

# OWOSSO

## *Planning Commission*



Regular Meeting  
7:00pm, Monday, January 27, 2014  
Owosso City Council Chambers

## AGENDA

### *Owosso Planning Commission*

Monday, January 27, 2014 at 7:00 p.m.  
Council Chambers – Owosso City Hall  
Owosso, MI 48867

CALL MEETING TO ORDER:

PLEDGE OF ALLEGIANCE:

ROLL CALL:

APPROVAL OF AGENDA: January 27, 2014

APPROVAL OF MINUTES: November 25, 2013

COMMUNICATIONS:

1. Staff memorandum
2. PC minutes from November 25, 2013
3. Zoning map of East Main from Washington to Gould
4. Potential land use map
5. Zoning ordinances from Lansing, Flint, Novi and New Baltimore as examples
6. Isotrope Wireless article

COMMISSIONER/PUBLIC COMMENTS:

PUBLIC HEARINGS: None

SITE PLAN REVIEW: None

BUSINESS ITEMS:

1. Westtown progress – discussion
2. East Main from Washington to Gould – discussion of possible land uses
3. Wireless tower and antenna – planning stages

ITEMS OF DISCUSSION: None

COMMISSIONER/PUBLIC COMMENTS:

ADJOURNMENT: Next meeting will be Monday, February 24, 2014

**Commissioners, please call Marty at 725-0540 if you will be unable to attend the meeting on Monday, January 27, 2014**

[The City of Owosso will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audiotapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting/hearing upon seventy-two (72) hours notice to the City of Owosso. Individuals with disabilities requiring auxiliary aids or services should contact the City of Owosso by writing or calling the following: Amy Kirkland, City Clerk, 301 W. Main St, Owosso, MI 48867 (989) 725-0500]. The City of Owosso website is: [www.ci.owosso.mi.us](http://www.ci.owosso.mi.us)

**Affirmative Resolutions**  
***Owosso Planning Commission***

Monday, January 27, 2014 at 7:00 p.m.  
Council Chambers – Owosso City Hall  
Owosso, MI 48867

**Resolution 140127-01**

Motion: \_\_\_\_\_  
Support: \_\_\_\_\_

The Owosso Planning Commission hereby approves the agenda of January 27, 2014 as presented.

Ayes: \_\_\_\_\_  
Nays: \_\_\_\_\_

Approved: \_\_\_\_                      Denied: \_\_\_\_

**Resolution 140127-02**

Motion: \_\_\_\_\_  
Support: \_\_\_\_\_

The Owosso Planning Commission hereby approves the minutes of November 25, 2013 as presented.

Ayes: \_\_\_\_\_  
Nays: \_\_\_\_\_

Approved: \_\_\_\_                      Denied: \_\_\_\_

**Resolution 140127-03**

Motion: \_\_\_\_\_  
Support: \_\_\_\_\_

The Owosso Planning Commission hereby adjourns the January 27, 2014 meeting, effective at \_\_\_\_\_pm.

Ayes: \_\_\_\_\_  
Nays: \_\_\_\_\_

Approved: \_\_\_\_                      Denied: \_\_\_\_



301 W. MAIN • OWOSSO, MICHIGAN 48867-2958 • (989) 725-0599 • FAX (989) 723-8854

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# *MEMORANDUM*

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DATE: January 20, 2014  
TO: Chairman Wascher and the Owosso Planning Commission  
FROM: Susan Montenegro,  
RE: Planning Commission Meeting: January 27, 2014

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**The planning commission shall convene at 7:00pm on Monday, January 27, 2014 in the city council chambers of city hall.**

This meeting will have three specific focus items:

1. E. Main to Gould
2. Westown progress
3. Creation of wireless cell tower ordinance

I would like the commission to look at zoning in the areas of E. Main to Gould Street to see if the current zoning reflects the needs of the owners, businesses and city and possible land uses. I will include zoning maps of this area for reference. Please take a drive past this area and be ready to share your thoughts! The next item is Westown progress and what needs to be done to complete this project. Additionally, I would like to commission to address the need for creating a wireless tower ordinance for the city. The city has been approached by a firm requesting information on its zoning and regulations regarding cell towers and the placement thereof. I am including zoning regulations from a couple of other cities for reference. Please come with ideas!

Please feel free to email or call my cell phone at 989.890.1394 if you have questions. I look forward to working with you all! Please **RSVP for the meeting**. I look forward to seeing you all on the 27th!

**MINUTES  
REGULAR MEETING OF THE OWOSSO PLANNING COMMISSION  
Council Chambers, City Hall  
November 25, 2013 – 7:00 pm**

**CALL TO ORDER:** Meeting was called to order at 7:00 p.m. by Chairman William Wascher.

**PLEDGE OF ALLEGIANCE:** The Pledge of Allegiance was recited by all in attendance.

**ROLL CALL:** Roll Call was taken by Recording Secretary Marty Stinson.

**MEMBERS PRESENT:** Chairman William Wascher; Commissioners David Bandkau, Tom Kurtz, Ron Schlaak, Brent Smith, Thomas Taylor.

**MEMBERS ABSENT:** Vice-Chairman Frank Livingston, Craig Weaver and vacancy.

**OTHERS PRESENT:** Adam Zettel, Assistant City Manager and Director of Community Development; City Manager Don Crawford; and master's degree intern, Sue Montenegro.

**AGENDA APPROVAL:**

**MOTION BY COMMISSIONER KURTZ, SUPPORTED BY COMMISSIONER SMITH TO APPROVE THE AGENDA FOR NOVEMBER 25, 2013.**

**YEAS ALL. MOTION CARRIED.**

**MINUTES APPROVAL:**

**MOTION BY COMMISSIONER KURTZ, SUPPORTED BY COMMISSIONER TAYLOR TO APPROVE THE MINUTES OF THE MEETING OF OCTOBER 28, 2013.**

**YEAS ALL. MOTION CARRIED.**

**COMMUNICATIONS:**

1. Staff memorandum
2. PC minutes from October 28, 2013
3. Zoning review list & map
4. Workshop letter

**COMMISSIONER / PUBLIC COMMENTS: NONE**

**PUBLIC HEARING: NONE**

**SITE PLAN REVIEW: NONE**

**BUSINESS ITEMS:**

1. **Selection of Commission Secretary**

**MOTION BY COMMISSIONER BANDKAU, SUPPORTED BY COMMISSIONER SMITH TO NOMINATE COMMISSIONER KURTZ FOR SECRETARY FOR THE PLANNING COMMISSION.**

**YEAS ALL. MOTION CARRIED.**

2. **Zoning Map Update Workshop (Public Engagement Item)**

Mr. Adam Zettel introduced the City Manager Don Crawford; and intern Sue Montenegro who is studying for a masters degree in public administration. Mr. Zettel has met with four people about the possible zoning changes in Westown. The first at 412 S. Shiawassee Street, Tial Products. This is heavy industrial. The owner prefers it stays I-2, but it may be able to go to I-1 as the future plans do fit under I-1. The property in front of his factory could be I-1.

308 S. Shiawassee is OK with it going to office zoning.

919-921 Beehler next to the Vaungarde property is willing to change their zoning.

115 S. Lansing wants to keep the same use which is multi family. Commissioner Bandkau suggested that RM-1 was a good transitional use at that location next to residential on one side and commercial on Main Street on the other.

The Vaungarde property at Beehler and Chipman is limited by the railroad right of way, and former industrial use limits residential use. City Manager Crawford suggested moving Beehler Street and enlarging the riverfront lots.

503 – 617 S. Chipman around the VFW will stay the same.

108 S. State just got renovated. This is next to the new mixed use and will go to R-1.

The city public works garage on Milwaukee Street will stay the same, but the parcel right next to the city garage will change from I-2 to I-1.

There will be a notice for the January 27, 2014 meeting for a public hearing

**COMMISSIONER / PUBLIC COMMENTS:**

Commissioner Bandkau said it was exciting to see the Christmas lights. The city really shines at this time of the year.

Chairman Wascher congratulated Commissioner Bandkau on his election to the City Council.

**ADJOURNMENT:**

**MOTION BY COMMISSIONER TAYLOR, SUPPORTED BY COMMISSIONER SCHLAAK, TO ADJOURN AT 7:53 P.M.**

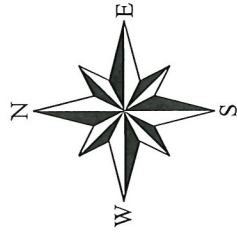
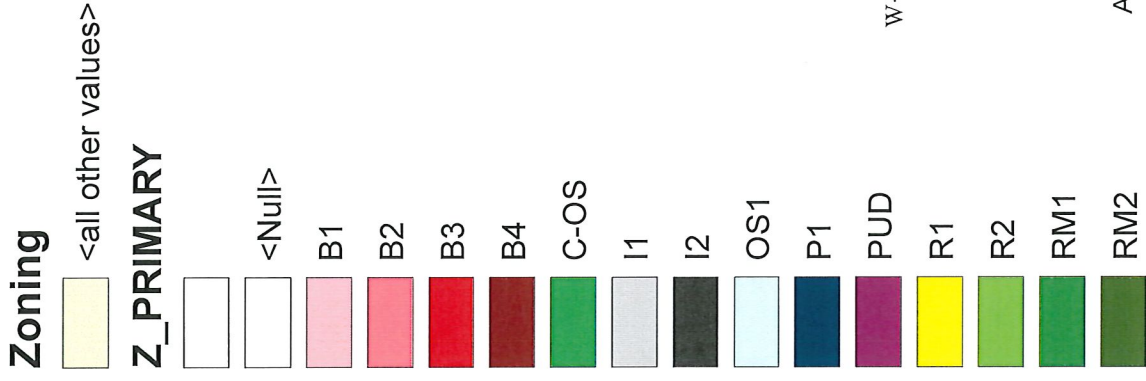
**YEAS ALL. MOTION CARRIED.**

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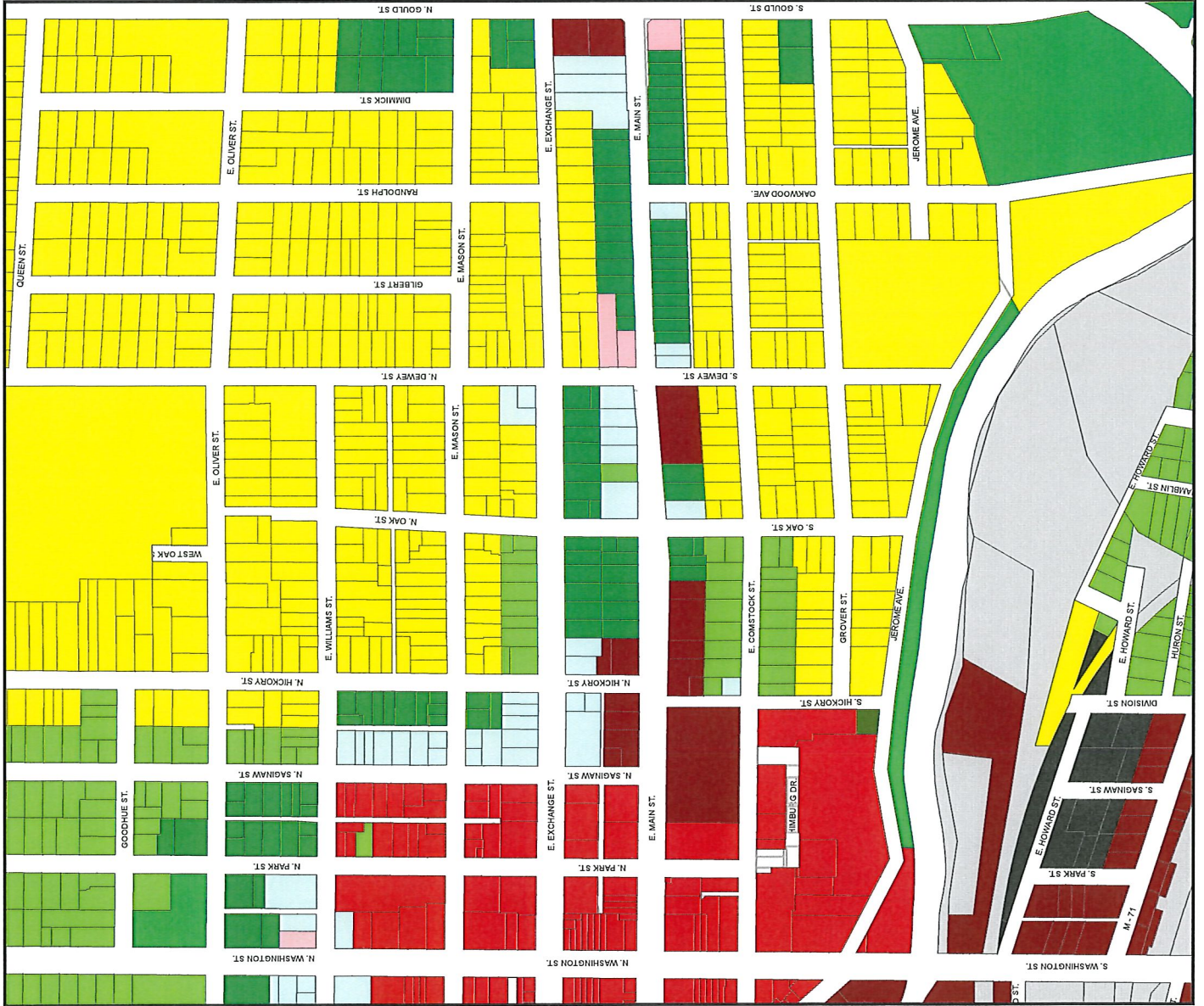
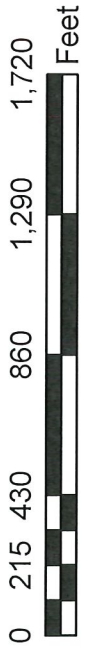
Tom Kurtz, Secretary

mms

# City of Owosso



April 19, 2013

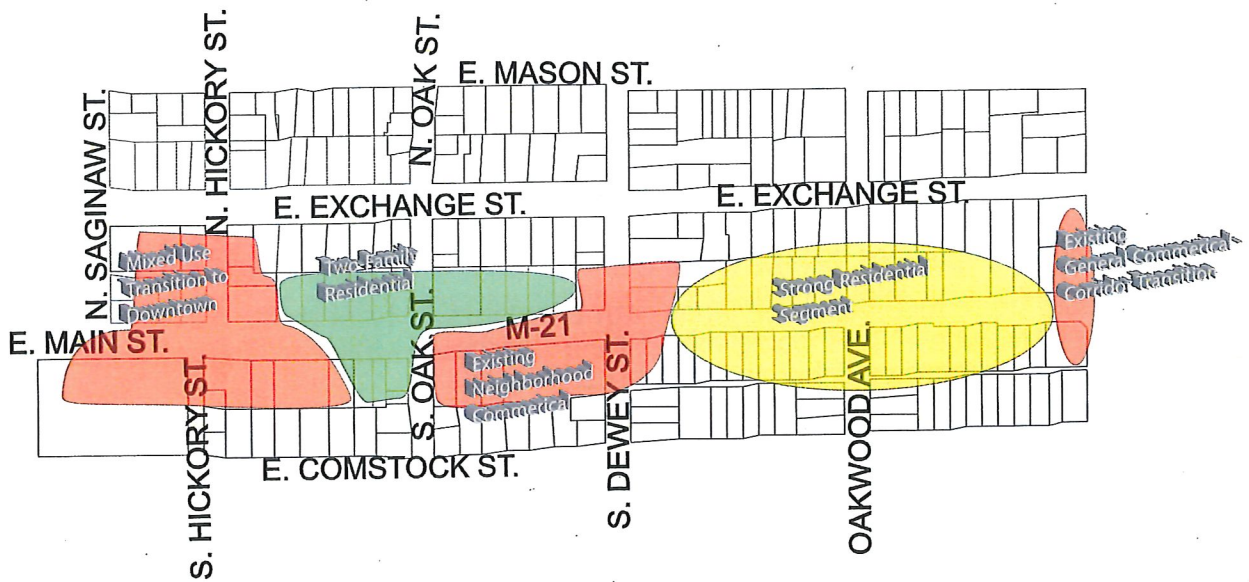




**Figure 24.**  
**M-71 Potential Land Use Patterns**



**Figure 25.**  
**East M-21 Potential Land Use Patterns**





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Part 12 - PLANNING AND ZONING CODE  
TITLE 6. - ZONING

CHAPTER 1298. [WIRELESS COMMUNICATIONS TOWERS AND ANTENNAS]

**CHAPTER 1298. [WIRELESS COMMUNICATIONS TOWERS AND ANTENNAS]**

[1298.01. Purpose.](#)

[1298.02. Definitions.](#)

[1298.03. Applicability.](#)

[1298.04. General requirements.](#)

[1298.05. Permitted use.](#)

[1298.06. Administratively approved uses.](#)

[1298.07. Special land use permits.](#)

[1298.08. Building or other equipment storage.](#)

[1298.09. Removal of abandoned antennas and towers.](#)

[1298.10. Nonconforming uses.](#)

**1298.01. Purpose.**

The purpose of this ordinance [chapter] is to establish general guidelines for the siting of wireless communications towers and antennas. The goals of this ordinance [chapter] are to: (1) protect residential areas, property values, and land uses from potential adverse impacts of towers and antennas; (2) strongly encourage the location of towers in nonresidential areas; (3) minimize the total number of towers throughout the community; strongly encourage the appropriate placement of new and existing towers (4) strongly encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers; (5) strongly encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal; (6) strongly encourage users of towers and antennas to configure them in a way that minimizes displeasing aesthetics of the towers and antennas through careful design, siting, landscape screening, and innovative camouflaging techniques; (7) enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently; (8) consider, to the extent permitted by law, the public health and safety impacts of communication towers; and (9) avoid potential damage to adjacent properties from tower failure through engineering, design, and careful siting of tower structures. in furtherance of these goals, the city shall give due consideration to the city's comprehensive plan, zoning map, existing land uses, and environmentally sensitive areas in approving sites for the location of towers and antennas.

(Ord. No. 1138, § 1, 11-10-08)

**1298.02. Definitions.**

For the purposes of this chapter, the following words and phrases shall have the meanings set forth below:

- (a) *Alternative tower structure* means clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

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- (b) *Antenna* means any exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals.
- (c) *FAA* means the Federal Aviation Administration.
- (d) *FCC* means the Federal Communications Commission.
- (e) *Height* means, when referring to a tower or other structure, the distance measured from the finished grade of the parcel to the highest point on the tower or other structure, including the base pad and any antenna.
- (f) *Preexisting towers and preexisting antennas* means any tower or antenna for which a building permit or special land use permit has been properly issued prior to the effective date of this ordinance, including permitted towers or antennas that have not yet been constructed so long as such approval is current and not expired.
- (g) *Tower* means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio and similar communication purposes, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like. The term includes the structure and any support thereto.

(Ord. No. 1138, § 1, 11-10-08)

**1298.03. Applicability.**

- (a) *New towers and antennas.* All new towers or antennas in the city shall be subject to these regulations, except as provided in subsections [1298.03\(b\)](#) through [1298.03\(d\)](#), inclusive.
- (b) *Amateur radio station/receive only antennas.* This chapter shall not govern any tower, or the installation of any antenna, that is under 70 feet in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for those antennas defined in 47 Code of Federal Regulations 1.4000.
- (c) *Preexisting towers or antennas.* Preexisting towers and preexisting antennas shall not be required to meet the requirements of this ordinance [chapter], other than the requirements of subsections [1298.04\(f\)](#) and [1298.04\(g\)](#).
- (d) *AM array.* For purposes of implementing this chapter, an AM array, consisting of one or more tower units and supporting ground system which functions as one am broadcasting antenna, shall be considered one tower. Measurements for setbacks and separation distances shall be measured from the outer perimeter of the towers included in the AM array. Additional tower units may be added within the perimeter of the AM array by right.

(Ord. No. 1138, § 1, 11-10-08)

**1298.04. General requirements.**

- (a) *Principal or accessory use.* Antennas and towers may be considered either principal or accessory uses. A different existing use of an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot.

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- (b) *Lot size.* For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to setback requirements, lot-coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas and/or towers may be located on leased parcels within such lot.
- (c) *Inventory of existing sites.* Each applicant for an antenna and/or tower shall provide to the zoning administrator an inventory of its existing towers, antennas, or sites approved for towers or antennas, that are either within the jurisdiction of the City or within one mile of the border thereof, including specific information about the location, height, and design of each tower. Information submitted to the zoning administrator shall be considered public information. The zoning administrator may share such information with the public and other applicants applying for special land use permits under this ordinance or other organizations seeking to locate antennas within the jurisdiction of the City, provided, however that the zoning administrator is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
- (d) *Aesthetics.* Towers and antennas shall meet the following requirements:
  - (1) Except as otherwise required for an alternative tower structure, towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.
  - (2) At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.
  - (3) If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.
- (e) *Lighting.* Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views. Lighting may be provided on an alternative tower structure to enhance its camouflaging or concealing effect. All lighting must be approved by the City.
- (f) *State or federal requirements.* All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this chapter shall bring such towers and antennas into compliance with such revised standards and regulations within six months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.
- (g) *Building codes; safety standards.* To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the electronic industries association, as amended from time to time. If, upon inspection, the City concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have 30 days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said 30 days shall constitute grounds for the removal of the tower or antenna at the owner's expense.

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- (h) *Measurement.* For purposes of measurement, tower setbacks and separation distances shall be calculated and applied to facilities located in the City irrespective of municipal and county jurisdictional boundaries.
- (i) *Not essential services.* Towers and antennas shall be regulated and permitted pursuant to this chapter and shall not be regulated or permitted as essential services, public utilities, or private utilities.
- (j) *Public notice.* For purposes of this chapter, any special land use request, variance request, or appeal of a special land use shall require public notice to the LPD neighborhood watch coordinators, and all neighborhood associations, property property owners, neighborhood associations, neighborhood watches, and all property ownersoccupants of properties that are located within 1,000 feet of the parcel that is the subject of the request, in addition to any notice otherwise required by the Zoning Code.
- (k) *Signs.* No signs shall be allowed on an antenna or tower.
- (l) *Buildings and support equipment.* Buildings and support equipment associated with antennas or towers shall comply with the requirements of [Section 1298.08](#)
- (m) *Multiple antenna/tower plan.* The City encourages the users of towers and antennas to submit a single application for approval of multiple towers and/or antenna sites. Applications for approval of multiple sites shall be given priority in the review process.

(Ord. No. 1138, § 1, 11-10-08)

**1298.05. Permitted use.**

The following use is deemed to be a permitted use and shall not require a special land use permit: antennas or towers located on property owned, leased, or otherwise controlled by the City provided a license or lease authorizing such antenna or tower has been approved by the Council.

(Ord. No. 1138, § 1, 11-10-08)

**1298.06. Administratively approved uses.**

- (a) *General.* The following provisions shall govern the issuance of administrative approvals for towers and antennas.
  - (1) The zoning administrator may administratively approve the uses listed in this section.
  - (2) Each applicant for administrative approval shall apply to the zoning administrator providing the information set forth in subsections [1298.07\(b\)\(1\)](#) and [1298.07\(b\)\(3\)](#) of this ordinance [chapter] and a refundable fee as established by resolution of council to reimburse the city for the costs and expenses incurred in reviewing the application. No application for an administratively approved use shall be considered by the zoning administrator until all conditions required in the resolution of council shall have been met.
  - (3) The zoning administrator shall respond to each such application within 60 days after receiving it by either approving or denying the application. If the zoning administrator fails to respond to the applicant within said 60 days, then the application shall be deemed to be approved.
  - (4) In connection with any such administrative approval, the zoning administrator may, in order to encourage shared use, administratively waive any zoning district setback requirements in

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[section 1298.07](#)(b)(4) or separation distances between towers in [section 1298.07](#)(b)(5) by up to 50 percent .

- (5) In connection with any such administrative approval, the zoning administrator may, in order to encourage the use of monopoles, administratively allow the reconstruction of an existing tower to monopole construction.
  - (6) If an administrative approval is denied, the applicant shall file an application for a special land use permit pursuant to [Section 1298.07](#) prior to filing any appeal that may be available under the Zoning Code.
- (b) *List of administratively approved uses.* The following uses may be approved by the zoning administrator after conducting an administrative review:
- (1) Locating a tower or antenna, including the placement of additional buildings or other supporting equipment used in connection with said tower or antenna, in any heavy industrial zoning district, provided that there is no residential property adjacent to the district.
  - (2) Locating antennas on existing structures or towers consistent with the terms of subsections (a) and (b) below.
    - (a) *Antennas on existing structures.* Any antenna which is not attached to a tower may be approved by the zoning administrator as an accessory use to any G-1 business, F-1 commercial, F commercial, E-2 local shopping, E-1 apartment shop, D-2 residential/off ice, D-1 professional office, or DM-1, DM-2, DM-3, or DM-4 residential multi-family structure of eight or more dwelling units, provided:
      - (i) The antenna does not extend more than 30 feet above the highest point of the structure;
      - (ii) The antenna complies with all applicable FCC and FAA regulations; and
      - (iii) The antenna complies with all applicable building codes.
    - (b) *Antennas on existing towers.* An antenna which is attached to an existing tower may be approved by the zoning administrator and, to minimize the displeasing aesthetics associated with the proliferation and clustering of towers, collocation of antennas by more than one carrier on existing towers shall take precedence over the construction of new towers, provided such collocation is accomplished in a manner consistent with the following:
      - (i) A tower which is modified or reconstructed to accommodate the collocation of an additional antenna shall be of the same tower type as the existing tower, unless the zoning administrator allows reconstruction as a monopole.
      - (ii) *Height:*
        - (a) An existing tower may be modified or rebuilt to a taller height, not to exceed 30 feet over the tower's existing height, to accommodate the collocation of an additional antenna.
        - (b) The height change referred to in subsection [1298.06](#)(b)(5)(ii)(a) may only occur one time per communication tower.
        - (c) The additional height referred to in subsection [1298.06](#)(b)(5)(ii)(a) shall not require an additional distance separation as set forth in [Section 1298.07](#). The tower's premodification height shall be used to calculate such distance separations.



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(iii) *Onsite location.*

- (a) A tower which is being rebuilt to accommodate the collocation of an additional antenna may be moved onsite within 50 feet of its existing location.
  - (b) After the tower is rebuilt to accommodate collocation, only one tower may remain on the site.
  - (c) A relocated onsite tower shall continue to be measured from the original tower location for purposes of calculating separation distances between towers pursuant to subsection [1298.07\(b\)\(5\)](#). The relocation of a tower hereunder shall in no way be deemed to cause a violation of subsection [1298.07\(b\)\(5\)](#).
  - (d) The onsite relocation of a tower which comes withinto a location that is less than the separation distances to residential units or residentially zoned lands as established in subsection [1298.07\(b\)\(5\)](#) shall only be permitted when approved by the zoning administrator.
- (3) Installing a cable microcell network through the use of multiple low-powered transmitters/receivers attached to existing wireline systems, such as conventional cable or telephone wires, or similar technology that does not require the use of towers.

(Ord. No. 1138, § 1, 11-10-08)

**1298.07. Special land use permits.**

- (a) *General.* The following provisions shall govern the issuance of special land use permits for towers or antennas by the Council following review and recommendation by the Planning Board:
- (1) If the tower or antenna is not a permitted use under [Section 1298.05](#) of this chapter, then a special land use permit shall be required for the construction of a tower or the placement of an antenna in all zoning districts.
  - (2) Applications for special land use permits under this section shall be subject to the procedures and requirements of [Chapter 1282](#), Special Land Use Permits, of the Zoning Code, except as modified in this section.
  - (3) In granting a special land use permit, the Council may impose conditions to the extent the Council concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties. In addition to any other conditions, Council may require an applicant to post with the City Clerk cash, a certified check, an irrevocable letter of credit issued by a bank, or a surety bond in an amount sufficient to pay for the removal of the tower in case the tower is abandoned as set forth in [Section 1298.09](#). The surety bond shall be open ended and shall be executed by the applicant and a United States based corporate surety authorized to do business in this state as a surety. Any surety bond or irrevocable letter of credit shall be in a form approved by the City Attorney, and shall be made payable to the City. In the event that an abandoned tower is removed at the applicant's expense, the bond, instrument of credit, cash deposit or certified check shall be released to the applicant.
  - (4) Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a licensed professional engineer.
  - (5) An applicant for a special land use permit shall submit the information described in this section, the information described in [Section 1298.04](#), and, in addition to any other fee required by law, a refundable fee as established by resolution of the Council to reimburse the City for the costs and expenses incurred in reviewing the application. No application for a special land use permit

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shall be considered by the Planning Board until all conditions required in the resolution of council shall have been met.

(b) *Towers.*

- (1) *Information required.* In addition to any information required for applications for special land use permits pursuant to [Chapter 1282](#), Special Land Use Permits, of the Zoning Code, applicants for a special land use permit for a tower shall submit the following information with the application or, with respect to other information deemed by the zoning administrator to be necessary to assess compliance with this chapter pursuant to subsection (i), as soon as reasonably practicable as determined by the zoning administrator:
  - (i) A scaled site plan clearly indicating the location, type and height of the proposed tower, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other municipalities), comprehensive plan classification of the site and all properties within the applicable separation distances set forth in subsection [1298.07\(b\)\(5\)](#), adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower and any other structures, topography, parking, and other information deemed by the zoning administrator to be necessary to assess compliance with this ordinance.
  - (ii) Legal description of the parent tract and leased parcel (if applicable).
  - (iii) The setback distance between the proposed tower and the nearest residential unit, platted residentially zoned properties, and unplatted residentially zoned properties.
  - (iv) The separation distance from other towers described in the inventory of existing sites submitted pursuant to subsection [1298.04\(c\)](#) shall be shown on an updated site plan or map. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing tower(s), if known.
  - (v) A landscape plan showing specific landscape materials.
  - (vi) Method of fencing, and finished color and, if applicable, the method of camouflage and illumination.
  - (vii) A description of compliance with subsections [1298.04\(c\)](#), (d)—(g), (k), and (l), [1298.07\(b\)\(4\)](#), [1298.07\(b\)\(5\)](#) and all applicable federal, state or local laws.
  - (viii) A notarized statement by the applicant as to whether construction of the tower will accommodate collocation of additional antennas for future users.
  - (ix) Evidence at the time of application of a lease or an option to lease by a telecommunications provider with the owner of the property in question.
  - (x) A description of the suitability of the use of existing towers, other structures or alternative technology not requiring the use of towers or structures to provide the services to be provided through the use of the proposed new tower, including specifics as to why such towers, structures or alternative technologies are not suitable or feasible in lieu of a tower.
  - (xi) A description of the feasible location(s) of future towers or antennas within the city based upon existing physical, engineering, technological or geographical limitations in the event the proposed tower is erected.
- (2) *Factors considered in granting special land use permits for towers.* In addition to any standards for consideration of special land use permit applications pursuant to [Chapter 1282](#), Special Land Use Permits, of the Zoning Code, the Council may consider the following factors and any other factors allowed by law in determining whether to issue a special land use permit, although

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the Council may waive or reduce the burden on the applicant of one or more of these criteria if the Council concludes that the goals of this chapter are better served thereby:

- (i) Height of the proposed tower;
  - (ii) Proximity of the tower to residential structures and residential district boundaries;
  - (iii) Nature of uses on adjacent and nearby properties;
  - (iv) Surrounding topography;
  - (v) Surrounding tree coverage and foliage;
  - (vi) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
  - (vii) Proposed ingress and egress;
  - (viii) Evidence at the time of application of a lease or an option to lease by a telecommunications provider with the owner of the property in question; and
  - (ix) Availability of suitable existing towers, other structures, or alternative technologies not requiring construction of a new tower, as discussed in subsection [1298.07\(b\)\(3\)](#) of this chapter.
- (3) *Availability of suitable existing towers, other structures, or alternative technology.* No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Council that no existing tower, structure or alternative technology that does not require the use of towers or structures can accommodate the applicant's proposed antenna. An applicant shall submit information requested by the council related to the availability of suitable existing towers, other structures or alternative technology. Evidence submitted to demonstrate that no existing tower, structure or alternative technology can accommodate the applicant's proposed antenna may consist of any of the following:
- (i) No existing towers or structures are located within the geographic area which meets the applicant's engineering requirements.
  - (ii) Existing towers or structures are not of sufficient height to meet the applicant's engineering requirements.
  - (iii) Existing towers or structures do not have sufficient structural strength to support the applicant's proposed antenna and related equipment.
  - (iv) The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
  - (v) The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
  - (vi) The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.
  - (vii) The applicant demonstrates that an alternative technology that does not require the use of towers or structures, such as a cable microcell network using multiple low-powered transmitters/receivers attached to a wireline system, is unsuitable. Costs of alternative

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technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable.

- (4) *Setbacks.* The following setback requirements shall apply to all towers for which a special land use permit is required; provided, however, that the Council may reduce the standard setback requirements if the goals of this chapter would be better served thereby:
- (i) Towers must be set back a distance equal to at least 75 percent of the height of the tower from any adjoining lot line.
  - (ii) Guys and accessory buildings must satisfy the minimum zoning district setback requirements.
- (5) *Separation.* The following separation requirements shall apply to all towers and antennas for which a special land use permit is required; provided, however, that the Council may reduce the standard separation requirements if the goals of this chapter would be better served thereby:
- (i) Separation from off-site uses/designated areas.
    - (a) Tower separation shall be measured from the base of the tower to the lot line of the off-site uses and/or designated areas as specified in Table 1, except as otherwise provided in Table 1.
    - (b) Separation requirements for towers shall comply with the minimum standards established in Table 1.

Table 1:

Off-Site Use/Designated Area	Separation Distance
Single-family or duplex residential units <sup>1</sup>	100 feet or 150 percent height of tower whichever is greater
Vacant single-family or duplex residentially zoned land which is either platted or has preliminary subdivision plan approval which is not expired	100 feet or 150 percent height of tower <sup>2</sup> whichever is greater
Vacant unplatted residentially zoned lands <sup>3</sup>	100 feet or 100 percent height of tower whichever is greater
Existing multifamily residential units greater than duplex units	100 feet or 100 percent height of tower whichever is greater
Nonresidentially zoned lands or nonresidential uses	None; only setbacks apply

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Includes modular homes and mobile homes used for living purposes.

Separation measured from base of tower to closest building setback line.

Includes any unplatted residential use properties without a valid preliminary subdivision plan or valid development plan approval and any multifamily residentially zoned land greater than duplex.

- (ii) Separation distances between towers.
  - (a) Separation distances between towers shall be applicable for and measured between the proposed tower and preexisting towers. The separation distances shall be measured by drawing or following a straight line between the base of the existing tower and the proposed base, pursuant to a site plan, of the proposed tower. The separation distances (listed in linear feet) shall be as shown in Table 2.

Table 2:

Existing Towers—Types				
	Lattice	Guyed	Monopole 75 feet in height or greater	Monopole less than 75 feet in height
Lattice	5,000	5,000	1,500	750
Guyed	5,000	5,000	1,500	750
Monopole 75 feet in height or greater	1,500	1,500	1,500	750
Monopole less than 75 feet in height	750	750	750	750

- (6) *Security fencing.* Towers shall be enclosed by security fencing not less than six feet in height and shall also be equipped with an appropriate anti-climbing device; provided however, that the council may waive such requirements, as it deems appropriate.
- (7) *Landscaping.* The following requirements shall govern the landscaping surrounding towers for which a special land use permit is required; provided, however, that the Council may waive such requirements if the goals of this chapter would be better served thereby:



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- (i) Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from property used for residences. The standard buffer shall consist of a landscaped strip at least four feet wide outside the perimeter of the compound.
- (ii) In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced, deferred, or waived.
- (iii) Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may be a sufficient buffer; in these cases, landscaping may be deferred during the time period that the natural growth provides a sufficient buffer.

(Ord. No. 1138, § 1, 11-10-08; Ord. No. 1163, § 1, 12-13-10)

**1298.08. Building or other equipment storage.**

- (a) *Antennas mounted on structures or rooftops.* The equipment cabinet or structure used in association with antennas shall comply with the following:
  - (1) The cabinet or structure shall not contain more than 36 square feet of gross floor area or be more than seven feet in height. In addition, for buildings and structures which are less than 65 feet in height, the related unmanned equipment structure, if over 36 square feet of gross floor area or seven feet in height, shall be located on the ground and shall not be located on the roof of the structure.
  - (2) If the equipment structure is located on the roof of a building, the area of the equipment structure and other equipment and structures shall not occupy more than five percent of the gross roof area.
  - (3) Equipment storage buildings or cabinets shall comply with all applicable building codes.
- (b) *Antennas mounted on utility poles or light poles.* The equipment cabinet or structure used in association with antennas shall be located in accordance with the following:
  - (1) In A, A-1, B, C, DM-1, DM-2, DM-3, and DM-4 residential districts, the equipment cabinet or structure may be located:
    - (i) In a front or side yard provided the cabinet or structure is no greater than six feet in height or 12 square feet of gross ground area, including foundation pad and the cabinet/ structure is located a minimum of ten feet from all lot lines. The cabinet/structure shall be screened by an evergreen hedge with an ultimate height of at least 42-48 inches and a planted height of at least 36 inches.
    - (ii) In a rear yard, provided the cabinet or structure is no greater than seven feet in height or 36 square feet in gross ground area, including foundation pad. The cabinet/ structure shall be screened by an evergreen hedge with an ultimate height of eight feet and a planted height of at least 36 inches.
  - (2) In I-heavy industrial, H-light industrial, G-2-wholesale, G-1-business, F-1-commercial, F-commercial, E-2-local shopping, E-1-apartment shop, D-2-residential/office, and D-1-professional office districts, the equipment cabinet or structure shall be no greater than seven feet in height or 42 square feet in gross ground area, including foundation pad. The structure or cabinet shall be screened by an evergreen hedge with an ultimate height of eight feet and a planted height of at least 36 inches. In all other instances, structures or cabinets shall be

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screened from view of all residential properties which abut or are directly across the street from the structure or cabinet by a solid fence 6 feet in height or an evergreen hedge with an ultimate height of eight feet and a planted height of at least 36 inches.

- (c) *Antennas located on towers.* The related unmanned equipment structure shall not contain more than 200 square feet of gross floor area or be more than 12 feet in height, and shall be located in accordance with the minimum yard requirements of the zoning district in which it is located.
- (d) *Modification of building size requirements.* The requirements of subsections [1298.08\(a\)](#) through [1298.08\(c\)](#) may be modified by the council to encourage collocation.

(Ord. No. 1138, § 1, 11-10-08)

**1298.09. Removal of abandoned antennas and towers.**

Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned, and the owner of such antenna or tower shall remove the same within 90 days of receipt of notice from the City notifying the owner of such abandonment. Failure to remove an abandoned antenna or tower within said 90 day period shall be grounds for the city to remove, or cause the removal of, the tower or antenna at the owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

(Ord. No. 1138, § 1, 11-10-08)

**1298.10. Nonconforming uses.**

- (a) *Not expansion of nonconforming use.* Towers that are constructed, and antennas that are installed, in accordance with the provisions of this ordinance [chapter] shall not be deemed to constitute the expansion of a nonconforming use or structure.
- (b) *Preexisting towers.* Preexisting towers shall be allowed to continue their usage as they presently exist. Routine maintenance (including replacement with a new tower of like construction and height) shall be permitted on such preexisting towers. New construction other than routine maintenance on a preexisting tower shall comply with the requirements of this chapter.

(Ord. No. 1138, § 1, 11-10-08)

Flint

§ 50-165.5 STANDARDS FOR WIRELESS TELECOMMUNICATION FACILITIES AND WIRELESS TELECOMMUNICATION ANTENNA AND TOWERS.

(a) All wireless telecommunication facilities shall be subject to the requirements of this section, as well as any other applicable provisions of this article and the Flint City Code. If at any time a wireless telecommunication facility does not meet the provisions and regulations of this article, the facility must be removed as provided in subsection (l).

(b) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**CO-LOCATION.** The ability to attach wireless antenna to existing structures which could include towers, rooftops, utility lines, church spires and the like.

**WIRELESS TELECOMMUNICATION ANTENNA.** The device through which wireless telecommunication signals, as authorized by the Federal Communications Commission, are transmitted or received. Not included are AM/FM radio antenna, television antenna, satellite dishes and licensed amateur radio facilities.

**WIRELESS TELECOMMUNICATION EQUIPMENT SHELTER.** The structure in which the electronic receiving and transmitting equipment for a wireless telecommunication is housed.

**WIRELESS TELECOMMUNICATION FACILITY.** A facility consisting of all structures and equipment involved in transmitting and/or receiving telecommunication signals from mobile communication sources and transmitting those signals to a central switching computer, which connects the mobile unit to the land-based telephone system. These facilities include but are not limited to private and commercial mobile radio service facilities, personal communication services (PCS) towers, and cellular telephone towers. Not included in this definition are AM/FM radio towers, television towers, satellite dishes and federally licensed amateur radio facilities.

**WIRELESS TELECOMMUNICATION STEALTH DESIGN.** Telecommunication facilities, including towers and antennas camouflaged in ways to minimize visibility and blend with their surroundings.

**WIRELESS TELECOMMUNICATION TOWER.** A structure intended to support equipment used to transmit and/or receive telecommunication signals including, but not limited to, monopoles, freestanding lattice structures and guyed lattice structures.

(c) *Zoning district requirements.* Wireless telecommunication facilities shall be permitted with the following conditions.

(1) No new wireless telecommunication towers shall be permitted in the single-family districts (A districts), two-family or townhouse districts (B districts), multifamily districts (C districts), office districts (D-1 districts), neighborhood business districts (D-2 districts), community business districts (D-3 districts), metropolitan business districts (D-4 districts) and metropolitan commercial-service districts (D-5 districts). Stealth design of wireless facilities, towers and antennas shall be permitted as a special regulated land use. Co-locations on existing wireless telecommunication facilities or existing structures that do not require any additional height shall be a permitted use.

(2) Wireless telecommunication facilities shall be permitted as a special regulated land use in the general and highway commercial service district (D-6 district), heavy commercial districts (E districts), intermediate manufacturing districts (F districts) and the heavy manufacturing districts (G districts).

(3) All telecommunication wireless facilities shall be prohibited in the parking district as defined in Article XV-A.

(4) New wireless telecommunication facilities, towers or antennas located within a historic district shall be prohibited. Stealth design of wireless facilities, towers or antennas shall be permitted as a special regulated land use upon review and approval of the Flint Historic District Commission and the regulations set forth in this section. Co-location on existing wireless telecommunication facilities or existing structures that do not require additional height shall be a permitted use upon review and approval by the Flint Historic District Commission.

(5) New wireless telecommunication towers located within a City park shall be prohibited. Stealth design of wireless facilities, including towers and antennas, shall be permitted as a special regulated land use. Co-locations on existing wireless telecommunication facilities or existing structures that do not require any additional height shall be a permitted use.

(d) *Compliance with Federal regulations.*

(1) All telecommunication facilities shall comply with current regulations of the Federal Aviation Administration (FAA) and the Federal Communications Commission (FCC) or any other Federal or State agency with authority to regulate telecommunication facilities, including towers and/or antennas.

(2) In the event of a change in Federal or State regulation, the owner of the telecommunication facility shall bring it into compliance with the revised regulations within six months of the effective date of such regulations, unless a different compliance schedule is mandated by the State or Federal agency.

(e) *Compliance with building codes.* All wireless telecommunication shall be constructed in compliance with all applicable building codes, including the Electronic Industries Association/Telecommunication Industry (EIA/TIA) standards for the construction of facilities including towers, antenna and support structures.

(f) (1) *General site location requirements.* No new wireless telecommunication towers shall be permitted within a radius of 1,000 feet of an existing wireless telecommunication tower unless the applicant can demonstrate that the existing telecommunication tower is unsuitable for technical or structural reasons.

(2) *Setback requirements.*

a. In nonresidential zoning districts, wireless telecommunication towers shall be set back at least 50% of the tower height from any adjoining property zoned for nonresidential use.

b. In residential zoning districts, wireless telecommunication towers shall be set back at least 50% of the tower height from all adjoining property zoned for residential use.

c. Other structures associated with the wireless telecommunication tower (such as equipment shelters, guy wire anchors) shall comply with the setback requirements of the district in which the tower is located.

d. The setback requirements of this section are minimums. The Planning Commission may require additional setback distance as part of a special land use approval.

(3) *Co-location requirements.* Unless made technically infeasible as a result of the use of stealth design, new wireless telecommunication towers shall be designed to permit

co-location by at least two additional entities and proposed locations for wireless telecommunication facilities shall be adequately sized and configured to allow the placement of at least two additional telecommunication equipment shelters.

(4) *Tower design.* Wireless telecommunication towers that are not of stealth design shall be constructed as freestanding structures (monopole or lattice towers, as approved by the Planning Commission) and shall have a neutral surface finish color to reduce visual obtrusiveness, except as otherwise required by a State or Federal agency.

(5) *Signs.* Wireless telecommunication facilities shall not be used for advertising purposes. Wireless telecommunication facilities shall display one sign, not to exceed two square feet, which identifies the service provider and an emergency telephone number. These restrictions shall not apply to any safety signs placed on the security fence or tower.

(6) *Fencing.* Wireless telecommunication facilities shall be enclosed by a solid screening fence not less than six feet in height. The Planning Commission shall review the need for the installation of anti-climbing devices and make a determination based on adjacent land use and zoning patterns.

(7) *Screening.* Wireless telecommunication facilities shall be effectively screened with a landscape buffer, approved by the Planning Commission, to obscure views of the tower base, equipment shelter, security fencing, or guy wire anchors from adjacent uses and public rights-of-way. Locations where the visual impact of the tower will be minimal or where existing vegetation provide an effective natural screen or where the security requirements of the principal use prevent screening (utility substations), the Planning Commission may modify this requirement.

(8) *Lighting.* Wireless telecommunication towers shall not be artificially lighted unless required by the FAA, FCC or other agency with jurisdictional authority. If lighting is required by Federal regulation, the applicant shall use the least intrusive form of lighting acceptable under the controlling regulation.

(9) *Equipment shelter design.* The design and materials used in the construction of the equipment shelter shall, to the extent possible, blend the structure with the surrounding built or natural environment. The equipment shelter shall not exceed 15 feet in height.

(10) *Off-street parking.* New wireless telecommunication facilities of non-stealth design shall provide one off-street parking space to accommodate maintenance vehicles if practicable. Driveways and parking spaces serving such facilities may have a gravel surface provided the surface is maintained in a dust-free condition and graded to maintain proper drainage.

(g) *Permitted additional antenna.* Wireless telecommunication antenna shall be considered a permitted accessory use when placed on or attached to any existing wireless telecommunication structure, provided that all other applicable ordinance requirements are complied with. Any initial wireless telecommunication antenna placed on an alternative tower structure shall be subject to the same review and approval procedures as a new wireless telecommunications facility. Subsequent antennas on alternative tower structures shall be considered permitted accessory uses in all districts.

(h) *Permitted tower placement.* An existing wireless telecommunication tower may be placed for the purposes of accommodating the co-location of additional wireless telecommunication antennas subject to the following review and approval process:



(1) Tower replacements that result in the addition of 50 or fewer feet of additional tower height shall require site plan view and approval by the Planning Commission;

(2) Tower replacements that result in the addition of more than 50 feet in height shall require special land use review and approval by the Planning Commission; and

(3) Tower replacements that require the installation of tower lights shall require special land use review and approval by the Planning Commission.

(i) *Site plan procedures.* As shown in § 50-8.3.

(j) *Application requirements.* In addition to any other applicable requirements of Article XXIX, the following information shall be provided in support of an application to initially construct a wireless telecommunication tower:

(1) Certification from a Michigan licensed professional engineer as to the manner in which the proposed wireless telecommunication tower is designed to collapse;

(2) A report that addresses the review criteria contained in subsection (k) below. This report shall include a map depicting the existing and known proposed location of telecommunication including telecommunication wireless towers, wireless telecommunication antenna attached to alternative tower structures, within a one-mile radius of the proposed site. This includes wireless telecommunication towers located within adjacent jurisdictions within the one-mile radius;

(3) The name, address and telephone number of the person to contact regarding site maintenance or other notification purposes. The tower owner shall periodically update this information; and

(4) A statement that indicates the applicant's intent to allow the co-location of other antenna, provided that the cost of modifying the existing tower is borne by the co-locating entity and reasonable compensation is paid by the co-locating entity.

(k) *Review criteria.* A wireless telecommunication tower shall not be approved unless it can be demonstrated by the applicant that there is a need for the tower which cannot be met by placing wireless telecommunication antenna on an existing tower or other suitable structure, or placement of an existing tower:

(1) No existing towers or alternative tower structures have the structural capacity to support the proposed antenna, nor can existing towers or alternative tower structures be reinforced to support the proposed antenna;

(2) No existing towers or alternative tower structures are located within the geographic area that meets the system's engineering requirements;

(3) The cost of using an existing tower or other suitable structure or replacing an existing tower exceeds the cost of constructing a new wireless telecommunication tower; or

(4) The installation or use of an alternative communication technology is unsuitable or infeasible.

(l) *Removal of abandoned facilities.* Any wireless telecommunication tower or antenna that is not operated for a continuous period of 12 months shall be considered abandoned and the owner of such tower or antenna shall remove the same within 90 days of receiving an abandonment notification from the City. Failure to remove an abandoned tower or antenna within 90 days shall be grounds for the removal of the tower or antenna at the owner's sole expense.

(m) *Bond.* Applicant shall provide the City with proof of an annual performance bond in the amount of \$7,500.00 to ensure that the applicant will comply with the provisions set forth in subsection (l) regarding the removal of an abandoned tower and/or antenna.

(n) *Inspection.* An inspection of the wireless telecommunication facility shall be required every two years after the completion of improvements. The inspection shall be carried out by the owner of the facility and shall certify the structural integrity of the wireless telecommunication facility. The inspection certification shall be submitted to the department budget, grants and development and filed with the site permit documents. If the Department of Budget, Grants and Development determines that an inspection has not been completed within the two-year time period, a notice will be sent to the owner. The owner shall have 30 days in which to comply with this requirement. If the inspection is not completed within the 30 days, the permit for the wireless telecommunication facility will be revoked.

(Ord. 3501, passed 10-14-2002; Ord. 3669, passed 11-28-2005)

§ 50-166 RESERVED.

§ 50-167 CONDITIONS AND LIMITATIONS.

(a) The Planning Commission may impose any conditions or limitations upon the establishment, location, construction, maintenance or operations of regulated use as may in its judgment be necessary for the protection of the public interest. Any evidence and guarantee may be required as proof that the conditions stipulated in connection therewith will be fulfilled.

(b) Any special regulated use that ceases for more than 30 days shall not be resumed except by application and approval pursuant to § 50-162, unless

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ARTICLE II. STATE CONSTRUCTION CODE

**ARTICLE II. STATE CONSTRUCTION CODE** <sup>[2]</sup>

[Sec. 7-26. Tower and wireless communications equipment and facilities.](#)

**Sec. 7-26. Tower and wireless communications equipment and facilities.**

- (a) Permit applications to construct, erect, install, enlarge, alter, repair, move, remove, replace, or change all or part of an existing or proposed television, radio, or wireless communication support structure (including buildings), tower, equipment, equipment compound, or facility shall include the following construction documents and site plan information:
  - (1) Identification of the dates, nature, and conditions of any zoning ordinance approvals or permits for the proposed work, with documentation of how requirements or conditions of those approvals or permits have been or will be satisfied, or if there have not been any such zoning approvals or permits, a written explanation of why such approvals or permits should not be required.
  - (2) If the proposed work is to place or install wireless communication equipment on an existing structure and/or in an existing wireless communication equipment area (compound), written certification from the planning division of the city community development department that:
    - a. The existing structure and/or compound, as applicable, is currently in compliance with the zoning ordinance, or if not, is in compliance with a prior approval under the zoning ordinance; and
    - b. Whether there has been a prior final approval under the zoning ordinance of the existing structure and/or compound, as applicable, and if so, that the proposed placement or installation complies with that approval.
  - (3) If the proposed work will increase the height of a wireless support structure, documentation of the original (when first erected), current, and proposed height.
  - (4) If the proposed work will increase the width of a wireless support structure, documentation of the purpose and that the increase is the minimum necessary for that purpose.
  - (5) If the proposed work will increase the area surrounding or adjacent to a wireless support structure within which wireless communication equipment is located (compound), documentation of the existing and proposed new areas of the compound expressed in terms of square feet.
  - (6) If the proposed work is for a new wireless support structure or to place or install wireless communication equipment on an existing structure, a structural analysis and certification by a registered professional engineer of compliance with the Code.
  - (7) The building permit application site plan shall be consistent with the last approved zoning ordinance site plan, if any, shall include and depict matters for which documentation is required in subsections 3, 4 and 5, and shall include information necessary for the building official to determine conformity of the proposed work with the zoning ordinance.
- (b) Regardless of whether the proposed work has been separately approved or permitted under the zoning ordinance, the following conditions shall be attached to and part of every permit or certificate of occupancy issued for that work:
  - (1) The work shall at all times be subject to and in compliance with zoning ordinance requirements applicable to the property upon which it is located.

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- (2) The work shall at all times be subject to and in compliance with the requirements and conditions of any prior and specifically identified zoning ordinance special land use, site plan, or other approval or permit for the property upon which it is located.
- (3) That upon invalidation of any state or federal law that allowed or required permit and/or certificate issuance for the work without a separate approval or permit otherwise required by the zoning ordinance, the building official may, by written notice:
  - a. Amend or modify the permit or certificate to require the zoning approval or permit to be applied for, obtained, and complied with.
  - b. Suspend or revoke the permit or certificate as necessary to enforcement of the amendment or modification of the permit or certificate.

(Ord. No. 13-134.03, Pt. I, 2-11-13)

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FOOTNOTE(S):

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**State Law reference**— State construction code, MCL 125.1501 et seq. [\(Back\)](#)

ARTICLE X. - SPECIAL LAND USE AND PLANNED UNIT DEVELOPMENT (PUD)

**ARTICLE X. - SPECIAL LAND USE AND PLANNED UNIT DEVELOPMENT (PUD)** <sup>51</sup>

[Sec. 60-239. - Wireless communication towers.](#)

Sec. 60-239. - Wireless communication towers.

- (a) *Purpose and intent.* The general purpose of this section is to authorize wireless communications towers, while still maintaining the community integrity, as well as the general character, property value, and aesthetic quality of the city.
- (1) Wireless communication towers, including their respective transmission towers, relay and/or receiving antennas, and normal accessory facilities involved in television, radio, microwave, cable systems, cellular, personal communication and similar communication services and facilities, shall be permitted as a special land use in the industrial zoning districts, when found to be needed or desirable to the public convenience or welfare and in conformance with the following requirements: It is noted that communication towers do not fall under the classification of essential services and may in no way be regulated as such.
  - (2) New towers may be located in the I (industrial) zoning districts after special land use approval.
  - (3) The development of new structures, stealth, concealed antennas, or such appurtenances on existing buildings or structures may be permitted in exceptional cases in other zoning districts, subject to special land use by the planning commission and the city council. Such approval would require a unique approach with no adverse impacts on the surrounding residential properties or adjacent neighborhoods.
  - (4) The co-location of a wireless antenna on an existing tower shall also require special land use approval.
- (b) *Requirements of the applicant.*
- (1) The applicant shall demonstrate that the tower is required in this general area and shall submit the grid patterns necessary for their system as part of such documentation. The city may also request that the applicant provide a map or overlay identifying all of the tower locations, search rings, or coverage area within the City of New Baltimore and the nearest adjoining units of government which are within a three-mile radius of the applicant's site. The city may also require the applicant to show why a cable based, fiber optic, or similar system cannot or should not be used in lieu of a wireless communication tower.
  - (2) In order to maximize the efficiency of providing such services, while minimizing the impact of such facilities on the city, co-location of such facilities on an existing tower or other existing structure is required, when physically feasible. The applicant shall have reviewed public sites, existing towers, tall buildings, or similar structures which are, or may be, capable of providing adequate service. If collocation is deemed not feasible, the applicant shall furnish written documentation as to why a co-location at another site or facility is not feasible and whether they have, in fact, contacted the owners of existing facilities to determine if co-location is possible.
  - (3) A written explanation of the design characteristics and ability of the structure(s) and attendant facilities to withstand winds, ice and other naturally occurring hazards shall be submitted for all towers and antennas. This technical documentation of any information regarding these concerns may be required by the planning commission or city council.
  - (4) The development of any such facility, together with accessory uses, shall be in such a location or be of a size and character as to be compatible with the orderly development of the zoning district in which it is situated, and shall not be detrimental to the orderly and reasonable development or use of properties in the adjacent areas or the community atlarge. Furthermore,

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ARTICLE X. - SPECIAL LAND USE AND PLANNED UNIT DEVELOPMENT (PUD)

the location and improvement of facilities, as provided for herein, shall also be subject to the following additional requirements:

- a. The site shall be of such size and shape that the proposed tower facility may be developed in compliance with all requirements of the city, and any such tower/antenna shall not exceed 175 feet in height.
  - b. The tower site shall be landscaped to obscure the view of the tower base, accessory buildings, and/or protective fences from any public right-of-way in accordance with article IX of this chapter. Greenbelts or landscaped berms may also be required along any residential zoning district. A six-foot fence shall enclose the site.
  - c. The city encourages innovative designs and utility pole camouflage as practical solutions for minimizing the visual pollution impact on residential neighborhoods or the motoring public. Monopole (stealth or equivalent type) antenna structures may be required where such are technologically feasible.
  - d. Setback requirements will be determined in relation to the tower/antenna design and collapse data as stated in subsection (b)(3). Minimum setback requirements, unless otherwise provided for, are as follows:
    1. When adjacent to nonresidential zoning districts, the setback shall not be less than the overall height of the tower/antennas. This setback requirement shall also apply to any accessory buildings. If the design and collapse data for the tower properly documents its ability to collapse down upon itself, the setback requirements to any side or rear yard property line abutting a nonresidential zoning district may be reduced to one-half the overall height of the tower. In no instance shall any tower facility be located within a front yard.
    2. When adjacent to any residential zoning district, the tower setback shall not be less than the overall height of the tower/antennas, plus 50 feet. If the design and collapse data for the tower properly documents its ability to collapse down upon itself, the setback requirement to any side or rear yard property line abutting any residential district may be reduced to the overall height of the tower/antennas. In no instance shall any tower be located within a front yard.
    3. Further modifications to setbacks may be considered when it is documented that the adjacent property is unbuildable due to wetlands, floodplains or other significant limitations. It shall also be determined that there will be no adverse impacts as a result of such development.
  - e. All new tower construction should provide for multiple antennas or multiple facilities upon the tower to encourage co-location. Leasing terms or the lease document must be provided (refer to subsection (b)(8)).
  - f. A visual simulation (rendered drawing to scale) may be required in a district that is within or abuts a sensitive or extremely visible areas as deemed by the planning commission. This simulation should include existing structures and natural elements and the tower's relation to those elements.
- (5) In addition to site plan review for new or reconstructed towers, the planning commission, upon deeming it necessary, shall require an independent third party review of an application. Such review shall be conducted by a professional engineer specializing in this type of communication technology and will be paid for by the applicant. The requirement for such a review shall be based on one or more of the following findings:
- a. The applicant has not substantiated a need for a proposed tower to the satisfaction of the commission.



- CODE OF ORDINANCES

Chapter 60 - ZONING

ARTICLE X. - SPECIAL LAND USE AND PLANNED UNIT DEVELOPMENT (PUD)

- b. The applicant has been unable to disprove the ability to co-locate on an existing tower or structure to the satisfaction of the commission.
  - c. The applicant has not substantiated the structural safety of a structure to be commensurate with the requested setback.
  - d. The data supplied by the applicant is determined to be disorganized, confusing or misleading by the commission.
  - e. The applicant has not substantiated that alternative technology cannot be utilized as a substitute to the proposed tower construction.
- (6) All structures, buildings, and required improvements shall comply with all other applicable codes and ordinances, including Federal Aviation Agency and Federal Communications Commission standards and shall be continuously maintained in a safe and complying condition. The permit may include a requirement for periodic structural and safety inspections and reports, as deemed necessary by the building official.
- (7) The applicant shall submit a letter agreeing that should any tower/antenna facility, approved under this Section, cease to be used for its approved use, for more than 90 continuous days or more than 90 days of any 120 day period it shall be removed from the site within 180 days of such cessation. The lease shall also state such conditions. Removal of the tower/antenna and its accessory use facilities shall also include removing the top three feet of the caisson upon which the tower is located and covering the remaining portion with top soil. The letter of agreement may include a financial guarantee, to insure removal of all facilities approved under the special use permit. Any such agreement, including any financial guarantee, shall be in a form acceptable to the city's attorney. The financial guarantee may also include a provision for periodic adjustments to the guarantee according to changes in the Consumers Price Index or other similarly established and accepted price indexes.
- (8) The applicant shall provide a letter of intent to lease any excess space on a tower facility and commit itself to:
- a. Promptly responding to any requests for information from a potential co-user of their tower/antenna;
  - b. Negotiate in good faith and allow for leased, shared use of the facility, when it is technically practical; and
  - c. Make no more than a reasonable charge for a shared use lease.
- (c) *Planning commission decisions.* The record of the planning commission and city council shall include substantial evidence to support such decision. The written findings and conclusions shall be contained in the minutes of the Commission.

(Ord. No. 158, § 10.28, 9-22-2008)

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FOOTNOTE(S):

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Chapter 60 - ZONING

ARTICLE X. - SPECIAL LAND USE AND PLANNED UNIT DEVELOPMENT (PUD)

**State Law reference**— Special land uses, MCL 125.3502, 125.3504; planned unit development, MCL 125.3503. [\(Back\)](#)



*Thinking outside the sphere*

# New Wireless Regulation from the 2012 Middle Class Tax Relief and Job Creation Act

March 2012

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## New Federal Law –

### **“...May Not Deny, and Shall Approve” Certain Modifications**

A new federal law regarding wireless facility modifications was incorporated in the 2012 Middle Class Tax Relief and Job Creation Act (“Jobs Act”).<sup>1</sup> Section 6409 of the Jobs Act addresses facility modifications and federal properties. The facility modification section (6409(a)) says:

**SEC. 6409. WIRELESS FACILITIES DEPLOYMENT.**

**(a) FACILITY MODIFICATIONS.—**

**(1) IN GENERAL.—***Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104–104) or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.*

**(2) ELIGIBLE FACILITIES REQUEST.—***For purposes of this subsection, the term “eligible facilities request” means any request for modification of an existing wireless tower or base station that involves—*

- (A) collocation of new transmission equipment;*
- (B) removal of transmission equipment; or*
- (C) replacement of transmission equipment.*

**(3) APPLICABILITY OF ENVIRONMENTAL LAWS.—***Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969.*

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<sup>1</sup> This report is informational only. It is not intended as legal advice or as specific recommendations for how to regulate wireless facilities. We employ our considerable experience with FCC technical regulations and with assisting municipalities in wireless facility permitting processes to provide an outline of issues for consideration. Advice of counsel is strongly recommended.



## Not a Blanket Collocation Law

Contrary to some headlines and interpretations, this is not a blanket collocation law. It applies to collocation of transmission equipment at *existing cell towers and existing base stations*, not to new installations on existing buildings/structures.<sup>2</sup>

## Terms

There are a number of terms that must be understood in order to make sense of the entire section.

**Eligible facilities request** – A request for modification of

- a. An “existing wireless tower”, or
- b. An existing “base station”

And, that involves

- (A) “Collocation of new transmission equipment”;
- (B) “Removal of transmission equipment”; or
- (C) “Replacement of transmission equipment”.

To be an eligible facility, a proposal must involve an existing wireless installation (a. or b. above) as well as meeting criterion (A), (B), or (C) above.

**Collocation** – is not defined in the Jobs Act. The FCC generally uses a definition that involves the placement of a wireless facility on any existing structure, whether or not there is already a wireless facility at the structure.<sup>3</sup> In contrast, many local bylaws/ordinances say collocation (or co-location) is the use of a structure by more than one wireless facility. Be careful with this. We now recommend the use of the term “site-sharing” in bylaws to indicate the placement of additional facilities where facilities already exist, and retiring the term “co-location” except in the context of the FCC definition.

**Wireless tower** – The Jobs Act does not define this term. The FCC has used a definition for “tower” as “any structure built for the sole or primary purpose of supporting FCC-licensed

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<sup>2</sup> PCIA Press Release February 21, 2009 stated in part: “PCIA Hails New Federal Collocation-by-Right Legislation... The Wireless Infrastructure Association applauds the passage of legislation that will enable wireless infrastructure providers to upgrade and expand existing facilities efficiently and cost-effectively. The wireless facilities siting provision of the Middle Class Tax Relief and Job Creation Act of 2012 streamlines collocation on and modification of an existing structure that does not substantially change the physical dimensions of the structure.” (*Emphasis added*) This language is ambiguous at best. The law only affects collocation of equipment under certain conditions.

<sup>3</sup> “...the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.” Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (2001), *available at* 47 C.F.R. Part I, Appendix B (“Collocation Agreement”).



antennas and their associated facilities.” Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (2001), available at 47 C.F.R. Part I, Appendix B

**Substantially change the physical dimensions** – The Jobs Act does not define this term. The FCC has used a definition for “substantially change” in another situation as follows:

The mounting of a proposed antenna on the tower that would **increase the existing height of the tower by more than 10%**, or **by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet**, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or

The mounting of a proposed antenna that would involve adding an appurtenance to the body of the tower **that would protrude from the edge of the tower more than twenty feet**, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable.

Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (2001), available at 47 C.F.R. Part I, Appendix B

The wireless industry would have municipalities apply this definition exclusively. Municipalities should confer with counsel on how to interpret the meaning of “substantially change.” See the discussion below for ways the above definition may undo carefully applied zoning regulations.

**Base station** – The Jobs Act does not define this term. It is generally used by the FCC to describe a radio facility at a fixed location that communicates to mobile devices. Each licensed wireless facility has its own base station.<sup>4</sup> A cell site, therefore, contains one or more base stations. The cell site is not a base station.

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<sup>4</sup> For example, PCS regulations of 47 CFR §24.232(a) references the radio frequency characteristics of a particular licensed base station, “Base stations are limited to 1640 watts peak equivalent isotropically radiated power ...” Similarly, Specialized Mobile Radio regulations state, (90.656(a)), “The licensees of base stations that provide Specialized Mobile Radio service on a commercial basis of the use of individuals, Federal government agencies, or persons eligible for licensing under either subparts B or C of this part will be responsible for exercising effective operational control over all mobile and control stations that communicate with the base station.” Wireless communication services regulations also treat the base station as the individual licensed facility providing communications, (27.53(a)(9)(v)) “The nominal average base station transmit output power is no more than 800 milliwatts when the base station antennas is located at a height of at least 8 meters (26.25 feet) above the ground...” Section 22.99 Definitions, Cellular System, has a definition that includes this, “Cellular systems employ techniques such as low transmitting power and automatic hand-off between base stations of communications in progress to enable channels to be reused at relatively short distances.”



## Substantial Change?

In the context of the Jobs Act limitation, if a facility is an eligible facility, the town “may not deny, and shall approve” the request for modification. Exactly how the approval is supposed to happen is not spelled out. The PCIA (the wireless infrastructure association) states this law is simply preemption of local authority, and that no conditions can be applied to any such approval.<sup>5</sup>

In terms of process, there remains the simple fact that a proposal will have to be considered for the nature of the change, “substantial” or not? Here are some examples of possible trip-points in interpreting the law.

## Modification of Stealth Installations?

What if the proposal were to modify a facility by adding to the diameter of a concealed antenna unipole? Despite the FCC’s prior use of a 20 foot horizontal extension as a threshold for “substantially change,” it would seem out of context when considering a modification to a stealth design. The whole point of a stealth design is to maintain visual inconspicuity. Imagine a ten or twenty foot horizontal extension to a 2 foot diameter unipole. Isotrope suggests that the 20 foot dimensional limitation referenced in the 2001 Programmatic Agreement refers to a hypothetical traditional cell tower design with large exposed antenna arrays and not to a “stealth” design such as a unipole. Adding up to twenty feet to the unipole’s width could completely violate the intent of the municipality having required a unipole in the first place.



Consider the two images above (unipole left, conventional monopole right, each about the same height). Is the new law saying that it is not a substantial change to a cell tower if it is converted

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<sup>5</sup> PCIA document says: “Preempts zoning review and conditional approvals of eligible Facilities requests”  
[http://pcia.com/images/Docs/Advocacy\\_Outreach/PCIA\\_Federal\\_Siting\\_Legislation\\_Facts\\_March\\_2012.pdf](http://pcia.com/images/Docs/Advocacy_Outreach/PCIA_Federal_Siting_Legislation_Facts_March_2012.pdf)





from the unipole design on the left to the open-frame design on the right? The extensions from the monopole on the right are not greater than 20 feet (about 8-10 feet at most). According to one interpretation by an industry association, a change like this cannot be denied.

A unipole is generally built with a sleek, continuous taper. However, there are modifications that have been permitted in some places that changed unipoles to have a “fat” section to accommodate larger antennas of one carrier or more. There is still a cover around the antennas, but with a larger diameter than the rest of the pole.

It might be necessary for a local permit granting authority to evaluate a visual analysis to determine whether a proposed design alteration is a substantial change to the dimensions.

### **Modifications that Change Fundamental Criteria?**

Consider a cell tower with several wireless providers already on it, and an eligible facility wants to go up ten feet to accommodate new antennas. Let’s say that changes the tower in a way that requires new air navigation lighting, because the tower was originally built to be just short of the required-lighting height. Or perhaps the change causes the tower to exceed the permissible height for the zoning district, fail a fall zone criterion or exceed a property line setback. The permit granting authority will have to consider whether these conditions make for a substantial change or whether the literal reading suggested by industry means the zoning authority is required to stay hands-off.

### **New Carrier?**

The law applies to “eligible facilities.” Eligible facilities are existing cell towers and existing base stations. Looking at base stations first, an existing base station is easily understood to mean the base station of an individual licensee. As discussed above, a cell site with five wireless providers has five base stations. Any existing carrier’s base station facility and/or equipment on a cell site is apparently protected. A new carrier proposing to install facilities at an existing cell site is installing a new base station, which, depending on interpretation, might be protected as a generic “collocation of transmission equipment” or not protected due to the lack of that carrier’s existing facilities at the site (“eligible facility”).

Now, considering the use of an existing tower, is a new carrier proposing specifically to come onto an existing cell tower protected? If the eligibility applies only to an existing tenant on the tower (using an existing base station), then, no, the new carrier is not existing on the cell tower or using an existing base station. If, on the other hand, the tower itself is the “eligible facility” and is generalized to allow any collocation of equipment on the tower, including equipment of new providers, it might be interpreted to mean a new tenant is protected for a facility “modification.” However, there remains a potential conflict in the fact that a new tenant installing equipment on the tower is likely to be installing a new base station on the ground. While the tower is existing, the base station is not. Ultimately, this raises the question, is this a



situation when a new base station is protected by the law because it is site-sharing at an existing cell tower?

## Unintended Consequences: Reluctance to Grant New Facilities?

The language of the Jobs Act is hot off the press and has not been interpreted in public hearings to any extent (not to mention it is far too soon to have guidance from court cases). Municipalities are faced with interpreting the new law, and no doubt, court cases will follow to thresh out the meaning of the various requirements.

Unfortunately, in protecting modifications to existing facilities, this new law may provoke protective local responses to *new facility* proposals. Land use boards hearing applications for new wireless facilities will consider the fact that an approval of a new facility with conditions today may not necessarily lock in those conditions for the future. Any newly approved facility whose future modification meets the threshold of the Jobs Act, could lose those original restrictive conditions. Height limits, dimensional limits, stealth design, prohibition of changes that would require FAA lighting, and other controls on a newly approved facility could be bypassed under the new law, if some interpretations of the law hold true.

## Recommendations

Until things are clarified, for new modification applications we suggest the following:

- Seek advice of counsel.
- Consider passing new regulations to outline the process for proposed modifications.
  - Define substantial change.
  - Consider the difficult scenarios; what about:
    - Preexisting non-conforming facilities?
    - Facilities where modifications are explicitly not allowed?
    - Stealth facilities?
    - Modifications whose implementation would create nonconformity?
    - Modifications that would exceed the conditions of an earlier permit.
  - Allow expedited staff review or building permit approval for non-substantial changes.
- Consider whether to accept a new occupant at an existing facility as an “eligible facility.”
- Consider how current facilities and current regulations for new facilities might be bypassed by future “modification” requests. Revise controls on new facility applications if this is of concern.
- Remember that not all collocation applications are eligible facilities requests.

The federal law was put in place because many wireless service providers have been upgrading their networks to provide better service, only to be delayed by full application proceedings for truly minor changes. Not all changes are minor, and there’s the problem. Municipalities are now being told to approve minor changes, however they are ultimately defined.

# Westtown Area Zoning Public Hearing

<u>Parcel or Area</u>	<u>Current Zoning</u>	<u>Potential Zoning</u>
108 state	B4	R1
111 S Lansing	I1	R1
115 S Lansing	I1	RM-1
125-219 S Lansing	I1	R1
814 Lynn	I1	R1
401 S State	I1	R1
503-617 S Chipman	B4	B1
919-921 Beehler	I1	R2
123 N Lansing	B4	OS1
412 S. Shiawassee	I2	I1
450 S. Shiawassee	I2	I1
202-308 S. Shaiwassee	I1	OS1
508-509 Genesee	I1	OS1
511 Clinton	I1	OS1
615 Clinton	I1	R1

## November Additions

312 State	R2	R1
520 Milwaukee	I2	I1
522 Milwaukee	I2	I1

### Classifications

- R1 - One Family Residential
- R2 - Two Family Residential
- OS1 - Office Service District
- B4 - General Business District
- I1 - Light Industrial
- I2 - General Industrial

27-Nov-13