**5711 AMS CARL S2000.2 - NOT FOR FLOOR USE**

**SB 5711** - S AMD TO S AMD (S-1947.3/17) **72**

By Senator Carlyle

Beginning on page 1, after line 3 of the amendment, strike all material through page 12, line 32 and insert the following:

"NEW SECTION. **Sec.**  A new section is added to chapter 35.99 RCW to read as follows:

(1) It is the policy of the state to promote the efficient deployment of small cell network infrastructure by offering predictability for wireless service providers so that the number and types of services offered by wireless service providers continues to increase. It is also the policy of the state that cities have the fiduciary duty, as a trustee, to manage the public rights-of-way for the health, safety, and welfare of the public, subject to state law.

(2) By January 1, 2018, cities and towns comprising more than twenty thousand in population, and by July 1, 2018, cities and towns comprising a population of five thousand to twenty thousand shall enact a small cell facility deployment ordinance establishing a process whereby the city or town shall issue a small cell facility right-of-way permit to service providers seeking to permit microcells, small cell facilities, and small cell networks as defined in RCW 80.36.375 in the city or town right-of-way as defined in RCW 35.99.010.

(3) The ordinance must be adopted following the requirements outlined in this title and Title 35A RCW. A city or town may require in its small cell facility deployment ordinance that a service provider participate in additional public meetings prior to the approval of a small cell facility right-of-way permit. However, the additional public meetings may not delay issuance of the small cell facility right-of-way permit outlined in subsection (7) of this section.

(4) In a city or town with an adopted small cell facility deployment ordinance, the issuance of a small cell facility right-of-way permit is exempt from land use review including but not limited to review under RCW 36.70B.060, 36.70B.070, and 36.70B.130, with the exception of RCW 36.70A.172 and chapters 90.58 and 43.21C RCW, and is not appealable or subject to further city or town legislative authority approval.

(5) A small cell facility deployment ordinance must outline the process for the issuance of a small cell facility right-of-way permit to service providers of personal wireless services seeking to deploy microcells, small cell facilities, and small cell networks as defined in RCW 80.36.375. The ordinance must treat service providers in a competitively neutral and nondiscriminatory manner.

(a) The ordinance must provide design review guidelines for microcells, small cell facilities, and small cell networks that any application for a small cell facility right-of-way permit shall comply with.

(i) Design review guidelines must be feasible, reasonable, and objective, and may require concealment, stealth, or aesthetic requirements.

(ii) Design review guidelines need not be consistent throughout the entire city or town, and may vary by geographic areas. However, the applicability of design review guidelines in various geographic areas must be clearly delineated in the ordinance as an overlay on a map of the city or town.

(iii) The small cell facility ordinance may include pictorial representation of the adopted design review guidelines.

(iv) The application of design review guidelines may not have the effect of prohibiting small cell facility installations within the city or town overall.

(b) The ordinance must outline small cell facility right-of-way permit approval timelines for permit applications that exceed thirty small cell network site locations. For small cell facility right-of-way permits that are fewer than thirty small cell network site locations, approval timelines for permit applications must be consistent with subsection (7) of this section.

(c) The ordinance must outline additional public meetings that the service provider is required to participate in prior to the approval of a small cell facility right-of-way permit. However, any additional public process may not present opportunities for the public to appeal the issuance of a permit and may not delay the issuance of a permit in accordance with subsection (7) of this section.

(d) The ordinance must outline the city or town's notification and preferred communication protocols with a service provider to coordinate work being completed within the city or town right-of-way with the deployment of microcells, small cell facilities, and small cell networks, and to ensure that work within the right-of-way does not inconvenience the public use of the right-of-way or adversely affect the public health, safety, and welfare. Small cell facility right-of-way permit applicants are required to comply with these protocols.

(e)(i) The ordinance must include: Installation, modification, extension, and replacement standards for city or town and noncity or town owned poles. The standards must include a process for service providers to request a modification, extension, or replacement of an existing pole; however, the pole cannot exceed the greater of:

(A) Ten feet in height above the tallest existing utility pole located within five hundred linear feet of the new pole in the same public right-of-way; or

(B) Fifty feet above ground level; and

(C) Each pole must be spaced at least three hundred linear feet from the nearest existing pole that is capable of supporting small cell facilities and is located in a public right-of-way, including differentiating among pole types and infrastructure, as well as location and height standards.

(ii) The standards may include nondiscriminatory undergrounding requirements including prohibiting installation of above ground structures in a public right-of-way under a small cell facility right-of-way permit and must address new poles that are needed in locations where there are locally adopted undergrounding requirements. Small cell facility right-of-way permit applicants are required to comply with these standards.

(f) The ordinance must include a fee schedule outlining the necessary fees for the city or town to recover costs. The fee schedule must allow the city or town to recover actual costs of processing small cell facility right-of-way permits. Additionally, the fee schedule must allow the city or town to recover its costs associated with the development of the small cell facility deployment ordinance amortized over the first five years following adoption of the ordinance. The ordinance must also allow a permit applicant to pay an additional fee for expedited permit processing.

(g) The ordinance must include a fee schedule for the use of the city or town right-of-way that will be permitted in a small cell facility right-of-way permit.

(h) A small cell facility deployment ordinance must comply with federal, state, and local regulation, including, without limitation, requirements under chapters 90.58 and 43.21C RCW and critical areas ordinances adopted under RCW 36.70A.172.

(6) A small cell facility deployment ordinance may include the following sections, at the discretion of the city or town:

(a) Guidelines for the installation of microcells, small cell facilities, and small cell networks, as defined in RCW 80.36.375, on city or town-owned structures located outside of the right-of-way. The city or town may establish reasonable rates, terms, and conditions for these installations.

(b) Guidelines for the installation of fiber optic cables connecting small cell facilities, and other required make-ready work.

(7) The following process may be memorialized in the small cell facility deployment ordinance for the approval of small cell facility right-of-way permits for fewer than thirty facilities.

(a) The city or town shall review small cell facility right-of-way permits to install facilities approved by the ordinance. City or town staff, without city or town legislative authority approval, may authorize minor deviations from the small cell facility deployment ordinance, as long as the deviations represent the least intrusive means, utilize the best available technology, and no reasonable alternatives exist.

(b) A city or town must determine whether an application for a small cell facility right-of-way permit for up to thirty small cell facility locations is complete within thirty days of submission, unless a service provider consents to a different time period.

(c) A service provider may resubmit an incomplete application within twenty-eight days of notice by the city or town.

(d) The service provider may modify its initial application, the application as modified will be considered a new application subject to the commencement of a new application review period.

(e) A service provider must be notified if the application has been approved or denied within ninety days for a service provider's complete application.

(f) If a city or town denies a permit, the city or town must state, in writing, the reasons for the denial, which must be limited to noncompliance with the standards established in the city or town's small cell facility deployment ordinance or related permit requirements.

(g) A service provider adversely affected by the final action denying a permit, or by an unreasonable failure to act on a permit as set forth in this section, may commence an action within thirty days to seek relief, which is limited to injunctive relief.

(h) If denied, the applicant has forty-five days to cure the permit application and resubmit the application, and the city or town must approve or deny that resubmittal within thirty days from the date the resubmittal is received.

(i) If a service provider submits multiple applications for small cell facility right-of-way permits, the city or town reserves the right to adjust the timelines in this subsection to ensure that city or town staff and resources are available to adequately review all permit applications.

(8) Nothing in this section may be construed to limit cities from imposing fees for use of public right-of-way or for requiring nondiscriminatory regulatory permits, including without limitation, right-of-way, building, electrical, and other permits that may be required for construction, installation, or maintenance of individual small cell facilities.

(9) A city or town that has adopted an ordinance governing the siting of small cell network infrastructure, as of the effective date of this section as required under this section, is not required to establish a small cell facility deployment ordinance.

(10) A small cell facility deployment ordinance enacted as required by this section has no effect on previously adopted franchises, permits, or agreements for small cell facility deployments made or entered into by any city or town."

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By Senator Carlyle

Beginning on page 46, line 32 of the title amendment, after "RCW" strike all material through "35A.21.245," on page 47, line 1 and beginning on line 2, after "80.36.690;" strike all material through "80.36 RCW;" on line 3 and insert "adding a new section to chapter 35.99 RCW;"

EFFECT: Requires cities and towns with populations greater than 20,000 to adopt small cell facility deployment ordinance by January 1, 2018, and cities and towns with populations of 5,000 to 20,000 by July 1, 2018. Provides that a small cell facility right-of-way permit issued through a small cell facility deployment ordinance is exempt from land use review, except the SMA and SEPA requirements, and is not appealable or subject to further city or town legislative approval. Provides timelines for processing applications, design review guidelines, and a fee schedule. A service provider adversely affected by a denial of a permit may seek injunctive relief.