

ORDINANCE 2002-14

AN ORDINANCE AMENDING ORDINANCE 84-4, THE "ZONING ORDINANCE OF THE CITY OF RUSSELLVILLE" BY CREATING A NEW SECTION TO PROVIDE FOR THE REGULATION OF WIRELESS TRANSMITTING STATIONS; CREATING DEFINITIONS, PROVIDING FOR PROHIBITED USES; ESTABLISHING FEES; PROVIDING FOR A REPEALER CLAUSE AND SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City of Russellville, Kentucky, has previously enacted Ordinance 84-4, the "Zoning Ordinance of the City of Russellville, Kentucky", and said ordinance included provisions regulating land use within the City of Russellville, Kentucky;

AND, WHEREAS, the General Assembly has enacted House Bill 270 providing, among other things, for local regulation of siting of wireless communication facilities;

AND, WHEREAS, the City has determined that the enactment of local legislation is fit and proper in accordance with House Bill 270, and this legislation is in the best interest of the health, safety and welfare of the citizenry of the City of Russellville, Kentucky;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF RUSSELLVILLE, KENTUCKY, THAT:

Ordinance 84-4 of the City of Russellville, Kentucky, is hereby amended to create a new section as follows:

SECTION I - WIRELESS TRANSMITTING STATIONS

A. Specific Use Standards

- 1) The purpose and intent of this Section are to avoid potential damage to adjacent properties from transmission tower collapse and falling ice through engineering and siting standards that maximizes use of any new cellular antenna tower, encourages collocation and clustering of cellular antenna towers to reduce the number of towers and tower sites needed.
- 2) The provisions of this Section shall apply to the construction, erection, alteration, use, and location of transmission towers and accessory facilities in all districts. Cellular antenna towers, antennas and related equipment in legal existence on the effective date of this Zoning Ordinance that are not in conformity with this Section may remain in place. Unless otherwise permitted by this Zoning Ordinance, no new cellular antenna tower, antennas nor related equipment may be erected or constructed unless all provisions of this Section and the requirements of the Kentucky Public Service Commission are met.
- 3) An antenna and supporting structure for the following uses is permitted in any district if accessory to a permitted use and if it complies with applicable regulations of the district in which situated and is otherwise permitted by law:
 - a. Amateur radios;
 - b. Citizen band radios;
 - c. A telecommunication device that only receives radio frequency signals;
 - d. Portable, hand held, and vehicular transmissions;
 - e. Industrial, scientific, and medical equipment operating at frequencies designated for that purpose by the FCC;

f. Transmission towers used for remote control of municipal or public facilities.

B. Examples subject to this Section include:

- 1) Broadcast towers;
- 2) Attached telecommunications facilities;
- 3) Telecommunications support towers;
- 4) Point-to-point microwave tower;
- 5) Ground mounted switchboxes.

C. Exceptions from this Section:

- 1) Receive-only antennas and amateur radio facilities that are owned and operated by a federally-licensed amateur radio station operator are not included in this category;
- 2) Radio and television studios are classified as Business Activities;
- 3) Radio and television broadcast facilities that are public safety facilities are classified as Basic Utilities.

D. Minimum Location Standards. The following minimum standards shall be met in the approval of an application under this Section:

- 1) All self supporting antenna towers will be set back from the property line on which it is located twenty-five percent (25%) of the overall height of the transmission tower.
- 2) All guyed antenna towers will be set back from the property line on which it is located fifty percent (50%) of the overall height of the transmission tower.
- 3) Transmission tower accessory facilities shall comply with the setback standard in the adjacent district if more restrictive than the proposed district.

- 4) At least two (2) off-street parking spaces and one additional space for each on-site personnel will be provided.
- 5) Transmission towers shall not be artificially lighted unless required by the Federal Aviation Administration or appropriate State authority.
- 6) Transmission tower accessory facilities in an Agriculture District and other such districts where transmission towers are a conditional use, permitted accessory buildings and structures may not include offices, long-term vehicle storage, other outdoor storage or broadcast studios, except for emergency purposes, or other uses that are not needed to send or receive transmissions, and in no event may exceed twenty-five percent (25%) of the floor area used for wireless transmission equipment.
- 7) The proposed use shall be consistent with applicable Federal and State regulations and shall have secured and submitted copies of compliance with these regulations.

E. Color of Towers. Unless otherwise required by state or federal regulations, all transmission towers shall be light gray in color.

F. Definitions.

- 1) "Cellular antenna tower" means 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;
- 2) "Cellular telecommunications service" means a retail telecommunications service that uses radio signals transmitted through cell sites and mobile switching stations;
- 3) "Co-location" means locating two (2) or more transmission antennas or related equipment on the same cellular antenna tower;

- 4) "Personal communication service" has the meaning as defined in 47 U.S.C. §332(c);
- 5) "Uniform Application" means an application to construct a cellular antenna tower submitted to a Logan Joint Cities/County Planning Commission in conformity with Sections 3 and 5 of KRS 100.985;
- 6) "Utility" as the meaning as defined in KRS 278.987; and
- 7) "Antennas or related equipment" means transmitting, receiving, or other equipment used to support cellular telecommunications service or personal communications service. This definition does not include towers.

G. Every utility or company that is engaged in the business of providing the required infrastructure to a utility that proposes to construct an antenna tower for cellular telecommunications services or personal communications services shall submit an application for approval which shall include the following:

- 1) A Logan Joint Cities/County Logan Joint Cities/County Planning Commission Conditional Use Permit Application;
- 2) The Uniform Application, which shall include:
 - a. The full name and address of the applicant;
 - b. The applicant's articles of incorporation, if applicable;
 - c. A geotechnical investigation report, signed and sealed by a professional engineer registered in Kentucky, that includes boring logs and foundation design recommendations;
 - 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;
 - e. Clear directions from the county seat to the proposed site, including highway numbers and street names, if applicable, with the telephone number of the person who prepared the directions;

- 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 and, if applicable, the portion of the agreement demonstrating compliance with KRS 100.987;
- g. The identity and qualifications of each person directly responsible for the design and construction of the proposed tower;
- 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;
- 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;
- 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;
- 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;
- 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 shall include a map of the location of the proposed construction;
 - b) Given the telephone number and address of the Logan Joint Cities/County Planning Commission; and
 - c) Informed of his or her right to participate in the Logan Joint Cities/County Planning Commission's proceedings on the application.
- m. A list of the property owners who received the notice, together with copies of the certified letters sent to the listed property owners;
- n. A statement that the chief executive officer of the affected local governments and their legislative bodies have been notified, in writing, of the proposed construction;
- o. A copy of the notice sent to the chief executive officer of the affected local governments and their legislative bodies;
- p. A statement that:
- 1) 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 Logan Joint Cities/County Planning Commission, has been posted and shall remain in a visible location on the proposed site until final disposition of the application;
 - 2) 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 Logan Joint

Cities/County Planning Commission, has been posted on the public road nearest the site.

- q. A statement that notice of the location of the proposed construction has been published in a newspaper of general circulation in the county in which the construction is proposed;
 - r. 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;
 - s. 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 the applicant attempted to locate its antennas and related facilities on a tower designed to host multiple wireless service providers' facilities or on an existing structure, such as a telecommunications tower or other suitable structure capable of supporting the applicant's antennas and related facilities; and
 - t. 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.
- 3) The Uniform Application shall also include 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 County; and

- b. A one-half (1/2) mile area outside of the County if that area contains either existing or proposed construction sites for cellular antenna towers.
 - 4) The Uniform Application shall also include a copy of the contract(s) with an owner(s) of property upon which the cellular antenna tower is to be constructed which shall include a provision that specifies, in the case of abandonment, a method that the owner (operator) will follow in dismantling and removing the cellular antenna tower including a timetable for removal.
- H. An application for approval of a transmission tower (other than a cellular antenna tower) shall include the following:
- 1. A Logan Joint Cities/County Logan Joint Cities/County Planning Commission Conditional Use Application;
 - 2. A site plan or plans drawn to scale and identifying the site boundary; towers; guy wire anchors; existing and proposed structures; vehicular parking and access; existing vegetation to be retained, removed or replaced;
 - 3. Uses, structures, and land use designations on the site and abutting parcels; and
 - 4. A copy of the contract(s) with an owner(s) of property upon which the transmission tower is to be constructed which shall include a provision that specifies, in the case of abandonment, a method that the owner (operator) will follow in dismantling and removing the transmission tower including a timetable for removal if necessary.
- I. Confidentiality. 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 Logan Joint Cities/County 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.

J. Approval; Denial.

1. After an applicant's submission of an application to construct a cellular antenna tower, the Logan Joint Cities/County Planning Commission shall:
 - a. Review the application in light of its agreement with the comprehensive plan and locally adopted subdivision regulations;
 - b. Make its final decision to approve or disapprove the application; and
 - c. Advise the applicant in writing of its final decision within sixty (60) days commencing from the date that the application is submitted to the Logan Joint Cities/County Planning Commission or within a date certain specified in a written agreement between the Logan Joint Cities/County Planning Commission and the applicant. If the Logan Joint Cities/County Planning Commission fails to issue a final decision within sixty (60) days and if there is no written agreement between the Logan Joint Cities/County Planning Commission and the applicant to a specific date for the Logan Joint Cities/County Planning Commission to issue a decision the application shall be deemed approved.

2. If the Logan Joint Cities/County Planning Commission disapproves of the proposed construction, it shall state the reasons for disapproval in its written decision and may make suggestions that, in its opinion, better accomplish the objectives of the comprehensive plan and the locally adopted subdivision regulations. No permit for construction of a cellular or personal communications services antenna tower shall be issued until the Logan Joint Cities/County Planning Commission approves the application or the sixty (60) day time period has expired, whichever occurs first.

3. The Logan Joint Cities/County Planning Commission may require the applicant to make a reasonable attempt to co-locate additional transmitting or related equipment. It is the intent of these regulations to encourage the collocation and clustering of multiple transmission towers and their antennas and accessory facilities and to discourage the use of individual transmission towers and accessory facility sites. Therefore, more than one (1) transmission tower will be permitted under these regulations on a single tract of land notwithstanding any other provision of this Zoning Ordinance, provided they meet all of the required location standards. The Logan Joint Cities/County Planning Commission may provide the location of existing cellular antenna towers on which the Logan Joint Cities/County Planning Commission deems the applicant can successfully co-locate its transmitting and related equipment. If the Logan Joint Cities/County Planning Commission requires the applicant to attempt co-location, the applicant shall provide the Logan Joint Cities/County Planning Commission with a statement indicating that the applicant has:

- a. Successfully attempted to co-locate on towers designed to host multiple wireless service providers' facilities or existing structures such as a telecommunications tower or another suitable structure capable of supporting the applicant's facilities, and that identifies the location of the tower or suitable structure on which the applicant will co-locate its transmission and related facilities; or
- b. Unsuccessfully attempted to co-locate on towers designed to host multiple wireless service provider's facilities or existing structures such as a telecommunications tower or another suitable structure capable of supporting the applicant's facilities and that:
 - 1) Identifies the location of the towers or other structures on which the applicant attempted to co-locate; and
 - 2) Lists the reasons why the co-location was unsuccessful in each instance.

4. The Logan Joint Cities/County Planning Commission may deny an 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.
5. In the event of co-location, a utility shall be considered the primary user of the tower if the utility is the owner of the antenna tower and if no other agreement exists that prescribes an alternate arrangement between the parties for use of the tower. Any other entity that co-locates transmission or related facilities on a cellular antenna tower shall do so in a manner that does not impose additional costs or operating restrictions on the primary user.
6. Upon the approval of an application for the construction of a cellular antenna tower by the Logan Joint Cities/County Planning Commission, the applicant shall notify the Public Service Commission within ten (10) working days of the approval. The notice to the Public Service Commission shall include a map showing the location of the construction site. If an applicant fails to file notice of an approved uniform application with the Public Service Commission, the applicant shall be prohibited from beginning construction on the cellular antenna tower until such notice has been made.
7. If the Logan Joint Cities/County Planning Commission disapproves of the proposed construction, it shall state the reasons for disapproval in its written decision and may make suggestions that, in its opinion, better accomplish the objectives of the comprehensive plan and the locally adopted subdivision regulations. No permit for construction of a cellular or personal communications services antenna tower shall be issued until the Logan Joint Cities/County Planning Commission approves the application or the sixty (60) day time period has expired, whichever occurs first.
8. A party aggrieved by a final action of the Logan Joint Cities/County Planning Commission under the provisions of KRS 100.985 to 100.987 may bring an action for review in any court of competent jurisdiction.

SECTION II - USES PROHIBITED

A. SINGLE FAMILY AND MULTI-FAMILY DISTRICTS:

No Telecommunications Facilities shall be permitted in these districts.

B. MANUFACTURED HOME RESIDENTIAL DISTRICT:

No Telecommunications Facilities shall be permitted in these districts.

SECTION III - FEES

Wireless Communication Facilities Site review - \$2,500

SECTION IV - REPEALER CLAUSE

All ordinances or parts of ordinances in conflict herewith now in effect are hereby repealed.

SECTION V - SEVERABILITY CLAUSE

If any court of competent jurisdiction shall rule any clause, provision or section of this ordinance void or unenforceable, the remainder hereof is intended to be enacted and shall be in force and effect notwithstanding.

SECTION VI - EFFECTIVE DATE

This ordinance shall be effective upon its passage and publication as required by law.

FIRST READING conducted the 22nd day of October, 2002.

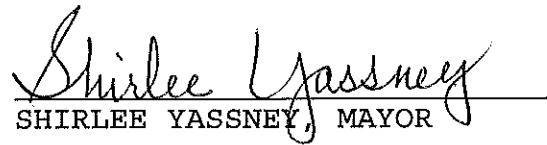
SECOND READING and passage by roll call vote this 5th day of November, 2002.

AYES: Ken Smith, Howard Wren, Morris L. Kisselbaugh, Ken Barrett, Jean Hankins

NAYS: None

ABSENT: Russell Jones

ABSTAINING: None


SHIRLEE YASSNEY, MAYOR

ATTEST:


PEGGY S. JENKINS, City Clerk