

AMENDED IN ASSEMBLY JUNE 20, 2017

AMENDED IN SENATE MAY 2, 2017

AMENDED IN SENATE MARCH 28, 2017

SENATE BILL

No. 649

Introduced by Senator Hueso

(Principal coauthor: Assembly Member Quirk)

(Coauthor: Senator Dodd)

(Coauthor: Assembly Member Dababneh)

February 17, 2017

An act to amend Section 65964 of, and to add ~~Section~~ *Sections* 65964.2 and 65964.5 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.

This bill would provide that a small cell is a permitted use, subject only to a specified permitting process adopted by a city or county, 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 encroachment permit or a building permit, and any additional ministerial permits, for

a small cell, as specified. *The bill would authorize a city or county to charge 3 types of fees: an annual administrative permit fee, an annual attachment rate, or a on-time reimbursement fee. The bill would require the city or county to comply with notice and hearing requirements before imposing the annual attachment rate. The bill would require an action or proceeding to challenge a fee imposed under the provisions of this bill to be commenced within 120 days of the effective date of the ordinance or resolution. The bill would define the term “small cell” for these purposes.*

This bill would prohibit a city or county from adopting or enforcing any regulation on the placement or operation of a communications facility in the rights-of-way by a provider that is authorized by state law to operate in the rights-of-way or from regulating that service or imposing any tax, fee, or charge, except as provided in specified provisions of law or as specifically required by law.

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 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: yes.
State-mandated local program: 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 *and wireline* connectivity enables,

1 such as Smart Communities and the Internet of Things, California
2 should work in coordination with federal, state, and local officials
3 to create a statewide framework for the deployment of advanced
4 wireless communications infrastructure in California that does all
5 of the following:

6 (a) Reaffirms local governments' historic role and authority
7 with respect to ~~wireless~~ communications infrastructure siting and
8 construction generally.

9 (b) Reaffirms that deployment of telecommunications facilities
10 in the rights-of-way is a matter of statewide concern, subject to a
11 statewide franchise, and that expeditious deployment of
12 telecommunications networks generally is a matter of both
13 statewide and national concern.

14 (c) Recognizes that the impact on local interests from individual
15 small wireless facilities will be sufficiently minor and that such
16 deployments should be a permitted use statewide and should not
17 be subject to discretionary zoning review.

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

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

25 (f) Grants providers fair, reasonable, nondiscriminatory, and
26 nonexclusive access to locally owned utility poles, streetlights,
27 and other suitable host infrastructure located within the public
28 ~~right-of-way~~ *rights-of-way* and in other local public places such
29 as stadiums, parks, campuses, hospitals, transit stations, and public
30 buildings consistent with all applicable health and safety
31 requirements, including Public Utilities Commission General Order
32 95.

33 (g) Provides for full recovery by local governments of the costs
34 of attaching small wireless facilities to utility poles, streetlights,
35 and other suitable host infrastructure in a manner that is consistent
36 with existing federal and state laws governing utility pole
37 attachments generally.

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

1 (i) Advances technological and competitive neutrality while not
2 adding new requirements on competing providers that do not exist
3 today.

4 SEC. 2. Section 65964 of the Government Code is amended
5 to read:

6 65964. As a condition of approval of an application for a permit
7 for construction or reconstruction for a development project for a
8 wireless telecommunications facility, as defined in Section 65850.6,
9 a city or county shall not do any of the following:

10 (a) Require an escrow deposit for removal of a wireless
11 telecommunications facility or any component thereof. However,
12 a performance bond or other surety or another form of security
13 may be required, so long as the amount of the bond security is
14 rationally related to the cost of removal. In establishing the amount
15 of the security, the city or county shall take into consideration
16 information provided by the permit applicant regarding the cost
17 of removal.

18 (b) Unreasonably limit the duration of any permit for a wireless
19 telecommunications facility. Limits of less than 10 years are
20 presumed to be unreasonable absent public safety reasons or
21 substantial land use reasons. However, cities and counties may
22 establish a build-out period for a site. A permit shall be renewed
23 for an equivalent duration ~~duration~~ unless the city or county makes
24 a finding that the wireless telecommunications facility does not
25 comply with the codes and permit conditions applicable at the time
26 the permit was initially approved.

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

30 SEC. 3. Section 65964.2 is added to the Government Code, to
31 read:

32 65964.2. (a) A small cell shall be a permitted use subject only
33 to a permitting process adopted by a city or county pursuant to
34 subdivision (b) if it satisfies the following requirements:

35 (1) The small cell is located in the public ~~right-of-way~~
36 *rights-of-way* in any zone or in any zone that includes a commercial
37 or industrial use.

38 (2) The small cell complies with all applicable federal, state,
39 and local health and safety regulations, including ~~compliance with~~

1 the federal Americans with Disabilities Act of 1990 (42 U.S.C.
2 Sec. 12101 et seq.).

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

4 (b) (1) A city or county may require that the small cell be
5 approved pursuant to a building permit or its functional equivalent
6 in connection with placement outside of the public ~~right-of-way~~
7 *rights-of-way* or an encroachment permit or its functional
8 equivalent issued consistent with Sections 7901 and 7901.1 of the
9 Public Utilities Code for the placement in public rights-of-way,
10 and any additional ministerial permits, provided that all permits
11 are issued within the timeframes required by state and federal law.

12 (2) Permits issued pursuant to this subdivision may be subject
13 to the following:

14 (A) The same ~~administrative~~ permit requirements as for similar
15 construction projects and applied in a nondiscriminatory manner.

16 (B) A requirement to submit additional information showing
17 that the small cell complies with the Federal Communications
18 Commission's regulations concerning radio frequency emissions
19 referenced in Section 332(c)(7)(B)(iv) of Title 47 of the United
20 States Code.

21 (C) A condition that the applicable permit may be rescinded if
22 construction is not substantially commenced within one year.
23 Absent a showing of good cause, an applicant under this section
24 may not renew the permit or resubmit an application to develop a
25 small cell at the same location within six months of ~~recession~~
26 *rescission*.

27 (D) A condition that small cells no longer used to provide
28 service shall be removed at no cost to the city or county.

29 (E) Compliance with building codes, including building code
30 structural requirements.

31 (F) A condition that the applicant pay all electricity costs
32 associated with the operation of the small cell.

33 (G) A condition to comply with feasible design and collocation
34 standards on a small cell to be installed on property not in the
35 ~~right-of-way~~ *rights-of-way*.

36 (3) Permits issued pursuant to this subdivision shall not be
37 subject to:

38 (A) Requirements to provide additional services, directly or
39 indirectly, including, but not limited to, in-kind contributions from
40 the applicant such 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 micro wireless facilities mounted on
8 a span of wire.

9 *(4) Notwithstanding any other provision of this section, a city*
10 *or county shall not impose permitting requirements or fees on the*
11 *installation, placement, maintenance, or replacement of micro*
12 *wireless facilities that are suspended, whether embedded or*
13 *attached, on cables or lines that are strung between existing utility*
14 *poles in compliance with state safety codes.*

15 (c) A city or county shall not preclude the leasing or licensing
16 of its vertical infrastructure located in public ~~right-of-way~~
17 ~~rights-of-way~~ or public utility easements under the terms set forth
18 in this ~~paragraph~~ *subdivision*. Vertical infrastructure shall be made
19 available for the placement of small cells under fair and reasonable
20 fees, *subject to the requirements in subdivision (d)*, terms, and
21 conditions, which may include feasible design and collocation
22 standards. A city or county may reserve capacity on vertical
23 infrastructure if the city or county adopts a resolution finding,
24 based on substantial evidence in the record, that the capacity is
25 needed for projected city or county uses. ~~Fees shall be tiered or~~
26 ~~flat and within a range of \$100 to \$850 per small cell per year,~~
27 ~~indexed for inflation from the effective date of this section.~~

28 (d) (1) A city or county may charge the following fees:

29 (A) An annual administrative permit fee not to exceed two
30 hundred fifty dollars (\$250) for each small cell attached to city or
31 county vertical infrastructure.

32 (B) An annual attachment rate that does not exceed an amount
33 resulting from the following requirements:

34 (i) The city or county shall calculate the rate by multiplying the
35 percentage of the total usable space that would be occupied by
36 the attachment by the annual costs of ownership of the vertical
37 infrastructure and its anchor, if any.

38 (ii) The city or county shall not levy a rate that exceeds the
39 estimated amount required to provide use of the vertical
40 infrastructure for which the annual recurring rate is levied. If the

1 *rate creates revenues in excess of actual costs, the city or county*
2 *shall use those revenues to reduce the rate.*

3 *(iii) For purposes of this subparagraph:*

4 *(I) “Annual costs of ownership” means the annual capital costs*
5 *and annual operating costs of the vertical infrastructure, which*
6 *shall be the average costs of all similar vertical infrastructure*
7 *owned or controlled by the city or county. The basis for the*
8 *computation of annual capital costs shall be historical capital*
9 *costs less depreciation. The accounting upon which the historical*
10 *capital costs are determined shall include a credit for all*
11 *reimbursed capital costs. Depreciation shall be based upon the*
12 *average service life of the vertical infrastructure. Annual cost of*
13 *ownership does not include costs for any property not necessary*
14 *for use by the small cell.*

15 *(II) “Usable space” means the space above the minimum grade*
16 *that can be used for the attachment of antennas and associated*
17 *ancillary equipment.*

18 *(C) A one-time reimbursement fee for actual costs incurred by*
19 *the city or county for rearrangements performed at the request of*
20 *the small cell provider.*

21 *(2) A city or county shall comply with the following before*
22 *adopting or increasing the rate described in subparagraph (B) of*
23 *paragraph (1):*

24 *(A) At least 14 days before the hearing described in*
25 *subparagraph (C), the city or county shall provide notice of the*
26 *time and place of the meeting, including a general explanation of*
27 *the matter to be considered.*

28 *(B) At least 10 days before the hearing described in*
29 *subparagraph (C), the city or county shall make available to the*
30 *public data indicating the cost, or estimated cost, to make vertical*
31 *structures available for use under this section if the city or county*
32 *adopts or increases the proposed rate.*

33 *(C) The city or county shall, as a part of a regularly scheduled*
34 *public meeting, hold at least one open and public hearing at which*
35 *time the city or county shall permit the public to make oral or*
36 *written presentations relating to the rate. The city or county shall*
37 *include a description of the rate in the notice and agenda of the*
38 *public meeting in accordance with the Ralph M. Brown Act*
39 *(Chapter 9 (commencing with Section 54950.5) of Part 1 of*
40 *Division 2 of Title 5).*

1 (D) *The city or county may approve the ordinance or resolution*
2 *to adopt or increase the rate at a regularly scheduled open meeting*
3 *that occurs at least 30 days after the initial public meeting*
4 *described in subparagraph (C).*

5 (3) *A judicial action or proceeding to attack, review, set aside,*
6 *void, or annul an ordinance or resolution adopting, or increasing,*
7 *a fee described in this subdivision, shall be commenced within 120*
8 *days of the effective date of the ordinance or resolution adopting*
9 *or increasing the fee. A city or county or interested person shall*
10 *bring an action described in this paragraph pursuant to Chapter*
11 *9 (commencing with Section 860) of Title 10 of Part 2 of the Code*
12 *of Civil Procedure in a court of competent jurisdiction.*

13 (4) *This subdivision does not prohibit a wireless service provider*
14 *and a city or county from mutually agreeing to an annual*
15 *administrative permit fee or attachment rate that is less than the*
16 *fees or rates established above.*

17 ~~(d)~~

18 (e) *A city or county shall not discriminate against the*
19 *deployment of a small cell on property owned by the city or county*
20 *and shall make space available on property not located in the public*
21 ~~*right-of-way*~~ *rights-of-way under terms and conditions that are no*
22 *less favorable than the terms and conditions under which the space*
23 *is made available for comparable commercial projects or uses.*
24 *These installations shall be subject to reasonable and*
25 *nondiscriminatory rates, terms, and conditions, which may include*
26 *feasible design and collocation standards.*

27 ~~(e) Nothing in this section shall be construed to~~

28 (f) *This section does not alter, modify, or amend any franchise*
29 *or franchise requirements under state or federal law, including*
30 *Section 65964.5.*

31 ~~(f)~~

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

34 (1) *“Micro wireless facility” means a small cell that is no larger*
35 *than 24 inches long, 15 inches in width, 12 inches in height, and*
36 *that has an exterior antenna, if any, no longer than 11 inches.*

37 ~~(1)~~

38 (2) (A) *“Small cell” means a wireless telecommunications*
39 *facility, as defined in paragraph (2) of subdivision (d) of Section*

65850.6, ~~using or a wireless facility that uses~~ licensed or unlicensed spectrum ~~and~~ that meets the following qualifications:

(i) ~~All antennas~~ *The small cell antennas* on the structure, excluding the associated equipment, total no more than six cubic feet in volume, whether ~~in a single~~ *an* array or separate.

~~(ii) (I) The associated equipment on pole structures does not exceed 21 cubic feet provided that any individual piece of associated equipment or pole structures do not exceed nine cubic feet.~~

(ii) Any individual piece of associated equipment on pole structures does not exceed nine cubic feet.

(iii) The cumulative total of associated equipment on pole structures does not exceed 21 cubic feet.

(iv) The cumulative total of any ground-mounted equipment along with the associated equipment on any pole or nonpole structure does not exceed 35 cubic feet.

~~(H)~~

(v) The following types of associated ancillary equipment are not included in the calculation of equipment volume:

~~(ia)~~

(I) Electric meters and any required pedestal.

~~(ib)~~

(II) Concealment elements.

~~(ic)~~

(III) Any telecommunications demarcation box.

~~(id)~~

(IV) Grounding equipment.

~~(ie)~~

(V) Power transfer switch.

~~(if)~~

(VI) Cutoff switch.

~~(ig)~~

(VII) Vertical cable runs for the connection of power and other services.

(VIII) Equipment concealed within an existing building or structure.

(B) “Small cell” includes a micro wireless ~~facility that is no larger than 24 inches long, 15 inches in width, 12 inches in height, and that has an exterior antenna, if any, no longer than 11 inches.~~ facility.

1 (C) “Small cell” does not include either of the following:

2 ~~(i) Coaxial or fiber optic cables that do not exclusively provide~~
3 ~~service to that small cell.~~

4 (i) *Wireline backhaul facility, which is defined to mean a facility*
5 *used for the transport of communications data by wire from*
6 *wireless facilities to a network.*

7 (ii) *Coaxial or fiber optic cables that are not immediately*
8 *adjacent to or directly associated with a particular antenna or*
9 *collocation.*

10 ~~(ii)~~

11 (iii) *Wireless facilities placed in any historic district listed in*
12 *the National Park Service Certified State or Local Historic Districts*
13 *or in any historical district listed on the California Register of*
14 *Historical Resources or placed in coastal zones subject to the*
15 *jurisdiction of the California Coastal Commission.*

16 (iv) *The underlying vertical infrastructure.*

17 ~~(2)~~

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

23 (B) For purposes of this paragraph, the term “controlled” means
24 having the right to allow subleases or sublicensing. A city or county
25 may impose feasible design or collocation standards for small cells
26 placed on vertical infrastructure, including the placement of
27 associated equipment on the vertical infrastructure or the ground.

28 ~~(g)~~

29 (h) *Existing agreements between a wireless service provider,*
30 *or its agents and assigns, and a city, a county, or a city or county’s*
31 *agents and assigns, regarding the leasing or licensing of vertical*
32 *infrastructure entered into prior to before the effective operative*
33 *date of this section remain in effect, subject to applicable*
34 *termination provisions. The operator of a small cell may accept*
35 *the rates of this section for small cells that are the subject of an*
36 *application submitted after the agreement is terminated pursuant*
37 *to the terms of the agreement, or other provisions in the existing*
38 *agreement, or unless otherwise modified by mutual agreement of*
39 *the parties. A wireless service provider may require the rates of*
40 *this section for new small cells sites that are deployed after the*

operative date of this section in accordance with applicable change of law provisions in the existing agreements.

~~(h)~~

(i) Nothing in this section shall be construed to *authorize or* impose an obligation to charge a use fee different than ~~those that~~ authorized by Part 2 (commencing with Section 9510) of Division 4.8 of the Public Utilities Code on a local publicly owned electric utility.

(j) *This section does not change or remove any obligation by the owner or operator of a small cell to comply with a local publicly owned electric utility's reasonable and feasible safety, reliability, and engineering policies.*

(k) *A city or county shall consult with the utility director of a local publicly owned electric utility when adopting an ordinance or establishing permitting processes consistent with this section that impact the local publicly owned electric utility.*

(l) *Except as provided in subdivisions (a) and (b), nothing in this section shall be construed to modify the rules and compensation structure that have been adopted for an attachment to a utility pole owned by an electrical corporation or telephone corporation, as those terms are defined in Section 216 of the Public Utilities Code pursuant to state and federal law, including, but not limited to, decisions of the Public Utility Commission adopting rules and a compensation structure for an attachment to a utility pole owned by an electrical corporation or telephone corporation, as those terms are defined in Section 216 of the Public Utilities Code.*

(m) *Nothing in this section shall be construed to modify any applicable rules adopted by the Public Utilities Commission, including General Order 95 requirements, regarding the attachment of wireless facilities to a utility pole owned by an electrical corporation or telephone corporation, as those terms are defined in Section 216 of the Public Utilities Code*

~~(i)~~

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

1 *SEC. 4. Section 65964.5 is added to the Government Code, to*
2 *read:*

3 *65964.5. Except as provided in Sections 65964, 65964.2, and*
4 *65850.6, or as specifically required by state law, a city or county*
5 *may not adopt or enforce any regulation on the placement or*
6 *operation of communications facilities in the rights-of-way by a*
7 *provider authorized by state law to operate in the rights-of-way,*
8 *and may not regulate any communications services or impose or*
9 *collect any tax, fee, or charge not specifically authorized under*
10 *state law.*

11 ~~SEC. 4.~~

12 *SEC. 5. No reimbursement is required by this act pursuant to*
13 *Section 6 of Article XIII B of the California Constitution because*
14 *a local agency or school district has the authority to levy service*
15 *charges, fees, or assessments sufficient to pay for the program or*
16 *level of service mandated by this act, within the meaning of Section*
17 *17556 of the Government Code.*