

City of Piedmont
COUNCIL AGENDA REPORT

DATE: August 6, 2018

TO: Mayor and Council

FROM: Paul Benoit, City Administrator

SUBJECT: Consideration of a Resolution Opposing U.S. Congressional Bill S. 3157, the STREAMLINE Small Cell Deployment Act

RECOMMENDATION:

Approve a resolution opposing S. 3157, the Streamlining the Rapid Evolution and Modernization of Leading-Edge Infrastructure Necessary to Enhance (STREAMLINE) Small Cell Deployment Act.

BACKGROUND:

The League of California Cities has asked the City of Piedmont to take a position opposing S. 3157, the STREAMLINE Small Cell Deployment Act, which is currently being considered by the U.S. Senate. Like SB 649, which was approved in 2017 by the California Legislature but vetoed by Governor Brown, S. 3157 would force local governments to lease out publicly owned infrastructure, eliminate reasonable local environmental and design review, and eliminate the ability for local governments to negotiate fair leases or public benefits for the installation of “small cell” wireless equipment on taxpayer-funded property.

While the City of Piedmont would like to ensure that all our residents have access to affordable, appropriately located, and reliable high-speed broadband, the language in S. 3157 will not help in achieving these goals. Instead, this bill would impose sharply reduced “shot clock” time limits for local governments to process potentially unlimited wireless facility applications for all sizes, and “deem granted” applications for facilities when local governments are unable to meet the stringent time limits regardless of its safety impacts or delays caused by incomplete applications. The bill also interferes with the City’s ability to manage its own property and to receive appropriate compensation for its use.

The National League of Cities has produced a list of talking points related to S. 3157, which is attached to this report as Attachment B. Information on and the text of the bill can be found at <https://www.congress.gov/bill/115th-congress/senate-bill/3157>.

ATTACHMENTS:

- A: Resolution Opposing S. 3157 – The Streamline Small Cell Deployment Act
- B: National League of Cities talking points for S. 3157

By: Kevin Jackson, Planning Director

RESOLUTION _____

A RESOLUTION OPPOSING S. 3157, THE SMALL CELL DEPLOYMENT ACT

WHEREAS, S. 3157 has been introduced in the United States Senate and was referred to the Senate Commerce, Science, & Transportation Committee; and

WHEREAS, this bill would place unreasonable restrictions in Federal law on the environmental and design review of applications for small cell sites by the City of Piedmont and other cities around the nation; and

WHEREAS, similar legislation which was pursued in California by the wireless industry in 2017, was opposed by over 325 cities in our state, including the city of Piedmont; and

WHEREAS, S. 3157 would shift authority away from our residents, businesses, and communities to a for-profit industry whose shareholder returns potentially outweigh their considerations for the health, safety, aesthetic, and public benefits of our community; and

WHEREAS, S. 3157 would impose unrealistic and sharply reduced timelines for review of wireless site applications, which would limit public input and stress limited City resources to meet the “shot-clock” requirements in the bill, and “deem granted” all applications for which the City is unable to meet the stringent time limits regardless of site safety impacts or delays caused by incomplete applications; and

WHEREAS, S. 3157 also interferes with the ability for our City to manage its own property and our ability to receive appropriate compensation for its use by stringently limiting those factors that the cities may consider in our own land use decisions, and restricting compensation only to the “actual costs” we incur to process applications; and

WHEREAS, the City of Piedmont actively manages rights-of-way to protect resident safety, preserve the residential character of the city, and maintain the availability of the rights of way for current and future uses; and

WHEREAS, the City of Piedmont shares in the goal of ensuring all our residents have access to affordable, reliable high-speed broadband, however, the plain language in S. 3157 will not help in achieving these goals;

NOW, THEREFORE, BE IT RESOLVED, that the City of Piedmont strongly opposes S. 3157 and urges Congress to consider more balanced efforts to improve the rollout of wireless and broadband deployment, and to reject legislation aimed to undermine input from residents, businesses, and local governments in considering where and how wireless infrastructure should be located this critical infrastructure.

[END OF RESOLUTION]

CITIES OPPOSE S. 3157 – Streamlining The Rapid Evolution And Modernization of Leading-edge Infrastructure Necessary to Enhance (STREAMLINE) Small Cell Deployment Act

Cities oppose S. 3157 because it will:

- **Complicate Existing Efforts to Deploy Small Cell Infrastructure**
 - Roughly half of all US states have already passed legislation specifically addressing the deployment of small cell wireless structures, and the local governments in those states are busy implementing new ordinances and procedures to comply with those changes.
 - Forcing a one-size-fits-all preemption will harm local negotiations and policy work, slowing the deployment of new infrastructure.
 - Cities have traditionally negotiated with providers on issues such as the location, appearance, and size of wireless infrastructure. This bill severely limits the ability of cities to ensure that infrastructure suits the neighborhood around it.
 - The bill also limits the ability of cities to act in a proprietary capacity – to decide whether or not to allow private use of public property at all.

- **Transfer Public Property to Private Companies with No Public Obligation**
 - S. 3157 restricts the rental rates cities can charge for use of public property such as the right-of-way and municipally-owned poles, in direct violation of the 5th and 10th Amendments.
 - Limiting rental rates to “actual and direct costs” also violates the gift prohibition of many state constitutions.
 - This forces taxpayers to subsidize private, commercial development, without any corresponding obligation on providers to serve communities in need or contribute to closing the digital divide in those markets.

- **Create a New Unfunded Mandate on Local Governments**
 - The new timelines for cities to review applications for small cells on public property are substantially shorter than the timelines the federal government allowed itself in the MOBILE NOW Act, yet cities have fewer resources than federal agencies.
 - These harsh timelines limit the resources cities have for other public needs, such as road maintenance and public safety. While small cell sites are smaller than macrotowers, they do not require an equivalently smaller amount of review and oversight.
 - The punishment for failing to meet these new, more stringent timelines is also unreasonable – automatically deeming granted any application which runs out the shot clock.

For more information, contact Angelina Panettieri, Principal Associate for Technology and Communications at panettieri@nlc.org.