



Protect Our Local Streets  
A Lobbying Coalition by  
Best Best & Krieger LLP

May 8, 2017

The Honorable Ricardo Lara  
Chair, Senate Appropriations Committee  
State Capitol, Room 5050  
Sacramento, CA 95814

**Subject: OPPOSITION to SB 649 (Hueso) – “Small Cell” Wireless Infrastructure Permitting**  
In Senate Appropriations on May 15, 2017 – As Amended on May 2, 2017

Dear Senator Lara:

The California Chapter of the American Planning Association (APA California), the League of California Cities (LCC), the Urban Counties of California (UCC), the Rural County Representatives of California (RCRC) and Protect our Local Streets Coalition (POLS) all respectfully oppose SB 649. SB 649 would unnecessarily frustrate local consideration of the aesthetic and environmental impacts of “small cells.” These not-so-small “small cell” structures would be required to be allowed on public property in *any* zone in a city or county. SB 649 would also require cities and counties to lease or license publicly-owned facilities, among many other provisions.

This bill was recently amended to try and address the concerns of local government. However, these amendments have not addressed all of our concerns. While we certainly appreciate the work of the author and the Chair of Senate Governance and Finance to try and narrow the measure, we still have the following concerns:

**By-Right Approval for “Small Cells”- LIMITED DISCRETIONARY APPROVAL ALLOWED**

SB 649 was amended to allow for a type of discretionary review of small cell applications. The language, however, as has been the case at every turn, was written at the last moment by the wireless industry and does not address significant issues raised by the opposition. Cities with prior experience may, in fact, be able to adopt new ordinances to utilize the processes described in the bill, but many other cities that have yet to see an application for a small cell will likely be caught off guard. The bill places the entire burden on local governments to adopt a complicated set of ordinances, and by the time an application for a small cell is submitted, it's too late. Under legislation that only took effect in 2016, local governments must act on applications for a wireless facility under short deadlines or the application is deemed approved. In sum, the current language providing for local discretionary review of small cells is a trap for the unwary, and almost certainly will lead to litigation to clarify new and undefined terms made up by the wireless industry.

### **Not So Small**

Unfortunately, these “small cells” are not necessarily small. ***The definition is not inclusive of ALL infrastructure necessary to support 5G technology.*** The definition explicitly excludes:

- Electric meters and any required demarcation box
- Concealment elements
- Any telecommunications demarcation box
- Grounding equipment
- Power transfer switches
- Cut-off switches
- Vertical cable runs

The recent amendments restrict the associated “on-pole” equipment to 21 cubic feet. However, we would note that the definition of vertical infrastructure includes communications service, electric service, lighting traffic control, or similar functions. Since similar functions is not defined, this could apply to other infrastructure owned by the city or county.

### **Mandatory Leasing of City or County Property at Little to No Cost for the Promise of 5G**

SB 649 forces local government to rent space for small cells on public property at rates far below fair market value. Rents from the use of public property, which every other for-profit business pays, help defray the cost of essential public services that are otherwise provided at tax payer expense. Passing a rent-control statute for the sole benefit of the wireless industry, which is the main purpose of SB 649, over time either takes money out of the tax payer’s pocket or it forces cuts to necessary services. SB 649 sets a dangerous precedent for other private industries to seek similar treatment, further eroding the ability to fund local services.

The supporters of SB 649 try to justify this gift of public resources by claiming that the public will benefit so much from 5G technology that it’s acceptable. The fact that many people will benefit from 5G services is beside the point. The real question is what benefit does the public get from giving the wireless industry a rent-control statute for public property that will one day be worth tens of millions of dollars? Does SB 649 require that 5G services be delivered to low-income neighborhoods in exchange for this generous gift of public resources? No. Are the wireless companies behind SB 649 required to provide lifeline wireless service to low-income customers? No. Do they provide any free services to public schools or libraries? No. Is there anything in SB 649 that can legitimately be called a public benefit? No.

### **Reinventing the Wheel**

The Wireless Telecommunications Bureau recently issued a Public Notice for comment on potential FCC actions to help expedite the deployment of small cells, including streamlining at the local level. The comment period just closed in March of 2017. It is more appropriate to allow this process to complete before taking action on this matter.

### Small Cell Deployment is New

As we understand per discussions with supporters, small cells are just in the beginning stages of being deployed. Given that many jurisdictions may not have even processed a small cell permit yet, or only handled a small number, we are unclear where the concerns are coming from that have prompted the need for this bill. We haven't seen any examples yet to demonstrate a lack of deployment. We understand that there is a desire to have certainty for providers when applying for these permits – local governments want certainty too. Complete applications help -- quick response to potential redesign also helps, for example. **To provide a more streamlined statewide process, it may be more beneficial to require the Office of Planning and Research (OPR) to develop a model ordinance or other guidance for both jurisdictions and providers to use, rather than passing legislation at this time.**

### What's Next?

The wireless industry continues to push legislation every year to further remove local government's discretion over wireless structures. **AB 57 just passed and went into effect a little over a year ago. That bill required permits to be processed faster and provided a deemed approved provision to collocations as well as brand new facilities. It is unclear what was lacking in AB 57 that makes this bill, SB 649, necessary - especially prior to any data on the effectiveness of the new statute being collected. We are unsure what problem is seeking to be solved with this legislation.** We also can't help but wonder what else, or what other types of structures or industries will be next in line to demand rent controlled public property.

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. **A better approach would be one that encourages coordination and up-front planning to ensure that wireless technology can be deployed as quickly as possible but with due consideration for aesthetics and the environment.**

Sincerely,



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cc: The Honorable Senator Ben Hueso  
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