

OSHTEMO CHARTER TOWNSHIP
KALAMAZOO COUNTY, MICHIGAN

NOTICE OF ORDINANCE ADOPTION

TO: THE RESIDENTS AND PROPERTY OWNERS OF OSHTEMO CHARTER TOWNSHIP, KALAMAZOO COUNTY, MICHIGAN, AND ANY OTHER INTERESTED PERSONS:

PLEASE TAKE NOTICE that on the 29th day of September, 2023, at its meeting, the Township Board amended the Oshtemo Charter Township Zoning Ordinance, by the adoption of Ordinance No. 656 & 657, which provides, in summary, as follows:

**SMALL CELL WIRELESS COMMUNICATION
FACILITIES DEPLOYMENT 5G ORDINANCE
ORDINANCE NO. 657
COMPILED SECTION 239**

1. SMALL CELL WIRELESS COMMUNICATION FACILITIES DEPLOYMENT 5G 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: the following definitions are more fully set forth in the ordinance:

- (1) "Antenna"
- (2) "Applicant"
- (3) "Authority"
- (4) "Co-Locate"
- (5) "Fee"
- (6) "Rate"
- (7) "Make-Ready Work"

- (8) "Micro Wireless Facility"
- (9) "Right of Way" or "ROW"
- (10) "Small Cells Act"
- (11) "Small Cell Wireless Facility"
- (12) "Structure"
- (13) "Utility Pole"
- (14) "Wireless Facility"
- (15) "Wireless Provider"
- (16) "Wireless Services"
- (17) "Wireless Support Structure"
- (18) "Wireline Backhaul Facility"

(C) Scope of Authority

- (1) 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:
 - (a). The provision of any services.
 - (b). The installation, placement, modification, maintenance, or operation of a wireline in the ROW.
- (3) Work in the Right-of-Way requires the Road Commission of Kalamazoo County approval.

(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.
- (2) The Authority shall not charge a Wireless Provider an annual Rate more than the amount set by the Small Cells Act.
- (3) The following activities are permitted uses and do not require zoning approval of any kind.

- (a). The construction of a Small Cell Wireless Facility or Micro Wireless Facility within a Right-of-Way.
- (b). The replacement of a Small Cell Wireless Facility with a Small Cell Wireless Facility.
- (c). Routine maintenance of a Small Cell Wireless Facility, utility pole, or Wireless Support Structure.
- (d). Co-Location of a Small Cell Wireless Facility.
- (e). The installation and placement of a Micro Wireless.
- (f). The construction of a Small Cell Wireless Facility or Micro Wireless Facility located upon a campus of an institution of higher education.

(4) Siting Requirements. The location of a new Utility Pole or Wireless Support Structure requiring approval under this Ordinance must meet all of the requirements of Section 5.

(5) Alternate Siting: 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.

(6) Justification. A proposed wireless facility shall not be established unless the communications equipment/antenna(s) cannot be accommodated on an existing structure for the reasons set forth in Section 7.

(7) 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:

(8) Historic, Downtown and Residential Districts: A Wireless Provider shall comply with written concealment measures in a Historic District.

(9) All Wireless Providers shall repair all damage to the ROW.

(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 provisions set forth in Section E.

(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 provisions are set forth in Section H.

(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.

(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.

(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 Article 59 Wireless Telecommunication Facilities.

PLEASE TAKE NOTICE that a proposed Ordinance has been submitted to the Township Board of Oshtemo Charter Township, which, if adopted, would provide, in summary, as follows:

WIRELESS TELECOMMUNICATION FACILITIES
5G ORDINANCE
ORDINANCE NO. 656
ARTICLE 59 OF THE TOWNSHIP ZONING ORDINANCE

2. WIRELESS TELECOMMUNICATION FACILITIES 5G ORDINANCE

An Ordinance to regulate the construction of wireless telecommunication facilities on private property. *Note: This section will replace Section 49.80. That section will be repealed and designated "Reserved."*

59.10 Purpose. The purpose of this section is to regulate the construction of wireless telecommunications facilities on private property.

59.20 Definitions. The following definitions are more fully set forth in the Ordinance.

- A. CO-LOCATION
- B. GEOGRAPHICALLY EXCEMPY
- C. MODIFICATION
- D. SMALL CELL WIRELESS FACILITY
- E. MICRO WIRELESS FACILITY
- F. WIRELESS FACILITY SUPPORT STRUCTURE

59.30 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 239.000:

- A. The construction of a Small Cell or Micro Wireless Facility within ROW on an existing Structure or new Wireless Support Structure under 40 feet.
- B. The replacement of a Small Cell Wireless Facility.
- C. Routine maintenance of a Small Cell Wireless Facility, or Wireless Support Structure.
- D. Co-Location of a Small Cell Wireless Facility.
- E. The installation of a Micro Wireless Facility.
- F. The construction or installation of a Small Cell or Micro Wireless Facility upon a campus of higher education.

59.40 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.

- A. Modifications to a previously approved wireless facility.
- B. Co-Locations on a previously approved wireless facility.
- C. Replacement of a Wireless Facility Support Structure with a new structure of the same or lower height.
- D. New wireless facilities utilizing a pre-existing structure.
- E. Constructing a new Wireless Facility Support Structure under 40 feet in height.
- F. Constructing a Geographically Exempt Facility.

59.50 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.
 - B. Constructing a new Wireless Facility Support Structure 200 feet in Height or taller.
 - C. Increasing the height of an existing Wireless Facility Support Structure to 110% of its original height.
 - D. Replacement of a Wireless Facility Support Structure with a new structure that is taller than the previous structure.
- 59.60 Application Requirements. In order to be considered complete, applications must contain the information required under Section 59.60.
- 59.70 Requirements for Approval – Co-Locations and Modifications. In order to be approved, Co-Locations and Modifications must meet the standards as set forth in Section 59.70.
- A. Ground Equipment and Accessory Structures.
 - B. Lighting.
 - C. Signs.
 - D. Interference.
 - E. Specific Requirements for Co-Locations and Modifications.
- 59.80 Requirements for Approval – New Facilities. In order to be approved, all new wireless facilities, except those specifically exempted from Zoning Approval under Section 59.30 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 as more fully set forth in Section 59.80.
 - B. Ground Equipment and Accessory Structures. See Section 59.70.A
 - C. Lighting. See Section 59.70.B.
 - D. Signs. See Section 59.70.C.
 - E. Interference. See Section 59.70.D.
 - F. Setbacks. All applications shall comply with the setback provisions of Section 59.80.

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.

H. Height. New wireless facilities on existing structures shall be exempt from the following requirements. All other applications shall comply with the provisions of Section 59.80H.

59.90 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 notify the applicant if the application is deemed complete within 25 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.

59.100 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.

59.110 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 foreengineering, 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.

59.120 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.

PLEASE TAKE FURTHER NOTICE that all Ordinances, or parts of Ordinances, inconsistent with this Ordinance are hereby repealed. This Ordinance shall take effect upon publication after adoption in accordance with State law.

PLEASE TAKE FURTHER NOTICE that the full text of the Ordinance has been posted for public inspection at Oshtemo Township Hall, 7275 West Main Street, Kalamazoo, Michigan, 49009, and on the Township's website, www.oshtemo.org.

DUSTY FARMER, Clerk
Oshtemo Charter Township Hall
7275 West Main Street
Kalamazoo, MI 49009
Telephone: (269) 375-4260