

## **ORDINANCE NO. 2020-04**

**AN ORDINANCE** of the City of Bainbridge Island, Washington, concerning telecommunications facilities; Amending Title 18 of the Bainbridge Island Municipal Code; Adding a new Chapter 18.10A BIMC, authorizing and establishing design and concealment standards for small wireless facilities; Amending BIMC 18.10.020 and BIMC 18.36.030 regarding definitions; Revising BIMC 18.10.010 to adopt applicability section; Repealing and replacing in full Chapter 18.11 BIMC concerning eligible facilities requests; Amending Table 18.09.020, BIMC 18.09.030, BIMC 18.10.030, and BIMC 2.16.040 to correct drafting errors; Repealing interim official control established by Ordinance No. 2019-15 and extended by Ordinance No. 2019-31 and Ordinance No. 2020-11.

**WHEREAS**, the Federal Communications Commission (“FCC”) recently adopted a Declaratory Ruling, Order, and Regulation (“FCC Order”), which imposes limitations on local municipalities including the City of Bainbridge Island (“City”) regarding processing and review of all permits associated with the deployment of small wireless facilities; and

**WHEREAS**, the adoption of aesthetic standards for deployment of small wireless facilities and utilization of a concurrent process emphasizing administrative review enables compliance with the federal presumptively reasonable time limits for review; and

**WHEREAS**, the City was required to enact administrative procedures and process to comply with the new presumptive federal safe harbors on or before January 14, 2019; and

**WHEREAS**, separately, federal law and regulation sets time limits on the processing of applications for eligible facility requests to expand existing structures which do not substantially change the height or profile of the structures used to collocate wireless communications facilities, and which regulations will replace Chapter 18.11 BIMC; and

**WHEREAS**, the City Council found that the existence of the federal regulations requires the immediate enactment of administrative procedures and processes which can comply with the FCC Order; and

**WHEREAS**, the City is authorized by state law, including RCW 36.70A.390, to expeditiously adopt interim official control ordinances due to a public emergency for the protection of the public peace, safety, or health while permanent regulations are developed, vetted, and processed through the City’s standard legislative procedures; and

**WHEREAS**, the City Council found that the adoption of this interim official control ordinance allowed the City to put in place standards to come into compliance with the FCC Order, while providing a meaningful opportunity for its citizens to provide input regarding design, concealment, and other aesthetic standards within the longer timeframe permitted by use of an interim official control ordinance; and

**WHEREAS**, on May 14, 2019, in response to the FCC Order, the City Council approved Ordinance No. 2019-15, adopting an interim official control that: created a new Chapter 18.10A, establishing interim small wireless facility design standards; amended Table 18.09.020, BIMC 18.09.030, and BIMC 18.10.010; and repealed and replaced Chapter 18.11 BIMC; and

**WHEREAS**, on May 14, 2019, the City Council also enacted amendments to its existing master permit code provisions contained in Title 19 BIMC and adopted a new Chapter 19.10 BIMC in order to provide a clear permitting procedure for the deployment of small wireless facilities; and

**WHEREAS**, on June 11, 2019, the City Council held a public hearing on Ordinance No. 2019-15 to receive public comment on the interim official control; and

**WHEREAS**, on August 13, 2019, the City Council directed the Planning Commission to begin work on permanent regulations to replace the interim official control adopted by Ordinance No. 2019-15; and

**WHEREAS**, on September 12, 2019, and October 24, 2019, the Planning Commission considered permanent regulations to replace the interim official control adopted by Ordinance No. 2019-15;

**WHEREAS**, the interim official control, adopted by Ordinance No. 2019-15, took effect on May 14, 2019, and would expire on November 14, 2019, unless extended by the City Council; and

**WHEREAS**, on October 8, 2019, the City Council set a public hearing for October 22, 2019, on Ordinance No. 2019-31, extending the interim official control originally adopted by Ordinance No. 2019-15 until May 14, 2020; and

**WHEREAS**, on October 22, 2019, the City Council held a public hearing on Ordinance No. 2019-31 and adopted the ordinance following the close of the public hearing; and

**WHEREAS**, on October 24, 2019, the Planning Commission considered Ordinance No. 2019-38 and reviewed comments submitted by industry representatives; and

**WHEREAS**, on December 12, 2019, the Planning Commission further considered Ordinance No. 2019-38; and

**WHEREAS**, on January 1, 2020, draft Ordinance No. 2019-38 was renumbered to be Ordinance No. 2020-04; and

**WHEREAS**, on January 23, 2020, the Planning Commission further considered Ordinance No. 2020-04; and

**WHEREAS**, on February 29, 2020, Governor Jay Inslee declared a state of emergency in response to the spread of COVID-19 in Washington State; and

**WHEREAS**, on March 8, 2020, the Kitsap Public Health District was notified of the first Kitsap County resident testing positive for COVID-19, an individual residing on Bainbridge Island; and

**WHEREAS**, on March 9, 2020, the City Manager, as the executive head of the City for purposes of emergency management, issued a Proclamation of Emergency in response to the COVID-19 public health emergency; and

**WHEREAS**, on March 10, 2020, the City Council adopted Resolution No. 2020-06, affirming the Proclamation of Emergency; and

**WHEREAS**, the COVID-19 public health emergency has significantly disrupted City operations and led to the cancellation of multiple meetings of the Planning Commission; and

**WHEREAS**, on April 14, 2020, the City Council set a public hearing for April 28, 2020, on Ordinance No. 2020-11, extending the interim official control originally adopted by Ordinance No. 2019-15 until November 14, 2020; and

**WHEREAS**, on April 28, 2020, the City Council held a public hearing on Ordinance No. 2020-11 and adopted the ordinance following the close of the public hearing; and

**WHEREAS**, on May 28, 2020, the Planning Commission resumed consideration of Ordinance No. 2020-04 and further considered the ordinance on June 11, 2020, and June 25, 2020; and

**WHEREAS**, on July 23, 2020, the Planning Commission further considered Ordinance No. 2020-04 and directed staff to schedule a public hearing on Ordinance No. 2020-04 at the next available meeting of the Planning Commission; and

**WHEREAS**, on August 13, 2020, the Planning Commission held a public hearing on Ordinance No. 2020-04 and [insert outcome of Planning Commission consideration]; and

**WHEREAS**, on [insert date], the City Council considered the Planning Commission's recommendation and [insert outcome of Council consideration].

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND, WASHINGTON, DOES ORDAIN AS FOLLOWS:**

**Section 1. Repeal of Interim Official Control.** The interim official control, originally adopted under Ordinance No. 2019-15 and subsequently extended by Ordinance No. 2019-31 and Ordinance No. 2020-11, is hereby repealed in its entirety and shall no longer be in force or effect.

**Section 2. Amendment of BIMC 18.10.010.** Section 18.10.010 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

**18.10.010 – Purpose: General Provisions.**

A. This chapter addresses the issues of location and appearance associated with wireless communication facilities (“WCFs”). It provides adequate siting opportunities through a wide range of locations and options which minimize safety hazards and visual impacts sometimes associated with wireless communications technology. The chapter encourages siting of facilities on existing buildings or structures, co-location of several providers’ facilities on a single support structure, and visual mitigation measures to maintain neighborhood appearance and reduce visual clutter in the city.

B. Applicability

1. Applicability. The provisions of this chapter shall apply to all new WCFs located within the boundaries of the City, and for any modification to an existing WCF that is not governed by Chapter 18.11 BIMC, provided that this chapter shall not apply to small wireless facilities permitted under Title 19 BIMC and are subject to Chapter 18.10A BIMC.

2. Permit Required. Any person who desires to place any WCF within the boundaries of the city must apply to the city for the appropriate wireless communication facility permit.

3. Lease Required. In addition to the requirement of obtaining the appropriate wireless communication facility permit, if all or a portion of the WCF will be located upon a city-owned structure, or upon non-right-of-way property which is either city-owned or city-leased, the applicant shall be required to enter into a lease agreement with the city for the use of the city property.

4. Master Permit Required. In addition to the requirement of obtaining the appropriate wireless communication facility permit, if all or a portion of the WCF will be located within the city’s right-of-way, the applicant shall be required to obtain a master permit, consistent with Title 19 BIMC, from the city for the use of the city’s right-of-way.

**Section 3. Amendment of BIMC 18.10.020.** Section 18.10.020 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

For the purpose of this chapter, the following terms, phrases, words, and abbreviations shall have the meanings given herein. Words not otherwise defined shall have their common and ordinary meaning:

A. “Antenna(s)” means any system of electromagnetically tuned wires, poles, rods, reflecting discs or similar devices used to transmit or receive electromagnetic waves between terrestrial and/or orbital based points, including, but not limited to:

1. Omni-directional (or “whip”) antenna(s), which transmits and receives radio frequency signals in a 360-degree radial pattern;

2. Directional (or “panel”) antenna(s), which transmits and receives radio frequency signals in a specific directional pattern of less than 360 degrees;

3. Parabolic antenna(s) (or “dish” antenna(s)), which is a bowl-shaped device for the reception and/or transmission of communications signals in a specific directional pattern; and

4. Ancillary antenna(s), which is an antenna less than 12 inches in its largest dimension and is not directly used to provide personal wireless communications services, such as a global positioning satellite (GPS) antenna.

B. “Co-location” means placing and arranging multiple providers’ antennas and equipment on a single support structure or equipment pad area.

C. “Electromagnetic field” or “EMF” means the field produced by the operation of equipment used in transmitting and receiving radio frequency signals.

D. “Equipment facility” means any structure used to house electronic equipment, cooling systems and back-up power systems associated with a WCF, including shelters, enclosures, cabinets and other similar structures.

E. “Facility I” means a wireless communication facility consisting of an antenna that is either: (1) four feet or less in height and with an area of not more than 580 square inches in the aggregate; or (2) if a tubular antenna, no more than four inches in diameter and no more than six feet in length.

F. “Facility II” means a wireless communication facility consisting of up to three antennas, each of which is a microcell with associated equipment facilities six feet or less in height and no more than 48 square feet in floor area.

G. “Lattice tower” means a wireless communication support structure that consists of metal crossed strips or bars to support antennas and related equipment.

H. “Monopole” means a wireless communication facility that consists of a support structure, the height of which shall not exceed 120 feet in height not including antennas.

GI. “Support structure” means any structure, designed and constructed specifically to support an antenna array, including a monopole, self-supporting (lattice) tower, guy-wire support tower and any other similar structures. Any device (attachment device) used to attach a WCF to an existing structure or building (attachment structure) shall be excluded from the definition of and regulations applicable to support structures.

HJ. “Wireless communication facility” or “WCF” means an unstaffed facility for the transmission and/or reception of radio frequency, microwave or other signals for commercial communications purposes, including and typically consisting of antennas, ~~equipment shelter or~~

~~cabinet~~ equipment facilities, transmission cables, a support structure required to achieve the necessary elevation, and reception and transmission devices and antennas.

~~K~~. “Wireless communication services” means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

**Section 4. Amendment of BIMC 18.10.030.** Subsection 18.10.030.B.1 of the Bainbridge Island Municipal Code to read as follows:

1. A facility I or II, or a monopole or lattice tower located in a nonresidential zone that does not exceed the maximum building height of the zone established in Chapter 18.12 BIMC; or

**Section 5. Amendment of Table 18.09.020.** The Utility and Telecommunications section of Table 18.09.020 of the Bainbridge Island Municipal Code is hereby amended to read as shown on attached **Exhibit A**.

**Section 6. Amendment of BIMC 18.09.030.** Section 18.09.030 of the Bainbridge Island Municipal Code is hereby amended to include a new Subsection 18.09.030.B.5, to read as follows:

5. Small wireless facilities. Small wireless facilities are prohibited on any property containing a residential use in the residential zones except where allowed under BIMC 18.10A.040.E.12.

**Section 7. Amendment of BIMC 18.09.030.** Section 18.09.030 of the Bainbridge Island Municipal Code is hereby amended to include a new Subsection 18.09.030.F.4, to read as follows:

4. In accordance with Chapter 18.10 BIMC, the department of planning and community development may grant permit approval for:

a. A facility I or II, or a monopole or lattice tower located in a nonresidential zone that does not exceed the maximum height of the zone; or

b. A facility I or II in a multifamily, business, commercial, or town center zone on an existing building or structure; provided, that the facility is no higher than 15 feet above the existing building or structure or the permitted height for the zone, whichever is higher; or

c. A facility I or II in a residential zone on a nonresidential building or structure; provided, that the facility is no higher than 15 feet above the permitted height in the zone.

d. All other WCFs require conditional use permit review and approval by the city hearing examiner.

e. For the purposes of this subsection and Table 18.09.020, the terms “Facility I” and “Facility II” and “Monopole” and “Lattice Tower” and “WCF” and “Wireless Communication Facility” shall have the same meaning as defined in Chapter 18.10 BIMC.

**Section 8. Adoption of New Chapter 18.10A BIMC.** Title 18 of the Bainbridge Island Municipal Code is hereby amended to include a new Chapter 18.10A BIMC, to read as follows:

**Chapter 18.10A**  
**USE REGULATIONS - SMALL WIRELESS FACILITIES**

- 18.10A.010 Purpose.
- 18.10A.020 Applicability.
- 18.10A.030 Definitions.
- 18.10A.040 Design and Concealment standards for small wireless facilities.
- 18.10A.050 New poles for small wireless facilities.

**18.10A.010 Purpose.**

The purposes of this chapter are to set forth regulations for the placement and development of small wireless facilities. Among the purposes included are to:

- A. Manage reasonable access to the right-of-way of the City for communication purposes on a nondiscriminatory basis.
- B. Conserve the limited physical capacity of the public rights-of-way held in public trust by the City.
- C. Ensure that all service providers maintaining facilities or providing services within the City comply with the ordinances, rules, and regulations of the City.
- D. Reduce unnecessary local regulation of providers and services.
- E. Ensure that the City can continue to fairly and responsibly protect the public health, safety, and welfare.
- F. Encourage the provision of advanced and competitive telecommunications, on the widest possible basis to the businesses, institutions, and residents of the City.
- G. Encourage the design of such small wireless facilities to be aesthetically and architecturally compatible with the surrounding built and natural environments where possible.
- H. Encourage the collocation or attachment of small wireless facilities on existing support structures to help minimize the total number and impact of such structures throughout the community.

I. Reserve to the City and provide for the fullest exercise possible of the authority and discretion of the City to require that:

1. Facilities are installed and maintained within the public rights-of-way in such manner and at such points so as not to inconvenience the public use of the public rights-of-way or to adversely affect the public safety and welfare; and
2. All non-City users of the rights-of-way shall be required to reimburse and hold harmless the City for the actual costs incurred by the City by reason of the construction or presence in the public rights-of-way of the facilities of such other users.
3. Potential adverse visual, aesthetic, and safety impacts of small wireless facilities be minimized.

#### **18.10A.020 Applicability.**

Any application for a small wireless facility both inside and outside of the right-of-way shall comply with the following application requirements for a small wireless facility permit described in this chapter. Applications must also comply with the small wireless facility permit requirements of Title 19 BIMC. For small wireless facilities inside the right-of-way, the applicant must also obtain a master permit as may be required under Title 19 BIMC.

#### **18.10A.030 Definitions.**

For the purpose of this chapter, the following terms, phrases, words, and abbreviations shall have the meanings given herein. Words not otherwise defined shall have their common and ordinary meaning:

- A. “Antenna” means an apparatus designed for the purpose of emitting radiofrequency (“RF”) radiation, to be operated or operating from a fixed location pursuant to FCC authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under 47 CFR Part 15.
- B. “Applicant” means any person submitting an application for a small wireless facility permit.
- C. “City property” means any real property owned by the City, whether in fee or other ownership estate of interest.
- D. “Collocation” means (1) mounting or installing an antenna facility on a pre-existing structure, and/or (2) modifying a structure for the purpose of mounting or installing an antenna facility on that structure.
- E. “Director” means the Director of Planning and Community Development or their designee.



F. “FCC” or “Federal Communications Commission” means the federal administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services, and providers on a national level.

G. “Grantee” means a person holding a master permit.

H. “Light Pole” means a pole used primarily for lighting streets, parking areas, parks, or pedestrian paths.

I. “Master Permit” means the authorization granted by the City to an operator of a telecommunications system, under Title 19 BIMC, giving the operator the nonexclusive right to occupy the space, or use facilities upon, across, beneath, or over any public right-of-way in the City, to provide a specified service within a master permit area. Such master permit shall not include or be a substitute for:

1. Any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City;

2. Any permit, agreement, or authorization required in connection with operations on or in public streets or property, including, by way of example and not limitation, street cut permits;

3. Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by the master permit including, without limitation, permits and agreements for placing devices on or in poles, conduits, other structures, or railroad easements, whether owned by the City or a private entity; or

4. The right to place devices in the right-of-way, such as pay telephones, for end user use in terminating or originating transmissions.

By way of example, and without limiting the foregoing, this title shall not be read to diminish or in any way affect the authority of the City to control the use of the City’s real estate, fixtures, or personal property. Therefore, any person who desires to use such property must obtain additional approvals, or agreements for that purpose, as may be required by the City.

J. “Pole” means any manmade assemblage of materials extending above or below the surface of the earth and affixed or attached thereto that is capable of supporting a small wireless facility.

K. “Public right-of-way” or “right-of-way” means land acquired or dedicated for public roads and streets but does not include:

1. State highways;

2. Land dedicated for road, streets, and highways not opened and not improved for motor vehicle use by the public;

3. Structures, including poles and conduits, located within the right-of-way;

4. Federally granted trust lands or forest board trust lands;
5. Lands owned or managed by the state parks and recreation commission; or
6. Federally granted railroad rights-of-way acquired under 43 U.S.C. Sec 912 and related provisions of federal law that are not open for motor vehicle use.

L. “Service provider” is defined consistently with RCW 35.99.010(6). Service provider shall include those infrastructure companies that provide telecommunications services or equipment to enable the deployment of telecommunication services.

M. “Small wireless facility” and “small wireless facilities” shall have the same meaning as “small wireless facility” as set forth in 47 CFR §16002, as may be amended. As of the effective date of Ordinance No. 2020-04, 47 CFR §16002 defines “small wireless facility” to mean facilities that meet each of the following conditions:

1. The facilities:
  - (a). Are mounted on structures 50 feet or less in height including their antennas as defined in 47 CFR §1.1320(d); or
  - (b). Are mounted on structures no more than 10 percent taller than other adjacent structures; or
  - (c). Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
2. Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 CFR §1.1320(d)), is no more than three cubic feet in volume;
3. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
4. The facilities do not require antenna structure registration under 47 CFR Part 17;
5. The facilities are not located on Tribal lands, as defined under 36 CFR §800.16(x); and
6. The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR §1.1307(b).

N. “Structure” means a pole, tower, base station, or building, whether or not it has an existing antenna facility, that is used, proposed to be used, or could be used for the provision of telecommunications service (whether on its own or comingled with other types of services).

O. “Telecommunications facilities” means the plant, equipment, and property including, but not limited to, cables, wires, conduits, ducts, pedestals, electronics, and other appurtenances used or to be used to transmit, receive, distribute, provide, or offer wireline or wireless telecommunications service.

P. “Telecommunications service” means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means for hire, sale, or resale to the general public. For the purpose of this subsection, “information” means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. For the purpose of this chapter, telecommunications service excludes the over-the-air transmission of broadcast television or broadcast radio signals.

Q. “Traffic Signal Poles” means a pole that supports equipment used for controlling traffic, including but not limited to traffic lights, rapid flashing beacons, speed radar, and school zone flashers.

R. “Transmission equipment” means equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

S. “Unified enclosure” means a small wireless facility providing concealment of antennas and equipment within a single enclosure.

T. “Utility pole” means a structure designed and used primarily for the support of electrical wires, telephone wires, television cable, traffic signals, or lighting for streets, parking areas, or pedestrian paths.

U. “Wireline” means services provided using a physically tangible means of transmission, including without limitation wire or cable, and the apparatus used for such transmission.

#### **18.10A.040 Design and Concealment standards for small wireless facilities.**

Small wireless facility deployments permitted inside or outside the right-of way shall conform to the following design standards:

A. Small wireless facilities attached to existing or replacement non-wooden poles, including non-wooden light poles or utility poles, shall conform to the following design criteria:

1. The applicant shall minimize to the extent possible the antenna and equipment space and shall use the smallest amount of enclosure possible to fit the necessary equipment. The antennas and equipment shall be located consistent with BIMC 18.10A.040.E.1.

2. The furthest point of any equipment enclosure may not extend more than twenty-eight (28) inches from the face of the pole. Any equipment or antenna enclosures must meet WSDOT height clearance requirements.
3. All conduit, cables, wires, and fiber must be routed internally in the non-wooden pole. Full concealment of all conduit, cables, wires, and fiber is required within mounting brackets, shrouds, canisters, or sleeves if attaching to exterior antennas or equipment.
4. An antenna on top of an existing pole may not extend more than six (6) feet above the height of the existing pole and the diameter may not exceed sixteen (16) inches, measured at the top of the pole, unless the applicant can demonstrate that more space is technically needed. The antennas shall be integrated into the pole design so that it appears as a continuation of the original pole, including colored or painted to match the pole, and shall be shrouded or screened to blend with the pole except for canister antennas which shall not require screening. All cabling and mounting hardware/brackets from the bottom of the antenna to the top of the pole shall be fully concealed and integrated with the pole.
5. Any replacement non-wooden pole shall substantially conform to the design of the pole it is replacing or the neighboring pole design standards utilized within the contiguous right-of-way, unless the Department of Planning and Community Development otherwise approves a variation due to aesthetic or safety concerns. Any replacement non-wooden pole located in the right-of-way shall be placed as close to the original pole as possible, but no more than five (5) feet from the existing pole location.
6. The height of any replacement pole may not extend more than six (6) feet above the height of the existing pole or the minimum additional height technically necessary; provided, that the height of the replacement pole cannot be extended further by additional antenna height.
7. The diameter of a replacement pole shall comply with the City's setback and sidewalk clearance requirements and shall, to the extent technically feasible, not be more than a twenty (20) inches measured at the base of the pole, unless additional diameter is needed in order to conceal equipment within the base of the pole, and shall comply with the requirements in subsection E.6 below.
8. The use of the pole for the siting of a small wireless facility shall be considered secondary to the primary function of the pole. If the primary function of a pole serving as the host site for a small wireless facility becomes unnecessary, the pole shall not be retained for the sole purpose of accommodating the small wireless facility and the small wireless facility and all associated equipment shall be removed.

B. Wooden pole design standards. Small wireless facilities located on existing or replacement wooden poles, including wooden light poles or utility poles, shall conform to the following design criteria:

1. The wooden pole at the proposed location may be replaced with a wooden pole for the purpose of accommodating a small wireless facility; provided, that the replacement pole shall not exceed a height that is a maximum of ten (10) feet taller than the existing pole, unless a further height increase is required and confirmed in writing by the pole owner and that such height extension is the minimum extension possible to provide sufficient separation and/or clearance from electrical and wireline facilities.
2. A pole extender may be used instead of replacing an existing wooden pole but may not increase the height of the existing wooden pole by more than ten (10) feet, unless a further height increase is required and confirmed in writing by the pole owner and that such height increase is the minimum extension possible to provide sufficient separation and/or clearance from electrical and wireline facilities. A “pole extender” as used herein is an object affixed between the pole and the antenna for the purpose of increasing the height of the antenna above the pole. The pole extender shall be painted to approximately match the color of the pole and shall substantially match the diameter of the pole measured at the top of the pole.
3. Replacement wooden poles must either match the approximate color and materials of the replaced pole or shall be the standard new wooden pole used by the pole owner in the City, unless the Department of Planning and Community Development otherwise approves a variation due to aesthetic or safety concerns.
4. Antennas, equipment enclosures, and all ancillary equipment, boxes, and conduit shall be colored, tinted, or painted to match the approximate color of the surface of the wooden pole on which they are attached.
5. Antennas shall not be mounted more than twelve (12) inches from the surface of the wooden pole.
6. Antennas should be placed in an effort to minimize visual clutter and obtrusiveness. Multiple antennas are permitted on a wooden pole provided that each antenna enclosure shall not be more than three (3) cubic feet in volume.
7. A canister antenna may be mounted on top of an existing wooden pole, which may not exceed the height requirements described in subsection B.1 above. A canister antenna mounted on the top of a wooden pole shall not exceed sixteen (16) inches in diameter, measured at the top of the pole, and shall be colored or painted to match the pole. The canister antenna must be placed to look as if it is an extension of the pole. In the alternative, the applicant may propose a side mounted canister antenna, so long as the inside edge of the antenna is no more than twelve (12) inches from the surface of the wooden pole. All cables shall be concealed either within the canister antenna or within a sleeve between the antenna and the wooden pole.
8. The furthest point of any antenna or equipment enclosure may not extend more than twenty-eight (28) inches from the face of the pole. Any equipment or antenna enclosures must meet WSDOT height clearance requirements.

9. An omni-directional antenna may be mounted on the top of an existing wooden pole, provided such antenna is no more than four (4) feet in height and is mounted directly on the top of a pole or attached to a sleeve made to look like the exterior of the pole as close to the top of the pole as technically feasible. All cables shall be concealed within the sleeve between the bottom of the antenna and the mounting bracket.

10. All related equipment, including but not limited to ancillary equipment, radios, cables, associated shrouding, microwaves, and conduit which are mounted on wooden poles shall not be mounted more than six (6) inches from the surface of the pole, unless a further distance is technically required, and is confirmed in writing by the pole owner.

11. Equipment for small wireless facilities shall be located consistent with BIMC 18.10A.040.E.1. If equipment is allowed to be placed on the wooden pole, the equipment must be placed in the smallest enclosure possible for the intended purpose. The visual effect of the small wireless facility on all other aspects of the appearance of the wooden pole shall be minimized to the greatest extent possible.

12. The use of the wooden pole for the siting of a small wireless facility shall be considered secondary to the primary function of the pole. If the primary function of a wooden pole serving as the host site for a small wireless facility becomes unnecessary, the pole shall not be retained for the sole purpose of accommodating the small wireless facility and the small wireless facility and all associated equipment shall be removed.

13. The diameter of a replacement wooden pole shall comply with the City's setback and sidewalk clearance requirements and shall not be more than a 25% increase of the existing wooden pole measured at the base of the pole, unless additional diameter is needed for structural integrity of the pole, and shall comply with the requirements in subsection E.5 below.

14. All cables and wires shall be routed through conduit along the outside of the wooden pole. The outside conduit shall be colored or painted to match the pole. The number of conduit shall be minimized to the number technically necessary to accommodate the small wireless facility.

C. Small wireless facilities attached to existing buildings shall conform to the following design criteria:

1. Small wireless facilities may be mounted to the sides of a building if the antennas do not interrupt the building's architectural theme.

2. The interruption of architectural lines or horizontal or vertical reveals is discouraged.

3. New architectural features such as columns, pilasters, corbels, or other ornamentation that conceal antennas may be used if it complements the architecture of the existing building.

4. Small wireless facilities shall utilize the smallest mounting brackets necessary in order to provide the smallest offset from the building.
5. Skirts or shrouds shall be utilized on the sides and bottoms of antennas in order to conceal mounting hardware, create a cleaner appearance, and minimize the visual impact of the antennas. Exposed cabling/wiring is prohibited.
6. Small wireless facilities shall be colored, painted, and textured to match the adjacent building surfaces, unless otherwise technically infeasible.
7. Small wireless facilities must meet the height requirement of the underlying zoning district.
8. Feed lines and coaxial cables shall be located below the parapet of the rooftop.
9. If a cabinet enclosure cannot be located within the building on which the wireless communication facilities will be located, then the City's first preference is for the wireless telecommunication carrier to locate the equipment on the roof of the building. If the equipment can be screened by placing the equipment below the parapet walls, no additional screening is required. If screening is required, the proposed screening must be consistent with the existing building in terms of color, design, architectural style, and material. If the cabinet equipment cannot be located on the roof or within the building then it shall be located underground consistent with BIMC 18.10A.040.E.1.

D. Small wireless facilities mounted on cables strung between existing poles (i.e., a strand mounted small wireless facility), including light poles or utility poles, shall conform to the following standards.

1. Each strand mounted small wireless facility shall not exceed four (4) cubic feet in volume.
2. Only one strand mounted small wireless facility is permitted between any two existing poles.
3. The pole must be able to support the necessary load requirements of the strand mounted small wireless facility.
4. A strand mounted small wireless facility shall be placed as close as possible to the nearest pole supporting the cable on which the small wireless facility is mounted, in no event more than five (5) feet from the pole unless a greater distance is technically necessary or is required by the pole owner for safety clearance.
5. No strand mounted small wireless facility shall be located in or above the portion of the roadway open to vehicular traffic.
6. Ground mounted equipment needed to accommodate a strand mounted small wireless facility is not permitted except when placed in pre-existing equipment cabinets.

7. Pole mounted equipment shall comply with the requirements of subsections A or B above, as applicable.

8. Strand mounted small wireless facilities must be installed to cause the least visual impact and without excess exterior cabling or wires (other than the original strand).

9. Strand mounted small wireless facilities are only permitted on existing overhead wirelines supported by existing poles.

E. General requirements for all installation types.

1. All equipment, except antennas and conduit, associated with installations in the R-0.4 zoning district shall be ground mounted, placed underground, completely concealed within the pole, or placed on private property consistent with the regulations identified in (a), (c), (d), and (e) below unless the applicant can demonstrate that each of those possible locations are technically infeasible, in which case the equipment may be placed in accordance with (b) below. All equipment associated with installations in the Mixed Use Town Center, High School Road I and II, and Neighborhood Center zoning districts shall be located on the pole, completely concealed within the pole, or placed on private property consistent with the regulations identified in (a), (b), and (d) below unless the applicant can demonstrate that each of those allowed locations are technically infeasible, in which case the equipment may be placed in accordance with (c) or (e) below. All equipment associated with installations in any other zone not identified above may be installed consistent with one of the methods identified in (a) through (e) below.

(a). Concealed completely within the pole or pole base. If antennas and associated equipment enclosures (including disconnect switches and other appurtenant devices) are located within the pole or pole base, they shall be fully concealed within the pole. Further, if located within the pole base, the base shall meet the ADA requirements and not impact the pedestrian access route.



(b). Located on a pole. If located on a pole, antennas and the associated equipment enclosures (including disconnect switches and other appurtenant devices) must be colored, tinted, or painted to match the approximate color of the surface of the pole and appear as an integral part of the pole or flush mounted to the pole, meaning for antennas no more than twelve (12) inches off of the pole and for associated equipment no more than six (6) inches off the pole, and must be the minimum size necessary for the intended purpose, but in no event shall any antenna exceed three (3) cubic feet in volume. The equipment enclosure and all other wireless equipment associated with the pole (including but not limited to conduit), including wireless equipment associated with the antenna and any pre-existing associated equipment on the pole, may not exceed twenty-eight (28) cubic feet. Multiple equipment enclosures may be acceptable if designed to more closely integrate with the pole design and does not cumulatively exceed twenty-eight (28) cubic feet. If the equipment enclosure is permitted on the exterior of the pole, the applicant is required to place the equipment enclosure behind any banners or road signs that may be on the pole, provided that such location does not interfere with the operation of the banners or signs or the equipment itself. The applicant may propose a side mounted canister antenna, so long as the inside edge of the antenna is no more than six (6) inches from the surface of the pole. All cables shall be concealed either within the canister antenna or within a sleeve between the antenna and the pole.

(c). Underground in a utility vault. If located underground, the access lid to the equipment enclosure shall be located outside the footprint of any pedestrian curb ramp and shall have a nonskid surface meeting ADA requirement if located within an existing pedestrian access route. Antennas are not subject to this paragraph due to technological limitations of such placement.

(d). On private property. If located on private property, the applicant shall submit a copy of a letter of authority from the private property owner prior to the small wireless facility permit issuance. Any such installation on private property must conform to all applicable regulations, including but not limited to zoning regulations, that apply to that property.

(e). On the ground in the right-of-way. If the equipment is located on the ground in the right-of-way, the equipment enclosure on the ground and all other wireless equipment associated with the pole (including but not limited to conduit), including wireless equipment associated with the antenna and any pre-existing associated equipment on the pole, may not exceed twenty-eight (28) cubic feet. The equipment located on the ground shall be placed within one enclosure not to exceed four (4) feet in height. Such enclosure must be colored and designed in a manner that minimize the visual impact of the enclosure. The location of the equipment on the ground must comply with all applicable setback and access requirements including ADA requirements. Prior to the issuance of any permit related to a small wireless facility which includes ground mounted equipment in the right-of-way, the applicant must obtain a site-specific agreement from the City to locate such ground mounted equipment.

2. Even if one of the designated equipment locations is technically feasible under BIMC 18.10A.040.E.1, the Director may determine that equipment located in a non-preferred location is in fact a superior alternative if the non-preferred location:

(a). Provides equal or greater protection to public vantage points, view corridors, and scenic vistas to support Bainbridge Island's sense of place, identity, and orientation; and

(b). Satisfies one or more of the following criteria:

- i. Has a greater natural resource conservation value;
- ii. Less adverse impact to adjoining properties; or
- iii. Results in a more practical design because of topography, critical area, or other extenuating circumstances.

3. An applicant who desires to enclose both its antennas and equipment within one unified enclosure may do so, provided that such enclosure is the minimum size necessary for its intended purpose and the enclosure and all other wireless equipment associated with the pole, including wireless equipment associated with the antenna and any pre-existing associated equipment on the pole does not exceed twenty-eight (28) cubic feet. The unified enclosure may not be placed more than twelve (12) inches from the surface of the pole. To the extent possible, the unified enclosure shall be placed so as to appear as an integrated part of the pole or behind banners or signs, provided that such location does not interfere with the operation of the banners or signs or the equipment itself. Requirements related to the location of equipment as outlined in BIMC 18.10A.050.E.1 do not apply if the antennas and equipment are located within one unified enclosure

4. No equipment shall be operated so as to produce noise in violation of Chapter 16.16 BIMC.

5. Small wireless facilities are not permitted on traffic signal poles unless denial of the siting could be a prohibition or effective prohibition of the applicant's ability to provide telecommunications service in violation of 47 USC §§ 253 and 332.

6. Replacement poles and new poles shall comply with the Americans with Disabilities Act (ADA), City construction and sidewalk clearance standards, City ordinance, and state and federal laws and regulations in order to provide a clear and safe passage within the rights-of-way. Further, the location of any replacement or new pole must: be physically possible, comply with applicable traffic warrants, not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices), and not adversely affect the public welfare, health, or safety.

7. No signage, message, or identification other than the manufacturer's identification or identification required by governing law is allowed to be portrayed on any antenna or equipment enclosure. Any permitted signage shall be located on the equipment enclosures and be of the minimum amount possible to achieve the intended purpose (no larger than 4x6 inches); provided, that signs are permitted as concealment element techniques where appropriate.

8. Antennas and related equipment shall not be illuminated except for security reasons, required by a federal or state authority, or unless approved as part of a concealment element plan.

9. Side arm mounts for antennas or equipment must be the minimum extension necessary and may not create a gap of more than twelve (12) inches for wooden poles and no more than six (6) inches for non-wooden poles between the pole and the antennas or equipment.

10. The preferred location of a small wireless facility on a pole is the location with the least visible impact. When siting a small wireless facility on a pole or structure in the right-of-way adjacent to a residential use, the applicant must first attempt to locate the small wireless facility on a pole or structure located on or near one of the boundary lines of the property containing the residential use. If a location not on or near the boundary line better mitigates the aesthetic impact of the new pole, the Planning Director may approve such alternative location. To the extent siting a small wireless facility on a pole or structure on or near the boundary line is technologically infeasible, the applicant shall attempt to site the small wireless facility on the pole or structure with the least aesthetic impact to the property, such as at a location where the small wireless facility would be concealed from view by trees, vegetation, or other structure.

11. Antennas, equipment enclosures, and ancillary equipment, conduit, and cable, shall not dominate the structure or pole upon which they are attached.

12. For one or more residential uses located more than 400 feet from the right-of-way, a small wireless facility may be located within an access easement over residential property, provided that the following conditions are met:

- (a). The owner of the residential property upon which the small wireless facility will be located has granted permission in writing to locate the small wireless facility in the desired location and has provided proof of authority to grant such permission;

- (b). The terms of the access easement allow the installation of the small wireless facility in the proposed location;
- (c). The installation of the small wireless facility in the proposed location does not create any access or safety issues;
- (d). Any new pole complies with the requirements of BIMC 18.10A.050;
- (e). Any new structure complies with all applicable requirements of the City Code;
- (f). Any covenants or easements recorded on the property allow the deployment of the small wireless facility on the property;
- (g). The proposed small wireless facility complies with all applicable land use regulations, including but not limited to: Chapter 19.10 BIMC, Chapter 18.10A.BIMC, Chapter 16.20 BIMC, and Chapter 16.12 BIMC.

13. The City may consider the cumulative visual effects of small wireless facilities mounted on poles within the rights-of-way when assessing proposed siting locations so as to not adversely affect the visual character of the City. This provision shall not be applied to limit the number of permits issued when no alternative sites are reasonably available nor to impose a technological requirement on the applicant.

14. These design standards are intended to be used solely for the purpose of concealment and siting. Nothing herein shall be interpreted or applied in a manner which dictates the use of a particular technology. When strict application of these requirements would effectively prohibit the applicant from providing a wireless service, alternative forms of concealment or deployment may be permitted which provide similar or greater protections from negative visual impacts to the streetscape.

**18.10A.050 New poles for small wireless facilities.**

- A. New poles for small wireless facilities are only permitted if the applicant can establish that:
  - 1. The proposed small wireless facility cannot be located on an existing utility pole or light pole, electrical transmission tower, or on a site outside of the public rights of way such as public non-park property, a building, a transmission tower, or in or on a non-residential use in a residential zone whether by roof or panel-mount or separate structure;
  - 2. The proposed small wireless facility complies with the applicable requirements of BIMC 18.10A.040;

3. All new poles in the right-of-way shall be the standard pole design adopted in the City's Design and Construction Standards. The Public Works Department may adopt standard pole designs for different use cases or different areas within the City in order to most fully protect the aesthetics and safety of the community. All standard designs shall accommodate and not limit the telecommunications technology used. The Public Works Director or designee may approve a deviation from the standard pole design if the Director finds that the proposed pole design is at least as protective of the aesthetic and visual character of the location as the City's adopted standard pole design.

(a). If a deviation is approved, all elements of the small wireless facility must be integrated into the design of the pole.

(b). Technical feasibility and safety shall be considered by the Public Works Director if any deviation from the City adopted standard pole design is requested.

(c). If no standard pole design is adopted, the design of the new pole must mimic the design of adjacent neighboring poles or the pole which is being replaced, including similar height to the extent technically feasible. All elements of the small wireless facility must be integrated into the design of the pole.

(d). Upon construction of a new pole complying with the standard pole design, the applicant may convey ownership of the pole to the City and the Public Works Director may accept ownership of the pole on behalf of the City if the pole serves a municipal purpose, including, but not limited to, street lighting or a benefit to a utility operated by a public agency.

4. The proposed small wireless facility receives approval for a concealment element design, as described in subsection C below;

5. The proposed small wireless facility also complies with Shoreline Management Act, SEPA, and any other relevant law or regulation if applicable; and

6. No new poles shall be located in a critical area or associated buffer or setback required by Chapter 16.20 BIMC except when determined to be exempt pursuant to Chapter 16.20 BIMC.

B. An application for a new pole is subject to review and approval or denial by the Director.

C. The concealment element design shall include the design of the screening, fencing, or other concealment technology for the pole and all related transmission equipment or facilities associated with the proposed small wireless facility, including but not limited to fiber and power connections.

1. The concealment element design should seek to minimize the visual obtrusiveness of the small wireless facility.

(a). New poles located within the right-of-way must conform to the requirements of BIMC 18.10A.050.A.3 above. Because all new poles are either the City adopted standard pole design or approved poles with all elements of the small wireless facility integrated into the design of the pole, no additional equipment is allowed on or in the ground.

(b). When siting a new pole on property located in a residential zone, the applicant must first attempt to locate the new pole on or near one of the boundary lines of that property. If a location not on or near the boundary line better mitigates the aesthetic impact of the new pole, the Planning Director may approve such alternative location. To the extent siting a small wireless facility on a new pole located on or near the boundary line is technologically infeasible, the applicant shall attempt to site the new pole at a location with the least aesthetic impact to the property, such as at a location where the new pole would be concealed from view by trees, vegetation, or other structure.

(c). New poles outside of the right-of-way should attempt to mimic the design of existing similarly situated neighboring poles or the pole which is being replaced, including similar height to the extent technically feasible. All equipment and antennas attached to such poles must conform with the standards contained in BIMC 18.10A.040.A or .B, as applicable, and BIMC 18.10A.040.E.

2. If the Director has already approved a concealment element design either for the applicant or another small wireless facility in the same area or for the same pole type, then the applicant shall utilize a substantially similar concealment element design, unless it can show that such concealment element design is not physically or technologically feasible, or that such deployment would undermine the generally applicable design standards.

D. Even if an alternative location is established pursuant to BIMC 18.10A.050.A.1, the Director may determine that a new pole in the right-of-way is in fact a superior alternative if the new pole:

1. Satisfies the other requirements of BIMC 18.10A.050.A;
2. Provides equal or greater protection to public vantage points, view corridors, and scenic vistas to support Bainbridge Island's sense of place, identity, and orientation; and
3. Satisfies one or more of the following criteria:
  - (a) Has a greater natural resource conservation value;
  - (b) Less adverse impact to adjoining properties; or
  - (c). Results in a more practical design because of topography, critical area, or other extenuating circumstances.

E. Prior to the issuance of a permit to construct a new pole in the right-of-way, the applicant must obtain a site-specific agreement from the City to locate such new pole. The requirement to obtain a site-specific agreement also applies to the placement of replacement poles when the replacement is necessary for the installation or attachment of the small wireless facility, the replacement structure is higher than the replaced structure, and the overall height of the replacement structure and the small wireless facility is more than sixty (60) feet.

F. These design standards are intended to be used solely for the purposes identified in BIMC 18.10A.010. Nothing herein shall be interpreted or applied in a manner which dictates the use of a particular technology. When strict application of these requirements would unreasonably impair the function of the technology chosen by the applicant, alternative forms of concealment or deployment may be permitted which provide similar or greater protections of the street scape.

**Section 9. Repeal and Replacement of Chapter 18.11 BIMC.** Chapter 18.11 of the Bainbridge Island Municipal Code is hereby repealed in its entirety and replaced by the following:

**Chapter 18.11  
Eligible Facilities Requests**

- 18.11.010 Definitions.
- 18.11.020 Application.
- 18.11.030 Qualification as an Eligible Facilities Request.
- 18.11.040 Timeframe for Review.
- 18.11.050 Tolling of the Time Frame for Review.
- 18.11.060 Determination That Application Is Not an Eligible Facilities Request.
- 18.11.070 Failure to Act.
- 18.11.080 Enforcement

**18.11.010 Definitions**

The following definitions shall apply to Eligible Facilities Requests only as described in this Chapter 18.11 BIMC.

A. “Base Station”: A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined herein nor any equipment associated with a tower. Base Station includes, without limitation:

1. Equipment associated with wireless communications services as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
2. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems (“DAS”) and small wireless networks).

3. Any structure other than a tower that, at the time the relevant application is filed (with jurisdiction) under this section, supports or houses equipment described in subparagraph (i) and (ii) above that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.

4. The term does not include any structure that, at the time the Eligible Facilities Request application is filed with the City, does not support or house equipment described in subparagraph 1.a and 1.b above.

B. “Collocation”: The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communication purposes.

C. “Eligible Facilities Request”: Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:

1. Collocation of new transmission equipment;
2. Removal of transmission equipment; or
3. Replacement of transmission equipment.

D. “Eligible support structure”: Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the City.

E. “Existing”: A constructed tower or base station is existing if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

F. “Substantial Change”: A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

1. For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten (10) feet, whichever is greater;

2. For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty (20) feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) feet;



3. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and Base Stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
4. It entails any excavation or deployment outside the current site;
5. It would defeat the concealment elements of the eligible support structure; or
6. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided, however, that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified above.

G. “Tower”: Any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul and the associated site.

H. “Transmission equipment”. Equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

#### **18.11.020 Application.**

The Director shall prepare and make publicly available an application form used to consider whether an application is an Eligible Facilities Request. The application may not require the applicant to demonstrate a need or business case for the proposed modification. Prior to the issuance of an Eligible Facilities Request permit, the applicant shall pay a permit fee in an amount as determined by the City Council and adopted by resolution.

#### **18.11.030 Qualification as an Eligible Facilities Request.**

Upon receipt of an application for an Eligible Facilities Request, the Director shall review such application to determine whether the application qualifies as an Eligible Facilities Request.

**18.11.040 Timeframe for Review.**

A. Within sixty (60) days of the date on which an applicant submits an Eligible Facilities Request application, the Director shall approve the application unless it determines that the application is not covered by 47 CFR §1.40001 and this Chapter 18.11 BIMC.

B. A permit issued pursuant to this chapter, and any applications deemed granted under BIMC 18.11.070, shall be valid for a term of 12 months from the date of issuance or the date the application has been deemed granted under BIMC 18.11.070.

**18.11.050 Tolling of the Time Frame for Review.**

A. The sixty (60) day review period begins to run when the application is filed and may be tolled only by mutual agreement by the Director and the applicant or in cases where the Director determines that the application is incomplete. .

1. To toll the timeframe for incompleteness, the Director shall provide written notice to the applicant within thirty (30) days of receipt of the application, clearly and 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 Director's notice of incompleteness.
3. Following a supplemental submission, the Director 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 subsection. Second or subsequent notice of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

**18.11.060 Determination That Application Is Not an Eligible Facilities Request.**

If the Director determines that the applicant's request does not qualify as an Eligible Facilities Request, the Director shall deny the application.

**18.11.070 Failure to Act.**

In the event the Director fails to approve or deny an application for an Eligible Facilities Request within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed granted application does not become effective until the applicant notifies the Director in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

## **18.11.080 Enforcement.**

Compliance with the provisions of this chapter is mandatory. Any violation of this chapter shall be enforced, and penalties assessed, in accordance with Chapter 1.26 BIMC.

**Section 10. Amendment to BIMC 18.36.030.** Subsections 18.36.030.7 (“Accessory antenna device”), 18.36.030.32 (“Attached wireless communication facility”), 18.36.030.53 (“Co-location”), 18.36.030.273 (“Wireless communication facility”), 18.36.030.273.a (“Facility I”), 18.36.030.273.b (“Facility II”), and 18.36.030.273.c (“Facility III”) of the Bainbridge Island Municipal Code are hereby repealed.

**Section 11. Amendment to BIMC 18.36.030.** Subsection 18.36.030.276 (“Wireless communication support structure”) of the Bainbridge Island Municipal Code is hereby amended to read as follows:

“Wireless communication support structure” means the structure erected to support wireless communication antennas and connecting appurtenances. Support structure types include, but are not limited to, stanchions, monopoles, lattice towers, wood poles or guyed towers. “Monopoles” and “lattice towers” shall have the same meaning as defined in Chapter 18.10 BIMC.

**Section 12. Amendment to BIMC 18.36.030.** Subsection 18.36.030.249 (“Structure”) of the Bainbridge Island Municipal Code is hereby amended to read as follows:

“Structure” means any manmade assemblage of materials extending above or below the surface of the earth and affixed or attached thereto. “Structure,” for the purposes of this title, except for BIMC 18.09.030.F.1, does not include “wireless ~~communications~~ communication facilities” as that term is defined in Chapter 18.10 BIMC.

**Section 13. Amendment to BIMC 2.16.040.** Subsection 2.16.040.B.1.d of the Bainbridge Island Municipal Code is hereby amended to read as follows:

d. The construction of new wireless ~~communications~~ communication support structures (but not the location of wireless facilities on existing buildings).

**Section 14. Amendment to BIMC 19.10.020.D.3.** Subsection 19.10.020.D.3 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

3. Associated Permit(s). The applicant shall attach all associated permit requirements, such as applications or checklists required under the critical areas, shoreline, or SEPA ordinances. Applications for ~~deployment of small wireless facilities in design zones or for new poles~~ shall comply with the requirements in Chapter 18.10A BIMC 18.10A.060.

**Section 15. Amendment to BIMC 19.10.020.E.1.d.** Subsection 19.10.020.E.1.d of the Bainbridge Island Municipal Code is hereby amended to read as follows:

d. Compliance with the aesthetic requirements of Chapter 18.10A BIMC.

**Section 16. Amendment to BIMC 19.10.030.D.** Subsection 19.10.030.D of the Bainbridge Island Municipal Code is hereby amended to read as follows:

~~D. Review of Facilities~~ Compliance with Federal Law. Review of the site locations proposed by the applicant shall be governed by the provisions of 47 U.S.C. Sections 253 and 332 and other applicable statutes, regulations, and case law. Applicants for master permits and small wireless facility permits shall be treated in a competitively neutral and nondiscriminatory manner with other service providers, utilizing supporting infrastructure that is functionally equivalent, that is, service providers whose facilities are similarly situated in terms of structure, placement, or cumulative impacts. Small wireless facility permit review under this chapter shall neither prohibit nor have the effect of prohibiting the ability of an applicant to provide telecommunications services.

**Section 17. Corrections.** The City Clerk and codifiers of the ordinance are authorized to make necessary corrections to this Ordinance or to the City Code including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

**Section 18. Severability.** If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason, such invalidity shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

**Section 19. Effective Date.** This ordinance shall take effect and be in force five (5) days from its passage and publication as required by law.

PASSED by the City Council this \_\_\_ day of \_\_\_\_\_ 2020.

APPROVED by the Mayor this \_\_\_ day of \_\_\_\_\_ 2020.

\_\_\_\_\_  
Leslie Schneider, Mayor

ATTEST/AUTHENTICATE:

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Christine Brown, CMC, City Clerk

FILED WITH THE CITY CLERK:  
PASSED BY THE CITY COUNCIL:  
PUBLISHED:  
EFFECTIVE DATE:  
ORDINANCE NUMBER:

2020-04

Exhibit A

DRAFT

**Exhibit A**  
**Amendments to Utility and Telecommunications Section of Table 18.09.020**

UTILITY AND TELECOMMUNICATIONS																				
Note: Utility and telecommunications uses may be subject to additional requirements in BIMC 16.12.030.C.7.																				
ZONING DISTRICT	R-0.4	R-1	R-2	R-2.9	R-3.5	R-4.3	R-5	R-6	R-8	R-14	Winslow Mixed Use Town Center					HSR I and II	NC	B/I	WD-1	Use-Specific Standards BIMC 18.09.030
											CC	MA	EA	Gate	Ferry [1]					
USE CATEGORY/TYPE																				
Monopole or Lattice Tower	<u>P/C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>F-4</u>
Small Wind Energy Generator	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>F-1</u>
Utility, Primary	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>P</u>	<u>C</u>	<u>C</u>	<u>F-2</u>
Public Communications Tower	<u>P</u>	<u>P</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>P</u>	<u>A</u>	<u>A</u>	<u>F-3</u>
Wireless Communication Facilities, Facility I	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>F-4</u>
Wireless Communication Facilities, Facility II	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>F-4</u>
All Other Wireless Communication Facilities, Facility III	<u>P/C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>F-4</u>
Small Wireless Facilities	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>B-5</u>