

CITY OF CALABASAS

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In The Matter of the City of Calabasas
Proposed Calabasas Municipal Code Section
17.12.050 entitled
“Antennas/Wireless Communication Facilities”

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**FINAL SUGGESTED REVISIONS TO
PROPOSED CITY ORDINANCE 17.12.050**

Respectfully Submitted to the
City of Calabasas, California,

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Dated: Garden City, NY
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FINAL SUGGESTED REVISIONS

Having reviewed the most recent draft, I suggest two (2) final revisions be added to the proposed ordinance as a result of new developments which have occurred within the past ninety (90) days.

The first is to ensure the absence of a potential loophole to the ordinance's applicability.

The second is to address an additional constraint imposed upon the City's regulatory authority by the newly enacted "Middle Class Tax Relief and Job Creation Act of 2012."

I The Potential Loophole

Within increasing regularity, companies which install and/or own wireless communications facilities across the Country are now claiming that: (a) because of the "public benefit" they provide, they should be recognized as public utilities, and (b) as such, their installations *must* be treated as "public utility structures" which fall within any exemptions for same under a respective City's Municipal Code.¹

They are asserting this position in jurisdictions which, similar to the City of Calabasas, possess a Municipal Code which includes various zoning exemptions for public utility structures.

As I previously explained to the City in my memo of November 30, 2011, wireless installations are actually *quite different* than *traditional* public utilities, and concomitantly, they present substantially different challenges to the City, in terms of protecting against the adverse impacts of unregulated installations.

To ensure that the City's proposed ordinance will apply to all proposed installations within the confines of the City, I strongly suggest that a fifth paragraph be added to Section B. of the proposed ordinance, as follows:

B.

5. *For the purpose of any application of this ordinance, and/or any other ordinance, section or provision of the Calabasas Municipal Code, the installation of any wireless communication facility, as defined herein, shall not be considered a public utility structure, but instead, shall be considered as a new development.*

¹ In the first four months of 2012, I have seen a dramatic increase in the number of cases within which wireless companies are now asserting this argument.

II The New Federal Act

This year, Congress enacted the “Middle Class Tax Relief and Job Creation Act of 2012.”

Unfortunately, the Act contains a number of provisions which are wholly unrelated to giving middle class tax relief or creating jobs.

Among them is §6409(a) which essentially mandates that local governments permit the owners of wireless facilities to modify and/or replace certain existing wireless structures so long as the modification or replacement does not “*substantially change the physical dimensions*” of such facilities.

This new provision will undoubtedly create a whole new set of problems for local governments in terms of its applicability and interpretation.

By way of example, it further aggravates the conflict between federal law and the power of local governments to ensure that wireless installations do not expose members of the public to RF radiation levels which exceed the maximum level deemed safe by the FCC.²

To ensure that the City’s new ordinance will not, *on its face*, run afoul of this new Congressional Act, I strongly recommend that the following additional language be added to the end of paragraph C. 1:

“Where applicable, this provision shall be applied within the constraints of Sections §6409(a)(1) and (a)(2) of the Middle Class Tax Relief and Job Creation Act of 2012.”

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² Since modifying a pre-existing wireless facility by increasing the power output does not necessarily require a “substantial change in the physical dimensions” of a facility, wireless companies will undoubtedly now assert that local governments are powerless to stop them from “powering up.”