

TO: Kenton County Planning Commission Members

FROM: Emi Randall, RLA, AICP, Director of Planning and Zoning

RE: Proposed Small Cell Tower Regulation Amendments

DATE: February 28, 2019

Enclosed please find proposed changes to the Regulations for Cellular Antenna Towers and Small Cell Towers in Kenton County to be considered at the March 7, 2019 meeting.

APPLICANT: Kenton County Planning Commission per Paul J. Darpel, Chairman
REQUEST: Proposed amendments to Article III of the REGULATIONS FOR CELLULAR ANTENNA TOWERS AND SMALL CELL TOWERS IN KENTON COUNTY for the entire planning jurisdiction. These amendments reduce application fees, modify application requirements, and add new language to the timeframe for staff review of applications and notification of incomplete submittal. These changes respond to the Federal Communications Commission's Declaratory Ruling and Third Report and Order dated September 27, 2018, made effective January 14, 2019.

Staff will be prepared to address your comments and/or questions regarding the project during the public hearing. If you need additional information or clarification prior to that time, don't hesitate to contact me.

AV/pm

attachment

c: Kenton County Judge/Executive and County Commissioners
Kenton County Mayors and Members of all City Councils/Commissions
Kenton County Administrators
Kenton County City Clerks

ARTICLE III: SMALL CELL TOWERS

SECTION 3.0 PRE-APPLICATION CONFERENCE: Applicants must contact Staff and request a pre-application conference. Upon receipt of this request, Staff will set up the meeting which shall 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 Cell System is proposed to be installed. This meeting will allow for early coordination by identifying existing structures that might be suitable for collocation and identifying any other items which are in conformance/nonconformance with the Comprehensive Plan, local zoning ordinance, and/or the provisions of these regulations. The meeting will provide an opportunity for an initial discussion regarding proposed structure locations, design and the Application submittal, and approval process. 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.

SECTION 3.1 APPLICATION SUBMITTAL: All proposed Small Cell Systems, except those exempted by Section 3.4, A., shall be subject to administrative review and approval by 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. Where Staff finds that circumstances or conditions relating to the particular Application 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 requirements unreasonable, Staff may modify or waive such requirement, either permanently or on a temporary basis. Any modification or waiver, shall be requested in writing by the Applicant.

SECTION 3.2 REQUESTED APPLICATION INFORMATION: 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.

Applicants for the construction of Small Cell Systems 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:

- A. An application fee of \$225 per small cell tower shall be submitted. [~~based upon the following table;~~]

[Number of proposed Small Cell Towers]	[Fee]
[1-3]	[\$500 per tower]
[4-6]	[\$400 per tower]
[7-10]	[\$2,500 total]

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 city or unincorporated area of the County.

- B. 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.
- C. A statement of the telecommunications objectives for the proposed location, whether the proposed facility is necessary to prevent or fill a gap, ~~or~~ 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.
- D. 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.
- E. A statement by an authorized representative that the Applicant or provider is in compliance with all conditions required for such license and approvals.
- F. A full description of the number and dimensions of all Small Cell Towers proposed to be installed.
- G. 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.
- H. 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.

~~[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.]~~

- I. A statement indicating the individual who is the authorized agent and their preferred email and mailing address to receive communications under these regulations.
- J. Photographs of view shed from each proposed tower location, taken in at least four directions.
- K. Description of whether other Overhead Utilities exist within five hundred (500) feet of the proposed antenna location.

SECTION 3.3 PROCESSING OF APPLICATION:

- A. 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.
- A-B. 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.
- B-C. 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.

C.D. 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 Subsection 4 below.

1. 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.
2. 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.
3. After the public hearing, the Planning Commission may approve, approve with conditions, or disapprove the requested waiver.
4. 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:
 - a. That strict compliance with these regulations will create a hardship or unsafe situation in the face of unusual conditions.
 - b. That granting the waiver creates a situation more in keeping with unique character within the general vicinity.
 - c. That the requested waiver better meets the objectives of these regulations.
 - d. That granting the waiver creates a safer situation than strict compliance with these regulations.

D.E. 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.

SECTION 3.4 SMALL CELL TOWER LOCATION AND DESIGN REGULATIONS: 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.

- 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.
- B. **NEW SMALL CELL SYSTEM TOWER LOCATIONS IN ALL ZONING DISTRICTS:** The regulations in this subsection apply to all new Small Cell System 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. New Small Cell Towers shall 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 non-residential 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 a

historic or commercial district with established public or private design control measures, regulations in subsection 3.4, C., shall be followed. 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 Urban Design Review Boards, such approvals may be required.

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 as defined in Article III, Section 3.4., D., (1).

1. Facilities in residential areas are strongly encouraged to be Non-Tower Wireless Communication Facilities, which are exempt from these regulations per Article III, Section 3.4, A.
2. New Small Cell Towers and Antenna or Related Equipment shall 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. New Small Cell Towers within residential areas should be located 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
- 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 subsection 3.4, C., shall be followed.
 2. Antennas in commercial, institutional, or park areas are encouraged to be installed as Non-Tower Wireless Communication Facilities, which are exempt from this regulation per Article III, Section 3.4, A.
 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 3.4, A.
 - b. Institutional.
 - c. Industrial.
 - d. Commercial.
 - e. Public parks.
 - f. Agricultural.
 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. Cylindrical antennas shall be required, 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.

SECTION 3.5 EVALUATION CRITERIA: Evaluation of the proposal shall be based upon the following criteria and shall be subject to administrative approval by Staff:

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

SECTION 3.6 AMENDMENTS TO APPROVED PLANS: Any amendments to plans, except for the minor adjustments outlined below, shall be made in accordance with the procedure required by Section 3.3, 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.

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

APPENDIX A

SUMMARY OF AMENDMENTS

<u>SUMMARY OF AMENDMENTS</u>	<u>DATE ADOPTED BY KCPC</u>
<u>New regulations adopted</u>	<u>May 5, 2016</u>
<u>(1) Section 1.14 amending the definition of "Small Cell Tower" to include Wi-Fi antennas (2) Adding Section 3.3, C, Waivers to these Regulations (3) Section 3.4, B., 2., allowing a height greater than what is permitted within the zoning district (4) Section 3.4, C., 2., allowing staff to approve other methods which will reduce visual impacts</u>	<u>October 6, 2016</u>
<u>(1) Section 3.2, A., amending the requested application information, including application fees (2) Section 3.3 clarifying the procedures for incomplete applications</u>	<u>Month, Day, Year</u>