

Pending Telecom Bills Sharply Limit Local Control over Antennas in Rights-of-Way – Two proposed bills in the Missouri Legislature, [HB 656](#) and [SB 354](#), would modify state law related to municipal control and regulation of wireless communications infrastructure. Although the language of the bills is still changing, various versions of the bills include the following potential impacts:

- Prohibit Rights-of-Way (“ROW”) agreements for “small wireless” and “micro wireless” facilities
- Prohibit any ROW permits or City approval for various types of new or replacement wireless facilities
- Eliminates existing or new antenna fees and linear foot fees
- Eliminates “gross receipts taxes,” or other taxes on wireless “not required by state of federal law” – which could be interpreted to end all existing gross receipts and other taxes; modification of this language is essential to clarify
- Eliminates existing authority to permit and regulate wireless in the ROW
- Expands preemption of zoning for collocations on and now even “immediately adjacent” to existing structures
- Mandates a guarantee of an antenna location in ROW for 25 years
- Mandates Municipal Utilities to allow antennas on Municipal poles

These Bills could cause huge loss of existing taxes or fees, loss of control over appearance and interference in the ROW, and create an incentive to move all antennas into the ROW to avoid paying private owners rent. Please contact your State Elected Official if you wish to express your concern over these bills.

Court Confirms Municipal Corporations Are Not Subject to Claims for Unjust Enrichment and City is Not Liable Under Payment Bond Statute – In [Septagon Construction Company Inc., et al. v. The Industrial Development Authority of the City of Moberly, et al.](#), (Mo. App. W.D. Mar. 7, 2017) the Missouri Court of Appeals affirmed a decision holding that a City was not liable to a subcontractor who was not paid for work done on a private factory that was financed by public bonds. The Court stated that the City, Industrial Development Authority, Redevelopment Corporation, and Economic Development Corporation, all represented by CVR, could not be held liable for not obtaining a payment bond to cover the subcontractor’s work where there was no specific public works contract with a contractor that provided construction services. Although the City entered into financing arrangements with the owner of the private factory, those contracts did not require the owner to provide construction services, and therefore did not trigger the payment bond statute. The Court also confirmed once again that municipal corporations cannot be held liable under a theory of implied contract or unjust enrichment.

Beware of Requests from Utility Companies Asking About Your City’s Tax – Telecommunications companies, class action attorneys and others have used city responses to written requests in pending litigation in attempts to obtain court rulings adverse to the cities or to claim a city is not owed required license taxes. Cities should therefore consult with their legal counsel before answering emails or correspondence from utility companies inquiring as to the taxability of certain items under municipal license taxes.

Cities Must be Cautious When Drafting Contracts or Risk Adverse Rulings if the Contract is Found to be Ambiguous – In [J.H. Berra Construction Co., Inc., v. City of Washington](#), (Mo. App. E.D., Feb. 14, 2017) the Missouri Court of Appeals recently ruled against a City trying to recover penalties from a construction company after it exceeded its construction deadline in a contract. The contract allowed a penalty for each “working day” after the deadline. In assessing the penalty, the City counted each non-holiday day, Monday through Friday, as a “working day.” The company sued, arguing “working day” only included days that weather conditions allowed construction work to be done. The court held that the term was ambiguous and because the City had drafted the contract, it must be construed against the City. Accordingly, the Court agreed with the construction company and ordered the penalty reduced. This case provides good justification to carefully review your form contracts to make sure they were actually drafted for the benefit of your specific City before adopting the contract as your City form for bidding.

Presentations by CVR Attorneys – The following recent and upcoming educational presentations and resources from CVR attorneys are available for your review:

- [A Day in the Life of a City Clerk](#) (MoCCFOA Spring Institute)– [Paul Rost](#) and [Erin Seele](#)
- [Fundamentals of Municipal Finance](#) (Government Finance Officers of Missouri)– [Kim Diamond](#)
- [Wireless Facilities in the Rights-of-Way: Changing Laws, Technologies, and Trends](#) (Municipal Officials Training Academy)– [Dan Vogel](#) and [Erin Seele](#)
- [UPCOMING - Sunshine Law](#) (Elected Officials Training Conference) – [Erin Seele](#)

Feedback – Your comments are greatly appreciated. If you have suggestions for improving these Municipal Issue Reports, please let us know at the contacts below.

Upcoming Dates & Deadlines for Missouri Municipalities*

April 4 – Municipal Election Day

April 8 – Provide a nonbinding estimated tax rate to County Clerk (Applicability depends on County’s receipt of State Tax Commission software); Penalty for failure to provide estimated tax rate is 20% reduction in property tax rate.

1st Meeting of April – Collector prepares and governing body approves delinquent tax list.

May 1 – Applications for renewal of liquor licenses due from licensees

May 1 – Financial disclosure reports due to Ethics Comm’n (Cities with \$1M+ annual operating budget, if City does not adopt its own biennial financial disclosure policy).

June 1 – City Clerk deliver to collector special tax bills for weed and trash removal for inclusion on current year’s tax bill.

*This list is not exhaustive. For the complete **Calendar of Procedural Deadlines for Missouri Municipalities**, click below:

[Jan. 1–Dec. 31 Fiscal Year](#)

[July 1–June 30 Fiscal Year](#)

Also see CVR’s [Annual Requirements for Missouri Municipal Special Purpose Entities](#)

Municipal Links

[Missouri Municipal League](#)

[Municipal League of Metro St. Louis](#)

[Mid-America Regional Council \(KC Area\)](#)

[East-West Gateway Council of Governments](#)

For more, visit CVR’s [Resources Page](#)

If you need further assistance on any of these matters, please consult your City Attorney or Legal Department for particularized guidance or contact us at:

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