



Orange County Council of Governments
Technical Advisory Committee

California Assembly Bill 965
Broadband Permit Efficiency and Local Government Staff
Solution Best Practices Act of 2023
Effective 1/1/24



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- **Telecom Law Firm, P.C. (Los Angeles & San Diego, CA)**
 - Admitted to practice law in California and New Mexico
 - Licensed by FCC since early 70s (holds too many licenses/certs)
- 40ish years in telecommunications engineering (RF, broadband, fiber, outside plant safety, code compliance, RF safety)
- 30 years consulting on telecom matters > 800 governments/firms; 23 years of wireless siting and planning ~2,000 cases/matters
- Expert witness/trial advisor in 40+ wireless, wired telecom cases
- Co-author, Co-editor of FCC's "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance" (Currently revising for the FCC)
- Supervising Property Manager/Broker at Telecom Realty Corp.
- **Member:** NMML (Attorneys Section); IMLA; NATOA (Twice Member of the Year); Society of Broadcast Engineers (Senior Member); ARRL (Life Member); Society of Cable Telecommunication Engineers (UK; Fellow Member); Society of Cable Telecommunication Engineers (US; Senior Member Emeritus).
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LP.D Doctor of Law and Policy, Northeastern Univ., Boston
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AB 965

- Introduced by Assembly Member Juan Carrillo on February 14, 2023; Signed into Law by Governor Newsom on October 8, 2023.
- Effective January 1, 2024.
- The new law lives at California Government Code § 65964.3.
- For Batching Broadband Permit Processing.

Simultaneous processing for more than one substantially similar broadband permit application.

(Nearly Identical in terms of equipment and general design, but not location or construction method).

- Number of applications within a batch is 2, but maximum number per batch is related to the population of the city or county (either 25 sites or 50 sites).
- Likely applies to Fiber, Wired or Wireless Facilities, Cable TV, any other facilities used to transport broadband data, video or voice services by wire or radio.
(hint: **Think ‘everything’.**)



AB 965

What is the 'problem' AB965 doesn't say it's trying to solve?

- The law purports to speed up **broadband**.
(No actual build obligation; no closing of the digital divide.)
- This is really and primarily (but not exclusively) a PROW small cell deployment law that only mentions wireless in passing; it's **not** limited to wireless site deployments.
- This law will likely impact local Public Works agencies far more than Community Development Departments.
- Many (most?) California public works codes lack modern wireless regulation provisions, especially as to design standards for wireless facilities in the PROW, and many (most? any?) do **not** effectively deal with broadband deployments.



AB 965

SEC. 3. Section 65964.3 is added to the Government Code, to read:

65964.3. (a) For purposes of this section, the following definitions apply:

(1) “Batch broadband permit processing” means the simultaneous processing of multiple broadband permit applications for substantially similar broadband project sites under a single permit.

(2) “Broadband permit application” means an application or other documents submitted for review by a local agency to permit the construction of a broadband project.

(3) “Broadband project” means the proposed facility, including the support structure and any supporting equipment necessary for operation of the proposed facility. A broadband project may be comprised of one or more components, including, but not limited to, a wireless facility, a fiber optic connection, and other supporting equipment, each of which may require separate permits or authorizations by a local agency.

(4) “Local agency” has the same meaning as the term is defined in Section 65964.5, except that it does not include a publicly owned electric utility that is subject to Part 2 (commencing with Section 9510) of Division 4.8 of the Public Utilities Code.

(5) “Presumptively reasonable time” means the timeframe, if any, specified in applicable law within which a local agency must review and resolve an application following submission of a complete broadband permit application. The presumptively reasonable time period may be modified by mutual, written agreement between the local agency and the applicant.

(6) “Substantially similar broadband project sites” means broadband project sites that are nearly identical in terms of equipment and general design, but not location.



AB 965

- The batched applications (2 or more) must be submitted to the City at the same time in the same batch.
- If the City does not issue permits or reject the batch applications and notify the applicant within the presumptively reasonable time, ALL of the sites in the batch are **deemed approved**.
 - **Presumptively Reasonable Time:** no more than 60 *calendar* days following submission of a complete broadband permit application.
- All application and permit fees will still be charged by local governments... but how much should you charge?



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(6) “Substantially similar broadband project sites” means broadband project sites that are **nearly identical** in terms of **equipment and general design**, **but not location**.

Nearly Identical is not a defined term!

(expect case law to develop around this term)



NEARLY IDENTICAL?



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Nearly Identical?



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Nearly Identical?





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What's 'Nearly Identical'?





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“Nearly Identical”???





Practice Pointers

- ✓ *The law allows a jurisdiction to evaluate whether a group of broadband projects are “substantially similar”... “nearly identical in terms of equipment and general design”. Do it!*
- ✓ *Consider adopting an **illustrated** design resolution (one reading) rather than an ordinance (two readings) that clarifies general design categories and provides visual examples of sameness, differences.*
- ✓ *Work with stakeholders to find natural groupings of what all/most might agree are “nearly identical in terms of equipment and general design”.*
- ✓ *Consider delegating design update authority to Director level to be flexible to respond to reasonable variations, court decisions, improvements in technology, etc...BUT be consistent between departments such as PW and CD!*



SEC. 3. Section 65964.3 is added to the Government Code, to read:

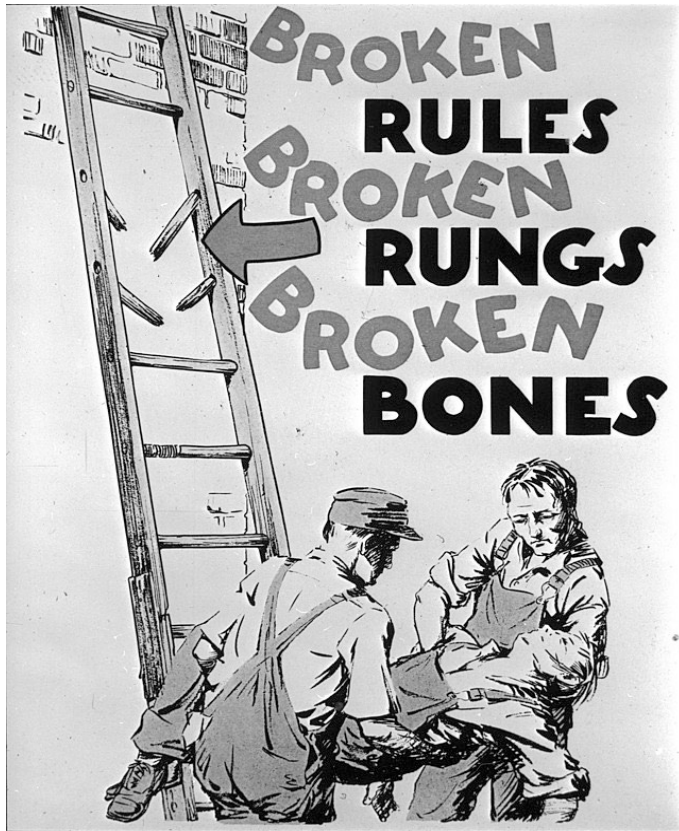
*65964.3 (e) The requirements of this section shall **not** apply to eligible facility requests, as defined and governed by Section 1455 of Title 47 of the United States Code.*

Practice Pointer: 47 C.F.R. § 1455(a) is where the “6409(a)” “eligible facilities rules” are found. If a jurisdiction receives a batch and any of the sub-applications uses any variation of the triggering terms like “6409” or “collocation” or “EFR” or “eligible facilities” or “1455” then the batch is not really one that should be submitted under AB965/§ 65964.3.





SEC. 3. Section 65964.3 is added to the Government Code, to read:



65964.3 (f) (1) This section does not preclude a local agency from requiring compliance with any requirements relating to the design, construction, or location of broadband projects that the local agency is otherwise authorized to impose or enforce under applicable law, including, without limitation, any generally applicable health and safety requirements.

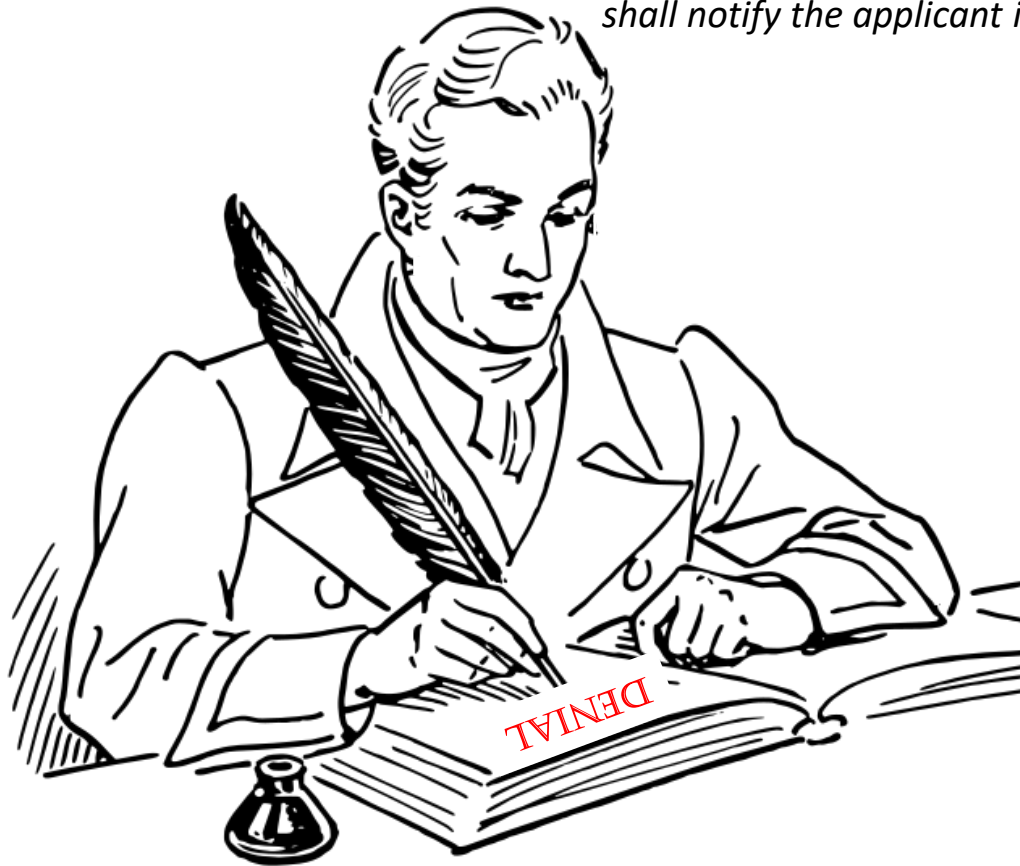
Practice Pointer: Nothing in this new law overrides local agency enforcement of generally applicable safety codes. Think about microtrenching; GO 95; GO 128; California Uniform Electrical Code; California Uniform Fire Codes, California Uniform Building Code, TIA 222 H tower safety codes; and just about everything else.

REALLY Important Practice Pointer: Do you have backup minimum code compliance specified in your Municipal Code for deemed approved projects? No?



SEC. 3. Section 65964.3 is added to the Government Code, to read:

65964.3 (f) (2) If a broadband permit application is denied, the local agency shall notify the applicant in writing of the reasons for the denial.



REALLY Important Practice Pointer: For almost every denial, there is usually more than one reason. Written denials are the first line of defense in any follow-on lawsuit so don't miss any potential denial points. Write a lot, not a little; and write like a judge (who knows the least about a case matter) will be reading it! English is a good language to use...Plain English.

Dsssst.... This is good practice for ANY type of denial!



SEC. 3. Section 65964.3 is added to the Government Code, to read:



65964.3 (h) Nothing in this section shall supersede, nullify, or otherwise alter the requirements to comply with safety standards, including, but not limited to, both of the following:

- (1) Article 2 (commencing with Section 4216) of Chapter 3.1 of Division 5 of Title 1.*
- (2) The Public Utilities Commission's General Order No. 128, Rules for Construction of Underground Electric Supply and Communication Systems, or successor rules adopted by the commission.*

Practice Huh?: Didn't we cover this just a few slides ago?
Oh well, let's revisit it here for good measure since nothing is really added, nor is anything taken away.



SEC. 3. Section 65964.3 is added to the Government Code, to read:

65964.3 (i) (1) A local agency may place reasonable limits on the number of broadband project sites that are grouped into a single permit while undertaking batch broadband permit processing.

(2) A reasonable limit imposed pursuant to paragraph (1) shall be no less than either of the following:

(A) For a city with a population of fewer than 50,000 or a county with a population of fewer than 150,000, including each city within that county, 25 project sites.

(B) For a city or county with a population greater than the applicable population described in subparagraph (A), 50 project sites.

(3) A local agency may only remove a broadband project site from grouping under a single permit under mutual agreement with the applicant or to expedite the approval of other substantially similar broadband project sites.

Practice Pointer: This is an area of the new law ripe for gaming by the applicants, since there no limit on the number of batch applications that may be simultaneously submitted...only a 'limit' on the number of sites per batched application.



SEC. 3. Section 65964.3 is added to the Government Code, to read:

65964.3 (j) A local agency may impose a fee on batch broadband permitting processing consistent with Section 50030. Where limited resources affect a local agency's ability to process applications for a broadband project, including batched applications, a local agency shall work with the applicant in good faith to resolve those resource limitations, which may include, but is not limited to, provision by the applicant of supplemental resources.

Practice Pointer: Gov. Code Sec. 50030 says, "Any permit fee imposed by a city, including a chartered city, a county, or a city and county, for the placement, installation, repair, or upgrading of telecommunications facilities such as lines, poles, or antennas **by a telephone corporation that has obtained all required authorizations to provide telecommunications services from the Public Utilities Commission and the Federal Communications Commission**, shall not exceed the reasonable costs of providing the service for which the fee is charged and shall not be levied for general revenue purposes."

Consider requiring proof of authorization status in your about-to-be-created-new-batched-application-form, and to make the FCC happy don't forget to **'publish'** it.



SEC. 4 and SEC. 5.

SEC. 4. *The Legislature finds and declares that the efficient approval of broadband permit applications is critical to the deployment of broadband services, is a matter of statewide concern, and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, Section 3 of this act adding Section 65964.3 to the Government Code applies to all cities, including charter cities.*

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

Practice Pointers:

1. Everybody into the (same) pool...
2. Get your fees from the applicants, not the state

Questions?

These slides are at:

www.TelecomLawFirm.com/occogtac



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