



City of Emeryville

INCORPORATED 1896

OFFICE OF THE MAYOR

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April 4, 2017

The Honorable Ben Hueso
California State Senate, District 40
State Capitol Building, Room 4035
Sacramento, CA 95814

RE: SB 649 as Proposed to be Amended by RN 17 08941 (Hueso). Wireless and Small Cell Telecommunications Facilities. Notice of Opposition

Dear Senator Hueso:

The City of Emeryville respectfully opposes your SB 649 and proposed amendments in RN 17 08941 (proposal) related to the permitting of wireless and small cell telecommunication 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, including all residential zones.

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 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, cut-off switches, cables, or conduits. The proposal allows for an unlimited number of antennas of less than three cubic feet each or six cubic feet for all antennas, while placing no height restrictions on the pole. 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. 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 relatively unconstrained access by “small cells.”

Local government typically encourages new technology within 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 Emeryville opposes your SB 649.

Sincerely,

Scott Donahue
Mayor

cc: Emeryville City Council
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