

**To: Immanuel Bereket and Marin Board of Supervisors**  
**From: Mary Beth Brangan, Ecological Options Network, EON,**  
**mbrangan@gmail.com**  
**Re: Draft Ordinance for “Small Cell” Installation**

**Many thanks to the sub-committee for this draft ordinance. I really appreciate your work to protect your authority as elected officials and your citizens from the FCC overreach.**

**Section 704 of the 1996 Telecommunications Act, that prohibits environmental (and claimed health effects too) from being used to prevent the placement of RF antenna is unjust and should be repealed. You are aware of the amassed peer-reviewed science showing adverse health and environmental impacts from RF/EMF.**

**I say this because, in a just system, to accommodate willingly the demand by the wireless industry to densify the RF/MMW antennae and therefore the RF/EMF exposure (classified as a 2B carcinogen) would be considered willful endangerment of the public. This assault on our right to health is an outrage.**

**Here are a few recommendations for your consideration:**

**1) First of all, since the FCC order may be overturned in court, we want to remind you about the suggestion from the legal firm, BB&K, who represents many in the case. They recommend that no FCC standards be incorporated into local law per se, in case the FCC order is vacated.**

- So please make anything in the ordinance that would force the county to accommodate the wireless industry’s placing powerful antennae in close proximity to the public, conditional, pending the resolution of the legal challenges.**

[https://www.bbklaw.com/news-events/insights/2019/legal-alerts/01/new-fcc-shot-clocks-and-other-rules-preempting-loc?utm\\_source=Constant\\_Contact&utm\\_medium=read\\_more&utm\\_campaign=LA\\_FC\\_C\\_10th\\_Circuit&utm\\_content=Legal\\_Alert](https://www.bbklaw.com/news-events/insights/2019/legal-alerts/01/new-fcc-shot-clocks-and-other-rules-preempting-loc?utm_source=Constant_Contact&utm_medium=read_more&utm_campaign=LA_FC_C_10th_Circuit&utm_content=Legal_Alert)

**From BB&K: “The order(s) may eventually be overturned.** We believe there are substantial questions as to whether the FCC small cell order is valid and lawful, and we are representing numerous jurisdictions challenging it and the August moratoria order. We are not recommending that you incorporate the FCC standards into local law per se. If you do so, then you will be bound by your own requirements, even if the FCC order is vacated. Therefore, we think it is useful to develop regulations that provide you with maximum flexibility to make substantive determinations that you would be comfortable making — even if the FCC had not changed its rules — while still complying with procedural requirements, such as shot clocks that, if not complied with, may result in a loss of rights. If you are faced with a situation where you feel compelled to grant an

application because of the FCC rules, you may wish to make the permit conditional, so that it terminates if the FCC rule is overturned.”

**2) In order to most effectively protect the considerable number of people who have been sickened already by exposure to RF/EMF and whose disability is beyond a mere mobility handicap, such as medical metal, vertigo, cardiac problems and the broader scope of EHS, please add the language:**

- **“The ordinance shall comply with the Americans with Disabilities Act.”**

This broadens the legal application to include all the handicaps that ADA is intended to include. The ADA covers all disabilities that keep us from engaging in one or more major life activities. The County of San Diego attorneys recommend this language in order not to discriminate among disabilities.

There are specific billing codes used by the Centers for Medicare and Medicaid Services for exposure to RF radiation and other non-ionizing radiation which definitely establish legal recognition of these conditions: <https://icd10coded.com/cm/W90/>

- Billable - [W90.0XXA](#) Exposure to radiofrequency, initial encounter
- Billable - [W90.0XXD](#) Exposure to radiofrequency, subsequent encounter
- Billable - [W90.0XXS](#) Exposure to radiofrequency, sequela

**This applies to everybody who is covered under Medicare and Medicaid**

**3)** Because the legal challenges brought by the Cities, Mayors, Counties, etc. appear to be very strong against the FCC overreach, the wireless industry and the FCC have a plan B: the industry is proposing to use OTARD to offer licenses to private landowners to have the ‘small cell’ antennae on private property. Of course this would avoid the few legal rights established for the public: being informed about an application, having a public hearing and from setbacks and zoning requirements, etc.

We are very concerned that this will present incredible problems for those residents who may be damaged both from decreased property values if in close proximity as well as from adverse health and environmental effects. What legal remedy would be available to a neighbor adversely affected by an OTARD-listed 5G antenna on a nearby property?

**4)** Stealth design for antenna facilities is also a concern. People need to be able to protect themselves against unwanted exposure – pregnant women, children, the sick and elderly particularly.

- **The County should mandate signage to warn that one is within, for instance, 50 ft. of an antenna.** This could help pregnant women, who want to act on the Kaiser Permanente study that showed women most exposed to RF/EMF had three times greater chance of miscarriage. These ‘small cells’ have already been measured to emit very high 4G radiation, even more dangerous because they are so much closer to people.

- 5) Please prohibit antennas in residential zones. “Least preferred” will be ignored.
- 6) Studies show that adverse effects increase dramatically within a 1500 ft radius of an antenna.
- *All* sensitive areas should be protected by a 1500 ft. setback: health facilities, parks/recreation areas, eldercare facilities, hospitals, playgrounds/parks — all places where children (and other more vulnerable members of our population) spend many hours to play and sleep.
- 7) Since the height of the antennae might be on the level of a second or third story window, special provisions must be in place to avoid this. Story poles, street markings, and photos with superimposed proposed antennas should be used to help the public understand exactly where the ‘small cells’ would be installed.
- 8) Yearly measurement to establish emission levels must be demanded. A 2013 study found a large percentage of cell towers were emitting more radiation than even the FCC has in its guidelines. The FCC said back in 2013 that it didn’t have the manpower to do checks on the hundreds of thousands of antenna under its jurisdiction. Imagine now with the exponential increase in numbers of antenna how unlikely any monitoring of radiation levels is by the FCC. The County must mandate monitoring.
- An *independent* expert chosen by the County should do the radio-frequency monitoring/measurements and
  - It should be paid for by the applicant.
  - Unannounced measurements should be done at peak use times to avoid carriers powering down and claiming averaged emissions
- 9) Please establish a Website so that:
- The public can have as much advance notice as possible of applications and
  - The public can track permit applications and subsequent action. Marin Maps could be used.
  - The public can have a sign-up for an automatic email alert when an application is submitted.
  - Public can notice should be provided at the expense of the applicant and the public notification process made clear *in the text of the ordinance itself*.
- 10) The public should have the right to appeal any permit approval.  
A public hearing and community meeting about applications should be included (San Anselmo's proposed ordinance has this.)