



Memorandum

**TO: SMART CITIES & SERVICE
IMPROVEMENTS COMMITTEE**

FROM: Betsy Shotwell

**SUBJECT: REPORT ON KEY STATE
& FEDERAL LEGISLATION**

DATE: November 20, 2017

Approved

Date 27 Nov 2017

RECOMMENDATION

Accept the staff memorandum dated November 20, 2017 concerning pending and enacted State and Federal legislation in the Smart Cities & Service Improvements Committee.

BACKGROUND

Included in the Smart Cities & Service Improvements Committee work plan for 2017 is the request for a legislative update to be brought forward to the Committee by the City Manager's Office of Intergovernmental Relations (IGR).

ANALYSIS – PENDING AND ENACTED STATE LEGISLATION

This section of the Legislative Summary identifies priority State bills and those of interest that have been introduced during the 2017 Legislative Session. These bills relate to the Smart Cities & Service Improvements Committee and include a partial list of bills of particular interest to the City. During the legislative session, legislation is continuously reviewed by IGR, the City's Sacramento lobbyists, and City departments to determine the impact on the City. Specific bills are coordinated with the City Attorney and are brought forward to the Rules Committee and City Council for consideration and adoption of City positions.

This legislative year, (January 4- 2017- October 15, 2017) was the first of the two-year 2017-2018 legislative session. The second-year of the session will commence on January 3, 2018, and bills that did not pass out of both the Assembly and Senate during the first year of the session may be reintroduced for consideration. A list of key dates from the first year of the two-year session may be found in Attachment A.

Included in this legislative report is City opposed SB 649 (Hueso) regarding wireless telecommunications facilities. The Governor vetoed SB 649 on October 15. If enacted, SB 649 would have removed the requirement for a wireless telecommunications collocation facility to obtain a discretionary permit prior to installing a "small cell" device on public right-of-ways, including City-owned facilities and light poles. SB 649 would have required the City to provide access to vertical infrastructure in City right-of-ways and would have limited the amount of rent that could be charged for the access. The bill would also not only have removed the requirement for CEQA, but also any ability to take into consideration of any aesthetic, design, or nuisance impacts.

Joining San José in opposition to SB 649 was the League of California Cities, the American Planning Association, the California State Association of Counties, Rural County Representatives of California, Urban Counties of California, AARP, California Teamsters Public Affairs Council, and more than 300 cities. In addition, on June 28, Mayor Sam Liccardo testified in Sacramento against the bill at the hearing held by the Assembly Local Government Committee.

The Smart Cities & Service Improvements Committee Legislative Report includes legislation relating to Autonomous Vehicles, Broadband/Internet, Smart Energy and Water Systems, and Mobile Technologies, for example:

ACR 62

Quirk (D)

5G Wireless Network Technology

This measure would urge policymakers in federal, state, and local government to work in cooperation with one another to modernize and streamline the processes that will enable rapid deployment of the small cell wireless infrastructure that supports 5G wireless networks and that will bring the many benefits of this important new technology to communities across California.

STATUS: 7/3/17 – Signed by the Governor. Chapter 93, Statutes of 2017.

AJR 7

Mullin (D)

Internet: net neutrality: access

This measure would declare that the Legislature strongly supports, and would respectfully urge the President of the United States and Members of the United States Congress to continue to protect, net neutrality, open Internet access, the federal Lifeline program's discounted telephone service for qualifying low-income consumers, and the E-rate program's discounted telecommunication and Internet access services for schools and libraries. The measure would declare that the Legislature views these as high priorities for California and the country, and opposes any federal efforts to rescind or block them.

STATUS: 9/12/17 – Signed by the Governor. Chapter 151, Statutes of 2017.

AB 56

Holden (D)

California Infrastructure and Economic Development Bank: housing.

The Bergeson-Peace Infrastructure and Economic Development Bank Act authorizes the California Infrastructure and Economic Development Bank, governed by a board of directors, to, among other things, make loans, issue bonds, and provide other financial assistance for various types of projects that qualify as public development or economic development facilities. The act defines, among other things, the term "public development facilities" for these purposes to mean real and personal property, structures, conveyances, equipment, thoroughfares, buildings, and supporting components thereof, excluding any housing, that are directly related to providing, among other things, city streets, county

highways, and educational facilities. The act establishes the California Infrastructure and Economic Development Bank Fund, a continuously appropriated fund, for support of the bank.

This bill would revise the definition of the term "public development facilities" for purposes of the act to mean real and personal property, structures, conveyances, equipment, thoroughfares, buildings, and supporting components thereof, excluding any housing, that are directly related to providing, among other things, housing-related infrastructure, which includes city streets; drainage, water supply, and flood control; environmental mitigation measures; power and communications; public transit improvement that directly supports transit-oriented housing; sewage collection and treatment; and water treatment and distribution. By expanding the banks' authority to expend funds in a continuously appropriated fund, the bill would make an appropriation.

STATUS: 9/6/17 – Signed by the Governor. Chapter 289, Statutes of 2017.

AB 546 Chiu (D) Land use: local ordinances: energy systems

Would, on or before September 30, 2018, for a city, county, or city and county with a population of 200,000 or more residents, or January 31, 2019, for a city, county, or city and county with a population of less than 200,000 residents, require the city, county, or city and county to make all documentation and forms associated with the permitting of advanced energy storage, as defined, available on a publicly accessible Internet Web site, as specified.

STATUS: 9/30/17 – Signed by the Governor. Chapter 380, Statutes of 2017.

AB 623 Rodriguez (D) Autonomous Vehicles: accident reporting.

Would require the operator of an autonomous vehicle who is involved in an accident that results in damage to the property of any one person in excess of \$1,000, or in bodily injury, or in the death of a person, to make that report. The bill would require a traffic collision report prepared by a member of the Department of the California Highway Patrol or any other peace officer to specify if an autonomous vehicle was involved in the traffic collision in any manner. Because a violation of the bill's reporting requirement would be an infraction, the bill would impose a state-mandated local program.

STATUS: 7/13/17 -In Senate Appropriations Committee.

AB 1145 Quirk (D) Conversion of Existing Overhead Electric and Communication Facilities to Underground Locations: cable operators

The Improvement Act of 1911 authorizes the initiation of special assessment proceedings for the conversion of overhead electric and communication facilities to underground locations upon either the filing of a petition or a determination by the local legislative body that the city or a public utility has voluntarily agreed to pay over 50% of all costs of conversion, excluding costs of users' connections to underground electric or communications facilities. Current law authorizes an agreement entered into as part of those proceedings to allocate duties between a city and an electricity or communication provider regarding the planning and specifications of, and contributions of labor, materials, and money to, the conversion of those electric and communication facilities to underground Locations. This bill would additionally make these provisions applicable to cable television facilities and a cable operator and, where overhead electric or communications facilities that are to be converted to underground are owned by a city or municipal government,

would require the legislative body initiating the conversion proceeding to reimburse the costs incurred by a cable operator for relocation.

STATUS: 10/14/17 – Signed by the Governor. Chapter 792, Statutes of 2017.

AB 1160 Bonta (D) Autonomous Vehicles

Current law authorizes the operation of an autonomous vehicle on public roads for testing purposes by a driver who possesses the proper class of license for the type of vehicle being operated if specified requirements are met. Current law defines an autonomous vehicle as any vehicle equipped with autonomous technology that has been integrated into that vehicle. This bill would change the definition of autonomous vehicle to mean any vehicle equipped with autonomous technology that has been integrated into that vehicle or a vehicle that meets specified levels of driving automation, as defined.

STATUS: 6/22/17 – In Senate Transportation and Housing Committee.

AB 1665 Garcia (D) Telecommunications: California Advanced Services Fund

Current law requires the Public Utilities Commission to develop, implement, and administer the California Advanced Services Fund (CASF) to encourage deployment of high-quality advanced communications services to all Californians that will promote economic growth, job creation, and the substantial social benefits of advanced information and communications technologies, as provided in specified decisions of the commission and in the CASF statute. The CASF itself is funded by surcharges on in-state phone bills. This bill would revise the goal of the program to provide that its goal is to approve funding by December 31, 2022, for infrastructure projects that will provide broadband access to no less than 98% of California households in each consortia region, as identified by the commission on or before January 1, 2017.

STATUS: 10/15/17 – Signed by the Governor. Chapter 851, Statutes of 2017.

SB 145 Hill (D) Autonomous Vehicles: testing on public Roads

Current law requires the Department of Motor Vehicles to notify the Legislature if it receives an application from a manufacturer seeking approval to operate an autonomous vehicle capable of operating without the presence of a driver inside the vehicle. Current law prohibits such an application from becoming effective any sooner than 180 days after that application is submitted. This bill would repeal the requirement that the department notify the Legislature of receipt of an application seeking approval to operate an autonomous vehicle capable of operating without the presence of a driver inside the vehicle.

STATUS: 10/12/17 – Signed by the Governor. Chapter 725, Statutes of 2017.

SB 649 Hueso (D) Wireless Telecommunications Facilities

Under current law, a wireless telecommunications collocation facility, as specified, is subject to a city or county discretionary permit and is required to comply with specified criteria, but a collocation facility, which is the placement or installation of wireless facilities, including antennas and related equipment, on or immediately adjacent to that wireless telecommunications collocation facility, is a permitted use not subject to a city or county discretionary permit. This bill would

provide that a small cell is a permitted use, subject only to a specified permitting process adopted by a city or county, if the small cell meets specified requirements.

STATUS: 10/15/17 – Vetoed by the Governor ¹.

CITY POSITION: OPPOSE²

SB 802 Skinner (D) Autonomous Vehicles: advisory taskforce.

Would direct the Office of Planning and Research to convene an Autonomous Vehicle Advisory Taskforce on or before April 1, 2018, to review autonomous vehicle policies and provide recommendations to the Legislature. The bill would require the Autonomous Vehicle Advisory Taskforce to meet at least quarterly, include at least one member each from 6 specified state agencies, and include at least 2 public members, as specified. The bill would compel the Autonomous Vehicle Advisory Taskforce to provide recommendations to the Legislature, as specified, on or before January 1, 2019.

STATUS: 9/1/17 – Held in Assembly Appropriations and under submission.

ANALYSIS – PENDING AND ENACTED FEDERAL LEGISLATION AND REGULATORY ACTIONS

FCC Reauthorization

On October 11, the House Energy and Commerce Subcommittee on Communications and Technology advanced FCC reauthorization legislation. The bill would reauthorize the FCC for the first time since 1990, and contains a number of FCC reform provisions, including reforms to the FCC's spectrum auction processes. Committee Chairman Greg Walden (R-OR) recently expressed his commitment to ensure the legislation is advanced through the full committee.

Small Cell Siting and Local Authority

In the most recent Federal lobbyist's update to the City, Squire Patton Boggs reported that FCC had issued two Notices of Proposed Rulemaking/Notices of Inquiry (NPRM/NOI) titled "Accelerating Wireline/Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment" (17-79/17-83). The NPRM/NOI is intended to streamline regulatory barriers and enhance broadband deployment, but, if finalized, could preempt local authority, offer deemed granted rights to city infrastructure, and limit time periods for municipalities to consider deployment applications. The NPRM/NOI has implications for municipal permitting processes, use agreements, rights of way fees, and local governments' ability to prevent redlining.

The U.S. Conference of Mayors (USCM), National League of Cities (NLC), and National Association of Counties (NACo) recently sent a joint letter to FCC Chairman Ajit Pai urging him to "fully consider"

¹ Governor Brown's veto message: https://www.gov.ca.gov/docs/Sb_649_Veto_Message_2017.pdf

² City Manager Norberto Dueñas' Letter of Opposition: Attachment B to Smart Cities & Services Improvements 6/1/2017 Committee Meeting Item d(2): <http://www.sanjoseca.gov/DocumentCenter/View/69185>

local perspectives in finalizing the pending broadband proceedings. The FCC's Broadband Deployment Advisory Commission met on November 9, and recommendations from the various working groups were presented including the Model Municipal Code working group recommendations for which Mayor Liccardo is the Vice Chair. All working groups documents were made public. A final vote by the Committee on the recommendations will be January 23-24.

Chairman Pai recently appeared before the House Energy and Commerce Subcommittee on Communications and Technology for an FCC oversight hearing, alongside four other FCC Commissioners. At the hearing, members discussed the need to preempt local authority and accelerate small cell approval processes.

In particular, Representative Mimi Walters (R-CA) stressed the importance of 5G, noting that widespread 5G availability could create 2,200 jobs in her district. She criticized California Governor Jerry Brown for vetoing a small cell siting bill (SB 649), that passed the state legislature, which she noted would have restricted local governments from blocking small cell siting efforts. Commissioner Carr also expressed disappointment with Governor Brown's veto of California's small cell legislation stressing the need for the aggressive deployment of small cells. He noted that the current state and local regulatory regime for small cell siting will serve as a significant bottleneck that will delay the deployment of 5G infrastructure.

Representative Susan Brooks (R-IN) explained that she and her staff had recently received a briefing from CTIA, emphasizing the importance of ensuring the U.S. does not fall behind global competition in the deployment of 5G infrastructure. She stressed the need to facilitate the expansion of 5G broadband infrastructure and better educate state and local governments on the need to accelerate broadband infrastructure deployment, leading the global race for 5G.

Chairman Pai has issued notice that the FCC will consider orders focused on pole attachment and historic preservation issues at the Commission's November meeting.

Additionally, Senate Commerce, Science, and Transportation Committee Chair John Thune (R-SD) and Senator Brian Schatz (D-Hawaii), are circulating a draft bill designed to accelerate broadband deployment by reducing regulatory barriers and reforming small cell siting and permitting processes. According to media reports, Chairman Thune began developing the legislation following the release of a Government Accountability Office (GAO) report (GAO-17-742), which identified provider costs for deploying antennas, installing wires or cables, and obtaining permits to access infrastructure as impediments to broadband infrastructure deployment.

Senators Roger Wicker (R-MS) and Catherine Cortez Masto (D-NV) also introduced legislation last month, the *Streamlining Permitting to Enable Efficient Deployment of Broadband Infrastructure* (The SPEED Act) Act (S. 1988), designed to reform broadband infrastructure.

Specifically, the SPEED Act would streamline federal permitting processes that impede the quick and efficient deployment of next-generation broadband technologies, including 5G. Currently, new and replacement telecommunications infrastructure is subject to numerous, sometimes duplicative federal approvals, including environmental and historical reviews. These duplicative approvals extend to areas

that have already been established as a public right-of-way (ROW), and where telecommunications infrastructure already exists.

The SPEED Act would not preempt the authority of a State or local government to apply and enforce all applicable zoning and other land use regulations on communications providers. The proposal also would expedite the review process for telecommunications infrastructure and accelerate the delivery of essential broadband services by:

- Exempting telecommunications infrastructure from environmental and historic reviews by the Federal Communications Commission (FCC) and other federal agencies in a public ROW if previously installed telecommunications infrastructure has already undergone environmental and historic reviews for the same public ROW. Any provider exempted from these reviews must still comply with the National Environmental Policy Act and the National Historic Preservation Act;
- Exempting the deployment of small cells from environmental and historical reviews only if 1) they are being deployed in a public ROW and are not higher than an existing structure in the public ROW; and 2) they are serving as a replacement for an existing small cell and they are the same or substantially similar to the small cell that is being replaced;
- Exempting the deployment of wireless services (e.g. voice, video, or data) from environmental and historical reviews if 1) they are located in an existing public ROW and 2) adhere to tower height and guy wire requirements;
- Directing the Government Accountability Office to develop a report analyzing how to increase the efficiency of deploying broadband infrastructure to federal lands; and
- Directing the FCC's Streamlining Federal Siting Working Group to submit a report to Congress on its preliminary findings and recommendations for accelerating the deployment of high-speed Internet access to federal lands across the United States.

Similar to the State Legislative calendar, Congress will conclude the first year of their two-year session in December, and will return to Washington in early January to commence the second year of the 115th session.

COORDINATION

This memo was coordinated with the Department of Transportation, City's State and Federal lobbyists, and the City Attorney's Office.

POLICY ALIGNMENT

The measures identified in the memorandum are based on the City of San José's 2017 Legislative Guiding Principles, Priorities and Advocacy Issues adopted by the City Council on January 10, 2017.

/s/
BETSY SHOTWELL
Director, Intergovernmental Relations
(408) 535-8270

Attachment A: 2017 California Legislative Calendar