



7275 W. MAIN STREET, KALAMAZOO, MI 49009-9334
269-216-5220 Fax 375-7180 TDD 375-7198
www.oshtemo.org

**NOTICE
OSHTEMO CHARTER TOWNSHIP
PLANNING COMMISSION - REGULAR MEETING**

**MEETING WILL BE HELD IN PERSON
AT OSHTEMO TOWNSHIP HALL
7275 W MAIN STREET**
Masks Are Optional in Oshtemo Township Buildings

(Meeting will be available for viewing through <https://www.publicmedianet.org/qavel-to-qavel/oshtemo-township>)

**THURSDAY, JULY 27, 2023
6:00 P.M.**

AGENDA

1. Welcome and Call to Order
2. Pledge of Allegiance
3. Approval of Agenda
4. Public Comment on Non-Agenda Items
5. Approval of Minutes: June 22, 2023
6. **Public Hearing – Rezoning – 1560 S. 8th Street**
The applicant, Scott Williams, is requesting to rezone 1560 S. 8th Street from its current zoning designation of R-3, Residence District to I-1, Industrial District.
7. Work Session
 - a. Introduction, 5G Ordinance
8. Other Updates and Business
9. Adjournment

**Policy for Public Comment
Township Board Regular Meetings, Planning Commission & ZBA Meetings**

All public comment shall be received during one of the following portions of the Agenda of an open meeting:

a. Citizen Comment on Non-Agenda Items or Public Comment – while this is not intended to be a forum for dialogue and/or debate, if a citizen inquiry can be answered succinctly and briefly, it will be addressed, or it may be delegated to the appropriate Township Official or staff member to respond at a later date. More complicated questions can be answered during Township business hours through web contact, phone calls, email (oshtemo@oshtemo.org), walk- in visits, or by appointment.

b. After an agenda item is presented by staff and/or an applicant, public comment will be invited. At the close of public comment there will be Board discussion prior to call for a motion. While comments that include questions are important, depending on the nature of the question, whether it can be answered without further research, and the relevance to the agenda item at hand, the questions may not be discussed during the Board deliberation which follows.

Anyone wishing to make a comment will be asked to come to the podium to facilitate the audio/visual capabilities of the meeting room. Speakers will be invited to provide their name, but it is not required.

All public comment offered during public hearings shall be directed, and relevant, to the item of business on which the public hearing is being conducted. Comment during the Public Comment Non-Agenda Items may be directed to any issue.

All public comment shall be limited to four (4) minutes in duration unless special permission has been granted in advance by the Supervisor or Chairperson of the meeting.

Public comment shall not be repetitive, slanderous, abusive, threatening, boisterous, or contrary to the orderly conduct of business. The Supervisor or Chairperson of the meeting shall terminate any public comment which does not follow these guidelines.

(adopted 5/9/2000)
(revised 5/14/2013)
(revised 1/8/2018)
(revised 5/3/2023)

Questions and concerns are welcome outside of public meetings during Township Office hours through phone calls, stopping in at the front desk, by email, and by appointment. The customer service counter is open from Monday-Thursday 8 a.m. - 1 p.m. and 2 – 5 p.m., and on Friday 8 a.m. – 1 p.m. Additionally, questions and concerns are accepted at all hours through the website contact form found at www.oshtemo.org, email, postal service, and voicemail. Staff and elected official contact information is provided below. If you do not have a specific person to contact, please direct your inquiry to oshtemo@oshtemo.org and it will be directed to the appropriate person.

Oshtemo Township Board Trustees		
<u>Supervisor</u> Cheri Bell	216-5220	cbell@oshtemo.org
<u>Clerk</u> Dusty Farmer	216-5224	dfarmer@oshtemo.org
<u>Treasurer</u> Clare Buszka	216-5221	cbuszka@oshtemo.org
<u>Trustees</u> Zak Ford	271-5513	zford@oshtemo.org
Kristin Cole	375-4260	kcole@oshtemo.org
Kizzy Bradford	375-4260	kbradford@oshtemo.org
Neil Sikora	760-6769	nsikora@oshtemo.org

Township Department Information		
<u>Assessor:</u> Kristine Biddle	216-5225	assessor@oshtemo.org
<u>Fire Chief:</u> Greg McComb	375-0487	gmccomb@oshtemo.org
<u>Ordinance Enf:</u> Rick Suwarsky	216-5227	rsuwarsky@oshtemo.org
<u>Parks Director:</u> Vanessa Street Rental Info	216-5233 216-5224	vstreet@oshtemo.org oshtemo@oshtemo.org
<u>Planning Director:</u> Iris Lubbert	216-5223	ilubbert@oshtemo.org
<u>Public Works:</u> Anna Horner	216-5228	ahorner@oshtemo.org

**OSHEMO CHARTER TOWNSHIP
PLANNING COMMISSION**

DRAFT MINUTES OF A MEETING HELD JUNE 22, 2023

Agenda

WORK SESSION:

- a. Introduction - Height Requirements for Residential Dwellings**
 - b. Update - Housing Study**
 - c. Update - Comprehensive Master Plan**
-

A meeting of the Oshtemo Charter Township Planning Commission was held Thursday, June 22, 2023, commencing at approximately 6:02 p.m. at the Oshtemo Township Hall, 7275 West Main Street.

ALL MEMBERS

WERE PRESENT: Anna Versalle, Chair
Phil Doorlag
Deb Everett
Zak Ford, Township Board Liaison
Scot Jefferies
Micki Maxwell, Vice Chair
Alistair Smith

Also present: Iris Lubbert, Planning Director and Martha Coash, Recording Secretary.

Call to Order and Pledge of Allegiance

Chairperson Versalle called the meeting to order and invited those present to join in the Pledge of Allegiance.

Approval of Agenda

The Chair asked if there were any changes to the agenda. Hearing none, she moved to the next agenda item.

Public Comment on Non-Agenda Items

No members of the public were present.

Approval of the Minutes of the Meeting of June 8, 2023

Chairperson Versalle asked if there were additions, deletions, or corrections to the Minutes of the Meeting of June 8, 2023.

Hearing none, she asked for a motion.

Mr. Ford **made a motion** to approve the Minutes of the Meeting of June 8, 2023 as presented. Ms. Maxwell **seconded the motion**. The **motion was approved** unanimously.

WORK SESSION:

Chairperson Versalle moved a work session to consider the agenda items a - c.

a. Introduction - Height Requirements for Residential Dwellings

Ms. Lubbert introduced ordinance amendments to include height requirements for residential dwellings for consideration by the Commission. She indicated Oshtemo Township is the only area community she is aware of that does not have height requirements for residential dwellings and proposed the same requirements as are in place in neighboring governmental units. She indicated having a requirement consistent with others will help to dictate community character and noted the catalyst for this suggested addition to the ordinance was the airport ordinance approved at the last Commission meeting.

Commissioners had questions regarding defining average elevation. Ms. Lubbert noted 35 feet is consistent with other communities' height requirements. There was discussion about the Michigan Building Code requirements and how they affect this discussion. Ms. Lubbert said she believed the Township's requirement can be more restrictive than the Michigan Building Code if desired, but not less. She will look at this issue for further clarification. The Commission also noted their desire to elaborate on the proposed definition of height.

Using the Commission's comments, Ms. Lubbert will bring an updated draft back to the group for further consideration before moving forward with a public hearing.

Ms. Versalle moved to the next agenda item.

b. Update - Housing Study

Ms. Lubbert reported the consultant is producing a final draft of the housing study, incorporating discussion at the last work session of the Commission. A work session is scheduled for Tuesday, June 27 at noon for those stakeholders who were

interviewed at the beginning of the process regarding the goals, basic background, and an update on progress. To date she noted that she has received 15 RSVPs, and expects 15-20 attendees. If substantial suggestions for changes come out of that meeting, she will bring them back to the group prior to developing the final document. She noted up to three Commission members may attend the meeting.

Mr. Ford and Ms. Maxwell noted their intent to attend the work session.

The Chair moved to the next agenda item.

c. Update - Comprehensive Master Plan

Ms. Lubbert provided an update for the group regarding the Comprehensive Master Plan, noting a contract has been signed with Progressive AE for the work to update the plan. A two hour kick-off meeting, yet to be scheduled, will be held to finalize the scope, schedule, and expectations for the process. She noted three Commissioners may attend the meeting. Ms. Maxwell, Mr. Doorlag, and Mr. Jefferies indicated they planned to attend.

The consultant has proposed weekly virtual check-ins with staff for brief updates. No Commissioners indicated they wished to be included in those sessions; Ms. Lubbert will keep them updated.

She also indicated a signed contract on development of a road ordinance has been signed with Progressive AE.

Chairperson Versalle moved to the next item on the agenda.

OTHER UPDATES AND BUSINESS

It was noted the deadline for applications for the open Board of Trustees position is June 23, with a decision expected June 27. The Planning Commission seat Ms. Versalle will leave in August also will need to be filled.

ADJOURNMENT

With there being no further business to consider, Chairperson Versalle adjourned the meeting at approximately 6:37 p.m.

Minutes prepared:
June 23, 2023

Minutes approved:
_____, 2023

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July 19, 2023



Mtg Date: July 27, 2023

To: Oshtemo Township Planning Commission

From: Iris Lubbert, AICP, Planning Director

Applicant: Scott Williams

Owner: Life Spring Church

Property: 1560 S. 8th Street, Parcel Number 05-22-485-030

Zoning: R-3, Residence District

Request: Rezone to I-1, Industrial District

Section(s): Article 8 – R3: Residence District
Article 27 - I-1: Industrial District, Manufacturing/Serviceing

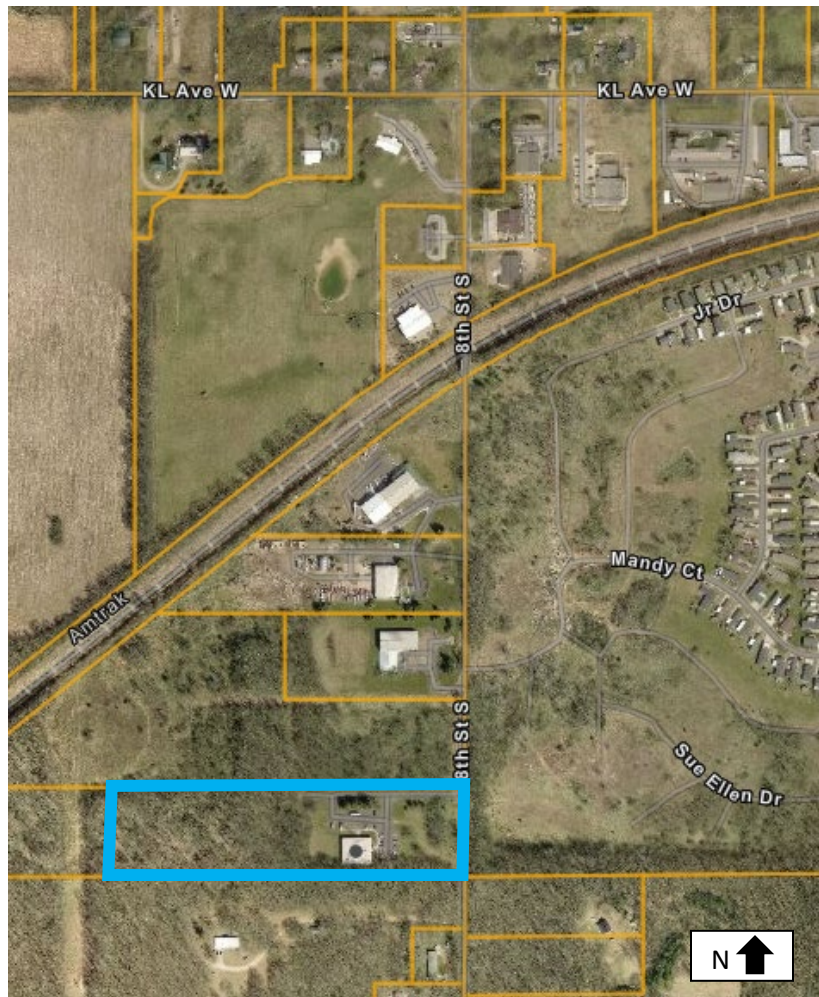
PROPOSAL:

The applicant, Scott Williams, is requesting to rezone 1560 S. 8th Street from its current zoning designation of R-3, Residence District to I-1, Industrial District. The property under consideration is outlined in blue in the areal image to the right.

OVERVIEW:

1560 S. 8th Street is currently zoned R-3, Residence District. The Parcel is 8.26 acres and located along the western portion of S. 8th Street, south of W. KL Avenue. The site is improved with a single-story building, measuring an estimated 7,760 square feet. Currently, the subject site functions as a religious institution.

Although this is not a conditional rezoning request, the applicant has indicated in their letter of



intent that if the rezoning request is approved, they intend to convert the existing building onsite into Complete Team Outfitters' home office. Complete Team Outfitters is primarily an apparel embroidery company.

CONSIDERATIONS:

The Zoning Enabling Act, which allows Townships to zone property, does not provide any required standards that a Planning Commission must consider when reviewing a rezoning request. However, there are some generally recognized factors that should be deliberated before a rezoning decision is made. These considerations are as follows:

1. Master Plan Designation

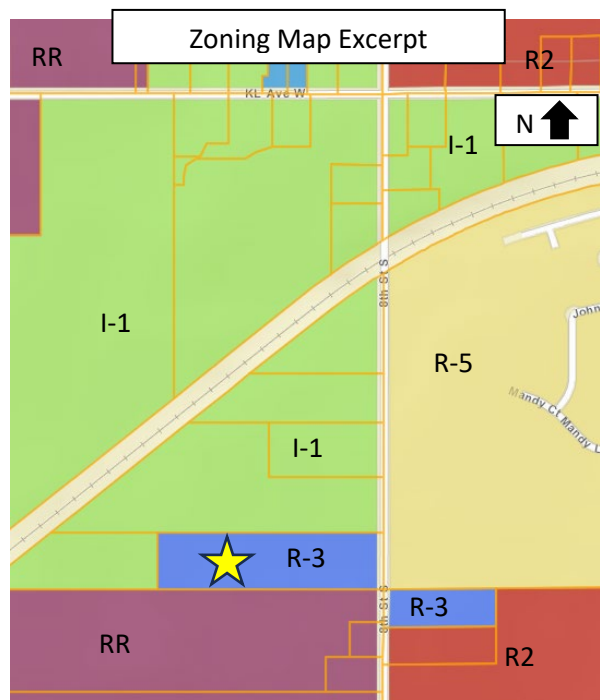
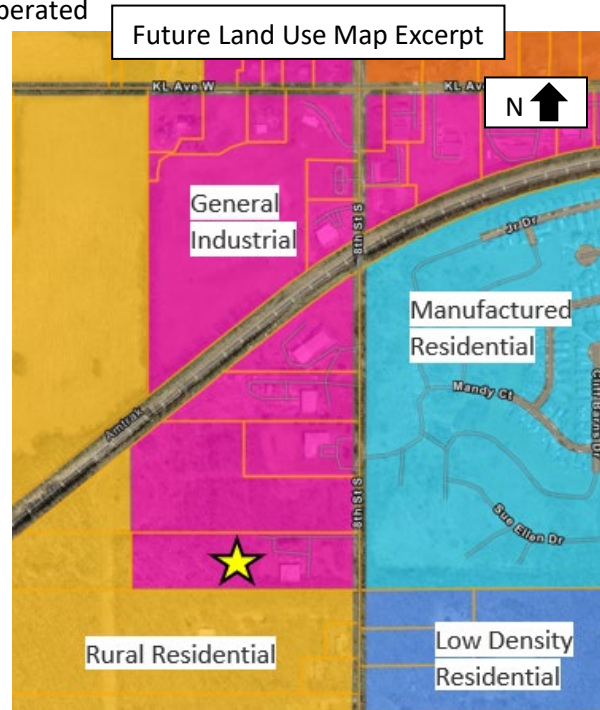
The Township's adopted 2017 Future Land Use Map designates 1560 S. 8th Street and the properties directly north of it as General Industrial. This designation is noted to include both light and general industrial uses. The Township's I-1, Industrial District meets the intent of the Master Plan's General Industrial designation. The proposal is consistent with the Oshtemo Township Master Plan. An excerpt of the Future Land Use Map is provided to the right, 1560 S. 8th Street is starred.

2. Consistency of the Zoning Classification in the General Area

1560 S. 8th Street is the only R-3, Residence zoned property on the west side of S. 8th Street between W. Kl Avenue and W. ML Avenue. RR, Rural Residential zoning is directly to the south. R-5, R-3, and R-2 Residence zoning is established to the east. I-1, Industrial zoned properties are located to the immediate north and west of the subject site. Rezoning 1560 S. 8th Street to I-1, Industrial would be consistent with the zoning classifications in the area.

3. Consistency and Compatibility with General Land Use Patterns in the Area

1560 S. 8th Street is improved with a single-story building, measuring an estimated 7,760 square feet. Currently, the site functions as a religious institution. There are existing industrial-use properties located to the immediate north of the subject site; it should be noted that there is an established development trend of general industrial



uses along KL Avenue and 8th Street. With the requested rezoning being consistent with the 2017 Future Land Use Plan and compatible with the industrial properties to the north, the proposed rezoning to I-1, Industrial would match the established character of the area.

4. Utilities and Infrastructure

Municipal water and sewer are not available to this site nor to the two established industrial properties directly to the north. Municipal water and sewer currently are only available on the north side of the railroad that crosses S. 8th Street. The existing church on-site is currently serviced by a private drinking well and private septic system. It should be noted that if any future development on the subject site requires such public infrastructure needs, that development will be mandated to extend and connect to the municipal system prior to the issuance of a certificate of occupancy. Review of utility needs would be conducted during a site plan review phase. Based on the information provided by the applicant, the proposed use of an industrial office, it is not anticipated that a connection will be needed anytime in the near future.

5. Reasonable Use under Current Zoning Classification

1560 S. 8th Street is currently zoned R-3, Residence District which does not allow for the variety of uses and activities permitted within the I-1, Industrial district. The rezoning achieves the Township's Master Plan goals for this area and also fits the applicant's vision for the site.

6. Effects on Surrounding Property

The existing use of the subject parcel is that of a religious institution, which is indicative of higher traffic volumes and usage than that of a rural residential property. The properties to the north and west have been zoned for and used as Industrial enterprises since the 1990's. The proposed rezoning of the subject site to an Industrial designation would be compatible with adjacent properties. Impacts beyond the activities currently occurring in the area are not anticipated.

RECOMMENDATION:

Planning Department staff recommend that the Planning Commission forward a recommendation of approval to the Township Board for the rezoning of 1560 S. 8th Street from the R-3, Residence District to the I-1, Industrial District based on the following findings of fact:

1. The Oshtemo Township 2017 Master Plan's Future Land Use Plan designates the subject property as Industrial.
2. The subject property is adjacent to industrially zoned properties to the north and west.
3. No adverse impact on existing utilities nor infrastructure are anticipated by the rezoning request.
4. The rezoning of the subject site to I-1 would provide a reasonable use of the property.
5. The rezoning is anticipated to have minimal impact on adjacent properties.

Attachments: Application, Letter of Intent, R-3 Ordinance, I-1 Ordinance, and I-R Ordinance.

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7275 W. Main Street, Kalamazoo, Michigan 49009-9834
Phone: 269-216-5223 Fax: 269-375-7180

SCANNED

PLEASE PRINT

PROJECT NAME & ADDRESS LTO / 1560 S. 8TH St., Kalamazoo

PLANNING & ZONING APPLICATION

Applicant Name: Scott Williams
Company An LLC to-be-determined.
Address 703 Treasure Island Dr
Manitouan, MI 49071
E-mail Scott.Williams-SMW@gmail.com
Telephone 269-598-6928 Fax ---
Interest in Property Under contract for purchase
Contingent on re-zoning.

THIS SPACE FOR TOWNSHIP USE ONLY

OWNER*:

Name Life Spring Church
Address 1560 S 8th Street
Kalamazoo, MI 49009
Email cctorstenson@sbcglobal.net
Phone & Fax 269-501-2714

Fee Amount _____
Escrow Amount _____

NATURE OF THE REQUEST: (Please check the appropriate item(s))

- Planning Escrow-1042
- Site Plan Review-1088
- Administrative Site Plan Review-1086
- Special Exception Use-1085
- Zoning Variance-1092
- Site Condominium-1084
- Accessory Building Review-1083
- Land Division-1090
- Subdivision Plat Review-1089
- Rezoning-1091
- Interpretation-1082
- Text Amendment-1081
- Sign Deviation-1080
- Other: _____

BRIEFLY DESCRIBE YOUR REQUEST (Use Attachments if Necessary):

This address
includes two separate parcels: OS-22-485-020 is 5.3 acres + zoned
as Industrial. Parcel OS-22-485-030 is 8.3 acres + zoned R-3. We
are seeking to have this R-3 parcel re-zoned to Industrial. "I-1"

LEGAL DESCRIPTION OF PROPERTY (Use Attachments if Necessary):

Part of the SE 1/4 of Section 22, T 2 S, R 12 W, Oshtemo Township, Kalamazoo County Michigan, further described as: Beginning at the SE corner of said Sec 22 thence S 89 Deg 54'32" W on the S line of said Sec. 1200.00ft.; thence N 0 deg 10'00" W parallel with the E line of said Sec. 300.00 ft.; thence N 10'00" E on said E section line of 300.00ft to

the point of beginning.
PARCEL NUMBER: 3905- 05-22-485-030

ADDRESS OF PROPERTY: 1560 S. 8TH St. / Kalamazoo

PRESENT USE OF THE PROPERTY: Life Spring Church

PRESENT ZONING R-3 SIZE OF PROPERTY 8.3 ACRES

NAME(S) & ADDRESS(ES) OF ALL OTHER PERSONS, CORPORATIONS, OR FIRMS HAVING A LEGAL OR EQUITABLE INTEREST IN THE PROPERTY:

Name(s)	Address(es)
<u>Missions and Church Extension Trust Fund - mortgagee</u>	<u>3347 Eagle Run Drive NE Suite B Grand Rapids, Michigan 49525-7054</u>

SIGNATURES

I (we) the undersigned certify that the information contained on this application form and the required documents attached hereto are to the best of my (our) knowledge true and accurate. I (we) acknowledge that we have received the Township's Disclaimer Regarding Sewer and Water Infrastructure. By submitting this Planning & Zoning Application, I (we) grant permission for Oshtemo Township officials and agents to enter the subject property of the application as part of completing the reviews necessary to process the application.

Life Spring Church LMC
Trustee Chairperson

Craig Torstenson
Craig Torstenson

Owner's Signature* (if different from Applicant)

6/3/23

Date

SMW

Applicant's Signature

6/1/23

Date

- Copies to:
- Planning -1
- Applicant -1
- Clerk -1
- Deputy Clerk -1
- Attorney -1
- Assessor -1
- Planning Secretary - Original

PLEASE ATTACH ALL REQUIRED DOCUMENTS

June 24, 2023

Oshtemo Township
Attn: Iris Lubbert
7275 W. Main Street
Kalamazoo MI 49009

RE: Letter of Intent: 1560 S. 8th St

To Whom It May Concern:

Please accept this letter for purposes of describing the projected use of 1560 S. 8th St. The use is dependent on the pending approval of our rezoning application to Industrial. The project is being pursued as an investment property by a small group of investors located Mattawan. It is being developed in conjunction with Complete Team Outfitters (CTO). CTO's primary business is an apparel embroidery company currently located off D Ave north of Kalamazoo. CTO will be using the existing building for their home office. We plan to refurbish the interior of the building, repair the parking lot, paint/update the exterior, update landscaping, and add new road signage.

We look forward to partnering with the township to enhance this property and move the usage to more closely align with the stated master plan goals.

Sincerely,

SM Williams

Scott M. Williams
Acquiring Owner
269.598.6928

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ZONING ORDINANCE

ARTICLE 8

8 – R-3: RESIDENCE DISTRICT

Contents:

- 8.10 STATEMENT OF PURPOSE**
- 8.20 PERMITTED USES**
- 8.30 PERMITTED USES WITH CONDITIONS**
- 8.40 SPECIAL USES**

(Amended by ord. no. 632; adopted February 10th, 2021, effective February 16th, 2021. Amended by ord.no. 647; adopted January 24, 2023.)

8.10 STATEMENT OF PURPOSE

This district classification is designed as a transitional zoning classification to permit residential development together with other facilities that do not generate large volumes of traffic, traffic congestion and parking problems, and are designed so as to be compatible with surrounding residential uses.

8.20 PERMITTED USES

- A. Any permitted use in the "R-2" Residence District.
- B. Accessory buildings and uses customarily incidental to the foregoing.
- C. Family day care home.
- D. Adult Foster Care Facility.
- E. Foster Family Home.
- F. Qualified Residential Treatment Programs (QRTP)

8.30 PERMITTED USES WITH CONDITIONS

- A. Conversion of a residence for offices.
- B. Temporary outdoor events (not lasting more than one day).
- C. Home occupations.

8.40 SPECIAL USES

- A. Three or four-family dwellings.
- B. Buildings and regulator stations for essential services.
- C. Golf courses, parks, and outdoor recreational areas.
- D. Office buildings.
- E. Veterinary, small animal clinics.
- F. Banks, credit unions, and savings and loan offices.

- G. Public and private schools.
- H. Child Care Centers and Adult Care Centers.
- I. Group day care home.
- J. Beauty parlors or barber shops.
- K. Temporary outdoor events (lasting more than one day).
- L. Communication towers.
- M. Earth removal, quarrying, gravel processing, mining, related mineral extraction businesses, and landfill gas recovery processing facilities.
- N. Wind energy conversion systems.
- O. Larger Facilities for Child and Adult Foster Care, including: Child Caring Institutions, Foster Family Group Home, Adult Foster Care Small Group Home, and Adult Foster Care Large Group Home.

ZONING ORDINANCE

ARTICLE 27

27 – I-1: INDUSTRIAL DISTRICT, MANUFACTURING/SERVICING

Contents:

- 27.10 STATEMENT OF PURPOSE
- 27.20 PERMITTED USES
- 27.30 PERMITTED USES WITH CONDITIONS
- 27.40 SPECIAL USES
- 27.50 DEVELOPMENT STANDARDS

27.10 STATEMENT OF PURPOSE

This district is composed of certain lands located along State highways, County primary roads, and railroad rights-of-way. The district is designed to provide land for industries of a manufacturing and servicing nature in which all work is carried on within a fully enclosed building and which produces little external effect of an objectionable nature to the surrounding properties.

27.20 PERMITTED USES

- A. Any permitted use in the "I-R" Industrial District.
- B. Contractor's services related to the building trades such as electrical, mechanical, plumbing, general building, excavating, and landscaping.
- C. Auto body and paint shops.
- D. Ice and cold storage plant.
- E. Warehouses; fully enclosed.
- F. Automobile repair, service and/or automobile glass repair facilities.
- G. Crematories.
- H. Wholesale and retail lumber yards.
- I. Laundromats and dry-cleaning establishments providing cleaning services to other laundromat and dry-cleaning establishments.
- J. Publicly owned and operated buildings and uses including community buildings and public parks, playgrounds and other recreational areas.
- K. Essential services.
- L. Accessory buildings and uses customarily incidental to the foregoing.
- M. Communication towers.

27.30 PERMITTED USES WITH CONDITIONS

- A. Manufacturing, compounding, assembling or treatment of merchandise.
- B. Temporary outdoor events (not lasting more than one day).

- C. Communication towers.

27.40 SPECIAL USES

- A. Farm machinery and other equipment sales lots, subject to the conditions and limitations set forth in Section 49.170.
- B. Office buildings for executive and professional occupations traditionally related to building trades, including, but not limited to, architects, engineers and surveyors subject to the regulations contained in Section 49.130.C–N, where applicable as determined by the Planning Commission in the Special Use review/approval process.
- C. Skating rinks, bowling alleys, indoor recreational facilities and health clubs.
- D. Storage buildings and mini warehouses.
- E. Freestanding office buildings on legal nonconforming substandard parcels subject to the regulations contained in Section 49.130, where applicable, as determined by the Planning Commission in the Special Use and Site Plan review process. For purposes of this section, the term substandard shall apply to a parcel that does not meet the minimum area requirements of Section 50.10.
- F. Kennels for the breeding, raising and/or boarding of dogs or cats.
- G. Veterinary small animal hospitals and dog pounds, including crematories attached thereto.
- H. Temporary outdoor events (lasting more than one day).
- I. Adult regulated uses.
- J. Earth removal, quarrying, gravel processing, mining, related mineral extraction businesses, and landfill gas recovery processing facilities.
- K. Private streets.
- L. Wind energy conversion systems.

27.50 DEVELOPMENT STANDARDS

Outdoor storage in connection with the above permitted uses shall be allowed in the side and rear yard areas except within the area required for setback from side and rear lot lines. Such storage may not exceed 100 percent of the square foot area of the principal building upon the premises. No outdoor storage of damaged or inoperable vehicles or equipment is allowed.

ZONING ORDINANCE

ARTICLE 26

26 – I-R: INDUSTRIAL DISTRICT, RESTRICTED

Contents:

- 26.10 STATEMENT OF PURPOSE
- 26.20 APPLICABILITY
- 26.30 PERMITTED USES
- 26.40 PERMITTED USES WITH CONDITIONS
- 26.50 SPECIAL USES
- 26.60 DEVELOPMENT STANDARDS

26.10 STATEMENT OF PURPOSE

This district is limited to large tracts located along State highways, County primary roads and/or adjoining residential and/or commercial areas. These regulations are intended to provide standards of intensity of use and standards of external effects or amenities compatible with the surrounding or abutting residential districts.

26.20 APPLICABILITY

Existing and developed structures in the "I-R" district may be used for any identified Permitted or Special Use in accordance with the standards and procedures identified herein. Vacant land or land to be redeveloped within the "I-R" district may only be developed as an Industrial-Office Development (Section 49.110) within which any Permitted or Special Use within the district or other uses identified therein may be developed.

26.30 PERMITTED USES

- A. Assembly of finished or semi-finished products from previously prepared material.
- B. Packaging of previously prepared materials.
- C. Processing or compounding commodities such as drugs, cosmetics, pottery, plastics and food products.
- D. Production, processing, assembling, or packaging of products that rely upon research and technological innovation. Typical uses include manufacturing research instruments, electronic products, and surgical and medical instruments. This use type does not include uses that require federal air quality discharge permits.
- E. Scientific or medical laboratories, engineering, testing or design facilities, or other theoretical or applied research facilities. Typical uses include electronics research laboratories, environmental research and development firms, agricultural and forestry research labs, and pharmaceutical research labs.
- F. Administrative, business, or professional offices.
- G. Banks, credit unions, and similar financial institutions.
- H. Hospitals and medical clinics.
- I. Printing, lithographic, blueprinting and similar uses.

- J. Publicly owned and operated buildings and uses including community buildings and public parks, playgrounds and other recreational areas.
- K. Essential services.
- L. Accessory buildings and uses customarily incidental to the foregoing.
- M. Craft food and beverage production facility.
- N. Winery.

26.40 PERMITTED USES WITH CONDITIONS

- A. Temporary outdoor events (not lasting more than one day).
- B. Wholesaling, storage and/or warehousing of commodities.

26.50 SPECIAL USES

- A. Industrial-Office Developments, designed to accommodate a variety of light industrial, applied technology, research, and related office uses within a subdivision setting.
- B. House of worship in an existing multi-tenant building.
- C. Skating rinks, bowling alleys, indoor recreational facilities and health clubs.
- D. Communication towers.
- E. Earth removal, quarrying, gravel processing, mining, related mineral extraction businesses, and landfill gas recovery processing facilities.
- F. Private streets.
- G. Wind energy conversion systems.

26.60 DEVELOPMENT STANDARDS

- A. Except as elsewhere specified herein, the parcel, the lot, building site, yard, area and setback requirements shall be as specified in [Article 50](#).
 - 1. Each district shall contain at least 30 contiguous acres.
 - 2. A parcel shall contain at least ten acres.
 - 3. There shall be a 100-foot setback requirement from the right-of-way line of all designated highways as specified in [Section 50.60](#) and including the following roadways: Parkview, "N" Avenue, and 11th Street. Along all other roadways, public or private, there shall be a 40-foot setback requirement from the right-of-way line.
 - 4. Development on the site shall comply with the standards of [Section 56.20.A](#) of this Ordinance. Additional setback, open space, or buffer yard area may be required along adjacent water bodies, streams, or drains to limit the impact of the proposed development on the health and/or function of the stream or drain.
 - 5. Proposed development shall be landscaped in compliance with [Article 53](#). Where practical, native plants including tall grass prairie plantings should be included in the required buffer materials.
- B. Section 26.60.A.2 shall not apply to any parcel of land within the "I-R" Industrial District, Restricted, Classification, the boundaries of which have been established by any instrument recorded previous to December 27, 1988, in the office of the Register of Deeds for Kalamazoo County, Michigan, or established previous to that date by operation of law.



July 21, 2023

Mtg Date: July 27, 2023
To: Planning Commission
From: Iris Lubbert, AICP, Planning Director
Subject: Introduction, 5G Ordinance

At the Planning Commission's regular July 27th meeting, Jim Porter, Township Attorney, will introduce a 5G Ordinance that the Legal Department and the Planning Department have been working on.

Attachments: DRAFT Article 45 Wireless Telecommunication Facilities, DRAFT Section 236.000 Small Cell Wireless Communication Facilities Deployment Ordinance

Article 45 Wireless Telecommunication Facilities

Note: This section will replace Section 49.80. That section will be repealed and designated "Reserved."

Contents:

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45.10. Purpose. The purpose of this section is to regulate the construction of wireless telecommunications facilities on private property, in order to accommodate the need for communication while protecting the public health, safety and welfare. Wireless telecommunications facilities in public or private rights-of-way shall not be subject to this Article, and shall instead be subject to Section 236 of the Oshtemo Township Code of Ordinances.

45.20. Definitions.

- A. **CO-LOCATION:** The installation of additional antennas or other equipment to an existing wireless telecommunication facility, generally to provide service for a telecommunications company that did not previously have antennas or other equipment in the facility.
- B. **MODIFICATION:** Any alteration to an existing wireless telecommunications facility that does not meet the definition of "Co-Location."
- C. **SMALL CELL WIRELESS FACILITY:** A wireless facility that meets both of the following requirements:
 - 1. Each antenna is located inside an enclosure of not more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements would fit within an imaginary enclosure of not more than 6 cubic feet.
 - 2. All other wireless equipment associated with the facility is cumulatively not more than 25 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.
- D. **MICRO WIRELESS FACILITY:** A Small Cell Wireless Facility that is not more than 24 inches in length, 15 inches in width, and 12 inches in height and that does not have an exterior antenna more than 11 inches in length.

- E. **WIRELESS FACILITY SUPPORT STRUCTURE:** Any structure (meeting the definition of “structure” in this Ordinance) that has antennas or other telecommunication equipment attached to it. Wireless Facility Support Structure may be purpose-built Wireless Facility Support Structure, or may be buildings, telephone poles, billboards, or other structures, provided that the requirements of this section are met.

45.30. Activities Not Requiring Zoning Approval. The following activities do not require zoning approval of any kind, but shall be subject to the Small Cells Wireless Communication Facilities Deployment Ordinance Section 236.000:

- A. The construction of a Small Cell Wireless Facility or Micro Wireless Facility within a Right-of-Way on an existing Structure or new Wireless Support Structure under 40 feet in height within a Right-of-Way.
- B. The replacement of a Small Cell Wireless Facility with a Small Cell Wireless Facility that is not larger or heavier, in compliance with applicable codes.
- C. Routine maintenance of a Small Cell Wireless Facility, utility pole, or Wireless Support Structure.
- D. Co-Location of a Small Cell Wireless Facility with a previously approved Small Cell Wireless Facility.
- E. The installation, placement, maintenance, operation, or replacement of a Micro Wireless Facility that is suspended on existing cables strung between utility poles or Wireless Support Structures in compliance with applicable codes.
- F. The construction or installation of a Small Cell Wireless Facility or Micro Wireless Facility located upon a campus of an institution of higher education.

45.40. Permitted Activities with Administrative Approval. The following activities shall be considered permitted uses of land, and shall require administrative approval and a permit from the Township, but not Special Use Approval, nor Site Plan approval from the Planning Commission or Zoning Board of Appeals.

- A. Modifications to a previously approved wireless facility, including Modifications to Small Cell and Micro Wireless Facilities that are not exempt from zoning approval under Subsection C. In order to be approved, this activity must meet the criteria in Section 45.70.
- B. Co-Locations on a previously approved wireless facility, including Co-Locations on Small Cell and Micro Wireless Facilities that are not exempt from zoning approval under Subsection D. In order to be approved, this activity must meet the criteria in Section 45.70.
- C. Replacement of a Wireless Facility Support Structure with a new structure of the same or lower height. In order to be approved, this activity must meet the criteria in Section 45.80.
- D. New wireless facilities utilizing a pre-existing structure, including new Small Cell and Micro Wireless Facilities that are not exempt from zoning approval under Subsection D. In order to be approved, this activity must meet the criteria in Section 45.80..

- E. Constructing a new Wireless Facility Support Structure under 40 feet in height, including Wireless Facility Support Structure for new Small Cell and Micro Wireless Facilities that are not exempt from zoning approval under the Small Wireless Communications Deployment Act (Public Act 365 of 2018), as described in Subsection D. In order to be approved, this activity must meet the criteria in Section 45.80.
- F. Constructing a “Geographically Exempt Facility”, which shall be defined as a New Wireless Facility Support Structure Between 40 and 199 feet in Height meeting all of the following geographic criteria.. In order to be approved, this activity must meet the criteria in Section 45.80.
 - 1. The proposed wireless facility is located west of 6th Street.
 - 2. The proposed wireless facility is at least 2,500 feet from another wireless facility.
 - 3. The property in question is not zoned R-1, R-2, R-3, R-4, or R-5.

45.50. Activities Requiring Special Use Approval. The following activities shall require Special Use Approval and Site Plan Approval from the Planning Commission as described in Article 65.

- A. Constructing a new Wireless Facility Support Structure between 40 and 199 feet in height that is not a Geographically Exempt Facility as defined in Section 45.40.F. In order to be approved, this activity must meet the criteria in Section 45.80, and the Special Use Approval Criteria in Article 65.
- B. Constructing a new Wireless Facility Support Structure 200 feet in Height or taller. In order to be approved, this activity must meet the criteria in Section 45.80, and the Special Use Approval Criteria in Article 65.
- C. Increasing the height of an existing Wireless Facility Support Structure to 110% of its original height, or taller. In order to be approved, this activity must meet the criteria in Section 45.80, and the Special Use Approval Criteria in Article 65.
- D. Replacement of a Wireless Facility Support Structure with a new structure that is taller than the previous structure. In order to be approved, this activity must meet the criteria in Section 45.80, and the Special Use Approval Criteria in Article 65.
- E. If, during an Administrative Approval under this Article, an application is deemed to fail one or more of these criteria, the applicant shall have the option to apply for a Special Land Use approval from the Planning Commission, which shall have the authority to approve the application, despite the lack of compliance with one or more of the sections above. The Planning Commission shall be under no obligation to approve any Special Land Use application that it does not deem to meet the criteria of this Ordinance.

45.60. Application Requirements. In order to be considered complete, applications must contain the following information:

- A. All forms and fees required by the Township.
- B. A Site Plan meeting the requirements of Section 64.60.C.

- C. Name, address, phone number of Wireless Facility Support Structure owner; name, address and phone number of contact persons for engineering, maintenance and other notice purposes.
- D. Organization name, address, phone number, and contact person of each co-locator and the operational status of the equipment.
- E. Notification of date of lease expiration and/or cessation of operation of any equipment and date of removal.
- F. Wireless Facility Support Structure plans and a report from a qualified and licensed professional engineer which:
 - 1. Describes the Wireless Facility Support Structure height and design, including a cross section and elevation.
 - 2. Documents the height above grade for all potential mounting positions for co-located antennas and the minimum separation distance between antennas.
 - 3. Describes the Wireless Facility Support Structure's capacity, including the number and type of antennas/equipment that it can accommodate.
 - 4. Documents what steps the applicant will take to avoid interference with established public safety telecommunications;
 - 5. Includes an engineer's stamp and registration number
 - 6. Includes the total cumulative square footage of wireless equipment, both existing and proposed.
 - 7. Indicates that the proposed Wireless Facility Support Structure complies with regulations administered by the Federal Communications Commission and the Federal Aviation Administration.
 - 8. Information necessary to allow determination of compliance with Building Code, Electrical Code and other applicable Township Ordinances.
 - 9. Information showing that the facility will not cause interference with any nearby existing telecommunications facilities.
 - 10. All information necessary to determine compliance with all applicable requirements.
- G. A letter of intent committing the Wireless Facility Support Structure owner and his or her successors to allow the shared use of the Wireless Facility Support Structure if an additional user agrees in writing to meet reasonable terms and conditions for shared use. Further, a request to co-locate antennas on a Wireless Facility Support Structure shall not be unreasonably refused. No provider or lessee or agent thereof shall unreasonably fail to cooperate to accommodate Co-Location.
- H. A letter of support and approval from the owner of the property or right-of-way where the wireless facility is, or is proposed to be, located.
- I. Any specific relevant information listed in Section 45.70 (for Co-Location and Modifications) and/or Section 45.80 (for New Facilities).

- J. Any other information deemed necessary by the Township to evaluate the request, and requested by the Township in writing.

45.70. Requirements for Approval – Co-Locations and Modifications. In order to be approved, Co-Locations and Modifications must meet the following standards:

A. Ground Equipment and Accessory Structures. All applications shall comply with the following:

- 1. Ground equipment accessory to the wireless telecommunications facility must meet the minimum setback requirement for accessory structures in the zoning district it is located within, and shall not be located in a front yard.
- 2. The base of the Wireless Facility Support Structure and all associated equipment and accessory structures must be surrounded by a locked, opaque screening fence at least six feet in height, or a solid screening row of evergreens, at least six feet tall at planting.

B. Lighting. All applications shall comply with the following.

- 1. Wireless Facility Support Structure designed specifically for wireless telecommunications antennas shall not be illuminated by artificial means and shall not display strobe lights unless such lighting is specifically required by the Federal Aviation Administration or other federal or state authority for a particular Wireless Facility Support Structure.
- 2. Site lighting shall comply with [Article 54](#).

C. Signs and Advertising. All applications shall comply with the following:

- 1. The use of any portion of a Wireless Facility Support Structure for signs other than warning or equipment information signs is prohibited, except when either of the following circumstances are met.
 - (i) The Wireless Facility Support Structure contained signage prior to containing telecommunications equipment.
 - (ii) The Wireless Facility Support Structure is designed for human habitation.

D. Interference. All applications shall comply with the following:

- 1. No new or existing telecommunications service shall interfere with other telecommunications, whether commercial, public, or otherwise.
- 2. All applications for new service shall be accompanied by an intermodulation study by a qualified and licensed professional engineer which provides a technical evaluation of existing and proposed transmissions and indicates all potential interference problems.

E. Specific Requirements for Co-Locations and Modifications: Applications for Co-Locations and Modifications shall comply with the following,

1. The applicant must submit a structural analysis, signed and sealed by a licensed engineer, demonstrating that the Wireless Facility Support Structure, in its present condition, has the structural capacity to support any proposed new antennae or other Wireless Facility Support Structure-mounted equipment.
2. The applicant must submit the results of an inspection of the condition of the Wireless Facility Support Structure and equipment compound, noting any potential problems with the facility that could impact the health, safety, and welfare of the surrounding area, or the effective provision of service from the facility. Any concerns raised by the inspection must be corrected during construction of the Modifications or Co-Locations.
3. The facility must be in compliance with all applicable Federal Communications Commission regulations.
4. The Township may require the Wireless Facility Support Structure to be painted non-reflective gray.
5. The height of the Wireless Facility Support Structure may be increased. However, an increase in the height of the Wireless Facility Support Structure to more than 110% of its previous height shall require Special Use Approval and Site Plan Approval from the Planning Commission.

45.80. Requirements for Approval – New Facilities. In order to be approved, all new wireless facilities, except those specifically exempted from Zoning Approval under Section 45.30 must meet the following requirements:

- A. **Justification.** A proposed wireless facility shall not be established unless the communications equipment/antenna(s) planned for the proposed location cannot be accommodated on an existing structure within the area of the proposed Wireless Facility Support Structure due to one of the following reasons:
 1. The planned equipment would exceed the structural capacity of the existing or approved Wireless Facility Support Structure as documented by a qualified and licensed engineer, and the existing or approved Wireless Facility Support Structure cannot be reinforced, modified or replaced to accommodate the planned or equivalent equipment at a reasonable cost.
 2. The planned equipment would cause interference materially impacting the usability of other existing equipment in the vicinity as documented by a qualified and licensed professional engineer and the interference cannot be prevented at a reasonable cost.
 3. Existing Wireless Facility Support Structure within the search radius cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified and licensed professional engineer.
 4. Other unforeseen reasons that make it infeasible to locate the planned telecommunications equipment upon an existing structure.
- B. **Ground Equipment and Accessory Structures.** See Section 45.70.A
- C. **Lighting.** See Section 45.70.B.
- D. **Signs and Advertising.** See Section 45.70.C.

E. **Interference.** See Section 45.70.D.

F. **Setbacks.** All applications shall comply with the following:

1. For existing structures proposed to support wireless telecommunications antennas, the existing setback of the structure considered sufficient to allow the addition of the telecommunications antennas.
2. A new Wireless Facility Support Structure shall be located so that the setback from all property lines is equal to or greater than the height of Wireless Facility Support Structure.
3. A new Wireless Facility Support Structure shall be located so that the setback from all dwelling units is equal to or greater than the height of the Wireless Facility Support Structure.
4. Wireless Facility Support Structure over 25 feet in height shall not be located on private property between a principal structure and a public or private street, with the following exceptions:
 - (i) In industrial zoning districts, Wireless Facility Support Structure may be placed within a side yard abutting a public or private street.
 - (ii) On sites adjacent to public or private streets on all sides, Wireless Facility Support Structure may be placed within a side yard abutting a public or private street.

G. **Design of Wireless Facility Support Structure.** New wireless facilities on existing structures and new Wireless Facility Support Structure under 40 feet in height shall be exempt from the following requirements. All other applications shall comply with the following:

1. Any new Wireless Facility Support Structure over 40 feet in height shall be designed and constructed to accommodate future Co-Locations. Wireless Facility Support Structure shall be designed to allow for future rearrangement of antennas and to accept antennas mounted at varying heights.
2. A new Wireless Facility Support Structure over 40 feet in height shall be a monopole design and painted non-reflective gray, unless required to be painted a different color by State or Federal regulation or law. In lieu of the gray color, the applicant may submit a design intended to camouflage or minimize the appearance of the Wireless Facility Support Structure, antennas, and equipment, for approval by the reviewing body.
3. The applicant must submit renderings or photo-sims of the proposed Wireless Facility Support Structure E as viewed from the following locations:
 - (i) The nearest public roadway.
 - (ii) The nearest residential dwelling unit.
 - (iii) Any other location requested by the reviewing body from which the Wireless Facility Support Structure may potentially be visible

- H. **Height.** New wireless facilities on existing structures shall be exempt from the following requirements. All other applications shall comply with the following:
1. The height of a Wireless Facility Support Structure shall be determined by measuring the vertical distance from the structure's point of contact with the ground to the highest point of the structure, including all antennas or other attachments.
 2. The structure shall be the shortest possible height required to provide the service desired.
 3. The applicant shall submit coverage and/or capacity information, including propagation maps and other information requested by the Township, to demonstrate the needed service improvement and why the requested height is necessary.
 4. The Township may request further information, including propagation maps, demonstrating the service at lower heights, in order to determine whether the requested height is necessary.
 5. Antennas and other transmission equipment, including, but not limited to, Small Cell Wireless Facility and Micro Wireless Facility, shall not extend more than five feet above the top of a Wireless Facility Support Structure, unless the structure is used for human occupancy.
 6. Structures under 25 feet in height shall be automatically deemed to be "the shortest possible height" under this section and shall not be required to provide additional information.

45.90. Timeline for Approval. The Township will comply with all State and Federal requirements for approval timelines. In the event of changes to Federal or State law, this section shall be void and the laws in place at the time of application shall be followed.

- A. For new facilities, the Township shall request all required information within 14 business days of the application being filed. The Township shall issue a decision on the application within 90 days of the application being deemed complete by the Township.
- B. For Modifications and Co-Locations, the Township shall request all required information within 14 business days of the application being filed. The Township shall issue an approval or denial within 60 days of the application being deemed complete by the Township.
- C. Once the Township has notified an applicant that an application is incomplete, if the applicant does not provide any new information for 180 days, the application will be deemed to have been withdrawn. Any new information submitted after 180 days shall be deemed a new application for the purposes of this Ordinance and the Michigan Zoning Enabling Act.

45.100. Annual Inspections. All Wireless Facility Support Structure shall be inspected at regular intervals, no less than once a year, and serviced as frequently as may be necessary, to maintain the Wireless Facility Support Structure in a safe and weather-withstanding condition. Inspections shall be based on ANSI/TIA/EIA-222F or most recent applicable ANSI standards. Reports as to all inspections and servicing shall be made available to the Township upon written request.

45.110. Information Update. The Wireless Facility Support Structure owner or representative shall submit updated information whenever any of the following change:

- A. Name, address, phone number of Wireless Facility Support Structure owner; name, address and phone number of contact persons forengineering, maintenance and other notice purposes.
- B. Organization name, address, phone number, and contact person of each co-locator and the operational status of the equipment.
- C. Notification of date of lease expiration and/or cessation of operation of any equipment and date of removal.

45.120. Abandonment and Removal. At the time of construction, the applicant shall submit a performance bond to guarantee all required equipment and structures are removed in the event of abandonment. At the time of the application, the applicant shall submit two third-party contractor bids for removal of all equipment, and all structures that are specifically designed for the facility, and the bond shall be the higher of the two bids.

If the Wireless Facility Support Structure is not used for as a wireless telecommunications facility for any period of six consecutive months, it must be removed at the expense of the property owner and/or owner of the Wireless Facility Support Structure. If the property owner and/or owner of the Wireless Facility Support Structure fail to remove the Wireless Facility Support Structure, the bond shall be forfeited, and the bond amount shall be used by the Township to remove all structures and equipment associated specifically with the wireless telecommunications facility.

DRAFT

Section 236.000 Small Cell Wireless Communication Facilities Deployment Ordinance

AN ORDINANCE to provide for the regulation of small cell wireless infrastructure by Oshtemo Charter Township, referred to herein alternatively as the "Authority", of the activities of wireless infrastructure providers and Wireless Services providers regarding the siting of certain wireless facilities.

(A) Title and Purpose

- (1) This ordinance shall be known and may be cited as the Small Cell Wireless Communication Facilities Deployment Ordinance.
- (2) The purpose of the ordinance is to regulate the siting of "Small Cell" facilities.
- (3) This section applies only to activities of a Wireless Provider within Public and Private Rights of Way for the deployment of small cell wireless facilities and associated new or modified Utility Poles.

(B) Definitions: As used in this ordinance:

- (1) "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of Wireless Services.
- (2) "Applicant" means a Wireless Provider or wireless infrastructure provider that submits an application described in this ordinance.
- (3) "Authority", unless the context implies otherwise, means Oshtemo Charter Township, to the extent authorized by law to make legislative, quasi-judicial, or administrative decisions concerning an application described in this ordinance.
- (4) "Co-Locate" means to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a Wireless Support Structure or Utility Pole. "Collocation" has a corresponding meaning.
- (5) "Fee" means an Authority one-time per small cell site charge for application processing.
- (6) "Rate" means an Authority annual charge per site
- (7) "Make-Ready Work" means work necessary to enable an Authority pole or Utility Pole to support collocation, which may include modification or replacement of Utility Poles or modification of lines.
- (8) "Micro Wireless Facility" means a Small Cell Wireless Facility that is not more than 24 inches in length, 15 inches in width, and 12 inches in height and that does not have an exterior ANTENNA more than 11 inches in length.
- (9) "Right of Way" or "ROW" means the area on, below, or above a public or private roadway, highway, street, alley, bridge, sidewalk, or utility easement dedicated for compatible uses. Right of Way does not include any of the following:
 - (a) A limited access highway.

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- (b) Land owned or controlled by a railroad as defined in section 109 of the railroad code of 1993, 1993 PA 354, MCL 462.109.
- (10) "Small Cells Act" means the small wireless facilities act, 2018 PA 365, MCL 460.1301, et seq, as the same may be amended from time to time.
- (11) "Small Cell Wireless Facility" means a Wireless Facility that meets both of the following requirements:
 - (a) Each Antenna is not more than 6 cubic feet in volume
 - (b) All other wireless equipment associated with the facility is cumulatively not more than 25 cubic feet in volume. Except -The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.
- (12) "Structure" means anything constructed, assembled or erected, the use of which requires location on the ground or attachment to something having location on or in the ground; this term shall include fences which are more than 50 percent solid, tanks, towers, dish antennae, advertising devices, bins, tents, wagons, trailers, dining cars, camp cars or similar structures on wheels or other support used for business or living purposes.
- (13) "Utility Pole" means a pole or similar Structure that is or may be used to support small cell wireless facilities. Utility Pole does not include a sign pole less than 15 Feet in height above ground.
- (14) "Wireless Facility" means wireless equipment, including, radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. Wireless Facility does not include coaxial or fiber-optic cable between Utility Poles or Wireless Support Structures.
- (15) "Wireless Provider" is a regulated provider of telecommunications services and a "wireless infrastructure provider" is an installer of wireless equipment at small cell sites and, both terms are interchangeable terms for purposes of this ordinance.
- (16) "Wireless Services" means any services, provided using licensed or unlicensed spectrum, including the use of Wi- Fi, whether at a fixed location or mobile.
- (17) "Wireless Support Structure" means a freestanding Structure designed to support or capable of supporting small cell wireless facilities. Wireless Support Structure does not include a Utility Pole.
- (18) "Wireline Backhaul Facility" means a facility used to transport services by wire or fiber-optic cable from a Wireless Facility to a network.

(C) Scope of Authority

- (1) Except as provided in this ordinance or the Small Cells Act, the Authority shall not prohibit, regulate, or charge for the collocation of small cell wireless facilities.
- (2) The approval of a Small Cell Wireless Facility under this ordinance authorizes only the collocation of a Small Cell Wireless Facility and does not authorize either of the following:

- (a) The provision of any services.
- (b) The installation, placement, modification, maintenance, or operation of a wireline in the ROW.

(D) Small Cell ROW Access, Permitted Use, Height, Underground, Residential, Districts

- (1) The Authority shall not enter into an exclusive arrangement with any person for use of the ROW for the construction, operation, or maintenance of Utility Poles or the collocation of small cell wireless facilities.
- (2) The Authority shall not charge a Wireless Provider an annual Rate more than the amount set by the Small Cells Act or other applicable State Law.
- (3) All greater Rates and Fees in current agreements shall be modified within 90 days of application receipt, so as not to exceed the Fees provided here, except for new small cell dedicated Utility Poles installed and operational in the ROW before the effective date of this ordinance or related agreements, which shall remain in effect for the duration of the ordinance or agreement.
- (4) The following activities are permitted uses and do not require zoning approval of any kind. In all other cases, the siting of Small Cell Wireless Facility shall require approval as described in the Oshtemo Township Zoning Ordinance.
 - (a) The construction of a Small Cell Wireless Facility or Micro Wireless Facility within a Right-of-Way on an existing Structure or new Wireless Support Structure under 40 feet in height within a Right-of-Way.
 - (b) The replacement of a Small Cell Wireless Facility with a Small Cell Wireless Facility that is not larger or heavier, in compliance with applicable codes.
 - (c) Routine maintenance of a Small Cell Wireless Facility, utility pole, or Wireless Support Structure.
 - (d) Co-Location of a Small Cell Wireless Facility with a previously approved Small Cell Wireless Facility.
 - (e) The installation, placement, maintenance, operation, or replacement of a Micro Wireless Facility that is suspended on existing cables strung between utility poles or Wireless Support Structures in compliance with applicable codes.
 - (f) The construction or installation of a Small Cell Wireless Facility or Micro Wireless Facility located upon a campus of an institution of higher education.
- (5) **Siting Requirements.** The location of a new Utility Pole or Wireless Support Structure requiring approval under this Ordinance must meet all of the following requirements:
 - (a) Must be within three feet of the outside edge of the Right-of-Way.
 - (b) Must be on the north or west side of the roadway.
 - (c) Must meet all applicable standards for Clear Corner Vision in the Oshtemo Township Zoning Ordinance.

- (d) Must not interfere with the Township's ability to construct non-motorized trails in the network planned in the Oshtemo Township Non-Motorized Plan.
- (6) **Alternate Siting:** Upon receipt of an application to place a new Utility Pole or Wireless Support Structure requiring approval under this Ordinance, in order to ensure that the requirements of Subsection E.2.d are met, the Authority may propose and the Applicant shall use an alternate location within the ROW or on property or Structures owned or controlled by a public utility/authority within 75 Feet of the Applicant's proposed location if reasonably achievable. The Authority may require an alternate siting even if the requirements of Sections D.5 are otherwise met.
- (7) **Justification.** A proposed wireless facility shall not be established unless the communications equipment/antenna(s) planned for the proposed location cannot be accommodated on an existing structure within the area of the proposed Wireless Facility Support Structure due to one of the following reasons:
- (a) The planned equipment would exceed the structural capacity of the existing or approved Wireless Facility Support Structure as documented by a qualified and licensed engineer, and the existing or approved Wireless Facility Support Structure cannot be reinforced, modified or replaced to accommodate the planned or equivalent equipment at a reasonable cost.
 - (b) The planned equipment would cause interference materially impacting the usability of other existing equipment in the vicinity as documented by a qualified and licensed professional engineer and the interference cannot be prevented at a reasonable cost.
 - (c) Existing Wireless Facility Support Structure within the search radius cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified and licensed professional engineer.
 - (d) Other unforeseen reasons that make it infeasible to locate the planned telecommunications equipment upon an existing structure.
 - (e) If, during an Administrative Approval under this Article, an application is deemed to fail one or more of these criteria, the applicant shall have the option to apply for a Special Land Use approval from the Planning Commission, which shall have the authority to approve the application, despite the lack of compliance with one or more of the sections above. The Planning Commission shall be under no obligation to approve any Special Land Use application that it does not deem to meet the criteria of this Ordinance.
- (8) **Undergrounding:** A Wireless Provider shall comply with reasonable and nondiscriminatory requirements (including concealment measures) that do not prohibit communications service providers from installing Structures on or above ground in the ROW in an area designated solely for underground or buried cable and utility facilities, if:
- (a) The Authority has required all cable and utility facilities, to place all their facilities underground and,
 - (b) A Wireless Provider may apply for a waiver of the undergrounding requirements under Utility Control Ordinance Section 230.004.B.

(9) **Historic, Downtown and Residential Districts:** A Wireless Provider shall comply with written, objective requirements for reasonable, technically feasible, nondiscriminatory, and technologically neutral designs or concealment measures in a Historic District, downtown district, or residential zoning district. Such requirement shall not have the effect of prohibiting any Wireless Provider technology. Any such design or concealment measures are not included in size restrictions in the definition of small Wireless Provider in section 5.

(10) All Wireless Providers shall repair all damage to the ROW caused by the activities of the Wireless Provider while occupying, constructing, installing, mounting, maintaining, modifying, operating, or replacing small cell wireless facilities, Utility Poles, or Wireless Support Structure in the ROW and, to return the ROW to its original condition. Following 60 days' written notice, the Authority or the owner of the ROW may make those repairs and charge the Wireless Provider the cost of the repairs.

(E) Provider and Authority Responsibilities, Application Information, Shot Clocks, Tollings, Deemed Approved, Basis Denial, Resubmittal, Batch Applications, Application Fees, Micro Wireless Facility Exemption, Alternate Siting, Decommissioning Sites.

(1) This section applies to activities of a Wireless Provider within a Public or Private Right-of-Way.

(2) For activities described in Section D.4 that do not require zoning approval, the provider/Applicant shall seek an Authority ROW access permit to Co-Locate a Small Cell Wireless Facility or install, modify, or replace a Utility Pole or other Wireless Support Structure on which a Small Cell Wireless Facility will be Co-Located as required of all ROW users. The processing of an application for such a permit is subject to all of the following:

(a) In-kind contributions to the Authority are not permitted in lieu of Rates and Fees described above (unless all parties voluntarily agree in furtherance of the interests of both.)

(b) The Wireless Provider shall provide all the information and documentation required by the Authority to enable the Authority to make an informed decision with regard to its criteria for authorizing ROW access including the following:

(i) A certificate of compliance with FCC rules related to radio frequency emissions from a Small Cell Wireless Facility,

(ii) Proof of notification to every other affected entity, including the owner of the right-of-way, and all necessary permits, permit applications, or easements to ensure all necessary permissions for the proposed activity are obtained.

(iii) An attestation that the small cell wireless facilities will be operational for use by a Wireless Services provider within 1 year after the permit issuance date. Failure to abide by this term shall result in termination of any permit issued in reliance on such attestation.

(iv) Design details as necessary to demonstrate compliance with this Ordinance and with all other applicable Township regulations.

(c) The Authority will comply with all State and Federal requirements for approval timelines. The Authority and an Applicant may extend a time period required under State or Federal Law by mutual agreement.

- (d) **Basis for Denial:** The Authority shall deny a completed application for a proposed collocation of a Small Cell Wireless Facility or installation, modification, or replacement of a Utility Pole that meets the height requirements in Section D.5 if the proposed activity would do any of the following:
- (i) Materially interfere with the safe operation of traffic control equipment.
 - (ii) Materially interfere with sight lines or clear zones for transportation or pedestrians.
 - (iii) Materially interfere with compliance with the Americans with Disabilities Ordinance of 1990, Public Law 101- 336, or similar federal, state, or local standards regarding pedestrian access or movement
 - (iv) With respect to drainage infrastructure under the jurisdiction of an Authority, either of the following:
 - 1) Materially interfere with maintenance or full unobstructed use of the drainage infrastructure as it was originally designed.
 - 2) Not be located a reasonable distance from the drainage infrastructure to ensure maintenance under the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630, and access to the drainage infrastructure.
 - (v) Failure to comply with reasonable, nondiscriminatory, written spacing requirements of general applicability adopted by ordinance or otherwise that apply to the location of ground-mounted equipment and new Utility Poles and that do not prevent a Wireless Pole from serving any location.
 - (vi) Failure to meet reasonable, objective, written stealth or concealment criteria for small cell wireless facilities applicable in a Residential District or other designated area, as specified in an ordinance or otherwise and nondiscriminatorily applied to all other occupants of the ROW, including electric utilities, incumbent or competitive local exchange carriers, fiber providers, cable television operators, and the Authority.
 - (vii) Fail to comply with all other applicable codes, including, but not limited to, Ordinance 125 (Use of Right-of-Way by Telecommunications Providers) and Ordinance 294 (Non-Motorized Facilities/Sidewalks).
 - (viii) Failure to submit sufficient information for the Township to deem the application complete under Section E.2.c
- (e) **Reasons for Denial; Resubmission and 30 Day Shot Clock:** If the completed application is denied, the notice under subdivision (h) shall explain the reasons for the denial and, if applicable, cite the specific provisions of applicable codes on which the denial is based. The Applicant may cure the deficiencies identified by the Authority and resubmit the application within 30 days after the denial without paying an additional application Fee. The Authority shall approve or deny the revised application within 30 days. The Authority shall limit its review of the revised application to the deficiencies cited in the denial.

- (f) **Batch Applications:** An Applicant may file an application and receive a single permit for the collocation of up to 20 substantially similar small cell wireless installations. The Authority may approve or deny 1 or more small cell wireless facilities included in such consolidated application.
 - (g) Approval of an application authorizes the Wireless Provider to undertake the installation, collocation and maintenance of such facilities.
 - (h) The Applicant shall not institute a moratorium on filing, receiving, or processing applications or issuing permits for the collocation of small cell wireless facilities or the installation, modification, or replacement of Utility Poles on which small cell wireless facilities will be Co-Located.
 - (i) Application Fee for a permit under subsection (2) shall not exceed the fee limitations prescribed by the Small Cells Act or other applicable State Law.
 - (j) The Applicant may revoke a permit, upon 30 days' notice and an opportunity to cure, if the permitted small cell wireless facilities and any associated Utility Pole fail to meet the requirements of this ordinance.
 - (k) The Applicant shall not require a permit or any other approval or require Fees or RATES for maintenance or operation of a Small Cell Wireless Facility or Mico Wireless Facility, except that the Authority may require a permit as described in Section E.2 for any work deemed by the Authority to affect traffic patterns or obstruct vehicular or pedestrian traffic in the ROW.
 - (l) **Decommissioning Sites:** An Authority shall notify the Authority in writing before discontinuing use of a Small Cell Wireless Facility, Utility Pole, or Wireless Support Structure. The notice shall specify when and how the Wireless Provider intends to remove the Small Cell Wireless Facility, Utility Pole, or Wireless Support Structure. The Wireless Provider shall return the property to its pre-installation condition. If the Wireless Provider does not complete the removal within 45 days after the discontinuance of use, the Authority may complete the removal and assess the costs of removal against the Wireless Provider. A permit under this section for a Small Cell Wireless Facility expires upon removal of the Small Cell Wireless Facility.
- (F) **Provider Requirement of Service:** This ordinance does not require Wireless Facility deployment or regulate Wireless Services.
- (G) **Appeals:** The Applicant may appeal any Authority determinations related to this ordinance to the highest elected body of the Authority or, the circuit court in the judicial circuit where the Authority is located.

(H) Defense, Indemnity, and Insurance: All Applicant Wireless Providers shall:

- (1) Defend, indemnify, and hold harmless the Authority its officers, agents, and employees against any claims, demands, damages, lawsuits, judgments, costs, liens, losses, expenses, and attorney Fees resulting from the installation, construction, repair, replacement, operation, or maintenance of any wireless facilities, Wireless Support Structure, or Utility Pole to the extent caused by the Applicant and all entities acting on its behalf including but not limited to its contractors, its subcontractors, and the officers, employees, or agents of any of these, except as to liabilities or losses due to or caused by the sole negligence of the Authority or its officers, agents, or employees.
- (2) Obtain insurance naming the Authority and those acting on its behalf including but not limited to its officers, agents, and employees as additional insureds against any claims, demands, damages, lawsuits, judgments, costs, liens, losses, expenses, and attorney Fees. A Wireless Provider may meet all or a portion of the Authority's insurance coverage and limit requirements by self-insurance, conditioned upon providing to the Authority, evidence demonstrating, to the Authority's satisfaction, the Wireless Provider's financial ability to meet the Authority's insurance coverage and limit requirements throughout the life of the provider's use of the ROW. To the extent it self-insures, a Wireless Provider is not required to name additional insureds under this section.

(I) Reduced Fees: The Authority may establish a Fee or Rate less than the maximum specified in the Small Cells Act or other applicable State Law.

(J) Bonding:

- (1) As a condition of a permit described in this act, the Wireless Provider shall provide a \$1,000 bond per new Utility Pole or other new Structure, for the purpose of providing for the removal of abandoned or improperly maintained small cell wireless facilities, including those that an Authority determines should be removed to protect public health, safety, or welfare, to repair the ROW as provided under section 13(10) and, to recoup Rates or Fees that have not been paid by a Wireless Provider in more than 12 months, if the Wireless Provider has received 60-day advance notice from the Authority of the noncompliance.
- (2) The Authority shall not require a cash bond, unless the Wireless Provider has failed to obtain or maintain a bond required under this section or the surety has defaulted or failed to perform on a bond given to the Authority on behalf of a Wireless Provider.

(K) Labelling: A Small Cell Wireless Facility for which a permit is issued shall be labeled with the name of the Wireless Provider, emergency contact telephone number, and information that identifies the Small Cell Wireless Facility and its location.

(L) Electric Costs: A Wireless Facility is responsible for arranging and paying for the electricity used to operate a Small Cell Wireless Facility.

(M) AUTHORITY Reservation of Rights: This ordinance is enacted in compliance with Michigan 2018 PA 365; MCL 460.1301 and 2018 PA 366; MCL 125.3205(1)(c) as amended and MCL 125.3514(10). However, the AUTHORITY takes specific note of inconsistencies as between these State Acts and certain potentially preemptive FCC Rulings concerning "Small Cells" known as the "Moratoria Order"; FCC 3rd Report and Order and Declaratory Ruling of 8/13/2018 FCC 18-111 <https://docs.fcc.gov/public/attachments/FCC-18-111A1.pdf> and "Small Cell Order"; FCC Declaratory Ruling and 3rd Report and Order of 9/27/2018 FCC 18-133 <https://docs.fcc.gov/public/attachments/FCC-18-133A1.pdf>.

- (1) The Authority also notes inconsistencies between the Small Cells Act and the Michigan Constitution of 1963 including but not limited to Article VII Sections 22, 26, 29, 30, 31 and 34. Enacting this ordinance does not preclude the Authority from engaging in or otherwise supporting a judicial or other challenge to either the State Acts or FCC rules referenced above. In the event of any interpretations, including Judicial, Legislative or Administrative, contrary to the Michigan Public Acts and/or FCC rules referenced above, the Authority specifically reserves the right to amend and or terminate this ordinance and all related agreements, policies and procedures undertaken in furtherance hereof.)

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