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# OWEN COUNTY FISCAL COURT ORDINANCE NO. 128 OF 2001

BE IT ORDAINED by the Owen County Fiscal Court, Owen County, Kentucky as follows:

## Section 1. Purpose and Legislative Intent.

The Telecommunications Act of 1996 affirmed the County of Owen authority concerning the placement, construction and modification of Wireless Telecommunications Facilities. The Owen County Fiscal Court finds that Wireless Telecommunications Facilities may pose a unique hazard to the health, safety, public welfare and environment of the County of Owen and its inhabitants. The County also recognizes that facilitating the development of wireless service technology can be an economic development asset to the County and of significant benefit to the County and its residents. In order to insure that the placement, construction or modification of Wireless Telecommunications Facilities is consistent with the County's land use policies, the County is adopting a single, comprehensive, Wireless Telecommunications Facilities application and permit process. The intent of this Ordinance is to minimize the negative impact of Wireless Telecommunications Facilities, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the County of Owen.

## Section 2. Title.

This Ordinance may be known and cited as the Wireless Telecommunications Facilities Siting Ordinance for the County of Owen, including its extraterritorial jurisdiction..

## Section 3. Severability.

- A) If any word, phrase, sentence, part, section, subsection, or other portion of this Ordinance or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed Application thereof, shall be severable, and the remaining provisions of this Ordinance, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.
- B) Any Special Use Permit issued under this Ordinance shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the Owen County Fiscal Court.

## Section 4. Definitions.

For purposes of this Ordinance, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

- 1. "Accessory Facility or Structure" means an accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities, and located on the same property or lot as the Wireless Telecommunications Facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.
- 2. "Applicant" means any Person submitting an Application to the County of Owen for a Special Use Permit for Wireless Telecommunications Facilities.

3. **"Application"** means the form approved by the Board, together with all necessary and appropriate documentation that an Applicant submits in order to receive a Special Use Permit for Wireless Telecommunications Facilities. **"Antenna"** means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency signals. Such waves shall include, but not be limited to radio, television, cellular, paging, personal Telecommunications services (PCS), and microwave Telecommunications.
4. **"Board"** means the Owen County Fiscal Court.
5. **"County"** means the County of Owen, Kentucky.
6. **"Co-location"** means the use of the same Telecommunications Tower or structure to carry two or more Antennae for the provision of wireless services by two or more persons or entities.
7. **"Commercial Impracticability"** or **"Commercially Impracticable"** shall have the meaning in this Ordinance and any Special Use Permit granted hereunder as is defined and applied under the United Commonwealths Uniform Commercial Code (UCC).
8. **"Completed Application"** means an Application that contains all information and/or data necessary to enable the Board to evaluate the merits of the Application, and to make an informed decision with respect to the effect and impact of Wireless Telecommunications Facilities on the County in the context of the permitted land use for the particular location requested.
9. **"Direct-to home satellite services"** or **"Direct Broadcast Service"** or **"DBS"** means only programming transmitted or broadcast by satellite directly to subscribers' premises without the use of ground receiving equipment, except at the subscribers' premises or in the uplink process to the satellite.
10. **"EPA"** means Commonwealth and/or Federal Environmental Protection Agency or its duly assigned successor agency.
11. **"FAA"** means the Federal Aviation Administration, or its duly designated and authorized successor agency.
12. **"FCC"** means the Federal Communications Commission, or its duly designated and authorized successor agency.
13. **"Free standing Tower"** means a Tower that is not supported by guy wires and ground anchors or other means of attached or external support.
14. **"Height"** means, when referring to a Tower or structure, the distance measured from the pre-existing grade level to the highest point on the Tower or structure, even if said highest point is an Antenna.
15. **"NIER"** means Non-Ionizing Electromagnetic Radiation
16. **"Person"** means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.
17. **"Personal Wireless Facility"** See definition for 'Wireless Telecommunications Facilities'.



18. **"Personal Wireless Services"** or **"PWS"** or **"Personal Telecommunications Service"** or **"PCS"** shall have the same meaning as defined and used in the 1996 Telecommunications Act.
19. **"Telecommunication Site"** See definition for Wireless Telecommunications Facilities.
20. **"Special Use Permit"** means the official document or permit by which an Applicant is allowed to construct and use Wireless Telecommunications Facilities as granted or issued by the County.
21. **"Commonwealth"** means the Commonwealth of Kentucky.
22. **"Telecommunications"** means the transmission and reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.
23. **"Telecommunications Structure"** means a structure used in the provision of services described in the definition of 'Wireless Telecommunications Facilities'.
24. **"Temporary"** means in relation to all aspects and components of this Ordinance, something intended to, or that does, exist for fewer than ninety (90) days.
25. **"Wireless Telecommunications Facilities"** or **"Telecommunications Tower"** or **"Telecommunications Site"** or **"Personal Wireless Facility"** means a structure, facility or location designed, or intended to be used as, or used to support, Antennas, as well as antennas or any functional equivalent equipment used to transmit or receive signals. It includes without limit, free standing Towers, guyed Towers, monopoles, and similar structures that employ camouflage technology, including, but not limited to structures such as a multi-story building, church steeple, silo, water tower, sign or other similar structures intended to mitigate the visual impact of an Antenna or the functional equivalent of such. It is a structure intended for transmitting and/or receiving radio, television, cellular, paging, personal Telecommunications services, or microwave Telecommunications, but excluding those used exclusively for fire, police and other dispatch Telecommunications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar Telecommunications.

## **Section 5. Overall Policy and Desired Goals for Special Use Permits for Wireless Telecommunications Facilities.**

In order to ensure that the placement, construction, and modification of Wireless Telecommunications Facilities protects the County's health, safety, public welfare, environmental features and other aspects of the quality of life specifically listed elsewhere in this Ordinance, the Board hereby adopts an overall policy with respect to a Special Use Permit for Wireless Telecommunications Facilities for the express purpose of achieving the following goals:

- 1) Implementing an Application process for person(s) seeking a Special Use Permit for Wireless Telecommunications Facilities;
- 2) Establishing a policy for examining an application for and issuing a Special Use Permit for Wireless Telecommunications Facilities that is both fair and consistent.
- 3) Establishing reasonable time frames for granting or not granting a Special Use Permit for Wireless Telecommunications Facilities, or recertifying or not recertifying, or revoking the Special Use Permit granted under this Ordinance.
- 4) Promoting and encouraging, wherever possible, the sharing and/or collocation of Wireless Telecommunications Facilities among service providers;
- 5) Promoting and encouraging, wherever possible, the placement, height and quantity of Wireless Telecommunications Facilities in such a manner as to minimize adverse aesthetic impacts to the land, property, buildings, and other facilities adjacent to, surrounding, and in



generally the same area as the requested location of such Wireless Telecommunications Facilities.

## Section 6. Special Use Permit Application and Other Requirements.

- A) All Applicants for a Special Use Permit for Wireless Telecommunications Facilities or any modification of such facility shall comply with the requirements set forth in this section. The Board is the officially designated agency or body of the community to whom applications for a Special Use Permit for Wireless Telecommunications Facilities must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, recertifying or not recertifying, or revoking special use permits for Wireless Telecommunications Facilities. The Board may at its discretion delegate or designate other official agencies of the County to accept, review, analyze, evaluate and make recommendations to the Board with respect to the granting or not granting, recertifying or not recertifying or revoking special use permits for Wireless Telecommunications Facilities.
- B) An Application for a Special Use Permit for Wireless Telecommunications Facilities shall be signed on behalf of the Applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the Applicant, shall also sign the Application. At the discretion of the Board, any false or misleading statement in the Application may subject the Applicant to denial of the Application without further consideration or opportunity for correction.
- C) Applications not meeting the requirements stated herein or which are otherwise incomplete, may be rejected by the Board.
- D) The Applicant shall include a statement in writing:
  - 1) That the applicant's proposed Wireless Telecommunications Facilities shall be maintained in a safe manner, and in compliance with all conditions of the Special Use Permit, without exception, unless specifically granted relief by the Board in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable County, Commonwealth and Federal Ordinances, rules, and regulations;
  - 2) That the construction of the Wireless Telecommunications Facilities is legally permissible, including, but not limited to the fact that the Applicant is authorized to do business in the Commonwealth of Kentucky.
- E) No Wireless Telecommunications Facilities shall be installed or constructed until the site plan is reviewed and approved by the Board, and the Special Use Permit has been issued.
- F) All applications for the construction or installation of new Wireless Telecommunications Facilities shall be accompanied by a report containing the information hereinafter set forth. The report shall be signed by a licensed professional engineer registered in the Commonwealth. Where this section calls for certification, such certification shall be by a qualified Commonwealth of Kentucky licensed Professional Engineer acceptable to the County, unless otherwise noted. The Application shall include, in addition to the other requirements for the Special Use Permit, the following information:
  - 1) Documentation that demonstrates the need for the Wireless Telecommunications Facility to provide service primarily within the County;
  - 2) Name, address and phone number of the person preparing the report;
  - 3) Name, address, and phone number of the property owner, operator, and Applicant, to include the legal form of the Applicant;
  - 4) Postal address and tax map parcel number of the property;



- 5) Zoning District or designation in which the property is situated;
  - 6) Size of the property stated both in square feet and lot line dimensions, and a diagram showing the location of all lot lines;
  - 7) Location of nearest residential structure;
  - 8) Location of nearest habitable structure;
  - 9) Location, size and height of all structures on the property which is the subject of the Application;
  - 10) Location, size and height of all proposed and existing antennae and all appurtenant structures;
  - 11) Type, locations and dimensions of all proposed and existing landscaping, and fencing;
  - 12) The number, type and design of the Telecommunications Tower(s) Antenna(s) proposed and the basis for the calculations of the Telecommunications Tower's capacity to accommodate multiple users;
  - 13) The make, model and manufacturer of the Tower and Antenna(s);
  - 14) A description of the proposed Tower and Antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
  - 15) The frequency, modulation and class of service of radio or other transmitting equipment;
  - 16) Transmission and maximum effective radiated power of the Antenna(s);
  - 17) Direction of maximum lobes and associated radiation of the Antenna(s);
  - 18) Certification that NIER levels at the proposed site are within the threshold levels adopted by the FCC;
  - 19) Certification that the proposed Antenna(s) will not cause interference with existing telecommunications devices, which certification shall be reviewed by a licensed engineer designated by County;
  - 20) A copy of the FCC license applicable for the use of Wireless Telecommunications Facilities;
  - 21) Certification that a topographic and geomorphologic study and analysis has been conducted, and that taking into account the subsurface and substrata, and the proposed drainage plan, that the site is adequate to assure the stability of the proposed Wireless Telecommunications Facilities on the proposed site, which certification shall be reviewed by a licensed engineer designated by the County;
  - 22) Propagation studies of the proposed site and all adjoining proposed, in-service or existing sites;
  - 23) Applicant shall disclose in writing any agreement in existence prior to submission of the Application that would limit or preclude the ability of the Applicant to share any new Telecommunication Tower that it constructs.
- G) In the case of a new Telecommunication Tower, the Applicant shall be required to submit a written report demonstrating its efforts to secure shared use of existing Telecommunications Tower(s) or use of existing buildings or other structures within the County. Copies of written requests and responses for shared use shall be provided to the Board.
- H) The Applicant shall furnish written certification that the Telecommunication Facility, foundation and attachments are designed and will be constructed to meet all local, County, Commonwealth and Federal structural requirements for loads, including wind and ice loads.
- I) After construction and prior to receiving a Certificate of Compliance, the Applicant shall furnish written certification that the Wireless Telecommunications Facilities are grounded and bonded so as to protect persons and property and installed with appropriate surge protectors.
- J) If requested by the Board, the Applicant shall furnish a Visual Impact Assessment which shall include:



- 1) A "Zone of Visibility Map" which shall be provided in order to determine locations where the Tower may be seen.
  - 2) Pictorial representations of "before and after" views from key viewpoints both inside and outside of the County, including but not limited to Commonwealth highways and other major roads; Commonwealth and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. The Board, acting in consultation with its consultants or experts, will provide guidance concerning the appropriate key sites at a pre-application meeting.
  - 3) An assessment of the visual impact of the Tower base, guy wires and accessory buildings from abutting and adjacent properties and streets.
- K) Any and all representations made by the Applicant to the Board, on the record, during the Application process, whether written or verbal, shall be deemed a part of the Application and may be relied upon in good faith by the Board.
- L) The Applicant shall, in a manner approved by the Board, demonstrate and provide in writing and/or by drawing how it shall effectively screen from view its proposed Wireless Telecommunications Facilities base and all related facilities and structures.
- M) All utilities from Wireless Telecommunications Facilities sites shall be installed underground and in compliance with all Ordinances, rules and regulations of the County, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate. The Board may waive or vary the requirements of undergrounding installation of utilities whenever, in the opinion of the Board, such variance or waiver shall not be detrimental to the health, safety, general welfare and environment, including the visual and scenic characteristics of the area.
- N) All Wireless Telecommunications Facilities shall contain a demonstration that the Facility be sited so as to have the least adverse visual effect on the environment and its character, and the residences in the area of the Wireless Telecommunications Facilities sites.
- O) Both the Wireless Telecommunications Facility and any and all accessory or associated facilities shall maximize use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings, this shall include the utilization of stealth or concealment technology as required by the County.
- P) At a Telecommunications Site, an access road and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and vegetation-cutting. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.
- Q) A Person who holds a Special Use Permit for Wireless Telecommunications Facilities shall construct, operate, maintain, repair, provide for removal of, modify or restore the permitted Wireless Telecommunications Facilities in strict compliance with all current technical, safety and safety-related codes adopted by the County, County, Commonwealth, or United Commonwealths, including but not limited to the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsibly workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building,



electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.

- R) A holder of a Special Use Permit granted under this Ordinance shall obtain, at its own expense, all permits and licenses required by applicable rule, regulation or Ordinance, and must maintain the same, in full force and effect, for as long as required by the County or other governmental entity or agency having jurisdiction over the applicant.
- S) The Board may conduct an environmental review of the proposed project in combination with its review of the Application under this Ordinance. Applicant shall provide written documentation that it is in compliance with all Federal, Commonwealth and Local Environmental regulations, such as NHPA and NEPA.
- T) An Applicant shall submit to the County Board the number of completed Applications determined to be needed at the pre-application meeting. A copy of the Application shall be provided to the legislative body of all adjacent municipalities.
- U) The Applicant shall examine the feasibility of designing a proposed Telecommunications Tower to accommodate future demand for at least two (2) additional commercial applications, for example, future collocations. The scope of this examination shall be determined by the Board. The Telecommunications Tower shall be structurally designed to accommodate at least two (2) additional Antenna Arrays equal to those of the Applicant, and located as close to the Applicant's Antenna as possible without causing interference. This requirement may be waived, provided that the Applicant, in writing, demonstrates that the provisions of future shared usage of the Telecommunications Tower is not technologically feasible, or is Commercially Impracticable and creates an unnecessary and unreasonable burden, based upon:
  - 1) The foreseeable number of FCC licenses available for the area;
  - 2) The kind of Wireless Telecommunications Facilities site and structure proposed;
  - 3) The number of existing and potential licenses without Wireless Telecommunications Facilities spaces/sites;
  - 4) Available space on existing and approved Telecommunications Towers.
- V) The applicant shall submit to the Board a letter of intent committing the owner of the proposed new Tower, and his/her successors in interest, to negotiate in good faith for shared use of the proposed Tower by other Telecommunications providers in the future. This letter shall be filed with the Board. Failure to abide by the conditions outlined in the letter may be grounds for revocation of the Special Use Permit. The letter shall commit the new Tower owner and their successors in interest to:
  - 1. Respond within 60 days to a request for information from a potential shared-use applicant;
  - 2. Negotiate in good faith concerning future requests for shared use of the new Tower by other Telecommunications providers;
  - 3. Allow shared use of the new Tower if another Telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the Tower or equipment to accommodate a shared user without causing electromagnetic interference.



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W) Unless waived by the Board, there shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues which will help to expedite the review and permitting process. A pre-application meeting may also include a site visit. Costs of the County's consultants to prepare for and attend the pre-application meeting will be borne by the applicant.

X) The holder of a Special Use Permit shall notify the County of any intended modification of a Wireless Telecommunication Facility and shall apply to the County to modify, relocate or rebuild a Wireless Telecommunications Facility.

Y) In order to better inform the public, in the case of a new Telecommunication Tower, the applicant shall prior to the public hearing on the application, hold a "balloon test" as follows: Applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a three (3) foot diameter brightly colored balloon at the maximum height of the proposed new Tower. The dates, (including a second date, in case of poor visibility on the initial date) times and location of this balloon test shall be advertised, by the Applicant, at seven (7) and fourteen (14) days in advance of the first test date in a newspaper with a general circulation in County and agreed to by the Board. The Applicant shall inform the Board, in writing, of the dates and times of the test, at least fourteen (14) days in advance. The balloon shall be flown for at least eight consecutive hours sometime between 7:00 am and 4:00 pm of the dates chosen. The primary date shall be on a week-end, but the second date, in case of poor visibility on the initial date, may be on a week day.

Z) The applicant will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the Telecommunications Tower or existing structure intended to support wireless facilities requires lighting under Federal Aviation Regulation Part 77. This requirement shall be for any new tower, or for an existing structure or building where the application increases the height of the structure or building. If this analysis determines, that the FAA must be contacted, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided in a timely manner.

## Section 7. Location of Wireless Telecommunications Facilities.

A) Applicants for Wireless Telecommunications Facilities shall locate, site and erect said Wireless Telecommunications Facilities in accordance with the following priorities, one (1) being the highest priority and four (4) being the lowest priority.

1. On existing Telecommunications Towers or other tall structures;
2. Co-location on a site with existing Wireless Telecommunications Facilities or structures;
3. On municipally-owned properties;
4. On other property in the County.

A) If the proposed property site is not the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site and the hardship that would be incurred by the Applicant if the permit were not granted for the proposed site.

B) An Applicant may not by-pass sites of higher priority by stating the site presented is the only site leased or selected. An Application shall address collocation as an option and if such option is not proposed, the applicant must explain why collocation is Commercially or otherwise Impracticable. Agreements between providers limiting or prohibiting collocation, shall not be a valid basis for any claim of Commercial Impracticability or hardship.



- C) Notwithstanding the above, the Board may approve any site located within an area in the above list of priorities, provided that the Board finds that the proposed site is in the best interest of the health, safety and welfare of the County and its inhabitants.
- D) The Applicant shall submit a written report demonstrating the Applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If the site selected is not the highest priority, then a detailed written explanation as to why sites of a higher priority were not selected shall be included with the Application.
- E) The Applicant shall, in writing, identify and disclose the number and locations of any additional sites that the Applicant has been, is, or will be considering, reviewing or planning for Wireless Telecommunications Facilities in the County, and all municipalities adjoining the County, for a two year period following the date of the Application.

## **Section 8. Shared use of Wireless Telecommunications Facilities and other structures.**

- A) Shared use of existing Wireless Telecommunications Facilities shall be preferred by the County, as opposed to the proposed construction of a new Telecommunications Tower. Where such shared use is unavailable, location of Antennas on other pre-existing structures shall be considered and preferred. The Applicant shall submit a comprehensive report inventorying existing Towers and other appropriate structures within four (4) miles of any proposed new Tower Site, unless the Applicant can show that some other distance is more reasonable, and outlining opportunities for shared use of existing facilities and the use of other pre-existing structures as a preferred alternative to new construction.
- B) An Applicant intending to share use of an existing Telecommunications Tower or other structure shall be required to document the intent of the existing owner to share use. In the event of an Application to share the use of an existing Telecommunications Tower does not increase the height of the Telecommunications Tower, the Board shall waive such requirements of the Application required by this Local Ordinance as may be for good cause shown.
- C) Such shared use shall consist only of the minimum Antenna array technologically required to provide service within the County, to the extent practicable, unless good cause is shown.

## **Section 9. Height of Telecommunications Tower(s).**

- A) The Applicant must submit documentation justifying to the Board the total height of any Telecommunications Tower, Facility and/or Antenna and the basis therefor. Such justification shall be to provide service within the County, to the extent practicable, unless good cause is shown.
- B) Telecommunications Towers shall be no higher than the minimum height necessary. Unless waived by the Board upon good cause shown, the maximum height shall be one hundred-forty (140) feet, based on six (6) co-located antenna arrays and ambient tree height of eighty (80) feet.



- C) The maximum height of any Telecommunications Tower and attached Antennas constructed after the effective date of this Ordinance shall not exceed that which shall permit operation without artificial lighting of any kind, in accordance with municipal, county, Commonwealth, and/or any federal statute, code, rule or regulation.

## **Section 10. Visibility of Wireless Telecommunications Facilities.**

- A) Wireless Telecommunications Facilities shall not be artificially lighted or marked, except as required by this Ordinance or other regulatory authority.
- B) Telecommunications Towers shall be of a galvanized finish, or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings as approved by the Board, and shall be maintained in accordance with the requirements of this Ordinance.
- C) If lighting is required, Applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under Commonwealth and Federal regulations, and an artist's rendering or other visual representation showing the effect of light emanating from the site on neighboring habitable structures within fifteen-hundred (1,500) feet of all property lines of the parcel on which the Wireless Telecommunications Facilities are located.

## **Section 11. Security of Wireless Telecommunications Facilities.**

All Wireless Telecommunications Facilities and Antennas shall be located, fenced or otherwise secured in a manner which prevents unauthorized access. Specifically as follows:

1. All Antennas, Towers and other supporting structures, including guy wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or run into; and
2. Transmitters and Telecommunications control points must be installed such that they are readily accessible only to persons authorized to operate or service them.

## **Section 12. Signage.**

Wireless Telecommunications Facilities shall contain a sign no larger than four (4) square feet to provide adequate notification to persons in the immediate area of the presence of an Antenna that has transmission capabilities. The sign shall contain the name(s) of the owner(s) and operator(s) of the Antenna(s) as well as emergency phone number(s). The sign shall be located so as to be visible from the access point of the site and must identify the equipment shelter of the applicant. The sign shall not be lighted unless the Board shall have allowed such lighting or unless such lighting is required by applicable provisions of Ordinance. No other signage, including advertising, shall be permitted on any facilities, Antennas, Antenna supporting structures or Antenna Towers, unless otherwise required by law.

## **Section 13. Lot Size and Setbacks.**

- A) All proposed Wireless Telecommunications Facilities shall be set back from abutting parcels, recorded rights-of-way and road and street lines a distance sufficient to substantially contain on-site ice-fall or debris from a Tower or Tower failure, and to preserve the privacy and sanctity of any adjoining properties.
- B) Wireless Telecommunications Facilities shall be located with a minimum setback from any property line a distance equal to the height of the Wireless Telecommunications Facility or the existing setback requirement of the underlying zoning district, whichever is greater. Further, any Accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated.



## **Section 14. Retention of Expert Assistance and Reimbursement by Applicant.**

- A) The Board may hire any consultant and/or expert necessary to assist the Board in reviewing and evaluating the Application, including the construction and modification of the site, once permitted, and any requests for rectification.
- B) An Applicant shall deposit with the County funds sufficient to reimburse the County for all reasonable costs of consultant and expert evaluation and consultation to the Board in connection with the review of any Application. The initial deposit shall be \$8,500.00. These funds shall accompany the filing of an Application and the County will maintain a separate escrow account for all such funds. The County's consultants/experts shall bill or invoice the County no less frequently than monthly for its services in reviewing the Application and performing its duties. If at any time during the review process this escrow account has a balance less than \$2,500.00, Applicant shall immediately, upon notification by the County, replenish said escrow account so that it has a balance of at least \$2,500.00. Such additional escrow funds must be deposited with the County before any further action or consideration is taken on the Application. In the event that the amount held in escrow by the County is more than the amount of the actual billing or invoicing at the conclusion of the review process, the difference shall be promptly refunded to the Applicant.
- C) The total amount of the funds set forth in subsection (B) of this section may vary with the scope and complexity of the project, the completeness of the Application and other information as may be needed by the Board or its consultant/expert to complete the necessary review and analysis. Additional escrow funds, as required and requested by the County, shall be paid by the Applicant.

## **Section 15. Exceptions from a Special Use Permit for Wireless Telecommunications Facilities.**

- A. No Person shall be permitted to site, place, build, construct or modify, or prepare any site for the placement or use of, Wireless Telecommunications Facilities as of the effective date of this Ordinance without having first obtained a Special Use Permit for Wireless Telecommunications Facilities. Notwithstanding anything to the contrary in this section, no Special Use Permit shall be required for those exceptions noted in the definition of Wireless Telecommunications Facilities, such as those used exclusively for fire, police and other dispatch Telecommunications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar Telecommunications.
- B) New construction, including routine maintenance on existing Wireless Telecommunications Facilities, shall comply with the requirements of this Ordinance.
- C) All Wireless Telecommunications Facilities existing on or before the effective date of this Ordinance shall be allowed to continue as they presently exist, provided however, that any modification to existing Wireless Telecommunications Facilities must comply with this Ordinance.

## **Section 16. Public Hearing Required.**

- A) Prior to the approval of any Application for a Special Use Permit for Wireless Telecommunications Facilities, a public hearing shall be held by the Board, notice of which shall be published in a newspaper of general circulation within the County no less than ten (10) calendar days prior to the scheduled date of the public hearing. In order to insure that nearby landowners are informed, the Applicant, at least three (3) weeks prior to the date of said public hearing, shall be required to provide names and address of all landowners whose property is located within fifteen hundred (1500) feet of any property line of the lot on which the new



Wireless Telecommunications Facilities are proposed to be located and certify that the Applicant has provided notice to said landowners of the public hearing.

- B) The Board shall schedule the public hearing referred to in Subsection (A) of this section once it finds the Application is complete. The Board, at any stage prior to issuing a Special Use Permit, may require such additional information as it deems necessary.
- C) The above provisions notwithstanding, if the application is for a Special Use Permit for collocating on an existing Telecommunications Tower or high structure, where no increase in height of the Tower or structure is required, no public hearing will be required prior to the approval of the application.

### **Section 17. Action on an Application for a Special Use Permit for Wireless Telecommunications Facilities.**

- A) The Board will undertake a review of an Application pursuant to this Ordinance in a timely fashion, and shall act within a reasonable period of time given the relative complexity of the Application and the circumstances, with due regard for the public's interest and need to be involved, and the Applicant's desire for a timely resolution.
- B) The Board may refer any Application or part thereof to any advisory or other committee for a non-binding recommendation.
- C) After the public hearing and after formally considering the Application, the Board may approve, approve with conditions, or deny a Special Use Permit. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the grant of the permit shall always be upon the Applicant.
- D) If the Board approves the Special Use Permit for Wireless Telecommunications Facilities Except, then the Applicant shall be notified of such approval in writing within ten (10) calendar days of the Board action, and the Special use Permit shall be issued within thirty (30) days after such approval. Except for necessary building permits, and subsequent Certificates of Compliance, once a Special Use Permit has been granted hereunder, no additional permits or approvals from the Board, such as site plan or zoning approvals, shall be required for the Wireless Telecommunications Facilities covered by the Special Use Permit.
- E) If the Board deny the Special Use Permit for Wireless Telecommunications Facilities, then the Applicant shall be notified of such denial in writing within ten (10) calendar days of the Board's action.

### **Section 18. Recertification of a Special Use Permit for Wireless Telecommunications Facilities.**

- A) At any time between twelve (12) months and six (6) months prior to the five (5) year anniversary date after the effect date of the Special Use Permit and all subsequent fifth anniversaries of the effective date of the original Special Use Permit for Wireless Telecommunications Facilities, the holder of a Special Use Permit for such Wireless Telecommunication Facilities shall submit a signed written request to the Board for recertification. In the written request for recertification, the holder of such Special Use Permit shall note the following:
  - 1) The name of the holder of the Special Use Permit for the Wireless Telecommunications Facilities;
  - 2) If applicable, the number or title of the Special Use Permit;



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- 3) The date of the original granting of the Special Use Permit;
  - 4) Whether the Wireless Telecommunications Facilities have been moved, re-located, rebuilt, or otherwise modified since the issuance of the Special Use Permit and if so, in what manner;
  - 5) If the Wireless Telecommunications Facilities have been moved, re-located, rebuilt, , or otherwise modified, then whether the Board approved such action, and under what terms and conditions, and whether those terms and conditions were complied with;
  - 6) Any requests for waivers or relief of any kind whatsoever from the requirements of this Ordinance and any requirements for a Special Use Permit;
  - 7) That the Wireless Telecommunications Facilities are in compliance with the Special Use Permit and compliance with all applicable codes, Ordinances, rules and regulations;
  - 8) Recertification that the Telecommunication Tower and attachments both are designed and constructed ("As Built") and continue to meet all local, County, Commonwealth and Federal structural requirements for loads, including wind and ice loads. Such recertification shall be by a qualified Kentucky Commonwealth licensed Professional Engineer acceptable to the County, the cost of which shall be borne by the Applicant.
- B) If, after such review, the Board determines that the permitted Wireless Telecommunications Facilities are in compliance with the Special Use Permit and all applicable statutes, local laws, codes, rules and regulations, then the Board shall issue a recertification Special Use Permit for the Wireless Telecommunications Facilities, which may include any new provisions or conditions that are mutually agreed upon, or required by applicable statutes, Ordinances, local Ordinances, ordinances, codes, rules and regulations. If, after such review, the Board determines that the permitted Wireless Telecommunications Facilities are not in compliance with the Special Use Permit and all applicable statutes, local laws, codes, rules and regulations, then the Board may refuse to issue a recertification Special Use Permit for the Wireless Telecommunications Facilities, and in such event, such Wireless Telecommunications Facilities shall not be used after the date that the Applicant receives written notice of such decision by the Board. Any such decision shall be in writing and supported by substantial evidence contained in a written record.
- C) If the Applicant has submitted all of the information requested by the Board and required by this Ordinance, and if the Board does not complete its review, as noted in subsection (B) of this section, prior to the five (5) year anniversary date of the Special Use Permit, or subsequent fifth anniversaries, then the Applicant for the permitted Wireless Telecommunications Facilities shall receive an extension of the Special Use Permit for up to six (6) months, in order for the Board to complete its review.
- D) If the holder of a Special Use Permit for Wireless Telecommunications Facilities does not submit a request for recertification of such Special Use Permit within the timeframe noted in subsection (A) of this section, then such Special Use Permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the Special Use Permit, or subsequent fifth anniversaries, unless the holder of the Special Use Permit adequately demonstrates to the Board that extenuating circumstances prevented a timely recertification request. If the Board agrees that there were legitimately extenuating circumstances, then the holder of the Special Use Permit may submit a late recertification request or Application for a new Special Use Permit.

## **Section 19. Extent and Parameters of Special Use Permit for Wireless Telecommunications Facilities.**

The extent and parameters of a Special Use Permit for Wireless Telecommunications Facilities shall be as follows:



- 1) such Special Use Permit shall be non-exclusive;
- 2) such Special Use Permit shall not be assigned, transferred or conveyed without the express prior written notification of the Board.
- 3) such Special Use Permit may, following a hearing upon due prior notice to the Applicant, be revoked, canceled, or terminated for a violation of the conditions and provisions of the Special Use Permit for Wireless Telecommunications Facilities, or for a material violation of this Ordinance after prior written notice to the Applicant and the holder of the Special Use Permit.

## **Section 20. Application Fee.**

- A) At the time that a person submits an Application for a Special Use Permit for a new Telecommunications Tower, such person shall pay a non-refundable application fee of \$5,000.00 to the County. If the Application is for a Special Use Permit for collocating on an existing Telecommunications Tower or high structure, where no increase in height of the Tower or structure is required, the non-refundable fee shall be \$2,000.00.
- B) No Application fee is required in order recertify a Special Use Permit for Wireless Telecommunications Facilities, unless there has been a modification of the Wireless Telecommunications Facilities since the date of the issuance of the existing Special Use Permit for which the conditions of the Special Use Permit have not previously been modified. In the case of any modification, the fees provided in Subsection (A) shall apply.

## **Section 21. Performance Security.**

The Applicant and the owner of record of any proposed Wireless Telecommunications Facilities property site shall at its cost and expense, be jointly required to execute and file with the County a bond, or other form of security acceptable to the County as to type of security and the form and manner of execution, in an amount of at least \$75,000.00 and with such sureties as are deemed sufficient by the Board to assure the faithful performance of the terms and conditions of this Ordinance and conditions of any Special Use Permit issued pursuant to this Ordinance. The full amount of the bond or security shall remain in full force and effect throughout the term of the Special Use Permit and/or until the removal of the Wireless Telecommunications Facilities, and any necessary site restoration is completed. The failure to pay any annual premium for the renewal of any such security shall be a violation of the provisions of the Special Use Permit and shall entitle the Board to revoke the Special Use Permit after prior written notice to the Applicant and holder of the permit and after a hearing upon due prior notice to the Applicant and holder of the Special Use Permit.

## **Section 22. Reservation of Authority to Inspect Wireless Telecommunications Facilities.**

In order to verify that the holder of a Special Use Permit for Wireless Telecommunications Facilities and any and all lessees, renters, and/or licensees of Wireless Telecommunications Facilities, place and construct such facilities, including Towers and Antennas, in accordance with all applicable technical, safety, fire, building, and zoning codes, Ordinances, ordinances and regulations and other applicable requirements, the County may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, Towers, Antennas and buildings or other structures constructed or located on the permitted site.



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## Section 23. Annual NIER Certification.

The holder of the Special Use Permit shall, annually, certify in writing to the County that NIER levels at the site are within the threshold levels adopted by the FCC. The certifying engineer need not be approved by the County.

## Section 24. Liability Insurance.

- A) A holder of a Special Use Permit for Wireless Telecommunications Facilities shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Special Use Permit in amounts as set forth below
- 1) Commercial General Liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
  - 2) Automobile Coverage: \$1,000,000.00 per occurrence/ \$2,000,000 aggregate;
  - 3) Workers Compensation and Disability: Statutory amounts.
- B) The Commercial General liability insurance policy shall specifically include the County and its officers, employees, committee members, attorneys, agents and consultants as additional named insureds.
- C) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the Commonwealth and with a Best's rating of at least A.
- D) The insurance policies shall contain an endorsement obligating the insurance company to furnish the County with at least thirty-(30) days prior written notice in advance of the cancellation of the insurance.
- E) Renewal or replacement policies or certificates shall be delivered to the County at least fifteen (15) days before the expiration of the insurance, which such policies are to renew or replace.
- F) Before construction of a permitted Wireless Telecommunications Facilities is initiated, but in no case later than fifteen (15) days after the grant of the Special Use Permit, the holder of the Special Use Permit shall deliver to the County a copy of each of the policies or certificates representing the insurance in the required amounts.

## Section 25. Indemnification.

- A) Any application for Wireless Telecommunication Facilities that is proposed for County property, pursuant to this Ordinance, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the Ordinance, to at all times defend, indemnify, protect, save, hold harmless, and exempt the County, and its officers, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at Ordinance or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said Facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the County, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the County.



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- B) Notwithstanding the requirements noted in subsection (A) of this section, an indemnification provision will not be required in those instances where the County itself applies for and secures a Special Use Permit for Wireless Telecommunications Facilities.

## Section 26. Fines.

- A) In the event of a violation of this Ordinance or any Special Use Permit issued pursuant to this Ordinance, the Board may impose and collect, and the holder of the Special Use Permit for Wireless Telecommunications Facilities shall pay to the County, fines or penalties as set forth below.
- B) A violation of this Ordinance is hereby declared to be an offense, punishable by a fine not exceeding three hundred fifty dollars (\$350) or imprisonment for a period not to exceed six months, or both for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than three hundred fifty (\$350) dollars nor more than seven hundred dollars (\$700) or imprisonment for a period not to exceed six months, or both; and, upon conviction for a third or subsequent offense all of which were committed within a period of five (5) years, punishable by a fine not less than seven hundred dollars (\$700) nor more than one thousand dollars (\$1,000) or imprisonment for a period not to exceed six (6) months, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this article or of such ordinance or regulation shall be deemed misdemeanors and for such purpose only all provisions of Ordinance relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional offense.
- C) Notwithstanding anything in this Ordinance, the holder of the Special Use Permit for Wireless Telecommunications Facilities may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this Ordinance or any section of this Ordinance. An attempt to do so shall subject the holder of the Special Use Permit to termination and revocation of the Special Use Permit. The County may also seek injunctive relief to prevent the continued violation of this Ordinance, without limiting other remedies available to the County.

## Section 27. Default and/or Revocation.

- A) If Wireless Telecommunications Facilities are repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Ordinance or of the Special Use Permit, then the Board shall notify the holder of the Special Use Permit in writing of such violation. Such notice shall specify the nature of the violation or non-compliance and that the violations must be corrected within seven (7) days of the date of the postmark of the Notice, or of the date of personal service of the Notice, whichever is earlier. Notwithstanding anything to the contrary in this subsection or any other section of this Ordinance, if the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Board may, at its sole discretion, order the violation remedied within twenty-four (24) hours.
- B) If within the period set forth in (A) above the Wireless Telecommunications Facilities are not brought into compliance with the provisions of this Ordinance, or of the Special Use Permit, or substantial steps are not taken in order to bring the affected Wireless Telecommunications Facilities into compliance, then the Board may revoke such Special Use Permit for Wireless Telecommunications Facilities, and shall notify the holder of the Special Use Permit within forty-eight (48) hours of such action.



## Section 28. Removal of Wireless Telecommunications Facilities.

- A) Under the following circumstances, the Board may determine that the health, safety, and welfare interests of the County warrant and require the removal of Wireless Telecommunications Facilities.
- 1) Wireless Telecommunications Facilities with a permit have been abandoned (i.e. not used as Wireless Telecommunications Facilities) for a period exceeding ninety consecutive (90) days or a total of one hundred-eighty (180) days in any three hundred-sixty five (365) day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall commence within 90 days;
  - 2) Permitted Wireless Telecommunications Facilities fall into such a Commonwealth of disrepair that it creates a health or safety hazard;
  - 3) Wireless Telecommunications Facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required Special Use Permit, or any other necessary authorization.
- B) If the Board makes such a determination as noted in subsection (A) of this section, then the Board shall notify the holder of the Special Use Permit for the Wireless Telecommunications Facilities within forty-eight (48) hours that said Wireless Telecommunications Facilities are to be removed. The Board may approve an interim temporary use agreement/permit, such as to enable the sale of the Wireless Telecommunications Facilities.
- C) The holder of the Special use Permit, or its successors or assigns, shall dismantle and remove such Wireless Telecommunications Facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within ninety (90) days of receipt of written notice from the Board. However, if the owner of the property upon which the Wireless Telecommunications Facilities are located wishes to retain any access roadway to the Wireless Telecommunications Facilities, the owner may do so with the approval of the Board.
- D) If Wireless Telecommunications Facilities are not removed or substantial progress has not been made to remove the Wireless Telecommunications Facilities within ninety (90) days after the permit holder has received notice, then the Board may order officials or representatives of the County to remove the Wireless Telecommunications Facilities at the sole expense of the owner or Special Use Permit holder.
- E) If the County removes or causes to be removed, Wireless Telecommunications Facilities, and the owner of the Wireless Telecommunications Facilities does not claim and remove it from the site to a lawful location within ten (10) days, then the County may take steps to declare the Wireless Telecommunications Facilities abandoned, and sell them and their components.
- F) Notwithstanding anything in this Section to the contrary, the Board may approve a temporary use permit/agreement for the Wireless Telecommunications Facilities, for no more ninety (90) days, during which time a suitable plan for removal, conversion, or re-location of the affected Wireless Telecommunications Facilities shall be developed by the holder of the Special Use Permit, subject to the approval of the Board, and an agreement to such plan shall be executed by the holder of the Special Use Permit and the County. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the County may take possession of and dispose of the affected Wireless Telecommunications Facilities in the manner provided in this Section.



## **Section 29. Relief.**

Any Applicant desiring relief or exemption from any aspect or requirement of this Ordinance may request such from the Board at a pre-Application meeting, provided that the relief or exemption is contained in the original Application for either a Special Use Permit, or in the case of an existing or previously granted Special Use Permit a request for modification of its Tower and/or facilities. Such relief may be temporary or permanent, partial or complete, at the sole discretion of the Board. However, the burden of proving the need for the requested relief or exemption, is solely on the Applicant to prove to the satisfaction of the Board. The Applicant shall bear all costs of the Board or the County in considering the request and the relief shall not be transferable to a new or different holder of the permit or owner of the Tower or facilities without the specific written permission of the Board. Such permission shall not be unreasonably withheld or delayed. No such relief or exemption shall be approved unless the Applicant demonstrates by clear and convincing evidence that, if granted the relief or exemption will have no significant affect on the health, safety and welfare of the County, its residents and other service providers.

## **Section 30. Periodic Regulatory Review by the Board.**

- A) The Board may at any time conduct a review and examination of this entire Ordinance.
- B) If after such a periodic review and examination of this Ordinance, the Board determines that one or more provisions of this Ordinance should be amended, repealed, revised, clarified, or deleted, then the Board may take whatever measures are necessary in accordance with applicable law in order to accomplish the same. It is noted that where warranted, and in the best interests of the County, the Board may repeal this entire Ordinance at any time.
- C) Notwithstanding the provisions of subsections (A) and (B) of this Section, the Board may at any time, and in any manner (to the extent permitted by Federal, Commonwealth, or local Ordinance), amend, add, repeal, and/or delete one or more provisions of this Ordinance.

## **Section 31. Adherence to Commonwealth and/or Federal Rules and Regulations.**

- A) To the extent that the holder of a Special Use Permit for Wireless Telecommunications Facilities has not received relief, or is otherwise exempt, from appropriate Commonwealth and/or Federal agency rules or regulations, then the holder of such a Special Use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any Commonwealth or Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
- B) To the extent that applicable rules, regulations, standards, and provisions of any Commonwealth or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a Special Use Permit for Wireless Telecommunications Facilities, then the holder of such a Special Use Permit shall conform the permitted Wireless Telecommunications Facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

## **Section 32. Conflict with Other Laws or Ordinances.**

Where this Ordinance differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by the County, Commonwealth or federal government, the more restrictive or protective of the County and the public shall apply.



**Section 33. Effective Date.**

This Ordinance shall be effective immediately upon passage, pursuant to applicable legal and procedural requirements.

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