

ARTICLE XXIX. REGULATION OF CELLULAR ANTENNA TOWERS

Section 29.01. Purpose.

The purpose of these regulations are to provide for the safest and most efficient integration of cellular antenna towers for cellular telecommunications services or personal communications services within the community; to provide for such facilities in coordination with the recommendations of the comprehensive plan; and to allow for such facilities with the intention of furthering the public health, safety, and general welfare.

Section 29.02. Definitions.

- A. *Alternative Cellular Antenna Tower* - means man-made trees, clock towers, bell towers, steeples, light poles and similar alternative-design mounting structures that accommodate, camouflage, minimize or conceal the presence of cellular antennas or cellular antenna towers and that are constructed primarily for the purpose of accommodating cellular antennas or cellular antenna towers or are reconstructed for the purpose of accommodating cellular antennas or cellular antenna towers. This does not include existing structures erected for another primary purpose, but which subsequently have cellular antennas attached to or located within them, without any reconstruction of the original structure. For the provisions of these regulations, an alternative cellular antenna tower is considered a cellular antenna tower.
- B. *Antennas or Related Equipment* - means transmitting, receiving, or other equipment used to support cellular telecommunications service or personal communications service. This definition does not include towers.
- C. *Cellular Antenna, Rooftop* - Any exterior transmitting or receiving device mounted on, or attached to, the rooftop of a building through gravity mounts or other surface attachments used for wireless or other telecommunication signals; integrated into the natural rooftop profile of a building so that it resembles a permissible rooftop structure, such as a ventilator, cooling equipment, solar equipment, water tank, chimney or parapet.
- D. *Cellular Antenna Tower* - means a tower constructed for, or an existing facility that has been adapted for, the location of transmission or related equipment to be used in the provision of cellular telecommunications services or personal communications services.
- E. *Cellular Antenna Tower Height* - The distance from the anchored base of the tower, whether on the top of another building or at grade, to the highest point of the antenna structure.
- F. *Cellular Equipment Cabinet* - A cabinet designed to house radio equipment, similar in size to a traffic signal cabinet, not designed for human occupancy. Any maintenance to radio equipment can only be done from outside the cabinet, as opposed to a larger sized equipment shelter that can be totally accessed by service personnel.
- G. *Cellular Telecommunications Service*- means a retail telecommunications service that uses radio signals transmitted through cell sites and mobile switching stations.

- H. *Cellular Telephone Transmitting Facility, Temporary* - Any system of wires, poles, rods, reflecting disks, or similar devices used for the transmission or reception of electromagnetic waves, not meeting the definition of a “structure” as defined by this Zoning Ordinance. Temporary facilities shall be subject to issuance of a locational permit from the Division of Planning prior to being located on a property.
- I. *Co-location* - means locating two (2) or more transmission antennas or related equipment on the same cellular antenna tower.
- J. *Environmentally Sensitive Areas*- means significant wildlife habitat and migration corridors, unique vegetation and critical plant communities, and ridge lines.
- K. *Geologic Hazards*- means unstable or potentially unstable slopes, undermining, faulting, landslides, rockfalls, flood, wildfire, or similar naturally occurring dangerous features or soil conditions or natural features unfavorable to development
- L. *Guyed Cellular Antenna Tower* - means a type of wireless transmission tower that is supported by thin guy wires.
- M. *Lattice Cellular Antenna Tower* - means a self- supporting tower with multiple legs and cross bracing of structural steel.
- N. *Monopole Cellular Antenna Tower* - means a slender self-supporting tower on which wireless antenna can be placed.
- O. *Personal Communication Service* - has the meaning as defined in 47 U.S.C. sec. 332(c).
- P. *Search Ring* - The necessary search area within which a site for a cellular antenna tower should, pursuant to radio frequency requirements, be located.
- Q. *Uniform Application* - means an application to construct a cellular antenna tower submitted to the planning commission in conformity with KRS 100.985 through KRS 100.987.
- R. *Utility* - has the meaning as defined in KRS 278.010(3).

Section 29.03. Where Permitted.

- A. To the greatest extent feasible, applicants are encouraged to consider properties owned by the local government for the location of cellular towers. Whenever possible, cellular antenna towers, whether temporary or permanent, shall be sited at locations that minimize their adverse effect on residential uses in the immediate area. Only when no other adequate site is available shall a cellular antenna tower be permitted in a residential zone, unless located on a property not used or intended for residential purposes. In accordance with the procedures established by this Article, cellular antenna towers may be permitted in any zone when approved by the Planning Commission, with the following exceptions:

1. No cellular antenna tower shall be constructed on land that is environmentally sensitive or a geologic hazard area as delineated in the Henderson City-County Comprehensive plan and the definitions herein, unless the tower has received approval or necessary permits from the appropriate state or federal governmental regulatory agency charged with permitting activities in these areas.

2. No cellular antenna tower shall be located along a Scenic Byway, as designated by the State of Kentucky, so as to have a negative impact on the scenic qualities of the roadway and the views from the roadway. When approved by the Planning Commission, any wireless communication facility proposed to be located along a state and/or federally designated Scenic Byway, or within a Scenic View Corridor, shall be located on an existing tower structure or utility pole, or shall be designed as an alternative tower, as described in Section 29.02. Any tower or antenna that is not an alternative tower design shall be designed to blend into the surrounding environment through the use of color and/or other camouflaging architectural treatments, except in instances where color is dictated by federal or state authorities, such as the Federal Aviation Administration. In addition, the base of the tower and any supporting equipment shall be located either three hundred (300) feet from the right-of-way, or beyond the view shed of the designated Scenic Byway; whichever is greater.

Section 29.04 Uniform Application Requirements.

Cellular antenna towers for cellular telecommunications services or personal communications services may be allowed in any zone after a Planning Commission review in accordance with the following procedures to ascertain agreement with the adopted comprehensive plan and the regulations contained within the zoning ordinance.

- A. *Applicability.*** Every utility, or company that is engaged in the business of providing the required infrastructure to a utility, that proposes to construct a cellular antenna tower shall submit a completed uniform application to the Planning Commission. Where the Planning Commission finds that circumstances or conditions relating to the application of an alternative cellular antenna tower are such that one or more of the requirements of the uniform application listed below are not necessary or desirable for the protection of surrounding property or the public health, safety, and general welfare, and that such special conditions or circumstances make one or more said requirements unreasonable, the Planning Commission, or its duly authorized representative, may modify or waive such requirement of the uniform application, either permanently or on a temporary basis. Any such modification or waiver shall be requested by the applicant, and the applicant shall submit a written justification for each requested modification or waiver. The Planning Commission shall not regulate the placement of antennas or related equipment on an existing structure.

B. *Uniform Application Requirements.* Applications for the construction of cellular antenna towers for cellular telecommunications services or personal communications services shall include the following:

1. The full name and address of the applicant.
2. The applicant's articles of incorporation, if applicable.
3. A geotechnical investigation report signed and sealed by a professional engineer registered in Kentucky that includes boring logs and foundation design recommendations.
4. A written report, prepared by a professional engineer or land surveyor registered in Kentucky, of findings as to the proximity of the proposed site to flood hazard areas.
5. The lease or sale agreement for the property on which the tower is proposed to be located, except that, if the agreement has been filed in abbreviated form with the County Clerk, an applicant may file a copy of the agreement as recorded by the County Clerk and, if applicable, the portion of the agreement that specifies, in the case of abandonment, a method that the utility will follow in dismantling and removing the proposed cellular antenna tower including a timetable for removal.
6. The identity and qualifications of each person directly responsible for the design and construction of the proposed tower.
7. A site development plan or survey, signed and sealed by a professional engineer registered in Kentucky, that shows the proposed location of the tower and all easements and existing structures within five hundred (500) feet of the proposed site on the property on which the tower will be located, and all easements and existing structures within two hundred (200) feet of the access drive, including the intersection with the public street system.
8. A vertical profile sketch of the tower, signed and sealed by a professional engineer registered in Kentucky, indicating the height of the tower and the placement of all antennas.
9. The tower and foundation design plans and a description of the standard according to which the tower was designed, signed, and sealed by a professional engineer registered in Kentucky.
10. A map, drawn to a scale no less than one (1) inch equals two hundred (200) feet, that identifies every structure and every owner of real estate within five hundred (500) feet of the proposed tower.
11. A statement that every person who, according to the records of the property valuation administrator, owns property within five hundred (500) feet of the proposed

tower or property contiguous to the site upon which the tower is proposed to be constructed, has been:

(a) Notified by certified mail, return receipt requested, of the proposed construction which notice shall include a map of the location of the proposed construction.

(b) Given the telephone number and address of the local planning commission; and

(c) Informed of his or her right to participate in the planning commission's proceedings on the application.

12. A list of the property owners who received the notice, together with copies of the certified letters sent to the listed property owners.

13. A copy of the notice, that the Chief Executive Officer of the affected local government and the legislative body (i.e., City Manager, Board of Commissioners of the City of Henderson; County Judge-Executive, Henderson County Fiscal Court; Mayor of Corydon) have been notified, in writing, of the proposed construction.

14. A statement that the Henderson City-County Airport has been notified, in writing, of the proposed construction and a copy of the notification.

15. A statement that the applicant has considered the likely effects of the installation on nearby land uses and values and has concluded that there is no more suitable location reasonably available from which adequate service to the area can be provided, and that there is no reasonably available opportunity to locate its antennas and related facilities on an existing structure, including documentation of attempts to locate its antennas and related facilities on an existing structure, if any, with supporting radio frequency analysis, where applicable, and a statement indicating that the applicant attempted to locate its antennas and related facilities on a tower designed to host multiple wireless service providers' facilities or on an existing structure, such as a telecommunications tower or other suitable structure capable of supporting the applicant's antennas and related facilities.

16. A map of the area in which the tower is proposed to be located, that is drawn to scale, and that clearly depicts the necessary search area within which an antenna tower should, pursuant to radio frequency requirements, be located.

17. A grid map that shows the location of towers or other structures (including buildings) located within the search ring for the subject facility and which are capable of its support within an area that includes:

a. All of the planning unit's jurisdiction (Henderson County, Kentucky); and:

b. A one-half (1/2) mile area outside of the boundaries of the planning unit's jurisdiction, if that area contains either existing or proposed construction sites for cellular antenna towers.

c. *Confidentiality of Application.* All information contained in the application and any updates, except for any map or other information that specifically identifies the proposed location of the cellular antenna tower then being reviewed, shall be deemed confidential and proprietary within the meaning of KRS 61.878. The Planning Commission shall deny any public request for the inspection of this information, whether submitted under Kentucky's Open Records Act or otherwise, except when ordered to release the information by a court of competent jurisdiction. Any person violating this subsection shall be guilty of official misconduct in the second degree as provided under KRS 522.030. The confidentiality of the applications and any updates of the application can be waived by the written authorization of the applicant.

- C. *Application Fee.* An applicant for the construction of cellular antenna towers for cellular telecommunications services or personal communications services shall pay an application fee in the amount set by the Planning Commission upon submission of a Uniform Application.
- D. *Processing of Application.* Applications for the construction of cellular antenna towers for cellular telecommunications services or personal communications services shall be processed as follows:
1. At least one (1) public hearing on the proposal shall be held, at which hearing interested parties and citizens shall have the opportunity to be heard. Notice of the time and place of such hearing shall be published at least once, in the highest circulation newspaper in the City-County, provided that one (1) publication occurs not less than seven (7) calendar days nor more than twenty-one (21) calendar days before the occurrence of such hearing. A public notice sign will also be placed on the property by the Planning Commission.
 2. Notice of the hearing shall be given at least fourteen (14) days in advance of the hearing, to the owner of every parcel of property within five hundred (500) feet of the proposed tower or property contiguous to the site upon which the tower is proposed to be constructed. Records maintained by the Property Valuation Administrator may be relied upon conclusively to determine the identity and address of said owner. In the event a property is in condominium or cooperative forms of ownership, then the person notified by mail shall be the president or chairperson of the owner group that administers property commonly owned by the condominium or cooperative owners. A joint notice may be mailed to two or more co-owners of an adjoining property who are listed in the Property Valuation Administrator's records as having the same address.
 3. Upon holding the hearing, the Planning Commission shall, within sixty (60) days commencing from the date that the application is received by the Planning Commission, or within a date specified in a written agreement between the Planning Commission and the applicant, make its final decision to approve or disapprove the Uniform Application. If the Planning Commission fails to issue a final decision within sixty (60) days, and if there is no written agreement between the Planning Commission and the utility to a specific date for the Planning Commission to issue a decision, it shall be presumed that the Planning Commission has approved the utility's Uniform Application.

Section 29.05 Design Standards.

Applicant shall provide information demonstrating compliance with the requirements contained herein. Potential sites that should be considered (in order from most-preferred to least-preferred) include street right-of-way, existing utility towers, industrial zones, commercial zones, and government buildings. Where the Planning Commission finds that circumstances or conditions relating to the particular application are such that one or more of the requirements listed below are not necessary or desirable for the protection of surrounding property or the public health, safety, and general welfare, and that such special conditions or circumstances make one or more said requirements unreasonable, the Planning Commission, or its duly authorized representative, may modify or waive such requirement, either permanently or on a temporary basis. Any such modification or waiver shall be requested by the applicant, and the applicant shall submit a written justification for each requested modification or waiver.

- A. *Monopole Cellular Antenna Towers* - Shall be permitted in any zone. Lattice and guyed cellular antenna towers shall be permitted in any zone except for residential zones.
- B. *Lattice and Guyed Cellular Antenna Towers Distance from Residential Buildings* - Constructed in an agricultural zone shall be located a minimum distance of not less than 250 feet from all existing residential structures. Distance shall be measured from the base of the tower to the nearest wall of the residential structure.
- C. *Setbacks* - For all structures constructed in connection with guyed or lattice cellular antenna towers, except fences and/or guy wires, shall be a minimum distance from the property line or lease line equal to at least one-half (1/2) the height of the tower, but not less than fifty (50) feet. All structures constructed in connection with monopole or alternative cellular antenna tower shall comply with the applicable setback requirements established for other structures within the applicable zoning district. Alternative cellular antenna towers that are to be located as part of a utility service facility (e.g. power pole or telephone pole) shall comply with setback requirements applicable to such utility service facilities, if any.
- D. *Height* - A cellular antenna tower, or alternative antenna tower structure, may be constructed to a maximum height of two hundred (200) feet regardless of the maximum height requirements listed in the specific zoning district. This also applies to any tower taller than fifteen (15) feet constructed on the top of another building or structure, with the height being the overall height of building/structure and tower together, measured from the grade to the highest point. The Planning Commission may allow antennas greater than two hundred (200) feet in height upon review of the applicant's justification that the additional height meets the criteria identified herein Section 29.05.
- E. *Construction* - the cellular antenna tower shall be constructed in compliance with the current ANSI/EIA/TIA 222-F standards and other applicable state standards.
- F. *Illumination* - Cellular antenna towers shall not be illuminated, except in accordance with other state or federal regulations.

- G. *Site Unstaffed* - Personnel may periodically visit the site for maintenance, equipment modification, or repairs. To accommodate such visits, ingress/egress shall be only from approved access points.
- H. *Fencing* - Woven wire or chain link (eighty (80) percent open) or solid fences made from wood or other materials (less than fifty (50) percent open) shall be used to enclose the site. Such fences shall not be more than eight (8) feet in height, and may be located within the front, side, or rear yard. The use of barbed wire or sharp pointed fences shall be prohibited in or along any boundary adjoining residential or MHP zones.
- I. *Screening* - Screening shall be provided by evergreen trees, with a minimum height of six (6) feet, planted in a staggered pattern at a maximum distance of fifteen (15) feet on center. The screening shall be placed in an area between the property line, or lease line, and a ten (10) foot setback.
- J. *Access Drives* - Surfacing of all driveways and off-street parking areas shall comply with the requirements of the applicable local zoning ordinance; the Planning Commission may allow gravel access drives in cases where it is determined there is a hardship or other mitigating circumstances.
- K. *Signs* - There shall be no signs permitted, except those displaying emergency information, owner contact information, warning or safety instructions, or signs that are required by a federal, state, or local agency. Such signs shall not exceed five (5) square feet in area.
- L. *Number of Service Providers* - All new cellular antenna towers shall be designed and constructed to accommodate a minimum of three (3) service providers.
- M. *Lease Agreements* - All option and site lease agreements shall not prohibit the possibility of co-location, and in the case of abandonment, shall include a method that the utility will follow in dismantling and removing the proposed cellular antenna tower including a timetable for removal.
- N. *Approval of Federal Aviation Administration and the Kentucky Airport Zoning Commission* - Required; or documentation where approval is not required shall be submitted prior to the issuance of a building permit for the construction of the cellular antenna tower.
- O. *Mitigating Design Standards for Cellular Antenna Towers in Residential Zones* - When no adequate alternate site for a cellular antenna tower is available, a site in a residential zone may be permitted. The Planning Commission shall consider the following mitigating design standards and may reduce or modify these standards in cases where it can be demonstrated that there is extreme hardship:
 - 1. The Planning Commission shall have the power to impose additional landscaping requirements, which may include plantings, trees, and fencing designed to complement the character of the landscaping in the surrounding residential area.

2. Design and materials to be used in the accessory building or buildings may be required to be submitted to the Planning Commission for review and approval.
3. Asphalt or other hard-surface paving shall be provided for driveways and parking.
4. A 1:1 height-to-yard ratio shall be required. A reduction in the height-to-yard ratio may be permitted if no other location for the tower can be found.
5. Monopole or alternative tower design shall be used in any residential zone; and paint colors, such as light gray or light blue, shall be used to minimize any negative visual impact the tower or antenna may have on adjoining properties. The tower must be maintained on a regular basis by the owner of the facility in order to ensure that it continues to have a minimal visual impact on the surrounding area.

Section 29.06. Planning Commission Action.

The Planning Commission shall have the authority to hear and decide requests by an applicant for a cellular antenna tower. The Planning Commission may approve, disapprove, or take no action on the request for a cellular antenna tower. The burden shall be on the applicant to establish the following by a clear preponderance of the evidence:

1. The application meets all requirements of the Zoning Ordinance;
2. The application is in agreement with the Comprehensive Plan;
3. Reasons why the site is appropriate for a cellular antenna tower and why it will not have an adverse effect on the health, safety and welfare of the adjoining area;
4. Reasons why the tower will not alter the essential character of the surrounding area;
5. Reasons why the applicant has been unsuccessful in its attempts to co-locate on towers designed to host multiple wireless service providers' facilities or other existing structures, such as a telecommunication tower or another suitable structure capable of supporting the applicant's facilities.
6. The Planning Commission shall not regulate the placement of a cellular antenna tower on the basis of the environmental effects of radio frequency emissions to the extent that the proposed facility complies with the regulations of the Federal Communications Commission concerning radio frequency emissions.

Section 29.07. Amendments.

Any amendments to plans, except for minor adjustments as determined by the Planning Commission, or its duly authorized representative, shall be made in accordance with the procedure required by Section 29.04, subject to the same limitations and requirements as those under which such plans were originally approved.