

Article amendments approved unless noted:	OMPC	Owensboro	Daviess Co.	Whitesville
Original Adoption of Article 20	12-Sep-2002	19-Nov-2002	21-Nov-2002	not adopted
2003 Review Committee: Corrected reference to Sec. 20-4(b) (20-7)	11-Dec-2003	02-Mar-2004	05-Feb-2004	06-Apr-2004
Added Small Cellular Systems and Towers	11-Apr-2019	07-May-2019	02-May-2019	28-May-2019

20-1 PURPOSE. The purposes of these regulations are: to provide for the safest and most efficient integration of cellular antenna towers and small cellular systems and 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.

20-2 PRE-APPLICATION CONFERENCE. Applicants are encouraged to notify the planning commission to discuss proposals, to allow for early coordination, and to identify those items that are in conformance/nonconformance with the comprehensive plan, zoning ordinance, and the provisions of these regulations. In the case of Small Cellular Systems or Towers the applicant is encouraged to request a meeting, in which staff will set up to include Staff, the Applicant, any applicable Utility providers, the local jurisdiction, and the owner of the right of way or property on which the Small Cellular System or Tower is proposed to be installed. Coordination with utilities for possible use of pre-existing structures will be required. Applicants should supply the Provider’s preferred locations, structure design style and structure height one week prior to the pre-application meeting or upon request for such meeting.

20-3 DEFINITIONS. For the purposes of these regulations, the following definitions shall apply:

“Alternative Cellular Antenna Tower” means man-made trees, clock towers, bell towers, steeples, light poles and similar alternative-design mounting structures that accommodate, camouflage, minimize or conceal the presence of cellular antennas or cellular antenna towers and that are constructed primarily for the purpose of

accommodating cellular antennas or cellular antenna towers or are reconstructed for the purpose of accommodating cellular antennas or cellular antenna towers. This does not include existing structures erected for another primary purpose, but which subsequently have cellular antennas attached to or located within them, without any reconstruction of the original structure. For the provisions of these regulations, an alternative cellular antenna tower is considered a cellular antenna tower.

"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.

"Cellular Antenna Tower" means any tower over fifty (50) feet in height 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.

"Cellular Telecommunications Service" means a retail telecommunications service that uses radio signals transmitted through cell sites and mobile switching stations.

"Co-location" means locating two (2) or more transmission antennas or related equipment on the same cellular antenna tower.

“Guyed Cellular Antenna Tower” means a type of wireless transmission tower that is supported by thin guy wires.

“**Lattice Cellular Antenna Tower**” means a self-supporting tower with multiple legs and cross bracing of structural steel.

“**Monopole Cellular Antenna Tower**” means a slender self-supporting tower on which wireless antenna can be placed.

“**Personal Communication Service**” has the meaning as defined in 47 U.S.C. sec. 332(c).

“**Planning Commission**” means the Owensboro Metropolitan Planning Commission established by a joint agreement of the City of Owensboro, the City of Whitesville, and Daviess County, Kentucky, pursuant to KRS Chapter 100.

“**Small Cellular Antenna System**” means a network of remote antenna nodes that distributes radio frequency signals from a central hub through a high capacity signal transport medium to a specific area. The term includes mini commercial towers, small cells, distributed antenna systems, mini cell, or similar systems.

“**Small Cellular Antenna Tower**” means any structure under fifty (50) feet in height with an antenna or transmitter that is constructed for the sole or primary purpose of supporting any Federal Communications Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. A pole originally installed for the primary purpose of supporting wireless telecommunications equipment, regardless of the timeframe between pole installation and connection/implementation of Transmission Equipment, is considered a Small Cell Tower, and is not a Utility Pole. The term Small Cell Tower includes mini cell towers, distributed antenna system towers, micro cell towers, mini cell, Wi-Fi antennas, or similar systems.

“**Staff**” Those employees of the Owensboro Metropolitan Planning Commission assigned to support and/or administer the powers and duties proscribed to the Owensboro Metropolitan Planning Commission.

“**Uniform Application**” means an application to construct a cellular antenna tower submitted to a planning commission in conformity with KRS 100.985 through KRS 100.987.

“**Utility**” has the meaning as defined in KRS 278.010(3).

20-4 CELLULAR ANTENNA TOWERS GENERAL.

Cellular antenna towers over fifty (50) feet tall for cellular telecommunications services or personal communications services may be allowed in any zone after a planning commission review in accordance with the following procedures to ascertain agreement with the adopted comprehensive plan and the regulations contained within the zoning ordinance.

20-4(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 a cellular antenna tower shall submit a completed uniform application to the planning commission. Where the planning commission finds that circumstances or conditions relating to the application of an alternative cellular antenna tower are such that one or more of the requirements of the uniform application listed below are not necessary or desirable for the protection of surrounding property or the public health, safety, and general welfare, and that such special conditions or circumstances make one or more said requirements unreasonable, the planning commission, or its duly authorized representative, may modify or waive such requirement of the uniform application, either permanently or on a temporary basis. Any such modification or waiver shall be requested by the applicant, and the applicant shall submit a written justification for each requested modification or waiver. The planning commission shall not regulate the placement of antennas or related equipment on an existing structure.

20-4(b) Application Requirements. Applications for the construction of cellular antenna towers for cellular telecommunications services or personal communications services shall include the following:

- (1) The full name and address of the applicant.
- (2) The applicant's articles of incorporation, if applicable.
- (3) A geotechnical investigation report signed and sealed by a professional engineer registered in Kentucky that includes boring logs and foundation design recommendations.

(4) A written report, prepared by a professional engineer or land surveyor, of findings as to the proximity of the proposed site to flood hazard areas.

(5) Clear directions from the City of Owensboro 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 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.

(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 chief executive officer of the affected local government and the legislative body (i.e., City Manager, Board of Commissioners of the City of Owensboro; County Judge-Executive, Daviess County Fiscal Court; Mayor of Whitesville, Whitesville City Commission) have been notified, in writing, of the proposed construction.

(15) A copy of the notice sent to the chief executive officer of the affected local government and the legislative body (i.e., City Manager, Board of Commissioners of the City of Owensboro; County Judge-Executive, Daviess County Fiscal Court; Mayor of Whitesville, Whitesville City Commission).

(16) A statement that the Owensboro-Daviess County Regional Airport has been notified, in writing, of the proposed construction and a copy of the notification.

(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 in a visible location on the proposed site; and

(b) A written notice, 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, 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 the Messenger-Inquirer of Daviess County, Kentucky.

(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 (Daviess County, Kentucky); and

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

20-4(c) Confidentiality of Application. All information contained in the application and any updates, except for any map or other information that specifically identifies the proposed location of the cellular antenna tower then being reviewed, shall be deemed confidential and proprietary within the meaning of KRS 61.878. The planning commission shall deny any public request for the inspection of this information, whether submitted under Kentucky's Open Records Act or otherwise, except when ordered to release the information by a court of competent jurisdiction. Any person violating this subsection shall be guilty of official misconduct in the second degree as provided under KRS 522.030. The confidentiality of the applications and any updates of the application can be waived by the written authorization of the applicant.

20-4(d) Application Fee. An applicant for the construction of cellular antenna towers for cellular telecommunications services or personal communications services shall pay an application fee in the amount set by the planning commission upon submission of a uniform application.

20-4(e) Processing of Application. Applications for the construction of cellular antenna towers for cellular telecommunications services or personal communications services shall be processed as follows:

(1) At least one (1) public hearing on the proposal shall be held, at which hearing interested parties and citizens shall have the opportunity to be heard. Notice of the time and place of such hearing shall be published at least once, in the Messenger-Inquirer of Daviess County, Kentucky, 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 on the site at least fourteen (14) days in advance of the hearing. The 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. Notice of the proposal shall also be posted on the public

road nearest the site. This 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.

(3) 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. The 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 a property is in condominium or cooperative forms of ownership, then the person notified by mail shall be the president or chairperson of the owner group that administers property commonly owned by the condominium or cooperative owners. A joint notice may be mailed to two or more co-owners of an adjoining property who are listed in the property valuation administrator's records as having the same address.

(4) Upon holding the hearing, the planning commission shall, within sixty (60) days commencing from the date that the application is received by the planning commission, or within a date specified in a written agreement between the planning commission and the applicant, make its final decision to approve or disapprove the uniform application. If the planning commission fails to issue a final decision within sixty (60) days, and if there is no written agreement between the planning commission and the utility to a specific date for the planning commission to issue a decision, it shall be presumed that the planning commission has approved the utility's uniform application.

20-5 CELLULAR ANTENNA TOWER DESIGN STANDARDS. The applicant shall provide information demonstrating compliance with the requirements contained herein. Potential sites that should be considered (in order

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

20-5(a) Monopole Cellular Antenna Towers shall be permitted in any zone. Lattice and guyed cellular antenna towers shall be permitted in any zone except for residential zones.

20-5(b) Lattice and Guyed Cellular Antenna Towers constructed in an agricultural zone shall be located a minimum distance of not less than 250 feet from all existing residential structures. Distance shall be measured from the base of the tower to the nearest wall of the residential structure.

20-5(c) Setbacks for all structures constructed in connection with guyed or lattice cellular antenna towers, except fences and/or guy wires, shall be a minimum distance from the property line or lease line equal to at least one-half (1/2) the height of the tower, but not less than fifty (50) feet. All structures constructed in connection with monopole or alternative cellular antenna tower shall comply with the applicable setback requirements established for other structures within the applicable zoning district. Alternative cellular antenna towers that are to be located as part of a utility service facility (e.g. power pole or telephone pole) shall comply with setback requirements applicable to such utility service facilities, if any.

20-5(d) Height. A cellular antenna tower, or alternative antenna tower structure, may be constructed to a maximum height of two hundred (200) feet regardless of the maximum height requirements listed in the specific zoning district. This also applies to any tower taller than fifteen (15) feet constructed on the top of another building or structure, with the height being the overall height of building/structure and tower together, measured from the grade to the highest point.

The planning commission may allow antennas greater than two hundred (200) feet in height upon review of the applicant's justification that the additional height meets the criteria identified in Subsection 20-6.

20-5(e) The Cellular Antenna Tower shall be Constructed in compliance with the current ANSI/EIA/TIA 222-F standards and other applicable state standards.

20-5(f) Illumination. Cellular antenna towers shall not be illuminated, except in accordance with other state or federal regulations.

20-5(g) The Site shall be Unstaffed. Personnel may periodically visit the site for maintenance, equipment modification, or repairs. To accommodate such visits, ingress/egress shall be only from approved access points.

20-5(h) Woven Wire or Chain Link (eighty (80) percent open) or solid fences made from wood or other materials (less than fifty (50) percent open) shall be used to enclose the site. Such fences shall not be more than eight (8) feet in height, and may be located within the front, side, or rear yard. The use of barbed wire or sharp pointed fences shall be prohibited in or along any boundary adjoining residential or MHP zones.

20-5(i) 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.

20-5(j) Surfacing of All Driveways and Off-street Parking Areas shall comply with the requirements of the applicable local zoning ordinance.

20-5(k) Signs. There shall be no signs permitted, except those displaying emergency information, owner contact information, warning or safety instructions, or signs that are required by a federal, state, or local agency. Such signs shall not exceed five (5) square feet in area.

20-5(l) Number of Service Providers. All new cellular antenna towers shall be designed and constructed to accommodate a minimum of three (3) service providers.

20-5(m) Lease Agreements. All option and site lease agreements shall not prohibit the possibility of co-location, and in the case of abandonment, shall include a method that the utility will follow in dismantling and removing the proposed cellular antenna tower including a timetable for removal.

20-5(n) Approval of the Federal Aviation Administration (FAA) and the Kentucky Airport Zoning Commission (KAZC) or documentation where approval is not required shall be submitted prior to the issuance of a building permit for the construction of the cellular antenna tower.

20-6 CELLULAR ANTENNA TOWER CRITERIA

20-6(a) Approval or Disapproval of the proposal shall be based upon an evaluation of the proposal's agreement with the comprehensive plan and zoning regulations.

(1) 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 provider's 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.

(2) 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.

(3) The planning commission shall not regulate the placement of a cellular antenna tower on the basis of the environmental effects of radio frequency emissions to the extent that the proposed facility complies with the regulations of the Federal Communications Commission concerning radio frequency emissions.

20-7CELLULAR ANTENNA TOWER 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 20-4(b), subject to the same limitations and requirements as those under which such plans were originally approved.

20-8 SMALL CELLULAR SYSTEMS AND TOWERS GENERAL. Small Cellular Towers under fifty (50) feet tall for cellular telecommunications services or personal communications services may be allowed in any zone after a planning commission staff review in accordance with the following procedures to ascertain agreement with the adopted comprehensive plan and the regulations contained within the zoning ordinance.

20-8(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 a small cellular system or tower shall submit a completed uniform application to the planning commission staff. Where the planning commission staff finds that circumstances or conditions relating to the application of an alternative small cellular tower are such that one or more of the requirements of the uniform application listed below are not necessary or desirable for the protection of surrounding property or the public health, safety, and general welfare, and that such special conditions or circumstances make one or more said requirements unreasonable, the planning commission staff may modify or waive such requirement of the uniform application, either permanently or on a temporary basis. Any such modification or waiver shall be requested by the applicant, and the applicant shall submit a written justification for each requested

modification or waiver. The staff shall not regulate the placement of antennas or related equipment on an existing structure. All proposed Small Cell Systems, except those exempted shall be subject to approval by the Staff. The factual determination approving or rejecting such plans shall be made in accordance with requirements of this and other applicable sections of these regulations and the Comprehensive Plan. One Application for multiple proposed towers within the same Small Cell System is encouraged whenever possible.

20-8(b) Application. Applications for the construction of Small Cellular Systems or Towers for cellular telecommunications services or personal communications services may choose to provide either the Uniform Application per KRS.100.9865 or in lieu of the Uniform Application, the following information should be submitted:

- (1) A written description and map showing the coverage area of the provider's existing facilities in the general and site-specific areas that are the subject of the Application
- (2) A statement of the telecommunications objectives for the proposed location, whether the proposed facility is necessary to prevent or fill a gap, capacity shortfall, expand or provide new coverage, or to deploy new technology in the Applicant or provider's service area, whether it is the least obtrusive means of doing so, and whether there are any alternative sites that would have fewer aesthetic impacts while providing comparable service.
- (3) A statement by an authorized representative that the Applicant or provider holds all applicable licenses or other approvals required by the Federal Communications Commission, the Kentucky Public Service Commission, and any other agency of state or federal government with authority to regulate telecommunications facilities that are required in order for the Applicant to construct the proposed facility.
- (4) A statement by an authorized representative that the Applicant or provider is in compliance with all conditions required for such license and approvals.

- (5) A full description of the number and dimensions of all Small Cell Towers proposed to be installed.
- (6) A site development plan, signed and sealed by a professional engineer registered in Kentucky, showing the proposed location of the tower and existing structures within five hundred (500) feet of the proposed site. For Applications in which multiple towers are proposed, an overall site development plan showing all proposed locations within a single city or unincorporated area must be provided.
- (7) A vertical profile sketch or drawing of the towers, signed and sealed by a professional engineer registered in Kentucky, indicating the height of the tower and the placement of all antennas and equipment enclosures.
- (8) Written approval from the property owner stating the Applicant or provider has permission to construct a facility on their property. In the case of public Right-of-Way or public property, written approval must be submitted from the duly authorized representative of the governing body holding ownership.
- (9) Photographs of view shed from each proposed tower location, taken in at least four directions.
- (10) Description of whether other Overhead Utilities exist within five hundred (500) feet of the proposed antenna location.

20-8(c) Confidentiality of Application. All information contained in the application and any updates, except for any map or other information that specifically identifies the proposed location of the cellular antenna tower then being reviewed, shall be deemed confidential and proprietary within the meaning of KRS 61.878. The planning commission shall deny any public request for the inspection of this information, whether submitted under Kentucky's Open Records Act or otherwise, except when ordered to release the information by a court of competent jurisdiction. Any person violating this subsection shall be guilty of official misconduct in the second degree as provided under KRS 522.030. The confidentiality of the applications and any updates of the application can be waived by the written authorization of the applicant.

20-8(d) Application Fee. An applicant for the construction of small cellular systems or towers for cellular telecommunications services or personal communications services shall pay an application fee in the amount set by the planning commission upon submission of an application. Applications are limited to ten (10) towers per application. Multiple towers may only be included on a single application if they are located within the same jurisdiction.

20-8(e) Processing of Application. Applications for the construction of small cellular systems or towers for cellular telecommunications services or personal communications services shall be processed as follows:

- (1) Applications will be reviewed for substance only when they meet all submittal requirements. If applications are not complete, staff must notify the applicant within ten (10) days from the submission of the application stating the application is incomplete and identifying the missing materials, which must be submitted in order to complete the application. No further review of the application will take place until the application is complete. If the resubmitted materials are not complete, staff must notify the applicant within ten (10) days from the submission of the application stating the application is incomplete and identifying the missing materials, which must be submitted in order to complete the application. No further review of the application will take place until the application is complete.
- (2) Staff shall review and take final action on Applications for new Small Cell Systems within sixty (60) days of a completed Application. This time period will not begin until [the filing fee is submitted and the application is deemed complete by Staff. Staff shall notify the applicant once the application is deemed complete and provide the deadline for the Staff review period. Staff shall either approve, approve with conditions, or deny the Application. If Staff does not make a final decision within the required sixty (60) days, the Application shall be deemed to be approved as submitted.
- (3) An applicant claiming to be injuriously affected or aggrieved by an official action, order, requirement, interpretation, grant, refusal, or decision of Staff in the administration of these regulations may appeal the action to the Planning

Commission. Such appeal must be taken within thirty (30) consecutive calendar days of the final action by Staff. The appeal shall be filed with Staff along with an appeal fee of five hundred dollars (\$500). Staff will fix a reasonable time for hearing the appeal and give public notice in accordance with KRS Chapter 424, as well as written notice to the appellant, the jurisdiction where the proposed Small Cell System is located, and the owner of Right-of-Way or property (if different from the jurisdiction) at least one (1) calendar week prior to the hearing. An applicant claiming to be injured or aggrieved by any final action of the Planning Commission shall appeal from the final action to the circuit court of the county in which the property is located. Such appeal shall be taken within thirty (30) days after such action.

(4) **WAIVERS TO THESE REGULATIONS:** This section sets forth a procedure by which the Planning Commission may allow for waivers of these regulations. The purpose is to allow some flexibility in dealing with unique issues that are outlined in Section 20-9.

- a. An application requesting a waiver, a \$500 fee, and any additional documentation necessary to meet the requirements of this section shall be submitted for review.
- b. The Planning Commission shall hold at least one public hearing after giving notice as according to KRS 424 for the purposes of reviewing the requested waiver.
- c. After the public hearing, the Planning Commission may approve, approve with conditions, or disapprove the requested waiver.
- d. The Planning Commission may grant a waiver to these regulations balanced against the public interest, providing the Planning Commission finds that the waiver will not be detrimental to the public interest and that the jurisdiction where the proposed small cell tower is to

be located approves the waiver, and at least one of the following criteria apply:

- i. That strict compliance with these regulations will create a hardship or unsafe situation in the face of unusual conditions.
- ii. That granting the waiver creates a situation more in keeping with unique character within the general vicinity.
- iii. That the requested waiver better meets the objectives of these regulations.
- iv. That granting the waiver creates a safer situation than strict compliance with these regulations.

(5) After a Small Cell System is approved, separate applicable building, zoning, and electrical permits, and permission from the local jurisdiction, Right-of-Way or property owner are required prior to the beginning of construction.

20-9 SMALL CELLULAR SYSTEM AND TOWER LOCATION AND DESIGN STANDARDS. A new Small Cell System is subject to design review and approval by Staff. The design criteria required for the new Small Cell Systems is determined by the type of location or zoning district in which the facility is to be located.

20-9(a) NON-TOWER SMALL CELL SYSTEM LOCATIONS: No administrative review by Staff is required for antennas locating on existing telecommunications structures, water towers, buildings, Utility Poles (as defined by this regulation) or other existing structures. These non-tower locations must adhere to all other applicable federal, state, and local zoning codes, building codes or permits.

20-9(b) NEW SMALL CELL SYSTEM TOWER LOCATIONS IN ALL ZONING DISTRICTS: The regulations in this subsection apply to all new Small Cell System and Towers.

(1) Temporary, mobile or wheeled cellular antenna towers shall not be permitted.

- (2) New Small Cell Towers shall not exceed the maximum building height for the zoning district within which they are located. A height that is in excess of what is permitted within the zoning district may be approved by staff if it integrates stealth technology that better meets the objectives of these regulations.
- (3) It is encouraged that New Small Cell Towers be designed and constructed to accommodate a minimum of two (2) service providers.
- (4) New Small Cell Towers may be located on public or private nonresidential land or within a public Right-of-Way provided it does not interfere with other utilities, functionality of sidewalks, visibility, or other matters of public safety.
- (5) New Small Cell Towers shall not be illuminated, except in accord with state or federal regulations, or unless illumination is integral to the Stealth Technology, such as a design intended to look like a street light pole.
- (6) New Small Cell Towers shall not include advertisements and may only display information required by a federal, state, or local agency. Such display shall not exceed one (1) square foot in area, unless required by state or federal regulations, or unless a larger display is integral to the Stealth Technology. Such display shall not exceed the width of the pole, unless a wider sign is integral to the Stealth Technology such as a design which integrates a decorative banner.
- (7) If a new Small Cell Tower is located in an area with primarily Underground Utilities, or where no adjacent Overhead Utility lines exist, it shall not utilize Overhead Utility lines.
- (8) In instances where an antenna is proposed to be constructed within the Downtown Overlay District efforts shall be made to adhere to any established design control measures or existing furnishing or fixture styles within the district. Where additional local design review processes exist, such as Certificates of Appropriateness or Historic Preservation Board, such approvals may be required.

20-9(c) NEW SMALL CELL SYSTEM TOWER LOCATIONS IN RESIDENTIAL ZONES: The regulations in this subsection apply to Small Cell Towers to be located within, or immediately adjacent to, residential zoning districts.

- (1) Facilities in residential areas are strongly encouraged to be Non-Tower Wireless Communication Facilities, which are exempt from these regulations.
- (2) Reasonable efforts shall be made for New Small Cell Towers and Antenna or Related Equipment to be camouflaged by Stealth Technology. Examples of appropriate Stealth Technology for residential areas includes, at a minimum, towers with all cables, wires, Transmission Equipment, electric meters, power equipment, etc. installed inside the Small Cell Tower. Other types of stealth technology or other methods which will reduce the visual impact may be approved by Staff.
- (3) All poles and antennas shall be uniform grey or black in color, unless another color is integral to the Stealth Technology as approved by Staff.
- (4) The use of cooling fans is discouraged. When needed, fans with lower noise profiles must be used.
- (5) New Small Cell Towers should avoid areas without Overhead Utilities. If a Small Cell Tower is located in an area with primarily Underground Utilities it must adhere to Stealth Technology that incorporates the telecommunications equipment into a streetscape amenity such as a decorative lamp post, street light or other approved design. In areas with Overhead Utilities, cylindrical antennas are required.
- (6) In residential areas, a Small Cell Tower shall not be located closer than the height of the proposed tower to an existing or proposed residential structure, or no closer than thirty (30) feet, whichever is greater.
- (7) Efforts should be made to locate new Small Cell Towers in the yard location where other Overhead Utilities are located.

- (8) In placing New Small Cell Towers within residential areas, reasonable efforts will be made to avoid obstructing the view of building facades by placing the tower at a corner, intersection or along a lot line.
 - (9) New Small Cell Tower shall not be located within five hundred (500) feet of an existing Small Cell System Tower. Multiple carriers are permitted and encouraged to locate on one tower, where possible.
 - (10) Reasonable efforts shall be made to locate new Small Cell Towers in the order of hierarchy below, based on the following functional roadway classification from the most to least preferred:
 - a. Interstate
 - b. Arterial
 - c. Collector
 - d. Local
- (4) Equipment enclosures, including electric meters, should be nearly the same width as the pole or as small as possible. Ground mounted equipment boxes should be screened from view with shrubs or other appropriate screening as approved by Staff.
 - (5) Shrouds, risers, and conduits shall be used to reduce the appearance of external cabling.
 - (6) All poles, antennas, brackets, cabling, risers, shrouds, and conduits shall be uniform grey or black in color, or other color as approved by Staff.
 - (7) Reasonable efforts shall be made to utilize Cylindrical antennas, unless another antenna style is integral to the Stealth Technology as approved by Staff.
 - (8) There shall be no more than a four (4) inch offset between the pole and pole mounted equipment enclosures.

20-9(d) NEW SMALL CELL SYSTEM TOWER LOCATIONS IN NON-RESIDENTIAL ZONES: The regulations in this subsection apply to towers to be located within non-residential zoning districts.

- (1) In instances where a facility is proposed to be constructed in the right of way within one hundred (100) feet of a residential zone or use, even if the antenna's physical location is within a non-residential zone, regulations in above subsection shall be followed.
- (2) Antennas in park areas are encouraged to be installed as Non-Tower Wireless Communication Facilities, which are exempt from this regulation.
- (3) Reasonable effort shall be given to locate new equipment based upon the following hierarchy of zones and land uses from the most to least preferred:
 - a. Co-locate on an existing structure whenever possible, which is exempt from these regulations, per Section 20-9(a)
 - b. Institutional.
 - c. Industrial.
 - d. Commercial.
 - e. Public parks.
 - f. Agricultural.

20-10 SMALL CELLULAR SYSTEM OR TOWER CRITERIA

20-10(a) Approval or Disapproval of the proposal shall be based upon an evaluation of the proposal's agreement with the comprehensive plan, zoning regulations and following criteria:

- (1) The extent to which the proposal is consistent with the purposes of these regulations.
- (2) The extent to which the proposal minimizes the impact on adjacent land uses, especially in terms of visual impact.
- (3) The extent to which the proposed facility is camouflaged (i.e., use of Stealth Technology).
- (4) The extent to which the proposed facility conforms to the character of the surrounding area (i.e., buildings, street lighting, signs).

20-11 SMALL CELLULAR SYSTEM AND TOWER AMENDMENTS. Any amendments to plans, except for minor adjustments as outlined below, shall be made in accordance with the procedure required by Subsection 20-

8(b), subject to the same limitations and requirements as those under which such plans were originally approved.

The following activities shall be considered minor adjustments from the original approval of an Application for towers located in public rights of way. Changes are measured cumulatively from the original approval of the tower or Base Station.

- (1) Tower height increases by less than ten (10) percent or ten (10) feet, whichever is greater.
- (2) Change in the tower width of less than ten (10) percent or six (6) feet, whichever is greater.