

Police Inspection of Lodging Registrations

BILL NO. ____

INTRODUCED BY COUNCIL

ORDINANCE NO. ____

AN ORDINANCE AMENDING THE SPARKS MUNICIPAL CODE RELATING TO HOTELS, MOTELS AND OTHER RENTED SHORT-TERM LODGING; REVISING PROVISIONS PERTAINING TO POLICE INSPECTION OF HOTEL, MOTEL AND OTHER LODGING REGISTERS AND REGISTRATION SYSTEMS; BROADENING THE DEFINITION OF REGISTRATION SYSTEMS TO INCLUDE MODERN ELECTRONIC SYSTEMS; ALLOWING THE OWNER OR OPERATOR OF HOTELS, MOTELS AND OTHER RENTED PROPERTIES TO SEEK PRE-COMPLIANCE JUDICIAL REVIEW OF POLICE DEMANDS FOR INSPECTION OF REGISTERS AND REGISTRATION SYSTEMS; AND PROVIDING OTHER MATTERS PROPERLY RELATED THERETO.

WHEREAS, the City of Sparks has long required hotel and motel operators to obtain the name and place of residence of persons who rent lodging and to place that information onto a registration system consisting of a register or registration cards; and

WHEREAS, changes in the rental market require that the owners or operators of certain other types of temporary rental properties also be required to maintain a guest registration system; and

WHEREAS, modern registration systems are electronic, computerized systems which must be included in the definition of registration systems; and

WHEREAS, other, outdated provisions of Chapter 5.52 of the Sparks Municipal Code should be repealed; and

WHEREAS, the registration of lodgers in hotels, motels, hotels and motels converted to apartments, rooming houses, recreational vehicle parks and other lodging is of significant aid to the police in preventing crime and capturing persons wanted for criminal acts; and

WHEREAS, the Sparks Municipal Code currently requires the owner or operator of such lodging properties, upon police demand, to open their guest registers or registration systems for inspection by the police, military police or F.B.I. at any and all times; and

WHEREAS, the U.S. Supreme Court held in *City of Los Angeles v. Patel*, Case No. 13-1175 (June 22, 2015), that municipal code provisions requiring hotel operators to provide their registration information to police upon demand did not fall within the administrative search exception to the requirement for a search warrant under the Fourth Amendment to the United States Constitution, and that such municipal code provisions were unconstitutional unless the hotel owner or operator had the opportunity to obtain pre-compliance judicial review of the police demand for inspection; and

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WHEREAS, it is necessary to amend the Sparks Municipal Code to conform to the new U.S. Supreme Court decision.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SPARKS DOES ORDAIN;

Section 1. Section 5.52.010 “Required registration system” is hereby amended as follows:

Section 5.52.010 - Required registration system.

~~Every person within the limits of the city who keeps, maintains or controls any hotel, apartment house, tenement, rooming house, auto court or other house or establishment where rooms for lodging are available shall provide, keep and maintain a register or registration system and shall require every person who rents or occupies a room in any such establishment to write or cause to be written in the register, or upon a registration card, his or her name and place of residence, and in the event that the person who so rents or occupies a room in any such establishment is wearing a uniform of any of the armed, naval or military services of the United States of America, such person shall also enter or cause to be entered on such register or registration card his or her rank, serial number, home station and nature of authority for being away from the home station, which information shall be verified by examination of the written credentials in the possession of such person. Every such registration shall be made upon a page of the register or upon a registration card, properly dated with reference to the day of the year, month and week, and the time of day, the person rents or arranges to occupy such lodging.~~

A. Every person who owns or operates within the limits of the city any hotel, motel, building comprised of former hotel or motel rooms which have been converted into apartments, tenement, boarding or rooming house, recreational vehicle park or other establishment where rooms or spaces for lodging are available to rent or lease on a temporary basis shall keep and maintain a registration system and shall require the name, date of birth and residential addresses, including city or town and state, of every person who rents or occupies a room or space in any such establishment to be written in the register, or upon a registration card, or entered into an electronic registration system. Every such registration shall contain a reference to the day of the year, month and week, and the time of day, the person rents or arranges to occupy such room or space.

Every person who rents or occupies such a room shall produce a photographic identification card issued by a governmental agency of the United States or a State in the United States. The person’s name, date of birth and residential address on the identification card should match the information entered in the registration system.

If there is a discrepancy between the photographic identification and the information provided by the renter or occupant, the owner or operator of the establishment shall create a unique identifier (e.g., a letter, word or symbol) and place it next to the entry in the registration system. Upon inquiry into a registration system by a peace officer, the owner or operator shall

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inform the officer that a unique identifier exists for any person entered in the registration system and explain any discrepancy in the registration.

B. For purposes of this chapter:

- 1. "Registration system" means a system of registration contained in a registration book, in a card file or in an electronic database.*
- 2. "Available to rent or lease on a temporary basis" means a rental or lease which is reasonably expected to have a tenancy of less than six months. An establishment which allows rent or lease payments to be paid on a daily, weekly or bi-weekly (every two weeks) basis is deemed to be for "rent or lease on a temporary basis," regardless of the type of property or the terms of any rental agreement or lease.*

(Ord. 942 § 1 (part), 1973; Ord. 723 § 6, 1968; 1962 Code § 25.605.)

Section 2. Section 5.52.040 "~~Registers~~ Registration System must be open for inspection" is hereby amended as follows:

Section 5.52.040 – ~~Registers~~ Registration systems must be open for inspection; Exception – procedures for objecting to inspection.

A. Except as provided in subsection B, ~~Every register or~~ registration system kept in compliance with the provisions of this chapter shall, upon demand, be open for inspection or investigation by the chief of police, or his authorized agent, or for the inspection or investigation of any of the military police or any officer in any of the armed, naval or military services of the United States of America, or any agent of the Federal Bureau of Investigation, at any and all times.

B. Upon receiving a demand for inspection pursuant to subsection A, the owner or operator of an establishment may voluntarily allow inspection of the registration system or may immediately object orally to the inspection. If the owner or operator makes an oral objection or otherwise refuses to allow the inspection, and the law enforcement agency desires to enforce the demand, the officer must make the demand in writing and personally serve it on the owner or operator. The demand must be signed by the officer making the demand. No particular form of the demand is required, but the demand must set forth the name of the establishment, the date and time the demand is served on the establishment and the name of person served. A demand served pursuant to this section shall have attached thereto a form objection letter which may be used by the establishment to object to the demand.

C. If the owner or operator of an establishment receives a written demand pursuant to this section and the owner or operator desires to object to the demand, the owner or operator must make a written objection to the demand, with a copy of the demand attached, and personally serve it within 48 hours after receiving the demand. Service of the objection must be made on the

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officer making the demand or another officer of the same law enforcement agency as the officer who made the demand. No particular form of an objection is required, but the objection must be signed by the owner or operator, and set forth the date and time it is served on the officer or the agency. Failure to timely make and serve a written objection to a demand is a waiver of the establishment's right to seek pre-compliance judicial review of that demand.

D. An establishment which makes and serves an objection pursuant to this section may challenge the demand for inspection by filing an action in a court of competent jurisdiction within 10 calendar days after the date the objection is served. Failure to timely file such an action is a waiver of the establishment's right to seek pre-compliance judicial review of that demand.

E. The owner or operator of an establishment that fails to timely make and serve a written objection, or that makes and serves a timely objection and then fails to timely file an action for pre-compliance judicial review, must open the establishment's registration system for inspection pursuant to subsection A immediately after the lapse of the period of time to make and serve a written objection or to file an action for pre-compliance judicial review, whichever is applicable.

F. Nothing in this section prohibits a law enforcement agency from obtaining access to any registration system pursuant to a warrant or ex parte warrant, or if an exception to the warrant requirement applies (e.g., consent or exigent circumstances).

G. Nothing in this section prohibits an officer possessing a reasonable, articulable suspicion that a registration system would be altered during pre-compliance review from guarding the registration system pending a decision of the court.
(Ord. 942 § 1 (part), 1973: Ord. 723 § 9, 1963: 1962 Code § 25.620.)

Section 3. Section 5.52.045: "Unlawful to fail or refuse to allow inspection under certain circumstances" is hereby added as follows:

Section 5.52.045 - Unlawful to fail or refuse to allow inspection under certain circumstances.

It is unlawful for the owner or operator of an establishment required to keep and maintain a registration system pursuant to SMC 5.52.010 to fail or refuse to allow an inspection of that registration system pursuant to SMC 5.52.040 under the following circumstances:

A. The law enforcement officer makes an oral demand for such inspection and the owner or operator of the establishment does not object to the demand, but then fails to allow the inspection.

B. The owner or operator of the establishment receives an oral demand for inspection and makes an oral objection to such inspection or otherwise refuses to allow the inspection. The law enforcement officer then issues a written demand for inspection pursuant to 5.52.040, but the

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owner or operator fails to timely make and serve a written objection pursuant to that section and thereafter fails or refuses to allow the inspection.

C. The owner or operator of an establishment receives an oral demand for inspection and makes an oral objection or otherwise refuses to allow the inspection. The law enforcement officer then serves a written demand for inspection pursuant to SMC 5.52.040 and the owner or operator timely makes and serves a written objection pursuant to that section, but thereafter fails to timely file an action in a court of competent jurisdiction for pre-compliance review of the police demand for inspection. Following that failure to timely file an action, which is a waiver of the owner's or operator's right to judicial review of the demand, the owner or operator then fails or refuses to allow such inspection.

D. The law enforcement officer and the owner or operator of the establishment each act in accordance with SMC 5.52.040 and the establishment files a proper action for pre-compliance judicial review, but the owner or operator is found by the court to have no right to fail or refuse to allow such an inspection, and the owner or operator thereafter fails or refuses to allow the inspection.

Section 4. Section 5.52.050 "Compliance required – keeping registration books system" is hereby amended as follows:

Section 5.52.050 - Compliance required—Keeping registration books system.

~~It is unlawful for any person within the limits of the city to keep, maintain or control any hotel, apartment house, tenement, rooming house, auto court or other house or establishment where rooms for lodging are available to fail, refuse or neglect to comply with the requirements of Sections 5.52.010 and 5.52.040, or to fail, refuse or neglect to keep in possession all registration books or cards, hereinabove referred to, for a period of at least three years from the date of the last entry therein or thereon.~~

It is unlawful for any person who owns or operates within the limits of the city any hotel, motel, building comprised of former hotel or motel rooms which have been converted into apartments, tenement, boarding or rooming house, recreational vehicle park or other establishment where rooms or spaces for lodging are available to rent or lease on a temporary basis to fail, refuse or neglect to comply with the requirements of SMC 5.52.010 and 5.52.040, or to fail, refuse or neglect to keep and maintain a registration system, or to fail, refuse or neglect to keep in possession all registration books, cards or computer entries and related data for a period of at least three years after the date of the last entry therein or thereon.

(Ord. 942 § 1 (part), 1973: Ord. 723 § 10, 1963: 1962 Code § 25.625.)

Section 5. Section 5.52.060 "Reporting minors to police department" is hereby amended as follows:

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Section 5.52.060 – Reporting minors to police department.

~~It is unlawful for any owner, agent, manager or keeper of any hotel, motel, apartment house, tenement, rooming house, auto court, trailer court or other house or establishment where rooms for lodging are available to fail to immediately report to the police department the known presence of any and all minors in such lodging house, room, rooms or trailer court who he has reason to believe to be under the age of eighteen years, unless such minor or minors are accompanied by an adult who he reasonably believes to be a responsible person.~~

It is unlawful for any person who owns or operates within the limits of the city any hotel, motel, building comprised of former hotel or motel rooms which have been converted into apartments, tenement, boarding or rooming house, recreational vehicle park or other establishment where rooms or spaces for lodging are available to rent or lease on a temporary basis to fail to immediately report to the police department the known presence of any and all minors in such rental properties who he has reason to believe to be under the age of eighteen years, unless such minor or minors are accompanied by an adult who he reasonably believes to be a responsible person.

(Ord. 942 § 1 (part), 1973; Ord. 723 § 11, 1968; 1962 Code § 25.630.)

SECTION 6. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 7. The City Clerk is instructed and authorized to publish the title to this ordinance as provided by law.

SECTION 8. This ordinance shall become effective upon passage, approval and publication.

SECTION 9. 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 10. 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.

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SECTION 11. 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:

GENO MARTINI, Mayor

ATTEST:

TERESA GARDNER, City Clerk

APPROVED AS TO FORM AND LEGALITY:

CHESTER H. ADAMS, City Attorney