

ORDINANCE NO. _____

ZONING TEXT AMENDMENT ORDINANCE

AN ORDINANCE TO AMEND THE TALLMADGE CHARTER TOWNSHIP ZONING ORDINANCE BY ADDING SECTION 3.38 – SMALL CELL WIRELESS FACILITIES, AMENDING SECTION 18.04(B) – SITE PLAN CONTENT, AMENDING SECTION 18.04(h) – SITE PLAN CONTENT, AND TO PROVIDE FOR THE EFFECTIVE DATE OF THIS ORDINANCE.

THE CHARTER TOWNSHIP OF TALLMADGE, COUNTY OF OTTAWA, AND STATE OF MICHIGAN ORDAINS:

Section 1. Small Cell Wireless Facilities. Section 3.38 shall be added to the Tallmadge Charter Township Zoning Ordinance to state in its entirety as follows.

SECTION 3.38 – SMALL CELL WIRELESS FACILITIES

(a) The purpose of this ordinance is to regulate the use of land for small wireless communications facilities in conformance with the small wireless communication facilities deployment act, Act No. 365 of the Public Acts of 2018 (the “Act”). In doing so, Tallmadge Charter Township (the “authority”) 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.

(b) Unless otherwise defined by this Section, words shall have the meanings as set forth in the Act.

(c) The activities set forth in section 15(5) of the Act are exempt from zoning review being:

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.

(d) A wireless provider may, as a permitted use not subject to zoning review or approval, except that an application for a permitted use is still subject to

approval by the authority pursuant to section 15 of the Act, collocate small cell wireless facilities and construct, maintain, modify, operate, or replace utility poles in, along, across, upon, and under the ROW. Such structures and facilities shall be constructed and maintained so as not to obstruct or hinder the usual travel or public safety on the ROW or obstruct the legal use of the authority's ROW or uses of the ROW by other utilities and communications service providers. Both of the following apply:

1. A utility pole in the ROW installed or modified on or after the effective date of this act shall not exceed 50 feet above ground level, unless a taller height is agreed to by the authority and is subject to the special land use process.
2. A small cell wireless facility in the ROW installed or modified shall not extend more than 5 feet above a utility pole or wireless support structure on which the small cell wireless facility is collocated.

(e) Per the Act, the authority requires zoning approval for certain activities that take place within or outside the public ROW that are not a permitted use under section 13(5) of the Act and Section 3.38(d) which shall hereby be a special land use:

1. The modification of existing or installation of new small cell wireless facilities.
2. The modification of existing or installation of new wireless support structures used for such small cell wireless facilities.

(f) Applications shall be submitted as required by Chapter 19 of this Ordinance.

(g) Along with applicable zoning criteria, the authority shall not deny an application unless all of the following apply:

1. The denial is supported by substantial evidence contained in a written record that is publicly released contemporaneously.
2. There is a reasonable basis for the denial.
3. The denial would not discriminate against the applicant with respect to the placement of the facilities of other wireless providers.

The review is also subject to the following:

4. An applicant's business decision on the type and location of small cell wireless facilities, wireless support structures, or technology to be used is presumed to be reasonable. This presumption does

not apply with respect to the height of wireless facilities or wireless support structures. The authority will consider the height of such structures in its zoning review, but shall not discriminate between the applicant and other communications service providers.

5. The authority shall not evaluate or require an applicant to submit information about an applicant's business decisions with respect to any of the following:
 - A. The need for a wireless support structure or small cell wireless facilities.
 - B. The applicant's service, customer demand for the service, or the quality of service.
6. Any requirements regarding the appearance of facilities, including those relating to materials used or arranging, screening, or landscaping, shall be reasonable.

Special Use criteria shall be used in the review of the applications under this section. The Planning Commission may consider spacing, setback, and fall zones that are substantially similar to those of other commercial structures. The Planning Commission may also consider aesthetics as it relates to the area of the proposal. The authority shall publish reasonable aesthetics criteria within a reasonable time.

(h) The application fees under this Section shall be as follows:

1. \$1,000.00 for a new wireless support structure or modification of an existing wireless support structure.
2. \$500.00 for a new small cell wireless facility or modification of an existing small cell wireless facility.

(i) Within 1 year after a zoning approval is granted, a wireless provider shall commence construction of the approved structure or facilities that are to be operated for use by a wireless services provider unless the authority and the applicant agree to extend this period or the delay is caused by a lack of commercial power or communications facilities at the site. If the wireless provider fails to commence the construction of the approved structure or facilities within the time required pursuant to section 15(2)(l) of the Act, the zoning approval is void, and the wireless provider may reapply for a zoning approval.

(j) The authority may revoke a zoning approval, upon 30 days' notice and an opportunity to cure, if the permitted small cell wireless facilities and any associated wireless support structure fail to meet the requirements of the approval, applicable codes, or applicable zoning requirements.

(k) As it pertains to small cell wireless facilities, this Section shall control over general telecommunications provisions found in Section 3.35 “Wireless Communication Facilities.

(l) If either the Act or the Order does not become effective or becomes ineffective or is modified due to court action or otherwise, this ordinance shall conform to the court order or amendment or in the absence of the Act or Order the authority may implement reasonable procedures as the authority deems appropriate to process applications.”

Section 2. Site Plan Content. Section 18.04(b) of the Tallmadge Charter Township Zoning Ordinance shall be amended to state in its entirety as follows.

SECTION 18.04(b)

Name, address, and phone number of the site owners(s), developer and designer, including professional seal of designer, architect, and civil engineer.

Section 3. Site Plan Content. Section 18.04(h) of the Tallmadge Charter Township Zoning Ordinance shall be amended to state in its entirety as follows.

SECTION 18.04(h)

Direction of storm water drainage and indication as to how storm water runoff will be handled. Site plans for the storm water system and the storm water calculations shall be sealed by a civil engineer.

Section 4. Effective Date. This amendment to the Tallmadge Charter Township Zoning Ordinance was approved and adopted by the Township Board of Tallmadge Charter Township, Ottawa County, Michigan on _____, 2019, after a public hearing as required pursuant to Michigan Act 110 of 2006, as amended; after introduction and a first reading on _____, 2019, and after posting and publication following such first reading as required by Michigan Act 359 of 1947, as amended. This Ordinance shall be effective on _____, 2019, which date is the eighth day after publication of a Notice of Adoption and Posting of the Zoning Amendment Ordinance in the _____, as required by Section 401 of Act 110, as amended. However, this effective date shall be extended as necessary to comply with the requirements of Section 402 of Act 110, as amended.

Section 5. If either the Act or the Order does not become effective or becomes ineffective or is modified due to court action or otherwise, this ordinance shall either conform to the court order or amendment or the authority may implement reasonable procedures as the authority deems appropriate to process applications.

James Van Ess,
Township Supervisor

Lenore Cook,
Township Clerk