

CITY OF BURBANK



OFFICE OF THE MAYOR

April 14, 2017

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

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

Dear Senator Hueso:

As Mayor of the City of Burbank, I oppose your Senate Bill 649 related to the permitting of wireless and small cell telecommunications facilities. It is the City of Burbank's assessment that 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 rights-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. These impacts are of particular importance when the proposed location of facilities is within a residential zone, industrial and commercial zones where the City has made a concerted effort, through its capital improvement program, to upgrade infrastructure in the public rights-of-way. The City's long term infrastructure planning and development efforts have included undergrounding of utilities and transitioning to more consistent, themed and visually appealing design as it relates to decorative street lights and new traffic lights consistent with the City of Burbank 2035 General Plan.

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.

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. Furthermore, the proposal would preclude the City of Burbank from effectively negotiating with prospective “small cell” applicants/installers to obtain design improvements that ensure appropriate concealment and location within the public property and rights-of way. The City has been actively working with prospective “small cell” applicants to focus facilities, whenever possible, away from residential zones and incorporate them into the existing city infrastructure network in the form of fully concealed facilities in new or upgraded street lights or traffic lights that visually integrate these new facilities into the surrounding area. These concealed facilities ensure that small cell facilities are aesthetically pleasing and respectful of the neighborhood and any affected commercial and industrial areas that the City is currently in the process of upgrading consistent with the City’s 2035 General Plan. It is the City’s assessment that retaining local authority to work with small cell applicants to design fully concealed facilities that preserve the visual environment while providing for robust wireless capacity sought by wireless carriers are attainable goals that are not mutually exclusive.

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.

This bill strips local government of the authority to protect the quality of life of our residents, and to protect public property and the public right-of-way from unconstrained access by small cells.

Furthermore, the bill will preclude the City of Burbank from continuing to work with small cell applicants and installers to facilitate the responsible development of new small cell facilities that minimize the visual and physical impacts of new wireless facilities by:

- Concealing new wireless facilities including antenna arrays, mechanical equipment and similar devices through the integration of these facilities in new traffic and light poles that include camouflage and screening techniques that help blend the new facilities into the surrounding area; and
- Designing new wireless facilities to be aesthetically pleasing and respectful of the neighborhood context;

- Maximizing use of existing city infrastructure to provide needed utilities to the proposed small cell facilities in order to reduce the need for separate mechanical equipment and visual clutter along the city's public right-of-ways and the potential need for trenching and/or drilling in the streets that the city's has previously invested tax payer dollars to upgrade and maintain.

Local governments typically encourage new technology in 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, as the Mayor of the City of Burbank, I **oppose** your SB 649.

Sincerely,



Jess A. Talamantes
Mayor
City of Burbank

cc: California Senator Anthony Portantino, 25th District
California Senator Robert Hertzberg, 18th District
State Assembly Member Laura Friedman, 43rd District
[Nidia Bautista](#), Consultant, Senate Energy, Utilities and Commerce Committee
[Kerry Yoshida](#), Principal Consultant, Senate Republican Caucus
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