



AGENDA AND NOTICE

CITIES ASSOCIATION OF SANTA CLARA COUNTY - LEGISLATIVE ACTION COMMITTEE

Thursday, August 10, 2017 6:25 PM
West Conference Room | Sunnyvale City Hall
456 West Olive Avenue | Sunnyvale, CA

This agenda and packet are available at www.citiesassociation.org

If you are unable to attend this meeting, please pass your packet to your alternate.

AGENDA

1. **Welcome, Introductions and Roll Call**
2. **Consent Calendar**
 - a. June 8, 2017 Meeting Minutes
3. **Old Business:** Review of June 8, 2017 legislative list including. Recommendations and “watch” items.
 - a. AB 574 (Quirk) Potable Reuse
 - b. AB 733 (Berman) Enhanced infrastructure financing districts
 - c. AB1222 (Quirk) Vehicles: electronic wireless communications devices
 - d. SB 35 (Weiner) Planning and Zoning: affordable housing: streamlined approval process. Sent opposition letter, however bill has been substantially amended.
 - e. AB 1598 (Mullin): Affordable housing authority
4. **New Business**
 - a. Request from Senator Hill
 - i. SB 21 (Hill) law enforcement surveillance transparency
 - ii. SB 611 (Hill) Disability placard program improvements
5. **Member Comments:** *Each Legislative Action Committee member may speak to any issue not on the agenda; time limit of 5 minutes unless LAC members authorize further discussion*
6. **Oral Communications:** *This time is reserved for public comments, not to exceed 3 minutes, on topics that are not on the agenda.*
7. **Future Agenda Items**
8. **Adjournment**



**Draft Minutes
Legislative Action Committee
Sunnyvale West Conference Room
June 8, 2017**

The LAC meeting of the Cities Association was called to order at 7:05 p.m. with Chair Pat Showalter presiding.

1. Call to Order/Roll Call

Present:

Liz Gibbons, Campbell
Savita Vaidhyanathan, Cupertino
Peter Leroe-Muñoz, Gilroy
Jan Pepper, Los Altos
Gary Waldeck, Los Altos Hills
Rob Rennie, Los Gatos
Rich Tran, Milpitas
Pat Showalter, Mountain View
Greg Scharff, Palo Alto
Chappie Jones, San Jose
Debi Davis, Santa Clara
Mary-Lynne Bernard, Saratoga
Larry Klein, Sunnyvale

Also Present:

Jim Griffith, Sunnyvale, Past Pres.
Anthony Phan, Milpitas
Manny Cappello, Saratoga
Jim Keene, Palo Alto City Manager
Betsy Shotwell, San Jose

Joanne Benjamin, Cities Association

2. Oral Communication: None

3. Consent Calendar

Approval of Minutes of May 11, 2017 Motion (Bernard)/ Second (Klein). Motion carried unanimously (13-0-2)

Ayes: Cappello, Davis, Gibbons, Jones, Klein, Leroe-Munoz, Pepper, Rennie, Scharff, Showalter, Tran, Vaidhayanathan, Waldeck

No:

Abstention:

Absent: Burton, Tate

4. Review of May 11 LAC Meeting Recommendations and Action:

Chair Pat Showalter reviewed the legislation discussed at the May 11 LAC Meeting. Milpitas Council Member Phan spoke in support for AB 1479 (Bonta) and SB 35 (Weiner).

The following action was taken on the list of legislation reviewed at the May 11 LAC Meeting:

- 1) AB 1250 (Jones-Sawyer) De Facto ban on local government contracts. Motion (Scharff) and Second (Klein) to Oppose and send letter. Passed unanimously (13-0-2)

Ayes: Cappello, Davis, Gibbons, Jones, Klein, Leroe-Munoz, Pepper, Rennie, Scharff, Showalter, Tran, Vaidhayanathan, Waldeck

No:

Abstention:

Absent: Burton, Tate

- 2) SB 649 (Hueso) Wireless Telecommunications Facilities. Motion (Vaidhyanathan) and Second (Bernard) to Oppose and send letter. Passed unanimously (13-0-2)

Ayes: Cappello, Davis, Gibbons, Jones, Klein, Leroe-Munoz, Pepper, Rennie, Scharff, Showalter, Tran, Vaidhayanathan, Waldeck

No:

Abstention:

Absent: Burton, Tate

- 3) AB 1089 Local elective offices: contribution limitations (Mullin). Motion (Bernard) and Second (Rennie) to Support and send letter. Passed unanimously (13-0-2)

Ayes: Cappello, Davis, Gibbons, Jones, Klein, Leroe-Munoz, Pepper, Rennie, Scharff, Showalter, Tran, Vaidhayanathan, Waldeck

No:

Abstention:

Absent: Burton, Tate

- 4) AB 920 (Aguiar-Curry) California Renewables Portfolio Standard Program. Motion (Rennie) and Second (Scharff) to continue to Watch. Passed unanimously (13-0-2)

Ayes: Cappello, Davis, Gibbons, Jones, Klein, Leroe-Munoz, Pepper, Rennie, Scharff, Showalter, Tran, Vaidhayanathan, Waldeck

No:

Abstention:

Absent: Burton, Tate

- 5) AB 1479 (Bonta) Supervisor of Public Records Request Requirement. Motion (Scharff) and Second (Waldeck) to Oppose and send letter. Passed (12-1-2)

Ayes: Cappello, Davis, Gibbons, Jones, Klein, Leroe-Munoz, Pepper, Rennie, Scharff, Showalter, Vaidhayanathan, Waldeck

No: Tran

Abstention:

Absent: Burton, Tate

- 6) SB 618 (Bradford) Load-serving entities: requires integrated resource plans. Motion (Bernald) and Second (Waldeck) to Oppose unless amended and send letter. Jan Pepper asked to see the Draft prior to sending. Passed unanimously (13-0-2)

Ayes: Cappello, Davis, Gibbons, Jones, Klein, Leroe-Munoz, Pepper, Rennie, Scharff, Showalter, Tran, Vaidhayanathan, Waldeck

No:

Abstention:

Absent: Burton, Tate

- 7) AB 184 (Berman) Planning for Sea Level Rise Database. Motion (Scharff) and Second (Rennie) to Support and send letter. Passed unanimously (13-0-2)

Ayes: Cappello, Davis, Gibbons, Jones, Klein, Leroe-Munoz, Pepper, Rennie, Scharff, Showalter, Tran, Vaidhayanathan, Waldeck

No:

Abstention:

Absent: Burton, Tate

- 8) AB 574 (Quirk) Potable Reuse. Motion (Klein) and Second (Gibbons) to continue to Watch. Passed unanimously (13-0-2)

Ayes: Cappello, Davis, Gibbons, Jones, Klein, Leroe-Munoz, Pepper, Rennie, Scharff, Showalter, Tran, Vaidhayanathan, Waldeck

No:

Abstention:

Absent: Burton, Tate

- 9) AB 733 (Berman) Allowing enhanced finance district. Motion (Bernard) and Second (Scharff) to research more and place on the Aug. 10 LAC agenda. Passed unanimously (13-0-2)

Ayes: Cappello, Davis, Gibbons, Jones, Klein, Leroe-Munoz, Pepper, Rennie, Scharff, Showalter, Tran, Vaidhayanathan, Waldeck

No:

Abstention:

Absent: Burton, Tate

- 10) AB 1222 (Quirk) Vehicles: electronic wireless communications devices. Motion (Waldeck) and Second (Scharff) to Watch and place on Aug. 10 LAC agenda. Passed unanimously (13-0-2)

Ayes: Cappello, Davis, Gibbons, Jones, Klein, Leroe-Munoz, Pepper, Rennie, Scharff, Showalter, Tran, Vaidhayanathan, Waldeck

No:

Abstention:

Absent: Burton, Tate

- 11) SB 35 (Weiner) Planning and Zoning: affordable housing: streamlined approval process. Motion (Scharff) and Second (Bernard) to Oppose and send letter. Passed (12-1-2)

Ayes: Cappello, Davis, Gibbons, Jones, Klein, Leroe-Munoz, Pepper, Rennie, Scharff, Showalter, Vaidhayanathan, Waldeck

No: Tran

Abstention:

Absent: Burton, Tate

- 12) AB 1508 (Bloom, Chiu, Bonta) Residential Rent Control: Costa Hawkins Rental Housing Act. Motion (Scharff) and Second (Rennie) to watch and place on LAC Aug. 10 agenda. Passed unanimously (13-0-2)

Ayes: Cappello, Davis, Gibbons, Jones, Klein, Leroe-Munoz, Pepper, Rennie, Scharff, Showalter, Tran, Vaidhayanathan, Waldeck

No:

Abstention:

Absent: Burton, Tate

- 13) AB 1598 (Mullin) Affordable Housing Authorities. Motion (Bernard) and Second (Showalter) to Watch and place on LAC Aug. 10 agenda. Passed unanimously (13-0-2)

Ayes: Cappello, Davis, Gibbons, Jones, Klein, Leroe-Munoz, Pepper, Rennie, Scharff, Showalter, Tran, Vaidhayanathan, Waldeck

No:

Abstention:

Absent: Burton, Tate

- 14) AB 1585 (Bloom) Planning and Zoning: Affordable housing: single application. Motion (Scharff) and Second (Showalter) to Watch and place on LAC Aug. 10 agenda. Passed unanimously (13-0-2)

Ayes: Cappello, Davis, Gibbons, Jones, Klein, Leroe-Munoz, Pepper, Rennie, Scharff, Showalter, Tran, Vaidhayanathan, Waldeck

No:

Abstention:

Absent: Burton, Tate

5. Member Comments: None

6. Oral Communications: None

7. Future Agenda Items: The Watch Items will be discussed at the next LAC meeting along with other legislation members want to consider.

Adjournment at 7:35 pm to the next LAC Meeting, Thursday, August 10, 2017, 6:30 pm, Sunnyvale City Hall, West Conference Room

Respectfully submitted,

Joanne Benjamin, Interim Executive Director, Cities Association of Santa Clara County

Updated LAC State legislative action and watch list for 2017

Purpose: To track bills that the LAC is following.

Update: Shaded grey areas are bills that LAC voted to watch and review at the August 10th meeting.

The recommended actions are below:

Bill Number & Name	Brief description	LAC/LCC Actions	Initiated by
<p>AB1250 (Jones-Sawyer) De facto ban on local government contracts</p>	<p>Requires full economic evaluation & CEQA before letting a contract. Must list contact and salary info for all workers paid by the contract.</p> <p>(Amended: 6/21/2017) Status: 7/13/2017-Withdrawn from committee. Re-referred to Com. on APPR. Location: 7/13/2017-S. APPR.</p>	<p>Oppose & send letter STRONGLY Opposed by CLC Policy Committee LAC 8/0 Change Action to WATCH since cities are now exempt from Onerous Contracting Measure</p> <p>June LAC Meeting: Opposed and sent letter</p> <p>LCC removed opposition on 6/21/17</p>	
<p>SB649 (Huesco) Wireless Telecommunications Facilities</p>	<p>Limits local control & revenue from installation of "small cell" equipment. Small is 6 cubic ft for antennas and 21 cubic ft for associated equipment.</p> <p>Wireless telecommunications facilities. (Amended: 7/18/2017) Status: 7/18/2017-Read second time and amended. Re-referred to Com. on APPR. Location: 7/12/2017-A. APPR.</p>	<p>Oppose unless the dimensions are fixed. LAC 6/2 Change Action to WATCH as bill has extensive amendments and passed the Senate with only one NO vote.</p> <p>June: Opposed and sent letter</p> <p>LCC: oppose</p>	<p>Opposed but still alive, encourage advocacy against bill.</p>

<p>AB1089 Local elective offices: contribution limitations (Mullin)</p>	<p>Establishes a campaign contribution limit for local offices of \$4,400 per candidate per election. Supported by LWV, Common Cause and many others</p> <p>Local elective offices: contribution limitations. (Introduced: 2/17/2017) Status: 6/20/2017-Coauthors revised. Location: 4/5/2017-A. APPR. SUSPENSE FILE</p>	<p>June: Support and sent letter LAC 8/0</p> <p>LCC- neutral</p>	
<p>AB920 California Renewables Portfolio Standard Program</p>	<p>Supported by RWRC before it was dramatically revised. RWRC's professional organization supported this bill.</p> <p>(Amended: 7/17/2017) Status: 7/17/2017-Read second time and amended. Re-referred to Com. on APPR. Location: 7/17/2017-S. APPR.</p>	<p>Watch and follow RWRC's lead on new version June: continue to watch</p> <p>LCC - watch</p>	
<p>AB 1479 (Bonta) Supervisor of Public Records Request Requirement.</p>	<p>Requires each agency to establish a "supervisor" of public records requests. Adds other requirements and sets fines. June: Opposed by CLC</p> <p>(Amended: 7/18/2017) Status: 7/18/2017-Read second time and amended. Re-referred to Com. on APPR. Location: 7/18/2017-S. APPR.</p>	<p>Oppose and send letter LAC8/0. On LCC HOT List to Oppose June: Oppose and sent letter</p> <p>LCC: change of position 7/18/17 (removal of opposition)</p>	

<p>SB 618 (Bradford) Load-serving entities: requires integrated resource plans</p>	<p>Requires each electrical load-serving entity like our SVCE prepare a plan to show that it was using a balanced portfolio for a reliable energy supply with optimal use of renewable energy. Problem is it give the PUC the review & approval authority.</p> <p>(Amended: 7/18/2017) Status: 7/18/2017-Read second time and amended. Re-referred to Com. on APPR. Location: 7/10/2017-A. APPR.</p>	<p>SVCEA & CLC urge opposition. Held at DESK; LCC Position is to “Watch”</p> <p>June: Oppose unless amended and send letter. Jan Pepper asked to see the Draft prior to sending. Passed unanimously (13-0-2)</p> <p>LCC position: Neutral</p>	
<p>AB 184 (Berman) Planning for Sea Level Rise Database</p>	<p>Provides funding for continuing and strengthening SLR database by State. Generally sounds good, but lacked info for action.</p> <p>Sea level rise planning: database. (Amended: 5/23/2017) Status: 6/27/2017-Read second time. Ordered to third reading. Location: 6/27/2017-S. THIRD READING</p>	<p>Watch; Calendared for 6/13/2017 Senate Natural Resources & Water;</p> <p>LCC position: watch</p> <p>June: Support and sent letter</p> <p>LCC position: watch</p>	
<p>AB 574 (Quirk) Potable Reuse</p>	<p>Bill would remove certain references to “direct potable reuse,” “indirect potable reuse for groundwater recharge,” and “surface water augmentation,” and would instead specify the four different types of potable reuse projects as “groundwater augmentation,” “reservoir augmentation,” “raw water augmentation,” and “treated drinking</p>	<p>Watch;</p> <p>LCC Position: Watch</p> <p>June: continue to watch</p>	<p>Pat Showalter</p>

	<p>water augmentation</p> <p>Potable reuse. (Amended: 7/12/2017) Status: 7/13/2017-Withdrawn from committee. Re-referred to Com. on APPR. Location: 7/13/2017-S. APPR.</p>		
<p>AB 733 (Berman) Enhanced infrastructure financing districts: projects: climate change. Morrell, Senate – Rules</p>	<p>Allows enhanced finance districts. Generally sounds good, but lacked info for action.</p> <p>Status as of 8/2/17 – (Amended: 6/26/2017) Status: 6/26/2017-Read second time and amended. Ordered to third reading. Location: 6/26/2017-S. THIRD READING</p> <p>AB-733 Enhanced infrastructure financing districts: projects: climate change. Berman Senate - Third Reading SB-733, Public Utilities Act:</p>	<p>Watch; Calendared for Senate Governance & Finance – 6/7/2017</p> <p>LCC position: Watch</p> <p>8/2/17 – LCC watch June LAC meeting: Place on August agenda</p> <p>8/4/17 Recommend to continue to watch.</p>	
<p>AB 1222 Vehicles: electronic wireless communications devices</p>	<p>Designed to fix issues with ham radio while driving</p> <p>As of 7/11/17 passed out of assembly, passed senate transportation referred to committee on appropriations</p> <p>Please see attachment from Bay Area Radio Association (Analysis of AB</p>	<p>Watch; LCC position: Watch June LAC meeting: place on August agenda</p> <p>NOTE: analysis shows that the current law (see attachment).</p>	

	<p>1785, current law)</p> <p><i>For the purposes of Section 23123.5(f) CVC, a radio installed and mounted in a vehicle with a wired hand microphone (e.g., business band or citizen band [CB]radio) is not considered a wireless communication device, nor is it considered a specialized mobile radio device, and therefore is not subject to enforcement under this section.</i></p> <p><i>The members of the Bay Area Radio Association have been unsuccessful in getting the author of AB1222 to use the exact language of the March 28, 2017 CHP enforcement memo (highlighted in yellow, above), in any amended version of the Bill. During conference calls with Staff Members of Bill Author Assembly Member Quirk's office, we were advised of a concern that if the law specifically and clearly eliminated from enforcement named group(s) of users, continued Federal Highway Safety Funding to the State of California could be placed in jeopardy.</i></p>		
<p>SB 35 (Weiner) Planning and Zoning: affordable housing: streamlined approval process</p>	<p>Makes many affordable housing projects "by right" which would stream-line the process, but reduce local control and limits opportunity for public review</p>	<p>May 11 LAC Rec: Watch; Passed Senate 23-12 & ordered to Assembly; On LCC Hot List to Oppose June meeting: opposed and sent</p>	

		opposition letter. Bill has been amended significantly since LAC opposition letter. May want further action.	
AB1506 (Bloom, Chiu, Bonta): Repeal Chapter 2.7: relating to tenancy	Would Repeal Costa Hawkins Act	Watch; This is now a two-year bill. June LAC meeting: to watch and place on LAC Aug. 10 agenda	
AB 1585 (Bloom): Planning and Zoning: Affordable housing: single application	Affordable housing – this bill would establish in each city, county, and city and county in the state an affordable housing zoning board and procedures by which a public agency or nonprofit organization proposing to build affordable housing units, as defined, or a developer proposing to build a housing project that meets specified affordability criteria, could submit to that board a single application for a comprehensive conditional use or other discretionary permit.	LCC Position: Oppose; is now a two-year bill June LAC meeting: place on August agenda	
AB 1598 (Mullin): Affordable housing authority	Affordable housing authorities This bill would authorize a city, county, or city and county to adopt a resolution creating an affordable housing authority ... Boundaries that are identical to the boundaries of the city, county, or city and county that created the authority. The bill would authorize specified local entities to adopt a resolution to provide tax increment revenue to the authority.	LCC Position: Watch June meeting: place on August agenda	

	<p>8/21/17 – hearing with Senate Appropriations</p>		
<p>SB 21 (Hill): law enforcement surveillance transparency</p>	<p>require each law enforcement agency, as defined, to submit to its governing body at a regularly scheduled hearing, open to the public, a proposed Surveillance Use Policy for the use of each type of surveillance technology and the information collected, as specified. The bill would require the law enforcement agency to cease using the surveillance technology within 30 days if the proposed plan is not adopted. The bill would require the law enforcement agency to submit an amendment to the surveillance plan, pursuant to the same open meeting requirements, for each new type of surveillance technology sought to be used. The bill would require the policy and any amendments to be posted on the agency’s Internet Web site. The bill would also require the agency to make specified reports, at approved intervals, concerning the use of surveillance technology, and to make those reports available on the agency’s Internet Web site.</p> <p>7/13/17: referred to committee on appropriations</p>	<p>LCC position: oppose unless amended</p> <p>California Police Officers Association oppose</p>	<p>Request to support by Senator Hill</p>

<p>SB 611 (Hill): Disability placard program improvements</p>	<p>This bill would require an applicant for a special license plate, a distinguishing placard, or a temporary distinguishing placard to provide proof of his or her true full name and date of birth at the time of application by submitting specified documents to the department. The bill would include licensed podiatrists on the list of medical professionals authorized to provide disability certifications ...</p>	<p>LCC position: watch</p>	<p>Request to support by Senator Hill</p> <p>Recommendation – no action</p>
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Analysis of Distracted Driving Law Legislation – State of California.

Presently, the current law (effective Jan. 1, 2017), reads as follows:

AB-1785 Vehicles: use of wireless electronic devices. (2015-2016)

Assembly Bill No. 1785

“THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

Section 23123.5 of the Vehicle Code is repealed.

SEC. 2.

Section 23123.5 is added to the Vehicle Code, to read:

23123.5.

(a) A person shall not drive a motor vehicle while holding and operating a handheld wireless telephone or an electronic wireless communications device unless the wireless telephone or electronic wireless communications device is specifically designed and configured to allow voice-operated and hands-free operation, and it is used in that manner while driving.

(b) This section shall not apply to manufacturer-installed systems that are embedded in the vehicle.

(c) A handheld wireless telephone or electronic wireless communications device may be operated in a manner requiring the use of the driver's hand while the driver is operating the vehicle only if both of the following conditions are satisfied:

(1) The handheld wireless telephone or electronic wireless communications device is mounted on a vehicle's windshield in the same manner a portable Global Positioning System (GPS) is mounted pursuant to paragraph (12) of subdivision (b) of Section 26708 or is mounted on or affixed to a vehicle's dashboard or center console in a manner that does not hinder the driver's view of the road.

(2) The driver's hand is used to activate or deactivate a feature or function of the handheld wireless telephone or wireless communications device with the motion of a single swipe or tap of the driver's finger.

(d) A violation of this section is an infraction punishable by a base fine of twenty dollars (\$20) for a first offense and fifty dollars (\$50) for each subsequent offense.

(e) This section does not apply to an emergency services professional using an electronic wireless communications device while operating an authorized emergency vehicle, as defined in Section 165, in the course and scope of his or her duties.

(f) For the purposes of this section, “electronic wireless communications device” includes, but is not limited to, a broadband personal communication device, a specialized mobile radio device, a handheld device or laptop computer with mobile data access, a pager, or a two-way messaging device.

SEC. 3.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.”

Currently, AB1222 is making its way through the California State Legislature. AB1222 was also authored by Assembly Member Bill Quirk, and it's intent was to resolve all ambiguity in connection with the implementation of AB1785, insofar as the use of two way radio devices while driving is concerned. The full text of AB 1222 reads as follows:

“THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

Section 23123.5 of the Vehicle Code is amended to read:

23123.5.

(a) A person shall not drive a motor vehicle while holding and operating a handheld wireless telephone or an electronic wireless communications device unless the wireless telephone or electronic wireless communications device is specifically designed and configured to allow voice-operated and hands-free operation, and it is used in that manner while driving.

(b) This section shall not apply to manufacturer-installed systems that are embedded in the vehicle.

(c) A handheld wireless telephone or electronic wireless communications device may be operated in a manner requiring the use of the driver's hand while the driver is operating the vehicle only if both of the following conditions are satisfied:

(1) The handheld wireless telephone or electronic wireless communications device is mounted on a vehicle's windshield in the same manner a portable Global Positioning System (GPS) is mounted pursuant to paragraph (12) of subdivision (b) of Section 26708 or is mounted on or affixed to a vehicle's dashboard or center console in a manner that does not hinder the driver's view of the road.

(2) The driver's hand is used to activate or deactivate a feature or function of the handheld wireless telephone or wireless communications device with the motion of a single swipe or tap of the driver's finger.

(d) A violation of this section is an infraction punishable by a base fine of twenty dollars (\$20) for a first offense and fifty dollars (\$50) for each subsequent offense.

(e) This section does not apply to an emergency services professional using an electronic wireless communications device while operating an authorized emergency vehicle, as defined in Section 165, in the course and scope of his or her duties.

(f) For the purposes of this section, "electronic wireless communications device" includes, but is not limited to, a broadband personal communication device, ~~a specialized mobile radio device,~~ a handheld device or laptop computer with mobile data access, ~~a pager, or a two-way messaging device, or a pager.~~"

In the opinion of the Bay Area Radio Association (BARA), AB 1222 in its present form does not go far enough to eliminate from enforcement, the use of a corded microphone customarily used in two way radio mobile operations by amateur radio operators, CB'ers, utility companies, bus and tow truck companies, and other commercial two way radio user/entities.

On March 28, 2017, the CHP Commissioner sent out the following memo on enforcement of AB1785:

"Enforcement of Section 23123.5 of the California Vehicle Code Hands Free Law

-----Original Message-----

From: Comm-Net Message [mailto:noreply@chp.ca.gov]

Sent: Tuesday, March 28, 2017 8:23 AM

To: @CHP

*Subject: Comm-Net: Enforcement of Section 23123.5 of the California Vehicle
Code*

Enforcement of Section 23123.5 of the California Vehicle Code

To: All Commands

Reference: Action Required

Subject: Enforcement of Section 23123.5 of the California Vehicle Code

Effective January 1, 2017, Section 23123.5 of the California Vehicle Code (CVC) was amended by Assembly Bill 1785, which substantially expanded the scope of Section 23123.5 CVC, from simply

prohibiting the use of a wireless phone to text while driving, to prohibiting holding and operating a handheld wireless telephone or an electronic wireless communications device while driving.

However, a driver may still use a handheld wireless telephone or an electronic wireless communication device while driving when:

The handheld wireless communication device is mounted to a windshield (in compliance with Section 26708[b] CVC), dashboard, or center console in a manner which does not interfere with the drivers view of the road, and;

The drivers hand is used to activate or deactivate a feature with a single tap or swipe of the drivers finger.

Pursuant to Section 23123.5(f) CVC, the definition of an electronic wireless communications device includes, but is not limited to: a broadband personal communication device, a specialized mobile radio device, a handheld device or laptop computer with mobile data access, a pager, or a two-way messaging device.

Section 23123.5 CVC does not apply to manufacturer-installed systems which are embedded in the vehicle, nor does it apply to an emergency services professional using a wireless telephone while operating an authorized Emergency vehicle, in the course and scope of employment.

For the purposes of Section 23123.5(f) CVC, a radio installed and mounted in a vehicle with a wired hand microphone (e.g., business band or citizen band [CB]radio) is not considered a wireless communication device, nor is it considered a specialized mobile radio device, and therefore is not subject to enforcement under this section.

*This information will be added to an upcoming revision to Highway Patrol Manual 100.68, Traffic Enforcement Policy Manual, Chapter 5, Other Enforcement Issues.
CHP Headquarters/Office of the Commissioner/061/18227”*

The members of the Bay Area Radio Association have been unsuccessful in getting the author of AB1222 to use the exact language of the March 28, 2017 CHP enforcement memo (highlighted in yellow, above), in any amended version of the Bill. During conference calls with Staff Members of Bill Author Assembly Member Quirk’s office, we were advised of a concern that if the law specifically and clearly eliminated from enforcement named group(s) of users, continued Federal Highway Safety Funding to the State of California could be placed in jeopardy.

To further resolve this apparent conflict, the BARA further proposed that the following language be included in AB1222:

(e) This section does not apply to emergency services personnel using a personal wireless communications device while operating under authority or in the service of a public safety entity, in the course and scope of his or her duties,”

AND:

*(f) For the purposes of this section, “personal wireless communication device” includes those specific to commercial mobile services.****

(g) For the purposes of this section, commercial mobile services” means any mobile service that is provided for profit and makes interconnected voice or broadband data services available to the public.”

*****The specific term of “Commercial Mobile Services” has long ago been defined by Federal Regulations (47 CFR 153) AND (47 CFR 332), and the proposed language of our new amendment is taken from said Federal Regulations covering mobile devices and services, their commonly accepted function, purpose, and use/activity.**

In closing,

- *** Since its effective date CVC 23123.5 has been perceived as ambiguous, received several law enforcement interpretations that are contrary to the Author’s ‘intent’.**

***** May preclude Federal - and State-mandated radio communications with risk to transport of hazardous materials and the public.**

***** At Assembly Member Quirk’s request CHP issued clarification (<http://www.no1pc.org/handsfree/CHP-Enforcement-of-Section-23123.pdf>) which is not codified in the revised Bill.**

*** Legislative Analysis is not codified in the revised Bill.**

*** With all due respect, in order to avoid problems over future mis-interpretation, the ambiguity of AB 1222 must be fixed to codify the Legislature’s own analysis and CHP’s, if not amended to match up with the federal definitions of mobile radio use.**

For the BARA (Bay Area Radio Association):

Jim Aspinwall
408-828-8100

Norm Lucas
916-284-3737

Glen Pitts
209-477-1671

*****CITY LETTERHEAD*****

Date

The Honorable Kevin de León
President pro Tempore
California State Senate
State Capitol Building, Room 205
Sacramento, CA 95814
VIA FAX: 916-651-4924

The Honorable Anthony Rendon
Speaker
California State Assembly
State Capitol Building, Room 219
Sacramento, CA 95814
VIA FAX: 916-319-2163

**RE: SB 35 (Wiener) Affordable Housing: Streamlined Approval Process.
Notice of Opposition (as amended 7/14/17)**

Dear President pro Tempore de León and Speaker Rendon:

The **City/Town of** is opposed to SB 35 (Wiener), which would pre-empt local discretionary land use authority by making approvals of multifamily developments, that meet inadequate criteria, “ministerial” actions, thus bypassing the California Environmental Quality Act (CEQA) and public input.

SB 35 has been characterized as a measure targeting “bad actor” jurisdictions that fail to approve enough housing to meet their Regional Housing Needs Allocation (RHNA) in all four income categories. However, SB 35 dodges the reality that state and federal affordable housing funding have slowed to a trickle. More than \$1 billion annually in affordable housing money has evaporated with the elimination of redevelopment agencies in 2011. Funds from the 2006 state housing bond have been exhausted and federal dollars have been declining for decades. This massive withdraw of resources has contributed to the current challenges, yet no significant source of ongoing affordable housing funding is on the horizon.

[If you have specific examples of the impact of this bill on your city/town, please include here.]

Forcing nearly all communities with a population over 2,500 to “streamline” housing approvals by eliminating opportunities for environmental and public review of major multifamily developments goes against the principles of local democracy and public engagement. While frustrating for some to address neighborhood concerns about traffic, parking and other development impacts, those directly affected by such projects have a right to be heard. Public engagement also often leads to better projects. Not having such outlets will increase public distrust in government and additional ballot measures dealing with growth management.

At a minimum, SB 35 should be amended to provide a “Safe Harbor” for “Good Actor/Pro-Housing” jurisdictions that:

- Have not violated the State’s housing laws in the last five years;
- Approved all submitted housing projects that have been submitted on sites identified in its housing element inventory;
- Have not reduced density of housing project below density as submitted by developer on initial application;
- Have implemented the programs in its housing element in accordance with schedule in housing element;

- Have completed any rezonings required by housing element within 2 years of adoption of housing element; and
- Can demonstrate that it did not receive applications for housing units that would have allowed it to issue building permits equal to the city's share of RHNA by income category for that reporting period.

For these reasons, the City/Town of _____ opposes SB 35.

Sincerely,

NAME

TITLE

CITY/TOWN of _____

cc: Your Senator & Assembly Member
Your League Regional Public Affairs Manager (via email)
Meg Desmond, League of California Cities, mdesmond@cacities.org

Dear Joanne:

Thank you, again, for spending time on the phone with me last month to help me advise the Los Altos City Councilmember who had reached out for expertise. I have referred her to her colleague, Jan Pepper, for additional information.

Meanwhile, I hope this e-mail is in time for the June 8 meeting of the Cities Association's legislative action committee.

I'm still waiting to hear from the rest of our Capitol staff, but I do have at least two bills for which Senator Hill would love to see support from Assembly members. I've pasted our staff member Patrick Welch's comments here, and have attached the fact sheets that were distributed to Senators for the final vote to send bills to the Assembly.

Thanks for checking! Please ask them to support:

- SB 21 – law enforcement surveillance transparency (Santa Clara County has an ordinance in line with SB 21)
- SB 611 – disability placard program improvements

If staff lets me know of other bills that would be worthy of consideration, I will let you know.

After June 8, when does the legislative action committee next meet to make recommendations, or is this the main meeting?

Best regards,

Lisa A. Chung

District Representative

Office of Senator Jerry Hill, 13th District

1528 S. El Camino Real, Suite 303

San Mateo, CA 94402

O: 650.212.3313 | F: 650.212.3320

senate.ca.gov/hill



IN BRIEF

SB 21 will expand the existing privacy standards for automatic license plate readers and cell-intercept devices to all surveillance technologies used by law enforcement agencies.

THE PROBLEM

California enacted two laws in 2015 – SB 34 & SB 741 – that require law enforcement agencies to develop privacy and use policies if an agency uses either an automatic license plate readers system or a cell-phone intercept device, both of which are surveillance technologies intended to collect wide-ranging information on members of the public. The laws also generally require a public discussion before either of the surveillance technologies are deployed.

While these laws appropriately balance protecting Californian’s civil liberties and privacy with law enforcement’s ability to use the technologies to fight crime, they are only applicable to two specific technologies. The laws do not apply to the other surveillance technologies used by the police.

Increasingly, law enforcement agencies are using a wider array of surveillance technologies as they become available. The technologies include: facial recognition, social media scrubbers, radar, and more. The Washington Post reported that the “number of local police departments that employ some type of technological surveillance increased from 20 percent in 1997 to more than 90 percent in 2013, according to the latest information from the Bureau of Justice Statistics.”¹ The data collected with the surveillance devices can be stored for undefined periods of time, often in large, regional databases.

While surveillance technologies can help improve public safety, the proliferation of the technologies has also profound impacts on Californians civil liberties and privacy. As police agencies continue to use a varied array of surveillance devices, they gain a greater ability to capture detailed information about where people go, who they associate with, what they say, and more. There should be laws in place to ensure that surveillance devices are only used for their intended purposes – to catch criminals and fight crime – and not to collect vast amounts of data on a wide array on non-criminal residents.

BACKGROUND

Local law enforcement agencies are increasingly using a variety of electronic surveillance devices, including, but necessarily limited to:

- **Facial recognition:** according to a report by the Georgetown University School of law, “nearly half of all American adults have been entered into law enforcement facial recognition databases.”² Facial recognition uses software to compare a photo of any person against databases, such as databases maintained by the DMV and which hold everyone’s driver’s license photo. It is widely used in California. At least 16 law enforcement agencies use the technology. In San Diego alone, according to an NBC report, “there are 433 devices used by 991 law enforcement personnel.”³ All law enforcement agencies in Los Angeles County have access to facial recognition software. There are no privacy or transparency laws applicable to this technology.
- **Social media scrubbers:** This technology, such as the products Geofeedia and Media Sonar, allow law enforcement agencies to monitor online activity on websites such as Facebook and Twitter. It is often deployed to monitor protest events. For example, Oakland Police admitted to using the technology to monitor Black Lives Matter protests. At least 21 law enforcement agencies across the state use it. There are no privacy or transparency laws applicable to this technology. Local agencies that have bought the technology have not allowed for public discussion nor have they developed basic privacy and use policies.
- **Portable surveillance cameras:** these devices, like those made by Reconyx, can be placed anywhere and take pictures of anyone that crosses their path, regardless of whether or not they are a criminal, or even suspected of being one. Unlike more traditional video surveillance equipment, these cameras do not capture continuous footage. Rather, they capture still images. The small town of Orinda in the Bay Area deployed 13 cameras and over a 90 day period, 5.7 million pictures were taken.⁴ It’s not known how many law enforcement agencies use the technology statewide, but at least 13 different agencies in the Bay Area deploy them.

There are no privacy or transparency laws applicable to this technology.

- **Video surveillance:** seen frequently in public settings, this type of technology typically involves mounting closed caption cameras on light or utility poles. Many of the cameras are capable of capturing video in 360-degree views for 24 hours a day, 365 days a year. Cameras are often capable of zooming in and in some cases, can record sound. Footage is often stored in centralized databases. Cameras can also be controlled remotely. At least 61 departments have surveillance cameras, though only 3 of the departments have any type of privacy or use policy. There are no privacy or transparency laws applicable to this technology.
- **Portable biometric scanners:** this type of technology is similar to facial recognition software and can come in many forms, such as an app on a phone or a dedicated mobile device that can analyze a person's physical characteristics, such as a fingerprint or an eyeball. Like many other surveillance technologies, the data is often sent to central databases. According to the Electronic Frontier Foundation, "the technology can be used to capture people's biometric data and add it to biometric databases, regardless of whether their identity is in question." It's not known how many law enforcement agencies in the state use the technology, though the LA County Sheriff has signed a 6 year contract with a company to provide biometric services. There are no privacy or transparency laws applicable to this technology.
- **Drones:** at least 3 local law enforcement agencies use drones to perform surveillance. The devices, just like those used by hobbyists, are outfitted with cameras that can capture video footage, which can be transmitted to centralized databases. There are no laws dictating that law enforcement agencies disclose their use of drones or how and what they are used for.
- **Automatic license plate readers:** Used primarily by law enforcement agencies on police vehicles, ALPR systems use a combination of high-speed cameras, software and criminal databases to rapidly check the license plates of millions of Californians. Dozens of California law enforcement agencies use the technology and nationwide, 85% of law enforcement agencies plan to expand their use. Use of ALPR is subject to the requirements of SB 34 (Hill, 2015).

- **Cell-phone intercept devices:** commonly known by its brand name "Stingray," allows law enforcement agencies to mimic a cell phone tower. The device, which is usually the size of a briefcase and is portable, can be used to find out who a person is calling, when that call is made, and where the call is made from. In some cases, depending upon the capability of the device, it can capture the content of a conversation as well. At least 11 California law enforcement agencies use the technology, use of which is now subject to the requirements of SB 741 (Hill, 2015).
- **Radar systems:** this technology, such as the product Range-R, uses radio waves to see inside a structure, such a home. Originally deployed in war-zones, the technology, which is handheld and highly portable, can be used by an officer who is standing even more than 50 feet away to detect whether someone is inside a house. It's not known how many California law enforcement agencies use the technology, though it is known that federal law enforcement agencies, such as the FBI, use the technology. There are no privacy or transparency laws applicable to this technology.

THE SOLUTION

SB 21 applies the standards already established for license plate readers and cell-phone intercept devices to a broader array of surveillance devices used by law enforcement agencies. This means that the surveillance technologies will be subject to public disclosure, local legislative review, and each technology must be governed by a privacy policy. Misuse is subject to a private right of action.

SB 21 also proposes two additional provisions. First, no less than every 2 years, law enforcement agencies will have to file a Surveillance Use Report, which will provide an overview of how the surveillance technology has been used. Second, SB 21 provides an exigent circumstances provision to law enforcement, which allows them to borrow or obtain surveillance devices they currently don't have in the case of a true emergency.

SB 21 defines surveillance technologies as any device that is intended monitor and collect audio, visual, locational, or other information on any individual or group. This covers a broad array of current devices, such as facial recognition, portable biometric scanners, and video cameras. Surveillance technologies are defined in a manner so that any future technologies

developed would be captured by the requirements of the bill.

Local jurisdictions could adopt provisions that go farther than the standards established by the bill.

SUPPORT

California Attorneys for Criminal Justice
California Civil Liberties Advocacy
Conference of California Bar Associations
Electronic Frontier Foundation
Media Alliance
Oakland Privacy
Berkeley City Council

FOR MORE INFORMATION

Patrick Welch – 651-4013 – patrick.welch@sen.ca.gov

¹ https://www.washingtonpost.com/local/public-safety/the-new-way-police-are-surveilling-you-calculating-your-threat-score/2016/01/10/e42bccac-8e15-11e5-baf4-bdf37355da0c_story.html

² <http://www.npr.org/sections/alltechconsidered/2016/10/25/499176469/it-aint-me-babe-researchers-find-flaws-in-police-facial-recognition>

³ <http://www.nbcsandiego.com/investigations/Use-of-Facial-Recognition-Software-By-San-Diego-Law-Enforcement-Increasing--378006081.html>

⁴ <http://www.nbcbayarea.com/investigations/Orinda-Surveillance-Cameras-Violates-Privacy-Critics-Say-389333452.html>

Sample Oppose Letter
SB 21 (Hill) Law Enforcement Agencies: Surveillance: Policies

Date

The Honorable Jerry Hill
California State Senate
State Capitol Building, Room 5035
Sacramento, CA 95814

RE: SB 21 (Hill). Law Enforcement Agencies: Surveillance: Policies. (As amended May 26, 2017)
Notice of Opposition Unless Amended

Dear Senator Hill:

The City of _____ respectfully submits notice of its opposition to Senate Bill 21.

This measure would require a governing body, under conditions compliant with the Brown Act, to consider and approve a surveillance policy submitted by a local law enforcement agency. It will also create a private right of action for individuals who suffer harm as a result of violations of an adopted policy.

While the core objectives of this legislation, to introduce a measure of accountability and transparency to the use of surveillance technology by police agencies, is both laudable and one with which the League agrees in concept, as written, this measure would appear to undermine the very purpose of placing surveillance technology into the hands of law enforcement agencies in the first place.

Respectfully, the blanket application of the Brown Act to governing body deliberations about both surveillance policies and the underlying technology that may be used pursuant to those policies, represents an approach that we believe to be unwise. We agree with the remarks of the State Sheriffs Association, voiced in an open legislative hearing, that such a requirement could potentially provide criminals with a road map as to how to evade law enforcement surveillance altogether.

In addition, the private right of action for those harmed by violations of the surveillance policy exposes cities to significant liability without an appropriately high threshold for establishing that liability. The bill provides that a civil action may be brought where a person “knowingly” causes a violation, but there is no requirement for an *intentional act, merely a knowing act*. An intentional act speaks to the desire to bring about harm to an individual, whereas a knowing act may merely involve a general intent to violate the policy, an event that, in itself, may or may not be reasonably expected to cause harm to an individual.

We seek the following amendments to address these deficiencies in the bill and remove our opposition:

First, local governing bodies should be expressly authorized to go into closed session at any time to discuss any surveillance technology and the policy that would guide its use. A summary report of the decisions made would then subsequently be released to the public. To proceed with this legislation under any other protocol undermines any public safety benefit that might arise from law enforcement use of surveillance technology, as it places a wealth of information at the disposal of not just the citizens of the community, but the criminals who would prey upon them.

Second, if there is a willingness to discuss heightening the standard of liability in the context of the civil action that this legislation would authorize, it is possible that the League can remove its opposition. Otherwise, we request that the private right of action be deleted from the bill altogether, as the punitive damages provision combined with what appears to be a low threshold for proof of fault threatens cities with potentially open-ended liability.

For these reasons, the City of _____ respectfully opposes this legislation.

Sincerely