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## **Local Elected Leaders Unite in Fresno to Stop the Big Telecom Power Grab**

*Leaders From The City Of Fresno, County Of Fresno, and Others Urge Lawmakers to Reject SB 649 (Hueso), Which Eliminates Local Governments' Authority to Determine Wireless Equipment Placement on Public Property and Transfers Authority and Dollars from Local Communities to Corporate Profits*

Fresno Mayor Lee Brand, Fresno County Supervisor Buddy Mendes and Fresno City Council Member Oliver Baines today urged the Legislature to reject SB 649 (Hueso). Opposed by more than 215 cities and dozens of counties, this legislation would virtually eliminate the authority of cities and counties to negotiate with telecommunications companies on the siting of wireless equipment in the public right-of-way and on public infrastructure. SB 649 would also cap the lease rates far below market rate, on public infrastructure. The leaders held a press conference this morning in Fresno at the Cultural Arts District Park. *For more, see Page 2.*



## **California Supreme Court Finds City Improperly Refused To Order Special Election for Citizens' Initiative Imposing General Tax**

*Though Less Than Clear, the Majority Opinion Does Not Appear to Eliminate the Two-Thirds Vote Requirement for Special Taxes Imposed Via Initiative*

The California Supreme Court issued a 5-2 decision Monday, Aug. 28, in *California Cannabis Coalition v. City of Upland* — a case involving a challenge to the city of Upland's decision to submit a citizens' initiative to the voters at the November 2016 general election rather than ordering a special election. *For more, see Page 3.*



## **Both Park/Water Bond Bills Advance after Rally for Parks**

*Cities Urged to Support Per Capita Funding for City Parks in a Parks and Water Bond*

Lawmakers continue to move the two park/water bond bills through committees while they negotiate about what the bond will fund. The two measures that would place a bond on the June 2018 statewide ballot are [AB 18](#) (E. Garcia) and [SB 5](#) (de León). Ultimately, the authors, leadership, and the Administration will have to agree to pass just one of the measures. *For more, see Page 3.*

Cities and counties support advances in technology, unique and diverse neighborhoods, businesses and closing the digital divide. They also have the authority to work with telecommunication companies to advance modern technology through an established discretionary permitting process, and many are doing so. Local governments are responsible for updating local zoning codes to reflect land use changes, based on the evolution of local neighborhoods and residents' needs. Discretionary control of local land use decisions is critical to preserving and supporting the unique identities of California's diverse communities. The bill has widespread opposition because it erodes local land use control, and subsidizes the telecommunications industry at the expense of our local neighborhoods.

SB 649 would give the wireless giants virtually limitless ability to install antennas, wireless boosters, and other equipment wherever they want — on any publicly owned street light, traffic-signal pole, or any wood poles with electricity, cable, or telephone lines attached. The bill would shortchange taxpayers, and disproportionately hurt those living in rural and inland communities by increasing the Digital Divide, while stripping power from inland and rural local leaders. Meanwhile, Californians would still pay the same high prices for their wireless services.

Each of the speakers urged the Legislature to listen to the opposition and reject SB 649.

**Fresno Mayor Lee Brand:** "SB 649 is an end-run around dozens of local agreements between wireless companies and local governments around the state. It removes rules that require telecom companies to upgrade their service in rural and inland communities. Stripping away these requirements could be disastrous for businesses and residents in less affluent areas, who could see their cell phone service stagnate, while upgrades happen only in more prosperous areas."

**Fresno County Supervisor Buddy Mendes:** "I know how important it is to be "connected" in this day and age — especially in rural communities. This bill does nothing to improve internet or cellular phone access in our rural and underserved communities. It lets the telecom companies decide where and how to install their equipment and it limits local input and local revenue at the same time. This is a bad bill, and I am urging our local legislators to vote against it."

**Fresno City Council Member Oliver Baines:** "SB 649 hands over the public's right-of-way for use by private companies. This will increase blight across our communities. Even though the public may not want cell phone towers in their front yard, they would have no recourse to stop it if SB 649 becomes law. Local citizens and elected officials would be rendered powerless to stop companies from placing whatever equipment they want, wherever they want."

**Hanford City Manager Darrel Pyle:** "Not only does SB 649 silence our residents on where wireless equipment is placed on public infrastructure, it would also be financially devastating to communities up and down California. Under SB 649, that amount is capped at a mere \$250 annually per installation. So city budgets and services are at risk as telecommunications giants make profits off using our lights, traffic signals and city buildings to put up their equipment."

Dr. Jonathan L. Kramer, Local Government Attorney and Wireless Engineer, Telecom Law Firm, P.C. brought a life-size model to show how large this equipment is in reality.

Elected city officials from throughout the Fresno region joined the speakers at the podium including:

- Clovis Mayor Bob Whalen;
- Clovis Mayor Pro Tem Drew Bessinger;
- Clovis Council Member Vong Mouanoutoua;
- Clovis City Manager Luke Serpa;
- Firebaugh Council Member Freddy Valdez;
- Firebaugh City Manager Ben Gallegos;
- Fresno Chief Information Officer Bryon Horn;
- Hanford Police Chief Parker Sever;
- Hanford IT Director Eric Forcey;
- Reedley Community Development Director Rob Terry; and

- Visalia Community Development Director Nick Mascia.
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**'Upland Case' Continued from Page 1...**

The initiative at issue proposed to allow up to three dispensaries in the city and to require that each dispensary pay the city an "annual Licensing and Inspection fee" of \$75,000. After accepting a certificate of sufficiency for the petition, the Upland City Council had three options to proceed under California Elections Code section 9214 — they could (1) adopt the ordinance without alteration, (2) order a special election or (3) order an agency report, and then decide whether to adopt the ordinance or order a special election. The Upland City Council opted to order an agency report.

The report concluded that the \$75,000 "fee" was significantly in excess of the city's estimated costs of permitting and inspection, and therefore constituted a general tax that, under article XIII C of the California Constitution (added by Proposition 218), had to be submitted to the voters at the next general election. The city council thus directed that the initiative be placed on the November 2016 ballot.

The proponents of the initiative — the California Cannabis Coalition — then filed a petition seeking to obtain a court order directing the city to place the initiative on a special election ballot. The superior court denied the petition and the proponents appealed. The Court of Appeal reversed the ruling of the superior court, holding that article XIII C did not apply to preclude the initiative from being placed on a special election ballot under Elections Code section 9214. The Court reasoned that article XIII C refers to taxes "imposed by local government" and taxes imposed by initiative are not "imposed by local government."

The California Supreme Court voted 5-2 to affirm the Court of Appeal. Writing for a majority of the Court, Justice Mariano-Florentino Cuéllar emphasized that courts have long declared it their duty to "jealously guard" the initiative power by narrowly interpreting provisions that would limit its exercise by the voters. With this principle in mind, the Court interpreted the term "local government" in article XIII C to mean "a locality's governing body, public officials, and bureaucracy" and found nothing in the Prop. 218 ballot materials or the text of article XIII C, section 2, to suggest an intent to include the electorate in the definition of "local government." The Court then concluded that the general election requirement of article XIII C, section 2, subsection (b) did not apply to the initiative since it was not imposed by "local government." Therefore, the Court held the city should have ordered a special election for the initiative under Elections Code section 9214.

Although the Court found no evidence the term "local government" was intended to include the electorate, the Court appeared to find some evidence that the two-thirds vote requirement in article XIII C, section 2, subdivision (d) would still apply to special taxes proposed by initiative. However, the majority's basis for distinguishing between article XIII C, section 2, subdivision (b) (general taxes) and article XIII C, section 2, subdivision (d) (special taxes) is less than clear, and the Court's discussion in this area would benefit from further explanation.

In light of the lack of clarity in the Court's discussion, cities faced with a citizens' initiative imposing a tax should consult with their city attorney.

The League would like to thank Michael Colantuono of Colantuono, Highsmith & Whatley, Robin Johansen of Remcho, Johnsen & Purcell, and Dan Hentschke for drafting the League's amicus brief in this case.

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**'Parks/Water Bonds' Continued from Page 1...**

There has been a flurry of activity throughout the week. On Wednesday, Senate President pro Tempore Kevin de León (D-Los Angeles), Assembly Speaker Anthony Rendon (D-Lakewood), Assembly Member Eduardo Garcia (D-Coachella), and several other lawmakers, joined forces with parks advocates to rally for the need for parks. Many speakers acknowledged the importance of local and urban parks. On Thursday, both measures passed their second house

policy committees and were sent to the appropriations committees, where they are expected to be heard next week.

While there is a lot to like in both park bond measures moving through the Legislature, the League continues to advocate for a high level of funding to be distributed to local governments on a per capita basis. The League urges cities to contact their legislators and let them know the importance of maintaining the \$425 million per capita allocation to local governments, which is currently in AB 18.

Two citizen's initiatives have also been filed that would place bonds on the ballot.

- [The Safe Drinking Water, Water Quality and Supply, Natural Resources Protection and Park Improvement Act of 2018](#)
- [State Water Supply Infrastructure, Water Storage and Conveyance, Ecosystem and Watershed Protection and Restoration, and Drinking Water Protection Act of 2018](#)

The last true park bond, Proposition 40, passed 15 years ago. Since then parks have suffered through the Great Recession as cities struggled to shore up shrinking budgets. Many parks departments have not recovered and are still weighed down by deferred maintenance. As all cities would benefit from this level of funding, cities that support parks funding are encouraged to reach out to legislators. Park bond funding is critical for struggling city parks.

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### **League-Sponsored Bond Agency Issues \$56.8 Million in Tax-Exempt Bonds for Affordable Housing in Santa Ana, Concord and New Markets Tax Credit Financing for CARE Center in Oakland**

Some of the most significant benefits of League membership for cities since 1988 have flowed from the League's co-sponsorship of the [California Statewide Communities Development Authority](#) (CSCDA) and [California Statewide Communities Development Corporation \(CSCDC\)](#).

This program provides a variety of public agencies and developers access to low-cost, tax-exempt financing and economic development tools. CSCDA recently issued a total of \$56,860,907 in tax-exempt multi-family affordable housing bonds for Heninger Village Apartments in Santa Ana and Sun Ridge Apartments in Concord, and [New Markets Tax Credit](#) (NMTC) allocation to Lao Family Community Development (LFCD) to finance its new CARE Center, the rehabilitation of a 30,000 square foot building located in East Oakland that will serve as its new headquarters as well as a multi-service community facility.

#### **About Heninger Village Apartments**

Heninger Village Apartments is an acquisition and rehabilitation of 58 multi-family affordable housing apartments by Heninger 2016 LP. The project sponsor is KDF Communities. Heninger Village will continue to be 100 percent affordable and provide apartments to low-income residents in Santa Ana.

CSCDA and KDF partnered with R4 Capital Funding, LLC and Orrick, Herrington & Sutcliffe, LLP to provide the \$9,500,000 in tax-exempt multi-family affordable housing bonds for Heninger Village. The project will undergo an extensive interior and exterior renovation ensuring that residents have an updated, safe, and affordable community to call home for years to come. The financing of Heninger Village will maintain the affordability of units for low-income tenants for 55 years.

#### **About Sun Ridge Apartments**

Sun Ridge Apartments is an acquisition and rehabilitation of 198 multi-family affordable housing apartments by Monument Boulevard Housing Associates, LP. The project sponsor is Community HousingWorks. Sun Ridge will continue to be 100 percent affordable and provide 84 one-bedroom, 98 two-bedroom, and 14 three-bedroom apartments to low-income families in Concord.

CSCDA and Community HousingWorks partnered with Jones Lang LaSalle Multifamily, LLC to provide the \$33,930,907 in tax-exempt multi-family affordable housing bonds for Sun Ridge. The rehabilitation will include extensive exterior and interior renovations which include energy and water efficiency upgrades. The financing of Sun Ridge will maintain the affordability of units for low-income tenants for 55 years.

### **About LAO Family Community Development**

LFCD is a nonprofit organization founded in 1980 whose mission is to build healthy communities by empowering vulnerable low-income refugees, immigrants, public assistance recipients, youth, seniors, and high barrier unemployed individuals and families to achieve self-sufficiency. LFCD has 10 locations in three counties and each year, LFCD delivers asset development, financial education, employment services and family support to over 15,000 immigrants, refugees, and low-income U.S. nationals in over 20 languages.

CSCDC partnered with JPMorgan Chase to provide \$13,430,000 in NMTC funding to finance the CARE Center. Other financing sources included: a loan from Clearinghouse CDFI; a California State Parks Prop 84 grant; and other capital campaign proceeds. The center will include LFCD's administrative offices and conference rooms, from which it will carry out its wide array of programs and services for low-income individuals including financial literacy, adult and youth education, employment and career services, healthcare access, income and asset development opportunities, and immigration and transitional services. The CARE Center will include a senior center with indoor community space, individual counseling offices, and an outdoor patio and therapy garden. The CARE Center's youth services space will include a dance studio, indoor space for after-school programs, computer lab, and an outdoor active space with basketball court.

An additional 18,000 square feet in the CARE Center will be available for lease to locally-owned businesses and nonprofit organizations. The leased spaces will include a café, a commercial catering kitchen, and co-working and individual office spaces for local small businesses, nonprofit organizations and entrepreneurs.

The CARE Center will allow LFCD to serve an estimated 10,000 additional people (an increase of 100 percent) in Oakland. Nearly 100 percent of the clients that LFCD serves are low-income individuals. The rehabilitation of the building is expected to result in 45 construction jobs, and the new CARE Center is expected to create 47 new permanent jobs.

### **Background**

CSCDC was created as an affiliate community development entity by CSCDA to facilitate investment in low income communities through the use of New Markets Tax Credits. The NMTC program, passed by Congress in 2000, encourages investments in low-income communities by providing a tax incentive for community development lenders and the capital markets to invest in communities that historically have had poor access to capital.

CSCDA is a joint powers authority created in 1988 and is sponsored by the League of California Cities® and the California State Association of Counties. It was created by cities and counties for cities and counties. More than 500 cities, counties and special districts are program participants in CSCDA, which serves as their conduit issuer and provides access to efficiently finance locally-approved projects. CSCDA has issued more than \$50 billion in tax exempt bonds for projects that provide a public benefit by creating jobs, affordable housing, healthcare, infrastructure, schools and other fundamental services. Visit [CSCDA's website](#) for additional information on the ways in which CSCDA can help your city.

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