

COMMISSIONERS ORDINANCE NO. O-2019-005

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT, KENTUCKY, PURSUANT TO CHAPTER 153 OF THE CODE OF ORDINANCES, AMENDING SECTION 9.30 OF THE OFFICIAL ZONING ORDINANCE OF THE CITY OF NEWPORT, KENTUCKY CONCERNING CELLULAR ANTENNA AND SMALL CELL SYSTEM TOWERS.

BE IT ORDAINED BY THE CITY OF NEWPORT, KENTUCKY:

WHEREAS, the City of Newport, Kentucky Planning and Zoning Commission, upon application for a text amendment to Section 9.30 of the Zoning Code, held a public hearing upon such request after giving notice as required by KRS Chapter 424, on February 26, 2019 (Hearing # PZ-19-02); and,

WHEREAS, the City of Newport, Kentucky Planning and Zoning Commission during the public hearing unanimously approved the request and made recommendation to the Board of Commissioners of the City of Newport, Kentucky to approve the requested text amendment; and,

WHEREAS, with the Board of Commissioners of the City of Newport, Kentucky having accepted the recommendation of the City of Newport, Kentucky Planning and Zoning Commission at a duly held meeting,

NOW, THEREFORE, Section 9.30. of the Official Zoning Ordinance of the City of Newport, Kentucky shall be and is hereby amended to reflect the same, and shall read as follows:

SECTION I

SECTION 9.30 CELLULAR ANTENNA TOWER AND SMALL CELL SYSTEM TOWER REGULATIONS

A. PURPOSE.

The purposes of these regulations are: to provide for the safest and most efficient integration of cellular antenna towers and small cell system 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. [20-2] PRE-APPLICATION CONFERENCE.

Applicants are encouraged to notify the planning commission to discuss proposals, to allow for early coordination, and to identify those items that are in conformance/nonconformance with the comprehensive plan, zoning ordinance, and the provisions of these regulations.

C. STATUS AS MINIMUM STANDARDS.

In their interpretation and application, these regulations shall be viewed as minimum standards or requirements, adopted for promotion of public health, safety, and general welfare. Whenever these regulations conflict with a requirement of any other lawfully-adopted rule, regulation, ordinance, order, or resolution, the most restrictive or that imposing the higher standards shall govern.

D. COMPLIANCE REQUIRED.

Except as hereinafter specified, no cellular antenna tower or small cell system tower shall hereafter be placed or constructed except in conformity with these regulations.

E. USE OF GRAPHICS, ILLUSTRATIONS, AND FIGURES.

Where a conflict may occur between the text and any graphic, illustration, or figure, the text shall control.

F. BURDEN OF PROOF.

The burden of demonstrating that an Application subject to these regulations complies with applicable review and approval standards is on the Applicant. The burden is not on the Staff, Planning Commission, or other parties to show that the standards have been met by the Applicant or person responsible for the development.

G. [20-3] DEFINITIONS.

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

~~["Alternative Cellular Antenna Tower" means m]~~ ALTERNATIVE CELLULAR ANTENNA TOWER: Manmade trees, clock towers, bell towers, steeples, light poles and similar alternative-design mounting structures that accommodate, camouflage, minimize or conceal the presence of cellular antennas or cellular antenna towers and that are constructed primarily for the purpose of accommodating cellular antennas or cellular antenna towers or are reconstructed for the purpose of accommodating cellular antennas or cellular antenna towers. This does not include existing structures erected for another primary purpose, but which subsequently have cellular antennas attached to or located within them, without any reconstruction of the original structure. For the provisions of these regulations, an alternative cellular antenna tower is considered a cellular antenna tower.

~~["Antennas or Related Equipment" means]~~ ANTENNAS OR RELATED EQUIPMENT:
Any transmitting, receiving, or other equipment used to support cellular telecommunications service or personal communications service. ~~[This definition does not include towers.]~~

~~["Cellular Antenna Tower" means a]~~ 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.

~~["Cellular Telecommunications Service" means a]~~ CELLULAR TELECOMMUNICATIONS SERVICE: A retail telecommunications service that uses radio signals transmitted through cell sites and mobile switching stations.

~~["Co-location" means]]~~ CO-LOCATION: Locating two (2) or more transmission antennas or related equipment on the same cellular antenna tower.

~~["Guyed Cellular Antenna Tower" means a]~~ GUYED CELLULAR ANTENNA TOWER:
A type of wireless transmission tower that is supported by thin guy wires.

~~["Lattice Cellular Antenna Tower" means a]~~ LATTICE CELLULAR ANTENNA TOWER: A self-supporting tower with multiple legs and cross bracing of structural steel.

~~["Monopole Cellular Antenna Tower" means a]~~ MONOPOLE CELLULAR ANTENNA TOWER: A slender self-supporting tower on which wireless antenna can be placed.

~~["Personal Communication Service"]~~ PERSONAL COMMUNICATION SERVICE has the meaning as defined in 47 U.S.C. sec. 332 (c).

~~["Planning Commission"]~~ PLANNING COMMISSION: means the Newport Planning and Zoning Commission.

RIGHTS-OF-WAY: The surface of and space above and below any real property in the City in which the federal government, Commonwealth or City has a regulatory interest, or interest as a trustee for the public, as such interests now or hereafter exist, including, but not limited to, all streets, highways, avenues, roads, alleys, sidewalks, tunnels, bridges, or any other public place, area, or property under the control of the federal government, Commonwealth, or City.

SMALL CELL SYSTEM: A network of remote antenna nodes that distributes radio frequency signals from a central hub through a high capacity signal transport medium

to a specific area. The term includes mini commercial towers, small cells, distributed antenna systems, mini cell, or similar systems.

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

STEALTH TECHNOLOGY: State-of-the-art design techniques used to blend objects into the surrounding environment and to minimize visual impact. These design techniques may be applied to wireless communications towers, antennas, and other facilities, which blend the proposed facility into the existing structure or visual backdrop in such a manner as to render it less visible to the casual observer. Such methods include, but are not limited to, facilities constructed to resemble light poles, flag poles or other streetscape amenities. The use of additional features such as flags,

decorative street lamps and banners or signs may be utilized to blend the proposed facility into the visual backdrop.

TRANSMISSION EQUIPMENT: Equipment that facilitates transmission for Federal Communications Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

~~["Uniform Application" means an]~~ UNIFORM APPLICATION: An application to construct a cellular antenna tower submitted to a planning commission in conformity with KRS 100.985 through KRS 100.987.

~~["Utility" h]~~ UTILITY: Has the meaning as defined in KRS 278.010(3).

UTILITY POLE: A structure originally constructed for the support of electrical, telephone, cable television or other video services, street lighting, or other similar cables and located within the public right-of-way or Utility easements. A pole originally installed for the primary purpose of supporting wireless telecommunications equipment, regardless of the timeframe between pole installation and

connection/implementation of Transmission Equipment, is considered a Small Cell Tower, and is not a Utility Pole.

H. ~~[20-4]~~ GENERAL.

Cellular antenna towers and small cell system 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 zoning ordinance.

~~[20-4(a)]~~ 1. Applicability.

Every utility, or a company that is engaged in the business of providing the required infrastructure to a utility, that proposes to construct a cellular antenna tower and/or small cell system towers shall submit a completed uniform application to the planning commission. Where the planning commission finds that circumstances or conditions relating to the application of an alternative cellular antenna tower are such that one or more of the requirements of the uniform application listed below are not necessary or desirable for the protection of surrounding property or the public health, safety, and general welfare, and that such special conditions or circumstances make one or more said requirements unreasonable, the planning commission, or its duly authorized representative, may modify or waive such requirement of the uniform application, either permanently or on a temporary basis. Any such modification or waiver shall be requested by the applicant, and the applicant shall submit a written justification for each requested modification or

waiver. The planning commission shall not regulate the placement of antennas or related equipment on an existing structure.

[20-4(b)] 2. Application Requirements.

Applications for the construction of cellular antenna towers and/or small cell system towers for cellular telecommunications services or personal communications services shall include the following:

~~[(1)]~~a. The full name and address of the applicant.

~~[(2)]~~b. The applicant's articles of incorporation, if applicable.

~~[(3)]~~c. A geo-technical investigation report signed and sealed by a professional engineer registered in Kentucky that includes boring logs and foundation design recommendations.

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

~~[(5)]~~e. Location within the City of Newport of the proposed site, including street names.

~~[(6)]~~f. 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, the portion, if applicable, of the agreement demonstrating compliance with KRS 100.987(2), and, if

applicable, the portion of the agreement that specifies, in the case of abandonment, a method that the utility will follow in dismantling and removing the proposed cellular antenna tower including a timetable for removal.

~~[(7)]~~g. The identity and qualifications of each person directly responsible for the design and construction of the proposed tower.

~~[(8)]~~h. A site development plan or survey, signed and sealed by a professional engineer registered in Kentucky, that shows the proposed location of the tower and all easements and existing structures within five hundred (500) feet of the proposed site on the property on which the tower will be located, and all easements and existing structures within two hundred (200) feet of the access drive, including the intersection with the public street system.

~~[(9)]~~i. A vertical profile sketch of the tower signed and sealed by a professional engineer registered in Kentucky indicating the height of the tower and the placement of all antennas.

~~[(10)]~~j. The tower and foundation design plans and a description of the standard according to which the tower was designed, signed, and sealed by a professional engineer registered in Kentucky.

~~[(11)]~~k. A map, drawn to a scale no less than one (1) inch equals two hundred (200) feet, that identifies every structure and every owner of real estate within five hundred (500) feet of the proposed tower.

~~[(12)]~~l. A statement that every person who, according to the records of the property valuation administrator, owns property within five hundred (500) feet of the proposed tower or property contiguous to the site upon which the tower is proposed to be constructed, has been:

- (a) Notified by certified mail, return receipt requested, of the proposed construction which notice shall include a map of the location of the proposed construction.
- (b) Given the telephone number and address of the local planning commission; and
- (c) Informed of his or her right to participate in the planning commission's proceedings on the application.

~~[(13)]~~m. A list of the property owners who received the notice, together with copies of the certified letters sent to the listed property owners.

~~[(14)]~~n. A statement that the City Manager of the affected local government and the legislative body (i.e., City Manager, Board of Commissioners of the City of Newport, County Judge-Executive, Campbell County Fiscal Court, Mayor of Newport, Newport City Commission) have been notified, in writing, of the proposed construction.

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

[(16)]p. A statement that the Greater Cincinnati/Northern Kentucky Regional Airport has been notified, in writing, of the proposed construction and a copy of the notification.

[(17)]q. 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] proposed to construct a telecommunications tower on this site" and including the addresses and telephone numbers of the applicant and the planning commission, has been posted in a visible location on the proposed site; and

(b) A written notice, at least two (2) feet by four (4) feet in size, stating that [Name of applicant] proposes to construct a telecommunications tower near this site" and including the addresses and telephone numbers of the applicant and the planning commission, has been posted on the public road nearest the site~~[-]~~ and shall remain in a visible location on the proposed site until final disposition of the application;

[(18)]r. A statement that notice of the location of the proposed construction has been published in the Campbell County Recorder of Campbell County, Kentucky.

[(19)]s. A brief description of the character of the general area in which the tower is proposed to be constructed, which includes the existing land use for the specific property involved.

[(20)]t. A statement that the applicant has considered the likely effects of the installation on nearby land uses and values and has concluded that there is no more suitable location reasonably available from which adequate service to the area can be provided, and that there is no reasonably available opportunity to locate its antennas and related facilities on an existing structure, including documentation of attempts to locate its antennas and related facilities on an existing structure, if any, with supporting radio frequency analysis, where applicable, and a statement indicating that he applicant attempted to locate its antennas and related facilities on a tower designed to host multiple wireless service providers' facilities or on an existing structure, such as a telecommunications tower or other suitable structure capable of supporting the applicant's antennas and related facilities.

[(21)]u. A map of the area in which the tower is proposed to be located, that is drawn to scale, and that clearly depicts the necessary search area within which an antenna tower should, pursuant to radio frequency requirements, be located.

[(22)]v. A grid map that shows the location of all existing cellular antenna towers and that indicates the general position of proposed construction sites for new cellular antenna towers within an area that includes:

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

w. A statement of the telecommunications objectives for the proposed location, whether the proposed facility is necessary to prevent or fill a gap, capacity shortfall, expand or provide new coverage, or to deploy new technology in the Applicant or provider's service area, whether it is the least obtrusive means of doing so, and whether there are any alternative sites that would have fewer aesthetic impacts while providing comparable service.

x. 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.

y. A statement by an authorized representative that the Applicant or provider is in compliance with all conditions required for such license and approvals. w. Any and all other requirements as required by the provisions of KRS 100.9865 as may be amended from time to time.

- z. A full description of the number and dimensions of all Small Cell Towers proposed to be installed.

[20-4(e)]3. Confidentiality of Application.

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

[20-4(d)] 4. Application Fee.

~~[An applicant for the construction of cellular antenna towers for cellular telecommunications services or personal communications services shall pay an application fee in the amount set by the planning commission upon submission of a uniform application.]~~ Shall be as set forth in Chapter 37, Appendix A of the Code of Ordinances.

[20-4(e)]5. Processing of Applications for Cellular Antenna Towers. Applications for the construction of cellular antenna towers for cellular telecommunications services or personal communications services shall be processed as follows:

~~[(1)]~~ a. At least one (1) public hearing on the proposal shall be held, at which hearing interested parties and citizens shall have the opportunity to be heard. Notice of the time and place of such hearing shall be published at least once, in the Campbell County Recorder of Campbell County, Kentucky, provided that one (1) publication occurs not less than seven (7) calendar days nor more than twenty-one (21) calendar days before the occurrence of such hearing.

~~[(2)]~~ b. Notice of the proposal shall be posted on the site at least fourteen (14) days in advance of the hearing. The notice shall consist of a written notice, of durable material at least two (2) feet by four (4) feet in size, stating that "[Name of applicant] proposes to construct a telecommunications tower on this site" and including the addresses and telephone numbers of the applicant and the planning commission. Notice of the proposal shall also be posted on the public road nearest the site. This notice shall consist of a written notice, of durable material at least two (2) feet by four (4) feet in size, stating that "[Name of applicant] proposes to construct a telecommunications tower near this site" and including the addresses and telephone numbers of the applicant and the planning commission.

~~[(3)]~~ c. Notice of the hearing shall be given at least fourteen (14) days in advance of the hearing, by certified mail, return receipt requested, to the owner of every parcel of property within five hundred (500) feet of the proposed tower or property contiguous to the site upon which the tower is proposed to be constructed. The notice shall include a map of the location

of the proposed construction, the telephone number and address of the planning commission and shall inform the addressee of his right to participate in the planning commission's proceedings on the application. Records maintained by the property valuation administrator may be relied upon conclusively to determine the identity and address of said owner. In the event a property is in condominium or cooperative forms of ownership, then the person notified by mail shall be the president or chairperson if the owner group that administers property commonly owned by the condominium or cooperative owners. A joint notice may be mailed to two or more co-owners of an adjoining property who are listed in the property valuation administrator's records as having the same address.

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

I. [20-5] DESIGN STANDARDS FOR CELLULAR ANTENNA TOWERS.

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

~~[20-5(a)]~~1. Monopole Cellular Antenna Towers shall be permitted in any zone. Lattice and guyed cellular antenna towers shall be permitted in any zone except for residential zones.

~~[20-5(b)]~~2. Lattice and Guyed Cellular Antenna Towers constructed in an agricultural zone shall be located a minimum distance of not less than 250 feet from all existing residential structures. Distance shall be measured from the base of the tower to the nearest wall of the residential structure.

~~[20-5(c)]~~3. Setbacks for all structures constructed in connection with guyed or lattice cellular antenna towers, except fences and/or guy wires, shall be a minimum distance from the property line or lease line equal to at least one-half (1/2) the

height of the tower, but not less than fifty (50) feet. All structures constructed in connection with monopole or alternative cellular antenna tower shall comply with the applicable setback requirements established for other structures within the applicable zoning district. Alternative cellular antenna towers that are to be located as part of a utility service facility (e.g. power pole or telephone pole) shall comply with setback requirements applicable to such utility service facilities, if any.

~~[20-5(d)]~~4. Height. A cellular antenna tower, or alternative antenna tower structure, may be constructed to a maximum height of two hundred (200) feet regardless of the maximum height requirements listed in the specific zoning district. This also applies to any tower taller than fifteen (15) feet constructed on the top of another building or structure, with the height being the overall height of building/structure and tower together, measured from the grade to the highest point. The planning commission may allow antennas greater than two hundred (200) feet in height upon review of the applicant's justification that the additional height meets the criteria identified in Subsection 20-6.

~~[20-5(e)]~~5. The Cellular Antenna Tower shall be Constructed in compliance with the current ANSI/EIA/TIA 222-7 standards and other applicable state standards.

~~[20-5(f)]~~6. Illumination. Cellular antenna towers shall not be illuminated except in accordance with other state or federal regulations.

~~[20-5(g)]~~7. The Site shall be Unstaffed. Personnel may periodically visit the site for maintenance, equipment modification, or repairs. To accommodate such visits, ingress/egress shall be only from approved access points.

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

~~[20-5(i)]~~9. Screening shall be provided by evergreen trees, with a minimum height of six (6) feet, planted in a staggered pattern at a maximum distance of fifteen (15) feet on center. The screening shall be placed in an area between the property line, or lease line, and a ten (10) foot setback.

~~[20-5(j)]~~10. Surfacing of All Driveways and Off-street Parking Areas shall comply with the requirements of the applicable local zoning ordinance.

~~[20-5(k)]~~11. Signs. There shall be no signs permitted, except those displaying emergency information, owner contact information, warning or safety instructions, or signs that are required by a federal, state, or local agency. Such signs shall not exceed five (5) square feet in area.

~~[20-5(l)]~~12. Number of Service Providers. All new cellular antenna towers shall be designed and constructed to accommodate a minimum of three (3) service providers.

~~[20-5(m)]~~13. Lease Agreements. All option and site lease agreements shall not prohibit the possibility of co-location, and in the case of abandonment, shall include

a method that the utility will follow in dismantling and removing the proposed cellular antenna tower including a timetable for removal.

[20-5(n)]14. Approval of the Federal Aviation Administration (FAA) and the Kentucky Airport Zoning Commission (KAZC) or documentation where approval is not required shall be submitted prior to the issuance of a building permit for the construction of the cellular antenna tower.

15. No cellular antenna tower, wireless communications tower, small cell tower or antenna shall be constructed, replaced or altered without first obtaining the applicable building permit.

16. All cellular antenna towers, wireless communications towers, small cell towers or antennas shall be maintained in good condition and repair.

17. Upon the expiration date of the permit or upon early termination, revocation or abandonment of any cellular antenna tower, wireless communications tower, small cell tower or antenna or the facility related thereto, the permittee shall remove the same and shall restore the site to its natural or previous condition, excepting any landscaping improvements shall remain at the discretion of the City.

J. [20-6] ADDITIONAL 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.

1. 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.

2. NEW SMALL CELL SYSTEM TOWER LOCATIONS IN ALL ZONING DISTRICTS: The regulations in this subsection apply to all new Small Cell System Towers.

- a. Temporary, mobile or wheeled cellular antenna towers shall not be permitted.
- b. 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.
- c. New Small Cell Towers shall be designed and constructed to accommodate a minimum of two (2) service providers.
- d. New Small Cell Towers may be located on public or private nonresidential land or within a public Rights-of-Way provided it does not interfere with other utilities, functionality of sidewalks, visibility, or other matters of public safety.

- e. 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.
- f. New Small Cell Towers shall not include signage or 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.
- g. If a new Small Cell Tower is located in an area with primarily Underground Utilities, or where no adjacent Overhead Utility lines exist, or where a project for underground utilities is underway, it shall not utilize Overhead Utility lines. It shall be required that in addition to all public utilities, Small Cell Tower System infrastructure, excepting the antenna, where possible, shall be placed underground. This shall particularly apply to areas of the City with planned improvements. In the areas with planned improvements, where new Small Cell Towers are proposed, they should be coordinated with other public improvements (such as with streetlighting), that could employ stealth technology.

h. 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.

3. 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.

a. Facilities in residential areas are strongly encouraged to be Non-Tower Wireless Communication Facilities, which are exempt from these regulations.

b. 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.

- c. 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.
- d. The use of cooling fans is discouraged. When needed, fans with lower noise profiles must be used.
- e. 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.
- f. 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.
- g. Efforts should be made to locate new Small Cell Towers in the yard location where other Overhead Utilities are located.
- h. 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.

i. 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.

j. 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:

(1) Interstate

(2) Arterial

(3) Collector

(4) Local

4. 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.

a. 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.

b. Antennas in commercial, institutional, or park areas are encouraged to be installed as Non-Tower Wireless Communication Facilities, which are exempt from this regulation.

c. 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:

(1) Co-locate on an existing structure whenever possible, which is exempt from these regulations, per Section L 1.

(2) Institutional.

(3) Industrial.

(4) Commercial.

(5) Public parks.

(6) Agricultural.

d. 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.

e. Shrouds, risers, and conduits shall be used to reduce the appearance of external cabling.

f. All poles, antennas, brackets, cabling, risers, shrouds, and conduits shall be uniform grey or black in color, or other color as approved by Staff.

g. Cylindrical antennas shall be required, unless another antenna style is integral to the Stealth Technology as approved by Staff.

h. There shall be no more than a four (4) inch offset between the pole and pole mounted equipment enclosures.

K. EVALUATION CRITERIA FOR CELLULAR ANTENNA TOWERS AND SMALL CELL TOWERS

[20-6]1. COMPREHENSIVE PLAN CONSIDERATION

[a]Approval or [D]disapproval of the proposal shall be based upon an evaluation of the proposal's agreement with the comprehensive plan and zoning regulations.

2. CO-LOCATION CONSIDERATION

[(4)]a The planning commission may require the applicant to make a reasonable attempt to co-locate additional transmitting or related equipment. The planning commission may provide the location of existing cellular antenna towers on which the commission deems the applicant can successfully co-locate its transmitting and related equipment. If the planning commission requires the applicant to attempt co-location, the applicant shall provide the planning commission with a statement indicating that the applicant has:

[(a)1] 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]2) Unsuccessfully attempted to co-locate on towers designed to host multiple wireless service provider's facilities or existing structures as a telecommunications tower or another suitable structure capable of supporting the applicant's facilities and that:

([1]a) Identifies the location of the towers or other structures on which the applicant attempted to co-locate; and

([2]b) Lists the reasons why the co-location was unsuccessful in each instance.

[(2)]b The planning commission may deny a uniform application to construct a cellular antenna tower based on an applicant's unwillingness to attempt to co-locate additional transmitting or related equipment on any new or existing towers or other structures.

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

3. AESTHETIC CONSIDERATIONS

a. The planning commission and staff shall evaluate:

(1) The extent to which the proposed facility is camouflaged (i.e. use of Stealth Technology), and,

(2) The extent to which the proposed facility conforms to the character of the surrounding area (i.e., buildings, street lighting, signs).

L. ~~[20-7]~~ AMENDMENTS. Any amendments to plans, except for minor adjustments as determined by the planning commission, or its duly authorized representative, shall be made in accordance with the procedure required ~~[by Subsection F]~~ herein, subject to the same limitations and requirements as those under which such plans were originally approved.

SECTION II

That this Ordinance shall be signed by the Mayor and attested to by the City Clerk, recorded, published and be effective upon publication.

PASSED: First reading March 11, 2019
PASSED: Second reading March 25, 2019

MAYOR JERRY R. PELUSO

ATTEST:

AMY B. ABLE
CITY CLERK

PUBLISHED: Online on the City website, www.newportky.gov, with URL reference published in the Campbell County Recorder of the 4th of April, 2019 as statutorily allowable under Section 143 of HB 487 approved in 2018 by the Kentucky Legislature and became law on April 27, 2018.