

**REGULATIONS FOR CELLULAR ANTENNA
TOWERS AND CELLULAR
TELECOMMUNICATIONS SERVICES**

PENDLETON COUNTY, KENTUCKY



Adopted By:

**PENDLETON COUNTY JOINT PLANNING
COMMISSION**

June 1, 2015

**SUMMARY
OF
REGULATIONS ADOPTED BY
THE PENDLETON COUNTY JOINT PLANNING COMMISSION
JUNE 1, 2015**

AN ORDINANCE relating to the regulation of the cellular antenna towers and cellular telecommunications services in Pendleton County.

BE IT ADOPTED by the Pendleton County Joint Planning Commission regulations in conformance with KRS 100 to regulate the siting, construction and maintenance of cellular antenna towers in Pendleton County. The regulations contains sections addressing: Purpose, Pre-application Process, Definitions, General Provisions, Applicability, Confidentiality, Application Requirements, Processing of Applications, Design Standards, Criteria, Duty to Co-locate, Amendments and Conflicts.

Provision for summary reading and publication is made as follows: These Regulations were adopted by the Pendleton County Joint Planning Commission after a public hearing held pursuant to legal notice on June 1, 2015 at 7:00 PM in the courthouse community room, 233 Main Street, Falmouth, Kentucky. The Regulations are published in summary form, the full text being available for public inspection in the office of the County Judge-Executive and/or the County Clerk.

Dated this 8 day of July, 2015.



DAVID S. FIELDS
Pendleton County Judge-Executive

PENDLETON COUNTY JOINT PLANNING COMMISSION

REGULATIONS FOR CELLULAR ANTENNA TOWERS AND CELLULAR TELECOMMUNICATIONS SERVICES

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- A. **PURPOSE:** These regulations are being adopted by the Pendleton County Joint Planning Commission (the "planning commission") in conformance with KRS 100. The purposes of these regulations 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. **PRE-APPLICATION CONFERENCE:** Applicants are encouraged to notify the planning commission's duly authorized representative, staff and legal counsel to discuss proposals; allow for early coordination; and to identify those items which are in conformance/nonconformance with the comprehensive plan, local zoning ordinance, and the provisions of these regulations.

C. **DEFINITIONS:** For the purposes of these regulations, the following definitions shall apply:

1. **ANTENNAS OR RELATED EQUIPMENT:** The transmitting, receiving, or other equipment used to support cellular telecommunications service or personal communications service. This definition does not include towers.
2. **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.
3. **CELLULAR TELECOMMUNICATIONS SERVICES:** A retail telecommunications service that uses radio signals transmitted through cell sites and mobile switching stations.
4. **CO-LOCATION:** Locating two (2) or more transmission antennas or related equipment on the same cellular antenna tower.
5. **PERSONAL COMMUNICATION SERVICE:** As defined in 47 U.S.C. sec. 332(c).
6. **UNIFORM APPLICATION:** An application to construct a cellular antenna tower submitted to a planning commission in accordance with KRS Chapter 100.9865 and KRS 100.987.
7. **UTILITY:** Any person except a city, who owns, controls, or 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 located in a county containing a city of the first class or a sewage collection, transmission, or treatment facility that is affixed to real property and located in any other county and is not subject to regulation by a metropolitan sewer district or any sanitation district created pursuant to KRS 220.
- D. GENERAL: Cellular antenna towers 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 applicable local zoning ordinance.
- E. 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 at least two full copies of the utility's completed uniform application to the planning commission.
- F. CONFIDENTIALITY OF APPLICATION AND APPLICANT'S DUTY OF IDENTIFICATION OF CONFIDENTIAL MATERIALS: 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. Each applicant is encouraged, along with their uniform application, to waive these confidentiality requirements. In the event that the applicant is unwilling to waive the confidentiality of the uniform application, the applicant is directed to specifically identify all information contained in its uniform application which it considers to be confidential and proprietary. Such confidential and proprietary information shall be submitted in a separate binder or container with a clear identification on the cover thereof that the information contained therein is considered the confidential and proprietary information of the applicant and is therefore restricted from release as provided above. All information not so identified will be deemed to be available for public inspection, disclosure and copying.
- G. APPLICATION REQUIREMENTS: Applications for the construction of cellular antenna towers for cellular telecommunications services or personal communications services shall include payment of an application fee in the

amount of Two Thousand Five Hundred (\$2,500) Dollars payable to the "Pendleton County Joint Planning Commission" and shall include the following:

1. 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 Pendleton County; and
 - b. A one-half (1/2) mile area outside of Pendleton County if that area contains either existing or proposed Construction sites for cellular antenna towers.
2. Any contract with an owner of property upon which a cellular antenna tower is to be constructed including 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.
3. The full name and address of the applicant.
4. The applicant's articles of incorporation, if applicable.
5. A geotechnical investigation report, signed and sealed by a professional engineer registered in Kentucky, which includes boring logs and foundation design recommendations.
6. 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.
7. 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.
8. 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 demonstrating compliance with KRS 100.987 (2).
9. The identity and qualifications of each person directly responsible for the design and construction of the proposed tower.
10. 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. The site development plan shall contain all information required of a Stage 1 Plan and a Stage 2 Plan in the applicable zoning ordinance (i.e., Section 11.3 of both the Pendleton County Zoning Ordinance and the Falmouth Zoning Ordinance).

11. 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.
12. 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.
13. 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.
14. A statement that every person who, according to the records of the property valuation administrator, owns property within five (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.
15. A list of the property owners who received the notice, together with copies of the certified letters sent to the listed property owners.
16. A statement that the chief executive officer of the affected local governments and their legislative bodies have been notified, in writing, of the proposed construction.
17. A copy of the notice sent to the chief executive officer of the affected local governments and their legislative bodies.
18. 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] 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.

19. 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.

20. 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.

21. 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 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.

22. 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.

H. PROCESSING OF APPLICATION: Applications for the construction of new 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 before the Pendleton County Joint Planning Commission, 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 the request and cost of the Applicant at least once, but may be published two (2) or more times, 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 hearing shall be posted by the Applicant conspicuously on the property in question, for fourteen (14) consecutive days immediately prior to the hearing. Said posting shall consist of one or more signs, constructed of durable material, and clearly depicting the following information: "(Name of utility) proposes to construct a telecommunications ("tower" or "monopole") on this site" (a minimum of one (1) inch high lettering); date, place, and time of public hearing (one (1) inch high lettering); and address, including telephone number, of the planning commission where additional information regarding hearing may be obtained.
3. Notice of the hearing shall be given by the Applicant at least fourteen (14) days in advance of the hearing, by certified mail with return receipt requested, with certification to the commission secretary, or other officer of the planning commission, that the notice was mailed to an owner of every parcel of property within five hundred (500) feet of the base of the proposed tower or monopole. It shall be the duty of the person(s) proposing the facility to furnish to the planning commission the names and addresses of said property owners. 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 having the same address.
4. 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. The planning commission shall submit to the applicant and the local zoning administrator, along with their action, the bases for their decision. 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 applicant to a specific date for the planning commission to issue a decision, the uniform application shall be deemed approved.
5. If the planning commission disapproves of the proposed construction, it shall state the reasons for disapproval in its written decision and may

make suggestions which, in its opinion, better accomplish the objectives of the comprehensive plan and the locally adopted zoning regulations.

6. No permit for construction of a cellular or personal communications services antenna tower shall be issued until the planning commission approves the uniform application or the sixty (60) day time period has expired, whichever occurs first.
7. The applicant shall be prepared to demonstrate that it holds a license issued by the FCC to operate a cellular tower.
8. The applicant shall 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 unit 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.
9. 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.
10. In the event of co-location, a utility shall be considered the primary user of the tower, if the utility is the owner of the antenna tower and if no other agreement exists that prescribes an alternate arrangement between the parties for use of the tower. Any other entity that co-locates transmission or related facilities on a cellular antenna tower shall do so in a manner that does not impose additional costs or operating restrictions on the primary user.
11. Upon the approval of an application for the construction of a cellular antenna tower by a planning commission, the applicant shall notify the

Public Service Commission within ten (10) working days of the approval. The notice to the Public Service Commission shall include a map showing the location of the construction site. If an applicant fails to file notice of an approved uniform application with the Public Service Commission, the applicant shall be prohibited from beginning construction on the cellular antenna tower until such notice has been made.

12. A party aggrieved by a final action of the planning commission under this process may bring an action for review in Pendleton Circuit Court.
- I. DESIGN STANDARDS: At the time of application submittal, the applicant shall provide information demonstrating compliance with the following requirements. Where the planning commission, or its duly authorized representative, 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 along with the uniform application, 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, unless written waiver of the requirement is obtained from all owners and tenants of the adjacent property.
 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 applicable criteria.
 3. When any cellular antenna tower, or alternative antenna tower structure, is proposed, the applicant shall furnish the planning commission with a certification from an engineer registered in the Commonwealth of Kentucky that the tower will meet the current ANSI/EIA/TIA 222-F standards and other applicable state standards.

4. Cellular antenna towers shall not be illuminated, except in accord with other state or federal regulations, including FAA requirements.
5. The site shall be unstaffed. 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 be 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.
13. All new cellular antenna towers, accessory structure or cabinet shall be located at least twenty-five (25') feet outside of the 100-year flood plain or any other designated flood hazard area.
14. All new cellular antenna towers shall be built a safe distance of at least two miles from any existing or planned airports.
15. No new cellular tower shall be permitted within 1,000 feet of any historic zoning or overlay district, nor in any mixed land use (MLU) zone.

16. No new cellular tower shall be built within 200' feet of the centerline of US Highway 27.
17. No cellular tower may be constructed in a required setback area or a required parking or loading area.

J. CRITERIA: Evaluation of the proposal shall be based upon the following criteria:

1. Agreement with the various elements of the adopted comprehensive plan, and, where applicable, any other adopted plan.
2. Extent to which the proposal is consistent with the purposes of these regulations.
3. Adequacy of the proposed site, considering such factors as the sufficiency of the size of the site to comply with the established criteria, the configuration of the site, and the extent to which the site is formed by logical boundaries (e.g., topography, natural features, streets, relationship of adjacent uses, etc.).
4. Extent to which the proposal responds to the impact of the proposed development on adjacent land uses, especially in terms of visual impact.
5. Extent to which the proposed cellular antenna tower camouflaged (i.e., use of "stealth technology").
6. Extent to which the proposed facility is integrated with existing structures (i.e., buildings, signs).

K. DUTY TO CO-LOCATE: The applicant shall make a reasonable attempt to co-locate additional transmitting or related equipment. The applicant shall have a duty to demonstrate that there is no co-location alternative reasonably available. Unless co-locating, Applicant shall submit with the uniform application a certification, supported by evidence, that co-location of the proposed facility with an existing approved tower or facility cannot be accommodated. The applicant's certification shall include a listing of all existing towers and facilities within a two (2) mile radius of the proposed tower location, a description of each existing site, and a discussion of the ability or inability to co-locate on each existing site, according to the following:

1. No existing towers or facilities are located within a two (2) mile radius of the proposed tower location.
2. Existing towers or facilities are not of sufficient height to meet the applicant's engineering requirements.

3. Existing towers or facilities do not have sufficient structural strength to support the applicant's proposed antenna(s) or related equipment.
 4. The applicant's planned equipment would cause frequency interference with other existing or planned equipment of the tower or facility, or the existing or planned equipment of the tower or facility would cause frequency interference with the applicant's planned equipment, and which cannot be reasonably prevented.
 5. Unwillingness of the owner/owners of the existing tower/towers or facility/facilities to entertain a co-location proposal.
 6. Existing towers are not located within a reasonable distance to provide the necessary coverage.
 7. Detailed information regarding the applicant's radio frequency requirements that cannot be met by other available towers in the vicinity, and how the proposed tower meets those requirements.
 8. A listing of at least three (3) potential sites within a one (1) mile radius of the proposed tower location, with a description of each potential site, and a discussion of the ability or inability of the site to host such a facility, according to the following: unwillingness of the site owner(s) to entertain such a facility; topographic limitations of the site; adjacent impediments that would obstruct adequate transmission; and physical site constraints that would preclude the construction of such a facility.
- L. **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 above, subject to the same limitations and requirements as those under which such plans were originally approved.
- M. **CONFLICTS WITH OTHER ORDINANCES OR REGULATIONS:** All ordinances or other regulations in conflict herewith are hereby repealed or superseded by these regulations, including Ordinance No. 610.2 adopted by the Pendleton County Fiscal Court on November 8, 2001, which was later transferred to the planning commission by Resolution adopted by the Pendleton County Fiscal Court on December 9, 2003.