

**Vergennes Township
Kent County, Michigan**

Ordinance # 2018-3
Adopted Date: 2018-5-21

AN ORDINANCE TO AMEND SECTION 201.432 OF THE VERGENNES TOWNSHIP ZONING ORDINANCE WHICH PERTAINS TO WIRELESS COMMUNICATION FACILITIES.

VERGENNES TOWNSHIP HEREBY ORDAINS:

Section 1. Amendment of Section 201.432. Section 201.432 of the Vergennes Township Zoning Ordinance is amended to read as follows.

201.432 Wireless Communication Facilities.

4.32.

A. *Intent:* It is the intent of this Section to provide regulations controlling the placement, design, and construction of wireless communication facilities including their accessory uses and attached communication systems. Changing technologies in the field of communications has resulted in a reliance upon more versatile and convenient forms of communication. Businesses, individuals and government have all developed a dependence upon the capability to contact others. The demand for this communication service has placed a burden on local communities in their ability to regulate wireless communication facilities. This ordinance intends to reduce the impact of these communication elements on adjacent land uses by reasonably regulating their location, height, safety, general appearance, and eventual removal. Additionally, this Ordinance intends to promote and encourage the co-location of attached communication systems on existing support structures.

B. *Regulations.* The following regulations shall govern the placement, design and construction of wireless communication facilities including their accessory uses, attached communication systems and co-location.

1. *Permitted Uses.*

a. *Rural Agricultural District.* Within the "RA" Rural-Agricultural District, a Wireless Communication Facility shall be permitted as a special exception use if it meets the requirements of the RA District, the requirements of Section 201.502D Site Plan Review, and the requirements of Section 201.432 C and D and, with the approval of a Special Exception Use Permit.

b. *Industrial District.* Except as provided in subparagraph c of this section, within the "I" Industrial District, a Wireless Communication Facility shall be a permitted principal or accessory use if it meets the requirements of the Industrial District, the requirements of Section 201.502D Site Plan Review, and the requirements of this

section 201.432, with the approval of a Special Exception Use permit.

c. *Accessory Use.* Within the Industrial and the Rural-Agricultural Districts, not more than one (1) Wireless Communication Facility may be permitted as a special exception use to occupy a lot with another existing use permitted in the District, however, provided that not more than one (1) Wireless Communication Facility shall be permitted on any lot in the Industrial or the Rural-Agricultural District. A Wireless Communication Facility proposed as an accessory use with another permitted use shall meet the requirements of the zoning district in which it is located, the requirements of Section 201.502D Site Plan Review, and the requirements of Section 201.432 C and D and with the approval of a Special Exception Use Permit. A Wireless Communication Facility proposed as an accessory use with another permitted use shall meet the following additional requirements.

- (1) The ownership interest of the land proposed to be occupied by a Wireless Communication Facility as an accessory use shall at all times be identical to the ownership interest of the entire parcel.
- (2) The land area occupied by a Wireless Communication Facility approved as an accessory use shall not be sold or otherwise conveyed independent of the principal use on the property, except as a part of a legal land division that results in a new lot and a remainder parcel that meet all the requirements of this Zoning Ordinance.

2. *Co-location.*

a. Wireless communications equipment is a permitted use of property and is not subject to special exception use approval if all of the following requirements are met:

- (1) The wireless communications equipment will be collocated on an existing wireless communications support structure or in an existing equipment compound.
- (2) The existing wireless communications support structure or existing equipment compound is in compliance with the Township's ordinance or was approved by the Township.
- (3) The proposed collocation will not do any of the following:
 - (a) Increase the overall height of the wireless communications support structure by more than 20 feet or 10% of its original height, whichever is greater.
 - (b) Increase the width of the wireless communications support structure by more than the minimum necessary to permit collocation.
 - (c) Increase the area of the existing equipment

compound to greater than 2,500 square feet.

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

b. Wireless communications equipment that meets the requirements of subsection 2(a)(1) and 2(a)(2) but does not meet the requirements of subsection 2(a)(3) or 2(a)(4) is a permitted only if it receives a Special Exception Permit .3. *Failure to Cooperate in Co-location.* If a party who owns and/or otherwise controls a support structure shall fail or refuse to alter a structure so as to accommodate a proposed and otherwise feasible co-location, such failure or refusal shall be deemed a violation of this Zoning Ordinance, subject to the penalties provided in Section 201.603 of this Ordinance and the revocation of any approved application. Co-location shall be deemed to be "feasible" for the purposes of this Section where all of the following are met:

- a. The applicant under consideration for co-location shall undertake to pay market rent or other market compensation for co-location.
- b. The Support Structure on which co-location is being considered, taking into consideration reasonable modification or replacement of a facility, is able to provide structural support.
- c. The co-location being considered is technologically reasonable, e.g., the co-location will not result in unreasonable interference, given appropriate physical and other adjustments in relation to the structure, antennae, and the like.
- d. The height of the structure necessary for co-location will not be increased beyond a point deemed to be permissible by the Township, taking into consideration the several standards contained within this subsection.

C. *Application Requirements.* All applications for Wireless Communication Facilities and/or Attached Communication Systems, regardless of the zoning district in which they are proposed to be located, constructed or modified, shall include the following information and agreements unless certain requirements are waived by the Zoning Administrator upon the zoning Administrator determining that certain items are irrelevant and/or immaterial:

1. *Site Plan.* A plan which meets the requirements of section 201.502 (D). The site plan shall include the location of the Wireless Communication Facility, the height and type of construction.
2. *Proposed Use.* A complete written and graphic description of the proposed Wireless Communication Facility and/or Attached Communication System. This written and graphic description shall include an explanation of the existing technology which is being proposed.
3. *Location Justification.* A written explanation of the reason for the proposed location with reference to the coverage area and capacity.

4. *Ownership Interest.* The nature and extent of the applicant's ownership or lease interest in the property, building or structure upon which the facilities are proposed for placement; and, if a leasehold interest, the name and address of the owner of the lot and any other principal use on the lot. Both the lessee and the owner of the property must sign the application.
5. *Other Support Structure Locations.* A map showing existing and known proposed Support Structures within Vergennes Township and adjoining jurisdictions. The map shall also show existing buildings and/or other structures of the same approximate height as the proposed Wireless Communication Facility within a five (5) mile radius of the proposed site which could reasonably accommodate a co-location of the applicant's proposed Antenna. To the extent the information required is on file with the Township, the applicant shall be required only to update as needed.
6. *Co-Locations.* Applications for Wireless Communication Facilities must be accompanied by documentation that the applicant has investigated the potential of co-location with other owners who have Wireless Communication Facilities or other reasonable Support Structures in Vergennes Township or neighboring communities. The documentation must include written evidence satisfactory to the Township that the applicant has had direct communication and response regarding the potential for co-location with the owners/operators of such other Wireless Communication Facilities, and determined that colocation is not feasible or will not achieve the applicant's coverage objectives. All applications for construction of a Wireless Communication Facility will be required to provide plans and drawings for future co-location with other owners/operators at a fair and reasonable rental rate.
7. *Engineering Certification.* The applicant shall provide verification with a certified, sealed print that the Attached Communication System and the support structure have been reviewed and approved by a professional engineer and that the proposed installation is in compliance with all the applicable codes.
8. *Liability.* The applicant shall provide documentation that indemnity and insurance coverage exist for the Wireless Communication Facility in the event that damage or personal injury occurs or the provider abandons the structure. Such indemnity and insurance shall name the Township as an additional insured. The specific dollar amount of the indemnity and insurance coverage shall be approved by the Township and the cancellation of such policy shall not be effective without the approval of the Township.
9. *Landscaping Plan.* Applications for a Wireless Communication Facility must be accompanied by a plan for landscaping, screening, fencing and buffering the site. The plans shall take into consideration any existing vegetation and any other natural features of the site. Landscaping shall be installed as soon as practicable and shall consist of species that provide adequate year-round visual screening. The Planning Commission or Township Board, as applicable, may waive the required landscaping if it is determined that existing vegetation on the site provides

adequate visual screening from adjacent properties. Natural vegetation on adjacent properties shall not be used to satisfy the landscaping requirements of this section.

10. *Visual Impact.* The applicant shall demonstrate how the visual impact of the proposed Wireless Communication Facility will be reduced through the use of color or other techniques. The Township Board or Planning Commission, as applicable, may require a photo simulation or similar model to aid in determining the visual impact that the proposed facility will have on the Township and adjacent properties.
11. *Acknowledgment.* The owner and lessee shall sign an acknowledgment and agreement to the following: (a) that a lien and other costs may be imposed upon the property pursuant to Section 201.432 (D) (5), and (b) that the owner and lessee shall consent to a co-location as provided in this ordinance.

D. Timeframe for Decision.

1. *Where a Special Exception Permit Is Not Required.* Where a special exception permit is not required, the Zoning Administrator shall approve or deny an application for a colocation or wireless communication equipment. Any such approval does not circumvent the need for a building permit.

2. *Where a Special Exception Permit Is Required.*

- a. Within fourteen (14) days of receipt of an application for a wireless communication facility special exception use permit, the Zoning Administrator, on behalf of the Township Board or Planning Commission, shall determine whether or not the application is administratively complete. Unless the Zoning Administrator provides a notice of deficiency as set forth below, the application shall be deemed administratively complete upon the earlier of when the Zoning Administrator makes such determination or fourteen (14) days after the application is received.

- b. If the application is deemed administratively incomplete, the Zoning Administrator shall notify the applicant in writing, or by electronic notification, within such fourteen (14) day period that the application is not administratively complete and shall specify the information or fees necessary to make the application administratively complete. The time period specified in subsection a above shall be tolled until the applicant submits the information and fee required.

- c. Once the application is deemed administratively complete, the Township Board or Planning Commission, as applicable, shall approve or deny the application within sixty (60) days of the date the application is deemed complete, except, however, within ninety (90) days for a special exception permit request for wireless equipment that does not meet the requirements of subsection B 2 a (1) or for a wireless communication support structure. A failure to timely approve or deny a special exception use request shall be deemed an approval. An approval may be conditioned only upon the wireless communications equipment

meeting the requirements of this ordinance, other Township ordinances and other federal and state laws before the wireless communications equipment begins operations.

- E. *Performance Standards for Wireless Communication Facilities.* Wireless Communication Facilities must meet the following applicable performance standards:
1. *Site Plan Review and Special Exception Use Permit.* A Wireless Communication Facility application must receive a Special Exception Use Permit and Site Plan approval from the Planning Commission and/or Township Board as set forth by the ordinance. Applications for approval of an Attached Communication System shall be approved by the Zoning Administrator.
 2. *Engineering Certification and Fall Zone.* The application shall provide verification that the antenna mount and structure have been reviewed and approved by a professional engineer and that the proposed installation is in compliance with all the applicable codes. The Wireless Communication Facility must be set back from all property lines a distance equal to height, unless engineering specifications certified by a licensed structural engineer and reviewed by the Township Engineer document a lesser fall zone. Such engineering certification must also provide that the final design meets all requirements of the Federal Communications Commission, the National Environmental Policy Act of 1969 and the Federal Aviation Administration and other applicable statutes and regulations. The Township may require any engineering certification be reviewed by the Township engineer or by a qualified third party engineer, and the applicant shall incur all costs associated with such review.
 3. *Height.* The maximum height of a Wireless Communication Facility shall be 199 feet. A Wireless Communication Facility greater than 199 feet may be permitted, if in the opinion of the Planning Commission or Township Board, as applicable, the applicant has sufficiently demonstrated that a proposed Wireless Communication Facility in excess of 199 feet will reduce the total number of potential Wireless Communication Facilities within Vergennes Township and the surrounding areas.
 4. *Accessory Structures.* Accessory structures are limited to the use associated with the operation of the Wireless Communication Facility. Accessory structures shall not exceed 600 square feet in area and a height of 20 feet. Accessory structures shall not be located closer than 50 feet from all property lines.
 5. *Abandonment.* The Wireless Communication Facility shall be removed by the property owner or lessee within three (3) months of being abandoned. The Wireless Communication Facility shall be removed to the top of the footing. If the tower has not been removed within the period specified, the Township Supervisor, with the approval of the Township Board, may take all steps necessary to have the structure removed. All costs relating to the removal (including attorney fees) shall be charged to the owner and/or lessee of such Wireless Communication Facility and

shall become a lien on the property until paid in full together with any and all costs of collection and the Township may record a lien against the property and proceed to foreclose upon the lien according to the laws of judicial foreclosure.

6. *Unsafe and Unlawful Wireless Communication Facilities.* When any Wireless Communication Facility is determined to be unsafe or is unlawfully erected or maintained and is found to be in violation of the provisions of this ordinance the use of the Wireless Communication Facility shall be discontinued until all violations are corrected or it shall be removed.
7. *Additional Equipment.* Wireless Communication Facility owners shall provide disclosure of additional Attached Communications Systems whenever installed on an existing structure.
8. *Additional Performance Requirements.* The following and additional regulations pertaining to Wireless Communication Facilities shall apply:
 - a. All Support Structures shall be equipped with an anti-climbing device to prevent unauthorized access.
 - b. No part of a Wireless Communication Facility shall be used for advertising purposes. The applicant shall install at least one informational sign on the service building(s) or cabinet, fence or tower base that lists the name, address and contact telephone number of the operator, as well as a safety-related sign signaling “danger” or “no trespassing.”
 - c. Antennas and metal structures shall be grounded for protection against a direct strike by lightning and shall comply as to electrical wiring and connections with all applicable local statutes.
 - d. All Wireless Communication Facilities shall be located so that they do not interfere with radio, television, telephone and other reception in nearby residential areas. In the event a Wireless Communication Facility causes interference, the applicant, or his/her agent shall take all steps necessary to correct and eliminate such interference.
 - e. Wireless Communication Facilities shall not be artificially lighted unless required by the Federal Aviation Administration and if so required, the Wireless Communication Facility shall be equipped with the form of lighting deemed by the Planning Commission or Township Board, as applicable, to be least intrusive. White strobe obstruction lighting shall not be permitted during nighttime hours.
 - f. The Site of a Wireless Communication Facility shall not serve as a regular place of employment for any employees of the owner or lessee of the Wireless Communication Facility.
 - g. The Wireless Communication Facility shall incorporate a color scheme which reduces visual impact.

Section 3. Conflicts.

A. If any provision of the Vergennes Township Ordinance conflicts with this amendment to the Zoning Ordinance, the terms of this amendment shall prevail.

B. To the extent any provision of this ordinance may be preempted by state or federal law, then any such provision shall be enforced up to the fullest extent of any state or federal law before such preemption would occur.

Section 4. Miscellaneous Severability.

A. Should any section or part of this Ordinance be declared unconstitutional, null or void by a court of competent jurisdiction, such declaration shall not have any effect on the validity of the remaining sections or parts of this Ordinance.

B. Those terms and phrases used in this Section 201.432 which are also similarly used in MCL 125.3514, as amended, shall have the same meaning as set forth in MCL 125.3514.

Section 5. Effective Date. This Ordinance shall become effective seven (7) days after its publication, or a summary thereof, in a newspaper of general circulation in the Township.

**Note original is signed*

VERGENNES TOWNSHIP

Dated: 5/21/2018_____

By: -Signed copy at Township Hall_____
Timothy Wittenbach, Supervisor

Dated: 5/21/2018_____

By: -Signed copy at Township Hall_____
Heather Hoffman, Clerk

Date Published: 5/30/2018_____

Date Effective: 6/6/2018_____