

MACKENZIE & ALBRITTON LLP

155 SANSOME STREET, SUITE 800
SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE 415 / 288-4000
FACSIMILE 415 / 288-4010

August 29, 2017

VIA EMAIL

Mayor Trish Herrera Spencer
Vice Mayor Malia Vella
Council Members Marilyn Ezzy Ashcraft,
Frank Matarrese and Jim Oddie
City of Alameda
2263 Santa Clara Avenue
Alameda, California 94501

Re: Authorization to Execute Agreements for up to 25 Years for Wireless
Telecommunications Facilities, Construction, Marketing, and
Management Services on City Assets in Exchange for 35% of
Revenues
City Council Consent Item 5-L, September 5, 2017

Dear Honorable Mayor Spencer, Vice Mayor Vella and Council Members:

We write to you on behalf of Verizon Wireless. The wireless industry has been working with Senator Ben Hueso (D–San Diego) on forward-thinking legislation (SB 649) that will expedite the deployment of “small cell” networks in California to expand the coverage and capacity of existing 4G networks and prepare for new high-speed 5G networks. Dozens of amendments have been made to the proposed legislation to accommodate the concerns of local government. As an accommodation to cities that already benefit from master agreements with wireless providers for placement of small cells on their light standards and other vertical infrastructure, an amendment was accepted to the legislation that honors “existing agreements” between wireless providers and local jurisdictions. Contrary to statements made in the staff report for this agenda item, other amendments to SB 649 would allow cities to exercise reasonable “time, place, and manner” control over access to the right-of-way and specify that annual compensation for use of city vertical infrastructure includes a city’s cost of ownership of the usable space occupied by a small cell plus up to an additional \$250 and any reasonable permitting fees. Further, the bill includes an exclusion that retains the pole availability, fees and charges for poles owned by Alameda Municipal Power, under existing California Public Utilities Code §9510 et seq.

Unfortunately, certain third-party companies have been encouraging local jurisdictions to rush into purportedly preemptory agreements prior to passage of the legislation arguing that such agreements will supersede SB 649. These companies have been pressing local jurisdictions to quickly turn over control of city assets with long-term master agreements of their own that will purportedly “protect” the local jurisdiction from the provisions of SB 649. The agreements generally transfer control of city assets that may be used for wireless facilities regardless of whether the assets are in current use or proposed for future use as wireless facilities. Further, these third-party agreements come at a high price: up to 35% of lease or license revenues that would otherwise be paid to the local jurisdiction.

As noted above, existing state law already requires that local publicly-owned electric utilities (such as Alameda Municipal Power) allow communication service providers to attach equipment to their utility poles with rates set by specified procedures. See California Public Utilities Code §9510 et seq. Wireless carriers may pursue this option to place small cells on utility poles irrespective of the provisions of SB 649 or any third-party agreements.

The suggestion that any “protection” from the provisions of SB 649 can be provided by last minute agreements with third-parties is speculative. Certainly, hastily approved third-party agreements with cities intended to bypass pending state legislation are not consistent with the intent, or in the spirit of, the “existing agreements” provisions added to SB 649. Not only are third-party agreements inconsistent with the intent of the legislation, they are likely to subject local jurisdictions to litigation and a loss of investment in infrastructure.

The staff report to the City Council is inaccurate with respect to two key provisions of SB 649 as amended. First, the legislation would not eliminate a city’s ability to consider the “time, place and manner” of installations; rather, SB 649 would allow a city to approve an encroachment permit “consistent with Sections 7901 and 7901.1 of the Public Utilities Code for the placement of small cells in public rights-of-way.” Public Utilities Code 7901.1 allows cities to exercise reasonable control of the “time, place and manner” in which rights-of-way are accessed. Second, the \$250 annual charge is not the only charge a city could impose for each small cell on city vertical infrastructure. SB 649 would also allow a city to charge an annual attachment rate based on the percentage of usable space a small cell occupies multiplied by the city’s annual cost of ownership of the vertical infrastructure. The bill also allows for reasonable permit fees to be charged consistent with existing law (e.g., Govt Code §50030). The amendments to SB 649 that provide for “time, place and manner” control and an additional annual attachment rate have been accepted by industry and the author.

Verizon Wireless has been working diligently to deploy small cell technology to cities and counties in California and has executed mutually beneficial master lease

Mayor and City Council
City of Alameda
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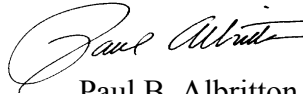
Page 3 of 3

agreements, master license agreements and strategic alliances directly with major cities throughout the state. Direct agreements facilitate firsthand communication between Verizon Wireless and local decision-makers, allowing them to craft mutually beneficial arrangements for infrastructure investment tailored to meet the needs of each community. Verizon Wireless prefers these direct relationships in order to avoid cookie-cutter arrangements that eliminate direct hands-on communication and divert resources from the wireless providers and local jurisdiction that would otherwise allow for greater investment in local communities.

We encourage you to refrain from acting upon the speculative promises of third-party companies pressing for “quick deals” that purport to “protect” a city from the provisions of SB 649. Such third-party agreements are not in the public interest because they will place local jurisdictions in conflict with wireless providers should SB 649 be enacted, hinder communication between wireless providers and local jurisdictions, and in all cases, siphon off valuable public resources (up to 35% of revenue on wireless facilities on City-owned property) that would otherwise benefit local communities through improved small cell networks.

Please feel free to contact me with any questions you may have regarding SB 649 and the numerous amendments that have been made to respond to local jurisdiction concerns.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul Albritton", written in a cursive style.

Paul B. Albritton

cc: Janet C. Kern

LARA WEISIGER

From: Samantha Caygill <scaygill@cacities.org>
Sent: Tuesday, September 05, 2017 8:42 AM
To: Marilyn Ezzy Ashcraft
Cc: Jill Keimach; LARA WEISIGER; Samantha Caygill
Subject: RE: Would Like Color Copy of July 26 Letter From Coalition of California Cities Opposed to SB 649
Attachments: 649 Nascar Letter-7.26.17.pdf; SB-649 DOF Analysis.pdf; SB 649 Not So Small Cell Examples.pdf

Good morning Marilyn,

That letter is the first attachment here. I've emailed our Sac team to see if there is an even more updated version than this as we have received some additional opposition. I'll forward that as soon as I get it if there's a more updated version.

I've also attached a couple other items that might be helpful – an analysis from the State Department of Finance that details their opposition and a handout with pictures of what small cell infrastructure could look like.

I hope this helps for your needs!

Sam

Sam Caygill | East Bay Division, League of California Cities | 510.473.5418

From: Marilyn Ezzy Ashcraft [mailto:MEzzyAshcraft@alamedaca.gov]
Sent: Monday, September 04, 2017 11:39 AM
To: Samantha Caygill
Cc: Jill Keimach; LARA WEISIGER
Subject: Would Like Color Copy of July 26 Letter From Coalition of California Cities Opposed to SB 649

Hi Sam,

I hope you are enjoying the holiday weekend.

Could you please e-mail a PDF of that great letter with all the City seals that we got at the last East Bay Division Board of Directors meeting? We have an agenda item on Tuesday concerning our city's opposition to SB 649 and Jill and I think this letter would be an excellent attachment.

Could you also please copy our City Clerk, Lara Weisiger? Lara's email address is LWEISIGER@alamedaca.gov

Thanks so much for your assistance! I'll see you in Sacramento next week.

Best regards,
Marilyn

Marilyn Ezzy Ashcraft



DATE: July 26, 2017
TO: Members of the California State Assembly
FROM: A Coalition of California Cities
RE: **SB 649 (Hueso) Special Permitting and Mandated Leasing of Public Property for "Small Cell" Wireless Infrastructure**

Over 215 California Cities are on record remaining strongly opposed to SB 649 (Hueso), which would require special permitting and mandated leasing of public property for "Small Cell" wireless infrastructure. This bill represents a major shift in telecommunications policy and law by: requiring local governments to lease out the public's property; placing a cap on attachment rates; eliminating the ability for cities to negotiate public benefits such as free Wi-Fi in public parks; and disregarding the public's input and full discretionary review in all communities in the state except for areas in coastal zones and historic districts.

SB 649 makes key changes to existing law, this measure:

1. Forces cities and counties to lease out their public property for wireless equipment;
2. Eliminates negotiated leases, and places a \$250 cap on what they call an attachment rate instead;
3. Eliminates public input, full local discretion, and ability to reduce equipment blight by using encroachment and building permits instead of discretionary permits;
4. Eliminates any conditional requirements to provide public benefits. This bill specifically prohibits "in-kind" conditions for issuing a permit such as free Wi-Fi in public parks as a condition of the permit; and
5. Eliminates ability to remove equipment that is blighting neighborhoods.

These permitting changes are significant because:

- This bill allows for antennas as large as 6 cubic feet, associated and ground mounted equipment totaling 35 cubic feet, with no size or quantity limitations for a host of "ancillary" equipment;
- This bill is aimed at street lights, traffic lights, and public buildings such as libraries where communities currently have a say. To clarify, the equipment identified in the bill is already permissible on utility poles; and
- This bill gives the wireless industry too much control over public infrastructure without imposing any meaningful requirements that these private, for-profit companies use the facilities appropriately.

Cities have a responsibility to protect public property and to condition fair use over taxpayer assets. Unlike the wireless industry, cities are not driven by profit, but by the public services we strive to deliver – from police, fire, libraries, infrastructure, and parks.

Despite promises made by the wireless industry, this bill does nothing to require the technology meet 5G, that there is equitable deployment to unserved/underserved areas, or that whatever cost savings these private companies will benefit from this bill are passed onto their customers.

SB 649 is the wrong answer for California.

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: 07/18/2017
POSITION: Oppose

BILL NUMBER: SB 649
AUTHOR: Hueso, Ben

BILL SUMMARY: Wireless telecommunications facilities.

This bill replaces local government permitting authority for small cell wireless facilities with statewide permitting requirements and rates.

FISCAL SUMMARY

If this bill is enacted and a test claim is filed with the Commission on State Mandates, the Commission may determine the bill imposes reimbursable, state-mandated costs on local agencies.

The potential state mandate would stem from (1) the bill's \$250 limit on the annual lease charge that cities and counties can impose on each small cell device attached to its vertical infrastructure, and (2) a formula that limits the annual attachment fees that cities and counties may charge for each small cell device attached to its vertical infrastructure. If the Commission determines the lease and fee revenue derived under these caps is insufficient to fund the claimants' actual inspection and maintenance costs, the difference would be state-reimbursable.

While the extent of the potential mandate is unknown, Finance believes it can easily approach \$1 million per year.

COMMENTS

Finance opposes this bill. While statewide uniform rules can help the expansion of new technologies, this bill goes too far by usurping city and county zoning authority for infrastructure development, and it potentially imposes reimbursable, state-mandated costs on cities and counties.

We also note the bill poses equity and access concerns. The bill gives telecommunications providers the power to determine where they deploy small cell technologies, which can be highly localized. Providers may cover high-demand neighborhoods first, while low-income neighborhoods may be left underserved. This arrangement follows in the path of high-speed internet service, which has led to uneven access for rural and lower-income areas. Under current law, cities and counties can require, as part of their permitting process, that small cell providers incorporate rural and lower-income areas into their service networks. By pre-empting local government authority, this bill also limits city and county tools to address those equity issues.

ANALYSIS

1. Programmatic Analysis

Under current law, cities and counties have broad authority to permit the placement of small cell devices within their jurisdictions, and to impose fees and conditions on those placements. Small

| | | | |
|------------------------------------|------|---|---|
| Analyst/Principal (0812) C.Hill | Date | Program Budget Manager Justyn Howard | Date |
| Department Deputy Director | | Date | |
| Governor's Office: | By: | Date: | Position Approved _____ Position Disapproved _____ |
| BILL ANALYSIS | | | Form DF-43 (Rev 03/95 Buff) |

Hueso, Ben

07/18/2017

SB 649

ANALYSIS (continued)

cell devices are devices that transmit mobile and wireless signals.

This bill significantly limits the ability of cities and counties to govern the placement of small cell devices within their jurisdictions. The bill also limits the fees and conditions that cities and counties may impose on small cell device owners for the privilege of installing the devices. Most significantly, the bill does the following:

- States that under most circumstances, small cell devices shall be a permitted use that is no longer subject to city or county approval.
- Authorizes cities and counties to require building permits, or their functional equivalents, for small cell devices placed outside the public rights-of-way, provided the permits are issued within the timeframes required by state and federal law. These permits shall not be subject to any of the following requirements:
 - That the small cell device owner provide additional services.
 - The submission of additional information, other than that required for similar construction projects.
 - Limitations on routine maintenance or on the replacement of the small cell devices with devices that are substantially similar.
- Prohibits cities and counties from imposing permitting requirements or fees on micro wireless facilities that are suspended on communications cables strung between utility poles.
- Prohibits cities and counties from precluding the leasing or licensing of their vertical infrastructure, located in public rights-of-way or utility easements, for small cell device purposes.
- Limits the fees that cities and counties may charge for small cell device placement as follows:
 - An annual charge capped at \$250 for each small cell device attached to their vertical infrastructure.
 - An annual attachment rate calculated pursuant to a statutory formula. The bill also prescribes the process by which cities and counties may increase this fee.
 - A one-time reimbursement fee for the actual costs the city or county incurs for rearrangements performed at the request of the small cell device owner.
- Prohibits cities and counties from discriminating against the placement of small cell devices on city or county-owned property, and requires cities and counties to make space available on property not located on public rights-of-way under terms and conditions no less favorable than those for comparable commercial uses.
- Authorizes existing agreements cities and counties have executed with small cell device owners to remain in place, subject to applicable termination provisions.

Currently, Article XI of the California Constitution vests local governments with discretion to make and enforce ordinances and regulations that do not conflict with general laws. Accordingly, cities and counties have a patchwork of negotiated permits with telecommunications service providers. This bill largely carves out the permitting of small cell wireless facilities from local government jurisdiction. Instead, this bill creates uniform rules for the rates and fees that local governments are allowed to levy

BILL ANALYSIS--(CONTINUED)**Form DF-43****AUTHOR****AMENDMENT DATE****BILL NUMBER**

Hueso, Ben

07/18/2017

SB 649

ANALYSIS (continued)

on small cell wireless facilities. This limits local government's power to adapt the fees to their existing costs. This bill also prevents local governments from addressing community concerns about small cells, such as the aesthetic impact small cells may have on a locality.

In addition to usurping local control and creating state-mandated costs, this bill poses equity and access concerns. The bill gives telecommunications providers the power to determine where they deploy small cell technologies, which can be highly localized. Providers may cover high-demand neighborhoods first, while low-income neighborhoods may be left underserved. This arrangement follows in the path of high-speed internet service, which has led to uneven access for rural and lower-income areas. Under current law, cities and counties can require, as part of their permitting process, the small cell providers timely incorporate rural and lower-income areas into their service networks.

| Code/Department Agency or Revenue Type | SO | (Fiscal Impact by Fiscal Year) | | | | | |
|--|----|--------------------------------|----|-----------|----|-----------|-------------------|
| | LA | (Dollars in Thousands) | | | | | |
| | CO | PROP | | | | | Fund |
| | RV | 98 | FC | 2017-2018 | FC | 2018-2019 | FC 2019-2020 Code |
| 0001/Major Rev | LA | No | C | -- | C | 1-1,000 | C 1-1,000 0001 |



NO on SB 649 (HUESO)

Not So "Small Cell" Examples

1. Under SB 649 these could be on nearly every street and public building in your neighborhood:

#NoOnSB649



2. SB 649 does not require "small cells" to actually be as small as the picture below, or to blend into the pole or the environment where it is placed.



SB 649 goes way beyond "small cell" antennas by deregulating all local authority over "micro-wireless" facilities that dangle in between utility poles.

(4) Notwithstanding anything to the contrary in this section, the installation, placement, maintenance, or replacement of micro-wireless facilities that are suspended, whether embedded or attached, on cables or lines that are strung between existing utility poles in compliance with state safety codes shall be exempt from permitting requirements and fees.



LEAGUE
OF CALIFORNIA
CITIES

1400 K Street, Suite 400
Sacramento, California 95814
Phone: (916) 658-8200

Vote #NoOnSB649