

Section 9.12: Cell Tower Regulations

A. Definitions Specific To This Section:

- (1) Cellular Antenna: Any structure or device used to collect or radiate electromagnetic waves, including both directional antennas, such as panels, microwave dishes and satellite dishes, and omni-directional antennas, such as whips, at frequencies on the electromagnetic spectrum as the FCC from time to time may designate, used for cellular telecommunications services and/or personal communications services, but not including such structures or devices when used for the broadcast of television of AM or FM radio stations or for citizens' band or amateur radio use. Examples of cellular telecommunications or personal communications services include, but are not limited to, cellular telephone, paging, public safety, data transmission. Specialized Mobile Radio, Enhanced Specialized Mobile Radio, and other commercial private radio services.
- (2) Cellular Antenna Tower. Any structure that is designed and constructed primarily for the purpose of supporting one or more cellular antennas. This includes guyed towers, lattice towers, monopoles, alternative cellular antenna tower structures and towers taller than 15 feet constructed on the top of another building, along with any separate building on the lot used to house any supporting electronic equipment.
- (3) Co-Location. Locating one or more cellular antennas for more than one provider on a single cellular antenna tower or alternative cellular antenna tower structure on a single lot.
- (4) Height, Antenna Tower. 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 structure, even if the highest point is the top of an antenna.
- (5) Telecommunications Facility. The lot, tract, or parcel of land that contains the telecommunications antenna, its support structure, any accessory buildings, and parking, and may include other uses associated with and ancillary to telecommunications transmission.

B. Antenna Towers For Cellular Telecommunications Services Or Personal Communications Services (Cellular Antenna Towers Or Alternative Tower Structures):

An antenna tower for cellular telecommunications services or personal communications services may be allowed in any district after receiving Planning Commission review in accordance with the Planning Commission's filing procedures to ascertain its agreement with the Comprehensive Plan and the zoning district regulations and after being granted a Certificate of Public Convenience and Necessity by the Public Service Commission. **Co-location of service facilities is preferred. Co-location objectives may be satisfied by configuration of new facilities for multiple carriers or by co-location on existing facilities.** Any request for review of a proposal to construct such an antenna tower or to re-configure, enlarge or re-construct an existing antenna tower, shall be made only in accordance with this Section B.

However, if the property is subject to an existing district development plan pursuant to Section 9.11 (A) of these zoning regulations or to an existing Conditional Use Permit, the property owner shall obtain approval of the appropriate amendment or modification request. Such request shall be filed simultaneously with the antenna tower for cellular telecommunications services or personal communications services request filed pursuant to this section. Review of the district development plan or Conditional Use Permit plan shall be limited to a determination of the impact of the antenna tower for cellular telecommunications services or personal communications services construction on the requirements of the district development plan or Conditional Use Permit. The property owner shall be responsible for making alternative provision for any alteration of the district development plan or Conditional Use Permit or shall obtain a variance or waiver of the specific plan or Permit requirement affected by the location of the tower on the site. In the event the Public Service Commission requires that the tower be located on the site differently than shown on the district development plan or Conditional Use Permit plan, the property owner shall submit an amended request and plan showing the new location

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for review of the effects the new location may have on the features of the district development plan or Conditional Use Permit site and use. Such amended request and plan shall be submitted no later than ten (10) business days after the date of the final order of the Public Service Commission approving the tower construction.

C. General Provisions:

- (1) Notice of Filing: (1) Notice of any request filed under this section shall be sent by the applicant by first class mail to the owner of every parcel of property within 500 feet of the tower, to the owner of every parcel of property adjoining at any point the property from which the applicant proposes to create the tower site, and to the owner of every parcel of property directly across the street from said property. Notice shall also be sent by the applicant to the Mayor of the City in which the tower site is proposed, if the tower is proposed to be located within the corporate limits of a City or to the County Judge/Executive, if the tower is proposed to be located in the unincorporated area of Nelson County.

Such notices shall include the Planning Commission Docket Number under which the request will be reviewed, the address and telephone number of the Planning Commission's office, and a statement that the recipient has the right to submit testimony to the Planning Commission, either in writing or by appearance at any Committee or Commission meeting scheduled for review of the request. Such notices by first class mail shall be mailed no sooner than the date of acceptance of the application by the Planning Commission and no later than two calendar days subsequent to the application. An attorney shall certify within five (5) days of mailing that the required notices have been sent.

- (2) Notification: The applicant shall furnish to the Planning Commission with the attorney certification a copy of the notices required by 1., a., (1) above and the names and addresses of the owners of property and the governmental officials to whom the required notices will be sent. Records maintained by the Property Valuation Administrator may be relied upon to determine the identity and address of said owners. If the property is in a cooperative form of ownership or has co-owners, notice may be in the manner described in KRS 100.214 (2) for such ownership. The applicant shall obtain the name and address of the applicable governmental officials from the Planning Commission through its authorized representative.

(3) Posting Property:

Notice of the filing of the request shall be posted conspicuously in a visible location on the proposed site of the telecommunications facility and in a visible location on the nearest public road at the same time that notice by first class mail is sent. The applicant shall certify that the postings have been made. The notices shall remain until the Planning Commission issues its final decision or 60 days has passed since acceptance of the request by the Planning Commission, whichever occurs first. The posting shall be as follows:

- (a) Each sign shall be at least two (2) feet by four (4) feet in size;
- (b) Each sign shall state: "(Name of applicant) proposes to construct a telecommunications tower and/or facility on this site. If you have questions, please contact (name and address of applicant). Information on the Planning Commission's review of this proposal may be obtained by calling the Planning Commission at (502) 348-1805. Please refer to the request name or number in all inquires."
- (c) In both posted notices, the words "proposes to construct a telecommunications tower and/or facility" shall be printed in letters at least (4) inches in height, and the words "Joint Nelson County Planning Commission at (502) 348-1805" shall be painted in letters at least one (1) inch

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in height. Both signs shall be constructed of durable, weatherproof material.

- (d) Any such signs may also include any notices required to be made by regulations of the Kentucky Public Service Commission including 807 KAR 5:063 (as now in effect, or as amended).

(4) Documentation:

Any request filed under this Section B. for review of a proposal to construct an antenna tower shall include the following:

- (a) An indication that the information that the applicant is required by 807 KAR 5:063, (as now in effect, or as amended) to submit to the Commonwealth of Kentucky Public Service Commission is available to be sent promptly to the Planning Commission upon its written request;
- (b) A copy of the applicant's FCC license, or, if the applicant is not an FCC license holder, a copy of at least one letter of commitment from an FCC license holder to locate at least one antenna on the applicant's tower.
- (c) Unless co-locating, certification, supported by evidence, that co-location of the proposed telecommunications facility with an existing approved tower or facility cannot be reasonably accommodated or that a new facility configured for multiple carriers. The applicant's certification shall include a listing of all existing towers and facilities, a description of each existing site, and a discussion of the ability or inability to reasonably co-locate on each existing site according to the following table:
- For a tower proposed to be 200 or more feet tall, all towers and facilities within a one (1.0) mile radius of the proposed site;
 - For a tower proposed to be less than 200 feet tall, all towers and facilities within a one (1.0) mile radius of the proposed site.
 - Notwithstanding the foregoing, for any size tower proposed to be located in the following zones: the B-2 Central Business District; R-1B, R-1C, R-1D and R-1T Single Family Residential Districts; and all Multi-Family Residential Districts; towers within a one half (0.5) mile radius of the proposed site.

Reasons for not co-locating on a site would include, but not be limited to, the following:

1. No existing towers or facilities are located within the above radius of the site;
 2. Existing towers or facilities are not of sufficient height to meet the applicant's engineering requirements;
 3. Existing towers or facilities do not have sufficient structural strength to support applicant's proposed antenna and related equipment;
 4. Applicant's planned equipment would cause radio frequency interference with other existing or planned equipment of the tower or facility, or the existing or planned equipment of the tower or facility would cause interference with the applicant's planned equipment which cannot be reasonably prevented;
 5. Unwillingness of the owner of the existing tower or facility to entertain a reasonable co-location proposal;
 6. Existing towers or facilities do not provide an acceptable location for requisite coverage for the applicant's communications network.
- (d) Unless co-locating, certification, supported by evidence, that there is no other site which is materially better from a land use perspective within the immediate area for the location of the telecommunications facility. The applicant's certification shall include a listing of potential sites,

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a description of each potential site, and a discussion of the ability or inability of the site to host a telecommunications facility according to the following table:

- For a tower proposed to be 200 or more feet tall, all potential sites within a one (1.0) mile radius of the proposed site;
 - For a tower proposed to be less than 200 feet tall, all potential sites within a one (1.0) mile radius of the proposed site.
 - Notwithstanding the foregoing, for any size tower proposed to be located in the following zones: the B-2 Central Business District; R-1B, R-1C, R-1D and R-1T Single Family Residential Districts; and all Multi-Family Residential Districts; all potential sites within a one half (0.5) mile radius of the proposed site.
- (e) Potential sites that should be considered (in order from most preferred to least preferred) include: highway rights-of-way except designated parkways, existing utility towers, industrial districts, commercial districts and commercial centers, office towers, and residential towers. Reasons for not locating on a potential site would include, but not be limited to, the following:
1. Unwillingness of the site owner to entertain a telecommunications facility;
 2. Economically impractical;
 3. Topographic limitations of the site;
 4. Adjacent impediments that would obstruct adequate cellular telecommunications and/or personal communications transmission;
 5. Physical site constraints that would preclude the construction of a telecommunications facility;
 6. Technical limitations of the telecommunications system;
 7. Existing potential sites do not provide an acceptable location for requisite coverage for the applicant's communications network;
- (f) At the time the applicant files an application for review under these regulations, a listing of the present locations of the applicant's telecommunications towers and/or facilities in Nelson County, to include co-location sites.
- (g) A pictorial representation, such as a silhouette drawing, photograph, etc. of the proposed telecommunications facility from a point 150 to 600 feet from the facility for at least two of the four compass directions, (to the extent practicable considering vegetation, buildings, or other obstructions) showing the relationship of the tower and/or facilities against the massing of surrounding structures, trees, and other intervening visual masses. Notwithstanding the foregoing, the applicant shall not be required to purchase temporary easement or license rights to allow it to make drawings or photographs from particular vantage points. A reasonable pictorial representation of the site may be substituted for the aforementioned specified compass direction representations if it is not practical to comply with the express terms of this paragraph and the Planning Commission is notified in writing of such practical difficulty.
- (h) A justification statement demonstrating that the proposed construction is in agreement with the Comprehensive Plan.
- (i) All new telecommunications facilities shall be configured to accommodate at least two telecommunications providers.

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(5) Design Standards

At the time of filing of a request under this Section B., the applicant shall provide information demonstrating compliance with the requirements listed below. Where the Planning Commission finds that the conditions or circumstances 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, or welfare, either at the time of application or in the foreseeable future, and that such special conditions and circumstances make one or more said requirements unduly burdensome, the Planning Commission 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) The site shall be landscaped in accordance with the requirements of the Zoning Regulations [if any] for utility substations. If the site is an easement, the boundaries of the tract on which the easement is located shall be treated as the property boundaries.
- (b) Any monopole, guyed, lattice, or similar type cellular antenna tower and any alternative cellular antenna tower structure similar to these towers, such as light poles, shall be maintained in either galvanized steel finish or be painted light gray or light blue in color. Alternate sections of aviation orange and aviation white paint may be used **ONLY** when the FAA finds that **none** of the alternatives to such marking are acceptable.
- (c) Towers shall not be artificially lighted except as required by the Federal Aviation Administration (FAA). Upon commencement of construction of a cellular tower, in cases where there are residential uses located within a distance which is three hundred (300) percent of the height of the cellular tower from the cellular tower and when required by federal law, dual mode lighting shall be requested from the FAA.
- (d) The site shall be unstaffed. Personnel may periodically visit the site for maintenance, equipment modification, or repairs. To accommodate such visits, access shall be only from access points approved by the applicable Works Department, and there shall be provided on site an area sufficient to accommodate the parking of the service vehicle.
- (e) The site shall be enclosed by a security fence, and the fence may be located in any required yard at any height.
- (f) If the use of any cellular antenna or cellular antenna tower or alternative cellular antenna tower structure is discontinued, the owner shall provide the Planning Commission with a copy of the notice to the FCC of intent to cease operations within 30 days of such notice to the FCC. If the cellular antenna or cellular antenna tower or alternative cellular antenna tower structure will not be reused, the owner shall have 180 days from submittal of the FCC notice to the Planning Commission to obtain a demolition permit and remove the antenna or tower that will not be reused. If the cellular antenna or cellular antenna tower or alternative cellular antenna tower structure is to be reused, the owner shall have no more than twelve (12) months from submittal of the FCC notice to the Planning Commission in which to commence new operation of the antenna or tower to be reused. Upon failure to commence new operation of the antenna or tower that is to be reused within twelve (12) months, the cellular antenna or cellular antenna tower or alternative cellular antenna tower structure shall be presumed abandoned, and the owner shall obtain within 90 days of the expiration of the twelve (12) month period, a demolition permit and remove the antenna or tower that is presumed abandoned within 60 days of obtaining the demolition permit. If the owner fails to remove an antenna or tower in the time provided by this paragraph, the Planning Commission may, on grounds of public safety, health, and welfare, cause the demolition and removal of the antenna or tower and recover its costs of demolition and removal. The Planning Commission, at time of application for construction, may require posting of a bond covering the cost of removal of the antenna or tower; the bond to be forfeited to the Planning

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Commission upon failure to remove the antenna or tower in a timely manner as required above.

The only signs allowed shall be emergency information signs, owner contact information, warning or safety instructions, and signs required by a federal, state, or local agency. Such signs shall not exceed five (5) square feet in area.

(6) Existing Telecommunications Facilities:

Telecommunications facilities in existence on the date of the adoption of this ordinance which do not comply with this ordinance (“existing telecommunications facilities”) are subject to the following provisions:

- (a) Existing telecommunication facilities may continue in use for the purpose now used, but may not be expanded or replaced without complying with this ordinance, except as further provided in this section.
- (b) Existing telecommunications facilities which are hereafter damaged or destroyed due to any reason or cause may be repaired and restored to their former use, location and physical dimensions subject to obtaining a building permit therefor, but without otherwise complying with this ordinance.
- (c) The owner of any existing telecommunications facility may replace, repair, rebuild and/or expand such telecommunications facility to accommodate co-located antennas or facilities, or to upgrade the facilities to current engineering, technological or communications standards by obtaining a building permit therefor, and without having to conform to the provisions of this ordinance (including, but not limited to, provisions of this ordinance regarding notice to local zoning authorities or posting of signs) or to otherwise request local zoning approvals, so long as such facilities are not increased in height by more than 50% and or setbacks are not decreased by more than 50%.
- (d) Any such replacement, repair, reconstruction or enlargement shall not violate the design standards described in B.2 above beyond that existing at the date of the adoption of this ordinance.

C. Incorporation By Reference Of Hb #168 As Codified In Krs 100.985 And 100.987.

HB #168 as enacted, and as now codified at KRS 100.985 and KRS 100.987, is hereby incorporated by reference into this Ordinance. The Planning Commission and City Council and/or Fiscal Court adopting this Ordinance shall comply with said statute as it is applicable to such entity. Among other requirements, said statute requires that the Planning Commission advise the applying utility in writing of its final decision within **sixty (60) days** commencing from the date that the uniform application (as defined in said statute) is received by the Planning Commission or within a date certain specified in a written agreement between the local Planning Commission and the utility.

D. SEVERABILITY.

That if any clause, section, or other part of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby, but shall remain in full force and effect.

E. CONFLICTS.

That all ordinances or parts of ordinances in conflict herewith are hereby repealed.