

CITY OF SYLVAN LAKE
OAKLAND COUNTY, MICHIGAN

ORDINANCE NO. 297
ZONING TEXT AMENDMENT

An Ordinance to amend Chapter 78 of the Sylvan Lake City Code, Zoning Chapter, to repeal Sec. 78-498, subsection paragraph (5) relating to Radio, Television and Telephone, Towers, etc., and to add a new Sec. 78-644, Wireless Communications Facilities, which will regulate Wireless Communication Facilities as hereinafter provided.

THE CITY OF SYLVAN LAKE ORDAINS:

Section 1.

Chapter 78, Zoning Chapter of the City of Sylvan Lake City Code, Sec. 78-498, subsection paragraph (5) is hereby repealed.

Section 2.

Article VI, Supplementary District Regulations, is hereby amended by adding a new section hereto, Sec. 78-644. **Wireless Communication Facilities Regulated**, to read as follows:

Sec. 78-644. Wireless Communication Facilities Regulated.

(1) Purpose and intent.

It is the general purpose and intent of the city to carry out the will of the United States Congress by authorizing communication facilities needed to operate wireless communication systems. It is the further purpose and intent of the city to provide for such authorization in a manner which will retain the integrity of neighborhoods and the character, property values and aesthetic quality of the city at large. In fashioning and administering the provisions of this section, attempt has been made to balance these potentially competing interests and uphold the values of public health, safety and welfare.

(2) Definitions.

The following definitions shall apply in the interpretation of this section:

- a. Wireless Communication Facilities shall mean and include all structures and accessory facilities relating to the use of the radio frequency spectrum for the purpose of transmitting or receiving radio signals. This may include, but shall not be limited to, radio towers, television towers, telephone devices and exchanges,

antennas, microwave relay towers, telephone transmission equipment, building and commercial mobile radio service facilities. Not included within this definition are: citizen band radio facilities; short wave facilities, ham, amateur radio facilities; satellite dishes; and governmental facilities which are subject to state or federal law or regulations which preempt municipal regulatory authority.

- b. Attached Wireless Communications Facilities shall mean wireless communication facilities (antennas and panels) that are affixed to existing structures, such as existing buildings, towers, water tanks, utility poles, and the like. A wireless communication support structure proposed to be newly established shall not be included within this definition.
- c. Wireless Communication Support Structures shall mean any and all structures erected or modified to support wireless communication antennas. Support structures within this definition include, but shall not be limited to, monopoles, lattice towers, light poles, wood poles and guyed towers, or other structures which are not defined in Sub-Section (2) b. above as attached wireless communication facilities.
- d. Collocation shall mean the location by two or more wireless communication providers of wireless communication facilities on a common structure, tower, or building, with the view toward reducing the overall number of structures required to support wireless communication antennas within the community.
- e. Planning Official shall mean the City Manager or his or her designee.
- f. Building Official shall mean the Chief Building Official.
- g. Backhaul Network shall mean the lines that connect a wireless communication provider's wireless communication facilities to one or more cellular telephone switching offices, and/or long distance providers, or the public switched telephone network.

(3) **Placement on City Property.**

Every effort must be made to locate wireless communication facilities on City Hall and adjoining city owned property including the water tower.

- a. Wireless communication facilities may be placed on City property following the guidelines set forth below.

- b. Engineering proof must be submitted proving that adequate signal coverage cannot be achieved by placing a facility on city owned property prior to a facility being proposed in another location.
- c. If after a review by the City's engineer, it is determined that a facility cannot be placed on City owned property, a proposal to place a facility on other property in the City may be submitted.

(4) **Authorization.**

- a. The planning official may permit an attached wireless communication facility as a permitted use in the C-1, C-2 and O-1 districts under any one of the following circumstances:
 - 1. The facility and any accessory equipment shall be located within an existing building or structure of a principal permitted use, or attached to an existing building or structure of the principal permitted use.
 - 2. The planning official finds that the facility is designed in such a manner that it is compatible with the character of existing building or structure. Any accessory building necessary for the enclosure of equipment shall be covered with the same or compatible building material as the principal building. The facility shall be attached to or be part of the structure in such a manner as to minimize its identity.
 - 3. The facility is proposed to be collocated upon a wireless communication support structure which had been pre-approved for such collocation as part of an earlier approval by the city.
 - 4. The facility is proposed to be attached to an existing utility pole or tower.
- b. Wireless communication facilities subject to the standards and conditions set forth below shall be authorized as special land uses to be approved by the City Council following public hearing and recommendation by the Planning Commission, within the I-1 District or on land owned by the City located within the Clinton River Trail subject to the following conditions:
 - 1. The base of the wireless communication facility shall have a minimum setback of 30 feet to any lot line located in a residential district

2. The base of the wireless communication facilities and any other structures connected therewith shall provide the minimum setback required by the district to any abutting C-1, C-2 or residential district; provided that the setback of the wireless communication facilities shall be not less than the height of the facility.
3. If located on the same zoning lot with another permitted use, such wireless communication facilities and any other structures connected therewith shall not be located in a front yard.
4. Exceptions to these conditions may be permitted by the City Council where the Council finds that circumstances of the site and in the surrounding area warrant different conditions.
5. Such wireless communications facilities shall further be subject to the conditions set forth in subsections (5), (6), (7), (8) and (9) below.

(5) **General Regulations.**

Standards and Conditions Applicable to All Facilities. All applications for wireless communication facilities shall be reviewed in accordance with the following standards and conditions, and, if approved, shall be constructed and maintained in accordance with such standards and conditions. In addition, if the facility is approved, and is other than a permitted use, it shall be constructed and maintained with any additional conditions imposed by the findings of the Planning Commission and approved by the City Council in its discretion:

- a. Wireless communication facilities shall not be demonstrably injurious to neighborhoods or otherwise detrimental to the public safety and welfare.
- b. Wireless communication facilities shall be located and designed to be harmonious with the surrounding areas, and if it is a new wireless communication support structure, shall be located no less than 1/2 mile from existing wireless communication support structures. The distance requirements shall not apply to applicants who have demonstrated that collocation is not feasible.
- c. Wireless communication facilities shall comply with applicable federal and state standards relative to the environmental effects of radio frequency emissions.

- d. Applicants shall demonstrate a justification for the proposed height of the structures and an evaluation of alternative designs which might result in lower heights.
- e. The applicant shall demonstrate options for a creative wireless tower facility design such as a steeple, flagpole, etc. The Proposed design shall be subject to review and recommendation by the Planning Commission and approval by the City Council.
- f. The following additional standards shall be met:
 - 1. The maximum height of the new or modified wireless communication support structure and antenna shall be the minimum height demonstrated to be necessary for reasonable communication by the applicant (and by other entities to collocate on the structure), but in no event shall the wireless communication support structure exceed one hundred fifty (150) feet in height.
 - 2. The accessory building contemplated to enclose such things as switching equipment shall be limited to the maximum height for accessory structures within the respective district.
 - 3. The setback of the new or proposed wireless communication support structure from any existing or proposed rights-of-way or other publicly traveled roads shall be no less than the height of the structure, unless the structure is placed within the right-of-way itself.
 - 4. There shall be unobstructed access to the wireless communication support structure, for operation, maintenance, repair and inspection purposes, which may be provided through or over an easement. This access shall have a width and location determined by such factors as: the location of adjacent thoroughfares and traffic and circulation within the site; utilities needed to service the tower and any attendant facilities; the location of buildings and parking facilities; proximity to residential districts and minimizing disturbance to the natural landscape; and the type of equipment which will need to access the site.
 - 5. The division of property (lot splits or subdividing) for the purpose of locating a wireless communication facility is prohibited.

6. Where an attached wireless communication facility is proposed on the roof of a building, if the equipment enclosure is proposed as a roof appliance or penthouse on the building, it shall be designed, constructed and maintained to be architecturally compatible with the principal building. The equipment enclosure may be located within the principal building or may be an accessory building. If proposed as an accessory building, it shall conform with all district requirements for principal buildings, including yard setbacks.
7. Before installing wireless communication support structures, the support system shall be constructed in accordance with all applicable building codes and shall include the submission of a soils report from a geotechnical engineer, licensed in the State of Michigan. This soils report shall include soil borings and statements confirming the suitability of soil conditions for the proposed use. The requirements of the Federal Aviation Administration, Federal Communication Commission, and Michigan Aeronautics Commission shall be noted. All applicants shall apply for and receive a permit from the Building Official prior to commencement of construction.
8. A maintenance plan, and any applicable maintenance agreement, shall be presented and approved as part of the site plan for the proposed facility. Such plan shall be designed to ensure long term, continuous maintenance to a reasonably prudent standard.
9. The use of high intensity (strobe) lighting on a wireless communication facility shall be prohibited, and the use of other lighting shall be prohibited absent a demonstrated need or required by State and/or Federal Authorities.
10. Fencing shall be installed enclosing the accessory support structures such as battery units. Such fence shall be 6 to 8 feet high and constructed of decorative material. The Planning Commission may allow the use of chain link fence based upon the location, visibility and existing screening for the tower and equipment.
11. The application shall include a description of security to be posted at the time of receiving a building permit for the facility to ensure removal of the wireless communication facility when it has been abandoned or is no longer needed, as provided in paragraph (8) below. The type of security required shall be determined by the City Council in its discretion in the form of a

cash bond, irrevocable bank letter of credit, or a recordable agreement as hereinafter described. The amount of the cash bond or irrevocable bank letter of credit shall be an amount of no less of 125% of the estimated costs of removal. The irrevocable bank letter of credit shall be a banking institution which has an office within 50 miles of City of Sylvan Lake. The recordable agreement shall establish the obligations of the applicant and owner of the property to remove the facility in a timely manner as required under this section of the ordinance, with further provision that the applicant and owner shall be responsible for the payment of any and all costs and attorneys fees incurred by the City of Sylvan Lake in securing removal, and that any removal costs and/or attorney fees incurred by the City of Sylvan Lake will become a lien on the owner's property and enforceable against said landowner in a court of law of appropriate jurisdiction. If the applicant and/or owner refuses to pay said removal costs, said amount maybe placed on the tax roll of property and collected in the same manner as property taxes are collected for said property.

(6) **Application requirements.**

- a. A site plan prepared in accordance with section 78-144 shall be submitted, showing the location, size, screening and design of all buildings and structures, including fences, and the location and size of outdoor equipment, and the location, number, and species of proposed landscaping.
- b. The site plan shall also include a detailed landscaping plan where the support structure is being placed at a location which is not otherwise developed, or where a developed area will be disturbed. The purpose of landscaping is to provide screening and aesthetic enhancement for the structure base, accessory buildings and enclosure. In all cases, there shall be shown on the plan fencing which is required for protection of the support structure and security from children and other unauthorized persons who may otherwise access facilities.
- c. The application shall include a signed certification by a state licensed professional engineer with regard to the manner in which the proposed structure will fall, which certification will be utilized, along with other criteria such as applicable regulations for the district in question, in determining the appropriate setback to be required for the structure and other facilities.

- d. The application shall include a map showing existing and known proposed wireless communication facilities within the city, and further showing existing and known proposed wireless communication facilities within areas surrounding the borders of the city in the location, and in the areas, which are relevant in terms of potential collocation or in demonstrating the need for the proposed facility. Any such information which is trade secret and/or other confidential commercial information which, if released would result in commercial disadvantage to the applicant, may be submitted with a request for confidentiality in connection with the development of governmental policy. MCL 15.243(1)(g). This ordinance shall serve as the promise to maintain confidentiality to the extent permitted by law. The request for confidentiality must be prominently stated in order to bring it to the attention of the city.
- e. The name, address and phone number of the person to contact for engineering, maintenance and other notice purposes. This information shall be continuously updated during all times the facility is on the premises.
- f. A fee, established by resolution of the City Council shall be paid with each application presented for approval of a wireless communication facility.
- g. The owner or duly authorized representative of all ownership interest in the land on which the wireless communication facility is proposed to be located shall sign the application.
- h. A copy of the application submitted to the FCC detailing technical parameters and/or a copy of the FCC authorization for the proposed facilities along with any notification submitted to the FAA.

(7) **Collocation.**

It is the city's policy to minimize the proliferation of new wireless telecommunication facility support structures in favor of collocation of such facilities on existing structures. No new wireless telecommunication facility support structures shall be constructed unless the applicant for the new structure demonstrates, and the planning commission finds, that collocation on an existing structure is not adequate or is not reasonably feasible. If a provider fails or refuses to permit collocation on a facility owned or otherwise controlled by it, where collocation is feasible, the result will be that a new and unnecessary additional structure will be compelled, in direct violation of and in direct contradiction to the basic

policy, intent and purpose of the city. The provisions of this subsection are designed to carry out and encourage conformity with the policy of the city.

(8) **Removal.**

A condition of every approval of a wireless communication facility shall be adequate provision for removal of all or part of the facility by users and owners upon the occurrence of one or more of the following events:

- a. When the facility has not been used for 180 days or more. For purposes of this section, the removal of antennas or other equipment from the facility, or the cessation of operations (transmission and/or reception of radio signals) shall be considered as the beginning of a period of non-use.
- b. Six months after new technology is available at reasonable cost as determined by the municipal legislative body, which permits the operation of the communication system without the requirement of the support structure.
- c. The situations in which removal of a facility is required, as set forth in subsection a. above, may be applied and limited to portions of a facility.
- d. Upon the occurrence of one or more of the events requiring removal, specified in sub-section a and b above, the property owner or persons who had used the facility shall immediately apply or secure the application for any required demolition or removal permits, and immediately proceed with and complete the demolition/removal, restoring the premises to an acceptable condition as reasonably determined by the planning official.
- e. If the required removal of a facility or a portion thereof has not been lawfully completed within 60 days of the applicable deadline, and after at least 30 days' written notice, the city may remove or secure the removal of the facility or required portions thereof, with its actual cost and reasonable administrative charge to be drawn, collected and/or enforced from or under the security posted at the time application was made for establishing the facility.

(9) **Signs on Towers/Antennas/Wireless Communication Support Structures.**

No signs shall be displayed on any cellular tower antennas or wireless communication support structure or facility without a submission of

findings of the City Planning Commission and approval of the City Council.

Section 4. Severability.

Should any section or part of this ordinance be declared unconstitutional, null or void by a court of competent jurisdiction, such declaration shall not have any effect on the validity of the remaining sections or parts of this ordinance.

Section 5. Savings

All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this Ordinance takes effect, are saved and may be consummated according to the law in force when they were commenced.

Section 6. Effective Date

The provisions of this Ordinance are hereby ordered to take effect seven (7) days after publication as required by law.

Section 7. Enactment

This ordinance was adopted by the City Council of the City of Sylvan Lake by authority of Public Act No. 110 of 2006 of the Public Acts of Michigan further amended as Public Act 12 of 2008, at a meeting duly called and held on the 13th day of May, 2009, and ordered to be published as prescribed by the law.

Yes: Maurina, Shepp, Wiegand, Zubrzycki, Lorenz

No: None

Abstentions: None

Absent: None

Adopted/Enacted: May 13, 2009

Published: May 21, 2009 Newspaper: Observer & Eccentric

Effective Date: May 28, 2009

Posted Date: May 15, 2009

Locations: City Hall, Community Center, Ferndale Park

I, Dennise Clippert, City Clerk for the City of Sylvan Lake, Michigan, do hereby certify that the foregoing is a true and correct copy of an Ordinance adopted by the City Council of Sylvan Lake at a Regular City Council Meeting, held on 13th day of May, 2009, the original of which is on file in my office.