



MEMORANDUM

Date: June 20, 2017
To: Council Members, Sean McGlynn, Gloria Hurtado, Sue Gallagher, Daisy Gomez
From: Liz Licursi
Subject: Oppose SB 649

Attached is the letter of opposition for SB 649 (Hueso) Wireless and Small Cell Telecommunications Facilities.

Due to the time constraints and a matter of urgency, the Mayor has signed this letter and it has been sent to the appropriate Committee/Member. You are receiving a copy of the letter and bill, as per Council Policy 000-40.



May 31, 2017

Senator Ben Hueso
State Capitol, Room 4035
Sacramento, CA 95814
FAX 916-651-4940

RE: Oppose SB 649

Dear Senator Hueso,

CHRIS COURSEY
Mayor

JACK TIBBETTS
Vice Mayor

JULIE COMBS
ERNESTO OLIVARES
CHRIS ROGERS
JOHN SAWYER
TOM SCHWEDHELM

The City of Santa Rosa respectfully opposes your SB 649 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.

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.

SB 649'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. 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 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.

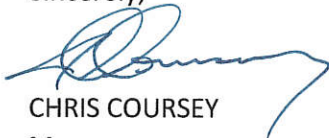
The measure would limit the rent a local government can charge a wireless company to place a small cell on public property to a "cost-based" fee. SB 649 provides favorable treatment to one industry over others who are paying the appropriate market rate for access to city property. The public is entitled to the fair-market value for using their property, and the local governments are the legal owners and landlords renting the property. When local governments rent public property, they are obligated to act in the public's interest and receive fair-market value. Control of property, including the ability to charge fair rent, is an essential property right.

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, SB 649 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 City of Santa Rosa opposes your SB 649.

Sincerely,



CHRIS COURSEY
Mayor

C: Senator Mike McGuire, Fax 916-651-4902
League of California Cities
Emanuel Jones

F:\COUNCIL\Mayor\Oppose SB 649.docx

AMENDED IN SENATE MAY 2, 2017

AMENDED IN SENATE MARCH 28, 2017

SENATE BILL

No. 649

Introduced by Senator Hueso
(Principal coauthor: Assembly Member Quirk)
(Coauthor: Senator Dodd)

February 17, 2017

An act to amend Section 65964 of, and to add Section 65964.2 to, the Government Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

SB 649, as amended, Hueso. Wireless telecommunications facilities.

Under existing law, a wireless telecommunications collocation facility, as specified, is subject to a city or county discretionary permit and is required to comply with specified criteria, but a collocation facility, which is the placement or installation of wireless facilities, including antennas and related equipment, on or immediately adjacent to that wireless telecommunications collocation facility, is a permitted use not subject to a city or county discretionary permit.

This bill would provide that a small cell is a permitted use, ~~not~~ subject *only to a specified permitting process adopted by a city or county* ~~discretionary permit, county~~, if the small cell meets specified requirements. By imposing new duties on local agencies, this bill would impose a state-mandated local program. The bill would authorize a city or county to require an ~~administrative permit~~ *encroachment permit or a building permit, and any additional ministerial permits*, for a small cell, as specified. The bill would define the term "small cell" for these purposes.

Under existing law, a city or county, as a condition of approval of an application for a permit for construction or reconstruction of a development project for a wireless telecommunications facility, may not require an escrow deposit for removal of a wireless telecommunications facility or any component thereof, unreasonably limit the duration of any permit for a wireless telecommunications facility, or require that all wireless telecommunications facilities be limited to sites owned by particular parties within the jurisdiction of the city or county, as specified.

This bill would require permits for these facilities to be renewed for equivalent durations, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares that, to ensure
2 that communities across the state have access to the most advanced
3 wireless communications technologies and the transformative
4 solutions that robust wireless connectivity enables, such as Smart
5 Communities and the Internet of Things, California should work
6 in coordination with federal, state, and local officials to create a
7 statewide framework for the deployment of advanced wireless
8 communications infrastructure in California that does all of the
9 following:

10 (a) Reaffirms local governments' historic role and authority
11 with respect to wireless communications infrastructure siting and
12 construction generally.

13 (b) Reaffirms that deployment of telecommunications facilities
14 in the rights-of-way is a matter of statewide concern, subject to a
15 statewide franchise, and that expeditious deployment of
16 telecommunications networks generally is a matter of both
17 statewide and national concern.

18 (c) Recognizes that the impact on local interests from individual
19 small wireless facilities will be sufficiently minor and that such

1 deployments should be a permitted use statewide and should not
2 be subject to discretionary zoning review.

3 (d) Requires expiring permits for these facilities to be renewed
4 so long as the site maintains compliance with use conditions
5 adopted at the time the site was originally approved.

6 (e) Requires providers to obtain all applicable building or
7 encroachment permits and comply with all related health, safety,
8 and objective aesthetic requirements for small wireless facility
9 deployments on a ministerial basis.

10 (f) Grants providers fair, reasonable, nondiscriminatory, and
11 nonexclusive access to locally owned utility poles, ~~street lights,~~
12 *streetlights*, and other suitable host infrastructure located within
13 the public right-of-way and in other local public places such as
14 stadiums, parks, campuses, hospitals, transit stations, and public
15 buildings consistent with all applicable health and safety
16 requirements, including Public Utilities Commission General Order
17 95.

18 (g) Provides for full recovery by local governments of the costs
19 of attaching small wireless facilities to utility poles, ~~street lights,~~
20 *streetlights*, and other suitable host infrastructure in a manner that
21 is consistent with existing federal and state laws governing utility
22 pole attachments generally.

23 (h) Permits local governments to charge wireless permit fees
24 that are fair, reasonable, nondiscriminatory, and cost based.

25 (i) Advances technological and competitive neutrality while not
26 adding new requirements on competing providers that do not exist
27 today.

28 SEC. 2. Section 65964 of the Government Code is amended
29 to read:

30 65964. As a condition of approval of an application for a permit
31 for construction or reconstruction for a development project for a
32 wireless telecommunications facility, as defined in Section 65850.6,
33 a city or county shall not do any of the following:

34 (a) Require an escrow deposit for removal of a wireless
35 telecommunications facility or any component thereof. However,
36 a performance bond or other surety or another form of security
37 may be required, so long as the amount of the bond security is
38 rationally related to the cost of removal. In establishing the amount
39 of the security, the city or county shall take into consideration

1 information provided by the permit applicant regarding the cost
2 of removal.

3 (b) Unreasonably limit the duration of any permit for a wireless
4 telecommunications facility. Limits of less than 10 years are
5 presumed to be unreasonable absent public safety reasons or
6 substantial land use reasons. However, cities and counties may
7 establish a build-out period for a site. A permit shall be renewed
8 for an equivalent duration unless the city or county makes a finding
9 that the wireless telecommunications facility does not comply with
10 the codes and permit conditions applicable at the time the permit
11 was initially approved.

12 (c) Require that all wireless telecommunications facilities be
13 limited to sites owned by particular parties within the jurisdiction
14 of the city or county.

15 SEC. 3. Section 65964.2 is added to the Government Code, to
16 read:

17 65964.2. (a) A small cell shall be a permitted use ~~not~~ subject
18 *only to a permitting process adopted by a city or county*
19 ~~discretionary permit pursuant to subdivision (b)~~ if it satisfies the
20 following requirements:

21 (1) The small cell is located in the public right-of-way in any
22 zone or in any zone that includes a commercial or industrial use.

23 (2) The small cell complies with all applicable ~~state federal,~~
24 ~~state, and local health and safety regulations. regulations, including~~
25 ~~compliance with the federal Americans with Disabilities Act of~~
26 ~~1990 (42 U.S.C. Sec. 12101 et seq.).~~

27 (3) The small cell is not located on a fire department facility.

28 (b) (1) A city or county may require that the small cell be
29 approved pursuant to ~~a single administrative permit~~ *a building*
30 *permit or its functional equivalent in connection with placement*
31 *outside of the public right-of-way or an encroachment permit or*
32 *its functional equivalent issued consistent with Sections 7901 and*
33 *7901.1 of the Public Utilities Code for the placement in public*
34 *rights-of-way, and any additional ministerial permits, provided*
35 ~~that the permit is all permits are issued within the time frames~~
36 ~~timeframes~~ *required by state and federal law.*

37 (2) ~~An administrative permit~~ *Permits issued pursuant to this*
38 *subdivision* may be subject to the following:

39 (A) The same administrative permit requirements as *for* similar
40 construction projects *and* applied in a nondiscriminatory manner.

1 ~~(B) The submission of~~ *A requirement to submit* additional
2 information showing that the small cell complies *with* the Federal
3 Communications Commission's regulations concerning radio
4 frequency emissions referenced in Section 332(c)(7)(B)(iv) of
5 Title 47 of the United States Code.

6 ~~(C) A condition that the applicable permit may be rescinded if~~
7 *construction is not substantially commenced within one year.*
8 *Absent a showing of good cause, an applicant under this section*
9 *may not renew the permit or resubmit an application to develop*
10 *a small cell at the same location within six months of rescision.*

11 ~~(D) A condition that small cells no longer used to provide~~
12 *service shall be removed at no cost to the city or county.*

13 ~~(E) Compliance with building codes, including building code~~
14 *structural requirements.*

15 ~~(F) A condition that the applicant pay all electricity costs~~
16 *associated with the operation of the small cell.*

17 ~~(G) A condition to comply with feasible design and collocation~~
18 *standards on a small cell to be installed on property not in the*
19 *right-of-way.*

20 ~~(3) The administrative permit~~ *Permits issued pursuant to this*
21 *subdivision shall not be subject to:*

22 ~~(A) Requirements to provide additional services, directly or~~
23 *indirectly, including, but not limited to, in-kind contributions from*
24 *the applicant such as reserving fiber, conduit, or pole space.*

25 ~~(B) The submission of any additional information other than~~
26 *that required of similar construction projects, except as specifically*
27 *provided in this section.*

28 ~~(C) Limitations on routine maintenance or the replacement of~~
29 *small cells with small cells that are substantially similar, the same*
30 *size or smaller.*

31 ~~(D) The regulation of any antennas~~ *micro wireless facilities*
32 *mounted on cable strands; a span of wire.*

33 ~~(c) A city or county shall not preclude the leasing or licensing~~
34 *of its vertical infrastructure located in public right-of-way or public*
35 *utility easements under the terms set forth in this paragraph.*
36 *Vertical infrastructure shall be made available for the placement*
37 *of small cells under fair and reasonable fees, terms, and conditions*
38 *and offered on a nondiscriminatory basis for small cells. Fees shall*
39 *be cost-based, and shall not exceed the lesser of either of the*
40 *following: conditions, which may include feasible design and*

1 collocation standards. A city or county may reserve capacity on
2 vertical infrastructure if the city or county adopts a resolution
3 finding, based on substantial evidence in the record, that the
4 capacity is needed for projected city or county uses. Fees shall be
5 tiered or flat and within a range of \$100 to \$850 per small cell
6 per year, indexed for inflation from the effective date of this section.

7 ~~(1) The costs of ownership of the percentage of the volume of~~
8 ~~the capacity of the vertical infrastructure rendered unusable by a~~
9 ~~small cell.~~

10 ~~(2) The rate produced by applying the formula adopted by the~~
11 ~~Federal Communications Commission for telecommunications~~
12 ~~pole attachments in Section 1.1409(c)(2) of Part 47 of the Code~~
13 ~~of Federal Regulations.~~

14 (d) A city or county shall not ~~unreasonably discriminate in the~~
15 ~~leasing or licensing of~~ *against the deployment of a small cell on*
16 *property owned by the city or county and shall make space*
17 *available on property not located in the public right-of-way owned*
18 *or operated by the city or county for installation of a small cell. A*
19 *city or county shall authorize the installation of a small cell on*
20 *property owned or controlled by the city or county not located*
21 *within the public right-of-way to the same extent the city or county*
22 *permits access to that property for under terms and conditions that*
23 *are no less favorable than the terms and conditions under which*
24 *the space is made available for comparable commercial projects*
25 *or uses. These installations shall be subject to reasonable and*
26 *nondiscriminatory rates, terms, and conditions; conditions, which*
27 *may include feasible design and collocation standards.*

28 (e) *Nothing in this section shall be construed to alter, modify,*
29 *or amend any franchise or franchise requirements under state or*
30 *federal law.*

31 ~~(e)~~

32 (f) For purposes of this section, the following terms have the
33 following meanings:

34 (1) (A) "Small cell" means a wireless telecommunications
35 facility, as defined in Section 65850.6, using licensed or unlicensed
36 spectrum that meets the following qualifications:

37 (i) ~~Any individual antenna, All antennas on the structure,~~
38 ~~excluding the associated equipment, is individually no more than~~
39 ~~three cubic feet in volume, and all antennas on the structure total~~

no more than six cubic feet in volume, whether in a single array or separate.

(ii) (I) The associated equipment on pole structures does not exceed 21 cubic feet for poles that can support fewer than three providers or 28 cubic feet for pole collocations that can support at least three providers, or the associated equipment on nonpole structures does not exceed 28 cubic feet for collocations that can support fewer than three providers or 35 cubic feet for collocations that can support at least three providers, *provided that any individual piece of associated equipment or pole structures do not exceed nine cubic feet.*

(II) The following types of associated ancillary equipment are not included in the calculation of equipment volume:

- (ia) Electric meters and any required pedestal.
- (ib) Concealment elements.
- (ic) Any telecommunications demarcation box.
- (id) Grounding equipment.
- (ie) Power transfer switch.
- (if) ~~Cut-off~~ Cutoff switch.
- (ig) Vertical cable runs for the connection of power and other services.

(B) “Small cell” includes a micro wireless facility that is no larger than 24 inches long, 15 inches in width, 12 inches in height, and that has an exterior antenna, if any, no longer than 11 inches.

~~(B)~~
(C) “Small cell” does not include communications infrastructure extending beyond the telecommunications demarcation box, *either of the following:*

- (i) Coaxial or fiber optic cables that do not exclusively provide service to that small cell.
- (ii) Wireless facilities placed in any historic district listed in the National Park Service Certified State or Local Historic Districts or in any historical district listed on the California Register of Historical Resources or placed in coastal zones subject to the jurisdiction of the California Coastal Commission.

(2) (A) “Vertical infrastructure” means all poles or similar facilities owned or controlled by a city or county that are in the public right-of-way or public utility easements and meant for, or used in whole or in part for, communications service, electric service, lighting, traffic control, ~~signage~~, or similar functions.

1 (B) For purposes of this paragraph, the term “controlled”
2 means having the right to allow subleases or sublicensing. A city
3 or county may impose feasible design or collocation standards for
4 small cells placed on vertical infrastructure, including the
5 placement of associated equipment on the vertical infrastructure
6 or the ground.

7 (g) Existing agreements regarding the leasing or licensing of
8 vertical infrastructure entered into prior to the effective date of
9 this section remain in effect, subject to applicable termination
10 provisions. The operator of a small cell may accept the rates of
11 this section for small cells that are the subject of an application
12 submitted after the agreement is terminated pursuant to the terms
13 of the agreement.

14 (h) Nothing in this section shall be construed to impose an
15 obligation to charge a use fee different than those authorized by
16 Part 2 (commencing with Section 9510) of Division 4.8 of the
17 Public Utilities Code on a local publicly owned electric utility.

18 (f)

19 (i) The Legislature finds and declares that small cells, as defined
20 in this section, have a significant economic impact in California
21 and are not a municipal affair as that term is used in Section 5 of
22 Article XI of the California Constitution, but are a matter of
23 statewide concern.

24 SEC. 4. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 a local agency or school district has the authority to levy service
27 charges, fees, or assessments sufficient to pay for the program or
28 level of service mandated by this act, within the meaning of Section
29 17556 of the Government Code.