

# **WIRELESS TELECOMMUNICATIONS FACILITIES ORDINANCE**

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# **WIRELESS TELECOMMUNICATIONS FACILITY**

## **Section 1. Title**

These regulations shall be known and cited as the “Wireless Telecommunications Facilities Ordinance” of Kanawha County, West Virginia (hereinafter referred to as the “ordinance”).

## **Section 2. Authority**

The authority of this ordinance is provided for under Chapter 8, Article 24, Code of West Virginia.

### **2.1 Grant of Power**

After adoption by the Kanawha County Commission and a certified copy of the ordinance has been filed with the County Clerk, the Kanawha County Commission and its assigned agency, the Kanawha County Planning Commission, shall have control over wireless telecommunications facilities.

### **2.2 Territorial Limits**

The ordinance contained herein shall apply within the unincorporated parts of Kanawha County under the jurisdiction of Kanawha County, West Virginia.

## **Section 3. Purpose**

The purpose of these regulations is to provide a process and a set of standards for the construction of wireless telecommunication facilities in order to:

Implement a county policy concerning the provision of wireless telecommunication services, and the siting of their facilities;

Establish clear guidelines, standards and time frames for the exercise of county authority to regulate wireless telecommunications facilities;

Allow competition in telecommunications service;

Encourage the provision of advanced telecommunications services to the largest number of businesses, institutions and residents of Kanawha County;

Permit reasonable access to the public rights of way for telecommunications purposes on a competitively neutral basis;

Ensure that all telecommunications carriers providing facilities or services within Kanawha County comply with the regulations of Kanawha County;

Ensure that Kanawha County can continue to fairly and reasonably protect the public health, safety and welfare;

Encourage the co-location of wireless telecommunications facilities, thus helping to minimize adverse visual impacts on the community;

Further the goals and objectives of the comprehensive plan, while promoting orderly development with minimal impacts on existing uses; and

Protect the scenic and visual character of the community.

## **Section 4. Applicability**

This regulation applies to all construction and expansion of wireless telecommunications Facilities, except as provided in Section 4.1.

### **4.1 Exemptions**

- A. Emergency Wireless Telecommunications Facility.** Wireless telecommunication facilities for emergency communications by public officials.
- B. Amateur (ham) Radio Stations.** Amateur (ham) radio stations licensed by the Federal Communications Commission (FCC).
- C. Parabolic Antenna.** Parabolic antennas less than seven (7) feet in diameter, that are an accessory use of the property.
- D. Maintenance or repair.** Maintenance, repair or reconstruction of a wireless telecommunications facility and related equipment, provided that there is no change in the height or any other dimension of the facility.
- E. Temporary wireless telecommunications facility.** Temporary wireless telecommunications facility, in operation for a maximum period of one hundred twenty (120) days.
- F. Antennas as accessory uses.** An antenna that is an accessory use to a residential dwelling unit.
- G. Co-location on existing wireless telecommunications facility or structure.**

## **Section 5. Review and Approval Authority**

### **5.1 Approval Required**

No person shall construct or expand a wireless telecommunication facility without approval of the Planning Director or the Planning Commission as follows:

- A. Expansion of an Existing Facility.** Approval by the Planning Director is required for any expansion of an existing wireless telecommunications facility that increases the height of the facility by no more than 40 feet; or co-location on an existing wireless telecommunications facility including, but not limited to, an existing structure.

- B. New Construction.** Approval of the Planning Commission is required for new construction of a new wireless telecommunications facility; and any expansion of an existing wireless telecommunications facility that increases the height of the facility by more than 40 feet.

## **5.2 Approval Authority**

In accordance with Section 5.1 above, the Planning Director or the Planning Commission shall review applications for wireless telecommunications facilities, and make written findings on whether the proposed facility complies with the regulations.

## **Section 6. Approval Process**

### **6.1 Pre-Application Conference**

All persons seeking approval of the Planning Director or the Planning Commission under these regulations should meet with the Planning Director no less than thirty (30) days before the filing deadline. At this meeting, the Planning Director shall explain to the applicant the regulations, as well as application forms and submissions that will be required under these regulations.

### **6.2 Application**

All persons seeking approval of the Planning Director or the Planning Commission under these regulations shall submit an application as provided below. The Planning Director shall be responsible for ensuring that notice of the application has been published in a newspaper of general circulation in the community.

#### **A. Application for Planning Director Approval**

Applications for permit approval by the Planning Director must include the following materials and information:

1. Documentation of the applicant's right, title, or interest in the property where the facility is to be sited, including name and address of the property owner and the applicant.
2. The owner of the facility's name shall be placed on the structure.
3. Copies of any easements necessary to access the property.
4. If a facility will have co-location capability all lessees names shall be placed on the structure or equipment.
5. All facility locations shall have posted street signs at the cross street intersection. Signs shall have a minimum of 3.5" reflective letters.
6. A copy of the FCC license for the facility or a signed statement from the owner or operator of the facility attesting that the facility complies with current FCC regulations.

7. The applicant will comply with applicable State and Federal Historic Preservation laws and regulations.
8. Location map and elevation drawings of the proposed facility and any other proposed structures, showing color, identifying structural materials, and a description of the access to the property.
9. A storm and erosion control plan for the access road to the site, unless there will be no changes implemented with regards to any existing roads.

## **B. Application for Planning Commission Approval**

An application for approval by the Planning Commission must be submitted to the Planning Director. The application must include the following information:

1. Documentation of the applicant's right, title, or interest in the property on which the facility is to be sited, including name and address of the property owner and the applicant.
2. The owner of the facility's name shall be placed on the structure.
3. If a facility will have co-location capability all lessees names shall be placed on the structure.
4. Evidence of any easements necessary to access the property as shown on the site plan.
5. All facility locations shall have posted street signs at the cross street intersection. Signs shall have a minimum of 3.5" reflective letters.
6. A copy of the FCC license for the facility, or a signed statement from the owner or operator of the facility attesting that the facility complies with current FCC regulations.
7. A USGS topographical map showing the location of all wireless telecommunications facilities above 150 feet in height, above ground level, except antennas located on roof tops, within a two (2) mile radius of the proposed facility, unless this information has been previously made available to the county. This requirement may be met by submitting current information (within thirty days of the date the application is filed) from the FCC Tower Registration Database.
8. A site plan:
  - a. prepared and certified by a professional engineer indicating the location, type, and height of the proposed facility, antenna capacity, on-site and abutting off-site land uses, means of access, and all applicable American National Standards Institute (ANSI) technical and structural codes;
  - b. a storm and erosion control plan for the access road to the site, unless there will be no changes implemented with regards to any existing roads;

- c. Certification by the applicant that the proposed facility complies with all FCC standards for radio emissions is required; and
  - d. A boundary survey for the lease hold area and/or owned area for the project performed by a land surveyor licensed by the State of West Virginia, including the access road and vicinity map.
9. A scenic assessment for the project area consisting of the following:
- a. elevation drawings of the proposed facility, showing height above ground level;
  - b. a landscaping plan indicating the proposed placement of the facility on the site; location of existing structures, trees, and other significant site features, the proposed lighting method;
  - c. photo simulations of the proposed facility taken from perspectives determined by the Planning Director, or their designee, during the pre-application conference. Each photo must be labeled with the line of sight, elevation, and with the date taken.
  - d. A narrative discussing:
    - i. the extent to which the proposed facility would be visible from a residential area,
    - ii. the tree line elevation of vegetation within 100' of the facility; and
    - iii. the distance to the proposed facility from the designated scenic resources noted viewpoints.
10. A propagation map, before and after, of how the proposed facility first in the Applicant's telecommunications network. The applicant must provide written evidence of a tenant for the proposed wireless telecommunications facility. Such evidence may include a lease or letter of intent from the tenant. This submission requirement does not require disclosure of confidential business information.
11. Evidence demonstrating that no existing building, site, or structure can accommodate the applicant's proposed facility, the evidence for which may consist of any one or more of the following:
- a. evidence that no existing facilities are located within the targeted market coverage area is required to meet the applicant's engineering requirements,
  - b. evidence that existing facilities do not have sufficient height or cannot be increased in height at a reasonable cost to meet the applicant's engineering requirements,
  - c. evidence that existing facilities do not have sufficient structural strength to support the applicant's proposed antenna and related equipment.

Specifically:

- i. planned, necessary equipment would exceed the structural capacity of the existing facility, considering the existing and planned use of those facilities, and these existing facilities cannot be reinforced to accommodate the new equipment.
  - ii. the applicant's proposed antenna or equipment would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna or equipment with the existing facility would cause interference with the applicant's proposed antenna.
  - iii. existing or approved facilities do not have space on which planned equipment can be placed so it can function effectively.
- d. for facilities existing prior to the effective date of the ordinance, the fees, costs, or contractual provisions required by the owner in order to share or adapt an existing facility are unreasonable. Costs exceeding the pro rata share of a new facility development are presumed to be unreasonable. This evidence shall also be satisfactory for a tower built after the passage of this ordinance;
  - e. evidence that the applicant has made diligent good faith efforts to negotiate co-location on an existing facility, building, or structure, and has been denied access.
12. The applicant will comply with all applicable State and Federal Historic Preservation laws and regulations.
  13. A form of surety approved by the Planning Commission to pay for the costs of removing the facility to a depth of 3' below ground level if it is abandoned.

### **6.3 Submission Waiver**

The Planning Director may waive any of the submission requirements based upon a written request of the applicant submitted at the time of the application. A waiver of any submission requirement may be granted only if the Planning Director finds in writing that due to special circumstances of the application, the information is not required to determine compliance with the standards of this Ordinance.

### **6.4 Fees**

#### **A. Planning Director Application Fees**

An application for Planning Director approval shall include a payment of an application fee of \$500.00 and \$500.00 for Co-location building permit fee. The application shall not be considered complete until this fee is paid. The applicant is entitled to a refund of the application fee if the application is withdrawn within fifteen (15) days of date of filing.

#### **B. Planning Commission Application Fee**

An application for Planning Commission approval shall include payment of an application fee of \$1,000.00 and \$1,000.00 building permit fee. The application shall not be considered complete



until this fee is paid. An applicant is entitled to a refund of the fee if the application is withdrawn within fifteen (15) days of date of filing.

### **6.5 Notice of Complete Application**

Upon receipt of an application, the Planning Director shall provide the applicant with a dated receipt. Within five (5) working days of receipt of an application the Planning Director shall review the application and determine if the application meets the submission requirements. The Planning Director shall review any requests for a waiver from the submission requirements and shall act on these requests prior to determining the completeness of the application.

If the application is complete, the Planning Director shall notify the applicant in writing of this determination and require the applicant to provide a sufficient number of copies of the application to the Planning and Development Office.

If the application is incomplete, the Planning Director shall notify the applicant in writing, specifying the additional materials or information required to complete the application.

If the application is deemed to be complete, and requires Planning Commission review, the Planning Director shall notify all property owners within 300' of the leased site as shown on the Assessor's records, by first-class mail, that a public hearing has been scheduled. This notice shall contain a brief description of the proposed activity and the name of the applicant, give the location, a copy of the application available for inspection, and provide the date, time, and place of the public hearing before the Planning Commission. Failure on the part of any property owners within the 300' to receive such notice shall not be grounds for delay of any consideration of the application nor denial of the project.

### **6.6 Public Hearing**

For applications for Planning Commission approval under Section 5.1(B), a public hearing shall be held within thirty (30) days of the notice of the complete application.

### **6.7 Approval**

- A. Planning Director Approval.** Within thirty (30) days upon receipt of a complete application for approval under Section 5.1(A), the Planning Director shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based. The Planning Director shall approve the application if the Planning Director finds that the application complies with the provisions in Section 6.2(A) of this ordinance.
- B. Planning Commission Approval.** Within ninety (90) days upon receipt of a complete application for approval under Section 6.2(B), the Planning Commission shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based.

## **Section 7. Standards of Review**

To obtain approval from the Planning Director or the Planning Commission, an application must comply with the standards in this section.

### **7.1 Planning Director Approval Standards**

An application for approval by the Planning Director under Section 6.2(A) must meet the following standards:

- A.** The proposed facility is an expansion, accessory use, or co-location to a structure existing at the time the application is submitted.
- B.** The applicant has sufficient right, title, or interest to locate the proposed facility on the existing structure.
- C.** The proposed facility increases the height of the existing structure by no more than forty (40) feet.
- D.** The proposed facility will be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practical.
- E.** The applicant will comply with all State and Federal Historic Preservation laws and regulations.

### **7.2 Planning Commission Approval Standards**

An application for approval by the Planning Commission under Section 6.2(B) must meet the following standards:

- A.** The proposed facility increases the height of the existing structure by more than forty (40) feet.
- B.** The applicant has sufficient right, title, or interest to locate the proposed facility on the existing structure.
- C.** A new facility on public or private property.
- D.** A new wireless telecommunications facility and related equipment must be screened with plants from view by abutting properties, to the maximum extent practical. Existing plants and natural land forms on the site shall also be preserved to the maximum extent practical.
- E.** A new wireless telecommunications facility must be illuminated only as necessary to comply with FAA or other applicable state and federal standards. However, security lighting may be used as long as it is shielded to be down directional to retain light within the boundaries of the site, to the maximum extent practical.

- F. A new wireless telecommunications facility must comply with the current Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revised Standard entitled “Structural Standards for Steel Antenna Towers and Antenna Supporting Structures.”
- G. The proposed wireless telecommunications facility will have no unreasonable adverse impact upon designated scenic resources within the County, as identified in the Comprehensive Plan, or by a State or Federal agency.
  - 1. In determining the potential unreasonable adverse impact of the proposed facility, the Planning Commission shall consider the following factors:
    - a. The type, number, height, and proximity of existing structures and proximity of existing structures and features, and background features within the same line of sight as the proposed facility.
    - b. The extent to which the proposed facility would be visible from the viewpoint.
    - c. The amount of vegetative screening.
    - d. The distance of the proposed facility from the viewpoint and the facility’s location within the designated scenic resource.
    - e. The presence of reasonable alternatives that allow the facility to function consistently with its purpose.
- H. A new or expanded wireless telecommunications facility must comply with the buffer zone of 60% of its height from the adjoining property lines. The distance shall be measured from the center of the tower. The following exemption may apply; (1) the buffer zone may be reduced by the Planning Commission upon a showing by the applicant that the facility is designed to collapse in a manner that will not harm other property, private or public, or (2) upon a showing of the lessor or landowner’s agreement to waive any provisions of this requirement and the adjoining property owners that fall within the 60% buffer zone.

### **7.3 Standard Conditions**

The following standard conditions of approval shall be a part of any approval or conditional approval issued by the Planning Director or the Planning Commission. Where necessary to ensure that an approved project meets the criteria of this ordinance, the Planning Commission can impose additional conditions of approval. Reference to the conditions of approval shall be clearly noted on the final approved site plan, and shall include:

- 1. Upon request by the County, the applicant shall certify compliance with all applicable FCC radio frequency emissions regulations.

## **Section 8. Amendment to an Approved Application**

Any changes to an approved application must be approved by the Planning Director or the Planning Commission, in accordance with Section 6.

## **Section 9. Abandonment**

A wireless telecommunications facility that is not operated for a continuous period of eighteen (18) months shall be considered abandoned. The Planning Director shall notify the owner of an abandoned facility in writing and order the removal of the facility within ninety (90) days of receipt of the written notice. The owner of the facility shall have thirty (30) days from the receipt of the notice to demonstrate to the Planning Director that the facility has not been abandoned. However, if negotiations are pending with a service provider a letter of intent shall be provided to the Planning staff prior to the expiration of the eighteen (18) months.

If the owner fails to show that the facility is in active operation, the owner shall have sixty (60) days to remove the facility. If the facility is not removed within this time period, the County may remove the facility at the owner's expense. The owner of the facility shall pay all site reclamation costs deemed necessary and reasonable to return the site to its preconstruction condition, including the removal of roads, and reestablishment of vegetation.

If a surety has been given to the County for removal of the facility, the owner of the facility may apply to the Planning Commission for release of the surety when the facility and related equipment are removed to the satisfaction of the Planning Commission.

## **Section 10. Appeals**

Any person aggrieved by a decision of the Planning Director or the Planning Commission under this ordinance may appeal the decision to the Kanawha County Commission. Written notice of an appeal must be filed with the Kanawha County Commission within thirty (30) days of the decision. The notice of appeal shall clearly state the reasons for the appeal.

## **Section 11. Administration and Enforcement**

The Planning Director, as appointed by the Planning Commission, shall enforce this ordinance. If the Planning Director finds that any provision of this ordinance has been violated, the Planning Director shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. The Planning Director shall order correction of the violation and may take any other legal action to ensure compliance with this ordinance.

The Kanawha County Commission, or their authorized agent, are authorized to enter into administrative consent agreements for the purpose of eliminating violations of this

ordinance and recovering fines without court action. Such agreements shall not allow a violation of this ordinance to continue unless: there is clear and convincing evidence that the violation occurred as a result of erroneous advice given by an authorized county official upon which the applicant reasonably relied to its detriment and there is no evidence that the owner acted in bad faith; the removal of the violation will result in a threat to public health and safety or substantial environmental damage.

**Section 12. Fees**

The building permit fees for wireless telecommunications facilities are as follows:

New Cell Tower	flat fee \$1,000.00
Co-Location	Flat Fee \$500.00
Maintenance and Upgrade of Equipment	
\$0-\$30,000	\$25.00
\$30,001 +	\$\$25.00 + \$2.50 per thousand
In the 100 year flood plain	\$300.00 additional

**Section 13. Penalties**

Any person who owns or controls any building or property that violates this ordinance shall be fined not less than \$300.00 per day. Each day such violation continues after notification by the Planning Director shall constitute a separate offense.

**Section 14. Conflict and Severability**

**14.1 Conflicts with other Ordinances**

Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance or of any other ordinance, regulation, or statute, the more restrictive provision shall apply.

**14.2 Severability**

The invalidity of any part of this ordinance shall not invalidate any other part of this ordinance.

## **Section 15. Definitions**

The term used in this ordinance shall have the following meanings:

“Antenna” means any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of radio or electromagnetic frequency signals.

“Antenna Height” means the vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure, even if said highest point is an antenna. Measurement of tower height shall include antenna, base pad, and other appurtenances and shall be measured from the finished grade of the facility site. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

“Co-location” means the use of a wireless telecommunications facility by more than one wireless telecommunications provider.

“Expansion” means the addition of antennas, towers, or other devices to an existing structure.

“FAA” means the Federal Aviation Administration, or its lawful successor.

“FCC” means the Federal Communications Commission, or its lawful successor.

“Height” means the vertical measurement from a point on the ground at the mean finish grade adjoining the foundation as calculated by averaging the highest and lowest finished grade around the building or structure, to the highest point of the building or structure. The highest point shall exclude farm building components, flagpoles, chimneys, ventilators, skylights, domes, water towers, bell towers, church spires, processing towers, tanks, bulkheads, or other building accessory features usually erected at a height greater than the main roofs of buildings.

“Historic District” means a geographically definable area possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united by past events or aesthetically by plan or physical development and identified in the county’s comprehensive plan, which is listed or is eligible to be listed on the National Register of Historic Places.

“Historic Landmark” means any improvement, building or structure of particular historic or architectural significance to the community relating to its heritage, cultural, social, economic or political history, or which exemplifies historic personages or important events in local, state or national history identified in the county’s comprehensive plan, which have been listed or are eligible to be listed on the National Register of Historic Places.