



# OLR RESEARCH REPORT

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## TELECOMMUNICATION TOWER SITING

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You asked for a description of the law regarding the Siting Council's process for approving a telecommunications tower's location.

### SUMMARY

The law ([CGS § 16-50x](#)) gives the Connecticut Siting Council exclusive jurisdiction over the location of telecommunications towers and requires a developer to obtain a certificate of environmental compatibility and public need from the council prior to building a tower ([CGS § 16-50k](#)). The process for obtaining the certificate begins with several requirements that the developer must meet before applying for a certificate, including consulting with potentially affected municipalities and obtaining municipal recommendations.

A tower developer can apply for the Siting Council certificate after meeting the pre-application requirements and must meet several notification requirements when filing its application. The council must hold a hearing on the application within 150 days of receiving the application. In practice, the council holds an evidentiary hearing, in which the parties (which can include the affected municipalities) and intervenors participate, and a public comment hearing, in which the general public can participate.

The law requires the council to consider a number of factors when deciding to grant, deny, or modify an application, including the tower's environmental impact, safety standards, the feasibility of sharing already existing towers, and municipal preferences. It also sets additional requirements for allowing a tower to be sited near a school, or on preserved agricultural or water company-owned lands.

## **PRE-APPLICATION PROCESS**

At least 90 days before applying for a Siting Council certificate, the law ([CGS § 16-507](#)) requires a proposed telecommunication tower's developer to consult with (1) each municipality in which any portion of the tower would be located in the proposal's primary or alternative locations and (2) any adjoining municipality that has a boundary within 2,500 feet of the tower. The consultation must include good faith efforts to meet with the municipality's chief elected official or the official's designee. The developer must provide the official with any technical reports concerning the site selection process and the need for, and environmental effects of, the facility. These must include:

1. a map showing the area to be served by the tower;
2. the location of existing surrounding facilities;
3. a description of the site selection process, including a detailed description of the proposed site, alternate sites being considered, and sites that were considered and rejected;
4. the location of schools near the proposed site, an analysis of the tower's aesthetic impact on the schools, and a discussion of measures to be taken to lessen these impacts; and
5. the proposed facility's potential environmental effects.

The developer must also provide the reports to the municipality's planning commission, or combined planning and zoning commissioner, and inland wetland agency.

The municipality can hold public information meetings on the proposed tower within 60 days of the initial consultation. If such a meeting is held, the developer must (1) notify anyone on record as an owner of property next to a proposed or alternate site and (2) publish a notice for the meeting in a general circulation newspaper at least 15 days before the meeting.

Within 30 days of the initial consultation, the municipality must provide the developer with any alternative sites to consider, including municipal parcels. The municipality must issue its recommendations to the developer within 60 days of the initial consultation meeting.

## **APPLICATION**

The telecommunications tower's developer can apply for the Siting Council certificate after meeting the pre-application requirements. It must include with its application its own evaluation of any alternative sites provided by the consulted municipalities. It can present any of them to the council for formal consideration.

The developer must serve a copy of the application on a wide range of individuals and organizations. Among others, these include each municipality where any part of the facility will be located, as the proposal's primary or an alternative location, and any adjoining municipality within 2,500 feet from the facility ([CGS § 16-50l](#)). When notifying a municipality of a tower developer's application, the council must ask the municipality to provide its own location preferences or criteria within 30 days ([CGS § 15-50gg](#)).

A copy of the application must also go to the chief executive officers of the affected municipalities; their planning, zoning, and conservation commissions; and their inland wetlands agencies. The relevant regional planning agencies, the attorney general, and each member of the legislature whose assembly or senate district includes the primary or alternative site for the facility must also receive copies of the application.

A public notice of the application must be given in the municipalities described above, by publishing a summary of the application and the date when it will be filed. The notice must be published in local newspapers in time to allow the public to prepare for and to be heard at the hearing. In addition, the applicant must send notice of the application, by certified or registered mail, to each person who owns property that abuts the proposed primary or alternative sites where the facility would be located.

The developer must also pay a filing fee based on the project's estimated construction costs. Projects costing up to \$5 million must pay 0.05% or \$1,250, whichever is greater. Projects costing over \$5 million must pay 0.1% or \$25,250, whichever is less. Telecommunications towers and cable TV towers are exempt from the additional \$25,000 municipal participation fee which must otherwise be paid to reimburse municipalities for the costs they accrue participating in Siting Council proceedings.

Within 15 days after submitting its application to the council, the tower developer must also give the council the material it provided to the municipality and a summary of the consultations, including the municipality's recommendations.

## **HEARINGS**

Under [CGS § 16-50m](#), the Siting Council must set the date and location for a hearing on a tower application between 30 and 150 days after it receives the application. At least one session of the hearing must be held at a location selected by the council in the county where the facility will be located. The hearing must have a session after 6:30 p.m. for the general public's convenience. The council may hold additional hearing sessions at other locations. Within one week of fixing the hearing's date and location, the council must mail notices of the date and location to the applicant and each person entitled to receive a copy of the application. The general notice to the public must be published in a local paper in at least 10-point boldface type.

In practice, there are two parts to the hearing process: the public evidentiary hearing and the public comment hearing. The evidentiary hearing, with participation by parties and intervenors, is typically held in the afternoon and the public comment hearing, with participation by the general public, in the evening.

Under [CGS § 16-50a](#), the parties to a certification proceeding are:

1. the applicant;
2. each person entitled to receive a copy of the application who files a notice with the council of his or her intent to be a party;
3. any nonprofit corporation or association that files notice of intent to be a party, but only if it was formed to (a) promote conservation or natural beauty; (b) protect the environment, personal health, or biological values; (c) preserve historical sites; (d) promote consumer interests; (e) represent commercial and industrial groups; or (f) promote the orderly development of the areas where the facility is to be located;
4. other persons the council deems appropriate; and
5. any person the council permits to participate as an intervenor.

All participants can attend both parts of the hearing, but actual participation is limited to the appropriate session of the proceeding.

The council can request that the attorney general bring a civil action if it determines that a party or intervenor intentionally omitted or misrepresented a material fact during a council proceeding over a telecommunications tower. The council must decide to make the request by a majority vote. In the action, the attorney general can seek any legal or equitable relief the Superior Court considers appropriate, including injunctive relief or a civil penalty up to \$10,000 and reasonable attorneys' fees and related costs.

## **DECISION**

The Siting Council must act on tower applications within 180 days after the application is filed, unless the applicant agrees to an extension of up to an additional 180 days. The council can grant or deny an application, or grant an application with additional terms, conditions, limitations, or modifications. It can impose reasonable conditions that it finds necessary to promote shared use of the tower to avoid their unnecessary proliferation. Any party can appeal the council's decision to the Superior Court.

The law requires the council to consider certain factors in making its decision. It allows the council to deny applications under certain circumstances and requires it to deny applications under others, unless certain conditions have been met.

## ***Considerations***

Usually, the council must determine the public need for a facility and the basis of the need. For cell phone towers, however, [PA 13-298](#) establishes a presumption of a public need for personal wireless (e.g., cell phone) services and limits the council's consideration of need to the specific need for the proposed tower to provide these services.

For telecommunication tower applications, the council must additionally consider:

1. the feasibility of requiring the applicant to share an existing tower, provided shared use is technically, legally, environmentally, and economically feasible and meets public safety concerns;

2. whether the proposed tower, if built, could be shared with any public or private entity which provides telecommunications or cable TV service, so long as (a) shared use is technically, legally, environmentally and economically feasible at fair market rates; (b) shared use meets public safety concerns; and (c) the parties' interests have been considered;
3. whether the proposed tower would be located in an area of the state which the council, in consultation with the Department of Energy and Environmental Protection and any affected municipalities, finds to be a relatively undisturbed area that possesses scenic quality of local, regional, or state-wide significance;
4. the manufacturer's recommended safety standards for any of the facility's equipment, machinery, or technology;
5. the latest design options meant to minimize the facility's aesthetic and environmental impact ([CGS § 16-50p](#)); and
6. any location preferences or criteria (a) provided by the effected municipality or (b) in the municipality's zoning regulations when the application was filed ([CGS § 16-50x](#)).

### ***Allowed Denials***

The council can deny an application if it determines that:

1. shared use of an existing tower is feasible;
2. the applicant does not agree to cooperate regarding the future shared use of the proposed facility; or
3. the proposed tower would substantially affect the scenic quality of its location or surrounding neighborhood, and no public safety concerns require that it be built there.

In addition, [PA 13-298](#), among other things, allows the council to deny an application for a proposed tower owned or operated by the state, if no public safety concerns require it to be constructed in the proposed location.

## ***Required Denials***

For most facilities, including towers, the council cannot grant a certificate, either as proposed or as modified by the council, unless it determines (1) the nature of the facility's probable environmental impact, alone and cumulatively with existing facilities, including a specification of every significant adverse effect and any conflicts with state environmental, public health, and safety policies and (2) why these adverse effects or conflicts are not sufficient reason to deny the application.

For telecommunications towers in particular, the council cannot approve an installation within 250 feet of a school or commercial child day care center unless the (1) municipality's chief elected official approves the location or (2) council finds that it will not have a substantial adverse effect on the aesthetics or scenic quality of the school's or day care center's neighborhood.

The council cannot approve a tower's installation on land under agricultural restriction in the state program to preserve agricultural land unless it will not result in a material decrease of acreage and productivity of the arable land ([CGS § 16-50p](#)).

[PA 13-298](#), among other things, also prohibits the council from approving a new ground mounted cellphone tower's installation on water company-owned land unless the (1) proposed site is preferred over any alternative sites and (2) council consults with the Department of Public Health to consider potential public health impacts to public drinking water supplies as part of its review.

The council's decisions must be consistent with federal law and regulations when applying the criteria for locating towers near schools or day care centers, or on preserved agricultural or water company land ([CGS § 16-50p\(a\)\(3\)\(G\)](#)). The Federal Communications Commission (FCC) has set exposure electromagnetic field (EMF) limits for various telecommunications facilities. With regard to facilities used to provide cell phone and related services, federal law limits the ability of states and municipalities to regulate the location of cell phone towers and antennas based on their EMF emissions. Specifically, section 704 of the Telecommunications Act of 1996 bars state and local governments from regulating the placement, construction, and modification of cell phone and other personal wireless service facilities on the basis of the environmental effects of their emissions to the extent that such facilities comply with the FCC regulations concerning such emissions.

## **HYPERLINKS**

Additional information about applying for a Siting Council certificate for a telecommunications tower can be found at:

<http://www.ct.gov/csc/lib/csc/guides/telcomguide2012.pdf#55844>.

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