTS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, The Advanced Wireless Infrastructure Deployment Act (the "Act") was signed into law by Governor Rick Scott and became effective July 1, 2017; and

WHEREAS, The Act was a lobbyist and wireless industry-led initiative intentionally crafted to circumvent the authority of local governments to set rules, regulations and rates with respect to wireless facilities in the public rights-of-way that are in their constituents' best interests; and

WHEREAS, no evidence was presented to establish that local government regulations or actions had in any way prevented or significantly delayed the deployment of advanced wireless communications infrastructure; and

WHEREAS, no evidence was presented to establish that local government involvement would impair the ability of wireless telecommunications providers to improve their wireless telecommunications networks; and

1 **WHEREAS**, the City Council of the City of Belle Isle recognizes the importance of and encourages
2 the technological advancement and effective infrastructure in the field of wireless telecommunications;
3 and

4 **WHEREAS**, the City Council of the City of Belle Isle acknowledges that small cell wireless facilities
5 is the next generation of wireless telecommunications technology; and

6 **WHEREAS**, the City Council of the City of Belle Isle recognizes that the advancement and
7 facilitation of wireless telecommunications infrastructure consistent with the approvals, projects and
8 local government investments related to their rights of way, is in the best interest of the City's
9 constituents; and

10 **WHEREAS**, the City Council of the City of Belle Isle recognizes that the wireless industry finds it
11 critical that the speed with which next-generation wireless technology is deployed is material and vital
12 to business success of that technology; and

13 **WHEREAS**, the City Council of the City of Belle Isle also appreciates the critical role local
14 governments play in ensuring technological progress is consistent with the vision and values of the
15 communities they represent and to protect the community's investments in their community; and

16 **WHEREAS**, the City Council of the City of Belle Isle opposes a one-size-fits-all approach to the
17 installation of wireless telecommunications facilities within public rights-of-way, especially considering
18 the great flexibility that exists in the potential size, type, location and installation methods for the types
19 of facilities covered by the Act and the unique characteristics of each local government; and

20 **WHEREAS**, certain local governments have expended enormous resources on making their
21 rights of way safe, attractive and functional in reliance on their ability to exercise their home rule
22 authority over their rights of way; and

23 **WHEREAS**, cities, towns and villages are voluntarily created and chartered by their citizens as
24 the embodiment of local self-determination; and

25 **WHEREAS**, no other level of government is more available or responsive to the voices of their
constituents than local government; and

1 **WHEREAS**, it is widely accepted that government closest to the people is most representative
2 and effective; and

3 **WHEREAS**, in recognition of the critical role local governments serve Florida voters in 1968
4 amended the state constitution to confer broad "Home Rule" powers to municipal government, under
5 Article VIII, Section 2(b); and

6 **WHEREAS**, the Florida Legislature adopted the Home Rule Powers Act in 1973, which recognizes
7 the broad Home Rule authority of cities and counties to adopt ordinances in the interests of the public
8 health, safety, and welfare; and

9 **WHEREAS**, local government is the most effective level of government to address the needs of
10 individual communities during the roll-out of rapidly evolving technology; and

11 **WHEREAS**, it is good practice and policy to allow local governments to enforce their existing,
12 and adopt new rules, regulations and rates that meet the demands of their constituents so as to protect
13 the community investments and maintain the uniqueness of their own communities; and

14 **WHEREAS**, it is good practice and policy to encourage wireless telecommunications providers to
15 engage with local governments to ensure that the installation of wireless facilities within public rights-
16 of-way is conducted in a manner consistent with the uniqueness of each local community and the values
17 of local communities, rather than to circumvent local involvement in such a critical field; and

18 **WHEREAS**, the Act significantly adversely impacts the authority of local governments to enforce
19 existing and adopt effective rules, regulations and rates that encourage continued advancement in the
20 field of wireless communications while protecting the values of their communities; and

21 **WHEREAS**, the Act significantly impairs the ability of local governments to work with
22 telecommunications providers to ensure installation of wireless technology within rights-of-way is
23 conducted in a manner consistent with the values of the community; and

24 **WHEREAS**, the Orange County Council of Mayors has called upon the local governments of
25 Orange County, Florida to express a unified voice in supporting technological advancement that benefits
their constituents while opposing continued state action that erodes their "Home Rule" powers.

1 NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BELLE ISLE, FLORIDA,

2 THAT:

3 **Section 1.** The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true
4 and correct and are incorporated herein by this reference.

5 **Section 2.** The City Council of the City of Belle Isle urges the Florida Legislature to reconsider its
6 position on local government involvement in the field of wireless telecommunications infrastructure
7 installation as enacted in the Advanced Wireless Infrastructure Deployment Act and amend the Florida
8 Statutes in order to restore "Home Rule" powers to local governments with respect to wireless facilities
9 in the public rights-of-way.

10 **Section 3.** The City Council of the City of Belle Isle expresses its solidarity with the other local
11 governments of Orange County, Florida, in supporting measures that advance wireless technology
12 without eroding the ability of local governments to protect the best interests of their communities and
13 constituents.

14 **Section 4.** The City Council of the City of Belle Isle calls for the wireless telecommunications
15 industry to work collaboratively with local governments to promote effective technology infrastructure
16 consistent with the community values of their customers. Specifically, the Council supports the
17 collaborative development of design standards and specifications that empower local governments to
18 devise customized wireless solutions that fit local conditions and, at the same time, provide for the rapid
19 deployment of next-generation technology.

20 **Section 5.** This Resolution shall become effective immediately upon its passage and adoption.

21 Passed and adopted by City Council of the City of Belle Isle, Florida this 15 day of August, 2017.

22
23 BELLE ISLE, FLORIDA
CITY COUNCIL

24 By: _____
25 Mayor Lydia Pisano

1 **ATTEST:**

2 _____
3 **Yolanda Quiceno, City Clerk**

4 _____
5 **Approved as to form and legality**

6 **City Attorney**

7 **STATE OF FLORIDA**

8 **COUNTY OF ORANGE**

9
10 I, YOLANDA QUICENO, CITY CLERK OF THE CITY OF BELLE ISLE, FLORIDA, do hereby certify that the above
11 and foregoing Resolution No. 17-17 was duly and legally passed and adopted by the Belle Isle City
12 Council in session assembled, at which session a quorum of its members were present on the _____
13 day of August, 2017.

14
15 _____
16 **Yolanda Quiceno, City Clerk**