

MEMORANDUM



TO: MEMBERS OF THE PLANNING COMMISSION
FROM: KIRSTEN MELLEME, PLANNER
THROUGH: BARBARA MCBETH, AICP, CITY PLANNER
SUBJECT: WIRELESS COMMUNICATION - TEXT AMENDMENT 18.280
DATE: JANUARY 6, 2017

Section 4.86 of the City of Novi's Zoning Ordinance provides for placement of various communication antennas, towers, and related equipment. The City Attorney's office has reviewed recent changes in State law related to Wireless Communications Equipment and provided suggested modifications to the Zoning Ordinance to insure that the standards in the new law are recognized and provided for in the City's Zoning Ordinance. The strike-through draft language is attached to this memo.

Much of the existing Zoning Ordinance text is being reformatted and refined, including the lead paragraph. Procedural review requirements are added as subsections to the first paragraph on pages 1-2. "Application and review requirements, procedures, and limitations" are included in new subsection iii, starting on page 4. Definitions from the state law are provided on page 7.

Staff believes that this additional language and clarification is appropriate. The 150 foot maximum height for towers has been in the ordinance since 1996 when the City developed local zoning regulations for wireless communication facilities. Staff believes that the 150 foot maximum allows for reasonable use of existing structures, such as existing electrical transmission towers and water towers, which are frequently used for colocation purposes. The 150 foot limitation has also allowed a reasonable maximum height for new towers without causing a sudden demand or a proliferation of new towers. The most recent cell towers approved in the City of Novi are 150 feet in height.

The ordinance continues to require colocation of carriers on one structure wherever feasible before a new tower or structure is permitted. As a result of this colocation requirement, we commonly see four or more carriers on one tower or structure. The proposed language allows and requires review of the proposed height of new cell tower locations based on justification from a professional engineer. Staff's opinion is that this additional study will assist in identifying when additional height is warranted.

Planning Commission and City Council History

This text amendment was originally presented to the Planning Commission on October 24, 2012, where action was postponed. On December 12, 2012 Planning Commission

held the public hearing and recommended approval to City Council. On January 28, 2013 the first reading was approved by City Council. On February 11, 2013 the second reading was approved by City Council. It was brought to staff's attention that this amendment was inadvertently excluded of the Clearzoning Ordinance reformatting, and is therefore going through the process to reinstate the ordinance language.

Public Hearing

The Planning Commission set a Public Hearing for the proposed ordinance amendments for the meeting on January 11, 2017. Following the public hearing on January 11th, the Planning Commission is asked to make a recommendation to the City Council for approval of the ordinance amendment. The City Council will ultimately approve or deny the amendment and may propose alterations as well. Only minor modifications have been made by the City Attorney's Office since the ordinance was last presented.

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 16-18.280

AN ORDINANCE TO AMEND THE CITY OF NOVI CODE OF ORDINANCES, ORDINANCE 14-18.271, AS AMENDED, THE CITY OF NOVI ZONING ORDINANCE, IN ORDER TO AMEND ARTICLE 4, "USE STANDARDS," SECTION 4.86, "USES NOT OTHERWISE INCLUDED WITHIN A SPECIFIC USE DISTRICT," AND ARTICLE 2, "DEFINITIONS," SECTION 2.2, "DEFINITIONS," IN ORDER TO RECOGNIZE AND PROVIDE FOR IMPLEMENTATION OF STATE AND FEDERAL LEGISLATION REGARDING WIRELESS COMMUNICATION EQUIPMENT AND FACILITIES.

THE CITY OF NOVI ORDAINS:

Part I. That the City of Novi Code of Ordinances, Ordinance 14-18.271, the City of Novi Zoning Ordinance, Article 4, "Use Standards," Section 4.86, "Uses Not Otherwise Included Within a Specific District," is amended, to read as follows:

Section 4.86 – USES NOT OTHERWISE INCLUDED WITHIN A SPECIFIC USE DISTRICT.

Introductory paragraphs to section [Unchanged]

1. *Commercial Television and Radio Towers, Communication Antennas, Public Utility Microwave Towers, Public Utilities T.V. Transmitting Towers.* Radio and television towers, communication antennas, public utility microwave towers, public utility television transmitting towers, and their attendant facilities shall be permitted by special land use approval, site plan approval, or after administrative review, as provided in Section 4.86.1.i subject to the ~~following criteria and applicable approval~~ standards in Section 4.86.1.ii and the application and review requirements, procedures, and limitations in subsection Section 4.86.1.iii. ~~being met:~~
 - i. City Council approval and Planning Commission recommendations and public hearings are not required for proposed uses that are permitted subject to administrative review or Planning Commission site plan approval as described below in Section 4.86.1.i.b and 4.86.1.i.c.
 - a. Special land use approval. Special land use approval by the City Council upon the recommendation of the Planning Commission is required for proposals for new communication antenna towers or poles and for proposals that require discretionary decisions under the approval standards in Section 4.86.1.ii.
 - b. Wireless Communication Equipment as a Permitted Use Subject to Administrative Review. A proposal to place or install wireless communication equipment on an existing wireless communications support structure or in an existing wireless communications equipment compound that satisfies the following criteria does not require special land use or site plan approval. Confirmation that these criteria are satisfied shall be determined by an administrative review and written

certification by the Planning Division of the City Community Development Department to the construction code building official prior to issuance of any construction code permits. Such proposals shall also be reviewed for compliance with the standards and conditions in Section 4.86.1.ii with the certification to identify any items of noncompliance.

- (1) The existing wireless communications support structure and/or wireless communications equipment compound are in compliance with this ordinance, and if not, are in compliance with a prior approval under this ordinance.
- (2) The proposal complies with the terms and conditions of any prior final approval under this ordinance of the wireless communications support structure and/or wireless communications compound.
- (3) The proposal will not increase the height of the wireless communications support structure more than the greater of 20 feet or 10% of its original height (as first erected without any later additions.)
- (4) The proposal will not increase the width of the wireless communications support structure by more than necessary to the stated and documented purpose of the increase.
- (5) The proposal will not increase the area of the existing wireless communications equipment compound to more than 2,500 square feet.

a.c. Wireless Communications Equipment as a Permitted Use Subject to Site Plan Approval. Proposals to place or install wireless communications equipment on an existing wireless communications support structure or in an existing wireless communications equipment compound that involve increases in height, width or area greater than those specified in Section 4.86.1.i.b above, or that do not comply with the terms or conditions of a prior zoning ordinance approval, are permitted subject to review and approval of a site plan or site plan amendment conforming to the applicable standards in 4.86.1.ii. Applications shall be reviewed and acted on under the procedures in 4.86.1.iii, and if approved, shall be subject to any prior special land use approval conditions for the wireless communications support structure or wireless communications equipment compound.

i. _____

ii. Approval standards. In addition to serving as standards for special land use approval, the standards in this subsection shall also apply to the Planning Commission site plan and administrative reviews provided for in Section 4.86.1.i.b and 4.86.1.i.c.

- a. Communication antenna towers and poles shall be ~~permitted located~~ in I-1 and I-2 Districts, ~~and provided the antenna or pole is located~~ at least 300 feet from any residentially-zoned districts. The City Council may permit a communication antenna or pole in other zoning districts not listed above or within 300 feet of a residentially-zoned district, or may otherwise vary the standards contained herein, when it finds that

such restrictions would prohibit or have the effect of prohibiting the provision of personal wireless services, so as to contravene the provisions of 47 U.S.C. § 332(c)(7)(B)(i). The relief granted shall be the minimum necessary to eliminate such an effect.

b. The following criteria shall be considered in the recommendation of the Planning Commission, and decision of the City Council:

- (1) Whether the requested use is essential or desirable to the public convenience or welfare;
- (2) Whether the proposed antenna tower or pole is of such location, size and character as to be compatible with the orderly development of the zoning district in which it is situated, and shall not be detrimental to the orderly development, environment or use of adjacent properties and/or zoning districts. Consideration will be given to applications which present a creative solution to proliferation of antennas.
- (3) Whether denial of the request will prohibit or have the effect of prohibiting the provision of personal wireless services.
- (4) The applicant's demonstration of good faith efforts to identify and evaluate alternate sites, locations, designs, placements, or features for the proposed facility that would or could be more consistent with the applicable approval standards in Section 6.1.2.
- (5) For each alternate site, location, design, placement, or feature for the proposed facility identified by the applicant or otherwise, the applicant's demonstration that the proposed facility is more consistent with the applicable approval standards in Section 6.1.2 and/or that such alternatives are not feasible.

c. [Unchanged]

d. [Unchanged]

e. [Unchanged]

f. [Unchanged]

g. ~~Antenna towers, poles and related equipment shelter buildings shall be subject to site plan review as provided in Section 6.1.~~ All equipment not mounted on the antenna tower or antenna pole must be installed in an equipment shelter building, unless otherwise permitted in this Section. Equipment shelter buildings shall be constructed of face brick on all sides with a gable roof in addition to compliance with the façade standards of Section 5.15.

h. [Unchanged]

i. [Unchanged]

j. Antenna towers shall not exceed the minimum height necessary for providing personal wireless services and co-location consistent with the application submittal required by Section 4.86.1.iii.a.6 or one hundred and fifty (150) feet in height as measured from surrounding grade, whichever is less.

k. [Unchanged]

l. [Unchanged]

- m. If permitted in a residential district, antenna towers or poles shall be of a "stealth design" that conceals the antenna and associated mounting structure, or other design that is deemed harmonious with the property and surrounding residential districts, as approved by the City Council taking into account any alternative designs submitted by the Applicant or identified during the review and decision process.
 - n. [Unchanged]
 - o. ~~When an applicant proposes solely to construct an antenna upon an existing structure, install additional equipment or construct an additional equipment building, without the construction of any additional tower or pole, the application and plan may be reviewed administratively without the necessity of special land use approval, provided that the criteria of this subsection are met. Under such administrative review, determinations that would otherwise be made by the Planning Commission or City Council shall be made by the Planning Division of the Community Development Department. The support structure and system shall be designed to support, or be capable of supporting the proposed wireless communication equipment, which shall be demonstrated by a structural analysis and certification from a registered professional engineer that identifies any modifications to an existing structure necessary to such capability.~~
- ~~iii. Application and review requirements, procedures, and limitations.~~
- a. Applications. All of the following information and documents shall be required for a special land use, site plan or administrative review application to be considered complete:
 - (1) A site plan in accordance with the requirements in Section 6.1 and containing all information required to demonstrate compliance with the approval standards in Section 4.86.1.ii.
 - (2) An application fee in an amount established by Resolution of the City Council.
 - (3) Identification of the dates, nature and conditions of any prior zoning approvals or permits for the property.
 - (4) If the application is for a new wireless communication support structure or to place or install additional wireless communications equipment on an existing support structure, a structural analysis and certification to the City by a registered professional engineer that the structure is designed to support, or capable of supporting the proposed wireless communications equipment. Any modifications necessary to a structure being capable of supporting the proposed equipment shall be specifically identified in the analysis and certification.
 - (5) If modifications to a wireless communications support structure are identified in a structural analysis under Section 4.86.1.iii.a.4 above, a written determination by the City construction code building official that, subject to review of an actual building permit application and plans, the identified modifications

would be allowed and that with the modifications, the structure would meet construction code requirements.

- (6) If the application is for a new wireless communications support structure or to increase the height of an existing structure, a written analysis and justification by a registered engineer that the proposed height is the minimum necessary for the provision of personal wireless services by at least two (2) co-locating providers, or by a larger number of providers if identified and disclosed in the application as intending and committed to use of the structure.
- (7) If the application is for a new wireless communications support structure, identification of all other structures and properties considered for the proposed use and a factual explanation of why they are not feasible in terms of availability, suitability, or otherwise.
- (8) If the application is for a new wireless communications support structure, identification of alternative locations, designs, or features for the structure that are possible, whether those alternatives were considered, and if so, a factual explanation of why those alternatives are not proposed.
- (9) If the application is for a new wireless communications support structure outside the I-1 and I-2 zoning districts or within 300 feet of a residential zoning district, identification and submission in written form of the evidence and arguments the Applicant will rely on in claiming that those restrictions prohibit or have the effect of prohibiting it from providing personal wireless services and that its proposal is more consistent with the approval standards stated in Section 6.1.2, than alternate sites, locations, designs, placements and features.
- (10) Disclosure and copies of all other required governmental permits or approvals, and if not yet obtained, the status and copies of the applications for those permits or approvals.
- (11) A map or plan showing the locations and heights of existing wireless communications support structures in the City and communities adjoining the City and which identifies structures the Applicant is using or has the right to use and the heights at which its antennas are or may be installed.
- (12) If the application is for a special land use approval, the name, expertise, and relationship to applicant of each licensed or registered professional that has or will provide evidence to support the application, with a summary of that evidence that includes any opinions expressed and the bases for such opinions.
- (13) For each professional opinion disclosed by the applicant as supporting the application, a statement of whether the applicant agrees that it should be subject to separate review by

or for the City, and if so, the type, scope, time, and cost of such a separate review that applicant believes would be reasonable.

(14) The Applicant's email address, fax number or address to which the City should direct notices regarding the Application.

b. Review and administrative actions on special land use and site plan approval applications.

(1) The Planning Division of the City Community Development Department shall promptly review special land use and site plan approval applications to determine if they are administratively complete by inclusion of all information required in Section 4.86.1.iii.a. If the application is not complete, no later than 14 business days after receiving it, the Planning Division shall provide a written or electronic notice to the Applicant specifying the information necessary to complete the application. Such review shall be on behalf of the City Council for special land use approvals and the Planning Commission for site plan approvals.

(2) Supplemental information in response to an incomplete application notice shall be reviewed and the Applicant promptly notified of any remaining deficiencies.

(3) An application shall be administratively complete upon the Planning Division's determination or the expiration of 14 business days from receipt of the application without a notice to the Applicant of deficiencies.

(4) Upon a special land use or site plan approval application being administratively complete, the Planning Division shall promptly schedule it for a Planning Commission meeting that will allow for a site plan decision by the Planning Commission or special land use City Council decision after Planning Commission public hearing and recommendation, within the time periods in Section 4.86.1.iii.c below.

(5) If the application has disclosed professional opinions supporting the application the City may determine that independent professional review for the City of any such opinion should be performed. In that event, the reasonable costs of such review may be assessed to the Applicant by a written notice from the Planning Division, as a professional review cost to be paid in accordance with the notice.

c. Decisions on special land use and site plan approval applications.

(1) The City Council shall approve or deny a special land use application for a new wireless communications support structure not more than 90 days after it is administratively complete.

(2) For all special land use and site plan applications other than new wireless communications support structures, unless the Applicant provides a written waiver or extension of time, the City Council or Planning Commission, as applicable, shall approve or deny the application not more than 60 days after it is administratively complete.

iv. Post-approval costs, fees and administrative actions.

Zoning permits to implement and grant the authority allowed by a special land use or site plan approval, and zoning certificates of use and occupancy shall be issued subject to and conditioned on all of the following:

- a. Any conditions of the special land use or site plan approval.
- b. Payment of any outstanding professional review costs as described in Section 4.86.1.iii.b.5.
- c. Payment of a reasonable zoning permit fee in an amount established by or in accordance with a Resolution of the City Council.

Part II. That the City of Novi Code of Ordinances, Ordinance 14-18.271, the City of Novi Zoning Ordinance, Article 2, "Definitions," Section 2.2, "Definitions," is amended to add the following:

Section 2.2 – Definitions

Wireless communications equipment: the equipment and components, including antennas, transmitters, receivers, base stations, equipment shelters or cabinets, emergency generators, and power supply, coaxial and fiber optic cables used in the provision of wireless communications services, but excluding wireless communication support structures.

Wireless communications equipment compound: a delineated area surrounding or adjacent to the base of a wireless communications support structure within which any wireless communications equipment related to that support structure is located.

Wireless communications support structures: structures designed to support or capable of supporting wireless communication equipment. Support structures within this definition include, but shall not be limited to, monopoles, lattice towers, utility poles, wood poles and guyed towers, buildings, or other structures with such design or capability.

PART III.

Severability. Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

PART IV.

Savings Clause. The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

PART V.

Repealer. All other Ordinance or parts of Ordinance in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

PART VI.

Effective Date: Publication. Public hearing having been held hereon pursuant to the provisions of Section 103 of Act 110 of the Public Acts of 2006, as amended, the provisions of this Ordinance shall be published within fifteen (15) days of its adoption by publication of a brief notice in a newspaper circulated in the City of Novi stating the date of enactment and effective date, a brief statement as to its regulatory effect and that a complete copy of the Ordinance is available for public purchase, use and inspection at the office of the City Clerk during the hours of 8:00 A.M. to 5:00 P.M., Local Time. The provisions of this Ordinance shall become effective seven (7) days after its publication.

MADE, PASSED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF NOVI, OAKLAND COUNTY, MICHIGAN, ON THE ___ DAY OF _____, 2017.

ROBERT J. GATT, MAYOR

CORTNEY HANSON, CITY CLERK

Ayes:
Nays:
Abstentions:
Absent: