

RESOLUTION NO. R-32-16

A RESOLUTION OPPOSING A LEGISLATIVE PROPOSAL PRESENTED TO THE GENERAL ASSEMBLY CONCERNING SMALL CELL WIRELESS FACILITIES WHICH WOULD REMOVE LOCAL CONTROL OF THE PUBLIC RIGHT OF WAY AND MUNICIPAL INFRASTRUCTURE, AND DECLARING AN EMERGENCY

WHEREAS, telecommunications companies have proposed legislation which seeks to amend Ohio Revised Code Chapter 4939 to eliminate the authority of municipalities to regulate small cell wireless facilities and related equipment on public property and in public rights of way (“ROW”); and

WHEREAS, it is expected that the legislative proposal will be brought before the General Assembly before the close of the current Session; and

WHEREAS, the proposal is extremely broad and would give telecommunications companies and financial speculators nearly unrestricted access to any municipal structure that can support a wireless antenna – street lights, stop signs, water towers, public right of way, utility poles, etc. – and prohibit municipalities from recovering their costs in many cases; and

WHEREAS, the proposal raises serious safety and security concerns for Ohio municipalities and will result in the proliferation of new utility poles within the public ROW; and

WHEREAS, the legislation would apply only to municipalities and not townships, counties, the State of Ohio, or any other political subdivision and would not apply to investor-owned utilities; and

WHEREAS, adoption of the legislative proposal would take decisions about the safety and aesthetics of municipal ROW and public properties out of the hands of local officials who answer directly to residents, and instead allow such decisions to be made by entities with no local ties; and

WHEREAS, the legislative proposal is unconstitutional because it violates the home rule amendment to the Ohio Constitution set forth in Article XVIII, Section 3; and

WHEREAS, this Council strongly opposes the legislative proposal and urges the members of the Ohio Legislature to stop this measure or at least fully and carefully vet it through a legislative hearing process so that stakeholders have a reasonable opportunity to express their concerns.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF
AVON, COUNTY OF LORAIN AND STATE OF OHIO:**

Section 1 – It is hereby declared that this Council is opposed to any state legislation that would preempt local zoning, municipal electric system rules and practices, and other regulatory

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authority of Ohio municipalities with respect to small cell wireless facilities and related equipment in the public right of way and on public properties.

Section 2 – This Council urges members of the Ohio Legislature to oppose any such legislation that unconstitutionally impinges upon the City's home rule authority.

Section 3 – The Clerk of Council is hereby directed to serve a certified copy of this Resolution by certified mail or commercial carrier (i.e., Fed Ex) as well as by electronic means on Governor John Kasich, State Representatives Nathan H. Manning and Terry Boose and State Senator Gayle Manning.

Section 4 – It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees or subcommittees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 5 – This Resolution is hereby declared to be an emergency measure necessary for the preservation of the public peace and general welfare of the inhabitants of the City of Avon, such emergency being for the reason that in order to discourage legislative action that would destroy the authority of the City to regulate small cells and similar wireless equipment in the public right of way and on public facilities under consideration by the Ohio Legislature in its lame duck session, it is necessary that this Resolution become effective at the earliest time permitted by law. Wherefore, provided it receives the affirmative vote of three-fourths or more members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

PASSED: _____

DATE SIGNED: _____

By: _____
Craig L. Witherspoon, Council President

DATE APPROVED BY THE MAYOR: _____

Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

John A. Gasior, Law Director

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ATTEST:

Barbara Brooks
Clerk of Council

Posted: _____
In Five Places as
Provided by Council

Prepared By:
John A. Gasior, Esq.
Law Director