

**AN ORDINANCE TO AMEND THE CODE OF THE CITY OF EAST GRAND RAPIDS
BY ADDING A NEW SUBSECTION E TO SECTION 5.75 OF CHAPTER 50 OF
TITLE V OF THE CITY CODE TO REGULATE ZONING REVIEW AND APPROVAL
OF SMALL CELL WIRELESS FACILITIES AND WIRELESS SUPPORT
STRUCTURES**

THE CITY OF EAST GRAND RAPIDS ORDAINS:

Section 1. Chapter 50 of Title V of the Code of the City of East Grand Rapids is amended by adding a new Subsection E to Section 5.75 to read in its entirety as follows:

E. Small Cell Wireless Facilities.

1. General

The collocation of a small cell wireless facility and associated support structure within a public right of way ("ROW") is not subject to zoning reviews or approvals under this ordinance to the extent exempt from such reviews under Act 365 of 2018, as amended ("Act 365"), and Act 366 of 2018, as amended ("Act 366"). In such case, a utility pole in the ROW may not exceed 40 feet above ground level without special land use approval (pursuant to Section 5.75(E)(5) hereof) and a small cell wireless facility in the ROW shall not extend more than 5 feet above a utility pole or wireless support structure on which the small cell wireless facility is collocated.

Collocation of a small cell wireless facility or installation of an associated support structure shall require that the wireless provider apply for and obtain a permit from the City consistent with the City Code.

Small cell wireless facilities (as defined below) and associated wireless support structures not exempt from zoning reviews are only permitted in accordance with the provisions of this zoning ordinance and Act 365, and upon application for and receipt from the City of a permit consistent with the City Code.

2. Definitions

"Wireless Communications Equipment": the set of equipment and network components used in the provision of wireless communication services, including, but not limited to, antennas, transmitters, receivers, base stations, equipment shelters, cabinets, emergency generators, power supply cables, coaxial and fiber optic cables, but excluding wireless communications support structures.

"Wireless Communications Support Structure": a structure that is designed to support, or is capable of supporting, wireless communications equipment. A wireless communications support structure may include a monopole, lattice tower, guyed tower, water tower, utility pole or building.

"Small Cell Wireless Facility": a wireless facility that meets both of the following requirements:

(i) Each antenna is located inside an enclosure of not more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements would fit within an imaginary enclosure of not more than 6 cubic feet.

(ii) All other wireless equipment associated with the facility is cumulatively not more than 25 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

"Wireless Support Structure" means a freestanding structure designed to support or capable of supporting small cell wireless facilities. Wireless support structure does not include a utility pole (as defined in Act 365).

3. Wireless Communications Equipment

Wireless communications equipment (but not a wireless communications support structure) is a permitted use and allowed in all zoning districts. Wireless communications equipment does not have to be related to the principal use of the site. Wireless communications equipment is not subject to zoning review and special land use approval if all of the following requirements are met:

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

(b) The existing wireless communications support structure or existing equipment compound is in compliance with the City's zoning ordinance or was approved by the City Commission.

(c) The proposed collocation will not do any of the following:

(i) Increase the overall height of the wireless communications support structure by more than 20 feet or 10% of its original height, whichever is greater.

(ii) Increase the width of the wireless communications support structure by more than the minimum necessary to permit collocation.

(iii) Increase the area of the existing equipment compound to greater than 2,500 square feet.

(d) 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 City Commission.

Notwithstanding the foregoing, wireless communications equipment otherwise exempt hereunder must still comply with all other applicable City Codes, including a determination by the building inspection that the collocation will not adversely impact the structure to which it is attached.

A collocation that meets the requirements of subsections (a) and (b), above, but which does not meet subsections (c) or (d), is subject to special land use review by the City Commission in accordance with the provisions hereof, Section 5.75(D) and Article 11 of this zoning ordinance, and Section 514 of Act 366, MCL 125.3514(2)-(6). Any equipment placed in a

residential district shall not be erected at a height that requires lighting. Any equipment placed adjacent to a residential district or use that requires lighting shall be a continuous red beacon at night.

4. Special Land Use Standards – Wireless Communications Equipment and Wireless Communications Support Structures

A. A wireless communications support structure must be installed on a lawful lot for the zoning district in which it is located, either as a principal use, or as an accessory use related to the principal use.

B. Wireless communication equipment that is not attached to an existing structure (thus requiring the installation of a new wireless communications support structure) or that is not exempt under Section 5.75(E)(3) hereof, is subject to special land use review consistent with Section 5.75(D) and Article 11 of this zoning ordinance; provided, however, that in the event of conflict between these provisions and Act 366, the provisions of Act 366 shall control. Processing of a special land use application is subject to the following requirements:

(i) Within 14 business days after receiving an application under this Section, the City Commission shall notify the applicant in writing whether the application is complete. The notice tolls the running of the 14-business-day period.

(ii) The running of the time period tolled under subdivision (i) resumes when the applicant makes a supplemental submission in response to the City Commission's notice of incompleteness.

(iii) If the application is for a collocation of wireless communications equipment that satisfies the requirements of Section 5.75(E)(3)(a) and (b) hereof, but does not satisfy the requirements of (c) and (d) hereof, then the City Commission shall approve or deny the application and notify the applicant in writing within 60 days after an application is deemed complete by the City Commission.

(iv) If the application is for a new wireless communications support structure and accompanying wireless communications equipment, then the City Commission shall approve or deny the application and notify the applicant in writing within 90 days after an application is deemed complete by the City Commission.

(v) The fee for zoning review of a special land use and associated site plan shall be as established by the City Commission by resolution from time to time, but shall not exceed the lesser of (a) the City Commission's actual, reasonable costs to review and process the special land use application, or (b) \$1,000.00.

C. Small cell wireless facilities and wireless support structures not exempt under Act 365 shall be subject to special land use approval pursuant to Section 5.75(E)(5) hereof.

5. Special Land Use Standards for Non-Exempt Small Cell Wireless Facilities

The modification of existing or installation of new small cell wireless facilities or the modification of existing or installation of new wireless support structures used for such small cell

wireless facilities that are not exempt from zoning review in accordance with the Act 365 shall be subject to special land use review and approval in accordance with the following procedures and standards:

A. The processing of a special land use application is subject to all of the following requirements:

(i) Within 30 days after receiving an application under this Section, the City Commission shall notify the applicant in writing whether the application is complete. The notice tolls the running of the 30-day period.

(ii) The running of the time period tolled under subdivision (i) resumes when the applicant makes a supplemental submission in response to the City Commission's notice of incompleteness.

(iii) The City Commission shall approve or deny the application and notify the applicant in writing within 90 days after an application for a modification of a wireless support structure or installation of a small cell wireless facility is received or 150 days after an application for a new wireless support structure is received. The time period for approval may be extended by mutual agreement between the applicant and the City Commission.

B. The City Commission shall base its review of the special land use request on the standards contained in Section 5.94 and Article 11 of this zoning ordinance; provided, however, that a denial shall comply with all of the following:

(i) The denial is supported by substantial evidence contained in a written record that is publicly released contemporaneously.

(ii) There is a reasonable basis for the denial.

(iii) The denial would not discriminate against the applicant with respect to the placement of the facilities of other wireless providers.

C. In addition to the provisions set forth in Section 5.94 and Article 11 of this zoning ordinance, in the City Commission's review:

(i) An applicant's business decision on the type and location of small cell wireless facilities, wireless support structures, or technology to be used is presumed to be reasonable. This presumption does not apply with respect to the height of wireless facilities or wireless support structures.

(ii) An applicant shall not be required to submit information about its business decisions with respect to any of the following:

(a) The need for a wireless support structure or small cell wireless facilities.

(b) The applicant's service, customer demand for the service, or the quality of service.

(iii) The City Commission may impose reasonable requirements regarding the appearance of facilities, including those relating to materials used or arranging, screening, or landscaping.

(iv) The City Commission may impose spacing, setback, and fall zone requirements substantially similar to spacing, setback, and fall zone requirements imposed on other types of commercial structures of a similar height in a similar location.

D. The fee for zoning review of a special land use and associated site plan shall be as established by the City Commission by resolution from time to time, but shall not exceed (i) \$500.00 for a new small cell wireless facility or modification to an existing small cell wireless facility, and (ii) \$1,000.00 for a new wireless support structure or a modification to an existing wireless support structure.

E. Within 1 year after a zoning approval is granted, a small cell wireless provider shall commence construction of the approved structure or facilities that are to be operational for use by a wireless services provider, unless the City Commission and the applicant agree to extend this period or the delay is caused by a lack of commercial power or communications facilities at the site. If the wireless provider fails to commence the construction of the approved structure or facilities within the time required the zoning approval is void.

Section 2. This ordinance shall be effective on November 15, 2019.

Section 3. Notice of adoption of this Ordinance shall be published within ten (10) days of its enactment by publication of a digest, summary, or statement of purpose of the Ordinance as provided by Chapter VII, Section 7.5 of the Charter of the City of East Grand Rapids.

NOTICE OF ADOPTION OF ORDINANCE BY THE CITY OF EAST GRAND RAPIDS:

Notice is hereby given that on November 4, 2019, the City Commission of the City of East Grand Rapids adopted an Ordinance adding a new Subsection E to Section 5.75 of Chapter 50 of Title V of the City Code. The purpose of this Subsection is to regulate zoning review and approval of small cell wireless facilities and wireless support structures. Certain small cell wireless facilities and wireless support structures are subject to zoning reviews and are permitted only in accordance with the provisions of this Ordinance. The full text of the Ordinance is available for inspection by and distribution to the public at the office of the City Clerk. No further publication of this Ordinance is required or contemplated.

CITY OF EAST GRAND RAPIDS

By: _____
Karen K. Brower, City Clerk