

ORDINANCE NO. 1030

AN ORDINANCE AMENDING APPENDIX A THE 2004 ZONING ORDINANCE OF THE CITY OF SPEARFISH TO ADD NEW SECTIONS REGULATING TELECOMMUNICATIONS FACILITIES.

BE IT ORDAINED by the Common Council of the City of Spearfish that the following specified portions of Appendix A, Of the Code of Ordinances of the City of Spearfish, of the 2004 Zoning Ordinance, are hereby amended to read as follows below (the bolded words shall be added, and the strike-outs shall be deleted), and all remaining portions of Appendix A not amended below shall remain unchanged:

ARTICLE IV. DISTRICT REGULATIONS

Section 1. AG Agricultural District.

B. USES PERMITTED: Property and structures in the AG-Agricultural District shall be used only for the following purposes:

**7. TELECOMMUNICATIONS FACILITIES AS DEFINED AND REGULATED IN ARTICLE V. SECTION 8.**

C. USES PERMITTED UPON REVIEW (UPR):

1. Other compatible uses may be permitted by the City Council in accordance with the procedure and standards contained in Article VI, Section 3.
- 2. TELECOMMUNICATIONS FACILITIES AS DEFINED AND REGULATED IN ARTICLE V. SECTION 8.**

Section 2. R1 Single-Family Residential District.

C. USES PERMITTED UPON REVIEW (UPR):

1. Other compatible uses may be permitted by the City Council in accordance with the procedure and standards contained in Article VI, Section 3.
- 2. TELECOMMUNICATIONS FACILITIES AS DEFINED AND REGULATED IN ARTICLE V. SECTION 8.**

Section 3. R2 One and Two Family Residential District.

C. USES PERMITTED UPON REVIEW (UPR):

1. Other compatible uses may be permitted by the City Council in accordance with the procedure and standards contained in Article VI, Section 3.
  - 2. TELECOMMUNICATIONS FACILITIES AS DEFINED AND REGULATED IN ARTICLE V. SECTION 8.**
- Section 4. R3 Multi-Family Residential District.

C. USES PERMITTED UPON REVIEW (UPR):

1. Other compatible uses may be permitted by the City Council in accordance with the procedure and standards contained in Article VI, Section 3.
2. **TELECOMMUNICATIONS FACILITIES AS DEFINED AND REGULATED IN ARTICLE V. SECTION 8.**

Section 5. C1 Central Commercial District.

B. USES PERMITTED: The following uses shall be permitted in the C1 Central Commercial District.

18. **TELECOMMUNICATIONS FACILITIES AS DEFINED AND REGULATED IN ARTICLE V. SECTION 8.**

C. USES PERMITTED UPON REVIEW (UPR):

1. Other compatible uses may be permitted by the City Council in accordance with the procedure and standards contained in Article VI, Section 3.
2. **TELECOMMUNICATIONS FACILITIES AS DEFINED AND REGULATED IN ARTICLE V. SECTION 8.**

Section 6. CC Central Core Commercial District.

C. USES PERMITTED UPON REVIEW (UPR):

1. Other compatible uses may be permitted by the City Council in accordance with the procedure and standards contained in Article VI, Section 3.
2. **TELECOMMUNICATIONS FACILITIES AS DEFINED AND REGULATED IN ARTICLE V. SECTION 8.**

Section 7. C2 Highway Service Commercial District.

B. USES PERMITTED: The following uses shall be permitted in the C1 Central Commercial District.

19. **TELECOMMUNICATIONS FACILITIES AS DEFINED AND REGULATED IN ARTICLE V. SECTION 8.**

C. USES PERMITTED UPON REVIEW (UPR):

1. Other compatible uses may be permitted by the City Council in accordance with the procedure and standards contained in Article VI, Section 3.
2. **TELECOMMUNICATIONS FACILITIES AS DEFINED AND REGULATED IN ARTICLE V. SECTION 8.**

Section 9. IH Heavy Industrial District

B. **USES PERMITTED:** All uses or change of uses in the Heavy Industrial District shall be considered special uses authorized by City Council for their location and operation.

**4. TELECOMMUNICATIONS FACILITIES AS DEFINED AND REGULATED IN ARTICLE V. SECTION 8 BY ADMINISTRATIVE APPROVAL AND USE PERMIT.**

Section 10. Development Review District

B. **USES PERMITTED:** Unless expressly prohibited in C. below, the following uses are permitted:

**10. TELECOMMUNICATIONS FACILITIES AS DEFINED AND REGULATED IN ARTICLE V. SECTION 8 BY ADMINISTRATIVE APPROVAL AND USE PERMIT.**

ARTICLE V. SUPPLEMENTARY REGULATIONS

C. **USES PERMITTED:** All uses or change of uses in the Heavy Industrial District shall be considered special uses authorized by City Council for their location and operation.

**Section 8. Telecommunications Facilities**

**A. General Provisions.** This section establishes criteria under which wireless communications infrastructure will be permitted in the City of Spearfish. Wireless antenna equipment and supporting structures are intended to be located in areas where they are the least obtrusive and most compatible with the surrounding environment.

**B. Exemptions**

Ordinary Maintenance of existing Telecommunications Facilities and Support Structures, as defined herein, shall be exempt from zoning and permitting requirements. In addition, the following facilities are not subject to the provisions of this Ordinance: (1) antennas used by residential households solely for broadcast radio and television reception; (2) satellite antennas used solely for residential or household purposes; (3) COWs (Carrier on Wheels) placed for a period of not more than one hundred twenty (120) days at any location within the City of Spearfish after a declaration of an emergency or a disaster by the Governor or by the responsible official of the City of Spearfish or Lawrence County; (4) COWs (Carrier on Wheels) placed for a period of not more than two weeks at any location within the City of Spearfish in order to serve a community event declared as such by the City Council (5) commercial television and AM/FM radio broadcast towers and associated facilities; (6) ham radio and amateur radio facilities.

**C. Administrative Approval and Use Permit Approval**

Telecommunications facilities are permitted in all zoning districts by either an administrative approval or use permit, according to the standards of the Telecommunications Facility Approval Matrix

**D. Definitions.**

For the purposes of this ordinance section, the following terms are defined:

**Accessory Equipment** -- Any equipment serving or being used in conjunction with a

Telecommunications Facility or Support Structure. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures.

**Administrative Approval** -- Zoning approval that the Zoning Administrator or designee is authorized to grant after administrative review.

**Antenna** -- Any structure or device used to collect or radiate electromagnetic waves for the provision of cellular, paging, personal communications services (PCS) and microwave communications. Such structures and devices include, but are not limited to, directional antennas, such as panels, microwave dishes and satellite dishes, and omnidirectional antennas, such as whips.

**Architecturally Integrated** -- A telecommunications facilities that is primarily an architectural structure and the purpose of the Facility for providing wireless services is not readily apparent to a casual observer.

**Camouflaged** -- A telecommunications facility that resembles a tree, or naturally occurring environmental feature, or, if the facility is a flag pole, antenna are snug or stealth mounted, and a flag is attached to the pole.

**Carrier** -- A company authorized and licensed under the Federal 1996 Telecommunications Act to provide wireless communications services to the public.

**Co-location** - The act of siting Telecommunications Facilities in the same location on the same Support Structure as other Telecommunications Facilities. Co-location also means locating Telecommunications Facilities on an existing structure (for example: buildings, water tanks, towers, utility poles, etc.) without the need to construct a new support structure.

**“Carrier on Wheels” or “Cell on Wheels” (“COW”)** -- A portable self-contained cell site that can be moved to a location and set up to provide personal wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the Antenna support structure.

**Downtown Historic** - For the purposes of locating telecommunication facilities, there are two areas that define the key historic settings in Spearfish. This area includes the following blocks of Original Town including all rights of way and alleys: All of Blocks 7, 8, 9, 10, 11, 12, 16, 17, 18, 19, 20, 21, 22, 28, 29, 30, 41, 42, 43, and the east ½ of Block 6, east ½ of Block 23, east ½ of Block 27, east ½ of Block 44, and the west ½ of Block 31, and the west ½ of block 40 and all of Block 41 of Uhling Addition. (Commercial areas are Kansas to Grant Street and Canyon to 7<sup>th</sup> Street. The residential areas are from Kansas to Illinois and from 7<sup>th</sup> Street to 11<sup>th</sup> Street, except the block located at the northeast corner of 10<sup>th</sup> and Jackson) These areas represent the most significant concentration of historic property in Spearfish and act as the main gateway to the community. For these reasons, telecommunications facility must be more sensitively designed.

**I-90 Corridor** - For the purposes of locating telecommunication facilities, the I-90 Corridor is defined as extending 660 feet from the I-90 right of way on both sides of the highway, starting at the north city limit line, and ending at the Exit 14 bridge. This is the prime view corridor and scenic gateway of the Spearfish Valley and has been previously recognized as such when billboards were prohibited from this area.

**Major Modifications** -- Improvements to existing Telecommunications Facilities or Support Structures that result in a substantial change to the Facility or Structure. Major Modifications shall include any one of the following: 1) extending the height of the Support Structure by more than ten percent (10%) of its current height, 2) The Support Structure does not meet the definition of “Replacement” as defined in this ordinance. Co-location of new Telecommunications Facilities to an existing Support Structure without Replacement or extension of the structure shall not constitute a Major Modification. Major modifications shall require use permit approval.

**Minor Modifications** -- Improvements to existing Telecommunications Facilities, and Support Structures, that result in some material change to the Facility or Support Structure but of a level, quality or intensity that is less than a “substantial” change. Such Minor Modifications include, but are not limited to, extending the height of the Support Structure by

less than ten percent (10%) of its current height, and the expansion of the compound area for additional Accessory Equipment. Final height shall be within the same height category as the original height as described in Table A Design Points. Heights that are specified in the Telecommunications Facility Approval Matrix do not apply to facilities that exist as of July 27, 2006.

**Monopole** - A single, freestanding pole-type structure supporting one or more Antenna.

**Ordinary Maintenance** - Ensuring that Telecommunications Facilities and Support Structures are kept in good operating condition. Ordinary Maintenance includes inspections, testing and modifications that maintain functional capacity, aesthetic and structural integrity; for example the strengthening of a Support Structure's foundation or of the Support Structure itself. Ordinary Maintenance includes replacing Antennas and Accessory Equipment on a like-for-like basis within an existing Telecommunications Facility and relocating the Antennas of approved Telecommunications Facilities to different height levels on an existing Monopole or Tower upon which they are currently located. Ordinary Maintenance does not include Minor and Major Modifications.

**Publicly Owned Building** – A building or structure owned by a City, State, County, or Public School District.

**Replacement** -- Constructing a new Support Structure of equal height and proportions to a preexisting Support Structure in order to accommodate Collocation and removing the pre-existing Support Structure.

**Stealth Telecommunications Facility** -- Any Telecommunications Facility that is integrated as an architectural feature of a structure so that the purpose of the Facility for providing wireless services is not readily apparent to a casual observer.

**Support Structure(s)** – A structure primarily designed to support Telecommunications Facilities including, but not limited to, Monopoles, Towers and other freestanding self-supporting structures.

**Telecommunications Facility(ies)** -- Any unmanned facility established for the purpose of providing wireless transmission of radio frequency signals, writings, sounds, messages, voice, data, images or other information of any nature by radio, lightwaves, electromagnetic means or other similar means, including, but not limited to, wireless telephone service, personal communications service (PCS), wireless internet and paging service. A Telecommunication Facility consists of one or more Antennas, equipment cabinet, a support structure, and Accessory Equipment.

**Tower** -- A lattice-type structure, guyed or freestanding, that supports one or more Antennas.

#### **E. Approval Processes and Facility Design Requirements.**

All facilities will be reviewed according to the Telecommunications Facility Approval Matrix, which lists the various locations, zoning districts, and applications that will be permitted by administrative approval, or use permit approval. All applications for Architectural Integration shall be reviewed in compliance with the City of Spearfish publication: *Architectural Integration Design Guidelines For Telecommunications Facilities*

## Telecommunications Facility Approval Matrix

NOTE: *italics text* are terms defined in the beginning of this section

Location – Zone - Application	Permitted Use - Administrative Approval	Use Permitted on Review Must meet Use Permit Criteria and	Maximum Location Points
1 <i>Downtown Historic</i> : all residential zoning districts (Overrides all categories below. Existing poles and towers follow rules in row 11)	N/A	A/I/C, Max Ht AES: 10 feet, Max Ht AGL: 45 feet	N/A
2 <i>Downtown Historic</i> : CC, C1 (Overrides all categories below. Existing poles and towers follow rules in row 11)	N/A	A/I/C, Max Ht AES: 10 feet, Max Ht AGL: 60 feet, <i>major and minor modifications</i>	N/A
3 Single Family R1, and residential uses in the PUD and DRD (Existing poles and towers follow rules in row 11)	N/A	A/I/C, Max Ht AES: 10 feet, Max Ht AGL: 45 feet	N/A
4 <i>I-90 Corridor</i> (overrides AG, commercial uses in the PUD, DRD, C1, C2, C3, I-LR, I-H, and PR districts. Existing poles and towers follow rules in row 11)	A/I/C, <i>minor modifications</i> , Max Height: 60 feet above ground level. If a flag pole, must be S/SE Mt, and flag attached.	Facility must be less than or equal to the Maximum Location Points S/SE Mt	11

Key: **A/I/C** = *Architecturally integrated or camouflaged*; **Max Ht AES** = Maximum height above existing structure; **Max Ht AGL** = Maximum height above ground level for new and existing structures; **S/SE Mt** = (antenna) *stealth or snug exterior mount*. *Stealth mount* are antenna that are not visible on the exterior of the *support structure*. *Snug mount* are antenna that are directly attached to the *support structure*, projecting less than 18 inches from the mounting surface.

## Telecommunications Facility Approval Matrix

NOTE: *italics text* are terms defined in the beginning of this section

Location – Zone – Application	Permitted Use – Administrative Approval	Use Permitted on Review	Maximum Location Points
5 Two & Multi-Family Residential: R2, R3. (Existing poles and towers follow rules in row 11 )	N/A	A/I/C, Max Ht AES: 10 feet, Max Ht AGL: 45 feet	N/A
6 Parks. (Existing poles and towers follow rules in row 11 )	N/A	Facility must be less than or equal to the Maximum Location Points <i>major modifications</i>	14
7 School, City Facility or <i>Publicly Owned Building/Structure.</i> (Existing poles and towers follow rules in row 11 )	A/I/C, <i>minor modifications,</i> Max Height: 60 feet above ground level	Facility must be less than or equal to the Maximum Location Points <i>major modifications</i>	15
8 AG (Existing poles and towers follow rules in row 11 )	A/I/C, <i>minor modifications,</i> Max Height: 60 feet above ground level	Facility must be less than or equal to the Maximum Location Points <i>major modifications</i>	16
9 Commercial Non- <i>Downtown Historic:</i> C1, C2, C3, and non- residential uses in the PUD & DRD. (Existing poles and towers follow rules in row 11 )	A/I/C, <i>minor modifications,</i> Max Height: 60 feet above ground level	Facility must be less than or equal to the Maximum Location Points, <i>major modifications</i> <b><i>if over 90 feet, setback 660 feet from I-90</i></b>	17
10 Industrial Parks: I-LR & I-H (Existing poles and towers follow rules in row 11 )	S/SE Mt, Max Ht AGL: 125 feet for new facilities with room for co-location on facility, <i>minor modifications</i> 660 foot setback from I-90	Facility must be less than or equal to the Maximum Location Points, <i>major modifications</i> 660 foot setback from I-90	18
11 Existing Poles & Towers (ball field lights, utility poles and towers, flag poles, telecommunications towers	<i>minor modifications</i>	S/SE Mt, <i>major modifications</i>	N/A

Key:  
**A/I/C** = *Architecturally integrated or camouflaged*; **Max Ht AES** = Maximum height above existing structure; **Max Ht AGL** = Maximum height above ground level for new and existing structures; **S/SE Mt** = (antenna) stealth or snug exterior mount. Stealth mount are antenna that are not visible on the exterior of the *support structure*. Snug mount are antenna that are directly attached to the *support structure*, projecting less than 18 inches from the mounting surface.

**F. Use Permit Criteria**

The Planning Commission and City Council must find that the application complies with the following criteria to determine if the requested equipment will be permitted:

- 1) The sum of design points in Table A are less than the maximum location points in Table B.
- 2) The application is in compliance with the intent of the ordinance as demonstrated by the following:
  - a. The facility would not be recognized as a telecommunications facility by virtue of its architecturally integrated or camouflaged appearance, or its visibility is significantly limited.
  - b. There are technical reasons that will not permit the telecommunications facility to be designed with architectural integration or camouflaged application, if applicable. A detailed narrative explaining the reason(s) shall be submitted to the City
  - c. There have been at least two Mitigating Factors applied to the installation, as described in Table A.
  - d. Special circumstance(s) exist that reduce the impact of the facility.
  - e. Ground equipment and support structure color blends with the surrounding setting.

**Table A – Design Points**

Characteristic	Points
<b>Height Points</b>	
Facility height over 120 feet up to 150 feet above existing grade	25
Facility height over 90 feet up to 120 feet above existing grade	20
Facility height over 60 feet up to 90 feet above existing grade	15
Facility height up to 60 feet above existing grade	10
<b>Mitigating Factors</b> (subtract from the height points for each factor)	
Antenna are snug mounted, exterior;	-1
Antenna are stealth mounted, interior;	-2
Room for co-located antenna or is a major modification of an existing pole or tower	-4
660 feet or greater from R-1, R-2, R-3, DRD, or PUD zoning, or any existing residential structures	-6
Verticality Proximity (see note 1) or camouflaged	-8
Antenna is located on pre-existing structure, tower or monopole.	-10
Antenna architecturally integrated, or on a pre-existing structure (see new definition for architecturally integrated)	Subtract all height points

Note 1: Located within 35 feet of a structure with 75% of the height of proposed facility height



**Table B – Maximum Location Points**

<b>Location</b>	<b>Maximum Points</b>
I-90 Corridor (see definitions) overrides all other categories below	11
Parks	14
School, Ball Field, City Facility, or Publicly Owned Building/structure	15
Agricultural (A-1) and open space (PR)	16
C-1, C-2, C-3	17
Industrial Parks (Light and Heavy)	18

**G. Application Submittal Requirements**

All applications for both administrative review and use permit review must contain the following:

- 1) Application form completed and signed by applicant.
- 2) Copy of lease agreement or a letter from a wireless communications carrier indicating the intent to use the property for a telecommunications facility.
- 3) Letter of authorization from property owner giving permission for the carrier's authority to pursue zoning application.
- 4) Letter(s) of preliminary approval from the FAA, State Historic Preservation Office, and other relevant agencies.
- 5) Drawings that accurately illustrate:
  - a. Site plan showing the location of all equipment with setbacks and adjacent uses and zoning clearly labeled.
  - b. Elevation drawings with dimensions of all improvements clearly labeled.
- 6) In the case of a new telecommunications facility, a statement from the carrier which documents how many additional carriers can co-locate. If co-location is not possible, a statement must include such technical information and other justifications as are necessary to document the reasons why co-location is not a viable option.
- 7) A list of all existing structures and sites considered as alternatives to the proposed location. The applicant shall provide a written explanation why the alternatives considered were either unacceptable or infeasible due to technical, physical, or financial reasons. If an existing tower or monopole is listed among the alternatives, applicant must specifically address why the modification of such structure is not a viable option.

**H. Abandonment, Removal, and Speculative Approvals**

- 1) Any Telecommunications Facility or Support Structure that is not operated for a period of twelve (12) consecutive months shall be considered abandoned.
- 2) The owner of the Telecommunications Facility or Support Structure shall remove the Facility within six (6) months of its abandonment. The City of Spearfish shall ensure and enforce removal by means of its existing regulatory authority.
- 3) No approval will be given for a Telecommunications Facility that is speculative in nature which is defined as being one where a specific carrier has not been identified at the time of application to the City of Spearfish according to the requirements described in paragraph G of the Application Submittal Requirements.

**I. Telecommunications Facilities and Support Structures in Existence on the Date of Adoption of this Ordinance.**

- 1) Telecommunications Facilities that were legally permitted on or before the date this Ordinance was enacted shall be considered a permitted and lawful use as a Non-conforming antenna and accessory equipment.
- 2) Non-conforming Antennas or Accessory Equipment: Ordinary Maintenance may be performed on Non-conforming Antennas and Accessory Equipment. However, if the proposed alteration would intensify a non-conforming characteristic of the Facility, the following sections 3-5 apply.
- 3) Minor Modifications to non-conforming Telecommunications Facilities may be permitted upon the granting of Administrative Approval by the Zoning Administrator.
- 4) Major Modifications to non-conforming Telecommunications Facilities may be permitted only upon the granting of a Use Permit approval by the City Council.
- 5) Ordinary Maintenance may be performed on a Non-conforming Support Structure.

Dated this 19<sup>th</sup> day of June, 2006.

**CITY OF SPEARFISH**

By: \_\_\_\_\_  
Jerry A. Krambeck, Mayor

**ATTEST:**

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Elizabeth A. Benning,  
Finance Officer

(SEAL)

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