

## ARTICLE 19.00

### WIRELESS COMMUNICATION FACILITIES

#### Section 19.1. Intent

It is the intent of Hamburg Township to conform to the Federal and State laws and administrative rules governing the installation and operation of wireless communication facilities and equipment including, but not limited to, the Federal Communications Act of 1996 (47 USC 151), the Sequestration Act of 2012, and the Michigan Zoning Enabling Act (MCL 125.3514). Furthermore, it is the intent of Hamburg Township to minimize the overall number of newly established locations for wireless communications facilities and support structures; to encourage the use of existing structures for wireless communications facilities purposes; to protect the public health, safety, and welfare; and to retain the aesthetic quality and character of the community.

#### Section 19.2. Definitions

- A. **Collocate:** To place or install wireless communications equipment on an existing wireless communications support structure or in an existing equipment compound.
- B. **Equipment Compound:** An area surrounding or adjacent to the base of a wireless communications support structure and within which wireless communications equipment is located.
- C. **Existing Facility:** The wireless towers or base stations that have been reviewed and approved under the applicable local zoning or siting process, or that the deployment of existing transmission equipment on the structure received another form of affirmative State or local regulatory approval.
- D. **Fall Zone:** A certification by a State of Michigan licensed and registered professional engineer regarding the manner in which the proposed tower will fall. The certification will be utilized in determining appropriate setbacks to be required for the tower.
- E. **Wireless Communications Equipment:** The set of equipment and network components used in the provision of wireless communications services, including, but not limited to, antennas, transmitters, receivers, base stations, equipment shelters, cabinets, emergency generators, power supply cables, and coaxial and fiber optic cables, but excluding wireless support structures.
- F. **Wireless Communication Facilities (Attached):** Shall mean wireless communication facilities that are affixed to existing structures, such as existing buildings, towers, water tanks, utility poles, and the like. A wireless communication support structure proposed to be newly established shall not be included within this definition.
- G. **Wireless Communication Facilities:** Shall mean and include all structures and accessory facilities relating to the use of the radio frequency spectrum for the purpose of transmitting or receiving telephone, cellular telephone, television, microwave and any other form of telecommunications signals. This may include, but shall not be limited to, radio towers, television towers, telephone devices and exchanges, microwave relay towers, telephone transmission equipment buildings, and commercial mobile radio service facilities.

- H. **Wireless Communications Support Structure:** A structure that is designed to support, or is capable of supporting, wireless communications equipment, including a monopole, self-supporting lattice tower, guyed tower, water tower, utility pole, or building.

### Section 19.3. Exemptions

- A. The following antennas installed on an existing wireless communications support structure are exempt from the requirements of this Article but are subject to applicable zoning requirements:
1. Amateur radio antennas operating under a license issued by the FCC.
  2. Television reception antennas.
  3. Citizen band radio antennas.
  4. Short wave antennas.
  5. Satellite dishes.
  6. Government wireless communications equipment and support structures which are subject to State and Federal law or regulations that preempt municipal regulatory authority.

### Section 19.4. Wireless Communication Facilities Approval Requirements

- A. **Administrative Review:** Wireless communications equipment, or collocation, removal, or replacement of wireless communications equipment is considered a permitted use of property and shall not be subject to special land use approval or any other approval under this section if all of the following requirements are met:
1. The wireless communications equipment will be collocated on an existing wireless communications support structure or in an existing equipment compound.
  2. The existing wireless communications support structure or existing equipment compound is in compliance with the local unit of government's zoning ordinance or was approved by the appropriate zoning body or official for the local unit of government.
  3. The proposed collocation will not do any of the following:
    - a. Increase the overall height of the wireless communications support structure by more than 20 feet or 10% of its original height, whichever is greater.
    - b. Increase the width of the wireless communications support structure by more than the minimum necessary to permit collocation.
    - c. Increase the area of the existing equipment compound to greater than 2,500 square feet.
  4. The proposed collocation complies with the terms and conditions of any previous final approval of the wireless communications support structure or equipment

compound by the appropriate zoning body or official of the local unit of government.

- B. **Site Plan Review:** A Wireless Communication Facility, wireless communications equipment, or collocation of wireless communications equipment that does not comply with Section 19.4 A above shall be a permitted use in the following circumstances, subject to site plan approval under Article 4:
1. In the Public and Private Recreation Facilities District.
  2. Located on any government owned property.
  3. In the Limited Industrial, General Industrial, Neighborhood Service, and Community Service Districts.
  4. An existing structure, which serves as an attached wireless communication facility where the existing structure is not altered or materially changed in appearance, as determined by the Planning Commission.
- C. **Special Use Permit and Site Plan Review:** If a Wireless Communication Facility, wireless communications equipment, or collocation of wireless communications equipment does not meet Section 19.4 A or B above, wireless communication facilities shall require special use permit and site plan review subject to Section 3.5 and Article 4.

#### **19.4.1. General Regulations for All Wireless Communications Equipment and Support Structures.**

- A. The maximum height of the new or modified support structure and antenna shall be the minimum height demonstrated to be necessary for reasonable communication by the applicant (and by other entities to collocate on the structure). The accessory building contemplated to enclose such things as switching equipment shall be limited to the maximum height for accessory structures within the respective district.
- B. The setback of the support structure from all lot lines or public, or private road rights-of-way, shall be no less than the radius of the fall zone for the support structure in the event of a total collapse, or the applicable setback for the zoning district the support structure is located within, whichever is greater. Other criteria, such as applicable regulations for the district in question used in determining the appropriate setback to be required for the structure and other facilities, must be provided.
- C. The setback of the wireless communications equipment shall be the required setbacks for the zoning district they are located within.
- D. There shall be unobstructed access to the wireless communication equipment and support structures for operation, maintenance, repair, inspection purposes, and for emergency vehicles, which may be provided through or over an easement.
- E. The Planning Commission shall, with respect to the color of the support structure and all accessory buildings, review and approve so as to minimize distraction, reduce visibility, maximize aesthetic appearance, and ensure compatibility with surroundings. It shall be the responsibility of the applicant to maintain the wireless communication facility in a neat and orderly condition.

#### **19.4.2. Application Requirements.**

The following items are required when applying for all wireless communications facilities permits:

- A. Project plans illustrating:
  1. That the proposed operation meets the requirements of Article 4.00 of the Zoning Ordinance;
  2. That the support system shall be constructed in accordance with all applicable building codes.
- B. A soils report from a geotechnical engineer, licensed in the State of Michigan. This soils report shall include soil borings and statements confirming the suitability of soil conditions for the proposed use. The requirements of the Federal Aviation Administration, Federal Communication Commission, and Michigan Aeronautics Commission shall be noted.
- C. A maintenance plan, and any applicable maintenance agreement, shall be presented and approved as part of the site plan for the proposed facility. Such plan shall be designed to ensure the long term, continuous maintenance to a reasonably prudent standard.
- D. A map showing existing and known proposed wireless communication facilities within the Township, and further showing existing and known proposed wireless communication facilities within areas surrounding borders of the Township. If the information is on file with the Township, the applicant shall update it as needed. Any such information which is a trade secret and/or other confidential commercial information, which if released would result in commercial disadvantage to the applicant, may be submitted with a request for confidentiality in connection with the development of governmental policy MCL 15.243(1)(g). This ordinance shall serve as the promise to maintain confidentiality to the extent permitted by law. The request for confidentiality must be prominently stated in order to bring it to the attention of the Township.
- E. The name, address and phone number of the person to contact for engineering, maintenance and other notice purposes. This information shall be continuously updated during all times the facility is on the premises.
- F. A signed fall zone certification letter by a State of Michigan licensed professional engineer will be required if the support structure setback from the property boundary is less than the height of the support structure. This certification letter will be in regard to the manner in which the proposed support structure will fall. The letter will be utilized, along with other criteria such as applicable regulations for the district in question, in determining the appropriate setback to be required for the support structure and equipment.
- G. A filing or no filing determination from the FCC and FAA.
- H. If the project is a new facility or modification to an existing facility the project shall be designed and constructed so as to accommodate collocation.
  1. If a party who owns or otherwise controls a wireless communication facility fails or refuses to alter a structure to accommodate a proposed and otherwise feasible collocation, such wireless communications facility shall be deemed to be a nonconforming structure and use, and shall not be altered, expanded or extended in any respect.

2. If a party who owns or otherwise controls a wireless communication facility shall fail or refuse to permit a feasible collocation, and this requires the construction and/or use of a new facility, the party failing or refusing to permit a feasible collocation shall be deemed to be in direct violation and contradiction of the policy, intent and purpose of the Township, and, consequently such party shall take responsibility for the violation, and shall be prohibited from receiving approval for a new wireless communication support structure within the Township for a period of five (5) years from the date of the failure or refusal to permit the collocation. Such a party may seek and obtain a variance from the Zoning Board of Appeals if and to the limited extent the applicant demonstrates entitlement to variance relief which, in this context, shall mean a demonstration that enforcement of the five (5) year prohibition would unreasonably discriminate among providers of functionally equivalent wireless communication services, or that effect of such enforcement would have the effect of prohibiting the provision of personal wireless communication services.
- I. If the project is a new facility, a feasibility study of the existing towers and structures in the area for collocation is required. Collocations shall be deemed "feasible" for purposes of this section where all of the following are met:
    1. The wireless communication provider entity under consideration for collocation will undertake to pay market rent or other market compensation for collocation.
    2. The site on which collocation is being considered, taking into consideration reasonable modification or replacement of a facility, is able to provide structural support.
    3. The collocation being considered is technologically reasonable, e.g., the collocation will not result in unreasonable interference, given appropriate physical and other adjustment in relation to the structure, antennas, and the like.
    4. The height of the structure necessary for collocation will not be increased beyond a point deemed to be permissible by the Township, taking into consideration the several standards contained in Section 19.4.1.
  - J. The application shall include a description of security to be posted at the time of receiving a building permit for the facility to ensure removal of the facility when it has been abandoned or is no longer needed. In this regard, the security shall, at the election of the applicant, be in the form of: (1) cash; (2) letter of creditor, (3) an agreement in a form approved by the Township Attorney and recordable at the office of the County Register of Deeds, establishing a promise of the applicant and owner of the property to remove the facility in a timely manner as required under this section of the ordinance, with the further provision that the applicant and owner shall be responsible for the payment of any costs and attorney fees incurred by the community in securing removal.

### **Section 19.5. Special Land Use Application Requirements**

- A. In addition to the standards in Section 3.5 for Special Use Permits, the following standards shall also apply to all wireless communications equipment and support structures for which a special land use permit is required:

1. The applicant shall demonstrate to the satisfaction of the Planning Commission the need for the proposed wireless communication equipment or support structure to be located outside the permitted areas.
  2. The proposal shall be reviewed in conformity with the collocation requirements of this Article.
  3. At the time of the submittal, the applicant shall demonstrate that a location within the permitted areas cannot reasonably meet the coverage and/or capacity needs of the applicant.
  4. Wireless communications equipment and support structures shall be of a design such as (without limitation) a steeple, bell tower, or other form, which is compatible with the existing character of the proposed site, neighborhood, and general area as approved by the Township.
- B. Special land use applications for wireless communication facilities shall be processed in accordance with all applicable state and federal requirements.

#### **Section 19.6. Removal**

- A. A condition of every approval of a wireless communication facility shall be adequate provision for removal of all or part of the facility by users and owners when the Township becomes aware that a facility has not been used for one hundred eighty (180) days or more. For purposes of this section, the removal of antennas or other equipment from the facility, or the cessation of operations (transmission and/or reception of radio signals) shall be considered as the beginning of a period of nonuse.
- B. The situations in which removal of a facility is required, as set forth in paragraph (A) above, may be applied and limited to portions of a facility.
- C. Upon the occurrence of one or more of the events requiring removal, specified in paragraph (A) above, the property owner or persons who had used the facility shall immediately apply or secure the application for any required demolition or removal permits, and immediately proceed with and complete the demolition/removal, restoring the premises to an acceptable condition consistent with Township codes and ordinances determined by the Zoning Administrator.
- D. The Township may remove or secure the removal of the facility if the following has not occurred:
1. The required removal has not been lawfully completed within sixty (60) days of the applicable deadline, and after at least thirty (30) days written notice.
  2. An application for reuse of the facility has not been submitted to the Township within the one hundred and eighty (180) days. An application for reuse is subject to the review procedures and standards outlined in this Ordinance.
- E. Any and all costs incident to the removal of the facility, including, but not limited to administrative charges, legal fees, court cost, construction costs, or expenses shall be the sole responsibility of the owner of the facility or any security deposits as may have been required by the Township at the time the application was made for establishing the

facility.