

ORDINANCE NO. 920.65

**AN ORDINANCE RELATED TO THE AMENDMENT
OF THE ORDINANCE ADOPTING THE ZONING
REGULATIONS OF CITY OF FRANKLIN AND SIMPSON COUNTY,
KENTUCKY TO INCLUDE CELLULAR ANTENNA TOWERS
AND CELLULAR TELECOMMUNICATION SERVICES**

WHEREAS, the Franklin-Simpson Planning & Zoning Commission has recommended to the City of Franklin and Simpson County governments that each respective body pass an ordinance adopting zoning regulations for cellular antenna towers and cellular telecommunications services; and,

WHEREAS, a copy of said recommended zoning regulations is attached hereto; and,

WHEREAS, the Fiscal Court of the County of Simpson, Commonwealth of Kentucky desires to adopt said zoning regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF COUNTY OF SIMPSON, COMMONWEALTH OF KENTUCKY, after the passage, approval and publication of this ordinance as follows:

1. The attached zoning regulations for cellular antenna towers and cellular telecommunications services are hereby approved, adopted and added to the Franklin-Simpson Planning & Zoning Regulations as a new section thereof to be designated as Section 9.7.

2. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof. All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

December 14, 2004 FIRST READING

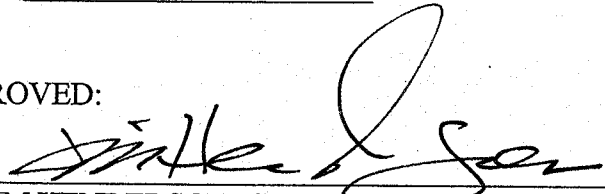
December 28, 2004 SECOND READING

At a meeting of the Fiscal Court of the County of Simpson, Commonwealth of Kentucky held December 28, 2004, on motion made by Honorable Kelly Banton, and seconded by Honorable Larry Randolph, the foregoing ordinance was adopted, after full discussion, by the following vote:

<u>Yes</u>	LARRY RANDOLPH
<u>Yes</u>	KELLY BANTON
<u>Yes</u>	KENNETH UTLEY
<u>Yes</u>	CHARLES McCUTCHEN
<u>Yes</u>	JIM HENDERSON

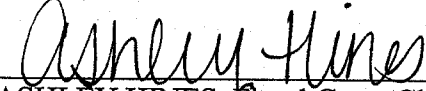
APPROVED:

BY:



 JIM HENDERSON, COUNTY JUDGE EXECUTIVE
 COUNTY OF SIMPSON, COMMONWEALTH OF KENTUCKY

ATTEST:



 ASHLEY HINES, Fiscal Court Clerk,
 County of Simpson, Commonwealth of Kentucky

GSB/esp
(COATTY\ORDINANCE.cellular tele. services)

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REGULATIONS FOR CELLULAR ANTENNA TOWERS AND CELLULAR TELECOMMUNICATIONS SERVICES

Joint City-County Planning Commission of Simpson County, Kentucky
Franklin, KY 42134

- A. **PURPOSE:** The purpose of the Cellular Antenna Tower Application and Procedures 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.
- B. **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 cellular telecommunications services or personal communications services shall submit a completed uniform application to the planning commission. The planning commission shall not regulate the placement of antennas or related equipment on an existing structure.
- C. **PRE-APPLICATION CONFERENCE:** Applicants are encouraged to notify the planning commission to discuss proposals, allow for early coordination and to identify those items which are in conformance/nonconformance with the comprehensive plan, zoning ordinance, and the provisions of these regulations.
- D. **DEFINITIONS:** For the purposes of these regulations, the following definitions shall apply:
1. "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.
 2. "CELLULAR TELECOMMUNICATIONS SERVICE" means a retail telecommunications service that uses radio signals transmitted through cell sites and mobile switching stations.
 3. "CO-LOCATION" means locating two (2) or more transmission antennas or related equipment on the same cellular antenna tower.
 4. "PERSONAL COMMUNICATION SERVICE" has the meaning as defined in 47 U.S.C. sec. 332(c).
 5. "UNIFORM APPLICATION" means an application to construct a cellular antenna tower submitted to a planning commission in conformity with KRS 100.987 and KRS ____ (section number not yet assigned).
 6. "UTILITY" has the meaning as defined in KRS 278.010(3).
 7. "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.

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- E. GENERAL:** Cellular antenna towers for cellular telecommunications services or personal communications services may be allowed in any zone after 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.
- F. APPLICATION REQUIREMENTS:** Applications for the construction of cellular antenna towers for cellular telecommunications services or personal communications services shall include the following:
1. Two (2) copies of all information that the applicant is required to submit to the Planning Commission, per the requirements of the uniform application.
 2. The full name and address of the applicant.
 3. The applicant's articles of incorporation, if applicable.
 4. A geotechnical investigation report, signed and sealed by a professional engineer registered in Kentucky, that includes boring logs and foundation design recommendations.
 5. 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.
 6. Clear directions from 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.
 7. 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.
 8. The identity and qualifications of each person directly responsible for the design and construction of the proposed tower.
 9. Eight (8) copies of 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.
 10. 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.
 11. 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.
 12. A map, drawn to 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.

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13. 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.

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

15. A statement that the County Judge/Executive has been notified, in writing, of the proposed construction.

16. A copy of the notice sent to the Mayor of the City of Franklin.

17. A statement that:

(a) A written notice, of durable material at least two (2) feet by four (4) feet in size, stating that "[Name of applicant] proposes to construct a telecommunications tower on this site" and including the addresses and telephone numbers of the applicant and the planning commission, has been posted and shall remain in a visible location on the proposed site until final disposition of the application; and

(b) a written notice, at least two (2) feet by four (4) feet in size, stating that "[Name of applicant] proposed to construct a telecommunications tower near this site" and including the addresses and telephone numbers of the applicant and the planning commission, has been posted on the public road nearest the site.

18. 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.

19. 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 for the specific property involved.

20. 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.

21. 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.

22. 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

G. 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 of \$1,500 upon submission of a uniform application, with \$2,500 being the maximum aggregate amount for application and any applicable building permit fees.

H. 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 a newspaper of general circulation in the 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.

2. Notice of the proposal shall be posted by the applicant and shall remain in a visible location on the proposed site until final disposition of application. Such notice shall consist of a written notice, of durable material at least two (2) feet by four (4) feet in size, stating that "[Name of applicant] proposes to construct a telecommunications tower on this site" and including the addresses and telephone numbers of the applicant and the planning commission.

3. Notice of the proposal shall be posted by the applicant and shall remain on the public road nearest the site until final disposition of the application. Such notice shall consist of a written notice, of durable material at least two (2) feet by four (4) feet in size, stating that "[Name of applicant] proposes to construct a telecommunications tower near this site" and including the addresses and telephone numbers of the applicant and the planning commission.

4. Notice of the hearing shall be given at least fourteen (14) days in advance of the hearing, by certified mail, return receipt requested, 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. Said notice shall include a map of the location of the proposed construction, the telephone number and address of the planning commission and shall inform the addressee of his or her right to participate in the planning commission's proceedings on the application. Records maintained by the property valuation administrator may be relied upon conclusively to determine the identity and address of said owner. In the event such 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 which 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

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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.

5. Upon holding such 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. In the event the application is filed in a timely manor where the planning commission's regular scheduled monthly meeting will not accommodate a public hearing, the planning commission with request a written agreement between said commission and the applicant to extend the sixty (60) day deadline.

I. DESIGN STANDARDS: The applicant shall provide information demonstrating compliance with the following requirements. 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.

1. All structures, except fences, shall be located a minimum distance from the property line or lease line of any adjoining property that is equal to one-half (1/2) the height of the tower, but not less than fifty (50) feet.

2. 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 in Subsection J.

3. The cellular antenna tower shall be constructed in compliance with the current ANSI/EIA/TIA 222-F standards and other applicable state standards.

4. Cellular antenna towers shall not be illuminated, except in accordance with other state or federal regulations.

5. The site shall be un-staffed. Personnel may periodically visit the site for maintenance, equipment modification, or repairs. To accommodate such visits, ingress/egress shall only be from approved access points.

6. 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 less than six (6) feet in height nor more than eight (8) feet in height. The use of barbed wire or sharp pointed fences shall be prohibited. Such fence may be located within the front, side, or rear yard.

- 7. 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.
- 8. Any site to be purchased or leased for the installation of a cellular antenna tower, or alternative antenna tower, and ancillary facilities, shall be at least five thousand (5,000) square feet in area.
- 9. Surfacing of all driveways and off-street parking areas shall comply with the requirements of the applicable local zoning ordinance.
- 10. There shall be no signs permitted, except those displaying emergency information, owner contact information, warning or safety instructions, or signs which are required by a federal, state, or local agency. Such signs shall not exceed five (5) square feet in area.
- 11. All new cellular antenna towers shall be designed and constructed to accommodate a minimum of three (3) service providers.
- 12. All option and site lease agreements shall not prohibit the possibility of co-location.

J. CRITERIA:

- 1. Approval or disapproval of the proposal shall be based upon evaluation of the proposal's agreement with the comprehensive plan and zoning regulations.
- 2. The planning commission may require the applicant to make a reasonable attempt to co-locate additional transmitting or related equipment. The planning commission may provide the location of existing cellular antenna towers on which the commission deems the applicant can successfully co-locate its transmitting and related equipment. If the planning commission requires the applicant to attempt co-location, the applicant shall provide the planning commission with a statement indicating that the applicant has:
 - (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 providers' facilities or existing structures such as a telecommunications tower or another suitable structure capable of supporting the applicant's facilities and that:
 - 1. Identifies the location of the towers or other structures on which the applicant attempted to co-locate; and
 - 2. Lists the reasons why the co-location was unsuccessful in each instance.
 - 3. The planning commission may deny a uniform application to construct a cellular 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.
 - 4. The planning commission shall not regulate the placement of a cellular antenna tower on the basis of the environmental effects of radio frequency

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K. 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 Subsection F, subject to the same limitations and requirements as those under which such plans were originally approved.

L. THE CITY OF FRANKLIN AND COUNTY OF SIMPSON, KY recommends that the Joint City-County Planning Commission work cooperatively with the service providers of cellular telecommunications services or personal communications services and use the following list of recommended strategies when evaluating the siting of service facilities:

- **Strategy 1:** Service Providers should be required to file an "annual plan" covering the applicant's present telecommunications towers and co-location sites within Simpson County.
- **Strategy 2:** Service Providers should be required to co-locate or share towers/facilities with other providers in order to minimize the proliferation of towers/facilities.
- **Strategy 3:** Wherever possible, service providers should be required to use existing structures or facilities that meet all of the requirements of the proposed installation. For example, water towers, radio and television towers, tall buildings, commercial signs, etc., in order to minimize the proliferation of new towers/facilities.
- **Strategy 4:** Wherever possible, siting of such facilities should be required to be located in areas identified for industrial or commercial type uses.
- **Strategy 5:** Ground level compounds such as equipment shelters, backup generators, etc. should be heavily screened from view.
- **Strategy 6:** Towers should be camouflaged or designed in such a manner to blend into the surrounding area. For example, changes in topography of the land may be used effectively to separate such facilities from adjacent residential uses.
- **Strategy 7:** To provide for proper separation, adequate setbacks should be provided based upon adjacent land uses and character of affected areas.
- **Strategy 8:** The type of tower (e.g., monopole, carillon, etc.) should be evaluated based upon adjacent land uses and character of affected areas.
- **Strategy 9:** When the facility is no longer required, the owner should remove it and the land restored to its natural state.

M. CONFIDENTIALITY: From the time that a uniform application is received by the planning commission, 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, or when and to the extent that confidentiality is waived in writing by the applying utility. **The planning commission will request that the applicant waive confidentiality on the contents of the uniform application, with the exception of any information that indicates the general position of future proposed construction sites for new cellular antenna towers as discussed in Subsection F (22).**

Planning & Zoning Chairman

Attest _____
Planning & Zoning Secretary