

**Charter Township of Garfield
Grand Traverse County, Michigan
DAS/SMALL CELL WIRELESS FACILITIES ORDINANCE
Ordinance No. 75**

**AN ORDINANCE REGULATING THE USE OF PUBLIC RIGHT-OF-WAY IN
GARFIELD TOWNSHIP FOR DAS/SMALL CELL/WIRELESS NETWORK
FACILITIES**

THE CHARTER TOWNSHIP OF GARFIELD ORDAINS:

Section 1. Definitions. For purposes of this section, the following terms and phrases shall be defined as follows:

“Act” means the Small Wireless Facilities Act, 2018 PA 365, MCL 460.1301, et seq., as the same may be amended from time to time.

“Antenna” means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

“Applicant” means a wireless provider or wireless infrastructure provider that submits an application described in this article.

“Collocate” or “collocation” means to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole. "Collocation" has a corresponding meaning.

“DAS/Small Cell/Wireless Network” shall mean any distributed antennae system or small cell communication or data wireless network.

“DAS/Small Cell/Wireless Facilities” or “DAS/Small Cell/Wireless Network Facilities” means a wireless facility that meets both of the following requirements:

- 1) Each antenna is not more than six cubic feet in volume.
- 2) 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, and vertical cable runs for the connection of power and other services.

“Fee” means an authority one-time per small cell site charge for application processing.

“Rate” means an authority annual charge per site.

“Historic district” means an officially designated historic district.

“Make-ready work” means work necessary to enable an authority pole or utility pole to support collocation, which may include modification or replacement of utility poles or modification of lines.

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

“Ordinance” means this small cell wireless communications facilities deployment ordinance.

“Public right-of-way” or “ROW” means the area on, below, or above a public roadway, highway, street, alley, bridge, sidewalk, or utility easement dedicated for compatible uses. Public right-of-way does not include any of the following:

- 1) A private right-of-way.
- 2) A limited access highway.
- 3) Land owned or controlled by a railroad as defined in section 109 of the Railroad Code of 1993, 1993 PA 354, MCL 462.109.

“Public Utility” means a person, firm, corporation, municipal department or board which is authorized to furnish to the public electricity, natural gas, telephone, cable television, Internet, water, sewage disposal, or storm water disposal services and which has been granted a franchise by the Charter Township of Garfield.

“Utility pole” means a pole or similar structure that is or may be used to support small cell wireless facilities. Utility pole does not include a sign pole less than 15 feet in height above ground.

“Wireless facility” means wireless equipment, including, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. Wireless facility does not include coaxial or fiber-optic cable between utility poles or wireless support structures.

“Wireless provider” is a regulated provider of telecommunications services and a "wireless infrastructure provider" is an installer of wireless equipment at small cell sites and, both terms are interchangeable terms for purposes of this article.

“Wireless services” means any services, provided using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile.

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

“Wireline backhaul facility” means a facility used to transport services by wire or fiber-optic cable from a wireless facility to a network.

“Township” means the Charter Township of Garfield.

Section 2. License Agreement. No person shall install or operate, in whole or in part, DAS/Small Cell/Wireless Facilities or DAS/Small Cell/Wireless Network Facilities in a public right-of-way or other public place without first applying for and receiving a DAS/Small Cell/Wireless license from the Township in a form and subject to such terms and conditions as is acceptable to the Township. Nothing herein shall be interpreted to require the Township to issue such a license and the Township reserves to itself discretion to grant, deny or modify a request for such a license as it determines to be in the best interest of the Township and its citizens.

Section 3. METRO Act Permit. No Person shall install or operate “telecommunications facilities,” as defined in the Metropolitan Extension Telecommunications Rights-Of-Way Oversight Act, Act No. 48 of the Public Acts of 2002, as amended (the “Act”) without first obtaining a permit under the Act from the Township, including any part of a DAS/Small Cell/Wireless System constituting telecommunication facilities.

Section 4. Design Parameters. Where permitted by the Township, the following minimal design parameters shall apply to DAS/Small Cells/Wireless Network Facilities in public rights-of-way:

- A. The required map(s) for proposed DAS/Small Cell/Wireless Facilities shall be legible, to scale, labeled with streets, and contain sufficient detail to clearly identify the proposed DAS/Small Cells/Wireless Network Facilities’ locations and surroundings. Where applicable, the required map or list shall include and identify any requested pole heights(s).
- B. The maximum height of a pole or other supporting structure installed to accommodate a DAS/Small Cells/Wireless Network shall not exceed 40 feet.
- C. Unless otherwise permitted in Section 4.F, DAS/Small Cells/Wireless Facilities shall be located no closer than 18 inches from an existing sidewalk/face of curb or 18 inches from a proposed future sidewalk/face of curb location.
- D. Unless otherwise permitted in Section 4.F., DAS/Small Cells/Wireless Facilities shall be located no closer than 10 feet from any driveway.
- E. In residential areas, DAS/Small Cells/Wireless Facilities shall be in line with a side lot line whenever possible and not in front of a house.
- F. The licensee shall field-stake all proposed locations DAS/Small Cells/Wireless Facilities which shall be subject to the approval of the Township, Grand Traverse County Department of Public Works, Grand Traverse County Road Commission and/or the Michigan Department of Transportation as applicable. All approved DAS/Small Cells/Wireless Facilities’ locations shall be on a per pole/equipment/other basis. Such approvals shall be memorialized by the Township and licensee.
- G. Once precise locations have been approved in accordance with Section 4.F, the licensee shall provide latitude and longitude coordinates for the DAS/Small Cells/Wireless Facilities’ locations to the Township’s Zoning Department.

- H. The licensee shall be responsible to obtain such other permits and approvals as required by law.

Section 5. Provider and Township responsibilities; application information; shot clocks; tolling; deemed appropriate; basis for denial; resubmittal; batch applications; application fees; micro wireless facility exemption; alternate siting decommissioning sites.

- A. This section applies to activities of a wireless provider within the public right-of-way
- B. Except as otherwise provided in Section 5.B(5) below, the provider/applicant shall seek an Township right-of-way access permit to collocate a small cell wireless facility or install, modify, or replace a utility pole on which a small cell wireless facility will be collocated as required of all ROW users. The processing of an application for such a permit is subject to all the following:
- (1) In-kind contributions to the Township are not permitted in lieu of rates and fees described above unless all parties voluntarily agree in furtherance of the interests of both.
 - (2) The provider shall provide all the information and documentation required by the Township to enable the Township to make an informed decision regarding its criteria for authorizing ROW access including the following:
 - (a) A certificate of compliance with FCC rules related to radio frequency emissions from a small cell wireless facility.
 - (b) Proof of notification to every other affected public utility and all necessary permits, permit applications, or easements to ensure all necessary permissions for the proposed activity are obtained.
 - (c) An attestation that the DAS/Small Cell/Wireless Network Facilities will be operational for use by a wireless services provider within one year after the permit issuance date. Failure to abide by this term shall result in termination of any permit issued in reliance on such attestation.
 - (d) An inventory of existing DAS/Small Cell/Wireless Network Facilities and existing coverage area within the Township.
 - (e) Written evidence demonstrating that no existing tower, pole, or other structure within 75 feet of each proposed DAS/Small Cell/Wireless Network pole can reasonably accommodate an antenna without significant costs to the wireless provider.
 - (3) Within 25 days after receiving an initial application, the Township shall notify the applicant in writing whether the application is complete. If incomplete, the notice will delineate all missing documents or information. The notice tolls the running of the time for approving or denying an application under Section 5.B(8).
 - (4) If the applicant makes a supplemental submission in response to the Township's notice of incompleteness, the Township will so notify the applicant in writing within ten days, delineating the previously requested and missing documents or information. The period for approval or denial is tolled in the case of second or subsequent notices under the procedures identified in Section 5.D.

- (5) The Township shall approve or deny the application and notify the applicant in writing within the following period after the application is received:
- (a) Collocation shot clock. For an application for the collocation of DAS/Small Cell/Wireless Network Facilities on a utility pole, 60 days, subject to the following adjustments:
 - i. Add 15 days if an application from another wireless provider was received within one week of the application in question.
 - ii. Add 15 days if, a timely extension is requested.
 - (b) New or replacement 40 foot pole and limited equipment. For an application for a new or replacement utility pole that meets the height requirements of Section 4.B and associated small cell facility, 90 days, subject to the following adjustments:
 - i. Add 15 days if an application from another wireless provider was received within one week of the application in question.
 - ii. Add 15 days if, a timely extension is requested.
 - iii. *Deemed approved.* A completed application is considered to be approved if not timely acted upon by the Township and, if the Township receives a notice not less than seven days before, the applicant may proceed with the work pursuant to this automatic approval.
- (6) Basis for denial. The Township may deny a completed application for a proposed collocation of a small cell wireless facility or installation, modification, or replacement of a utility pole that meets the height requirements in Section 4.B if the proposed activity would do any of the following:
- (a) Materially interfere with the safe operation of traffic control equipment or water/sewer infrastructure.
 - (b) Materially interfere with sight lines or clear zones for transportation or pedestrians.
 - (c) Materially interfere with compliance with the Americans with Disabilities Ordinance of 1990, Public Law 101-336, or similar federal, state, or local standards regarding pedestrian access or movement.
 - (d) Materially interfere with maintenance or full unobstructed use of infrastructure under the jurisdiction of a public utility.
 - (e) With respect to drainage infrastructure under the jurisdiction of a public utility, either of the following:
 - i. Materially interfere with maintenance or full unobstructed use of the drainage infrastructure as it was originally designed.

- ii. 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.
 - (f) Fail to comply with reasonable, nondiscriminatory, written spacing requirements of general applicability adopted by ordinance or otherwise that apply to the location of ground-mounted equipment and new utility poles and that do not prevent a wireless provider from serving any location.
 - (g) Fail to comply with all other applicable codes.
 - (h) Fail to comply with section Sections 5.G or 5.H.
 - (i) Fail to meet reasonable, objective, written stealth or concealment criteria for DAS/Small Cell/Wireless Network Facilities applicable in a historic district or other designated area, as specified in an ordinance or otherwise and nondiscriminatory applied to all other occupants of the ROW, including electric utilities, incumbent or competitive local exchange carriers, fiber providers, cable television operators, and the Township.
 - (7) Reasons for denial; resubmission and 30-day shot clock. If the completed application is denied, the notice 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.
 - (8) Batch applications. 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 one or more DAS/Small Cell/Wireless Network Facilities included in such consolidated application.
 - (9) Approval of an application authorizes the wireless provider to undertake the installation, collocation, and maintenance of such facilities.
 - (10) The Township will not institute a moratorium on filing, receiving, or processing applications or issuing permits for the collocation of DAS/Small Cell/Wireless Network Facilities or the installation, modification, or replacement of utility poles on which DAS/Small Cell/Wireless Network Facilities will be collocated.
 - (11) The Township and an applicant may extend a period under this subsection by mutual agreement.
- C. Application fees and rates for a permit under Section 5.B shall not exceed the following:
- (1) \$200.00 fee for each small cell wireless facility alone.
 - (2) \$300.00 fee for each small cell wireless facility and a new utility pole to which it will be attached.

- (3) \$125 rate per year for each utility pole or support structure erected by or on behalf of a wireless provider after March 12, 2019.
 - (4) \$30 rate per year for each small cell wireless facility placed on a township-owned pole.
 - (5) The fee and rate schedule set forth above shall automatically increase by ten percent on March 12, 2024 and by ten percent every five years thereafter (rounded to the nearest dollar) without further amendment of this article. Notwithstanding the foregoing, if the Act or any other law allows the Township to charge more, then it may do so to the fullest extent permitted.
- D. Bonding. As a condition of a permit described in this act, the wireless provider shall provide a \$1,000 bond per site for the purpose of providing for the removal of abandoned or improperly maintained DAS/Small Cell/Wireless facilities, including those that the Township determines shall be removed to protect public health, safety, or welfare, to repair the ROW as provided in this Ordinance, and to recoup rates or fees that have not been paid by a wireless provider in more than twelve (12) months if the provider has received 60-day advance notice from the Township of the noncompliance.
- E. The Township may revoke a permit, upon 30 days' notice and an opportunity to cure, if the permitted DAS/Small Cell/Wireless Network Facilities and any associated utility pole fail to meet the requirements of this article.
- F. Micro wireless facility exempt. The Township shall not require a permit or any other approval or require fees or rates for ordinance compliant replacement, maintenance or operation of a small cell wireless facility or ordinance compliant installation, replacement, maintenance or operation of a micro wireless facility that is suspended on cables strung between utility poles or wireless support structures in compliance with applicable codes.
- G. Alternate siting. Upon receipt of an application to place a new utility pole, the Township may propose and the applicant shall use an alternate location within the ROW or on property or structures owned or controlled by the Township or other public utility provider within 75 feet of the applicant's proposed location if reasonably achievable.
- H. Decommissioning sites. A wireless provider shall notify the Township in writing before discontinuing use of a small cell wireless facility, utility pole, or wireless support structure. The notice shall specify when and how the wireless provider intends to remove the small cell wireless facility, utility pole, or wireless support structure. 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 under this section for a small cell wireless facility expires upon removal of the small cell wireless facility.
- I. A provider shall obtain a permit for any work that will affect traffic patterns or obstruct vehicular or pedestrian traffic in the ROW.
- J. Labeling Requirement. A DAS/Small Cell/Wireless Facility for which a permit is issued shall be labeled with the name of the wireless provider, emergency contact telephone number, and information that identifies the DAS/Small Cell/Wireless Facility and its location.

K. Notices. Wireless provider shall provide advance written notice of at least 14 days to the Township and the owners of property along the ROW as follows:

- (1) For installations:
 - (a) The dates when installations will be starting and concluding;
 - (b) What work will be involved in the installation; and
 - (c) Whether traffic or pedestrian travel will be impacted.
- (2) For activation of wireless facilities, the date when activation of the wireless facility will occur.
- (3) For decommissioning sites:
 - (a) The dates when decommissioning will occur;
 - (b) What facilities and/or other equipment or poles will be removed;
 - (c) What work will be involved in the decommissioning;
 - (d) Whether traffic or pedestrian travel will be impacted; and
 - (e) What restoration work is required and the timeframe for doing so.

Section 6. Compliance with Applicable Law. The Township, in reviewing and authorizing a permit under the Act and/or a license referred to in this section, and the licensee, in the establishment and operation of any DAS/Small Cell/Wireless Network Facilities, shall comply with all applicable federal and state laws.

Section 7. Effective Date. This Ordinance will become effective seven (7) days following its publication in a newspaper in general circulation within the Township as provided by law.

At a regular meeting held on November 10, 2020, a motion was offered by Molly Agostinelli, with support from Dan Walters, to approve the foregoing Ordinance No. 75. The motion carried as follows in a roll call vote.

Upon roll call vote, the following voted:

YES: Agostinelli, Walters, Duell, Blood Law, McManus, Korn

NO: None

ABSENT: Denise Schmuckal

ORDINANCE NO. 75 ADOPTED.




Chuck Korn, Supervisor




Lanie McManus, Clerk

CERTIFICATE

I, Lanie McManus, the Clerk of Charter Township of Garfield, do hereby certify that the above is a true and correct copy of Ordinance No. 75 which was adopted by the Township Board of the Charter Township of Garfield on the 10th day of November, 2020. Garfield Township Ordinance No. 75 shall take effect upon the expiration of seven (7) days following publication.



Dated:



Lanie McManus, Clerk

Introduced: October 27, 2020
Adopted: November 10, 2020
Published: November 15, 2020
Effective: November 22, 2020