



Legislation Text

File #: 17-0304, **Version:** 1

TO:

Honorable Mayor and Members of the City Council

THROUGH:

Mark Danaj, City Manager

FROM:

Anne McIntosh, Community Development Director
Stephanie Katsouleas, Public Works Director
Sanford Taylor, Information Technology Director
George Gabriel, Management Analyst

SUBJECT:

Letter of Opposition Regarding Senate Bill 649 - Wireless "Small Cell" Communication Facilities Discretionary Review (Community Development Director McIntosh, Public Works Director Katsouleas and Information Technology Director Taylor).

OPPOSE LEGISLATION

RECOMMENDATION:

Staff recommends that the City Council write a letter opposing Senate Bill (SB) 649 to the California State Assembly, State Senator Ben Hueso, the Committee on Communications & Conveyance, and the League of California Cities.

FISCAL IMPLICATIONS:

No fiscal implications associated with the recommended action but if the bill passes, it may hinder potential revenue the City generates in the future.

BACKGROUND:

Authored by State Senator Ben Hueso (D-40-San Diego), Senate Bill (SB) 649 proposes to reduce local control and fees over small cell siting in the public right-of-way. This bill grants cell providers access to locally owned infrastructure within the public right-of-way and in commercial and industrial zones and prohibits local discretionary zoning review.

Proponents have noted that SB 649 streamlines the regulatory process for small cell antennas and decreases gaps in cell phone coverage.

For purposes of this summary, "small cell" is defined as wireless telecommunications equipment used by cell providers to provide cell service.

Specifically, this bill:

1. Establishes that a small cell is a permitted use not subject to a city or county discretionary zoning review or discretionary permit if it satisfies the following requirements:

- a. Complies with all applicable state and local health and safety regulations.
 - b. Is not located within the coastal zone or a fire department facility.
 - c. Is located in the public right-of-way in any zone or in any zone that includes a commercial or industrial use.
2. Grants cell providers nondiscriminatory and nonexclusive access to locally owned utility poles, street lights, and other suitable host infrastructure located within the public right-of-way and in other local public places such as stadiums, parks, campuses, hospitals, transit stations, and public buildings consistent with all applicable state and local health and safety requirements.
3. Requires local governments to renew expiring permits for cell facilities that have maintained compliance with use conditions adopted at the time the cell site was originally approved.
4. Permits local governments to charge wireless permit fees that are nondiscriminatory and cost based.
5. Permits local governments to charge 3 types of fees: an annual administrative permit fee (not to exceed \$250), an annual attachment rate (i.e. leasing fee), or one-time reimbursement fee (to perform cell site rearrangements).

For reference, staff has included a breakdown of notable supporters and opposition to the bill.

Notable Supporters

AT&T, Berkeley Chamber of Commerce, Long Beach Area Chamber of Commerce, Orange County Business Council, Sprint, and Verizon.

Notable Opponents

League of California Cities, American Planning Association, California State Association of Counties, Protect our Local Streets Coalition, City of Hermosa Beach, City of Torrance, City of Palos Verdes Estates, and over 100+ California Cities.

Bill Status

Senate Bill 649 passed the California State Senate (32-1) and is now being reviewed by the California State Assembly. The bill has been referred to the Committee on Local Governance and the Assembly Committee on Communications & Conveyance. On June 28, 2017 the Assembly Committee on Local Governance passed the bill (6-1-1). The bill is now scheduled to be heard at the Assembly Committee on Communications & Conveyance. As of June 28, 2017 a hearing has not been scheduled.

DISCUSSION:

In establishing a statewide framework for small cell deployment, this bill establishes limitations on the process, procedures, costs, and abilities of local governments to permit small cell facilities. The City of Manhattan Beach currently regulates the installation and operation of wireless telecommunications facilities, including small cells, within the public right-of-way and on public and private properties citywide (Ordinance No. 2075).

After preliminary review of the Community Development Director, Public Works Director, and Information Technology Director, and the City Manager's Office, staff has raised the following concerns of the bill:

1. The bill removes a local government's ability to condition the aesthetics of proposed facilities.
2. While the bill exempts coastal zones, a sizable portion of the City is not exempt to the bill.
3. Eliminates view impacts as a reason to deny a particular location, a potential concern to many

Manhattan Beach residents.

4. Lack of language included in bill to address potential antenna blight, technology concealment with the use of smart devices, and the rights of municipalities where the small antennas could have impacts.
5. Potentially significant fiscal implications on fees generated from permits required to process applications from network providers.
6. Potentially significant fiscal implications on ability to generate revenue from streetlights that are in the beginning phases of acquisition from Southern California Edison.

At this current time, the City of Manhattan Beach has less than ten permitted small-cell wireless installations in the City. However, the City has approximately 75 applications pending review. Therefore, staff recommends opposing the bill to ensure the pending applications undergo a process that does not limit the City's discretionary review.

POLICY ALTERNATIVE:

ALTERNATIVE:

No Action

PROS:

- No staff resources dedicated to bill opposition.

CONS:

- Opposition to bill not advocated by City of Manhattan Beach.

PUBLIC OUTREACH/INTEREST:

After analysis, staff determined that public outreach was not required for this issue.

LEGAL REVIEW

The City Attorney has reviewed this report and determined that no additional legal analysis is necessary.

Attachment:

1. Senate Bill 649