

City of Takoma Park, Maryland

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Council President Tom Hucker
Council Office Building
100 Maryland Avenue, 6th Floor
Rockville, MD 20850

Dear President Hucker:

We are writing today to oppose the passage of Zoning Text Amendment (ZTA) 19-07 (Telecommunications Towers – Limited Use) as currently drafted. The City of Takoma Park wants every resident of Montgomery County to have equitable access to affordable broadband internet. However, everyone should have a voice in the planning process. This ZTA, as currently drafted, would cut municipalities and residents out of the planning and siting process for many new “small” cell towers and strip us of our voices.

The City of Takoma Park has spent a great deal of time considering the impact of small cells on our community and we are greatly concerned that ZTA 19-07 would severely limit our City’s ability to be part of the process in approving the placement of small cells in our community.

We have many concerns with this ZTA which we have shared with the Council previously. We believe the way to address these concerns is to adopt a more holistic approach to drafting this small cell tower zoning legislation. To that end, we urge the Council to work with local officials, community leaders, and residents to draft legislation that reasonably balances the aesthetic and quality of life concerns of residents with the commercial needs of applicants.

Below is a short list of our major concerns with the proposed ZTA:

The ZTA Cuts Residents and Municipalities out of the Planning and Siting Process

Limited Use

The ZTA would allow the placement of small cell towers in neighborhoods on utility poles or street lights 30 feet from a resident's home. Under the zoning code, this would occur as a “limited use.” Telecommunications companies would simply submit an application and if the application met basic standards set ahead of time, and was 30 feet from a residence, it would be approved. This would occur without notification to affected residents or an opportunity for municipalities to have any meaningful input into the process.

Eviscerated Conditional Use

When carriers wish to place a pole **closer than 30 feet** (inside the 30 foot setback), or install a new cell tower, where no pole has existed before, this legislation allows an expedited process which does not enable a municipality to offer any alternative plan or to make a case against the placement of the cell tower.¹

The Tower Committee Needs to Be Reformed

When an application for a new small cell wireless facility is filed, it goes before the County for approval, where it is submitted to the County's [Transmission Coordination Facilitation Group](#) or "Tower Committee" for review. Unfortunately, the processes of the Tower Committee need to be re-thought. Reform of the Tower Committee process must precede any ZTA to prevent a flood of incorrect or incomplete applications. Specifically, there is currently no requirement in the County Code for actual testing RF emissions, prior to installation, to determine background levels of RF on a building or after installation of new facilities. The County staff interpret the Federal standards on RF emissions to primarily trigger signage requirements at levels above the standards and not prohibition.

Enforcement of Zoning Law Must Be Improved

This ZTA envisions that many utility owned poles will be converted into small cell wireless facilities through the addition of infrastructure and antennas.

Before this ZTA passes, the County needs to establish that it has the authority to regulate every pole, including utility owned poles, which would support a small cell wireless facility. We have been told by County staff that the County does not regulate installs on utility poles, either for small cells or for pole replacement with a pole 10 feet or higher from the prior pole.

Currently there are a number of small cell wireless towers out of compliance with the zoning code, and the County has not acted. This is true even when residents have taken pictures and submitted testimony about out of compliance cell towers. The County must establish, through legislative language, that permits for infrastructure and wireless providers will be revoked if a small cell facility is out of compliance with the county code — even if on a utility owned pole.

In addition, the ZTA eliminates all standard Conditional Use reviews for replacement-pole antenna facilities in residential rights-of-way. These reviews are critical in that they currently

¹ In this process, the ZTA requires the hearing examiner to select either the proposed site or an alternative site that has been pre-selected by the applicant. This ties the hearing examiner's hands. This is very different from the "true" conditional use hearing process that is established for every other conditional use in the County zoning ordinance. True conditional use hearings require the hearing examiner to reach findings of fact about the compatibility of the use, and then to make a determination as to whether to grant a Conditional Use permit, and if so, what conditions if any are necessary to impose with the permit. Also, in this process, "batching" (consolidations) of multiple applications is tacitly encouraged.

protect neighborhood compatibility and require unsubsidized periodic post-installation inspections.

Post Installation Inspection and Testing

The ZTA envisions a large number of small cell towers. It is absolutely crucial that the County has a plan for post-installation inspection and enforcement of the new law. There is nothing in the ZTA that addresses that need; in fact, as noted above, the ZTA eliminates post-installation periodic inspections. This is not simply a function of Executive branch enforcement. There is clearly a need for legislative language.

We look forward to working with you.

Sincerely,



Kate Stewart
Mayor, Takoma Park

Peter Kovar
Ward 1 City Council Member, Takoma Park

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