

GREEN OAK CHARTER TOWNSHIP

**ORDINANCE NUMBER 01-2018
AN ORDINANCE TO AMEND SECTION 38-199
WIRELESS COMMUNICATION FACILITIES**

GREEN OAK CHARTER TOWNSHIP ORDAINS:

Section 38-199. Wireless communication facilities.

(a) ***Purpose and intent.*** It is the general purpose and intent of the Township to carry out the will of the United States Congress by authorizing communication facilities needed to operate wireless communication systems. However, it is the further purpose and intent of the Township to provide for such authorization in a manner which will protect the public health, safety and welfare and retain the integrity of neighborhoods and the character, property values and aesthetic quality of the community at large. In fashioning and administering the provisions of this section, attempt has been made to balance these potentially competing interests.

Recognizing the number of providers authorized to establish and operate wireless communication services and coverage, and changes in State and Federal legislation, it is the further purpose and intent of this section to:

- (1) Facilitate adequate and efficient provision of sites for wireless communication facilities and ensure that wireless communication facilities are situated in appropriate locations and relationships to other land uses, structures and buildings.
- (2) Establish predetermined districts in the location considered best for the establishment of wireless communication facilities, subject to applicable standards and conditions.
- (3) Recognize that operation of a wireless communication system may require the establishment of facilities in locations not within the predetermined districts. In such cases, it has been determined that it is likely that there will be greater adverse impact upon neighborhoods and areas within the community. Consequently, more stringent standards and conditions should apply to the review, approval, and use of such facilities.
- (4) Limit inappropriate physical and aesthetic overcrowding of land use activities and avoid adverse impact upon existing population, transportation systems, and other public services and facility needs.
- (5) Provide for adequate information about plans for wireless communication facilities in order to permit the community to effectively plan for the location of such facilities.
- (6) Minimize the adverse impacts of technological obsolescence of such facilities, including a requirement to remove unused and/or unnecessary facilities in a timely manner.
- (7) Minimize the negative visual impact of wireless communication facilities on neighborhoods, community land marks, historic sites and buildings, natural

beauty areas and public rights-of-way. This contemplates the establishment of as few structures as reasonably feasible, the use of structures which are designed for compatibility, and the use of existing structures.

- (8) Implement and provide for compliance with State and Federal legislation through new and amended application, review, and decision standards, requirements and procedures for wireless communication facilities requests.

(b) Authorization.

(1) As a Permitted Use Subject to Site Plan Approval.

In all Zoning Districts, a wireless communication facility described in this subsection (b)(1) shall be a permitted use subject to the standards and conditions set forth in subsection (c), the application requirements in subsection (d), the collocation requirements in subsection (e), the procedures in subsection (g), and any prior special land use or site plan approval conditions.

- a. Wireless communications equipment attached to an existing structure not previously approved and used as a wireless communications support structure and located within a nonresidential zoning district, where there will be no substantial change in physical dimensions of the existing structure.
- b. A proposed collocation upon a wireless communication support structure which has been approved by the Township for
- c. such collocation but which is not permitted by administrative review under subsection (b)(3).
- d. Wireless communication equipment on an existing utility pole structure located within a right-of-way and not previously approved and used as a wireless communications support structure, where there will be no substantial change in physical dimensions of the existing pole.
- e. Attached wireless communication facilities that are not permitted by administrative review under subsection (b)(3).

(2) As a Special Land Use.

Unless permitted under subsections (b)(1) or (b)(3), wireless communication facilities require approval as a special land use, which shall be subject to the standards and conditions in subsection (c), the application requirements in subsection (d), the collocation requirements in subsection (e), the procedures in subsection (g), and a demonstration of the need for the proposed facility based on one or more of the following factors:

- I. Proximity to an interstate or major thoroughfare.
- II. Areas of population concentration.
- III. Concentration of commercial, industrial, and/or other business centers.
- IV. Areas where signal interference has occurred due to tall buildings, masses of trees, or other obstructions.
- V. Topography of the proposed facility location in relation to other facilities with which the proposed facility is to operate.

VI. Other specifically identified reason creating facility need.

- a. If it is demonstrated by an applicant that a wireless communication facility necessary to providing services cannot be established as permitted under subsection (b)(1), wireless communication facilities may be permitted as a special land use in the LI and GI zoning districts.
 - b. If it is demonstrated by an applicant that a wireless communication facility necessary to providing services cannot be established as permitted under subsection (b)(1) or in a zoning district identified in subsection (b)(2)a, such wireless communication facility may be considered and permitted elsewhere in the Township as a special land use, subject to the following:
 1. In the application, the applicant shall demonstrate that no existing structure identified in subsection (b)(1) or location in a zoning district identified in subsection (b)(2)a, above can reasonably meet the specifically disclosed service, coverage and/or capacity needs of the applicant. Such demonstration requires identification of all structures and properties considered and a factual explanation of why they are not feasible in terms of availability, suitability, or otherwise.
 2. Wireless communication facilities shall be of a “stealth” design such as, without limitation, a steeple, bell tower, tree, or other form which is located and compatible with the existing character of the proposed site, neighborhood and general area, as approved by the Township taking into account any alternative designs submitted by the Applicant or identified during the review and decision process.
 3. Locations outside the zoning districts identified in subsection (b)(2)a, shall be limited to the following sites:
 - I. Municipally-owned sites.
 - II. Other governmentally owned sites.
 - III. Religious or other institutional sites.
 - IV. Public or private school sites.
 - V. Other sites if: (i) not located in an RI, R2, R2A, or R3 zoning district, and (ii) no sites identified in i - iv, above are available and suitable, as demonstrated in the application and determined by the Planning Commission.
1. The applicant’s demonstration of good faith efforts to identify and evaluate alternate sites, locations, designs, placements, or features for the proposed facility that would or could be more consistent with the ordinance purposes stated in subsection (a).
 2. For each alternate site, location, design, placement, or feature for the proposed facility identified by the applicant or otherwise, the applicant’s demonstration that the proposed facility is more consistent with the ordinance purposes stated in subsection (a), and/or that such alternate is not feasible.

(3) Wireless Communication Equipment as a Permitted Use Subject to Administrative Review.

A proposal for attached wireless communication facilities that satisfies the following criteria does not require special land use or site plan approval. Confirmation that these criteria are satisfied shall be determined by an administrative review and written certification by the Zoning Administrator to the construction code building official prior to issuance of any construction code permits. Such proposals shall also be reviewed for compliance with the standards and conditions in subsection (c), with the certification to identify any items of noncompliance.

- a. The existing wireless communications support structure and/or wireless communications equipment compound are in compliance with this ordinance, and if not, are in compliance with a prior approval under this ordinance.
- b. The proposal complies with the terms and conditions of any prior final approval under this ordinance of the wireless communications support structure and/or wireless communications compound.
- c. The proposal will not increase the height of the wireless communications support structure by more than 20 feet or 10% of its original height (as first erected without any later additions), whichever is greater.
- d. The proposal will not increase the width of the wireless communications support structure by more than necessary to the stated and documented purpose of the increase.
- e. The proposal will not increase the area of the existing wireless communications equipment compound to more than 2,500 square feet.

(c) *Review Standards and Conditions.*

All applications for wireless communication facilities shall be reviewed in accordance with the following standards and conditions, and, if approved, shall be constructed and maintained in accordance with such standards and conditions.

- (1) Facilities shall not be demonstrably injurious to neighborhoods or otherwise detrimental to the public safety and welfare.
- (2) Facilities shall be located and designed to be compatible with the existing character of the proposed site and harmonious with surrounding areas.
- (3) Facilities shall comply with applicable federal and state standards relative to the environmental effects of radio frequency emissions.
- (4) Applicants shall demonstrate an engineering justification for the proposed height of the support structure, and an evaluation of alternative designs and locations which might result in lower heights. Support structures shall not exceed the minimum height necessary for collocation by at least two (2) providers, or by a larger number of providers identified and disclosed in the application as contracted or otherwise committed to use of the structure. Except as needed for essential services, and regardless of the number of collocators, wireless communication support structures shall not exceed a height of 220 feet . The accessory building contemplated to enclose such things as switching equipment shall be limited to the maximum height for accessory structures within the respective district.

- (5) The minimum setback of a monopole support structure and equipment compound from an adjacent boundary of any property shall be equal to the required setbacks for structures in the district in which the tower is located. Lattice towers or guyed towers shall be setback from an adjacent boundary of any property a minimum of 125% of the height of the support structure.
- (6) There shall be unobstructed access to the support structure and equipment compound, for police, fire and emergency vehicles, and for operation, maintenance, repair and inspection purposes, which may be provided through or over an easement.
- (7) The division of property for the purpose of locating a wireless communication facility is prohibited unless all zoning requirements and conditions are met.
- (8) The equipment enclosure may be located within the principal building, an accessory building, or in an equipment compound upon a demonstration by the applicant, and approval by the Township, that placement of the equipment inside a building is not practical due to site or equipment conditions or constraints. Equipment compounds shall include landscaping and screening approved by the Township along the perimeter of the compound, exclusive of a singular entry point, that at the time of initial installation shall have a minimum height equal to the height of the tallest building or piece of equipment located within the equipment compound, but in no case less than eight (8) feet in height, exclusive of the support structure. If proposed as an accessory building or equipment compound, it shall conform to all district requirements for principal buildings, including yard setbacks. Where a wireless communication facility is proposed on the roof of a building, any equipment enclosure proposed as a roof appliance or penthouse on the building, shall be designed, constructed and maintained to be architecturally compatible with the principal building. Wireless communication facilities mounted upon the side of a building shall be attached flush against the building surface, and shall not be allowed to protrude more than the depth of the antenna. Such facilities shall blend into the design; contour and color scheme of the building.
- (9) The Township shall review and approve the architecture and color of the support structure and all accessory buildings and structures so as to minimize distraction, reduce visibility, maximize aesthetic appearance, and ensure compatibility with surroundings. It shall be the responsibility of the applicant to maintain the wireless communication facility in a neat and orderly condition. Lighting is only allowed if required by, and in compliance with the standards of, the Federal Aviation Administration, Federal Communications Commission, Michigan Aeronautics Commission, other governmental agencies, or the Township as a special land use approval condition. Any such requirements and standards shall be documented by the Applicant.
- (10) The support structure and system shall be designed to support, or capable of supporting the proposed wireless communication equipment, which shall be demonstrated by a structural analysis and certification from a registered professional engineer that identifies any modifications to an existing structure necessary to such capability.

- (11) Support structures shall be constructed, and maintained in accordance with all applicable building codes. Any approval or certification under this ordinance shall be subject to and conditioned on the construction code building official's authority to require and be provided with a soils report from a geotechnical engineer, licensed in the State of Michigan, based on actual soil borings and certifying the suitability of soil conditions for the proposed use, and a written engineering certification from the manufacturer or designer of the support system that the support system can safely accommodate attached antennas under expected weather conditions.
- (12) A maintenance plan, and any applicable maintenance agreement, shall be presented and approved as part of the site plan for the proposed facility. Such plan shall be designed to ensure the long term, continuous maintenance to a reasonably prudent standard. Such plans shall include the names, pager number and email addresses, if any, business and home telephone numbers, mobile telephone numbers, if any, and identity of no fewer than two persons who can be contacted at any hour of the day or night that have full authority to act on behalf of the applicant in the event of a malfunction or emergency. Such list of persons shall be kept current by immediate written notice to the Township of any changes.

(d) *Application Requirements.*

All of the following information and documents shall be required for a special land use, site plan, or administrative review application to be considered complete:

- (1) A site plan prepared in accordance with Article II, Division II, shall be submitted, showing the location, size, screening, lighting and design of all buildings and structures.
- (2) The site plan shall also include a detailed landscape plan prepared in accordance with Section 38-177. The purpose of landscaping is to provide screening and aesthetic enhancement for the structure base, accessory building(s) or enclosure. In all cases, fencing of a minimum height equal to the tallest building or piece of equipment located within the equipment compound, but in no case less than eight (8) feet in height exclusive of the support structure, shall be required for protection of the support structure and security from children and other persons who may otherwise access the facilities.
- (3) The application shall include a description of security to be posted at the time of receiving a building permit to ensure removal of the facility when it has been abandoned or is no longer needed, as provided in Subsection (f). In this regard, the security shall be posted and maintained in the form of: (1) cash; (2) irrevocable letter of credit; or, (3) other security arrangement accepted by the Township Board.
- (4) A map or plan showing the locations and heights of existing wireless communications support structures in the Township and communities adjoining the Township, and which identifies structures the Applicant is using or has the right to use and the heights at which its antennas are or may be installed.

- (5) The name, address identity, home and business telephone numbers, pager number and email addresses, if any, and mobile phone number, if any, of the person to contact for engineering, maintenance and other notice purposes . This information shall be kept current by immediate written notice of the Township of any changes.
- (6) An application fee in an amount established by Resolution of the Township Board.
- (7) Identification of the dates, nature and conditions of any prior zoning approvals or permits for the property.
- (8) If the application is for a new wireless communication support structure or to place or install additional wireless communications equipment on an existing support structure, a structural analysis and certification to the Township by a registered professional engineer that the structure is designed to support, or capable of supporting the proposed wireless communications equipment. Any modifications necessary to a structure being capable of supporting the proposed equipment shall be specifically identified in the analysis and certification.
- (9) If modifications to a wireless communications support structure are identified in a structural analysis under subsection (8) above, a written determination by the Township construction code building official that, subject to review of an actual building permit application and plans, the identified modifications would be allowed and that with the modifications, the structure would meet construction code requirements.
- (10) If the application is for a new wireless communications support structure or to increase the height of an existing structure, a written analysis and justification by a registered engineer that the proposed height is the minimum necessary for the provision of personal wireless services and one colocation.
- (11) If the application is for a new wireless communications support structure, identification of all other structures and properties considered for the proposed use and a factual explanation of why they are not feasible in terms of availability, suitability, or otherwise.
- (12) If the application is for a new wireless communications support structure, identification of possible alternative locations, designs, or features, whether those alternatives were considered, and if so, a factual explanation of why those alternatives are not proposed.
- (13) If the application is for a new wireless communications support structure outside the L1 and GI zoning districts, identification and submission in written form of the evidence and arguments the Applicant will rely on in claiming that those restrictions prohibit or have the effect of prohibiting it from providing personal wireless services and that its proposal is more consistent with the ordinance purposes stated in subsection (a), than alternate sites, locations, designs, placements and features.
- (14) Disclosure and copies of all other required governmental permits or approvals and the status and copies of pending applications for those permits or approvals.

- (15) If the application is for a special land use approval, the name, expertise, and relationship to applicant of each licensed or registered professional that has or will provide evidence to support the application, with a summary of that evidence that includes any opinions expressed and the bases for such opinions.
- (16) For each professional opinion disclosed by the applicant as supporting the application, a statement of whether the applicant agrees that it should be subject to separate review by or for the Township, and if so, the type, scope, time, and cost of such a separate review that applicant believes would be reasonable.
- (17) The Applicant 's email address, fax number or address to which the Township should direct notices regarding the Application.

(e) **Collocation.**

(1) Statement of Policy.

It is the policy of the Township to minimize the overall number of newly established locations for wireless communication facilities and Wireless Communication Support Structures within the community, and encourage the use of existing structures for Attached Wireless Communication Facility purposes, consistent with the statement of purpose and intent, set forth in Subsection (a), Purpose and Intent, above. Each licensed provider of a wireless communication facility must, by law, be permitted to locate sufficient facilities in order to achieve the objectives promulgated by the United States Congress. However, particularly in light of the dramatic increase in the number of wireless communication facilities reasonably anticipated to occur as a result of the change of federal law and policy in and relating to the Federal Telecommunications Act of 1996, it is the policy of the Township that all users should collocate on Attached Wireless Communication Facilities and Wireless Communication Support Structures in the interest of achieving the purposes and intent of this section, as stated above, and as stated in Subsection (a), Purpose and Intent. If a provider fails or refuses to permit collocation on a facility owned or otherwise controlled by it, where collocation is feasible, the result will be that a new and unnecessary additional structure will be compelled, in direct violation of and in direct contradiction to the basic policy, intent and purpose of the Township. The provisions of this subsection are designed to carry out and encourage conformity with the policy of the Township.

(2) Feasibility of collocation.

Collocation shall be deemed to be "feasible" for purposes of this section where all of the following are met:

- a. The wireless communication provider entity under consideration for collocation will undertake to pay market rent or other market compensation for collocation.

- b. The site on which collocation is being considered, taking into consideration reasonable modification or replacement of a facility, is able to provide structural support.
- c. The collocation being considered is technologically reasonable, e.g., the collocation will not result in unreasonable interference, given appropriate physical and other adjustment in relation to the structure, antennas, and the like.
- d. The height of the structure necessary for collocation will not be increased beyond a point deemed to be permissible by the Township, taking into consideration the several standards contained in Subsections (b) and (c), above.

(3) Requirements for Collocation.

- a. The construction and use of a new wireless communication facility shall not be granted unless' and until the applicant demonstrates that a feasible collocation is not available for the coverage area and capacity needs.
- b. All new and modified wireless communication facilities shall be designed and constructed so as to accommodate collocation.
- c. The policy of the community is for collocation. Thus, if a party who owns or otherwise controls a facility shall fail or refuse to alter a structure so as to accommodate a proposed and otherwise feasible collocation, such facility shall thereupon and thereafter be deemed to be a non-conforming structure and use, and shall not be altered, expanded or extended in any respect.
- d. If a party who owns or otherwise controls a facility shall fail or refuse to permit a feasible collocation, and this requires the construction and/or use of a new facility, the party failing or refusing to permit a feasible collocation shall be deemed to be in direct violation and contradiction of the policy, intent and purpose of the Township, and, consequently such party shall take responsibility for the violation, and shall be prohibited from receiving approval for a new wireless communication support structure within the Township for a period of five years from the date of the failure or refusal to permit the collocation. Such a party may seek and obtain a variance from the Zoning Board of Appeals if and to the limited extent the applicant demonstrates entitlement to variance relief which, in this context, shall mean a demonstration that enforcement of the five year prohibition would unreasonably discriminate among providers of functionally equivalent wireless communication services, or that such enforcement would have the effect of prohibiting the provision of personal wireless communication services.

(f) **Removal.**

- (1) A wireless communication facility must furnish reasonable evidence of ongoing operation at any time after construction.

- (2) A condition of every approval of a wireless communication facility shall be removal of all or part of the facility by users and owners when the facility has not been used for 180 days or more. For purposes of this section, the removal of antennas or other equipment from the facility, or the cessation of operations (transmission and/or reception of radio signals) shall be considered as the beginning of a period of nonuse.
- (3) The situations in which removal of a facility is required, as set forth in paragraph (4) (2) above, may be applied and limited to portions of a facility no longer being used, by written application to and approval of the Zoning Administrator.
- (5) If removal of all or part of a facility is required, the property owner or persons who had used the facility shall immediately apply or secure the application for any required demolition or removal permits, and immediately proceed with and complete the demolition/removal, restoring the premises to an acceptable condition as reasonably determined by the Zoning Administrator.
- (6) The required removal of a facility or a portion thereof shall be lawfully completed within 60 days of the period of nonuse under paragraph (2) above. If removal is not completed within that time, after at least 30 days written notice, the Township may remove or secure the removal of the facility or required portions thereof, with its actual cost and reasonable administrative charge to be drawn or collected from the security posted at the time application was made for establishing the facility.

(g) ***Procedures.***

- (1) Review and administrative actions on special land use and site plan approval applications.
 - a. The Zoning Administrator shall promptly review special land use and site plan approval applications to determine if they are administratively complete by inclusion of all information required in subsection (d). If the application is not complete, no later than 14 business days after receiving it, the Zoning Administrator shall provide a written or electronic notice to the Applicant specifying the information necessary to complete the application. Such initial review for completeness by the Zoning Administrator shall be on behalf of the Planning Commission for special land use and site plan approvals.
 - b. The Zoning Administrator shall review supplemental information submitted in response to an incomplete application notice and notify the Applicant of any remaining deficiencies.
 - c. An application shall be administratively complete upon the Zoning Administrator's determination or the expiration of 14 business days from receipt of the application without a notice to the Applicant of deficiencies.
 - d. Upon a special land use or site plan approval application being administratively complete, the Zoning Administrator shall promptly schedule it for a Planning Commission meeting that will allow for a Planning Commission site plan decision or special land use decision after the required public hearing within the time periods in subsection (2) below.

- e. If the application has disclosed professional opinions supporting the application and the Zoning Administrator or Planning Commission has determined that independent professional review for the Township of any such opinion should be performed, the reasonable costs of such review may be assessed to the Applicant by a written notice from the Zoning Administrator, as a professional review cost to be paid in accordance with the notice.

(2) Decisions on special land use and site plan approval applications.

- a. The Planning Commission shall approve or deny a special land use application for a new wireless communications support structure not more than 90 days after it is administratively complete.
- b. For all special land use and site plan applications other than new wireless communications support structures, the Planning Commission shall approve or deny the application not more than 60 days after it is administratively complete.

(3) Post-approval costs, fees and administrative actions.

Zoning permits to implement and grant the authority allowed by a special land use or site plan approval for wireless communication facilities, and zoning certificates of use and occupancy for such facilities shall be issued subject to and conditioned on all of the following:

- a. Any conditions of the special land use or site plan approval.
- b. Payment of any outstanding professional review costs as described in subsection (g)(1)e.
- c. Payment of a permit fees in an amount established by or in accordance with a Resolution of the Township Board.

Section 3. Repealer.

This Ordinance hereby repeals any ordinances in conflict herewith.

Section 4. Severability.

The various parts, sections and clauses of this Ordinance are declared to be severable. If any part, sentence, paragraph, section or clauses is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected.

Section 5. Savings Clause.

That nothing in this Ordinance hereby adopted be construed to affect any just or legal right or remedy of any character nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

Section 6. Publication and Effective Date.

This Ordinance is hereby declared to have been adopted by the Green Oak Charter Township Board at a meeting thereof duly called and held on the twenty-first day of March, 2018, and ordered to be given effect as mandated by Charter and statute.

Section 7. Adoption.

This Ordinance was duly adopted by the Green Oak Charter Township Board at its regular meeting called and held on the seventh day of March, 21, 2018, and was ordered given publication in the manner required by law.

Michael H. Sedlak, CMC Township Clerk

Introduction Date: February 7, 2018

First Publication Date: February 28, 2018

Adoption Date: March 21, 2018

Second Publication Date: March 22, 2018

Effective Date: March 22, 2018

CERTIFICATION

I, Michael H. Sedlak, the Clerk for the Green Oak Charter Township, Livingston County, Michigan, do hereby certify that the foregoing is a true and complete copy of Ordinance Number 01-2018, adopted by the Green Oak Charter Township Board at a regular meeting held on March 21, 2018. The following members of the Township Board were present at that meeting: Tracey Edry, Susan Daugherty, Dan Rainko, Richard Everett, Michael Sedlak and Mark St. Charles.

The Ordinance was adopted by the Township Board with six members of the Board voting in favor and no members voting in opposition. Notice of introduction and publication of the Ordinance was published in the Livingston County Community News on February 28, 2018. The Ordinance shall be effective March 22, 2018.

Michael H. Sedlak, Township Clerk