

ARTICLE XIX

GENERAL INTREPRETATIONS AND EXCEPTIONS

SECTION 1900. AREA, HEIGHT AND USE EXCEPTIONS:

The regulations in this Ordinance shall be subject to the following interpretation and exceptions:

1. Essential Services:
Essential services shall be permitted as authorized and regulated by law and other Ordinances of the City of Auburn Hills, it being the intention hereof to exempt such essential services from the application of this Ordinance.
2. Voting Place:
The provisions of this Ordinance shall not be construed as to interfere with the temporary use of any property as a voting place in connection with a City or other public election.
3. Height Limit:
The height limitations contained in the Schedule of Regulations do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.
4. Lots Adjoining Alleys:
In calculating the area of a lot that adjoins a dedicated alley or lane, for the purpose of applying lot area requirements of this Ordinance, one-half (1/2) the width of such alley abutting the lot shall be considered as part of such lot.
5. Yard Regulations:
When yard regulations cannot reasonably be complied with, as in the case of a planned development in the multiple family district, or where application cannot be determined on lots existing and of record at the time this Ordinance became effective, and on lots of peculiar shape, topography, or due to architectural or site arrangement, such regulations may be modified or determined by the Board of Appeals by the granting of a variance.
6. Multiple Dwelling Side Yard:
For the purpose of side yard regulations, a two (2) family or a multiple dwelling shall be considered as one (1) building occupying one (1) lot.
7. Terrace:
An open, unenclosed paved terrace may project into a required front yard for a distance not exceeding ten (10) feet, but this shall not be interpreted to include or permit fixed canopies or parking.
8. Projections into Yards:
Attached architectural features may extend into a required side yard not more than two (2) inches for each one (1) foot of width of such side yard, and may extend or project into a required front yard or rear yard not more than three (3) feet. Architectural features shall not include those details which are normally demountable.

SECTION 1901. ACCESS THROUGH YARDS:

For the purpose of this Ordinance, access drives may be placed in the required front or side yards so as to provide access to rear yards and/or accessory or attached structures. These drives shall not be considered as structural violations in front and side yards. Further, any walk, terrace, or other pavement servicing the like function, and not in excess of nine (9) inches above grade upon which placed, shall for the purpose of this Ordinance not be considered to be a structure, and shall be permitted in any required yards.

SECTION 1902. CORNER AND OTHER DRIVER VISIBILITY CLEARANCE:

No fence, wall, shrubbery, sign, or other obstruction to vision above a height of thirty (30) inches from the established street grades shall be permitted within the triangular area formed at the intersection of any street right-of-way lines by a straight line drawn between said right-of-way lines at a distance along each line of twenty-five (25) feet from their point of intersection.

SECTION 1903. BASEMENT RESIDENCY:

Basement residency is expressly prohibited in the City of Auburn Hills.

SECTION 1904. FENCES, HEDGES, BERMS, AND WALLS IN RESIDENTIAL DISTRICTS:

1. **Front Yard.** Opaque fences, hedges, berms, or walls not more than two and one-half (2½) feet in height and non-opaque fences not more than four (4) feet in height may be constructed within a required front yard, e.g., along the property line.
2. **Rear and Side Yard.** Fences, hedges, berms, or walls of not more than six (6) feet in height, either opaque or non-opaque, may be constructed in residential districts within a required rear or side yard.
3. **Visual Clearance Triangle.** No fence, hedge, berm, or wall may be permitted within the triangle area located at a corner or intersection that is required for proper visibility from a motorized vehicle or by a pedestrian as defined in Section 1902.
4. **Height Measurement.** Height shall be determined by measuring the vertical distance from the average surrounding grade, not including a berm, to the highest point of a fence, hedge, berm, or wall. A berm may be used in combination with a fence, hedge, or wall provided the highest point of the combination does not exceed the height permitted in this Section.

(Amended: 12-18-06 per Ordinance No. 794)

SECTION 1905. BUILDING MECHANICAL EQUIPMENT:

For all uses, except residential uses, heating, ventilation and air conditioning mechanical equipment located on the exterior of the building(s) shall be screened from adjacent public or private streets and adjacent properties. If the equipment is mounted on the building, it shall be screened at least the height of the equipment in a manner that is architecturally compatible with the building design. If the equipment is ground-mounted, it shall be screened in a similar manner and/or with evergreen plant materials. The method of screening shall be approved by the City Council or official approving the site plan.

Other types of mechanical equipment located on the exterior of the building such as dust collectors, hoppers, stacks, and similar equipment, that cannot reasonably be screened, shall be designed, located and/or painted to minimize any adverse visual impact.

SECTION 1906. ESSENTIAL SERVICES AND QUASI-PUBLIC FACILITIES:

For essential services and quasi-public services such as substations, communication towers, monopoles and the like, where strict adherence to the requirements of Section 1815, Site Plan Review may pose a hardship or practical difficulty to development or continued services, the Building Department Manager may waive paved parking and drives, loading and unloading areas, with the inclusion of screening landscaping, and the Building Department Manager may waive a full site plan and require only a schematic site plan. The Planning Commission shall be notified of any such occurrence.

In addition, wireless communication facilities may be allowed on City property, except for all City park property, exclusive of the Civic Center park property, in any zoning district in accordance with the following standards and requirements:

- A. The facilities shall not be demonstrably injurious to the adjacent area or otherwise detrimental to the public health, safety and welfare.
- B. The applicant shall demonstrate the need for the proposed facility to be located as proposed based upon the presence of one or more of the following factors:
 1. Proximity to an interstate or major thoroughfare.
 2. Areas of population concentration.
 3. Concentration of commercial, industrial and/or other business center.
 4. Areas where signal interference has occurred due to tall buildings, masses of trees, or other obstructions.
 5. Other specifically identified reasons creating facility needs.
 6. Topography.
- C. The facility shall be located and designed to be harmonious with the surrounding area. .

- D. Wireless communication facilities shall be of a design such as a monopole, steeple, bell tower, or other form which is compatible with the existing character of the proposed site and general area as approved by the City.
- E. All wireless communication facilities shall comply with applicable federal and state standards relative to electromagnetic fields.
- F. The applicant shall demonstrate a justification for the proposed height of the structures and an evaluation of alternative designs which might result in lower heights.
- G. The following additional standards shall be met:
1. The maximum height of the support structure and antenna shall be the minimum height demonstrated to be necessary for reasonable communication by the applicant (and by other entities to co-locate on the structure).
 2. The minimum setback of the proposed support structure and accessory structures shall be in accordance with the required setbacks for main or principal buildings as provided in the Schedule of Regulations for the zoning district in which the support structure is located.
 3. There shall be unobstructed access to the support structure, which may be provided through an easement. This access is necessary for maintenance of the facility and will have a width and location determined by such factors as: the location of adjacent thoroughfares, and traffic and circulation within the site; utilities needed to service the tower or pole and any attendant facilities; the location of buildings and parking facilities; proximity to residential districts and minimizing disturbance to the natural landscape; and the type of equipment which will need to access the site.
 4. The division of property for the purpose of locating a wireless communication facility is prohibited unless all zoning requirements and conditions are met.
 5. The Planning Commission shall, with respect to the color of the support structure and all accessory buildings, review and recommend so as to minimize distraction, reduce visibility, maximize aesthetic appearance, and ensure compatibility with surrounding structures. It shall be the responsibility of the applicants to maintain the wireless communication facility in a neat and orderly condition.
 6. The support system shall be constructed in accordance with all applicable building codes and shall include the submission of a soils report from a geotechnical engineer licensed in the State of Michigan. This soils report shall include soil borings and statements indicating the suitability of soil conditions for the proposed use. The requirements of the Federal Aviation Administration, Federal Communications Commission and Michigan Aeronautics Commission shall be noted.
 7. A maintenance plan, and any applicable maintenance agreement, shall be presented and approved as part of the site plan for the proposed facility.
 8. The proposal shall be reviewed in conformity with the co-location requirements below.
 9. Landscaping shall be provided in accordance with Section 1808.
 10. The application shall include a Certification by a State of Michigan Registered Engineer of the applicant with regard to the manner in which the proposed structure will fall, which certification will be utilized, along with other criteria such as applicable regulations for the district in question, in determining the appropriate setback to be required for the structure and other facilities.
 11. The application shall include a description of security to be posted at the time of receiving a Building Permit for the facility to ensure removal of the facility when it has been abandoned or is no longer needed, as provided in Paragraph H below. In this regard, the security shall, at the election of the applicant, be in the form of: (1) cash, (2) surety bond, (3) letter of credit, or (4) an agreement in a form approved by the attorney for the City and recordable at the Office of the Register of Deeds, establishing a promise of the applicant and owner of the property to timely remove the facility as required under this section of the ordinance, with the further provision that the applicant and owner shall be responsible for the payment of any costs and attorney fees incurred by the City in securing removal.
- H. Co-location shall be deemed to be "feasible" for purposes of this section where all of the following are met:

1. The provider entity being considered for co-location will undertake to pay market rent or other market compensation for co-location.
 2. The site on which co-location is being considered, including reasonable modification or replacement of a facility, is able to provide structural support.
 3. The co-location being considered is technologically reasonable, e.g. the co-location will not result in unreasonable interference, given appropriate physical and other adjustment in relation to the structure, antennas, and the like.
 4. The height of the structure necessary for co-location will not be increased beyond a point deemed to be permissible by the City.
- I. Requirements for co-location shall be met as follows:
1. A Special Land Use Permit for the construction and use of a new wireless communication facility shall not be granted unless and until the applicant demonstrates that a feasible co-location is not available for the coverage area and capacity needs.
 2. All new and modified wireless communication facilities shall be designed and constructed so as to accommodate co-location.
 3. If a party who owns or otherwise controls a facility shall fail or refuse to alter a structure so as to accommodate a proposed and otherwise feasible co-location, such facility shall thereupon and thereafter be deemed to be a nonconforming structure and use, and shall not be altered, expanded or extended in any respect.
 4. If a party who owns or otherwise controls a facility shall fail or refuse to permit a feasible co-location, and this requires the construction and/or use of a new facility, the party failing or refusing to permit a feasible co-location shall be deemed to be in direct violation and contradiction of the policy, intent and purpose of the City and, consequently, such party shall take responsibility for the violation, and shall be prohibited from receiving approval for a new wireless communication support structure within the City for a period of five (5) years from the date of the failure or refusal to permit the co-location, unless such party shall seek and obtain a variance from the Zoning Board of Appeals upon a showing that a new facility is clearly necessary in order to operate the respective communication system, considering all feasible alternatives.
- J. Removal requirements shall be as follows:
1. A condition of every approval of a wireless communication facility shall be adequate provision for removal of all or part of the facility by users and owners when the facility has not been used for 180 days or more. For purposes of this section, the removal of antennas or other equipment from the facility, or the cessation of operations (transmission and/or reception of radio signals) shall be considered as the beginning of a period of nonuse.
 2. The situations in which removal of a facility is required, as set forth in Paragraph 1 above, may be applied and limited to portions of a facility.
 3. When a facility has not been used for one hundred eighty (180) days, the property owner or persons who had used the facility shall immediately notify the City Building Department, apply or secure the application for any required demolition or removal permits, and immediately proceed with and complete the demolition/removal, restoring the condition which existed prior to the construction of the facility.
 4. If the required removal of a facility or a portion thereof has not been lawfully completed within sixty (60) days of the applicable deadline, after at least thirty (30) days written notice, the City may remove or secure the removal of the facility or required portions thereof, with its actual cost and reasonable administrative charge to be drawn or collected from the security posted at the time application was made for establishing the facility.

SECTION 1907. DUAL USE OF PROPERTY:

Except as otherwise specifically provided herein, no parcel of property may be used for more than one use at a time. An example, but not as a limitation, would be a parcel of property with a residential nonconforming use in a business or industrial district shall not also be used for a business or industrial use.

SECTION 1908. POSTING OF PROPERTY FOR DEVELOPMENT:

It shall be the responsibility of the petitioner to conspicuously post, with a sign as established by resolution of the City Council, any lot or parcel proposed for development with a notice at least fifteen (15) days prior to the scheduled public meeting as outlined in the application for development.

(Amended: 6-16-08 per Ordinance No. 08-808)