

**Frequently Asked Questions  
Cell Antennas  
Updated 10-25-16**

**Q: Why can't the County prohibit cell antennas in residential areas?**

A: Federal law does not permit a total prohibition of cell towers if doing so would prohibit the delivery of wireless services to that area. The placement, construction and modification of cell towers and antennas in cities and counties is subject to federal statutes, laws, regulations and case law.

Based on decisions made by federal courts, cell phone companies have the right to close a significant gap in their cell coverage. The federal case law does not define what constitutes a significant gap in coverage. If it is determined that a significant gap exists, the law allows cities and counties to require that a wireless company close the gap in coverage under applicable zoning.

**Q: What has changed since the Council required telecommunications towers be at least 300 feet from homes?**

A: The current law governing cell towers anticipated tall towers or monopoles. These towers, under the conditional use approval process, are allowed up to 199 feet tall. This height benefits macrocell technology. The cell coverage of these towers depends on the height of an antenna, topography and other variables. These large cell towers can cover a range of five miles or more.

The technology for small cell antennas and Distributed Antenna Systems (DAS) uses much shorter poles but requires many more poles to cover the same area. The range of coverage for these shorter antennas is measured in hundreds of feet and not miles.

Cell phones have become smart phones and more people are “cutting the cord” from their landlines. The increased intelligence of cell phones and the increased dependence on wireless services of all types, including the Internet of Things (IoT), means that consumers are using significantly more data. The applications for small cell and DAS antennas is in effect an expression of the applicants’ opinion that the current macrocell network capacity will not be sufficient to meet expected demands.

**Q: Why was a 30-foot setback from houses proposed?**

A: The 30-foot setback in the Council’s proposed zoning text amendment (ZTA) is included to protect property and is related to the height of the pole being regulated. The ZTA would apply to poles that are 10 feet higher than the nearest street light pole but, in no event, higher than 30 feet. (Residential street light poles are typically 12 to 16 feet tall.) Requiring a one foot of setback for every one foot of pole height would allow a pole to fall without hitting a structure.

**Q: What happens if a cell company wants to install an antenna on an existing utility pole?**

A: Utility poles (wooden poles that are installed to carry electricity) are treated as existing structures under existing and proposed zoning law. An antenna may be placed on a utility pole after the Telecommunications Facility Coordinating Group (Tower Committee) reviews the application and the County's Department of Permitting Services (DPS) approves a building permit. If a cell company submits an application that meets zoning and safety standards, DPS must approve the building permit.

**Q: What is the impact on street lights?**

A: The County owns 29,000 street lights and utility poles. Another 32,000 County street lights are located on poles owned by utility companies. There also are other street lights owned by municipalities and homeowners associations. (The proposed zoning text amendment only regulates poles in the County's right-of-way.) The County's residential street light poles cannot hold the weight of the proposed antennas and equipment.

At least one cell company is proposing to build a new pole, which would be wider and taller than the existing street light pole, to hold its equipment and a new street light. In this case, when a utility pole is County owned, the Department of Transportation would be the owner of the new pole.

**Q: When is an applicant required to give residents notice of a new pole?**

A: Under existing zoning law, all new towers and new replacement structures, other than public utility poles, require approval through a process called "conditional use approval." This process is under the initial jurisdiction of the County's Hearing Examiner and requires notice to residents who have property abutting a new pole. The Hearing Examiner conducts a hearing and issues a report and a decision. The Council's proposed zoning text amendment would still require new poles taller than 30 feet to go through this process. Shorter poles would not be required to do so.

Residents are notified when a conditional use application is filed, which is a discretionary process that can lead to an approval or denial. Applications for non-residential building permits do not require any notice under current law. The issuance of a building permit is an administrative act, not a discretionary one. If an applicant satisfies specific standards, then the application must be approved. Currently the County does not require notice in an administrative process.

**Q: Why not allow the rejection of poles in the right-of-way because of aesthetic considerations?**

A: Maryland law does not allow the consideration of aesthetics outside of some other public consideration like historic preservation requirements. It would be possible to regulate objective concerns such as height, diameter, location (as long as it does not amount to a denial of service), material and fixtures. To that extent, the County can require that the new pole look, as much as possible, like the nearest street light pole.

**Q: Can the proposed location of antennas be changed?**

A: DAS have a very limited range. There is no doubt that a proposed location could be changed; however, a change in location or pole height may affect the location of other poles to maintain radio frequency coverage. Most proposed poles would be near County owned street lights. The idea of replacing existing street light poles at the same location as the existing street light would have the new pole at a familiar location but with a wider and higher pole.

**Q: Spokane, Washington approved a six-month moratorium on cell towers. Why not do that? What is the rush to act?**

A: The Federal Communication Commission (FCC) requires that all telecommunications applications be approved or denied within 150 days. A failure to meet that “shot-clock” results in approval of the application as submitted. Spokane, Washington conducted its moratorium when it had no pending applications.

The County has approximately 200 pending applications. A moratorium would not stop the FCC shot-clock. The number of actual and expected applications calls into question the County’s ability to reach decisions within the time allowed by the FCC, even without any self-imposed delay in the application process.

**Q: What have other jurisdictions done when faced with dozens of pole applications? What “lessons learned” have arisen from other communities that have these poles installed?**

A: Staff could not find any other jurisdictions in the country faced with the number of pole deployments proposed. The standards in other jurisdictions differ depending on the circumstances.

Montgomery County has had more applications filed in the past four months than in the past 18 years. Staff research also showed that the County has 10 times more applications than any other local jurisdiction.

The County appears to be unique in the number applications for poles, less than 30 foot tall, with antennas. Many jurisdictions have varying requirements for macrocells, which are 50 to 200 feet tall.

**Q: What does the Telecommunications Facility Coordinating Group (Tower Committee) do?**

A: The Tower Committee reviews applications to see if an existing location can be used for new cell antennas or if new antennas would create interference with existing facilities. The Committee uses a consultant who provides engineering reviews and looks for co-location opportunities.

The Tower Committee is comprised of staff from the relevant County departments and agencies and does the following:

- reviews tower applications;
- considers zoning requirements;
- reviews the recommendation and information compiled by the tower coordinator; and
- formulates a siting recommendation that goes forward to the affected agency. (In the case of a pole in the public right-of-way, both the Department of Transportation and the Department of Permitting Services are affected.)

Tower Committee meetings are open to the public and provide an administrative forum for members to discuss siting issues, review and comment on the telecommunications transmission facility policies of various agencies and facilitate communications between member agencies, departments and applicants. The Committee does not make any final decisions. The relevant department or agency, which is the Hearing Examiner for a conditional use, and the Department of Permitting Services makes the final decisions related to cell antennas.

**Q: Has the County conducted any research into the effect small cell/DAS antenna poles will have on nearby property values?**

A: As far as staff knows, the County has never conducted any research concerning the property value effects of installing any type of facility in the right-of-way.

**Q: Can the Council consider the health effects of radio frequency waves?**

A: Federal law trumps local law when it comes to wireless communication. Congress and the FCC have preempted any local regulation based on radio frequency (RF) health effects, if the proposed site is in compliance with RF emissions standards. The FCC has the first and last word on all RF standards.

**Q: What controls will the County institute to ensure that these poles stay within FCC emission limits (i.e., inspections, monitoring, etc.)?**

A: The County does not have any plans to institute a monitoring program. The City of Calabasas, California approved an ordinance that required inspections to assure that cell antennas did not exceed federal emission standards. In the case of *Crown Castle v. City of Calabasas* the Superior Court of California struck down the ordinance because it was preempted by federal law.

**Q: What protections from radio frequency waves are there for workers who must be within five feet of the antenna?**

A: The FCC requires a warning sign on each pole to alert people who may come within five feet of the antenna. An antenna can be turned off for service work.