

**ORDINANCE NO. 30- 1084**

AN ORDINANCE TO AMEND SECTIONS 2.81, 2.82, AND 4.59 THROUGH 4.68 OF THE CODE OF ZONING ORDINANCES OF THE CITY OF WARREN RELATING TO WIRELESS ANTENNA TOWERS AND SECTION 14.02 OF THE CODE OF ZONING ORDINANCES RELATING TO SPECIAL LAND USE PERMITS

THE CITY OF WARREN ORDAINS:

**SECTION 1.** That Sections 2.81 and 2.82 of Appendix A, Article II of the Code of Zoning Ordinances of the City of Warren, Michigan, entitled “Definitions”,

**WHICH PRESENTLY READ AS FOLLOWS:**

**SECTION 2.81 - ANTENNA**

Any device utilized for the purpose of sending or receiving electromagnetic waves, including but not limited to, microwave, cellular telephone, radio, television, personal communication services or other communications. Citizen radio, short wave, amateur radio, residential TV or satellite TV antennas and towers are excluded from the regulations of this chapter.

**SECTION 2.82 – ANTENNA TOWER**

Any structure which is utilized to support an antenna or antennas, as defined in section 2.81, above the ground or above an existing structure. Antenna towers include, but are not limited to, monopoles, tripods, wood poles, roof mounting brackets, chimney brackets, multiple leg tower structures, signs and self-supporting and guy wired towers.

**ARE REPEALED, AND DESIGNATED AS “Reserved”**

**SECTION 2.** That Sections 4.59 through 4.68 of Appendix A, Article IV of the Code of Zoning Ordinances of the City of Warren, Michigan, entitled “General Provisions”,

**WHICH PRESENTLY READ:**

#### **SECTION 4.59. PERMITTED DISTRICTS.**

Antennas and other antenna towers are permitted in C-1, C-2, C-3 or SS districts with a special land use permit pursuant to 14.02. Antenna and or antenna tower are a permitted use in M-1, M-2, M-3 and M-4 zoning districts as regulated herein.

#### **SECTION 4.60. HEIGHT OF ANTENNA TOWERS.**

In all permitted districts, antenna towers, antennas or other structural projections shall not exceed one hundred fifty (150) feet in height as measured from the average ground elevation of the site.

#### **SECTION 4.61 - SETBACKS**

- (1) No antenna or antenna tower shall be located closer than four hundred fifty (450) feet from any residential use, residential district, health care, day care or educational institution. The distance shall be measured from the base of the tower or supporting structure to the property line of the residence or residential district boundary line.
- (2) Antenna towers shall comply with the setback standards for a structure in the zoning district for the parcel.
- (3) A freestanding antenna tower (i.e. not mounted on a roof) shall not be located in any front yard.
- (4) All accessory structures must meet the minimum setback standards for accessory structures in the zoning district for the parcel and shall not be inhabited, used for vehicle storage or used for outdoor storage of any kind.

#### **SECTION 4.62 – FENCE; LANDSCAPING REQUIRED**

All antenna towers shall be screened from entry by a six (6) foot high fence to prevent unauthorized persons from access to the tower. Existing on site vegetation shall be preserved to the maximum extent possible. The petitioner shall submit a detailed landscaping plan with the application for site plan approval. The proposed landscaping shall provide a buffer for the site and a screen for the structure base, accessory buildings and enclosure.

#### **SECTION 4.63 – LIGHTING AND COLOR OF ANTENNA TOWER**

Antenna tower lighting shall conform to all F.A.A. rules and regulations and shall be designed to minimize the glare or other impact on adjoining properties. All antenna towers shall be finished in an unobtrusive, neutral color.

## SECTION 4.64 – SITE PLAN APPROVAL

Upon submitting an application for site plan approval of an antenna or antenna tower, the Petitioner shall also provide the following information:

- (1) Name, address and phone number of the Petitioner and of the owner of the property.
- (2) A location map of all antennas and antenna towers which the Petitioner has currently erected in the City of Warren and shall include a master plan for any future antenna locations known to the Petitioner. This requirement is for planning purposes only and shall not limit the Petitioner to the sites indicated on the map.
- (3) An affidavit of the total watts of effective radiated power of the proposed antenna.
- (4) An affidavit verifying that the proposed site and proposed antenna(s) complies with all Federal Communication Commission rules and guidelines; and all federal, state and local laws. In the event any antenna is found to exceed the applicable F.C.C. standard, site plan approval shall be immediately revoke.
- (5) A statement as to whether an environmental assessment was required by the Federal Communications Commission and a copy of the environmental assessment if one was required.
- (6) The antenna, antenna tower and all supporting equipment shall not block areas which will hamper firefighting equipment and maintenance of electrical lines.
- (7) If the proposed antenna location is on a new tower, the Petitioner shall submit an affidavit attesting that there is no suitable space available on any existing tower in the desired area.
- (8) An affidavit of the proposed height of the tower and a statement verifying a "safe fall" zone for the tower or antenna. The statement, together with any and all attachments, shall be certified and sealed by a licensed engineer or architect. Manufacturers' specifications of a "safe fall" zone must be submitted. No inhabited building shall be located within the safe fall zone area.
- (9) A statement verifying that the tower or antenna will withstand wind speeds and ice loads as required by the BOCA Building Code. The statement, together with any and all attachments, shall be certified and sealed by a

licensed engineer or architect. Manufacturer specifications must be submitted.

- (10) The system shall be certified by a licensed engineer to verify that the signal(s) being transmitted will not interfere with the ability of surrounding uses to receive signals from different radio, television, telephone or other electronic equipment.

#### **SECTION 4.65 – CO-LOCATION**

To prevent the proliferation and congestion of antenna towers, it is encouraged for any new antenna to be co-located on an existing antenna tower, provided there is technically suitable space available on an existing tower within the desired area pursuant to the following regulations:

- (1) The maximum number of co-locations on any tower is limited to four (4) unless the applicant can demonstrate to the satisfaction of the planning commission that the structure can safely accommodate additional co-locations and the radio frequency emissions will continue to comply with federal regulations.
- (2) All co-locations on existing towers shall be subject to the setback requirements contained in section 4.61.
- (3) Any proposed antenna addition to an existing tower shall receive site plan approval pursuant to section 22.16 of this appendix.
- (4) In cases where special land use approval has already been granted for an existing tower, there is no further special land use approval required for co-location.

#### **SECTION 4.66 – USE OF PUBLIC PROPERTY**

Upon recommendation of the Planning Commission and approval of the City Council, properly zoned property owned by the City of Warren, excluding street rights-of-way, may be used for antenna and antenna tower purposes upon the execution of a valid lease approved by the City Attorney. After receiving approval to place an antenna or antenna tower on City property, the Petitioner must proceed to obtain all required approvals as required by the Ordinances of the City of Warren.

#### **SECTION 4.67 – MONITORING OF ANTENNA RADIO FREQUENCY EMISSIONS**

Each telecommunications provider with antennas located within the City shall provide the City with a semi-annual report disclosing the radio frequency emissions of each

antenna site. The City shall require an annual inspection of the radio frequency emissions of each antenna site to ensure that the site complies with the requirements of the Telecommunications Act of 1996. The City shall charge the provider a fee for the cost of the annual inspection.

#### **SECTION 4.68 – ANTENNA AND ANTENNA TOWER REMOVAL**

- (1) In the event an antenna has not been used for a period of 180 days or more, as evidenced by the cessation of transmission and/or reception of radio signals, it shall be the responsibility of the owner of the property to secure removal of the unused antenna within thirty (30) days of discontinuance.
- (2) In the event all antennas located on a tower have not been used for a period of 180 days or more, as evidenced by the cessation of transmission and/or reception of radio signals, it shall be the responsibility of the owner of the property to secure the removal of the unused antenna within sixty (60) days of discontinuance.
- (3) In the event any antenna is found to exceed the applicable F.C.C. standard, site plan approval shall be immediately revoked and the antenna shall be removed.
- (4) To insure compliance with this section, the Planning Commission upon site plan approval, shall require that a cash deposit or an approved surety bond, covering the estimated cost of removal to be deposited with the City Treasurer. The Petitioner is required to maintain either the cash deposit or a surety bond for the performance of the removal until the antenna(s) or antenna tower is removed. In the event the antenna(s) or antenna tower is not erected as planned or is removed as required by this ordinance, the cash deposit shall be refunded. In the event, an antenna(s) or antenna tower is not removed pursuant to the provisions of this ordinance, the bond shall be forfeited to the general fund of the City of Warren.

#### **ARE AMENDED TO READ AS FOLLOWS:**

#### **ARTICLE IV – A Telecommunications - Personal Wireless Service Facilities**

##### **Section 4.59. Definitions**

**For purpose of this article, the following words, phrases and terms shall have the meaning:**

**Antenna.** An apparatus designed for the purpose of sending or receiving radiofrequency (RR) radiation, to be operated or operating from a fixed location pursuant to FCC authorization, for the provision of personal wireless service, within the

meaning of 47 U.S.C. sec. 332 (c )(7), and includes associated antenna equipment. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under 47 CFR, Part 15 or antennas regulated as a small wireless facility under 47 USC 332(c )(7)

**Antenna Equipment.** The equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and when collocated on a structure, is mounted or installed at the same time as such antenna.

**Accessory Equipment.** Switches, servicing or being used in conjunction with a wireless communications facility, including, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets, and storage sheds, shelters or other structures, including fences and ground-based enclosures at the same fixed location as the wireless communications facility.

**Collocation.** To install or mount or add new or add new or additional antennae or associated equipment to be used for the provision of personal wireless services to a preexisting cell tower or facility which is already built and is currently being used to provide personal wireless service by a different provider of such services, wireless carrier or site developer.

**Director.** Official charged with administration of the Planning Department.

**FCC** Federal Communications Commission

**Facility or Personal Wireless Service Facility or Tower.** A free-standing structure that is used solely for the provision of personal wireless service, private broadcast or public safety services, supporting one or more FCC-licensed or authorized Antennas and associated equipment, and may be in the form of a monopole, lattice tower, silo steeples, or utility poles, or in such alternate form, as deemed harmonious to the surrounding neighborhood. This article does not pertain to structures, such as poles or utility poles that solely supporting small wireless facilities.

**Fall Zone.** The range of area to be impacted by the fall or collapse of the Facility and the manner in which it will fall, and shall account for debris, ice or other elements, to be certified by a State of Michigan licensed and registered professional engineer.

**Hazardous Substance.** Any substance, chemical or waste that is identified as hazardous or toxic by any applicable federal, state or local law or regulation, including but not limited to petroleum products and asbestos.

## Minor Facility Modification

1. Replacement, **addition or collocation** of antennae or accessory equipment on an existing approved Facility, which does not
  - 1) increase the ~~height of the~~ or ~~width of the~~ overall height of the Facility by more than 20 feet or 10% of its original height, whichever is greater;
  - 2) Increase the width of the Facility by more than the minimum necessary to permit collocation.
  - 3) Increase the area of the existing equipment compound to greater than 2,500 feet, as compound is defined in Section 514 of Public Act No. 366 of 2018;
  - 4) Encroach upon the setback requirement in this article.

**Property.** The geographical parcel of real property upon which the Tower or proposed Tower is be situated.

**Site** - Fixed location of owned or leased real property occupied by the Tower or Personal Wireless Service Facility and all associated accessory equipment.

## SECTION 4.60 – AUTHORIZATION

Subject to the standards and conditions set forth in this article, Towers and Personal Wireless Service Facilities and modifications to such Tower or Facility, shall be permitted in C-1, C-2, C-3, SS, M-1, M-2, M-3 and M-4 zoning districts, as regulated here in, with site plan approval as provided in section 22.16 and herein or with Administrative Approval for Minor Modifications as provided in section 4.63. Wireless Facilities on Public Property shall require an agreement which will include different or additional standards **or conditions**.

### Section 4.61. STANDARDS AND CONDITIONS.

1. **Setback.** The following minimum separation requirements shall apply to all Towers:
  - a. Towers shall be set back 200 feet from any R-1-A, R-1-B, R-1-C, R-2, R-3 and R-3-A district property boundary line, or from private or public day-care center or educational institution, excluding trade schools or colleges. the distance shall be measured from the base of the tower or supporting structure.
  - b. Towers shall be setback to the greater of 150 feet or a distance equal to 125 percent of the height of the supporting structure, whichever is greater, to the district boundary line of all other districts, unless there is a day care or educational institution in such district, in which case subsection (a) shall apply.
  - c. Notwithstanding the above, the separation between the Tower and the adjoining property lines shall be no less than the radius of the fall zone for the support structure in the event of total collapse, including any falling

debris, antennae or other equipment, or fire, based upon an engineering certification. A greater setback will be required based upon a Fall Zone exceeding the separation requirements in subsection (a) and (b) above.

2. **Height.** The maximum height of any Tower, including lightning rod, antenna or other accessory equipment, is 150 feet.
3. **Co-location.** The tower shall be designed to accommodate future collocations of at least three platforms (accommodating three carriers).
4. **Access.** Adequate access to wireless communications equipment and to the support structure, for the maintenance of the facility and equipment and for emergency vehicles.
5. **Emissions.** The equipment shall not radiate radio frequency emissions that exceed the thresholds of the FCC or FAA.
6. **No Hazardous substance.** No Hazardous Substance shall be leaked or released from the Tower or equipment, and full compliance with federal or state guidelines
7. **Signs.** Emergency notification signs shall be posted on the site identifying the owner of the facility and an emergency response contact information. No other signs are permitted.
8. No artificial illumination unless required by federal or state regulations or by the planning commission. If required by law, the lighting alternatives and design must result in the least disturbance to the surrounding properties.
9. The structure shall be placed in an area which would not require the removal of trees or natural features. If a tree is removed, a tree must be planted elsewhere on the property.
10. Maintenance, construction, schedule, colors, screening, landscaping, buffers, design, and emissions must conform to the reports, representations made or submitted with the site plan application and conditions imposed by the Planning Commission or Planning Director, if administratively approved.
11. The tower and equipment must be maintained and operated in good working order in compliance with the regulations of the FAA and FCC, and other applicable governmental and regulatory agencies. All registrations and licenses required by law or regulation shall be maintained and kept in good standing.

12. Colors and design shall be compatible with the surrounding area. The tower and all accessory equipment shall be solid, neutral colors, as determined by the Planning Commission.
13. Antenna towers shall comply with the setback standards for a structure in the zoning district for the parcel that may exceed the standard in section 4.61 (1)
14. A freestanding antenna tower (i.e. not mounted on a roof) shall not be located in any front yard.
15. All accessory structures must meet the minimum setback standards for accessory structures in the zoning district for the parcel and shall not be inhabited, used for vehicle storage or used for outdoor storage of any kind.
16. After construction, the Tower and associated antennae or equipment shall remain in continuous use and operation for a period of three months. The Tower Owner shall report to the City the non-use and whether re-use is expected within the ensuing three months. Any Tower or equipment that is not operated for a continuous period of six months shall be considered abandoned, and the Director of Public Service may order removal.
17. No Facility, antenna or antenna equipment or accessory equipment, shall interfere in any manner with current or future City or other governmental public safety communication or with any utilities, or the surrounding use of existing radios, televisions, or other electronic equipment.

#### Section 4.62. SITE PLAN APPROVAL.

Upon submitting an application for site plan approval of a Tower or antenna, the Petitioner shall also provide the following information:

1. Name, address and phone number of the Petitioner and of the owner of the property.
2. A location map of all antennas and antenna towers which the Petitioner has currently erected in the City of Warren and shall include a master plan for any future antenna locations known to the Petitioner. This requirement is for planning purposes only and shall not limit the Petitioner to the sites indicated on the map.
3. An affidavit of the total watts of effective radiated power of the proposed antenna.
4. An affidavit verifying that the proposed site and proposed antenna(s) complies with all Federal Communication Commission rules and guidelines; and all

federal, state and local laws, including such rules, regulations or standards regarding signal interference.

5. A statement as to whether an environmental assessment is required by the Federal Communications Commission and a copy of the environmental assessment if one was required.
6. The antenna, antenna tower and all supporting equipment shall not block areas which will hamper firefighting equipment and maintenance of electrical lines.
7. If the proposed antenna location is on a new tower, the Petitioner shall submit an affidavit attesting that there is no suitable space available on any existing tower in the desired area.
8. An affidavit of the proposed height of the tower and a signed "safe fall" zone certification letter from a licensed and registered professional engineer, including the manner in which the support structure will fall, radius of fall, including impact from falling equipment and debris. Manufacturer's specifications of a "safe fall" zone must be submitted. No inhabited building shall be located within the safe fall zone area.
9. A statement verifying that the tower or antenna will withstand wind speeds and ice loads as required by the BOCA Building Code. The statement, together with any and all attachments, shall be certified and sealed by a licensed engineer or architect. Manufacturer's specifications must be submitted.
10. An affidavit from the applicant that the FCC regulations, rules or standards regarding non-interference are satisfied and will be maintained. The affidavit will address non-interference with public safety equipment and the ability of existing surrounding uses to receive signals from radios, televisions, telephone, modems, or other electronic equipment.
11. A filing or no filing determination from the FCC or FCC, and all registration numbers assigned by respective regulatory agencies.
12. The name, address and phone number of a contact person for engineering, emergency, maintenance and other notice purposes. This information shall be updated at all times the Facility or equipment is on the Property.
13. A consent from the property owner authorizing city officials or agents or contractors to enter the Property for purposes of inspecting the Facility, site conditions or for removal purposes, if necessary. A separate affidavit or except of lease, or other documentation from the Property owner that such owner will cause the removal or remediation of any Tower or Antenna or equipment that is abandoned, dilapidated, operating unlawfully, or causing a hazardous leak or interference.

14. A soil report from a geotechnical engineer licensed in the State of Michigan. This soils report shall include borings and statements verifying the suitability of the soil conditions for the proposed use. The requirements of the FAA, FCC and Michigan Aeronautics Commission shall be noted.
15. A maintenance plan shall be presented and approvals as part of the site plan for the proposed Facility and Site.
16. A detailed landscaping plan.
17. The description of the security to be posted at the time of receiving a building permit to ensure removal of the facility when it has been abandoned or is no longer needed, which shall remain in effect at all times until released by the City. This shall be separate from the site plan guarantee established by the Planning Commission.
18. Structural analysis report for the initial build and any co-location, when required by the engineer
19. Written commitment to send certified emissions report demonstrating that the antennae satisfy the radio frequency emissions or to satisfy the threshold of the FCC; this report shall be required upon completion of the development, prior to site performance bond release, and updated as provided in this ordinance.
20. **For new Facilities, adequate justification for a new Facility in lieu of collocation on an existing Facility.**

#### Section 4.63. SITE PLAN REVIEW.

The site plan will be reviewed in accordance with the procedures and standards of review in section 22-16, 22-14 (B), consideration of the adequacy of the application and submittals, and compliance with this article. In addition, the planning commission may consider the following factors in reviewing applications towers and antennas and may attach reasonable conditions to an approval consistent with these factors:

1. Tower or antenna height;
2. Nature of uses on adjacent or nearby properties;
3. Surrounding tree coverage and foliage;
4. Tower design, including design characteristics that are intended to reduce or eliminate adverse impacts upon the surrounding area;
5. Availability of suitable existing towers or other structures;
6. Potential adverse impact upon historical districts or other historic properties or upon the recognized aesthetic assets of the city.

**Section 4.64 - ADMINISTRATIVE REVIEW.** The Planning Director shall have the authority to grant or deny an administrative approval of a plan for a Minor Facility Modification as defined in this article, subject to compliance with the following procedure:

1. Upon submission of an application for administrative review, the Petitioner shall submit proposed plan showing as built and proposed change or replacement and a narrative explaining the change, identification of the new provider, if any, with an emergency contact person and information and signed verification that such provider agrees to abide by this article.
2. If any modification would in the discretion of the Planning Director, potentially compromise the public health safety or welfare or impact upon a neighboring landowner, the matter may be referred for formal site plan approval.
3. In connection with such administrative approval process, the Planning Director may develop reasonable administrative policies and procedures for considering applications for administrative approvals, including a site plan performance bond. In connection with granting, denying or conditioning approval of an administrative approval, the Planning Director shall also obtain approvals, denials or conditions from the City Building Division, Engineering Division, and Fire Department or other entities, as deemed appropriate by the Planning Director.
4. The final determination of the application for the administrative approval shall be made no later than 21 days after submission of the completed application, together with submittals in such form and as may be either required or requested by the Planning Director.
5. Upon final build, the Petitioner shall provide the Planning Director with updated site plans. The Planning Director shall have the authority to issue, or cause to be issued, permits in connection with work to be performed based on any administrative approval granted by the Planning Director.

#### **SECTION 4.65 - USE OF PUBLIC PROPERTY**

Upon recommendation of the Planning Commission and approval of the City Council, properly zoned property owned by the City of Warren, excluding street rights-of-way, may be used for antenna and antenna tower purposes upon the execution of a valid lease approved by the City Attorney. After receiving approval to place an antenna or antenna tower on City property, the Petitioner must proceed to obtain all required approvals as required by the Ordinances of the City of Warren, and use or occupancy shall be subject to insurance and other standards established in a written agreement.

## **SECTION 4.66 - MONITORING OF ANTENNA RADIO FREQUENCY EMISSIONS**

Each telecommunications provider with antennas located within the City shall provide the City with a semi-annual or annual report disclosing the radio frequency emissions of each antenna site. The City shall perform an annual inspection of the radio frequency emissions of each antenna site to ensure that the site complies with the requirements of the Telecommunications Act of 1996. The City shall charge the provider a fee for the cost of the annual inspection.

## **SECTION 4.67 - ANTENNA AND ANTENNA TOWER REMOVAL**

1. A condition of every approval of a Tower, Antenna or Collocation shall be for removal of all or part of the Facility, Antenna, antenna equipment or accessory equipment.
2. Any Tower, Antenna, or equipment that is not used for a period of 180 days or more, as evidenced by the cessation of operations or the transmission or reception of radio signals, shall be deemed abandoned. It shall be the responsibility of the owner of the Tower to secure removal of the unused Tower, antenna or equipment within thirty (30) days of discontinuance. The failure to remove the abandoned Tower or antenna or equipment upon 30 days' of a request of the Director of Public Service, the Tower owner or the property owner shall be responsible for demonstrating the use of any antenna or the Tower.
3. Failure to respond or to adequately document use, the Director of Public Service may order the abandoned Tower, Antenna, or equipment to be removed. The owner of the Tower shall remove the Tower, Antenna or equipment within 60 days' notice from the Director of Public Service. Upon failure to remove the Tower or Antenna or Equipment, the bond will be forfeited to the general fund of the City. The City may remove the Tower, Antenna or equipment, and pursue costs of such removal from the Tower owner. The Tower owner, or if the Tower owner has dissolved, bankrupt, in receivership or otherwise, no longer available, the property owner will be responsible for the removal, or upon failure to do so, the City's costs of removal, including attorney fees.
4. In the event any antenna is found to exceed the applicable F.C.C. standards, or the antenna or equipment is leaking hazardous substances, site plan approval shall be immediately revoked and the antenna shall be removed, and the Tower owner or property owner shall remain responsible for cost recovery and remediation.
4. To ensure compliance with this section, the Planning Commission upon site plan approval, shall require that a cash deposit or an approved surety

bond, covering the estimated cost of removal is to be deposited with the City Treasurer. The Petitioner is ~~also~~ required to maintain the cash deposit or surety bond until the antenna(s), equipment or Tower is removed as required by City ordinances. In the event, the antennae, Tower or equipment is pursuant to the provisions of this ordinance, the cash deposit or surety bond shall be forfeited to the general fund of the City of Warren. The bond to secure the removal is supplemental to the site plan bond.

**SECTION 3.** Section 14.02 C, which reads as follows:

**Section 14.02 Approval of special land use permit.**

Under such conditions as the City Council, after recommendation of the planning commission, finds the use meets the standards for approval set forth in Section 22.14 of the Ordinance and subject to the conditions that may be imposed, the following uses may be permitted:

- C. Antennas and antenna towers. Any request for special land use approval for an antenna or antenna tower in a C-1, C-2, C-3 or SS district must comply with all the standards set forth in section 4.64 for site plan approval and for special land use approval set forth in section 22.14.

Shall be amended to remove subsection (C) of section 14.02, and the remaining parts of 14.02 shall remain unchanged, and shall be renumbered accordingly.