



CITY of NOVI CITY COUNCIL

Agenda Item 4
January 28, 2013

SUBJECT: Approval of Zoning Ordinance Text Amendment 18.265 to amend the City of Novi Zoning Ordinance at Article 25, "General Provisions" Section 2508.1, "Commercial Television and Radio Towers, Communication Antennas, Public Utility Microwave Towers, Public Utilities T.V. Transmitting Towers" in order to recognize and provide for implementation of State and Federal legislation regarding wireless communication equipment and facilities. **FIRST READING**

Baird

SUBMITTING DEPARTMENT: Community Development Department - Planning

CITY MANAGER APPROVAL:

BACKGROUND INFORMATION:

Section 2508.1 of the City's Zoning Ordinance provides for the placement of various communication antennas, towers and related equipment. The City Attorney's office has reviewed recent changes in State and Federal laws and court decisions related to Wireless Communication Equipment (excerpt of changes attached) and provided suggested modifications to the Zoning Ordinance in insure that the standards in the new law are recognized and provided for in the Zoning Ordinance. Additions in response to the changes in State law are also proposed for the City's Construction Code as a separate agenda item.

Ordinance Amendment

Much of the existing Zoning Ordinance text is being reformatted and refined. Procedural review requirements are added as subsections to the first paragraph on pages 1-3 of the strike-through version of the amendment. "Application and review requirements, procedures and limitations" are included in new subsection (c), starting on page 6 of the strike-through version. Definitions from the State law are provided on page 9 of the strike-through version of the amendment.

Planning Commission Action

The Planning Commission first considered the matter at the October 24, 2012 Planning Commission meeting and postponed action. At that meeting, the Commission had some additional questions, particularly in regard to height limitations for cell towers.

Staff made some minor revisions to the ordinance and the Planning Commission held the public hearing and recommended approval of the proposed amendment on December 12, 2012. All relevant Planning Commission minutes are attached.

RECOMMENDED ACTION: Approval of Zoning Ordinance Text Amendment 18.265 to amend the City of Novi Zoning Ordinance at Article 25, "General Provisions" Section 2508.1, "Commercial Television and Radio Towers, Communication Antennas, Public Utility Microwave Towers, Public Utilities T.V. Transmitting Towers" in order to recognize and

provide for implementation of State and Federal legislation regarding wireless communication equipment and facilities. **FIRST 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				

**LETTER FROM CITY ATTORNEY'S OFFICE
JANUARY 23, 2013**



JOHNSON ROSATI SCHULTZ JOPPICH PC

34405 W. Twelve Mile Road Suite 200 ~ Farmington Hills, Michigan 48331-5627
Phone: 248.489.4100 | Fax: 248.489.1726

Gary L. Dovre
gdovre@jrsjlaw.com

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
Page 2

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.

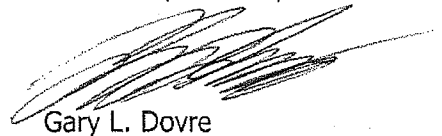
At the Federal level, a section of the "Middle Class Tax Relief and Job Creation Act of 2012", amended the Federal Telecommunications Act to add provisions on Wireless Facilities Deployment and Facility Modifications that require local government to approve eligible facilities requests for modification 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. Dovre

GLD

PROPOSED ORDINANCE AMENDMENTS – STRIKE VERSION

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 13-18.265

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. Such proposals shall also be reviewed for compliance with the standards and conditions in subsection (b), with the certification to identify any items of noncompliance.

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.

(iv) The applicant's demonstration of good faith efforts to identify and evaluate alternate sites, locations, designs, placements, or features for the proposed facility that would or could be more consistent with the applicable approval standards in Section 2516.2.

(v) For each alternate site, location, design, placement, or feature for the proposed facility identified by the applicant or otherwise, the applicant's demonstration that the proposed facility is more consistent with the applicable approval standards in Section 2516.2 and/or that such alternatives are not feasible.

(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 consistent with the application submittal required by subsection (c)(1)f, 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, as approved by the City Council taking into account any alternative designs submitted by the Applicant or identified during the review and decision process.

(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) The support structure and system shall be designed to support, or be capable of supporting the proposed wireless communication equipment, which shall be demonstrated by a structural analysis and certification from a registered professional engineer that identifies any modifications to an existing structure necessary to such capability.~~

~~(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.

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 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 by at least two (2) co-locating providers, or by a larger number of providers if identified and disclosed in the application as intending and committed to use of the structure.

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 feasible in terms of availability, suitability, or otherwise.

h. If the application is for a new wireless communications support structure, identification of alternative locations, designs, or features for the structure that are possible, whether those alternatives were considered, and if so, a factual explanation of why those alternatives 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 and that its proposal is more consistent with the approval standards stated in Section 2516.2, than alternate sites, locations, designs, placements and features.

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. If the application is for a special land use approval, the name, expertise, and relationship to applicant of each licensed or registered professional that has or will provide evidence to support the application, with a summary of that evidence that includes any opinions expressed and the bases for such opinions.

m. For each professional opinion disclosed by the applicant as supporting the application, a statement of whether the applicant agrees that it should be subject to separate review by or for the City, and if so, the type, scope, time, and cost of such a separate review that applicant believes would be reasonable.

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

(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.

e. If the application has disclosed professional opinions supporting the application the City may determine that independent professional review for the City of any such opinion should be performed. In that event, the reasonable costs of such review may be assessed to the Applicant by a written notice from the Planning Division, as a professional review cost to be paid in accordance with the notice.

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

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 is 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, [Delete] the City Council or Planning Commission, as applicable, shall approve or deny the application not more than 60 days after it is administratively complete.

(3) Post-approval costs, fees and administrative actions.

Zoning permits to implement and grant the authority allowed by a special land use or site plan approval, and zoning certificates of use and occupancy shall be issued subject to and conditioned on all of the following:

a. Any conditions of the special land use or site plan approval.

b. Payment of any outstanding professional review costs as described in subsection (c)(2)e.

c. Payment of a reasonable zoning permit fee in an amount established by or in accordance with a Resolution of the City Council.

(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 _____, 2013.

ROBERT J. GATT, MAYOR

MARYANNE CORNELIUS, CITY CLERK

Ayes:

Nays:
Abstentions:
Absent:

PROPOSED ORDINANCE AMENDMENTS – CLEAN VERSION

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 13-18.265

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 applicable approval standards in subsection (b) and the application and review requirements, procedures, and limitations in subsection (c).

(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. Such proposals shall also be reviewed for compliance with the standards and conditions in subsection (b), with the certification to identify any items of noncompliance.

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 located in I-1 and I-2 Districts and 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.
 - (iv) The applicant's demonstration of good faith efforts to identify and evaluate alternate sites, locations, designs, placements, or features for the proposed facility that would or could be more consistent with the applicable approval standards in Section 2516.2.
 - (v) For each alternate site, location, design, placement, or feature for the proposed facility identified by the applicant or otherwise, the applicant's demonstration that the proposed facility is more consistent with the applicable approval standards in Section 2516.2 and/or that such alternatives are not feasible.
- (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) 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 consistent with the application submittal required by subsection (c)(1)f, or 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, as approved

by the City Council taking into account any alternative designs submitted by the Applicant or identified during the review and decision process.

- (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) The support structure and system shall be designed to support, or be capable of supporting the proposed wireless communication equipment, which shall be demonstrated by a structural analysis and certification from a registered professional engineer that identifies any modifications to an existing structure necessary to such capability.

(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.
 - 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 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 by at least two (2) co-locating providers, or by a larger number of providers if identified and disclosed in the application as intending and committed to use of the structure.

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 feasible in terms of availability, suitability, or otherwise.

h. If the application is for a new wireless communications support structure, identification of alternative locations, designs, or features for the structure that are possible, whether those alternatives were considered, and if so, a factual explanation of why those alternatives 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 and that its proposal is more consistent with the approval standards stated in Section 2516.2, than alternate sites, locations, designs, placements and features.

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. If the application is for a special land use approval, the name, expertise, and relationship to applicant of each licensed or registered professional that has or will provide evidence to support the application, with a summary of that evidence that includes any opinions expressed and the bases for such opinions.

m. For each professional opinion disclosed by the applicant as supporting the application, a statement of whether the applicant agrees that it should be subject to separate review by or for the City, and if so, the type, scope, time, and cost of such a separate review that applicant believes would be reasonable.

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

(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.

e. If the application has disclosed professional opinions supporting the application the City may determine that independent professional review for the City of any such opinion should be performed. In that event, the reasonable costs of such review may be assessed to the Applicant by a written notice from the Planning Division, as a professional review cost to be paid in accordance with the notice.

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

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 is 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, [Delete] the City Council or Planning Commission, as applicable, shall approve or deny the application not more than 60 days after it is administratively complete.

(3) Post-approval costs, fees and administrative actions.

Zoning permits to implement and grant the authority allowed by a special land use or site plan approval, and zoning certificates of use and occupancy shall be issued subject to and conditioned on all of the following:

a. Any conditions of the special land use or site plan approval.

b. Payment of any outstanding professional review costs as described in subsection (c)(2)e.

c. Payment of a reasonable zoning permit fee in an amount established by or in accordance with a Resolution of the City Council.

(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.

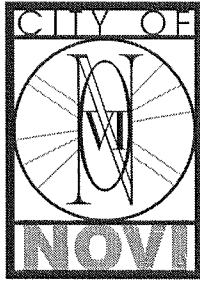
MADE, PASSED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF NOVI,
OAKLAND COUNTY, MICHIGAN, ON THE ___ DAY OF _____, 2013.

ROBERT J. GATT, MAYOR

MARYANNE CORNELIUS, CITY CLERK

Ayes:
Nays:
Abstentions:
Absent:

**PLANNING COMMISSION
MEETING MINUTES - EXCERPT
DECEMBER 12, 2012**



cityofnovi.org

PLANNING COMMISSION MINUTES

CITY OF NOVI

Regular Meeting

December 12, 2012 7:00 PM

Council Chambers | Novi Civic Center | 45175 W. Ten Mile
(248) 347-0475

CALL TO ORDER

The meeting was called to order at or about 7:00 PM.

ROLL CALL

Present: Member Anthony, Member Greco, Member Lynch, Chair Pehrson, Member Prince

Absent: Member Gutman, (excused), Member Zuchlewski (excused)

Also Present: Barbara McBeth, Deputy Director of Community Development; Gary Dovre, City Attorney; Kristen Kapelanski, Planner; David Beschke, Landscape Architect; Adam Wayne, Engineer; Rod Arroyo, Traffic Consultant

PLEDGE OF ALLEGIANCE

Member Anthony led the meeting attendees in the recitation of the Pledge of Allegiance.

APPROVAL OF AGENDA

Moved by Member Lynch, seconded by Member Anthony:

VOICE VOTE ON THE AGENDA APPROVAL MOTION MADE BY MEMBER LYNCH AND SECONDED BY MEMBER ANTHONY:

Motion to approve the December 12, 2012 Planning Commission Agenda. Motion carried 5-0.

PUBLIC HEARINGS

5. ZONING ORDINANCE TEXT AMENDMENT 18.265 TO MODIFY THE STANDARDS FOR COMMUNICATION ANTENNAS

Public hearing for Planning Commission's recommendation to the City Council for an Ordinance to amend the City of Novi Zoning Ordinance at Article 25, General Provisions, Section 2508, Uses Not Otherwise Included within a Specific District in order to modify the standards for communication antennas.

Planner Kapelanski said this is an amendment that the City Attorney's office has been working on in response to some recent changes in the State law related to the review of wireless communications equipment. The amendment provides suggested modifications to the Zoning Ordinance to ensure that the standards in the new law are recognized and appropriately addressed in the ordinance. As a result of that, the text is being reformatted and refined. This matter was originally considered at the October 24th Planning Commission meeting where the Planning Commission asked staff to take a closer look at the amendment, specifically regarding the provisions related to the height of a tower. Staff has reviewed the language and has no concern regarding the provisions resulting in a proliferation of communication towers. The Planning Commission is asked to hold the public hearing and make a recommendation to the City Council.

No one from the audience wished to speak and there was no correspondence. Chair Pehrson closed the public hearing.

Member Lynch said the Planning Commission was struggling with having one large tower or several smaller ones. The revisions that have been made gives the Planning Commission and City Council a little bit of latitude in that regard.

City Attorney Dovre said he has made two changes on pages six and seven. It goes to that issue and

maybe even improves upon it. The height limit was in subsection 10 on page six and that said "not exceed the minimum height necessary for wireless services and call location." I'm suggesting adding a specific reference to an application requirement that is on the following page. That is found near the bottom of page seven. That section already required an engineering justification for proposed height. This is expanded to confirm that it's to be for at least two providers and show the height needed for all of them. It discloses upfront that if you want to get as much height as possible show us who's going to be on here.

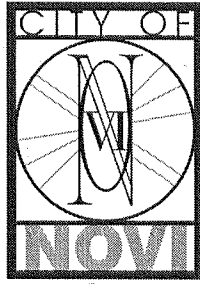
Member Lynch said he appreciated that and agreed.

Moved by Member Lynch and seconded by Member Anthony:

ROLL CALL VOTE ON APPROVAL RECOMMENDATION MOTION MADE BY MEMBER LYNCH AND SECONDED BY MEMBER ATHONY:

Motion to recommend approval to the City Council of Text Amendment 18.265 to modify the standards for communication antennas incorporating the additional revisions provided at the meeting by the City Attorney. *Motion carried 5-0.*

**PLANNING COMMISSION
MEETING MINUTES - EXCERPT
OCTOBER 24, 2012**



cityofnovi.org

PLANNING COMMISSION MINUTES

CITY OF NOVI

Regular Meeting

October 24, 2012 7:00 PM

Council Chambers | Novi Civic Center | 45175 W. Ten Mile
(248) 347-0475

CALL TO ORDER

The meeting was called to order at or about 7:00 PM.

ROLL CALL

Present: Member Anthony, Member Lynch, Chair Pehrson, Member Zuchlewski

Absent: Member Greco (Excused), Member Gutman (Excused), Member Prince (Excused)

Also Present: Barbara McBeth, Deputy Director of Community Development; Gary Dovre, City Attorney; Kristen Kapelanski, Planner

PLEDGE OF ALLEGIANCE

Member Anthony led the meeting attendees in the recitation of the Pledge of Allegiance.

APPROVAL OF AGENDA

Moved by Member Lynch, seconded by Member Anthony:

VOICE VOTE ON THE AGENDA APPROVAL MOTION MADE BY MEMBER LYNCH AND SECONDED BY MEMBER ANTHONY:

Motion to approve the October 24, 2012 Planning Commission Agenda. Motion carried 4-0.

PUBLIC HEARINGS

2. ZONING ORDINANCE TEXT AMENDMENT 18.265 TO MODIFY THE STANDARDS FOR COMMUNICATION ANTENNAS

Recommendation to City Council for an Ordinance to amend Ordinance No. 97-18 as amended, the City of Novi Zoning Ordinance at Article 25, General Provisions, Section 2508, Uses Not Otherwise Included within a Specific District; in order to modify the standards for communication antennas.

Planner Kapelanski said that this is an amendment that the City attorney's office has been working on in response to some recent changes in the State law related to the review of wireless communications equipment. The amendment provides suggested modifications to the Zoning Ordinance to ensure that the standards in the new law are recognized and appropriately addressed in the ordinance. As a result of that, the text is being reformatted and refined. Amendments to the City's construction code have been included as background information only and a revised version of the text has been placed in on the table for consideration this evening.

Chair Pehrson closed the public hearing as no one wished to speak and there was no correspondence.

Member Anthony asked if the proposed changes are just simply the adoption of the changes that occurred at the state level.

Planner Kapelanski answered she thought that was correct and perhaps the City attorney could speak to that.

City Attorney Dovre said the primary force behind this amendment is the amendment to the State law and that did two things. First, it stated certain wireless communication equipment proposals, such as attachments on structures or placement of additional equipment in existing equipment compounds, were not going to be subject to special land use or site plan approval. The second aspect of that statute was to impose regulations stating the amount of time a community had to review and approve

new proposals. Anything not reviewed in the allotted time would be considered approved. There has also been a recent decision published by the US 6th Circuit Court of Appeals in a cell tower case in Michigan that established review standards that the City is trying to take into account in this suggested language.

Member Lynch asked if the State law supersedes what was previously in the ordinance regarding cell tower review.

City Attorney Dove answered yes and said the existing ordinance calls for special land use approval for all new cell tower wireless communication proposals. Under the new State law, the City can't exercise special land use approval authority in certain situations. Additionally, the City can't even exercise site plan approval authority under the new regulations. The proposed ordinance allows the Building Department the authority to check with the Planning Division even if a formal planning review and approval cannot be done. Any inconsistencies with the plan could then be tied into the Building Permit review.

Member Lynch asked if the City has lost the ability to enforce the Zoning Ordinance in regards to cell towers.

City Attorney Dove said the State Law says that a cell company doesn't need a special land use or other approval under the zoning law. It doesn't say that the community can't review a proposal for compliance with its Zoning Ordinance, and it doesn't say that the construction code can't be enforced. The Michigan Building codes have a requirement that a Building Official in looking at an application for a permit has to determine that not only are the construction codes are satisfied, but that all other applicable ordinances are satisfied. So the Building Official can look to see if the Zoning Ordinance is being complied with.

Member Lynch asked if the proposed amendment provides the specifics and language the City would need to enforce these new standards and the Zoning Ordinance.

City Attorney Dove said that he has drafted this in an effort to provide everything here that the staff need to administer this new law.

Member Lynch asked if the Zoning Ordinance leads to the construction requirements.

City Attorney Dove answered yes.

Member Lynch asked if we needed to revisit the construction requirements on cell towers so that we have them in a more specific manner.

City Attorney Dove said that the amendment that has been provided to the City's construction code ordinance doesn't change the State construction code. It simply is codifying if you will what the Building Official should require as a construction document. And the purpose there is not because the City has to have that, but if it's on the books that will put carriers on notice that they can't just walk in the door and ask for a building permit and expect to get it. The City has gone on record as its Building Official is legitimately going to be requiring these things as construction documents as part of a building permit application. As far as a site zoning ordinance goes, the Zoning Ordinance amendment considerably expands things that someone would have to turn in when they make an application for zoning approval. The idea there was make the carrier provide anything that the City might want to see up front and can easily determine whether or not the application is complete. The new law only provides a small amount of time for a community to state whether or not the application is complete.

Member Lynch the said the current ordinance allows towers up to 150 feet but the proposed ordinance reads, "shall not exceed the minimum height necessary for providing personal wireless service co-location". Who determines what that minimum height necessary is?

City Attorney Dove said it is not a revision required by the State law, it is a revision he is recommending. As it was written, the ordinance was simply saying you can have a tower 150 feet high. Many times carriers might only need 110 feet. So, by rewriting that portion, there is a corresponding application requirement at the back end of this draft and it requires up front disclosure of the height needed.

Member Lynch said that is an example in the amendment intended to give the City as much protection and flexibility in reviewing a permit as possible.

City Attorney Dove answered yes. If there is other information that the staff, Planning Commission or City Council would like to see, that should really be included in the ordinance itself. There is only a small window that the new State law provides to determine whether an application is complete or approvable.

Member Lynch asked if the staff had reviewed the amendment.

Deputy Director McBeth addressed the Chair and said that the staff has been working with the City attorney's office on this for a while but given the fact that changes were made in the last day or so, the staff has not had a chance to summarize the amendment or go through the most recent version in detail. Staff could take a closer look and better summarize the changes at a future meeting. It is complicated and there are a number of aspects that are involved related to State law as City Attorney Dove said. If the Planning Commission chooses, staff would be happy to provide some more information and put that together.

City Attorney Dove stated that just briefly as he indicated in his letter, the ordinance amendments are not mandated by the State law. The law is self-executing and as long as the City honors and follows the State law, that is fine. The amendment is intended to provide text that corresponds with the new law to make it clear for the applicants and the staff. It does not have to be rushed to City Council.

Member Lynch said he would like to have more time to review this. In particular, he would like to make sure he understands the implications of the revised height standards. One tall tower is better than six or seven smaller ones.

Chair Pehrson asked if the amendment was creating a situation that Member Lynch just referred to where there are several smaller towers throughout the City.

City Attorney Dove said that is a policy and a very good policy observation.

Chair Pehrson said it would be important to consider what has been approved in the past or recommended for approval by the City staff or the Planning Commission and see how it would have been reviewed or interpreted under the new ordinance. It is also important to ensure that any new towers would be open to multiple carriers for colocation instead of having a new tower for each carrier. Under the new ordinance, the City would be asking tower companies to justify the needed height. But the City would not have a way to confirm their justification since the City would not undertake a study of wireless networks to determine what is needed.

Member Lynch said he wanted to make sure there were provisions that allow for multiple carriers on one tower and would like more time for the staff to review these things as well as the Planning Commission and he would like to revisit this at a later date.

Motion made by Member Lynch and seconded by Member Anthony:

ROLL CALL VOTE ON MOTION TO POSTPONE CONSIDERATION TO THE CITY COUNCIL OF TEXT AMENDMENT 18.265 MADE BY MEMBER LYNCH AND SECONDED BY MEMBER ANTHONY:

Motion to postpone consideration to the City Council of Text Amendment 18.265 – In order to modify the standards for communication antennas. *Motion carried 4-0.*

Member Lynch noted Chair Pehrson stated the City would not undertake studies to determine what tower height or location was needed and wondered if the City could actually undertake something like that through a consultant.

**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



RITCHIE ANNEYS
ATTORNEYS, P.A.



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