

April 25, 2017

SB 649 (Hueso) – Wireless and Small Cell Telecommunications Facilities OPPOSE

The California Chapters of the American Public Works Association opposes Senate Bill 649, which is scheduled to be heard on April 26, 2017 in the Senate Governance and Finance Committee.

SB 649 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***.

We oppose the bill due to the following reasons:

- It 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 impact of “small cells.”
- 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 bill’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.
- 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. Control of property, including the ability to charge fair rent, is an essential property right.

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.

For these reasons, the CA APWA opposes SB 649.



Lisa Ann Rapp
Chair, CA APWA Advocacy Committee

The nine California Chapters of the American Public Works Association, representing nearly 4,000 members, advocate policies that sustain infrastructure and performance on behalf of all levels of government. APWA's public policy objectives are guided by these principles:

- *Support for adequate investment in public infrastructure.*
- *Respect for local authority.*
- *Reasonable regulations and protection from unfunded mandates.*
- *Support for streamlining government oversight.*

Working in the public interest, APWA's 29,000 members nationwide design, build, operate and maintain transportation, water supply, sewage and refuse disposal systems, public buildings and other structures and facilities essential to our nation's economy and way of life.