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Transmission Facilities Coordination Group

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2018 Proposed Zoning Text Amendment (ZTA)


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Application

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Calendar

A listing of upcoming Towers Committee meetings and dates.



 [Proposed ZTA 18-11
Telecommunication Towers – Approval Standards](#)


 [NEW PHED Committee Packet - ZTA 18-11](#)

 [NEW PHED Committee Session Video - ZTA 18-11](#)

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The purposes of the Montgomery County
Tower Coordination Process

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Tower Committee



[Committee Members](#)



[Tower Coordinator and Engineering Staff](#)

ZTA Information

The level of State and federal legislative and regulatory efforts to preempt the authority of local government to manage the placement and size of telecommunications towers in the public rights of way is unprecedented. The best defense we have against these intrusions into local governance is to demonstrate that no further state or federal preemption is necessary because we have already provided a balanced local solution. Preemption will lead to less local input and an inability to protect residents. For these reasons the County Executive is working with the County Council to expeditiously to enact reasonable local solutions to manage 5G small cell deployments.

On May 15, 2018, the County Council approved ZTA 18 02 to address deployment of 5G small cell antennas in commercial areas. At the request of the County Executive, on July 27, 2018, the County Council introduced ZTA 18 11 to address deployment of 5G small cell antennas in residential areas. The County Council held a public hearing regarding ZTA 18 11 on September 25, 2018 at 7:30pm in the Council Office Building third Floor hearing 100 Maryland Ave 20850.



Summary of Proposed ZTA 18-11 Zoning Changes

ZTA 18 11 would address deployment of 5G small cell antennas in residential areas of the county. A fact sheet summarizing the changes proposed by ZTA 18 11 can be found [here](#). A map showing heights of most streetlights can be found [here](#). *Wait a few minutes for map layers to load, then use the tool bar on left to select the "StreetlightPoles_" layers. Green are poles that meet limited use standards. Orange are poles that meet conditional use standards. Brown would require Hearing Examiner approval to use as conditional use. Blue are poles that cannot be used for small cells. At the October 1, 2018 Planning, Housing and Economic Development (PHED) Council Committee, PHED voted 3 0 to recommend ZTA 18 11 for consideration by the County Council with the amendments recommend by Staff at page 10 and Circle 30.*

- ZTA 18 11 DOES NOT CHANGE REQUIREMENTS FOR TALL (e.g., 100 ft tall) TELECOMMUNICATIONS TOWERS
 - In residential areas, these macro towers continue to require a 300 foot setback, Conditional Use approval, and an Office of Zoning and Administrative Hearing (OZAH) Hearing Examiner's approval may be appealed to the Board of Appeals
- DIFFERENCE BETWEEN LIMITED AND CONDITIONAL USE FOR TELECOMMUNICATIONS TOWERS
 - Both types of uses require a Transmission Facility Coordinating Group (TFCG or Tower Committee) recommendation and Department of Permitting Services (DPS) building or right of way permit. Post installation, DPS will inspect work performed to enforce code compliance
 - Conditional Use will also require approval from OZAH. After OZAH and Planning Department staff have determined an application is complete, OZAH will schedule a public hearing and provide public notice of the hearing to properties near the proposed telecommunications tower
 - Limited Use is non discretionary standards are specified, TFCG reviews an application for compliance, and DPS provides code enforcement. Conditional Use includes discretionary review OZAH reviews the pole location and has discretion to adjust setback distances and design color to make the replacement telecommunications tower less visually obtrusive
- ZTA 18 11 WOULD ALLOW REPLACEMENT OF TALLER PRE EXISTING POLES AS LIMITED USE TELECOMMUNICATIONS TOWERS IN RESIDENTIAL AREAS. TO QUALIFY FOR LIMITED USE:
 - Pre existing Streetlight, utility or site plan approved parking lot light poles would qualify as "pre existing poles" simple street signs without lights, and traffic signals are not included. Pre existing poles would be replaced with new replacement poles at the same location.
 - Pre existing poles must be taller than 22 feet and at least 30 feet from houses
 - The height of a replacement structure would be limited to 6 additional feet for streetlights and 10 additional feet for utility poles
 - Additional minimal height increased would be allowed for utility poles to comply with safety code
 - New antennas could also be attached to pre existing poles, if the pole is 30 feet from houses
 - New antennas could be installed on building roofs or facades if the building is a minimum of 35 feet (three stories), and the building is a minimum of 10 feet from a single family detached house, duplex or townhouse
- ZTA 18 11 WOULD ALLOW REPLACEMENT OF PRE EXISTING POLES AS CONDITIONAL USE



TELECOMMUNICATIONS TOWERS IN RESIDENTIAL AREAS

- A Conditional Use would be required for replacement of shorter pre existing poles because the visual impact would be greater than when a shorter pole is replaced this is especially so in neighborhoods where there are underground utilities, no tall utility poles, and 14 foot tall streetlights in the right of way
- OZAH approval and a public hearing is required for replacement of shorter pre existing poles to provide more notice to nearby properties and the opportunity for public hearing before the Hearing Examiner
- Conditional Use can be used to replace existing streetlight light poles shorter than 22 feet tall and at least 30 feet from houses
 - The Replacement pole is limited to 22 feet (8 foot increase)
- The Hearing Examiner
 - Must find that the proposed preplacement pole is compatible with, or can be made compatible with, nearby residential property by the use of screening, coloring, stealth design, or other visual mitigation options after considering the height of the structure,
 - Review to determine this is the least visually obtrusive pole within 400 feet
 - Reduce the setback to 10 feet if there is no other pole available within 800 feet that meets a 30 foot setback
 - Allow a use of a different color paint than the pre existing pole and require other screening to make the pole less visually obtrusive
- ZTA 18 11 AMENDS OZAH CONDITIONAL USE REVIEW FOR REPLACEMENT OF PRE EXISTING POLES AS CONDITIONAL USE
 - The Hearing Examiner must find that the tower is compatible with nearby residential property and is located to minimize its visual impact. Small cells have a service range of about a 350 ft radius; thus, the Hearing Examiner will review an area of 400 feet to determine compatibility
 - Removes oral appeal to Board of Appeals of Hearing Examiner's decision
 - This is needed to help County meet federal shot clock and prevent preemptory zoning approvals under federal law ("deemed granted")
 - Decision can still be appealed to Circuit Court
- OTHER CHANGES AND CLARIFICATIONS
 - Equipment size increased from 12 cubic feet to 20 cubic feet for equipment in pole base
 - The setback is measured from the pole to the building/house, and excludes porches and similar permitted setback encroachments
 - An antenna does not count towards building height

Frequently Asked Questions:

Frequently asked questions can be downloaded here. To ask additional questions, send an email to AntennaZTA@montgomerycountymd.gov



+ What is a Small Cell?
+ What Is 5G?
+ Why Should the County Allow Any Telecommunications Towers in Residential Neighborhoods?
+ What Is the Difference Between “Limited Use” and “Conditional Use” in the Montgomery County Zoning Code?
+ What is the Process for Allowing Telecommunications Towers in Residential Neighborhoods?
+ How Will Allowing Telecommunications Towers as Replacements of Pre-Existing Streetlights, Utility Poles, and Parking Lot Lights Impact My Neighborhood?
+ Can equipment be required to be placed underground?
+ How Close to Homes Can Antennas Be Placed on Existing Structures?
+ Why Should Antennas Be Allowed to Be Placed Closer to Homes If We Are Uncertain About the Health Effects of Having Antennas Closer to People?
+ Why Are There So Many Applications to Install New Antennas in Some Areas and No Antennas Planned for Similar Nearby Neighborhoods?
+ Why Make Any Changes Now to the Zoning Code If There is Uncertainty About 5G Small Cell Technology?

Additional Small Cell Antenna Information

The County Council’s Small Cell information page can be found [here](#). The County Council provided responses to small cell Frequently Asked Questions in October 2016, which can be found [here](#). Links to other documents and videos are provided below.

FCC Small Cell Recent Actions

The FCC is working to extend its authority to preempt local small cell ordinances. If enacted as proposed, FCC actions would further reduce time limits for the County to review small cell applications, restrict rental rates for use of municipal streetlights to cost, require local communities to subsidize the cost to review small cell



applications and permits, and allow streetlights to be increased in size without the consent of the County as the streetlight pole owner. The US Conference of Mayors summarized the FCC actions as follows:

The first action approved in late August 2018 is a final Order prohibiting local governments and states from imposing “moratoria” that might delay companies from accessing local rights of way and local property to deploy wireless and wireline facilities. New York City and a collection of other cities, including Los Angeles and Boston, have both petitioned the agency to reconsider this Order.

The second action is a proposed Order that broadly and dramatically preempts local government authority to manage and receive fair compensation for installation of small cells and other related facilities in the right of way and on city owned infrastructure. The FCC will adopt that Order on September 26. This Order is certain to limit what companies pay communities to use public rights of way and public property and place controls on what communities can require of companies seeking to use local property for small cell deployments.

In these actions, the FCC, as an unelected and largely unaccountable independent federal regulatory agency, is directly attacking the core authority of local governments (and even state governments). The FCC’s actions are deliberate and systematic, with the clear goal of granting a favored industry preferential access to state and local government property, both threatening and diminishing legitimate and traditional authorities of cities, counties and states to manage and receive fair compensation for their public property on behalf of their taxpayers.

Montgomery County, as part of the Smart Communities coalition, filed comments opposing the FCC’s actions.

National Associations representing local governments, including the National Association of Counties, filed comments requesting a stay of the FCC orders while any appeals or administrative reviews are in progress.

Oregon Cities filed comments opposing limiting fees to cost.

Maryland Small Cell Legislation:

In 2018, SB1188 and HB1767 were introduced in the Maryland General Assembly to preempt prevent public input and limit local government authority over deployment of small cell poles and antennas. The bills would have required Maryland communities to allow poles 50 feet tall with 28 cubic feet of equipment in residential areas, in public rights of way, and on County property. The bills would have also required below cost permits for small cells and required the County allow small cells on public property almost rent free. The County Executive opposed these bills and planned to testify against them. A planned March 20, 2018 public hearing in Annapolis was canceled and the 2018 Maryland legislative session ended without further action on the bills. More information can be found here.

Previous Draft ZTAs, Fact Sheets, and FAQs:

- [ZTA 18 11 Telecommunications Towers Approval Standards FACT SHEET SUMMARY](#)
- [ZTA 18 11 Telecommunications Towers Approval Standards Frequently Asked Questions](#)



- ZTA 18 02 Telecommunications Towers Limited Use (Ord 18 43 Effective June 4, 2018
 - Tower and Antenna Zoning Code as Amended by ZTA 18 02
- Draft ZTA October 2017
 - Draft ZTA Antennas Sizes October 2017
 - October 2017 FAQs
- Draft ZTA July 2017
 - Draft ZTA Summary July 2017
- County Council ZTA 16 05 June 2016
 - Staff Report for Planning, Housing & Economic Development (PHED) Committee September 12, 2016 meeting to review ZTA 16 05

Small Cell Public Meeting Coverage and Presentations

- May 3, 2018 PHED Committee ZTA 18 02 Council Worksession (Agenda/Packet)
- April 3, 2018 ZTA 18 02 Public Hearing (Video)
- March 26, 2018 Small Cell Discussion on WAMU Kojo Nnamdi Show (Audio)
- October 23, 2017 Community Meeting (Video) (Power Point Slides)
- October 9, 2017 Upcounty Advisory Board Meeting (Powerpoint slides)
- September 19, 2017 Upcounty Community Meeting (Video)
- September 19, 2017 Upcounty Community Meeting (Powerpoint slides)
- September 18, 2017 Downcounty Community Meeting (Powerpoint slides)
- June 14, 2017 Rockville Community Meeting (Powerpoint slides)
- October 26, 2016 County Council Community Meeting (Video)
- September 12, 2016 PHED Committee Worksession ZTA 1605 (Packet) (Video)(Audio)(Video download)
- July 19, 2016 Public Hearing on ZTA 16 05 (Video)

Database, Map and Zoning Ordinance

- Zoning Map Showing Zoning Classification for All Properties
- Database of Antenna and Tower Applications
- Interactive Map of Current and Proposed Antennas and Towers
- Current Zoning Ordinance Montgomery County Zoning Ordinance (2014), Chapter 59, Article 59 3 Uses and Use Standards, Division 3.5 Commercial Uses governs new towers and antennas:
 - New towers are governed by Section 59 3.5.2.C
 - Antennas attached to existing structures are governed by Section 59 3.5.14.C
 - ZTA Abbreviations

Radio Frequency (RF) Emissions



Many residents have expressed concern about the health effects of radio frequency (RF) emissions. Under federal law, the County may not “regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the [FCC’s] regulations concerning such emissions.” In other words, the County may enforce and require compliance with FCC regulations, but not create additional requirements. That said, the County and other local elected officials have taken steps to lobby the FCC to do more to address residents’ concerns about RF emissions:

- Summary of the May 2017 County Executive and Council and Congressional Delegation meeting with the FCC – click [here](#)
- Congressman Delaney’s February 2017 small cell antenna letter to the FCC – click [here](#)
- County Executive January 2017 letter to FCC requesting the FCC complete its 2013 proceeding on the health effects of RF emissions – click [here](#)
- Montgomery County vs FCC 4th Circuit decision denying the County’s appeal of the FCC’s wireless facilities minor modification (Section 6409) Order – click [here](#)
- Montgomery County 2017 response to FCC Mobilitie Petition – click here for **Comments** and **Reply Comments**
- Montgomery County Joint Smart Communities Siting Coalition response to FCC Mobilitie Petition – click here for **Comments** and **Reply Comments**
- GAO July 2012 Report – Telecommunications Exposure and Testing Requirements for Mobile Phones Should be Reassessed – click [here](#)

Video PHED Committee Approval of ZTA 18-11 (October 2, 2018)

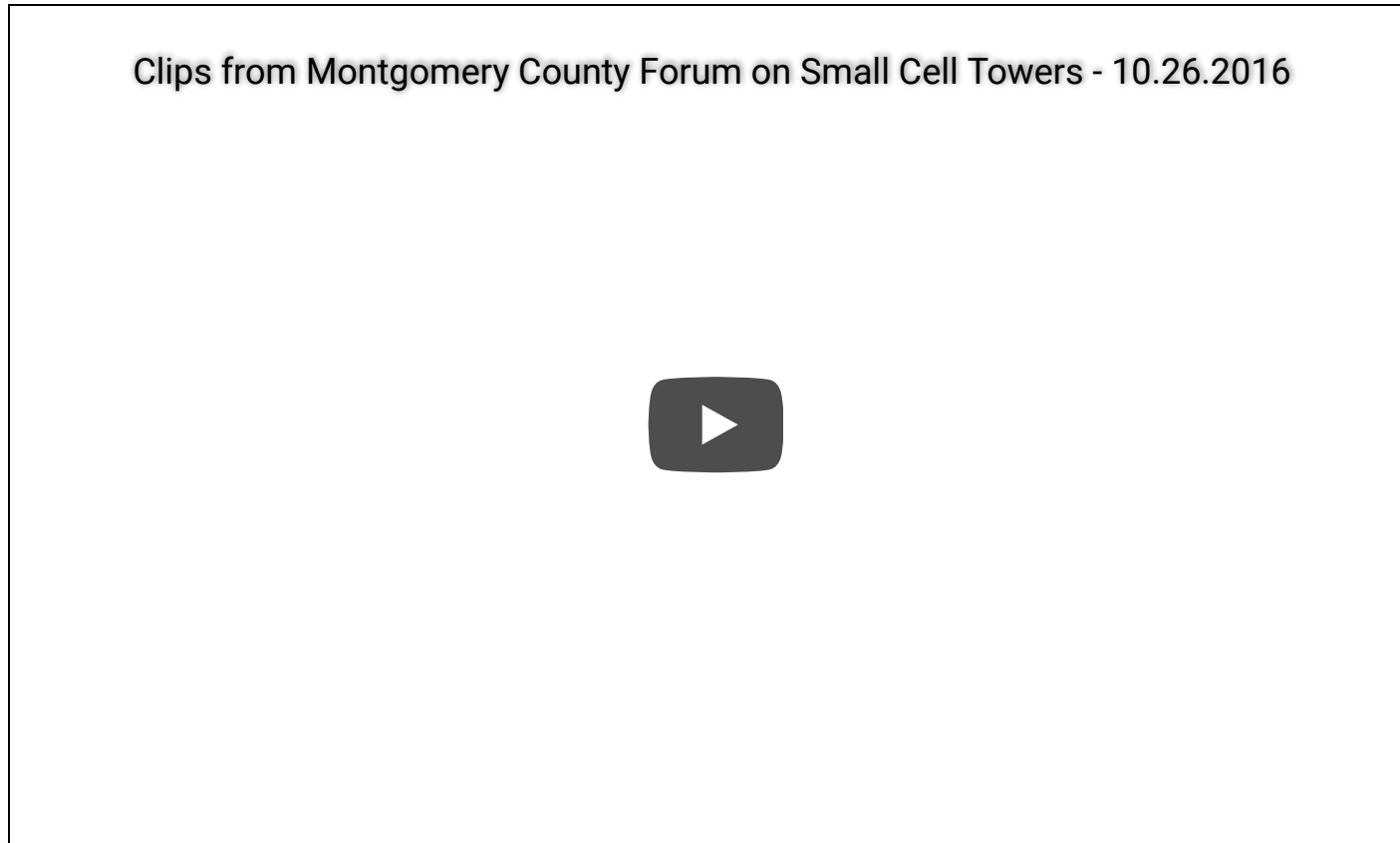


Keyboard Shortcuts

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Toggle Sidebar	s
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Toggle Audio Description	a
Seek Forward 5 Seconds	l
Seek Backward 5 Seconds	j
Increase Speed	.
Decrease Speed	,
Increase Quality	'
Decrease Quality	;
Increase Volume]
Decrease Volume	[



Video Summary of Residents' Concerns About RF Emissions (October 26, 2016 Video Excerpts)



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