


REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: April 15, 2013

TO: Honorable Members of the Rules, Elections and Intergovernmental Relations Committee.

FROM: Gerry F. Miller 
Chief Legislative Analyst

Assignment No. 13-04-0263
Council File No. 13-0002-S50

SUBJECT: Resolution (Koretz-Reyes) to OPPOSE AB 162 (Holden) relative to Wireless telecommunications facilities.

CLA RECOMMENDATION: Adopt the attached Resolution to include in the City's 2013-14 State Legislative Program, OPPOSITION to AB 162 (Holden), which would require local governments to approve a request to modify 'wireless telecommunications facilities' within 45 days of receipt, inasmuch as it undermines local land use control.

SUMMARY

Resolution (Koretz-Reyes) indicates that AB 162 (Holden) would prohibit cities from denying an eligible facilities request, for a modification of existing wireless telecommunications facilities, define to mean equipment and network components, including towers, utility poles, transmitters, base stations, and emergency power systems that are integral to providing wireless telecommunications services.

The Resolution further indicates that 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.

AB 162 would require a local government to act on an eligible facilities request within 45 days of receipt of a request, and the failure to act within 45 days of receipt of a request shall be deemed an approval of the request, and the 45 days will be tolled if the request is determined to be incomplete.

AB 162, therefore, is of concern, because it will be contrary to the City's existing land use regulatory controls, inasmuch as the Planning Department requires a Conditional Use Permit and a California Environmental Quality Act (CEQA) clearance for the collocation of wireless facilities and that process always takes longer than 45 days.

The Resolution, therefore, seeks to protect the city's existing land use process, and notes that 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.

BACKGROUND

Planning Department comments:

The Planning Department notes in its comments that if AB 162 is enacted into law, it will undermine local land use control inasmuch as the department requires a Conditional Use Permit and a California Environmental Quality Act (CEQA) clearance for the collocation of wireless facilities and that process always takes longer than 45 days. Furthermore, the legislation is troubling because it will penalize the city, and all other local governments, for projects that take longer than 45 days.

California League of Cities:

In a letter dated April 8, 2013 to Assemblymember Holden, the California League of Cities notes its opposition to AB 162 because it will take away the ability for local governments to regulate the placement of certain wireless facilities, and because the timeframes included therein would limit the ability of a city to notice and hold the proper public meetings.

CONCLUSION

AB 162 will undermine the city's existing land use regulatory processes, and ultimately the principle of 'home rule,' because it will dictate a one size fits all concept as to the modification of existing wireless telecommunications facilities.

DEPARTMENTS NOTIFIED

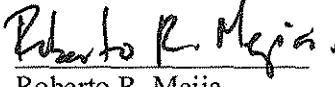
Department of City Planning
City Attorney

BILL STATUS

1/23/13 Introduced.

3/21/13 Amended

3/21/13 Re-referred to Committee on Local Government.


Roberto R. Mejia
Analyst

Attachments: 1. Resolution.
2. AB 162 (Holden).
3. League of California Cities April 8, 2013 letter.
4. Planning Department comments.

APR 3 2013

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations, or policies proposed to or pending before a local, state, or federal governmental body or agency must first have been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, AB 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 would require a local government to act on an eligible facilities request within 45 days of receipt of a request, and the failure to act within 45 days of receipt of a request shall be deemed an approval of the request, and the 45 days will be tolled if the request is determined to be incomplete; 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 telecommunications services; and

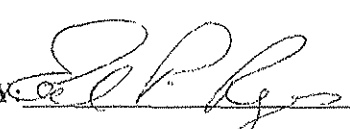
WHEREAS, the Planning Department requires a Conditional Use Permit and a California Environmental Quality Act (CEQA) clearance for the collocation of wireless facilities and that process always takes longer than 45 days, and this is of concern because it will be detrimental if the City began to get penalized for projects that take longer than 45 days; 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 and County 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, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2013-14 State Legislative Program OPPOSITION to AB 162 (Holden), which would require local government to approve a request to modify wireless telecommunications facilities within 45 days of receipt, inasmuch as it undermines local land use control, and ultimately, the principle of home rule.

PRESENTED BY: 
PAUL KORETZ
Councilmember, 5th District

SECONDED BY: 

APR 2 2013



Office of the City Clerk, City of Los Angeles

This report was generated by the Council File Management System on 04/15/2013

Council File Number

13-0002-S50

Title

AB 162 (Holden) / Modification Request for Wireless Telecommunication Facilities

Last Change Date

04/03/2013

Expiration Date

04/03/2015

Pending in committee

Rules, Elections and Intergovernmental Relations Committee

Mover

PAUL KORETZ

Second

ED REYES

Action History for Council File 13-0002-S50

Date Activity

04/03/2013 Resolution referred to Rules, Elections and Intergovernmental Relations Committee.

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 162

Introduced by Assembly Member Holden

January 23, 2013

~~An act to amend Section 65584 of the Government Code, relating to land use.~~ *An act to add Section 65964.5 to the Government Code, relating to telecommunications facilities.*

LEGISLATIVE COUNSEL'S DIGEST

AB 162, as amended, Holden. ~~Land use: housing element.~~ *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 that does not substantially change the physical dimensions of the wireless telecommunications facility, as specified. The bill would require a local government to act on an eligible facilities request within 45 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.

~~The Planning and Zoning Law requires a city or county to adopt a comprehensive, long-term general plan that includes various mandatory elements, including a housing element. That law requires the housing element to contain, among other things, an assessment of housing needs and an inventory of resources and constraints relevant to meeting those needs. That law further requires the Department of Housing and Community Development to determine the existing and projected need for housing for each region, as specified.~~

~~This bill would make technical, nonsubstantive changes to that law.~~

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

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 65964.5 is added to the Government Code,
- 2 to read:
- 3 65964.5. (a) Notwithstanding any other law, and pursuant to
- 4 Section 6409 of the federal Middle Class Tax Relief and Job
- 5 Creation Act of 2012 (47 U.S.C. Sec. 1455), a local government
- 6 shall approve and may not deny any eligible facilities request for
- 7 a modification of an existing wireless telecommunications facility
- 8 that does not substantially change the physical dimensions of the
- 9 wireless telecommunications facility.
- 10 (b) The failure to act on an eligible facilities request within 45
- 11 days of receipt of a request shall be deemed an approval of the
- 12 request. The 45 days shall be tolled if the request is determined to
- 13 be incomplete. If the request is determined to be incomplete, the
- 14 local government shall comply with subdivision (c) of Section
- 15 65943 of the Government Code.

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

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

5 (1) "Eligible facilities request" or "request" means any request
6 for modification of an existing wireless telecommunications facility
7 that involves any of the following:

8 (A) Collocation of upgraded transmission equipment.

9 (B) Removal of transmission equipment.

10 (C) Replacement of transmission equipment.

11 (2) "Substantially change" means any of the following:

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

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

24 (C) The mounting of the proposed antenna would involve adding
25 an appurtenance to the body of the wireless telecommunications
26 facility that would protrude from the edge of the wireless
27 telecommunications facility more than 20 feet, or more than the
28 width of the wireless telecommunications facility at the level of
29 the appurtenance, whichever is greater, except that the mounting
30 of the proposed antenna may exceed the size limits set forth in this
31 subparagraph if necessary to shelter the antenna from inclement
32 weather or to connect the antenna to the wireless
33 telecommunications facility via cable.

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

39 (3) "Wireless telecommunications facility" means equipment
40 and network components, including towers, utility poles,

1 *transmitters, base stations, and emergency power systems that are*
2 *integral to providing wireless telecommunications services.*

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

8 ~~SECTION 1. Section 65584 of the Government Code is~~
9 ~~amended to read:~~

10 ~~65584. (a) (1) For the fourth and subsequent revisions of the~~
11 ~~housing element pursuant to Section 65588, the department shall~~
12 ~~determine the existing and projected need for housing for each~~
13 ~~region pursuant to this article. For purposes of subdivision (a) of~~
14 ~~Section 65583, the share of a city or county of the regional housing~~
15 ~~need shall include that share of the housing need of persons at all~~
16 ~~income levels within the area significantly affected by the general~~
17 ~~plan of the city or county.~~

18 ~~(2) While it is the intent of the Legislature that cities, counties,~~
19 ~~and cities and counties should undertake all necessary actions to~~
20 ~~encourage, promote, and facilitate the development of housing to~~
21 ~~accommodate the entire regional housing need, it is recognized,~~
22 ~~however, that future housing production may not equal the regional~~
23 ~~housing need established for planning purposes.~~

24 ~~(b) The department, in consultation with each council of~~
25 ~~governments, shall determine each region's existing and projected~~
26 ~~housing need pursuant to Section 65584.01 at least two years prior~~
27 ~~to the next scheduled revision required pursuant to Section 65588.~~
28 ~~The appropriate council of governments, or for cities and counties~~
29 ~~without a council of governments, the department, shall adopt a~~
30 ~~final regional housing need plan that allocates a share of the~~
31 ~~regional housing need to each city, county, or city and county at~~
32 ~~least one year prior to the scheduled revision for the region required~~
33 ~~by Section 65588. The allocation plan prepared by a council of~~
34 ~~governments shall be prepared pursuant to Sections 65584.04 and~~
35 ~~65584.05 with the advice of the department.~~

36 ~~(c) Notwithstanding any other provision, the due dates for the~~
37 ~~determinations of the department, or for the council of~~
38 ~~governments, respectively, regarding the regional housing need~~
39 ~~may be extended by the department by not more than 60 days, if~~
40 ~~the extension will enable access to more recent critical population~~

1 or housing data from a pending or recent release of the United
2 States Census Bureau or the Department of Finance. If the due
3 date for the determination of the department or the council of
4 governments is extended for this reason, the department shall
5 extend the corresponding housing element revision deadline
6 pursuant to Section 65588 by not more than 60 days.

7 (d) ~~The regional housing needs allocation plan shall be~~
8 ~~consistent with all of the following objectives:~~

9 (1) ~~Increasing the housing supply and the mix of housing types,~~
10 ~~tenure, and affordability in all cities and counties within the region~~
11 ~~in an equitable manner, which shall result in each jurisdiction~~
12 ~~receiving an allocation of units for low- and very low income~~
13 ~~households.~~

14 (2) ~~Promoting infill development and socioeconomic equity,~~
15 ~~the protection of environmental and agricultural resources, and~~
16 ~~the encouragement of efficient development patterns.~~

17 (3) ~~Promoting an improved intraregional relationship between~~
18 ~~jobs and housing.~~

19 (4) ~~Allocating a lower proportion of housing need to an income~~
20 ~~category when a jurisdiction already has a disproportionately high~~
21 ~~share of households in that income category, as compared to the~~
22 ~~countywide distribution of households in that category from the~~
23 ~~most recent decennial United States census.~~

24 (e) ~~For purposes of this section, "household income levels" are~~
25 ~~as determined by the department as of the most recent decennial~~
26 ~~census pursuant to the following code sections:~~

27 (1) ~~Very low incomes as defined by Section 50105 of the Health~~
28 ~~and Safety Code.~~

29 (2) ~~Lower incomes, as defined by Section 50079.5 of the Health~~
30 ~~and Safety Code.~~

31 (3) ~~Moderate incomes, as defined by Section 50093 of the Health~~
32 ~~and Safety Code.~~

33 (4) ~~Above moderate incomes are those exceeding the~~
34 ~~moderate income level of Section 50093 of the Health and Safety~~
35 ~~Code.~~

36 (f) ~~Notwithstanding any other determinations made by the~~
37 ~~department, a council of governments, or a city or county pursuant~~
38 ~~to this section or Section 65584.01, 65584.02, 65584.03, 65584.04,~~
39 ~~65584.05, 65584.06, 65584.07, or 65584.08 are exempt from the~~

- 1 California Environmental Quality Act (Division 13 (commencing
- 2 with Section 21000) of the Public Resources Code).

COMPLETE BILL HISTORY

BILL NUMBER : A.B. No. 162

AUTHOR : Holden

TOPIC : Wireless telecommunications facilities.

TYPE OF BILL :

Active

Non-Urgency

Non-Appropriations

Majority Vote Required

State-Mandated Local Program

Fiscal

Non-Tax Levy

BILL HISTORY

2013

Apr. 1 Re-referred to Com. on L. GOV.

Mar. 21 Referred to Com. on L. GOV. From committee chair, with author's amendments: Amend, and re-refer to Com. on L. GOV. Read second time and amended.

Jan. 24 From printer. May be heard in committee February 23.

Jan. 23 Read first time. To print.

CURRENT BILL STATUS

MEASURE : A.B. No. 162
AUTHOR(S) : Holden.
TOPIC : Wireless telecommunications facilities.
HOUSE LOCATION: ASM
+LAST AMENDED DATE : 03/21/2013

TYPE OF BILL :

- Active
- Non-Urgency
- Non-Appropriations
- Majority Vote Required
- State-Mandated Local Program
- Fiscal
- Non-Tax Levy

LAST HIST. ACT. DATE: 04/01/2013
LAST HIST. ACTION : Re-referred to Com. on L. GOV.
COMM. LOCATION: ASM LOCAL GOVERNMENT
HEARING DATE : 05/01/2013

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



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Phone: 916.658.8200 Fax: 916.658.8240
www.cacities.org

April 8, 2013

The Honorable Chris Holden
California State Assembly, 41st District
State Capitol Building, Room
Sacramento, CA 95814

**RE: AB 162 (Holden). Wireless Telecommunications Facilities. (as amended March 21, 2013)
Notice of OPPOSITION**

Dear Assembly Member Holden:

The League of California Cities must respectfully oppose your AB 162, which would unnecessarily and significantly impact a cities' authority to regulate the placement of certain wireless facilities. In addition, the timeframes included in AB 162 would limit the ability of a city to notice and hold the proper public meetings.

Unreasonable Timeframes. In 2009, the Federal Communications Commission (FCC) adopted rules that require local governments to review and act on applications for the establishment of wireless communications structures. Under that ruling, cities have 90 days to review collocation applications, and 150 days for other siting applications. If cities do not act in this timeframe, an applicant can bring action in court.

AB 162 would cut these timeframes in half and would deem applications granted at the end of the 45 days. During the rulemaking, CTIA – The Wireless Association requested that the FCC adopt the timeframes and automatic adoption included in your bill. However, the FCC rightly refused, stating the timeframes “may be insufficiently flexible for general applicability.” In addition, the FCC ruled that the state or local government should have the opportunity to rebut the presumption of reasonableness in court if they do not act on an application within the timeframe. The League is unaware of any evidence that the timeframes set by the FCC are not appropriate for California.

Problems with Definition of “Substantially Change.” AB 162 requires that a local government approve any request to modify an existing wireless telecommunications facility that does not “substantially change” the physical dimensions, as defined, of the wireless telecommunications facility. The definitions of AB 162 go far beyond what was included in the Middle Class Tax Relief and Job Creation Act of 2012. In addition, the definition of “substantially change” would allow significant changes in some cases. For instance, if a facility is a 20 foot pole, AB 162 would allow that size to be doubled.

Need to Account for More Than Size. AB 162 talks about the size of facilities, but does not take into account other factors such as weight or location. Some existing wireless facilities are located on the side or top of buildings. The provisions of AB 162 would allow those facilities to protrude from the side of a building by 20 feet. In addition, AB 162 does not take in account that new equipment may weigh more than existing equipment and could impact the integrity of the building. In other cases, existing facilities are mounted to utility poles or streetlights. Modifications to the equipment could cause sidewalks and ADA ramps to be completely blocked.

The Public Record Should Be Complete. AB 162 prohibits local governments from requiring proof of gap in coverage as part of the approval of an eligible facilities request. Again, this varies from the FCC ruling which prohibited local governments from denying an application based solely on this information. Requesting the information from an applicant is simply part of the public process, and there is no documented need to completely exclude the information from the public record.

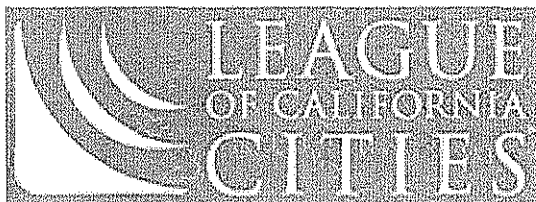
Pending Supreme Court Decision. AB 162 formalizes in state law several issues that are currently pending before the Supreme Court in *City of Arlington, Texas v. Federal Communications Commission*. It is imprudent for the state to take any action on these items before the case receives a ruling, and the League encourages you to hold your bill until the case is decided and can be implemented.

For these reasons, the League must oppose AB 162. If you have any questions regarding the League's position on this bill, please do not hesitate to contact me at (916) 658-8249.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Whiting".

Jennifer Whiting
Legislative Representative



Search Results
Monday, April 15, 2013

AB 162

(Holden D) Wireless telecommunications facilities. (Amended: 3/21/2013)

Status: 4/1/2013-Re-referred to Com. on L. GOV.

Location: 4/1/2013-A. L. GOV.

2Year	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf.	Enrolled	Vetoed	Chaptered
Dead	1st House				2nd House				Conc.			

Calendar: 5/1/2013 1:30 p.m. - State Capitol, Room 447 ASSEMBLY LOCAL GOVERNMENT, ACHADJIAN, Chair

Summary: 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 that does not substantially change the physical dimensions of the wireless telecommunications facility, as specified. The bill would require a local government to act on an eligible facilities request within 45 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. This bill contains other related provisions and other existing laws.

Attachments:

- [AB 162 \(Holden\) Notice of Opposition](#)
- [AB 162 \(Holden\) Sample Letter Oppose](#)
- [AB 162 \(Holden\) Opposition Letter to Author - April 8, 2013](#)

Policy Committee (primary)	Primary Lobbyist	2nd Lobbyist		
Housing Community and Economic Development Transportation, _Communications _and _Public _Works	Whiting, Jennifer			
League Position	Position Taken	Policy Committee (secondary)	Policy Analyst	
Oppose		Housing		

Total Measures: 1
Total Tracking Forms: 1

4/15/2013 9:55:24 AM



Roberto Mejia <roberto.mejia@lacity.org>

Re: AB 162 (Holden) & Wireless facilities

1 message

Tom Rothmann <tom.rothmann@lacity.org>

Wed, Mar 27, 2013 at 11:22 AM

To: Roberto Mejia <roberto.mejia@lacity.org>

Hi Roberto, The Planning Department requires a conditional use permit and a CEQA clearance for the co-location of wireless facilities and that process always takes longer than 45 days. It would be a big deal if we start getting penalized for projects that take longer than 45 days. Tom

On Wed, Mar 27, 2013 at 9:38 AM, Roberto Mejia <roberto.mejia@lacity.org> wrote:

Hi Tom:

Below is a hyperlink to a recent State bill, Assembly Bill (AB) 162 (Holden) relative to wireless facilities. Please let me know if this proposed legislation will be detrimental to the City or if it raises any red flags relative to land use?

I also sent it to City Attorney for comments.

http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=ab_162&sess=CUR&house=B&author=holden

Thank you for your help.

--

Roberto R. Mejia
Legislative Analyst
Office of the Chief Legislative Analyst
Los Angeles City Council
City of Los Angeles
(213) 473-5748

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Tom Rothmann
Senior City Planner
Code Studies
213-978-1891