



City of Encinitas

Office of
The Mayor

April 26, 2017

The Honorable Ben Hueso
California State Senate, District 40
State Capitol Building, Room 4035
Sacramento, CA 95814
VIA FAX: 916-651-4940

Catherine S. Blakespear
Mayor

**RE: SB 649 (Hueso). Wireless and Small Cell Telecommunications Facilities.
Notice of Opposition (As Amended March 28, 2017)**

Dear Senator Hueso:

Tony Kranz
Deputy Mayor

The City of Encinitas 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."

Tasha Boerner Horvath
Council Member

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*.

Mark Muir
Council Member

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.

Joe Mosca
Council Member

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.

Karen P. Brust
City Manager

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.

The voters in the City of Encinitas placed a 30-foot height restriction on structures within the City. During discretionary review of "small cell" applications, this information is conveyed to the applicants and plan modifications must be made to accommodate the height restriction. On more than one occasion, an applicant has submitted plans to install "small cells" on City-owned light poles with heights in excess of the restriction. By-right approval of these applications will remove local control of height restrictions in these instances.

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 Encinitas **opposes** SB 649.

Sincerely,



Catherine S. Blakespear
Mayor

cc: Senator Patricia Bates
Assembly Member Rocky Chavez
[Nidia Bautista](#), Consultant, Senate Energy, Utilities and Commerce Committee
[Kerry Yoshida](#), Principal Consultant, Senate Republican Caucus
Catherine Hill, League of California Cities, chill@cacities.org
[Meg Desmond](#), League of California Cities
JGC Government Relations
Planning & Building Department
City Council