

Legislation Text

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DATE OF MEETING: 02/19/19

SUBJECT:

CITY COUNCIL AUTHORIZATION BY MINUTE ACTION TO RATIFY LETTER OF SUPPORT TO CONGRESSMAN MARK DESAULNIER REGARDING FEDERAL LEGISLATION H.R. 530 - ACCELERATING WIRELESS BROADBAND DEVELOPMENT BY EMPOWERING LOCAL COMMUNITIES ACT OF 2019

CITY MANAGER RECOMMENDATION

Approve by Minute Action

COMPLIANCE STATEMENTS

FY 2018-2021 Council Priority Workplan Compliance Statement

Municipal Broadband/ Public Fiber Project, Opposition to SB 649 (Hueso), Opposition to S. 3157 (Thune) are adopted policy items under the FY 2018-21 Council Adopted Workplan, effective November 1, 2017.

CEQA Compliance Statement

This is not a project as defined by CEQA.

BACKGROUND

Federal Communications Commission Ruling

On September 26, 2018, the Federal Communications Commission (FCC) adopted new regulations that require local cities to quickly approve or deny wireless carriers' requests to deploy 5G wireless cell installations. While the goal of rapidly deploying 5G industry is widely shared, the FCC's approach has come under considerable criticism, particularly from states and cities. The new FCC regulations constrain the time cities have to review wireless deployment requests while also limiting them from taking into account environmental impact issues or other impacts, which affect local neighborhoods or public right-of-ways.

A complete copy of the FCC declarative ruling, which went into effect January 14, 2019, is found at <https://www.fcc.gov/document/fcc-facilitates-wireless-infrastructure-deployment-5g>

The new FCC declaratory ruling runs roughshod over state and local authority in the deployment of 5G wireless infrastructure. Since, the FCC and the wireless industry consider these deployments relatively small, the FCC is not as worried about how they'll impact local communities. However, once this Order went into effect, local governments will be required to approve or deny deployment of small wireless facilities within 90 days, or just 60 days if they are being added onto an existing facility. If local cities do not respond within the new FCC regulatory timeframe, the FCC says that wireless companies will have grounds to litigate for violation of FCC regulations.

The rationale made by the FCC is to accelerate the 5G deployment and to cut costs for telecom

wireless carriers. During FCC deliberations, a total of \$2 billion in unnecessary costs were attributed to costs imposed by local cities for regulatory and permitting review. The telecom industry stated to the FCC during hearings that elimination of these costs could lead to a \$2.5 billion in opportunity cost investments by telecom wireless providers, potentially helping lower socio-economic urbanized cities, and including rural deployment.

5G Deployment Process

5G deployment will require telecommunications providers to install hundreds of thousands of small cells across the country to construct 5G networks. The vast majority of these sites will be located on locally-owned public rights-of-way, which requires providers to submit applications for local government review. The local review process is essential to ensure small cell sites do not put public health and safety at risk, including ADA disabled access on sidewalks, during the construction and modification of broadcasting facilities, as well as ongoing operations.

Due to the significant number of small cell sites needed to fully deploy 5G, close coordination between wireless service providers and local governments is critical during the siting process. 5G's reliance on a large network of small cell sites will place a considerable administrative strain on local governments' ability to process the exponential increase in applications for small cells from service providers.

State of CA SB 649 (Hueso) Legislation

The California State Legislature considered similar legislation (SB 649- Hueso) two years ago during the 2016-17 State Legislative Session. The bill received widespread opposition from local jurisdictions, including opposition from the City of San Pablo. Even though the state legislature passed SB 649, former California Governor Brown vetoed the bill. Fortunately, for local cities, no new State legislation has been reintroduced at this time. On September 21, 2017, the City transmitted letters to then Governor Brown stating opposition to SB 649 (Hueso) legislation and urging him to veto the legislation. SB 649 legislation was subsequently vetoed by Governor Brown following the outcry from cities in California.

Federal S. 3157 Legislation

On June 28, 2018, the S.3157 federal legislation was introduced into the US Senate by US Senator John Thune, (R-SD) which would create a new federal mandate that proposes to streamline the siting of small cell technology deployment for the telecom industry. The proposed S. 3157 federal legislation was similar in scope to SB 649 (Hueso) which was opposed by nearly 350 cities and counties in California.

SB 649 intended to circumnavigate and preempt many local government ordinances and regulations to streamline small cell technology deployment in local communities by the telecom wireless industry. S. 3157 is a federal version of this former vetoed state bill and would have created a new federal mandate on the siting of small cell technology bypassing all local ordinances and regulations. In light of the concerns noted above, three (3) letters were prepared by the City's contract lobbyist, Townsend Public Affairs, on behalf of the City addressing the concerns over the proposed S. 3157 federal legislation. These letters were executed by former San Pablo Mayor Calloway on July 12, 2018 and transmitted to California Congressman Mark DeSaulnier, and US Senators Dianne Feinstein and Kamala Harris. The legislation was referred to the Senate Committee on Commerce, Science and Transportation where it remains, with no current or pending actions.

Federal H.R. 530 Legislation Introduced

On January 14, 2019, Congresswoman Anna Eshoo (D-Calif.) introduced the “*Accelerating Wireless Broadband Development by Empowering Local Communities Act of 2019*” (H.R. 530 <<https://www.congress.gov/bill/116th-congress/house-bill/530>>), which would effectively dismantle the Federal Communications Commissions (FCC) controversial ruling on 5G broadband <<https://www.naco.org/blog/fcc-curtails-local-control-5g-deployment-order>>.

As aforementioned, the FCC ruling, which went into effect on January 14, 2019, curtails local authority over public rights-of-ways for 5G wireless broadband deployment, and limits the ability of local governments to properly preserve and protect public rights-of-ways by narrowing the review process and limiting fees local governments can charge providers for the placement, construction or collation of new wireless service facilities.

In response to the proposed order, the National Association of Counties (NACo) and National League of Cities (NLC) released a joint statement <<https://www.naco.org/resources/counties-cities-voice-concern-over-fcc-small-cell-ruling>> in September 2018 highlighting concerns with the new FCC regulations. Citing over 100 local governments from 22 states who filed comments prior to the FCC’s decision, NACo and NLC stated: “*The FCC’s impractical actions will significantly impede local governments’ ability to serve as trustees of public property, safety and well-being. The decision will transfer significant local public resources to private companies, without securing any guarantee of public benefit in return.*”

In response to the FCC ruling, several lawsuits were filed in federal appeals courts questioning the legality of the FCC rule. Following these filings, NACo joined a letter <https://www.naco.org/sites/default/files/documents/FCC%20Letter_Request%20for%20Stay_0.pdf> with NLC and over 40 local governments and associations requesting the FCC issue a stay on the 5G order until the courts reach a decision. The FCC ultimately declined to issue a stay on the order. Therefore, H.R. 530 legislation is designed to preserve the rights of state and local government authority over the deployment of wireless infrastructure as the “*Accelerating Broadband Development by Empowering Local Communities Act of 2019.*”

City Letter of Support - H.R. 530 Legislation

On February 4, 2019, the City’s contract lobbyist, Townsend Public Affairs, drafted a letter of support for H.R. 530 legislation for San Pablo Mayor Kinney which was executed and transmitted to local Congressman Mark DeSaulnier requesting potential co-sponsorship or support, and explaining the relative importance of this legislation in regards to the City’s ongoing project planning on a city-wide municipal fiber project (in-design phase), and future 5G wireless infrastructure deployment (see Attachment).

City Council Ratification

The letter of support transmitted by Mayor Kinney on February 4, 2019 to Congressman DeSaulnier on behalf of the City Council requires formal City Council ratification approval by majority vote by minute action.

FISCAL IMPACT

None associated with this report other than staff time associated with its preparation.

ATTACHMENTS

1. Letter of Support from Mayor Kinney to Congressman DeSaulnier dated 02/04/19
2. Copy of H.R. 530 Legislation introduced by Rep. Anna Eshoo (D-Calif.)