

SECTION 1611. WIRELESS COMMUNICATION ORDINANCE

- A. **Statement of Purpose and Intent.** The regulations of this Section are intended to conform with federal laws and administrative rules governing facilities needed to operate wireless communication systems and to set forth procedures and standards for review and approval for the location of such facilities within Lake Township. It is the Township's intent to reasonably regulate the location and design of such facilities to retain the integrity of neighborhoods and the character, property values and aesthetic quality of the township. Given the increase in the number of wireless communication facilities requested as a result of the new technology and the Federal Telecommunications Act of 1996, it is the policy of the township that all users should co-locate on attached wireless communication facilities and wireless communication support structures. Co-location is proposed in order to assure the most economic use of land and to prevent the proliferation of duplicative services. In recognition of the township's concern that technological advances may render certain wireless communication facilities obsolete or unnecessary in the future, requirements are set forth for the removal of unused or unnecessary facilities in a timely manner and provide security for removal.
- B. **Location and Approval Process for Wireless Communication Facilities.** Wireless Communication Facilities may be located within the Township in Sections 25 through 36 upon approval of the Township Board after recommendation of the Lake Township Planning Commission pursuant to Chapter VI, Special Approval Use Permits.
- C. **Application Requirements.** The following information shall be provided with the application in addition to other submittal requirements for site plans as required in Chapter 16, Special Approval Use Permits:
1. Signed certification by a professional engineer licensed by the State of Michigan with regard to the manner in which the proposed structure will fall in the event of damage, accident or injury (i.e. "fall zone", and that the setback area provided shall accommodate the structure should it fall or break and provide a reasonable buffer in the event the structure fails.

2. The Township will require an irrevocable \$10,000 performance bond to ensure the removal of the wireless communication facility when it is abandoned or is no longer needed. It shall further be provided that the applicant, owner or successor, shall be responsible for payment of any costs or attorney fees incurred by the Township in securing removal.
3. A map that illustrates existing and known proposed wireless communication facilities within Lake Township and adjacent communities, which are relevant in terms of potential co-location or to demonstrate the need for the proposed facility. If and to the extent the information in question is on file with the township, the applicant shall be required only to update as needed. Any such information which is trade secret and/or other confidential business information which, if released would result in business disadvantage to the application, and be submitted with a request for confidentiality in connection with the development of governmental policy. MCL 15.243(l)(g). This ordinance shall serve as the promise to maintain confidentiality to the extent permitted by law. The request for confidentiality must be prominently stated in order to bring it to the attention of the community.
4. For all new facilities, in recognition of the township's policy to promote co-location, a written agreement, transferable to all assessors and assigns, that the operator shall make space available on the facility for co-location.
5. The name, address and phone number of the person to contact for engineering, maintenance and other notice purposes. This information shall be continuously updated during all times the facility is on the premises.

D. **Design Standards Applicable to All Facilities:** In addition to the Special Approval Use Permit requirements in this chapter all wireless communication facilities shall be constructed and maintained in accordance with the following standards:

1. Facilities shall be located and designed to be harmonious with the surrounding areas. The Planning Commission may require unique design of the structure to either diminish the visual impact or to create an architectural feature that will contribute to or enhance community character.

2. A permit for the construction and use of a new wireless communication facility shall not be granted until the applicant demonstrates a feasible co-location is not available for the coverage area and capacity needs.
3. All new and modified wireless communication facilities shall be designed and constructed to accommodate co-location, with a written agreement in a format approved by the Township Attorney.
4. Landscaping consisting of two (2) alternating rows of evergreen trees with a minimum height of five (5') feet on twenty (20') foot centers along the entire perimeter of the tower and related structures. In no case shall the evergreens be any closer than ten (10') feet to any structure.
5. Elevations of the accessory buildings shall be provided. All accessory buildings shall be constructed of brick, provided the Planning Commission may waive this requirement for a building that is located in an area not visible from a public right-of-way.
6. Fencing shall be provided for protection of the support structure and security from children and other persons who may otherwise access facilities.
7. Any nonconforming situations on the site, such as outdoor storage, signs, inadequate landscaping, improper lighting or similar conditions shall be brought into conformance prior to the erection of the wireless communication facility. If existing buildings or structures are not in conformance with the current zoning standards, improvements shall be made to decrease the nonconformity or additional landscaping shall be provided to reduce the impact of the nonconformity and the wireless facility.
8. The operator shall comply with applicable federal and state standards relative to the environmental effects of radio frequency emissions.
9. Minimum required setbacks for new facility or support structures:

- a. From residential dwellings setback shall be a minimum of one thousand three hundred twenty (1320') feet;
 - b. From any existing or proposed rights-of-way or other publicly traveled roads or non-motorized improved pathways setback shall be half the height of the structure, plus twenty-five (25') feet.
 - c. A minimum distance of two (2) miles from any existing wireless communication support structures.
10. Accessory buildings shall be a maximum of fourteen (14') feet high and shall not exceed four hundred (400) square feet of gross building area per structure.
11. There shall be unobstructed access to the support structure for operation, maintenance, repair and inspection purposes, which may be provided through or over an easement. This access shall have a width and location determined by such factors as: the location of adjacent thoroughfares and traffic and circulation within the site; utilities needed to service the tower and any attendant facilities; the location of buildings and parking facilities; proximity to residential districts and minimizing disturbance to the natural landscape; and the type of equipment which will need to access the site.
12. The support system shall be constructed in accordance with all applicable building codes and shall include the submission of a soils report from a geotechnical engineer, licensed in the State of Michigan. The soils report shall include soil borings and statements confirming the suitability of soil conditions for the proposed site.
13. The requirements of the Federal Aviation Administration, Federal Communication Commission, and Michigan Aeronautics Commission shall be noted. Any aviation hazard lighting shall be detailed on the plans.
14. 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.

E. **Removal.** As a condition of every approval of a wireless communication facility, adequate provision shall be made for removal of all or part of the facility by users and owners upon the occurrence of one or more of the following events:

1. When the facility has not been used for one hundred eighty (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 non-use.
2. Six (6) months after new technology is available at reasonable cost, as determined by the Township Board, which permits the operation of the communication system without the requirement of the support structure.
3. The situations in which removal of a facility is required, as set forth in paragraph 1 above, may be applied and limited to portions of a facility.
4. Upon the occurrence of one or more of the events requiring removal, specified in paragraph 1 above, 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.
5. If the required removal of a facility or a portion thereof has not been lawfully completed with sixty (60) days of the applicable deadline, and after at least thirty (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 and/or enforced from or under the security posted at the time application was made for establishing the facility.

F. **Co-Location.**

1. **Statement of Policy.** It is the policy of Lake Township to minimize the overall number of newly established locations for Wireless Communication Facilities and Wireless Communication Support Structures within the Township and to encourage the use of existing structures

for Attached Wireless Communication Facilities. If a provider fails or refuses to permit Co-location of a facility owned or controlled by it, where co-location is feasible, the result will be that a new and unnecessary additional structure will be required, in contradiction with Township policy. Co-location shall be required unless an applicant demonstrates that co-location is not feasible.

2. **Feasibility of Co-Location.** Co-location shall be deemed “feasible” for the purpose of this section where all of the following are met.

- a. The wireless communication provider or property owner where co-location is proposed will accept market rent or other market compensation for co-location and the wireless communication provider seeking the facility will pay such rates.
- b. The site on which co-location is being considered, taking into consideration reasonable modification or replacement of a facility, is able to provide structural support.
- c. The co-location being considered is technically reasonable, e.g. the co-location will not result in unreasonable interference, given appropriate physical and other adjustments in relation to the structure, antennas and the like.

G. **Nonconforming Facilities and Penalties for Not Permitting Co-Location.** If a party who owns or otherwise controls a wireless communication facility shall fail or refuse to alter a structure to accommodate a proposed and otherwise feasible co-location, such facility shall thereupon and thereafter be deemed to be a nonconforming structure and use, and shall not be altered, expanded or extended in any respect. In addition, if a party refuses to allow co-location in accordance with the intent of this Section and this action results in construction of a new tower, the Township may refuse to approve a new wireless communication support structure from that party for a period of up to five (5) years. 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 (5) year prohibition would unreasonably discriminate among provides of functionally equivalent wireless communication services, or that

such enforcement would have the effect of prohibiting the provision of personal wireless communication services.

H. **Variances.** The Zoning Board of Appeals may consider a variance from the standards of this Section based upon a finding that one or more of the following factors exist, as appropriate for the type of variance requested:

1. For no co-location: The applicant has demonstrated that a feasible co-location is not available for the coverage area and capacity needs because existing structures cannot support the facility, that co-location would result in unreasonable interference, or that reasonable financial terms are not available for co-location.
2. For setback: The applicant has provided engineering information that documents that the tower is self collapsing and that the setback area provided shall accommodate the structure should it fall or break and provide a reasonable buffer in the event the structure fails.
3. For height: The height requested is due to signal interference due to topography, tall buildings, masses of trees, or other obstructions, or would reduce the number of towers to the benefit of the township.
4. For all: The applicant has proposed means to mitigate any negative impacts through provision for future co-location, if found to be appropriate by the Township, and special design of the facility and site.
5. For all: The wireless communication and accessory facilities shall be designed to be compatible with the existing character of the proposed site and general area.