

ORDINANCE NO. 6 - 2009 SERIES

AN ORDINANCE AMENDING ORDINANCE #8, ADOPTED OCTOBER 23, 1987, FISCAL COURT ORDER BOOK 15, PAGE 31, RELATING TO THE ZONING ORDINANCE IN FRANKLIN COUNTY, KENTUCKY, SECTION 6.30 WIRELESS COMMUNICATIONS FACILITIES

**WHEREAS**, The Franklin County Fiscal Court, having heretofore enacted an Ordinance relating to zoning regulations and zoning district maps titled, "The Zoning Ordinance of Franklin County," in accordance with a Comprehensive Plan and KRS 100; and

**WHEREAS**, the aforesaid Ordinance provides for amendments to the zoning ordinance text and maps and requires the Frankfort/Franklin County Planning Commission to forward their recommendations for approval or denial of the text amendment to the Franklin County Fiscal Court for action; and


**WHEREAS**, The Frankfort/Franklin County Planning Commission held a public hearing on September 10, 2009 and adopted a summary of the evidence and recommended approval of the text amendment, as required by K.R.S. 100;

**NOW, THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF THE COUNTY OF FRANKLIN, COMMONWEALTH OF KENTUCKY, AS FOLLOWS:**

The Zoning Ordinance of Franklin County, which contains the Zoning District Maps, adopted October 23, 1987, Ordinance #8, 1987 Series, Fiscal Court Book 15, Page 31, be and is hereby amended to include Section 6.30 Wireless Communications Facilities, as shown on attachment "A", to become effective November 18, 2009.

**INTRODUCED AND GIVEN FIRST READING IN SUMMARY** at a duly convened meeting of the Fiscal Court of Franklin County, Kentucky, held on the 23 day of October, 2009.

**GIVEN SECOND READING AND APPROVED** at a duly convened meeting of the Fiscal Court of Franklin County, Kentucky, held on the 12 day of November, 2009 and of record in Fiscal Court Order Book 23, Page 240. This Ordinance shall take effect and be in full force effective November 18, 2009.

  
Ted Collins  
County Judge/Executive

ATTESTED TO:

  
Shirley Brown  
Fiscal Court Clerk

# **ATTACHMENT "A"**

**6.30            Wireless Communications Facilities**

**6.301           Intent**

In as much as the Congress of the United States enacted the Telecommunications Act of 1996, to deregulate the telecommunications industry by providing a more competitive environment for wired and wireless telecommunications. Kentucky Legislature initially passed House Bill 168, and later enacted House Bill 270, to allow local governments which have adopted planning and zoning regulations to plan for and regulate the siting of cellular antenna towers. The intent of this Article of the Zoning Regulations is to provide for cellular telecommunication towers in appropriate locations throughout the community at sites which provide adequate cellular telecommunication service while protecting the public, preserving the character and value of surrounding property, and protecting the view from residential areas.

**6.302           Applicability**

This Article of the Franklin County Zoning Ordinance shall apply to all cellular telecommunication towers located, or to be located, within the jurisdiction of Franklin County.

**6.303           Definitions**

For the purposes of these regulations, the following definitions shall apply:

1.    **Alternative Cellular Antenna Tower**- Any facility, such as a clock or bell tower; steeple; light pole; or other similar alternative-design mounting structure that accommodates, minimizes, camouflages or conceals the presence of a cellular antenna or cellular antenna tower and that is constructed (or reconstructed) primarily for the purpose of accommodating a cellular antenna or cellular antenna tower.
2.    **Antenna or Related Equipment**- Transmitting, receiving, or other equipment used to support cellular telecommunications services or personal communications services.
3.    **Cellular Antenna Tower**- 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.
4.    **Cellular Antenna Tower Height**- The distance from the highest point of the antenna structure to the point at which the antenna or any structure the antenna is mounted upon meets the grade.
5.    **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 an alternative larger sized equipment shelter that can be totally accessed by service personnel.

6. **Cellular Telecommunications Facility**- The lot, tract, or parcel of land that contains the cellular antenna tower, its supporting structure, any accessory building, parking, and any other uses or structures that are associated with the transmission facility.
7. **Cellular Telecommunications Service**- A retail telecommunications service that uses radio signals transmitted through cell sites and mobile switching stations.
8. **Co-Location**- Locating two (2) or more transmission antennas or related equipment on the same cellular antenna tower.
9. **Personal Communication Service**- As defined in 47 U.S.C. sec. 332(c).
10. **Search Ring**- The necessary search area within which a site for a cellular antenna tower should, pursuant to radio frequency requirements, be located.
11. **Uniform Application**- The application submitted to the Planning Commission by an applicant, complete and meeting all requirements as provided in KRS 100.9865, for the construction of a cellular antenna tower for cellular telecommunications services or personal communications services. Completion of a uniform application shall not be required for temporary cellular antennae that are deployed during construction of permanent facilities; used in the event of emergency situations where infrastructure has been damaged; or in connection with temporary high usage situations, such as sporting events.
12. **Utility**- Any person except, for purposes of paragraphs (a), (b), (c),(d), and (f) of this subsection, a city, who owns, controls, operates, or manages any facility used or to be used for or in connection with:
  - a) The generation, production, transmission, or distribution of electricity to or for the public, for compensation, for lights, heat, power, or other uses;
  - b) The production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power, or other uses;
  - c) The transporting or conveying of gas, crude oil, or other fluid substance by pipeline to or for the public, for compensation;
  - d) The diverting, developing, pumping, impounding, distributing, or furnishing of water to or for the public, for compensation;
  - e) The transmission or conveyance over wire, in air, or otherwise, of any message by telephone or telegraph for the public, for compensation; or
  - f) The collection, transmission, or treatment of sewage for the public, for compensation, if the facility is a subdivision collection, transmission, or treatment facility plant that is affixed to real property and is located in a county containing a city of the first class or is a sewage collection, transmission, or treatment facility that is affixed to real property, that is located in any other county, and that is not subject to regulation by a metropolitan sewer district or any sanitation district created pursuant to KRS Chapter 220

13. **Stealth Technology**- Cellular antenna tower is camouflaged, such as in a steeple or flag pole, to make it less visible.
14. **Fall Zone**- Designated area around the cellular antenna tower where the structure is likely to fall in the event of a catastrophic failure. The fall zone shall be free of all dwellings.

6.304 **Where Permitted**

To the extent feasible, applicants are encouraged to consider properties owned by the local government for the location of cellular towers, if such properties are appropriate in view of surrounding land uses. 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. 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. **The Frankfort/Franklin County Planning Commission may allow the placement of cellular antenna towers in designated flood hazard areas as shown on the Flood Insurance Rate Map (FIRM) as being the 100-year floodplain upon review of the applicant's justification.**

6.305 **Design Standards**

6.3051 **Lighting/Signage Standards**

1. Cellular antenna towers shall not be lighted, except in accord with other state and federal regulations.
2. 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.

6.3052 **Setback Standards**

1. A Fall Zone clear of any dwellings on the parcel containing the telecommunication tower (other than equipment enclosures associated with the wireless telecommunication facility) equal to one-half the height of the tower shall be required.
2. All accessory structures associated with the cellular antenna tower shall be located as close to the antenna tower as possible and at least twenty-five (25) feet or the equivalent of the setback of that zoning district whichever is greater from any adjoining property in a residential zone or any property used for residential purposes. The Planning Commission shall have the power to reduce the 25-foot setback in cases of demonstrated hardship or where adequate natural screening exists on the cell tower lot itself.

**6.3053      Fencing/Screening Requirements**

1. The site shall be enclosed by a six foot (6') security fence, with two feet (2') of Constantine Wire. Such fence may be located within the front, side, or rear yard.
2. Visual Landscape Screening shall be required surrounding the outside of the fence. Such screening buffer shall be at least twenty (20) feet in width, with a double-row staggered planting of Evergreen trees planted at 15' On Center. In any zone, whenever possible, all antenna towers shall be designed and constructed to minimize any potential negative aesthetic, environmental or visual impacts.

**6.3054      Miscellaneous Development Standards**

1. The tower shall be constructed to withstand a minimum wind speed with ½ inch of ice or the basic wind speed, and seismic load capacity standards as determined by Kentucky Building Code. The tower design shall be certified by a registered engineer, licensed in the State of Kentucky
2. The location of the cellular antenna tower shall not interfere with the traffic circulation, access, storm drainage, required landscaping or other requirements of the Zoning Ordinance, and shall not reduce the number of parking spaces below what is otherwise required.
3. All new cellular antenna towers shall be designed and constructed to reasonably accommodate a minimum of three (3) service providers.
4. All option and site lease agreements shall not prohibit the possibility of collocation.
5. Monopole and alternative design cellular antenna towers shall be permitted in all zones. Lattice towers and guyed towers may only be located in Non-Residential zones.
6. In cases where a cellular antenna tower or antenna is located on a portion of a property whose "subdivision" is based on a long-term lease, the lease area shall not take the parent tract below the minimum lot requirement for the zone in which it is located.
7. Prior to construction and/or location of a cellular antenna or tower or associated structure whether on an existing structure or on ground level, any applicable permits must be obtained from the Planning Commission and/or the Franklin County Building Department.
8. 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 points.
9. A Cellular antenna tower, or alternative antenna tower structure, may be constructed to a maximum height of three hundred twenty-five (325) feet regardless of the maximum height requirements listed in the specific zoning district.

**6.306**            **Mitigating Design Standards for Cellular Antenna Towers in Residential or Agricultural Zones**

When no adequate alternate site for a cellular antenna tower is available, a site in a residential or an agricultural 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 a hardship:

- a. 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.
- b. 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.
- c. Asphalt or other hard-surface paving shall be provided for driveways and parking.
- d. In order to protect the public health, safety, and welfare, and to encourage the placement of telecommunications facilities in locations other than residential areas there shall be a setback area around the tower equal to one half the height of the tower free of any dwellings on the parcel containing the telecommunication tower (other than equipment enclosures associated with the wireless telecommunication facility) in addition to the Fall Zone required elsewhere by this ordinance.

**6.307**            **Uniform Application for a Cellular Antenna Tower**

Any applicant that proposes to construct a cellular antenna tower for cellular telecommunications services or personal communications services within Franklin County must submit a completed uniform application to the Planning Commission, as mandated by KRS 100.9865. Unless waived by the applicant, all information contained in the uniform application and any updates, except for information that specifically identifies the proposed location of the cellular antenna tower then being reviewed, shall be deemed confidential and proprietary. In accordance with KRS 100.987, the Planning Commission may not approve public requests 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 the applicant has provided a written waiver of confidentiality.

**6.308**            **Application Process**

Application for the construction of cellular antenna towers or co-location of cellular antennas for cellular telecommunications services or personal communications services shall be processed as follows:

- A. **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 or co-locate an antenna for cellular telecommunications services or personal communications services, and has officially registered with the Public Service Commission, shall submit a copy of the

utility's completed uniform application to the Frankfort/Franklin County Joint Planning Commission within five (5) consecutive days of applying to the Public Service Commission for a certificate of necessity and convenience, as required by KRS 278.020 (1)

For applicants who are requesting co-location, all requirements in these regulations apply.

**B. Co-Location**

1. A utility planning to co-locate its antennas on an existing tower or to augment an existing structure to enable it to place its antennas on that structure shall file with the Planning Office its intent to do so, including the name and address of the utility, name of the owner of the structure, the latitude and longitude of the structure, and a description of the plan to augment or co-locate, if:
  - a) the proposed augmentation, if any, of the existing structure shall not increase the height of the structure; and
  - b) the proposed augmentation, if any, of the existing structure will not result in altering lighting requirements for a structure on which lighting is not currently required.
2. For facilities located on previously approved sites, a representative of the Frankfort/Franklin County Planning Commission shall review the application for its conformity with these regulations and the regulations contained within the County's Zoning Ordinance. If the Planning Director determines that the application is in conformity with these regulations and the regulations contained within the Frankfort Zoning Ordinance, an administrative approval may be granted. This administrative approval shall not be considered final until it is ratified by a vote of the full commission.
3. If the Director determines that the application is not in conformity with these regulations and the regulations contained within the Franklin County Zoning Ordinance, a public hearing, pursuant to section IV. C., of these regulations, shall be scheduled.

**C. EVALUATION**

The Frankfort/Franklin County Planning Commission, shall, within sixty (60) days commencing from the date that the application is received by the Frankfort/Franklin County Planning Commission, or within a date specified in a written agreement between the Frankfort/Franklin County Planning Commission and the applicant, make its final decision to approve or disapprove the uniform application. The Frankfort/Franklin County Planning Commission shall submit to the Public Service Commission, along with their action, the basis for their decision, along with suggestions which, in its opinion, better accomplishes the objectives of the Comprehensive Plan and the Zoning Regulations. If the Frankfort/Franklin County Planning Commission fails to issue a final decision within sixty (60) days, and if there is no written agreement between the Frankfort/Franklin County Planning Commission and the utility, to a specific date for the Frankfort/Franklin County Planning Commission to issue a decision, it is presumed that the Frankfort/Franklin County Planning Commission has approved the utility's uniform application. In the case that the commission should deny an



application the applicant would have 30 days to appeal from the time of the Planning Commission's "Final action".

Whenever the Planning Commission may deny an application, it must do so in writing. According to 47 U.S.C § 332(c)(7)(B)(iii), the commission's written denial must be separate from the written record, (i.e. separate from the Planning Commission minutes) must describe the reasons for denial and must contain a "sufficient explanation of the reasons for the denial to allow a reviewing court to evaluate the evidence in the record that supports those reasons."

**The evaluation of the application shall include but not be limited to the following criteria:**

1. The Frankfort/Franklin County Planning Commission will deny a uniform application to construct a cellular antenna tower based on an applicants' unwillingness to attempt to co-locate additional transmitting or related equipment on any new or existing towers
2. Agreement with the various elements of the Frankfort/Franklin County Comprehensive Plan, and where applicable, any other adopted plans.
3. Extent to which the proposal is consistent with the purposes of these regulations.
4. Adequacy of the proposed site, considering such factors as the sufficiency of the size of the site to comply with the established Design Standards listed in Section 6.305 and 6.306 of these regulations.
5. Extent to which the proposal responds to the impact of the proposed development on adjacent land uses, especially in terms of visual impact. *The Commission shall have substantial evidence, presented at a public hearing in order to deny an application based upon visual impact.*
6. Extent to which the proposed facility is integrated with existing structures, or the extent to which the proposed cellular antenna tower uses stealth technology.

**D. AMENDMENTS**

Any amendments to the site development plans, except for minor adjustments as determined by the Frankfort/Franklin County Planning Commission, or its duly authorized representative, shall be made in accordance with the procedure required by Subsection C., above, subject to the same limitations and requirements as those under which such plans were originally approved.

**6.309            EXISTING TELECOMMUNICATIONS FACILITIES**

Telecommunications facilities in existence on the date of the adoption of this ordinance which 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 therefore, but without otherwise complying with this ordinance.

C. The owner of any existing telecommunications facility may replace, repair, or rebuild and/or expand such telecommunications facility to accommodate co-located antennas or facilities, or to upgrade the facilities current engineering, technological or communications standards by obtaining a building permit therefore, 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 height is not increased.

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.

E. Any legally permitted and constructed telecommunications tower shall be exempt from these regulations; except when discontinued for a period of twelve (12) months. In such cases, the applicant or utility shall be required to follow the procedures listed herein.

#### **6.310            MAINTENANCE AND REMOVAL**

A. Included in any contract with an owner of property upon which a cellular antenna tower is to be constructed, a provision that specifies, in the case of abandonment, a method that the utility will follow in dismantling and removing a cellular antenna tower including a timetable for removal.

B. To insure the removal of all improvements at any abandoned telecommunications facility, any applicant filing a request under these regulations shall, at the time of the submittal, deposit with the Frankfort/Franklin County Planning Commission, and to the benefit of the Frankfort/Franklin County Planning Commission, a letter of credit, a performance bond, or other security acceptable to the Frankfort/Franklin County Planning Commission in the amount equal to the cost of demolition and removal of the facility. An applicant having multiple telecommunications facilities within the Frankfort/Franklin County Planning Commission's jurisdiction may deposit a single guarantee in the amount equal to the cost of demolition and removal of the one facility it owns which would cost the most to demolish and remove until such time as the number of its multiple facilities exceeds four (4) such facilities. At such time as the approved number of the applicant's multiple facilities exceeds four (4) such facilities, the applicant shall increase the amount on deposit to an amount equal to the cost of the most costly demolition and removal plus twenty-five (25) percent of the cost of demolition and removal of the applicant's other existing facilities. Any guarantee submitted shall be irrevocable and shall provide for the Frankfort/ Franklin County Planning Commission to collect the full amount of the guarantee if the applicant fails to maintain the guarantee.

C. If the use of any cellular antenna or cellular antenna tower or alternative cellular antenna tower structure is discontinued, the owner shall provide the Frankfort/Franklin County 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 Frankfort/Franklin County 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 that twelve (12) months from submittal of the FCC notice to the Frankfort/Franklin County 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 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 Frankfort/Franklin County 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.

6.311            SEVERABILITY

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.

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