

**TOWNSHIP OF CHIKAMING
BERRIEN COUNTY, MICHIGAN**

ORDINANCE NO. 143
Adopted: June 13, 2019

**AN ORDINANCE TO SECURE THE PUBLIC HEALTH, SAFETY AND GENERAL
WELFARE OF THE PROPERTY OWNERS, RESIDENTS AND VISITORS OF
CHIKAMING TOWNSHIP BY REGULATING SMALL CELL WIRELESS
FACILITIES**

WHEREAS, the State of Michigan has enacted the Wireless Communication Facilities Deployment Act, Act No. 365 of the Public Acts of 2018 (the “Act”), which requires municipalities to allow small cell wireless facilities to co-locate within public rights-of-ways.

WHEREAS, prior to the Act, many Michigan municipalities had asserted the right to prohibit or impose regulations on small cell wireless facilities pursuant to constitutional and statutory provisions granting municipalities reasonable control of their highways, streets, alleys and other public places.

WHEREAS, the Act significantly curtails municipal regulatory authority with respect to small cell wireless facilities and might be construed to require that any such regulations be codified in a duly enacted Township ordinance.

THE TOWNSHIP OF CHIKAMING, BERRIEN COUNTY, MICHIGAN ORDAINS:

Section 1. Purpose.

The purpose of this article is to regulate and provide a permitting process for the deployment of small wireless communications facilities in conformance with the Small Wireless Communication Facilities Deployment Act, Act No. 365 of the Public Acts of 2018, as amended (the “Act”) and the FCC Declaratory Ruling and Third Report and Order entitled “Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment” (the “Order”). In doing so, the Township wishes to ensure the reasonable and fair control and management of public rights-of-way, support new technology, avoid interference with right-of-way use, and protect the public, health, safety, and welfare.

Section 2. Definitions.

Unless the context clearly indicates otherwise, words and phrases used in this article shall have the same meanings as ascribed to them in the Act.

Section 3. Permit Required.

- A. A permit from the Township is required in order to:
 - 1. Co-locate a small cell wireless facility in a right-of-way in the Township; or
 - 2. Install, modify, or replace a utility pole or wireless support structure in a right-of-way in the Township in which a small cell wireless facility will be located.

- B. The foregoing shall not be construed as requiring a permit for any of the following:
 - 1. The replacement of a small cell wireless facility with a small cell wireless facility that is not larger or heavier, in compliance with applicable codes.
 - 2. Routine maintenance of a small cell wireless facility, utility pole or wireless support structure.
 - 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.

Section 4. Application Process.

- A. To apply for a permit, the applicant shall submit the following to the Township Clerk:
 - 1. A dimensioned and annotated photograph or drawing of each proposed small cell wireless facility, including the utility pole or wireless support structure, enclosure installation, and all other related equipment.
 - 2. A site location map, such as a color satellite or aerial photograph, with appropriate dimensions and annotations showing all proposed facilities.
 - 3. A document listing all proposed locations and indicating for each:
 - a. Whether the location is within a Township right-of-way, within the right-of-way of another government authority, or on private property.
 - b. Whether the proposed small cell wireless facility would involve an existing structure or a new structure.
 - c. A description of any construction or improvements that may be required, including make-ready work, earthwork, grading, slope flattening, vegetation and/or trimming removal, *etc.*
 - 4. Whenever a new utility pole or wireless support structure is proposed, a description of the analytical effort taken to determine that co-location on an existing utility pole or wireless support structure is not feasible.
 - 5. Signed verification that the applicant will defend, indemnify, and hold the Township harmless to the full extent authorized by Section 29 of the Act, MCL 460.1329.
 - 6. Signed verification that the applicant will obtain insurance satisfying the same insurance requirements as specified in the standard unilateral permit form promulgated by the Michigan Public Service Commission pursuant to the Metropolitan Extension Telecommunications Right of Way oversight Act, Act No. 48 of the Public Acts of 2002, as amended.
 - 7. For any proposal to attach a small cell wireless communications facility to a utility pole or wireless support structure not owned by the applicant or the Township, signed verification from the owner that the owner approves of the proposed attachment.

8. A certificate of compliance with FCC rules related to radio frequency emissions from a small cell wireless facility.
9. Proof of other necessary permits, permit applications, or easements to ensure all necessary permissions for the proposed activity are obtained.
10. An application fee in the following amounts:
 - a. \$200 for each small cell wireless facility alone.
 - b. \$300 for each small cell wireless facility and a new utility pole to which it will be attached.
 - c. Every 5 years after the effective date of the Act, the fees required in this subsection will automatically increase by 10% and rounded to the nearest dollar.
11. Any other items or information reasonably required by the Township.

B. After receiving an application, the Clerk shall provide copies to the Township Supervisor and Township Attorney to ensure compliance with the review deadlines provided in the Act.

C. The Township Supervisor and Township Attorney shall review the application to verify that it includes all of the items listed in subsection A above. If any required item has been omitted, the Township shall inform the applicant that the application is incomplete and that the Township's response deadline is tolled until the applicant provides all required information.

D. An applicant may file an application and receive a single permit for the collocation of up to 20 substantially similar small cell wireless installations. The Township may approve or deny 1 or more small cell wireless facilities included in such consolidated application.

E. The Clerk is authorized, but not required, to promulgate a standard application form that must be used when applying for a permit under this section.

Section 5. Review Standards; Issuance and Denial of Permits; Resubmittal.

A. Upon receiving a complete application, the Township Supervisor shall issue the requested permit(s) to the applicant within the deadlines specified in the Act unless the applicant's proposal would do any 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 Township's jurisdiction.
5. Materially interfere with maintenance or full unobstructed use of drainage infrastructure under the jurisdiction of the drain commissioner pursuant to the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630.
6. Involve the installation of new utility poles or wireless support structures in area of the Township designated solely for underground or buried cable and utility facilities if all of the following apply:

- a. The Township has required all cable and utility facilities, along with any attachments, or poles used for street lights, traffic signals, or other attachments necessary for public safety, to be placed underground by a date that is not less than 90 days before the submission of the application.
- b. The Township does not prohibit the replacement of Township poles by a wireless provider in the designated area.

Applicants may request a waiver from the provisions of this subsection 6, which shall be granted if the applicant can show that: (1) placement of a new utility pole or wireless support structure in the undergrounding area is essential to serving wireless customers in that area; and (2) the proposed location is the most preferable to the Township among any feasible alternatives with respect to its impact on aesthetics and traffic safety.

7. For proposals involving new utility poles or wireless support structures, adversely affect the aesthetics of the Township or the public health, safety, or welfare more than a possible alternate location (either within the right-of-way or on property or structures owned or controlled by the Township) within 75 feet of the proposed location. The Township may require the applicant to use the alternate location on reasonable terms and conditions if the alternate location does not impose unreasonable technical limits or significant additional costs.

8. Fail to comply with the following dimensional requirements provided in the Act. As of the effective date of this ordinance, those requirements include:

- a. A utility pole in the ROW installed or modified on or after the effective date of the Act shall not exceed 40 feet above ground level, unless the Township Supervisor waives this requirement.
- b. A small cell wireless facility installed or modified after the effective date of the Act shall not extend more than 5 feet above a utility pole or wireless support structure on which the small cell wireless facility is co-located.
- c. Each antenna is located inside an enclosure of not more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements would fit within an imaginary enclosure of not more than 6 cubic feet.
- d. All other wireless equipment associated with the facility is cumulatively not more than 25 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, vertical cable runs for the connection of power and other services, and concealment measures required by this ordinance.

9. Fail to comply with the following spacing requirements:

- a. No new utility pole or wireless support structure shall be located within 150 feet of an existing facility where collocation is feasible. Feasibility will be determined by the Township based on information provided by the applicant
- b. A new utility pole or wireless support structure shall be located at the midpoint of the average spacing for street lights. (e.g., if the street light spacing along one side of the street is 150 feet on center, the small wireless communications facility shall not be closer than 75 feet to any street light pole).
- c. To the extent reasonably possible, a new utility pole or wireless support structure shall be located on center with the extension of a lot line that runs perpendicular to the street or curb line.

10. For any proposed installation in any residential zoning district, fail to comply with the following design and concealment criteria:

- a. Each small cell wireless antenna shall be located entirely within a shroud or cannister type enclosure.
- b. The diameter of the enclosure at its widest point should not be wider than two times the diameter of the narrowest point on the utility pole or wireless support structure.
- c. Each antenna enclosure shall either be: (1) mounted to the top of the utility pole or wireless support structure and aligned with the centerline of such structure; or (2) mounted to the side of the utility pole or wireless support structure such that the vertical centerline of the antenna enclosure shall be parallel with such structure, with the height of the side mounted antenna being at least 6 feet above ground level at its lowest point. The Township Supervisor may, in his or her discretion, waive or modify the height requirement for side mounted antennas to the extent doing so would not interfere with clear vision for vehicles.
- d. All cables, wires and connectors related to the small cell wireless facility must be fully concealed on the utility pole or wireless support structure and shall match the color of such structure.
- e. There shall be no external cables or wires related to the small cell wireless facility hanging off or otherwise exposed on the utility pole or wireless support structure.
- f. The colors of antenna enclosures and equipment cabinets shall match the color of the utility pole or wireless support structure on which they are located. However, in situations where a small cell wireless facility is mounted on an existing wood utility pole, finishes of conduit shall be zinc, aluminum or stainless steel, or colored to match those metal finishes, and equipment cabinets shall be the color of brushed aluminum.
- g. Ground-mounted equipment shall incorporate concealment elements into the proposed design matching color and materials of the utility pole or wireless support structure, unless other materials or colors are approved by the Township. Concealment may include, but shall not be limited to, landscaping and strategic placement in less obtrusive locations.
- h. The small cell wireless facility permittee shall post its name, location identifying information, and emergency telephone number in an area on the cabinet of the small wireless facility that is visible to the public. Signage required under this section shall not exceed 4 inches by 6 inches, unless otherwise required by law (*e.g.* radio frequency (RF) ground notification signs) or the Township. If no cabinet exists, the signage shall be placed at the base of the pole.
- i. The small cell wireless facility permittee shall remove or paint over unnecessary equipment manufacturer decals. The color shall match or shall be as approved by the Township. Small cell wireless facilities, utility poles, and wireless support structures shall not include advertisements and may only display information required by a federal, state or local agency. The small cell wireless facility permittee shall utilize the smallest and lowest visibility RF warning sticker required by government or electric utility regulations. Placement of the RF sticker shall be as close to the antenna as possible.

11. Fail to comply with other applicable codes.

B. The Township Supervisor shall deny the application if any of the criteria above are not satisfied.

C. If an application is denied, the Township Supervisor's notice of denial shall explain the reasons for the denial and, if applicable, cite the specific provisions of applicable codes on which the denial is based. The applicant may cure the deficiencies identified by the Township and resubmit the application within 30 days after the denial without paying an additional application fee. The Township shall approve or deny the revised application within 30 days. The Township shall limit its review of the revised application to the deficiencies cited in the denial.

Section 6. Permit Conditions.

A. Before commencing installation of a small cell wireless facility, the permittee shall provide the Township with certificates of insurance satisfying the coverage requirements specified in Section 4, above.

B. If deemed appropriate for a particular installation, the Township Supervisor may require a bond to be provided prior to installation for one or more of the following purposes:

1. For the removal of abandoned or improperly maintained small cell wireless facilities, including those that the Township determines should be removed to protect public health, safety, or welfare.
2. To repair the right-of-way.
3. To recoup rates or fees that have not been paid by a wireless provider in more than 12 months, if the wireless provider has received 60-day advance notice from the Township of the noncompliance.

C. A wireless provider is responsible for arranging and paying for the electricity used to operate the small cell wireless facility.

D. The Township may revoke the permit, upon 30 days' notice and an opportunity to cure, if the permitted small cell wireless facilities and any associated utility pole is in such a state that it does not satisfy the approval criteria in Section 5.

E. For each utility pole or wireless support structure in a right-of-way on which a wireless provider has installed a small cell wireless facility, the permittee shall pay a fee in the following amounts:

1. \$20 per year; or
2. \$125 per year, if the utility pole or wireless support structure was erected by or on behalf of the wireless provider on or after the effective date of the Act. This subdivision does not apply to the replacement of a utility pole that was not designed to support small cell wireless facilities.

Every 5 years after the effective date of the Act, the fee amounts shall automatically increase by 10%, rounded to the nearest dollar.

F. A permittee shall complete collocation of the small cell wireless facility within 1 year after the permit is granted. Permits shall be deemed void after 1 year if the installation is not complete.

G. Before discontinuing its use of a small cell wireless facility, utility pole, or wireless support structure, a wireless provider shall notify the Township in writing. The notice shall specify when and how the wireless provider intends to remove the small cell wireless facility, utility pole, or wireless support


structure. When discontinuance occurs, the wireless provider shall return the property to its pre-installation condition. If the wireless provider does not complete the removal within 45 days after the discontinuance of use, the Township may complete the removal and assess the costs of removal against the wireless provider. A permit issued under this article shall be deemed terminated upon removal of the small cell wireless facility.

Section 7. Reservation of Rights.

The Township reserves the right to amend and or terminate this ordinance and all related permits, agreements, policies and procedures undertaken in furtherance thereof if a court of competent jurisdiction rules that any material provision of the Act or the Order fail to comply with applicable federal or Michigan laws, including but not limited to the state or federal constitution.


Section 8. Enactment and Effective Date

This ordinance was enacted on the 13th day of June, 2019, by the Township Board of Chikaming Township, Berrien County, Michigan, and ordered to take effect on the 29th day of June, 2019, the same being more than seven (7) days after its publication.



Paula Dudiak, Clerk
Township of Chikaming

Attest:



David A. Bunte, Supervisor
Township of Chikaming

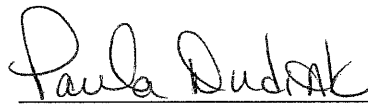
CERTIFICATION

I do hereby certify that the foregoing constitutes a true and complete copy of Ordinance No. 143, duly adopted by the Township Board of the Township of Chikaming, Berrien County, Michigan, at a regular meeting held on the 13th day of June, 2019. I further certify that Dudiak moved the adoption of said ordinance and Marske supported said motion. The names and the members of the Township Board and their vote on the foregoing ordinance were as follows:

MEMBERS	AYES	NAYS	ABSTAIN	ABSENT
Sullivan	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Marske	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Rettig	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Dudiak	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Bunte	<u> X </u>	<u> </u>	<u> </u>	<u> </u>

I further certify that the aforesaid ordinance was recorded in the Ordinance Book for the Township of Chikaming on the 17th day of June, 2019, and such recording has been authenticated by the signatures of the Supervisor and Township Clerk. I further certify that the foregoing ordinance was published in full in the Harbor Country News, a newspaper circulated in the Township of Chikaming, Berrien County, Michigan, on the 21st day of June, 2019.

Dated: June 17, 2019



Paula Dudiak, Clerk
Township of Chikaming