



CITY OF
BAINBRIDGE ISLAND

**PLANNING COMMISSION SPECIAL MEETING
THURSDAY, DECEMBER 12, 2019**

BAINBRIDGE ISLAND CITY HALL
280 MADISON AVENUE N.
BAINBRIDGE ISLAND, WASHINGTON

AGENDA

1. **CALL TO ORDER/ROLL CALL - 6:30 PM**
2. **PUBLIC COMMENT - 6:35 PM**
Receive public comment on off-agenda items.
3. **UNFINISHED BUSINESS - 6:45 PM**
 - 3.a **(6:45 PM) Aveterra Code Amendment Request - Planning**, 60 Minutes
[December 12, 2019 PC Memo.pdf](#)
 - 3.b **(7:30 PM) Ordinance No. 2019-38, Adopting Small Wireless Facility Design Standards**, 45 Minutes
[Ordinance No. 2019-38, Adopting Small Wireless Facility Design Standards - Draft for 12-12-19 PCM Memo - Items Requested by Commission on October 24, 2019](#)
[Table Summary of Industry Comments](#)
[Small Wireless Facilities - Sample Photos of Actual Deployments](#)
[Design Zones - COBI - Mixed Use Town Center - HS Road Zoning Districts - SR 305 ROW](#)
[Design Zones - COBI - Neighborhood Centers](#)
[Design Zones - COBI - Lynwood Center Neighborhood Center](#)
[Design Zones - COBI - Island Center Neighborhood Centers](#)
[Design Zones - COBI - Rolling Bay Neighborhood Center](#)
[Design Zones - COBI - Eagledale Neighborhood Center](#)
4. **NEW BUSINESS - 8:15 PM**
 - 4.a **(8:15 PM) Ordinance No. 2019-09 Relating to Accessory Dwelling Units (ADUs) - Planning**, 45 Minutes
[20191212_Staff_Memo_on_ADUs \(1\).docx](#)
[20191106 Ordinance 2019-09 DRAFT.docx](#)
[ADU Use Specific Standards 18.09.030 Attachment A](#)
[Building Official Memo re Tiny Home Appendix Q Adoption](#)
[Appendix Q](#)

5. PLANNING DIRECTOR'S REPORT - 8:50 PM

6. ADJOURNMENT - 9:00 PM

GUIDING PRINCIPLES

Guiding Principle #1 - Preserve the special character of the Island, which includes downtown Winslow's small town atmosphere and function, historic buildings, extensive forested areas, meadows, farms, marine views and access, and scenic and winding roads supporting all forms of transportation.

Guiding Principle #2 - Manage the water resources of the Island to protect, restore and maintain their ecological and hydrological functions and to ensure clean and sufficient groundwater for future generations.

Guiding Principle #3 - Foster diversity with a holistic approach to meeting the needs of the Island and the human needs of its residents consistent with the stewardship of our finite environmental resources.

Guiding Principle #4 - Consider the costs and benefits to Island residents and property owners in making land use decisions.

Guiding Principle #5 - The use of land on the Island should be based on the principle that the Island's environmental resources are finite and must be maintained at a sustainable level.

Guiding Principle #6 - Nurture Bainbridge Island as a sustainable community by meeting the needs of the present without compromising the ability of future generations to meet their own needs.

Guiding Principle #7 - Reduce greenhouse gas emissions and increase the Island's climate resilience.

Guiding Principle #8 - Support the Island's Guiding Principles and Policies through the City's organizational and operating budget decisions.



Planning Commission meetings are wheelchair accessible. Assisted listening devices are available in Council Chambers. If you require additional ADA accommodations, please contact the Planning & Community Development Department at (206) 780-3750 or pcd@bainbridgewa.gov by noon on the day preceding the meeting.

Public comment may be limited to allow time for the Commissioners to deliberate. To provide additional public comment, email your comment to pcd@bainbridgewa.gov or mail it to Planning and Community Development, 280 Madison Avenue North, Bainbridge Island, WA 98110.



CITY OF
BAINBRIDGE ISLAND

Planning Commission Special Meeting Agenda Bill

MEETING DATE: December 12, 2019

ESTIMATED TIME: 60 Minutes

AGENDA ITEM: (6:45 PM) Aveterra Code Amendment Request - Planning,

AGENDA CATEGORY: Discussion

PROPOSED BY: Annie Hillier

PREVIOUS PLANNING COMMISSION

REVIEW DATE(S): September 12, 2019
September 26, 2019

PREVIOUS COUCIL REVIEW DATE(S):

RECOMMENDED MOTION:

"I move to authorize staff to draft an ordinance for [select one]: a parcel-specific code amendment to BIMC 18.09.030.G.3 -OR- a code amendment that would apply to all composting facilities under BIMC 18.09.030.G.3."

SUMMARY:

The applicant is requesting a code amendment to 1. To exclude two lots commonly known as the "triangle property" from a 500' setback in BIMC 18.09.030.G.3 that applies to waste transfer facilities; and 2. To create a use- or parcel-specific dimensional standard that would increase the allowed lot coverage from 10%. The Planning Commission is considering this site-specific request, as well as a broader code amendment that would apply to all composting facilities.

BACKGROUND: See December 12, 2019 PC Memo.

ATTACHMENTS:



Department of Planning and Community Development

Memorandum

Date: December 12, 2019
To: Planning Commission
From: Annie Hillier, Planner
Subject: Aveterra Code Amendment Request

Background

The applicant applied for a legislative review of land use regulations (aka “code amendment”) as provided in [BIMC 2.16.180](#), which allows any person or entity to propose an amendment to the BIMC. The applicant’s request includes two potential code changes: 1. To exclude two lots commonly known as the “triangle property” from a 500’ setback in BIMC 18.09.030.G.3 that applies to waste transfer facilities; and 2. To create a use- or parcel-specific dimensional standard that would increase the allowed lot coverage from 10%. If this code amendment request is approved, the applicant intends to apply for a conditional use permit (CUP) to locate a compost facility on the triangle property.

At a previous study session (September 26th, 2019) the Planning Commission formed a subcommittee to further explore the applicant’s request. Over the last two months, the subcommittee held several meetings to discuss potential issues with the code amendment request and other legislative options. At the December 12th, 2019 study session, the subcommittee will bring their findings and recommendations to the full Planning Commission for consideration, which are summarized in the attached memorandum (**Attachment A**).

As described in Attachment A, the subcommittee recommends that the full Planning Commission first consider the parcel-specific language contained in the staff memorandum dated October 1, 2019, which responds specifically to the applicant’s request (see **Attachment B**). If the Planning Commission does not support a parcel-specific code amendment, the subcommittee requests consideration of an alternative, broader code amendment to the use-specific standards for waste transfer facilities in BIMC 18.09.030.G.3, that would apply to all composting facilities (see top of page 2, Attachment A).

In considering this alternative approach, staff requests that the Planning Commission review the proposed amendment to BIMC 18.09.030.G.3 contained in Attachment A, and then consider the following staff-recommended alternatives to achieve a similar outcome:

- The proposed language introduces the term “composting facility” to the BIMC, and changes the term waste “transfer” facility to waste “management” facility. (Note that this would also require an amendment to the permitted use table in BIMC 18.09, as well as the definitions in BIMC 18.36.)

- An alternative to amending or creating new definitions is to use the existing language *about* composting from the definition of “waste transfer facility”, in place of the new term “composting facility”. For example, the amended code could read, “No waste transfer facility operation, except uses that manufacture or produce goods or energy from the composting of organic material or processing of scrap or waste material, shall be conducted within 500 feet of a property located in any zone district other than the R-0.4 zone district.”
- The proposed language includes a standard for increased lot coverage (as written, 30% or 100,000sf, whichever is less).
 - An alternative to increasing lot coverage for the use (or parcel) would be to exclude semi-enclosed composting pads from lot coverage under the use-specific standards for waste transfer facilities, instead of increasing the allowed percentage. Under this scenario, office buildings, restrooms, sheds, etc. would count towards the allowed 10% in R-0.4, but the composting pads would not. For example, the amended code could read, “e. semi-enclosed composting pads used for the storage of input material, processing systems, and output material are excluded from lot coverage.”

Next Steps

With Planning Commission’s direction, an ordinance for either a parcel-specific code amendment or a code amendment that would apply to all composting facilities will be prepared following the December 12th study session. A public hearing must be held on the ordinance, and the next available public hearing date is January 23, 2020. Following the public hearing, Planning Commission shall issue a written recommendation that contains (a) a statement recommending that the proposed amendment be approved, approved as amended, or denied, and (b) a statement of facts upon which the recommendation is based and the conclusions derived from those facts.

Links to previous memorandums are provided below. The entire project file in SmartGov can be viewed using this link: <https://ci-bainbridgeisland-wa.smartgovcommunity.com/PermittingPublic/PermitDetailPublic/Index/feb392e5-46c7-49bd-ad1d-a9ec0117f0ed?conv=1>.

- [September 12, 2019 PC Memo](#)
- [September 26, 2019 PC Memo](#)

December 5, 2019

MEMO TO: Planning Commission

FROM: Planning Commissioners Jon Quitslund, Mack Pearl, and Joe Paar

RE: PLN51245 LDR (Request for legislative review of development regulations pertaining to a proposed composting facility)

The Planning Commission has been tasked with responding to a request from Mollie Bogardus, representing her business, Aveterra Corporation, to consider amendments to the development regulations that would make possible the siting and operation of a composting facility on an appropriate parcel in the R-0.4 zone.

This request, together with supportive information and comments from the applicant and interested citizens, was considered in Planning Commission meetings on September 12 and 26, 2019. After discussion in the second meeting, a subcommittee of three commissioners (Quitslund, Pearl, and Paar) was charged with studying the issues and legislative options, and making recommendations for consideration by the full Planning Commission.

Materials assembled by Planner Annie Hillier for the meetings in September are included in the agenda packet for your information. A staff memo dated October 1 includes proposed language for a site-specific code amendment that would make it feasible for Aveterra to apply for a Conditional Use Permit to establish a composting facility on the so-called "Triangle" property at Lynwood Center Road and Fletcher Bay Road.

At a meeting on October 4 with Planners David Greetham and Annie Hillier, the subcommittee discussed the issues involved in properly locating and regulating a composting facility, taking into account several anticipated impacts on the neighborhood and the anticipated community benefits. In addition to the proposed site-specific code amendment, we considered an alternative amendment to regulations that could be applicable on the Triangle site or elsewhere on the Island.

On October 10, the subcommittee met with Mollie Bogardus to visit a composting facility on a farm property off Hwy 305, and to walk the Triangle Property. Subsequently, responding to an inquiry from John Grinter, Jon met with Mollie and Mr. Grinter to discuss his objections to locating on the Triangle site and his ideas for other possible locations. In addition, on different occasions the subcommittee members met with two other property owners near the Triangle site, Wendy Tyner and Nick Masla.

The subcommittee now recommends a two-step process in response to the request for legislative review. A decision in the December 12 meeting on a course of action would be followed by the drafting of an Ordinance and the scheduling of a Public Hearing, after which the Planning Commission would make a recommendation to the City Council.

As a first step, we request consideration of the site-specific language contained in the staff memorandum dated October 1: this responds specifically to the applicant's request for a Code change.

If the Commission does not support that Code amendment, we request consideration of the following alternative:

Amend BIMC 18.09.030.G (Use Specific Standards, Industrial Uses) as follows:

3) Waste ~~Transfer~~ Management Facility.

- a. No waste ~~transfer management~~ facility operation shall be conducted within 500 feet of a property located in any zone district other than the R-0.4 zone district, except the operation of a composting facility that satisfies all criteria and conditions of a major Conditional Use Permit.
- b. All waste ~~transfer management~~ facility operations, including those of a composting facility, shall maintain a full screen landscaped buffer meeting the standards of *BIMC 18.15.010.D.4.a* and at least 50 feet wide around each waste transfer facility operation. The width of the buffer may be increased up to 100 feet by the planning director through the same standards that apply to B/I district buffers.
- c. All waste ~~transfer management~~ facility operations and operators shall comply with all applicable requirements of Chapter 70.95 RCW (Solid Waste Management), Chapter 173-350 WAC (Solid Waste Handling Standards), and Chapter 173-351 WAC (Criteria for Municipal Solid Waste Landfills), including the requirement to obtain and maintain a current solid waste permit and to comply with all conditions of that permit.
- d. All composting facility operations and operators shall comply with all applicable requirements of Chapter 173-350-220 WAC (Composting facilities), including the requirement to obtain and maintain a current composting permit and to comply with all conditions of that permit.
- e. Lot coverage for a composting facility is limited to 30% of the total area or 100,000 sq. ft., whichever is less, subject to conditions specified in the Conditional Use Permit and requirements of the composting permit. Structures containing the composting facility and any leachate will be semi-enclosed and unheated, on concrete slab foundations.

If BIMC 18.09.030.G.3 is amended, the definition of “Waste transfer facility” in BIMC 18.36 should be modified, and a definition of “Composting facility” should be added, as follows:

272. “Waste [~~transfer~~] management facility” means establishments that receive solid or liquid wastes from others for disposal on the site or for transfer to another location, uses that collect sanitary wastes, or uses that ~~manufacture or produce goods or energy from the composting of organic material or processing of~~ scrap or waste material. This does not include the waste or salvage of hazardous materials. Accessory uses may include recycling of materials, offices, and repackaging and shipment of by-products. Waste management involving composting is defined above at 60bis.

60bis. “Composting facility” means a waste management facility that involves the biological degradation and transformation of organic solid waste under controlled conditions designed to promote aerobic decomposition and to create a useful soil amendment.

Here are some considerations to bear in mind as you consider the potential community benefits and the downsides of permitting a commercially viable composting facility on Bainbridge Island:

The Code permits, within the definition of “waste transfer facility” in BIMC 18.36, “uses that manufacture or produce goods or energy from the composting of organic material,” without recognizing the differences between a composting facility and the various waste collection and off-Island transfer activities that take place at the Vincent Road site.

In the Comprehensive Plan, the Utilities element includes this Goal (U-15): “Ensure adequate, cost effective, reliable, and environmentally responsible solid waste, recycling and composting service to the citizens of Bainbridge Island.” A “**Legislative Review of Land Use Regulations**” has been prepared for Aveterra Corp and is included with the project application. It includes a summary of community benefits, keyed to Goals and Policies of the Environmental element in the Comprehensive Plan.

According to WAC 173-350-100, “**Composting** means the biological degradation and transformation of organic solid waste under controlled conditions designed to promote aerobic decomposition. Natural decay of organic solid waste under uncontrolled conditions is not composting.”

Neither Bainbridge Disposal nor Tilz does composting. Animal wastes that create pollutants and other nuisances are stockpiled on a number of Island farms, and at present the City has no basis for requiring proper management of these wastes.

The Department of Ecology has published “Siting and Operating Composting Facilities in Washington State; Good Management Practices” (revised July 2013): 28 pp. The Department of Ecology sets the standards for composting facilities, and permits that implement those standards are administered by county health districts.

The application for a composting facility permit requires the following: “Nuisance odor management plan (air quality control plan); Leachate management plan, including monthly water balance; A description of how equipment, structures and other systems are to be inspected and maintained, including the frequency of inspections and inspection logs; A neighbor relations plan describing how the owner or operator will manage complaints.”



Department of Planning and Community Development

Memorandum

Date: October 1, 2019
 To: Planning Commission
 From: Annie Hillier, Planner
 Subject: Aveterra Code Amendment Request: Example Code Amendment & Similar Existing Regulations

I. Background

At the September 26, 2019 study session, planning commission heard from the applicant on several previously request topics, including the relevancy of the 500' setback and the future project's relationship to the ongoing mining reclamation on the subject property; planning commission also heard from members of the public, where concerns including traffic and odor impacts, and the island's sustainability, were raised. After deliberating on these items and the future use of the site (composting), planning commission agreed to form a subcommittee of three members to analyze the proposed code amendment. This memorandum provides the applicant's request and an example of a code amendment that could accomplish this request, as well as other examples of similar parcel- and use-specific regulations that are contained in the BIMC.

Applicant's Request

The applicant has applied for a legislative review of land use regulations, as provided in [BIMC 2.16.180](#). The request is two-fold: 1. to specifically exclude the subject parcel(s) from the 500' setback provision in BIMC 18.090.030.G.3.a. (The 50' full screen landscaped buffer would still apply.) And 2. to include a parcel- or use-specific dimensional standard for a greater lot coverage allowance than allowed in BIMC Chapter 18.12. An example of how the code could be amended to achieve this is provided below.

II. Example Code Amendment

This example amends the existing use-specific standards for waste transfer facilities, provided in [BIMC 18.09.030.G.3](#). (Italicized text is copied from the BIMC, with red underlined language added by staff):

G. Industrial Uses.

- 1. Mining and Quarrying....*
- 2. Recycling Center....*
- 3. Waste Transfer Facility.*

a. No waste transfer facility operation shall be conducted within 500 feet of a property located in any zone district other than the R-0.4 zone district, except for facilities or uses that manufacture or produce goods or energy from the composting of organic material located on parcel number [xxx] which shall have a lot coverage maximum of 30%.

b. All waste transfer facility operations shall maintain a full screen landscaped buffer meeting the standards of BIMC 18.15.010.D.4.a and at least 50 feet wide around each waste transfer facility operation. The width of the buffer may be increased up to 100 feet by the planning director through the same standards that apply to B/I district buffers.

c. All waste transfer facility operations and operators shall comply with all applicable requirements of Chapter 70.95 RCW (Solid Waste Management), Chapter 173-350 WAC (Solid Waste Handling Standards), and Chapter 173-351 WAC (Criteria for Municipal Solid Waste Landfills), including the requirement to obtain and maintain a current solid waste permit and to comply with all conditions attached to that permit.

The language, “except for facilities or uses that manufacture or produce goods or energy from the composting of organic material”, that has been added to the existing code is included in the definition of “waste transfer facility” ([BIMC 18.36.030 #272](#)).

III. Other Examples of Parcel- and Use-Specific Regulations in the Municipal Code

The BIMC contains other examples of parcel- and use-specific regulations that may serve as a precedent for the applicant’s request. (Italicized text is copied from the BIMC, with underline added by staff for emphasis.)

- [BIMC Chapter 18.24](#), Historic Preservation Program, identifies specific tax parcel numbers in the Fort Ward historic overlay district that are authorized increases in density and are subject to certain standards for maintenance or rehabilitation of the exteriors of existing buildings:
 - 1. Availability...*
 - 2. Building 16. The property tax identified as tax parcel number 112402-3-004-2003 containing a building of historical interest, identified as Building 16 on Attachment 2, shall be permitted an increase in density up to a total of eight units; provided, that the majority of the dwelling units are located inside Building 16; and provided, that the following development standards are met...*

- [Table 18.12.020-2](#), Standard Lot Dimensional Standards for Residential Zone Districts, provides footnotes that contain additional requirements for specific parcels as well as specific uses. Footnote 1 indicates a parcel in Lynwood center that is allowed a higher density than other R-2 lots; footnote 4 provides additional height allowances for community and educational facilities:

[1] The base density for that parcel in the Lynwood Center special planning area designated as R-2 is one unit per 20,000 sq. ft., but may be increased up to 3 units per acre; provided, that a public access easement is granted for that portion of the parcel that lies to the south of Point White Drive along the waters of Rich Passage. The base density of some parcels in the Fort Ward historic overlay district may be increased as shown in BIMC 18.24.110.

[2] Pursuant to Chapters 18.18 and 18.27 BIMC the minimum lot area for a dwelling unit shall be 5,400 square feet for that area designated on the official land use map as the urban single-family overlay district (R-8SF). All other requirements of this chapter shall apply.

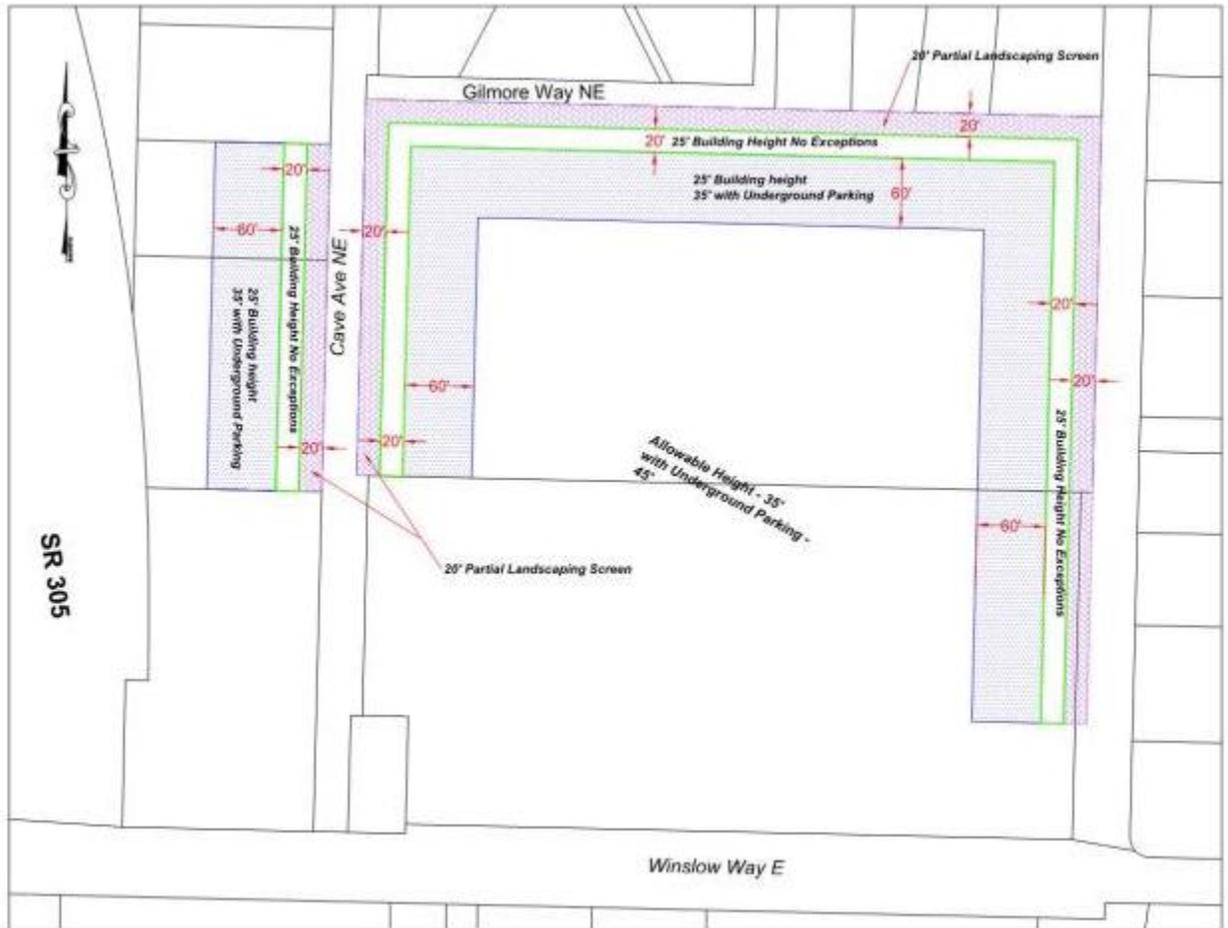
[3] Additional setbacks for taller buildings must be from the ground upward – i.e., this is not a “step-back” requirement for upper floors.

[4] For community and educational facilities (as listed in Table 18.09.020), spires, towers and other vertical features with horizontal cross-sections no more than five percent of the footprint of the primary structure may have a maximum height of 10 feet above the maximum base height, and shall be reviewed through a conditional use permit.

- [BIMC 2.16.110.G.7](#), Additional Decision Criteria for Institutions in Residential Zones, provides greater lot coverage allowances for institutions that require a major CUP. For example, public schools and governmental facilities that are located in the R-0.4 zoning district are allowed 150 percent of the lot coverage established in the R-0.4 zoning district:

7. Lot coverage does not exceed 50 percent of the allowable lot coverage in the zone in which the institution is located, except that public schools and governmental facilities, as defined in BIMC Title 18, that are located in the R-0.4 zoning district shall be allowed 150 percent of the lot coverage established in the R-0.4 zoning district, and such public schools and governmental facilities located in other zoning districts shall be allowed 100 percent of the lot coverage established in the underlying zoning district in which the facility is located, unless, regardless of which zoning district such a facility is located, conditions are required to limit the lot coverage to mitigate impacts of the use.

- [BIMC 18.12.030.C](#), Transition Standards in the Ferry Terminal Overlay District, provides alternative height and landscaping requirements for a specific region located north of Winslow Way E, in the ferry terminal overlay district:



IV. Next Steps

Staff will prepare a draft ordinance for the required public hearing. Prior to drafting an ordinance, staff is requesting the planning commission's recommendation on:

- Which sections of the code to amend (e.g. BIMC 18.09.030.G.3 or BIMC 18.12.020-2);
- The wording of the code amendment (see Attachment A, or the table from page 12 of the September 12, 2019 memo for variations); and
- Dates for the next study session (as applicable) and public hearing.



CITY OF
BAINBRIDGE ISLAND

Planning Commission Special Meeting Agenda Bill

MEETING DATE: December 12, 2019

ESTIMATED TIME: 45 Minutes

AGENDA ITEM: (7:30 PM) Ordinance No. 2019-38, Adopting Small Wireless Facility Design Standards,

AGENDA CATEGORY: Ordinance

PROPOSED BY: Robbie Sepler

PREVIOUS PLANNING COMMISSION

REVIEW DATE(S): September 12, 2019, and October 24, 2019.

PREVIOUS COUCIL REVIEW DATE(S): May 14, 2019; June 11, 2019; August 13, 2019; October 8, 2019; and October 22, 2019.

RECOMMENDED MOTION:

Planning Commission Discussion.

SUMMARY:

Continued Planning Commission consideration of small wireless facility design standards to govern the deployment of small wireless facilities on Bainbridge Island.

BACKGROUND: Under federal law, the Federal Communications Commission ("FCC") is granted extensive powers to regulate telecommunication services in the United States. On September 5, 2018, the FCC issued an order ("FCC Order") that dramatically changed how local governments can regulate deployments of small wireless facilities ("SWFs"). Some of the order came into effect on January 14, 2019, while the rest of the order came into effect on April 14, 2019. The FCC Order imposes limitations on local municipalities, including the City of Bainbridge Island ("City"), regarding processing and review of all permits associated with the deployment of SWFs, and permanent regulations are needed to ensure that the City is in compliance with what Federal law requires.

The purpose of SWFs is to augment capacity for wireless data traffic in dense areas (primarily downtown cores and residential neighborhoods). SWFs typically consist of an antenna less than 3 cubic feet in volume, an equipment box, and wiring or "fiber." SWFs are typically mounted on utility or light poles in the right-of-way, or on an existing building or structure located outside of the right-of-way.

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 ("Interim SWFs Design Standards").

On June 11, 2019, the City Council held a public hearing on Ordinance No. 2019-15 to receive public comment on the Interim SWFs Design Standards adopted by Ordinance No. 2019-15.

On August 13, 2019, the City Council directed the Planning Commission to begin work on permanent regulations to replace the Interim SWFs Design Standards adopted by Ordinance No. 2019-15.

On September 12, 2019, the Planning Commission began consideration of permanent regulations to replace the Interim SWFs Design Standards adopted by Ordinance No. 2019-15.

The Interim SWFs Design Standards, adopted by Ordinance No. 2019-15, took effect on May 14, 2019, and were initially set to expire on November 14, 2019. On October 8, 2019, the Council set a public hearing on Ordinance No. 2019-31, proposing to extend the Interim SWFs Design Standards for an additional six-month period. On October 22, 2019, the Council approved Ordinance No. 2019-31, extending the Interim SWFs Design Standards for an additional six-month period, unless terminated earlier by the City Council.

On October 24, 2019, the Planning Commission discussed Ordinance No. 2019-38 and reviewed comments submitted by industry. The Commission requested the following five items from staff:

- (1) A table outlining industry comments;
- (2) Pictures of actual SWFs deployments;
- (3) Map of design zones;
- (4) An option for the placement of SWF equipment on the ground in the right-of-way; and
- (5) An option to allow SWFs on private drives/access easements, which would otherwise be prohibited as a residential use in a residential zone.

These items have been included in the packet and are discussed in more detail in the attached memo from Daniel Kenny.

For reference, "design zones" are designated in proposed BIMC 18.10A.040. Currently, the following areas are designated as design zones:

- (1) Mixed Use Town Center;
- (2) Neighborhood centers;

(3) Highschool Road I and II Zoning Districts;

(4) In the right-of-way of State Highway 305 from Harborview Drive SE to High School Road.

Prior to making a recommendation to the City Council, a public hearing is required and could be scheduled for January 23, 2020, at the Planning Commission's discretion.

ATTACHMENTS:

ORDINANCE NO. 2019-38

AN ORDINANCE of the City of Bainbridge Island, Washington, concerning wireless communications facilities; Amending Title 18 of the Bainbridge Island Municipal Code to add a new Chapter 18.10A BIMC, authorizing and establishing design and concealment standards for small wireless facilities; Amending BIMC 18.10.030 regarding definitions; Revising BIMC 18.10.010 to adopt applicability section; Repealing and replacing in full Chapter 18.11 BIMC concerning eligible facilities requests; Repealing interim official control established by Ordinance No. 2019-15 and extended by Ordinance No. 2019-31.

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, Chapter 19.02 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 [insert outcome of Planning Commission consideration]; and

WHEREAS, on [insert date of required public hearing], the Planning Commission held a public hearing on Ordinance No. 2019-38 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]; and

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, 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 that are permitted under Chapter 19.10 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 Chapters 19.02 and 19.04 BIMC, from the city for the use of the city’s right-of-way.

Section 3. 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 follows:

UTILITY AND TELECOMMUNICATIONS																					
Note: Utility and telecommunications uses may be subject to additional requirements in BIMC 16.12.030.C.7 .																					
ZONING DISTRICT USE CATEGORY/TYPE	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]					
Monopole or Lattice Tower	P																		P		
Small Wind Energy Generator	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	P/C	P/C	P/C	F-1
Utility, Primary	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	P	C	F-2
Public Communications Tower	P	P	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	P	A	F-3
Wireless Communication Facilities, Facility I	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Wireless Communication Facilities, Facility II	P										P	P	P	P	P	P	P	P	P		
Wireless Communication Facilities, Facility III	P																	P	P		
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>B-5</u>										

Section 4. 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. Except for locations in the right-of-way, small wireless facilities are prohibited on any property containing a residential use in the residential zones.

Section 5. 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 Zones.
- 18.10A.050 Design and Concealment standards for small wireless facilities.
- 18.10A.060 New poles for small wireless facilities and installations in a Design Zone.

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. Minimize potential adverse visual, aesthetic, and safety impacts of small wireless facilities.
- H. Encourage the design of such small wireless facilities to be aesthetically and architecturally compatible with the surrounding built and natural environments where possible.
- I. 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.

J. 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.

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 requirements of Chapter 19.10 BIMC. For small wireless facilities inside the right-of-way, the applicant must also comply with the requirements of Chapters 19.02 and 19.04 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 or corporation submitting an application for a small wireless facility permit.
- C. “City property” means any real property owned by 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. Provided that, for purposes of Eligible Facilities Requests, “collocation” means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.
- E. “Director” means the Director of Planning and Community Development or his/her 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 this title, 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. “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.
- K. “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.
- L. “Small wireless” and “small wireless facility” shall have the same meaning as a “small wireless facility” as set forth in 47 CFR 1.6002.
- M. “Structure” means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of telecommunications service (whether on its own or comingled with other types of services).
- N. “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.
- O. “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.
- P. “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.
- Q. “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.
- R. “Unified enclosure” means a small wireless facility providing concealment of antennas and equipment within a single enclosure.
- S. “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.
- T. “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 Zones.

A. The following areas, as defined in Chapter 18.06 BIMC, are designated as Design Zones for the purpose of siting small wireless facilities:

1. Mixed Use Town Center;
2. Neighborhood Centers;
3. High School Road I and II Zoning Districts; and
4. In the right-of-way of State Highway 305 from Harborview Drive SE to High School Road.

B. Any applicant who desires to place a small wireless facility in a Design Zone must first establish that the applicant cannot locate the small wireless facility outside of the Design Zone. Applications for small wireless facilities in a Design Zone may be approved if the applicant demonstrates that due to technical infeasibility the applicant cannot locate the proposed small wireless facility on an existing or replacement pole within 500 feet of the proposed site and outside of the Design Zone.

C. Applications for small wireless facilities within Design Zones are approved or denied by the Director and must comply with a concealment element design described in BIMC 18.10A.060 below.

18.10A.050 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 light poles or utility poles in the right-of-way or non-wooden light poles or utility poles outside of the right-of-way shall conform to the following design criteria:

1. Upon adoption of a City standard small wireless facility pole design(s) within the Design and Construction Standards, an applicant is encouraged to first consider using or modifying the standard pole design to accommodate its small wireless facility without substantially changing the outward visual and aesthetic character of the design. The applicant, upon a showing that use or modification of the standard pole design is either technically or physically infeasible, or that the modified pole design will not comply with the City's ADA, sidewalk clearance requirements and/or would violate electrical or other safety standards, may deviate from the adopted standard pole design and use the design standards as adopted in this subsection A.
2. 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 using one of the following methods:

(a) Concealed completely within the pole or pole base. Antennas and the associated equipment enclosures (including disconnect switches and other appurtenant devices) shall be fully concealed within the pole, unless such concealment is otherwise technically infeasible, or is incompatible with the pole design. If 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 camouflaged to 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. 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.

(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.

3. 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.

4. 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.

5. 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.

6. Any replacement 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. Any replacement pole shall be placed as close to the original pole as possible, but no more than five (5) feet from the existing pole location.

7. 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.

8. 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.4 below.

9. 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 wooden poles shall conform to the following design criteria:

1. The wooden pole at the proposed location may be replaced with a taller 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 pole but may not increase the height of the existing 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.
4. Antennas, equipment enclosures, and all ancillary equipment, boxes and conduit shall be colored 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, 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 attached to the wooden pole or placed in accordance with subsection E.1. For equipment placed on the pole, the equipment must be placed in the smallest enclosure possible for the intended purpose. The equipment enclosure and all other wireless equipment associated with the utility pole, 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. The applicant is encouraged 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.
12. 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.
13. 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.
14. 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 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.
15. The diameter of a replacement pole shall comply with the City's setback and sidewalk clearance requirements and shall not be more than a 25% increase of the existing utility 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.4 below.
16. All cables and wires shall be routed through conduit along the outside of the 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 where 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 subsection E.1.

D. Small wireless facilities mounted on cables strung between existing utility poles shall conform to the following standards.

1. Each strand mounted facility shall not exceed three (3) cubic feet in volume.
2. Only one strand mounted facility is permitted between any two existing poles.
3. The pole must be able to support the necessary load requirements of the strand mounted facility.

4. The strand mounted devices shall be placed as close as possible to the nearest utility pole, in no event more than five (5) feet from the pole unless a greater instance technically necessary or is required by the pole owner for safety clearance.
5. No strand mounted device shall be located in or above the portion of the roadway open to vehicular traffic.
6. Ground mounted equipment to accommodate a shared mounted 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. Such strand mounted devices must be installed to cause the least visual impact and without excess exterior cabling or wires (other than the original strand).
9. Strand mounted facilities are only permitted on poles that have existing overhead wirelines.

E. General requirements.

1. Ground mounted equipment in the rights of way is prohibited, unless such facilities are placed under ground or the applicant can demonstrate that pole mounted or undergrounded equipment is technically infeasible. If ground mounted equipment is necessary, then the applicant shall submit a concealment element plan. Generators located in the rights of way are prohibited.
2. No equipment shall be operated so as to produce noise in violation of Chapter 16.16 BIMC.
3. 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.
4. 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.
5. 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.

6. 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.
7. 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.
8. The preferred location of a small wireless facility on a pole is the location with the least visible impact.
9. Antennas, equipment enclosures, and ancillary equipment, conduit and cable, shall not dominate the structure or pole upon which they are attached.
10. Except for locations in the right-of-way, small wireless facilities are prohibited on any property containing a residential use in the residential zones.
11. 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.
12. 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.060 New poles for small wireless facilities and installations in a Design Zone.

- A. New poles for small wireless facilities or for installations of small wireless facilities in a Design Zone 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.050;
 3. The proposed small wireless facility receives approval for a concealment element design, as described in subsection C below;

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

5. 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 or installation in a Design Zone 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 a tower, pole, or equipment structure, 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. The proposed pole or structure should have similar designs to existing neighboring poles in the rights-of-way, including similar height to the extent technically feasible. If the proposed small wireless facility is placed on a replacement pole in a Design Zone, then the replacement pole shall be of the same general design as the pole it is replacing, unless the Department of Planning and Community Development otherwise approves a variation due to aesthetic or safety concerns. Any concealment element design for a small wireless facility should attempt to mimic the design of such pole and integrate the small wireless facility into the design of the pole. Other concealment methods include, but are not limited to, integrating the installation with architectural features or building design components, utilization of coverings or concealment devices of similar material, color, and texture - or the appearance thereof - as the surface against which the installation will be seen or on which it will be installed, landscape design, or other camouflage strategies appropriate for the type of installation. Applicants are required to utilize designs in which all conduit and wirelines are installed internally in the structure.

2. If the Director has already approved a concealment element design either for the applicant or another small wireless facility along the same public right-of-way 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.060.A.1, the Director may determine that a new pole in the right-of-way is in fact a superior alternative based on the impact to the City, the concealment element design, the City's Comprehensive Plan and the added benefits to the community.

E. Prior to the issuance of a permit to construct a new pole or ground mounted equipment in the right-of-way, the applicant must obtain a site-specific agreement from the City to locate such new pole or ground mounted equipment. The requirement 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 wireless facility is more than sixty (60) feet.

F. 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 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 6. 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.

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 this Chapter 18.11 BIMC.

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 a request for an Eligible Facilities Request within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant 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 7. Corrections. The City Clerk and codifiers of the ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 8. 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 9. 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 _____ 2019.

APPROVED by the Mayor this ___ day of _____ 2019.

Kol Medina, Mayor

ATTEST/AUTHENTICATE:

Christine Brown, CMC, City Clerk

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

2019-38

M E M O R A N D U M

DATE: December 5, 2019
TO: Bainbridge Island Planning Commission
FROM: Daniel P. Kenny – Ogden Murphy Wallace
RE: Follow-up responses to prior planning commission comments and requests

The Planning Commission requested the items outlined below for its continued consideration of the small wireless code.

ITEM 1 – Table outlining industry comments and city responses.

- See Spreadsheet included in packet.

ITEM 2 – Pictures of actual and proposed small wireless deployments. These are only examples and a deployment within the City could look different as long as it is in compliance with the regulations being considered now.

- See PowerPoint with Pictures included in packet.

ITEM 3 – Map of design zones. Those design zones currently identified in the code are outlined on the maps included in the packet. If the commission alters those zones, these maps can be updated.

ITEM 4 - An option for the placement of equipment on the ground in the right-of-way. This option puts ground mounted as the last option, and also puts in place restrictions if that is the option used.

18.10A.050 Design and Concealment standards for small wireless facilities.

A. Small wireless facilities attached to existing or replacement non-wooden light poles or utility poles in the right-of-way or non-wooden light poles or utility poles outside of the right-of-way shall conform to the following design criteria:

2. 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 using one of the following methods [in the manner prescribed by E.1:](#)

(a) Concealed completely within the pole or pole base. Antennas and the associated equipment enclosures (including disconnect switches and other appurtenant devices) shall be fully concealed within the pole, unless such concealment is otherwise technically infeasible, or is incompatible with the pole design. If 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 camouflaged to 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. 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.

(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.

(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. The equipment enclosure may not be located within 10 feet of an entrance of a business or within the middle 50% of a residential lot's width. Prior to the issuance of any permit related to a 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.

B. Wooden pole design standards. Small wireless facilities located on wooden poles shall conform to the following design criteria:

...

11. Equipment for small wireless facilities shall be attached to the pole or to the wooden pole or placed in accordance with subsection E.1. For equipment placed on the pole, the equipment must be placed in the smallest enclosure possible for the intended purpose. The equipment enclosure and all other wireless equipment associated with the utility pole, 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. The applicant is encouraged 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.

E. General requirements.

1. Equipment ~~Ground mounted~~ on the ground ~~equipment~~ in the rights of way is not allowed ~~prohibited~~, unless such facilities are placed under ground or the applicant can demonstrate that pole mounted, completely concealed within the pole, on private property, or undergrounded equipment, as described in section 18.10A.050(A)(2)(b-e), is technically or physically infeasible. If ground mounted equipment is necessary, then the applicant shall submit a concealment element plan. Generators located in the rights of way are prohibited.

ITEM 5 – Allowance for small wireless facilities on private drives/access easements which would otherwise be prohibited as a residential use in a residential zone.

18.09.030.B.5 (General Use Regulations)

5. Small wireless facilities. Except for locations in the right-of-way, small wireless facilities are prohibited on any property containing a residential use in the residential zones. Except where small wireless facilities are intended to be located more than 400 feet from a right-of-way and within an access easement over residential property, the location may be allowed if the applicant affirms that they have property owner permission to locate the facility in the desired location, that the property owner where the facility will be installed has authority to grant such permission to locate the facility and related infrastructure at the designated location pursuant to the terms of the access easement, that the installation is allowed by and consistent with the access easement, that such installation will not frustrate the purpose of the easement or create any access or safety issue, and shall be in compliance with all land use regulations such as, but not limited to, setback requirements.

18.10A.050.E.10

10. Except for locations in the right-of-way, small wireless facilities are prohibited on any property containing a residential use in the residential zones. Except where small wireless facilities are intended to be located more than 400 feet from a right-of-way and within an access easement over residential property, the location may be allowed if the applicant

affirms that they have property owner permission to locate the facility in the desired location, that the property owner where the facility will be installed has authority to grant such permission to locate the facility and related infrastructure at the designated location pursuant to the terms of the access easement, that the installation is allowed by and consistent with the access easement, that such installation will not frustrate the purpose of the easement or create any access or safety issue, and shall be in compliance with all land use regulations such as, but not limited to, setback requirements.

Page of Ordinance No. 2019-38, Adopting Small Wireless Design Standards (Clean for PC Review)	Code Section	Industry Comment	City Response
4	18.09.030.B.5	VERIZON - This will need to be modified to address private drives where the poles are on private property with residential uses.	CITY – Agreed. Private drives need to be considered and discussed by the Planning Commission.
9	18.10A.040.A	VERIZON -It would be helpful to see these mapped	CITY – The selection and/or modification of design zones will be discussed with Planning Commission. Staff will prepare maps that will show these zones and others that may come up in conversation.
9	18.10A.040.B	<p>T-MOBILE - Local governments lack authority to limit small wireless facilities to certain locations unless the provider can demonstrate that service cannot be provided using an alternative location or pole.</p> <p>First, local governments cannot materially limit or inhibit T-Mobile from competing on a fair and balanced regulatory playing ground. 47 U.S.C. § 253; Decl. Ruling ¶¶ 35-37. By attempting to limit wireless facilities to certain areas, while imposing no such limits on telecommunications providers that do not use wireless technologies, local governments are creating a regulatory benefit for T-Mobile’s competitors and inhibiting T-Mobile from providing service and competing. Wireline providers are not limited to certain areas. This is particularly critical in dense areas where demand is high and consumers expect quality service.</p> <p>Second, the FCC made clear that local regulations based on aesthetics must be “reasonable,” and to be reasonable, the regulations must be technologically feasible. Decl. Ruling ¶ 87. The Declaratory Ruling makes clear that what is “technically feasible” is dictated by the performance characteristics that T-Mobile chooses and seeks to achieve. Id. ¶ 37, n.87. Moreover, the FCC makes clear that “local jurisdictions do not have the authority to require that providers offer certain types or levels of service, or to dictate the design of a provider’s network.” Id. ¶ 37, n.84 (emphasis added)..</p> <p>Finally, the City’s requirement that a provider make a showing to justify a location is placing the City in the position of adjudicating the existence of an effective prohibition of service and doing so based on a rejected standard. The FCC rejected as incorrect previous court interpretations that required a showing of a “significant gap” and that the proposal was the “least intrusive” or “only feasible” means of remedying that gap. Decl. Ruling ¶ 40, n.94. The FCC explained that the significant gap tests thrust cities into regulating and evaluating carriers’ services, “an inquiry for which they are ill-qualified to pursue and which could only delay infrastructure deployment.” Id. ¶ 40, n.95. Thus, the City cannot prohibit deployment of small wireless facilities in certain areas or on certain types of poles unless T-Mobile makes a showing to the City that is based on a fundamentally erroneous legal standard and that is not within the City’s authority to evaluate.</p>	<p>CITY –</p> <p>First – this code was written specifically to not materially limit or inhibit T-Mobile’s (or any other applicant’s) participation or business.</p> <p>Second, Design Zones do not limit the roll out of small wireless in those zones. Small wireless facilities are allowed in those zones. This creates a process for review in a sensitive area. That process does not materially inhibit or prohibit the rollout of small wireless facilities as they will never be prohibited.</p> <p>Finally, this is not based on the outdated significant gap in coverage test.</p>
9	18.10A.040.B	VERIZON – proposed revision from 500 feet down to 200 feet. 5G antennas have a limited range, especially in a heavily treed environment.	CITY – because small wireless facilities have a radius of 500-1000 feet (modified down to 250-750ft by Verizon at the last meeting), placing the facility up to 500 feet away could be an issue. However, if the applicant shows technical infeasibility to operate in that other location, it would not be required.
9	18.10A.050.A.1	T-MOBILE - Any City standard pole design should be flexible and able to accommodate various small cell designs. If the standard pole design is limited to allowing only one or two types of small cell design, this provision may have the effect of limiting the technologies providers may employ.	CITY – if the City adopts a standard pole design, it should do so in consultation with the carriers to ensure it is usable for all facility types, or there should be alternatives.

10	18.10A.050.A.2.b	T-MOBILE - A unified enclosure small cell design should be allowed on City poles.	CITY – Unified Enclosures are specifically addressed in B12 below, which is on wood poles. These non-wooden pole requirements would not preclude a unified enclosure, which is where the antenna and equipment are all in the same enclosure, rather than spread down the pole. We’ve only heard of this from T-Mobile. PC could make this explicit A.2.b in a manner similar to B.12. See revisions just below.
10	18.10A.050.A.2.b	T-MOBILE – proposed addition of “a unified enclosure or” following the words “The applicant may propose...” as well as following “as the inside edge of the...”	CITY – This is in a circumstance where the installation of equipment/antennas is permitted on the exterior of the pole. Therefore, this could be considered.
10	18.10A.050.A.2.c	VERIZON -Unlike macro facilities, which generate much more powerful signals, small wireless facility equipment has a much more limited range. Placing radios underground separates the antennas from the radios in such a way that the signal is degraded through path loss. Also, cooling small wireless facility equipment and radios require airflow which introduces moisture in the rainy climate of the Pacific Northwest that can corrode the radios.	CITY – This is the common response regarding requiring equipment to go underground. I would encourage considerations that would allow options for locations in case the underground option does not work. Also, consider that underground is intrusive to the ROW in terms of cuts, infrastructure, etc. Not always the best option.
10	18.10A.050.A.4	T-MOBILE -This is dependent on the interior space within the pole. If the pole is too narrow to accommodate this, other designs or a replacement pole with adequate diameter must be allowed.	CITY – As noted, the primary issue with utilizing existing non-wooden poles is that they cannot accommodate the installation. So, this will result in replacement or new poles.
11	18.10A.050.A.8	T-MOBILE – proposed revision: “equipment or cabling within the base of the pole”	CITY – This comment is noted, but because the measurement is at the base of the pole, the request for the allowance for equipment or cabling within the pole would not apply. This is trying to change the section to create a way to get more diameter up on the pole as well as at the base. The point of the allowance here is to allow more diameter at the base to allow the equipment to be placed in the base of the pole so it is not up on the pole. The pole itself would be a replacement, so the diameter higher on the pole should never been an issue. It would be new.
12	18.10A.050.B.4	CROWN CASTLE - please note that 5G antennas can’t be painted at this time. We can tint them, but we can’t paint them. “Colored” could work, as long as tinting will suffice.	CITY – The requirement to be colored or painted to match would not preclude tinting, which would achieve the colored requirement.
12	18.10A.050.B.7	CROWN CASTLE - canister antennas range in height from 2’-4’ tall. 16” won’t work.	CITY – Propose clarifying this is 16 inches in diameter. Height is controlled by either B1 or B2.
13	18.10A.050.B.12	T-MOBILE – proposed addition to end of sentence: “...banners or signs or the equipment itself.”	CITY – Agree with the proposed additional language.
14	18.10A.050.D.1	CROWN CASTLE - we like to ask for 4 cu. ft. to account for power supplies.	CITY – I would encourage the City to research load capacity for this type of installation. This is required under #3. I have seen 4cf in other jurisdictions.
15	18.10A.050.D.4	T_MOBILE – Proposed revision: “greater instance distance is technically...”	CITY – Agreed with proposed revision.
16	18.10A.050.E.7	VERIZON – still confirming whether this will work with Verizon designs.	

16	18.10A.050.E.10	VERIZON - This is another place to address private drives.	CITY – Agreed. Private drives need to be considered and discussed.
16	18.10A.050.E.10	T-MOBILE - Attachment to multi-family buildings should be allowed.	CITY – This should be discussed by Planning Commission. Apartments/Condos as well as mixed use could be locations where small cell could be placed. Note that they would always be allowed in the ROW in residential zones, so that option remains available.
16	18.10A.050.E.11	T-MOBILE - This provision requiring alternative sites analysis raises similar concerns to those outlined in Comment 1 above.	CITY – This provision does not require alternative site analysis. The City is specifically allowed to adopt aesthetic standards and has published them in advance. This provision allows for the cumulative impact of multiple sites to be considered, but specifically states that it will not result in <u>limited approvals</u> .
16	18.10A.050.E.12	T-MOBILE – Proposed revision: “...particular technology or which interferes with the provider’s technologically effective network design. ”	CITY – The City is entitled to adopt design and aesthetic standards per the FCC order. The City’s adopted standards are not directed at the provider’s “technologically effective network design.”
17	18.10A.060.C.2	T-MOBILE - This has the effect of dictating technology and/or network design, see initial comment from T-Mobile..	CITY – This provision has multiple points of relief for industry. This does not dictate technology or network design.
17	18.10A.060.D	T-MOBILE – See initial comment from T-Mobile on page 10.	CITY – A new pole would always be the best option for industry because it wouldn’t be tied to any existing location or design.
18	18.10A.060.E	T-MOBILE – proposed revision: “The requirement also applies to the placement of replacement <u>City-owned</u> poles when the replacement <u>of the City-owned pole is necessary for the installation or attachment of the small wireless facility...</u> ”	CITY – Reject proposed change. The placement of a replacement pole would be a new location within the ROW that must have an appropriate permit.
18	18.10A.060.F	T-MOBILE – Proposed revision: “Nothing herein shall be interpreted or applied in a manner which dictates the use of a particular technology or which interferes with the provider’s technologically effective network design <u>or which interferes with the provider’s technologically effective network design.</u> ”	CITY – The City is entitled to adopt design and aesthetic standards per the FCC order. The City’s adopted standards are not directed at the provider’s “technologically effective network design.”
21	18.11.040	CROWN CASTLE – Proposed revision: “...is not covered by 47 CFR §1.40001 and this Chapter 18.11 BIMC.”	CITY – This proposed revision is fine – that is the effectuating provision.
21	18.11.050.A.3	CROWN CASTLE – proposed revision: “...within ten (10) days if that the supplemental submission”	CITY – Agree with revision.

Small Cell Siting and Rights-of-Way:



OGDEN
MURPHY
WALLACE
ATTORNEYS

Las Vegas Strip



Las Vegas



Los Angeles



Los Angeles

Courtesy of
Jonathan Kramer



Seattle



Seattle – AT&T on Light Pole



Bellevue



Mercer Island



Seattle – T-Mobile

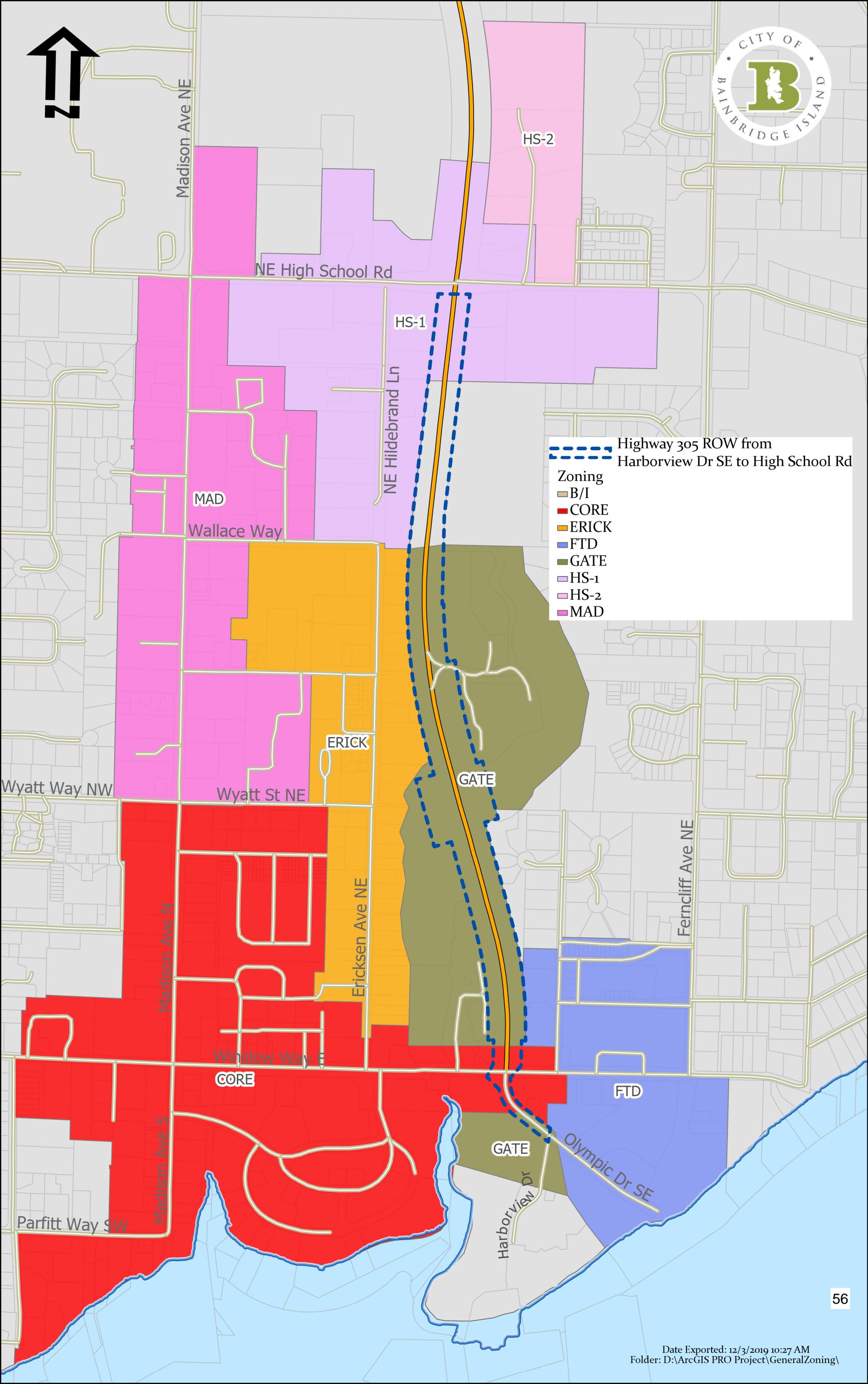


Contact Us

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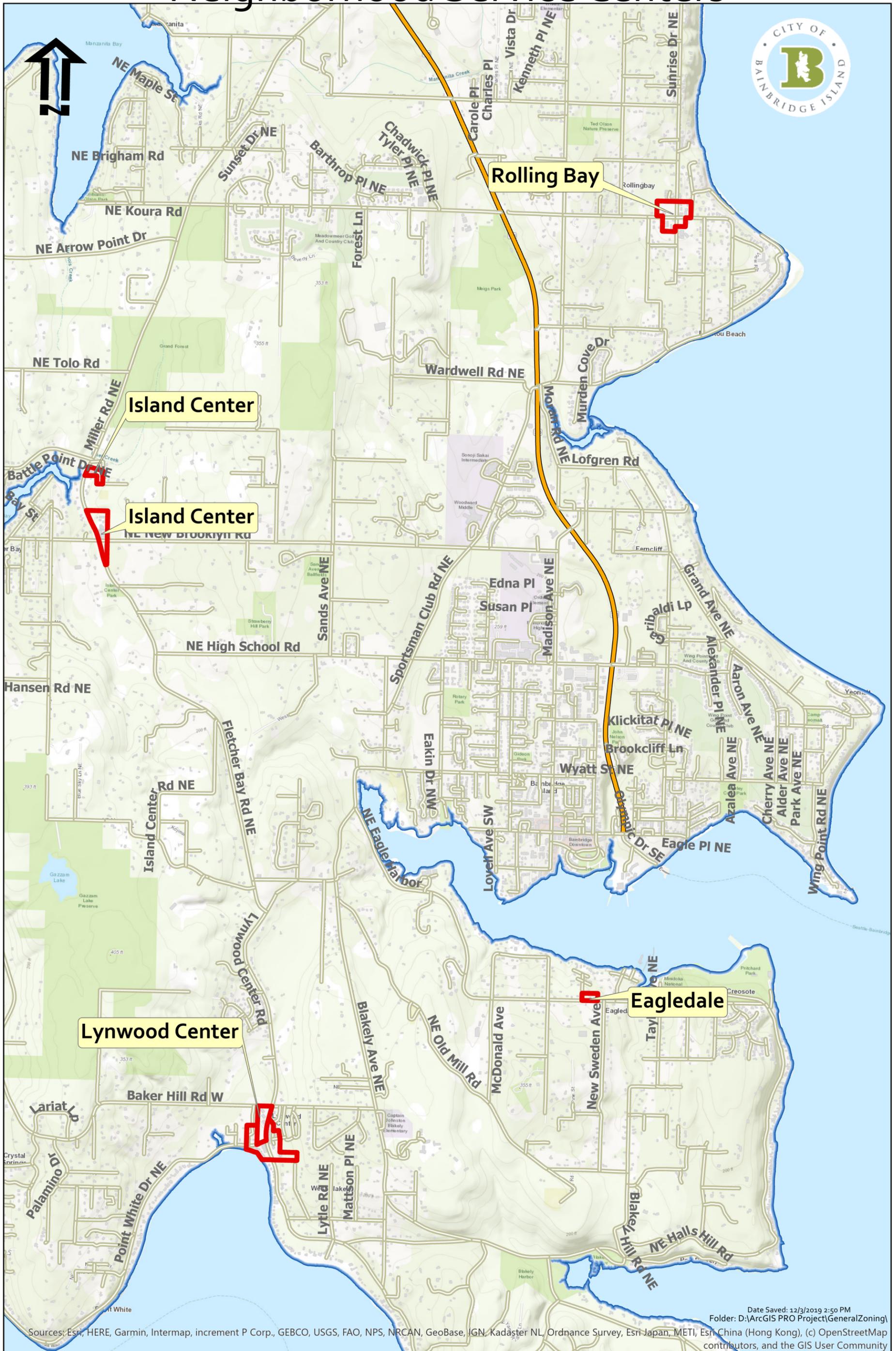


--- Highway 305 ROW from Harborview Dr SE to High School Rd

Zoning

- B/I
- CORE
- ERICK
- FTD
- GATE
- HS-1
- HS-2
- MAD

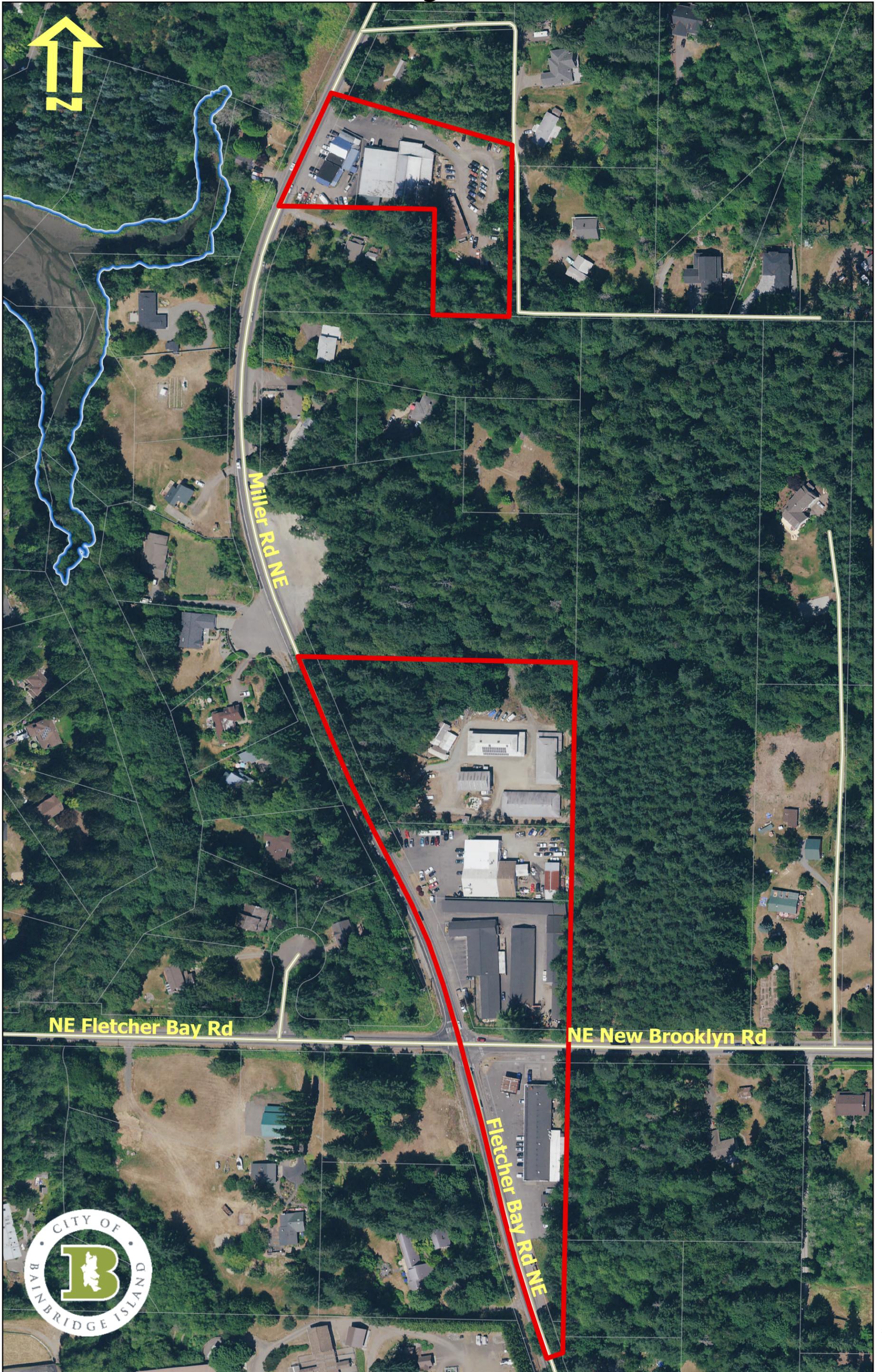
Neighborhood Service Centers



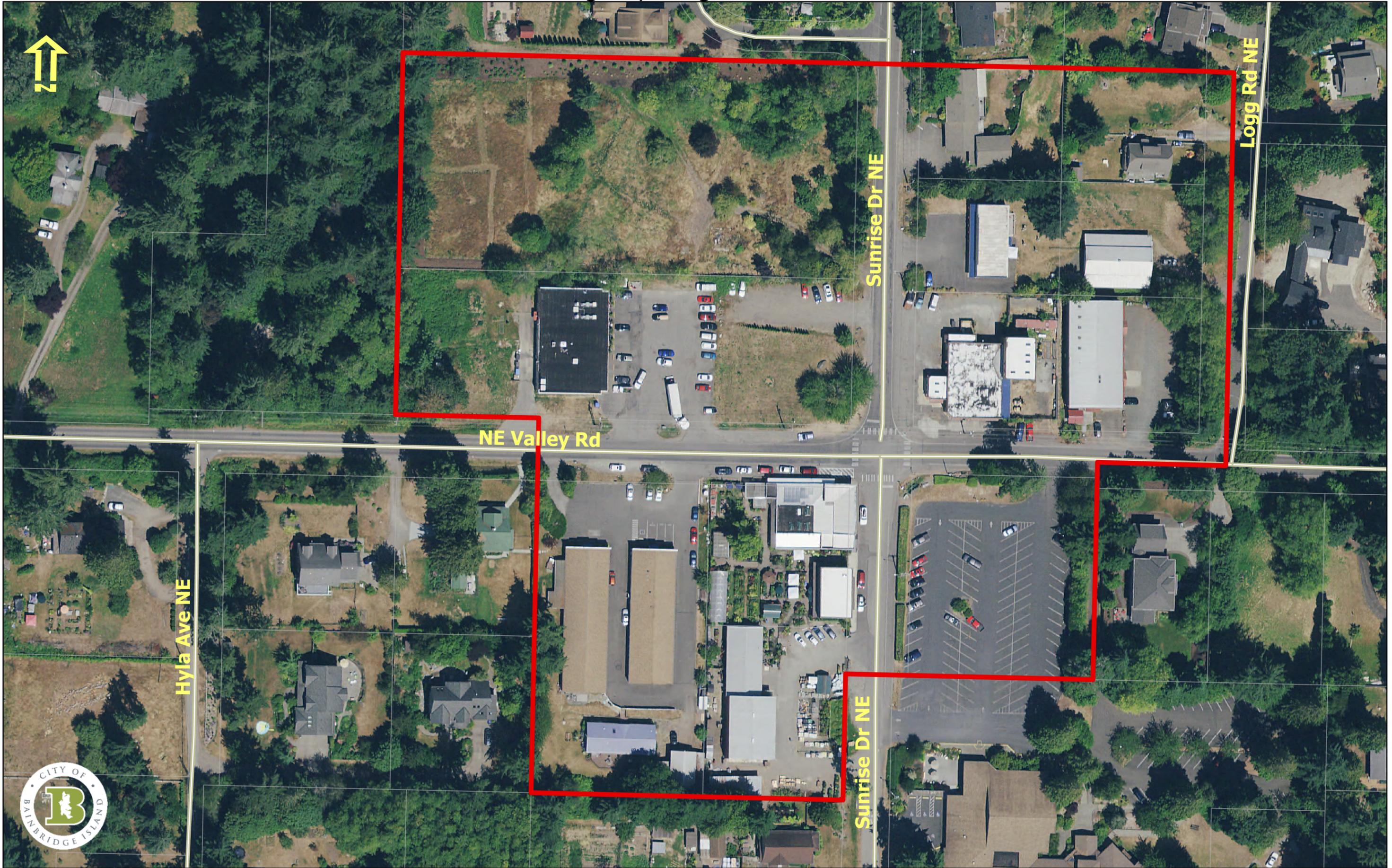
Lynwood Center Neighborhood Center



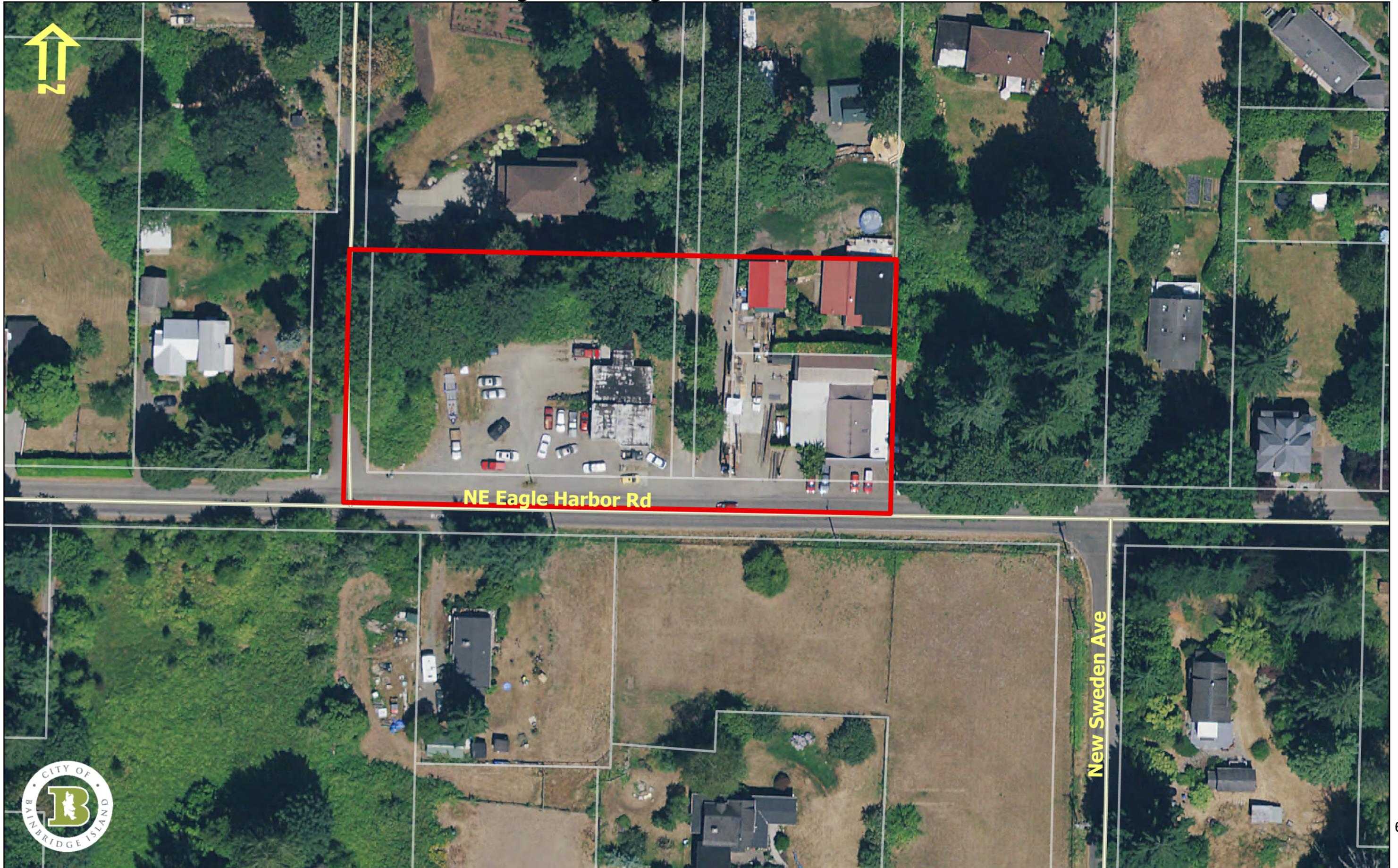
Island Center Neighborhood Centers



Rolling Bay Neighborhood Center



Eagledale Neighborhood Center



NE Eagle Harbor Rd

New Sweden Ave





CITY OF
BAINBRIDGE ISLAND

Planning Commission Special Meeting Agenda Bill

MEETING DATE: December 12, 2019

ESTIMATED TIME: 45 Minutes

AGENDA ITEM: (8:15 PM) Ordinance No. 2019-09 Relating to Accessory Dwelling Units (ADUs) - Planning,

SUMMARY: Ordinance 2019-09 revises ADU standards and zoning definitions regarding common ownership, lot coverage, and tiny homes.

AGENDA CATEGORY: Ordinance

PROPOSED BY: Planning & Community Development

RECOMMENDED MOTION: Discussion. I move to forward Ordinance 2019-09 to a public hearing on January 9, 2020. NOTE: Ordinance number will be updated to reflect new year.

STRATEGIC PRIORITY: Green, Well-Planned Community

FISCAL IMPACT:

Amount:	
Ongoing Cost:	
One-Time Cost:	
Included in Current Budget?	

BACKGROUND: Beginning in Fall, 2018, the City Council has conducted a review of rules related to Accessory Dwelling Units (ADUs) in response to Recommendation #3 from the Affordable Housing Task Force (2018) to "adopt procedures to encourage Accessory Dwelling Units."

The City Council discussed a variety of accessory dwelling unit and small-unit housing topics during 5 meetings over a 12-month period: October 23, 2018, June 18, July 23, September 10 and October 22, 2019. These City Council meetings and materials can be read and viewed from the City's website. The City Council's final policy direction from their October 22, 2019 meeting is captured in Draft Ordinance 2019-09 that makes the following changes to accessory dwelling unit regulations (BIMC Section 18.09.030.I.5) and zoning definitions (BIMC Section 18.36.030), described further in this memo:

- Requires common ownership of new ADUs, such that sale or ownership of an ADU separate from the primary single-family dwelling is prohibited.
- Removes "lot coverage" standard as a barrier to constructing ADUs for properties that are less than 40,000 square feet in size in residential zones.

- Acknowledges that residential subdivisions (and consequently, ADUs) are now permitted in the Mixed Use Town Center and High School Road zoning districts with approval of the new subdivision regulations (Ordinance 2019-03) by removing current BIMC Section 18.09.030.I.5.n.
- Adds new definition for “tiny home”- a dwelling smaller than 400 square feet. A tiny home could be the primary or accessory dwelling unit on a property.

On October 22, the City Council finalized their policy direction on modifications to ADU regulations for the Planning Commission, and Ordinance 2019-09 executes that Council policy direction.

ATTACHMENTS:

[20191212 Staff Memo on ADUs \(1\).docx](#)

[20191106 Ordinance 2019-09 DRAFT.docx](#)

[ADU Use Specific Standards 18.09.030 Attachment A](#)

[Building Official Memo re Tiny Home Appendix Q Adoption](#)

[Appendix Q](#)

FISCAL DETAILS: N/A

Fund Name(s):

Coding:

Department of Planning and Community Development

Memorandum

Date: December 12, 2019
To: Planning Commission
From: Jennifer Sutton, AICP
Senior Planner
Subject: Proposed Ordinance 2019-09: Accessory Dwelling Unit Regulations

I. Council Policy Direction for Accessory Dwelling Unit (ADU) Regulations

The City Council discussed a variety of accessory dwelling unit and small-unit housing topics during 5 meetings over a 12-month period: October 23, 2018, June 18, July 23, September 10 and October 22, 2019. These City Council meetings and materials can be read and viewed from the [City's website](#). The City Council's final policy direction from their October 22, 2019 meeting is captured in Draft Ordinance 2019-09 that makes the following changes to accessory dwelling unit regulations (BIMC Section 18.09.030.I.5) and zoning definitions (BIMC Section 18.36.030), described further in this memo:

- Requires common ownership of new ADUs, such that sale or ownership of an ADU separate from the primary single-family dwelling is prohibited.
- Removes "lot coverage" standard as a barrier to constructing ADUs for properties that are less than 40,000 square feet in size in residential zones.
- Acknowledges that residential subdivisions (and consequently, ADUs) are now permitted in the Mixed Use Town Center and High School Road zoning districts with approval of the new subdivision regulations (Ordinance 2019-03) by removing current BIMC Section 18.09.030.I.5.n.
- Adds new definition for "tiny home" - a dwelling smaller than 400 square feet. A tiny home could be the primary or accessory dwelling unit on a property.

II. Common Ownership Requirement for ADU & Primary Residence

On October 23, 2018, the City Council was briefed by the City Attorney's office about the City's ADU regulations and state condominium law. The City currently allows ADUs as an accessory use to single-family residences ([BIMC Table 18.09.020](#)) and applies additional regulations to ADUs in [BIMC 18.09.030.I.5](#). The Council had requested the briefing from the City Attorney's office on the following question:

Can the City of Bainbridge Island prohibit, regulate, or otherwise discourage property owners from making condominiums out of accessory dwelling units (ADUs) located on their property, which then may be sold separately from the primary dwelling?

Brief Answer: A local regulation directly prohibiting the creation of condominiums would likely be preempted by state law and impermissible. However, there are other avenues through which the

City can address or mitigate unwanted effects of property owners making condominiums out of ADUs.

The City Council discussed these issues at their meeting on October 23, 2018. At the end of the discussion, the Council voted to direct staff to bring back an ordinance to require common ownership of ADUs. See page 2 of Ordinance 2019-09 that proposes to add new provisions to BIMC 18.09.030.I.5.e.

III. Relaxing ADU Development Standards: Lot Coverage

The City Council has discussed the Affordable Housing Task Force final report and recommendations on several occasions, and endorsed a City work plan to address the "Priority" and "Quick Win" recommendations. Priority Recommendation #3 is Adopt procedures to encourage ADUs. There has been a total of 220 ADU building permits issued since 1991, as far back as City electronic permit records go. The City will work toward accomplishing Priority Recommendation #3 goal in several different ways, including considering expedited permitting and fee reductions/waivers.

Ordinance 2019-09 modifies ADU development regulations so that new ADU building footprints would not count toward overall lot coverage limits for residentially zoned properties smaller than 40,000 square feet in size- see section 18.09.030.I.5.m in the ordinance. Note: one acre equals 43,560 square feet in sized. This change could allow for construction of ADUs on smaller properties, such as properties and would not modify any other development standards such as setbacks, building height, aquifer recharge protection area or stormwater management requirements for new hard surfaces.

For reference, see lot coverage definition below and lot coverage standards by zone.

BIMC 18.12.050.K. (Lot Coverage.) "Lot coverage" means that portion of the total lot area covered by buildings, excluding up to 24 inches of eaves on each side of the building, any building or portion of building located below predevelopment and finished grade. Any portion of a slatted or solid deck located more than five feet above grade shall be counted towards lot coverage. Also excluded are ground-mounted accessory small wind energy generators, solar panels, composting bins, rain barrels/cisterns, and covers designed to shade ground-mounted heat pumps and air conditioners to increase their efficiency.

Zone	Lot Coverage Standard (BIMC Table 18.12.020-2)
R-0.4	10%
R-1	15%
R-2	20%
R-2.9	25%
R-3.5	25%
R-4.3	25%
R-5	25%
R-8	25%
R-14	40%

IV. Tiny Homes

At its March 5, 2019 meeting, the City Council discussed tiny homes, and indicated that they wanted to consider whether to allow tiny homes with wheels to be approved as permanent residences. Tiny homes with wheels are currently classified as recreational vehicles ("RVs") and are not considered to be permanent residences, while tiny homes that are set on a foundation can be considered as a permanent residence. Current [ADU Use Specific Standards, BIMC Section 18.09.030.I.5.i](#) provides that RVs, and therefore tiny homes with wheels, shall not be ADUs.

Recent State Legislation related to Tiny Home & Tiny Home Communities ([ESSB 5383](#)): During the 2019 legislative session the Washington State Legislature approved [ESSB 5383](#), a bill which promotes tiny homes and tiny home communities as described below:

- Provides that tiny homes on wheels are allowed as primary residences in manufactured or mobile home communities;

- Added new Chapter 35.21 RCW to describe how a City or town may adopt an ordinance to regulate the creation of tiny house communities;
- Directs the State Building Council to adopt standards specific to tiny homes by December 31, 2019. The legislature expects the newly-issued IRC guidance to become the basis for these standards. Local governments, in turn, can amend their building codes to include these new provisions. In 2018, the International Code Council issued tiny house building standards in [Appendix Q](#) of the International Residential Code (IRC). The City will need to update our Building Code once the state updates its standards.

With the state building code being updated for tiny homes (with or without wheels), the City's zoning code will be updated to reflect this new type of housing (see new definition, page 3 of Ordinance 2019-09). Currently, tiny home of any kind cannot be permitted as dwellings on Bainbridge Island. The changes related to tiny homes in Ordinance 2019-09 mean that tiny homes would be treated like other legal dwellings- primary or accessory.

On-site Septic, Sewer and Water: The Kitsap Public Health District will require the same water and sanitation standards for tiny homes (with or without wheels) as permanent residences as they do for ADUs. For properties served by on-site septic, this means having two-bedrooms of a septic system allocated to the tiny home. If the property is served by sewer and/or a public water system, the tiny home may or may not need a separate sewer or water connection depending on the location of the utility lines and primary residence. If the property is served by a private well, then the well would need to be approved as a two-party (or more) well by the Health District. Like an ADU, a tiny home would count as a separate party.

V. NEXT STEPS

The Planning Commission must hold a public hearing on Ordinance 2019-09 prior to making a recommendation on the ordinance to the City Council. A public hearing is tentatively scheduled for January 9, 2020.

The City Council's summer 2019 discussion of limiting common ownership for ADUs and tiny homes had expanded to include the topics of tiny home communities (see [ESSB 5383](#) discussion above) and allowing recreational vehicles (RVs) to be permitted as residences. During their discussion on September 10, the City Council opted to continue discussion of RVs and tiny home communities separately from the other changes to ADU regulations in draft Ordinance 2019-09, and those topics have been removed from the draft ordinance. RVs and tiny home communities will be scheduled for City Council discussion in 2020.

ORDINANCE NO. 2019-09

AN ORDINANCE of the City of Bainbridge Island, Washington, relating to accessory dwelling units and tiny homes and amending Section 18.09.030.I.5 and Section 18.36.030 of the Bainbridge Island Municipal Code.

WHEREAS, the City has permitted and regulated accessory dwelling units as an accessory use to single-family residences for many years; and

WHEREAS, accessory dwelling units are recognized as a type of affordable housing; and

WHEREAS, the City is aware of a limited number of property owners who have turned an accessory dwelling unit into a condominium pursuant to Chapter 64.34 RCW, and some of those units may have been sold to a person other than the owner of the single-family residence (primary dwelling unit); and

WHEREAS, given the high real estate prices on Bainbridge Island, the sales price of an accessory dwelling unit sold as a condominium is unlikely to meet the definition of “affordable housing” as it relates to an income qualified household earning a middle-income or below, which is generally defined by Chapter 18.21 BIMC and BIMC 18.36.030.16 as one-hundred and twenty percent (120%) or below of the Department of Housing and Urban Development median income levels for the Bremerton-Silverdale metropolitan statistical area; and

WHEREAS, the City Council desires to maintain the affordability of accessory dwelling units by limiting the ability to sell them separately from the primary dwelling unit; and

WHEREAS, in addition to considering issues related to accessory dwelling unit ownership, the City Council has considered issues related to allowing tiny homes, with or without wheels, to be considered as permanent residences as a way to increase affordable housing options; and

WHEREAS, the City Council approved updated subdivision regulations, via Ordinance 2019-03, on September 24, 2019, and those new regulations now allow new single-family residences in the Mixed Use Town Center and High School Road zones and, therefore, accessory dwelling units will also be allowed in those zones.

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

Section 1. Section 18.09.030.I.5 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

Section 18.09.030.I.5 Accessory Dwelling Unit

In addition to all other applicable location and use regulations in Titles 16, 17 and 18, the following regulations apply to accessory dwellings units (ADU), including tiny homes utilized as ADU.

a. An accessory dwelling unit (ADU) may be created within, or detached from, any single-family dwelling, whether existing or new, as a subordinate use, where permitted (“P”) by this chapter.

e. Sale or ownership of an ADU separate from the primary single-family dwelling is prohibited. This prohibition does not apply to an accessory dwelling unit that is owned in the condominium form of ownership prior to the effective date of this ordinance. Further, this prohibition does not apply to an accessory dwelling unit that was lawfully in existence prior to the effective date of this ordinance, or an accessory dwelling unit for which a complete building permit application has been submitted for that accessory dwelling unit prior to the effective date of this ordinance.

ef. One off-street parking space shall be provided in addition to off-street parking that is required for the primary dwelling.

fg. Accessory dwelling units shall be designed to maintain the appearance of the primary dwelling as a single-family dwelling, containing 900 square feet of floor area or less. However, if the accessory dwelling unit will be located within a building existing as of the approval date of Ordinance No. 2015-16 (for example, in a basement) the city may allow an increased size in order to efficiently use all floor area. If a separate outside entrance is necessary for an accessory dwelling unit located within the primary dwelling, that entrance must be located either on the rear or side of the building.

gh. If an accessory dwelling unit is constructed in conjunction with a garage, the square footage of the garage shall not count towards the 900-square-foot limitation.

hi. An accessory dwelling unit not attached to the single-family dwelling may not contain any accessory use other than a garage.

ij. No recreational vehicle shall be an accessory dwelling unit.

jk. When stairs utilized for the ADU are enclosed within the exterior vertical walls of the building, they shall not count towards the floor area of the ADU.

~~kl.~~ The ADU shall share a single driveway with the primary dwelling.

~~lm.~~ School impact fees and qualified exemptions from those fees as provided in Chapter 15.28 BIMC shall apply.

~~mn.~~ All other applicable standards including, but not limited to, ~~lot coverage~~, setbacks, parking requirements, and health district or city requirements for water, sewer, and/or septic must be met. Accessory dwelling units are excluded for the purposes of calculating lot coverage requirements on lots smaller than 40,000 square feet.

~~n.~~ ~~In the Mixed Use Town Center, new accessory dwelling units are only permitted as part of a housing design demonstration project single family subdivision approved pursuant to BIMC 2.16.020.S.~~

Section 2. Section 18.36.030 of the Bainbridge Island Municipal Code is hereby amended to add the following:

18.36.030 Definitions

10. “Accessory dwelling unit” means ~~a dwelling separate living quarters~~ containing kitchen facilities, where the living quarters are contained within or detached from a single-family dwelling on a single lot.

80. “Dwelling” or “dwelling unit” means a building or portion of a building that provides independent living facilities with provisions for sleeping, eating and sanitation; provided a tiny home is considered a dwelling, however a recreational vehicle or bus is not a dwelling or dwelling unit. A facility for sleeping is a habitable room large enough for a couch, bed or cot. A closet in the room is not necessary for the room to be considered a bedroom. Provisions for sanitation mean that bathing facilities are provided, e.g., a shower or a tub. A toilet and sink in a room are not considered bathing facilities. A kitchen is necessary to provide facilities for eating (see definition of “Kitchen”).

259. “Tiny home” means a dwelling less than 400 square feet in size that provides independent living facilities with provisions for sleeping, eating, cooking, and sanitation and is constructed to meet the requirements of the International Residential Code. Tiny homes can be on a foundation or on wheels.

Section 3. 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.

XXXX, Mayor

ATTEST/AUTHENTICATE:

Christine Brown, City Clerk

FILED WITH THE CITY CLERK:	October 15, 2019
PASSED BY THE CITY COUNCIL:	
PUBLISHED:	
EFFECTIVE DATE:	
ORDINANCE NUMBER:	2019-09

18.09.030.I.5. Accessory Dwelling Unit.

- a. An accessory dwelling unit (ADU) may be created within, or detached from, any single-family dwelling, whether existing or new, as a subordinate use, where permitted (“P”) by this chapter.
- b. In the shoreline jurisdiction, an accessory dwelling unit may be created within, or detached from, any single-family dwelling, whether existing or new, as a subordinate use, where conditional (“C”) pursuant to this chapter. See Chapter [16.12](#) BIMC for shoreline conditional use process.
- c. Only one accessory dwelling unit may be created per parcel.
- d. No variances shall be granted for an accessory dwelling unit.
- e. One off-street parking space shall be provided in addition to off-street parking that is required for the primary dwelling.
- f. Accessory dwelling units shall be designed to maintain the appearance of the primary dwelling as a single-family dwelling, containing 900 square feet of floor area or less. However, if the accessory dwelling unit will be located within a building existing as of the approval date of Ordinance No. 2015-16 (for example, in a basement) the city may allow an increased size in order to efficiently use all floor area. If a separate outside entrance is necessary for an accessory dwelling unit located within the primary dwelling, that entrance must be located either on the rear or side of the building.
- g. If an accessory dwelling unit is constructed in conjunction with a garage, the square footage of the garage shall not count towards the 900-square-foot limitation.
- h. An accessory dwelling unit not attached to the single-family dwelling may not contain any accessory use other than a garage.
- i. No recreational vehicle shall be an accessory dwelling unit.
- j. When stairs utilized for the ADU are enclosed within the exterior vertical walls of the building, they shall not count towards the floor area of the ADU.
- k. The ADU shall share a single driveway with the primary dwelling.
- l. School impact fees and qualified exemptions from those fees as provided in Chapter [15.28](#) BIMC shall apply.
- m. All other applicable standards including, but not limited to, lot coverage, setbacks, parking requirements, and health district or city requirements for water, sewer, and/or septic must be met.
- n. In the Mixed Use Town Center, new accessory dwelling units are only permitted as part of a housing design demonstration project single-family subdivision approved pursuant to BIMC [2.16.020.S](#).

Memorandum

To: Heather Wright, PCD Director

From: Todd Cunningham, Building Official

Re: Tiny Homes

Date: 07-18-2019

At the June 18, 2019 meeting of the City Council, the Mayor and Council entered into a discussion related to allowing tiny homes to be placed on properties within the City. The Council provided staff direction to move forward with methodology to address this subject and the Council's desire to allow for the placement of tiny homes; staff has prepared this information in response.

Every three years, the construction code writing organizations update their respective technical and administrative codes. The Revised Code of Washington (RCW), Section 19.27, requires that jurisdictions within the State of Washington adopt these codes as required by RCW through the oversight of the Washington State Building Code Council (SBCC). The code cycle for the 2018 codes is currently active and moving toward finalization. As this takes place, the consideration for approval of tiny home construction was added to the draft language of the International Residential Code (IRC) as an appendix chapter, namely Appendix Q, "Tiny Homes." (See attached.)

Unlike any prior code/s, Appendix Q provides support for the construction of tiny homes allowing for a variation of alternate choices and code application for construction of these homes by allowing greater flexibility from previous IRC requirements while still maintaining a level of life-safety standards commensurate with past and current codes. As the current code adoption cycle moves forward, the state, through the enactment of ESSB 5383, has formalized the direction to develop a method in which to address and allow tiny home construction; Appendix Q does this.

The legislative directive included a deadline of December 31, 2019. It is anticipated that the State Building Code Council will have the formalized document in place and that jurisdictions across Washington State will begin to allow tiny home construction practices to take place as early as July 1, 2020, which is the effective date of the newly adopted codes. This will include both permanent ground constructed homes and chassis structures.

As the Council continues its interest in tiny homes, City staff encourages the Council to thoroughly consider the timeline and alignment of the state adoption process as it relates to the City's desire to move forward in allowing these homes. Under the City's current timeline, the City's process is not lining up well with the state's process because the City is on a path to take action prior to the

effective date of the new state code provisions. It is anticipated that the state codes will publish on January 1, 2020 and have an effective date of July 1, 2020, at which time tiny home construction can move forward without delay.

If the City implements new local regulations prior to the effective date of the new state regulations related to allowing for the construction of tiny homes, there would need to be some level of construction oversight developed by either using the current IRC or developing construction standards for tiny homes in the absence of chassis built standards or recreational vehicle standards already in place. An alternative approach might be to use the proposed Appendix Q, although it is not yet finalized by the state and revisions are still taking place. Taking such an alternative approach, however, could misalign construction standards by allowing tiny homes prior to official state adoption of the final document.

At the local level, if the Council moves forward earlier than state adoption of the new tiny home regulations, the earliest window for approval is estimated to be sometime around the end of October 2019, which is a couple of months prior to the publication date of the new state regulations. Because of this timing, staff recommends that the Council wait to implement provisions for the construction and placement of tiny homes while still allowing, as applicable, for land use review of applications for tiny homes to move forward through the land use process until such time as there are state-adopted standards in place for construction of tiny homes. This could be done as soon as January 2020 (the publication date) and would allow for:

1. Appendix Q to be published by the state, which would allow for greater consistency and guidance related to standards for the construction and installation of tiny homes throughout Washington, which would avoid a situation in which there would be no standards at all for do it yourself constructed units, or different local standards that do not align with codes or standards for recreational vehicles based on current regulations that are not in line with use of a tiny home as a permanent residence.
2. Safer built units in that there would be a set of code requirements in place specifically addressing the construction and safety of tiny homes. Additionally, options would be available for tiny home construction related to utilizing a code that allows for flexibility and cost savings.

If the Council chooses to adopt regulations prior to the state adoption of the IRC and which do not align with construction practices by allowing these units prior to the effective date of the new state codes and Appendix Q, the City may be allowing something different than what will be allowed under the new state regulations when they become effective. However, if the City waits until the new regulations are published on January 1, 2020, the City could move to implement Appendix Q before the July 1, 2020 effective date of the new state regulations and thereby allow Appendix Q to be the City's code six months earlier. The new state regulations, once published, are not likely to be revised, so the delay of two months as proposed above would be worth the wait from City staff's perspective.



2018 International Residential Code

APPENDIX Q TINY HOUSES

First Printing: Aug 2017

APPENDIX Q TINY HOUSES

This provisions contained in this appendix are not mandatory unless specifically referenced in the adopting ordinance.

User note:

About this appendix: Appendix Q relaxes various requirements in the body of the code as they apply to houses that are 400 square feet in area or less. Attention is specifically paid to features such as compact stairs, including stair handrails and headroom, ladders, reduced ceiling heights in lofts and guard and emergency escape and rescue opening requirements at lofts.

SECTION AQ101 GENERAL

AQ101.1 Scope.

This appendix shall be applicable to *tiny houses* used as single *dwelling units*. *Tiny houses* shall comply with this code except as otherwise stated in this appendix.

SECTION AQ102 DEFINITIONS

AQ102.1 General.

The following words and terms shall, for the purposes of this appendix, have the meanings shown herein. Refer to Chapter 2 of this code for general definitions.

EGRESS ROOF ACCESS WINDOW. A *skylight* or roof window designed and installed to satisfy the emergency escape and rescue opening requirements of Section R310.2.

LANDING PLATFORM. A landing provided as the top step of a stairway accessing a *loft*.

LOFT. A floor level located more than 30 inches (762 mm) above the main floor, open to the main floor on one or more sides with a ceiling height of less than 6 feet 8 inches (2032 mm) and used as a living or sleeping space.

TINY HOUSE. A *dwelling* that is 400 square feet (37 m²) or less in floor area excluding *lofts*.

SECTION AQ103 CEILING HEIGHT

AQ103.1 Minimum ceiling height.

Habitable space and hallways in *tiny houses* shall have a ceiling height of not less than 6 feet 8 inches (2032 mm). Bathrooms, toilet rooms and kitchens shall have a ceiling height of not less than 6 feet 4 inches (1930 mm). Obstructions including, but not limited to, beams, girders, ducts and lighting, shall not extend below these minimum ceiling heights.

Exception: Ceiling heights in *lofts* are permitted to be less than 6 feet 8 inches (2032 mm).

SECTION AQ104 LOFTS

AQ104.1 Minimum loft area and dimensions.

Lofts used as a sleeping or living space shall meet the minimum area and dimension requirements of Sections AQ104.1.1 through AQ104.1.3.

AQ104.1.1 Minimum area.

Lofts shall have a floor area of not less than 35 square feet (3.25 m²).

AQ104.1.2 Minimum dimensions.

Lofts shall be not less than 5 feet (1524 mm) in any horizontal dimension.

AQ104.1.3 Height effect on loft area.

Portions of a *loft* with a sloped ceiling measuring less than 3 feet (914 mm) from the finished floor to the finished ceiling shall not be considered as contributing to the minimum required area for the loft.

Exception: Under gable roofs with a minimum slope of 6 units vertical in 12 units horizontal (50-percent slope), portions of a *loft* with a sloped ceiling measuring less than 16 inches (406 mm) from the finished floor to the finished ceiling shall not be considered as contributing to the minimum required area for the *loft*.

AQ104.2 Loft access.

The access to and primary egress from *lofts* shall be of any type described in Sections AQ104.2.1 through AQ104.2.4.

AQ104.2.1 Stairways.

Stairways accessing *lofts* shall comply with this code or with Sections AQ104.2.1.1 through AQ104.2.1.5.

AQ104.2.1.1 Width.

Stairways accessing a *loft* shall not be less than 17 inches (432 mm) in clear width at or above the handrail. The width below the handrail shall be not less than 20 inches (508 mm).

AQ104.2.1.2 Headroom.

The headroom in stairways accessing a *loft* shall be not less than 6 feet 2 inches (1880 mm), as measured vertically, from a sloped line connecting the tread or landing platform nosings in the middle of their width.

AQ104.2.1.3 Treads and risers.

Risers for stairs accessing a *loft* shall be not less than 7 inches (178 mm) and not more than 12 inches (305 mm) in height. Tread depth and riser height shall be calculated in accordance with one of the following formulas:

1. The tread depth shall be 20 inches (508 mm) minus four-thirds of the riser height.
2. The riser height shall be 15 inches (381 mm) minus three-fourths of the tread depth.

AQ104.2.1.4 Landing platforms.

The top tread and riser of stairways accessing *lofts* shall be constructed as a *landing platform* where the *loft* ceiling height is less than 6 feet 2 inches (1880 mm) where the stairway meets the *loft*. The *landing platform* shall be 18 inches to 22 inches (457 to 559 mm) in depth measured from the nosing of the landing platform to the edge of the *loft*, and 16 to 18 inches (406 to 457 mm) in height measured from the *landing platform* to the *loft* floor.

AQ104.2.1.5 Handrails.

Handrails shall comply with Section R311.7.8.

AQ104.2.1.6 Stairway guards.

Guards at open sides of stairways shall comply with Section R312.1.

AQ104.2.2 Ladders.

Ladders accessing *lofts* shall comply with Sections AQ104.2.1 and AQ104.2.2.

AQ104.2.2.1 Size and capacity.

Ladders accessing *lofts* shall have a rung width of not less than 12 inches (305 mm), and 10-inch (254 mm) to 14-inch (356 mm) spacing between rungs. Ladders shall be capable of supporting a 200-pound (75 kg) load on any rung. Rung spacing shall be uniform within $\frac{3}{8}$ inch (9.5 mm).

AQ104.2.2.2 Incline.

Ladders shall be installed at 70 to 80 degrees from horizontal.

AQ104.2.3 Alternating tread devices.

Alternating tread devices accessing *lofts* shall comply with Sections R311.7.11.1 and R311.7.11.2. The clear width at and below the handrails shall be not less than 20 inches (508 mm).

AQ104.2.4 Ships ladders.

Ships ladders accessing *lofts* shall comply with Sections R311.7.12.1 and R311.7.12.2. The clear width at and below handrails shall be not less than 20 inches (508 mm).

AQ104.2.5 Loft Guards.

Loft guards shall be located along the open side of *lofts*. *Loft* guards shall be not less than 36 inches (914 mm) in height or one-half of the clear height to the ceiling, whichever is less.

SECTION AQ105 EMERGENCY ESCAPE AND RESCUE OPENINGS

AQ105.1 General.

Tiny houses shall meet the requirements of Section R310 for emergency escape and rescue openings.

Exception: *Egress roof access windows* in *lofts* used as sleeping rooms shall be deemed to meet the requirements of Section R310 where installed such that the bottom of the opening is not more than 44 inches (1118 mm) above the *loft* floor, provided the egress roof access window complies with the minimum opening area requirements of Section R310.2.1.