



CITY COUNCIL STAFF REPORT

DATE: July 19, 2017

CONSENT CALENDAR

SUBJECT: OPPOSITION OF SENATE BILL 649 (HUESO) REGARDING WIRELESS TELECOMMUNICATIONS FACILITIES ALLOWING INSTALLATION OF SMALL CELLS WITHOUT LOCAL CONTROL

FROM: David H. Ready, City Manager

BY: Marcus L. Fuller, Assistant City Manager

SUMMARY:

Legislation identified as Senate Bill (SB) 649 proposed by Senator Hueso, would amend Section 65964 of, and add Sections 65964.2 and 65964.5 to, the California Government Code relating to "small cell" wireless telecommunications facilities. SB 649 would limit local governmental control over the location, proliferation and appearance of small cell antennae installed within public rights-of-way and on public property; as a result the League of California Cities has officially opposed SB 649, which has also been opposed by over 150 cities, counties and other local agencies.

This action will allow the City Council to consider approving an Opposition Letter to be submitted to Senator Hueso, to join with over 150 other cities, counties and various public agencies opposing the state's approval of SB 649.

RECOMMENDATION:

Approve the Opposition Letter regarding SB 649, and authorize the Mayor to execute on behalf of the City of Palm Springs.

BACKGROUND:

Senate Bill (SB) 649 (Huerto)

The following is the Legislative Counsel's digest on SB 649, with significant points emphasized that affect and otherwise limit the City's abilities to effectively continue regulating the installation of wireless telecommunications facilities within the City:

ITEM NO. 1.M.

Under existing law, a wireless telecommunications co-location facility, as specified, is subject to a city or county discretionary permit and is required to comply with specified criteria, ***but a co-location facility, which is the placement or installation of wireless facilities, including antennas and related equipment, on or immediately adjacent to that wireless telecommunications co-location 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, subject only to a specified permitting process adopted by a city or 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 encroachment permit or a building permit, and any additional ministerial permits, for a small cell, as specified. The bill would authorize a city or county to charge 3 types of fees: an annual charge for each small cell attached to city or county vertical infrastructure, an annual attachment rate, or a on-time reimbursement fee. The bill would require the city or county to comply with notice and hearing requirements before imposing the annual attachment rate. The bill would require an action or proceeding to challenge a fee imposed under the provisions of this bill to be commenced within 120 days of the effective date of the ordinance or resolution. The bill would define the term "small cell" for these purposes.

This bill would prohibit a city or county from adopting or enforcing any regulation on the placement or operation of a communications facility in the rights-of-way by a provider that is authorized by state law to operate in the rights-of-way or from regulating that service or imposing any tax, fee, or charge, except as provided in specified provisions of law or as specifically required by law.

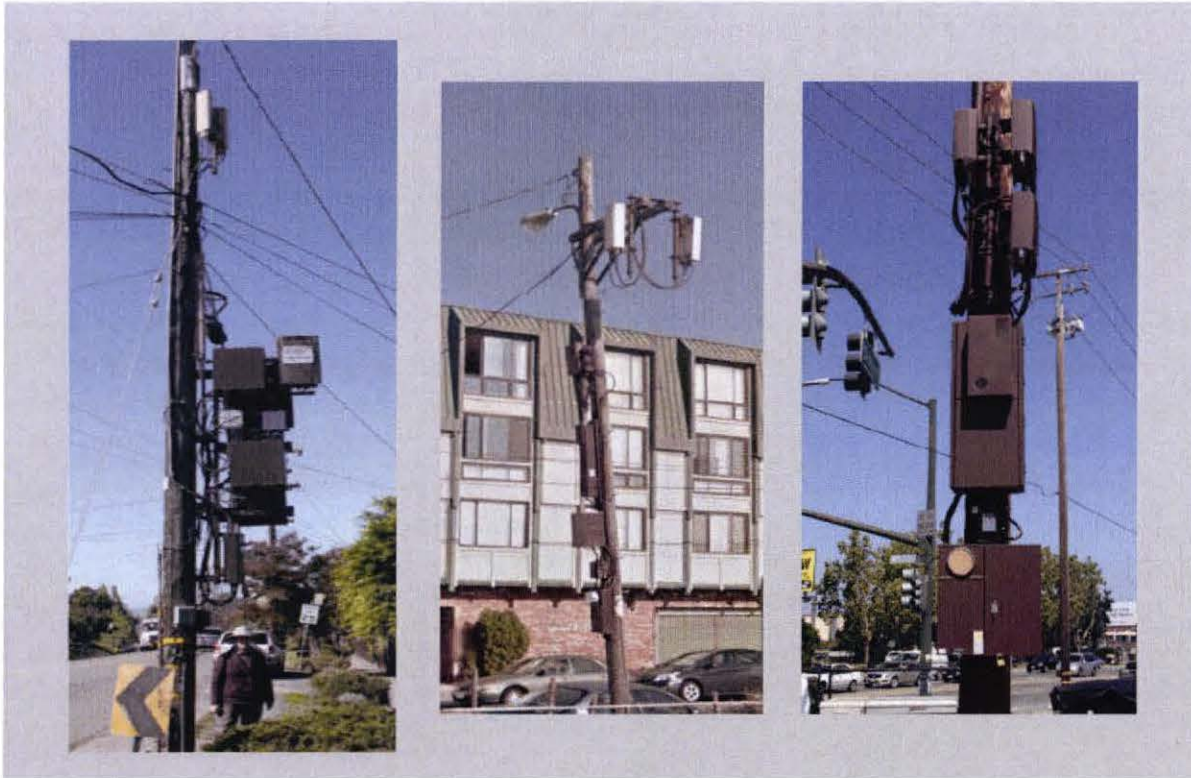
A complete copy of SB 649 is included as **Attachment 1**.

Of particular importance to the City, is the fact that SB 649 includes a legislative declaration that providers of advanced wireless communications should be granted fair, reasonable, nondiscriminatory, and nonexclusive access to locally owned utility poles, streetlights, and other suitable host infrastructure located within the public rights-of-way ***and in other local public places such as stadiums, parks, campuses, hospitals, transit stations, and public buildings.***

SB 649 will add Section 65964.2 to the Government Code, making installation of "small cells" a permitted use subject only to a permitting process, including installations on public buildings (and specifically City Hall), with no exclusion for buildings designated as Class 1 "Historic Sites." (SB 649 only provides protections against installation of "small cells" in "Historic Districts").

The following photos are some examples of "small cell" installations in public rights-of-way on public utility poles, which would be permitted by right pursuant to SB 649:

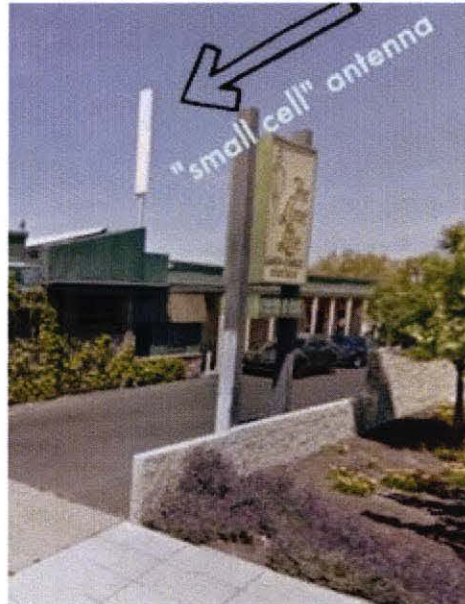
In these photos are individual “small cells” permitted by each City (Oakland, and other unknown cities).



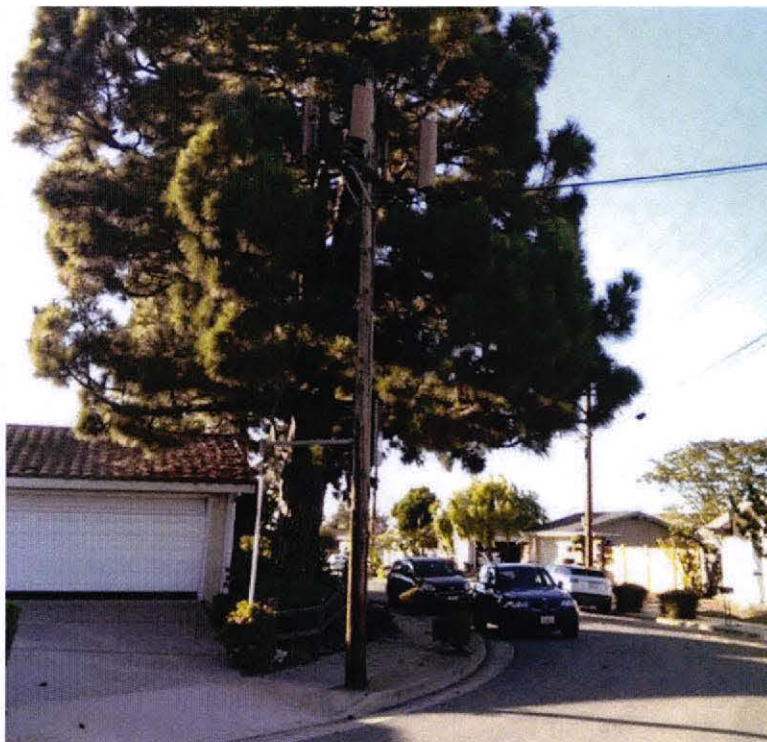
Another example of “small cell” wireless technology installed in the public right-of-way in Oakland, California, with the associated appurtenant infrastructure, is provided on the following page. In this case, Oakland has authorized the installation of the encroachments pursuant to its municipal powers.



Another example of a “small cell” antenna installed on top of a retail office building is shown here:



Yet another example of a “small cell” antenna installed on a public utility pole that was expressly permitted by the City of Rancho Palos Verdes is shown here:



The City of Sebastopol, in a staff report prepared for its City Council on June 6, 2017, requested action on a request from the League of California Cities (the "League") to join a Letter of Opposition to SB 649. The staff report stated:

As written, SB 649 will prohibit 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. It will pre-empt local land use plans by mandating that "small cells" be allowed in all zones, including residential zones, as use by right. This proposal shifts local land use authority away from local government.

Local governments have a responsibility to protect the quality of life for our residents and to protect public property in the public right-of-way. Local governments typically encourage new technology 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 the community and the quality of their environment.

Currently, there are at least 122 cities, 12 counties, and 11 other organizations that have opposed SB 649. The League strongly opposes SB 649, and on its website states the following:

Under the guise of building a strong 5G network for consumers, this bill effectively gives the wireless industry the keys to the store at the expense of local governments' responsibility to manage their communities. SB 649 moved to the Assembly last week where it is awaiting its first policy committee assignment and hearing date.

This wireless industry sponsored bill restricts the ability of local agencies to control access to their public right-of-ways and caps the ability of local agencies to collect rent related to small cell siting on that public infrastructure. It eliminates public input, full local environmental and design review as well as the ability for local governments to negotiate leases or any public benefit for the installation of "small cell" equipment on taxpayer-funded property. Instead of needing to negotiate with individual local agencies on siting issues and having to pay market-rate rents for the privilege of placing their equipment on public infrastructure, the industry seeks to use legislative preemption to reduce costs on multiple fronts.

While the industry promises that SB 649 will allow them to rapidly deploy 5G technology, the bill fails to specify 5G, 4G, or any technological standard for this special permitting process and fails to include any deployment requirement to hold industry to their promise. Furthermore, 5G standards are still being

developed which begs the question why the industry needs this special privilege today, especially when they have been unable to demonstrate any examples of city imposed obstacles. Cities statewide welcome new technology, especially for network and broadband deployment, but only when it's in collaboration with the industry, which SB 649 would eliminate.

The League has published an announcement with all of the public agencies that have currently joined the opposition effort against SB 649, included as **Attachment 2**.

On July 5, 2017, the *Los Angeles Times* published an article by its Editorial Board regarding SB 649, included as **Attachment 3**. As indicated in the article, the Editorial Board, and ends their opinion by stating:

The telecommunication industry has been pushing this "streamlining" strategy in other states, with various degrees of success. Eleven have adopted some sort of laws to limit the local permitting process and pole fees. Legislators in other states, like Washington, have been more skeptical. California's lawmakers ought to be wary as well and show more interest in protecting the rights of communities to govern the use of their infrastructure, rather than letting telecommunication companies make those decisions for them.

Staff recommends that the City Council join in opposition to SB 649, and authorize the Mayor to sign a Letter of Opposition, included as **Attachment 4**.

Wireless Marketing Agreement -

SB 649 was introduced on February 17, 2017, and on May 31, 2017, the Senate had its third reading of the legislation, and passed SB 649 on a vote of 32-1. SB 649 has now been referred to the Assembly, and is currently referred to the Committee on Local Government; it is anticipated that SB 649 may be acted upon by the Assembly by August 2017. Time is of the essence for the City to position itself in a way to preserve its rights to better control and regulate installation of "small cells" that will be declared a permitted use by right upon adoption of SB 649.

SB 649 cannot on its face terminate or otherwise invalidate existing agreements or contracts that local agencies have previously executed that related to wireless marketing and administering leasing and licensing of public property. Specifically, limits have been placed upon federal and state preemption by use of the "Contracts Clause" both as they appear in the U.S. Constitution and the California Constitution. The "Contracts Clause" prevents a government entity from enacting legislation that affects the contractual rights of a private party.

There is one provision in the current version of SB 649 that preserves some local control of the installation of "small cells," provided that the local agency has already established a contract to administer the leasing or licensing of "vertical infrastructure"

pursuant to existing agreements. "Vertical infrastructure" is defined as *all poles or similar facilities owned or controlled by a city or county that are in the public rights-of-way or public utility easements and meant for, or used in whole or in part for, communications service, electric service, lighting, traffic control, or similar functions.*

Specifically, SB 649 states:

Existing agreements regarding the leasing or licensing of vertical infrastructure entered into before the operative date of this section remain in effect, subject to applicable termination provisions. The operator of a small cell may accept the rates of this section for small cells that are the subject of an application submitted after the agreement is terminated pursuant to the terms of the agreement.

Although SB 649 would implement fixed fees and a limited calculation on determining leasing or licensing charges for "small cells" on public property, to the extent that, prior to enactment of SB 649, the City has entered into a commercial agreement with a private party for the management and administration of wireless facilities on and within public property, the City has legal defense pursuant to the "Contracts Clause" that SB 649 cannot diminish leasing and licensing fees and charges that are effective with such a commercial agreement.

In light of the potential detrimental impacts to the City with the proliferation of "small cell" wireless technology on public property and within public rights-of-way, staff recommends that the City consider protecting itself with legal "Contracts Clause" defense by considering a Wireless Marketing Agreement that would include the following components:

1. Contract with a legitimate private party to manage the administration of wireless attachments in the right-of-way
2. Grant exclusivity to defend against "work arounds"
3. Term lengths that establish longevity to afford long term protection
4. Consideration that is tied to the generation of revenue for the city

Having these four components would allow the City's wireless marketing administrator to argue that the reduced fees for leasing and licensing wireless technology on public property that would be implemented by SB 649 degrades the contractual benefit to be realized by such a contract. The exclusivity provision protects the scope of the contract by not allowing "work arounds", i.e. carriers trying to bypass the management agreement. It is also important that a clear contractual term length, such as five years with four automatic renewals, can protect the municipality for the extended life of the contract. It is important to note that a Wireless Marketing Agreement must be executed before SB 649 is adopted in order to preserve a "Contracts Clause" defense.

Staff is currently negotiating a contract with a firm to provide the City with wireless marketing services, and will be presenting the item to Council at its July 26, 2017, meeting in an effort to pre-empt SB 649's limits on the City's local control over installation of wireless technology in public rights-of-way or property.

ENVIRONMENTAL IMPACT:

This action is not considered a "project" under the California Environmental Quality Act, because the action does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by Title 14, California Code of Regulations, Section 15378(b)(4). Therefore no negative environmental impact is noted.

FISCAL IMPACT:

None.

SUBMITTED:



Marcus L. Fuller, MPA, P.E., P.L.S.
Assistant City Manager



David H. Ready, Esq., Ph.D.
City Manager

Attachments:

1. SB 649
2. League Opposition Announcement
3. LA Times Editorial 7/5/17
4. SB 649 Letter of Opposition

ATTACHMENT 1



SB-649 Wireless telecommunications facilities. (2017-2018)

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Date Published: 07/03/2017 09:00 PM

AMENDED IN ASSEMBLY JULY 03, 2017

AMENDED IN ASSEMBLY JUNE 20, 2017

AMENDED IN SENATE MAY 02, 2017

AMENDED IN SENATE MARCH 28, 2017

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

SENATE BILL

No. 649

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

February 17, 2017

An act to ~~amend Section 65964 of, and to~~ add Sections 65964.2 and 65964.5 ~~to, 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, subject only to a specified permitting process adopted by a city or 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 encroachment permit or a building permit, and any additional ministerial permits, for a small cell, as specified. The bill would authorize a city or county to charge 3 types of fees: an annual ~~administrative permit fee, charge for each small cell attached to city or county vertical infrastructure,~~ an annual attachment rate, or a ~~on-time one-time~~ reimbursement fee. The bill would require the city or county to comply with notice and hearing requirements before imposing the annual attachment rate. The bill would require an action or proceeding to

challenge a fee imposed under the provisions of this bill to be commenced within 120 days of the effective date of the ordinance or resolution. The bill would define the term "small cell" for these purposes.

This bill would prohibit a city or county from adopting or enforcing any regulation on the placement or operation of a communications facility in the rights-of-way by a provider that is authorized by state law to operate in the rights-of-way or from regulating that service or imposing any tax, fee, or charge, except as provided in specified provisions of law or as specifically required by law.

~~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 Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

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

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

(c) Recognizes that the impact on local interests from individual small wireless facilities will be sufficiently minor and that such deployments should be a permitted use statewide and should not be subject to discretionary zoning review.

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

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

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

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

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

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

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

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

~~(a) Require an escrow deposit for removal of a wireless telecommunications facility or any component thereof. However, a performance bond or other surety or another form of security may be required, so long as the amount of the bond security is rationally related to the cost of removal. In establishing the amount of the security, the city or county shall take into consideration information provided by the permit applicant regarding the cost of removal.~~

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

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

~~SEC. 3.~~ **SEC. 2.** Section 65964.2 is added to the Government Code, to read:

65964.2. (a) A small cell shall be a permitted use subject only to a permitting process adopted by a city or county pursuant to subdivision (b) if it satisfies the following requirements:

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

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

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

(b) (1) A city or county may require that the small cell be approved pursuant to a building permit or its functional equivalent in connection with placement outside of the public rights-of-way or an encroachment permit or its functional equivalent issued consistent with Sections 7901 and 7901.1 of the Public Utilities Code for the placement in public rights-of-way, and any additional ministerial permits, provided that all permits are issued within the timeframes required by state and federal law.

(2) Permits issued pursuant to this subdivision may be subject to the following:

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

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

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

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

(E) Compliance with building codes, including building code structural requirements.

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

(G) A condition to comply with feasible design and collocation standards on a small cell to be installed on property not in the rights-of-way.

(3) Permits issued pursuant to this subdivision shall not be subject to:

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

- (B) The submission of any additional information other than that required of similar construction projects, except as specifically provided in this section.
- (C) Limitations on routine maintenance or the replacement of small cells with small cells that are substantially similar, the same size or smaller.
- (D) The regulation of any micro wireless facilities mounted on a span of wire.
- (4) Notwithstanding any other provision of this section, a city or county shall not impose permitting requirements or fees on 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.
- (c) A city or county shall not preclude the leasing or licensing of its vertical infrastructure located in public rights-of-way or public utility easements under the terms set forth in this subdivision. Vertical infrastructure shall be made available for the placement of small cells under fair and reasonable fees, subject to the requirements in subdivision (d), terms, and conditions, which may include feasible design and collocation standards. A city or county may reserve capacity on vertical infrastructure if the city or county adopts a resolution finding, based on substantial evidence in the record, that the capacity is needed for projected city or county uses.
- (d) (1) A city or county may charge the following fees:
- (A) An annual ~~administrative permit fee~~ charge not to exceed two hundred fifty dollars (\$250) for each small cell attached to city or county vertical infrastructure.
- (B) An annual attachment rate that does not exceed an amount resulting from the following requirements:
- (i) The city or county shall calculate the rate by multiplying the percentage of the total usable space that would be occupied by the attachment by the annual costs of ownership of the vertical infrastructure and its anchor, if any.
- (ii) The city or county shall not levy a rate that exceeds the estimated amount required to provide use of the vertical infrastructure for which the annual recurring rate is levied. If the rate creates revenues in excess of actual costs, the city or county shall use those revenues to reduce the rate.
- (iii) For purposes of this subparagraph:
- (I) "Annual costs of ownership" means the annual capital costs and annual operating costs of the vertical infrastructure, which shall be the average costs of all similar vertical infrastructure owned or controlled by the city or county. The basis for the computation of annual capital costs shall be historical capital costs less depreciation. The accounting upon which the historical capital costs are determined shall include a credit for all reimbursed capital costs. Depreciation shall be based upon the average service life of the vertical infrastructure. Annual cost of ownership does not include costs for any property not necessary for use by the small cell.
- (II) "Usable space" means the space above the minimum grade that can be used for the attachment of antennas and associated ancillary equipment.
- (C) A one-time reimbursement fee for actual costs incurred by the city or county for rearrangements performed at the request of the small cell provider.
- (2) A city or county shall comply with the following before adopting or increasing the rate described in subparagraph (B) of paragraph (1):
- (A) At least 14 days before the hearing described in subparagraph (C), the city or county shall provide notice of the time and place of the meeting, including a general explanation of the matter to be considered.
- (B) At least 10 days before the hearing described in subparagraph (C), the city or county shall make available to the public data indicating the cost, or estimated cost, to make vertical structures available for use under this section if the city or county adopts or increases the proposed rate.
- (C) The city or county shall, as a part of a regularly scheduled public meeting, hold at least one open and public hearing at which time the city or county shall permit the public to make oral or written presentations relating to the rate. The city or county shall include a description of the rate in the notice and agenda of the public meeting in accordance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950.5) of Part 1 of Division 2 of Title 5).

(D) The city or county may approve the ordinance or resolution to adopt or increase the rate at a regularly scheduled open meeting that occurs at least 30 days after the initial public meeting described in subparagraph (C).

(3) A judicial action or proceeding to attack, review, set aside, void, or annul an ordinance or resolution adopting, or increasing, a fee described in this subdivision, shall be commenced within 120 days of the effective date of the ordinance or resolution adopting or increasing the fee. A city or county or interested person shall bring an action described in this paragraph pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure in a court of competent jurisdiction.

(4) This subdivision does not prohibit a wireless service provider and a city or county from mutually agreeing to an annual ~~administrative permit fee~~ charge or attachment rate that is ~~less than~~ different from the fees or rates established above.

(e) A city or county shall not discriminate against the deployment of a small cell on property owned by the city or county and shall make space available on property not located in the public rights-of-way under terms and conditions that are no less favorable than the terms and conditions under which the space is made available for comparable commercial projects or uses. These installations shall be subject to reasonable and nondiscriminatory rates, terms, and conditions, which may include feasible design and collocation standards.

(f) This section does not alter, modify, or amend any franchise or franchise requirements under state or federal law, including Section 65964.5.

(g) For purposes of this section, the following terms have the following meanings:

(1) "Micro wireless facility" means a small cell 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.

(2) (A) "Small cell" means a wireless telecommunications facility, as defined in paragraph (2) of subdivision (d) of Section 65850.6, or a wireless facility that uses licensed or unlicensed spectrum and that meets the following qualifications:

(i) The small cell antennas on the structure, excluding the associated equipment, total no more than six cubic feet in volume, whether an array or separate.

(ii) Any individual piece of associated equipment on pole structures does not exceed nine cubic feet.

(iii) The cumulative total of associated equipment on pole structures does not exceed 21 cubic feet.

(iv) The cumulative total of any ground-mounted equipment along with the associated equipment on any pole or nonpole structure does not exceed 35 cubic feet.

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

(I) Electric meters and any required pedestal.

(II) Concealment elements.

(III) Any telecommunications demarcation box.

(IV) Grounding equipment.

(V) Power transfer switch.

(VI) Cutoff switch.

(VII) Vertical cable runs for the connection of power and other services.

(VIII) Equipment concealed within an existing building or structure.

(B) "Small cell" includes a micro wireless facility.

(C) "Small cell" does not include the following:

(i) Wireline backhaul facility, which is defined to mean a facility used for the transport of communications data by wire from wireless facilities to a network.

(ii) Coaxial or fiber optic cables that are not immediately adjacent to or directly associated with a particular antenna or collocation.

(iii) 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.

(iv) The underlying vertical infrastructure.

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

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

~~(h) Existing agreements between a wireless service provider, or its agents and assigns, and a city, a county, or a city or county's agents and assigns, regarding the leasing or licensing of vertical infrastructure entered into before the operative date of this section remain in effect, subject to applicable termination or other provisions in the existing agreement, or unless otherwise modified by mutual agreement of the parties. A wireless service provider may require the rates of this section for new small cells sites that are deployed after the operative date of this section in accordance with applicable change of law provisions in the existing agreements. The operator of a small cell may accept the rates of this section for small cells that are the subject of an application submitted after the agreement is terminated pursuant to the terms of the agreement.~~

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

(j) This section does not change or remove any obligation by the owner or operator of a small cell to comply with a local publicly owned electric utility's reasonable and feasible safety, reliability, and engineering policies.

(k) A city or county shall consult with the utility director of a local publicly owned electric utility when adopting an ordinance or establishing permitting processes consistent with this section that impact the local publicly owned electric utility.

~~(l) Except as provided in subdivisions (a) and (b), nothing~~ *Nothing* in this section shall be construed to modify the rules and compensation structure that have been adopted for an attachment to a utility pole owned by an electrical corporation or telephone corporation, as those terms are defined in Section 216 of the Public Utilities Code pursuant to state and federal law, including, but not limited to, decisions of the Public ~~Utility~~ *Utilities* Commission adopting rules and a compensation structure for an attachment to a utility pole owned by an electrical corporation or telephone corporation, as those terms are defined in Section 216 of the Public Utilities Code.

(m) Nothing in this section shall be construed to modify any applicable rules adopted by the Public Utilities Commission, including General Order 95 requirements, regarding the attachment of wireless facilities to a utility pole owned by an electrical corporation or telephone corporation, as those terms are defined in Section 216 of the Public Utilities Code

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

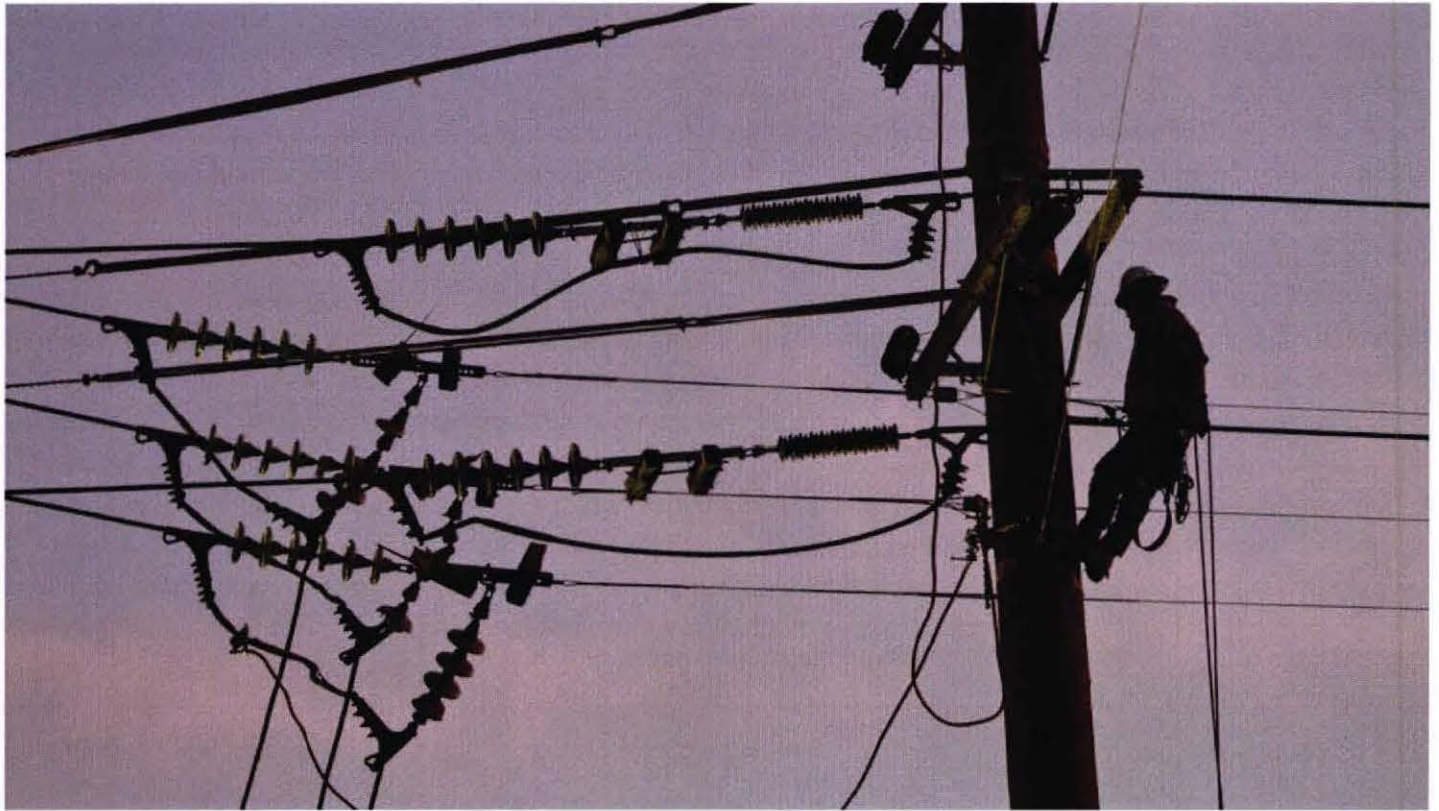
SEC. 4. SEC. 3. Section 65964.5 is added to the Government Code, to read:

65964.5. Except as provided in Sections 65964, 65964.2, and 65850.6, or as specifically required by state law, a city or county may not adopt or enforce any regulation on the placement or operation of communications facilities in the rights-of-way by a provider authorized by state law to operate in the rights-of-way, and may not regulate any communications services or impose or collect any tax, fee, or charge not specifically authorized under state law.

~~SEC. 5.~~ **SEC. 4.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

ATTACHMENT 2

Editorial An audacious 5G power (pole) grab



A Southern California Edison employee works to reattach electric wires on Dec. 4, 2011-. (Los Angeles Times)

By **The Times Editorial Board**

JULY 5, 2017, 5:00 AM

Telecommunications companies are preparing to roll out the next generation of wireless networks, dubbed “5G,” which promise an enormous increase in capacity and connectivity. These networks not only will increase competition in broadband, they are a key enabling technology for a host of advanced products and services. They also represent a gateway to better economic opportunities in inner-city areas that are underserved by broadband today.

But these new networks are different in structure and appearance too. Instead of high-powered antennas on tall towers, they rely on an array of lower-power transmitters closer to the ground that serve much smaller “cells.” That’s why mobile phone companies are concerned that cities and counties will throw up bureaucratic or financial roadblocks to 5G in their communities. It’s not a groundless worry; wireless companies already have encountered local resistance in places where they have introduced the new technology.

It’s the look and the intrusiveness of the small cell networks that seems to spark the controversy. People are upset about the deployment of thousands of pieces of equipment the size of small appliances being placed strategically and liberally on publicly owned “vertical infrastructure” (that’s bureaucratese for municipal utility

poles, street lights and even traffic lights). That means a lot of equipment in full view and in proximity — *really* close in some cases — to houses and people.

“

Local governments must retain some authority to push back on proposed deployments.

The wireless industry has a solution to this potentially huge NIMBY headache: A bill in the California legislature (SB 649) that would “streamline” the approval process for putting small cell networking gear on public poles and lights. If it’s on property the government controls, approval would be automatic in most cases, so local governments couldn’t drag out the permitting process with public hearings and studies. The bill also would limit how much rent locals can charge the companies for space on their poles and lights.

There is precedent for this kind of brazen move: The phone and cable TV companies persuaded the Legislature in 2006 to end local control over the construction of new cable TV systems, arguing that a shift to state licensing would bring much-needed competition to pay TV. But that logic doesn’t apply to the mobile phone market, where there is vibrant competition. Local government officials are crying foul, calling it an audacious power grab and the equivalent of a gift of public funds to billion-dollar telecommunications companies that don’t need the help.

The new mobile networks also will involve much more equipment in public view than an upstart cable TV system. Wireless companies say that the transmitters are typically the size of a pizza box or briefcase, although the bill would allow equipment up to the size of a small refrigerator.

Sen. Ben Hueso (D-San Diego), the author of SB 649, argues that wireless upgrades are a public benefit, and therefore local governments should not have the right to endanger them with unreasonable hurdles. Besides, he says, the more that individual cities are allowed to charge for their pole rentals, the less that wireless companies will have left for network upgrades in other, possibly more needy communities. But the bill goes far beyond setting a reasonable fee to access public property; it would usurp the rights of cities and counties to make decisions about how to use their property. Those rights include the right to make the wrong decisions.

It’s clearly in everyone’s best interest for 5G networks to be deployed, and surely most local governments would agree. But why shouldn’t cities and counties be able to try to leverage their assets to get a good deal for residents as part of the process, or take the time to get the public’s input on what could be a significant change to their physical and virtual landscapes?

Small cell technology does not have to be obtrusive or unattractive, nor will every street in a community necessarily require outfitting. That’s why local governments must retain some authority to push back on proposed deployments. Left to their own devices, telecommunications companies would naturally opt for the most efficient and cost-effective configuration when making a capital investment. Their goals are making profits and serving customers, not making a city look nice.

The telecommunication industry has been pushing this “streamlining” strategy in other states, with various degrees of success. Eleven have adopted some sort of laws to limit the local permitting process and pole fees. Legislators in other states, like Washington, have been more skeptical. California’s lawmakers ought to be wary as well and show more interest in protecting the rights of communities to govern the use of their infrastructure, rather than letting telecommunication companies make those decisions for them.

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For The Record

JUL. 5, 2017, 10:45 AM

An earlier version of this editorial misidentified the bill in question as AB 649. It is SB 649.

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This article is related to: Ben Hueso

ATTACHMENT 3



DATE: June 23, 2017
 TO: Members of the California State Assembly
 FROM: A Coalition of California Cities

**RE: SB 649 (Hueso). Wireless Telecommunications Facilities
 Notice of Opposition (As Amended 6/20/17)**

Nearly 150 California Cities are **strongly opposed** to SB 649, which would represent a major shift in telecommunications policy and law by requiring local governments to lease out the public's property, cap how much cities can lease this space out for, eliminate the ability for cities to negotiate public benefits, the public's input and full discretionary review in all communities of the state except for areas in coastal zones and historic districts, for the installation of "small cell" wireless equipment.

Despite the wireless industry's claim that the equipment would be "small" in their attempt to justify this special permitting and price arrangement solely for their industry, the bill would allow for antennas as large as six cubic feet, equipment boxes totaling 35 cubic feet (larger than previous bill version of 21 cubic feet), with no size or quantity limitations for the following equipment: electric meters, pedestals, concealment elements, demarcation boxes, grounding equipment, power transfer switches, and cutoff switches.

The industry also claims that SB 649 retains local discretion, but by moving the bill into the ministerial process, also known as over-the-counter or check-the-box permitting, their "attempt" at giving locals discretion falls flat. Cities would have to live with the size parameters established by the bill for "small cells." Furthermore, cities would be unable to impose any meaningful maintenance requirements for the industry's small cells and are limited to requiring building and encroachment permits confined to the bill's parameters written by the industry. True local discretion exists only through the use of discretionary permits, not through building or encroachment permits, especially since the public has no say in the issuance of the latter.

Furthermore, the ability for cities to negotiate any public benefit (typically negotiated because of the level of discretion cities currently have) would be eliminated by this bill. Benefits, such as network access for police, fire, libraries, and parks, negotiated lease agreements for the city general fund to pay for such services, or the ability to use pole space for public safety and/or energy efficiency measures are effectively stripped down or taken away entirely. Even if every single city resident complained about a particular "small cell" and its visual blight, cities and their councils would have no recourse to take them down, move them, or improve their appearance or any other community impacts under SB 649.

In addition to the permitting issues raised by this bill, it would also cap how much cities can negotiate leases for use of public property and a city's ability to maximize public benefit at \$250 (was \$850 under prior version of the bill) annually per attachment rates for each "small cell". Some cities have been able to negotiate leases for "small cells" upwards of \$3,000, while others have offered "free" access to public property in exchange for a host of tangible public benefits, such as free Wi-Fi in public places, or network build-out to underserved parts of their cities, agreements usually applauded by both cities and industry.

What's truly perverse about SB 649 is that it would actually fail to deliver on stated promises and make it especially tough for cities that always seem to be last in line for new technology to see deployment, while also completely cutting out these communities from the existing process. For example, SB 649 fails to require that their "small cells" deliver 5G, 4G, or any standard level of technology. The truth is that standards for 5G are still being developed, which is why the bill can't require it to meet that standard which begs the question as to why this bill is necessary at all. It also fails to impose any requirement for the wireless industry to deploy their networks to unserved or underserved parts of the state.



While California has been a leader in wireless deployment, many rural and suburban parts of the state still don't have adequate network access. The lease cap in the bill guarantees prices for the wireless industry to locate in the state's "population hubs," leaving other parts of the state stranded and when the technology finally does deploy, they'll have no say in the time, place, manner, or design of the equipment, creating two different standards depending on where one lives in the state, one for coastal and historic, and a lower standard for everyone else.

As if SB 649 wasn't wreaking enough havoc on the ability for cities to protect their residents, the latest June 20, 2017 amendments completely deregulate and eliminate all oversight for "micro-wireless" facilities which can be equipment nearly three feet long dangling between utility poles, raising significant public safety issues such as obstructing traffic sight distance without any oversight. In addition, the arbitrary "lease cap" of \$850 in the prior version of the bill has now been lowered to \$250 for each small cell, not just as applied to leases but also to the permitting of "small cells." Also, the bill now applies a utility pole "attachment rate" formula which is inappropriate for equipment being placed on city buildings, street and traffic lights.

As amended, the bill is no longer limited to just "small cells." It now applies broadly to all telecommunications providers and the equipment they use from "micro-wireless" to "small cell" to "macro-towers." It's clear from the direction of this bill, that this is not about 5G wireless deployment, but more about local deregulation of the entire telecommunications industry. This latest version places a new ban on city/county regulation of placement or operation of "communication facilities" within and outside the public right of way far beyond "small cells." This new language would extend local preemption of regulation to any "provider authorized by state law to operate in the rights of way," which can include communications facilities installed for services such as gas, electric, and water, leaving cities and counties with limited oversight only over "small cells."

Ultimately, cities and local governments recognize that the wireless industry offers many benefits in our growing economy, but a balance with community impacts must also be preserved. SB 649, however, is the wrong approach and benefits corporate bottom lines rather than communities. The bill undermines our ability to ensure our residents have a voice and get a fair return for any use of public infrastructure. Residents that don't happen to live in a coastal zone or in a historic district will have to wonder why their communities deserve such second-tier status. Furthermore, this bill is no longer about small cells; instead it's about all telecommunications regulation. Such a massive shift in law and policy is unprecedented and would warrant statewide stakeholder meetings before even considering such a shift, let alone trying to jam this through between now and September.

For these reasons, nearly 150 cities are strongly opposed to SB 649.



ATTACHMENT 4



City of Palm Springs

Office of the Mayor

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July 20, 2017

The Honorable Senator Ben Hueso
State Capital, Room 4035
Sacramento, CA 95814

RE: Senate Bill 649, Letter of Opposition

Dear Senator Hueso,

The City of Palm Springs 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 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, batter 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.

Senator Ben Hueso
July 20, 2017
Page 2

More importantly, although SB 649 attempts to protect culturally and historically significant properties by excluding wireless facilities placed in any "historic district," that protection is not specific to any "historic site," which is defined differently as a historic district. The City of Palm Springs has many of its properties designated as Class 1 "Historic Sites," including its City Hall, which is listed in the National Register of Historic Places, (#15000641). **Although your legislation protects "Historic Districts", it does not protect "Historic Sites" and would allow installation of "small cells" to important "Historic Sites" by right, without City review.**

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.

SB 649 will 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. **Your legislation strips this essential property right away from the City.**

SB 649 strips local government of its 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 significant impacts to local government control and land use authority within the City, the City of Palm Springs opposes SB 649. Please revise SB 649 to retain local land use authority for installation of "small cell" technology on public property and in public rights-of-way.

Sincerely,

Robert Moon,
Mayor