

**CITY OF BELLEVUE, KENTUCKY
ORDINANCE NO. 2020-09-03**

AN ORDINANCE OF THE CITY OF BELLEVUE, IN CAMPBELL COUNTY, KENTUCKY, REGULATING THE PLANNING, PLACEMENT, MAINTENANCE AND OPERATION OF CELLULAR ANTENNA TOWERS AND SMALL CELL TOWERS, AND GRANTING TO THE CITY THE POWER TO ESTABLISH NON-EXCLUSIVE FRANCHISES FOR THE USE OF THE PUBLIC STREETS, ALLEYS, RIGHTS OF WAY, AND OTHER PUBLIC GROUNDS OF THE CITY FOR CELLULAR ANTENNA TOWERS AND SMALL CELL TOWERS

WHEREAS, Kentucky cities including Bellevue are being contacted about placing small cell towers and/or antenna towers within the rights of way (ROW) of the City; and

WHEREAS, §253 of the Federal Communications Act prohibits local governments from creating barriers to the provision of telecommunication services (47 U.S.C. §253(a)); and

WHEREAS, §253 of the Federal Communications Act also preserves the right of local governments to require fair and reasonable compensation from telecommunications providers on a competitively neutral and non-discriminatory basis, for use of the public rights of way (47 U.S.C. §253(c)); and

WHEREAS, the City of Bellevue desires to comply with federal law while also regulating the planning, placement, maintenance and operation of cellular antenna towers and small cell towers, and;

WHEREAS, §163 and §164 of the Kentucky Constitution prohibit public utilities from using streets, alleys, rights of way and other public grounds within the city without a franchise for that use; and;

WHEREAS, the City desires to issue non-exclusive franchises for the use of the City's streets, alleys, rights of way and public grounds for the planning, placement, maintenance and operation of cellular antenna towers and small cell towers.

NOW, THEREFORE be it ordained by the City of Bellevue, Campbell County, Kentucky as follows:

Section 1.0 Definitions

1.1 The word “city” means the City of Bellevue in Campbell County, Kentucky.

1.2 The phrase “cellular antenna towers” means any structure that is designated, and constructed, or an existing facility that has been adapted for the location of transmission or related equipment to be used in the provision of cellular telecommunication services or personal communication services.

1.3 The word “franchisee” means the person to whom the City has awarded and granted a franchise hereby established.

1.4 The word “application” means the completed form or forms and all accompanying documents, exhibits and fees required of an applicant by the planning commission, planning commission’s duly authorized representative, or the applicable legislative body as part of a submission for review.

1.5 The word “applicant” means the person or entity who is authorized by the provisions of this Ordinance to file for approval under the regulations set forth and/or referred to herein.

1.6 The phrase “right of way” (ROW) means the surface of and space above and below any real property in the municipality in which the federal, state, county or local municipality, or municipal authority has a regulatory interest, or interest as a trustee for the public as such interest now or hereafter exists. This includes, but is not limited to, all streets, highways, avenues, roads, alleys, sidewalks, tunnels, bridges, or any other public space, area or property under the control of the federal government, state, municipality, or municipal authority.

1.7 The term “small cell system” means a network of remote antenna nodes that distribute radiofrequency signals from a central hub through a high capacity signal transport medium to a specific area. The term includes many commercial towers, small cells, distributed antenna systems, mini cell or similar systems.

1.8 The term “small cell tower” means 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 communication 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, microcell towers, mini cell, or similar systems.

Section 2.0 – Franchise

There is hereby established and the City is empowered to grant non-exclusive franchises for the use of the public property within the City for planning, placement, maintenance and operation of cellular antenna towers and small cell towers for consumption both within and outside of the City. Franchisee shall enter into and abide by all provisions of a Franchise Agreement as provided by City, including but not limited to an application process.

Section 3.0 – Terms of Franchise

The terms and conditions of the franchise hereby established are as follows:

- 3.1 Bidding Requirement. Pursuant to Section 164 of the Kentucky Constitution, before granting the franchise hereby established, the City shall first, after due advertisement, receive bids therefor publically, and award it to the highest and best bidders; but the City shall have the right to reject any and all bids.
- 3.2 Franchise Not Assignable. The franchise established hereby shall not be assignable without the written consent of the City; however, the Franchisee may assign the franchise to any affiliate which may, during the term of the franchise assume the obligation.
- 3.3 Franchise Area. The franchise established hereby shall be for the use of those portions of the public property within the City.
- 3.4 Effective Period of Franchise. The franchise established hereby may be effective for a period of up to twenty (20) years, beginning on the first day of the calendar month immediately following the grant and award of a franchise hereby established to a Franchisee unless previously terminated by the City pursuant to the provisions hereof or as otherwise provided by operation of law.
- 3.5 Franchise Termination. In the event of any default continuing longer than thirty (30) days by a Franchisee of any of the obligations of the franchise hereby established and after a written notice and description thereof to the Franchisee from the City by certified mail, return receipt requested, and upon the failure of the Franchisee to reasonably cure the default within a reasonable period of time, the City may terminate the franchise awarded and granted to the defaulting Franchisee, through a written notice thereof

to the Franchisee, by certified mail, return receipt requested, to be effective no less than ninety (90) days from delivery of said written notice.

- 3.6 Application Process. Any entity desiring for planning, placement, maintenance and operation of cellular antenna towers and small cell towers in the City shall complete an application which shall be available to them (applicant) at the City building during regular business hours. Applicant shall pay all fees, complete the application and provide all necessary documents and attachments to said application.

Section 4.0 – Franchisee Rights, Privileges and Obligations During Effective Period.

While the franchise established hereby is effective, the Franchisee may engage in the following activities:

- 4.1 Planning and Placement. All planning and placement of cellular antenna towers and small cell towers are subject to and must comply with Article IX §9.31 of the Planning and Zoning Regulations entitled “Cellular Antenna Towers and Small Cell Towers”. All planning and placement is also subject to rules and guidelines of the Historic Preservation Commission, the Tree Commission and other municipal authorities as applicable, so as to allow Franchisee placement, maintenance and operation of cellular antenna towers and small cell towers while placing reasonable restrictions thereon, and exploring and complying with reasonable alternatives in order to comply with rules and regulations of the City.
- 4.2 Right of Way Maintenance. Upon proper application and approval, the Franchisee may be permitted, without payment of fees, to cut, trim or remove any trees, overhanging branches, or other obstructions on public property which are determined to endanger or interfere with the efficient installation or maintenance of facilities. Cutting, trimming and removal of trees must be approved by the Tree Commission, and must be in conformity with all ordinances, zoning regulations, and must not be contrary to the public health, safety, welfare, and convenience of the City. If, during the franchise period, the City closes to public use any public property in or on which facilities of the Franchisee are located, the City shall make such provisions as may be legal and necessary to grant the Franchisee the right to retain the facilities thereof within that public property, along with the rights to maintain and operate such facilities
- 4.3 Franchisee Obligations During Effective Period. While this franchise is effective the Franchisee shall:

4.3.1 Surety Bond. Provide the City with and continually maintain a surety bond with (a) the City as the Obligee; and (b) the Franchisee as the Principle; and (c) a surety approved by the Mayor of the City, in an amount equal to \$50,000.00 conditioned upon the faithful performance by the Franchisee of the terms and conditions of the franchise hereby established; provided, however, that this requirement may be waived by the Mayor or the designee thereof upon the reasonable satisfaction thereof with the net worth of the Franchisee.

4.3.2 Liability Insurance. Provide the City with and continually maintain a comprehensive policy of liability insurance, with the Franchisee and the City as named insureds, and with limits not less than \$500,000.00 per person and \$1,000,000.00 per occurrence, by which the Franchisee and the City are insured against any legal liability to others that is in any way related to any acts or omissions of the Franchisee pursuant to the franchise hereby established; provided, however, that this requirement may be waived by the Mayor or the designee thereof upon the reasonable satisfaction thereof with the net worth of the Franchisee.

4.3.3 Maintenance of Facilities. Cause the facilities of the Franchisee within the franchise area to be maintained and repaired to a condition that is functional and safe and not a hazard to the public health, safety, welfare, and convenience. All maintenance of facilities shall be in compliance with this Ordinance, the Franchise Agreement, and Rules and Regulations of the Historic Preservation Commission, the Tree Commission and Planning and Zoning, including but not limited to those regulations set forth in §9.31.

4.3.4 Prosecution of Work. During the construction, maintenance, repair, replacement, re-construction, expansion, extension, new construction or installation of any of the facilities of the Franchisee, the Franchisee shall promptly and diligently prosecute such activities to completion within a reasonable time, and at the least possible hazard to the public health, safety, inconvenience and general welfare; and, upon completion thereof, the public property of the City in which those activities occurred shall be restored by the Franchisee to a condition that is as good or better than the condition thereof at the time of the commencement of those activities.

4.3.5 Relocation of Facilities. During any construction, maintenance, repair, replacement, improvement, or expansion by the City of any of the public property within the franchise area or any improvements therein other than the facilities of the Franchisee, or at any other time, the Franchisee shall, remove, relocate, or adjust any of the facilities of the Franchisee in such

public property within a reasonable time after a written request therefor from the City.

4.3.6 Franchise Fee. Pay to the City within thirty (30) days after the end of each calendar quarter a franchise fee at a percentage rate based on gross receipts from the sale of services granted in the franchise for consumption within the City as agreed upon by the City and Franchisee during the previous calendar quarter, along with a certification signed by an officer of the Franchisee or a Certified Public Accountant employed by or on behalf of the Franchisee indicating the quarter's gross receipts, payment calculation, and any necessary gross-ups for collections by the Franchisee. The franchise fee required hereby is not in substitution or in lieu of any other tax, fee, imposition, or charge for which the Franchisee would otherwise be responsible and liable. The franchise fee required hereby is in consideration of the use of the public streets, alleys and other public grounds within the City by the Franchisee pursuant to the provisions of the franchise hereby established, since such use is a valuable right in property, the acquisition and maintenance of which is very expensive to the City; and, without such use, the Franchisee would be required to acquire easements in private property for the transmission and distribution of either or both electricity and natural gas, at considerable expense to the Franchisee.

4.3.7 Release. Except to the extent otherwise prohibited under Kentucky law, release acquit and forever discharges the City, and all of the officers, agents, employees, successors and assigns thereof, from each, every, any and all uninsured obligations and liabilities of any of them to the Franchisee and the successors and assigns thereof for each, every, any and all personal injuries, property damage, costs, expenses, losses, compensation and all other damages of every kind and nature, and all claims and causes of action therefore, at law, or in equity, which may accrue to the Franchisee and the successors and assigns thereof, through any act, omission, event or occurrence proximately caused by any negligence of the City that is in any way related to the administration of the franchise established hereby or the award or grant thereof by the City to the Franchisee or the use of the public streets, alleys and other public grounds within the City by the Franchisee pursuant to the franchise established hereby

4.3.8 Indemnification. Pay, indemnify and hold the City and the officers, agents, employees, successors and assigns thereof harmless from and to defend them at the request of the City and at the sole cost and expense of the Franchisee, from each, every, any and all obligations and liabilities of any of them to others and the executors, administrators, heirs, successors and assigns of such others for each, every, any and all personal injuries, property damage, costs, expenses, losses, compensation and all other damages of every kind and nature, and all claims and causes of action therefore, at law,

or in equity, including, without limitation, claims of third parties for indemnification and/or contribution, which may accrue to such others and their executors, administrators, heirs, successors and assigns, through any act, omission, event or occurrence proximately caused by the negligence of the Franchisee which is in any way related to the franchise established hereby or the award or grant thereof by the City to the Franchisee or the use of the public streets, alleys and other public grounds within the City by the Franchisee pursuant to the franchise hereby established.

- 4.4 Franchisee Obligations After Effective Period. The Release obligation of the Franchisee provided in the previous Section 3.10.9 and the Indemnification obligation of the Franchisee provided in the previous Section 3.10.10 shall continue after the effective period of the franchise hereby established regarding all such claims that accrue during the effective period.

Section 5.0 – Construction

This ordinance shall not be construed in a manner which would create an obligation, requirement or duty on the part of the Franchisee which is in any way inconsistent with Kentucky law or its tariff on file with and approved by the Commission.

Section 6.0 – Conflicting Ordinances Repealed

All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

Section 7.0 – Effective Date

This Ordinance shall be effective when read, passed and advertised according to law.

Charlie Cleves, Mayor

ATTEST:

Mary H. Scott, City Clerk

1st reading: _____

2nd reading: _____

Publication: _____