



Councilmember Susan Wengraf
District 6

CONSENT CALENDAR
May 21, 2013

To: Honorable Mayor and Members of the City Council
From: Councilmember Susan Wengraf
Subject: Oppose Assembly Bill 162 (Holden)

RECOMMENDATION

Adopt a Resolution strongly opposing Assembly Bill 162 (Holden) which would add Section 65964.5 to the Government Code, relating to telecommunication facilities. Send a copy of the adopted resolution to Assemblywoman Nancy Skinner indicating that the City of Berkeley strongly opposes AB 162.

BACKGROUND

AB 162 would unnecessarily and significantly impede a city’s authority to regulate the placement of certain wireless facilities. AB 162 also prohibits local governments from requiring proof of gap coverage as part of the approval of an eligible facilities request which is one of the few tools that local governments currently have to control placement.

In addition, AB 162 requires that local governments approve any request to modify an existing wireless telecommunications facility that does not “substantially change” the physical dimensions of the existing facility. However, the definition of “substantially change” would allow significant changes in some cases because other factors such as weight or location are not aspects of the facility that can be considered.

AB 162 in its current form strips local governments of the ability to make decisions that make sense for local communities and neighborhoods.

FINANCIAL IMPLICATIONS

No General Fund impact.

CONTACT PERSON

Councilmember Wengraf Council District 6 510-981-7160

Attachments:

- 1. Resolution
- 2. AB 162

RESOLUTION NO. ##,###-N.S.

OPPOSE AB 162 (HOLDEN) AN ACT TO ADD SECTION 65964.5 TO THE GOVERNMENT CODE, RELATING TO TELECOMMUNICATION FACILITIES

WHEREAS, Assembly Bill 162 (Holden) would prohibit a local government from denying an eligible facilities request, for a modification of existing wireless telecommunications facility; and

WHEREAS, AB 162 defines “eligible facilities request” to mean any request for modification of an existing wireless telecommunications facility that involves any of the following: (a) collocation of upgraded transmission equipment, (b) removal of transmission equipment, (c) replacement of transmission equipment; and

WHEREAS, AB 162 defines “Wireless Telecommunications Facility” to mean equipment and network components, including towers, utility poles, transmitters, base stations and emergency power systems that are integral to providing wireless telecommunication services; and

WHEREAS, land use planning must be aligned to achieve a City that promotes the unique character and scale of our neighborhoods in a responsible way, but the City cannot do this if the State asserts a one-size fits-all for every City in the State; and

WHEREAS, authority over land use planning and zoning laws is the most fundamental of local issues and the City must maintain the ability to make decisions that make sense for local communities and neighborhoods.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley opposes AB 162 as proposed.

BILL NUMBER: AB 162 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 23, 2013
AMENDED IN ASSEMBLY MARCH 21, 2013

INTRODUCED BY Assembly Member Holden

JANUARY 23, 2013

An act to add Section 65964.5 to the Government Code, relating to telecommunications facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 162, as amended, Holden. Wireless telecommunications facilities.

The Planning and Zoning Law authorizes the legislative body of any county or city to adopt ordinances that, among other things, regulate the use of buildings, structures, and land as between industry, business, residences, and open space. Existing law, the federal Middle Class Tax Relief and Job Creation Act of 2012, prohibits a state or local government from denying an eligible facilities request, as defined, for a modification of an existing wireless tower or base station that does not substantially change the tower or base station.

This bill would prohibit a local government from denying an eligible facilities request, as defined, for a modification of an existing wireless telecommunications facility *or structure* that does not substantially change the physical dimensions of the wireless telecommunications facility *or structure* , as specified. The bill would require a local government to act on an eligible facilities request within ~~45~~ 90 days of receipt of a request, as specified. The bill would prohibit a local government from requiring proof of gap in coverage as part of the approval of an eligible facilities request. By adding to the duties of a local government, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) Nearly one in every three Californians communicates only via a cellular device and does not own or operate a landline telephone.

(b) Of the 240,000,000 calls to telephone number 911 for emergency assistance placed nationwide each year, 70 percent now originate from cellular devices.

(c) In 2010, 5 percent of all 911 calls originating from cellular devices were dropped, resulting in 8,400,000 dropped 911 calls.

(d) Recognizing the public's shift toward cellular telephone use, the Legislature passed Senate Bill 1375 (Chapter 332 of the Statutes of 2010), authorizing telephone corporations to deactivate 911 emergency service from any landline telephone not subscribing to paid telephone service.

(e) Given the increased reliance on cellular phones, maintaining signal strength and call reliability for 911 calls from cellular telephones is critical to protecting public safety and saving lives of Californians.

(f) The Final Report of the National Commission on Terrorist Attacks Upon the United States (known as the 9/11 Commission Report) identified the lack of coordination among first responder agencies and communication challenges in the 9/11 attacks and emphasized the need for uniform and reliable communications for all first responders.

(g) The federal Middle Class Tax Relief and Job Creation Act of 2012 (Public Law 112-96) creates a framework for the public sector to partner with commercial providers to leverage the private sector's investments in broadband technologies to efficiently deploy an interoperable broadband network for public safety.

(h) The federal Middle Class Tax Relief and Job Creation Act of 2012 (Public Law 112-96) allocated seven billion dollars (\$7,000,000,000) for grants to states to build the nationwide public safety broadband network.

(i) The Federal Communications Commission has found that delays by local governments in approving ministerial requests have delayed the implementation of next-generation broadband services for consumers and first responders.

(j) It is the intent of the Legislature to increase network capacity on existing wireless structures in order to serve the needs of safety personnel and the people of the state.

~~SECTION 1.~~ *SEC. 2. Section 65964.5 is added to the Government Code, to read:*

65964.5. (a) Notwithstanding any other law, and pursuant to Section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. Sec. 1455), a local government shall approve and ~~may~~ shall not deny any eligible facilities request for a modification of an existing wireless telecommunications facility or structure that does not substantially change the physical dimensions of the wireless telecommunications facility or structure .

(b) The failure to act on an eligible facilities request within ~~45~~ 90 days of receipt of a request shall be deemed an approval of the request. The ~~45~~ 90 days shall be tolled if the request is determined to be incomplete. If the request is determined to be incomplete, the local government shall comply with subdivision (c) of Section 65943 of the Government Code.

(c) A local government shall not require proof of gap in coverage as part of the approval of an eligible facilities request.

(d) For purposes of this section, the following definitions shall apply:

(1) *"Collocation" means the mounting of the wireless telecommunications facility and related equipment on an existing tower, building, or structure for the purpose of transmitting or receiving signals for telecommunications or public safety services.*

~~(1)~~

(2) "Eligible facilities request" or "request" means any request for modification of an existing wireless telecommunications facility *or collocation on an existing structure* that involves any of the following:

(A) Collocation of upgraded transmission equipment.

(B) Removal of transmission equipment.

(C) Replacement of transmission equipment.

(D) *Collocation and deployment of transmission equipment necessary to construct or maintain public safety broadband communication systems.*

(3) *"Public safety broadband communications system" means any regional interoperable communications system, the nationwide public safety broadband network, the first responder analog-D block, or any other government-operated communications system used by first responders or emergency management systems.*

~~(2)~~

(4) "Substantially change" means any of the following:

(A) The mounting of the proposed antenna on the wireless telecommunications facility *or structure* would increase the existing height of the wireless telecommunications facility by more than 10 percent, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this subparagraph if necessary to avoid interference with existing antennas.

(B) The mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four equipment cabinets, or more than one additional equipment shelter.

(C) The mounting of the proposed antenna would involve adding an appurtenance to the body of the wireless telecommunications facility *or structure* that would protrude from the edge of the wireless telecommunications facility more than 20 feet, or more than the width of the wireless telecommunications facility at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this

subparagraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the wireless telecommunications facility via cable.

~~(D) The mounting of the proposed antenna would involve excavation outside the current wireless telecommunications facility site, defined as the current boundaries of the leased or owned property surrounding the wireless telecommunications facility and any access or utility easements currently related to the site.~~

(D) The eligible facility request fails to comply with all existing aesthetic requirements imposed by a local government for the specific facility subject to the request. Nothing in this section shall be construed to require that any new aesthetic enhancements to be made to an eligible facility that were not existing requirements at the time the eligible facility request was made.

~~(3)~~

(5) "Wireless telecommunications facility" means equipment and network components, including towers, utility poles, transmitters, base stations, and emergency power systems that are integral to providing wireless telecommunications services.

~~SEC. 2.~~ SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.