



CITY of NOVI CITY COUNCIL

Agenda Item I
April 1, 2019

SUBJECT: Approval of Ordinance No. 19-194, an ordinance to amend the City of Novi Code of Ordinances Chapter 32.5, "Telecommunications", to add a new Article III, Wireless Facilities in Right-of-Way, to establish requirements, standards, and regulations for access to and use of public right-of-way for wireless facilities that are not telecommunication facilities under Article II of Chapter 32.5, together with a related Appendix. **SECOND READING**

SUBMITTING DEPARTMENT: City Manager

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION: 

This proposed ordinance is focused on the technology now favored by the wireless communication industry for providing service. That technology involves the use of antennas placed closer together at generally lower heights than traditional cellular towers. To facilitate this new technology, the wireless communication industry has successfully convinced the legislature in Lansing and the Federal Communications Commission to adopt laws or rules that, with some exceptions and limitations, require municipalities to approve antennas and related wireless facilities, utility poles, or other support structures in the public right-of-way. Those laws are described in the Purpose section of the ordinance. The draft ordinance is intended to respond to and provide for compliance with the new State and Federal laws.

Note that these new State and Federal laws do not *require* adoption of an ordinance. They simply apply as a preemption of a municipality's authority over its rights-of-way. However, to avail itself of the limited municipal rights recognized by these laws, the municipality must adopt an ordinance. One benefit of adopting an ordinance is that it works as a "roadmap" of sorts for compliance with these complicated and differing laws. An additional benefit is to take advantage of the right recognized by the State law to require a permit

Both the State and Federal laws recognize a municipality's ability to adopt measures directed at the appearance of wireless facilities in the right-of-way. The State law refers to them as concealment measures, while the Federal law refers to them as aesthetic requirements. Both laws require such standards to be objective, reasonable/technically feasible, and nondiscriminatory as related to other infrastructure in the right-of-way.

The State law says that such standards may only be applied in historic districts, downtown districts, and residential zoning districts. While the Federal law contains no such limitation, it does contain language that could be interpreted to mean that for aesthetic standards to be enforceable they must be published prior to April 14, 2019. To protect against such an interpretation, this proposed ordinance includes a number of such standards.

However, it also provides that waivers or modifications from one or more standards may be requested.

Under the proposed ordinance, a permit fee resolution would be required, and that will be proposed at the time of adoption/second reading.

The version of the ordinance provided for second reading and adoption has two minor edits on page 9, Section 32.5-57, adding additional limitations on placing new facilities/poles on designated natural beauty roads, and further limiting placement in front of structures where possible.

RECOMMENDED ACTION: Approve Adoption of Ordinance No. 19-194, an ordinance to amend the City of Novi Code of Ordinances Chapter 32.5, "Telecommunications", to add a new Article III, Wireless Facilities in Right-of-Way, to establish requirements, standards, and regulations for access to and use of public right-of-way for wireless facilities that are not telecommunication facilities under Article II of Chapter 32.5, together with a related Appendix. **SECOND READING**

**CITY OF NOVI
OAKLAND COUNTY, MICHIGAN**

ORDINANCE NO. 19-194

AN ORDINANCE TO AMEND THE CITY OF NOVI CODE OF ORDINANCES CHAPTER 32.5, "TELECOMMUNICATIONS", TO ADD A NEW ARTICLE III, WIRELESS FACILITIES IN RIGHT-OF-WAY, TO ESTABLISH REQUIREMENTS, STANDARDS, AND REGULATIONS FOR ACCESS TO AND USE OF PUBLIC RIGHT-OF-WAY FOR WIRELESS FACILITIES THAT ARE NOT TELECOMMUNICATION FACILITIES UNDER ARTICLE II OF CHAPTER 32.5.

THE CITY OF NOVI ORDAINS:

Section 1 of Ordinance.

That the Novi City Code, Chapter 32.5, "Telecommunications", is amended by adding a new Article III, Wireless Facilities in Right-of-Way, to read as follows:

ARTICLE III. - WIRELESS FACILITIES IN RIGHT-OF-WAY

Sec. 32.5-51. - Purpose.

This article is adopted in response to new and differing State and Federal regulations, including Michigan Public Act No. 365 of 2018 (MCL 460.1301 - 460.1339), 47 USC 1455, Rules adopted by the Federal Communications Commission (FCC) as 47 CFR 1.40001 (now 47 CFR 1.6100) and 47 CFR 1.6001 - 1.6003, and the FCC's Declaratory Ruling and Third Report and Order in FCC 18-133, that infringe on the city's constitutional and proprietary rights and interests in its public right-of-way and the reasonable control thereof under Article VII, Section 29 of the Michigan Constitution of 1963, the city charter, and other applicable laws, which would allow the city to require public right-of-way users to obtain a franchise or permit from the city. Without waiving those city rights, this article is adopted for the purpose of complying with those State and Federal regulations by providing for and regulating access to and ongoing use of, public rights-of-way for wireless facilities that are not considered to be telecommunications facilities covered by the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts of 2002) ("Act"), and permits applied for and issued under that Act and article II of this chapter.

Sec. 32.5-52. - Definitions.

As used in this article, the following words and phrases shall have the indicated meanings:

Applicant means a wireless provider that applies for a permit or approval for wireless facilities, a wireless support structure, or utility pole in a public right-of-way.

Collocation or collocate means to place, replace, modify, mount, or install wireless facilities on or adjacent to a wireless support structure or utility pole, but does not include make-ready work or the installation of a new wireless support structure or utility pole.

Eligible facilities request means a request for modification of a lawfully existing wireless tower or lawfully existing wireless base station in a public right-of-way that involves collocation, removal, or replacement of wireless facilities that will not substantially change the physical dimensions of the wireless

tower or based station support structure, with wireless tower, wireless base station, and substantial change defined in Section 32.5-59.

Micro wireless facility means a small wireless that is not more than 24 inches in length, 15 inches in width, and 12 inches in height that does not have an exterior antenna more than 11 inches in length.

Public right-of-way means the area on, above, or below a public roadway, highway, street, alley, bridge, sidewalk, or utility easement dedicated for compatible uses, whether owned or controlled by, or under the jurisdiction of, the city or county, state, or federal government but does not include a private right-of-way, limited access highway, land owned or controlled by a railroad, and railroad infrastructure.

Small wireless facility means a wireless facility that meets each of the following requirements:

- (a) Each antenna is enclosed or would fit within an enclosure of not more than six (6) cubic feet in volume.
- (b) All other wireless facilities associated with all antennas at a single location are not more than 28 cubic feet in volume, with electric meters, telecommunications demarcation boxes, grounding equipment, power transfer and cut-off switches, vertical cable runs, and concealment elements required by the city excluded from that calculation.

Utility pole means a pole or similar structure other than a wireless support structure, that is or may be fully or partially used for cable or wireline communications, electric distribution, lighting, traffic control, signage if the pole is at least 15 feet in height above ground level, or a similar function, or that is designed to support small wireless facilities.

Wireless facility or facilities means equipment and components at a fixed location that enables or facilitates the provision of wireless services, including antennas, transmitters, receivers, coaxial or fiber-optic cable, equipment shelters or cabinets, power supplies, comparable equipment, and miscellaneous hardware, but excluding structures or improvements on, under, or within which the equipment is collocated, telecommunication facilities as defined in section 32.5-28, and a wireline backhaul facility.

Wireless provider means a person or entity that provides wireless services and a person or entity that builds or wireless facilities or support structures for a disclosed provider of wireless services.

Wireless service means a wireless communication service that is permitted or authorized by the Federal Communications Commission, which includes but is broader than personal wireless services as defined in 47 USC 332.

Wireless service provider means a person or entity that provides wireless services.

Wireless support structure means a freestanding structure designed to support or capable of supporting small wireless facilities, but does not include a utility pole.

Sec. 32.5-53. - Required permits and approvals to be applied for and complied with.

- (a) Wireless facilities, wireless support structures, and utility poles shall not be installed, used, operated, or maintained in a public right-of-way without complying with the applicable regulations in this article and first obtaining and thereafter complying with the terms and conditions of all of the following permits or approvals to be applied for from the indicated city department or division:

- (1) A Right-of-Way construction or engineering permit to be applied for, reviewed, and issued or denied under Article VIII of Chapter 11 and/or Article I of Chapter 31 of the Code and the standards and regulations in this article.
 - (2) Required building, electrical, and other construction code to be applied for, reviewed, and issued or denied under Chapter 6 of the Code.
 - (3) Any approvals or permits required through the Department of Community Planning & Development to be applied for, reviewed, and issued or denied under the Zoning Ordinance, Ordinance 14-271 in Appendix of the Code.
- (b) A permit or approval shall not be required and fees or rates shall not be payable for:
- (1) Replacement of a small wireless facility with a small wireless facility that is not larger or heavier and complies with applicable codes.
 - (2) Routine maintenance of small wireless facilities, wireless support structures, or utility poles.
 - (3) The installation, placement, maintenance, operation, or replacement of a micro wireless facility that is suspended on cables strung between utility poles or wireless support structures in compliance with applicable codes.
- (c) Any construction code and Zoning Ordinance permits or approvals for wireless facilities, wireless support structures, or utility poles shall be conditioned on the issuance of and compliance with the Right-of-Way construction permit and permit conditions for those facilities, support structures, or utility poles.
- (d) The time period for the city to act on a wireless provider permit or approval application for wireless facilities, support structures, or utility poles under this article shall not commence until the city has complete applications for all of the required city permit or approvals listed in subsection (a) for those wireless facilities, support structures, and utility poles.
- (e) In addition to city permits and approvals, any required permits from other governmental entities that also have an ownership, control, or jurisdictional interest in the public right-of-way must be obtained prior to construction, and thereafter complied with. Obtaining a permit for wireless facilities, wireless support structures, or utility poles from another governmental entity who share the public right-of-way with the city does not relieve a wireless provider from the need to comply with the standards in this article and the city reserves the right to require that a Right-of-Way Permit under this article and Article I in Chapter 36 of the Code be applied for, obtained, and complied with.
- (f) To the extent applicable and allowed under existing franchises, permits, and applicable law, the permit requirements under this article shall apply to all new installations in the public right-of-way by electric and gas public utilities, incumbent or competitive local exchange carriers, fiber providers, and cable television video services providers.

Sec. 32.5-54. - Types of wireless facilities and applicable standards.

(a) The following types of wireless facilities, support structures, and utility poles in the public right-of-way are addressed and subject to the application, review, and other standards and regulations in the indicated section of this article:

- (1) Section 32.5-58 for collocation of a small wireless facility on an existing wireless support structure or utility pole.
- (2) Section 32.5-59 for collocation of a small wireless facility on a new or replacement wireless support structure or utility pole.
- (3) Section 32.5-60 for eligible facilities requests.
- (4) Section 32.5-61 for collocation of wireless facilities other than small wireless facilities and eligible facilities requests.
- (5) Section 32.5-62 for replacement and new wireless support structures or utility poles not involving small wireless facilities or eligible facilities requests.

(b) An application for a permit or approval required under this article shall conspicuously identify the type of wireless facilities proposed and the ordinance section(s), as listed in subsection (a), the applicant believes to be applicable.

Sec. 32.5-55. - Permit applications for Right-of-Way Construction or Engineering Permit.

(a) Applications for a Right-of-Way Permit under Article I of Chapter 34 of the Code and the standards and regulations in this article shall be filed with the City Clerk and shall include plans for the proposed wireless facilities, wireless support structures, and utility poles in a quantity, form, size, and scale, which application may be reviewed by the City Engineer, with the City allowed to waive or relax a standard to the extent it is not applicable or necessary for review of the application. The plans shall include a cover sheet with the project name, wireless provider applicant name and contact information, a general location map and sheet index, and detailed scaled location and elevation drawings for each site for which the permit is requested that show, describe, and include the following:

- (1) The sides and specific locations on named streets, with geographic information system (GIS) coordinates.
- (2) The location and edges of the public right-of-way and portion used for vehicular travel, and the location and dimensions of existing above-ground structures, utilities, sidewalks, driveways, buildings, signs, traffic lights and signs, poles, curbs, buildings, utility cabinets, utility pole guy wires, shelters, benches, storm drains, wireless support structures, utility poles, other improvements, and trees within 75 feet of the proposed location.
- (3) Existing below ground structures including but not limited to water, sanitary sewer, storm sewer, electric, gas, cable, communication lines, and conduit.
- (4) Information necessary to demonstrate compliance with the public, utility, and traffic safety and protection standards in section 32.5-56.

- (5) Information necessary to demonstrate compliance with the aesthetic, spacing, and undergrounding standards in section 32.5-57.
 - (6) Information necessary to demonstrate compliance with the applicable standards for the type of wireless facilities, support structure, or utility poles for which approval is requested under sections 32.5-58 through 32.5-62.
- (b) In addition to identification of the type of proposed wireless facility and applicable ordinance section as required in section 32.5-54(b) and the plans described in subsection (a), applications shall include:
- (1) Certified documentation that each proposed wireless support structure or utility pole can structurally accommodate the proposed wireless facilities and documentation of its ability to accommodate the proposed and any future wireless facilities.
 - (2) Manufacturer, model number, height, width, depth, weight, and volume in cubic feet of all proposed wireless facilities individually and collectively, specifically including the total cubic feet of each antenna and the total cubic feet of all other wireless facilities.
 - (3) The identity of the wireless provider applying for the permit and the owners of and wireless providers that will use the wireless facilities, wireless support structures, and utility poles for which the permit is requested, and for each of those entities the following:
 - a. Legal and any assumed names, and resident agent name, if any.
 - b. Local, mailing, and registered office addresses.
 - c. Name, title, and authority of signatory for that entity.
 - d. Contact person name, address, phone numbers and email address.
 - (4) Documentation that the owner of the proposed wireless facilities, wireless support structures, and utility poles has approved what is disclosed in the plans for the requested permit.
 - (5) A written certification by the applicant that the wireless facilities for which the permit is requested will be operational within one (1) year after permit issuance.
 - (6) A certificate of compliance with FCC rules related to radio frequency emissions from the proposed wireless facilities.
 - (7) Copies of any required permits from other governmental entities that also have an ownership, control, or jurisdictional interest in the public right-of-way or documentation that those permits have been properly applied for.
 - (8) Documentation of the date when complete applications for construction code permits and any required Zoning Ordinance permits or approvals were or will be made.
 - (9) Identification of contractors who will be working in the public right-of-way and contact persons and information for those contractors.
 - (10) A construction schedule indicating the period of time for the work from commencement to completion and restoration of all public right-of-way disturbed by the work.

- (11) A traffic control plan for when work is being performed in the public right-of-way.
 - (12) Photo simulations of existing and proposed conditions.
 - (13) A video recording of the location showing the staging and work areas where construction machinery will be driven or positioned off the traveled roadway.
 - (14) Documentation of the applicant's ability to provide any required bond under section 34-210.
 - (15) Payment of any application, review, or processing fee established by resolution of the city council under section 32.5-66.
 - (16) For applications that would involve exceeding the height limits under Public Act No. 365 of 2018, to the height limits allowed by 47 CFR 16.001 - 16.003, a statement of whether the applicant agrees to payment of the annual recurring fees recognized as presumptively valid under the Declaratory Ruling and Order in FCC 18-133.
- (c) An application may be for up to 20 collocations by the applicant of substantially similar small wireless facilities for placement on similar types of wireless support structures or utility poles.

Sec. 32.5-56. - Public, utility, traffic, and pedestrian safety protection standards.

- (a) Wireless facilities, wireless support structures, utility poles, and any related equipment shall be designed, installed, used, and maintained in compliance with the following standards that are intended to avoid material interference with the safe operation of traffic equipment, sight lines and clear vision areas, Americans with Disabilities Act (ADA) compliance regarding pedestrian access or movement, and the maintenance and full unobstructed use of public utility and drainage infrastructure:
- (1) Shall have a separation distance of at least five (5') feet from a sidewalk and the back of a curb, or if there is no curb, from the edge of the improved public right-of-way improved used for motor vehicle travel.
 - (2) Shall have a separation distance of at least five (5') feet from the edge of any driveway and not be positioned to obstruct the ability to view traffic on the road from a vehicle exiting a driveway.
 - (3) Shall be located outside the corner clearance area under the Zoning Ordinance and comply with any other traffic safety clear vision standard under any city or other governmental ordinance, code, standard, rule, or regulation.
 - (4) Shall not cause a physical or visual obstruction or safety hazard to pedestrian or vehicular traffic.
 - (5) Shall comply with any setback, separation, or isolation distance requirement from existing or planned public utilities and lawful structures in the public right-of-way under any city ordinance, code, or design standards.

(6) The lowest part of wireless facilities shall be located at a height that is at least ten (10') feet above existing grade or higher as necessary to not pose a hazard or obstruction to persons or vehicles and to provide sufficient separation distance from power lines and similar facilities.

(7) Wireless support structures and utility poles shall not have more collocated wireless facilities than the structure or pole is designed and constructed to safely accommodate as documented by a certified structural analysis.

(8) Construction and traffic control during construction shall be in accordance with the Michigan Manual of Uniform Traffic Control Devices, Michigan Vehicle Code, and the directives of the city public safety department.

(9) Shall not interfere or prevent compliance with ADA standards regarding pedestrian access and movement.

(10) Shall comply with all conditions of any required permits from other governmental entities.

(b) To provide compliance with one or more of the standards in subsection (a), the city may require that a proposed collocation involving a new or replacement utility pole be moved by up to 75 feet for collocation on a designated existing wireless support structure or utility pole or to a designated location for the new or replacement utility pole. The applicant may request a waiver of this requirement by demonstrating in writing that the applicant cannot secure the right to comply with the city's requirement on reasonable terms and conditions and that compliance imposes unreasonable technical problems or significant additional costs.

(c) An applicant may request a waiver or modification of one or more of the standards in subsection (a) by demonstrating in writing that compliance will prevent a disclosed wireless service provider that would be using the proposed wireless facilities, support structure, or utility pole, from providing personal wireless services in violation of 47 USC 332.

Sec. 32.5-57. - Aesthetic, spacing, and undergrounding standards.

(a) Wireless facilities, wireless support structures, utility poles, and any related equipment shall be designed, installed, used, and maintained in compliance with the following standards that are intended to conceal such facilities, structures, and poles to the extent technically feasible in an effort to avoid or remedy the tangible and intangible public harm of installations in the public right-of-way that are unsightly, out-of-character with the surrounding area, or could result in the direct or indirect removal of trees and other aesthetically desirable features and appearances:

(1) Shall be strictly limited to the location and what is shown on the approved plans.

(2) Wireless facilities shall be treated and colored to be visually compatible with the wireless support structure or utility pole they are collocated on or associated with by painting or other coating. For existing wood utility poles, a finish color of conduit that is zinc, aluminum, or stainless steel is considered visually compatible.

(3) Wireless facilities shall be compatible in scale and proportion to the structure or pole upon which they are to be attached, using the smallest and least intrusive technology available,

with the diameter of top mounted antennas to not exceed twice the diameter of the top of the structure or pole.

(4) Antennas shall be top mounted and aligned with the centerline of wireless support structures or utility poles, or side mounted with the vertical centerline of the antenna parallel with the support structure or utility pole.

(5) All cables and wires shall be placed in conduit or otherwise properly secured and concealed on the wireless support structure or utility pole.

(6) No more than three (3) antennas may be collocated on a utility pole and only if that number of antennas can be designed and accommodated in a manner that complies with all requirements of this section.

(7) Existing trees in the public right-of-way shall not be removed or trimmed to facilitate the installation, use, or maintenance of wireless facilities.

(8) Wireless facilities, support structures, and utility poles shall not be located within the drip line (critical root zone) of an existing tree in or adjoining the public right-of-way.

(9) Ground mounted wireless facilities, including equipment cabinets and enclosures, shall be located as close as legal and technically feasible to the wireless support structure or utility pole they are associated with.

(10) Ground mounted wireless facilities, including equipment cabinets and enclosures, shall be concealed to the extent technically feasible by matching color and materials to existing above-ground structures, landscaping, and placement to take advantage of concealment provided by the proposed structure or pole, existing landscaping, or above-ground improvements.

(11) Wireless facilities shall not project more than two (2') feet from any side of the utility pole or wireless support structure upon which they are collocated.

(12) Wireless facilities shall not be illuminated unless required by law or integral to a concealment design such as appearance as or on a street light pole.

(13) New and replacement utility poles shall be located in alignment with existing utility poles on either side.

(14) New and replacement utility poles shall be located equidistance from existing utility poles on either side.

(15) New and replacement utility poles shall be made of the same material and have the same visual appearance as the existing utility poles on either side. If those existing utility poles are different, the new or replacement pole shall be metal or fiber if either existing pole is of that material and shall otherwise be the same material as the newer of the existing poles.

(16) Unless a greater height is approved under this article as required by state or federal law, wireless support structures and utility poles shall not be taller than the existing utility poles on either side.

(17) In a public right-of-way abutting residentially used or zoned property, new wireless facilities, wireless support structures, and utility poles shall only be located in line with a side lot line.

(18) New wireless facilities shall not be collocated on an existing wireless support structure or utility pole that is directly in front of an existing residential dwelling or that is along the frontage of a property containing a building of historic significance under federal, state, or other laws.

(19) New wireless facilities, wireless support structures, and utility poles shall not be located in front of an existing residential or commercial structure on the same or either side of the road.

(20) In a public right-of-way abutting residentially used or zoned property, wireless facilities that require a cooling system shall use a passive system, or if a motorized system is technologically required, shall use a system and fan with the lowest available noise level.

(21) Except for a label containing the name and emergency contact telephone number for the wireless provider responsible for the wireless facilities and wireless support structure or utility pole, information that identifies them and their location, and any information required to be displayed by state or federal law, no signage shall be allowed, with all manufacturer decals that are not needed for safety reasons to be removed or painted over.

(22) Regardless of the number of antennas that are collocated on a utility pole or wireless support structure, the other wireless facilities associated with those antennas shall not exceed 28 cubic feet in volume.

(23) Collocations on and replacement or new utility poles or wireless support structures in a public right-of-way that has been specifically designated or identified by ordinance or city council resolution for a program of improvement, redevelopment, beautification, regulation, or other planning goals, shall be subject to city review and approval of the design, appearance, and method and height of attachment to assure consistency, compatibility, and uniformity with the standards, objectives, installations and streetscape appearance planned for that public right-of-way under the program.

(24) Shall not be located in the public right-of-way of a designated Natural Beauty Road or Street under MCL 324.35701 – MCL 324.35706.

(b) To provide compliance with one or more of the standards in subsection (a), the city may require that a proposed collocation involving a new or replacement utility pole be moved by up to 75 feet for collocation on a designated existing wireless support structure or utility pole or to a designated location for the new or replacement utility pole. The applicant may request a waiver of this requirement by demonstrating in writing that the applicant cannot secure the right to comply with the city's requirement on reasonable terms and conditions and that compliance imposes unreasonable technical problems or significant additional costs.

(c) Above ground wireless facilities and support structures and utility poles shall not be allowed in an area designated by the city council solely for underground or buried cable and utility facilities if all of the following apply:

(1) The city has required all cable and utility facilities, other than city, street light, and traffic signal poles and attachments, to be placed underground by a date that is not less than 90 days before the submission of the application.

(2) The city does not prohibit the replacement of city poles by a wireless provider in the designated area.

(d) An applicant may request a waiver or modification of one or more of the standards in subsections (a) and (c) by demonstrating in writing that compliance will prevent a disclosed wireless service provider that would be using the proposed wireless facilities, support structure, or utility pole, from providing personal wireless services in violation of 47 USC 332.

(e) To the extent applicable and allowed under existing franchises, permits, and applicable law, the permit requirements under this article shall apply to all new installations in the public right-of-way by electric and gas public utilities, incumbent or competitive local exchange carriers, fiber providers, and cable television video services providers.

Sec. 32.5-58. - Collocation of small wireless facilities on existing structures and poles.

(a) This section applies to the collocation of small wireless facilities on existing wireless support structures or utility poles.

(b) For collocations where the applicant wants the annual rate limited to what is allowed by MCL 460.1313, wireless facilities shall not extend more than five (5) feet above the height of the wireless support structure or utility pole they are collocated on.

(c) If the applicant has agreed to pay the annual recurring fee recognized as presumptively valid under the Declaratory Ruling and Order in FCC 18-133, subject to compliance with subsection (b), the collocation shall not result in a height that exceeds the greater of the following overall heights of the structure or pole and collocated wireless facilities:

(1) 50 feet.

(2) A height that is 10% more than the height of the existing structure or pole.

(3) A height that is 10% more than the height of immediately adjacent wireless support structures or utility poles in the public right-of-way.

(d) Subject to the possible time adjustments in MCL 460.1315 and 47 CFR 1.6003 that are included in the Shot Clock Appendix to this article, the city shall approve or deny an application for a permit under this section within 60 days of all applications for the requested facilities being submitted and complete.

(e) A permit application under this section may only be denied for reasons listed in section 32.5-63(b).

Sec. 32.5-59. - Collocation of small wireless facilities on replacement/new structures and poles.

(a) This section applies to the collocation of small wireless facilities on new or replacement wireless support structures or utility poles.

(b) For collocations where the applicant wants the annual rate limited to what is allowed by MCL 460.1313, wireless facilities shall not extend more than five (5) feet above the height of the wireless support structure or utility pole and the new or replacement wireless support structure or utility pole used for collocation shall not exceed 40 feet in height above ground level.

(c) If the applicant has agreed to pay the annual recurring fee recognized as presumptively valid under the Declaratory Ruling and Order in FCC 18-133, the collocation shall not result in a height that exceeds the greater of the following overall heights of the new or replacement structure or pole and collocated wireless facilities:

(1) 50 feet.

(2) For a replacement structure or pole, a height that is 10% more than the height of the structure or pole being replaced.

(3) A height that is 10% more than the height of immediately adjacent wireless support structures or utility poles in the public right-of-way.

(d) Subject to the possible time adjustments in MCL 460.1315 and 47 CFR 1.6003 that are included in the Shot Clock Appendix to this article, the city shall approve or deny an application for a permit under this section within 90 days of all applications for the requested facilities being submitted and complete.

(e) A permit application under this section may only be denied for reasons listed in section 32.5-63(b).

Sec. 32.5-60. - Eligible facilities requests.

(a) This section applies to eligible facilities requests as defined in section 32.5-52.

(b) For purposes of this section:

(1) Wireless tower means a structure in a public right-of-way, the sole or primary purpose of which is to support antennas and associated wireless equipment for the provision of wireless services.

(2) Wireless base station means equipment or a structure (other than a wireless tower), that at the time of the application supports or houses wireless facilities at a fixed location that enables wireless service between user equipment and a communications network.

(c) An eligible facilities request application shall include the documents, plans, specifications, and statements necessary to establish that:

(1) The wireless tower or base station is existing.

(2) The wireless tower or base station to be modified is in compliance with all applicable city, state, and other local zoning, siting, and regulatory reviews, permits, and approvals.

(3) Modification is limited to collocation, removal or replacement of wireless equipment.

- (4) There will be no "substantial change" to the wireless tower or base station.
- (d) For purposes of this section substantial change means any of the following:
 - (1) Increasing the height over the height approved as of February 22, 2012, by more than 10% or more than 10 feet, whichever is greater.
 - (2) Adding wireless facilities that would protrude from the edge of the structure by more than six (6) feet.
 - (3) The installation of new ground equipment cabinets if there are no pre-existing ground cabinets.
 - (4) If there are existing ground equipment cabinets, the installation of ground cabinets that are 10% larger in height or overall volume than the existing cabinets.
 - (5) Excavation or deployment outside the perimeter of the area occupied by the wireless tower or base station and existing wireless facilities.
 - (6) A modification that does not comply with prior approval conditions for the wireless support structure or base station unless the noncompliance is limited to a modification that would not be a substantial change under the above standards in subsections (1) through (5).
 - (7) A modification that would defeat or be incompatible or inconsistent with existing elements of a wireless tower or base station designed to conceal or minimize its appearance as a wireless tower or base station.
- (e) Subject to the possible time adjustments under 47 CFR 1.6100 that is included in the Shot Clock Appendix to this article, the city shall approve or deny an application for a permit under this section within 60 days of all applications for the requested facilities being submitted and complete.

Sec. 32.5-61. - Collocation of wireless facilities other than small wireless facilities and eligible facilities requests.

- (a) This section applies to the collocation of wireless facilities that are not described in sections 32.5-58, 32.5-59, or 32.5-60.
- (b) Collocations shall comply with all standards in sections 32.5-56 and 32.5-57.
- (c) For collocations where the applicant wants the annual rate limited to what is allowed by MCL 460.1313, wireless facilities shall not extend more than five (5) feet above the height of the wireless support structure or utility pole they are collocated on.
- (d) If the applicant has agreed to pay the annual recurring fee recognized as presumptively valid under the Declaratory Ruling and Order in FCC 18-133, subject to compliance with subsection (c) and the applicant's demonstration that a disclosed wireless provider will be prohibited from providing personal wireless services without the increased height, the collocation shall not result in a height that exceeds the greater of the following overall heights of the structure or pole and collocated wireless facilities:

- (1) 50 feet.
 - (2) A height that is 10% more than the height of the existing structure or pole.
 - (3) A height that is 10% more than the height of immediately adjacent wireless support structures or utility poles in the public right-of-way.
- (e) Subject to the possible time adjustments in MCL 460.1315 and 47 CFR 1.6003 that are included in the Shot Clock Appendix to this article, the city shall approve or deny an application for a permit under this section within 90 days of all applications for the requested facilities being submitted and complete.

Sec. 32.5-62. - Replacement and new wireless support structures and utility poles not involving small wireless facilities or eligible facilities requests.

- (a) This section applies to the new and replacement wireless support structures and utility poles not involving collocation of wireless facilities under sections 32.5-58, 32.5-59, or 32.5-60.
- (b) Wireless support structures and utility poles shall comply with all standards in sections 32.5-56 and 32.5-57.
- (c) For wireless support structures and utility poles where the applicant wants the annual rate limited to what is allowed by MCL 460.1313, the height shall not exceed 40 feet above ground level and wireless facilities shall not extend more than five (5) feet above the height of the wireless support structure or utility pole.
- (d) If the applicant has agreed to pay the annual recurring fee recognized as presumptively valid under the Declaratory Ruling and Order in FCC 18-133, subject to the applicant's demonstration that a disclosed wireless provider will be prohibited from providing personal wireless services without a height greater than in subsection (c), the wireless support structure or utility pole may be increased to a height that does not exceed the greater of the following overall heights of the structure or pole and collocated wireless facilities:
- (1) 50 feet.
 - (2) A height that is 10% more than the height of the existing structure or pole.
 - (3) A height that is 10% more than the height of immediately adjacent wireless support structures or utility poles in the public right-of-way.
- (e) For new and replacement wireless support structures and utility poles under this section, the city may specify and require relocation from what is proposed to a new location in the same general public right-of-way area based on any standard listed in sections 32.5-56, 32.5-57, or permit condition listed in section 32.5-64(e).
- (f) Subject to the possible time adjustments in MCL 460.1315 and 47 CFR 1.6003 that are included in the Shot Clock Appendix to this article, the city shall approve or deny an application for a permit under this section within 150 days of all applications for the requested facilities being submitted and complete.

Sec. 32.5-63. - Review and decisions on permit applications.

(a) Within the time allowed for approval or denial of a permit application, the city shall issue a written notice to the applicant that either denies the requested permit for specified reasons with citations to sections of this article or applicable codes or provides notice that the application has been approved and the requirement for the permit to be issued.

(b) An application under sections 32.5-58 and 32.5-59 for wireless facilities, support structures, or utility poles described in and complying with those sections may only be denied if the facilities, structures, or poles would do one or more of the following:

- (1) Materially interfere with the safe operation of traffic control equipment.
- (2) Materially interfere with sight lines or clear zones for transportation or pedestrians.
- (3) Materially interfere with compliance with the Americans with Disabilities Act of 1990, Public Law 101-336, or similar federal, state, or local standards regarding pedestrian access or movement.
- (4) Materially interfere with maintenance or full unobstructed use of public utility infrastructure under the jurisdiction of the city.
- (5) With respect to drainage infrastructure under the jurisdiction of the city or other governmental entity, either of the following:
 - A. Materially interfere with maintenance or full unobstructed use of the drainage infrastructure as it was originally designed.
 - B. Not be located a reasonable distance from the drainage infrastructure to ensure maintenance under the Drain Code of 1956, 1956 PA 40, MCL 280.1 to 280.630, and access to the drainage infrastructure.
- (6) Fail to comply with the one or more spacing standards in sections 32.5-56 and 32.5-57 that do not prevent a wireless provider from serving any location.
- (7) Fail to comply with applicable codes.
- (8) Fail to comply with the aesthetic, spacing, or undergrounding standards in section 32.5-57 in a historic, downtown, or residential district unless such compliance is demonstrated by the applicant to prohibit use of the wireless service provider's technology.
- (9) Fail to meet the aesthetic, spacing, and undergrounding standards in section 32.5-57 unless such compliance is demonstrated by the applicant to prohibit the provision of personal wireless services.

(c) If an application is denied, the applicant may attempt to cure the reasons for denial by submitting a revised application with amended or supplemental information within 30 days of the denial without payment of an additional application fee. The city shall approve or deny the revised application within 30 days, limiting its review to the reasons for denial, and provide notice of that decision as provided in subsection (a).

(d) Before issuance of a permit, any bond required by section 32.5-55 shall be provided and the annual fee established by Resolution of the city council for the approved wireless facilities under section 32.5-66 shall be paid.

Sec. 32.5-64. - Permit terms and conditions.

(a) Repair. Every Right-of-Way Permit issued under Article VIII of Chapter 11 and/or Article I of Chapter 31 of the Code and this article shall be considered to include a condition that all wireless providers using the wireless facilities, support structures, or utility poles are responsible for repairing all damage to the public right-of-way caused by the activities of one or more of those providers while occupying, constructing, installing, mounting, maintaining, modifying, operating, or replacing wireless facilities, wireless support structures, or utility poles, and to restore the public right-of-way to the condition that existed prior to the damage. If the wireless providers fail to perform the repairs and restoration within 60 days of the city's written notice to do so, the city may perform the repairs and restoration, with the wireless providers responsible for paying the city its reasonable and documented costs within 30 days of the city's invoice or billing for those costs.

(b) Electricity. Every Right-of-Way Permit issued under Article VIII of Chapter 11 and/or Article I of Chapter 31 of the Code and this article shall be considered to include a condition that all wireless providers using the wireless facilities, support structures, or utility poles shall be responsible for arranging and paying for all electricity used for the wireless facilities.

(c) Indemnification. Every Right-of-Way Permit issued under Article VIII of Chapter 11 and/or Article I of Chapter 31 of the Code and this article shall be considered to include a condition that all wireless providers using the wireless facilities, support structures, or utility poles shall defend, indemnify, and hold harmless the city and its officers, agents, and employees against any claims, demands, damages, lawsuits, judgments, costs, liens, losses, expenses, and attorney fees resulting from the installation, construction, repair, replacement, operation, or maintenance of any wireless facilities, wireless support structures, or utility poles to the extent caused by the applicant, wireless providers using the facilities, structures, or poles, and their contractors, subcontractors, and the officers, employees, or agents of any of these. This obligation does not apply to any liabilities or losses due to or caused by the sole negligence of the city or its officers, agents, or employees.

(d) Insurance. Every Right-of-Way Permit issued under Article VIII of Chapter 11 and/or Article I of Chapter 31 of the Code of the Code and this article shall be considered to include a condition that all wireless providers using the wireless facilities, support structures, or utility poles obtain insurance naming the city and its officers, agents, and employees as additional insureds against any claims, demands, damages, lawsuits, judgments, costs, liens, losses, expenses, and attorney fees in amounts required by the city. A wireless provider may meet all or a portion of the city's insurance coverage and limit requirements by self-insurance. To the extent it self-insures, a wireless provider is not required to name additional insureds under this section. To the extent a wireless provider elects to self-insure, the wireless provider shall provide to the city evidence demonstrating, to the city's satisfaction, the wireless provider's financial ability to meet the city's insurance coverage and limit requirements.

(e) Every Right-of-Way Permit issued under Article VIII of Chapter 11 and/or Article I of Chapter 31 of the Code of the Code and this article shall be considered to include the following conditions which are based on the substantive terms and conditions of the current unilateral form of permit approved by the Michigan Public Service Commission for use under the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, Act No. 48 of the Public Acts of 2002, as amended:

(1) No Burden on Public Right-of-Way. Permittee, its contractors, subcontractors, and the wireless facilities, structures, and poles shall not unduly burden or interfere with the present or future use of any of the Public Right-of-Way. The Wireless facilities, structures, and poles shall be installed and maintained so as to not endanger or injure persons or property in or about the Public Right-of-Way. If City reasonably determines that any portion of the wireless facilities, structures, and poles constitutes an undue burden or interference, due to changed circumstances, Permittee, at its expense, shall modify the wireless facilities, structures, and poles or take such other actions as City may determine is in the public interest to remove or alleviate the burden, and Permittee shall do so within a reasonable time period. City shall attempt to require all occupants of a pole or conduit whose wireless facilities, structures, and poles are a burden to remove or alleviate the burden concurrently.

(2) No Priority. This Permit does not establish any priority of use of the Public Right-of-Way by Permittee over any present or future permit holder or parties having agreements with City or franchises for such use. In the event of any dispute as to the priority of use of the Public Right-of-Way, the first priority shall be to the public generally, the second priority to City, the third priority to the State of Michigan and its political subdivisions in the performance of their various functions, and thereafter as between other permit, agreement or franchise holders, as determined by City in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Michigan.

(3) Marking. Permittee shall mark the Wireless facilities, structures, and poles in compliance with applicable federal and state law requirements, with each location at which Wireless facilities, structures, and poles are located to have a written sign that is readable from ground level that at a minimum states Permittee's name and a toll-free telephone number to call for assistance, and if Wireless facilities, structures, and poles are underground, a statement that there is buried equipment at the site.

(4) Installation and Maintenance. The construction and installation of the wireless facilities, structures, and poles shall be performed pursuant to plans approved by City, and together with the maintenance of the wireless facilities, structures, and poles, shall be done in a clean, good, and workmanlike manner. Permittee shall install and maintain the wireless facilities, structures, and poles in a reasonably safe condition, free from workmanship and product defects. Permittee may perform maintenance on the wireless facilities, structures, and poles without prior approval of City, provided that Permittee shall obtain any and all permits required by City in the event that any maintenance will disturb or block vehicular traffic or are otherwise required by City.

(5) Coordination. Permittee shall coordinate its construction and all other work in the Public Right-of-Way with any City programs or projects Permittee was notified of in the City's review comments on construction permit application.

(6) Compliance with Laws. Permittee shall comply with all governmental laws, statutes, ordinances, rules, resolutions, tariffs, administrative orders, certificates, permits, orders, regulations, and other legal requirements regarding the construction, installation, use, and maintenance of its wireless facilities, structures, and poles, whether federal, state or local, now in force or which hereafter may be promulgated or become effective. Permittee shall comply with all zoning and land use ordinances and historic preservation ordinances as may exist or may hereafter be amended.

(7) Street Vacation. If City vacates or consents to the vacation of Public Right-of-Way within its jurisdiction, and such vacation necessitates the removal and relocation of wireless facilities, structures, and poles in the vacated Public Right-of-Way, Permittee does, as a condition of this Permit, consent to the vacation and remove its Wireless facilities, structures, and poles at its cost and expense when and within the reasonable time ordered by City or a court of competent jurisdiction. If Permittee fails to satisfy this obligation, City may take all reasonable actions it deems necessary to secure timely completion of the required work.

(8) Relocation. If City requests Permittee to relocate, protect, support, disconnect, or remove its wireless facilities, structures, and poles because of street or utility work, or other public projects, Permittee shall relocate, protect, support, disconnect, or remove its wireless facilities, structures, and poles, at its cost and expense, including where necessary to such alternate location as City and Permittee mutually agree, applying reasonable engineering standards. The work shall be completed within a reasonable time period. If Permittee fails to satisfy this obligation, City may take all reasonable actions it deems necessary to secure timely completion of the required work.

(9) Public Emergency. City shall have the right to sever, disrupt, dig-up or otherwise destroy wireless facilities, structures, and poles of Permittee if such action is necessary because of a public emergency. If reasonable to do so under the circumstances, City shall attempt to provide notice to Permittee. Public emergency shall be any condition which poses an immediate threat to life, health, or property caused by any natural or man-made disaster, including, but not limited to, storms, floods, fire, accidents, explosions, water main breaks, hazardous material spills, and similar events. Permittee shall be responsible for repair at its cost and expense of any of its wireless facilities, structures, and poles damaged pursuant to any such action taken by City.

(10) Miss Dig. If eligible to join, Permittee shall subscribe to and be a member of "MISS DIG," the association of utilities formed pursuant to Act 174 of the Public Acts of 2013, as amended, MCL § 460.721et seq., and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.

(11) Underground Relocation. If Permittee has its wireless facilities on poles of a utility or telecommunications provider and such utility or telecommunications provider relocates its system underground, this Permit shall terminate as to any such pole that is no longer used except by Permittee for its wireless facilities. Permittee shall remove any such pole described in this subsection at its cost and expense within a reasonable time period specified by the City in a written notice. If Permittee fails to satisfy this obligation, City may take all reasonable actions it deems necessary to secure timely completion of the required work.

(12) Identification. All personnel of Permittee and its contractors or subcontractors who have as part of their normal duties contact with the general public shall wear on their clothing a clearly visible identification card bearing Permittee's name, their name and photograph. Permittee shall account for all identification cards at all times. Every service vehicle of Permittee and its contractors or subcontractors shall be clearly identified as such to the public, such as by a magnetic sign with Permittee's name and telephone number.

(f) Compliance with permit conditions is required, with a violation of permit conditions being a violation of this article.

Sec. 32.5-65. - Bond.

A bond may be required to be posted prior to issuance of a Right-of-Way Permit under Article I in Chapter 31 of the Code and this article in an amount not exceeding \$1,000.00 for each wireless facility at a location to provide for removal of abandoned or improperly maintained facilities, repair and restore the public right-of-way, and recoup rates or fees the have not been paid within 12 months of when they were due. The city may not require the bond to be cash unless the wireless provider has failed to obtain or maintain a required bond in a form other than cash or the surety has defaulted or failed to perform on a bond given on behalf of the wireless provider.

Sec. 32.5-66. - Fees.

Application, review, inspection, and recurring annual rates or fees shall be payable to the city in amounts established by city council resolution.

Sec. 32.5-67. - Shot Clock Appendix.

The attached Shot Clock Appendix containing MCL 460.1315, 47 CFR 1.6003, and 47 CFR 1.40001 is part of this article.

Sec. 32.5-68. - Violations.

A violation of any section in this article or permit condition shall be a municipal civil infraction. Nothing in this section shall be construed to limit the remedies available to the city under a permit or otherwise by law for such violations.

Section 2 of Ordinance. Repealer.

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect, and the Novi Code of Ordinances shall remain in full force and effect, amended only as specified above.

Section 3 of Ordinance. Savings.

All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this Ordinance takes effect are saved and may be consummated according to the law in force when they were commenced.

Section 4 of Ordinance. Severability.

If any section, clause or provision of this Ordinance shall be declared to be unconstitutional, void, illegal or ineffective by any Court of competent jurisdiction, such section, clause or provision declared to be unconstitutional, void or illegal shall thereby cease to be a part of this Ordinance, but the remainder of this Ordinance shall stand and be in full force and effect.

Section 5 of Ordinance. Effective Date.

The provisions of this Ordinance are hereby ordered to take effect on the date provided by applicable law following publication.

Section 6 of Ordinance. Enactment.

