

**CITY COMMISSION
CITY OF WALKER
KENT COUNTY, MICHIGAN**

ORDINANCE NO. 22 - 666

At a regular meeting of the City Commission for the City of Walker held at City Hall on March 28, 2022, and commencing at 7:00 p.m., the following Ordinance was offered for adoption by Commissioner Gilbert, and was seconded by Commissioner Grooters:

AN ORDINANCE TO AMEND CHAPTER 94, ARTICLE V, TO ADD A NEW SECTION 94-117, TO BE ENTITLED "SMALL CELL WIRELESS FACILITIES;" TO AMEND CHAPTER 94, ARTICLE XII, TO ADD A NEW SECTION 94-360, TO BE ENTITLED "SMALL CELL WIRELESS FACILITIES;" AND TO AMEND CHAPTER 94, ARTICLE IX, TO ADD A NEW SECTION 94-254, SUBSECTION (c), TO BE ENTITLED "NON-EXEMPT SMALL CELL WIRELESS FACILITIES," OF THE CODE OF ORDINANCES OF THE CITY OF WALKER, MICHIGAN.

THE CITY OF WALKER ORDAINS:

Section 1. Amendment of Chapter 94, Article V. That the Code of Ordinances of the City of Walker, Michigan, Chapter 94 (Zoning Ordinance), Article V, entitled "Application of District Regulations" is amended to add a new Section 94-117 to read as follows:

Sec. 94-117. Small Cell Wireless Facilities.

- A. The co-location of a small cell wireless facility and associated support structure within a public right of way ("ROW") is not subject to zoning reviews or approvals to the extent exempt from such reviews under Act No. 365 of 2018, as amended ("Act 365"). In such case, a small cell wireless facility or support structure may not exceed the limitations set forth in Section 13(5) of Act 365 without city planning commission special exception use permit review and approval. Regardless of zoning review status, the co-location of a small cell wireless facility or installation of an associated support structure within the ROW shall require that the wireless provider apply for and obtain a DPW permit from the city consistent with Chapter 79. The modification or installation of small cell wireless facilities and/or wireless support structures which are not exempt from zoning reviews and approvals shall only be permitted in accordance with the provisions of this Chapter 94 and Act 365 and upon application for and receipt from the city of a special exception use permit consistent with this chapter.

- B. A small cell wireless facility proposed in the ROW that exceeds the limitations set forth in Section 13(5) of Act 365 is subject to special exception use standards of section 94-254(c).
- C. A new small cell wireless facility located outside of the ROW is subject to the special exception use standards of section 94-250 and 94-254(c) of the Zoning Ordinance.
- D. Small cell wireless facilities, support structures and wireless communications equipment shall be permitted and processed consistent with the following:

Type of Facility per District	All Residential Zoning Districts, including the AA District	All Commercial and Office Zoning Districts	The SDD and P-SP Zoning Districts	All Industrial Zoning Districts
Exempt wireless communication equipment (attached to a lawful existing wireless support structure) in accordance with Act 365 and Act 110 of 2006, as amended (“Act 110”)	P	P	P	P
Exempt small cell wireless facility or support structure in accordance with Act 365	P	P	P	P
Small cell wireless facility (outside of the ROW) in accordance with Act 365	SEU	SEU	SEU	SEU
Non-exempt small cell wireless facility or support structure in the ROW (exceeds height, width, etc. standards) in accordance with Act 365	SEU	SEU	SEU	SEU
Non-exempt wireless communication equipment or support structure (exceeds height, width, etc. standards) in accordance with Act 110	SEU	SEU	SEU	SEU

P: Land and/or buildings may be used for the purposes listed by right.

SEU: Land and/or buildings may be permitted by obtaining special exception use approval when all applicable standards as cited in Articles VII and IX and elsewhere are met.

Section 2. Amendment of Chapter 94, Article XII. That the Code of Ordinances of the City of Walker, Michigan, Chapter 94 (Zoning Ordinance), Article XII, entitled “Supplementary District Regulations” is hereby amended to add a new Section 94-360 to read as follows:

Sec. 94-360. Small Cell Wireless Facilities.

1. *Definitions.* Consistent with Act No. 365 of the Public Acts of Michigan of 2018, as

amended (“Act 365”), for purposes of this section the following words and phrases shall be defined as follows. In the event of a conflict between the definitions herein and Act 365, the provisions of Act 365 shall control.

- a. “Co-locate” 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. Collocation does not include make-ready work or the installation of a new utility pole or new wireless support structure.
- b. “Applicable Codes” means that term as defined in Act 365 and any additional ordinances or resolutions adopted by the City.
- c. “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.
- d. “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:
 - i. A private right-of-way;
 - ii. A limited access highway;
 - iii. Land owned or controlled by a railroad as defined in section 109 of the railroad code of 1993, PA 354 of 1993, MCL 462.109;
 - iv. Railroad infrastructure.
- e. “Small Cell Wireless Facilities” means a Wireless Facility that meets both of the following requirements:
 - i. 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 its exposed elements shall not exceed 6 cubic feet in volume.
 - ii. 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.
- f. “Wireless Facility” means equipment as a fixed location that enables the provision of wireless services between user equipment and a communications network, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. Wireless facility includes a small cell wireless facility. Wireless facility does not include any of the following:

- i. The structure or improvements on, under, or within which the equipment is co-located.
 - ii. A wireline backhaul facility.
 - iii. Coaxial or fiber-optic cable between utility poles or wireless support structures or that otherwise is not immediately adjacent to or directly associated with a particular antenna.
- g. “Wireless Infrastructure Provider” means any person, including a person authorized to provide telecommunications services in this state but not including a wireless services provider, that builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures and who, when filing an application with an authority under the Act, provides written authorization to perform the work on behalf of a wireless services provider.
 - h. “Wireless Services Provider” means a person that provides wireless services.
 - i. “Wireless Provider” means a wireless infrastructure provider or a wireless services provider. Wireless provider does not include an investor-owned utility whose rates are regulated by the MPSC.
 - j. “Wireless Support Structure” means a freestanding structure designed to support or capable of supporting small cell wireless facilities. Without limitation, wireless support structure does not include a utility pole.

2. *Applicability.*

- a. Permitted use not requiring a zoning permit.
 - i. A Wireless Provider is not required to obtain a zoning permit, zoning review or approval, or pay zoning fees or rates for the following activities:
 - (A) 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.
 - (B) Routine maintenance of a small cell wireless facility, utility pole, or wireless support structure.
 - (C) 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.
 - ii. Except that an application for a permitted use shall remain subject to the

application and permit approval process contained in Chapter 79 of the Walker Code, the collocation by a Wireless Provider of Small Cell Wireless Facilities, and the construction, maintenance, modification, operation, or replacement of wireless support structures or utility poles in, along, across, upon, and under a Public ROW is a permitted use allowed in all zoning districts and is not subject to zoning review or approval only if consistent with the following:

(A) A wireless support structure or utility pole in the ROW installed or modified on or after March 12, 2019 shall not exceed 40 feet above ground level.

(B) A small cell wireless facility in the ROW installed or modified after March 12, 2019 shall not extend more than 5 feet above an authority pole, utility pole or wireless support structure on which the small cell wireless facility is co-located.

b. Special exception uses requiring Planning Commission approval. Except as provided above, the following activities that take place within or outside of the Public ROW are special exception uses in any district and are subject to zoning review and approval:

i. The modification of existing or installation of new small cell wireless facilities.

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

Section 3. Amendment of Chapter 94, Article IX, Sec. 94-254. That Chapter 94 (Zoning Ordinance), Article IX of the Code of Ordinances of the City of Walker, Michigan, is hereby amended to add a new Subsection (c) to Section 94-254, entitled “Non-Exempt Small Cell Wireless Facilities,” which subsection shall read as follows:

(c) *Non-Exempt Small Cell Wireless Facilities.*

The modification of existing or installation of new small cell wireless facilities or new utility poles or wireless support structures (jointly, "support structures") used for such small cell wireless facilities that are not exempt from zoning review in accordance with Public Act 365 of 2018, as amended (“Act 365”) shall be subject to special exception use review and approval in accordance with the following procedures and standards:

(1) New installations of support structures designed to support small cell wireless facilities outside of the right-of-way shall be installed on a legal lot. This provision shall not apply to existing support structures, including existing buildings.

- (2) Wireless Support Structures designed to support Small Cell Wireless Facilities outside of the Public ROW must be set back from all lot lines (and in the case of a park site, from areas of unrestricted public use) at a distance that is equal to the actual fall zone for the Wireless Support Structure proposed or 50 percent of the height of the support structure, whichever is greater. The fall zone shall be certified by a State of Michigan licensed and registered professional engineer.
- (3) The owner and operator of a Wireless Support Structure for new Small Cell Wireless Facilities outside Public ROWs shall agree to permit other communication service providers, including local governmental agencies, to use the Wireless Support Structure, upon commercially reasonable terms and conditions. As used herein, "commercially reasonable terms and conditions" shall mean a rental or license rate consistent with the market for metropolitan Grand Rapids and without mandating the use of another entity's towers. This obligation shall not require the owner or operator to permit access where doing so will interfere with the owner or operator's ability to provide or receive signals or with contractual obligations to unrelated third parties.
- (4) In residential districts, the height of support structures outside of Public ROWs shall not exceed that minimally required to meet federal, state, and local performance requirements. Subject to FAA standards, any support structure in a residential district shall not be erected at a height to require lighting.
- (5) The applicant shall include in its application for special exception uses information on the screening or landscaping of the site. The Wireless Support Structure may be required to be disguised or stealthed with natural or manmade features such as landscape features, clock towers, steeples, flagpoles etc. in residential or historic districts. Landscape screening and similar environment-blending measures may be required by the planning commission to help screen the ancillary buildings from the surrounding uses, with special consideration for residential uses.
- (6) The planning commission shall base its review of the special exception use request on the standards contained in Section 94-250, the standards in this section and Act 365; provided, however that a denial shall meet the following criteria:
 - a. The denial is supported by substantial evidence contained in a written record that is publicly released simultaneously or concurrently.
 - b. There is a reasonable basis for the denial.
 - c. The denial would not discriminate against the applicant with respect to the placement of the facilities of other wireless providers.
- (7) In addition to the provisions set forth herein, the planning commission in its review of an application is subject to all of the following:

- a. An applicant's business decision on the type and location of Small Cell Wireless Facilities, support structures, or technology to be used is presumed to be reasonable. This presumption does not apply with respect to the height of Small Cell Wireless Facilities or Wireless Support Structures.
- b. An applicant shall not be required to submit information about its 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.

(8) The fees for zoning review of a special exception use and associated site plan shall be as set by resolution of the City Commission.

(9) Within one year after a zoning approval is granted, a Wireless Provider shall commence construction of the approved Wireless Support Structure that are to be operational for use by a Wireless Services Provider, unless the City 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 Wireless Support Structure within the time required, the zoning approval is void.

Section 4. Amendment of Chapter 94, Article XVIII, Sec. 94-523. That Chapter 94 (Zoning Ordinance), Article XVIII of the Code of Ordinances of the City of Walker, Michigan, is hereby amended to add a new Subsection (a)(6) to Section 94-523, entitled “Uses permitted with and without obtaining a zoning permit,” which subsection shall read as follows:

(6) Designated activities associated with small cell wireless facilities, utility poles, wireless support structures and micro wireless facilities as provided for in section 94-360 2.a.i.

Section 5. Conflict.

A. Nothing in this Ordinance will be construed in such a manner to conflict with existing City ordinances except as otherwise stated herein.

B. Nothing in this Ordinance will be construed in such a manner to conflict with the laws of the state of Michigan.

Section 6. Repealer.

All ordinances and resolutions or parts of ordinances and resolutions in conflict with this Ordinance are repealed, but only to the extent of any such conflict.

Section 7. Savings Clause.

The provisions of this Ordinance are severable. If any part of this Ordinance is declared void or inoperable for any reason by a court of competent jurisdiction, such declaration does not void any or render inoperable other part or portion of this Ordinance.

Section 8. Effective Date.

This Ordinance is effective 7 days after its publication in the manner required by law.

First Reading: March 14, 2022

Second Reading/Adopted: March 28, 2022

Published (Date/Newspaper): April 4, 2022

Effective: (7 days after Publication Date): April 11, 2022