

CITY OF DALTON GARDENS, IDAHO

ORDINANCE NO. \_\_\_\_

AN ORDINANCE OF THE CITY OF DALTON GARDENS, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; AMENDING TITLE 5, CHAPTER 1, SECTION 4 TO ADD DEFINITIONS; AMENDING TITLE 5, CHAPTER 3, SECTION 1 TO ADD A NEW ALLOWED USE TO THE COMMERCIAL DISTRICT AND TO CLARIFY REQUIREMENTS FOR A SPECIAL USE PERMIT; AMENDING TITLE 5, CHAPTER 3, SECTION 14 TO DELETE WIRELESS COMMUNICATION FACILITY; AMENDING TITLE 5, CHAPTER 4, SECTION 1 TO REVISE THE USES ALLOWED IN THE UTILITY DISTRICT; AMENDING TITLE 5, CHAPTER 5, SECTION 1 TO ADD A NEW ALLOWED USE IN THE RESIDENTIAL DISTRICT; AMENDING TITLE 5, CHAPTER 5, SECTION 2 TO CLARIFY USES WHICH REQUIRE A SPECIAL USE PERMIT; AMENDING TITLE 5 TO ADD A NEW CHAPTER 13 FOR STANDARDS FOR SPECIFIC USES AND A NEW SECTION 1 TO SAID CHAPTER TO ADD STANDARDS FOR DISTRIBUTED ANTENNA SYSTEMS AND SMALL CELL WIRELESS COMMUNICATION FACILITIES, PROVIDING SEVERABILITY, REPEALING CONFLICTING PROVISIONS, AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DALTON GARDENS, IDAHO:

SECTION 1: AMENDMENTS TO TITLE 5, CHAPTER 1, SECTION 4

5-1-4: DEFINITIONS:

DISTRIBUTED ANTENNA SYSTEMS (DAS): A form of wireless communication facility consisting of a network of transceiver equipment at a central hub site to support multiple antenna locations throughout the desired coverage area.

MACROCELL: An antenna or antennas mounted on a tower, ground-based mast, rooftops and other towers or structures, at a height that provides a clear view over the surrounding buildings and terrain.

SMALL CELL: A form of wireless communication facility consisting of compact wireless equipment that contain their own transceiver equipment and function like cells in a wireless network but provide a smaller coverage area than traditional macrocells. Small cells shall not exceed 50 feet in height and shall have antennas that are less than 3 cubic feet in size.

UTILITY SUPPORT STRUCTURE: A freestanding structure that is used for supporting utilities, including, but not limited to electrical service and communications. Such structures may consist of a monopole, mast, lattice tower, utility pole, water tower, or other similar structures.

WIRELESS COMMUNICATION FACILITY (WCF): A staffed or unstaffed facility or location or equipment for the transmission or reception of radio frequency (RF) signals or other wireless

communications or other signals for commercial communications purposes, typically consisting of one or more antennas or group of antennas, a tower or attachment support structure, transmission cables and other transmission equipment, and an equipment enclosure or cabinets, and including small cell technologies.

## **SECTION 2: AMENDMENTS TO TITLE 5, CHAPTER 3, SECTION 1, SUBSECTION B.2.**

### **5-3-1: USES**

#### **B. Allowed Uses:**

2. Allowed Uses: See section 5-3-14, "Appendix 1 Activity Groups", of this chapter for general description and definition of each use.

Distributed antenna systems and small cell wireless communication facilities, in accordance with the standards in Section 5-13-1.

4. Special Use Permits: See section 5-3-14, "Appendix 1 Activity Groups", of this chapter for general description and definition of each use. A structure, site or parcel may have more than one special use permit. Each special use is considered a separate permit.

Wireless communication facility, except distributed antenna systems and small cell wireless communication facilities

## **SECTION 3: AMEND TITLE 5, CHAPTER 3, SECTION 14**

### **5-3-14: APPENDIX 1 ACTIVITY GROUPS:**

~~Wireless communication facility (WCF). Any facility designed and used for the purpose of transmitting, receiving, or relaying voice and data signals. WCFs include siting areas, transmission towers and antennas.~~

## **SECTION 4: AMEND TITLE 5, CHAPTER 4, SECTION 1**

### **5-4-1 USE RESTRICTIONS:**

A The utility district shall permit no land uses other than the following:

1. Water infrastructure such as the maintenance of wells, pumps, pump houses, water tanks, pipes, and associated fencing, equipment and accessory structures or buildings, all of which must be compatible with one another.

2. Electrical substations and associated fencing, equipment, accessory structures or buildings.

3. Distributed antenna systems and small cell wireless communication facilities, in accordance with the standards in Section 5-13-1.

## **SECTION 5: AMEND TITLE 5, CHAPTER 5, SECTION 1**

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### **5-5-1: ALLOWED USES:**

In the Residential District, no building or land located therein shall be used, nor any structure hereafter erected or altered, except for the following purposes:

Distributed antenna systems and small cell wireless communication facilities, in accordance with the standards in Section 5-13-1.

## **SECTION 6: AMEND TITLE 5, CHAPTER 5, SECTION 2**

### **5-5-2: SPECIAL USES:**

Public utility structures such as substations, pumping plants, ~~telephone exchanges~~ and similar uses.

## **SECTION 7: AMEND TITLE 5, TO ADD A NEW CHAPTER 13**

### **CHAPTER 13** **STANDARDS FOR SPECIFIC USES**

#### **5-13-1: STANDARDS FOR DISTRIBUTED ANTENNA SYSTEMS AND SMALL CELL WIRELESS COMMUNICATION FACILITIES**

- A. Distributed antenna systems (DAS) and small cells are allowed in all zones, provided the applicant complies with all Federal laws (such as the Americans With Disabilities Act) and State laws and requirements.
- B. Distributed antenna systems and small cells located within city right-of-way are subject to approval of encroachment permits, licensing agreements, building permits and administrative review, as applicable for the circumstance.
- C. Distributed antenna systems and small cells located on private property are subject to administrative review and building permit approval. No private property shall host more than one antenna system.
- D. Installation of a distributed antenna system or small cell on an existing building or existing utility support structure shall not result in an increase in height greater than 15' higher than the existing building or utility support structure. Utility support structures may be replaced, but shall be no more than 15 feet higher than the previous structure which did not support a distributed antenna system or small cell.
- E. New support structures used for distributed antenna systems or small cells which are not replacements shall not exceed 45 feet in height above grade. In no case shall the utility support structure and antenna in combination exceed 50 feet in total height.
- F. The antenna array shall be designed, placed and colored to blend into the architectural detail and coloring of the host structures. Support towers or poles shall be painted a non-reflective color

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that best allows it to blend into the surroundings. The use of grays, blues, greens, dark bronze, browns or other site-specific colors may be appropriate; however, each case should be evaluated individually.

G. A single permit application may be used for multiple distributed antennas that are part of a larger overall DAS network. A single permit application may also be used for multiple small cells. A single license agreement may be used for multiple node locations in DAS and/or small cell networks.

H. The City may charge fees for permit review and/or use of City-owned right-of-way, in accordance with the duly-adopted fee schedule.

I. A written report will be prepared, signed and sealed by an Idaho-licensed professional engineer or a competent employee of the applicant, which assesses whether the proposed WCF demonstrates compliance with the RF emissions limits established by the FCC. If the report is prepared by an employee of the applicant, who is not an Idaho-licensed professional engineer, the report must be accompanied by documentation establishing the employee's competence to complete the report.

J. Documentation from an Idaho-licensed professional engineer shall be submitted which shall demonstrate the proposed facility's compliance with applicable Building Code standards, and describing the general structural capacity of the proposed facility, including the maximum number and type of devices that can be accommodated and the basis of the calculation of capacity. Additionally, a Non-Ionizing Electromagnetic Radiation Report demonstrating compliance with FCC regulations shall also be submitted.

K. Colocation of Facilities:

1. Policy: It is the policy of the City to minimize the number of wireless communication support towers and to encourage the collocation of antenna arrays of more than one wireless communication service provider on a single support tower.

2. Written consent to place DAS and small cell wireless facilities on utility poles and related infrastructure shall be submitted with the application to the City.

3. Colocation consent shall be required and a written statement shall be signed by a person with the legal authority to bind the applicant and the project owner, which indicates whether the applicant is willing to allow other transmission equipment owned by others to collocate with the proposed wireless communication facility whenever technically and economically feasible and aesthetically desirable.

L. Setback Requirements:

1. Except for facilities which are collocated on the same structure, no DAS or small cell shall be located within 500 feet of another DAS or small cell installation.

2. No DAS or small cell shall be located within 100 feet of a residence.

3. ~~Antenna towers~~ Utility support structures shall be separated from the property line of any adjacent residentially zoned property at least a distance equal to the height of the antenna tower or ~~one hundred feet (100') feet~~, whichever is greater.

M. Compliance:

1. All DAS and small cell facilities must comply with all standards and regulations of the FCC and any State or other Federal government agency with the authority to regulate wireless communication facilities.

2. All graffiti on DAS and small cell facilities must be removed at the sole expense of the permittee after notification by the City to the owner/operator of the facility. The graffiti must be removed within fourteen (14) days after notification by the City.

3. If any FCC, State or other governmental license or any other governmental approval to provide communication services is ever revoked as to any site permitted or authorized by the City, the permittee must inform the City of the revocation within thirty (30) days of receiving notice of such revocation.

N. Indemnification. Each permit issued for a DAS or small cell facility located on City property shall be deemed to have as a condition of the permit a requirement that the applicant defend, indemnify and hold harmless the City and its officers, agents, employees, volunteers, and contractors from any and all liability, damages, or charges (including attorneys' fees and expenses) arising out of claims, suits, demands, or causes of action as a result of the permit process, a granted permit, construction, erection, location, performance, operation, maintenance, repair, installation, replacement, removal, or restoration of the DAS or small cell.

O. Insurance. Each permit issued for a DAS or small cell facility located on City property shall procure and maintain insurance, in the amount set forth in the Master License Agreement, but in no event less than the minimum amount provided by the Idaho Tort Claims Act, Idaho Code Section 6-901 *et seq.*, and provide the City with a certificate of insurance on a standard insurance industry ACORD form or its equivalent. The insurance coverage required must be issued by an insurer licensed, authorized or permitted to transact business in the State of Idaho.

P. Colocation of DAS or Small Cell on Pre-Existing Structure. For the mounting or installation of a DAS or small cell facility on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes:

1. Purpose: This section implements, in part, 47 USC section 332(c)(7) of the Federal Communications Act of 1934, as amended, as interpreted by the FCC in its Report and Order No. 18-133, and regulated by 47 CFR section 1.6003. Except when a shorter timeframe is otherwise required under this chapter, the following timeframes apply to colocation.

2. Application Review:

a. Application: The City shall prepare and make publicly available an application form, the requirements of which shall be limited to the information necessary for the City to consider whether an application is a colocation request.

b. Review: Upon receipt of an application for a colocation request pursuant to this section, the City shall review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.

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c. Timeframe For Review: Within sixty (60) days of the date on which an applicant submits an application seeking approval of a colocation request under this section, the City shall review and act upon the application, subject to the tolling provisions below.

d. Tolling Of The Timeframe For Review: The 60-day review period begins to run when the application is filed, and may be tolled only by mutual agreement between the City and the applicant, or in cases where the City determines that the application is incomplete.

(1) To toll the timeframe for incompleteness, the City must provide written notice to the applicant within thirty (30) days of receipt of the application, specifically delineating all missing documents or information required in the application.

(2) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the City's notice of incompleteness.

(3) Following a supplemental submission, the City will notify the applicant within ten (10) days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

e. Failure To Act: In the event the City fails to approve or deny a complete application under this section within the timeframe for review (accounting for any tolling), the applicant shall be entitled to pursue all remedies under applicable law.

Q. New Structure to Support Small Cell. For the mounting or installation of a DAS or small cell facility on a new tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes:

1. Purpose: This section implements, in part, 47 USC section 332(c)(7) of the Federal Communications Act of 1934, as amended, as interpreted by the FCC in its Report and Order No. 18-133, and regulated by 47 CFR section 1.6003. Except when a shorter timeframe is otherwise required under this chapter, the following timeframes apply to colocation.

2. Application Review:

a. Application: The City shall prepare and make publicly available an application form, the requirements of which shall be limited to the information necessary for the City to consider whether an application is a colocation request.

b. Review: Upon receipt of an application for a colocation request pursuant to this section, the City shall review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.

c. Timeframe For Review: Within ninety (90) days of the date on which an applicant submits an application seeking approval of a colocation request under this section, the City shall review and act upon the application, subject to the tolling provisions below.

d. Tolling Of The Timeframe For Review: The 90-day review period begins to run when the application is filed, and may be tolled only by mutual agreement between the City and the applicant, or in cases where the City determines that the application is incomplete.

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(1) To toll the timeframe for incompleteness, the City must provide written notice to the applicant within thirty (30) days of receipt of the application, specifically delineating all missing documents or information required in the application.

(2) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the City's notice of incompleteness.

(3) Following a supplemental submission, the City will notify the applicant within ten (10) days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

e. Failure To Act: In the event the City fails to approve or deny a complete application under this section within the timeframe for review (accounting for any tolling), the applicant shall be entitled to pursue all remedies under applicable law.

R. Abandonment. Any DAS or small cell that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such DAS or small cell shall so notify the City in writing and remove the same within ninety (90) days of giving notice to the City of such abandonment. Additionally, upon written notice from the City that the DAS or small cell has been abandoned by the owner of such infrastructure for a continuous period of more than twelve (12) months, the owner shall remove the same within ninety (90) days. If the removal cannot be accomplished within this timeframe, the owner shall request an extension and provide a plan to remove the same and the associated timelines to accomplish the removal. Failure to remove an abandoned DAS or small cell within said ninety (90) days shall be grounds to remove the DAS or small cell at the owner's expense, including all costs and attorneys' fees. Irrespective of any agreement between the owner of a facility and the owner of a building or land upon which the facility is located to the contrary, they shall be jointly and severally responsible for the removal of abandoned unused facilities and the facility's foundation, if any.

## **SECTION 8. SEVERABILITY.**

If any provision of this chapter, or its application to any person or circumstances, be declared unconstitutional or invalid for any reason by a Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter or the application of the provisions to other persons or circumstances.

Nothing in this chapter shall be construed as preventing the adoption of more restrictive provisions set forth in other sections of the Dalton Gardens Municipal Code. The more restrictive provisions of the code shall control.

## **SECTION 9. REPEAL OF CONFLICTING PROVISIONS.**

All provisions of the ordinances of the City of Dalton Gardens which conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

## **SECTION 10. EFFECTIVE DATE.**

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Upon passage and approval and publication in one (1) issue of the Coeur d'Alene Press, the official newspaper of the City of Dalton Gardens, Idaho, this Ordinance shall be in full force and effect.

PASSED under suspension of the rules at which a roll call vote was taken at the regular meeting of the city council of the City of Dalton Gardens, Kootenai County, Idaho, this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

ATTEST:

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DAN EDWARDS, Mayor

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TERESA JANSEN, Clerk