

INTRODUCED BY COUNCIL

BILL NO. 2756

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 12 OF THE SPARKS MUNICIPAL CODE BY ADDING CHAPTER 12.42.020 TO ADDRESS THE CONSTRUCTION, INSTALLATION, AND OPERATION OF SMALL WIRELESS FACILITIES WITHIN THE CITY RIGHT-OF-WAY; AND PROVIDING OTHER MATTERS PROPERLY RELATED THERETO.

THE CITY COUNCIL OF THE CITY OF SPARKS DOES ORDAIN:

SECTION 1. Section 12.42.020: “Small wireless facilities” is hereby added as follows:

Section 12.42.020 - Small wireless facilities.

Purpose: This section establishes general guidelines for the siting of small wireless facilities. The goals of this chapter are to: (1) protect the City and the public from potential adverse impacts of small wireless facilities; (2) encourage operators of small wireless facilities to locate them, to the extent possible, in areas where the potential adverse impact on the community is minimal; (3) encourage carrier companies of small wireless facilities to configure them in a way that minimizes the adverse visual impact through design, siting, landscape screening, and camouflaging techniques; (4) enhance the ability of the providers of small wireless communications services to provide such services to the community quickly, effectively, and efficiently; (5) consider the health, safety, and welfare of the public relating to small wireless facilities and the poles and structures that such facilities are located on; (6) avoid potential harm or damage to people and adjacent properties from small wireless facilities or pole or other structure failure through structural and engineering analysis and careful siting of small wireless facilities; and (7) encourage placement of small wireless facilities in locations that ensure safe pedestrian and vehicular passage throughout the City of Sparks. In furtherance of these goals, the City of Sparks shall give due consideration to the City of Sparks comprehensive plan, zoning map, existing land uses, and environmentally sensitive areas in approving sites for the location of small wireless facilities.

A. Applicability.

1. This section applies to any small wireless facilities to be located in City of Sparks right-of-way.

B. Exemptions.

1. Any repair or maintenance of an existing small wireless facility.

C. General Requirements.

1. **Master license agreement.** All carriers who plan to install small wireless facilities on poles or structures owned by the City of Sparks within the City of Sparks right-of-way or who plan to install new poles or structures within the City of Sparks right-of-way for the purpose of supporting or housing small wireless facilities shall execute a Master License Agreement with the City of Sparks prior to the issuance of any building permits.
2. **Building Permit.** Each application for the construction, installation, and operation of small wireless facilities will be reviewed through the City of Sparks' building permit process for conformance with this chapter, the Master License Agreement, and applicable building codes and construction standards.
3. **Business License.** The applicant shall provide to the Administrator all applicable City of Sparks business licensing fees or fees in lieu of business in accordance with Section 5.02.010 of this code. The failure or refusal to remit appropriate fees to the Administrator shall constitute grounds to remove the applicant's small wireless communication facility.
4. **Application Review.** The Administrator shall evaluate the completeness of an application for approval to install and operate a small wireless facility, including construction of a new pole for the purpose of installing and operating small wireless facilities, within 10 days after receipt of the building permit application. If an application is deemed incomplete, the Administrator shall provide written notice that the application is incomplete within 10 days after receipt of the building permit application and a summary of the missing documentation or information. Any notice that an application is incomplete will toll the applicable deadline for City action until the missing documentation or information is supplemented. The Administrator shall respond to each complete small wireless facilities application that seeks to collocate small wireless facilities on an existing pole or structure within sixty (60) days after the filing of the building permit application by either approving or denying the application, unless the applicant and Administrator mutually agree in writing to extend the deadline for City action. For any applications seeking approval to construct a new pole or structure for the purpose of operating or attaching small wireless facilities, the Administrator shall respond to each complete application within ninety (90) days after the filing of the building permit application, unless the applicant and Administrator mutually agree in writing to extend the deadline for City action. If an applicant submits multiple batched applications on the same day that include applications for the construction of new poles or structures and applications for collocation on existing structures, then the Administrator shall respond to each complete application within ninety (90) days, unless the applicant and Administrator mutually agree in writing to extend the deadline for City action.
5. **Existing pole or structure not owned by the City.** An applicant considering attaching small wireless facilities to an existing pole or structure that is not owned or controlled by the City of Sparks shall provide documentation demonstrating that it has authority to

attach small wireless facilities to the existing pole or structure. The documentation shall include structural analysis demonstrating that the existing pole or structure can support the addition of the small wireless facilities without undue risk of collapse, failure, or risk to public health, safety or welfare. Small wireless facilities attached to a pole or structure that is not owned or controlled by the City of Sparks are not subject to annual fees associated with the use of City right-of-way under the Master License Agreement.

- 6. Building codes; safety standards.** To ensure the structural integrity of poles and other structures that may support small wireless facilities, the owner of a new pole or structure shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for the pole or structure that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the City of Sparks concludes that a pole or structure fails to comply with such codes and standards and constitutes a danger to persons or property, then upon written notice being provided to the owner of the pole or structure, the owner has 30 days to bring the pole or structure into compliance with those standards. Failure to bring the pole or structure into compliance within 30 days is grounds for City removal of the pole or structure at the owner's expense.
- 7. Connection.** The carrier shall be responsible for obtaining access and connection to electrical power and fiber optic lines or other backhaul solutions that may be required for the operation of its small wireless communications facilities.
- 8. Installation.** The carrier shall, at its own cost and expenses, install the small wireless facilities and any ancillary structures in a good and workmanlike manner and in accordance with the requirements promulgated by the Administrator, as such may be amended from time to time. The carrier's work shall be subject to the regulation, control and direction of the Administrator. All work done in connection with the installation, operation, maintenance, repair, modification, and/or replacement of the small wireless facilities or poles/structures shall be in compliance with all applicable laws, ordinances, codes, standards, rules, and regulations ("Laws").
- 9. Emergency contact.** The carrier shall post its name, location identifying information, and emergency contact telephone number in an area on the cabinet or other exterior portion of the small wireless facility that may be visible to the public. Signage required under this section shall not exceed 4"x 6" inches in size, unless otherwise required by direction of the Administrator or by law.
- 10. Signs.** Except as required by law, the carrier shall not post any other signage or advertising on its small wireless facilities or any supporting pole or structure.

11. RF Interference. Every carrier shall ensure that its small wireless facilities will not cause radio frequency interference with existing wireless communication facilities or devices, cable television, broadcast radio or television systems, satellite broadcast systems, or the City's or other public entities' traffic, public safety or other communication signal equipment existing at the time of installation of the carrier's small wireless facilities.

12. State or federal requirements. All small wireless facilities must meet or exceed requirements within all current Laws, including those of the Federal Aviation Administration (FAA), the Federal Communication Commission (FCC), and any other agency of the State of Nevada or federal government with the authority to regulate small wireless facilities. If those Laws are changed, then a holder of a permit to install and operate small wireless facilities governed by this ordinance shall bring its small wireless facilities into compliance with the revised Laws, standards or regulations within six (6) months of the effective date of the revised Laws, standards and regulations, unless a different compliance schedule is mandated by the controlling agency or the holder of the permit and the City agree in writing to a different compliance schedule. Failure to bring small wireless facilities into compliance with the revised Laws, standards and regulations constitutes grounds for City removal of the small wireless facility at the owner's expense.

D. Aesthetics.

1. Small wireless facilities equipment to be installed on an existing pole or structure shall be concealed or enclosed as much as is technologically feasible in an equipment box, cabinet or other unit that may include ventilation openings. External cables and wires shall be sheathed, placed inside the pole, or enclosed in a metal conduit so that the wires are protected and not visible or visually minimized to the maximum extent possible. All cables, wiring, and other connections necessary for the installation and operation of small wireless facilities shall be housed, to the extent possible, in a conduit that is separate from any existing City or third-party cables, wiring, or other connections that are within or adjacent to the structure. For new pole or structure installation, all wiring shall be enclosed, to the extent possible, within the pole/structure, equipment box, cabinet or other unit that may include ventilation openings. The preferred location for any ground equipment shall be in an underground vault to the extent it is reasonably feasible from a technical, construction, engineering, and design perspective, but if any equipment must be placed above ground it shall be a color or material to match the surrounding area and ensure that it allows for necessary pedestrian access as required under the Americans with Disabilities Act, including the maintenance of a minimum forty-eight (48) inches of walking space.
2. To the extent technically feasible, antennas and associated equipment located on a pole structure shall be installed within a camouflaged facility to the approval by the

Administrator. Camouflaging may include hiding the antennas by use of radome or other similar concealment designs and matching colors or materials to the surrounding area.

3. Conduit associated with the small wireless facility shall be painted flat with non-reflective colors to match the underlying pole. All conduits, conduit attachments, cables, wire and other connectors must be shielded in channeling and concealed from public view to the maximum extent feasible to the approval of the Administrator. There shall be no exposed cables.
4. The maximum height of any new pole or structure shall be 45 feet, including antennas and any other appurtenances.
5. Any new pole placed within the ASHTO clear zone shall have a slip base assembly. The pole shall be hot dip galvanized metal pole meeting ATM A123 Spec. F-1. The color of finish coat shall be powdered coated to the approval of Administrator.
6. Any ground equipment may be mounted on a concrete pad that must be flush with the ground or at least six (6) inches above grade.
7. The antenna volume shall be not more than 3 cubic feet.
8. The total size of small wireless facilities installed on a pole or structure shall not exceed 28 cubic feet, unless otherwise approved by the Administrator.
9. When a supporting pole or structure bearing a small wireless facility is replaced, the carrier must install camouflaged small wireless facilities, ground equipment and/or carrier poles as authorized by Administrator and in compliance with the City's adopted aesthetics standards, unless otherwise approved by Administrator.

E. Placement.

1. Small wireless facilities located on a pole or other vertical structure shall be installed at least 8 feet above the ground.
2. All poles, structures, ground equipment and other associated equipment which are located within a sidewalk area or planned future sidewalk area must allow for sufficient pedestrian access as required under the Americans with Disabilities Act, including the maintenance of a minimum forty-eight (48) inches of walking space.
3. Small wireless facilities, including antennas, ground equipment, and other appurtenances shall be placed so as to not impede pedestrian or vehicular traffic in the right-of-way. Generators or back-up generators shall not be installed without the prior approval of Administrator.

4. The preferred placement of ground equipment shall be in an underground vault if it is reasonable from a technical, construction, engineering, and design perspective. If the equipment cannot be placed underground, the ground equipment shall be placed a minimum of 6 feet from the pole or structure and shall not impede pedestrian or vehicular traffic in the right-of-way.
5. The distance between all small wireless facilities shall be a minimum of 150 feet measured radially from the center of each facility's supporting pole or structure, unless a shorter separation distance is approved by the Administrator.
6. An applicant shall not construct or install new wooden poles for the purpose of supporting or housing small wireless facilities unless the installation of wooden poles would be consistent with the color and design of other poles in the surrounding area as determined by the Administrator.

F. Removal of abandoned small wireless communications facilities

Any small wireless facilities that are not operated for a continuous period of 180 days are considered abandoned, and the owner of the small wireless facilities shall remove them within 90 days of receipt of notice from the City of Sparks notifying the owner of the abandonment. If abandoned small wireless facilities are not timely removed the City may take action to remove the small wireless facilities at the owner's expense.

SECTION 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3. The City Clerk is instructed and authorized to publish the title to this ordinance as provided by law.

SECTION 4. This ordinance shall become effective upon passage, approval and publication.

SECTION 5. The provisions of this ordinance shall be liberally construed to effectively carry out its purposes in the interest of the public health, safety, welfare and convenience.

SECTION 6. If any subsection, phrase, sentence or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions.

SECTION 7. The City Council finds that this ordinance is not likely to impose a direct and significant economic burden upon a business or directly restrict the formation, operation or expansion of a business, or is otherwise exempt from Nevada Revised Statutes Chapter 237.

PASSED AND ADOPTED this ____ day of _____, 20____, by the following vote of the City Council:

AYES: _____

NAYS: _____

ABSTAIN: _____

ABSENT: _____

APPROVED this ____ day of _____, 20____, by:

RONALD SMITH, Mayor

ATTEST:

LISA HUNDERMAN, Acting City Clerk

**APPROVED AS TO FORM AND
LEGALITY:**

CHESTER H. ADAMS, City Attorney