

Senate File 431 - Enrolled

Senate File 431

AN ACT

RELATING TO THE SITING OF SMALL WIRELESS FACILITIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 8C.2, subsections 3 and 14, Code 2017, are amended to read as follows:

3. "*Authority*", used as a noun, means a state, county, or city governing body, board, agency, office, or commission authorized by law to make legislative, quasi-judicial, or administrative decisions relative to an application.

"*Authority*" does not include ~~state~~ any of the following:

a. State courts having jurisdiction over land use, planning, or zoning decisions made by an authority, ~~the~~.

b. The utilities division of the department of commerce, ~~or~~.

c. Any entities, including municipally owned utilities established under or governed by Title IX, subtitle 4 of the Code, that do not have zoning or permitting authority jurisdiction.

14. "Utility pole" means a pole or similar structure owned or operated utilized in whole or in part by a public utility, municipality, wireless service provider, or electric utility that is designed specifically for and used to carry lines, cable, transmission equipment, or wires for telephone, wireless service, cable television, or electricity service, or to provide for lighting, the vertical portion of support structures for traffic control signals or devices, signage, information kiosks, or other similar functions.

Sec. 2. Section 8C.2, Code 2017, is amended by adding the following new subsections:

NEW SUBSECTION. 9A. "Micro wireless facility" means a small wireless facility with dimensions no larger than twenty-four inches in length, fifteen inches in width, and twelve inches in height and that has an exterior antenna, if any, that is no more than eleven inches in length.

NEW SUBSECTION. 10A. a. "Small wireless facility" means a wireless facility that meets the following requirements:

(1) Each antenna is no more than six cubic feet in volume.

(2) (a) All other equipment associated with the small wireless facility is cumulatively no more than twenty-eight cubic feet in volume.

(b) For purposes of this subparagraph, volume shall be measured by the external displacement of the primary equipment enclosure, not the internal volume of such enclosure. An associated electric meter, concealment, telecommunications demarcation box, ground-based enclosures, battery backup power systems, grounding equipment, power transfer switch, cutoff switch, cable, conduit, and any equipment that is concealed from public view within or behind an existing structure or concealment may be located outside of the primary equipment enclosure and shall not be included in the calculation of the equipment volume.

b. "Small wireless facility" includes a micro wireless facility as defined in subsection 9A.

c. "Small wireless facility" does not include any structure that supports or houses equipment described in this subsection.

NEW SUBSECTION. 14A. "Wireless facility" means equipment at a fixed location that enables the transmission of wireless communications or information of any kind between user equipment and a communications network, except that "wireless facility" does not include coaxial or fiberoptic cable that is not immediately adjacent to, or directly associated with, a particular antenna.

NEW SUBSECTION. 14B. "Wireless service" means any fixed or mobile service using licensed or unlicensed wireless spectrum and provided using a wireless facility.

NEW SUBSECTION. 14C. "Wireless service provider" means a provider of wireless service.

Sec. 3. NEW SECTION. 8C.7A **Uniform rules for small wireless facilities — permit approval.**

1. *a.* Except as provided in this section, an authority shall not prohibit or restrict the siting of a small wireless facility.

b. For purposes of this section, "siting" means the mounting, installation, maintenance, modification, operation, or replacement of a small wireless facility on or adjacent to any of the following:

(1) An existing tower, utility pole, wireless support structure, or other existing structure.

(2) A new utility pole of a similar height and appearance as an existing utility pole and which is located within a five-hundred-foot radius of the existing utility pole.

(3) A replacement utility pole of a similar height and appearance as an existing utility pole and which is located within a five-hundred-foot radius of the existing utility pole.

2. *a.* An authority that has adopted planning and zoning regulations shall authorize the siting of a small wireless facility within its jurisdiction and shall not require a person to obtain a special or conditional land use permit for any of the following:

(1) For siting the small wireless facility in a public right-of-way or on an authority structure located outside of a public right-of-way to the extent that such structure is

already in use as a wireless support structure by supporting non-authority communications equipment that involve external attachments, provided that such structure is not listed on the national register of historic places.

(2) For siting the small wireless facility on an existing tower, utility pole, or wireless support structure, regardless of the location, except for on property zoned and used exclusively for single-family residential use or within a previously designated area of historical significance pursuant to section 303.34.

b. A small wireless facility may be classified as a special or conditional land use where such small wireless facility is not sited in a manner as provided in paragraph "a".

c. A person may install a new utility pole or wireless support structure in a public right-of-way subject to the provisions of this section. An authority may reasonably limit the number of new utility poles or wireless support structures, consistent with the protection of public health, safety, and welfare, and provided that such limitation does not have the effect of prohibiting or significantly impairing a wireless service provider's ability to provide wireless service within the area of a proposed new structure. However, an authority may require a person to obtain a special or conditional land use permit to install a new utility pole or wireless support structure for the siting of a small wireless facility on property zoned and used exclusively for single-family residential use or within a previously designated area of historical significance pursuant to section 303.34.

3. *a.* (1) An authority may require a person to obtain a building, electrical, or public right-of-way use permit for the siting of a small wireless facility to the extent that such permit is of general applicability and does not deny access to site the small wireless facility in a public right-of-way. Notwithstanding this paragraph, an authority shall not require a person to obtain a permit for the routine maintenance of a previously approved small wireless facility or the replacement of a previously approved small wireless facility with a facility of substantially similar height, weight, and wind and structural loading, provided, however, that an authority

may require a person to obtain a permit to work in a public right-of-way or on an authority structure located outside of a public right-of-way with the same terms and conditions provided for other commercial projects or uses in the public right-of-way or on the authority structure.

(2) (a) Except as provided in subparagraph divisions (b) and (c), an authority shall not impose any fee or require any application or permit for the installation, placement, operation, maintenance, or replacement of a micro wireless facility that is suspended on operator-owned cables or lines that are strung between existing utility poles in compliance with national safety codes.

(b) An authority that has adopted a municipal or county code which requires an application or permit for the installation, placement, operation, maintenance, or replacement of a micro wireless facility may continue the application or permit requirement subsequent to the effective date of this Act.

(c) (i) An authority may require a single-use right-of-way permit for the installation, placement, operation, maintenance, or replacement of a micro wireless facility if any of the following conditions apply:

(A) The work is contained within a highway lane or requires the closure of a highway lane.

(B) The work disturbs the pavement, shoulder, ditch, or operation of a highway.

(C) The work involves placement of a micro wireless facility on a limited access right-of-way.

(D) The work requires any specific precautions to ensure the safety of the traveling public or the protection or operation of public infrastructure and such work was not authorized in, or will not be conducted in, the same time, place, or manner that is consistent with the approved terms of the existing permit for the facility or structure upon which the micro wireless facility is attached.

(ii) For purposes of this subparagraph division, "highway" means the same as defined in section 325A.1.

b. An authority shall not require a person to apply for or enter into an individual license, franchise, or other agreement with the authority or any other entity for the siting

of a small wireless facility on a utility pole located in a public right-of-way. However, an authority may, through the conditions set forth in a building permit obtained pursuant to this subsection, do any of the following:

(1) Establish nondiscriminatory, competitively neutral and commercially reasonable rates, terms, and conditions for such siting, which rates, terms, and conditions shall comply with the federal pole attachment requirements provided in 47 U.S.C. §224 and any regulations promulgated thereunder.

(2) Require compliance with the Iowa electrical safety code, the national electrical safety code, applicable fire safety codes, and any building code or similar code of general applicability for the protection of the public health, safety, or welfare that was adopted by an authority prior to the filing of the application.

(3) Require that a small wireless facility reasonably match the aesthetics of an existing utility pole or wireless support structure that incorporates decorative elements.

(4) Require compliance with section 306.46, subsection 1, and section 306.47.

(5) Require that after the construction of a small wireless facility or new utility pole is completed in accordance with all conditions under which the permit is granted, which conditions shall be consistent with this section, the owner of the small wireless facility or new utility pole, or the owner's successor in interest, shall maintain the small wireless facility or new utility pole at the expense of the owner or successor and if the authority subsequently undertakes any maintenance, public improvement project, or reconstruction of authority property or equipment which requires the modification, relocation, or reconstruction of the small wireless facility or new utility pole, such work and the costs thereof shall be the responsibility of the owner or successor. If the project necessitating the modification, relocation, or reconstruction of the small wireless facility or new utility pole is for a private commercial purpose, the authority may require the owner or successor to modify, relocate, or reconstruct the small wireless facility or new utility pole upon prepayment of the costs of such work by the

private commercial entity whose project facilitates the need for such work. For purposes of this subparagraph, "new utility pole" means a new utility pole installed by a wireless service provider pursuant to this section solely for use as a wireless support structure and that is owned by the wireless service provider.

c. Beginning with applications filed on or after September 1, 2017, an authority shall accept an application for, process, and issue a permit under this subsection as follows:

(1) An applicant shall not be required to provide more information or pay a higher application fee, consulting fee, or other fee associated with the processing or issuance of a permit than the amount charged to a telecommunications service provider that is not a wireless service provider. The total amount of fees for processing or issuing a permit, including any fees charged by third parties, shall not exceed five hundred dollars for an application addressing no more than five small wireless facilities, and an additional fifty dollars for each small wireless facility addressed in an application in excess of five small wireless facilities. An applicant shall not be required to pay any additional fees or perform any services relating to the acceptance, processing, or issuance of a permit, nor provide any services unrelated to the siting of the small wireless facility or of a new, replacement, or modified utility pole on which a small wireless facility is sited. For purposes of this subparagraph, engineering and structural review are deemed to be related to the permitting of a small wireless facility. The total amount of fees shall be adjusted every five years to reflect any increases or decreases in the consumer price index, rounded to the nearest five dollars.

(2) An authority shall approve or deny a permit application within ninety days following the submission of a completed application. Except as provided herein, an application shall be deemed approved if the authority fails to approve or deny the application within ninety days following the submission of a completed application. This period of time for the processing of an application may be extended upon mutual written agreement between the authority and the applicant.

An applicant may address up to twenty-five small wireless facilities in a single application, provided, however, that a single application may only address small wireless facilities within a single two-mile radius consisting of substantially similar equipment to be placed on substantially similar types of wireless support structures or utility poles. In rendering a decision on an application addressing more than one small wireless facility, an authority may approve the application as to certain individual small wireless facilities while denying it as to others. An authority's denial of an individual small wireless facility or subset of small wireless facilities within an application is not a basis to deny the application as a whole. If an authority receives applications for the approval of more than seventy-five small wireless facilities within a single seven-day period, whether from a single applicant or from multiple applicants, the authority may notify an applicant submitting any additional siting applications during that seven-day period that the authority is invoking its right to an automatic thirty-day extension for any additional siting application submitted during that seven-day period.

(3) (a) An authority may only deny a completed application if any of the following apply:

(i) The application fails to include reasonable information required by the authority and in accordance with this subsection.

(ii) The application does not comply with the Iowa electrical safety code, the national electrical safety code, applicable fire safety codes, or any building code or similar code of general applicability for the protection of the public health, safety, or welfare that was adopted by an authority prior to the filing of the application.

(iii) The application would result in the authority being noncompliant with the federal Americans With Disabilities Act.

(iv) (A) A licensed engineer selected by the applicant or the authority certifies that siting the small wireless facility as proposed would compromise the structural safety of, or preclude the essential purpose of, the utility pole or wireless support structure in the public right-of-way on which it is proposed to be sited and any of the following conditions apply:

(I) The applicant fails to redesign the small wireless facility in a manner determined necessary by the engineer to make the existing utility pole or wireless support structure structurally sound for the siting of the small wireless facility.

(II) The applicant fails to modify the utility pole or wireless support structure to make the structure structurally sound for the siting of the small wireless facility.

(III) The applicant fails to replace the utility pole or wireless support structure with a utility pole or wireless support structure that is structurally sound for the siting of the small wireless facility.

(IV) The applicant fails to propose an alternative location for the siting of the small wireless facility.

(B) If an applicant chooses to modify or replace a utility pole or wireless support structure to make the structure structurally sound for the siting of a small wireless facility, the applicant shall pay or advance to the authority the costs of modifying or replacing the utility pole or wireless support structure with a utility pole or wireless support structure that would safely support the small wireless facility and preserve the essential purpose of the utility pole or wireless support structure.

(v) The application seeks approval of a new small wireless facility, utility pole, or wireless support structure that would impair, interfere with, or preclude the safe and effective use of facilities already located in the public right-of-way for pedestrian, vehicular, utility, or other authority public right-of-way purposes.

(vi) The application seeks approval for the siting of a small wireless facility outside the public right-of-way that would impair, interfere with, or preclude the safe and effective use of an authority structure or property for a public purpose.

(vii) The application seeks approval for the siting of a small wireless facility on a wireless support structure used exclusively for emergency communications equipment.

(viii) The application seeks approval for the siting of a small wireless facility on a utility pole that is the vertical

portion of a support structure for a traffic control signal or device, and the authority determines that the utility pole lacks sufficient space or load capacity for the proposed siting or the small wireless facility cannot be sited on the utility pole without impairing the public health, safety, or welfare.

(b) An authority denying an application shall document the basis for the denial, including the specific code provisions or standards on which the denial is based, and provide the applicant with such documentation on or before the date the application is denied.

(c) An applicant whose application is denied shall have an opportunity to cure any deficiencies identified by the authority as the basis for the denial and to submit a revised application within thirty days following the date of denial without paying an additional fee. The authority shall approve or deny a revised application within thirty days following submission. The authority shall not identify any deficiencies in a second or subsequent denial that were not identified in the original denial.

(4) An authority shall not limit the duration of a permit issued for the siting of a small wireless facility in a public right-of-way pursuant to this subsection, and shall not limit the duration of a permit issued for the siting of a small wireless facility on an authority structure located outside of a public right-of-way to any period less than ten years, with one automatic five-year renewal, provided, however, that the owner of the small wireless facility may terminate the permit upon providing ninety days' notice to the authority. The construction of a small wireless facility permitted pursuant to this subsection shall commence no later than two years following the date that the permit is issued, or two years after any appeals are exhausted.

(5) An authority shall not impose a moratorium on the processing or issuance of permits under this subsection.

(6) An authority shall process and issue permits on a nondiscriminatory basis. An authority shall receive an application for, process, and issue a permit for the siting of a small wireless facility in a manner substantially comparable to the permitting of other applicants within the jurisdiction

of the authority, and may not impose discriminatory licensing standards for persons siting small wireless facilities.

4. The annual recurring rate charged by an authority for the siting of a small wireless facility on an authority utility pole shall not exceed the rate computed by the federal communications commission for telecommunications pole attachments in 47 C.F.R. §1.1409(e)(2).

5. *a.* An authority shall authorize the siting of a small wireless facility on an authority structure located outside of a public right-of-way to the same extent the authority authorizes access to such structures for other non-authority communications equipment that involve external attachments, and may authorize the siting even if the authority has not previously permitted such access.

b. A siting authorized under this subsection shall be subject to reasonable rates, terms, and conditions as provided in one or more agreements between the authority and the wireless service provider. Notwithstanding chapter 480A, the annual recurring rate for such siting as charged by an authority shall not exceed the lesser of the following:

(1) The amount charged for a similar commercial project or use to occupy a similar area of space on similarly situated property.

(2) The projected cost to the authority resulting from the siting.

6. A party aggrieved by the final action of an authority, either by its affirmative action on a permit, term or condition, or rate under the provisions of this section or by its inaction, may bring an action for review in any court of competent jurisdiction, except that if the final action of the authority was the denial of a conditional or special use permit pursuant to this section, the party must first seek review under section 335.13 or 414.10, as applicable.

7. This section only addresses an authority's approval of zoning and building permits and the rates for the use of public rights-of way and authority structures. This section shall not modify the rights and obligations of a nonauthority owner of a utility pole or a municipal utility that owns a utility pole, under 47 C.F.R. §1.1401 et seq., and the Iowa electrical safety

code.

Sec. 4. NEW SECTION. **8C.7B Small wireless facilities — violation and removal.**

1. A public utility that owns or controls a utility pole on which a small wireless facility is sited in alleged violation of this chapter or the Iowa electrical safety code shall notify the owner of the small wireless facility of the alleged violation, in writing or by any other method agreed upon by the parties in writing. The notice shall include the following information:

a. The address and location where the alleged violation occurred.

b. A description of the alleged violation.

c. Suggested corrective action.

2. Upon the receipt of notice of an alleged violation, the recipient of such notice shall respond to the public utility within sixty days in writing or by any other method agreed upon by the parties in writing. The response shall include the following information:

a. A statement disclosing whether or not the recipient of the notice is the owner of the small wireless facility at issue.

b. A statement disclosing that the owner disputes that the alleged violation has occurred, if applicable.

c. A plan for corrective action if the owner does not dispute that the violation has occurred.

d. A statement disclosing whether the violation has been corrected, if the owner does not dispute that the violation has occurred.

3. The owner of a small wireless facility in alleged violation of this chapter or the Iowa electrical safety code shall correct the alleged violation within one hundred eighty days after receiving notice of the violation unless, for good cause shown, a delay for taking corrective action is appropriate or if the parties otherwise agree in writing to extend the time required to take corrective action. Good cause for a delay in corrective action shall include but is not limited to a dispute over whether the recipient of the notice is the owner of the small wireless facility at issue, a

dispute over whether the alleged violation has occurred, or if taking corrective action within the required time frame is not possible due to circumstances which are beyond the control of the owner of the small wireless facility. The public utility and owner of the small wireless facility shall cooperate in determining an efficient and cost-effective solution to correct an alleged violation.

4. *a.* Notwithstanding subsections 1 through 3, in the event of an emergency, an authority or public utility shall contact the owner of the small wireless facility at issue and provide the owner with a reasonable opportunity, given the nature of the emergency, to alleviate such emergency or participate with the authority or public utility to make any repairs necessary to alleviate such emergency. If the owner of the small wireless facility does not respond in a timely manner, as determined by the authority or public utility given the nature of the emergency, the authority or public utility may remove or make alterations to the small wireless facility as necessary to ensure public safety.

b. For purposes of this subsection, "*emergency*" means exigent and extraordinary circumstances under which the physical or electrical failure of a utility pole, wireless support structure, or small wireless facility threatens imminent physical harm to persons or there is a substantial likelihood of imminent and significant harm to property.

5. If the parties cannot resolve a dispute after following the procedures provided in this section, any party may file an action concerning an alleged violation under this section in the district court for the county in which the violation is alleged to have occurred, for any appropriate remedy, including the removal of a small wireless facility deemed by the court to be in violation of this chapter or the Iowa electrical safety code. However, this section shall not preclude a party from bringing an action pursuant to the Iowa electrical safety code or 47 C.F.R. §1.1401 et seq., or the application of a dispute resolution process set forth in an applicable pole attachment agreement between the parties.

6. Nothing in this section shall be deemed to limit the ability of a public utility and the owner of a small wireless

facility to voluntarily enter into a pole attachment agreement that establishes different terms for the siting of a small wireless facility or the resolution of a dispute regarding such a facility.

Sec. 5. NEW SECTION. **8C.7C Height limitations.**

1. A new, replacement, or modified utility pole or wireless support structure installed in a public right-of-way located within the city limits of an incorporated city for the purpose of siting a wireless facility, including a small wireless facility under the provisions of this chapter shall not exceed the greater of ten feet in height above the tallest utility pole existing on or before July 1, 2017, located within five hundred feet of the new, replacement, or modified utility pole in the same public right-of-way, or forty feet in height above ground level. Except as provided in section 8C.7A, subsection 2, paragraph "c", an authority shall not require a special or conditional use permit for the installation of a utility pole or wireless support structure that complies with the height limitations of this subsection.

2. Notwithstanding subsection 1, a person may construct, modify, or maintain a utility pole or wireless support structure along, across, and under a public right-of-way in excess of the size limits provided in subsection 1, to the extent permitted by the authority's applicable zoning regulations.

3. A person shall comply with nondiscriminatory undergrounding requirements that prohibit wireless service providers from installing structures in a public right-of-way without prior zoning approval in areas designated as an underground district pursuant to a resolution or ordinance adopted by an authority prior to the date the application is filed or in areas zoned and used for single-family residential use, provided that such requirements shall not prohibit the replacement of existing structures.

4. Nothing in this section shall be deemed to limit the ability of a public utility to install a utility pole for the purposes of electric utility transmission or distribution within a public right-of-way subject to an authority's planning and zoning regulations.

Sec. 6. Section 8C.9, Code 2017, is amended to read as follows:

8C.9 Repeal.

This chapter is repealed July 1, ~~2020~~ 2022.

JACK WHITVER
President of the Senate

LINDA UPMEYER
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 431, Eighty-seventh General Assembly.

W. CHARLES SMITHSON
Secretary of the Senate

Approved _____, 2017

TERRY E. BRANSTAD
Governor