

**TOWN OF FAIRFAX
STAFF REPORT**

To: Mayor, Members of the Town Council
From: Michele Gardner, Deputy Town Clerk
Date: May 1, 2013
Subject: Resolution Opposing AB 162 Wireless Telecommunications Facilities

DISCUSSION

The attached Resolution was drafted by Council Member Bragman.

ATTACHMENTS

Resolution Opposing AB 162
The League of California Cities Notice in Opposition to AB 162

RESOLUTION NO. 13 - 22

**A RESOLUTION OF THE FAIRFAX TOWN COUNCIL
OPPOSING AB 162**

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

WHEREAS, the Town of Fairfax has existing ordinances at Chapter 19.04 and 19.08 of the Fairfax Town Code which comprehensively regulate the siting and construction of wireless telecommunications facilities in order to protect and promote public health, safety, community welfare and the aesthetic quality of Fairfax as set forth in the goals, objectives and policies of the town's general plan; 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, (d) enlargement 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 would be deemed an approval of the request; and,

WHEREAS, existing town code requires town Planning Department approval for expansion of existing facilities and collocation of additional antennae; and,

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

WHEREAS, authority over land use planning and zoning law is the most fundamental of local issues and the Town of Fairfax must maintain its ability to make decisions that make sense for local communities and neighborhoods;

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Fairfax hereby opposes AB 162 (Holden) which would require local government to approve a request to modify wireless telecommunications facilities within 45 days of receipt, as it undermines local land use control and ultimately the principle of home rule.

The foregoing Resolution was duly introduced and adopted at a regular meeting of the Town Council of the Town of Fairfax held in said town on the 1st day of May 2013 by the following vote, to wit:

AYES:
NOES:
ABSENT:

JOHN REED, MAYOR

Attest:

Deputy Town Clerk



1400 K Street, Suite 400 • Sacramento, California 95814
Phone: 916.658.8200 Fax: 916.658.8240
www.cacities.org

April 12, 2013

The Honorable Katcho Achadjian
Chair, Assembly Local Government Committee
1020 N Street, Room 157
Sacramento, CA 95814

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

Dear Assembly Member Achadjian:

The League of California Cities opposes AB 162 (Holden), 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.

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. And the addition of 20 feet of equipment would be substantial. 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.

While we appreciate the author's willingness to discuss and try to address our concerns, we 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

cc: Assembly Member Chris Holden
Members, Assembly Local Government Committee
Debbie Michel, Assembly Local Government Committee
William Weber, Assembly Republican Caucus