



June 15, 2016

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

**Re: AB 2788 (Gatto): Wireless telecommunications facilities.
As amended on June 15, 2016 – OPPOSE
Set for hearing on June 21, 2016 – Senate Energy, Utilities, and Communications Committee**

The California State Association of Counties (CSAC), the California Chapter of the American Planning Association (APA CA), the League of California Cities (LCC), the Urban Counties of California (UCC), and the Rural County Representatives of California (RCRC) oppose AB 2788 authored by Assembly Member Mike Gatto, which was recently gutted and amended to deal with the permitting of wireless facilities. This bill would unnecessarily preempt local authority, shut out public input by eliminating consideration of the aesthetic and environmental impacts of “small cells,” require cities and counties to lease or license publicly-owned facilities for the installation of such facilities, and imposes arbitrary time limits for the issuance of permits.

Eliminates Local Government Review, Shuts Out The Public, & Is An End Run Around Environmental Review

AB 2788 would preclude local discretionary review of specified “small cell” wireless antennas and related equipment, regardless of whether they will be collocated on existing structures or located on new “poles, structures, or non-pole structures,” including those within the public road right-of-way and on buildings. The bill shuts out the public from the permitting process and preempts adopted local land use plans by mandating that “small cells” be allowed in **all** zones as a use by-right and requiring that the installation of “small cells” shall only require the issuance of a building permit or other administrative permit.

As such, the bill provides a de facto exemption to the California Environmental Quality Act (CEQA) for the installation of such facilities and precludes the consideration by the public of the aesthetic, nuisance impacts and other environmental impacts of these facilities. Local government planning departments have reported that this bill could have implications for protections of coastal areas, tribal cultural resources, historic preservation efforts and protected agricultural land when they are forced to update their zoning ordinances to allow the installation of “small cells” by-right in all zones—whether rural or urban and developed with urban uses or not.

Attached is an example of “small” cell infrastructure. The picture on the right side of the example encompasses many of the aspects of wireless telecommunications infrastructure that is **expressly excluded** from the definition of “small” cell. This sort of infrastructure will be allowed by-right in any zone in a city or county with absolutely zero input from the local agency or the public. To be clear, wireless telecommunications companies have the ability to work with local governments and the public to design wireless telecommunications infrastructure that limit aesthetic impacts, addresses any

potential environmental and public safety issues, and gain the support of the surrounding community. For example, the picture on the left of the attachment is a “small” cell example that is much less obtrusive and aesthetically pleasing that resulted only after local agency and public input.

NOT So “Small” Cell

While the bill includes size limitations for certain components, the definition of a "small cell" could actually result in facilities that are quite large and exceed those specified limitations. The limits do not apply to a laundry list of equipment that could be part of a "small cell," including associated electric meters, concealments, telecom demarcation boxes, ground-based enclosures, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cables, or conduits. The bill seems to allow for an unlimited number of antennas provided each one is less than six cubic feet, while saying nothing about the height of the pole. It is not clear whether the bill allows the wireless industry to install its own poles. In addition, because federal law (Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012) preempts local authority to deny requests to modify these types of facilities, any initial size limits could be made meaningless by subsequent modifications.

Mandatory Leasing of City or County Property at Little to No Cost

The bill would also preempt local authority by *requiring* local governments to lease or license sites they own for the installation of a “small cell,” precluding the imposition of a "reasonable permit, application, consulting, or other fee" associated with the review of an application to use city property unless a similar fee is required for similar types of commercial development within the city or county. This language could be interpreted to prevent cities and counties from charging "rent" for the use of city or county-owned light and other poles. The bill unfairly targets local governments and imposes a disproportionate burden on them by doing nothing to require that investor-owned utilities, state agencies, or other public agencies that may own infrastructure or property appropriate for the installation of “small cells” make these locations available for the installation of such facilities.

Unreasonable and Arbitrary Timelines and Remedies

Finally, the bill continues a troubling precedent from last year’s Assembly Bill 57 and other recent legislation that has sought to prioritize certain favored types of applications by imposing arbitrary time limits on the issuance of building permits or other non-discretionary permits for “small cells.” Specifically, a city or county must issue the applicable building permit or administrative permit no later than 60 days after the submission of an application for a small cell facility, or else the permit is deemed approved. The time period for issuance can only be paused within the first 30 days after the submission of an application for a small cell facility if the city or county notifies the applicant that the application is incomplete. The “deemed issued” remedy is unwarranted and could result in the installation of facilities that do not meet codes designed to promote safe building practices.

While the undersigned organizations support the deployment of facilities to ensure that Californians have access to telecommunications services, this goal is not inherently in conflict with appropriate local planning and consideration for the environmental and aesthetic impacts of such facilities. AB 2788 goes too far by requiring local governments to approve “small cells” in *all* land use zones through a ministerial permit, thereby shutting the public out of decisions that could affect the aesthetics of their community and the quality of their environment. A better approach would be one that encourages


coordination and up-front planning to ensure that wireless technology can be deployed with due consideration for aesthetics and the environment.

Moreover, this is a very difficult issue to have to reconcile this late in the legislative session and with only two and a half weeks before the policy committee deadline. For these reasons, CSAC, APA CA, LCC, UCC, and RCRC are strongly opposed to AB 2788 and we respectfully request your "no" vote on the measure. Please do not hesitate to contact us with any questions about our position.

Sincerely,



Kiana Valentine
Legislative Representative
California State Association of Counties



Lauren De
Legislative Representative
American Planning Association, California Chapter



Jolena Voorhis
Executive Director
Urban Counties of California



Tracy Rhine
Legislative Representative
Rural County Representatives of California



Rony Berdugo
Legislative Representative
League of California Cities

Enclosure

cc: Honorable Mike Gatto, California State Assembly
Members and Consultant, Senate Energy, Utilities & Communications Committee
Kerry Yoshida, Senate Republican Consultant

"Small Cells"

Without collaborative City input:

**"Small Cell" at
4471 Moraga Ave
Oakland**

*(bulky boxes, tacky
bundles of wiring below
unpainted antennas and
noisy cooling fans)**

**With collaborative City input:
Verizon at 1367 Jones Street
in San Francisco**

(unobtrusive and noiseless)

320 built; another 200 expected for other carriers

***AB 2788 would allow multiple poles, for multiple carriers next to each other, even if right in front of your driveway**

