



City of Encinitas

Office of
The Mayor

June 27, 2016

The Honorable Mike Gatto
California State Assembly, District 43
State Capitol Building, Room 5136
Sacramento, CA 95814
Fax: (916) 319-2143

Kristin Gaspar
Mayor

**RE: AB 2788 (Gatto) Wireless Telecommunications Facilities
Oppose (As amended 6/13/2016)**

Dear Assembly Member Gatto:

Lisa Shaffer
Deputy Mayor

The City of Encinitas respectfully opposes your AB 2788, which was recently gutted and amended to deal with the permitting of wireless facilities. This bill 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."

Catherine S. Blakespear
Council Member

AB 2788 prohibits 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 on buildings. The bill preempts adopted local land use plans by mandating that "small cells" be allowed in all zones as a use by-right.

Tony Kranz
Council Member

As such, the bill 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.

Mark Muir
Council Member

This bill's definition of a "small cell" may actually result in large facilities that exceed the bill's specified limitations. Furthermore, the limits do not apply to 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. The bill allows for an unlimited number of antennas of less than six cubic feet, while placing no height restrictions on the pole. The City of Encinitas has voter imposed and approved height restrictions, and your bill would override local law with respect to structure heights.

Karen P. Brust
City Manager

The bill 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 bill 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 city property to private telecommunications companies.

Finally, a city or county must issue the applicable building permit or administrative permit within an arbitrary timeline of 60 days after the submission of an application for a small cell

facility, or else the permit is deemed issued. Even more concerning, this bill seemingly allows a telecommunications company to submit an application for an unlimited number of facilities and equipment simultaneously, which would force a public agency to potentially review dozens or unlimited numbers of applications within the 60 day window, potentially approving these facilities regardless of whether they are built to building, health, safety or local codes.

Our city owns and operates a Community and Senior Center, where residents congregate for the recreational programs we offer. We choose not to locate telecommunications antennae on the building because of the unknown effects of radio waves, and the large numbers of children in our recreational programs. It is troubling that we would lose land use authority over our own property with respect to placement of antennae, even if we oppose these placements for good reason. Of course public schools are government-owned facilities and would be subject to the same lack of local control with respect to telecommunications antennae placement.

Local governments typically welcome new technology into their boundaries because of the potential to dramatically improve the quality of life for their residents. However, AB 2788 goes too far by requiring local governments to approve "small cells" in all land use 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 Encinitas **opposes** AB 2788 (Gatto) Wireless Telecommunications Facilities.

Sincerely,



Kristin Gaspar
Mayor

cc: Senator Patricia Bates
Assembly Member Rocky Chavez
Nidia Bautista, Consultant, Senate Energy, Utilities and Commerce Committee
Kerry Yoshida, Principal Consultant, Senate Republican Caucus
JGC Governmental Relations
Catherine Hill, League of California Cities, chill@cacities.org
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City Council
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