


**REPORT OF THE
CHIEF LEGISLATIVE ANALYST**

DATE: May 18, 2017

TO: Honorable Members of the Rules, Elections, Intergovernmental Relations, and
Neighborhoods Committee

FROM: Sharon M. Tso 
Chief Legislative Analyst

Council File No: 17-0002-S69
Assignment No: 17-04-0501

SUBJECT: Resolution (Wesson – Blumenfield) to OPPOSE SB 649 (Hueso).

CLA RECOMMENDATION: Adopt Resolution (Wesson – Blumenfield) to include in the City's 2017-2018 State Legislative Program, OPPOSITION to SB 649 (Hueso), which would provide that a small cell is a permitted use, not subject to a city or county discretionary permit, if the small cell meets specified requirements.

SUMMARY

Resolution (Wesson – Blumenfield), introduced April 28, 2017, reports that SB 649 (Hueso) would preempt local control over small cell infrastructure by prohibiting 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. According to the Resolution, SB 649 would also preempt adopted local land use plans by allowing small cells in all zones as a use by-right and providing a de facto exemption to the California Environmental Quality Act (CEQA) for the installation of such facilities. In addition, the Resolution states that SB 649 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. Per the Resolution, SB 649 unconstitutionally strips local authority over public property and shuts out public input and local discretion by prohibiting consideration of the aesthetic and environmental impacts of small cells. The Resolution therefore requests that the City oppose SB 649 (Hueso), which would provide that a small cell is a permitted use, not subject to a city or county discretionary permit, if the small cell meets specified requirements.

BACKGROUND

Small Cells

SB 649 (Hueso) purports to streamline the permitting of small cell wireless facilities to assist the installation of small cell infrastructure. Small cells are smaller wireless facilities that augment the current wireless communication technology that is dependent on a network of large macro cell towers that are often over 200 feet tall. It has been reported that small cells and associated equipment usually take up less than 35 cubic feet of volume and can be about 40 feet tall. Due to their shorter range, small cells need to be deployed at greater density than traditional macro cell towers. According to CTIA, the trade association for the wireless communications industry and sponsor of

SB 649, more than 250,000 small cells are expected to be installed over the next few years in the United States to prepare for the roll-out of fifth generation (5G) mobile technology. It has been projected that 5G technology will provide speeds of up to 100 times faster than current networks, the benefits of which are estimated to exceed \$500 billion in gross domestic product (GDP) growth. By that projection, it has been reported that the City of Los Angeles may see the creation of nearly 37,000 jobs and an increase of nearly \$6 billion in GDP. To expand their existing networks and prepare for 5G technology, providers of wireless telecommunications services (carriers) are interested in reducing the time and cost of deploying small cell infrastructure.

Current Law

Currently, wireless carriers must apply to cities and counties for permits to build wireless facilities and related telecommunications equipment, like antennae. Similarly, wireless carriers must seek local approval to add upon existing facilities, known as collocations. Under current law, carriers have the right to access utility poles in the public right-of-way, as governed by a set of State regulations. State law establishes a framework governing the attachment of telecommunications facilities to investor-owned utility (IOU) poles and municipal utility poles and provides the California Public Utilities Commission (CPUC) with the authority to establish and enforce rates, terms, and conditions for pole attachments. Under this framework, local governments may not block utility pole attachments, but can regulate the time, manner, and place of pole attachments in the public right-of-way. However, IOUs and municipal utilities are limited to charging the CPUC's cost-based rates for the use of their properties, which are generally lower than market rate.

However, these restrictions do not apply to other infrastructure in the right-of-way, such as light poles and streetlights, or municipal properties outside of the right-of-way. In these circumstances, local governments retain discretionary authority over the approval process, including the ability to impose conditions on the wireless facilities and negotiate payments for the use of their public infrastructure. Carriers and cities have negotiated agreements for the deployment of small cells that require lease payments to use municipal infrastructure. These agreements are negotiated on an ad hoc basis and can result in fees of over \$4,200 per pole per year.

SB 649 Challenges to Local Authority

The California Constitution asserts that cities have police powers to protect public health, safety, and welfare. The police powers of local governments include their authority to regulate land through planning, zoning, and building ordinances. Those opposing SB 649 have argued that this municipal authority is obstructed by the Statewide framework that SB 649 would establish for streamlining the permitting of small cells. Specifically, SB 649 would require a ministerial permit in lieu of a discretionary permit, require cost-based fees in lieu of market pricing, and ensure carrier access to most host infrastructure in the utility right-of-way and also within a commercial or industrial zone. This bill would also require permits for wireless telecommunications facilities to be automatically renewed for equivalent durations, as specified.

Because SB 649 would only require a ministerial permit for small cell installation, small cells would become a permitted use and therefore could be developed by-right. Accordingly, this bill would prohibit local governments from establishing or continuing their discretionary approval processes for the permitting and siting of small cells wireless facilities. The local authority would not be able

to consider public input in determining the adequacy of small cell installations, nor would it be able to adequately regulate related aesthetic, nuisance, or environmental impacts. This may be of particular concern considering that SB 649 would eliminate discretionary review in significant portions of communities and everywhere within the public right-of-way in all zones, including residential neighborhoods and historic districts if they allow commercial or industrial uses.

Furthermore, SB 649 would require local governments to offer their vertical infrastructure—including streetlights, traffic lights, or other locally-owned or controlled pole or infrastructure that has not previously been used for communications or electrical transmission purposes—for carrier use. At the same time, SB 649 would remove their ability to charge fair rent by capping lease fees to an amount that is a small fraction of the rates in current agreements between carriers and local governments. As many cities opposing this bill have expressed, SB 649 would impede the obligation of local governments to rent public property in the public's interest and receive fair-market value. Effectively, by limiting the rate that could be charged to a cost-based fee, SB 649 would allow for the preferential treatment of the wireless communications industry over other entities who are paying the appropriate market rate for use of similar public property.

Lastly, SB 649 would further limit cities and counties' ability to address environmental concerns, particularly the health impacts from radio frequency and microwave radiation associated with wireless communications. Federal law, specifically the Telecommunications Act of 1996, already limits consideration of the environmental effects of radio frequency by the city or county insofar as a proposed project is in compliance with Federal Communications Commission (FCC) requirements. The law requires that remedies for projects that are out of compliance must be addressed by the FCC. Although SB 649 includes language requiring compliance with FCC emissions requirements, it has been reported that those who oppose this bill out of concern for the health impacts of wireless technologies are not likely to be satisfied with the standards that the FCC has established. These commenters have cited several studies in support, including a California Medical Association resolution supporting efforts to reevaluate microwave safety exposure and implement new safety exposure limits for wireless devices.

Other Issues

- **Unfair Competition:** Cable companies are deploying technology that would compete with wireless telecommunications carriers. As a direct competitor, the cable industry has expressed concern that SB 649 would give carriers an unfair advantage by easing rules for their technology, while leaving out functionally similar technology used by the cable industry to provide Wi-Fi. Another point of concern has been that SB 649 would cut the fees that carriers must pay by requiring local governments to charge significantly lower cost-based fees, whereas cable companies would continue to pay franchise fees of as much as five percent of gross revenues.
- **Nascent Technology:** Although small cell technology is considered the foundation of next-generation 5G networks, small cells have only been deployed for a few years. As such, the regulatory framework concerning small cells is still in the process of being established. Both the FCC and CPUC solicited comments on various policy issues regarding small cells as recently as December 2016 and early 2017, respectively. These proceedings could have a major impact on carrier and local government rights relative to siting small cells. Local governments are also just beginning to negotiate rates and procedures for small cell installations and need time to understand

the issues they present and how best to regulate them.

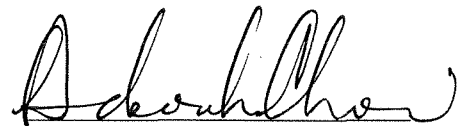
- **Reimbursement for State-mandated Local Program:** The California Constitution generally requires the State to reimburse local agencies for their costs when the State imposes new programs or additional duties. The Legislative Counsel's Office has determined that SB 649 would create a new State-mandated local program. However, SB 649 claims that because local agencies can levy fees to pay for the program, no reimbursement is required.

DEPARTMENT NOTIFIED

City Attorney
City Planning

BILL STATUS

- 2/17/17 Introduced.
- 3/2/17 Referred to Committee on Energy, Utilities and Communications and Committee on Governance and Finance.
- 3/28/17 Read second time and amended. Re-referred to Committee on Energy, Utilities and Communications.
- 4/5/17 Passed and re-referred to Committee on Governance and Finance.
- 5/1/17 Passed as amended and re-referred to Committee on Appropriations.
- 5/2/17 Read second time and amended. Re-referred to Committee on Appropriations.
- 5/4/17 Set for hearing May 15.



Deborah Choi
Analyst

Attachment: 1. Resolution

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must first have been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, California law allows local jurisdictions to establish and enforce a wide range of police powers, including regulatory land use control through planning, zoning, and building ordinances in order to protect public health, safety and welfare; and

WHEREAS, new wireless technologies function based on an infrastructure that allows for continuous communications, with recent infrastructure advancements reliant on "small cell" equipment which has much shorter ranges and must be deployed in greater density to achieve full coverage; and

WHEREAS, SB 649 (Hueso) would preempt local control over small cell infrastructure by prohibiting 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; and

WHEREAS, further, it preempts adopted local land use plans by mandating that "small cells" be allowed in all zones as a use by-right; and

WHEREAS, in addition, SB 649 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; and

WHEREAS, 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, contrary to the local government obligation to rent public property in the public's interest and receive fair-market value; and

WHEREAS, 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 ;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2017-18 State Legislative Program OPPOSITION to SB 649 which would provide that a small cell is a permitted use, not subject to a city or county discretionary permit, if the small cell meets specified requirements.

Presented by: _____
HERB WESSON, Jr.
Councilmember, 10th District

Seconded by: _____

APR 28 2017