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The Honorable Ben Hueso
California State Senate, District 40
State Capitol Building, Room 4035
Sacramento, CA 95814

RE: SB 649 as Proposed to be Amended by RN 17 08941 (Hueso). Wireless and Small Cell Telecommunications Facilities.
Oppose

Dear Senator Hueso:

The League of California Cities respectfully opposes your SB 649 and proposed amendments in RN 17 08941 (proposal) related to the permitting of wireless and small cell telecommunications facilities. This proposal unnecessarily and unconstitutionally strips local authority over public property and shuts out public input and local discretion by eliminating consideration of the aesthetic and environmental impacts of “small cells.”

This proposal would prohibit local discretionary review of “small cell” wireless antennas, including equipment collocated on existing structures or located on new “poles, structures, or non-pole structures,” including those within the public right-of-way and buildings. The proposal preempts adopted local land use plans by mandating that “small cells” be allowed in all zones as a use by-right, including all residential zones.

As such, the proposal provides a de facto exemption to the California Environmental Quality Act (CEQA) for the installation of such facilities and precludes consideration by the public of the aesthetic, nuisance, and environmental impacts of these facilities, all of which are of particular importance when the proposed location of facilities is within a residential zone.

The proposal’s use of the Federal Communications Commission (FCC) definition of a “small cell” include other “small cell” equipment such as electric meters, concealments, telecom demarcation boxes, ground-based enclosures, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cables, or conduits. The proposal allows for an unlimited number of antennas of less than three cubic feet each or six cubic feet for all antennas, while placing no height restrictions on the pole. While proponents argue that an individual “small cell” has very little impact, the cumulative size specifications of all the small cells and associated equipment far exceed the perceived impacts from a single cell.

The “associated equipment” as defined in this proposal includes up to 28 cubic feet for collocations on all non-pole structures such as on building and water tanks and 21 cubic feet for collocations on all pole structures such as light poles/traffic signal poles/and utility poles when the structures can support less than three providers. For structures that can support at least three providers, the definitions would allow for up to 35 cubic feet for non-pole collocations and 28 cubic feet for pole collocations.

The proposal also unconstitutionally preempts local authority by requiring local governments to make available sites they own for the installation of a “small cell.” While the city may place “fair and reasonable terms and conditions” on the use of city property, the proposal does not provide the city with

any discretion to deny a “small cell” to be located on city property except for fire department sites. In effect, this measure unconstitutionally gives control of public property to private telecommunications companies, while also precluding local governments from leasing or licensing publicly owned property.

Further, the requirement that a city allow the installation of a small cell on city-owned property not within the right-of-way to the extent that it allows access to the property for other commercial projects or uses has the potential to lead to absurd and illogical results. For example, if a city-owned Little League field allows commercial signage on its outfield wall, the city would be precluded from denying a demand to allow a small cell on the property no matter how inappropriate such a use would be.

Under this proposal, local governments would be required to give preferential treatment to one industry that has received “most favored nation” status under state law. No justification is provided for why this is necessary. This bill strips local government of the authority to protect the quality of life of our residents, and to protect public property and the public right-of-way from relatively unconstrained access by small cells.

Local governments typically encourage new technology into their boundaries because of its potential to dramatically improve the quality of life for their residents. However, this proposal goes too far by requiring local governments to approve “small cells” in all land use zones, including residential 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.

For these reasons, the League respectfully **Opposes** this proposal. If you have any questions regarding our position, please contact Rony Berdugo at 916-658-8283 or at rberdugo@cacities.org.

Sincerely,



Rony Berdugo
Legislative Representative

cc: Members, Senate Energy, Utilities, and Commerce Committee
Nidia Bautista, Consultant, Senate Energy, Utilities and Commerce Committee
Kerry Yoshida, Principal Consultant, Senate Republican Caucus