



QUESTIONS ON THE CONNECTICUT SITING COUNCIL

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CONNECTICUT SITING COUNCIL

The Connecticut Siting Council has jurisdiction over the construction, maintenance, and operation of:

- certain electric transmission lines;
- certain fuel transmission lines;
- electric generating or storage facilities using any fuel;
- certain electric substations or switchyards;
- community antenna television towers and head-end structures;
- telecommunications towers owned or operated by the state, a public service company, or used in a cellular system; and
- hazardous waste facilities (in conjunction with the Department of Energy and Environmental Protection).

ISSUE

This report answers several questions on the Connecticut Siting Council's authority on and jurisdiction over the location of telecommunications towers. The Office of Legislative Research is not authorized to issue legal opinions, and this information should not be considered one.

What state and federal laws authorize the Connecticut Siting Council to regulate telecommunication towers?

The Public Utility Environmental Standards Act created the Connecticut Siting Council in 1972 and state legislation has since expanded the council's jurisdiction to include siting telecommunications towers ([CGS § 16-50g et seq.](#)). The law requires tower developers to obtain a certificate from the Siting Council and requires the council to consider certain factors prior to granting a certificate. OLR Report [2013-R-0378](#) describes the law regarding the council's process for approving a telecommunication tower's location. The council is also subject to the Uniform Administrative Procedure Act ([CGS § 4-167 et seq.](#)).

Federal law, however, places some limits on the council's authority to site telecommunication towers ([47 U.S.C. 332\(c\)\(7\)](#)). The Federal Communications

Commission (FCC) has set electromagnetic field (EMF) exposure 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 states and local governments from regulating the placement, construction, and modification of cell phone and other personal wireless service facilities on the basis of environmental effects of their emissions if the facilities comply with the FCC's EMF emissions limits ([47 U.S.C. § 332\(c\)\(7\)\(B\)\(iv\)](#)).

Federal law also requires state or local governments to (1) act on any request to authorize the construction of a tower within a reasonable period of time and (2) make any decision to deny a request in writing and support such a decision with substantial evidence contained in a written record. Federal law prohibits state and local governments from (1) unreasonably discriminating among providers of functionally equivalent services and (2) prohibiting the provision of personal wireless services. The FCC has ruled, in [a 2009 declaratory ruling](#), that state or local governments may not deny an application because one or more carriers already serve an existing geographical area, as such a denial would effectively prohibit the provision of personal wireless services.

Can the council disregard local zoning requirements in its telecommunication tower decisions?

State law gives the council exclusive jurisdiction over the location and type of certain facilities ([CGS § 16-50x](#)). Courts have ruled that this statute gives the council the power to override municipal zoning provisions. For example, in *Corcoran v. Connecticut Siting Council*, 50 Conn. Supp. 443 (2006), the court held that the council could override town zoning requirements when granting a certificate to a telecommunications company for construction of a facility which exceeded the maximum height allowed by town zoning regulations.

However, state law also requires the council to consider certain zoning regulations and other factors in its decisions. By law, in its evaluation of an application for a telecommunications tower within a particular municipality, the council must consider any location preferences or criteria (1) in the municipality's zoning regulations or (2) submitted by the municipality within 30 days of the council's notification of the project ([CGS § 16-50x](#)). State law allows, but does not require, the council to consider regional location preferences from neighboring municipalities ([CGS § 16-50gg](#)).

In addition, a developer proposing a telecommunication tower must, among other things, (1) begin consulting with affected municipalities 90 days before filing an application with the council; (2) provide certain technical reports to the municipalities planning or zoning commission, and (3) include an evaluation of alternative sites submitted by the municipality in the developer's application to the council.

Can the council's public hearing requirements be changed through state legislation?

State legislation could change the council's public hearing requirements. Past legislation has created and modified these requirements.

Current law requires the council to 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 ([CGS § 16-50m](#), as amended by [PA 14-94](#)).

Could state legislation require the council to consider health or property values in its decisions on telecommunications towers?

Health. As noted above, federal law prevents state and local governments from regulating the location of cell phone towers and antennas based on the environmental effects of their EMF emissions. The council is responsible for ensuring that any tower meets federal permissible exposure limits, but any potential hazard to human health is a matter of federal jurisdiction.

The council does consider public health more generally in its decisions. Current law requires the council to consult with and solicit written comments from the Department of Public Health prior to holding a public hearing on an application ([CGS § 16-50j\(g\)](#), as amended by [PA 14-94](#)).

Property Values. Under current law, the council does not directly consider the potential impact of a tower on property values. In its decisions, the council weighs the need for a proposed facility against effects associated with its construction,

maintenance, and operation. Some of the effects considered include scenic, historic, and recreational values. As a result, the council could deny an application if it determined that a tower's impact on these aesthetic values (which affect property values) outweighed the public's need for a tower.

The legislature could require the council to specifically consider property values, but the federal Telecommunications Act of 1996 requires specific evidence to deny an application. In other jurisdictions, courts have upheld regulators' decisions to deny applications to build telecommunication towers based on an anticipated decline in property values in some cases (see *Cellular Tel. Co. V. Zoning Bd. of Adjustment of the Borough of Ho-Ho-Kus*, 24 F. Supp. 2d 359, 364 (D.N.J. 1998)). Other cases have dismissed denials based on property value decline due to lack of evidence (see *Smart SMR v. Borough of Fair Lawn*, 152 N.J. 309 (1998)).

HYPERLINKS

OLR Report 2013-R-0378, Telecommunication Tower Siting, <http://www.cga.ct.gov/2013/rpt/pdf/2013-R-0378.pdf>, last visited December 5, 2014.

Summary of FCC Declaratory Ruling (2009), Federal Register, Vol. 74, No. 243, <http://www.gpo.gov/fdsys/pkg/FR-2009-12-21/pdf/E9-30291.pdf>, last visited December 4, 2014.

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