

**GREEN OAK CHARTER TOWNSHIP
ORDINANCE NUMBER 01-2008**

AN ORDINANCE TO AMEND PORTIONS OF CHAPTER 38, ZONING, OF THE CODE OF ORDINANCES FOR GREEN OAK CHARTER TOWNSHIP, ALL SAID AMENDMENTS DEALING WITH WIRELESS COMMUNICATION FACILITIES REGULATIONS AND BEING IN PARTICULAR: SECTION 38-1, DEFINITIONS; SECTION 38-135(11)(b)(15) DELETED; SECTION 38-135(12)(b)(7) DELETED; SECTION 38-196(22) DELETED AND AN ADDITION OF A NEW SECTION 38-199 TREATING REGULATIONS FOR WIRELESS COMMUNICATION FACILITIES.

GREEN OAK CHARTER TOWNSHIP ORDAINS:

Section 1. The following definition is hereby adopted and shall be added to Section 38-1 of Chapter 38 of the Green Oak Charter Township Code of Ordinances and shall read as follows:

Wireless communications facilities shall mean 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, micro-wave relay facilities, telephone transmission equipment building and commercial mobile radio service facilities. Not included within this definition are: citizen band radio facilities; short wave receiving facilities; amateur (ham) radio facilities; private/stand alone satellite dishes; and, governmental facilities which are subject to state or federal law or regulations which preempt municipal regulatory authority. For purposes of this Ordinance, the following additional terms are defined:

1. *Attached wireless communications facilities* shall mean wireless communications facilities 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.
2. *Wireless communication support structures* shall mean 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 appear to be something other than a mere support structure.
3. *Collocation* shall mean the location by two (2) 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 communications antennas within the community.

Section 2. The following Sections of Chapter 38 of the Code of Ordinances for Green Oak Charter Township are hereby deleted in their entirety: Section 38-135(11)(b)(15); Section 38-135(12)(b)(7), and Section 38-196(22).

Section 3. A new Section 38-199 is hereby adopted, added to Chapter 38 of the Code of Ordinances for Green Oak Charter Township and shall read as follows:

Sec. 38-199. Wireless communication facilities.

(a) Purpose and Intent.

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

Recognizing the number of providers authorized to establish and operate wireless communication services and coverage, it is the further purpose and intent of this section to:

- (1) Facilitate adequate and efficient provision of sites for wireless communication facilities and ensure that wireless communication facilities are situated in appropriate locations and relationships to other land uses, structures and buildings.
- (2) Establish predetermined districts in the location considered best for the establishment of wireless communication facilities, subject to applicable standards and conditions.
- (3) Recognize that operation of a wireless communication system may require the establishment of facilities in locations not within the predetermined districts. In such cases, it has been determined that it is likely that there will be greater adverse impact upon neighborhoods and areas within the community. Consequently, more stringent standards and conditions should apply to the review, approval and use of such facilities.
- (4) Limit inappropriate physical and aesthetic overcrowding of land use activities and avoid adverse impact upon existing population, transportation systems, and other public services and facility needs.

- (5) Provide for adequate information about plans for wireless communication facilities in order to permit the community to effectively plan for the location of such facilities.
- (6) Minimize the adverse impacts of technological obsolescence of such facilities, including a requirement to remove unused and/or unnecessary facilities in a timely manner.
- (7) Minimize the negative visual impact of wireless communication facilities on neighborhoods, community land marks, historic sites and buildings, natural beauty areas and public rights-of-way. This contemplates the establishment of as few structures as reasonably feasible, the use of structures which are designed for compatibility, and the use of existing structures.

(b) Authorization.

(1) As a Permitted Use

In all Zoning Districts, a proposal to establish a new wireless communication facility shall be deemed a permitted use in the following circumstances; subject to the standards set forth in Subsections (c), (d) and (e).

- a. An existing structure which will serve as an Attached Wireless Communication Facility within a nonresidential zoning district, where the existing structure is not proposed to be either materially altered or changed in appearance.
- b. A proposed collocation upon an Attached Wireless Communication Facility which has been approved by the Township for such collocation.
- c. An existing utility pole structure located within a right-of-way, which will also serve as an Attached Wireless Communication Facility where the existing pole is not proposed to be materially altered or changed in appearance.

(2) As a Special Land Use

- a. Subject to the standards and conditions set forth in Subsection (c), (d) and (e), wireless communication facilities shall be a special land use in the LI and GI zoning districts.
- b. If it is demonstrated by an applicant that a wireless communication facility, in order to operate, is required to be established outside of an area identified in either Subsections (b)(1) or (b)(2)(a), such wireless communication facilities may be considered elsewhere in the Township as a special land use, subject to the following:

1. At the time of the submittal, the applicant shall demonstrate that a location within the districts identified in Subsections (b)(1) or (b)(2)(a) above can not reasonably meet the coverage and/or capacity needs of the applicant.
2. Wireless communication facilities shall be of a design such as, without limitation, a steeple, bell tower, or other form which is compatible with the existing character of the proposed site, neighborhood and general area, as approved by the Township.
3. Locations outside of the areas identified in Subsection (b)(1) or (b)(2)(a) above shall be limited to the following locations, subject to application of all other standards contained in this section:
 - i. Municipally-owned sites.
 - ii. Other governmentally owned sites.
 - iii. Religious or other institutional sites.
 - iv. Public or private school sites.
4. All other criteria and standards set forth in Subsection (c) and (d) are met.

(c) General Regulations.

(1) 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.

- a. Facilities shall not be demonstrably injurious to neighborhoods or otherwise detrimental to the public safety and welfare.
- b. Facilities shall be located and designed to be compatible with the existing character of the proposed site and harmonious with surrounding areas.
- c. Facilities shall comply with applicable federal and state standards relative to the environmental effects of radio frequency emissions.
- d. Applicants shall demonstrate an engineering justification for the proposed height of the structures and an evaluation of alternative designs which might result in lower heights.
- e. The following additional standards shall be met:

1. The maximum height of the new or modified support structure and antenna shall not exceed height limits provided in Table 1, and shall be the minimum height demonstrated to be necessary for reasonable communication by the applicant and by other entities to collocate on the structure.

Table 1
Support Structure Height Limits by Zoning District

Zoning District	Height Limit
PL*, RF*, RE*	180 feet
R1*, R2*, R2A*, R3*	140 feet
RM*, RMH*	160 feet
LB*, GB*, HC*, RO*	180 feet
LI, GI	180 feet

* Wireless communication facilities only permitted in these districts subject to Subsection (b)(2)(b).

Additional height over that which is provided in Table 1 may be permitted, in the sole discretion of the Township Board, when it can be demonstrated by the applicant that additional height is required to permit collocation. Evidence of collocation shall be provided by the applicant if additional height over that which is provided in Table 1 is requested. 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.

2. The setback of the support structure and accessory structures shall be five hundred (500) feet from the boundary of any residentially zoned property and one thousand (1,000) feet from the boundary of an historic district. Otherwise, the setback of the support structure shall be two hundred (200) feet or a distance equal to 125% of the height of the support structure (whichever is greater) from an adjacent property boundary and all existing or proposed rights-of-way.
3. There shall be unobstructed access to the support structure, for police, fire and emergency vehicles, and for operation, maintenance, repair and inspection purposes, which may be provided through or over an easement.

4. The division of property for the purpose of locating a wireless communication facility is prohibited unless all zoning requirements and conditions are met.
5. 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 to all district requirements for principal buildings, including yard setbacks. Where an attached wireless communication facility is proposed on the roof of a building, any equipment enclosure proposed as a roof appliance or penthouse on the building, shall be designed, constructed and maintained to be architecturally compatible with the principal building.
6. The Township shall review and approve the architecture and color of the support structure and all accessory buildings so as to minimize distraction, reduce visibility, maximize aesthetic appearance, and ensure compatibility with surroundings. It shall be the responsibility of the applicant to maintain the wireless communication facility in a neat and orderly condition. If lighting is required by the Federal Aviation Administration, Federal Communications Commission, Michigan Aeronautics Commission, or other governmental agencies, it shall be red between sunset and sunrise, white between sunrise and sunset, and shall blink or flash at the longest permitted intervals, unless otherwise required.
7. 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 indicating 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 submitted by the applicant in the original application for approval. The applicant shall furnish a written certification from the manufacturer or designer of the support system that the support system has been evaluated by a registered professional engineer and that the support system can safely accommodate attached antennas under expected weather conditions.
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 the long term, continuous maintenance to a reasonably prudent standard.

Such plans shall include the names, pager number, if any, business and home telephone numbers, mobile telephone numbers, if any, and identity of no fewer than two persons who can be contacted at any hour of the day or night that have full authority to act on behalf of the applicant in the event of a malfunction or emergency. Such list of persons shall be kept current and updated or confirmed to the Township in writing at least every four months, and shall be posted prominently on the premises so as to afford convenient viewing to a person on the outside of the premises where the facility is located.

(2) Standards and Conditions Applicable to Special Land Use Facilities.

Applications for wireless communication facilities which may be approved as special land uses shall be reviewed, and if approved, constructed and maintained, in accordance with the standards and conditions in Subsection (c)(1) and in accordance with the following standards:

- a. The applicant shall demonstrate the need for the proposed facility based upon one (1) or more of the following factors:
 1. Proximity to an interstate or major thoroughfare.
 2. Areas of population concentration.
 3. Concentration of commercial, industrial, and/or other business centers.
 4. Areas where signal interference has occurred due to tall buildings, masses of trees, or other obstructions.
 5. Topography of the proposed facility location in relation to other facilities with which the proposed facility is to operate.
 6. Other specifically identified reason creating facility need.
- b. The proposal shall be reviewed in conformity with the collocation requirements of this section.

(3) Standards and Conditions Applicable to Attached Wireless Communication Facilities.

All applications for attached wireless communication facilities shall be reviewed, and if approved, constructed and maintained, in accordance with the standards and conditions in Subsection (c)(1) and, as applicable, Subsection (c)(2), and in accordance with the following standards:

- a. Attached wireless facilities mounted upon the side of a building shall be attached flush against the building surface, and shall not be allowed to protrude more than the depth of the antenna. Such facilities shall blend into the design, contour and color scheme of the building.

(d) Application Requirements.

- (1) A site plan prepared in accordance with Article II, Division II, shall be submitted, showing the location, size, screening, lighting and design of all buildings and structures.
- (2) The site plan shall also include a detailed landscape plan prepared in accordance with Section 38-177. The purpose of landscaping is to provide screening and aesthetic enhancement for the structure base, accessory buildings and enclosure. In all cases, fencing of a minimum of six (6) feet in height shall be required for protection of the support structure and security from children and other persons who may otherwise access facilities.
- (3) The application shall include a description of 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, as provided in Subsection F. In this regard, the security shall be posted and maintained in the form of: (1) cash; (2) irrevocable letter of credit; or, (3) other security arrangement accepted by the Township Board.
- (4) The application shall include a map showing existing and known proposed wireless communication facilities within the Township, and further showing existing and known proposed wireless communication facilities within areas surrounding the borders of the Township in the location, and in the area, which are relevant in terms of potential collocation or in demonstrating the need for the proposed facility. If and to the extent the information in question is on file with the community, the applicant shall be required only to update as needed. Any proprietary information may be submitted with a request for confidentiality in connection with the development of governmental policy, in accordance with 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 community.
- (5) The name, address identity, home and business telephone numbers, pager number, if any, and mobile phone number, if any, of the person to contact for engineering, maintenance and other notice purposes. This information shall be continuously updated or confirmed in writing to the Township no less than every four (4) months, during all time the facility is on the premises.

(e) Collocation.

(1) Statement of Policy:

- a. It is the policy of the Township to minimize the overall number of newly established locations for wireless communication facilities and Wireless Communication Support Structures within the community, and encourage the use of existing structures for Attached Wireless Communication Facility purposes, consistent with the statement of purpose and intent, set forth in Subsection (a), Purpose and Intent, above. Each licensed provider of a wireless communication facility must, by law, be permitted to locate sufficient facilities in order to achieve the objectives promulgated by the United States Congress. However, particularly in light of the dramatic increase in the number of wireless communication facilities reasonably anticipated to occur as a result of the change of federal law and policy in and relating to the Federal Telecommunications Act of 1996, it is the policy of the Township that all users should collocate on Attached Wireless Communication Facilities and Wireless Communication Support Structures in the interest of achieving the purposes and intent of this section, as stated above, and as stated in Subsection (a), Purpose and Intent. 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 Township. The provisions of this subsection are designed to carry out and encourage conformity with the policy of the Township.

(2) Feasibility of collocation:

Collocation shall be deemed to be "feasible" for purposes of this section where all of the following are met:

- a. The wireless communication provider entity under consideration for collocation will undertake to pay market rent or other market compensation for collocation.
- b. The site on which collocation is being considered, taking into consideration reasonable modification or replacement of a facility, is able to provide structural support.
- c. The collocation being considered is technologically reasonable, e.g., the collocation will not result in unreasonable interference, given appropriate physical and other adjustment in relation to the structure, antennas, and the like.
- d. The height of the structure necessary for collocation will not be increased beyond a point deemed to be permissible by the Township, taking into

consideration the several standards contained in Subsections (b) and (c), above.

(3) Requirements for Collocation:

- a. The construction and use of a new wireless communication facility shall not be granted unless and until the applicant demonstrates that a feasible collocation is not available for the coverage area and capacity needs.
- b. All new and modified wireless communication facilities shall be designed and constructed so as to accommodate collocation.
- c. The policy of the community is for collocation. Thus, if a party who owns or otherwise controls a facility shall fail or refuse to alter a structure so as to accommodate a proposed and otherwise feasible collocation, such facility shall thereupon and thereafter be deemed to be a non-conforming structure and use, and shall not be altered, expanded or extended in any respect.
- d. If a party who owns or otherwise controls a facility shall fail or refuse to permit a feasible collocation, and this requires the construction and/or use of a new facility, the party failing or refusing to permit a feasible collocation shall be deemed to be in direct violation and contradiction of the policy, intent and purpose of the Township, and, consequently such party shall take responsibility for the violation, and shall be prohibited from receiving approval for a new wireless communication support structure within the Township for a period of five years from the date of the failure or refusal to permit the collocation. Such a party may seek and obtain a variance from the Zoning Board of Appeals if and to the limited extent the applicant demonstrates entitlement to variance relief which, in this context, shall mean a demonstration that enforcement of the five year prohibition would unreasonably discriminate among providers of functionally equivalent wireless communication services, or that such enforcement would have the effect of prohibiting the provision of personal wireless communication services.

(f) Removal.

- (1) A wireless communication facility must furnish reasonable evidence of ongoing operation at any time after the construction of an approved tower.
- (2) 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 one hundred-eighty (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 nonuse.

- b. Six (6) months after new technology is available at reasonable cost as determined by the Township Board, which permits the operation of the communication system without the requirement of the support structure.
- (3) The situations in which removal of a facility is required, as set forth in paragraph (1) above, may be applied and limited to portions of a facility.
- (4) Upon the occurrence of one (1) or more of the events requiring removal, specified in paragraph 1 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 Zoning Administrator.
- (5) If the required removal of a facility or a portion thereof has not been lawfully completed within sixty (60) days of the applicable deadline, and after at least thirty (30) days written notice, the Township may remove or secure the removal of the facility or required portions thereof, with its actual cost and reasonable administrative charge to be drawn or collected from the security posted at the time application was made for establishing the facility.

Section 4. Repealer.

This Ordinance hereby repeals any ordinances in conflict herewith.

Section 5. Severability.

The various parts, sections and clauses of this Ordinance are declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected.

Section 6. Savings Clause.

That nothing in this Ordinance hereby adopted be construed to affect any just or legal right or remedy of any character nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

Section 7. Publication and Effective Date.

This Ordinance is hereby declared to have been adopted by the Green Oak Charter Township Board at a meeting thereof duly called and held on the second day of April, 2008, and ordered to be given effect as mandated by Charter and statute.

Section 8. Adoption.

This Ordinance was duly adopted by the Green Oak Charter Township Board at its regular meeting called and held on the second day of April, 2008, and was ordered given publication in the manner required by law.

Michael H. Sedlak, Township Clerk

Adoption Date: April 2, 2008

Publication Date: April 11, 2008

Effective Date: May 11, 2008

CERTIFICATION

I, Michael H. Sedlak, the Clerk for Green Oak Charter Township, Livingston County, Michigan, do hereby certify that the foregoing is a true and complete copy of Ordinance Number 01-2008, adopted by the Green Oak Charter Township Board at a regular meeting held on April 2, 2008. The following members of the Township Board were present at that meeting: Tracey Edry, Susan Daugherty, Rollin Green, George Kilpatrick, Wally Qualls, Michael Sedlak and Mark St. Charles

The Ordinance was adopted by the Township Board with seven members of the Board voting in favor and no members voting in opposition. Notice of adoption and publication of the Ordinance was published in the Livingston County Community News on April 11, 2008. The Ordinance shall be effective thirty (30) days after publication.

Michael H. Sedlak, Township Clerk