

CHARTER TOWNSHIP OF WEST BLOOMFIELD

ORDINANCE NO. C-553-B

An Ordinance to Amend Chapter 20, Streets, Sidewalks and Other Public Places, of the Charter Township of West Bloomfield Code of Ordinances, Article III, Right-of-Way Management, to Enact a New Division 9, Wireless Communication Facilities, Sections 20-126 to 20-152 to Regulate the Placement and Maintenance of Wireless Communication Facilities within the Public Rights-of-Way.

THE CHARTER TOWNSHIP OF WEST BLOOMFIELD ORDAINS:

Section 1 of Ordinance

Chapter 20, Streets, Sidewalks and Other Public Places is hereby amended by adding a new Division 9 titled Wireless Communication Facilities to Article III, Right-of-Way Management, Sections 20-126 to 20-152 to read as follows:

DIVISION 9. WIRELESS COMMUNICATION FACILITIES

Sec. 20-126. Purpose and Scope.

This Division is adopted pursuant to the Township's constitutional and proprietary rights and interests in public rights-of-way located within the Township and the reasonable control thereof under Article VII, Section 29 of the Michigan Constitution of 1963, and other applicable laws for the purpose of establishing a franchise license requirement for access to, and ongoing use of, public rights-of-way for wireless facilities in a manner that complies with applicable State and federal regulations including the Federal Telecommunications Act, 47 U.S.C. 151, *et seq.* (Telecommunication Act), Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, as amended (Spectrum Act) and applicable Federal Communication Commission ("FCC") rulings. The scope of this Division is limited to wireless facilities established and/or maintained within the public rights-of-way that are not considered to be telecommunications facilities covered by the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, MCL 484.3101, *et. seq.* ("Metro Act"), and permits applied for and issued under the Metro Act and Division 4 of this Chapter.

Sec. 20-127. Interpretation.

This Division shall not be interpreted or applied in a manner that prohibits or may have the effect of prohibiting the ability of a Wireless Provider to provide interstate or intrastate telecommunications wireless service contrary to Section 253 of the Telecommunications Act, MCL 47 USC 253.

Sec. 20-128. Definitions.

As used in this Division, the following words and phrases shall have the indicated meanings:

Collocation means to place or install wireless transmission equipment on an eligible support structure or pole for the purpose of transmitting and/or receiving radio frequency signals for communications purposes as defined by the Federal Telecommunications and Spectrum Acts.

DAS/Small Cells means any distributed antenna system or small cell telecommunication or data wireless network and all wireless facilities or related equipment installed and/or operated by a Wireless Provider for the provision of commercial mobile radio service ("CMRS") carriers and including cables, antennas, brackets, devices, conduits, poles, support structures, shelters, houses, cabinets and all other related equipment to be deployed, installed and/or operated by a Wireless Provider

Eligible Facilities Request means a request for modification of a lawfully existing Wireless Support Structure or lawfully existing wireless equipment (base station) in a public right-of-way that involves collocation, removal or replacement of wireless equipment that will not substantially change the physical dimensions of the wireless support structure or existing wireless equipment, with **substantial change** meaning any of the following:

- a. Increasing the height of a wireless support structure over the existing approved height by more than ten percent (10%) or more than ten feet (10'), whichever is greater.
- b. Adding wireless equipment to a wireless support structure that would protrude from the edge of the structure by more than six feet (6').
- c. The installation of new ground equipment cabinets if there are not pre-existing ground cabinets.
- d. If there are existing ground equipment cabinets, the installation of ground cabinets that are ten percent (10%) larger in height or overall volume than the existing cabinets.
- e. Excavation or deployment outside the perimeter of the area occupied by the wireless support structure and existing or related wireless equipment.
- f. A modification that does not comply with prior approval conditions for the wireless support structure or existing wireless equipment unless the noncompliance is limited to a modification that would not be a substantial change under the standards set forth in subsections (a) through (e) above.
- g. A modification that would defeat or be incompatible or inconsistent with existing elements of a wireless support structure or existing wireless equipment designed to conceal or minimize its appearance as a wireless support structure or wireless equipment.

License means a Township approved right-of-way use for a Wireless Facility granted pursuant to a fully executed Right-of-Way Wireless Franchise Agreement adopted by resolution of the Township Board, also referred to as a franchise license.

Public Right-of-Way means the surface of, air space above, and area below the entire width of any road, highway, street, alley, thoroughfare, easement, or other area that is dedicated, reserved, used, or open to use as a matter of right for public travel whether owned or controlled by, or under the jurisdiction of the Township, the County, the State, or the federal government.

Utility Pole or Pole means a lawfully existing pole, other than a wireless support structure, in a public right-of-way that is owned, controlled, or under the jurisdiction of the Township or other governmental entity, an entity recognized by State or federal law as a public utility, or other person or entity that has a franchise, license, or other proprietary authority granted by the Township or by law, to have, maintain and use the pole in the public right-of-way including light poles, wooden power poles, traffic light poles, highway sign poles, utility poles, non-Township owned lighting fixtures or other similar poles located in a public way, which poles are owned by the Township or a Wireless Provider or any third parties and may refer to such facilities in the singular or plural as appropriate to the context in which used. The term "poles" excludes historically or architecturally significant poles owned by the Township located on public ways or other similar street features. Wireless Equipment may be installed on a pole as provided in this Division.

Wireless Equipment means equipment and components including antennas, transmitters, receivers, equipment shelters or cabinets, power supply, and ancillary equipment, poles, and miscellaneous hardware used to provide wireless service including DAS/Small Cells, but excluding emergency generators, wireless support structures, and telecommunication facilities as defined by the Metro Act.

Wireless Facility or Facilities means wireless equipment and wireless support structures.

Wireless Provider means a person or entity that is licensed or authorized to provide wireless services.

Wireless Service means a wireless communication service that is licensed or authorized by the Federal Communications Commission, which includes personal wireless services as defined in 47 USC 332 and further including broadband, licensed or unlicensed, terrestrial or satellite, commercial mobile, private mobile, broadcast, and public safety services, as well as fixed wireless service such as microwave backhaul or fixed broadband.

Wireless Support Structure means a structure in a public right-of-way, the sole or primary purpose of which is to support antennas and associated wireless equipment for the provision of wireless services and may include a pole or utility pole if, and only if, the sole or primary purpose of the pole is to support antennas and associated wireless equipment for the provision of wireless services.

Sec. 20-129. Franchise License Required.

Based on the Township's constitutional and proprietary rights and interests in its public rights-of-way and the reasonable control thereof under Article VII, Section 29 of the Michigan Constitution of 1963, the Township charter, and other applicable laws, wireless facilities shall

not be installed, used, operated, or maintained in a public right-of-way without a franchise license in a form and with such terms and conditions established by resolution of the Township Board. Such franchise license shall be applied for and obtained by each person or entity that will own, and each Wireless Provider that will be a user of the wireless facilities. Nothing herein shall be interpreted to require the Township to issue a franchise license and the Township reserves to itself discretion to grant, deny or modify a request for a license as it determines to be in the best interest of the Township and its citizens taking into account such proprietary, safety and fiduciary interests as it deems warranted. It is the policy of the Township to encourage the collocation of antennas and similar facilities first outside of public rights-of-way and, secondarily, within the public rights-of-way. The collocation of wireless facilities shall be a condition of approval of any franchise license granted for a new supporting structure in the public right-of-way according to terms and conditions set forth in a required right-of-way franchise agreement.

Sec. 20-130. Franchise License Types and Time Requirements.

Subject to its proprietary and reserved rights and discretion under Sec. 20-129, the Township provides notice that franchise licenses for the following wireless facilities in the public right-of-way may be applied for:

- a. Collocation of wireless equipment on a new or existing wireless support structure or utility pole subject to the standards in Sec. 20-131 and Sec. 20-132. Unless a collocation qualifies as an Eligible Facilities Request, an application for collocation on an existing support structure or pole shall be acted upon by the Township within sixty (60) days of receiving a complete application. Applications for collocation on a new or previously unapproved support structure or pole shall be acted upon by the Township within ninety (90) days of receiving a complete application. The Township shall notify the applicant in writing within thirty (30) days of receiving an application if the application is determined to be incomplete and shall identify the incomplete items.
- b. Eligible Facilities Requests subject to the standards and time requirements set forth in Sec. 20-133.
- c. A new or replacement wireless support structure or utility pole, including use of an existing support structure or pole previously unapproved for use as a wireless support structure or pole as provided in Sec. 20-132 and Sec. 20-134. Applications for placement/use of a new or previously unapproved support structure or pole shall be acted upon by the Township within ninety (90) days of receiving a complete application. The Township shall notify the applicant in writing within thirty (30) days of receiving an application if the application is determined to be incomplete and shall identify the incomplete items.

Sec. 20-131. Collocation on Wireless Support Structures and Utility Poles.

Unless otherwise provided by this Division, wireless equipment collocated on wireless support structures and utility poles shall be designed, installed, used, and maintained in compliance with, and be subject to, the following standards:

- a. Shall only be used by entities with a franchise, license, or other proprietary authority granted by the Township or by law to have access to and use of the public right-of-way in that location.
- b. Shall be treated to match the supporting structure or pole by painting or other coating to be visually compatible with the support structure upon which it is to be attached.
- c. Shall be compatible in scale and proportion to the structure or pole upon which it is to be attached using the smallest and least intrusive technology available.
- d. Up to three (3) antennas may be collocated on a utility pole if technically and structurally feasible and designed in a manner that complies with all requirements of this Section.
- e. For wireless support structures, the number of antennas that may be added is limited to the number the structure was designed and constructed to accommodate.
- f. No antenna or other wireless equipment shall extend more than four feet (4') above the existing height of the structure or pole upon which it is to be attached.
- g. No antenna or other wireless equipment shall project more than one foot (1') from any side of the utility pole or wireless support structure upon which it is to be attached.
- h. No antenna or other wireless equipment shall project closer than two feet (2') from an existing sidewalk/face of curb.
- i. No antenna or other wireless equipment shall be closer than five feet (5') from any driveway.
- j. The wireless equipment shall be located at a height above grade that complies with Sec. 20-132, does not pose a hazard or obstruction to persons or vehicles, and provides sufficient separation distance from power lines and similar facilities.
- k. In residential districts, collocations shall only be on wireless support structures or utility poles located in line with a side lot line to avoid placement in front of houses.
- l. Structural modification of the utility pole or wireless support structure must not be necessary to safely accommodate the collocation in compliance with all building codes.
- m. Must obtain and comply with all conditions of any required permits from other governmental entities that also have an ownership, control or jurisdictional interest in the public right-of-way.
- n. Any franchise license for collocation of wireless equipment on a utility pole shall not deem or cause the utility pole to be considered or claimed to be a wireless support structure or existing wireless equipment (base station) for purposes of any future eligible facilities request.

Sec. 20-132. Guidelines for Designated Road Classifications.

Township rights-of-way generally consist of four (4) separate classifications which will allow three (3) distinct corresponding categories for wireless installations. These guidelines may be modified by the Township as needed on a cases-by-case basis to accommodate an otherwise permissible collocation and/or reduce the need for placement of new wireless support structures and poles within the right-of-way. Existing available poles and support structures shall be utilized whenever feasible. Township owned poles/support structures and/or property may be utilized at the Township's proprietary discretion subject to a Franchise Agreement and terms approved by the Township. Requests for new and/or replacement poles/support structures within a public right-of-way shall be evaluated on a case-by-case basis according to the need, the availability of existing support structures, the availability of placement on land outside the public right-of-way and other relevant site and technical factors. As a condition to approval, new or previously unapproved support structures and/or poles approved by the Township shall be made available for technically feasible collocations by other providers on commercially reasonable terms. In addition to other terms and conditions set forth in an applicable permit, Franchise Agreement or provision of this Division, the following dimensional and placement guidelines shall be observed:

- a. **Category 3 Wireless-Principal Arterial/Minor Arterial Roads.** Category 3 rights-of-way are typically the largest and most flexible. Most will have adequate space to accommodate larger wireless equipment without negatively impacting the safety and aesthetics of the environment. Wireless facilities in these areas may occupy up to twenty-seven (27) cubic feet of total area. This total includes the antenna and any supporting or ancillary equipment, including any ground mounted equipment. Category 3 installations may include a separate equipment cabinet that can be ground mounted adjacent to a supporting structure for the wireless facility. No other structure and/or equipment can be mounted lower than ten feet (10') above grade. All installation requests are subject to existing requirements, including franchise license and agreement requirements, and necessary permitting requirements. The total overall height of a Category 3 wireless facility shall not exceed fifty feet (50').
- b. **Category 2 Wireless-Major Collector Roads.** Category 2 rights-of-way typically serve as transition roads between local streets and arterial roads. Category 2 installations may occupy up to twenty-seven (27) cubic feet of total area. Ground mounted installations are not allowed. Antennas and cabinets shall be pole/structure mounted at least ten feet (10') above grade. Wireless facilities shall be set back at least fifty feet (50') from an existing residential building. All installation requests are subject to existing requirements, including franchise license and agreement requirements, and necessary permitting requirements. The total overall height of a Category 2 wireless facility shall not exceed fifty feet (50').
- c. **Category 1 Wireless-Local Roads.** Category 1 rights-of-way typically consist of local/residential roads with limited capacity to support additional and/or new facilities. Category 1 installations shall be self-contained equipment that can be attached to existing structures/poles. Category 1 installations shall not exceed eight

(8) cubic feet of total volume and shall not be within fifty feet (50') of an existing residential building. All installation requests are subject to existing requirements, including franchise license and agreement requirements, and necessary permitting requirements. The total overall height of a Category 1 wireless facility shall not exceed thirty-five feet (35').

Sec. 20-133. Eligible Facilities Requests.

- a. The sixty (60) day time period under federal law, 47 USC 1455(a) and 47 CFR 1.40001, for the Township to review and approve or deny an Eligible Facilities Request shall begin to run upon submission of a complete application which shall include an application for a Right-of-Way Disruption Permit and any other required permit for construction under applicable codes and ordinances. If the Township determines the application to be incomplete, or a supplemented application remains incomplete, the sixty (60) day time period shall be tolled during the period of incompleteness as provided in subsection (e) below.
- b. As defined, an Eligible Facilities Request is not available for collocation on a pole unless the pole qualifies as a Wireless Support Structure. Eligible Facility Requests are available for collocations on or modifications to existing approved support structures or base stations only.
- c. An application for an Eligible Facilities Request shall include all the documents, plans, specifications, and statements necessary to establish that:
 1. The wireless support structure or wireless equipment (base station) is existing.
 2. The wireless support structure or wireless equipment (base station) to be modified is in compliance with all applicable Township, State, and other local zoning, siting, and regulatory reviews, permits, and approvals.
 3. Modification is limited to collocation, removal or replacement of wireless equipment.
 4. There will be no "substantial change" to the wireless support structure or wireless equipment (base station).
- d. An application for Eligible Facilities Request will be reviewed and the decision to approve or deny will be based on compliance with the requirements for approval of this Division, other applicable ordinances, and all other required permits.
- e. The time allowed for review and decision on an application for Eligible Facilities Request will be tolled if the Township provides written notice to the applicant within thirty (30) days of receipt of the request that the application is incomplete and identifies missing documents and information required for the application to be complete under subsection (c) above. The time period allowed for review will begin to run again upon the applicant submitting the documents and information needed for the application to be complete. If the supplemental submission remains incomplete, a new notice of incompleteness will be issued within seven (7) days of the supplemental submission, and

the time period for review and decision will remain tolled until the documents and information required for a complete application is submitted.

Sec. 20-134. Wireless Support Structures and Poles.

Wireless support structures and poles shall be designed, installed, used, and maintained in compliance with, and shall be subject to the following guidelines:

- a. Shall only be used by entities with a franchise, license, or other proprietary authority granted by the Township or by law to have access to and use the public right-of-way in that location.
- b. Replacement structures/poles shall not be taller than the height of the structure or pole being replaced by more than ten percent (10%) or ten feet (10'), whichever is greater.
- c. Shall be subject to the Township specifying a location in the same general public right-of-way area, but different than the exact location of the structure or pole being replaced, or newly established for any of the following reasons:
 1. To comply with any setback, separation, or isolation distance requirement from existing or planned public utilities or other lawful structures in the public right-of-way.
 2. To provide a separation distance of at least five feet (5') from a sidewalk and the back of a curb, or if there is no curb, from the edge of the public right-of-way improved and used for motor vehicle travel.
 3. To provide a separation distance of at least five feet (5') from the edge of any driveway.
 4. To comply with a traffic safety clear vision standard under any Township ordinance or code.
 5. To avoid a location that may cause a physical or visual obstruction or safety hazard to pedestrian or vehicular traffic.
 6. To locate the replacement pole aligned with, or in a desired relationship to, other structures or poles in the public right-of-way.
 7. To avoid location on privately owned land occupied by the public right-of-way.
 8. To comply with any applicable restrictions and conditions for a designated public right-of-way under Sec. 20-132.
- d. Must obtain and comply with all conditions of any required permits from other governmental entities that also have an ownership, control, or jurisdictional interest in the public right-of-way.
- e. Approval of the replacement of a utility pole with a wireless support structure or utility pole with wireless equipment collocated on it shall not be considered or claimed to be a wireless support structure or existing wireless equipment (base station) for purposes of any future Eligible Facilities Requests.

- f. A replacement utility pole with wireless equipment collocated on it shall not be altered, expanded, or changed in appearance without Township approval unless any State or federal statute, rule or law allows such modifications without Township approval.

Sec. 20-135. Franchise License Application Requirements.

Applications for a franchise license for wireless facilities under this Division shall be filed with the Township Clerk in a form and quantity determined by the Clerk and shall include the documents and information described in this Section. Eligible Facilities Requests shall also include the documents, plans, specifications, and statements described in Sec. 20-133.

- a. A legible and scaled location map accurately showing each site for which the license is requested by reference to the sides and locations on named streets, and containing a summary description of what is existing and proposed for each site.
- b. For each site shown on the location map, identification of:
 - 1. The owner of the wireless support structure or utility pole.
 - 2. Owners of wireless equipment to be collocated at the site.
 - 3. Wireless providers that will use wireless equipment at the site.
- c. For each person or entity required to be identified in subsection (b), the following information:
 - 1. Legal and any assumed names and resident agent name, if any.
 - 2. Local, mailing and registered office addresses.
 - 3. Name and title of authorized person that will sign license if approved.
 - 4. Contact person name, address, phone number and email address.
- d. For each site shown on the location map, scaled and accurate detailed plans and elevation drawings of existing conditions that show:
 - 1. The wireless support structure or utility pole proposed for collocation or replacement and attachments to it.
 - 2. The closest wireless support structures or utility poles on the same side of the public right-of-way to the structure or pole proposed for collocation or replacement.
 - 3. Trees and existing structures on or above the ground within fifty feet (50') of the structure or pole proposed for collocation or replacement including, but not limited to the improved roadway, curbs, buildings, driveways, sidewalks, signs, utility cabinets, utility pole guy wires, shelters, and benches.
 - 4. Existing below-ground structures within fifty feet (50') of the structure or pole proposed for collocation or replacement including, but not limited to water, sanitary sewer, storm sewer, electric, gas, cable, and communication lines, conduit, or other installations.

- e. For each site shown on the location map, scaled and accurate detailed plans, specifications, and elevation drawings of proposed conditions that establish compliance with the applicable standards in Sec. 20-131 through Sec. 20-134 would be sufficient to obtain a Right-of-Way Disruption Permit and any other required construction permits which, if approved, shall be attached to and made a part of the approved franchise license.
- f. Documentation that each wireless support structure or utility pole proposed for collocation can structurally accommodate the collocation, and for each proposed replacement structure or pole, documentation of its sufficiency to accommodate the proposed and any future wireless equipment.
- g. For each site shown on the location map, documentation that the owner of the wireless support structure or utility pole has approved the information disclosed in the plans, specifications, and drawings described in subsection (f).
- h. Any license application, review, or processing fee established by resolution of the Township Board.

Sec. 20-136. Review and Decision on Franchise License Application.

- a. After a complete license application is submitted, it will be reviewed by Township staff and/or consultants for compliance with the standards in this Division and for eligibility for the Township Board to consider approval of a franchise license. A franchise license applicant will be notified by the Township of any areas of non-compliance and allowed the opportunity to correct and supplement incomplete or non-compliant items.
- b. Upon the Township staff/consultant review determining compliance with the standards in this Division, a wireless facilities right-of-way Franchise Agreement containing terms and conditions and in a form as approved by resolution of Township Board will be prepared by the Township and presented to the license applicant for authorized signature by the owner and each Wireless Provider of the wireless facilities that would be authorized by the franchise license. The presentation of a form Franchise Agreement by the Township shall not be considered or claimed to represent any determination or representation that the Township has approved or will approve the franchise license.
- c. Upon a right-of-way Franchise Agreement being signed by the required persons or entities and returned to the Township Clerk, it will be presented to the Township Board at its first available regular meeting for review and its discretionary decision to approve, approve with required changes or conditions, or deny the requested franchise license.
- d. Township Board approved right-of-way Franchise Agreement for wireless facilities shall be executed by the Supervisor and Clerk on behalf of the Township.

Sec. 20-137. Franchise License Terms, Conditions, and Fees.

The form, terms, conditions, and fees for use of the public right-of-way for a wireless facility shall be established and set forth in a Uniform Right-of-Way Franchise Agreement adopted by resolution of the Township Board. The execution of a Uniform Right-of-Way Franchise Agreement by the Township and a Wireless Provider shall constitute and confer a license to use and occupy the public right-of-way as provided in the Uniform Right-of-Way Franchise Agreement. A Wireless Provider shall comply with all terms and conditions set forth in an executed Uniform Right-of-Way Franchise Agreement. Any material breach of a term or condition of a Uniform Right-of-Way Franchise Agreement shall constitute: 1) a breach of contract; and 2) a violation of this Division.

Sec. 20-138. Right-of-Way Disruption Permits and Construction Permits.

A person that has applied for and obtained a license shall not commence construction upon, over, across, or under the public right-of-way without first applying for and obtaining a required Right-of-Way Disruption Permit, and any required construction permit(s) as may be required under applicable Township codes and ordinances.

Sec. 20-139. Compliance with Permit Conditions.

Compliance with permit conditions is required, and a violation of permit conditions is a violation of this Section.

Sec. 20-140. Fees and Bond.

A bond may be required to be posted as a condition of a required permit in an amount and form determined by the Township to ensure that the public right-of-way is returned to its original condition during and after the Wireless Provider's access and use. In addition to any fees or charges that are payable to the Township under a franchise license for access to and use of the public right-of-way, fees for making application, review, permit issuance, and/or inspection shall be payable in amounts established by resolution of the Township Board. Fees include professional review fees and costs incurred by the Township in processing an application. The Township may require an escrow payment at the time of application to cover anticipated professional review fees. An application shall be deemed incomplete until the applicant has paid all required fees and posted all required bonds.

Sec. 20-141. Violation.

A violation of any section in this Division shall be a misdemeanor. Nothing in this Section shall be construed to limit the remedies available to the Township under a franchise license or otherwise by law or equity in the event of a violation of this Division, or any issued permit.

Sec. 20-142 to 20-152. Reserved.

Section 2 of Ordinance

Should any section, subdivision, sentence, clause, or phrase of this Ordinance be declared by the Courts to be invalid, it shall not affect the validity of the remainder of the Ordinance or any part other than the part invalidated. It is further declared that such provisions would have been adopted independently of the provision found to be invalid. Should any procedural aspect of this Ordinance be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this Ordinance.

Section 3 of Ordinance


This Ordinance shall take effect immediately upon publication.

CERTIFICATION

STATE OF MICHIGAN)
) SS.
COUNTY OF OAKLAND)

I, Deborah Binder, the duly elected Clerk for the Charter Township of West Bloomfield, Oakland County, Michigan, do hereby certify that the foregoing is a true and complete copy of the Ordinance adopted by the Township Board for the Charter Township of West Bloomfield at a meeting held on the 17th day of December, 2018, the original of which is on file in the Office of the Township Clerk.

I affix my official signature/seal this 17 day of December, 2018.

By: 
Deborah Binder, Clerk

EMERGENCY ADOPTION: December 17, 2018
EFFECTIVE: December 26, 2018
PUBLISHED: December 26, 2018