



**CITY OF NEWPORT BEACH**

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April 13, 2021

The Honorable Ben Hueso  
Chair, Senate Energy, Utilities, and Communications Committee  
State Capitol Building, Room 4035  
Sacramento, CA 95814

**RE: SB 556 (Dodd) – Notice of Opposition**

Street light poles, traffic signal poles, utility poles, and support structures: attachments.

Dear Senator Hueso,

The City Newport Beach writes to respectfully oppose SB 556. The bill largely duplicates recent regulations adopted by the Federal Communications Commission (FCC) to streamline telecom development that local jurisdictions are already implementing with success. It is concerning that the bill would allow traffic poles as eligible sites as there are a number of resulting safety and technical issues. The bill makes no differentiation between the public right of way and private property owned by the City, the latter of which may otherwise constitute a taking.

**Make Ready Issues.** SB 556 does not define the requirements constituting "make ready" work. How is the City to know the extent of make-ready work when the communication service provider has not provided plans and specifications for how they will install the equipment? Is this placing the burden of installation costs on cities? Existing procurement laws would also preclude cities from complying with a 60 -105 day timeline to have third-party vendors perform contracted work in the public right of way. The bill would allow make ready work to be done concurrently on over 300 poles in one jurisdiction. Would the make ready timeline stand up in court if it creates a default on an existing contractual obligation? Each pole is a project with its own considerations – there is not enough staff at any agency to review 299 poles in 45 days, let alone over 300 in 60 days. Work on this number of traffic signals could result in massive outages on the same day. Is the state providing traffic control officers for this? The request for use requirements are unclear and do not specify if the procedure is a formal application or email request.

**Repeats Existing Federal Law.** On January 14, 2019, the FCC's Declaratory Ruling and Order FCC 18-133 (Order) became effective to facilitate and stimulate wireless infrastructure development. This directive restricted certain aspects of local authority in review and permitting of cell sites such as time limits, location/colocation, and fees. In this way, the spirit of SB 556 is incorporated into the existing FCC order. Pursuant to the Order, local jurisdictions cannot "materially [inhibit] the introduction of new services or the improvement of existing services." Additionally, pursuant to Section 332(c)(7)(B)(i)(II) of U.S. Code Title 47 (Telecommunications), local jurisdictions may "not regulate the placement, construction or modification of wireless service facilities in a manner that prohibits the provision of personal wireless services." The FCC Order enables the local jurisdiction to assess wireless service facilities under local permitting protocol and ensures sites adhere to responsible regulatory practices, including safety, accessibility, environmental impact, land use, and aesthetics. With success, the City has entered into several master license agreements with wireless carriers to authorize non-exclusive use of City-owned streetlights to install telecommunications equipment for small cell facilities. The master license agreement includes approved designs, fee and rent assessment in compliance with the FCC Order. It is unclear why the additional regulation is required as cities like Newport Beach are doing their part to adhere to Order. At the very least, the bill should require operators to first partner with private companies on private infrastructure before approaching a government agency to locate to a public use that results in more impacts. SB 556 ignores sound planning practices such as design standards, traffic safety, historical resources, and residents' quality of life. **SB 556 does not build on the foundation of the Order, but instead excessively and indiscriminately restricts local control of public right-of-ways.**

**Public Safety Hazard.** Traffic signal equipment relies on wired, radio, and other wireless communication. Close proximity of the telecom equipment may have an adverse impact on the traffic signal control equipment. Traffic signal outages are considered an "emergency" and immediate repair and maintenance is critical. Telecom equipment on street lights could limit the City's ability to limit the repair of traffic signals to service in a timely manner, especially if coordination is required with the wireless provider to temporarily disengage the telecom. This delay would create a considerable hazard to the community. Clutter on poles in the intersections also creates visual hazards. The City's telecommunications Code prohibits siting on traffic poles for such reasons.

**Does Not Account for Future Required Technologies.** In the near future, integration of connected and autonomous vehicles may require additional equipment on traffic poles. Without being able to reserve space on the traffic signal poles for municipal use, the ability to implement new traffic control technology will be limited. Additional equipment adds weight that can significantly alter the engineering for these poles and further create hazards in an intersection.

**Confusing Fee Structure.** In conflict with the existing fees under the FCC Order, SB 556 creates a great deal of confusion regarding the fees that a local jurisdiction can charge for use of public infrastructure. The FCC Order clearly establishes baseline pricing and places a requirement that fees beyond the set amount be a "reasonable approximation of the local government's actual and direct costs." This includes costs related to the maintenance of a structure within the right-of-way or processing an application or permit. SB 556 limits the fees a local jurisdiction can charge based on "actual cost" and "reasonable actual cost." Does the accounting requirement supersede the FCC rate, or can this be used in lieu of

calculating these costs? If SB 556 is an enhancement of the FCC Order, it would introduce more ambiguity into the existing fee process and result in lost staff time and legal fees in recovering what is owed to the local jurisdiction.

**Conflicts with the California Coastal Act.** SB 556 has the ability to undermine protected coastal resources outlined in the Coastal Act as it does not consider impacts to coastal resources, access, and views. Each site must be reviewed with the proposed design to determine if the project will result in visual degradation. Not all utility poles are feasible locations because the wireless design may require a larger, more conspicuous replacement pole to support the antennas. There may be alternative locations nearby that meet a wireless company's needs with less impact as well.

**Lack of Access and Equity Requirements.** The City recognizes the importance of telecommunications and the necessity to close the digital divide in California's unserved and under-resourced communities. SB 556 is well-intentioned and makes claims to help ensure equity in such communities. Yet, the topic of equity is only discussed in the declaration and not found in the proposed amendment of the Public Utilities Code. To help guarantee wireless equity, the bill should encourage and incentivize telecommunication companies to provide a standard level of service to areas lacking adequate and affordable coverage. Without explicit requirements to require the deployment of telecommunications in under-covered communities, the bill inadvertently has the potential to sidestep the equity it intends to advance.

The City of Newport Beach commends the State's goal to expand broadband, but SB 556 is duplicative of the existing FCC Order and unnecessarily undermines local control.

For these reasons, the City of Newport Beach opposes SB 556.

Sincerely,



Brad Avery  
Mayor  
Newport Beach

cc. Senator Bill Dodd  
Senator David Min  
Assemblywoman Cottie Petrie-Norris  
Newport Beach City Council  
Grace Leung, City Manager  
Seimone Jurjis, Community Development Director  
League of California Cities (Via email: [cityletters@cacities.org](mailto:cityletters@cacities.org))