

SECTION 12

TELECOMMUNICATION TOWERS

12-1 PURPOSE

The purposes of these regulations are: (1) to provide for the safest and most efficient integration of cellular antenna towers within unincorporated Hardin County; (2) to provide for such facilities in coordination with the recommendations of the comprehensive plan; and (3) to allow for such facilities with the intention of furthering the public health, safety, and general welfare.

12-2 ADMINISTRATIVE REVIEW REQUIRED

Cellular antenna towers may be allowed in any zone after receiving an Administrative Review and approval from the Director in accordance with this Section. The Director may approve the proposed antenna tower only upon finding that the proposal complies with the Comprehensive Plan and the zoning regulations, including this Section. Reasonable attempts to co-locate additional transmitting or related equipment are required.

Any request for review of a proposal to construct an antenna tower shall be made only in accordance with this Section. If the property is subject to an existing approved development plan 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 cellular antenna tower request filed pursuant to this Section. The property owner shall be responsible for making alternative provisions for any alteration of the 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.

12-3 APPLICABILITY

Every utility, or a company that is engaged in the business of providing the required infrastructure to a utility, that proposes to construct an antenna tower for telecommunications services or personal communications services within unincorporated Hardin County shall submit a completed Uniform Application to the Director. The Director shall not regulate the placement of antennas or related equipment on an existing structure (co-location).

12-4 POSTING PROPERTY

Notice of the filing of the request shall be posted conspicuously in a visible location on the proposed site of the telecommunications tower 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 Director issues its final decision or 60 days has passed since acceptance of the request by the Director, whichever occurs first. The posting shall be as follows:

1. Each sign shall be at least two (2) feet by four (4) feet in size;
2. Each sign shall state: "(Name of applicant) proposes to construct a telecommunications tower on this site. If you have questions, please contact (name and address of applicant). Information on the Director's review of this proposal may be obtained by calling the Planning Commission at (270) 769-5479. Please refer to the request name or number in all inquires."
3. In both posted notices, the words "proposes to construct a telecommunications tower" shall be printed in letters at least (4) inches in height, and the words "Hardin County Planning Commission at (270) 769-5479" shall be in letters at least one (1) inch in height. Both signs shall be constructed of durable, weatherproof material.
4. 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).

12-5 APPLICATION REQUIREMENTS

Applications for the construction of cellular antenna towers 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, of findings as to the proximity of the proposed site to flood hazard areas.
5. Clear directions from the City of Elizabethtown (i.e., the county seat) to the proposed site, including highway numbers and street names, if applicable, with the telephone number of the person who prepared the directions.
6. 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 Hardin 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.

DEVELOPMENT GUIDANCE SYSTEM

7. The identity and qualifications of each person directly responsible for the design and construction of the proposed tower.
8. 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.
9. 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.
10. 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.
11. 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.
12. 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.
13. A list of the property owners who received the notice, together with copies of the certified letters sent to the listed property owners.
14. A statement that the Judge Executive of the Hardin County Fiscal Court has been notified, in writing, of the proposed construction.
15. A copy of the notice sent to the Judge Executive of the Hardin County Fiscal Court (#14).
16. A statement that notice of the location of the proposed construction has been published in a newspaper of general circulation in the county in which the construction is proposed.
17. A brief description of the character of the general area in which the tower is proposed to be constructed, which includes the existing land use and zoning for the specific property involved.
18. 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 (i.e., co-locate), 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.

19. 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.
20. A grid map that shows the location of all existing cellular antenna towers and that indicates the general position of proposed construction sites for new cellular antenna towers within an area that includes:
 - (a) all of the planning unit's jurisdiction; 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.

12-6 PROCESSING OF APPLICATION

After an applicant's submission of a completed uniform application to construct an antenna tower, the Director shall process the application as follows:

1. Review the uniform application in light of its agreement with the Comprehensive Plan and the Zoning Regulations;
2. Make final decision to approve or disapprove the uniform application; and
3. Advise the applicant in writing of its final decision within sixty (60) days commencing from the date that the completed uniform application is submitted to the Director or within a date certain specified in a written agreement between the Director and the applicant.

If the Director fails to issue a final decision within sixty (60) days and if there is no written agreement between the Director and the applicant to a specific date for the Director to issue a decision, the uniform application shall be deemed approved.

If the Director disapproves of the proposed construction, it shall state the reasons for disapproval in its written decision and may make suggestions which, in its opinion, better accomplish the objectives of the Comprehensive Plan and the Zoning Regulations. No permit for construction of a cellular antenna tower shall be issued until the Director approves the uniform application or the sixty (60) day time period has expired and the Director has failed to issue a decision.

Director may require the applicant to make a reasonable attempt to co-locate additional transmitting or related equipment. The Director may provide the location of existing telecommunication antenna towers on which the Director deems the applicant can successfully co-locate its transmitting and related equipment. If the Director requires the applicant to attempt co-location, the applicant shall provide the Director with a statement indicating that the applicant:

- a. Successfully attempted to co-locate on towers designed to host multiple wireless service providers' facilities or existing structures such as a telecommunications tower or another suitable structure capable of supporting the applicant's facilities, and that identifies the location of the tower or suitable structure on which the applicant will co-locate its transmission and related facilities; or
 - b. Unsuccessfully attempted to co-locate on towers designed to host multiple wireless service provider's facilities or existing structures such as a telecommunications tower or another suitable structure capable of supporting the applicant's facilities. The statement shall include:
 - i. The location of the towers or other structures on which the applicant has attempted to co-locate; and
 - ii. The reasons why the co-location attempts were unsuccessful in each instance.
4. The Director may deny a uniform application to construct a telecommunication antenna tower based on an applicant's unwillingness to attempt to co-locate additional transmitting or related equipment on any new or existing towers or other structures. Upon the approval of an application for the construction of a telecommunication antenna tower by the Director, the applicant shall notify the Public Service Commission within ten (10) working days of the approval.
5. The notice to the Public Service Commission shall include a map showing the location of the construction site. If an applicant fails to file notice of an approved uniform application with the Public Service Commission, the applicant shall be prohibited from beginning construction on the telecommunication antenna tower until such notice has been made.

12-7 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 **Director** 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.

12-8 DESIGN STANDARDS

At the time of filing of a request under this Section, the applicant shall provide information demonstrating compliance with the requirements listed below. Waivers of the following standards may be requested by the applicant and granted by the Director in accordance with the provisions of these Zoning Regulations.

1. All structures, except fences and/or guy wires, shall be located minimum distance from the property line equal to the setback of the respective zone, plus one-half (1/2) the height of the tower.

All structures constructed in connection with stealth towers shall comply with the applicable setback requirements established for other structures within the applicable zone. Stealth 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. No tower may be located closer than fifty (50) feet to any property line or the minimum building setback line established for the zone, which ever is greater.

Lease lines are not considered property lines and therefore do not have building setback limits.

2. Any monopole, guyed, lattice, or similar type telecommunication antenna tower and any alternative telecommunication 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.
3. Lattice and guyed cellular antenna towers constructed in an agricultural or residential zone shall be located a minimum distance of not less than 250 feet from all existing residential structures.

4. A telecommunication antenna tower or alternative telecommunication antenna tower structure may be constructed to a maximum height of two hundred fifty feet (250') regardless of the maximum allowed height for the zone in which it is located. This also applies to any tower taller than fifteen feet (15') constructed on the top of another building, with the height being the overall height of building and tower together measured from the grade to the highest point. When any telecommunication antenna tower or alternative telecommunication antenna tower structure is taller than the distance from its base to the nearest property line, the applicant shall furnish a certification from an engineer registered in the Commonwealth of Kentucky that the tower will withstand winds of seventy (70) miles per hour in accordance with current ANSI/EAI/TAI standards. When a tower taller than fifteen feet (15') constructed on the top of another building results in the overall height of the building and tower, including any antenna, being greater than the distance from the base of the building to the nearest property line, the applicant shall furnish this same certification.
5. A telecommunication antenna tower or alternative telecommunication antenna tower structure may be artificially lighted ONLY with steady-burning red obstruction lights (FAA type L-810) or flashing red obstruction lights (FAA type L-864) flashing no faster than twenty (20) flashes per minute. Flashing red obstruction lights (FAA type L-864) flashing faster than twenty (20) flashes per minute, medium intensity flashing white obstruction lights (FAA type L-865 or L-866), high intensity flashing white lights (FAA type L-856 or L-857), or dual flashing red obstruction lights and medium intensity flashing white obstruction lights (FAA types L-864/L-865) may be used ONLY when the FAA specifies that the specific lighting pattern is the ONLY lighting pattern acceptable to promote aviation safety.
6. 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 Road Department, and there shall be provided on site an area sufficient to accommodate the parking of the service vehicle.
7. The site shall be enclosed by an eight foot (8') high solid wood security fence, and the fence may be located in any required yard at any height, but not in the sight triangle. The use of barbed wire or sharp pointed fences shall be prohibited.
8. Screening shall be provided by evergreen trees, with a minimum height of five (5) feet, planted in a staggered pattern at a maximum distance of ten (10) feet on center. The Director may increase the distance between plantings based on the type (species) of evergreen tree and its growth characteristics. The screening shall be placed within the Lease Area. A break in the landscape screening, not to exceed fifteen

- (15) feet in width, shall be allowed for access of maintenance personnel and vehicles.
9. Surfacing of all driveways and off-street parking areas shall comply with the requirements of Sections 8 and 10 of the Zoning Ordinance and be at least constructed of gravel or other durable surface. The Director may require alternative surface materials based on grade, construction and potential for erosion.
 10. The facility shall comply with the FCC's regulations concerning radio frequency emissions. To the extent that the facilities do not comply with the FCC's regulations, the Director may establish additional requirements on the basis of the environmental effects of radio frequency emissions.
 11. If the use of any telecommunication antenna or telecommunication antenna tower or alternative telecommunication antenna tower structure is discontinued, the owner shall provide the Director with a copy of the notice to the FCC of intent to cease operations within thirty (30) days of such notice to the FCC. If the telecommunication antenna or telecommunication antenna tower or alternative telecommunication antenna tower structure will not be reused, the owner shall have one hundred eighty (180) days from submittal of the FCC notice to the Director to obtain a demolition permit and remove the antenna or tower that will not be reused. If the telecommunication antenna or telecommunication antenna tower or alternative telecommunication 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 Director 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 telecommunication antenna or telecommunication antenna tower or alternative telecommunication antenna tower structure shall be presumed abandoned, and the owner shall immediately obtain a demolition permit and remove the antenna or tower that is presumed abandoned. If the owner fails to remove an antenna or tower in the time provided by this paragraph, the Director may cause the demolition and removal of the antenna or tower recover its costs of demolition and removal.
 12. 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.
 13. All new telecommunication antenna tower or alternative telecommunication antenna tower structure shall be designed and constructed to accommodate a minimum of four (4) service providers.

14. All option and site lease agreements shall not prohibit the possibility of co-location.

12-9 PETITION FOR COMMISSION REVIEW

Any person or party claiming to be aggrieved may request within 30 days of notice or application date that the Commission make the final decision.

This Petition for Review shall be filed in the Commission's office and shall state specifically the reason(s) for the review. Within seven days, the Director shall certify if these conditions have been met and proceed with preparations for the Commission Review. In cases where these conditions have not been met, the Director shall notify the applicant immediately so that a complete Petition for Review can be submitted.

A party aggrieved by a final action of the Commission under the provisions of KRS 100.985 to 100.987 may bring an action for review in any court of competent jurisdiction.