CLARK COUNTY, NEVADA

Business Impact Statement

(NRS 237.090)

Clark County Code Title 5, Chapter 5.02 (Rights-Of-Way Management - Wireless Communications Facilities)

Upon request, a copy of the Business Impact Statement can be obtained from the Clark County Department of Business License and such requests should be sent to:

Clark County Department of Business License
Chapter 5.02
500 S. Grand Central Pky., 3rd Flr
Box 551810
Las Vegas, NV 89155-1810

or a copy may be obtained from the following website:

www.clarkcountynv.gov/businesslicense.

Description of the proposed ordinance or rule:

The proposed amendments to Chapter 5.02 will:

1. Standardize and make consistent provisions that currently reside in multiple, separate agreements that have been approved over many years. Common provisions that affect all Licensees of Wireless Communications Facilities in the County’s Rights-of-Way may be revised easier and more responsively to address changes in technology rather than amending individual agreements.

2. Require persons that wish to install and operate Wireless Communications Facilities in the Rights-of-Way (ROW) to first obtain a Master Wireless Communications License Agreement (MLA).


4. Establish rates for the use of the County’s Rights-of-Way for the installation and operation of wireless communications facilities in each ROW Design District.
Intent of the proposed ordinance or rule including issues to be resolved or other factors to be considered:

The intent of this proposed ordinance is to establish a policy concerning Rights-of-Way management for Wireless Communications Facilities; permit and manage reasonable access, in an equitable manner, to Rights-of-Way in unincorporated Clark County for Wireless Communications Facilities; manage the physical capacity of the Rights-of-Way held in public trust by the County; establish design standards to provide for a consistent and aesthetically pleasing appearance of Wireless Communications Facilities in the County Rights-of-Way within specific, defined districts; recover public costs of permitting private use of County Rights-of-Way; and ensure that all providers of Wireless Communications Facilities within the County comply with all ordinances, rules and regulations of the County.

Description of the manner in which public comment, data or arguments was solicited from affected businesses and/or community stakeholders:

A meeting was held on September 20, 2018 with the wireless communications industry to present the high-level concepts of the proposed ordinance and to receive feedback and comments. Subsequently, three additional meetings were held on October 15 and 16, 2018, with the third-party tower companies, the wireless service providers and with technical staff of the wireless industry to discuss specific provisions of the proposed ordinance and to receive feedback and comments. In addition to these discussions, on October 4, 2018, the County sent a Notification of Proposed Amendments to Clark County Code, Title 5, Chapter 5.02 (Notification Letter, Attachment #1) to representatives of the wireless tower companies, the wireless service providers and other interested parties. The Notification and proposed ordinance were also available on the Department of Business License’s website. Recipients of the Notification Letter were encouraged to respond with any comments or concerns regarding the proposed ordinance.

Summary of public comment, data or arguments including the number of public comments received:

Public comments were received by the Department of Business License through written correspondence and discussions between staff and stakeholders.

COMMENTS RECEIVED FROM THE INDUSTRY MEETINGS HELD ON SEPTEMBER 20, 2018

The following questions and comments were received during the meeting with the wireless communications industry that occurred on September 20, 2018:

1. There was a request that the proposed ordinance not be considered by the County until after a pending FCC ruling that was scheduled to be heard by the FCC on September 26, 2018.
2. A question was raised as to why there is a fee based on gross receipts and an annual rental fee.

3. An attendee asked whether there will be a limit on the number of carriers or transmission equipment regarding neutral hosts or collocated poles.

4. Another attendee asked who determines whether a County facility is functionally suitable.

5. An attendee stated that the 600-foot distance requirement is somewhat preemptive and more restrictive and the distance should be as little as 300 feet.

6. Another attendee asked how this new ordinance will affect existing sites in the Rights-of-Way.

7. The proposed remediation date of December 31, 2019 was questioned as to the time by which all existing sites must be brought into compliance with the new ordinance, since that would, according to an attendee, require removing some of the Licensee’s customers because some sites have more than one carrier.

8. Another attendee commented that the design guidelines in the proposed ordinance seem rigid and changes in the design of equipment over the years could present challenges in the future and the main concern being the timeliness of approval of sites.

9. Another attendee wanted to know how the 5% gross revenue fee was derived and if there are any situations elsewhere that have a fee based on gross revenue and a site license fee.

10. There was a concern mentioned regarding the distance between facilities with respect to the future 5G technology.

11. A statement was made that there is a lot more to discuss and recommended that more work sessions be scheduled to discuss the particulars of the Wireless Communications Facilities, especially concerning multi-carrier poles with two carriers and the limiting of antennas.

12. A attendee stated that the remediation timeline is very problematic, unless it is being done during an upgrade and that the non-compliant sites possibly need to be grandfathered for a period longer than December 31, 2019.

13. Another attendee expressed concern over the proposed sublease provisions that indicate that the County can deny a sublease at any time.

14. Another attendee recommended the formation of a user group in the industry that would meet more frequently so that as changes in technology and equipment occur and the industry’s demands change, the County can be able to better understand the issues that affect this industry.
COMMents received FROM THE Industry Meetings held on October 15 - 16, 2018

The following comments were received during the three meetings with the wireless communications industry that occurred on October 15 and 16, 2018:

1. The fees in general are too high and should be based on rational costs. The inspection fees should be charged only after an inspection of a specific site has failed.

2. The distance between a Licensee’s Wireless Communications Facilities should be reduced from 600 feet to 150 feet or 0 feet.

3. Incentive agreements may not be available to some smaller companies that have limited capital or ability to take advantage of the offered incentives.

4. An incentive to third-party licensees does not translate to any savings to the wireless carriers.

5. There is a need to clarify whether the distance restrictions are between licensees or between providers.

6. If there is collocation on a pole, there needs to be a method by which the first licensee can recover some of its costs that it incurred to replace or modify the pole to accommodate a second licensee when the second license wants to install Equipment or Facilities on that pole.

7. As a telecommunications company, Cox does not believe it should have to comply with the distance restrictions for its strand-mounted facilities in the Rights-of-Way.

8. The remediation deadline is too restrictive and instead of a specific date, remediation should be as equipment is naturally replaced or upgraded.

9. Two carriers per pole may not work.

10. The design guidelines should not be in the Code, but in a separate guide giving more flexibility to be able to make changes as technology changes. The County manager could approve exceptions.

11. After an MLA is signed there should be nothing else required for applying for specific installation sites that would require a signature. Agreements that require signatures are very time-consuming for the Licensees as they may have to be routed through many departments of the Licensee’s organization for approval. The SLA should be consolidated with the encroachment permit.
12. The design standards should outline the parameters of the antennas and equipment rather than requiring specific dimensions.

13. Maybe there should be no limit in the number of carriers on a pole as long as the pole has the structural capacity and the facilities look aesthetically pleasing.

14. Shared antennas and painted or concealed antennas will not work with 5G technology.

COMMENTS RECEIVED FROM THE OCTOBER 4, 2018 NOTIFICATION LETTER

The following comments were received in response to a notification letter that was sent to the wireless industry and interested parties dated October 4, 2018, regarding the proposed ordinance:

Response #1 – (Attachment #2)

An e-mail was received from Verizon with an attached letter indicating that is represents combined comments from Verizon, AT&T, T-Mobile, Mobilitie, Crown Castle, ExteNet Systems and Cox. The e-mail urges the County to comply with federal law, stating that “a local regulation that conflicts with federal law will stall or deter the deployment of wireless technology.” Attached to this e-mail was a copy of the proposed ordinance with recommended revisions. Neither the e-mail nor the industry-revised ordinance indicate whether the proposed ordinance provisions: (a) impose a direct and significant economic burden upon a business, or (b) directly restrict the formation, operation or expansion of a business. The following issues were suggested for revision and some may be considered by the industry as imposing a direct and significant economic burden upon a business or directly restricting the formation, operation or expansion of a business:

1. Allowing the installation of small cell antennas and equipment on decorative streetlight poles without prior approval from the County.

2. Allowing the installation of small cell antennas and equipment on traffic light and signage poles.

3. Removing the definition of gross revenue and eliminating the use fee of 5% on gross revenue entirely.

4. Changing the definition of “wireless service provider” to include the third-party tower companies that are not the actual providers of the wireless services.

5. Adding the following timelines by which the County must approve a Master Wireless Use License Agreement (MLA): 60 days if the applicant for the MLA is intending to only use existing structures in the Rights-of-Way, or 90 days if the MLA is intending to use new structures in the Rights-of-Way.
6. Changing the wireless site license fees from quarterly to annually with the renewal coinciding with the anniversary of the Wireless Site License Agreement (SLA).

7. Revising the requirement that existing sites must come into compliance with the proposed ordinance by a certain date to the date that the Facility is modified in such a way that causes a new SLA to be submitted.

8. Requiring concealment of antennas, equipment, cables and lines to the extent that it is technically feasible.

9. Eliminating the multicarrier pole definition.

10. The proposed ordinance provides that a Licensee may install a new pole if it is unable to find an available structure in the ROW within 700 feet. The industry proposal would reduce that distance to 100 feet.

11. The proposed ordinance provides that a Licensee may not install a Facility if it is within 600 feet of another Facility installed by that Licensee. The industry proposal would reduce that distance to 100 feet.

12. The proposed ordinance creates ROW design districts and establishes specific design standards within each district. The industry proposal suggests that the design standards not be codified, but instead be considered on a case-by-case basis.

13. The height limit of a Facility in the proposed ordinance is 5 feet above the existing structure. The industry proposal would increase that distance to 10 feet.

14. Eliminating the encroachment permit fee in lieu of the site license fee.

15. Changing the time to commence operations to 1 year from the date an SLA is approved instead of 9 months as stated in the proposed ordinance.

16. The proposed ordinance states that a Licensee must relocate one or more of its Facilities at the County’s direction upon 60 days’ prior written notice. The industry proposal would increase that time to 180 days.

17. The proposed ordinance states that a Licensee must remove, repair or replace any of its equipment that has not been used after the initial installation for a period of 90 days. The industry proposal would be to increase that time to 180 days.

18. Changing the wireless site license fee from the proposed minimum of $700 to a maximum of $3,960 per pole per year, depending on the design district in which the site is located, to $270 per pole per year in every district.

19. Eliminating the application fee for the MLA of $1,000 and change the application fee for the SLA from $250 per site to $500 for the first 5 sites and $100 per site thereafter.
20. Eliminating the remediation non-compliance fee of $500 for every 30 days a site remains noncompliant after the date that the site must be compliant.

21. Requiring the County to indemnify the Licensee from all damages caused by negligence, willful misconduct or intentional actions of the County.

22. Reducing the security deposit from $75,000 to $25,000.

23. The proposed ordinance provides for the increase in the security bond amount upon renewal of the MLA based on the change in the CPI since the initial date of the MLA or last renewal. The industry proposal would eliminate this increase.

24. The proposed ordinance requires that the insurance provider of the Licensee shall carry a minimum rating assigned by A.M. Best & Company’s Key Rating Guide of “A” Overall and a Financial Size Category of “X” (i.e., a size of $500,000,000 to $750,000,000 based on capital, surplus, and conditional reserves). The industry proposal would reduce the Financial Size Category to “VII”, which is $50,000,000 to $100,000,000.

25. Several revisions were suggested to clarify certain provisions or to make grammatical corrections.

Response #2 – (Attachment #3)

A letter dated September 20, 2018, that was initially received prior to the industry meeting on that same day, has been re-submitted by Verizon to be considered as a response to the Business Impact Statement from Verizon Wireless specifically. The commenter states that while Verizon believes that the County plays a pivotal role in managing the use of its Rights-of-Way and that Verizon does not oppose adoption of an ordinance to accomplish the County’s legitimate objectives, it has concerns relating to several provisions in the ordinance that Verizon believes are in conflict with federal law and would materially inhibit the deployment of next generation wireless technologies in the County. The comments and concerns in this letter are as follows:

1. ROW Design Standards – It is Verizon’s position that many of the design standards violate Sections 253 and 332 of the Telecommunications Act by effectively prohibiting the provision of personal wireless services, such as the following requirements:

   a. The minimum 700-foot radius requirement for locating a Facility on an available Municipal Facility,

   b. Only multi-carrier poles are allowed in the Las Vegas Boulevard District and all equipment must be contained in the interior of the pole,

   c. All antennas and equipment must be contained in the interior of the poles located within the Central Communication District,

   d. All antennas must be at least 15 feet above the ground and all equipment at least 8 feet above the ground, and
e. The requirement that antennas be concealed within a pole (Verizon believes that this would prohibit the use of antennas and related equipment which are currently required for 5G deployment).

2. Applicable Fees – The fees contained in the proposed ordinance, according to the commenter, constitute an effective prohibition in providing personal wireless services and they do not appear to be reasonably related to costs that will be incurred by the County to manage its public Rights-of-Way.

3. Application of proposed ordinance to Existing Facilities – The requirement to bring any wireless communications facility in the Right-of-Way into compliance with the requirements of this ordinance by December 31, 2019, or pay a non-compliance fee is, in the commenter’s opinion, prohibited by federal and state law, especially in light of the fact that Verizon Wireless has an active agreement with the County and all existing facilities were installed in compliance with the previously established and published standards and requirements.

Response #3 – (Attachment #4)

An e-mail was received from AT&T with an attached study and report from Accenture Strategy entitled “Accelerating Future Economic Value from the Wireless Industry” that was submitted as its response to the Business Impact Statement. The following quote from the report was emphasized by AT&T:

“Modernizing rules for the deployment of small cells in Public Rights of Way through streamlining permitting and processes, and creating reasonable fee structures will help with deployment timelines. Currently, many applications for small-cell implementations can take up to 18 to 24 months for approval, and can involve time-consuming pole-by-pole assessments which leave plenty of room for improvement. Present processes can divert both time and capital investment away from network deployment. Reducing these deployment barriers has tangible financial impacts.”

The report also states that “unlocking the full potential of 5G depends on two key actions: spectrum availability and modernization of infrastructure guidelines” and that “accelerating infrastructure deployment by one year could drive an additional $100 billion in economic impact in the next three years.”

The estimated economic effect of the proposed ordinance or rule on businesses:

1. Adverse effects

The proposed ordinance will require wireless communications licensees to comply with design standards when installing wireless communications facilities in the County’s
Rights-of-Way, including distance restrictions, and to pay additional fees for the use of the Rights-of-Way.

2. **Beneficial effects**

   The proposed ordinance will standardize and provide consistency to the management of the County’s Rights-of-Way relating to placement and operation of wireless communications facilities. The design standards will be established and published in advance so that Licensees will know what is expected in the way of aesthetic requirements. The ordinance provides for cost allocation and recovery when more than one Licensee installs equipment on the same pole.

3. **Direct effects**

   The direct effects of the proposed amendments are that the aesthetic and other requirements will be consistent and published in advance so that Licensees will know what is expected in regards to installation of Wireless Communications Facilities in the County’s Rights-of-Way.

4. **Indirect effects.**

   Currently the provisions that govern how each Licensee shall install and operate Wireless Communications Facilities within the County’s Rights-of-Way are contained in multiple, separate agreements that have been written over the period of several years and not all of the conditions and terms are consistent in each agreement. By establishing many of these common provisions in the County Code, these provisions will be consistent among all Licensees and when a revision or modification is needed, as technology changes, the Code can be amended thereby affecting all Licensees equally and at the same time. Also, the time it takes to negotiate, draft and approve a standardized Master Wireless License Agreement is greatly reduced.

5. **Other economic effects to be considered.**

   No other economic effects were identified.

**The estimated cost to the local government for the enforcement of the proposed ordinance or rule:**

With the adoption of this ordinance, the County intends to monitor more closely the installations of wireless communications facilities within its Rights-of-Way to ensure compliance with design standards and to ensure that the antennas and equipment that were approved by the County are the antennas and equipment that have been installed by the Licensee. This will require a greater effort on the County to inspect the Licensees’ Facilities and notify the Licensees of any noncompliance issues. The County will incur additional expenses for the increased enforcement of this proposed ordinance which cannot be estimated at this time; however, the additional revenue provided in this ordinance is expected to cover any additional costs for enforcement.
The estimated cost to the local government for the administration of the proposed ordinance or rule:

With the adoption of this ordinance the County intends to establish a wireless broadband management program that provides the wireless communications licensees with a more streamlined application process for requesting specific sites for the deployment of their facilities that tracks the approval process through a workflow process. This will require a greater effort on the County to maintain certain data on each site used by the licensees that will allow more accurate billing of the individual sites. The County will incur additional expenses for the increased administration of this proposed ordinance which cannot be estimated at this time; however, the additional revenue provided for in this ordinance is expected to cover any additional costs for administration.

If applicable, explanation of a new fee or increase to an existing fee including a projection of the annual revenue expected to be collected and the manner in which the revenue will be utilized:

The new fees created by this ordinance are based on the number of small cell sites that are installed in the County’s Rights-of-Way, which cannot be determined at this time. However, the revenue derived from the use fees and site license fees are anticipated to sufficiently fund the administration and enforcement of this ordinance as well as providing funds for enhancement and expansion of the County’s infrastructure that is necessary for the advancement of wireless services to areas that are underserved or are lacking such services.

Assessment of provisions of the proposed ordinance or rule, which may duplicate or are more stringent than Federal, State or local standards regulating the same activity:

Certain provisions of the proposed ordinance may be considered more stringent than a regulation that was adopted by the Federal Communications Commission on September 26, 2018, titled “Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment” (FCC 18-133) (“FCC Order”). The Order contains several provisions that intend to limit or restrict local governments in certain areas such as fees, aesthetic requirements, distance restrictions and approval timelines. The effective date of the Order is January 19, 2019, but there have been a number of legal actions filed by various governments and other groups challenging the FCC’s authority to impose such restrictions. Requests to stay the implementation of the Order during the pendency of the legal actions have been filed and the length of time to resolve the pending legal actions is unknown at this time.

If applicable, explanation of why the duplicative or more stringent provisions are necessary:

The FCC Order that was adopted on September 26, 2018 and becomes effective on January 19, 2019 contains very specific guidelines as to how much control a local government has over wireless communications licensees utilizing the public Rights-of-Way and how limited a local government is in requiring aesthetical standards, including distance restrictions. However, the
more restrictive fees and requirements contained in this proposed ordinance are necessary in order to provide the site approval services to the wireless industry that will allow them to deploy their facilities more timely and to maintain aesthetic standards that do not distract from the visual appearance of the Rights-of-Way. There have been a number of legal actions taken by other local governments in opposition to many of the provisions of the FCC Order that will take time for the legal issues to be resolved. In the meantime, the County needs to plan for the immediate future especially since the deployment of 5G technology is imminent.

Description of the methods that local government considered to modify the proposed ordinance or rule; or otherwise reduce the impact of the proposed rule on businesses, the parties involved, and a statement of the methods used:

Notification of the proposed amendments was distributed to the wireless communications companies that currently have a Wireless Use License Agreement with the County, with wireless service providers that do not have such an agreement with the County, and other interested parties so the concerns of all parties involved could be solicited.

Based on comments and concerns received, modifications to the original proposed amendments have been made as follows:

1. An effective date of the ordinance of July 1, 2019 was added to allow sufficient time to transition to the Master Wireless License Agreements and to implement the provisions of this proposed ordinance.

2. The original date of December 31, 2019, by which the remediation of existing Facilities were to come into compliance with the proposed ordinance has been extended as follows: for sites within the Las Vegas Boulevard District - the date that coincides with the completion of the Public Works / Las Vegas Water District project to repave Las Vegas Boulevard or by December 31, 2023, whichever is later; for sites within the Central Communication District – by December 31, 2021; and for sites within all other Districts – by the date that the equipment for each site is upgraded or replaced.

3. Shared antennas will only be required to the extent that they are technologically feasible and commercially available.

4. If a Municipal Facility is replaced by a Licensee that includes a lighting fixture the requirement that the replacement include exact lighting fixtures has been changed to be exact or substantially similar with approval from Public Works.

5. The requirement that antennas and equipment must be completely concealed has been changed to be concealed to the extent technologically feasible considering that the antennas and equipment for 5G technology are still be developed and may not be able to be completely concealed.

6. The distance for the requirement that a Licensee must use a Municipal Facility has been reduced from 700 feet of the proposed location to 600 feet.
7. The time requirements for certain activities have been extended, such as the time in which a Licensee is required to commence operation of a small cell site has been increased from 9 months to one year and the requirement to submit an application for an SLA for a location at which unauthorized Equipment was discovered has been increased from 3 months to 6 months.

8. Provisions for cost allocation have been added to the proposed ordinance for situations where a licensee incurs expenses in replacing or modifying a pole to accommodate a second licensee and wishes to recover some of those expenses when a second licensee wants to install equipment on that pole.

9. The distance for the requirement that a Licensee must not install another Facility on a Municipal Facility has been reduced from 600 feet to 300 feet.

10. The size limitations for antennas and equipment have been changed from specific dimensions to volume capacities of a maximum of 6 cubic feet for antennas and a maximum of 24 cubic feet for equipment.

11. The site license fees for the Residential, Commercial and Manufacturing Districts have been reduced from $2,500 per pole per year to $1,900 per pole per year.

12. The annual fee adjustment of 3% has been reduced to 2% and the effective date of the annual fee adjustment has been extended from July 1, 2019 to July 1, 2020.

13. The administrative charge for work performed by the County on the Licensee's behalf has been reduced from 25% of the actual costs incurred by the County to 15% as suggested by the industry.

14. The definition and requirements for strand mounted facilities were removed from the proposed ordinance as these facilities are installed on facilities generally owned by public utilities.

15. At the suggestion of the industry, we have included a provision that specifically does not prohibit a Licensee from pursuing a claim against a third party that causes any damage to its Equipment installed in the ROW or on Municipal Facilities.

In addition to the above revisions to the proposed ordinance, the comments included many revisions that are intended to clarify certain provisions or grammatical corrections. Many of these recommended revisions have been made.

Some of the suggested changes to the proposed ordinance that were not made include the following:

1. The inclusion of "traffic light poles and signage Poles" in the definition of "Municipal Facilities" was not made for public safety reasons as these types of poles have a direct impact on the flow of traffic and traffic safety. If a traffic light pole were to lose power
due to the operations of a Wireless Communications Facility the impact on the public would be much greater than if a street light were to fail.

2. The inclusion of a person that “builds, installs, and/or maintains Wireless Communications Facilities on behalf of a Person who provides Personal Wireless Services” in the definition of “Wireless Service Provider” was not made as such a person does not actually provide wireless services to the public or end user.

3. The requirement that, in the case of an emergency, and it becomes necessary for the County to remove any of the Licensee’s Equipment, no charge shall be made by the Licensee to the County for any loss, damage, restoration or repair only when the emergency involves the immediate threat of harm to persons or property was not made, since these situations exist which constitute emergencies that do not constitute immediate direct threats or harm to persons or property such as a downed pole blocking traffic that requires immediate removal.

4. The suggestion of eliminating the use fee that is based on gross revenue and reducing the Wireless Site License Fees in all ROW Design Districts to $270 per pole per year was not made as the County will be incurring additional costs in implementing a wireless communication policy concerning the management of the County’s Rights-of-Way that will include permitting, enforcement, and maintenance of the Rights-of-Way.

The reasons for the conclusions regarding the impact of the proposed rule on businesses:

The report that was submitted by AT&T (Attachment #4) as its response to this Business Impact Statement states that, “given that 5G connectivity will require a system of wireless infrastructure significantly denser than that required by 4G, modernization of infrastructure guidelines will be key to decreasing the time required for a 5G network rollout. Recognizing that 300,000 small cells need to be deployed in the next three to four years – roughly double the number of macro towers built over the past 30 years – current approval processes pose a challenge.” The report goes on to say, “accelerating 5G deployment approval timelines by just one year could add over $100 billion to the U.S. economy within the next three years.”

In order for the County to be prepared to meet this significant increase in the demand for small cell site locations within the County’s Rights-of-Way, the County needs to plan now for a robust program to manage these sites and the County’s assets in the Rights-of-Way and the County will need to cover the increased costs related to this effort.

The proposed amendments provide benefits to the wireless service providers by establishing a standard permitting and approval process and establishing provisions that affect every Licensee consistently. The aesthetic and other requirements are published in advance to aid the licensee in planning their network deployment. Although, this ordinance does impose higher fees, they are offset by the benefits of improved, streamlined administration and enforcement of the County’s Rights-of-Way, encouragement of the development of services in areas that are underserved or not served, and protection of public safety and public resources, and does not impose a direct and
significant economic burden upon a business or directly restrict the formation, operation or expansion of a business.

Certification of Business Impact Statement

I certify that, to the best of my knowledge or belief, the information contained in this Business Impact Statement was prepared properly and is accurate.

Yolanda King
County Manager

11/19/2018
Date