



MAYOR SAVITA VAIDHYANATHAN

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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

Dear Senator Hueso:

The **City of Cupertino respectfully opposes 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.

As such, the proposal precludes consideration by the public of the aesthetic 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, cutoff switches, cables, or conduits.

While proponents argue that an individual “small cell” has very little impact, if aesthetics are not properly considered, the impact could be very acute.

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. 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.

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 relatively unconstrained access by small cells.

Further, the City of Cupertino has expended considerable effort in establishing agreements with several “small cell” installers and wireless providers. These existing agreements create a consistent and fair playing field among these various providers, and possess reasonable terms that the providers have found acceptable. SB 649 would erode these efforts and would give providers who have not yet established agreements with the City of Cupertino an unfair advantage, due to the different terms and requirements that SB 649 would impose on Cities.

The City of Cupertino is an excellent example of local government managing public property, and doing so in a manner that balances the interests of their populations with the interests of industry. SB 649 would tip that balance and unconstitutionally erode local authority.

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 reasons, the **City of Cupertino opposes SB 649.**

Sincerely,

Savita Vaidhyanathan
Mayor
City of Cupertino

cc: Senator Jim Beall (via email) - senator.beall@senate.ca.gov
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