

ZONING AMENDMENTS:

There are three changes in 2018 PA 365 and 366 which affect zoning. Two are included in 2018 PA 366, which amends the State ZEA to include the provisions of the Small Cell Act (PA 365) into the ZEA. This change occurs at MCL 125.3205(1)(c). PA 366 also amends MCL 125.3514 by adding sec (10) to the 2012 Amendment which addresses Macro towers only.

It may be appropriate therefor to include those changes in your zoning ordinance if those sections of the ZEA are presently included in your zoning ordinance.

2018 PA 366 Amends the ZEA twice as follows (IN CAPS)

1. ZEA at MCL 125.3205(1)(c) as amended

“(1) A zoning ordinance is subject to all of the following:

(c) THE SMALL WIRELESS COMMUNICATIONS FACILITIES DEPLOYMENT ACT.”

2. ZEA at MCL 125.3514(10) as amended

“(10) THIS SECTION DOES NOT APPLY TO AN ACTIVITY OR USE THAT IS REGULATED BY THE SMALL CELL WIRELESS COMMUNICATIONS FACILITIES DEPLOYMENT ACT.”

3. The 3rd amendment affecting zoning is sec 17 of PA 365, included below. It is the section of the small cell act that addresses zoning. It could be included in the small cell ordinance since it does refer to other sections of the small cell ordinance. It could therefore also be included or at least referenced in your zoning ordinance.

Sec. 17. Zoning: In the ROW for Non Permitted Uses and, Outside the ROW

(1) The activities set forth in section 15(5) are exempt from zoning review. Subsections (2) to (4) below, apply to zoning reviews for the following activities that are subject to zoning review and approval, that are not a permitted use under section 13(5), and that take place within **or outside the public right-of-way**:

- (a) The modification of existing or installation of new small cell wireless facilities.
- (b) The modification of existing or installation of new wireless support structures used for such small cell wireless facilities.

(2) The processing of an application for a zoning approval is subject to all of the following requirements:

- (a) Within **30 days** after receiving an application under this section, an authority shall notify the applicant in writing whether the application is complete. If the application is incomplete, the notice shall clearly and specifically delineate all missing documents or information. The **notice tolls the running of the 30-day period**.

- (b) The running of the time period tolled under subdivision (a) resumes when the applicant makes a supplemental submission in response to the authority’s notice of incompleteness. If the applicant makes a supplemental submission in response to the authority’s notice of incompleteness, the authority will so notify the applicant in writing within 10 days, delineating the previously requested and missing

documents or information. The time period may be tolled in the case of second or subsequent notices under the procedures identified in subdivision (a).

(c) **Modification of Support Structure or Collocation or Installation of Wireless Facilities Shot Clock 90 Days – New Support Structure Shot Clock 150 Days; Modification by Agreement; Deemed Approved:** The authority shall approve or deny the application and notify the applicant in writing within **90 days** after an application for a modification of a wireless support structure or installation of a small cell wireless facility is received or **150 days** after an application for a new wireless support structure is received.

i. The time period for approval may be extended by mutual agreement between the applicant and authority.

ii. If the authority fails to comply with this subdivision, the application is considered to be approved subject to the condition that the applicant provide the authority not less than 15 days' advance written notice that the applicant will be proceeding with the work pursuant to this automatic approval.

(d) The authority may [**shall**] deny an application if all of the following apply:

(i) The denial is supported by substantial evidence contained in a written record that is publicly released contemporaneously.

(ii) There is a reasonable basis for the denial.

(iii) The denial would not discriminate against the applicant with respect to the placement of the facilities of other wireless providers.

(3) An authority's review of an application for a zoning approval is subject to all of the following requirements:

(a) **Applicant Presumed Reasonable:** 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. An authority may consider the height of such structures in its zoning review, but shall not discriminate between the applicant and other communications service providers.

(b) An authority shall not evaluate or require an applicant to submit information about an applicant's business decisions with respect to any of the following:

(i) The **need** for a wireless support structure or small cell wireless facilities.

(ii) The applicant's **service, customer demand** for the service, or the quality of service.

(c) Any requirements regarding the appearance of facilities, including those relating to materials used or arranging, screening, or landscaping, shall be reasonable.

(d) Any spacing, setback, or fall zone requirement shall be substantially similar to a spacing, setback, or fall zone requirement imposed on other types of commercial structures of a similar height.

(4) **Application Fees:** An application fee for a zoning approval shall not exceed the following:

(a) \$1,000.00 for a new wireless support structure or modification of an existing wireless support structure.

(b) \$500.00 for a new small cell wireless facility or modification of an existing small cell wireless facility.

(5) All zoning approval is void if the provider fails to commence construction within 1 year of the grant of same. The wireless provider may reapply for a zoning approval.

(5a) A wireless provider may voluntarily request that a zoning approval be terminated.

(6) The authority shall not institute a moratorium on either of the following:

(a) Filing, receiving, or processing applications for zoning approval.

(b) Issuing approvals for installations that are not a permitted use.

(7) The authority may **[shall]** 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.