

CITY OF BURBANK
OFFICE OF THE CITY COUNCIL

April 16, 2013

The Honorable Chris Holden
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0041

RE: OPPOSITION TO AB 162

Dear Assembly Member Holden:

The City of Burbank is writing to express strong opposition to AB 162 as introduced. Assembly Bill 162 would add Section 65964.5 to the Government Code, duplicating Sec. 6409(a) of the Middle Class Tax Relief Act of 2012 which states:

“(a) Notwithstanding any other law, and pursuant to Section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. Sec. 1455), a local government shall approve and may not deny any eligible facilities request for a modification of an existing wireless telecommunications facility that does not substantially change the physical dimensions of the wireless telecommunications facility.”

However, in addition to duplicating a federal law that already limits the ability of local governments to exercise zoning authority over wireless telecommunications facilities, AB 162 goes a step further and limits local government authority even more by saying:

“(b) The failure to act on an eligible facilities request within 45 days of receipt of a request shall be deemed an approval of the request. The 45 days shall be tolled if the request is determined to be incomplete. If the request is determined to be incomplete, the local government shall comply with subdivision (c) of Section 65943 of the Government Code.”

Section (b) would effectively eliminate any possibility of public hearings in advance of mandatory approvals. The 45 day limitation would cut in half the time determined by the FCC to be adequate to process collocations. The effective result would be that wireless collocation projects would take priority over virtually every other project considered by a local government.

Further, the slash in the amount of time available to process an application would severely limit the opportunity for public engagement. As proposed, the bill would eliminate the ability for local municipalities to allow for a public process to enable the community to provide input into the wireless siting process for collocations. In fact, the proposed bill would speed up the process to the point where the public would be denied

the opportunity to have any meaningful review, much less input, on proposed wireless collocations.

In addition, the definitions of key terms in AB 162 are so broad as to encompass nearly every portion of a wireless system ranging from ancillary equipment cabinets to integral support structures such as towers and poles. Moreover, the definitions are in conflict with the plain words of the proposed bill as to what constitutes non-substantial changes in the physical dimensions of the wireless telecommunications facility.

For example, the increase in height of a wireless telecommunications facility by 20 feet, or possibly even more if necessary to avoid interference with existing antennas, would not be considered a substantial change under AB 162. In Burbank wireless telecommunications facilities taller than 35 feet require a Conditional Use Permit. Increasing the height of an existing 35 foot tall structure by an additional 20 feet is considered a substantial change and would require a Conditional Use Permit. However, under AB 162, the City of Burbank would be forced to approve this sort of change within 45 days, completely circumnavigating the public process normally required.

Under AB 162, the City would not only lose the ability to provide for an open transparent process that allows for public engagement, but the opportunity to thoroughly review projects or impose conditions of approval to ensure that proposed facilities are aesthetically compatible with the surrounding area and that the health, safety and welfare of the community is protected.

Eliminating the need for an applicant to demonstrate a gap in coverage is a particularly problematic provision. Wireless facilities, even when disguised, have an aesthetic impact which must be considered in some cases. Further, the equipment on the ground can generate significant noise in areas which are usually quiet. To tell local government that these collocations must be approved without requiring an analysis of a gap in coverage is to throw open the field to those who currently speculate on what might be a need at some point in the future.

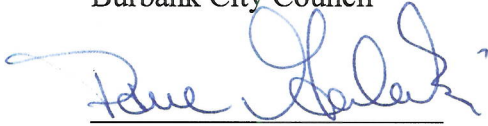
AB 162 would open the door to fully camouflaged compatible sites morphing into ugly monopoles or visible sites, which would have serious negative impacts on the aesthetics of communities across California. The ability of local government to regulate the aesthetics of wireless telecommunication facilities has long been recognized and upheld by the courts. AB 162 would strip cities of this ability.

As a former elected local government official for the City of Pasadena, we are sure that you remember how vitally important it is to provide an open and transparent process that enables local governments to recognize and address the needs of both constituents and the industry. AB 162 would eliminate this very significant ability of local governments.

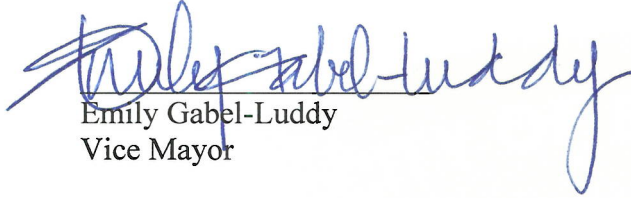
The City of Burbank respectfully requests that you reconsider your introduction of this legislation. As drafted, it is so fundamentally flawed that revisions alone cannot redeem it.

Sincerely yours,

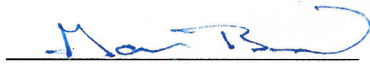
Burbank City Council



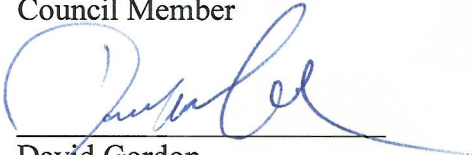
Dave Golonski
Mayor



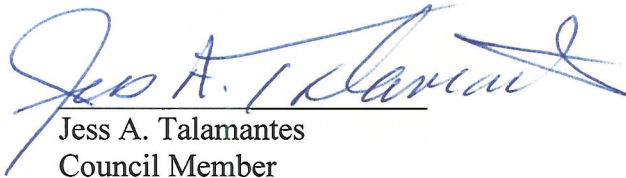
Emily Gabel-Luddy
Vice Mayor



Gary Bric
Council Member



David Gordon
Council Member



Jess A. Talamantes
Council Member

cc:

Assembly Member Katcho Achadjian, Chair of the Local Government Committee

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Assembly Member Steven Bradford

Assembly Member Richard S. Gordon

Assembly Member Melissa A. Melendez

Assembly Member Kevin Mullin

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Senator Carol Liu

Ms. Jennifer Whiting, California League of Cities

Ms. Kiana Buss, California Association of Counties