



**Date:** August 28, 2017

**To:** Mayor and Members of the City Council

**From:** Patrick H. West, City Manager *T.M.W.*

**Subject:** **Opposition to SB 649 (Hueso) Deregulation of Telecommunication and Cable**

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**Introduction**

Senate Bill 649 (Hueso) is State legislation proposing to remove local land use control as it relates to permitting small cells and cable infrastructure. The legislation is sponsored by the telecommunications industry and has been quickly advancing through the State Legislature process despite significant local government opposition.

This memorandum provides a summary of SB 649, background on permitting telecommunications infrastructure in Long Beach, concerns the City has with respect to the legislation, as well as steps the City has taken to oppose the bill. For your information, all correspondence mentioned in this memorandum are attached.

The City has also partnered with the League of California Cities, Belmont Heights Community Association, Downtown Long Beach Business Associates, and the American Public Works Association to host a press conference in opposition to SB 649. At this media event, the City will highlight our support for technology and broadband infrastructure in concert with preserving local neighborhood aesthetics as the basis for our opposition to SB 649. The press conference will be on:

Wednesday, August 30, 2017, at 10:00am  
The Lighthouse at Pierpoint Landing  
200 Aquarium Way  
Long Beach, CA 90892

**Summary**

SB 649 proposes to eliminate the City's ability to work with telecommunication and cable providers to ensure aesthetics and other subjective criteria related to siting infrastructure in Long Beach are met. The bill would define "small cells" as equipment that does not exceed 21 cubic feet, much larger than equipment that is currently permitted in the City. Further, SB 649 establishes a \$250 annual cap on fees that a City would be able to charge a telecommunications provider. Long Beach currently charges a one-time application fee of \$5,000 and an annual fee of \$1,500 per small cell. In effect, SB 649 would significantly reduce operational costs for the telecommunications industry, and deregulate deployment of equipment.

**Background**

The growing use of smart phones, mobile web browsing, and streaming video has led to higher demand in cellular data. For the telecommunication industry to support

this demand, providers are interested in installing more compact, localized micro cell stations to supplement the shortfalls of traditional larger macro cell stations.

Local governments currently have the authority to regulate local land use, which includes aesthetic and placement of localized micro cell stations, as well as cable infrastructure. This regulatory authority enables the City to require service providers to install equipment in a manner that is sensitive to neighborhood aesthetics and blends in with the surrounding infrastructure.

#### **Concerns with SB 649**

SB 649 would nearly eliminate the City's ability to manage and regulate the way in which wireless telecommunication, small cell and cable equipment infrastructure is deployed in neighborhoods and business communities. Based on the City's current experience regulating these important infrastructure assets, Long Beach believes SB 649 would result in an uncontrolled, rapid deployment of wireless telecommunications equipment in our cities, at a significantly negative cost to the quality of life and visual environment in our neighborhood and business communities. These changes will have significant negative aesthetic impacts, and they will negatively affect the City's economic well-being.

Most recently, Crown Castle, negotiating on behalf of the telecommunications industry, submitted applications to the City to place 31 micro cells on specified streetlight poles in the Long Beach right-of-way and City-owned lots. City staff reviewed all 31 sites and recommended 21 sites for approval, subject to conditions of approval.

Because the City of Long Beach is currently able to regulate local land use, the City was able to work with Crown Castle to develop standards that include the replacement of the approved 21 existing streetlight poles with new light poles in the same location. The proposed pole replacements, paid for by Crown Castle, will closely match the appearance of existing streetlight poles with a slightly larger pole diameter, not to exceed a 13-inch base and 10-inch top, to provide adequate space to run all necessary small cell components. To further lessen visual impact and public right-of-way intrusion, support equipment will be placed in a below-grade vault unless Crown Castle provides proof it is not feasible; if placed above ground, equipment will be placed outside the path of travel and reviewed to the satisfaction of the Director of Public Works. Any future expansion to the site or ancillary equipment will require approval from the Director of Public Works. These conditions of approval would not be possible if SB 649 were to become State law. For that reason, the City strongly opposes the legislation.

#### **Legislative Advocacy in Opposition**

In an effort to work with the telecommunications industry on this policy issue, Long Beach met with Verizon officials on several occasions earlier in the legislative session. The City invested resources into working with Verizon to identify a solution

that would enable the telecommunication industry to obtain permits for small cells more expeditiously, while enabling cities to maintain local unique identities and appropriate aesthetic controls over wireless development. Much of the basis for these conversations were rooted in the “patch” Ordinance that was adopted by the City Council in April 2017.

Unfortunately, there remains significant fundamental disagreement between more than 250 cities and counties, including the City of Long Beach, and the telecommunications industry. Long Beach believes local land use decisions, and the management of public infrastructure in the public right-of-way should remain within the purview of local jurisdictions, and not be transferred to a private-for-profit industry. The telecommunications industry continues to seek a one-size fits-all regulatory process applicable to every city in California, whereby permit approval would be granted through a ministerial process devoid of discretionary review.

Through State legislative advocacy, Long Beach has explained the need for discretionary permit reviews and local control; the City has submitted amendments to the legislation, and partnered with the Big 10 Mayors coalition, as well as the League of California Cities to oppose the legislation. A history of our written opposition is below:

- April 19, 2017 – Long Beach sent an “oppose unless amended” letter to the Senate Governance and Finance Committee to express opposition to the legislation. The City’s legislative advocates also testified in opposition to the bill at this hearing. Prior to this letter, Long Beach met with Verizon officials twice to suggest changes to the bill but those changes were not accepted.
- May 11, 2017 – Long Beach sent a letter of firm opposition to the Senate Appropriations Committee to re-affirm the City’s position on the bill. This letter explained the major difference between the City’s current permitting fee structure (\$5,000 one-time application fee, and a \$1,500 annual fee), and a static, statewide fee schedule.
- June 22, 2017 – Since the City’s opposition to the bill in the State Senate failed to stop the legislation, Long Beach reiterated our opposition to the State Assembly. Prior to the Assembly Local Government hearing, the City sent a third letter of opposition to the bill, and the City’s legislative advocates testified in opposition at the hearing.
- June 26, 2017 – Mayor Garcia, along with mayors from: Oakland, San Francisco, San Jose, Los Angeles, and Santa Ana signed and sent a final letter of opposition to the bill.

Several neighborhood groups and business improvement districts have reached out to express concerns about the legislation, and staff have shared the City’s legislative position letters with those groups for their own advocacy against SB 649.

Additionally, Long Beach is coordinating a press conference along with the League of California Cities, the Belmont Heights Community Association, Downtown Long Beach Alliance (DLBA), and American Public Works Association to oppose SB 649. The City will highlight support for technology and broadband infrastructure in concert with preserving local neighborhood aesthetics as the basis for the opposition to SB 649. This press conference will be held on Wednesday, August 30, 2017 at 10:00 a.m.

**Next Steps**

SB 649 is currently in the Assembly Appropriations Committee. The deadline to vote and pass the legislation in the Assembly Appropriations Committee is September 1. If the legislation reaches the Assembly Floor, it will need to receive a majority vote in support in order to continue advancing forward. Because amendments were made to SB 649 after the Senate approved the legislation, the bill will need to return to the Senate for a majority vote of approval in concurrence before it is presented to the Governor for consideration as State law.

Please contact Diana Tang, Manager of Government Affairs at (562) 570-6506 if you have any questions.

Cc: Charles Parkin, City Attorney  
Laura Doud, City Auditor  
Tom Modica, Assistant City Manager  
Kevin Jackson, Deputy City Manager  
Craig Beck, Director of Public Works  
Amy Bodek, Director of Development Services  
Bryan Sastokas, Director of Technology and Innovation  
John Keisler, Director of Economic and Property Development  
Rebecca Jimenez, Assistant to the City Manager  
Diana Tang, Manager of Government Affairs  
DiMare, Brown, Hicks, & Kessler, LLC



# CITY OF LONG BEACH

OFFICE OF THE CITY MANAGER

333 WEST OCEAN BOULEVARD • LONG BEACH, CALIFORNIA 90802 • (562) 570-6711 • FAX (562) 570-6583

PATRICK H. WEST  
CITY MANAGER

April 19, 2017

The Honorable Mike McGuire, Chair  
California State Senate, Committee on Governance and Finance  
State Capitol, Room 408  
Sacramento, CA 95814

**RE: Oppose unless amended. SB 649 (Hueso) –Wireless telecommunications facilities**

Dear Senator McGuire:

The City of Long Beach met with Verizon on two separate occasions to discuss Senate Bill 649 (Hueso), and expressed concerns related to local control in the proposed legislation. As the current bill does not mitigate these concerns, the City must respectfully oppose unless amended.

Long Beach takes pride in supporting a robust economy inclusive of modern technology, well-designed urban spaces, and a beautiful skyline. While the City values the services provided by the wireless telecommunication industry, local governments must retain local land use authority to balance the numerous needs of our communities.

SB 649 contains a number of legislative changes that directly conflict with responsible local governance. These include:

- **Unilaterally requiring a city to renew permits for equivalent durations unless a finding is made that determines the wireless communications facility is not in compliance with codes and permit conditions applicable at the time the permit was initially approved.** Cities must retain local agency discretion over renewal terms. The City of Long Beach continually invests in modernizing and improving our local infrastructure, and it is important that cities retain the ability to require telecommunication providers do the same through a duly established permitting process.
- **Unilaterally allowing small cells to be a permitted use, not subject to a local discretionary permit, if the small cell is located in the public right-of-way, or in any zone that includes commercial or industrial use.** Cities must retain local agency discretion over aesthetic requirements. As a diverse and economically vibrant city, zoning in Long Beach is incredibly complex. Long Beach absolutely must retain the ability to issue discretionary permits, as this is the City's only mechanism for consistently protecting and preserving the aesthetic integrity of our commercial corridors and neighborhoods, which are uniquely Long Beach.
- **Significantly limiting a city's ability to manage leases in the public right-of-way or public utility easements.** Cities must retain discretion in leasing/licensing city-owned poles and other public infrastructure. Long Beach considers space in the public right-of-way, and space in public utility easements, as space held in trust for the public. It is important the City is able to use market-rate

**Opposition to SB 649 (Hueso) Wireless telecommunications facilities**

**April 19, 2017**

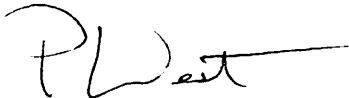
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studies as for a component of determining appropriate lease payments if public space is leased to private for-profit entities. SB 649 significantly limits a city's ability to manage its proprietary rights and powers to regulate, govern and use city-owned property in the public right-of-way, and to act in a city's separate and additional capacity as an owner of city streetlights and poles.

The City of Long Beach understands the need to modernize the telecommunication permitting process. Staff is in the process of updating zoning regulations for wireless telecommunication facilities in an effort to respond to the current market for small cell development. It is anticipated this update will be complete within the next six months. Long Beach's local zoning update will provide appropriate aesthetic and location standards for City residents and stakeholders, while increasing clarity of regulations and efficiency of processing for the wireless industry. The update process is unique to Long Beach and extremely important to Long Beach.

Given these reasons, the City of Long Beach opposes SB 649 (Hueso).

Sincerely,



**Patrick H. West  
CITY MANAGER**

cc:     The Honorable Speaker Anthony Rendon, State Assembly  
          The Honorable Ben Hueso, State Senate, 40<sup>th</sup> District  
          The Honorable Steven Bradford, State Senate, 35<sup>th</sup> District  
          The Honorable Ricardo Lara, State Senate, 33<sup>rd</sup> District  
          The Honorable Janet Nguyen, State Senate, 34<sup>th</sup> District  
          The Honorable Mike Gipson, State Assembly, 64<sup>th</sup> District  
          The Honorable Patrick O'Donnell, State Assembly, 70<sup>th</sup> District



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PATRICK H. WEST  
CITY MANAGER

May 11, 2017

The Honorable Ricardo Lara, Chair  
California State Committee on Appropriations  
State Capitol, Room 2206  
Sacramento, CA 95814

**RE: Oppose SB 649 (Hueso) – Wireless telecommunications facilities**

Dear Senator Lara:

On behalf of the City of Long Beach, I write in opposition to SB 649. This legislative position represents a shift in the City's original "oppose unless amended" position. Long Beach has met periodically with Verizon in search of a solution that would enable the telecommunication industry to obtain permits for small cells more expeditiously, and Long Beach to maintain the unique identify of our City. Unfortunately, the proponents of SB 649 have not been able to meet the City's concerns with regards to local discretionary control related to aesthetics, permitting processes, use of city-owned facilities, and infrastructure in the public right-of-way.

Long Beach takes pride in supporting a robust economy inclusive of modern technology, well-designed urban spaces, and a beautiful skyline. While the City values services provided by the wireless telecommunication industry, the City must also have the authority to fulfill our role as a local government. As a part of this responsibility, Long Beach manages space in the public right-of-way. The most recent small cell permit approved, provides for a \$1,500 annual fee per pole in downtown Long Beach, plus a one-time application fee of \$5,000. The term of the agreement is 10 years.

The City understands the need to modernize the telecommunication permitting process given changes in technology. Zoning updates related to "small cells" are underway in Long Beach, and will provide appropriate aesthetic and location standards for City residents and stakeholders, and increase clarity of regulations and efficiency of processing for the wireless industry. These updates can, and are, occurring without SB 649.

Given these reasons, the City of Long Beach respectfully opposes SB 649 (Hueso).

Sincerely,

A handwritten signature in black ink, appearing to read "P. West".

Patrick H. West  
CITY MANAGER

cc: The Honorable Speaker Anthony Rendon, State Assembly  
The Honorable Ben Hueso, State Senate, 40<sup>th</sup> District  
The Honorable Steven Bradford, State Senate, 35<sup>th</sup> District  
The Honorable Ricardo Lara, State Senate, 33<sup>rd</sup> District  
The Honorable Janet Nguyen, State Senate, 34<sup>th</sup> District  
The Honorable Mike Gipson, State Assembly, 64<sup>th</sup> District  
The Honorable Patrick O'Donnell, State Assembly, 70<sup>th</sup> District  
Senate Appropriations Committee Members



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PATRICK H. WEST  
CITY MANAGER

June 22, 2017

The Honorable Cecilia M. Aguiar-Curry, Chair  
California State Assembly, Committee on Local Government  
1020 N Street, Room 157  
Sacramento, CA 95814

**RE: Oppose SB 649 (Hueso) – Wireless telecommunications facilities**

Dear Chair Aguiar-Curry:

On behalf of the City of Long Beach, I write in strong opposition to SB 649. This bill would neutralize the City's ability to manage and regulate the way in which telecommunication small cell and cable equipment impact neighborhoods and business communities in Long Beach. Based on our experience managing these assets, Long Beach believes that SB 649 would result in a much more rapid deployment of telecommunication equipment in our cities, at a significant cost to the quality of life and local culture in our neighborhood and business communities. These changes will be visually apparent, and they will be financially significant.

In an effort to work with the telecommunications industry on this policy issue, Long Beach has met with Verizon officials on several occasions earlier in the legislative session. The City had hoped to identify a solution that would enable the telecommunication industry to obtain permits for small cells more expeditiously, while enabling cities to maintain local unique identities. Unfortunately, there remains a fundamental disagreement between many cities and counties, including the City of Long Beach, and the telecommunications industry. Long Beach believes local land use decisions, and the management of public infrastructure should remain within the purview of local jurisdictions, and not transferred to a private-for-profit industry.

The City of Long Beach takes pride in supporting a robust economy inclusive of modern technology, well-designed urban spaces, and a beautiful skyline. As a part of this responsibility, Long Beach manages space in the public right-of-way, including that which is used by the telecommunication and cable industries for siting of privately-owned equipment. The most recent small cell permit approved in Long Beach considered local aesthetics, as well as market rates. These permits were approved at a cost of \$1,500 annual fee per pole in downtown Long Beach, plus a one-time application fee of \$5,000. The term of the agreement between the City and the telecommunications provider is 10-years.

SB 649 proposes to limit the fees that a city or county may charge for the installation of a small cell telecommunications facility on publicly owned vertical infrastructure. The bill provides for a fee structure that ranges from \$100 to \$850 per small cell per year. The City is concerned with this language, as it significantly subsidizes the private sector with below market rates for the usage of public assets paid for by city residents.



Opposition to SB 649 (Hueso) Wireless telecommunications facilities

June 22, 2017

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Long Beach understands the need to modernize the telecommunication permitting process given changes in technology. Zoning updates related to "small cells" were adopted in our City earlier this year, and will provide appropriate aesthetic and location standards for City residents and stakeholders, as well as increase clarity of regulations and efficiency of processing for the wireless industry. These updates can, and are, occurring without SB 649. If SB 649 passes, the updates streamlining "small cell" permits in Long Beach would become mute.

Given these reasons, the City of Long Beach strongly opposes SB 649 (Hueso).

Sincerely,



Patrick H. West  
CITY MANAGER

cc:       The Honorable Speaker Anthony Rendon, State Assembly  
          The Honorable Ben Hueso, State Senate, 40<sup>th</sup> District  
          The Honorable Steven Bradford, State Senate, 35<sup>th</sup> District  
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          California State Assembly, Committee on Local Government