# Court ruling allows regulation of cell towers

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Published 4:00 am, Friday, September 12, 2008

A federal appeals court reversed itself Thursday and said cities and counties can regulate the location and appearance of wireless towers and poles, a ruling that could revive a dormant San Francisco ordinance.

The Ninth U.S. Circuit Court of Appeals in San Francisco upheld San Diego County's limits on the placement, size and design of towers and poles that are needed for companies to provide cell phone service and wireless Internet connections. The court also voted 11-0 to discard a standard it had established in 2001 that barred local governments from adopting any restrictions that "may have the effect of prohibiting" wireless services.

Federal courts in the nine-state circuit have relied on the 2001 ruling to overturn restrictions on telecommunications structures in several communities, including San Francisco and Berkeley. The court said Thursday that it had misinterpreted federal law when it issued the earlier ruling, and that local governments can regulate wireless towers and poles as long as they don't actually prohibit wireless service within their borders or create a "significant gap in service coverage."

San Diego County's 2003 ordinance was intended to keep unsightly structures out of neighborhoods. It required poles to be camouflaged in residential areas, set height limits, required companies to submit a "visual impact analysis," and allowed a zoning board to deny an application if it was inconsistent with the character of the community. Two courts had overturned the ordinance, based on the 2001 appellate standard, before Thursday's ruling reinstated it.

The new ruling gives cities and counties "the ability to even-handedly control the environment in our neighborhoods," with no exemption for wireless companies, said attorney William Marticorena, president of the California-Nevada chapter of a national association of telecommunications regulators. "There isn't some special place for the telecom operators to put the 50-foot-tall red monopole (cellular tower) in front of city hall."

Thomas Bunton, a deputy county counsel who represented San Diego County, said the ruling allows local governments to hold public hearings and require wireless towers and poles to be concentrated in certain areas and camouflaged to fit in with their surroundings.

Lawyers for Sprint, which challenged the San Diego County ordinance, and Verizon, which filed supporting arguments, were unavailable for comment.

In San Francisco, Deputy City Attorney William Sanders said the ruling could restore portions of a 2007 law that a federal judge struck down in June.

The ordinance required wireless companies to seek a city permit before locating transmitters or other installations near a park, a historic landmark or a building with architectural importance, or on a street that the city has designated as scenic.

U.S. District Judge Marilyn Hall Patel, citing the appeals court's 2001 decision, ruled that the ordinance was invalid because it allowed public hearings in permit disputes and failed to set precise standards for denying a permit. San Francisco supervisors have already drafted a new ordinance to comply with the ruling, but the city now has the option of asking Patel to reconsider in light of Thursday's decision, Sanders said.

The 2001 decision was also the basis of a January 2006 appeals court ruling that allowed Qwest Communications to install a fiber link to the Lawrence Berkeley National Laboratory over the city of Berkeley's objections. The court said in 2006 that Berkeley's ordinance, which required telecommunications companies to pay a fee or go through an extensive permit process, had the effect of denying service.

Marticorena, who took part in the Berkeley case, said Thursday's ruling won't affect Qwest, which has installed its link, but will allow Berkeley and other cities to take another look at their regulations.

### Read the ruling

The ruling in Sprint vs. County of San Diego can be found at:

*links.sfgate.com/ZDXO*