

MEMORANDUM



TO: PLANNING COMMISSION
FROM: ^{Barbara} BARBARA MCBETH, AICP, DEPUTY DIRECTOR
OF COMMUNITY DEVELOPMENT
SUBJECT: WIRELESS COMMUNICATIONS ORDINANCE
DATE: OCTOBER 19, 2012

Section 2508 of the City of Novi's Zoning Ordinance provides for placement of various communication antennas, towers and related equipment. The City Attorney's office has reviewed recent changes in State Law related to Wireless Communications Equipment (attached) and provided suggested modifications to the Zoning Ordinance and Construction Code to insure that the standards in the new law are recognized and provided for in the City's Code of Ordinances. The strike-through draft language is attached to this memo.

Much of the existing Zoning Ordinance text is being reformatted and refined, including the lead paragraph. Current subsections a-o are being renumbered (on pages 3-5 of the attached draft ordinance) with the changes highlighted in the document. New sections start on page 6, including "Application and Review Requirements, Procedures and Limitations". Definitions from the State Law are provided on page 9.

In a separate attachment, the City's Construction Code is proposed to be amended to codify construction documents and site plan information that should be submitted to the building official for wireless communications requests. It also provides conditions that would be part of permits and certificates of occupancy issued under the construction code.

The Planning Commission is asked to review the proposed draft language and hold the scheduled public at the October 24th Planning Commission meeting. The Planning Commission will be asked to forward a recommendation to the City Council for consideration of the ordinance amendments.

Please feel free to contact the Community Development Department if there are any questions.

**PROPOSED ORDINANCE
STRIKE-THROUGH VERSION**

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. _____

AN ORDINANCE TO AMEND ORDINANCE NO. 97-18 AS AMENDED, THE CITY OF NOVI ZONING ORDINANCE, AMENDING SECTION 2508.1, COMMERCIAL TELEVISION AND RADIO TOWERS, COMMUNICATION ANTENNAS, PUBLIC UTILITY MICROWAVE TOWERS, PUBLIC UTILITIES T.V. TRANSMITTING TOWERS, IN ARTICLE 25, GENERAL PROVISIONS, TO RECOGNIZE AND PROVIDE FOR IMPLEMENTATION OF STATE AND FEDERAL LEGISLATION REGARDING WIRELESS COMMUNICATION EQUIPMENT AND FACILITIES.

THE CITY OF NOVI ORDAINS:

Part I. That Ordinance No. 97-18, the City of Novi Zoning Ordinance, is amended, by amending Section 2508.1, in Article 25 – General Provisions, to read as follows:

Sec. 2508. - Uses Not Otherwise Included Within a Specific Use District.

Introductory paragraphs to section [Unchanged]

1. *Commercial Television and Radio Towers, Communication Antennas, Public Utility Microwave Towers, Public Utilities T.V. Transmitting Towers.* Radio and television towers, communication antennas, public utility microwave towers, public utility television transmitting towers, and their attendant facilities shall be permitted by special land use approval, site plan approval, or after administrative review, as provided in subsection (a), subject to the following criteria and applicable approval standards in subsection (b) and the application and review requirements, procedures, and limitations in subsection (c), being met:

(a) City Council approval and Planning Commission recommendations and public hearings are not required for proposed uses that are permitted subject to administrative review or Planning Commission site plan approval as described below in subsections (2) and (3).

(1) Special land use approval. Special land use approval by the City Council upon the recommendation of the Planning Commission is required for proposals for new communication antenna towers or poles and for proposals that require discretionary decisions under the approval standards in subsection (b).

(2) Wireless Communication Equipment as a Permitted Use Subject to Administrative Review. A proposal to place or install wireless communication equipment on an existing wireless communications support structure or in an existing wireless communications equipment compound that satisfies the following criteria does not require special land use or site plan approval. Confirmation that these criteria are satisfied shall be determined by an administrative review and written certification by the Planning Division of the City Community Development Department to the construction code building official prior to issuance of any construction code permits.

a. The existing wireless communications support structure and/or wireless communications equipment compound are in compliance with this ordinance, and if not, are in compliance with a prior approval under this ordinance.

b. The proposal complies with the terms and conditions of any prior final approval under this ordinance of the wireless communications support structure and/or wireless communications compound.

c. The proposal will not increase the height of the wireless communications support structure more than the greater of 20 feet or 10% of its original height (as first erected without any later additions.)

d. The proposal will not increase the width of the wireless communications support structure by more than necessary to the stated and documented purpose of the increase.

e. The proposal will not increase the area of the existing wireless communications equipment compound to more than 2,500 square feet.

(3) Wireless Communications Equipment as a Permitted Use Subject to Site Plan Approval. Proposals to place or install wireless communications equipment on an existing wireless communications support structure or in an existing wireless communications equipment compound that involve increases in height, width or area greater than those specified in subsection (a)(2) above, or that do not comply with the terms or conditions of a prior zoning ordinance approval, are permitted subject to review and approval of a site plan or site plan amendment conforming to the applicable standards in subsection (b). Applications shall be reviewed and acted on under the procedures in subsection (c), and if approved, shall be subject to any prior special land use approval conditions for the wireless communications support structure or wireless communications equipment compound.

(b) Approval standards. In addition to serving as standards for special land use approval, the standards in this subsection shall also apply to the Planning Commission site plan and administrative reviews provided for in subsections (a)(2) and (3).

- (1) Communication antenna towers and poles shall be permitted located in I-1 and I-2 Districts; ~~and provided the antenna or pole is located~~ at least 300 feet from any residentially-zoned districts. The City Council may permit a communication antenna or pole in other zoning districts not listed above or within 300 feet of a residentially-zoned district, or may otherwise vary the standards contained herein, when it finds that such restrictions would prohibit or have the effect of prohibiting the provision of personal wireless services, so as to contravene the provisions of 47 U.S.C. § 332(c)(7)(B)(i). The relief granted shall be the minimum necessary to eliminate such an effect.
- (2) The following criteria shall be considered in the recommendation of the Planning Commission, and decision of the City Council:
 - (i) Whether the requested use is essential or desirable to the public convenience or welfare;
 - (ii) Whether the proposed antenna tower or pole is of such location, 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 development, environment or use of adjacent properties and/or zoning districts. Consideration will be given to applications which present a creative solution to proliferation of antennas.
 - (iii) Whether denial of the request will prohibit or have the effect of prohibiting the provision of personal wireless services.
- (3) In order to maximize the efficiency of the provision of telecommunication services, while also minimizing the impact of such facilities on the City, co-location, or the provision of more than one facility at a single location, shall be required in accordance with the following. An applicant seeking to establish a new antenna or pole for the providing of wireless services shall be required to provide information regarding the feasibility of co-location at existing sites. Before approval is granted for a new facility, the applicant shall demonstrate that it is not possible to co-locate at an existing site. Further, the applicant shall be

required to provide a letter of intent to lease excess space on a facility and commit itself to:

- (i) Respond to any requests for information from another potential shared use applicant;
- (ii) Negotiate in good faith and allow for leased shared use if an applicant demonstrates that it is technically feasible, and
- (iii) Make no more than a reasonable charge for a shared use lease.

The requirement to permit co-location in accordance with such letter of intent shall be deemed a condition of approval of an application. If a party that owns or otherwise controls a facility fails or refuses a proposed and feasible co-location, that party shall be deemed in violation of this section. In addition to those remedies provided in Article 38, the party shall be precluded from receiving approval for a new wireless communication facility until such violation is corrected.

To further minimize the impact of such facilities on the City, if facilities cease to be used for transmission purposes, the facilities, including all buildings and structures, shall be removed in their entirety within 90 days of the ceasing of such use and a note evidencing this requirement shall be placed on the site plan.

- (4) The use may be located on the same property with a second principal use. When a tower or pole is located on the same property as another principal use it shall be separated from all structures, associated with the other principal use by a distance no less than forty (40) percent of the height of the pole or tower. Separation shall not be required for an antenna attached to an existing building, tower, pole or other structure. For purposes of access to public streets and dimensional requirements, the property shall be treated as a single site. If a tower ceases to be utilized it shall be removed within 90 days, along with any building, fencing or other structural improvements.
- (5) A setback consisting of forty (40) percent of the height of an antenna tower and antenna (forty (40) percent fall zone) shall be required for any antenna tower or pole. Fall zone percentage means the distance relative to the height of the tower or pole, as measured from surrounding grade to the uppermost element of the antenna, which the tower or pole must set back from all adjacent property lines. If the setback is less than one hundred (100) percent of height of tower or pole, the applicant must

provide data showing that the facility is designed to keep any falling tower, pole or other infrastructure within the fall zone. Notwithstanding the above, where a site is adjacent to residentially-zoned property, the minimum setback shall be not less than 100 percent of the height of the antenna tower and antenna.

- (6) All transmission lines related to and serving any antenna tower or pole shall be placed underground.
- (7) ~~Antenna towers, poles and related equipment shelter buildings shall be subject to site plan review as provided in Section 2516.~~ All equipment not mounted on the antenna tower or antenna pole must be installed in an equipment shelter building, unless otherwise permitted in this Section. Equipment shelter buildings shall be constructed of face brick on all sides with a gable roof in addition to compliance with the facade standards of Section 2520
- (8) The approving body may permit the installation of outdoor cabinets or other equipment outside of an equipment shelter building, provided that the equipment is located within a screened equipment compound. The applicant shall demonstrate to the approving body that the placement of equipment within an equipment shelter building is not practical, due to existing site conditions or due to the constraints of the equipment itself. The equipment compound shall be adequately screened from view from any public road and all neighboring properties. Any equipment permitted outside of a building, including cabinets, may not exceed the height of the screening. Screening may consist of a masonry screen wall that complies with Section 2520, or with landscaping that provides for adequate screening of the equipment compound, as approved by the city's landscape architect. The equipment compound entrance shall be screened with an opaque gate.
- (9) Equipment shelter buildings and equipment compounds shall comply with the building setback and height standards for the District in which they are located.
- (10) Antenna towers shall not exceed the minimum height necessary for providing personal wireless services and co-location, or one hundred and fifty (150) feet in height as measured from surrounding grade, whichever is less.
- (11) Where a wireless communication facility is proposed on the roof of a building, and the equipment enclosure is proposed as a roof appliance or penthouse on the building, it shall be designed, constructed, and maintained to be architecturally compatible with

the building on which it is to be located, and shall be subject to the standards of Section 2520.

- (12) Antenna shall be permitted to be mounted on an existing structure, such as a building, water tower or utility tower, provided that all other provisions of this ordinance are met.
- (13) If permitted in a residential district, antenna towers or poles shall be of a "stealth design" that conceals the antenna and associated mounting structure, or other design that is deemed harmonious with the property and surrounding residential districts.
- (14) As a condition to every approval, the applicant shall provide to the City of Novi Building Department on an annual basis, beginning the first July 1st after erection of the tower, an inspection report from a licensed engineer confirming: (1) the continued structural integrity of the facility in accordance with applicable standards; and (2) that the facility meets those standards imposed by the Federal Communications Commission for radio frequency emissions. A notice of these conditions shall be placed on the site plan.

~~(15) When an applicant proposes solely to construct an antenna upon an existing structure, install additional equipment or construct an additional equipment building, without the construction of any additional tower or pole, the application and plan may be reviewed administratively without the necessity of special land use approval, provided that the criteria of this subsection are met. Under such administrative review, determinations that would otherwise be made by the Planning Commission or City Council shall be made by the Planning Division of the Community Development Department.~~

(c) Application and review requirements, procedures and limitations.

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

a. A site plan in accordance with the requirements in Section 2516 and containing all information required to demonstrate compliance with the approval standards in subsection (b).

b. An application fee in an amount established by Resolution of the City Council not to exceed \$1,000.00.

c. Identification of the dates, nature and conditions of any prior zoning approvals or permits for the property.

d. If the application is for a new wireless communication support structure or to place or install additional wireless communications equipment on an existing support structure, a structural analysis and certification to the City by a registered professional engineer that the the structure is designed to support, or capable of supporting the proposed wireless communications equipment. Any modifications necessary to a structure being capable of supporting the proposed equipment shall be specifically identified in the analysis and certification.

e. If modifications to a wireless communications support structure are identified in a structural analysis under subsection d. above, a written determination by the City construction code building official that, subject to review of an actual building permit application and plans, the identified modifications would be allowed and that with the modifications, the structure would meet construction code requirements.

f. If the application is for a new wireless communications support structure or to increase the height of an existing structure, a written analysis and justification by a registered engineer that the proposed height is the minimum necessary for the provision of personal wireless services.

g. If the application is for a new wireless communications support structure, identification of all other structures and properties considered for the proposed use and a factual explanation of why they are not available and/or not suitable.

h. If the application is for a new wireless communications support structure, identification of alternative designs for the structure that are possible, whether those designs were considered, and if so, a factual explanation of why those designs are not proposed.

i. If the application is for a new wireless communications support structure outside the I-1 and I-2 zoning districts or within 300 feet of a residential zoning district, identification and submission in written form of the evidence and arguments the Applicant will rely on in claiming that those restrictions prohibit or have the effect of prohibiting it from providing personal wireless services.

j. Disclosure and copies of all other required governmental permits or approvals, and if not yet obtained, the status and copies of the applications for those permits or approvals.

k. A map or plan showing the locations and heights of existing wireless communications support structures in the City and communities adjoining the City and which identifies structures the Applicant is using or has the right to use and the heights at which its antennas are or may be installed.

l. The Applicant's email address, fax number or address to which the City should direct notices regarding the Application. receipt

(2) Review and administrative actions on special land use and site plan approval applications.

a. The Planning Division of the City Community Development Department shall promptly review special land use and site plan approval applications to determine if they are administratively complete by inclusion of all information required in subsection (c)(1). If the application is not complete, no later than 14 business days after receiving it, the Planning Division shall provide a written or electronic notice to the Applicant specifying the information necessary to complete the application. Such review shall be on behalf of the City Council for special land use approvals and the Planning Commission for site plan approvals.

b. Supplemental information in response to an incomplete application notice shall be reviewed and the Applicant promptly notified of any remaining deficiencies.

c. An application shall be administratively complete upon the Planning Division's determination or the expiration of 14 business days from receipt of the application without a notice to the Applicant of deficiencies.

d. Upon a special land use or site plan approval application being administratively complete, the Planning Division shall promptly schedule it for a Planning Commission meeting that will allow for a site plan decision by the Planning Commission or special land use City Council decision after Planning Commission public hearing and recommendation, within the time periods in subsection (3) below.

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

a. Unless the Applicant provides a written waiver or extension of time, the City Council shall approve or deny a special land use application for a new wireless communications support structure not more than 90 days after it was administratively complete.

b. For all special land use and site plan applications other than new wireless communications support structures, unless the Applicant provides a written waiver or extension of time, the City Council or Planning Commission, as applicable, shall approve or deny the application not more than 60 days after it was administratively complete.

(d) Definitions. As used in this Section 2508.1, the following phrases have the meanings indicated.

Wireless communications equipment means the equipment and components, including antennas, transmitters, receivers, base stations, equipment shelters or cabinets, emergency generators, and power supply, coaxial and fiber optic cables used in the provision of wireless communications services, but excluding wireless communication support structures.

Wireless communications equipment compound means a delineated area surrounding or adjacent to the base of a wireless communications support structure within which any wireless communications equipment related to that support structure is located.

Wireless communications support structures shall mean structures designed to support or capable of supporting wireless communication equipment. Support structures within this definition include, but shall not be limited to, monopoles, lattice towers, utility poles, wood poles and guyed towers, buildings, or other structures with such design or capability.

Part II

Severability. Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

PART III.

Savings Clause. The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

PART IV.

Repealer. All other Ordinance or parts of Ordinance in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

PART V.

Effective Date: Publication. Public hearing having been held hereon pursuant to the provisions of Section 103 of Act 110 of the Public Acts of 2006, as amended, the provisions of this Ordinance shall be published within fifteen (15) days of its adoption by publication of a brief notice in a newspaper circulated in the City of Novi stating the date of enactment and effective date, a brief statement as to its regulatory effect and that a complete copy of the Ordinance is available for public purchase, use and inspection at the office of the City Clerk during the hours of 8:00 A.M. to 5:00 P.M., Local Time. The provisions of this Ordinance shall become effective seven (7) days after its publication.

MADE, PASSED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF NOVI,
OAKLAND COUNTY, MICHIGAN, ON THE ___ DAY OF _____, 2012.

ROBERT J. GATT, MAYOR

MARYANNE CORNELIUS, CITY CLERK

Ayes:
Nays:
Abstentions:
Absent:

**CONSTRUCTION CODE
ORDINANCE AMENDMENT**

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 12-_____

AN ORDINANCE TO AMEND THE CITY OF NOVI CODE OF ORDINANCES, CHAPTER 7, BUILDINGS AND BUILDING REGULATIONS, ARTICLE II, STATE CONSTRUCTION CODE, TO ADD A NEW SECTION 7-26 TO CONFIRM AND PROVIDE NOTICE OF NECESSARY CONSTRUCTION DOCUMENTS AND SITE PLAN INFORMATION AND ESTABLISH CONDITIONS TO BE INCLUDED IN PERMITS AND CERTIFICATES ISSUED FOR TOWERS AND WIRELESS COMMUNICATIONS STRUCTURES, EQUIPMENT, AND FACILITIES.

THE CITY OF NOVI ORDAINS:

PART I. That Chapter 7, Buildings and Building Regulations, Article II, State Construction Code, of the City of Novi Code of Ordinances, is amended to add a new Section 7-26, to read as follows:

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 to 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 (c), (d) and (e), 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.
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.

PART II.

Severability. Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

PART III.

Savings Clause. The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

PART IV.

Effective Date: Publication. The provisions of this Ordinance shall become effective fifteen (15) days after its adoption and shall be published within 15 days of its adoption by publication of a brief notice in a newspaper circulated in the City, stating the date of enactment and the effective date of the ordinance, a brief statement as to the subject matter of this Ordinance and such other facts as the Clerk shall deem pertinent, and that a copy of the Ordinance is available for public use and inspection at the office of the City Clerk.

Made, Passed and Adopted by the Novi City Council this ____ day of _____, 2012.

Robert J. Gatt, Mayor

Maryanne Cornelius, City Clerk

Certificate of Adoption

I hereby certify that the foregoing is a true and complete copy of the ordinance adopted at the regular meeting of the Novi City Council held on the ____ day of _____, 2012.

Maryanne Cornelius, City Clerk

Adopted:
Published:
Effective:

**EXCERPT FROM
MICHIGAN ZONING ENABLING ACT**

MICHIGAN ZONING ENABLING ACT (EXCERPT)
Act 110 of 2006

125.3514 Wireless communications equipment as permitted use of property; application for special land use approval; approval or denial; authorization by local unit of government; definitions.

Sec. 3514. (1) Wireless communications equipment is a permitted use of property and is not subject to special land use approval or any other approval under this act if all of the following requirements are met:

(a) The wireless communications equipment will be collocated on an existing wireless communications support structure or in an existing equipment compound.

(b) 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.

(c) The proposed collocation will not do any of the following:

(i) Increase the overall height of the wireless communications support structure by more than 20 feet or 10% of its original height, whichever is greater.

(ii) Increase the width of the wireless communications support structure by more than the minimum necessary to permit collocation.

(iii) Increase the area of the existing equipment compound to greater than 2,500 square feet.

(d) 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.

(2) Wireless communications equipment that meets the requirements of subsection (1)(a) and (b) but does not meet the requirements of subsection (1)(c) or (d) is a permitted use of property if it receives special land use approval under subsections (3) to (6).

(3) An application for special land use approval of wireless communications equipment described in subsection (2) shall include all of the following:

(a) A site plan as required under section 501, including a map of the property and existing and proposed buildings and other facilities.

(b) Any additional relevant information that is specifically required by a zoning ordinance provision described in section 502(1) or 504.

(4) After an application for a special land use approval is filed with the body or official responsible for approving special land uses, the body or official shall determine whether the application is administratively complete. Unless the body or official proceeds as provided under subsection (5), the application shall be considered to be administratively complete when the body or official makes that determination or 14 business days after the body or official receives the application, whichever is first.

(5) If, before the expiration of the 14-day period under subsection (4), the body or official responsible for approving special land uses notifies the applicant that the application is not administratively complete, specifying the information necessary to make the application administratively complete, or notifies the applicant that a fee required to accompany the application has not been paid, specifying the amount due, the running of the 14-day period under subsection (4) is tolled until the applicant submits to the body or official the specified information or fee amount due. The notice shall be given in writing or by electronic notification. A fee required to accompany any application shall not exceed the local unit of government's actual, reasonable costs to review and process the application or \$1,000.00, whichever is less.

(6) The body or official responsible for approving special land uses shall approve or deny the application not more than 60 days after the application is considered to be administratively complete. If the body or official fails to timely approve or deny the application, the application shall be considered approved and the body or official shall be considered to have made any determination required for approval.

(7) Special land use approval of wireless communications equipment described in subsection (2) may be made expressly conditional only on the wireless communications equipment's meeting the requirements of other local ordinances and of federal and state laws before the wireless communications equipment begins operation.

(8) If a local unit of government requires special land use approval for wireless communications equipment that does not meet the requirements of subsection (1)(a) or for a wireless communications support structure, subsections (4) to (6) apply to the special land use approval process, except that the period for approval or denial under subsection (6) is 90 days.

(9) A local unit of government may authorize wireless communications equipment as a permitted use of property not subject to a special land use approval.

(10) As used in this section:

(a) "Collocate" means to place or install wireless communications equipment on an existing wireless communications support structure or in an existing equipment compound. "Collocation" has a corresponding meaning.

(b) "Equipment compound" means an area surrounding or adjacent to the base of a wireless communications support structure and within which wireless communications equipment is located.

(c) "Wireless communications equipment" means 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 communications support structures.

(d) "Wireless communications support structure" means 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.

History: Add. 2012, Act 143, Imd. Eff. May 24, 2012.

Compiler's note: Sec. 3514. should evidently read "Sec. 514."

"PLANNING BRIEF"
BIRCHLER ARROYO/CLEARZONING



BIRCHLER ARROYO
ARCHITECT, INC.



2012 Extra Issue

Planning Brief

New Federal & Michigan Laws Impact Municipal Approval of Certain Wireless Facilities Action May Be Necessary

The following is an update to a special brief we sent out earlier this year.

When the "Middle Class Tax Relief and Job Creation Act of 2012" - HR 3630 - was approved in February 2012, it contained a little-known provision that impacts the local approval of certain Wireless Communications Facilities. The Act amends the federal telecommunications laws to limit the ability of local units of government to deny certain requests to modify existing wireless communications facilities or replace existing equipment on existing towers. In Michigan, P.A. 143 of 2012 provides additional restrictions for local regulation of wireless equipment.

Under Michigan's P.A. 143 of 2012:

1. Classification as a Permitted Use - Wireless Communications Equipment (WCE) - which does not include towers - is a permitted use and shall not be subject to special land use approval or other approval under the Michigan Zoning Enabling Act (MZEA) if 4 requirements are met: a) collocation on an existing support structure or in an existing equipment compound; b) 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 body or official; c) the proposed collocation will not do any of the following: *i.* increase the overall height of the wireless communications support structure by more than 20 feet or 10% of its original height, whichever is greater, *ii.* Increase the width of the wireless communications support structure by more than the minimum necessary to permit collocation, *iii.* increase the area of the existing equipment compound to greater than 2,500 square feet; d) 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.

2. Approval Time Limits - WCE that meets a) and b) above but does not meet c) or d) above is a permitted use if it receives special land use approval under the following terms: 1) an application, site plan, and relevant information is submitted, 2) after submittal for a special land use, the approving body or official has 14 business days to notify the applicant of any missing data or information not provided in the application; otherwise the application shall be deemed to be complete. If notification of deficiencies is made, it stops the 14-day clock rather than resetting it. Thus, a quick review is advantageous so a local government has time to determine the sufficiency of any resubmitted application. Review fees charged by the local government must reflect actual, reasonable costs and may not exceed \$1,000. The approving body or official shall approve or deny the application not more than 60 days from the date it is considered complete. If no action is taken within 60 days, the application is deemed approved. When a new tower is proposed, an additional 30 days for review and action is permitted (90 days total).

3. Limits on Conditions - Approval of WCE that is a special land use because it meets a) and b) but not c) or d) under paragraph 1 may be made expressly conditional only on the WCE meeting other local ordinances (non-zoning) and federal and state laws. Approval of new towers does not have this limitation, meaning that conditions related to zoning and non-zoning laws can be part of a special land use approval.

We strongly encourage local governments to review their current wireless zoning provisions with planning and legal experts to ensure compliance with new federal and state requirements.

Focus on...
WIRELESS