

Testimony Submitted in Opposition to ZTA 22-01.
September 7, 2022

ZTA 22-01 - DO NOT ACT ON THIS ZTA

Councilmembers,

ZTA 22-01 is another zoning change that is on a trajectory to be voted on without meaningful public input. Please do not move forward with ZTA 22-01.

Last year the Council adopted 19-07 - a zoning change largely pushed by the wireless industry and unpopular with residents. The Council's lead sponsor - Mr. Riemer - claims 19-07 is not "exactly as intended" and needs a correction so that he can allow wireless providers access to thousands of utility poles in residential areas as close as 30 feet from homes.

There is no FCC requirement or rational justification for this ZTA 22-01.

PLEASE CONSIDER THE FOLLOWING AND TABLE THIS ZTA 22-01

1. Council did NOT intend to cover utility poles 30 feet from homes when it passed ZTA 19-07.

ZTA 19-07 amended the provisions of the code contained in Section 3.5.2 and not those contained in Section 3.5.14. The Council's own briefing materials on the date of the passage (7.27.2021) contained this point noting that 19-07 did not cover "existing and replacement utility poles" as they are separately defined in the code.¹ This point was made repeatedly: in the January 2020 memo by the PHED committee senior legislative attorney² and in the June 29, 2021 briefing packet to the full Council, giving the lead sponsor, the committee and the Council ample time to change the text of 19-07, *if that had been their intent*. ZTA 22-01 is not an adjustment to ZTA 19-07 but a completely different and **material**³ zoning change.

¹ "5. Antenna attachments to existing and replacement *utility poles are not covered* by this ZTA. Although Section 59.3.5.2.C mentions replacement utility poles, it has been interpreted that utility poles – whether existing or replacement – are governed by Section 59.3.5.14.C “Antenna on Existing Structure”. The staff memo from Jan 21, 2020, explains, “A pole may be replaced because of general maintenance, increased electrical service needs, to accommodate cable service, or to accommodate an antenna. If the pole exists when an applicant applies for an electrical permit, the provision for an antenna attachment on an existing structure applies (Section 59.3.5.14.C of the zoning code). There is NO height limit for antennas on existing structures. There IS a required 60-foot antenna setback from any dwelling (Section 59.3.5.14.C.2.e.iii).” (pg. 11) The memo confirms that ZTA 19-07 does not amend this section and that therefore, it would “not affect the current law concerning the unlimited height of utility poles in their status as existing structures.” [included as part of briefing materials for ZTA 19-07 dated July 27, 2021: https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2021/20210727/20210727_4D.pdf]

² https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2020/20200123/20200123_PHED1.pdf

³ An estimate of the number of poles affected by ZTA 22-01 is approximately 32,435, based on a Memorandum prepared by Livhu Ndou to the PHED Committee. "Currently: 9,383 poles have less than a 30-foot setback from a building; 18,839 poles have a setback between 30 feet and 45 feet; 13,596 poles have a setback between 45 and 60 feet; and 33,368 poles have a setback of 60 feet or more."

Mr. Riemer has stated that ZTA 22-01 "is needed to correct the Council's intention to allow existing poles to erect antennas at 30 [foot setbacks]."⁴ *Is Mr. Riemer saying that neither he nor Councilmembers read the 19-07 briefing materials, so they did not know what they were passing?*

2. The Material Zoning Changes in ZTA 22-01 Need a Meaningful Public Hearing

The hearing for ZTA 22-01 is scheduled to be September 13th at 1:30 p.m. - mid-day on a workday - automatically excluding those residents that work during that time. The hearing has very limited speaking slots that filled within hours - also denying residents the ability to speak to ZTA 22-01.

Further, the County continues to pass zoning amendments without the input of the Office of the People's Counsel ("OPCS") as it seems to have determined to update its codified provisions on the OPC via defunding it rather than legislatively removing it.

County procedure stipulates that input on zoning text amendments is to be provided by the Office of the People's Counsel whose purpose is "promoting a full and fair presentation of relevant issues in administrative proceedings in order to achieve balanced records upon which land use decisions can be made" and it is tasked with providing "technical assistance to citizens and citizens associations [to] encourage effective participation in, and increased public understanding of and confidence in, the County land use process." Yet, the People's Counsel (established over 30 years ago) was defunded by the Council several years ago and the Council has dodged requests to reinstate it. The provision for People's Counsel is still on the books, the Council just pretends it is not there by not funding it.⁵

3. Wireless Zoning Needs Climate Impact Analysis

While it is a move in the right direction to pass Bill 3-22 on climate reviews of zoning text amendments it does not capture ZTA 22-01 if the Council passes it now. So conveniently all of the cell antennas and their related generators and those that could be deployed if the Council moves forward now with ZTA 22-01 will be completely (and conveniently) ignored for energy use and greenhouse gas emissions.

https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2021/20210310/20210310_PH_ED2.pdf

⁴ <https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/col/2022/20220215/minutes-20220215.pdf>

⁵ See https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md_zone2014/0-0-0-64694 (noting that required staff consultations for a zoning text amendment must include one staff representative "each from the Montgomery County Planning Board; the Office of the County Attorney; the Office of Zoning and Administrative Hearings; the Department of Permitting Services; the Board of Appeals; the *People's Counsel*; and the Office of the County Executive." [emphasis added])
See also https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md/0-0-0-1896

4. Council has Failed to Correct Errors of Wireless Antenna Placements Under Current Zoning

Flaws in the current zoning process - the Tower Committee - have been raised to the Council many times including by the County Executive in 2019 noting that "administrative reforms are needed."⁶ The zoning process must be reviewed thoroughly to stop the mistakes that residents have raised continuously in hearings for ZTA 19-07 and its failed predecessors including cell poles put up in the incorrect location, next to schools for pre-grade school children, and those in violation of zoning height and setback requirements. Also, those cell towers that are in excess of current FCC RF emissions.

PLEASE TABLE ZTA 22-01

Thank you,
Cyndie Baughman
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⁶ <https://montgomerycountymd.gov/cable/Resources/Files/Towers/ZTAFiles/Final%20testimony%20ZTA%2019-07.pdf>