



September 25, 2017

The Honorable Jerry Brown
Governor, State of California
State Capitol, First Floor
Sacramento, CA 95814

RE: SB 649 (Hueso) - Wireless Telecommunications Facilities - Request for Veto

Dear Governor Brown:

The American Planning Association, California Chapter (APA California) respectfully urges your veto on SB 649, authored by Senator Hueso. SB 649 eliminates public input by requiring a ministerial permit process for wireless equipment without adequate environmental and design review, mandates the forced leasing of publicly owned infrastructure to private companies, and eliminates the ability of local governments to negotiate fair leases or any public benefit for the installation of “small cell” wireless equipment on taxpayer-funded property.

APA California members are responsible for processing these “small cell” permits, ensuring that our residents have access to adequate broadband while also protecting our communities by providing appropriate safety and design standards. This is currently done through a discretionary process. That process allows local governments to work with carriers to ensure the equipment is, for instance, screened or concealed and placed in appropriate locations. If this bill is signed, those efforts will be lost.

While the author and sponsors have insisted language in the bill allows local governments the ability to apply aesthetics when processing the permit for “small cells”, it must be made very clear that this bill only requires a ministerial permit. **This ministerial permit effectively eliminates local discretion as well as the ability for residents and businesses to provide input on equipment that could be placed right outside and within direct view of their property.**

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Language in the bill states that “feasible design and collocation standards” can be applied, but the bill does not clearly indicate which party determines what is feasible, local government or the applicant. This ambiguous term, which is defined by another completely subjective definition, will surely create uncertainty. In fact, a carrier actually sued a city arguing the city was prohibited from having design, noise, or location review of wireless facilities in the public right of way. Given that, this language will lead to more litigation if jurisdictions try to apply design standards to these applications. In addition, one of the major design concerns of these “small” cells – size -- is mandated in the bill to be allowed up to 21 cubic feet (the size of a refrigerator) on any type of pole, up to 35 cubic feet on the ground and, for ancillary equipment, in unlimited numbers – hardly small in size or impact. This of course also eliminates any incentives for the industry to develop smaller, more streamlined designs.

SB 649 also forces local governments to rent space for “small cells” on public property at rates far below fair market value and requires that every jurisdiction, in order to use its own public property, provide “substantial evidence” that the space is needed by that community. The bill proposes to calculate the maximum rate for these leases using a formula designed only for utility poles. Application of this formula to publically-owned property is both unfair and uncertain. Further, this formula would be so complicated to calculate that after applying the formula, fees would likely barely cover maintenance costs or staff time.

Finally, AB 57, which just went into effect last year, already streamlined the permit process for this industry by requiring expedited processing timelines for approvals of new and collocated sites. The industry failed to provide any examples that AB 57 has failed to speed up the permitting of wireless facilities as required.

APA California is not opposed to 5G technology. In fact, we work hard to ensure broadband access for all of our residents -- but that is not what this bill is about. There is no requirement in the bill to require service providers to deploy the new 5G technology or deploy into underserved and unserved communities. Instead, what this bill will accomplish is yet another law to allow one industry preferential treatment at the cost of the character of our communities and taxpayer dollars.

Given that many jurisdictions haven’t even processed a “small cell” permit yet, or only handled a small number, it is unclear why there is such an urgent need for this bill. This bill is being passed with the

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assumption that there **will be** issues, which supporters have yet to demonstrate. We believe this bill deserves careful consideration. APA California has continually suggested that to provide a more streamlined statewide process, it may be more beneficial to require the Office of Planning and Research (OPR) to develop a model ordinance or other guidance for both jurisdictions and providers to use, rather than passing such aggressive legislation.

APA California urges your veto of SB 649. If you have any questions, please contact APA California's lobbyist, Lauren De Valencia with Stefan/George Associates, 916-443-5301 or lauren@stefangeorge.com.

Sincerely,

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cc: *California State Senator, Ben Hueso*

Camille Wagner, Legislative Affairs Secretary, Office of the Governor

Tom Dyer, Deputy Legislative Affairs Secretary, Office of Governor Brown

OPR

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