

TOWNSHIP OF BOSTON

COUNTY OF IONIA, MICHIGAN

ORDINANCE NO. 01-1, AS AMENDED

ANTENNA AND TOWER CO-LOCATION ORDINANCE

THE TOWNSHIP OF BOSTON ORDAINS:

Section 1. Purpose. It is the general purpose and intent of Boston Township (the “Township”) to comply with the requirements of the Federal Telecommunications Act of 1996 by authorizing towers and antennas 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 retain the integrity of neighborhoods and the character, property values and quality of the Township.

It is the further purpose and intent of this Ordinance to:

- (a) Facilitate adequate and efficient provision of sites for towers and antennas.
- (b) Ensure that towers and antennas are situated in appropriate locations and relationships to other land uses, structures and buildings.
- (c) Limit overcrowding of land use activities and avoid adverse impact upon existing population, transportation systems, and other public services and facility needs.
- (d) Require adequate information about plans for towers and antennas in order to permit the Township to effectively plan for the location of such facilities.
- (e) Minimize adverse impacts of the technological obsolescence of such facilities.
- (f) Minimize the negative visual impact of towers and antennas on neighborhoods, community landmarks, natural beauty areas and public right-of-way, by reducing the numbers of towers through co-location where feasible.

Section 2. Application. Antennas and towers exceeding a height of 35 feet shall be permitted only if approved by the Township Board under the terms of this Ordinance.

(a) The application for such antenna or tower shall include the following information, in addition to what is otherwise required by the terms of this Ordinance:

- (i) A detailed site development plan depicting the nature, type, appearance and location of the antennas and tower, any building or other structures and

all other external features of the special land use, including driveways, fencing, isolation distances, screening and landscaping and other matters.

(ii) A visual impact analysis which shall include graphic depiction of the anticipated visual appearance of the tower from important vantage points in the surrounding area. Methods used in preparing the analysis shall be reviewed and approved by the Township Supervisor.

(iii) A justification for the proposed height of the antenna and tower, and an evaluation of alternative designs which might result in lower heights.

(iv) A maintenance plan and any applicable maintenance agreement, prepared so as to ensure long-term, continuous maintenance of the antenna and tower and any supporting structures.

(v) A list of all properties investigated for placement of the proposed tower or antenna and the rationale and other background material for selection of the proposed location. The applicant shall provide copies of correspondence to and from owners of properties who have been contacted by the applicant and who have refused to allow their property to be utilized, purchased or leased by the applicant.

(vi) A list of other wireless communication providers who have been contacted by the owner regarding co-location, as well as any correspondence to and from the other providers.

(vii) A map showing existing and known proposed telecommunications facilities or other structures within and surrounding the Township which could possibly be used by the applicant to co-locate the proposed antenna.

(b) An applicant shall file an application with the Boston Township Board, for approval of such tower or antenna or the co-location of antennas. The application shall include such materials, including a site plan, as are sufficient to indicate compliance with the terms of this Ordinance. Any application fee required by Township Board resolution shall be paid.

The applicant shall reimburse the Township for professional, consulting and other expenses that it incurs in the review and consideration of the application and any inspection of the approved work and the site thereof. Such reimbursement shall be accomplished through an initial deposit, and any required subsequent deposits, into a Township escrow account, from which the Township shall make withdrawals so as to reimburse the Township for expenses in the matter. The applicant shall add to the escrow account as required by the Township Supervisor to assure that adequate funds are available to satisfy anticipated or incurred expenses. The escrow account shall contain sufficient funds to satisfy expected final expenses before Township approval is given for the tower and antennas or co-location of antennas.

The applicant shall otherwise comply with the Township Board resolution pertaining to the reimbursement of Township expenses through deposits into and withdrawals from an escrow account. Approval may be withheld until all required amounts are paid in full.

Section 3. Co-location. It is the policy of the Township that all wireless communication providers co-locate on existing towers or structures capable of accommodating antennas to minimize the overall number of newly established towers within the Township and to encourage the use of existing towers and structures for new antennas.

(a) *The policy of the Township is for co-location.* Thus, if a party who owns or otherwise controls a tower, as defined herein, shall fail or refuse to allow the alteration of a tower so as to accommodate a proposed and otherwise feasible co-location, 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.

(b) *Approval of co-located antenna.* an application for co-location on an existing tower shall require only site plan review in order to obtain approval. The site plan shall be reviewed by the Township Board in accordance with the requirements of this Ordinance.

Section 4. Requirements and Standards. An antenna or tower approved by permit shall comply with all of the following requirements:

(a) Items (a), (b), and (d) through (h) of Section 5.

(b) In addition to the standards for approval of all permit applications contained in this Ordinance, the Township Board shall consider the following factors in determining whether to issue a permit:

(i) Height of the proposed tower;

(ii) Proximity of the tower to residential structures;

(iii) Nature of uses on adjacent and nearby properties;

(iv) Surrounding topography;

(v) Surrounding tree coverage and foliage;

(vi) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;

(vii) Proposed ingress and egress; and

(viii) Availability of suitable existing towers, or other structures for co-location, or alternative technologies not requiring the use of towers or structures, as discussed in this Ordinance.

(c) No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Township Board that no existing tower, structures or alternative technology that does not require the use of towers or structures can accommodate the applicant's proposed antenna. An applicant shall submit information requested by the Township Board related to the availability of suitable existing towers, other structures or alternative technology.

Evidence submitted to demonstrate that no existing tower, structure or alternative technology can accommodate the applicant's proposed antenna may relate to any of the following issues:

- (i) No existing towers or structures are located within the geographic area which meets the needs of the applicant.
 - (ii) Existing towers or structures are not of sufficient height to meet the applicant's need.
 - (iii) Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
 - (iv) The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
 - (v) The fees, costs or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
 - (vi) The applicant demonstrates that there are other material limiting factors that render existing towers and structures unsuitable.
 - (vii) The applicant demonstrates that an alternative technology that does not require the use of towers or structures is unsuitable.
- (d) Facilities shall be located and designed so as to be reasonably harmonious with the surrounding area.
- (e) The maximum height of the antenna and tower shall be the minimum height necessary for reasonable communications by the applicant, and by other entities which may co-locate on the structure.
- (f) There shall be no unobstructed access to the support structure, for operation, maintenance, repair and inspection purposes.
- (g) The support system shall be constructed in accordance with all applicable building codes.
- (h) A proposed tower for commercial telecommunications services shall be required to be designed, constructed and placed so as to accommodate both the applicant's equipment and comparable equipment for at least three or more additional users. The Township Board may permit a tower design which would allow fewer than three other users if the Township Board finds that three additional users would not be consistent with the intent and purpose of this section.

The Township Board may require that such towers be designed and constructed so as to allow for the future rearrangement of equipment upon the tower, and to accept equipment mounted at varying heights on the tower.

(i) Towers for telecommunications services shall be designed so as to blend, insofar as possible, into the surrounding environment, through the use of color of equipment and architectural treatment, except in those cases where color of equipment may be dictated by state or federal agencies. Such towers shall be of a monopole design unless the Township Board determines that an alternative design would be satisfactory. The monopole may be designed to resemble natural features or to fit in with the design of other existing structures in the area.

(j) The Township Board may require that the telecommunications towers, or other related structures or buildings, be screened with landscaping, berms, walls or all combination of any of them. The Township Board may require plantings to be placed on properties adjacent to the tower site in order to provide a more effective visual screen.

(k) Towers for commercial telecommunications services which are abandoned or unused shall be removed by the owner or operator along with any associated buildings, structures or equipment within 180 days of written notice from the Township, unless a time extension is granted by the Township Board. A one-time extension, of up to six months, shall be permitted if the Township Board determines that the owner or former operator of the facility is taking active steps to insure its removal.

(l) If the height required for the tower to serve its intended function decreases from the installed height, due to technological advancement, additional tower installations at other locations, or other factors, the tower shall be lowered to such decreased minimum upon notice given by the Township.

(m) Tower lighting shall not be permitted unless required by federal or state agencies.

(n) Any ancillary building housing equipment needed for the operation of the antenna or tower, or any other appurtenance, shall be of a size, type, color and exterior materials which are aesthetically compatible with existing principal building within the surrounding area. The equipment enclosure may be located within the principal building or may be an accessory building.

(o) Where a tower or antenna is proposed for the roof of a building or for the top of another existing structure, the tower shall be designed, constructed and maintained so as to be reasonably architecturally compatible with the principal building or structure.

(p) Any antenna or tower shall be located only in a rear yard or side yard, unless otherwise permitted by the Township Board. It shall not be closer to a property line than its height, unless a lesser setback is permitted by the Township Board based on documentation from the applicant that a closer setback will not create a hazard for adjoining properties or roadways.

(q) The requirements of the Federal Aviation Administration, the Federal Communications Commission and the Michigan Aeronautics Commission shall be fully complied with.

(r) In its reasonable discretion, the Township Board may impose additional terms and conditions regulating the construction, installation, use, repair, maintenance and removal of an antenna or tower in order to achieve the intent and purpose of this section.

Section 5. *Antenna and Tower Construction Standards Not Exceeding 35 Feet in Height.* The construction, use, maintenance, operation, repair and removal of antennas and towers not exceeding 35 feet in height shall comply with the following requirements:

(a) The antenna or tower shall be permanently secured to a stable foundation.

(b) No part of the antenna or tower shall conduct or display any advertising, messages or other graphic representation.

(c) An antenna or tower shall be located only in the rear yard or the side yard and shall not be closer to a property line than its height.

(d) An antenna may be mounted on the roof of a principal or accessory building, but it shall not exceed a height of 10 feet, as measured from its foundation.

(e) An antenna or tower must be grounded to protect against damage from lightning.

(f) An antenna or tower shall not be so located or constructed as to have a serious adverse effect on adjacent or nearby land uses.

(g) Amateur radio antennas operating under a license issued by the Federal Communications Commission shall be subject to the provisions of this section, unless such provisions would preclude or prevent the operation of the antenna, then such provisions shall not apply.

(h) A satellite dish antenna less than one meter across (39.37 inches) shall be exempt from these regulations.

Section 6. *Revocation of Permit.* Failure to comply with conditions of approval stipulated for a tower or antenna under this Ordinance may result in the revocation of the Permit. In considering whether or not to revoke a Permit, a hearing shall be held by the Township Board.

Section 7. *Violation and Penalty.*

(a) *Municipal Civil Infraction.* A violation of this Ordinance or a violation of any approval granted hereunder is a municipal civil infraction, for which the fine shall be \$500 for the first offense, and not less than \$1,000 nor more than \$2,500 for subsequent offenses, in the discretion of the court, and in addition to all other costs, damages, expenses and actual attorney fees incurred by the Township in enforcing the ordinance. For purposes of this section,

“subsequent offense” means a violation of this Ordinance committed by the same person within 12 months of a previous violation of the ordinance for which said person admitted responsibility or was adjudicated to be responsible, provided, however, that offenses committed on subsequent days within a period of one week following issuance of a citation for a first offense shall be considered separate first offenses. Each day that such violation occurs shall constitute a separate offense.

(b) *Injunctive Relief.* In addition, a violation of this Ordinance or a violation of any approval granted hereunder is hereby declared to be a nuisance per se. The issuance of a municipal civil infraction and imposition of the foregoing municipal civil infraction penalties against a violator shall not prohibit the Township from also seeking injunctive relief against a violator, in order to abate the violation or to seek such other relief provided by law.

Section 8. Severability. The provisions of this Ordinance are hereby declared to be severable and if any clause, sentence, word, section or provision is declared void or unenforceable for any reason by any court of competent jurisdiction, it shall not affect any portion of this Ordinance other than said part or portion thereof.

Section 9. Repeal. The provisions of any Township ordinance in conflict with the provisions of this Ordinance are hereby repealed.

TOWNSHIP OF BOSTON

Lori Spoelstra
Township Clerk

Ordinance No. 01-1, adopted February 14, 2001, and effective February 24, 2001
Ordinance No. 02-7, adopted February 13, 2002, and effective March 21, 2002
Ordinance No. 09-10, adopted September 9, 2009, and effective October 19, 2009
Ordinance No. 09-13, adopted November 11, 2009, and effective November 21, 2009