

AMENDED IN SENATE MARCH 28, 2017

SENATE BILL

No. 649

Introduced by Senator Hueso
(Principal coauthor: Assembly Member Quirk)
(Coauthor: Senator Dodd)

February 17, 2017

An act to amend ~~Sections 65850.6 and Section 65964 of~~ *of, and to add Section 65964.2 to*, the Government Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

SB 649, as amended, Hueso. Wireless telecommunications facilities.

Under existing law, a wireless telecommunications collocation facility, as specified, is subject to a city or county discretionary permit and is required to comply with specified criteria, but a collocation facility, which is the placement or installation of wireless facilities, including antennas and related equipment, on or immediately adjacent to that wireless telecommunications collocation facility, is a permitted use not subject to a city or county discretionary permit. ~~Existing law defines various terms for these purposes.~~

This bill would *provide that a small cell is a permitted use, not subject to a city or county discretionary permit, if the small cell meets specified requirements. By imposing new duties on local agencies, this bill would impose a state-mandated local program. The bill would authorize a city or county to require an administrative permit for small cell, as specified. The bill would define the term "small cell" as a particular type of telecommunications facility for these purposes.*

Under existing law, a city or county, as a condition of approval of an application for a permit for construction or reconstruction of a

development project for a wireless telecommunications facility, may not require an escrow deposit for removal of a wireless telecommunications facility or any component thereof, unreasonably limit the duration of any permit for a wireless telecommunications facility, or require that all wireless telecommunications facilities be limited to sites owned by particular parties within the jurisdiction of the city or county, as specified.

~~This bill would apply these prohibitions to the approval of small cell facilities as defined by this bill. require permits for these facilities to be renewed for equivalent durations, as specified.~~

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 no reimbursement is required by this act for a specified reason.

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. The Legislature finds and declares that, to ensure
- 2 that communities across the state have access to the most advanced
- 3 wireless communications technologies and the transformative
- 4 solutions that robust wireless connectivity enables, such as Smart
- 5 Communities and the Internet of Things, California should work
- 6 in coordination with federal, state, and local officials to create a
- 7 statewide framework for the deployment of advanced wireless
- 8 communications infrastructure in California that does all of the
- 9 following:
- 10 (a) Reaffirms local governments’ historic role and authority
- 11 with respect to wireless communications infrastructure siting and
- 12 construction generally.
- 13 (b) Reaffirms that deployment of telecommunications facilities
- 14 in the rights-of-way is a matter of statewide concern, subject to a
- 15 statewide franchise, and that expeditious deployment of
- 16 telecommunications networks generally is a matter of both
- 17 statewide and national concern.
- 18 (c) Recognizes that the impact on local interests from individual
- 19 small wireless facilities will be sufficiently minor and that such

1 deployments should be a permitted use statewide and should not
2 be subject to discretionary zoning review.

3 (d) Requires expiring permits for these facilities to be renewed
4 so long as the site maintains compliance with use conditions
5 adopted at the time the site was originally approved.

6 (e) Requires providers to obtain all applicable building or
7 encroachment permits and comply with all related health, safety,
8 and objective aesthetic requirements for small wireless facility
9 deployments on a ministerial basis.

10 (f) Grants providers fair, reasonable, nondiscriminatory, and
11 nonexclusive access to locally owned utility poles, street lights,
12 and other suitable host infrastructure located within the public
13 right-of-way and in other local public places such as stadiums,
14 parks, campuses, hospitals, transit stations, and public buildings
15 consistent with all applicable health and safety requirements,
16 including Public Utilities Commission General Order 95.

17 (g) Provides for full recovery by local governments of the costs
18 of attaching small wireless facilities to utility poles, street lights,
19 and other suitable host infrastructure in a manner that is consistent
20 with existing federal and state laws governing utility pole
21 attachments generally.

22 (h) Permits local governments to charge wireless permit fees
23 that are fair, reasonable, nondiscriminatory, and cost based.

24 (i) Advances technological and competitive neutrality while not
25 adding new requirements on competing providers that do not exist
26 today.

27 ~~SEC. 2. Section 65850.6 of the Government Code is amended~~
28 ~~to read:~~

29 ~~65850.6. (a) A collocation facility shall be a permitted use not~~
30 ~~subject to a city or county discretionary permit if it satisfies the~~
31 ~~following requirements:~~

32 ~~(1) The collocation facility is consistent with requirements for~~
33 ~~the wireless telecommunications collocation facility pursuant to~~
34 ~~subdivision (b) on which the collocation facility is proposed.~~

35 ~~(2) The wireless telecommunications collocation facility on~~
36 ~~which the collocation facility is proposed was subject to a~~
37 ~~discretionary permit by the city or county and an environmental~~
38 ~~impact report was certified, or a negative declaration or mitigated~~
39 ~~negative declaration was adopted for the wireless~~
40 ~~telecommunications collocation facility in compliance with the~~

1 California Environmental Quality Act (Division 13 (commencing
2 with Section 21000) of the Public Resources Code), the
3 requirements of Section 21166 do not apply, and the collocation
4 facility incorporates required mitigation measures specified in that
5 environmental impact report, negative declaration, or mitigated
6 negative declaration.

7 (b) A wireless telecommunications collocation facility, where
8 a subsequent collocation facility is a permitted use not subject to
9 a city or county discretionary permit pursuant to subdivision (a),
10 shall be subject to a city or county discretionary permit issued on
11 or after January 1, 2007, and shall comply with all of the following:

12 (1) City or county requirements for a wireless
13 telecommunications collocation facility that specifies types of
14 wireless telecommunications facilities that are allowed to include
15 a collocation facility, or types of wireless telecommunications
16 facilities that are allowed to include certain types of collocation
17 facilities; height, location, bulk, and size of the wireless
18 telecommunications collocation facility; percentage of the wireless
19 telecommunications collocation facility that may be occupied by
20 collocation facilities; and aesthetic or design requirements for the
21 wireless telecommunications collocation facility.

22 (2) City or county requirements for a proposed collocation
23 facility, including any types of collocation facilities that may be
24 allowed on a wireless telecommunications collocation facility;
25 height, location, bulk, and size of allowed collocation facilities;
26 and aesthetic or design requirements for a collocation facility.

27 (3) State and local requirements, including the general plan, any
28 applicable community plan or specific plan, and zoning ordinance.

29 (4) The California Environmental Quality Act (Division 13
30 (commencing with Section 21000) of the Public Resources Code)
31 through certification of an environmental impact report, or adoption
32 of a negative declaration or mitigated negative declaration.

33 (e) The city or county shall hold at least one public hearing on
34 the discretionary permit required pursuant to subdivision (b) and
35 notice shall be given pursuant to Section 65091, unless otherwise
36 required by this division.

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

38 (1) "Collocation facility" means the placement or installation
39 of wireless facilities, including antennas, and related equipment,

1 on, or immediately adjacent to, a wireless telecommunications
2 collocation facility.

3 (2) ~~“Small cell” means a wireless telecommunications facility~~
4 ~~within the volume limits established by the Federal~~
5 ~~Communications Commission for small wireless antennas and~~
6 ~~associated equipment in the First Amendment to Nationwide~~
7 ~~Programmatic Agreement for the Collocation of Wireless Antennas~~
8 ~~(47 C.F.R. Part 1 Appendix B).~~

9 (3) ~~“Wireless telecommunications facility” means equipment~~
10 ~~and network components such as towers, utility poles, transmitters,~~
11 ~~base stations, and emergency power systems that are integral to~~
12 ~~providing wireless telecommunications services.~~

13 (4) ~~“Wireless telecommunications collocation facility” means~~
14 ~~a wireless telecommunications facility that includes collocation~~
15 ~~facilities.~~

16 (e) ~~The Legislature finds and declares that both small cell and~~
17 ~~collocation facilities, as defined in this section, have a significant~~
18 ~~economic impact in California and are not a municipal affair as~~
19 ~~that term is used in Section 5 of Article XI of the California~~
20 ~~Constitution, but are a matter of statewide concern.~~

21 (f) ~~With respect to the consideration of the environmental effects~~
22 ~~of radio frequency emissions, the review by the city or county shall~~
23 ~~be limited to that authorized by Section 332(e)(7) of Title 47 of~~
24 ~~the United States Code, or as that section may be hereafter~~
25 ~~amended.~~

26 ~~SEC. 3.~~

27 *SEC. 2.* Section 65964 of the Government Code is amended
28 to read:

29 65964. As a condition of approval of an application for a permit
30 for construction or reconstruction for a development project for a
31 wireless telecommunications ~~facility or small cell, facility,~~ as
32 defined in Section 65850.6, a city or county shall not do any of
33 the following:

34 (a) Require an escrow deposit for removal of a wireless
35 telecommunications facility or any component thereof. However,
36 a performance bond or other surety or another form of security
37 may be required, so long as the amount of the bond security is
38 rationally related to the cost of removal. In establishing the amount
39 of the security, the city or county shall take into consideration

1 information provided by the permit applicant regarding the cost
2 of removal.

3 (b) Unreasonably limit the duration of any permit for a wireless
4 telecommunications facility. Limits of less than 10 years are
5 presumed to be unreasonable absent public safety reasons or
6 substantial land use reasons. However, cities and counties may
7 establish a build-out period for a site. *A permit shall be renewed*
8 *for an equivalent duration unless the city or county makes a finding*
9 *that the wireless telecommunications facility does not comply with*
10 *the codes and permit conditions applicable at the time the permit*
11 *was initially approved.*

12 (c) Require that all wireless telecommunications facilities be
13 limited to sites owned by particular parties within the jurisdiction
14 of the city or county.

15 *SEC. 3. Section 65964.2 is added to the Government Code, to*
16 *read:*

17 *65964.2. (a) A small cell shall be a permitted use not subject*
18 *to a city or county discretionary permit if it satisfies the following*
19 *requirements:*

20 *(1) The small cell is located in the public right-of-way in any*
21 *zone or in any zone that includes a commercial or industrial use.*

22 *(2) The small cell complies with all applicable state and local*
23 *health and safety regulations.*

24 *(3) The small cell is not located on a fire department facility.*

25 *(b) (1) A city or county may require that the small cell be*
26 *approved pursuant to a single administrative permit provided that*
27 *the permit is issued within the time frames required by state and*
28 *federal law.*

29 *(2) An administrative permit may be subject to the following:*

30 *(A) The same administrative permit requirements as similar*
31 *construction projects applied in a nondiscriminatory manner.*

32 *(B) The submission of additional information showing that the*
33 *small cell complies the Federal Communications Commission's*
34 *regulations concerning radio frequency emissions referenced in*
35 *Section 332(c)(7)(B)(iv) of Title 47 of the United States Code.*

36 *(3) The administrative permit shall not be subject to:*

37 *(A) Requirements to provide additional services, directly or*
38 *indirectly, including, but not limited to, in-kind contributions such*
39 *as reserving fiber, conduit, or pole space.*

1 (B) *The submission of any additional information other than*
2 *that required of similar construction projects, except as specifically*
3 *provided in this section.*

4 (C) *Limitations on routine maintenance or the replacement of*
5 *small cells with small cells that are substantially similar, the same*
6 *size or smaller.*

7 (D) *The regulation of any antennas mounted on cable strands.*

8 (c) *A city or county shall not preclude the leasing or licensing*
9 *of its vertical infrastructure located in public right-of-way or public*
10 *utility easements under the terms set forth in this paragraph.*
11 *Vertical infrastructure shall be made available under fair and*
12 *reasonable fees, terms, and conditions and offered on a*
13 *nondiscriminatory basis for small cells. Fees shall be cost-based,*
14 *and shall not exceed the lesser of either of the following:*

15 (1) *The costs of ownership of the percentage of the volume of*
16 *the capacity of the vertical infrastructure rendered unusable by a*
17 *small cell.*

18 (2) *The rate produced by applying the formula adopted by the*
19 *Federal Communications Commission for telecommunications*
20 *pole attachments in Section 1.1409(e)(2) of Part 47 of the Code*
21 *of Federal Regulations.*

22 (d) *A city or county shall not unreasonably discriminate in the*
23 *leasing or licensing of property not located in the public*
24 *right-of-way owned or operated by the city or county for*
25 *installation of a small cell. A city or county shall authorize the*
26 *installation of a small cell on property owned or controlled by the*
27 *city or county not located within the public right-of-way to the*
28 *same extent the city or county permits access to that property for*
29 *commercial projects or uses. These installations shall be subject*
30 *to reasonable and nondiscriminatory rates, terms, and conditions.*

31 (e) *For purposes of this section, the following terms have the*
32 *following meanings:*

33 (1) (A) *“Small cell” means a wireless telecommunications*
34 *facility, as defined in Section 65850.6, using licensed or unlicensed*
35 *spectrum that meets the following qualifications:*

36 (i) *Any individual antenna, excluding the associated equipment,*
37 *is individually no more than three cubic feet in volume, and all*
38 *antennas on the structure total no more than six cubic feet in*
39 *volume, whether in a single array or separate.*

1 (ii) (I) *The associated equipment on pole structures does not*
2 *exceed 21 cubic feet for poles that can support fewer than three*
3 *providers or 28 cubic feet for pole collocations that can support*
4 *at least three providers, or the associated equipment on nonpole*
5 *structures does not exceed 28 cubic feet for collocations that can*
6 *support fewer than three providers or 35 cubic feet for collocations*
7 *that can support at least three providers.*

8 (II) *The following types of associated ancillary equipment are*
9 *not included in the calculation of equipment volume:*

- 10 (ia) *Electric meters and any required pedestal.*
11 (ib) *Concealment elements.*
12 (ic) *Any telecommunications demarcation box.*
13 (id) *Grounding equipment.*
14 (ie) *Power transfer switch.*
15 (if) *Cut-off switch.*
16 (ig) *Vertical cable runs for the connection of power and other*
17 *services.*

18 (B) *“Small cell” does not include communications infrastructure*
19 *extending beyond the telecommunications demarcation box.*

20 (2) *“Vertical infrastructure” means all poles or similar facilities*
21 *owned or controlled by a city or county that are in the public*
22 *right-of-way or public utility easements and meant for, or used in*
23 *whole or in part for, communications service, electric service,*
24 *lighting, traffic control, signage, or similar functions.*

25 (f) *The Legislature finds and declares that small cells, as defined*
26 *in this section, have a significant economic impact in California*
27 *and are not a municipal affair as that term is used in Section 5 of*
28 *Article XI of the California Constitution, but are a matter of*
29 *statewide concern.*

30 SEC. 4. *No reimbursement is required by this act pursuant to*
31 *Section 6 of Article XIII B of the California Constitution because*
32 *a local agency or school district has the authority to levy service*
33 *charges, fees, or assessments sufficient to pay for the program or*
34 *level of service mandated by this act, within the meaning of Section*
35 *17556 of the Government Code.*