

TOWNSHIP OF NOTTAWA
ST. JOSEPH COUNTY, MICHIGAN
WIRELESS COMMUNICATIONS FACILITIES ORDINANCE #51

Adopted: _____

Effective: _____

An ordinance to define and allow wireless communications facilities; to provide methods for consideration and approval of applications of the same in compliance with the Michigan Zoning Enabling Act; to provide an effective date; and to repeal conflicting ordinance provisions.

The Township of Nottawa, St. Joseph County, Michigan ordains:

Section 1
Amendment to Article Two, “Construction of Language and Definitions” of the
Nottawa Township Zoning Ordinance, as amended.

Article Two, “Construction of Language and Definitions” Section 300.202 “Definitions” of the Nottawa Township Zoning Ordinance is hereby amended by the addition of a new subsection designated “ 202.54.5 “Wireless Communications Facilities” to read as follows:

202.54.5 “Wireless Communication Facilities” . All equipment, support 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, personal communication transmission equipment and exchanges, microwave relay lowers, telephone transmission equipment building, and commercial mobile radio service facilities. This definition does not include a reception antenna for an individual lot as otherwise defined and regulated in this zoning chapter. Co-location on existing towers is permitted in all zoning districts. See Section 300.409. For new towers, see also Section 300.409 and “special use regulations therein.”

Section 2
Amendments to Article Three “Zoning Districts and Map” of the Nottawa Township
Zoning Ordinance

- a. Article Three, Section 300.305 “AR Districts: Agricultural Residential District”, Section 305.3 “Uses Permitted by Special Use Permit in an AR District”, is hereby amended by the addition of a new subsection designated “N” to read as follows:

“N. New Communication Towers subject to special use, see Section 300.409 and application and special use regulations therein.”

- b. Article Three, Section 300.306 “R-1 Districts: Low Density Residential District”,

Section 306.3 “Uses Permitted by Special Use Permit“ is hereby amended by the addition of a new Subsection Designated “F.” to read as follows:

“F. New Communications Towers, See Section 300.409 and application and special use regulations therein.”

- c. Article Three, Section 300.307 “R-2 Districts: Medium Density Residential District”, Section 307.3 “Uses Permitted by Special Use Permit” is hereby amended by the addition of a new subsection designated “E” to read as follows:

“E. New Communication Towers subject to special use, See Section 300.409 and application and special use regulations therein.”

- d. Article Three “Zoning Districts and Map”, Section 300.311 “C Districts: Commercial District”, Section 311.3 “Uses Permitted by Special Use Permit”, is hereby amended by the addition of a new subsection designated “M” to read as follows:

“M. New Communication Towers subject to special use, see Section 300.409 and application and special use regulations therein.”

- e. Article Three, “Zoning Districts and Map” Section 300.312 “I Districts—Limited Industrial District”, Section 312.25 “Uses Permitted by Special Use Permit” is hereby amended by the addition of a new section designated “312.25” to read as follows:

“312.25 Uses Permitted by Special Use Permit: A. New Communication Towers subject to special use, see Section 300.409 and application and special use regulations therein.”

Section 3

Amendment to Article Four “General Provisions and Exceptions” of the Nottawa Township Zoning Ordinance, as amended

Article Four “General Provisions and Exceptions” Section 300.400 of the Nottawa Township Zoning Ordinance, as amended, is hereby amended by the addition of a new subsection designated “300.409” to read as follows:

“300.409 Wireless communication Facilities and Structures”.

(A) Intent. It is the intent of the Township of Nottawa to conform to the federal and state of Michigan laws and administrative rules governing the installation and operation of wireless communications facilities and equipment including, but not limited to, the Federal Communications Act of 1996 (47 USC 151) and the Michigan Zoning Enabling Act (MCL 125.3514). It is further the intent of the Township of Nottawa to set forth regulations and procedures for the installation and location of wireless communication equipment and facilities in the Township of Nottawa in compliance with all applicable federal and state statutes.

(B) Definitions. For the purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them by this division:

ATTACHED WIRELESS COMMUNICATION FACILITIES. Wireless communication facilities affixed to existing structures, including but not limited to existing buildings, lowers, water tanks, or utility poles.

COLLOCATION. Location by 2 or more wireless communication providers of wireless communication facilities on a common structure, tower or building, to reduce the overall number of structures required to support wireless communication antennas within the township.

WIRELESS COMMUNICATION FACILITIES. All equipment, support 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, personal communication transmission equipment and exchanges, microwave relay lowers, telephone transmission equipment building, and commercial mobile radio service facilities. This definition does not include a reception antenna for an individual lot as otherwise defined and regulated in this zoning ordinance.

(C) Application and approval process for wireless communication facilities.

(1) Zoning approval. Wireless communication facilities may be located within the Township of Nottawa pursuant to the guidelines set forth herein.

(2) Application requirements. The following information shall be submitted to the township.

(a) A site plan prepared 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, and as-built drawings for all proposed attached wireless communication facilities and/or wireless communication support structures.

(b) A disclosure of what is proposed, demonstrating the need for the proposed wireless communication facility to be located as proposed based upon the presence of 1 or more of the following factors:

1. Proximity to an interstate highway 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 within which the proposed facility is to operate; and
6. Other specifically identified reason(s) creating need for the facility.

(c) The reason or purpose for the placement, construction, or modification with specific reference to the providers' coverage, capacity and/or quality needs, goals, and objectives;

(d) The existing form of technology being used and any changes proposed to that technology;

(e) As applicable, the planned or proposed and existing service area of the facility and the attached wireless communication facility, and wireless communication support structure height and type, and signal power expressed in ERP upon which the service area has been planned;

(f) The nature and extent in the provider/applicant's ownership or lease interest in the property, building, or structure upon which facilities are proposed for placement, construction, or modification;

(g) The identity and address of all owners and other person with a real property interest in the property, building, or structure upon which facilities are proposed for placement, construction, or modification;

(h) A map showing existing and known proposed wireless communication facilities with the Township of Nottawa, and within areas surrounding the borders of the township. The map shall also show existing buildings and/or other structures of the same approximate height within a 1-mile radius of the proposed site which could accommodate a feasible co-location of the applicant's proposed attached wireless communication facility;

(i) An illustration and description of the fall zone for the structure, including certification by a State of Michigan licensed and registered professional engineer to be utilized, along with other criteria such as applicable regulations for the district in question, to determine appropriate setbacks to be required for the structure and other facilities;

(j) The site plan shall include a landscape plan to demonstrate landscaping will provide screening for the wireless communication support structure base, accessory buildings, and enclosures;

(k) Elevations of the wireless communication facility and all accessory structures;

(l) Evidence of site plan approval from the Federal Aviation Administration, if required due to the site's proximity to an airport, or evidence that such approval is not required;

(m) The name, address, and telephone 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;

(n) A description of the security to be posted at the time of receiving a building permit for the wireless communication facility to ensure removal of the structure when it has been abandoned or is no longer needed. The security shall be in the form of a surety bond. A written statement shall be required from the applicant and owner of the property that the facility will be removed in a timely manner as required under this section, with the further provision that the applicant and owner shall be responsible for the payment of any costs and attorney fees incurred by the Township of Nottawa in securing the removal;

(D) Wireless communications equipment allowed as a permitted use. Pursuant to MCL 125.3514 and as set forth herein, the installation of all wireless communication equipment shall be a permitted use of property and does not require a special land use permit if all of the following conditions are met:

(1) The wireless communications equipment will be collocated on an existing wireless communications support structure or in existing facilities.

(2) The existing wireless communications support structure and facilities were previously approved by the Township of Nottawa Planning Commission and the Township of Nottawa Board of Trustees and is in compliance with all Township of Nottawa Zoning Ordinances.

(3) The proposed collocation of wireless communications equipment meets all of the following requirements:

(a) The collocation of the wireless communication equipment will not increase the overall height of the wireless communications support structure by more than 20 feet or 10% of its original height, whichever is greater.

(b) The collocation of the wireless communications equipment will not increase the width of the wireless communications support structure by more than the minimum necessary to permit collocation.

(c) The collocation of the wireless communications equipment will not increase the area of the existing equipment compound to greater than 2,500 square feet.

(4) The proposed collocation complies with the terms and conditions of any previous final approval of the wireless communications support structure or equipment compound by the Township of Nottawa Planning Commission and the Township of Nottawa Board of Trustees.

(E) Wireless communications equipment subject to special land use approval. Pursuant to MCL 125.3514 and as set forth herein, the proposed installation all wireless communication equipment that does not meet the requirements of division (D)(1) - (4) as set forth herein, shall be subject to approval of a special land use permit by the Township of Nottawa Planning Commission and approved by the Township of Nottawa Board of Trustees. The following site and developmental requirements shall apply to the installation of all wireless communication facilities, equipment, or support structures that require a special land use permit:

(1) A special land use permit must be granted by the Township of Nottawa Planning Commission.

(2) All support structures and facilities must be located on a minimum of 2 acres.

(3) A security deposit in the form of a surety bond must be submitted by the owner of the wireless communications facility in an amount deemed appropriate by the Township of Nottawa Township Planning Commission to cover the cost of removal of the facility once abandoned.

(4) The applicant shall provide an existing cell coverage map, a proposed cell coverage map, and a map of existing towers with a 1-mile radius of the proposed site. The maps will assist in identification of void areas of coverage and allow Nottawa Township and the applicant to locate the tower on or near the most appropriate site in order to minimize gaps in coverage.

(5) Wireless communication support structures shall be located according to prioritized locations:

(a) Co-location on existing wireless communications structures.

(b) Township of Nottawa property.

(c) Industrial zoned districts.

(d) Commercial districts.

(e) Agriculture districts.

(f) Residential districts.

(6) All freestanding wireless communications towers shall not exceed 250 feet in height above final grade level.

(7) A minimum of 2,600 feet of separation shall exist between freestanding towers.

(8) There shall be an unobstructed access to the wireless communication facility for operation, maintenance, repair, and inspection purposes which may be provided through an easement.

(9) The applicant shall demonstrate that the requested height of the new or modified support structure and antenna shall be the minimum height necessary for reasonable communication by the applicant, including additional height to accommodate future co-location where appropriate.

(10) No occupied building shall be located within the designated fall zone of the wireless communications tower.

(11) Where a wireless communication facility is proposed on the roof of a building, the equipment enclosure, if proposed, 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, provided that it conforms to all district requirements for accessory building, including yard setbacks and building height.

(12) All wireless communication facilities shall be constructed in accordance with all applicable building codes and shall include the submission of a professional soil report from a geotechnical engineer licensed in the State of Michigan.

(13) All wireless communications facilities and support structures shall comply with landscape ordinance screening requirements or provide a screening plan. Existing on-site vegetation shall be preserved to the maximum extent possible.

(14) A maintenance plan and any applicable maintenance agreement shall be presented as part of the site plan for the proposed facility.

(15) The minimum setbacks for all new or modified wireless communications facilities are based on the proposed location(s) and include all that are applicable:

(a) Adjacent to any residential district: the height of the structure plus 25 feet measured to residential property line *.

(b) Adjacent to any existing or proposed rights-of-way or other publicly traveled roads or non-motorized improved pathways: half of the height of the structure, plus 25 feet measured to the ROW.

(c) Adjacent to any existing or proposed county road rights-of-way: 500 feet measure to the ROW.

(d) Adjacent to any pre-existing residence or residentially-use building: height of the structure, plus 25 feet measured to the building plane of the residential structure nearest the tower .

* setback may be reduced upon determination that no residential use exists or is expected on the adjacent site.

(16) Setbacks may be reduced as determined by the Township of Nottawa Planning Commission upon demonstration and certification by a registered professional engineer, that the wireless communication facility or support structure has a shorter fall zone distance due to self-collapsing. Documentation must be provided that the setback area can accommodate the structure should it fall or break. A reasonable buffer area shall be provided in the event the structure fails.

(17) Accessory structures are limited to uses associated with the operation of the tower and may not be located any closer to front or side property lines than 30 feet.

(18) The base of the wireless communication support structure and wire cable supports shall be fenced with a minimum 6-foot-high fence which is also equipped with barbed or razor wire at the top of the fence.

(19) Accessory buildings shall be a maximum of 14 feet high and shall be set back in accordance with the requirements for principal buildings in the zoning district.

(20) All wireless communication support structures shall be equipped with an anti-climbing device to prevent unauthorized access.

(21) The plans of the wireless communication support structure construction shall be certified by a registered structural engineer.

(22) The applicant shall provide verification that the antennas, mounts, and structure have been reviewed and approved by a professional engineer and that the installation is in compliance with all applicable codes.

(23) All wireless communication support structures and facilities must meet the standards of the Federal Aviation Administration and the Federal Communications Commission.

(24) No part of any wireless communication support structure or antenna shall be constructed, located, or maintained at any time, permanently or temporarily, on or upon any required setback area for the district in which the antenna or tower is to be located. In no case shall a wireless communication support structure or antenna be located within 30 feet of a front or side property line.

(25) Metal wireless communication support structures shall be constructed of, or treated with, corrosive resistant material.

(26) Antenna and metal wireless communication support structures shall be grounded for protection against a direct strike by lightning and shall comply as to electrical wiring and connections with all applicable local statutes, regulations, and standards.

(27) Wireless communication support structures with antennas shall be designed to withstand a uniform wind loading as prescribed in the applicable building code.

(28) All signals and remote-control conductors of low energy extending substantially horizontally above the ground between a wireless communication support structure or antenna and a structure, or between towers, shall be at least 8 feet above the ground at all points, unless buried underground.

(29) Wireless communication support structures shall be located so that they do not interfere with television or radio reception in nearby residential areas.

(30) Wireless communication support structures shall be located so there is appropriate clearance for vehicles conducting maintenance to maneuver on the property owned and/or leased by the applicant.

(31) Wireless communication support structures shall not be artificially lighted unless required by the Federal Aviation Administration.

(32) There shall not be displayed advertising or identification of any kind intended to be visible from the ground or other structures, except as required for emergency purposes.

(33) Wireless communication support structures shall be subject to any state and federal regulation concerning non-ionizing electromagnetic radiation. Should additional state or federal regulations be adopted in the future, the wireless communications facility shall be made to conform to the extent required by the standard of the special use. Approval will be subject to revocation by the Nottawa Township Planning Commission. Costs for testing and verification of compliance shall be paid by the operator and/or owner of the wireless communications facility.

(34) There shall be no employees located on the site on a permanent basis to service or maintain the wireless communication support structure or antenna. Occasional or temporary repair and service activities are excluded from this restriction.

(35) Collocation shall be required where deemed feasible by the Township of Nottawa:

(a) Collocation shall be deemed feasible when the following conditions are met:

1. The wireless communications provider or property owner where co-location is proposed will accept market rent or other market compensation for co-location and the wireless communication provider seeking the facility will pay the rates;

2. The site on which co-location is being considered, taking into consideration reasonable modification or replacement of a facility, is able to provide structural support; and

3. The collocation being considered is technically reasonable.

(b) Newly-constructed wireless communications towers shall have a minimum of 3 times the capacity of intended use in order that secondary users may lease remaining capacity of the wireless communications tower.

(c) The applicant must include a statement in the application and an affidavit stating space on a proposed tower will be made available to future users when technically possible; and

(d) The applicant shall send a written notice via certified mail to all potential users of the new wireless communications tower offering an opportunity for co-location.

1. The list of potential users shall be provided by the township based on those entities who have requested approval of wireless communication towers in the past, current FCC license holders, and any other entities requesting to be included on the list.

2. The applicant shall accommodate the request for co-location by potential users, unless co-location is not reasonably possible based on the criteria of this section.

(e) If a party who owns or otherwise controls a wireless communication facility shall fail or refuse to alter a structure to accommodate a proposed and otherwise feasible co-location, the facility shall be deemed to be a non-conforming structure and use, and shall not be altered, expanded, or extended in any respect.

(36) Removal. The wireless communication facility shall be removed within 6 months by the property owner or lessee under any of the following conditions:

(a) The wireless communications facility is abandoned. The wireless communication facility shall be deemed abandoned when the facility has not been used for 180 days or longer.

(b) New technology is available at reasonable cost, as determined by the Township of Nottawa which permits the operation of the communication system without the requirement of the support structure or facility. Nottawa Township shall give the wireless communication provider the opportunity to submit information that the facility remains necessary and shall give such information due consideration in rendering a decision.

(c) If removal is required pursuant to the provisions of this section, the property owner(s) shall immediately apply for and secure all necessary permits from the Township of Nottawa for the demolition or removal of the wireless communications facility and shall restore the property to an acceptable condition as reasonably determined by the Nottawa Township Building and Zoning Administrators.

(d) If the removal of the wireless communication facility, as determined necessary by Nottawa Township officials, is not completed within 180 days after a written notice is provided by Nottawa Township to the owner of the facility, Nottawa Township may remove or secure the removal of the wireless communications facility with actual costs and reasonable administrative costs to be collected from the security deposit provided by the owner at the time of application for construction of the facility.

(F) Processing of application for special land use permit. Pursuant to MCL 125.3514 and as set forth herein, an application submitted to the Township of Nottawa for a special land use

permit for the installation of wireless communications equipment shall be subject to the following process and conditions:

(1) The Nottawa Township Zoning Administrator shall determine whether the application is administratively complete.

(2) The application shall be considered administratively complete if the Nottawa Township Zoning Administrator does not notify the applicant within 14 business days of submission of the application of any necessary information or fees required to complete the application.

(3) The Nottawa Township Zoning Administrator shall notify the applicant within 14 business days of the submission of the application if the application is not administratively complete and shall specify the information necessary to make the application administratively complete.

(4) The Nottawa Township Zoning Administrator shall notify the applicant within 14 business day of the submission of the application if a fee that is required to accompany the application has not been paid and shall notify the applicant of the amount of the fee to be paid.

(5) If the applicant is notified by the Nottawa Township Zoning Administrator that further information or fees are necessary to complete the application the 14-business day period shall be tolled until the applicant submits to the Nottawa Township Zoning Administrator the specified information or fee amount due.

(6) Any notice provided by the Nottawa Township Zoning Administrator to the applicant requesting further information or fees shall be given in writing or by electronic notification.

(7) Any fee required with the application for the installation of the wireless communications equipment subject to the approval of a special land use permit shall not exceed the Township of Nottawa's actual, reasonable costs to review and process the application or \$1,000.00, whichever is less.

(8) The Nottawa Township Planning Commission and the Nottawa Township Board of Trustees shall approve or deny the application for the installation of wireless communications equipment not more than 60 days after the application is considered to be administratively complete.

(9) If the application is for the installation of wireless communications equipment that will not be collocated or for the installation of a new wireless communications support structure or tower, the Nottawa Township Planning Commission and the Nottawa Township Board of Trustees shall approve or deny the application within 90 days after the application is considered to be administratively complete.

Section 4

Severability

The various provisions of this ordinance are deemed severable from each other. If any part or provision herein is deemed to be unconstitutional or otherwise unenforceable, such determination shall not affect the rest of the Ordinance.

Section 5

Effective Date and Repeal

This Ordinance is effective on the 8th day after publication, after adoption. Conflicting ordinance provisions are repealed.

Nottawa Township
St. Joseph County, Michigan
By Bret Lutz, Clerk