

CHARTER TOWNSHIP OF MONITOR
COUNTY OF BAY, MICHIGAN

ORDINANCE NO: 48

AN ORDINANCE TO ESTABLISH REGULATIONS AND PROCEDURES FOR THE APPLICATION, REVIEW, APPROVAL, DISAPPROVAL, CONSTRUCTION, MAINTENANCE AND REMOVAL OF WIRELESS COMMUNICATIONS FACILITIES LOCATED WITHIN THE TOWNSHIP, AND TO PROVIDE PENALTIES FOR THE VIOLATION OF SUCH REGULATIONS.

THE TOWNSHIP BOARD OF THE TOWNSHIP OF MONITOR ORDAINS AS FOLLOWS:

SECTION I - PURPOSE AND INTENT

- A. It is the general purpose and intent of the Township of Monitor 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 Monitor Township to provide for such authorization in a manner which will retain the integrity of neighborhoods and the character, property values and 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.
- B. Recognizing the number of providers authorized to establish and operate wireless communication services and coverage, it is the further purpose and intent of this Township to:
1. Facilitate adequate and efficient provision of sites for wireless communication facilities.
 2. Identify predetermined areas within the Township of the number, shape, and 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 on rare occasion, require the establishment of facilities in locations not within the predetermined districts. As a result of the likelihood of greater adverse impact upon neighborhoods and areas within the community, in such cases, more stringent standards and conditions shall apply to the review, approval and use of such facilities.
4. Ensure that wireless communication facilities are situated in appropriate locations and relationships to other land uses, structures and buildings.
5. Limit inappropriate physical and overcrowding of land use activities and avoid adverse impact upon existing population, transportation systems, and other public services and facility needs.
6. Promote the public health, safety and welfare.
7. 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.
8. Minimize the adverse impacts of technological obsolescence of such facilities by requiring the removal of unused and/or unnecessary facilities in a timely manner.
9. Minimize the negative visual impact of wireless communication facilities on neighborhoods, community land marks, historic sites and building, natural beauty areas and public rights-of-way. This objective contemplates the establishment of as few structures as reasonably feasible, and the use of structures which are designed for compatibility, including the use of existing structures and the avoidance of lattice structures which are unnecessary.

10. The Monitor Township Board hereby determines that the presence of numerous tower structures, particularly if located within residential areas, would decrease the attractiveness and destroy the character and integrity of the community. This, in turn, would have an adverse impact upon property values. Therefore, it is necessary to minimize the adverse impact from the presence of numerous relatively tall tower structures having low architectural and other aesthetic appeal to most persons, recognizing that the absence of regulations would result in a material impediment to the maintenance and promotion of property values and further recognizing that this economic component a legitimate consideration in this Boards' obligation to protect and promote the public health, safety and welfare.

SECTION II - DEFINITIONS.

The following definitions shall apply in the interpretation of this Ordinance:

1. Wireless Communication facilities shall mean and include all structures and accessory facilities relating to the use of the radio frequency spectrum for the purpose of transmitting or receiving radio signals. This may include, but shall not be limited to, radio towers, television towers, telephone devices and exchanges, microwave relay towers, telephone transmission equipment building and commercial mobile radio service facilities. Not included within this definition are: citizen band radio facilities; short wave facilities; ham, amateur radio facilities; satellite dishes; and, governmental facilities which are subject to state or federal law or regulations which preempt municipal regulatory authority.
2. Attached Wireless Communications Facilities shall mean wireless communication facilities that are affixed to existing structures, such as existing buildings, towers, water tanks

utility poles, and the like. A wireless communication support structure proposed to be newly established shall not be included within this definition.

3. **Wireless Communication Support Structures** shall mean structures erected or modified to support wireless communication antennas. Support structures within this definition include, but shall not be limited to, monopoles, lattice towers, light poles, wood poles and guyed towers.
4. **Colocation** shall mean the location by two (2) or more wireless communication providers of wireless communication facilities on a common structure, tower, or building, with the intention of reducing the overall number of structures required to support wireless communication antennas within the community.
5. **Authorized Township Representative** shall mean the Township Supervisor or the person designed by the Township Board to act as the authorized Township representative.
6. **Monitor Township Zoning Ordinance** shall mean Ordinance No. 35 adopted in accordance with Michigan Act 184 of 1943, originally adopted by the Township Board June 26, 1989, and effective September 1, 1989, as amended, which ordinance, the zoning map, and all amendments thereto are hereby incorporated by reference. All references to zoning districts included in this Ordinance shall refer to those districts established and amended from time to time by the Monitor Township Zoning Ordinance. The definitions found in Chapter II of The Monitor Township Zoning Ordinance are specifically adopted by reference herein unless specifically modified by the text of this Ordinance No. _____, as amended.

SECTION III - APPLICATIONS.

A. Necessity for an Application.

1. For so long as there are not material changes to any wireless communication facility or support structure existing at the time of the effective date of this Ordinance No. ____, no application for consideration by the Township Board need be submitted.
2. Those persons proposing to erect or materially alter any wireless communication facility or support structure shall submit an Application For Wireless Communication Facility to the Clerk of the Township for transmittal to and consideration by the Township Board.

B. Application Requirements.

All applications required to be submitted to the Clerk of the Township shall comply with the following requirements:

1. A site plan shall be submitted, showing the location, size, screening and design of all buildings and structures, including fences, and the location and size of outdoor equipment, and the location, number, and species of proposed landscaping.
2. The site plan shall also include a detailed landscaping plan where support structures are being placed at a location which is not otherwise developed, or where a developed area will be disturbed. The purpose of landscaping is to provide screening and aesthetic enhancement for the structure base, accessory buildings and enclosure. In all cases, there shall be shown on the plan fencing which is required for protection of the support structure and security from children and other persons who may otherwise access facilities.
3. The application shall include a signed certification by a State of Michigan licensed professional engineer with regard to the manner in which the proposed structure will

fall, which certification will be utilized, along with other criteria such as applicable regulations for the district in questions, in determining the appropriate setback to be required for the structure and other facilities.

4. The application shall include a description of security to be posted at the time of receiving a building permit for the facility to ensure removal of the facility when it has been abandoned or at such time as it becomes functionally obsolete. In this regard, the security shall, at the election of the Township, be in the form of: 1) cash; 2) surety bond; 3) letter of credit; or, 4) an agreement in a form approved by the Township Board after consultation with Township legal counsel and other consultants, and recordable at the office of the Register of Deeds, establishing a promise of the applicant and owner of the property to remove the facility in a timely manner as required under this section of the Ordinance, with the further provision that the applicant and/or owner shall be responsible for the payment of any costs and attorney fees incurred by the community in securing removal.

5. The application shall include a map showing existing and known proposed wireless communication facilities within the Township, and further showing existing and known proposed wireless communication facilities within three (3) miles of the borders of the Township in the location, and in the area, which locations are relevant in terms of potential colocation or in demonstrating the need for the proposed facility. If and to the extend the information in question is on file with the Clerk's Office, the applicant shall be required only to update as needed. Any such information which is trade secret and/or other confidential commercial information which, if released would result in commercial disadvantage to the applicant, may be submitted with a request for confidentiality in connection with the development of

governmental policy, MCL 15.243(1)(g). This ordinance shall serve as assurance of this Township's intent to maintain confidentiality to the extent permitted by law. The request for confidentiality must be prominently stated on the first page of the application.

6. 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.

SECTION IV - PERMITTED COMMUNICATION FACILITY APPROVAL (PCFA)

A. The following represent circumstances warranting Permitted Communication Facility Approval (PCFA) consideration by the Township Board in reviewing an Application For Wireless Community Facility:

1. A proposed colocation upon an Attached Wireless Communication Facility which had been pre-approved for such colocation as part of an earlier approval by the Township.
2. An existing structure that will serve as an Attached Wireless Communication Facility consisting of a utility pole located within a right-of-way, where the existing pole is not proposed to be modified in a manner which, in the discretion of the Authorized Township Representative, would materially alter the structure and/or result in an impairment of sight lines or other safety interests.
3. A Wireless Communication Support Structure established within a right-of-way having an existing width of more than two hundred four (204) feet.

B. Upon the Township Board's determination that the proposed facility or structure warrants PCFA consideration the application shall be reviewed in accordance with the following 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 harmonious with the surrounding areas.
 3. Wireless communication facilities shall comply with applicable federal and state standards relative to the environmental effects of radio frequency emissions.
 4. Applicants shall demonstrate a justification for the proposed height of the structures and an evaluation of alternative designs which might result in lower heights.
- C. The Township Board may approve such an application with any conditions to insure that the facility will be constructed, maintained and removed in accordance with these standards and conditions.

**SECTION V - SPECIAL COMMUNICATION FACILITY APPROVAL
IN I-1 AND I-2 ZONING DISTRICTS**

- A. All wireless communication facilities and structures not warranting PCFA consideration as set forth in Section IV above must obtain a Special Communication Facility Approval (SCFA) by the Township Board.
1. Upon receipt of an Application requiring SCFA the clerk or his or her authorized Deputy shall mail a notice that of the receipt of such Application to the record owners of real property within three (300) hundred feet of the boundary of the properly identified in the Application.
 2. These notices shall be mailed not less than five (5) days before the Application is to be considered by the Township Board and shall provide notice of the date, time and location of the Township Board meeting where the application will be considered, and shall further inform the recipients of this notice as to where and when such an Application may be reviewed prior to said Township Board meeting.

B. All Applications submitted for SCFA consideration where the proposed facility or structure is proposed to be located or altered within any area of the Township zoned I-1 or I-2, pursuant to the Monitor Township Zoning Ordinance, as amended, shall be reviewed by the Township Board in accordance with, and subject to, the following standards and conditions:

1. All of those standards and conditions as set forth in Section IV (B) above.
2. The maximum height of the new or modified support structure and antenna shall be minimum height demonstrated to be necessary for reasonable communication by the applicant (and by other entities to collocate on the structure). The accessory building contemplated to enclose such things as switching equipment shall be limited to the maximum height for accessory buildings within the respective district.
3. The setback of the support structure from any residentially zoned area shall be at least the height of the highest point of any structure on the premises. The setback of the support structure from any existing or proposed rights-of-way or other publicly traveled roads shall be no less than the height of the structure.
4. Where a proposed new or altered support structure abuts a parcel of land zoned for a use other than residential, the minimum setback of the structure, and accessory structures, shall be in accordance with the required setbacks for main or principal buildings as provided in the Township Zoning Ordinance, as amended, for the zoning district in which the support structure is located.
5. 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

circulations 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.

6. Where an attached wireless communication facility is proposed on the roof of a building, if the equipment enclosure is proposed as a roof appliance or penthouse on the building, it shall be designed, constructed and maintained to be architecturally compatible with the principal building. The equipment enclosure may be located within the principal building or may be proposed as an accessory building. If proposed as an accessory building, it shall conform with all district yard setback requirements for principal buildings.
7. The color of support structures and all accessory buildings shall be reviewed 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.
8. The facility's support system shall be constructed in accordance with all applicable building codes.
9. The Township Board may consider the soils where the proposed structure is to be located. The Board may require the submission a soils report of a geotechnical engineer, licensed in the State of Michigan. This soils report shall include soil borings and statements confirming the suitability of soil conditions for the proposed use.
10. A maintenance plan shall be presented by the Applicant and approved by the Township Board during the SCFA approval process. Such a maintenance plan shall be designated to

insurance the long term, continuous maintenance to a reasonably prudent standard. The Applicant, and its' successor and assigns shall be obligated to comply with the plan as approved by the Township Board, and any failure to strictly comply with the plan shall be deemed a violation of this Ordinance.

11. The Applicant shall also provide a demonstration of the technical, practical and/or economic need for the proposed facility to be located as proposed based upon the presence of one or more of the following factors:

- a. Proximity to an interstate or major thoroughfare.
- b. Areas of population concentration.
- c. Concentration of commercial, industrial, and/or other business centers.
- d. Areas where signal interference has occurred due to tall buildings, masses of trees, or other obstructions.
- e. Topography of the proposed facility location in relation to other facilities with which the proposed facility is to operate.
- f. Other specifically identified reason(s) creating facility need.

C. The Township Board may approve such an application with any conditions to insure that the facility will be constructed, maintained and removed in accordance with these standards and conditions.

**SECTION IV - SPECIAL COMMUNICATION FACILITY APPROVAL (SCFA)
OUTSIDE OF I-1 AND I-2 ZONING DISTRICTS**

A. All Applications submitted for SCFA consideration where the proposed facility or structure is proposed to be

located within any area of the Township NOT zoned I-1 or I-2, pursuant to the Monitor Township Zoning Ordinance, as amended, but which facility or structure is located at:

1. A municipally owned site, or,
2. Some other governmentally owned site, or,
3. A public park and other large permanent open space areas

shall be reviewed by the Township Board in accordance with, and subject to, the standards and conditions as set forth in Section V of this Ordinance; provided however that the applicant demonstrates to the Township Board's satisfaction that the intended users and invitees of such publicly owned land shall be safe and that such proposed facilities and/or structures would not significantly adversely impact the use and enjoyment of the public facility.

B. All Applications submitted for SCFA consideration where the proposed facility or structure is proposed to be located or altered within any area of the Township NOT zoned I-1 or I-2, pursuant to the Monitor Township Zoning Ordinance, as amended, not specifically addressed by paragraph IV (A) above, shall be reviewed by the Township Board in accordance with, and subject to, the following standards and conditions:

1. All of those standards and conditions as set forth in Section V(B) above.
2. The applicant shall demonstrate that a location upon property zoned I-1 or I-2 cannot reasonably meet the coverage and/or capacity needs of the applicant.
3. Wireless communication facilities shall be of a design such as (without limitation) a steeple, bell tower, or other form which is compatible with the existing character of the proposed site, neighborhood and general area, as approved by the Township Board.

C. The Township Board may approve such an application with any conditions to insure that the facility will be

constructed, maintained and removed in accordance with these standards and conditions.

SECTION VII - COLOCATION

- A. 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 paragraph (A) of this Section above. Each licensed provider of a wireless communication facility must, by law, be permitted collocate 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 paragraph (A) of this section. 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 and in direct contradiction to the basic policy, intent and purpose of the Township. The provisions of this Section are designed to carry out and encourage conformity with this policy.
- B. Colocation shall be deemed to be "feasible" for purposes of this section where all of the following are met:
1. The wireless communication provider entity under consideration for collocation will undertake to pay market rent or other market compensation for collocation.
 2. The site on which collocation is being considered, taking into consideration reasonable modification or replacement of a

facility, is able to provide structural support.

3. The colocation being considered is technologically reasonable, for example, the colocation will not result in unreasonable interference, given appropriate physical and other adjustment in relation to the structure, antennas, and the like.
 4. The height of the structure necessary for colocation will not be increased beyond a point deemed to be permissible by the Township, taking into consideration the several standards contained in Sections V and VI of this Ordinance.
- C. A Special Communication Facility Approval application shall not be approved for the construction and use of a new wireless communication facility unless and until the applicant demonstrates that a feasible colocation is not available for the coverage area and capacity needs.
- D. All new and modified wireless communication facilities shall be designed and constructed so as to accommodate colocation.

SECTION VIII - REMOVAL

- A. A condition of approval for all SCFA applications shall be adequate provision for the demolition and removal of all or part of the facility and for the complete restoration of the site by the 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 nonuse.
 2. When, as a result of damage, neglect or any other reason including the existence of competent scientific evidence tending to demonstrate that the operation of such a facility may be injurious to persons or property in proximity to such a facility, the

Authorized Township Representative determines the facility poses a danger to the public health, safety or welfare.

3. At such time as the owner of the facility or those persons responsible for it shall fail to comply with the Maintenance Plan approved by the Township Board during the SCFA approval process as set forth in Section V (B)(10) above.
- B. The mandatory removal of a facility, as set forth in paragraph (A)(1) above, may be applied and limited to portions of a facility.
- C. Upon the occurrence of any of the situations which require the removal of a facility, the Authorized Township Representative shall notify the owner of the facility as to his or her determination. Such Notice shall state the basis for the determination that the facility is being required to be removed.
1. The Notice shall be sent to the owners of the facility at the last known address of such owners as on file with the Township Clerk.
 2. The Notice shall be sent by certified mail, return receipt requested and by regular U.S. mail delivery.
 3. The Notice shall inform the owner whether or not the facility constitutes and immediate threat to the public's safety, and if it does, the nature of the threat.
 4. The Notice shall state the number of days the owner shall have to obtain a demolition or removal permit from the Township, and, the number of days the owner shall have to complete the facility's removal, including the complete restoration of the premises as determined by the Authorized Township Representative.
- a. In the event the Authorized Township Representative determines the facility constitutes an immediate

threat to the public's safety, the owner shall be given five (5) days to complete the demolition, or, to abate the threatening condition.

- b. In the event the facility is deemed not to constitute an immediate threat to the public's safety, the owner shall have seven (7) days from the date of the mailing of the notice to obtain the demolition permit from the Township, and an additional sixty (60) days to complete the required demolition, removal and restoration of the site.

D. In the event the users or owners of the facility fail to obtain a demolition permit or to complete the demolition, removal and restoration in a timely manner, the Township may demolish, remove and/or secure the facility and restore the site. The actual cost including attorney fees as well as professional and administrative expenses shall be charged to and paid by the owner of the facility or the owner of the land upon which the facility is located. Such expenses may also be drawn from any security or bond posted at the time application was made to establish the facility.

1. In the event the Authorized Township Representative determines the facility constitutes an immediate threat to the public's safety, the Township shall be authorized to take such action as shall abate the threat immediately after the expiration of the five (5) days notice provided in subparagraph (c)(4)(a) above without further notice.
2. In the event the facility is deemed not to constitute an immediate threat to the public's safety, the Township shall, upon the owner's failure to timely complete the required demolition, removal and restoration mail the owner Notice of it's intent to complete said work and the projected costs of the project. This Notice shall be mailed at least thirty (30) days prior to the Township's undertaking the project at the owner's expense.

SECTION IX - BOARD OF APPEALS

A. In order to decide questions involving the interpretation of this Ordinance, and, to hear and decide certain appeals of decisions or determinations made by the Township's Authorized Representative, and, to grant variances from the strict application of this Ordinance in certain limited situations, a Board of Appeals is hereby created.

1. The Board of Appeals thus created shall consist of the same members who serve on the Township's building code Board of Appeals as more fully set forth in Section 204 as adopted by this Township by Ordinance No. 15-0.

2. The term of the membership in the Board shall also be as set forth for the building code Board of Appeals, however, members of this Board of Appeals may be removed by the Township Board for non-performance of duty or misconduct in office upon written charges provided to such member and after a public hearing.

B. Subject to the following specific provisions, the Board of Appeals shall adopt rules of procedure for conducting its business and shall render all decisions and findings in writing to the appellant with a duplicate copy to the Township Board.

1. A concurring vote of a majority of the members of the Board of Appeals shall be necessary to reverse any decision or determination made by the Township's Authorized Representative, but a unanimous vote of the members of the Board of Appeals shall be necessary to reverse any decision made by the Township Board or to any variation in this Ordinance No. ____.

2. The Township Board shall, by Resolution, establish and amend a fee schedule pertaining to such appeals which fee schedule shall be designed to cause the applicant to pay for all expenses, including professional fees, incurred in such appeals.

3. When an application or appeal has been filed, the Secretary of the Board shall place said application or appeal on the calendar for hearing at the next meeting of the Board and cause notices stating the time, place and object of the hearing to be served. Such notices shall be served personally or by first-class mail within a reasonable time prior to such hearing upon the applicant or appellant, the Township's Authorized Representative and the owners of property of record within three hundred (300) feet of the premises in question; which notices, if by mail, shall be addressed to the respective property owners of record at the address given in the last assessment roll. In the event any property immediately adjacent to said premises shall be part of a different governmental subdivision, the owner of any such property shall, nevertheless, receive notice and shall be entitled to be heard.
 4. Upon the day for hearing any application or appeal, the Board may adjourn the hearing in order to permit the obtaining of additional information or to cause such further notice, as it deems proper, to be served upon such other property owners as it decides may be interested in said application or appeal. In the case of an adjourned hearing, persons previously notified and persons already heard need not be notified of the time of resumption of said hearing.
 5. Upon hearing, any party may be heard in person or by agent or attorney.
 6. Any person having an interest affected by any such decision shall have the right to appeal to the Circuit Court on questions of law and fact.
- C. In authorizing a variance or exception, the Board may, in addition to the conditions of approval called for in this Ordinance, attach thereto such other conditions regarding the location, character, landscaping or treatment reasonably necessary to the furtherance of the intent and spirit of this Ordinance and the protection of the public

interest, including the right to authorize such variance or exception for a limited period of time.

D. Where there are practical difficulties or unnecessary hardship not caused or created by the Applicant or the Applicant's predecessor in title, in carrying out the strict letter of this Ordinance, the Board of Appeals shall have power to vary or modify any provisions of this Ordinance so that the spirit of the Ordinance shall be observed, public safety promoted, and substantial justice done. The Board of Appeals may grant such variances only upon finding that the condition or situation for which the variance is sought is not so general or recurrent in nature as to make reasonably practicable the formulation of a general regulation for such condition or situation in this Ordinance.

E. No variance in the provisions or requirements of this Ordinance or in any requirement or decision of the Monitor Township Board shall be effected by the Board of Appeals unless it finds from reasonable evidence that such variance will not be of substantial detriment to adjacent property and will not materially impair the intent and purpose of this Ordinance or the public health, safety and welfare and, further, that at least two of the following facts and conditions exist:

1. That there are exceptional or extraordinary circumstances or conditions applying to the specific property that do not apply generally to other properties in the same zone;
2. That such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the zone, provided that increased financial return shall not be deemed sufficient to warrant a variance; or
3. That the condition or situation of the specific property or the intended use is not of so general or recurrent a nature as to make reasonably practical a general regulation as part of this Zoning Ordinance.

SECTION X - PENALTIES


- A. Any person who shall violate any provision of this Ordinance shall, upon conviction, pay a fine of not more than five hundred (\$500.00) Dollars and/or be confined to the Bay County jail for a period not to exceed ninety (90) days. Each and every day such a violation continues shall be deemed a separate and distinct violation.
- B. The owner of any building or structure, lot or land, or part thereof, where anything in violation of this Ordinance shall be placed or shall exist, or any architect, builder, contractor, agent, person or corporation employed in connection therewith and who assists in the commission of such violation shall each be guilty of a separate violation and, upon conviction thereof, shall each be liable to the fine or imprisonment, or both as specified in this Section.
- C. Any building or structure or facility erected, altered, enlarged, rebuilt or moved, or any use carried on in violation of any provisions of this Ordinance is hereby declared to be a nuisance per se. Any court of competent jurisdiction may order such nuisance abated and the owner guilty of maintaining a nuisance per se.
- D. The Township Board, the Board of Appeals, the duly authorized Attorney for the Township, the Prosecuting Attorney for Bay County, or any owners or occupants of any real estate within the Township may institute injunction, mandamus, abatement or any other appropriate action or proceedings to prevent, enjoin, abate or remove any violation of this Ordinance. The rights and remedies provided herein are cumulative and in addition to all other remedies provided by law.


SECTION XI - MISCELLANEOUS PROVISIONS

- A. No officer, agent, employee, or member of the Township Board, or Board of Appeals shall render himself personally liable for any damage that may accrue to any person as the result of any act, decision or other consequence or occurrence arising out of the discharge of his duties and responsibilities pursuant to this Ordinance.

- B. This Ordinance and the various parts, sections, subsections, paragraphs, sentences, phrases and clauses thereof are hereby declared to severable. If any part, section, subsection, paragraph, sentence, phrase and clause is adjudged unconstitutional or invalid, it is hereby provided that the remainder of this Ordinance shall not be affected thereby.
- C. The foregoing Ordinance was adopted by a majority vote of the Monitor Township Board at first reading held on the 22nd day of June, 1998, and at second reading held on the 27th day of July, 1998. This Ordinance shall be filed with the Township Clerk; and shall be published in a newspaper circulating within the Township on or before July 26, 1998.

Effective Date: September 1, 1998.


WARREN J. SINKE,
Monitor Township Supervisor


ERWIN M. HUTTER,
Monitor Township Clerk

1st Reading: June 22, 1998

2nd Reading: July 13, 1998

CHARTER TOWNSHIP OF MONITOR
COUNTY OF BAY, MICHIGAN

ORDINANCE NO: 48A

AN ORDINANCE AMENDING THE TOWNSHIP'S, WIRELESS COMMUNICATIONS ORDINANCE (ORDINANCE NO. 48) TO CLARIFY THE REMOVAL PROVISIONS OF THE ORDINANCE AND TO PROVIDE PENALTIES FOR THE VIOLATION THEREOF.

THE TOWNSHIP BOARD OF THE TOWNSHIP OF MONITOR ORDAINS AS FOLLOWS:

SECTION I

Section VIII of Ordinance No. 48, is hereby amended to read as follows:

SECTION VIII - REMOVAL

- A. A condition of approval for all SCFA applications shall be adequate provision for the demolition and removal of all or part of the facility and for the complete restoration of the site by the 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 nonuse.
 2. When, as a result of damage or neglect, the Authorized Township Representative determines the facility poses a danger to the public health, safety or welfare.
 3. When for any other reason including the existence of competent scientific evidence tending to demonstrate that the operation of such a facility may be injurious to persons or property in proximity to such a facility, the Authorized Township Representative determines the facility poses a danger to the public health, safety or welfare.

4. At such time as the owner of the facility or those persons responsible for it shall fail to comply with the Maintenance Plan approved by the Township Board during the SCFA approval process as set forth in Section V (B)(10) above.

B. The mandatory removal of a facility, as set forth in paragraph (A)(1) above, may be applied and limited to portions of a facility.

C. Upon the occurrence of any of the situations which require the removal of a facility, the Authorized Township Representative shall notify the owner of the facility as to his or her determination. Such Notice shall state the basis for the determination that the facility is being required to be removed.

1. The Notice shall be sent to the owners of the facility at the last known address of such owners as on file with the Township Clerk.

2. The Notice shall be sent by certified mail, return receipt requested and by regular U.S. mail delivery.

3. The Notice shall inform the owner whether or not the facility constitutes an immediate threat to the public's safety, and if it does, the nature of the threat.

4. The Notice shall state the number of days the owner shall have to obtain a demolition or removal permit from the Township, and, the number of days the owner shall have to complete the facility's removal, including the complete restoration of the premises as determined by the Authorized Township Representative.

a. In the event the Authorized Township Representative determines the facility constitutes an immediate threat to the public's safety in accordance with subsection VIII(A)(2), the owner shall be given five (5) days to complete the demolition, or, to abate the threatening condition.

b. In the event the facility is deemed not to constitute an immediate threat to the public's safety, or, that the facility does constitute

such a threat in accordance with subsection VIII(A)(3), the owner shall have seven (7) days from the date of the mailing of the notice to obtain the demolition permit from the Township, and an additional ninety (90) days to complete the required demolition, removal and restoration of the site.

D. In the event the users or owners of the facility fail to obtain a demolition permit or to complete the demolition, removal and restoration in a timely manner, the Township may demolish, remove and/or secure the facility and restore the site. The actual cost including attorney fees as well as professional and administrative expenses shall be charged to and paid by the owner of the facility or the owner of the land upon which the facility is located. Such expenses may also be drawn from any security or bond posted at the time application was made to establish the facility.

1. In the event the Authorized Township Representative determines the facility constitutes an immediate threat to the public's safety, the Township shall be authorized to take such action as shall abate the threat immediately after the expiration of the five (5) days notice provided in subparagraph (c)(4)(a) above without further notice.

2. In the event the facility is deemed not to constitute an immediate threat to the public's safety, the Township shall, upon the owner's failure to timely complete the required demolition, removal and restoration mail the owner Notice of it's intent to complete said work and the projected costs of the project. This Notice shall be mailed at least thirty (30) days prior to the Township's undertaking the project at the owner's expense.

SECTION II

All other terms and conditions of Ordinance No. 48 are hereby ratified.

SECTION III

A. Any person who shall violate any provision of this

RICHARD L. AUSTIN • ATTORNEY AT LAW • 702 CHURCH STREET • FLINT, MICHIGAN 48502 • TELEPHONE (810) 767-6860

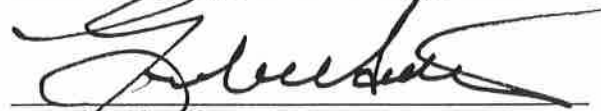
Ordinance shall, upon conviction, pay a fine of not more than five hundred (\$500.00) Dollars and/or be confined to the Bay County jail for a period not to exceed ninety (90) days. Each and every day such a violation continues shall be deemed a separate and distinct violation.

- B. The owner of any building or structure, lot or land, or part thereof, where anything in violation of this Ordinance shall be placed or shall exist, or any architect, builder, contractor, agent, person or corporation employed in connection therewith and who assists in the commission of such violation shall each be guilty of a separate violation and, upon conviction thereof, shall each be liable to the fine or imprisonment, or both as specified in this Section.
- C. Any building or structure or facility erected, altered, enlarged, rebuilt or moved, or any use carried on in violation of any provisions of this Ordinance is hereby declared to be a nuisance per se. Any court of competent jurisdiction may order such nuisance abated and the owner guilty of maintaining a nuisance per se.
- D. The Township Board, the Board of Appeals, the duly authorized Attorney for the Township, the Prosecuting Attorney for Bay County, or any owners or occupants of any real estate within the Township may institute injunction, mandamus, abatement or any other appropriate action or proceedings to prevent, enjoin, abate or remove any violation of this Ordinance. The rights and remedies provided herein are cumulative and in addition to all other remedies provided by law.

Effective Date: October 1, 1998.



WARREN J. SINKE,
Monitor Township Supervisor



ERWIN M. HUTTER,
Monitor Township Clerk

Date of 1st Reading: August 10, 1998

Date of 2nd Reading: August 24, 1998

CHARTER TOWNSHIP OF MONITOR

COUNTY OF BAY, MICHIGAN

ORDINANCE 48-D

AN ORDINANCE AMENDING THE TOWNSHIP'S WIRELESS COMMUNICATIONS ORDINANCE (ORDINANCE NO. 48) TO PROVIDE FOR ADDITIONAL MINIMUM SET BACK REQUIREMENTS FOR THE PLACEMENT OF NEW WIRELESS COMMUNICATION FACILITIES, TO PROVIDE FOR EXPERT ASSISTANCE TO THE TOWNSHIP DURING ITS DELIBERATIONS ON THE LICENSING OF A PROPOSED WIRELESS COMMUNICATION FACILITY, TO CLARIFY THAT ORDINANCE NO. 48 AS IT MAY BE AMENDED FROM TIME TO TIME IS THE SOLE REGULATORY AUTHORITY GOVERNING THE PLACEMENT OF WIRELESS COMMUNICATIONS FACILITIES WITHIN THE TOWNSHIP, AND PROVIDING FOR CIVIL PENALTIES FOR THE VIOLATIONS OF SAID ORDINANCE NO. 48, AS AMENDED.

THE CHARTER TOWNSHIP OF MONITOR ORDAINS:

SECTION I-SET BACK

Subsection B.3 of Section V of Ordinance No. 48 shall be amended to provide:

3. The minimum set back of a new wireless communication facility and all support structures being proposed shall be a distance from all rights-of-way, property lines, publicly traveled roads and buildings equal to the height of the structure(s).

Further, subsection B.4 of Section V of Ordinance No. 48 shall be and hereby is repealed.

SECTION II-EXPERT TECHNICAL ASSISTANCE

Section V of Ordinance No. 48 shall be amended by the adoption of a new subparagraph D which shall provide:

- D. The Township may hire independent experts to evaluate any technical data provided by the Applicant in support of an Application. The costs of such independent expert assistance shall be bore by the Applicant, and all such costs shall be paid in full prior to any final determination upon the proposed Application.

SECTION III-EXCLUSIVE REGULATION

Section XI of Ordinance 48 is hereby amended by the adoption of a new subparagraph D which shall provide:

- D. The regulation of wireless communication facilities, and the consideration of applications for new facilities to be located within the Township and all applicable restrictions upon such new facilities shall be governed exclusively by the terms of this Ordinance No. 48, as it may be amended from time to time.

SECTION IV-PENALTY PROVISION

Section X of Ordinance 48, and Section III of Ordinance No. 48A are hereby amended to provide:

The penalty for the violation of this Ordinance shall be deemed a municipal civil infraction and upon a finding of responsibility shall be subject to the penalties as set forth in Section 5 of Ordinance No. 53 which establishes the penalties for the violation of a Township municipal civil infraction.

SECTION V-PUBLICATION AND EFFECTIVE DATE


This Ordinance shall be published in a newspaper circulated within the Charter Township of Monitor, Bay County, Michigan, and shall take effect immediately upon such publication.

THE CHARTER TOWNSHIP OF MONITOR

Date of 1st Reading:
June 21, 2005

BY: 
GARY A. BRANDT, Supervisor

Date of 2nd Reading:
June 27, 2005

BY: 
CINDY L. KOWALSKI, Clerk

Date of Publication:
June 30, 2005

Effective Date:
June 30, 2005



Charter Township of Monitor

2483 MIDLAND ROAD—BAY CITY, MICHIGAN 48706—PHONE (517)684-7203—FAX (517)684-9234

Special Communication Facility Application

I. Applicant

1. Legal Name of Applicant _____
2. Address of Applicant _____
3. Applicant Telephone number: _____ Facsimile number _____
4. Is the Applicant a corporation, L.L.C., partnership, assumed name or individual? _____
5. If Applicant is a corporation or L.L.C. please list the names and addresses of the officers.

and Registered Agent(s):

6. If Applicant is a partnership, please list the names and addresses of the partners:

7. Please provide the name, address, and phone number of the person(s) to contact for engineering, maintenance and other notice purposes:

II. The Facility

1. Please describe in detail the proposed location of the facility including legal descriptions for the facility and any access easements required.
2. What is the zoning classification of the land where the facility is proposed to be located?
3. Please describe the proposed facility, including description of:
 - a) The tower (if a new tower is to be constructed) its height and type of construction.
 - b) The support structures including storage buildings, fences, etc.
 - c) Any existing buildings, towers, or structures that will be substantially affected by the new facility.
 - d) The access to and from the facility including names of all persons or entities providing easements over privately used property.

4. Please provide demonstrable evidence that the height and location of the facility are reasonably necessary for technical, practical, or economic needs for yourself as well as potential co-locators.
5. What future co-location plans and designs have been engineered into this facility.
7. Is the land to be used for the facility leased or owned by the Applicant? If leased, please provide the name and address of the Lessor.
8. Please provide cost estimates for the construction of the facility including all support structures.
9. Please submit a site plan including all of the information required by Section III paragraphs 1 and 2.
10. Please attach a signed certification by a State of Michigan licensed professional engineer with regard to the manner in which the proposed tower would fall.
11. Please provide an estimate as to the cost of:
 - a) The demolition and removal of the tower.
 - b) The demolition and removal of the support structures.
12. Please attach a map showing existing and known proposed wireless communication facilities within the Township and within three (3) miles of the Township boundaries.
13. Will the applicant require any variances for the location of the facility? If so, please detail what variances will be requested.
14. Will the color or other adornments to the facility distract, reduce visibility or otherwise inhibit acceptable aesthetic appearances relative to its surroundings?
15. Are the soils at the proposed site logically suitable for the construction of this proposed facility?
16. Please submit a detailed maintenance plan for the facility, which will include:
 - a. Long Term insurance coverage
 - b. Regular Scheduled maintenance

Certification of Application:

I, _____, a legal representative or officer of the applicant corporation, L.L.C., partnership, assumed name or individual, hereby make application for a *Special Communications Facility Permit*, subject to the provisions of the Charter Township of Monitor Ordinance No. 48 (as amended). To best of my knowledge all communications, submissions and exhibits connected with this application are accurate and complete. The facility will comply with

all applicable state and federal regulations and standards relative to the environmental effects of radio frequency emissions. I further certify that I have been provided a copy of Monitor Township Ordinance No. 48 and all amendments thereto, and that I am familiar with the terms and conditions of that Ordinance and its amendments.

(Signed)-Legal Representative or Officer

Printed name and title

Proposed Date of Start of Construction

Date of Application



Charter Township of Monitor

2483 MIDLAND ROAD ≈ BAY CITY, MICHIGAN 48706 ≈ PHONE (989) 684-7203 ≈ FAX (989) 684-9234

SUPPLEMENTAL WIRELESS COMMUNICATION FACILITY APPLICATION (FOR CO-LOCATED FACILITIES)

1. Please identify the owner and all managing agents of the existing structure to be utilized for the co-location. Please provide the address and telephone number of this/these entity.
2. Please specify the entity that will own the co-located facility once it is attached to the existing structure.
3. Please provide a copy of all lease agreements between the owner of the existing structure and the entity co-locating the new facility.
4. Please describe the new facility. Please include the exact location where the new facility is to be attached to the existing structure and the method of its attachment.
5. Please describe the additional ground facilities to be located at the site as a result of this co-location. Please provide the exact location of such ground facilities on the site plan submitted with this Application.
6. If the Applicant is an agent of a communication facility entity, please provide the complete identity of both principal and agent entities.

PLEASE READ THE FOLLOWING CAREFULLY:

By executing this Application, the applicant represents that he/she/it is familiar with the terms of Monitor Township Ordinance 48 and 48A, as amended, as well as with the terms of all Lease Agreements which have been previously executed between the Township and the owner of the structure upon which applicant seeks its co-location. Applicant further acknowledges Township approval of this Application may be adversely affected by the terms and conditions of these documents.
