

County Council Budget hearings April 8, 2021

Written testimony:

COUNTY COUNCIL -- USE THE BUDGET TO write and enact a legally based and maximum protective ZTA for Wireless Telecommunication Facilities (WTFs) that maintains Congress-provided local governmental power and authority via the Telecommunications Act of 1996 (TCA).

County Council, we have a crisis on our hands! The PHED Committee, chaired by Hans Riemer, just voted for ZTA 19-07, which is the telecom industry's dream ordinance and the people's and environment's nemesis. The County Council needs to put money in the budget to develop a new ordinance that creates the most legally sound, protective ordinance possible. Each member of the Council and each resident who cares about this should consult with experts in the field of telecom law like Andrew Campanelli, who has worked with hundreds of cities and counties to develop ordinances on WTFs that protect people. We are currently only hearing the telecom industry point of view in ZTA 19-07 and we need a new approach. ZTA 19-07 must be replaced with the help from outside counsel who are pre-eminent lawyers on creating ordinances that preserves locality's power and protects residents.

You can read Andrew Campanelli's advice on the issues involved in creating a thoughtful law to protect people. He explains clearly the issues that a proper ordinance should provide. Refer to Andrew's bio on the initial pages of:

<https://www.dropbox.com/s/m0wui8rbk2bb0d7/Pensacola%20FL%20Ordinance%20Review%20Final.pdf?dl=0>

Local government has the power for maximum regulatory authority to control the placement of wireless transmission facilities (WTFs) to the maximum extent intended by Congress while also minimizing wireless applicant claim validity/risk when an application is denied. Local government must adopt local zoning regulations that codify guidelines to ultimately allow decisions that are permissible within the TCA. ZTA 19–07 does not accomplish these legally permitted goals.

Cities and counties have the right to limit the number and placement of cell antennas to only as many as are technologically needed to enable phone calls, texts, etc. The Telecommunications Act of 1996 preserves local zoning authority. Such a limitation does not constitute an effective prohibition of personal wireless service.

These rights are based on the following laws:

- Cities have broad regulatory powers preserved by the Telecommunications Act of 1996 (TCA) (47 U.S.C. §332. (c)(7)(A))
- The City can regulate cell antenna placement as long as such regulation does not “prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” (47 U.S.C. §253.(a)), “shall not prohibit or have the effect of prohibiting the provision of personal wireless services.” (47 U.S.C. §332. (c)(7)(B)(i)(II))

Calabasas, CA is an example of a legally informed jurisdiction that developed an ordinance that includes these provisions:

- No wireless telecommunication facility shall be built in a residential area, including the public right-of-way, unless the applicant has proven with clear and convincing evidence that there is a significant gap.
- The council should consider requiring the maximum setback supportable for new towers and base stations from sensitive receptors such as schools, homes and parks.

- Before any new wireless telecommunication facility is approved, the applicant must prove a significant gap with clear and convincing evidence.
- For new poles a set back at least one thousand (1,000) feet from schools, dwelling units and parks, lesser setback is necessary to close a significant gap.
- The city shall retain one (1) or more independent, qualified consultants to review any application for a wireless facility permit for a personal wireless telecommunication facility, for a wireless facility minor modification permit, or for a small wireless facility permit.
- A statement signed by a person with legal authority to bind the applicant attesting under penalty of perjury to the accuracy of the information provided in the application.

Additional recommendations include requiring all cellphone facilities to be installed underground "to the fullest extent possible" and prohibiting them from being built in the public right of way. Refer to this link for complete details:

<https://scientists4wiredtech.com/calabasas/2019-calabasas-wireless-code/>

We need generous setbacks to protect us from radiation and aesthetic clutter. We don't need small cell antennas on streetlights and utility poles in front of buildings and houses. Adding more cell towers detracts from the aesthetics of our neighborhoods and is unnecessary in residential areas. When residents can make phone calls, text messages, and go online from mobile devices while at home, a significant gap in coverage does not exist. Therefore, there is no justification for additional WTFs, aka cell towers, let alone a cell towers 30 feet or less from homes. The push for more cell towers and antennas is coming from the profit-driven wireless industry. The carriers' representatives often make false statements about the range of their antennas, because they can — and because more often than not, the Council Members trust them — and do not know any better. Then the Council members and staff take those false statements as true — and make policy decisions based on misrepresentation of fact. The result is more cell antennas than are really necessary for the system to work. As in the

case of the 3/10 PHED Committee meeting, the word, “permissiveness” was invented to promote unnecessary densification — as if there would be no quality network without excessive cell towers 30 feet from our homes.

The latter is not true. In fact, Lowell McAdam was the [CEO of Verizon in mid-2018 at the time of this interview with CNBC](#). The interviewer asked him a question about whether it is really necessary to place a cell antenna 25’ from a home. McAdam’s answer addresses the “myths of millimeter waves.” What McAdam says about the range of a modern cell antenna is, “We are now designing the system for over 2,000’ from transmitter to receiver.” A cell antenna is both a transmitter and receiver, so is a cell phone. Therefore, a “true” 5G signal will reach a cell phone from thousands of feet away.

It is important to note that the 2,000 feet range is not a theoretical or calculated number. It is Verizon's conclusion based on more than a year of testing in 11 American cities. All of the geographical features and things that you would find in most American cities are taken into account — such as buildings, cars, trucks, houses, and trees. Also in 2018, On Verizon’s YouTube channel, they proved [5G millimeter waves can travel 3,000 feet](#) while keeping gigabit speeds. Wireless providers don't need a 30 foot setback to build their network, so I am advocating for a 3,000 foot setback.

Moreover, Maryland is bound by the 4th Circuit ruling which still requires that two conditions be met to legally deny a wireless installation. Those are: “significant gap” in coverage and “least intrusive” location. Refer to [New Cingular Wireless v. Fairfax](#) which, in turn, relied on [T-Mobile v Newport News](#). Is just one of many provisions which must be included in a replacement zoning ordinance. Councilmembers have been misled into believing that the 9th Circuit ruling in [City of Portland, Oregon](#) applies to us. Residents are aware that Council members have stated (in writing) that “many of [Council’s] recent ordinance decisions were based upon the necessity to legally comply with rulings of the 9th Circuit Court.”

ZTA 19-07 is not based on legal or technology truths. The budget should be used to do the dispassionate analysis necessary to create an ordinance that protects people from radiation and densification of cell towers and antennas. In order to create an ordinance that protects people we should focus on what lawyers, like Andrew Campanelli, who have decades of specialized experience in analyzing zoning ordinances for local governments. They have a comprehensive legal understanding of telecom and site developers, as well as the regulations and administration of the FCC. Please allocate money in the budget to do the analysis necessary to develop an ordinance that is free from the influence of the telecom industry. The current ZTA 19-07 must be replaced with the help of outside counsel.

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