

File No. 150594

Committee Item No. _____

Board Item No. 50

COMMITTEE/BOARD OF SUPERVISORS

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Committee: _____

Date _____

Board of Supervisors Meeting

Date June 9, 2015

Cmte Board

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OTHER (Use back side if additional space is needed)

- California Assembly Bill 57
- _____
- _____
- _____
- _____

Completed by: John Carroll Date June 4, 2015

Completed by: _____ Date _____

1 [Opposing California State Assembly Bill 57 (Quirk) - Wireless Telecommunication Facilities]

2
3 **Resolution opposing California State Assembly Bill 57, authored by Assembly Member**
4 **Quirk, which would significantly limit San Francisco's ability to regulate wireless**
5 **telecommunication facilities.**

6
7 WHEREAS, There are over 1,033 existing commercial cell towers (WTS facilities) in
8 San Francisco's 47 square miles; and

9 WHEREAS, San Francisco's WTS facilities provide significant connectivity and public
10 safety benefits for residents, business, and visitors; and

11 WHEREAS, In the last three years approximately 35 large ("macro") WTS facilities
12 have been approved by the City, in primarily residential neighborhoods; and

13 WHEREAS, The San Francisco Public Utilities Commission and San Francisco
14 Municipal Transportation Agency have recently made thousands of City-owned poles
15 available for the installation of WTS facilities; and

16 WHEREAS, Assembly Bill (AB) 57 would create an expansive California-only automatic
17 approval remedy for any new WTS facility or major co-location significantly beyond Federal
18 mandates; and

19 WHEREAS, AB 57 does not provide clarity as to the State's interest in the siting,
20 operation, or maintenance of a single locally-installed WTS facility even though it broadly
21 states that "a wireless facility is a Statewide concern, and not a municipal affair;" and

22 WHEREAS, AB 57 does not appear to recognize the complex nature of land use,
23 environmental review (e.g. archaeological, geotechnical, sensitive habitat, historic
24 preservation), and noise effect consideration, that may be associated with local approval of an
25

1 application to construction a WTS facility, especially when that facility is poorly sited or
2 designed; and

3 WHEREAS, AB 57 does not clarify whether necessary and complex building and fire
4 safety code review must also occur within State-imposed deadlines, or if a "deemed
5 approved" remedy would allow installation to begin without proper approvals; and

6 WHEREAS, AB 57 could force local governments to deny applications that are
7 incomplete or contain inadequate designs by effectively removing the ability of local
8 governments to halt the State-imposed review clock or for wireless carriers and local
9 governments to agree extend the review clock; and

10 WHEREAS, AB 57 references public notice required for the application, but not public
11 notice that may be required by law and, therefore, appears inconsistent with the California
12 Permit Streamlining Act; and

13 WHEREAS, AB 57 could be construed to require automatic approval of an application
14 to construct a WTS facility even if an approved application is appealed by a member of the
15 public in a timely manner; and

16 WHEREAS, AB 57 creates timing constraints that could incentivize wireless carriers to
17 pursue litigation or re-application even though a viable neighborhood appropriate design is in
18 sight; and

19 WHEREAS, AB 57 may also incentivize carriers to rely less on (preferred) rooftop-
20 mounted WTS facilities and instead rely on a larger number of facilities mounted on wooden
21 utility poles to meet their service needs; and

22 WHEREAS, WTS facilities mounted on wooden utility poles present a number of
23 aesthetic concerns, particularly within the City's historic residential neighborhoods, can be
24 noisy, and are less likely to feature long-term resilient battery backup in the event of a disaster
25 or power outage; and

1 WHEREAS, Many review and approval delays for WTS facilities can be attributed to
2 incomplete or inaccurate designs, inaccurate radio-frequency safety reports, a lack of
3 community engagement, or co-locations at existing facilities that are poorly designed,
4 installed, or maintained, or lack prior building permit completion; and

5 WHEREAS, AB 57 is opposed by the League of California Cities, the California
6 Chapter of the American Planning Association, and the California State Association of
7 Counties; now, therefore, be it

8 RESOLVED, That the City respectfully urges the California Legislature to not approve,
9 or the Governor of California to veto, AB 57; and, be it

10 FURTHER RESOLVED, That the City respectively urges the State of California to
11 create a broadband connectivity group; as envisioned in the original language of AB 57, to: 1)
12 Encourage State agencies, special districts (e.g. flood or sanitation), and utilities to proactively
13 consider the siting of both commercial and publicly-operated WTS facilities; and
14 2) Encourage State agencies, special districts (e.g. flood or sanitation), and utilities to reduce
15 time and review barriers for commercial or publicly-operated wired broadband investments
16 across State owned lands or State rights-of-way; and 3) Encourage model building and
17 development codes that require multiple points of wired connectivity into residential dwellings
18 and commercial suites so as to reduce cost and competition barriers for municipal,
19 commercial, or non-profit internet service providers.

BILL NUMBER: AB 57 AMENDED
 BILL TEXT

AMENDED IN ASSEMBLY APRIL 6, 2015
 AMENDED IN ASSEMBLY MARCH 26, 2015

INTRODUCED BY Assembly Member Quirk

DECEMBER 2, 2014

~~An act to amend Section 8886 of the Government Code, relating to communications.— An act to add Section 65964.1 to the Government Code, relating to telecommunications.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 57, as amended, Quirk. ~~Broadband communications infrastructure.— Telecommunications: wireless telecommunication facilities.~~

Existing law requires a city, including a charter city, or county to administratively approve an application for a collocation facility on or immediately adjacent to a wireless telecommunications collocation facility, as defined, through the issuance of a building permit or a nondiscretionary permit, as specified. Existing law prohibits a city or county from taking certain actions as a condition of approval of an application for a permit for construction or reconstruction for a development project for a wireless telecommunications facility.

Under existing federal law, the Federal Communications Commission issued a ruling establishing reasonable time periods within which a local government is required to act on a collocation or siting application for a wireless telecommunications facility.

This bill would provide that a collocation or siting application for a wireless telecommunications facility is deemed approved, if the city or county fails to approve or disapprove the application within the time periods established by the commission and all required public notices have been provided regarding the application.

~~The existing federal Telecommunications Act of 1996 preempts any state or local statute or regulation that may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. However, this provision does not prohibit a state from imposing, on a competitively neutral basis, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers, nor does it prevent a state or local government from managing the public rights-of-way or requiring fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis.—~~

~~Under existing law, telegraph or telephone corporations may construct lines of telegraph or telephone lines along and upon any public road or highway, along or across any of the waters or lands within the state, and may erect related poles, posts, piers, abutments, and other necessary fixtures of their lines, but may not incommode the public use of the road or highway or interrupt the~~

~~navigation of the waters. Existing law declares the intent of the Legislature that, consistent with this authorization, municipalities have the right to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed, but that for the control to be reasonable it must, at a minimum, be applied to all entities in an equivalent manner.~~

~~Existing law establishes the California Broadband Council in state government for the purpose of promoting broadband deployment in unserved and underserved areas of the state and broadband adoption throughout the state, imposes specified duties on the council relating to that purpose, and specifies the membership of the council.~~

~~This bill would state the intent of the Legislature to enact legislation to promote the deployment of communications infrastructure by removing barriers to investment. The bill would add the President of the Board of Directors of the League of California Cities and the President of the Executive Committee of the California State Association of Counties, or their respective designees, to the membership of the council.~~

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

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

SECTION 1. Section 65964.1 is added to the Government Code , to read:

65964.1. (a) A colocation or siting application for a wireless telecommunications facility, as defined in Section 65850.6, shall be deemed approved if both of the following occur:

(1) The city or county fails to approve or disapprove the application within the time periods established by the Federal Communications Commission in *In re Petition for Declaratory Ruling*, 24 FCC Rcd. 13994 (2009).

(2) All public notices regarding the application have been provided consistent with the public notice requirements for the application.

(b) The Legislature finds and declares that a wireless telecommunications facility has a significant economic impact in California and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution, but is a matter of statewide concern.

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

~~(a) California consumers and businesses have adopted new, Internet-based technologies and mobile connections at an unprecedented rate. Internet-based products and devices, including smartphones and tablets, are providing consumers everywhere with new choices to connect, to communicate, and to access information and entertainment.~~

~~(b) The deployment of faster, more robust, and advanced wireless and wireline broadband infrastructure is essential to ensuring there is sufficient capacity and coverage to support the increasing reliance of California residents on broadband services.~~

~~(c) State and local review of broadband infrastructure deployment serves important interests, but at the same time, California must take steps to ensure that requirements do not hinder investment. State and local permitting processes should be designed to eliminate unnecessary barriers and spur deployment of infrastructure. This includes streamlining permitting requirements to reduce delay and~~

~~cost, and the creation of uniform processes.~~

~~— (d) New and upgraded infrastructure delivers a vast array of consumer and community benefits, including important improvements to public safety, education, and healthcare. The power of mobile communications is a critical tool for first responders in emergency situations. According to the Federal Communications Commission, nearly 70 percent of 911 calls are made from mobile telephones, and that percentage is growing.~~

~~— (e) As we continue the transition to a knowledge based, technology driven economy, California must invest in students and provide them with the proper tools and technologies to bolster academic achievement, starting with expanding access to high-speed broadband Internet and next generation Internet Protocol-based networks.~~

~~— (f) Facilitating broadband deployment additionally plays a key role in advancing telemedicine and mobile health applications, which can help Californians remotely monitor their health while reducing medical costs.~~

~~— (g) Wireless broadband is also key to economic development and a driver for new business and jobs. Businesses increasingly depend on strong wireless broadband service to carry their employees through the work day. An estimated 94 percent of small businesses surveyed use smartphones to conduct business and mobile technologies are saving the country's small businesses more than sixty-five billion dollars (\$65,000,000,000) a year.~~

~~— (h) Broadband infrastructure deployment creates jobs. A 2013 study conducted by the research firm Information Age Economics projects that wireless infrastructure investment will generate as much as one trillion two-hundred billion dollars (\$1,200,000,000,000) in economic growth while creating over 1.2 million new jobs, nationally, over the next five years.~~

~~— (i) It is the intent of the Legislature to enact legislation to promote the deployment of communications infrastructure by removing barriers to investment. Removing investment barriers is critical to meeting the surging demand by California residents for advanced wireless and wireline broadband technologies and services, supporting and enhancing critical public safety needs, and bridging the digital divide by increasing access for more Californians to improved education, health care, and economic development opportunities.~~

~~— SEC. 2. — Section 8886 of the Government Code is amended to read:~~

~~— 8886. (a) The membership of the California Broadband Council shall include all of the following:~~

~~— (1) The Director of Technology, or his or her designee.~~

~~— (2) The President of the Public Utilities Commission, or his or her designee.~~

~~— (3) The Director of Emergency Services, or his or her designee.~~

~~— (4) The Superintendent of Public Instruction, or his or her designee.~~

~~— (5) The Director of General Services, or his or her designee.~~

~~— (6) The Secretary of Transportation, or his or her designee.~~

~~— (7) The President of the California Emerging Technology Fund, or his or her designee.~~

~~— (8) A member of the Senate, appointed by the Senate Committee on Rules.~~

~~— (9) A member of the Assembly, appointed by the Speaker of the Assembly.~~

~~— (10) The President of the Board of Directors of the League of California Cities, or his or her designee.~~

~~(11) The President of the Executive Committee of the California State Association of Counties, or his or her designee.~~

~~(b) Members of the Legislature appointed to the council shall participate in the activities of the council to the extent that their participation is not incompatible with their positions as Members of the Legislature.~~

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee.
An ordinance, resolution, motion, or charter amendment.
- 2. Request for next printed agenda without reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [] inquires"
- 5. City Attorney request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. []
- 9. Request for Closed Session (attach written motion).
- 10. Board to Sit as A Committee of the Whole.
- 11. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative sponsor(s):

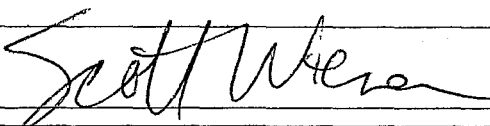
Supervisors Wiener, Christensen, Tang and Farrell

Subject:

Resolution In Opposition to AB 57 (Quirk) Wireless Telecommunication Facilities

The text is listed below or attached:

Resolution in opposition to Assembly Bill 57 which would significantly limit San Francisco's ability to regulate wireless telecommunication facilities.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only:

