



---

# MEMORANDUM

---

Date: June 24, 2021

To: The Honorable Chair and Members  
Pima County Board of Supervisors

From: C.H. Huckelberry  
County Administrator

A handwritten signature in black ink, appearing to be "CHH", is written over the printed name "C.H. Huckelberry".

Re: **Small Cell Communication Towers in Public Rights of Way**

Members of the Board of Supervisors and others have received concerns and/or complaints regarding the installation of small cell communication towers in the public right of way. Most of the concerns have been inside the City of Tucson; however, we will also begin to receive both inquiries and complaints regarding their proliferation.

Attached is a memorandum from Development Services Director Carla Blackwell on this subject. It is clear the County is preempted by State law passed in 2017 to regulate small cell tower installation. In her memorandum, Ms. Blackwell discusses a meeting held with an attorney who specializes in small cell litigation and national consultation who has indicated that HB 2365, passed in 2017, was one of the worst laws he has encountered nationally and that the Legislature has universally preempted local control of small cell towers in the right of way.

Page 2 of the memorandum indicates some activities the County can initiate regarding the regulation of small cell towers on private property. I have directed Ms. Blackwell and Development Services staff to proceed with developing these regulations for future consideration by the Board of Supervisors.

In the meantime, if your office receives concerns and complaints regarding small cell tower construction in the public right of way, please refer them to the Legislature as we have been preempted from taking any specific regulatory action.

CHH/anc

Attachment

c: Jan Leshar, Chief Deputy County Administrator  
Carmine DeBonis, Jr., Deputy County Administrator for Public Works  
Francisco García, MD, MPH, Deputy County Administrator & Chief Medical Officer,  
Health and Community Services  
Carla Blackwell, Director, Development Services



DATE: June 22, 2021

TO: C. H. Huckelberry, County Administrator

FROM: Carla Blackwell, Development Services Director *CB*

SUBJECT: Small Cell Communication Towers in the Right of Way

---

The Board of Supervisors recently received two communications relating to the installation of 5G towers from Ms. Heidi Miller and Ms. Wendy Burkhard. This memo is intended to update County Administration regarding these inquiries.

While we did receive requests for 5G tower permitting records from Ms. Miller the configuration of our permitting system is not conducive to readily locating these since small cells do not carry a unique identifier. Permitting records could be readily located if an address were provided, but the requests received have related to all small cell towers in the region. We have, however, been able to identify these through a small cell right-of-way fee assessed on these permits though are unsure whether this method has identified all relevant records. Additionally, identified records are redacted as to underground fiber locations on the plans per state statutes, so additional time is required to process the requests. To date, all open requests for records pertaining to small cell towers have been filled.

Development Services was also approached by a small group of Pima County residents to begin a dialogue over regulation of the small cell towers. We attended a meeting virtually that featured an attorney, Andrew Capanelli, who specializes in small cell litigation and consultation nationally. He has consulted with local jurisdictions on the regulation of these towers.

Mr. Capanelli reviewed the Arizona State Statutes regarding small cell towers and provided the following observations:

- Every community wants 5G coverage. This issue is not 5G, it is the oversaturation of towers due to pre-emption of local government regulation.
- HB 2365 passed in 2017 is one of the worst laws that he has seen nationally.
- The state legislature has universally pre-empted local control of towers in the right of way.

Site developers are not required to prove gaps in service, leading to an oversaturation of towers and blight in the community. He provided an example of a small town that only needed 3 towers to provide coverage but ended up with 50 towers due to competing site developers trying to attract wireless leases from providers.

Page Two  
Small Cell Tower Update

- He believes this oversaturation and pre-emption of local control creates unnecessary radiation in the community.

Mr. Capanelli recommended that Pima County consider the following items:

- Developers of small cell towers on private property (not right-of-way) should be required to prove service gaps and identify the maximum strength of transmission (with monitoring).
- Ensure that Pima County residents understand the state law and are provided state legislature contact information to voice concerns.
- Provide additional information on our website including Federal Communication Commission complaint information if residents feel a tower may be exceeding the maximum strength.
- Contemplate guidelines to regulate strength using consultants or provide residents standing to enforce and commission a study if they are impacted by a tower and fearful of the transmission.

We have already enabled a webpage with a map of all known communication towers for constituent use. Development Services will continue to work with the concerned residents and will evaluate if any public information or code changes are warranted.

Attachments

C: Carmine DeBonis Jr. Deputy County Administrator  
Yves Khawam, Assistant County Administrator  
Tom Drzazgowski, Chief Zoning Inspector

**Danielle Greene**

---

**From:** Heidi Miller <weweredragons@gmail.com>  
**Sent:** Monday, June 7, 2021 4:34 PM  
**To:** COB\_mail; District1; District3; DIST2; District4; District5  
**Subject:** Public Comment Tuesday 6/8/2021  
**Attachments:** Public Comment PC 6.8.2021.pdf

**CAUTION:** This message and sender come from outside Pima County. If you did not expect this message, proceed with caution. Verify the sender's identity before performing any action, such as clicking on a link or opening an attachment.

**See attached document for public comment at Board of Supervisors meeting during Call to the Public.**

\*The County maintains a state of violating Arizona's Open Meeting Laws and excluding the public's attendance, permitting The People only to listen. This is not acceptable and must be righted forthwith. The County is but one simple conference call function away from compliance. STOP violating the public's rights.

JUN 07 11:04:41 PC CLK OF-30 *28*

**CLERK'S NOTE:  
COPY TO SUPERVISORS  
COUNTY ADMINISTRATOR**

DATE 6.8.21 *28*

Heidi Miller, 25-year-old mother of 2,

Putting a spotlight on the blight being cemented onto every street, at every corner, at every school, at every playground, outside every window:

Redundant, overpowered **Wireless Telecommunication Facilities**, pouring unnecessarily high power into bedrooms, capable of generating nude images peering beyond our bathroom walls. There won't be a child left in Pima County unviolated by this intrusive, unrestrained catastrophe.

County staff believes it bears no obligation to protect public safety, privacy, and property values!

There is a striking lack of adherence to law and *absolute disregard* for the quiet enjoyment of streets and landscape. This must be righted with great haste.

Further substance *denied* to the public:

- Entitlements under **A.R.S. 39-121**  
*"Public records and other matters in the custody of any officer shall be open to inspection by any person **at all times** during office hours."*
- Open Meeting Law **A.R.S. 38-431.01. Meetings shall be open to the public**  
*All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to **attend and listen** to the deliberations and proceedings."*  
(meetings are closed to the public's attendance we are only permitted to listen.)

County imposes unlawful barriers to inspect public records:

- Denying rights under Title 39
- Unjustifiably imposing hoops and lengthy procedure to obtain only a fraction of the record.
- That fraction of the record is not made available until after a wait of many months.

Supervisor Bronson and County Administrator's office has not responded to the substance of the letter signed by affected residents as it regards unlawful permitting process and the withholding of records for a WTF threatening the neighborhood.

Pima County's WTF applications are incomplete:

- The County cannot permit and host facilities that violate federal law. WTFs on record exceed 1KiloWatt Effective Radiated Power *at the least* by 8x, lacking the federally required NEPA review.
- Few match existing local design if any
- No signatures of applicants or County staff are on record
- Model and manufacturing number for the radios and antennas are lacking
- Before and after photo or simulation missing
- Reports detailing all possible co-locations exhausted before approval of the site are lacking
- Contractors have not had their paperwork on site as required by the permit!
- Public is not made aware of these ROW projects
- The County has not demonstrated enforcement of these necessary terms.

How are we going to fix this disaster? I suggest a live meeting with residents such as myself to discuss what shall be done to protect the best interests of residents according to law.

The County is unable to cite any law to back its many claims instead substituting general statements "state law", "can't do anything", "can't regulate". The latter is far from the language of the State law:

11-1802. ... terms...

E. A COUNTY SHALL:

1. ADOPT AN ORDINANCE ESTABLISHING RATES, FEES AND **TERMS** FOR THE FOLLOWING:

- a) THE INSTALLATION, MODIFICATION OR REPLACEMENT... OF A... POLE.
- b) THE COLLOCATION... OF A SMALL WIRELESS...

11-1807. requirements...

WIRELESS FACILITIES DEPLOYED... PURSUANT TO THIS ARTICLE **SHALL BE CONSTRUCTED AND MAINTAINED AS TO NOT OBSTRUCT, ENDANGER OR HINDER ... PUBLIC SAFETY...**

11-1808. Scope of local authority

- A. **A COUNTY MAY EXERCISE ZONING, LAND USE, PLANNING AND PERMITTING AUTHORITY AND THE COUNTY'S POLICE POWER... INCLUDING FOR... INSTALLATION, MODIFICATION AND REPLACEMENT OF ... STRUCTURES AND ...POLES**

*I regard no matters of mere concern but of substance fact and law, to be submitted for the public record.*

*In Good Faith,  
-Heidi Miller*

**Danielle Greene**

---

**From:** Wendy Burkhard <wb4possibility@gmail.com>  
**Sent:** Monday, June 7, 2021 9:10 PM  
**To:** COB\_mail; District1; District3; DIST2; District4; District5  
**Subject:** PUBLIC COMMENT TUESDAY 6/8/2021  
**Attachments:** PUBLIC COMMENT FOR THE RECORD.docx

**CAUTION:** This message and sender come from outside Pima County. If you did not expect this message, proceed with caution. Verify the sender's identity before performing any action, such as clicking on a link or opening an attachment.

PLEASE SEE ATTACHED.  
THANK YOU.  
WENDY BURKHARD

JUN082108PM POC KOF-ND

CLERK'S NOTE:  
COPY TO SUPERVISORS  
COUNTY ADMINISTRATOR

DATE 6.8.21 *DB*

6/7/2021 My name is Wendy Burkhard of Pima County, Tucson, AZ. I am a small business owner. I attest and affirm that the following statements are true, accurate and within my knowledge.

I observe, as do you, the unnecessary, unjustified and uncompensated "taking" of property from Pima County residents to enrich multi-billion-dollar Telecom companies. This must cease immediately.

Esteemed Board of Supervisors, this densified 4G/5G deployment is hurting your constituents' finances in two ways, simultaneously:

1. Many residents face significant decreases in their home's values. Each wireless telecommunications facility (WTF) determines, by means of private, hidden, decision-making, the greater losers in each neighborhood: while everyone loses, anyone nearer loses more.

2. The wireless industry, with some of its facility components manufactured by foreign interests, has manipulated our state and local governments into unwitting participation in a huge liability transfer.

The County claims to be insured; however, based on insurers' exemptions, insufficient insurance exists for the coming claims for the injury, impairment, illness and early death that occur from highly xenobiotic, pulse-modulated microwave radiation.

Electromagnetic Radiation (EMR) is listed as a pollutant under the insurance policy exclusion of coverage. That means policies do not cover adverse outcomes from microwave radiation more specifically. Exclusion language from General Liability Policies Of Zurich, Sun, Hartford and CFC Underwriting for Lloyd's of London, state:

"We will not pay anything under this policy, claim expenses, in respect of: Electromagnetic fields any liability nature directly or indirectly caused by, in connection with or contributed to by or arising from electromagnetic fields or electromagnetic radiation."

The County must resolve this problem immediately.

- Microwave radiation has been classified by the wireless industry and the largest reinsurers in the world as toxic "pollution", and all general liability plans include a "pollution exclusion clause" for it.

- The County has legitimate authority and obligation to require full coverage. This means either third-party supplemental insurance *without a pollution exclusion clause*, listing the County as an additionally insured; or Self-insurance directly from multibillion-dollar corporations AT&T, T-Mobile/Sprint and Verizon.

The legal catch? The County is not doing business directly with AT&T, T-Mobile/Sprint or Verizon, but rather fairly to totally uninsured franchises thereof. The firm named on the application is a shell company designed to go bankrupt when the first claim arrives.

This leaves County taxpayers holding the bag. And since you are now positively informed, we will not leave ourselves holding the bag. The County could be bankrupted unless it ceases its current activity, does its due diligence, avoids bait-and-switch liability terms and amends the ordinance to require full insurance with proof thereof to be submitted as part of the application process. Because of your fiduciary obligations as well as that to the public safety to prevent and not merely insure against harm, you must revise the ordinance at once such that the parent wireless companies remain liable, not Pima County.