

**REPORT OF THE
CHIEF LEGISLATIVE ANALYST**

DATE: September 10, 2018

TO: Honorable Members of the Rules, Elections, and Intergovernmental Relations Committee

FROM: Sharon M. Tso  Council File No: 18-0002-S103
Chief Legislative Analyst Assignment No: 18-08-0794

SUBJECT: Resolution (Rodriguez – Blumenfield) to oppose S. 3157 (Thune)

CLA RECOMMENDATION: Adopt Resolution (Rodriguez – Blumenfield) to include in the City’s 2017 - 2018 Federal Legislative Program **OPPOSITION** to S. 3157 (Thune), the **STREAMLINE** Small Cell Deployment Act, which would streamline the siting process for small cell wireless facility deployment.

SUMMARY

The Resolution (Rodriguez – Blumenfield), introduced on August 8, 2018, states that the roll-out of fifth generation (5G) mobile technology requires the installation of small cell wireless facilities. Currently, wireless carriers must seek local approval of permits to build wireless facilities or to add upon existing facilities, known as collocation.

The Resolution further states that S. 3157 (Thune), the Streamlining the Rapid Evolution and Modernization of Leading-Edge Infrastructure Necessary to Enhance Small Cell Deployment Act (or **STREAMLINE** Small Cell Deployment Act), would provide the City only 60 days to authorize a permit for collocation and 90 days for any other action relating to a small personal wireless service facility. The City would be limited to setting fees for permits based on cost recovery for the placement, construction, or modification of a small personal wireless facility, thereby constraining the ability of the City to properly assess and price the placement of small cell infrastructure. The Resolution therefore requests that the City oppose S. 3157.

BACKGROUND

The siting process for small cell wireless facilities is regulated by a combination of federal, state, and local law. The Federal Telecommunications Act of 1996 (Act) establishes specified limitations, preemptions, and preservations of local zoning authority relative to the siting of personal wireless service facilities. Except where noted in the Act, state and local governments have authority over decisions regarding the placement, construction, and modification of personal wireless service facilities. State and local governments are also required to not unreasonably discriminate against functionally equivalent providers, to not prohibit the provision of personal wireless facility, to provide written notice of any decision to deny a request to place, construct, or modify personal wireless facilities.

Within California, state regulations require that wireless carriers must seek local approval for collocations. The Public Utilities Code also establishes a framework, process, and procedures governing the attachment of telecommunications facilities to investor-owned or municipal utility

poles. Local governments may not block utility pole attachments, but can regulate the time, manner, and place of pole attachments in the public right-of-way. Investor-owned and municipal utilities are limited to charging cost-based rates for use of their properties. These restrictions do not apply, however, to other infrastructure in the right-of-way, such as light poles and street lights. Local governments retain discretionary authority over the approval process in these instances and may impose conditions on the wireless facilities and negotiate payments for the use of public infrastructure.

S. 3157 would amend 47 United States Code §332 to regulate the discretionary authority of state and local governments over the placement, construction, and modification of small personal wireless service facilities. State and local governments would be able to deny a permit based on publicly available criteria that are reasonable, objective, and non-discriminatory. State and local governments would also be able to set objective and reasonable structural engineering standards, safety requirements, or aesthetic or concealment requirements.

More significantly, S. 3157 establishes timeframe limitations for state and local governments to act on a permit request and regulates the fees state and local governments may charge to operators for the use of facilities located in the public right-of-way. The City would have 60 days to act on a collocation permit and 90 days for any other action relating to a small personal wireless service facility. Smaller cities would have between 90 and 150 days to field requests depending on various factors. State and local governments would be permitted to charge a fee, subject to various conditions. The fee must be competitively neutral and publicly disclosed. It must also be based on actual and direct costs, such as costs for the review and processing of applications, maintenance, emergency responses, repairs and replacements of certain components and materials, and inspections.

Both the National League of Cities and the California League of Cities are opposed to S. 3157. The organizations note that cities have historically managed public rights-of-way to take into account the impact of location, appearance, and size of wireless infrastructure and to protect the availability of public rights-of-way for future uses. S. 3157, in limiting rental rates to “actual and direct costs,” would also violate the 5th and 10th amendments of the US Constitution as well as the gift prohibition in many state constitutions. In establishing stringent, short deadlines to review applications, S. 3157 also limits the resources that cities would have for other needs, such as road maintenance or public safety.

In California, the legislature passed, and the governor subsequently vetoed, similar legislation in the form of Senate Bill 649 (Hueso). This legislation would have required a ministerial permit in lieu of a discretionary permit, required cost-based fees in lieu of market pricing, and ensured carrier access to most host infrastructure in the utility right-of-way and also within a commercial or industrial zone. The legislation would have also required automatic renewal of permits for wireless telecommunications facilities. Council adopted a resolution including in the City’s 2017-18 State Legislative Program opposition to SB 649 on September 1, 2017 (C.F. 17-0002-S69).

DEPARTMENTS NOTIFIED

Bureau of Street Lighting
Bureau of Engineering
Information Technology Agency

BILL STATUS

6/28/2018

Introduced in Senate.



Tim Plummer
Analyst

SMT:tcp

Attachments: Resolution (Rodriguez – Blumenfield) opposing S. 3157 (Thune)

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, hundreds of thousands of small cell wireless facilities are expected to be installed over the next few years in the United States to prepare for the roll-out of fifth generation (5G) mobile technology; and

WHEREAS, in the City of Los Angeles, wireless carriers must seek local approval of permits to build wireless facilities and related telecommunications equipment or to add upon existing facilities, known as collocation; and

WHEREAS, S. 3157 (Thune), the Streamlining the Rapid Evolution and Modernization of Leading-Edge Infrastructure Necessary to Enhance Small Cell Deployment Act (or STREAMLINE Small Cell Deployment Act) was introduced in the Senate on June 28, 2018; and

WHEREAS, S. 3157 would provide the City only 60 days to authorize a permit for the collocation of a small personal wireless service facility and only 90 days for any other action relating to a small personal wireless service facility; and

WHEREAS, if the City fails to grant approval of a permit within the timeframe, the permit will be deemed approved; and

WHEREAS, the City would only be allowed to set fees for permits based on the actual and direct costs to the City for the placement, construction, or modification of a small personal wireless facility, which does not adequately reflect the value of the Los Angeles market to wireless carriers; and

WHEREAS, this proposal unnecessarily constrains the ability of the City to properly assess the placement of small cell infrastructure and appropriately price permits for the Los Angeles market;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2017 - 2018 Federal Legislative Program OPPOSITION to S. 3157 (Thune), the STREAMLINE Small Cell Deployment Act, which would streamline the siting process for small cell wireless facility deployment.

PRESENTED BY:

Monica Rodriguez

MONICA RODRIGUEZ
Councilwoman, 7th District

AUG 08 2018

SECONDED BY:

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