


November 22, 2019

FOR YOUR INFORMATION

To: Mayor and Members of Council
From: Patrick A. Duhaney, City Manager 
Subject: **5G NETWORKS SAFETY; CITY ABILITY TO REGULATE**

At the City Council meeting on November 14, 2019, several public speakers voiced concerns about the safety of 5G telecommunications networks. 5G is the fifth generation of digital cellular network technology, which utilizes a higher-frequency band of the wireless spectrum. In response, the Administration has asked the Law Department to provide guidance concerning the City's authority to regulate telecommunications providers on the basis of radiation-based health or safety concerns. As set forth below, federal and state law prevent the City from addressing 5G health concerns through local regulations.

State and federal law generally prevent the City from prohibiting wireless providers from placing small cell poles or other telecom/wireless facilities in the public right-of-way. The City's authority is more limited and includes, for example, regulation for reasons such as aesthetics, pedestrian/traffic circulation management, and general right-of-way management policies. The City regulates wireless facilities through Cincinnati Municipal Code Chapter 719 and Design Guidelines ("Guidelines") to carry out the policies authorized in the Municipal Code,¹ which are focused on ensuring fair and reasonable access to wireless communications equipment in the City's right of way consistent with state and federal law. The health and safety aspect of the City's law and Guidelines is limited, by law, to compliance with state and federal standards and requirements for safe construction and maintenance.

Preemption of Local Authority

The City's ability to regulate wireless communications facilities is limited by state and federal law, which seek to streamline regulations by preempting a substantial amount local oversight, including Ohio Revised Code Chapter 4939, 47 U.S.C. §§ 253(a), 332(c)(7)), and FCC rules and regulations. The FCC rules were amended in the Fall of 2018 to further limit cities' ability to regulate 5G infrastructure. The FCC ruling expressly denied any adverse health effects caused by 5G equipment and preempted local regulation on that topic.² In short, cities cannot prohibit wireless facilities or deny permit applications based on health effects as long as the facilities comply with FCC standards.

The FCC rules are currently being challenged in court, but they remain effective today. Proposed legislation seeks to modify federal rules, as well. At this time, it is speculative as to whether either of these avenues will successfully expand the City's ability to regulate 5G networks or the health effects that may be caused by such networks. Until federal law changes, the City's regulatory authority is severely constrained.

¹ Interim Detailed Design Guidelines for Wireless Communications Facilities in the Right of Way, approved by City Council September 28 2016, modified by DOTE July 31, 2018.

² FCC 18-133, Declaratory Ruling and Third Report and Order, September 226, 2018 (effective January 15, 2019), Article III, Paragraph 33, p. 17, and fn. 72.