



Fact Sheet Regarding Cellular Towers

1. How Are Cell Towers Regulated in Communities?

- a. The TELECOMMUNICATIONS ACT OF 1996 (TCA)
 - i. Congress enacted TCA to “provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapid deployment of telecommunications and information technologies and services.”
 - ii. TCA preserves state and local zoning authority subject to five express restrictions.

2. What authority does the City have to regulate Cell Towers?

- a. **There are limitations on the City’s availability to regulate cell towers.**
 - i. Local jurisdiction’s regulation on cell tower cannot “prohibit or have the effect of prohibiting the provisions of personal wireless services.”
 - ii. This means a local jurisdiction cannot deny a cell tower application if the proposed cell tower is the “least intrusive means” to cover a “significant gap” in personal wireless service
- b. Other requirements for the City:
 - i. The City cannot discriminate, prohibit or have effect of prohibiting personal wireless service.
 - ii. The City must act within a reasonable period of time.
 - iii. The City cannot deny on the basis of environmental effects of radio frequency emissions.
 - iv. Denial of application must be in writing supported by substantial evidence.

3. What are some other requirements of the City in the case of Cell towers?

- a. Local jurisdiction must act on cell tower “within a reasonable period of time.” (Shot Clock Rule)
- b. Denial of a cell tower siting application must be “supported by substantial evidence contained in a written record.”
- c. FCC defined “reasonable period” as 150 days for new cell tower siting. (Shot Clock Rule)
- d. Local jurisdiction has up to 30 days for administrative completeness review.

- e. The clock tolls until application is administratively complete.
- f. 150 days is rebuttable presumption. Meaning you can work with applicant to avoid lawsuit.

4. Can the City hire an expert to review a request?

- a. The law says that the local jurisdiction may require the cell tower applicant to prove the existence of coverage gap.
- b. An expert may be necessary to rebut the existence of significant coverage gap. Marketing material and person drive-by tests are not persuasive.

5. What are the obligations of the applicant for a cell tower?

a. The applicant must show or provide:

- i. That the proposed cell tower closes a significant gap in its own coverage in the least intrusive way possible.
- ii. A meaningful comparison of various sites.
- iii. That the proposed site is the best available.
- iv. That the proposed site is the best technologically feasible site.
- v. That the application complies with the city's land development code. 4
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6. Additional Requirements of Applicants "LEAST INTRUSIVE MEANS"

- a. Applicant must show a lack of available and technologically feasible alternatives to its proposed cell tower.
- b. It is appropriate to ask applicant to study:
 - i. 1. Alternative sites
 - ii. 2. Alternative designs
 - iii. 3. Alternative technologies

7. What happens if the City denies a cell tower placement?

- a. The City must provide "Substantial Evidence" means facts, expert opinions, data used to justify the reasons for denial.
- b. The City must provide a written denial of the application and reasons for denial in a timely manner.
- c. If the case goes to court, it goes to a Federal court, and must be heard on an expedited basis.

8. Can a cell tower be denied based on concerns about radio frequency emissions?

- a. NO.** Environmental effect of radio frequency emission cannot be used to deny a cell tower application.
- b.** The City can ask– if the cell tower compile with FCC regulation on RF Emission.

9. What happens if the proposed site in on City property?

- a.** TCA does not preempt or affect local jurisdiction authority to negotiate cell tower leases on properties owned by the local jurisdiction.
 - i.** • Omnipoint Communication v. City of Huntington Beach, 738 F. 3d 192 (9th Cir. 2013) 28 NEGOTIATION TIPS
- b.** Maximizing Revenues v. Greater Connectivity
- c.** Regulatory approval/FCA compliance for cell tower leases not required
- d.** Standard Rates v. Case-by-Case Negotiation
- e.** Political/Neighborhood Concerns
- f.** Regulatory approval/FCA compliance for cell tower leases not required
- g.** Standard Rates v. Case-by-Case Negotiation

For more information, please visit the City website, and search for Cell Towers in the search bar.

<http://www.prescott-az.gov/business-development/planning/projects/cell-towers/>