



® March 30, 2017

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

**Re: SB 649 (Hueso): Wireless telecommunications facilities
As amended on March 28, 2017 – OPPOSE
Set for hearing on April 4, 2017 – Senate Utilities, Energy and Communications
Committee**

Dear Senator Hueso:

The California State Association of Counties (CSAC) is regrettably opposed to your Senate Bill 649. This bill would eliminate discretionary review for the installation of small cells, as defined, within the public right-of-way and utility easements, as well as anywhere within land use zones that include commercial or industrial uses. The bill would also, for the first time, prohibit cities and counties from precluding the leasing of their so-called “vertical infrastructure”, including streetlights and stoplights, for the installation of wireless telecommunications facilities. Moreover, the bill would impose a cap developed for utility poles on the rents that cities or counties could charge for the use of their publicly-owned non-utility pole vertical infrastructure.

SB 649 would eliminate discretionary review for the installation of small cells in significant portions of communities and everywhere within the public-right-of-way. This broad language would appear to limit county’s discretion and the ability to consider public input and aesthetics impacts of small cells installed within the public right-of-way in all zones (including residential neighborhoods) or anywhere inside or outside of the public right-of-way in mixed use residential/commercial zones. Instead counties would only be able to approve small cells located in these areas through an “administrative permit.”

While the bill attempts to take a permissive approach to encouraging counties to only require a single administrative permit—by using “may” instead of “shall”—additional clarity is needed as to what constitutes an administrative permit for the purposes of this bill. Does a building permit or an encroachment permit qualify as an administrative permit? What sort of conditions can be applied by the local government under this administrative review? Counties are concerned about losing discretion over aesthetic considerations, especially since SB 649 would require counties to allow the installation of small cells on streetlights and other infrastructure that hasn’t previously been used for communications or electrical transmission purposes. Moreover, to guarantee public safety, counties should be able to maintain their traditional level of control over the time, place and manner (including aesthetics) of encroachments to the public right-of-way.

Counties would not be able to preclude the lease of their publicly-owned or controlled vertical infrastructure under SB 649. While CSAC understands that the sponsors may not intend to require every streetlight, stoplight, or other locally-owned or controlled pole to be leased for use of small cells, our ability to determine areas where small cells may or may not be appropriate should be clarified in the bill. There also appear to be requirements that are

unworkable. For instance, it appears that counties may not be able to reserve space for future public uses of their streetlights or stoplights when a small cell is installed on a publicly-owned pole (for example, there may be plans to install an additional signal head on a county-owned traffic signal pole). The bill should clarify our ability to ensure that the installation of small cells would not preclude the intended use of the publicly-owned infrastructure.

CSAC is also concerned by the bill's imposition of limits to rents for installations on these non-utility poles. Given the public investment used in developing this infrastructure, counties owe it to their taxpayers to secure a fair rent for the lease of this public property. The limitations created by SB 649 would attempt to apply rates developed for utility poles to streetlights and stoplights, where there is no precedent for requiring these types of installations and where the formulas developed for utility poles simply do not apply. Finally, the bill is unclear as to how the prohibition on precluding the lease of pole space for small cells would apply to streetlights that are leased, not owned by public agencies. These leased poles could be considered "controlled" by the public agency, and would therefore fall under the bill's provisions.

Finally, CSAC is concerned about the requirement that public property outside of the public right-of-way be leased for small cells if it is leased for any commercial purpose. While this section of the bill does not seem to preclude the imposition of a fair market rent, the requirement should at least be limited to circumstances where the public property is leased for a purpose *similar* to the installation of small cell wireless antennas.

For these reasons, CSAC is opposed to SB 649. Should you have any questions regarding our position, please do not hesitate to contact Chris Lee at 916-650-8180, or clee@counties.org.

Sincerely,



DeAnn Baker
Deputy Executive Director of Legislative Affairs

cc: Members, Senate Utilities, Energy and Communications Committee
Nidia Bautista, Consultant, Senate Utilities, Energy and Communications Committee
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