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CITY of NOVI CITY COUNCIL

Agenda Item B
February 11, 2013

SUBJECT: Approval of City Code amendment 13-134.03 to amend the City of Novi Code of Ordinances at Chapter 7, "Buildings and Building Regulations" Article II, "State Construction Code" in order 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. **SECOND READING**

SUBMITTING DEPARTMENT: Community Development Department *Bull*

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION:

The City Attorney's office has reviewed recent changes in State law related to Wireless Communication Equipment (excerpt of changes attached) and provided suggested modifications to the City's Construction Code Ordinance in order to insure that the standards in the new law are recognized and provided for in the City Code. Several modifications to the Section 2508.1 of the Zoning Ordinance in response to the changes in State law are also proposed as a separate agenda item.

The City's Construction Code Ordinance 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. Conditions that would be part of permits and certificates of occupancy issued under the Construction Code have also been provided.

The City Council approved the first reading of the proposed amendment on January 28, 2013. Relevant meeting minutes are attached.

RECOMMENDED ACTION: Approval of City Code amendment 13-134.03 to amend the City of Novi Code of Ordinances at Chapter 7, "Buildings and Building Regulations" Article II, "State Construction Code" in order 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. **SECOND READING**

| | 1 | 2 | Y | N |
|------------------------|---|---|---|---|
| Mayor Gatt | | | | |
| Mayor Pro Tem Staudt | | | | |
| Council Member Casey | | | | |
| Council Member Fischer | | | | |

| | 1 | 2 | Y | N |
|-------------------------|---|---|---|---|
| Council Member Margolis | | | | |
| Council Member Mutch | | | | |
| Council Member Wrobel | | | | |

PROPOSED AMENDMENTS – STRIKE VERSION

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 13-134.03

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 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.
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 _____, 2013.

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 _____, 2013.

Maryanne Cornelius, City Clerk

Adopted:
Published:
Effective:

PROPOSED AMENDMENTS – CLEAN VERSION

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 13-134.03

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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 _____, 2013.

Robert J. Gatt, Mayor

Maryanne Cornelius, City Clerk

Certificate of Adoption

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Maryanne Cornelius, City Clerk

Adopted:
Published:
Effective:

**CITY COUNCIL
MEETING MINUTES - EXCERPT
JANUARY 28, 2013**

**REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI
MONDAY, JANUARY 28, 2013 AT 7:00 P.M.
COUNCIL CHAMBERS – NOVI CIVIC CENTER – 45175 W. TEN MILE ROAD**

Mayor Gatt called the meeting to order at 7:00 P.M.

PLEDGE OF ALLEGIANCE

ROLL CALL: Mayor Gatt, Mayor Pro Tem Staudt, Council Members Casey, Fischer, Margolis (absent, excused), Mutch, Wrobel

ALSO PRESENT: Clay Pearson, City Manager
Victor Cardenas, Assistant City Manager
Thomas Schultz, City Attorney

APPROVAL OF AGENDA:

CM-13-01-007 Moved by Wrobel, seconded by Casey; CARRIED UNANIMOUSLY:

To approve the Agenda as presented.

| | |
|---------------------------------------|--|
| Roll call vote on CM-13-01-007 | Yeas: Staudt, Casey, Fischer, Mutch, Wrobel, Gatt |
| | Nays: None |

MATTERS FOR COUNCIL ACTION:

2. Approval of City Code amendment 13-134.03 to amend the City of Novi Code of Ordinances at Chapter 7, "Buildings and Building Regulations" Article II, "State Construction Code" in order 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. **FIRST READING**

CM-13-01-010 Moved by Mutch, seconded by Wrobel; CARRIED UNANIMOUSLY:

To approve the City Code amendment 13-134.03 to amend the City of Novi Code of Ordinances at Chapter 7, "Buildings and Building Regulations" Article II, "State Construction Code" in order 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. **FIRST READING**

City Manager Pearson said they are updating the ordinances be in compliance with the changes in the Federal and State laws. They still have to have the necessary local reviews.

Roll call vote on CM-13-01-010

**Yeas: Mutch, Wrobel, Gatt, Staudt, Casey,
Fischer**

Nays: None

LETTER FROM CITY ATTORNEY
01/23/13



JOHNSON ROSATI SCHULTZ JOPPICH PC

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Gary L. Dovre
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www.johnsonrosati.com

January 23, 2013

City of Novi Council
45175 W. Ten Mile Road
Novi, MI 48375

RE: Proposed Wireless Communications Ordinance Amendments

Dear City Council Members:

As explained in the Background Information provided by the Community Development Department, the proposed amendments to the City Zoning and Construction Code Ordinances are primarily in response to an amendment of the Michigan Zoning Enabling Act (MZEA) last year that added a new section, MCL 125.3514. That statute restricts local zoning authority and procedures with respect to wireless communication equipment (WCE).

The first change under the amended MZEA is that WCE is a permitted use of property and not subject to special land use or other zoning approvals if certain standards are met. Those standards are reflected and provided for in the Administrative Review provided for in Section 2508.1(a)(2) of the Zoning Ordinance amendment. While the MZEA may preempt zoning approvals in those situations, in our opinion it does not preempt the existing State Construction Code requirement that building permits should not be issued for work that does not conform with other pertinent laws, such as the Zoning Ordinance. The proposed amendment of the Construction Code Ordinance is intended to complement the Zoning Amendment by specifying what is required for a building permit application for activity that no longer needs zoning approval under the MZEA.

In cases where zoning approval authority is not preempted the MZEA imposes self-executing time limits on review of applications and final decisions. 14 business days are allowed for determining if an application for special land use or site plan approval is administratively complete. From the date of such administrative completeness, only 60 days are allowed for decisions on WCE proposals for placement or installation on/in existing structures/compounds, with only 90 days allowed when the application is for a new wireless communication support structure. Failure to approve or deny an application within the time allowed is considered approval! In addition to providing for these time lines, Section 2508.1(c) expands the information required for an application to be considered administratively complete.

January 23, 2013
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The MZEA also places a cap on application fees for actual and reasonable City review costs of \$1,000.00. The concepts of "professional review costs" and a permit fee separate from the application fee in Section 2508.1(c) were included to provide possible tools that could be considered for use while still complying with the statutory application fee cap.


At the Federal level, a section of the "Middle Class Tax Relief and Job Creation Act of 2012", amended the Federal Telecommunications Act to add provisions on Wireless Facilities Deployment and Facility Modifications that require local government to approve eligible facilities requests for modification of an existing wireless towers or base stations that do not substantially change the physical dimensions. Eligible facilities requests are defined as collocations and removal or replacement of transmission equipment. We do not believe that ordinance language trying to address this section is necessary and would note that there is a school of thought that this section will eventually be found unconstitutional.

Some of the amendments are in response to recent federal court decisions under the Federal Telecommunications Act. That Act requires that municipal regulations (decisions) on personal wireless service facilities not prohibit or have the effect of prohibiting the provision of personal wireless services. A Sixth Circuit United States Court of Appeals decision last August established the standards to be applied in making that determination. Under that ruling, alternatives considered or available to the carrier to satisfy its needs are a legitimate consideration, explaining the reason for those provisions in the proposed ordinance.

Obviously, this letter does not address all the changes, many of which are a matter of form or format. Please do not hesitate to ask any questions there may be.

Sincerely yours,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.



Gary L. Dove

GLD