



CITY OF  
BAINBRIDGE ISLAND

**PLANNING COMMISSION PUBLIC PARTICIPATION MEETING  
THURSDAY, OCTOBER 24, 2019**

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

**AGENDA**

1. **CALL TO ORDER/ROLL CALL - 6:00 PM**
2. **PUBLIC PARTICIPATION MEETING**
  - 2.A **(6:05 PM) Bainbridge Disposal Transfer Station Redevelopment**, 45 Minutes
  - 2.B **(6:50 PM) Public Participation Meeting McGraw Short Subdivision (PLN51569 PRE)**, 15 Minutes  
PLN51569 PRE McGraw site plan
3. **PLANNING COMMISSION MEETING MINUTES**
  - 3.A **(7:05 PM) October 10, 2019 Planning Commission Meeting Minutes**, 5 Minutes  
Planning Commission Minutes DRAFT 101019.docx
4. **PUBLIC COMMENT ON OFF AGENDA ITEMS - 7:10 PM**
5. **PUBLIC HEARING - 7:15 PM**
  - 5.A **Ordinance 2019-33 "Housekeeping" Changes: Revising BIMC Title 2 Administration,...and Land Use Procedures and Title 18 Zoning**, 30 Minutes  
PC Staff Memo  
DRAFT Ord 2019-33  
Exhibit A Title 2 Housekeeping Changes.pdf  
Exhibit B BIMC 18.09.020 Use Table Excerpt Temporary Uses  
Exhibit C Title 18 Housekeeping Changes
6. **UNFINISHED BUSINESS**
  - 6.A **(7:45 PM) Ordinance No. 2019-38, Adopting Small Wireless Facilities Design Standards**, 45 Minutes  
Ordinance No. 2019-38, Adopting Small Wireless Design Standards - 10/24 Draft for PC Review

**7. NEW BUSINESS**

- 7.A (8:15 PM) Ordinance No. 2019-32 Amending BIMC 2.16.020.S. Housing Design Demonstration Projects (HDDP) Program, 30 Minutes**  
DRAFT ORD 2019-32 HDDP Program  
PLANNING COMMISSION MINUTES 062118.pdf  
Ordinance No. 2018-31 Limiting the Housing Design Demonstration Project Program to Affordable Housing Approved 082818  
HDDP Program Summary for PC  
BIMC 2.16.020.S HDDP Program

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

**9. FUTURE PLANNING COMMISSION AGENDAS - 8:55 PM**

**10. 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](mailto: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](mailto: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 Public Participation Meeting Agenda Bill

**MEETING DATE:** October 24, 2019

**ESTIMATED TIME:** 45 Minutes

**AGENDA ITEM:** (6:05 PM) Bainbridge Disposal Transfer Station Redevelopment,

**AGENDA CATEGORY:** Discussion

**PROPOSED BY:** Kelly Tayara

**PREVIOUS PLANNING COMMISSION**

**REVIEW DATE(S):** None.

**PREVIOUS COUCIL REVIEW DATE(S):** None,

**RECOMMENDED MOTION:**

Presentation and Discussion

**SUMMARY:**

Public Participation Meeting is required as part of the preapplication phase of the proposed development.

**BACKGROUND:** Bainbridge Disposal is proposing a new office building, comfort station and parking lot on their 5.87 acre property located at 6400 Don Palmer Ave (T.P.N. 332502-2-018-2002)

**ATTACHMENTS:**



CITY OF  
BAINBRIDGE ISLAND

## Planning Commission Public Participation Meeting Agenda Bill

**MEETING DATE:** October 24, 2019

**ESTIMATED TIME:** 15 Minutes

**AGENDA ITEM:** (6:50 PM) Public Participation Meeting McGraw Short Subdivision (PLN51569 PRE),

**AGENDA CATEGORY:** Discussion

**PROPOSED BY:** Ellen Fairleigh

**PREVIOUS PLANNING COMMISSION  
REVIEW DATE(S):** N/A

**PREVIOUS COUCIL REVIEW DATE(S):** N/A

**RECOMMENDED MOTION:**  
Presentation and Discussion.

**SUMMARY:**

This is a mandatory meeting as part of the pre-application phase pursuant to BIMC 2.16.070.

[https://ci-bainbridgeisland-wa.smartgovcommunity.com/PermittingPublic/PermitDetailPublic/Index/beff3d5c-d7ba-4f17-aacb-aacb015ed10d?\\_conv=1](https://ci-bainbridgeisland-wa.smartgovcommunity.com/PermittingPublic/PermitDetailPublic/Index/beff3d5c-d7ba-4f17-aacb-aacb015ed10d?_conv=1)

Please copy and paste the above link into your browser to view the application.

**BACKGROUND:** The Public Participation Program is intended to bring developers and community members together early in the development application process, so that the residents can learn about proposed developments in the community, and the applicant can be aware of their concerns, if any.

The McGraw Short Subdivision proposes to subdivide one parcel into two lots.

**ATTACHMENTS:**

# MCGRAW SHORT PLAT

## Parcel Data

**Property Owners:**  
Jeffrey and Sueann McClelland  
**Address:**  
6800 Blue Sky Lane NE, B.I., WA 98110  
**Tax Lot Number:**  
292502-4-022-2008  
**Zoning:** RO.4/ 1 DU/2.5 acres or 100,000 sf  
**Comp Plan:** OSR 0.4  
**Open Space** = requires 54,824 sf = 25%

Gross **Lot Area** of Short Plat: 219,296.6 sf  
Gross Lot Area: (Including Easement Area)  
Lot A: 109,663.0 sf (2.5 Acres)  
Lot B: 109,663.5 sf (2.5 Acres)  
Net Lot Area: (Excluding Easement Area)  
Lot A: 103,018.4 sf (2.4 Acres)  
Lot B: 84,391.0 sf (1.9 Acres)

**Maximum Lot Coverage:** 10%  
Lot A: 10,966.3 sf  
Lot B: 10,966.3 sf  
Maximum Building Height: 30 feet

**Exterior Dimensions, Structure Impervious Area:**  
Wellhouse: 6' X 8' 48 sf  
House: 40' X 28' 1,120 sf

**Water Source:** On-site Well  
**Sewer:** On-site Septic Drainfield  
**Ex. Stormwater:** None  
**Fire:** Per BIMC Title 20  
There is no public water system on-site. Requirements for fire flow to be determined at time of building application.

**Ex. Impervious Area:** Driveway to house: - sf  
and two structures at 1,168 sf; Total - sf.

**Trees**  
This lot is partially tree covered.

**Minimum Building Separation and Setbacks**  
Building to Building: 0 feet or minimum required by fire code.  
Building to exterior plat boundary: 25 feet  
Building to other streets: 15 feet  
Building to Open Space or Access Easement: 10 feet

**Schedule B Encumbrances** per Title Company Order  
1. Access Easements

FEMA National Flood Insurance Designation  
Zone:  
Map:  
Date:

## Surveyor's Notes:

- This survey meets the minimum required surveying standards per WAC 332-130-090.
- This survey accomplished by field traverse procedures using a two second total station.
- Survey Markers shown hereon were the only points set for this survey. Property lines were checked for encroachments only as shown.
- A title report was provided to the Surveyor. There may exist other recorded documents that affect this parcel.
- This survey is for the use of the original purchaser.
- This map is not intended to show all matters related to the property, such as easements or encroachments.
- Encroachments and usage may establish lines of ownership. Property owners with questions should consult an attorney for legal advice.
- See also recordings under:

## Lot Description

PARCEL I: THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER, SECTION 29, TOWNSHIP 25 NORTH, RANGE 2 EAST, W.M., IN KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: BEGINNING AT THE EAST QUARTER CORNER OF SAID SECTION; THENCE NORTH 88°33'33 WEST 661.39 FEET; THENCE SOUTH 0°59'01 WEST 996.43 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 0°59'01 WEST 332.14 FEET TO THE SOUTH LINE OF SAID SUBDIVISION; THENCE SOUTH 88°26'55 EAST ALONG THE SOUTH LINE 659.96 FEET TO THE SOUTHEAST CORNER OF SAID SUBDIVISION; THENCE NORTH 1°02'43 EAST ALONG THE EAST LINE OF SAID SECTION, 332.34 FEET; THENCE NORTH 88°28'34 WEST 660.32 FEET TO THE TRUE POINT OF BEGINNING; PARCEL II: AN UNRESTRICTED EASEMENT FOR INGRESS, EGRESS AND UTILITIES OVER, UNDER AND ACROSS THE FOLLOWING DESCRIBED PROPERTY: BEGINNING AT THE EAST QUARTER CORNER OF SAID SECTION 29; THENCE NORTH 88°33'33 WEST ALONG THE NORTH LINE OF SAID SUBDIVISION 681.39 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 1328.06 FEET TO THE SOUTH LINE OF SAID SUBDIVISION; THENCE SOUTH 88°26'55 EAST ALONG SAID SOUTH LINE 679.96 FEET TO THE SOUTHEAST CORNER OF SAID SUBDIVISION; THENCE N1°02'43 EAST ALONG THE EAST LINE OF SAID SECTION, 30 FEET; THENCE NORTH 88°26'55 WEST 640.00 FEET; THENCE NORTH 0°59'01 EAST 1298.13 FEET, MORE OR LESS, TO THE NORTH LINE OF SAID SUBDIVISION; THENCE NORTH 88°33'33 WEST 40 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING OF SAID EASEMENT.

## Open Space Management Plan

**OPEN SPACE OWNERSHIP AND MANAGEMENT ENTITY**  
The Open Space will be privately owned and managed by the owners of the lot on which it is situated. Open Space access is restricted to the owners of the Open Space and their invited guests. The owners of the Open Space shall be responsible for the maintenance of the Open Space in accordance with the Open Space Management plan.

**APPROVED USES WITHIN THE OPEN SPACE**  
1. Passive recreation including pervious trails.  
2. Potable water wells and well houses.  
3. Low impact fencing or signs marking the open space boundary.  
4. On-site sewage treatment system with approved use by the Director (consistent with BIMC 17.12.030.A.7.t).  
5. Storm drainage system use as approved by the Director (consistent with BIMC 17.12.030.A.7.t).  
6. Play grounds and tot lots, picnic shelters and benches may be allowed within a designated open space area, provided the proposed use will not adversely affect the function or characteristics of the specific open space.  
7. Solar panels, small wind energy generators, composting bins, rainwater harvesting barrels, cisterns and rain gardens/swales, as defined in BIMC 18.36, may be allowed within a designated open space area, provided the proposed feature will not result in the damage or removal of significant trees.  
8. Planting of native vegetation.  
9. Planting of non-invasive, non-native vegetation.  
10. Removal of invasive vegetation

**LIMITATIONS**  
1. Buildings are not permitted within the open space (except well houses and picnic shelters).  
2. Existing vegetation shall be retained and maintained except for City approved driveways, utility corridors and trails. No cutting, clearing or other removal of existing and/or native vegetation shall be allowed in the designated open space in order to provide lawns, gardens, patios, decks, recreation facilities or other constructed features.  
3. All trees within the open space are required to be retained in perpetuity. Hazard tree removal may be allowed only with City approval and appropriate replanting provisions in BIMC 18.15.010.C. If trees required to be retained are not retained, or if protection measures are not fully implemented requirements for unauthorized removal provided in BIMC 18.15.010.C shall apply.  
4. No construction activities or staging shall be permitted in the open space. Prior to construction on Lots A and B temporary chain link fencing, orange construction fencing or other construction fencing satisfactory to the Director, shall be placed around all the open space. Hazard trees within the open space can and should be removed with the approval of the Director during the clearing and grading phase of construction.

**OPEN SPACE MAINTENANCE PLAN**  
The Open Space shall be maintained by the owner of the Open Space. Maintenance activities shall include, at a minimum, an annual inspection for compliance with the Open Space Management Plan. If the Open Space is not maintained consistent with this Open Space Management Plan the City shall have the right to provide the maintenance thereof, and the right to bill the owner of the Open Space for the cost of the maintenance.

## NOTICE

- Responsibility and expense for maintenance of streets serving lots within this Short Subdivision (unless such roads have been accepted into the City) shall rest with the lot owners.
- Any further division of lots within this Short Subdivision shall be subject to the requirements of Section 17.12.190 of City of Bainbridge Island Short Subdivision Ordinance.

## DIRECTOR'S APPROVAL

Approved for recording pursuant to City of Bainbridge Island Ordinance No. 17.12.200.

Heather , Director

Date:

## TREASURER'S CERTIFICATE

I hereby certify that real property taxes are current for the subdivided property shown hereon to:

Date

Kitsap County Treasurer

## SURVEYOR'S CERTIFICATE

### DC SURVEYING

SURVEYORS ~ PLANNERS  
P.O. BOX 1090, POULSBORO, WA 98370

40015

Certificate Number

Signature

Date

206-842-6123

tim@dcsurveyors.com

CITY OF BAINBRIDGE ISLAND,  
KITSAP COUNTY, WASHINGTON

SHORT SUBDIVISION NO.     

292502-4-022-2008

Assessor's Tax Account No.

Walt McGraw

Name of Applicant

6800 Blue Sky Lane, BI

Address of Applicant

206-855-8845

Phone Number

NE 1/4, SE 1/4

SEC. 29, T. 25 N., R. 2 E., W.M.

SHEET 1 OF 2 SHEETS

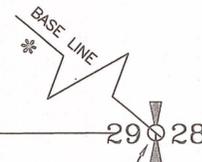
## AUDITOR'S CERTIFICATE

DRAWN BY:	TMC
DATE:	--
JOB NUMBER:	19-
FIELD BOOK	/
CHECKED:	--
SCALE:	REVISION:

# MCGRAW SHORT PLAT BASIC SITE PLAN

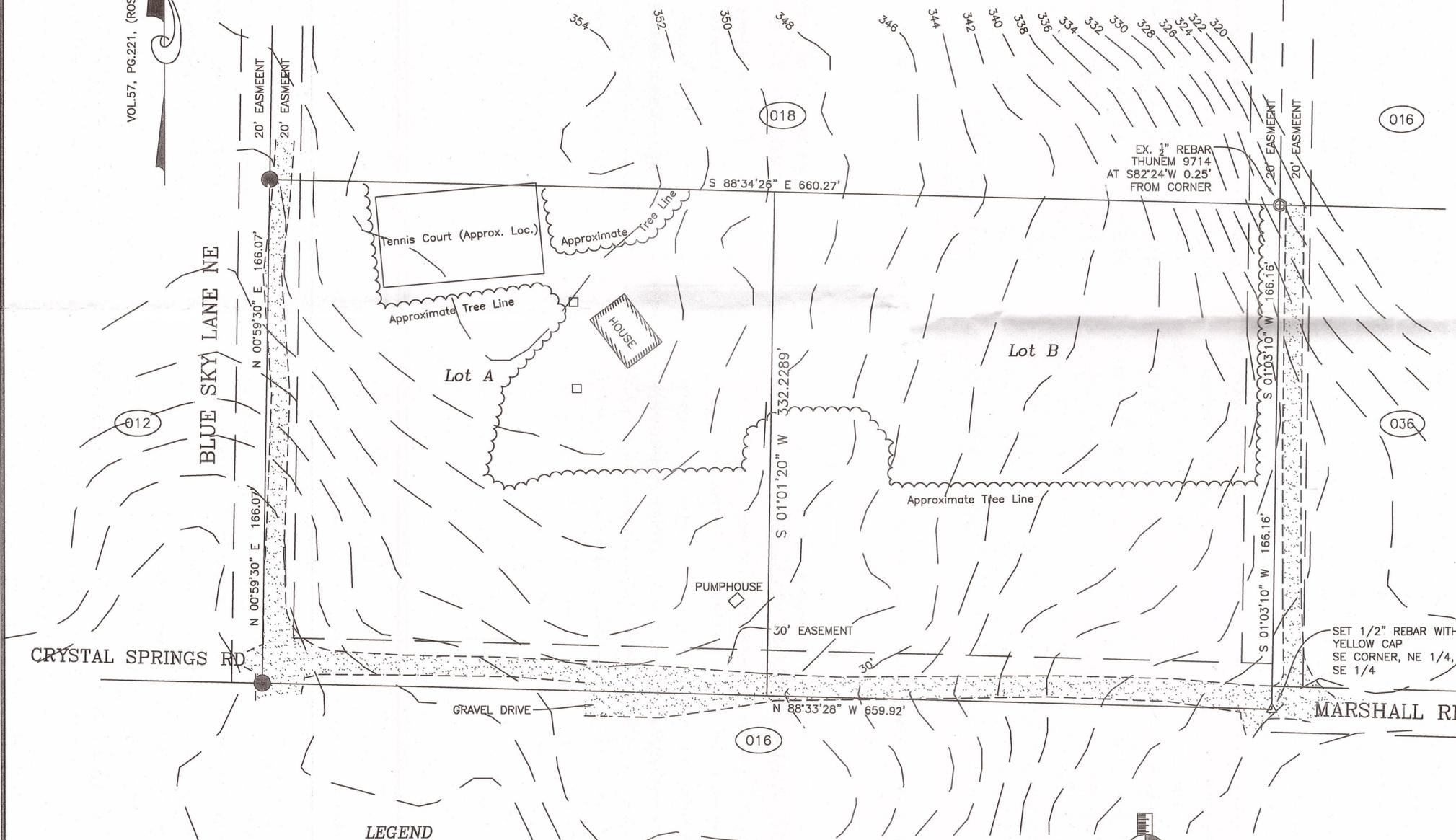


(E-W CL SECTION 29) N88°37'16"W ~ 2645.33'



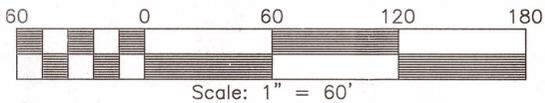
\* BASE LINE= NORTH QUARTER CORNER MONUMENT TO EAST QUARTER CORNER MONUMENT SECTION 29 AT S44°08'16"E 3774.453' (MEASURED 3774.47')

VOL. 57, PG. 221, (ROS)



### LEGEND

- PROPERTY LINE
- RIGHT OF WAY
- ADJOINING PROPERTY LINE
- EDGE OF GRAVEL DRIVE
- EASEMENT
- SET 3/4" IRON PIPE (2)
- EX. PIPE AS NOTED
- FENCE AS NOTED
- CATCH BASIN



NAVD'88  
LIDAR CONTOURS

DRAWN BY:	TMC
DATE:	10-3-19
JOB NUMBER:	19-
FIELD BOOK:	/
CHECKED:	-
SCALE: 1"=60'	REVISION:

<b>SURVEYOR'S CERTIFICATE</b> <b>DC SURVEYING</b> SURVEYORS ~ PLANNERS P.O. BOX 1090, POULSBO, WA 98370 40015 Certificate Number
Signature _____ Date _____ 206-842-6123 tim@dcsurveyors.com
CITY OF BAINBRIDGE ISLAND, KITSAP COUNTY, WASHINGTON SHORT SUBDIVISION NO. _____ 292502-4-022-2008 Assessor's Tax Account No. Walt McGraw Name of Applicant 6800 Blue Sky Lane, BI Address of Applicant 206-855-8845 Phone Number NE 1/4, SE 1/4 SEC. 29, T. 25 N., R. 2 E., W.M.
SHEET 2 OF 2 SHEETS
AUDITOR'S CERTIFICATE



CITY OF  
BAINBRIDGE ISLAND

## Planning Commission Public Participation Meeting Agenda Bill

**MEETING DATE:** October 24, 2019

**ESTIMATED TIME:** 5 Minutes

**AGENDA ITEM:** (7:05 PM) October 10, 2019 Planning Commission Meeting Minutes,

**AGENDA CATEGORY:** Minutes

**PROPOSED BY:** Jane Rasely

**PREVIOUS PLANNING COMMISSION  
REVIEW DATE(S):**

**PREVIOUS COUCIL REVIEW DATE(S):**

**RECOMMENDED MOTION:**  
Review and Approve

**SUMMARY:**

**BACKGROUND:**

**ATTACHMENTS:**

CALL TO ORDER – Call to Order, Agenda Review, Conflict Disclosure  
PUBLIC PARTICIPATION MEETING – Paine Short Subdivision ([PLN51574 PRE](#))  
REVIEW AND APPROVE MINUTES – September 26, 2019  
PUBLIC COMMENT ON OFF AGENDA ITEMS  
ORDINANCE 2019-24 SPR/CUP DECISION CRITERIA UPDATE – Recommendation  
HOUSEKEEPING CODE CHANGES – Study Session  
CITY COUNCIL UPDATE  
NEW/OLD BUSINESS  
ADJOURN

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**CALL TO ORDER – Call to Order, Agenda Review, Conflict Disclosure**

Chair William Chester called the meeting to order at 6:03 PM. Planning Commissioners in attendance were J. Mack Pearl, Jon Quitslund, Kimberly McCormick Osmond, Don Doman and Joe Paar. Lisa Macchio was absent and excused. City Staff present were Planning Director Heather Wright, Long Range Senior Planner Jennifer Sutton, Planner Ellen Fairleigh and Administrative Specialist Jane Rasely who monitored recording and prepared minutes.

The agenda was reviewed. There were not any conflicts noted.

**PUBLIC PARTICIPATION MEETING – Paine Short Subdivision ([PLN51574 PRE](#))**

Chair Chester introduced the public participation meeting at 6:03 PM. Planner Ellen Fairleigh introduced the project and introduced Trey Benson, from Johnson Squared who was representing applicant Howard Paine.

**REVIEW AND APPROVE MINUTES – September 26, 2019**

Commissioner McCormick Osmond asked to have the last name of public commenter Danielle (Bogardus) added to the minutes.

**Motion: Move approval of the minutes as amended by our discussion.**

**Quitslund/McCormick Osmond: Passed Unanimously**

**PUBLIC COMMENT ON OFF AGENDA ITEMS**

None.

Commissioner Doman provided an update on the Design Review Board meetings he had attended.

**ORDINANCE 2019-24 SPR/CUP DECISION CRITERIA UPDATE – Recommendation**

Long Range Senior Planner Jennifer Sutton provided a recap of previous work completed and facilitated discussion.

**Motion: I recommend forwarding Ordinance Number 2019-24 including Exhibits A, B and C, modified by the discussion as recorded by Jennifer Sutton and Jane Rasely.**

**Quitslund/McCormick Osmond: Passed Unanimously**

**HOUSEKEEPING CODE CHANGES – Study Session**

Ms. Sutton continued the study session with an overview of specific changes led by the Planning Commissioners.

**CITY COUNCIL UPDATE**

Planning Director Heather Wright provided an update on City Council actions.

**NEW/OLD BUSINESS**

National Community Planning Month was introduced and Commissioners were invited to attend a celebration on October 24, 2019 at 1:00 PM.

**ADJOURN**

The meeting was adjourned at 8:55 PM.

Approved by:

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William Chester, Chair

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Jane Rasely, Administrative Specialist



CITY OF  
BAINBRIDGE ISLAND

## Planning Commission Public Participation Meeting Agenda Bill

**MEETING DATE:** October 24, 2019

**ESTIMATED TIME:** 30 Minutes

**AGENDA ITEM:** Ordinance 2019-33 "Housekeeping" Changes: Revising BIMC Title 2 Administration,...and Land Use Procedures and Title 18 Zoning,

**AGENDA CATEGORY:** Ordinance

**PROPOSED BY:** Jennifer Sutton

**PREVIOUS PLANNING COMMISSION**

**REVIEW DATE(S):** March 28, April 25, May 23, June 27 and October 10, 2019

**PREVIOUS COUCIL REVIEW DATE(S):**

**RECOMMENDED MOTION:**

I move to recommend approval of Ordinance 2019-33 to the City Council with the exception of changes related to amending subdivisions, highlighted in green and located on pages 13, 18, 28, 30, 33, 34, 37, 43, 46, and 47 Exhibit A.

**SUMMARY:**

Ordinance 2019-33 makes corrections and clarifications throughout the development code. Exhibit A contains Title 2 changes, Exhibit B amends BIMC Table 18.09.030 Use Table to add the new use "temporary construction staging", and Exhibit C contains additional changes to Title 18 Zoning.

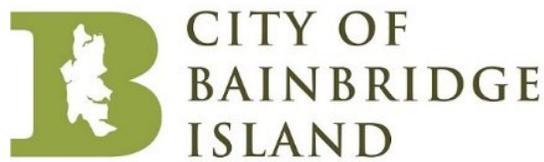
The City Surveyor has recommended fixing language related to changing short plats or long subdivisions to be consistent with Revised Code of Washington (RCW) 58.17.215 terminology. To improve consistency with state law, the City Surveyor is suggesting changing the terms "amendment" or "modification" to "alteration" when related to short and long subdivisions/plats.

The City Attorney's office is currently examining these proposed updates, and needs additional time to review the changes. For consistency with state law, the terminology may need to be different between short plats and long subdivisions. The City Attorney's office is requesting that when making its recommendation to the City Council, that the Planning Commission omit making a recommendation on these proposed changes in Ordinance 2019-33. The City Attorney's office will complete its review, and bring forward a separate ordinance that deals exclusively with this topic. Changes to omit from the recommendation are found on pages 13, 18, 28, 30, 33, 34, 37, 43, 46, and 47 and highlighted in green.

**BACKGROUND:** The Department of Planning and Community Development staff and the City Attorney's office have identified many areas of the development code (BIMC Chapters 2.14, 2.16 and 18) that could be clarified, updated or where there are errors in need of correction. The proposed updates have discussed by the Planning Commission at their

March 28, April 25, May 23, June 27 and October 10, 2019 meetings. In addition to clarification and correcting errors, Ordinance 2019-33 adds a new use temporary construction staging, including a definition (BIMC Section 18.36.030, see page 12 EXHIBIT C) and use specific standards (BIMC Section 18.09.030.J, pages 1-2 EXHIBIT C).

**ATTACHMENTS:**



Department of Planning and Community Development

## Memorandum

Date: October 24, 2019  
To: Planning Commission  
From: Jennifer Sutton, AICP  
Senior Planner  
Subject: Public Hearing on Ordinance 2019-33:  
"Housekeeping" Changes: Update to BIMC Title 2 Administration,....and Land Use  
Procedures and Title 18 Zoning Development Code

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### I. BACKGROUND

The Department of Planning and Community Development staff have identified many areas of the development code ([BIMC Chapters 2.14, 2.16 and 18](#)) that could be clarified, updated or where there are errors in need of correction. The proposed updates have discussed by the Planning Commission at their March 28, April 25, May 23, June 27 and October 10, 2019 meetings. In addition to clarification and correcting errors, this effort adds a new use temporary construction staging, including a definition (BIMC Section 18.36.030, see page 12 EXHIBIT C) and use specific standards (BIMC Section 18.09.030.J, pages 1-2 EXHIBIT C).

All code changes are **highlighted**, to make them easier to identify in the long documents.

### II. AMENDMENT VS. ALTERATION TERMINOLOGY FOR SUBDIVISIONS/PLATS

The City Surveyor has recommended fixing language related to changing short plats or long subdivisions to be consistent with Revised Code of Washington (RCW) 58.17.215 terminology. To improve consistency with state law, the City Surveyor is suggesting changing the terms "amendment" or "modification" to "alteration" when related to short and long subdivisions/plats.

The City Attorney's office is currently examining these proposed updates, and needs additional time to review the changes. For consistency with state law, the terminology may need to be different between short plats and long subdivisions. The City Attorney's office is requesting that when making its recommendation to the City Council, that the Planning Commission omit making a recommendation on these proposed changes in Ordinance 2019-33. The City Attorney's office will complete its review, and bring forward a separate ordinance that deals exclusively with this topic. Changes to omit from the recommendation are found on pages 13, 18, 28, 30, 33, 34, 37, 43, 46, and 47 and **highlighted in green**.

### III. MEETING PURPOSE

The Planning Commission will hold a public hearing on Ordinance 2019-33 on October 24. After completing the public hearing, the Commission will make a final recommendation to the City Council on these Housekeeping Changes, Ordinance 2019-33.

**ORDINANCE NO. 2019-33**

**AN ORDINANCE** of the City of Bainbridge Island, Washington, related to clarifying and correcting land use regulations, revising Chapters 2.14, 2.16, 18.09, 18.12, 18.15 and 18.36, of the Bainbridge Island Municipal Code (BIMC).

**WHEREAS**, City staff have compiled a set of changes to land use regulations of the BIMC to “fix” errors, omissions and clarifications; and

**WHEREAS**, this includes adding a new use “temporary construction staging”, including new use specific standards; and

**WHEREAS**, the changes were organized into BIMC *Title 2* and *Title 18* changes, and the Planning Commission discussed the proposed changes on March 28, April 25, May 23, June 27 and October 10, 2019; and

**WHEREAS**, the Planning Commission held a public hearing on Ordinance 2019-33 on October 24, 2019 and after closing the public hearing, made a recommendation of approval of Ordinance 2019-33 to the City Council; and

**WHEREAS**, notice was given on **XXXX, 2019**, to the Office of Community Development at the Washington State Department of Commerce in conformance with RCW 36.70A.106; and

**WHEREAS**, the City Council considered this ordinance at its meeting on **XX**; and

**WHEREAS**, the City Council held a public hearing on Ordinance 2019-33 on **XX**; and

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

**Section 1.** Chapters 2.14 and 2.16 of the Bainbridge Island Municipal Code is hereby amended as shown in Exhibit A.

**Section 2.** Table 18.09.020 *Use Table* of the Bainbridge Island Municipal Code is hereby amended as shown in Exhibit B:

**Section 3.** Chapters 18.09, 18.12, 18.15 and 18.36 of the Bainbridge Island Municipal Code is hereby amended as shown in Exhibit C:

**Section 4.** If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared invalid or unconstitutional for any reason, such decision shall not affect the validity of the remaining portions of this ordinance.

**Section 5.** This ordinance shall take effect and be in force five (5) days after its passage, approval, 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, City Clerk

FILED WITH THE CITY CLERK: \_\_\_\_\_, 2019  
PASSED BY THE CITY COUNCIL: \_\_\_\_\_, 2019  
PUBLISHED: \_\_\_\_\_, 2019  
EFFECTIVE DATE: \_\_\_\_\_, 2019  
ORDINANCE NUMBER: 2019-33

## **2.14.020 Planning commission.**

A. Purpose and Role of the Planning Commission. The Bainbridge Island planning commission serves as an advisory body to the city council, and provides recommendations to the director of planning, the hearing examiner and/or the city council. The commission's role is to consider legislative, as well as quasi-judicial matters, depending upon the action before it. Pursuant to Chapter [35A.63](#) RCW, the commission has primary responsibility for preparing, reviewing and updating the comprehensive plan.

B. Duties and Responsibilities. Pursuant to the provisions of Chapter [35A.63](#) RCW, there is established within the city a planning commission. The title "planning commission" is substituted for the title "planning agency" in all city ordinances and other documents approved prior to the effective date of the ordinance codified in this chapter. The planning commission shall have the following duties and responsibilities:

1. Participate in the preparation and review of the comprehensive plan for the city;
2. Consider the location, character, extent, and effect of any proposed dedication of any street or other area for public use, including parks, public ways, public buildings, or public structures, with reference to the comprehensive plan, pursuant to RCW [35A.63.080](#);
3. Review and make recommendations on all applications for amendments to the comprehensive plan, official zoning map and official zoning ordinance of the city pursuant to Table 2.16.010-1;
4. Review and make recommendations on all housing design demonstration project applications pursuant to BIMC [2.16.020.S](#), including those housing design demonstration project applications involving land subdivision, based on a comprehensive review of the project at a public meeting;
5. Review and make recommendations on preliminary short subdivisions if requested by the director;
6. Review and make recommendations on all preliminary large lot subdivisions, preliminary long subdivisions, major site plan and design reviews, major conditional use permits, and major shoreline conditional use permits, taking into consideration the recommendation from the design review board and a comprehensive review of the project at a public meeting;
7. Such other advisory duties as may be assigned to it by the city council, or as specified in the BIMC;
8. Create the planning commission agenda prior to its publication in consultation with the director.

C. Composition – Appointments – Terms – Residency – Chairpersons.

1. The commission shall consist of seven members appointed by the mayor and confirmed by the city council. All seven members of the commission shall be residents of the city. The members shall not be employees or officers of the city or appointed to another city committee, board or commission, except for specialized committees or task forces of limited duration. The commission shall reflect the diverse perspectives, work experiences and backgrounds represented in the community. Each commissioner shall endeavor to understand and agree to uphold the city's adopted comprehensive plan.
2. All members shall serve without compensation for three-year terms, which begin on July 1st and end on June 30th three years later. Members shall be appointed to a position number, and the terms are to be staggered, with no more than three positions expiring in any given year. Members may be reappointed to additional terms. No member shall serve more than three consecutive terms on the commission unless the city council determines that special expertise is required or there are no other qualified applicants.

3. The officers of the commission shall consist of a chairperson and a vice chairperson elected by the members of the commission for a one-year term. The election of officers shall take place at the first meeting of the year. In the event of the vacancy of the chair, the chairperson would be replaced by the vice chairperson, and the vice chairperson would be replaced by a vote of the members of the commission. Demotion of the chairperson or vice chairperson shall be governed by Chapter [2.01](#) BIMC.

4. The chairperson shall preside over meetings of the commission and may exercise all the powers usually incident to the office. Duties of the chairperson shall include, but not be limited to, committees of the whole, handling meeting items and discussion, conflict of interest, suspension of meetings, timing or discussion of issues, and clarification of issues and questions. The chairperson shall sign all approved commission minutes, reports or other official documents.

5. In the absence of the chairperson, the vice chairperson shall perform all the duties incumbent upon the chairperson. The chairperson and the vice chairperson both being absent, the members present may elect for the meeting a temporary chairperson who shall have the full powers of the chairperson during the absence of the chairperson and the vice chairperson.

6. The ~~chair~~ [Planning Commission](#) shall have full power to create subcommittees that would include up to three commissioners. Standing or temporary committees may be charged with such duties, examinations, investigations and inquiries relative to one or more subjects of interest to the commission. ~~No committee shall have the power to commit the commission to the endorsement of any plan or program without the approval of a quorum of the commission.~~

#### D. Removal and Resignation.

1. The removal and resignation of members appointed to the commission shall be governed by Chapter [2.01](#) BIMC.

2. Any unexpired term of a vacant office shall be filled by a qualified person appointed by the mayor and confirmed by the city council in accordance with the city's appointment cycle.

#### E. Meetings.

1. The planning commission shall meet on the second and fourth Thursday of each month and may hold such special meetings as the planning commission may determine necessary. All regularly scheduled meetings shall begin at 7:00 p.m. and shall endeavor to adjourn by 9:00 p.m.; provided, that the hours of a regular meeting may be modified for exceptional purposes, as determined by the chairperson.

2. Planning commission meetings shall be held at the city of Bainbridge Island City Hall. Under special circumstances, regular and special meetings and retreats may be held in other locations as publicly noticed.

3. The planning commission shall give public notice of its meetings as provided by law. Notice for a public hearing shall be provided at least 10 days in advance of said hearing.

4. All meetings of the planning commission shall be open to the public and held in accordance with the Open Public Meetings Act (Chapter [42.30](#) RCW). In the event a regular meeting falls upon a legal holiday, the meeting shall be held on the following business day.

5. All meetings shall be conducted according to Robert's Rules of Order.

6. The planning commission shall review and approve rules of procedure and code of conduct annually.

F. Quorum and Voting.

1. A simple majority of the appointed members shall constitute a quorum for the transaction of business.

~~2. The chairperson shall be entitled to vote on a matter when it is necessary to break a tie or to make a quorum.~~

3. When a commissioner has stepped down because of a potential conflict of interest, he or she shall not be counted for purposes of establishing a quorum during considerations undertaken while he or she is not sitting with the commission.

G. Public Meetings and Hearings. The planning commission will consider land use applications at a public meeting and shall recommend approval, approval with conditions, or denial of an application. For legislative decisions, the planning commission will hold a public hearing and shall recommend approval, approval with conditions, or denial of an application. In making a recommendation, the planning commission shall consider the applicable decision criteria of this code, the comprehensive plan, all other applicable law, any necessary documents and approvals, and any testimony presented verbally or in writing at the public meeting. If the applicable criteria are not met, the planning commission shall recommend the proposal be subject to conditions or denied. A planning commission recommendation is not a final decision and is not subject to appeal. The planning commission's written recommendation and other documents upon which its decision is based shall be immediately transmitted to the director, the city council, and/or the hearing examiner, as applicable.

H. Public Records. Minutes of each meeting, including a record of attendance, shall be prepared by the secretary and approved and signed at a subsequent meeting. The minutes do not need to reflect the actual discussion, but only the formal actions taken by the planning commission, and shall include findings of fact and conclusions where applicable to support the planning commission's recommendation. The meeting minutes shall be posted on the city's web site.

I. Consultants. Upon approval of the city council, the planning commission may recommend the retention of a planning consultant who assists the planning commission in its deliberations. The consultant shall be hired by the city.

J. Conflict of Interest. Planning commission members shall sign a conflict of interest statement in accordance with the city's ethics program upon appointment and any reappointment. If a planning commission member has a financial interest in or is an applicant, or if a planning commission member is a paid or unpaid advocate, agent or representative for an applicant on a comprehensive plan amendment or land use application that will be reviewed or considered by the planning commission, the planning commission member shall not participate in a decision or recommendation on the application, and he or she will be asked to leave the meeting facility prior to commencement of discussion of that agenda item.

K. Support Staff. The planning staff shall perform the following roles in its work with the planning commission:

1. Provide the initial record that includes the standards of review, relevant municipal code and comprehensive plan provisions and provisions of other permitting agencies. The staff report shall include findings of fact and conclusions of law based on evidence in the record; and

2. Provide technical information and research, prepare documents and maintain records. This includes drafting transmittal memos, preparing alternative findings and conclusions when appropriate, and obtaining legal opinions from the city attorney; and

3. Respond to questions and discussion of procedures; and

4. Assist the commission in articulating their collective will; and

5. Provide upon request formal opinions or recommendations from the city attorney, city engineer, public works director or the director of planning and community development on any matter that is pending before the planning commission; and

6. Arrange for the provision of city email accounts to commission members and related training on the use of email accounts, including personal computer privacy expectations while serving on the commission.

### **2.14.030 Hearing examiner.**

A. Policy. The conduct of public hearings in quasi-judicial matters generally involves disputed issues. It is in the best interest of the residents of the city to create officers designated in this chapter as “hearing examiners,” whose duties shall be judicial in nature. Whenever any ordinance of the city requires a public hearing to be conducted by the hearing examiner, the hearing shall be conducted in accordance with the procedures established in Chapter 2.16 BIMC.

B. Qualifications – Appointment – Term – Removal. Each hearing examiner shall be appointed by the city manager, confirmed by the city council, and shall serve for a term of two years. As required by WAC 242-02-040, each appointed hearing examiner shall be someone who has a demonstrated knowledge of land use planning and law and shall meet any additional qualifications specified by city council resolution. The appointed hearing examiner shall be removed only (1) upon conviction of a gross misdemeanor or felony, (2) because of physical or mental disability rendering the hearing examiner incapable of performing the duties of the office, (3) upon conviction of a violation of subsection D of this section, or (4) upon conviction of a violation of Chapter 42.23 RCW, the violation of which shall constitute a misdemeanor under this code.

#### C. Hearing Examiner Responsibilities and Duties.<sup>1</sup>

1. The hearing examiner is responsible for conducting hearings on and adjudicating quasi-judicial cases involving a variety of complex land use and regulatory compliance issues, and other issues which the city council may designate to the hearing examiner by ordinance or resolution. The hearing examiner shall issue decisions or recommendations based on relevant ordinances, regulations, policies, statutes, and other authorities.

2. Duties. In addition to any other duty established by ordinance or resolution, the hearing examiner:

a. Supervises and evaluates the work of employees as required;

b. Develops procedural rules-rules of procedure for the scheduling and conduct of hearings and related matters, which shall be adopted by the city council by resolution. Such rules of procedure may be amended from time to time by resolution of the city council, Such rules shall and will be published on the City’s website and available from the office of the city clerk upon request;

c. Reviews properties that are the subject of hearings to become familiar with the terrain and relationships to other properties;

d. Receives and examines hearing related documents, and reviews case files, city codes and policies, environmental impact statements, plot plans and topographical maps;

- e. Evaluates testimony and evidence, prepares records, enters final written findings, and imposes conditions to conform projects to city ordinances and land use policies;
- f. Maintains knowledge of current relevant state and city land use laws, policies and related state and federal court decisions;
- g. Prepares reports and correspondence to the city manager, city council, and planning commission as requested;
- h. Prepares and submits annual written reports to the city manager and city council, including how many hearings have been conducted, the final outcome of hearings, the time required to issue decisions and the cost of hearings;
- i. Meets with the city manager, city council, planning commission and staff as requested, to identify conflicts in the code; and
- j. When necessary, recommends candidates for pro tem hearing examiner, for approval by the city manager.

D. Noninterference in Performance of Duties. No person shall attempt to influence the hearing examiner in the performance of duties. The hearing examiner shall not discuss the merits of any case considered by the hearing examiner until all city review and court appeals have been concluded and a final decision has been rendered. Any violation of this provision shall be deemed a misdemeanor and may be punished pursuant to Chapter 1.24 BIMC.

E. Legal Counsel for Hearing Examiner. General legal advice to the hearing examiner will be provided by the city attorney, except that in a contested case where the city will be represented by the city attorney, the mayor may appoint independent counsel to render legal advice to the hearing examiner, the cost of which shall be borne by the city.

F. Disqualification of Hearing Examiner.

1. The hearing examiner on his or her own initiative may enter an order of disqualification in the event of personal bias or prejudice or to preserve the appearance of fairness.
2. Prior to any hearing on a matter, a party may file an affidavit, which is a sworn statement in writing and under oath, stating that such party cannot have a fair and impartial hearing by reason of the hearing examiner's personal bias or prejudice. The hearing examiner shall rule on the affidavit prior to making other ruling and prior to the hearing. No party shall be permitted to file more than one such affidavit under this section in regard to any one proceeding. (Ord. 2011-23 § 1, 2011; Ord. 2011-02 § 2 (Exh. A), 2011)

**2.16.010 Land use procedures summary table.**

**Table 2.16.010-1: Summary Table of Land Use Procedures**

<b>R = Review and Recommendation, (R) = Optional Review, D = Decision, A = Appeal, P = Public Hearing, (P) = Optional Public Hearing</b>						
	<b>DRB</b>	<b>Planning Comm.</b>	<b>Director</b>	<b>Hearing Examiner</b>	<b>City Council</b>	<b>Courts</b>
<b>Administrative Approvals</b>						
Clearing Permit Tree Removal/Vegetation Maintenance Permit			D	A		
Conversion Option Harvest Plan Permit			D	A		
Minor Conditional Use	(R)	(R)	D	A		
Minor Variance		(R)	D	A		
Agricultural Conditional Use			D	A		
Large Lot Subdivisions (Prelim) (Final)	R	R	D D	A		A
Minor Shoreline Variance [1]		(R)	D	A		A [2]
Minor Shoreline Conditional Use [1]		(R)	D	A		A [2]
Public Works Administrative Decisions			D			A
SEPA Determinations			D	A		
Shoreline Substantial Development Exemption [1]			D	A		
Shoreline Substantial Development [1]		(R)	D	A		A [2]

**R = Review and Recommendation, (R) = Optional Review, D = Decision, A = Appeal, P = Public Hearing, (P) = Optional Public Hearing**

	DRB	Planning Comm.	Director	Hearing Examiner	City Council	Courts
Short Subdivisions (Prelim)	(R)	(R)	D	A		
(Final)			D	A		A
Sign Permits			D			A
Minor Site Plan and Design Review	(R)	(R)	D	A		
Major Site Plan and Design Review	R	R	D	A		
Critical Area Permit – Major and Minor			D	A		
All other administrative decisions: This includes agricultural retail plans, boundary line adjustments (See BIMC 2.16.090), building and other construction permits, building administrative decisions, clearing permits, BIMC interpretations, vegetation management permit, extension of construction noise hours (See BIMC 16.16.025), and any other administrative land use decision authorized by this code to be made by the director.						
<b>Quasi-Judicial Decisions by the Hearing Examiner</b>						
Conditional Use Permits	R	R	R	D/P		A
Variances		(R)	R	D/P		A
Reasonable Use Exception (See BIMC 16.20.080)		(R)	R	D/P		A
Major Shoreline Variances [1]		(R)	R	D/P		A [2]
Major Shoreline Conditional Use Permits [1]	R	R	R	D/P		A [2]
Long Subdivisions (Prelim)	R	R	R	D		A
<b>Quasi-Judicial Decisions by City Council</b>						
Long Subdivisions (Final)			R		D	A
Site-Specific Rezones		(R)	R	R/P	D	A

<b>R = Review and Recommendation, (R) = Optional Review, D = Decision, A = Appeal, P = Public Hearing, (P) = Optional Public Hearing</b>						
	<b>DRB</b>	<b>Planning Comm.</b>	<b>Director</b>	<b>Hearing Examiner</b>	<b>City Council</b>	<b>Courts</b>
<b>Consolidated Project Review</b>						
See BIMC 2.16.170						
<b>Legislative Approvals</b>						
Adoption or Amendment of Development Regulations		R/P	R		D (P)	A
Comprehensive Plan Amendments		R/P	R		D (P)	A
Legislative Area-Wide Rezones		R/P	R		D (P)	A
Special Area Plans		R/P	R		D (P)	A

[1] City decisions on shoreline variances, shoreline substantial development permits, and shoreline conditional use permits must be reviewed by the Washington Department of Ecology pursuant to WAC 173-27-130 and RCW 90.58.140(10). The Department of Ecology may approve, approve with conditions, or deny the application.

[2] The hearing examiner's decision is forwarded to the Department of Ecology (DOE) for decision. The DOE decision is then appealable to the Shoreline Hearings Board. (See BIMC 2.16.165.I.)

**2.16.020 General provisions.**

**2.16.020.M. Notice Requirements.**

1. Land Use Notice Summary Table.

**Table 2.16.020-1 Land Use Notice Summary Table [1]**

	Mail, Fax, E-mail, or Other to Applicant	Mail, Fax, or E-mail to Depts., Public, and Others	Publishing in Newspaper	Posting Notice at Official Locations	Posting Sign on the Property
Notice of Complete Application	X				
Notice of Application and Public Comment Period*		X	X	X	X
Notice of Public Hearing	X	X	X	X	X
Notice of Decision and Appeal Period	X	X **			

[1] Additional noticing may be required by other Titles of the BIMC

\* May be combined with SEPA notice.

\*\* Notice only goes to parties that commented during public comment period and any agencies with jurisdiction; if the application includes SEPA, notice of decision goes to SEPA agencies also.

~~2. Types of Notifications for Land Use Decisions. All applications, except those exempted in subsection M.2 of this section, require the following notifications:~~

- ~~a. Notice of complete application; and~~
- ~~b. Notice of application and public comment period\*; and~~
- ~~c. Notice of public hearing, if a public hearing is required; and~~
- ~~d. Notice of decision and appeal period.~~

~~\* If the optional process is used pursuant to subsection M.8 of this section, this will include SEPA comment period.~~

3. Exemptions from Public Notice Requirements on Land Use Decisions. The following land use applications do not require a notice of application and public comment period or notice of decision:

- a. A building permit or other construction permit, unless a notice of intent to construct in geologically hazardous areas is required under BIMC 16.20.140.
- b. An administrative decision that is categorically exempt under SEPA (Chapter 43.21C RCW), unless the permit application procedures require a public comment period or public hearing. Flexible lot design short or long plats are not exempt from notice requirements.

4. Notice of Complete Land Use Decision Application.

a. Within 28 days after receiving a land use permit application, the department director shall either mail, fax, or otherwise provide to the applicant a written determination, stating either that the application is complete or that the application is incomplete and what is necessary to make the application complete. If the application is determined to be incomplete, the department director will request additional information in writing.

b. Within 14 days after an applicant has submitted all additional information identified by the department director as being necessary for a complete application, the department director shall notify the applicant whether the application is complete or what additional information is necessary.

c. If the department director does not provide a written determination as to whether the application is complete within the 28 days, the application shall be deemed complete as of the twenty-eighth day.

#### 5. Notice of Application and Public Comment Period.

a. Time of Notice. Within 14 days of a notice of complete application, the department director shall issue a notice of application for any land use application except for those applications that are exempted pursuant to subsection M.3 of this section. The notice of application shall provide a minimum comment period of 21 days. However, for projects requiring review under the State Environmental Policy Act (SEPA), the notice of application shall provide a minimum comment period of 14 days; the SEPA threshold determination shall not be issued prior to the expiration of the notice of application comment period.

b. Method of Notice. The notice of application shall be provided to the public and other government agencies with jurisdiction over some aspect of the application by the following means:

i. Distributing written notice to property owners at addresses listed on the property tax records of Kitsap County within 500 feet of any boundary of the subject property and including any property within 500 feet of any contiguous property in the applicant's ownership;

ii. Posting notice in the official posting places of the city, including the city website;

iii. Publishing notice in the official newspaper of the city;

iv. Posting the subject property in a manner prescribed by the city; and

v. Distributing notices to government agencies.

c. Notice of Application Contents. The content of the notice shall comply with the requirements of state law and shall contain that information set forth in the administrative manual.

d. Transportation Notice. If the application is for a short subdivision or a large lot subdivision that is adjacent to the right-of-way of a state highway or within two miles of the boundary of a state or municipal airport, not later than 10 days after the short subdivision application is filed, the director shall provide a notice of the application, including a legal description and location map, to the State Secretary of Transportation. The Department of Transportation shall, within 15 days after receiving the notice, submit a statement to the director who furnished the notice,

including any information that the Department of Transportation deems to be relevant about the effect of the proposed short subdivision or large lot subdivision upon the legal access to the state highway, the traffic carrying capacity of the state highway and the safety of the users of the state highway. If comments are not received within 15 days, the director may extend the comment period by an additional 15 days to allow for Department of Transportation comments.

6. Notice of Public Hearing. Notice for an application requiring a public hearing shall be provided in the following manner:

a. Time of Notice. The hearing examiner shall provide notice of the public hearing at least 15 days prior to the hearing or as otherwise provided by law.

b. Method of Notice. The hearing examiner shall provide notice of an appeal hearing as provided in this subsection M.6.b and shall provide public notice for any other public hearing by:

i. Posting notice in the official posting places of the city, including the city website; and

ii. Publishing notice in the official newspaper of the city at least 14 days prior to the hearing or as otherwise provided by law; and

iii. Distributing notice to the applicant and appellant, if applicable; and

iv. Distributing written notice to property owners at addresses listed on the property tax records of Kitsap County within 500 feet of any boundary of the subject property and including any property within 500 feet of any contiguous property in the applicant's ownership; and

v. Distributing notice to any person who has submitted a written request for notice of the hearing; and

vi. Posting the subject property in a manner prescribed by the city.

c. Public Hearing Notice Contents. The content of the notice shall comply with the requirements of state law and shall contain that information set forth in the administrative manual.

7. Notice of Land Use Decision and Appeal Period. A notice of decision shall be issued upon a final decision on a land use application. The decision-maker shall distribute the notice of decision to the applicant, the applicable department director and any persons requesting notice or submitting comments on the application prior to the decision. Notice of decision shall include:

a. A statement indicating that the application is approved, approved with conditions, denied, or remanded; and

b. A statement of any conditions included as part of a decision for approval or approval with conditions; and

c. A statement of facts upon which the decision, including any conditions, is based and the conclusions of law derived from those facts; and

d. The SEPA threshold determination and mitigation conditions as specified in Chapter 16.04 BIMC, if applicable; and

e. Procedures for appeal under subsection R of this section if applicable.

8. Combining Public Notices on Land Use Applications. If a land use application is subject to environmental review under Chapter 16.04 BIMC (Chapter 43.21C RCW) and requires a SEPA threshold determination, the SEPA public notice and notice of SEPA public comment period, if any, shall be combined with other land use application notices when possible. A combined notice shall include a statement that a single comment letter may be submitted to the SEPA official, addressing impacts as well as other issues subject to review under the decision criteria for the land use application.

9. Notice Required for Legislative Review Procedures. Unless subsection M.10 or 11 of this section requires otherwise, notice of the date, time and place of any scheduled hearing shall be provided to the public by the following means:

a. Publishing notice in the official newspaper of the city at least 10 calendar days prior to the public hearing.

b. Posting notice in the official posting places of the city.

10. Notice Required for Adoption and Amendment of Land Use Regulations.

a. The city shall give notice of the public hearing in a way that is reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes, government agencies, businesses, and organizations. Examples of reasonable notice include:

i. Posting the property for site-specific proposals;

ii. Publishing notice in the official newspaper of the city;

iii. Notifying public or private groups who have notified the city of an interest in a certain proposal or in the type of proposal being considered.

b. Notice of the public hearing shall state when the public may submit written comments on the proposed development regulation; provided, that the public shall be given at least 10 days prior to the scheduled public hearing to submit written comments to the city.

c. Errors in exact compliance with this chapter shall not render the development regulation invalid if the spirit of the procedures established by this chapter is observed.

11. Notice Required for Special Area Plan Process. The interdepartmental staff team described in BIMC 2.16.210.D shall provide notice to the public of the initial public meeting by (a) mailing notice, by regular mail, at least 10 days prior to the date of the meeting, to all interested persons and groups identified by the interdepartmental staff team, and to all persons requesting such notice; and (b) publishing notice in the city's official newspaper at least 10 days prior to the date of the meeting.

### **2.16.020.Q. Approval Binding.**

No person, firm or corporation shall locate or expand a use for which any land use approval is required without first obtaining that land use approval. Once a land use application has been approved, no building or development of any sort shall occur contrary to the approved land use application unless this title includes a procedure for adjustments or ~~modifications~~ alterations and the city has approved those adjustments or ~~modifications~~ alterations.

### **2.16.020.R. Appeals.**

#### 1. Appeal of an Administrative Review Decision.

a. Applicability. All administrative decisions, departmental rulings and interpretations made in accordance with administrative review procedures of BIMC 2.16.030 and administrative decisions made under BIMC 1.26.070 may be appealed to a hearing examiner. Administrative decisions of the public works director and decisions on sign permits may not be appealed to the hearing examiner.

b. SEPA Appeals. Appeals of decisions made in accordance with Chapter 16.04 BIMC, the city's SEPA rules, shall be made according to the procedures in that chapter. Where the appeal concerns a substantive approval, denial, or conditional approval of a development application based on a SEPA determination (a "substantive SEPA appeal"), the appeal hearing shall be pursuant to subsection R.1.i of this section. Where the appeal concerns a threshold determination regarding the applicability of SEPA or the level of SEPA review required (a "procedural SEPA appeal"), the appeal shall also be pursuant to subsection R.1.i of this section, but, if heard on the same date, the procedural SEPA appeal shall be heard first and the record of the proceeding closed before the substantive appeals are heard.

c. Rules. The rules of procedure adopted under BIMC 2.14.030.C.2.b shall address appeal hearings before the hearing examiner. Any— Such rules of procedure for appeal hearings adopted by the hearing examiner shall will be kept published on the City's website and available from on file with the office of the city clerk and shall be provided to any person filing an appeal upon request.

d. Timing. An appeal of an administrative decision shall be filed with the city clerk within 14 days of the date of the decision. This provision applies when the application (i) is exempt from SEPA or (ii) is subject to SEPA and uses the "optional process." An appeal of an administrative decision shall be filed with the city clerk within 21 days of the date of decision when the project is subject to SEPA and requires a SEPA threshold determination public comment period pursuant to WAC 197-11-340.

e. Written Appeal Required. All appeals shall be filed in writing with the city clerk, shall identify the decision appealed and the date of the decision, and shall contain a summary of the grounds for the appeal.

f. Content of Appeal. Appeal hearings shall be limited to the issues specified in the written appeal.

g. Hearing Date. Following receipt of a notice of appeal and payment of the appropriate fee, a public hearing shall be set by the hearing examiner.

h. Related Documents. All written comments and related documents received prior to the appeal hearing shall be transmitted to the hearing examiner no later than the hearing date. In the case of complex or controversial appeals, the city may require that some or all materials be submitted two or more days in advance of the hearing date.

i. Appeal Hearing. As stated in RCW 43.21C.075, because a major purpose of SEPA is to combine environmental considerations with public decisions, any appeal brought under this section shall be linked to a specific governmental action. The State Environmental Policy Act provides a basis for challenging whether governmental action is in compliance with the substantive and procedural provisions of this chapter. The State Environmental Policy Act is not intended to create a cause of action unrelated to a specific governmental action. The appeal shall be heard in accordance with RCW 43.21C.075. The appeal shall be held at an open record public hearing. Participation in an appeal hearing is limited to the applicant, the applicant's representative, the appellant, the appellant's representative, appropriate city staff and consultants, any witnesses called by each and any nonparty who submitted written comments during the public comment period if the hearing examiner determines that the testimony will be relevant to the issue on appeal and nonrepetitive of the testimony of other witnesses.

i. In a SEPA procedural appeal, the procedural determination by the city's SEPA official shall carry substantial weight.

ii. In an appeal of a substantive decision made by the city, the criteria shall be whether (A) the proceedings were materially affected by failure to comply with adopted procedures, or (B) the decision is inconsistent with the BIMC criteria for that type of approval, or (C) the evidence in the record was not adequate to support the decision.

iii. In an appeal on the substance of a SEPA determination, or substantive conditions attached to an approval through the SEPA review process, the determination by the city's SEPA official shall carry substantial weight.

j. Continuation of Hearing. A hearing may be continued to a date certain without additional notice.

k. Decision. Upon completion of the appeal hearing, the hearing examiner shall (i) affirm the decision, (ii) reverse the decision, (iii) affirm the decision with conditions, or (iv) remand the decision to the department director for further consideration of identified issues. The decision of the director shall be accorded substantial weight by the hearing examiner. The hearing examiner may include conditions as part of a decision granting or granting with conditions an appeal to ensure conformance with BIMC, the city's comprehensive plan and other applicable laws or regulations.

l. Timing of Written Decision. The hearing examiner shall issue a written decision on the appeal within 20 working days after completion of the public hearing unless the appellant and the hearing examiner have consented to an extension of time. The written decision shall include (i) the decision of the hearing examiner granting or denying the appeal in whole or in part; (ii) any conditions included as part of the decision on the appeal; (iii) findings of facts upon which the decision, including any conditions, is based and the conclusions of law derived from those facts; and (iv) a statement of the right of a person with standing to appeal the decision of the hearing examiner in accordance with Chapter 36.70C RCW.

m. Distribution. The hearing examiner or designee body shall provide a copy of the written decision to the applicant, the appellant, the applicable department director, and any person requesting the written decision or who submitted substantive comments on the application prior to the decision.

2. Appeal of a Decision of the Hearing Examiner. The decision of the hearing examiner shall be final unless, within 21 days after issuance of a decision, a person with standing appeals the decision in accordance with Chapter 36.70C RCW or its successor.

3. Appeal of a City Council Decision on a Quasi-Judicial Matter. The decision of the city council shall be final unless, within 21 days after issuance of a decision, a person with standing appeals the decision in accordance with Chapter 36.70C RCW or its successor.

4. Appeals of a City Council Decision on a Legislative Matter. Appeal of a city council decision on a development regulation, area-wide rezone and comprehensive plan amendment is governed by state law.

### **2.16.030 Administrative review – In general.**

A. Purpose. The purpose of this section is to establish procedures for administrative decision-making on land use applications. These provisions apply when BIMC does not describe more detailed administrative procedures for a specific type of application, and also supplement those more specific administrative procedures where they exist. If there is an inconsistency between these general administrative provisions and more detailed administrative provisions for a specific type of application elsewhere in the BIMC, the more specific provisions shall govern.

B. Applicability. This section applies generally each time a provision of the BIMC authorizes administrative review of a land use application. Permit specific review requirements are in relevant subsections, except site plan and design review (which is covered under BIMC 2.16.040), including those administrative approvals described in Chapter 16.12 BIMC, with the exception of shoreline substantial development permit applications, shoreline conditional use permit applications, and shoreline variance applications, which must go to the Washington Department of Ecology pursuant to WAC 173-27-130 and RCW 90.58.140(10) for a 21-day appeal period. The specific types of applications subject to administrative review are listed in the table in BIMC 2.16.010. When an application requires both an administrative approval under BIMC Title 17 or Title 18 and also a shoreline jurisdiction approval under Chapter 16.12 BIMC, those approvals may be processed simultaneously.

C. Public Comment. Any person may comment on a proposed application by submitting written comments prior to the end of the notice of application 21-day comment period (except for those applications for which no notice is required under BIMC 2.16.020.M).

D. Decision Procedures.

1. Criteria for Decision. In making the decision, the department director shall consider the applicable decision criteria of this code, all other applicable law, and any necessary documents and approvals. When no other criteria are specified, the director shall apply the following criteria:

a. The application must comply with all applicable requirements of the BIMC as well as state and federal law.

b. The application is consistent with the adopted comprehensive plan, and specifically with the character or intended character of the area in which the property is located, as described in the comprehensive plan.

2. Environmental Review. For a land use application subject to Chapter [43.21C](#) RCW and Chapter [16.04](#) BIMC, a SEPA threshold determination may be issued simultaneously with the final decision of the land use application.

3. Planning Commission Recommendation. When written public comments are received during the public comment period concerning the effect of the land use application on the comprehensive plan, shoreline master program or matters not addressed by specific provisions of this code, the director may request the planning commission to review an application and make a written recommendation prior to the director making a decision. The planning commission will consider the land use application at a public meeting. The planning commission shall recommend approval, approval with conditions or denial of an application. In making a recommendation, the planning commission shall consider the applicable decision criteria of this code, all other applicable law, and any necessary documents and approvals. If the applicable criteria are not met, the planning commission shall recommend the proposal be modified or denied. A planning commission recommendation is not a final decision and therefore there is no appeal of the recommendation. The planning commission's written recommendation and other documents upon which its decision is based shall be immediately transmitted to the director.

#### E. Single Report.

1. The department director shall prepare a single consolidated report setting forth all the recommendations and decisions made on the application as of the date of the report.

2. The report shall state any mitigation required or proposed under the development regulations or as required through SEPA, Chapter [43.21C](#) RCW. The report shall include the SEPA determination if a determination has not previously been issued.

3. If an administrative shoreline master program permit is required for the project pursuant to Chapter [16.12](#) BIMC, the report shall address the requirements of that chapter.

F. Department Director Decision. The department director may approve, approve with conditions, or deny the application based on the decision criteria, findings of fact, recommendations of the planning commission and design review board as applicable, and any necessary documents and approvals.

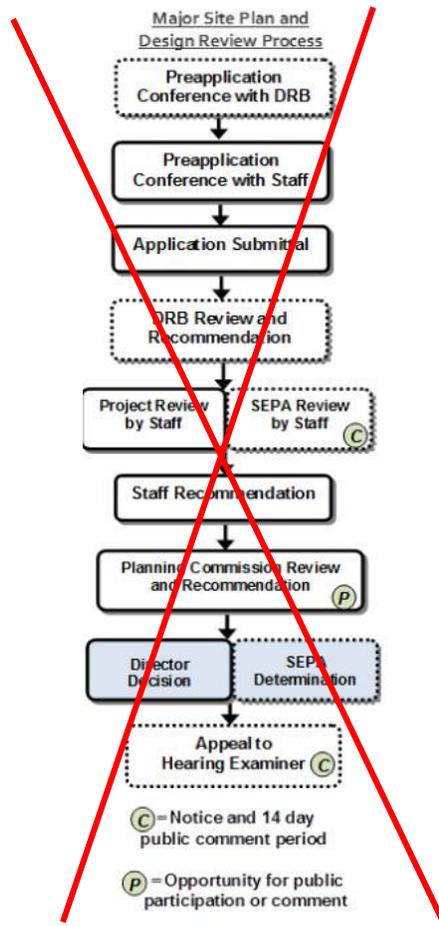
G. Corrections or Clarification. The department director may amend the decision at any time to correct clerical errors clearly identifiable from the public record. Such a correction does not affect any time limit provided for in this chapter. The department director may clarify a statement in the written decision at any time as long as the clarification does not materially alter the decision.

H. Effect of Decision. The decision of the department director is the final decision of the city, subject to the appeal provisions in BIMC [2.16.020](#).R.

I. Revocation of Administrative Approvals. An administrative approval may be revoked by the director upon the finding of any one or more of the following:

1. That the approval was obtained by deception, fraud or other intentional or misleading representation; or

2. That the use for which approval was granted has been changed; or
3. In the case of minor conditional use permits, that the use has at any time been discontinued for a year or more; or
4. That the permit granted is being exercised contrary to the terms or conditions of such approval or in violation of the code; or
5. That the use for which the approval was granted was so exercised as to be detrimental to the public health or safety.



## 2.16.060 Minor variance.

A. Purpose. Variances are the mechanism by which the city may grant relief from the provisions of the zoning ordinance ~~or the City of Bainbridge Island engineering and development standards~~ where practical difficulty renders compliance with certain provisions of the code an unnecessary hardship, where the hardship is a result of the physical characteristics of the subject property and where the purpose of the comprehensive plan is fulfilled. ~~A variance is authorized only for lot coverage, size of setbacks and/or technical engineering standards. Variances are not authorized for changes in density requirements, building or structure height requirements, open space requirements, or expanding a use otherwise prohibited.~~

### B. Applicability.

~~1.~~ A variance is authorized only for lot coverage, size of structure or size of setbacks. Variances are not authorized for changes in density requirements, building or structure height requirements, open space requirements, or expanding a use otherwise prohibited.

~~2.~~ The minor variance process may be used for minor deviations from zoning standards in BIMC Title 18 as determined by the director. Minor projects should be limited to: (a) projects that are exempt from review under the State Environmental Policy Act (SEPA), or (b) proposals for less than a 25 percent encroachment in required yards, ~~or~~ (c) proposals ~~of for~~ less than a 25 percent increase in lot coverage, ~~or~~ (d) proposals related to single-family residences on an existing lot. All other variances shall be processed using the procedures set forth in BIMC 2.16.120.

~~3.~~ This process may also be used for minor variation(s) from the engineering requirements of the adopted city of Bainbridge Island engineering and development standards if the requested variation will further the purposes of the BIMC and is approved by the department director, after recommendation by the city engineer and/or the fire marshal.

~~4.~~ For projects participating in a housing design demonstration project pursuant to BIMC 2.16.020.S, design guidelines may be varied if the applicant can demonstrate that deviation from the guidelines will facilitate meeting goals of the housing design demonstration program.

~~5.~~ This procedure is not available to obtain variances from subdivision standards in BIMC Title 17 or to obtain variances from BIMC Title 18 zoning standards cross-referenced in BIMC Title 17 as part of a short subdivision, long subdivision, or large lot subdivision approval or ~~amendment alterations~~ process, except for those engineering standards covered by subsection B.2 of this section.

~~6.~~ This procedure is not available to allow the siting for an accessory dwelling unit where it would not otherwise be permitted.

~~7.~~ A variance shall not be granted solely because of the presence of nonconformities in the vicinity of the subject site.

~~8.~~ The provisions of this section shall supplement those of BIMC 2.16.020 and 2.16.030. In the event of a conflict between the provisions of BIMC 2.16.020 or 2.16.030 and this section, the provisions of this section shall govern.

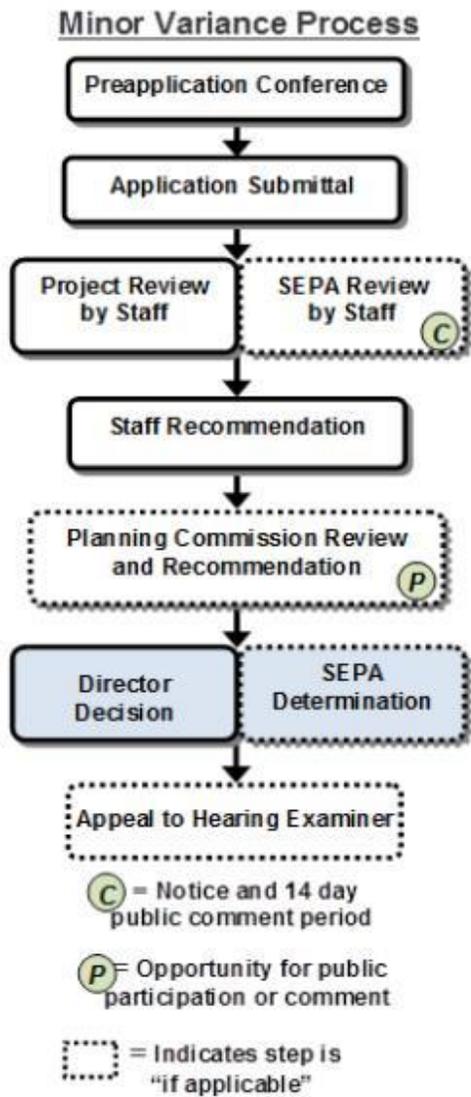
C. Procedures. Minor variances shall be approved through the general administrative review procedures described in BIMC 2.16.030 except as described below. Application materials for minor variances can be found in the administrative manual.

D. Decision Criteria.

1. A minor variance may be approved or approved with conditions if:

- a. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the property is located; and
- b. The variance is requested because of special circumstances related to the size, shape, topography, trees, groundcover, location or surroundings of the subject property, or factors necessary for the successful installation of a solar energy system such as a particular orientation of a building for the purposes of providing solar access; and
- c. The need for a variance has not arisen from previous actions taken or proposed by the applicant; and
- d. The variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity and zone, but that is denied to the property in question because of special circumstances on the property in question, and will not constitute a grant of special privilege inconsistent with the limitations upon uses of other properties in the vicinity in which the property is located; and
- e. The variance is consistent with all other provisions of this code, except those provisions that are subject to the variance, and is in accord with the comprehensive plan.

2. A variance may be approved with conditions. If no reasonable conditions can be imposed that ensure the application meets the decision criteria in subsection D.1 of this section, then the application shall be denied.



E. Conversion to Major Variance. If a minor variance application has received written public comments during the notice of application comment period concerning the effect on the land use application of the comprehensive plan, shoreline master program or matters not addressed by specific provisions of the BIMC, the director may determine that the application be processed as a major variance. (Ord. 2011-02 § 2 (Exh. A), 2011)

## **2.16.070 Short subdivisions.**

A. Purpose. This section provides an administrative procedure for approving subdivision plats including four lots or less.

B. Applicability. This procedure applies to all short subdivisions. Short subdivisions involve the division or redivision of land into four lots or less when those plats meet the criteria set forth in BIMC Title 17.

C. General Procedures.

1. Short subdivisions shall be approved through the general administrative review procedures described in BIMC 2.16.030 except as described below. Application materials for short subdivisions can be found in the administrative manual.

2. Short subdivisions shall not be used, either by a person alone or by persons acting together, at one time or over a period of time, as a means to circumvent compliance with the more stringent subdivision requirements that control the subdivision of land into five or more lots. When an application for a short subdivision is filed within five years after the approval of a short subdivision on a contiguous land parcel, a presumption of an attempt to circumvent short subdivision requirements may be invoked by the director as a basis for further investigation to assure compliance with the intent of this provision.

3. The provisions of this section shall supplement those of BIMC 2.16.020 and 2.16.030 when the application is for a short subdivision. In the event of a conflict between the provisions of BIMC 2.16.020 or 2.16.030 and this section, the provisions of this section shall govern.

4. Vesting. A proposed short subdivision shall be considered under the subdivision ordinance, zoning or other land use control ordinances, and the State Environmental Policy Act in effect at the time a fully completed application for preliminary approval of the subdivision has been submitted to the city. The requirements for a fully completed application shall be defined by the administrative manual.

5. Timeline for Review. The city has 90 calendar days from the filing of a complete application in which to approve, disapprove, or return the application to the applicant for modification. The timeline for review can be extended beyond 90 calendar days if the city determines it has incomplete or insufficient application materials and/or if there are significant changes to application materials. If no action can be taken to approve or disapprove the application within the 90 calendar days, the director must notify the applicant of the reasons for the delay and steps necessary to complete the application.

D. Review Procedures – Proposal Stage. Review of short subdivision proposals shall include all of the following except that the division or redivision of land into two lots shall not be required to comply with subsections D.1 and D.2 of this section:

1. Conceptual Proposal Review Meeting. The conceptual proposal review meeting is a means of screening short subdivision proposals in their earliest stages of design before proponents are committed to a particular design. The conceptual proposal meeting is an opportunity to ensure that the proponent understands the objectives of the review process, design guidelines, and comprehensive plan goals and policies. This early touch allows review bodies to dialogue in an informal manner with the applicant, review the design guidelines and comprehensive plan goals

and policies applicable to the site, and explore design concepts and/or options. It is also a means for staff to acquaint the prospective applicant with the procedural steps for subdivision review. The conceptual proposal review meeting will be held at a meeting of the design review board. Submittal requirements are described in the administrative manual, and include a statement of intent, site analysis, and context map. An applicant may request a waiver from the conceptual proposal review meeting if the applicant demonstrates knowledge and understanding of the city's permit processing procedures.

2. Design Guidance Review Meeting. The design guidance review meeting is intended to provide input and guidance to an applicant on consistency with applicable design guidelines and comprehensive plan goals and policies, including recommendations for how the project could be revised to achieve greater consistency. The applicant should also make known the potential need and rationale for any departure from the design guidelines or the city of Bainbridge Island design and construction standards and specifications. The design guidance review meeting will be held at a meeting of the design review board. Submittal requirements are described in the administrative manual and include documentation of the four-step design process, schematic design, and completed subdivision design guidelines checklist. The four-step design process includes:

a. Delineate Natural Space. The applicant shall prioritize natural resources on the site in terms of their highest to least appropriateness for inclusion in the proposed natural area. On the basis of those priorities and practical considerations given to the site's configuration, its context in relation to natural areas on adjoining and neighboring properties, and the applicant's subdivision objectives, natural space shall be delineated in a manner clearly indicating boundaries as well as the types of resources. The amount of natural space required is provided in Chapter 17.12 BIMC.

b. Locate Homesites and Community Space. After delineating natural space, homesite areas and community space shall be identified (a "sketch" diagram is acceptable), using the site analysis and context maps produced for the conceptual proposal review meeting as a base map. The amount of community space required is provided in Chapter 17.12 BIMC.

c. Define Access. After locating the natural space, homesites, and community space, the access network shall be defined. The access network shall provide a safe, convenient, and efficient system for vehicular, pedestrian and bicycle circulation and minimize impacts on proposed natural space.

d. Draw Lot Lines. Upon completion of the preceding three steps, draw lot lines to delineate the boundaries of individual lots.

3. Preapplication Conference. The applicant shall participate in a preapplication conference in accordance with the provisions and requirements in BIMC 2.16.020.I. ~~As part of the preapplication phase, applicants are required to participate in a community meeting through the city's public participation program outlined in Resolution No. 2010-32, except that the community meeting shall be held at a planning commission meeting. The preapplication conference application shall be provided to the design review board and planning commission.~~

E. Review Procedures – Application Stage. Review of short subdivision applications shall include all of the following:

1. Application. An applicant may submit an application for a short subdivision at any time after completion of the required steps in subsection D of this section or approval of a waiver in accordance with BIMC 2.16.020.I.3 or I.4 or subsection D.1 of this section. The applicant shall submit a complete application with all required submittal requirements listed in the administrative manual.

2. Review by Kitsap Public Health District.

a. Upon receipt of the application and determination of completeness, the director shall transmit a copy of the application to the health district.

b. The health district shall provide written recommendation of approval, approval with conditions, or disapproval of the preliminary short subdivision application pursuant to the decision criteria in subsection F of this section.

3. Review by City Engineer.

a. Upon receipt of the application and determination of completeness, the director shall transmit a copy of the application to the city engineer.

b. The city engineer shall provide written recommendation of approval, approval with conditions, or disapproval of the preliminary short subdivision application pursuant to the decision criteria in subsection F of this section.

4. Review and Recommendation by Design Review Board.

a. Review and recommendation by the design review board is optional. The director shall determine whether review is necessary based on the major issues and specific aspects of the project and any written public comments received during the public comment period.

b. The purpose of the design review board review and recommendation meeting is to review a proposed project for compliance with applicable design guidelines and to ensure that the project reflects any revisions recommended by the design review board at the design guidance review meeting. The design review board will also consider any requested departures from the design guidelines.

c. The design review board will forward written findings, their determination of the project's consistency with the design guidelines, the design guideline checklist, and their recommendation, including any conditions, to the staff planner. Any condition attached to a recommendation must be intended to achieve consistency with one or more specific design guidelines. The design review board's written findings, conclusions, and recommendation will be included in the staff report transmitted to the director or planning commission.

d. A design review board recommendation is not a final decision and therefore there is no appeal of the recommendation.

5. Review and Recommendation by Planning Commission.

a. Review and recommendation by the planning commission is optional. The director shall determine whether review is necessary based on the major issues and specific aspects of the

project, the design review board recommendation, and any written public comments received during the public comment period.

b. The purpose of the planning commission review and recommendation meeting is to review a proposed project for consistency with applicable design guidelines, BIMC Titles 17 and 18, and the comprehensive plan.

c. The planning commission shall consider the application at a public meeting where public comments will be taken. The planning commission shall recommend approval, approval with conditions or denial of an application. In making a recommendation, the planning commission shall consider the applicable decision criteria, all other applicable law, and the recommendation of the design review board. If the applicable criteria are not met, the planning commission shall recommend the proposal be modified or denied.

d. The design review board's recommendation shall hold substantial weight in the consideration of the application by the planning commission. Any deviation from the recommendation shall be documented in their written findings of facts and conclusions.

e. The planning commission will forward its written findings of facts and conclusions, their determination of the project's consistency with the comprehensive plan, and their recommendation, including any conditions attached by the planning commission and design review board, to the staff planner. The planning commission's written findings, conclusions and recommendation will be included in the staff report transmitted to the director.

f. A planning commission recommendation is not a final decision and therefore there is no appeal of the recommendation.

#### 6. Review and Approval by Director.

a. The director shall review the application materials, information provided by the health district and city engineer, staff report, any public comments received, the recommendations of the design review board and the recommendations of the planning commission.

b. The director will make the final decision based on (i) the decision criteria in subsection F of this section, (ii) the recommendation of the planning commission, (iii) the recommendation of the design review board, and (iv) consideration of any public comments received. The design review board and planning commission's recommendation shall hold substantial weight in the consideration of the application by the director. Any deviation from that recommendation shall be documented in the director's report.

c. The director shall make compliance with the recommendations of the design review board and/or planning commission a condition of approval, unless the director concludes that the recommendations:

i. Reflect inconsistent application of design guidelines or any applicable provisions of this code;

ii. Exceed the authority of the design review board or planning commission;

iii. Conflict with SEPA conditions or other regulatory requirements applicable to the project;  
or

iv. Conflict with requirements of local, state, or federal law

d. The director shall prepare written findings of facts and conclusions in support of the decision made. If the director disapproves the application he or she shall provide a written explanation of the reasons for the disapproval to the applicant.

F. Decision Criteria for Short Subdivisions. The director's decision shall include written findings of fact addressing all the requirements of the following subsections. The short subdivision may be approved or approved with modification if:

1. The applicable subdivision design guidelines and development standards of BIMC Titles 17 and 18 are satisfied; and
2. The preliminary short subdivision makes appropriate provisions for the public health, safety and general and public use and interest, including those items listed in RCW 58.17.110; and
3. The short subdivision has been prepared consistent with the requirements of the four-step design process; and
4. Any portion of a short subdivision that contains a critical area, as defined in Chapter 16.20 BIMC, conforms to all requirements of that chapter; and
5. Any portion of a short subdivision within shoreline jurisdiction, as defined in Chapter 16.12 BIMC, conforms to all requirements of that chapter; and
6. The city engineer's recommendation contains determinations that the following decision criteria are met and such determinations are supported by substantial evidence within the record:
  - a. The short subdivision meets the requirements of Chapter 17.12 BIMC related to streets and pedestrian access, and water, stormwater, and septic facilities; and
  - b. The short subdivision conforms to regulations concerning drainage in Chapters 15.19, 15.20 and 15.21 BIMC; and
  - c. The short subdivision will not cause an undue burden on the drainage basin or water quality and will not unreasonably interfere with the use and enjoyment of properties downstream; and
  - d. If the short subdivision will rely on public water or sewer services, there is capacity in the water or sewer system (as applicable) to serve the short subdivision, and the applicable service(s) can be made available at the site; and
7. The proposal complies with all applicable provisions of this code; Chapters 36.70A and 58.17 RCW; and all other applicable provisions of state and federal laws and regulations; and
8. The proposal is consistent with the city's comprehensive plan; and
9. Appropriate provisions for maintenance in perpetuity of natural and/or community space have been made; and
10. The preliminary subdivision design is compatible with the physical characteristics of the proposed subdivision site.

G. Repealed by Ord. 2018-20.

H. Civil Plan Review.

1. The applicant shall submit civil engineering plans and designs to the city for review by city staff and acceptance by the city engineer before submitting an application for final short subdivision approval.
2. No construction on or to the site may take place until civil engineering plans have been received and approved by the city.
3. After the preliminary short subdivision and civil engineering plans have been approved the subdivider is authorized to develop the subdivision's facilities and improvements in strict accordance with standards established by this title, related standards in BIMC Titles 17 and 18, and any conditions imposed.



I. Review of Final Short Subdivision Application.

1. Timeline for Review. A final short subdivision shall be approved, disapproved or returned to the applicant within 30 working days from the date of a complete application, unless the applicant provides written consent to an extension of such time period.
2. Submittal of Final Plat.
  - a. A final plat shall be submitted containing all of the submittal requirements listed in the administrative manual.
  - b. Improvements shall be constructed and/or construction assurance documents pursuant to subsection N of this section must be filed for any unfulfilled conditions.
  - c. Documentation that all conditions of approval from the preliminary plat have been met shall be provided.

3. Duties of Surveyor. All final short subdivisions shall be prepared by a land surveyor registered pursuant to Chapter 18.43 RCW, shall be surveyed in accordance with current state regulations, and shall contain the certificate shown in the administrative manual. The lot corners, perimeter, and right-of-way monuments (if applicable) shall be marked in a manner approved by the city surveyor. The material used to mark the corners, perimeter, and right-of way monuments (if applicable) shall be described upon the face of the short subdivision drawing.

4. Review, Recommendation, and Approval.

a. The final plat must be consistent with the preliminary plat approval and all conditions of approval.

b. The city engineer shall review the final short subdivision to determine compliance with the requirements of RCW 58.17.160, the "City of Bainbridge Island Engineering Design and Development Standards Manual" (except as varied by the city engineer during the preliminary short plat review process), and any conditions imposed on the approved preliminary subdivision plat, and forward written recommendations for approval or disapproval to the director.

c. The health district when appropriate shall review the final short subdivision and forward recommendations for approval or disapproval to the department.

d. After receiving the city engineer's recommendations pursuant to subsection I.4.b of this section, and the health district's recommendations pursuant to subsection I.4.c of this section as applicable, the director shall approve or disapprove an application for final short subdivision.

e. The short subdivision plat shall be approved if the director determines that:

i. The final short subdivision meets all standards established by state law, this title, and related standards in BIMC Titles 15 through 18.

ii. The final short subdivision is in conformance with all terms and conditions of the preliminary short subdivision.

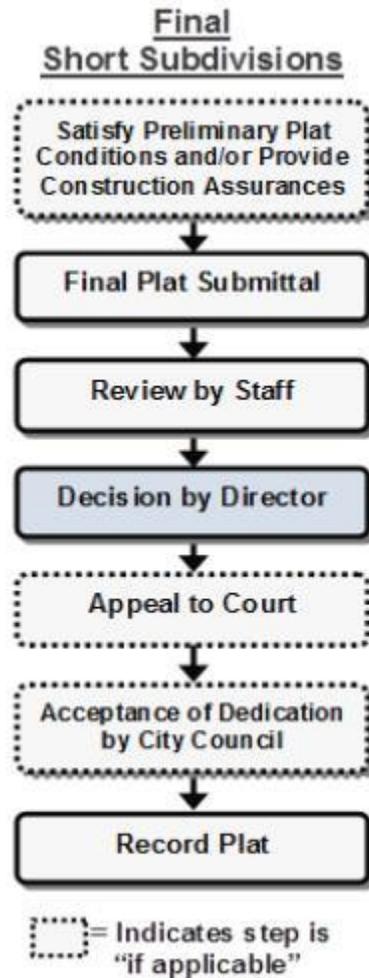
iii. The final short subdivision bears the certificates and statements of approval required by the BIMC.

f. If the application conforms to the criteria in subsection I.4.e of this section, the director shall signify his or her approval by signing the approval line on the face of the short subdivision. If the director disapproves the application, a written explanation shall be provided to the applicant.

g. If an applicant voluntarily sets aside more than 25 percent of the site as designated open space, that fact will be noted on the plat.

5. Amendment of Disapproved Application. When an application is disapproved, an applicant shall have 180 working days following the decision in which to file an amended application to remedy the matters that led to the disapproval. Upon receipt of such an amended application, the application shall be reviewed as set forth in this subsection. If an applicant files no such amended application within the period allowed, the application shall be considered denied.

6. Certification by Treasurer. Upon request of the city or the applicant for a short subdivision, the county treasurer, if no property taxes are owing upon the real property, shall so certify by subscribing the certification line upon the face of the short subdivision.



J. Modification Alteration of Preliminary or Final Short Subdivision before Filing.

1. An alteration to an approved preliminary short subdivision that does not change the general plat layout, increase off-site impacts of the subdivision, or modify a provision or condition that was a matter of dispute by any party during the preliminary approval process may be made by the director after notice and opportunity to comment are provided to the applicant and all parties of record. The director shall review and approve or disapprove the request for modification alteration following the process set forth in BIMC 2.16.030.

2. Other modifications alterations to an approved short subdivision must be reviewed in accordance with the process for a new short subdivision application, including payment of fees, and shall be approved consistent with the procedures and requirements of this section.

3. The following exemptions shall not constitute changes in the short subdivision approval and do not require further review as provided for under subsection J.1 or J.2 of this section:

- a. Engineering detail, unless the proposed detail modifies or eliminates features specifically required as an element of the preliminary short subdivision approval. For purposes of this section, "engineering detail" shall mean minor changes to proposed road or lot grading or drainage design that do not significantly affect the location of those facilities, and minor changes to locations of utility pipes, swales, or wires that do not significantly affect their visibility from adjacent roads or properties, and similar minor changes;
- b. Minor changes in lot lines or lot dimensions; or
- c. Minor alterations regarding homesite location and/or open space usage.

K. Requirements for Filing Plat.

- 1. No short subdivision shall be presented to or accepted for filing with the county auditor unless the face of the short subdivision contains the approval of the director, and the certification of the treasurer that no tax, penalties, or delinquent assessments are owing on the subject property.
- 2. The applicant shall record the short subdivision with the county auditor within 90 days of approval, and shall provide a copy of the recorded subdivision to the department.

L. Further Subdivision. Land in a short subdivision may not be further divided through a short subdivision within a period of five years after the recording of the final short subdivision without the approval of a long subdivision pursuant to BIMC 2.16.125 and 2.16.160. Nothing in this section shall prevent the owner from filing an amendment within the five-year period to create up to a total of four lots within the original short subdivision boundaries.

M. Disclaimer as to Streets. Streets within a short subdivision shall not be maintained by the city unless such streets have been improved to current city standards and have been accepted as part of the approved short subdivision. Unless accepted, the responsibility for maintenance shall lie with the owners of the lots. In such case, the face of each short subdivision shall contain the following disclaimer:

Responsibility and expense for maintenance of streets serving lots within this short subdivision (unless such roads have been accepted by the city) shall rest with the lot owners.

N. Assurance of Improvements.

- 1. In lieu of completion of improvements with conditions of a preliminary short plat approval, the city engineer may accept an assurance device in an amount and in a form determined by the city council, but not to exceed 125 percent of the established costs of completing the infrastructure that secures and provides for the actual construction and installation of the improvements or the performance of the conditions within one year, or such additional time as the city engineer determines is appropriate after final plat approval.
- 2. The city engineer shall require an assurance device securing the successful performance of improvements for two years after the city's acceptance of the improvements. The city may require that the applicant provide assurances of improvement for all lots in an approved short subdivision

before the city will approve final occupancy for more than 80 percent of the lots shown on the subdivision.

O. ~~Amendment~~ Alteration to Approved Short Subdivision. A short subdivision that has been approved and recorded may be amended upon application of the owners of all lots, access easements, open space, or other rights that are proposed to be amended. The contents and procedure for an amended application shall be that for an application in the first instance, except that minor alterations regarding home-site location and/or open space usage shall be approved administratively consistent with the procedures and requirements of BIMC 2.16.030. (Ord. 2018-20 § 8 (Exh. C), 2018; Ord. 2017-02 § 5, 2017; Ord. 2011-21 § 3, 2011; Ord. 2011-02 § 2 (Exh. A), 2011)

### **2.16.080 Large lot subdivisions.**

A. Purpose. This section provides an administrative procedure for approving subdivisions in which all of the created lots are generally larger than five acres.

B. Applicability. This procedure applies to all large lot subdivisions. Large lot subdivisions include divisions or redivisions of land so that each created lot contains at least five acres of land (or 1/128th of a section of land, whichever is less).

C. General Procedures.

1. The provisions of this section shall supplement the general administrative review provisions of BIMC 2.16.020 and 2.16.030 when the application is for a large lot subdivision. In the event of a conflict between the provisions of BIMC 2.16.020 or 2.16.030 and this section, the provisions of this section shall govern.

2. Large lot subdivisions shall be reviewed and approved through the procedures described for short subdivisions in BIMC 2.16.070.D through F, with the exception that design review board and planning commission review and recommendation are required, not optional.

3. Vesting. A proposed large lot subdivision shall be considered under the subdivision ordinance, zoning or other land use control ordinances, and the State Environmental Policy Act in effect at the time a fully completed application for preliminary approval of the subdivision has been submitted to the city. The requirements for a fully completed application shall be defined by the administrative manual.

4. Timeline for Review. The city has 90 calendar days from the filing of a complete application in which to approve, disapprove, or return the application to the applicant for modification. The timeline for review can be extended beyond 90 calendar days if the city determines it has incomplete or insufficient application materials and/or if there are significant changes to application materials. If no action can be taken to approve or disapprove the application within the 90 calendar days, the director must notify the applicant of the reasons for the delay and steps necessary to complete the application.

D. *Repealed by Ord. 2018-20.*

E. *Repealed by Ord. 2018-20.*

F. Civil Plan Review.

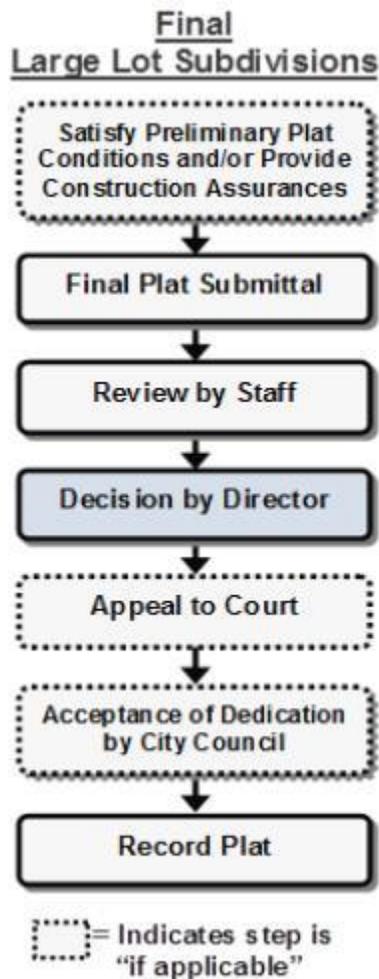
1. The applicant shall submit civil engineering plans and designs to the city for review by city staff and acceptance by the city engineer before submitting an application for final large lot subdivision approval.
2. No construction on or to the site may take place until civil engineering plans have been received and approved by the city.
3. After the preliminary large lot subdivision and civil engineering plans have been approved the subdivider is authorized to develop the subdivision's facilities and improvements in strict accordance with the standards established by this title, related standards in Titles 17 and 18, and any conditions imposed.



**G. Review of Final Large Lot Subdivision Application.**

1. **Timeline for Review.** Final large lot subdivisions shall be approved, approved with conditions, disapproved or returned to the applicant by the director within 30 working days from the date of filing of a complete application, unless the applicant consents to an extension of such time period.
2. **Submittal of Final Plat.** The submittal requirements shall be the same as those for short subdivisions as described in BIMC 2.16.070.1.2.
3. **Duties of Surveyor.** The duties of the surveyor shall be the same as those for a short subdivision as described in BIMC 2.16.070.1.3.
4. **Review, Recommendation, and Approval.**
  - a. The city engineer shall review the final large lot subdivision to determine the compliance with the requirements of RCW 58.17.160, the "City of Bainbridge Island Engineering Design and Development Standards Manual" (except as varied by the city engineer during the preliminary large lot review process), and any conditions imposed on the approved preliminary subdivision plat, and forward written recommendations for approval, approval with conditions, or disapproval to the director.
  - b. After receiving the city engineer's recommendation pursuant to subsection G.4.a of this section, the director shall approve, approve with conditions, or disapprove the final large lot subdivision.

- c. The large lot subdivision shall be approved if the director determines that:
  - i. The final large lot plat meets all standards established by state law, this title and related standards in BIMC Titles 15 through 18; and
  - ii. The proposed final large lot plat bears the certificates and statements of approval required by the administrative manual; and
  - iii. The facilities and improvements required to be provided by the subdivider have been completed or assurances in accordance with BIMC 2.16.070.N have been provided.
- d. If the application conforms to the criteria in subsection G.4.c of this section, the director shall signify his or her approval by signing the approval line on the face of the large lot subdivision. If the director disapproves the application, he or she shall provide a written explanation to the applicant.



5. Amendment of Disapproved Application. When an application is disapproved, an applicant shall have the same rights to submit an amended application that apply to short subdivisions as

described in BIMC 2.16.070.I.5, except that any amended application filed within the 180-day time frame shall be reviewed as set forth in this subsection G.

#### H. Improvements.

1. All large lot subdivisions shall have the following improvements developed and/or installed prior to recording the final plat:

- a. Streets shall be cleared and grubbed; and
- b. Streets shall be rocked or graveled to provide adequate year-round passage; and
- c. Appropriate drainage, including erosion control, facilities consistent with Chapters 15.20 and 15.21 BIMC shall be provided on a plan approved by the city engineer prior to clearing and construction of any plat improvements.

2. All street rights-of-way within the large lot subdivision shall be dedicated to the city of Bainbridge Island unless the only access between the large lot subdivision and a developed, publicly owned road is a private road and there is no easement providing public access on that private road. That dedication shall not reduce the number of parcels allowable in a large lot subdivision if such parcels are based on a section subdivision and/or comprise 1/128th of a section or more.

3. On any approved large lot no further lot divisions shall be approved until the required improvements are installed and approved by the city.

I. Assurance of Improvements. Large lot subdivisions shall be subject to the same requirements for assurance of required improvements that apply to short subdivisions as described in BIMC 2.16.070.N.

#### J. Modification Alteration of Preliminary or Final Large Lot Subdivisions before Filing.

1. An alteration to an approved preliminary large lot subdivision that does not change the general plat layout, increase off-site impacts of the subdivision, or ~~modify alter~~ a provision or condition that was a matter of dispute by any party during the preliminary approval process may be made by the director after notice and opportunity to comment are provided to the applicant and all parties of record. The director shall review and approve or disapprove the request for modification alteration following the process set forth in BIMC 2.16.030.

2. Other modifications alterations to an approved large lot subdivision must be reviewed in accordance with the process for a new large lot subdivision application, including payment of fees, and shall be approved consistent with the procedures and requirements of this chapter.

3. The following exemptions shall not constitute changes in the preliminary large lot subdivision approval and do not require further review as provided for under subsections J.1 or J.2 of this section:

- a. Engineering detail, unless the proposed detail modifies or eliminates features specifically required as an element of the preliminary large lot subdivision approval. For purposes of this section, "engineering detail" shall mean minor changes to proposed road or lot grading or drainage design that do not significantly affect the location of those facilities, and minor changes to locations of utility pipes, swales, or wires that do not significantly affect their visibility from adjacent roads or properties; and similar minor changes;

- b. Minor changes in lot lines or lot dimensions; or
- c. Minor alterations regarding homesite location and/or open space usage.

K. Disclaimer as to Streets. Streets within a large lot subdivision shall not be constructed or maintained by the city unless such streets have been improved to current standards and have been accepted into the city street system. Unless so improved and accepted, the responsibility for maintenance shall lie with the owners of the lots. In such cases the face of each large lot subdivision plat shall contain the following disclaimer:

Responsibility and expense for maintenance of roads leading to or serving lots within this Large Lot Subdivision (unless such roads have been accepted into city's road system) shall rest with the lot owners.

L. Further Division. No lot in an approved large lot subdivision may be divided further within five years of recording the approved final large lot subdivision plat without following the subdivision requirements in effect at the time of such application. Short or long subdivision procedures may apply, depending on the number of additional lots proposed to be created.

M. Requirements for Filing Plat. In addition to the requirements of subsections J and K of this section, approved large lot subdivisions shall be subject to the same requirements for filing plats that apply to short subdivisions as described in BIMC 2.16.070.K.

N. Amendment Alteration to Approved Large Lot Subdivision. Proposals for amendment of a large lot subdivision shall follow the provisions of RCW 58.17.215. Alterations of a subdivision are also subject to the provisions of RCW 64.04.175. (Ord. 2018-20 § 9 (Exh. D), 2018; Ord. 2011-02 § 2 (Exh. A), 2011)

### **2.16.100 Quasi-judicial review by hearing examiner – In general.**

A. Purpose. The purpose of this section is to describe those general procedures that apply whenever state law or the BIMC require a public hearing before a hearing examiner and a recommendation or decision by the hearing examiner.

B. Applicability. This section applies each time a provision of this code authorizes a recommendation or a final decision by the hearing examiner. The specific types of applications subject to review by the hearing examiner are listed in the table in BIMC 2.16.010. The provisions of this section are supplemented by more detailed provisions in BIMC 2.16.110, 2.16.120, 2.16.160, 2.16.165, and/or 16.20.080.

C. Procedures.

1. SEPA Environmental Review. For a land use application subject to Chapter 43.21C RCW and Chapter 16.04 BIMC, the SEPA threshold determination shall be issued and any required public comment period shall be completed prior to a public hearing.

2. Planning Commission Review and Recommendation. When written public comments are received during the public comment period concerning the effect of the land use application on the comprehensive plan, the shoreline master program, or matters not addressed by specific provisions of this code, the director or the hearing examiner may request planning commission review and recommendation pursuant to the procedures in BIMC 2.14.020.G prior to the final decision.

### 3. Single Report.

- a. The director shall prepare a single consolidated report setting forth all the recommendations and decisions made on the application as of the date of the report.
- b. The report shall state any mitigation required or proposed under the development regulations or as required by SEPA, Chapter 43.21C RCW, and shall include the SEPA determination if a determination has not previously been issued.
- c. If a shoreline master program permit is required for the project pursuant to Chapter 16.12 BIMC, the report shall address the requirements of that section.
- d. The director's report shall be presented to the hearing examiner at the public hearing.

4. Public Hearing. The hearing examiner shall hold a public hearing prior to issuing a decision. The purpose of the public hearing is to review a proposed project for consistency with the BIMC, appropriate elements of the comprehensive plan and all other applicable law, and to provide an opportunity for the public to comment on the project and its compliance with the municipal code, the comprehensive plan and all other applicable law. The hearing examiner shall maintain a record of the exhibits presented and a recording of the testimony and arguments presented, which shall be kept by the city clerk. Any rules of procedure for hearings adopted by the City Council hearing examiner shall will be published on the City's website and available from kept on file with the office of the city clerk upon request. A hearing may be continued to a date certain without additional notice.

5. Participation in the Public Hearing. Any person may participate in the public hearing. The hearing examiner has discretion to limit testimony to relevant, nonrepetitive comments and to set time limits.

### 6. Hearing Examiner Action.

- a. The hearing examiner may approve, approve with conditions, deny, or remand an application.
- b. In making a decision, the hearing examiner shall consider the applicable decision criteria of this code, all other applicable laws, recommendations of the planning commission and design review board, testimony presented at the hearing, and any necessary documents and approvals. In the case of decisions involving properties subject to the shoreline jurisdiction of Chapter 16.12 BIMC, the hearing examiner shall also consider consistency with the requirements of the shoreline master program.
- c. The hearing examiner shall issue a written decision in accordance with BIMC 2.16.020.M.7, within 10 working days of the public hearing, unless a longer period is agreed upon by the hearing examiner and the applicant or appellant. If the hearing examiner and the applicant or appellant agree on a longer period for issuance of the written decision, the examiner shall provide notice of the extension to the applicant or appellant, the city, and any person who testified at the hearing or submitted written testimony for consideration at the hearing.
- d. The hearing examiner shall file the decision with the city clerk's office.

7. Motion for Reconsideration. The rules of procedure adopted under BIMC 2.14.030.C.2.b shall allow a party of record to file, within a reasonable period of time specified by such rules, a motion for reconsideration of a recommendation or decision issued by the hearing examiner. A motion for reconsideration may be filed to correct substantive errors. Such motion shall be filed in writing 10 days from the date the hearing examiner's decision was filed. The motion shall be decided on the record unless, at the hearing examiner's discretion, further public hearing is necessary. If a timely and appropriate request for reconsideration is filed, the appeal period shall begin from the date the decision on the reconsideration is issued.

8. Corrections or Clarification. The hearing examiner at any time may amend the decision to correct clerical errors clearly identifiable from the public record. Such correction does not affect any time limit provided for in this chapter. The hearing examiner may clarify a statement in the written decision as long as the clarification does not materially alter the decision.

9. Effect of Decision.

a. On matters that do not involve shoreline conditional uses or shoreline variances, the decision of the hearing examiner is the final decision of the city, subject to the appeal provisions in BIMC 2.16.020.R.2

b. Pursuant to RCW 90.58.140(10) and WAC 173-27-130, final decisions involving shoreline conditional use permits and shoreline variances are made by the Washington State Department of Ecology. For these types of applications, the hearing examiner's decision is a recommendation subject to approval, approval with conditions, or denial by that department.

10. Revocation of Quasi-judicial Approvals. An approval or permit granted by the hearing examiner may be revoked by the hearing examiner following the procedures in this section upon the finding of any one or more of the following:

a. That the approval was obtained by deception, fraud or other intentional or misleading representation; or

b. That the use for which approval was granted has been changed; or

c. In the case of major conditional use permits, that the use has at any time been discontinued for a year or more; or

d. That the permit granted is being exercised contrary to the terms or conditions of such approval or in violation of the BIMC; or

e. That the use for which the approval was granted was so exercised as to be detrimental to the public health or safety. (Ord. 2011-21 § 4, 2011: Ord. 2011-02 § 2 (Ex. A), 2011)

### **2.16.120 Major variances.**

A. Purpose. Variances are the mechanism by which the city may grant relief from the provisions of the zoning ordinance where practical difficulty renders compliance with certain provisions of the code an unnecessary hardship, where the hardship is a result of the physical characteristics of the subject property and where the purpose of the comprehensive plan is fulfilled.

## B. Applicability.

1. The major variance process may be used for deviations from zoning standards in BIMC Title [18](#) that the director determines exceed the threshold for minor variances under BIMC [2.16.060](#). A variance is authorized only for lot coverage, size of structure or size of setbacks. Variances are not authorized for changes in density requirements, building or structure height requirements, open space requirements, or expanding a use otherwise prohibited.
2. This procedure is not available to obtain variances from subdivision standards in BIMC Title [17](#) or to obtain variances from BIMC Title [18](#) zoning standards cross-referenced in BIMC Title [17](#) as part of a short subdivision, long subdivision, or large lot subdivision approval or **amendment alteration** process.
3. This procedure is not available to allow the siting for an accessory dwelling unit where it would not otherwise be permitted.
4. A variance shall not be granted solely because of the presence of nonconformities in the vicinity of the subject site.
5. Variances from the city's noise regulations in Chapter [16.16](#) BIMC are available through the noise variance process in Chapter [16.16](#) BIMC and are not available through the major variance process in this section.
6. The provisions of this section supplement those of BIMC [2.16.020](#) and [2.16.100](#) when the application is for a major variance. In the event of a conflict between the provisions of BIMC [2.16.020](#) or [2.16.100](#) and this section, the provisions of this section shall govern.

### **2.16.125 Preliminary long subdivisions.**

A. Purpose. This section provides a procedure for review and approval of preliminary long subdivision applications in compliance with the provisions of RCW Title 58, BIMC Title 17, and other applicable provisions of Washington State law and this municipal code.

B. Applicability. This procedure applies to all applications for preliminary long subdivisions. Long subdivisions involve the division or redivision of land into more than four lots.

#### C. General Procedures.

1. Long subdivisions shall be approved through the quasi-judicial hearing examiner approval procedures described in BIMC 2.16.100 except as described below.
2. The provisions of this section shall supplement those of BIMC 2.16.020 and 2.16.030 when the application is for a long subdivision. In the event of a conflict between the provisions of BIMC 2.16.020 or 2.16.030 and this section, the provisions of this section shall govern.
3. Vesting. A proposed long subdivision shall be considered under the subdivision ordinance, zoning or other land use control ordinances, and the State Environmental Policy Act in effect at the time a fully completed application for preliminary approval of the subdivision has been submitted to the city. The requirements for a fully completed application shall be defined by the administrative manual.

4. Timeline for Review. The city has 90 calendar days from the filing of a complete application in which to approve, disapprove, or return the application to the applicant for modification. The timeline for review can be extended beyond 90 calendar days if the city determines it has incomplete or insufficient application materials and/or if there are significant changes to application materials. If no action can be taken to approve or disapprove the application within the 90 calendar days, the director must notify the applicant of the reasons for the delay and steps necessary to complete the application.

D. Review Procedures – Proposal Stage. Review of long subdivision proposals shall include all of the following:

1. Conceptual Proposal Review Meeting. The conceptual proposal review meeting is a means of screening long subdivision proposals in their earliest stages of design before proponents are committed to a particular design. The conceptual proposal meeting is an opportunity to ensure that the proponent understands the objectives of the review process, design guidelines, and comprehensive plan goals and policies. This early touch allows review bodies to dialogue in an informal manner with the applicant, review the design guidelines and comprehensive plan goals and policies applicable to the site, and explore design concepts and/or options. It is also a means for staff to acquaint the prospective applicant with the procedural steps for subdivision review. The conceptual proposal review meeting will be held at a meeting of the design review board. Submittal requirements are described in the administrative manual, and include a statement of intent, site analysis, and context map. An applicant may request a waiver from the conceptual proposal review meeting if the applicant demonstrates knowledge and understanding of the city’s permit processing procedures.

2. Design Guidance Review Meeting. The design guidance review meeting is intended to provide input and guidance to an applicant on consistency with applicable design guidelines and comprehensive plan goals and policies, including recommendations for how the project could be revised to achieve greater consistency. The applicant should also make known the potential need and rationale for any departure from the design guidelines or the city of Bainbridge Island design and construction standards and specifications. The design guidance review meeting will be held at a meeting of the design review board. Submittal requirements are described in the administrative manual and include documentation of the four-step design process, schematic design, and completed subdivision design guidelines checklist. The four-step design process includes:

a. Delineate Natural Space. The applicant shall prioritize natural resources on the site in terms of their highest to least appropriateness for inclusion in the proposed natural area. On the basis of those priorities and practical considerations given to the site’s configuration, its context in relation to natural areas on adjoining and neighboring properties, and the applicant’s subdivision objectives, natural space shall be delineated in a manner clearly indicating boundaries as well as the types of resources. The amount of natural space required is provided in Chapter 17.12 BIMC.

b. Locate Homesites and Community Space. After delineating natural space, homesite areas and community space shall be identified (a “sketch” diagram is acceptable), using the site analysis and context maps produced for the conceptual proposal review meeting as a base map. The amount of community space required is provided in Chapter 17.12 BIMC.

c. Define Access. After locating the natural space, homesites, and community space, the access network shall be defined. The access network shall provide a safe, convenient, and efficient system for vehicular, pedestrian and bicycle circulation and minimize impacts on proposed natural space.

d. Draw Lot Lines. Upon completion of the preceding three steps, draw lot lines to delineate the boundaries of individual lots.

3. Preapplication Conference. The applicant shall participate in a preapplication conference in accordance with the provisions and requirements in BIMC 2.16.020.I. As part of the preapplication phase, applicants are required to participate in a community meeting through the city's public participation program outlined in Resolution No. 2010-32, except that the community meeting shall be held at a planning commission meeting. The preapplication conference application shall be provided to the design review board and planning commission.

E. Review Procedures – Application Stage. Review of long subdivision applications shall include all of the following:

1. Application. An applicant may submit an application for a long subdivision at any time after completion of the required steps in subsection D of this section or approval of a waiver in accordance with BIMC 2.16.020.I.3 or I.4 or subsection D.1 of this section. The applicant shall submit a complete application with all required submittal requirements listed in the administrative manual.

2. Review by Kitsap Public Health District.

a. Upon receipt of the application and determination of completeness, the director shall transmit a copy of the application to the health district.

b. The health district shall provide written recommendation of approval, approval with conditions, or disapproval of the preliminary long subdivision application pursuant to the decision criteria in subsection F of this section.

3. Review by City Engineer.

a. Upon receipt of the application and determination of completeness, the director shall transmit a copy of the application to the city engineer.

b. The city engineer shall provide written recommendation of approval, approval with conditions, or disapproval of the preliminary long subdivision application pursuant to the decision criteria in subsection F of this section.

4. Review and Recommendation by Design Review Board.

a. The purpose of the design review board review and recommendation meeting is to review a proposed project for compliance with applicable design guidelines and to ensure that the project reflects any revisions recommended by the design review board at the design guidance review meeting. The design review board will also consider any requested departures from the design guidelines.

b. The design review board will forward written findings, their determination of the project's consistency with the design guidelines, the design guideline checklist, and their recommendation, including any conditions, to the staff planner. Any condition attached to a recommendation must be intended to achieve consistency with one or more specific design guidelines. The design review board's written findings, conclusions, and recommendation will be included in the staff report transmitted to the director or planning commission.

c. A design review board recommendation is not a final decision and therefore there is no appeal of the recommendation.

5. Review and Recommendation by Planning Commission.

a. The purpose of the planning commission review and recommendation meeting is to review a proposed project for consistency with applicable design guidelines, BIMC Titles 17 and 18, and the comprehensive plan.

b. The planning commission shall consider the application at a public meeting where public comments will be taken. The planning commission shall recommend approval, approval with conditions or denial of an application. In making a recommendation, the planning commission shall consider the applicable decision criteria, all other applicable law, and the recommendation of the design review board. If the applicable criteria are not met, the planning commission shall recommend that the proposal be modified or denied.

c. The design review board's recommendation shall hold substantial weight in the consideration of the application by the planning commission. Any deviation from the recommendation shall be documented in their written findings of facts and conclusions.

d. The planning commission will forward its written findings of facts and conclusions, their determination of the project's consistency with the comprehensive plan, and their recommendation, including any conditions attached by the planning commission and design review board, to the staff planner. The planning commission's written findings, conclusions, and recommendation will be included in the staff report transmitted to the director.

e. A planning commission recommendation is not a final decision and therefore there is no appeal of the recommendation.

6. Review by Director.

a. The director shall review the application materials, information provided by the health district and city engineer, staff report, and the recommendations of the planning commission and shall prepare a report to the hearing examiner recommending approval, approval with conditions, or disapproval of the application.

b. The planning commission's recommendation shall hold substantial weight in the consideration of the application by the director. Any deviation from that recommendation shall be documented in the director's report.

7. Review and Public Hearing with Hearing Examiner.

a. The hearing examiner shall consider the application materials and the director's recommendation at a public hearing following the procedures of BIMC 2.16.100.C and applicable provisions of BIMC 2.16.020.

b. The hearing examiner shall make compliance with the recommendations of the planning commission a condition of approval, unless the hearing examiner concludes that the recommendations:

i. Reflect inconsistent application of design guidelines or any applicable provisions of this code;

ii. Exceed the authority of the design review board or planning commission;

iii. Conflict with SEPA conditions or other regulatory requirements applicable to the project; or

iv. Conflict with requirements of local, state, or federal law.

F. Decision Criteria for Preliminary Long Subdivisions. The hearing examiner's decision shall include written findings of fact that the application meets all the requirements of the following subsections. The preliminary long subdivision may be approved or approved with modification if:

1. The applicable subdivision design guidelines and development standards of BIMC Titles 17 and 18 are satisfied; and

2. The preliminary long subdivision makes appropriate provisions for the public health, safety and general and public use and interest, including those items listed in RCW 58.17.110; and

3. The preliminary long subdivision has been prepared consistent with the requirements of the four-step design process; and

4. Any portion of a long subdivision that contains a critical area, as defined in Chapter 16.20 BIMC, conforms to all requirements of that chapter; and

5. Any portion of a long subdivision within shoreline jurisdiction, as defined in Chapter 16.12 BIMC, conforms to all requirements of that chapter; and

6. The city engineer's recommendation contains determinations that the following decision criteria are met and such determinations are supported by substantial evidence within the record:

a. The long subdivision meets the requirements of Chapter 17.12 BIMC related to streets and pedestrian access, and water, stormwater, and septic facilities; and

b. The long subdivision conforms to regulations concerning drainage in Chapters 15.19, 15.20 and 15.21 BIMC; and

c. The long subdivision will not cause an undue burden on the drainage basin or water quality and will not unreasonably interfere with the use and enjoyment of properties downstream; and

d. If the long subdivision will rely on public water or sewer services, there is capacity in the water or sewer system (as applicable) to serve the long subdivision, and the applicable service(s) can be made available at the site; and

7. The proposal complies with all applicable provisions of this code; Chapters 36.70A and 58.17 RCW; and all other applicable provisions of state and federal laws and regulations; and

8. The proposal is consistent with the city's comprehensive plan; and

9. Appropriate provisions for maintenance in perpetuity of natural and/or community space have been made; and

10. The preliminary subdivision design is compatible with the physical characteristics of the proposed subdivision site.

G. *Repealed by Ord. 2018-20.*

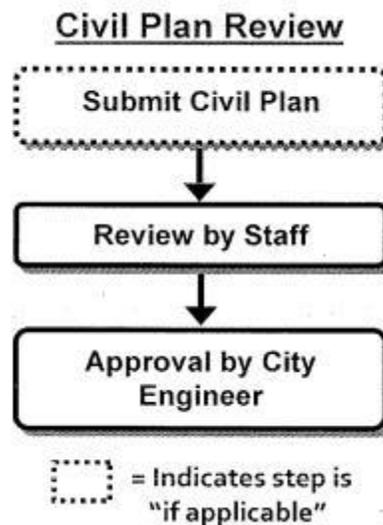
H. *Repealed by Ord. 2018-20.*

I. Civil Plan Review.

1. The applicant shall submit civil engineering plans and designs to the city for review by city staff and acceptance by the city engineers before submitting an application for final long subdivision approval.

2. No construction on or to the site may take place until civil engineering plans have been received and approved by the city.

3. After the preliminary long subdivision and civil engineering plans have been approved, the subdivider is authorized to develop the subdivision's facilities and improvements in strict accordance with the standards established by this title, related standards in BIMC Titles 17 and 18, and any conditions imposed.



J. Phased Development of Long Subdivision.

1. Portions of an approved preliminary long subdivision may be processed separately for recording in phases; provided, that (a) the phases were identified in the preliminary long subdivision; and (b) recording of phases is consistent with the conditions of preliminary approval and will meet all the requirements for final approval if subsequent phases are not recorded.
2. Prior to the approval of a phase of a final subdivision, the city engineer or the director may require assurance devices submitted for construction of improvements in subsequent phases if such improvements are necessary for the phases being approved to meet requirements of the subdivision and other applicable ordinances.

K. Modification Alteration of Preliminary Long Subdivision.

1. An alteration of an approved preliminary long subdivision that does not change the general plat layout, increase off-site impacts of the subdivision, or modify alter a provision or condition that was a matter of dispute by any party during the preliminary approval process may be made by the director after notice and opportunity to comment are provided to the applicant and all parties of record. The director shall review and approve or disapprove the request for modification alteration following the process set forth in BIMC 2.16.030.
2. Other modifications alterations to an approved long subdivision must be reviewed in accordance with the process for a new subdivision application and shall be approved consistent with the procedures and requirements of this chapter.
3. The following exemptions shall not constitute changes in the preliminary long subdivision approval and do not require further review as provided for under subsection K.1 or K.2 of this section:
  - a. Engineering detail, unless the proposed detail modifies alters or eliminates features specifically required as an element of the preliminary long subdivision approval. For purposes of this section, "engineering detail" shall mean minor changes to proposed road or lot grading or drainage design that do not significantly affect the location of those facilities, and minor changes to locations of utility pipes, swales, or wires that do not significantly affect their visibility from adjacent roads or properties, and similar minor changes;
  - b. Minor changes in lot lines or lot dimensions; or
  - c. Minor alterations regarding homesite location and/or open space usage. (Ord. 2018-20 § 11 (Exh. F), 2018; Ord. 2017-02 § 7, 2017; Ord. 2011-21 § 5, 2011)

**2.16.160 Final long subdivisions.**

A. Purpose. This section provides a procedure for city council approval of final long subdivision applications in compliance with the provisions of RCW Title 58, BIMC Title 17, and other applicable provisions of Washington State law.

B. Applicability. This procedure applies to all applications for final long subdivisions, as the term "long subdivisions" is defined in Chapter 17.28 BIMC, and that definition shall prevail over the following

summary. Long subdivisions generally involve the division or redivision of land into more than four lots, where some of the lots are smaller than five acres in size.

C. Procedure.

1. Final long subdivisions shall be approved through the quasi-judicial city council approval procedures described in BIMC 2.16.130 except as described below.
2. The provisions of this section shall supplement those of BIMC 2.16.020 and 2.16.030 when the application is for a final long subdivision. In the event of a conflict between the provisions of BIMC 2.16.020 or 2.16.030 and this section, the provisions of this section shall govern.

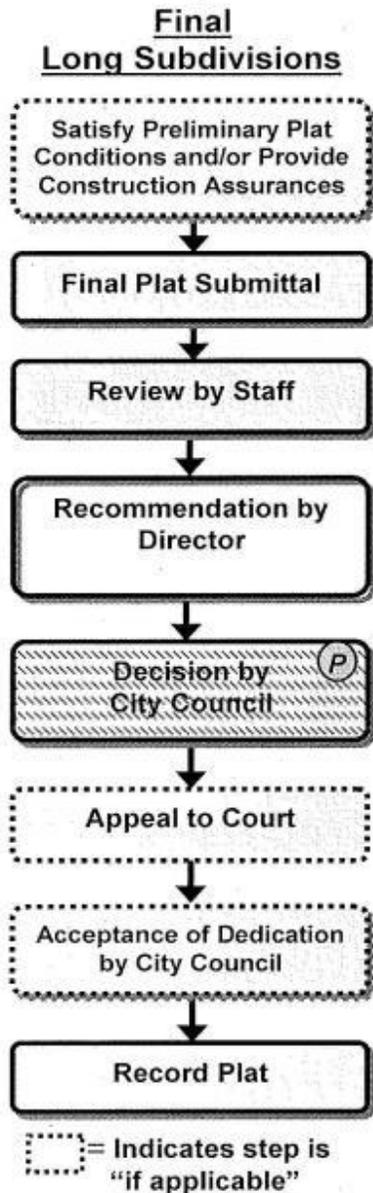
D. Vesting. A proposed final long subdivision shall be reviewed under all applicable city ordinances and the State Environmental Policy Act in effect at the time of complete application, unless a different result is required by provisions of Chapter 58.17 RCW. A later request for additional information shall not change the date on which the application is considered vested.

E. Timeline for Review of Final Plat. A final long subdivision shall be approved, disapproved or returned to the applicant within 30 working days from the date of a complete application, unless the applicant provides written consent to an extension of such time period.

F. Submittal of Final Plat. A final plat shall be submitted containing all of the submittal requirements listed in the administrative manual.

G. Review of Final Long Subdivision.

1. The city engineer shall review the final subdivision to determine compliance with the requirements of RCW 58.17.160 and forward recommendations for approval or disapproval to the department.
2. The health district, when appropriate, shall review the final subdivision and forward recommendations for approval or disapproval to the department.
3. The director shall forward his or her recommendation for approval or disapproval to the city council, evaluating compliance with any conditions imposed on the preliminary subdivision and other applicable ordinances.
4. In accordance with RCW 58.17.140, final subdivisions shall be approved, disapproved or returned to the applicant within 30 days from the date of filing of a complete application, unless the applicant consents to an extension of the time period. The director and the city engineer shall have authority to return the application for correction or modification with a request for additional information before city council review, and city council shall have authority to return the application for correction or modification with a request for additional information during its review.



H. City Council Review and Approval of Final Long Subdivision.

1. The city council shall approve the final long subdivision if it determines:
  - a. That the conditions imposed through the preliminary subdivision have been met; and
  - b. Bonds or other assurance devices, if any, by their essential terms assure completion of all plat improvements; and
  - c. The requirements of state law, the BIMC, the comprehensive plan, and any other applicable ordinances in effect at the time of preliminary plat approval have been satisfied by the subdivider.

2. The city council can approve the final subdivision with minor modifications recommended by the department and the applicant.
3. If the city council approves the final subdivision, the council chair shall sign the face of the final plat to indicate the council's approval; provided, that upon approval of the final plat the city council may direct and authorize the mayor or another council member to sign the face of the final plat to indicate the council's approval.
4. If an applicant voluntarily sets aside more than 25 percent of the site as designated open space, that fact will be noted on the plat.
5. The original mylar of the final subdivision shall be recorded with the county auditor, and one copy with the auditor's recording number shall be filed with the city.

I. Modification Alteration of Preliminary Long Subdivision Before Filing.

1. An alteration of an approved preliminary long subdivision that does not change the general plat layout, increase off-site impacts of the subdivision, or modify alter a provision or condition that was a matter of dispute by any party during the preliminary approval process may be made by the director after notice and opportunity to comment are provided to the applicant and all parties of record. The director shall review and approve or disapprove the request for modification alteration following the process set forth in BIMC 2.16.030.
2. Other modifications alterations to an approved long subdivision must be reviewed in accordance with the process for a new subdivision application and shall be approved consistent with the procedures and requirements of this chapter.
3. The following exemptions shall not constitute changes in the preliminary long subdivision approval and do not require further review as provided for under subsection I.1 or I.2 of this section:
  - a. Engineering detail, unless the proposed detail modifies alters or eliminates features specifically required as an element of the preliminary long subdivision approval. For purposes of this section, "engineering detail" shall mean minor changes to proposed road or lot grading or drainage design that do not significantly affect the location of those facilities, and minor changes to locations of utility pipes, swales, or wires that do not significantly affect their visibility from adjacent roads or properties, and similar minor changes;
  - b. Minor changes in lot lines or lot dimensions; or
  - c. Minor alterations regarding homesite location and/or open space usage.

J. Requirement for Filing Plat. Approved long subdivisions shall be subject to the same requirements for filing plats that apply to short subdivisions as described in BIMC 2.16.070.K.

K. Amendment of Disapproved Application. When an application for approval of a final long subdivision is disapproved, an applicant shall have 180 working days following the decision in which to file an amended application to remedy the matters that led to the disapproval. Upon receipt of such an amended application, the application shall be reviewed as set forth in this section. If an applicant files no such amended application within the period allowed, the application shall be considered denied.

L. Assurance of Improvements. Approved final long subdivisions shall be subject to the same provisions regarding assurance of improvements that are applicable to short subdivisions as described in BIMC 2.16.070.N.

M. Amendment-Alteration to Approved Long Subdivision.

1. Proposals for alteration of a subdivision shall follow the provisions of RCW 58.17.215. Alterations of a subdivision are also subject to the provisions of RCW 64.04.175, except as described in subsection S.2 of this section.
2. The contents and procedures for minor alterations of open space and/or open space usage in an approved final long subdivision shall be administratively reviewed consistent with the procedures and requirements of BIMC 2.16.030.

N. Expiration of Final Long Subdivision. Any lot in a final long subdivision plat filed for record shall be a valid land use for a period of five years from the date of filing the final subdivision, notwithstanding any change in zoning laws. Any lot in a final plat shall be governed by the terms of approval of the final long subdivision at the time of vested application, unless a change in conditions creates a serious threat to the public health or safety. (Ord. 2011-21 § 6, 2011: Ord. 2011-02 § 2 (Exh. A), 2011)

## **2.16.165 Shoreline master program administration.**

E. Statement of Exemption from Shoreline Substantial Development Permit.

1. Purpose and Applicability. Certain development activities identified in WAC 173-27-040 are exempt from the requirement to secure a shoreline substantial development permit; however, a shoreline variance or shoreline conditional use permit may still be required. State law requires that exemptions be construed narrowly. Exemption from substantial development permit procedures does not constitute exemption from compliance with the policies and use regulations of the SMA (Chapter 90.58 RCW), the provisions of the master program, or applicable city, state or federal permit requirements. Applicants shall have the burden to demonstrate that the proposal complies with the requirements for the exemptions sought as described under WAC 173-27-040 or its successor. If any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire proposed development project, pursuant to WAC 173-27-040(d) or its successor.

2. Procedure.

a. In the case of an emergency, the administrator may waive this requirement and authorize the use or activity orally or in writing. If authorized orally, the applicant shall submit a required application as soon as possible.

b. The administrator shall decide requests for a statement of exemption based on WAC 173-27-040 or its successor and the provisions of the Shoreline Management Act and the master program.

c. Before determining that a proposal is exempt, the administrator may conduct a site inspection to ensure that the proposal meets the exemption criteria.

d. Exempt developments and activities shall comply with the Shoreline Management Act and the master program. The administrator shall condition statements of exemption to ensure the exempt development or activity complies with the Shoreline Management Act and the master program.

e. In the case of development subject to the policies and regulations of the master program, but exempt from the substantial development permit process, shoreline management requirements may be made conditions of the building permits and/or other permits and approvals. For example, the approval of a building permit for a single-family residence can be conditioned with provisions from the master program.

f. Whenever a development falls within the exemptions stated in WAC 173-27-040 or its successor, ~~but is still subject to those permits listed in WAC 173-27-040 (as amended)~~, a letter exempting the development from the substantial development permit requirements of Chapter 90.58 RCW or its successor shall be given to the applicant and Department of Ecology.

### 3. Decision Criteria.

a. Exemptions shall be narrowly construed. When making the determination, the administrator shall grant a statement of exemption only when the development proposed is consistent with the following:

i. The applicable policies, guidelines, and regulations of the Shoreline Management Act of 1971; Chapter 90.58 RCW, as amended; and Chapters 173-26 and 173-27 WAC or their successors;

ii. The goals, policies, objectives and regulations of the city of Bainbridge Island shoreline master program;

iii. The city of Bainbridge Island comprehensive plan and municipal code; all other applicable law; and any related documents and approvals.

4. Action of Administrator. The administrator may grant, deny, or conditionally approve the shoreline exemption request. The approval or conditional approval will become conditions of approval for any related development permit, and no development permit will be issued unless it is consistent with the statement of exemption. A copy of the city's statement of exemption shall be filed with the Department of Ecology.

5. Application Time Frame. The approval for a shoreline exemption shall be the same as the expiration date of the development permit. All conditions of the approval for a shoreline exemption shall be included in the conditions of approval granted for the development permit.

6. Appeal. Any person aggrieved by the administrator's determination on a shoreline exemption request may be appealed, except as stated below, using the applicable appeal provision of subsection I of this section. If a proposed development activity also requires approval through other permit procedures, any appeal of a shoreline exemption requires will be heard as part of that other process.

F. Shoreline Substantial Development Permit.

1. Purpose and Applicability. Substantial development is any development of which the total cost or fair market value exceeds ~~\$6,416~~ \$7,047 or any development which materially interferes with the normal public use of the waters or shorelines of the state, except those exempted developments set forth in subsection E of this section, consistent with WAC 173-27-040 or its successor.

2. Procedure. Shoreline substantial development permits shall be approved through the general administrative review procedures described in BIMC 2.16.030 except as described below. Application materials for shoreline substantial development permits can be found in the Administrative Manual.

a. Public Comment. The city shall not make a decision on the permit until after the end of the comment period.

i. A 30-day public comment period shall be given for shoreline permits.

ii. The public comment period shall be 20 days for substantial development permits for a limited utility extension or for erosion control measures to protect a single-family residence and its appurtenant structures. (See shoreline master program definition of "limited utility extension," Chapter 16.12 BIMC.)

iii. SEPA review shall be conducted as provided by Chapter 16.04 BIMC, Environmental Policy, or its successor. The required SEPA notices should be included with the shoreline notices when possible. The SEPA documents should be circulated with permit documents where possible.

3. Decision and Criteria. After the 30-day comment period has ended, the administrator shall issue a decision on the application.

a. The administrator may approve, approve with modifications, or deny any substantial development permit.

b. Decision Criteria.

i. In making the decision, the administrator shall grant a substantial development permit only when the development proposed is consistent with the following:

(A) The applicable policies, guidelines, and regulations of the Shoreline Management Act of 1971; Chapter 90.58 RCW, as amended; and Chapters 173-26 and 173-27 WAC or their successors;

(B) The goals, policies, objectives and regulations of the city of Bainbridge Island shoreline master program;

(C) The city of Bainbridge Island comprehensive plan and municipal code; all other applicable law; and any related documents and approvals.

ii. The administrator shall also consider whether the cumulative impact of additional past and future requests that reasonably may be made in accordance with the comprehensive

plan, or similar planning document, for like actions in the area will result in substantial adverse effects on the shoreline environment and shoreline resources.

c. The applicant(s) shall have the burden of proving that a proposed development is consistent with the approval criteria and master program policies and regulations (WAC 90.58.140(7) or its successor).

d. The administrator may require additional information if necessary.

e. The administrator shall issue a written decision which contains the following:

i. A statement indicating the application is approved, approved with modifications, or denied;

ii. A statement of any conditions included as part of an approval or approval with modifications;

iii. A statement of facts upon which the decision, including any conditions, is based, and the conclusions derived from those facts; and

iv. A statement of the right of any person to appeal the decision of the administrator pursuant to subsection I of this section.

f. The administrator may refer the application to the planning commission for review and recommendations prior to deciding the application. The application shall also be referred to the planning commission for a recommendation at the request of the applicant. The planning commission makes its recommendation following its review of the proposal, the environmental checklist, and the tentative threshold determination.

g. The permit, whether approved or denied, shall be in the form required by WAC 173-27-120 or its successor.

#### 4. Distribution/Notification of Administrative Decision.

a. The administrator shall mail the applicant the original of the completed permit form and the findings and conclusions.

b. All persons who submitted comments on the application during the comment period (see subsection F.2 of this section) and anyone else requesting notification in writing shall be notified in a timely manner of the decision and shall be mailed a copy of the decision. The decision shall be filed with the Washington State Department of Ecology and the Washington State Office of the Attorney General.

#### 5. Application Time Frame.

a. Substantial Progress.

i. Substantial progress towards completion of a permitted activity shall be undertaken within two years after approval of the permit (WAC 173-27-090 or its successor). See definition of "substantial progress" in BIMC 16.12.080.

ii. The administrator may, with prior notice to parties of record and to Ecology, grant one extension of the two-year time period for substantial progress for up to one year based on reasonable factors which would justify the extension, including the inability to expeditiously obtain other governmental permits which are required prior to the commencement of construction (WAC 173-27-090 or its successor). The request for the extension must be filed with the administrator before the end of the time limit.

b. Five Year Permit Authorization.

i. The authorization granted by an approved permit to construct any structure or conduct any use or activity shall terminate five years after the date the permit is approved by the city, except that the permit may be authorized for a lesser period of fixed duration.

ii. Where an approved permit authorizes construction, the use and maintenance of the structure or facility may continue after the five-year period, provided the structure was completed during the five-year time limit or any approved extension.

iii. Where an approved permit authorizes a use or activity which does not require a structure, such as mining or maintenance dredging, the use or activity shall cease at the end of the five-year limit or any extension as granted in subsection F.4.b.iv of this section.

iv. The administrator may, with prior notice to parties of record and to Ecology, grant one time extension of up to one year based on reasonable factors which would justify the extension. The request for the extension must be filed with the administrator before the end of the time limit.

c. The application time limits shall not include the time during which an activity was not actually pursued due to the pendency of reasonably related administrative appeals or litigation.

d. When a permit is conditioned, the conditions shall be satisfied prior to occupancy or use of a structure, or prior to commencement of a nonstructural activity, provided an alternative compliance limit may be specified in the permit.

e. Revisions to permits may be authorized after the original permit has expired under subsection F.5.b of this section, provided this procedure shall not be used to extend the original permit time requirements (WAC 173-27-060 or its successor).

6. Adjustments to Approved Shoreline Substantial Development Permits.

a. Minor adjustments to an approved shoreline substantial development permit may be made after review by the administrator. The applicant must submit detailed plans and text describing the proposed changes. If the administrator determines that the revisions proposed are within the scope and intent of the original permit, consistent with WAC 173-27-100 or its successor, the administrator may approve the revision as a minor adjustment.

b. A minor adjustment entails a revision that is within the scope and intent of the original permit, which means all of the following:

i. No additional over-water construction is involved, except that pier, dock, or float construction may be increased by 500 square feet or 10 percent, whichever is less;

- ii. Ground area coverage and height is not increased more than 10 percent;
- iii. Additional structures located landward and not within required buffer or setback areas do not exceed a total of 250 square feet;
- iv. The revision does not authorize development to exceed height, setback, lot coverage, or any other requirement of the city of Bainbridge Island shoreline master program;
- v. Additional landscaping is consistent with conditions, if any, attached to the original permit and with the applicable master program provisions;
- vi. The use authorized pursuant to the original permit is not changed; and
- vii. No adverse, environmental impact will be caused by the project revision (WAC 173-27-064(2)(a) through (g) as amended).

c. If the sum of the proposed revision and any previously approved revisions do not meet the criteria above, the revision shall be reviewed through a major adjustment process. This shall be processed in the same manner as a new shoreline substantial development permit application. If the adjustment involves a conditional use or shoreline variance which was conditioned by the Department of Ecology, the adjustment also must be reviewed and approved by Ecology (WAC 173-27-064 or its successor).

d. A city or Ecology decision on a minor or major adjustment to the permit may be appealed within 21 days of such decision, in accordance with RCW 90.58.180 or its successor, and WAC 173-27-064 or its successor.

e. Construction allowed by the revised permit that is not authorized under the original permit is undertaken at the applicant's risk until the expiration of the appeals deadline.

7. Appeal. The decision of the administrator may be appealed to the hearing examiner following the procedures of subsection I of this section.

H. Shoreline Conditional Use Permits. Where a development includes several uses or activities and one or more uses or activities require a shoreline conditional use permit, all uses and activities shall be processed and decided following the shoreline conditional use procedures.

1. Purpose. The purpose of a shoreline conditional use permit is to allow greater flexibility in applying the use regulations of the master program in a manner consistent with the policies of RCW 90.58.020 or its successor; provided, that shoreline conditional use permits should also be granted in a circumstance where denial of the permit would result in a thwarting of state policy enumerated in RCW 90.58.020 or its successor. In authorizing a conditional use, special conditions may be attached to the permit by the city or the State Department of Ecology to prevent undesirable effects of the proposed use. Uses which are specifically prohibited by the master program may not be authorized with approval of a shoreline conditional use permit.

2. Applicability.

a. Minor Conditional Use. As determined by the director, this procedure shall apply to (i) all minor conditional uses identified in Chapter 16.12 BIMC; (ii) where the director determines

that the anticipated impacts of those conditional uses will be minor or minimal; or (iii) uses that are clearly consistent and compatible with other uses in the same zone or vicinity.

b. Major Conditional Use. As determined by the administrator, a major conditional use permit shall be secured from the city prior to establishing or expanding a use according to situations that include, but are not limited to: (i) the proposed use or expansion covers 50 percent or greater of the total lot area; (ii) the proposed use is accessed by a local or private road; (iii) the proposed use or expansion generates more than 36 total trips per day; (iv) the proposed use or expansion contains four or more units in a multifamily dwelling; or (v) requests for additional nonresidential building height pursuant to Chapter 16.12 BIMC.

### 3. Procedure.

a. Application. An application for a shoreline conditional use permit shall be submitted on a form provided by the city. The application should be accompanied by maps, a completed environmental checklist, applicable fees, and any other information specified in the master program or requested by the administrator.

b. Minor Shoreline Conditional Use.

i. The administrator shall review a minor shoreline variance conditional use application following procedures in subsection F.2 of this section.

c. Minor Shoreline Conditional Use. Applications for shoreline variances conditional uses that are more intensive than the minor shoreline variance conditional use as determined by the administrator shall be decided by the hearing examiner following the procedures in BIMC 2.16.100, or its successor, supplemented by the following provisions:

i. The decision of the hearing examiner shall be the final city decision, and may be appealed in accordance with subsection I of this section.

d. Notice of Application and Comment Period. In addition to the notice of application content established in BIMC 2.16.020.M, notice of application for shoreline conditional use permits must also contain the information required under WAC 173-27-110.

e. Notice of Hearing. When a public hearing is required, the procedures of BIMC 2.16.020.M.6 shall apply.

f. The administrator shall mail the final city decision to the applicant, the State Department of Ecology, and the State Attorney General. The permit must be received by Ecology within eight days of the date of the decision. Within eight days of the date of the decision, the administrator shall also mail the decision to any person who requested notice of the decision.

g. The State Department of Ecology shall approve, approve with conditions, or deny all shoreline conditional use permits approved by the city. Ecology's decision must be made within 30 days of the date the permit and other information required by WAC 173-14-090 or its successor are received by Ecology and the Washington State Attorney General. Ecology will send a letter to the applicant and the city informing them of the decision. Upon receipt of the Ecology decision, the administrator shall notify those interested persons who requested notification.

4. Decision Criteria – Conditional Use Permit.

a. Uses classified as conditional uses may be authorized; provided, that pursuant to WAC 173-27-140 and 173-27-160 or their successors, the applicant can demonstrate all of the following:

- i. The proposed use will be consistent with the policies of RCW 90.58.020 or its successor and the policies of the master program;
- ii. The proposed use will not interfere with the normal public use of the public shorelines;
- iii. That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;
- iv. The proposed use will cause no unreasonably adverse effects to the shoreline environment designation in which it is located;
- v. The public interest suffers no substantial detrimental effect (WAC 173- 14-140(1) or its successor); and
- vi. The proposed use is consistent with the provisions of the zoning ordinance (BIMC Title 18).

b. Other uses which are not listed in the master program as permitted or conditional uses and are also not prohibited may be authorized as conditional uses, provided the applicant can demonstrate, in addition to the criteria set forth in subsection H.4.a of this section, that (i) extraordinary circumstances preclude reasonable economic use of the property in a manner consistent with the policies of RCW 90.58.020, or its successor, and that (ii) the proposed use would not produce significant adverse effects on the shoreline environment.

c. In the granting of all shoreline conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area.

5. Time Frame. Construction and activities authorized by a shoreline conditional use permit are subject to the time limitations in subsection F.5 of this section (WAC 173-27-090 or its successor).

6. Adjustments to Approved Shoreline Conditional Use Permit.

a. A permit revision is required whenever an applicant proposes substantive changes to the design, terms or conditions of a project from that approved as a shoreline conditional use permit. When a revision of a shoreline conditional use permit is sought, the applicant shall submit detailed plans and text describing the proposed changes in the permit and demonstrating compliance with the following minimum standards pursuant to Chapter 173-27 WAC.

b. If the proposed changes are determined by the administrator to be within the scope and intent of the original permit, and are consistent with the SMA (Chapter 90.58 RCW), the shoreline guidelines (Chapter 173-26 WAC), and the shoreline master program, the revisions may be approved as a minor adjustment.

c. A minor adjustment entails a revision that is within the scope and intent of the original permit, which means all of the following:

- i. No additional over-water construction is involved except that a pier, dock or floating structure may be increased by 10 percent or 500 square feet, whichever is less, over that approved under the original approval;
- ii. Ground area coverage and/or height may be increased a maximum of 10 percent over that approved under the original approval; provided, that the revised approval does not authorize development to exceed the height, impervious surface, setback or any other requirements of this program except as authorized under a variance granted for the original development;
- iii. Additional or revised landscaping is consistent with any conditions attached to the original approval and with this program;
- iv. The use authorized pursuant to the original approval is not changed; and
- v. The revision will not cause adverse environmental impacts.

d. Revisions to shoreline permits and statements of exemption may be authorized after the original authorization has expired. Revisions made after the expiration of the original approval shall be limited to changes that are consistent with this program and that would not require a permit under this program. If the proposed change is a substantial development as defined by this program, then a new permit is required. The provisions of this subsection shall not be used to extend the time requirements or to authorize substantial development beyond the time limits or scope of the original approval.

e. A new permit shall be required if the proposed revision and any previously approved revisions in combination would constitute development beyond the scope and intent of the original approval.

f. Upon approval of a revision, the decision maker shall file a copy of the revised site plan and a detailed description of the authorized changes to the original permit with the Department of Ecology together with a final ruling and findings supporting the decision based on the requirements of this section. In addition, the decision maker shall notify parties of record of the action.

g. If the proposed revision is to a development for which a shoreline conditional use or variance was issued, the decision maker shall submit the revision to the Department of Ecology for approval, approval with conditions, or denial, and shall indicate that the revision is being submitted under the requirements of this subsection. Under the requirements of WAC 173-27-110(6), the Department shall render and transmit to the decision maker and the applicant/proponent its final decision within 15 days of the date of the Department's receipt of the submittal from the decision maker. The decision maker shall notify parties on record of the Department's final decision.

7. Appeal of Decision on Conditional Use Permit. The decision of the hearing examiner may be appealed to the following the procedures of subsection I of this section.

**Table 18.09.020 Use Table**

"P" = Permitted Use		"A" = Accessory Use										Additional use restrictions for Chapters 16.12 and 16.20 BIMC may apply to shoreline or critical area properties								
"C" = Conditional Use		"CA" = Conditional Accessory Use																		
Blank = Prohibited Use		"T" = Temporary Use																		
ZONING DISTRICT	R-0.4	R-1	R-2	R-2.9	R-3.5	R-4.3	R-5	R-6	R-8	R-14	Winslow Mixed Use Town Center				HSR I and II	NC	B/I	WD-I	Use-Specific Standards BIMC 18.09.030	
USE CATEGORY/TYPE											CC	MA	EA	Gate	Ferry [1]					
<b>TEMPORARY USES</b>																				
Temporary Construction Building	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	J-1
<b>Temporary Construction Staging</b>	<b>T</b>	<b>T</b>	<b>T</b>	<b>T</b>	<b>T</b>	<b>T</b>	<b>T</b>	<b>T</b>	<b>T</b>	<b>T</b>	<b>T</b>	<b>T</b>	<b>T</b>	<b>T</b>	<b>T</b>	<b>T</b>	<b>T</b>	<b>T</b>	<b>T</b>	<b>J-2</b>
Temporary Container Storage	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	J-2 <u>3</u>
Temporary Commercial Parking											T	T	T	T	T	T				J-3 <u>4</u>
Temporary Public Events or Gatherings	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T		J-4 <u>5</u>
Temporary Ferry Commuter Parking											T			T	T					J-5 <u>6</u>
Temporary Noncommuter Parking															T					J-6 <u>7</u>
Temporary Seasonal Sales	T	T	T								T				T	T	T	T		J-7 <u>8</u>
Temporary Homeless Encampment	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	J-8 <u>9</u>

### 18.09.030 Use-specific standards.

Regardless of whether a use is allowed as a permitted (“P”) use or as a conditional (“C”) use and regardless of the zoning district in which the use is located there may be additional standards that are applicable to the use, and the use must comply with such standards except as authorized by this code. The existence of these use specific standards is noted in the column headed “Use Specific Standards” in Table 18.09.020, which cross-references the section of the code that imposes the additional standard.

#### 18.09.030.B. Residential.

3. Commercial/Residential Mixed Use Development. Principal and accessory uses shall comply with the all applicable development standards and performance standards of BIMC Title 18 of the NC district as well as the other standards listed here.

a. *Repealed by Ord. 2018-13.*

b. In the NC district, residential units must be located above the ground floor if the building is located on a collector or secondary arterial or higher road classification; however, for mixed use projects, if the building fronts on a local or private street, residential units can be located on the ground floor. Density for mixed use projects in the NC district shall be calculated pursuant to BIMC [18.12.030.D](#).

#### 18.09.030.D. Commercial Sales and Service.

7. Professional Services.

a. In the ferry terminal overlay district, professional services may be located anywhere south of Winslow Way.

b. In the ferry terminal overlay district, north of Winslow Way, professional services are permitted only along Winslow Way, within 100 feet north of Winslow Way. Buildings shall have customer entrances on Winslow Way.

~~c. In the B/I district, professional offices shall be limited to those that do not provide services directly to the general public or attract customers from the general public. For example, accountants’, lawyers’, and architects’ offices are not permitted. Establishments that provide professional services to other businesses are permitted, such as civil, mechanical, or electrical engineers and research and development establishments~~

#### 18.09.030.J. Temporary Uses

2. Temporary Construction Staging **NEW USE**

a. A temporary construction staging permit must be issued by the Department of Planning and Community prior to staging activities commencing. Staging on publicly-owned property, such as property owned by the City or Bainbridge Island Metropolitan Park District, is exempt from the staging permit requirement.

b. For construction that requires a development permit, such as a grading or building permit, the temporary construction staging permit cannot be issued until any related development permits are issued. Temporary construction staging shall be exempt from site plan and

design review pursuant to BIMC 2.16.040. The application shall be processed as an administrative approval under BIMC Title 2.16.020, including noticing requirements.

- c. The staging area and the access to the temporary construction staging property must comply with any applicable regulations of the BIMC and the Design and Construction Standards Manual in order to minimize the inconvenience to neighboring properties, and protect public health, safety and the environment;
- d. Any temporary structures must not be permanently affixed to the lot;
- e. Temporary construction staging shall not interfere with public non-motorized pathways including sidewalks.
- f. Temporary construction staging may not exceed 9-months. This time limitation does not apply to publicly-owned properties or public construction projects. To prevent serial use of a property as temporary construction staging, a property shall not be utilized for temporary construction staging for more than eighteen-months within a 5-year period. The department may grant one extension of a permit authorizing temporary construction staging for a period not to exceed 180 days if:
  - i. A request for an extension is received by the department no later than 30 days prior to the expiration of the permit;
  - ii. Termination of the permit would result in an unreasonable hardship to the applicant;  
and
  - iii. An extension of the permit will not cause substantial detriment to existing uses in the immediate vicinity of the subject property.
- g. Temporary construction staging shall be removed, and property restored to pre-construction conditions to the satisfaction of the City within 30 days after related construction is complete. The city may request that the applicant submit a restoration surety to ensure compliance;
- h. The use of any temporary construction staging shall comply with the air quality emissions performance standards of BIMC 18.06.030.B.2.

**18.12.020 Tables of dimensional standards.**

Tables 18.12.020-1, 18.12.020-2, and 18.12.020-3 set forth applicable dimensional standards. Where a property is located in more than one zone district, units permitted by density calculations within each zone district must be constructed on the portion of the property located within that zone district and required setbacks for each zone district must be met. Permitted densities are not “blended” across the zone district line.

**Table 18.12.020-1 Flexlot Subdivision Dimensional Standards for Residential Zone Districts**

[Numbers in brackets indicate additional requirements listed at the end of the table.]

ZONING DISTRICT	R-0.4	R-1	R-2	R-2.9	R-3.5	R-4.3	R-5	R-6	R-8	R-14
<p><b>DIMENSIONAL STANDARD</b></p> <p><b>MINIMUM SETBACKS</b></p> <p>Note: Landscaped areas may serve as setbacks (i.e., setbacks are not in addition to landscaped areas), and some encroachments into setback areas are permitted pursuant to BIMC 18.12.040.</p> <p>Note: Additional setbacks may be required by:</p> <ul style="list-style-type: none"> <li>(a) Chapter 16.08 or 16.12 BIMC, or</li> <li>(b) Chapter 16.20 BIMC, Critical Areas, or</li> <li>(c) BIMC 16.28.040, mining regulations, or</li> <li>(d) BIMC 18.09.030, Use-specific standards, or</li> <li>(e) BIMC <del>18.12.030.F</del> <u>16.12.040.i.h</u>, Shoreline Structure Setbacks, or</li> <li>(f) BIMC 18.15.010, landscaping and screening.</li> </ul>										
<p><b>Shoreline Jurisdiction</b></p> <p>See Table 16.12.030-2, Dimensional Standards Table, and BIMC <del>18.12.030.F</del> <u>16.12.040.i.h</u>, Shoreline Structure Setbacks. For properties abutting the shoreline, the native vegetation zone required by BIMC 16.12.030 and Table 16.12.030-3 replaces the zoning setbacks along the water.</p>										
<p><b>MAXIMUM BUILDING <u>AND STRUCTURE</u> HEIGHT</b></p> <p>Note: Bonus may not be available in the shoreline jurisdiction</p>										

**Table 18.12.020-1 Flexlot Subdivision Dimensional Standards for Residential Zone Districts**

[Numbers in brackets indicate additional requirements listed at the end of the table.]

ZONING DISTRICT	R-0.4	R-1	R-2	R-2.9	R-3.5	R-4.3	R-5	R-6	R-8	R-14
DIMENSIONAL STANDARD										
Short, Long, and Large Lot Subdivisions	Height requirements for standard lots apply (see end of table 18.12.020-2)									

**Table 18.12.020-2 Standard Lot Dimensional Standards for Residential Zone Districts**

[Numbers in brackets indicate additional requirements listed at the end of the table]

ZONING DISTRICT	R-0.4	R-1	R-2	R-2.9	R-3.5	R-4.3	R-5	R-6	R-8	R-14
DIMENSIONAL STANDARD										
<p>MINIMUM SETBACKS</p> <p>Note: Landscaped areas may serve as setbacks (i.e., setbacks are not in addition to landscaped areas), and some encroachments into setback areas are permitted pursuant to BIMC 18.12.040.</p> <p>Note: Additional setbacks may be required by:</p> <ul style="list-style-type: none"> <li>(a) Chapter 16.08 or 16.12 BIMC, or</li> <li>(b) Chapter 16.20 BIMC, Critical Areas, or</li> <li>(c) BIMC 16.28.040, mining regulations, or</li> <li>(d) BIMC 18.09.030, Use Specific Standards, or</li> <li>(e) BIMC 18.12.030-F 16.12.040.i.h, Shoreline Structure Setbacks, or</li> <li>(f) BIMC 18.15.010, Landscaping and Screening.</li> </ul>										
Shoreline Jurisdiction	See Table 16.12.030-2, Dimensional Standards Table, and BIMC 18.12.030-F 16.12.040.i.h, Shoreline Structure Setbacks.									
MAXIMUM BUILDING <u>AND STRUCTURE</u> HEIGHT [4]										

**Table 18.12.020-2 Standard Lot Dimensional Standards for Residential Zone Districts**

[Numbers in brackets indicate additional requirements listed at the end of the table]

ZONING DISTRICT	R-0.4	R-1	R-2	R-2.9	R-3.5	R-4.3	R-5	R-6	R-8	R-14
Note: Bonus may not be available in the shoreline jurisdiction										
Exemption	Alternative height limits may apply for nonresidential uses if additional conditional use permit provisions of BIMC Title 2 are met. Some encroachments through height limits are permitted under BIMC 18.12.040.									
Shoreline Jurisdiction	See Table 16.12.030-2, Dimensional Standards Table, and BIMC <del>18.12.030-F</del> <u>16.12.040.i.h</u> , Shoreline Structure Setbacks.									

[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.

**Table 18.12.020-3 Dimensional Standards for Mixed Use Town Center and “Other” Zone Districts**

ZONING DISTRICT	Winslow Mixed Use Town Center					HSR I and II	NC	B/I	WD-I
DIMENSIONAL STANDARD	Central Core Overlay	Madison Avenue Overlay	Ericksen Avenue Overlay	Gateway Overlay	Ferry Terminal Overlay [See BIMC 18.12.030.C]				
<p>SETBACKS (Minimum required unless otherwise noted) [4]</p> <p>Note: Landscaped areas may serve as setbacks and, in some cases, may exceed the setback requirements.</p> <p>Note: Additional setbacks may be required by:</p> <p>(a) Chapter 16.12 BIMC, Shoreline Master Program; or</p> <p>(b) Chapter 16.20 BIMC, Critical Areas; or</p> <p>(c) BIMC 16.28.040, mining regulations; or</p> <p>(d) BIMC 18.09.030, Use Specific Standards; or</p> <p>(e) BIMC <del>18.12.030.F</del> <u>16.12.040.i.h</u>, Shoreline Structure Setbacks.</p>									
Shoreline Jurisdiction	See Table 16.12.030-2, Dimensional Standards Table, and BIMC <del>18.12.030.F</del> <u>16.12.040.i.h</u> , Shoreline Structure Setback Lines								
<p>MAXIMUM BUILDING <u>AND STRUCTURE</u> HEIGHT [5]</p> <p>Note: Bonus may not be available in the shoreline jurisdiction</p>									
Base	35 ft.; 25 ft. max. south of Parfitt	25 ft.; 35 ft. north of High School Road	25 ft.	35 ft.	BIMC 18.12.030.C standard height north of Winslow Way; 35 ft. south of Winslow Way	35 ft.	35 ft.	35 ft.	35 ft. except that Chapter 16.12 BIMC applies within shoreline jurisdiction
Bonus 1 if parking under building [6]	45 ft.; 35 ft. south of Parfitt	35 ft.; 45 ft. north of High School Road	35 ft.	45 ft.	BIMC 18.12.030.C optional height north of Winslow	45 ft.			

**Table 18.12.020-3 Dimensional Standards for Mixed Use Town Center and “Other” Zone Districts**

ZONING DISTRICT	Winslow Mixed Use Town Center					HSR I and II	NC	B/I	WD-I
DIMENSIONAL STANDARD	Central Core Overlay	Madison Avenue Overlay	Ericksen Avenue Overlay	Gateway Overlay	Ferry Terminal Overlay [See BIMC 18.12.030.C]				
					Way; 45 ft. south of Winslow Way				
Bonus 2 for Nonresidential Uses with Major Conditional Use Permit							45 ft.	45 ft.	45 ft.
Bonus 3 Structure Height	Alternative height limits may apply if the conditional use permit provisions of BIMC Title 2 are met. Some encroachments through height limits are permitted under BIMC 18.12.040.								

[4] When property adjoins a single-family residential zone, building setback shall be in accordance with the landscape ordinance perimeter landscaping requirements.

[5] When property adjoins a lower density residential zone, except in the ferry terminal district, north of Winslow Way, for the first 30 feet of the building from the property line of an adjoining lower density residential zone, the building height shall be the building height of the adjoining lower density residential zone. Optional building height allowed in the adjoining lower density residential district through a conditional use permit may be requested for projects within the Mixed Use Town Center and High School Road zones through the site plan review process. For building height requirements in the ferry terminal district, north of Winslow Way, reference BIMC 18.12.030.C.

[6] The bonus height is ~~only~~ available when parking is located underground or under the occupiable space of the planned building for the entire building if parking is located under more than 50 percent of the building footprint. If parking is located under 50 percent or less of the ~~building footprint~~ occupiable space, the bonus may only be used for a portion of the building footprint twice as large as the area with parking located beneath.

**18.12.040 Modifications to required setbacks and heights.**

A. Permitted Setback/Height Modifications. Minimum and maximum setbacks and maximum heights established in Tables 18.12.020-1, 18.12.020-2, and 18.12.020-3 and in BIMC [18.12.030](#) may be encroached as set forth in Table 18.12.040 and may also be modified by applicable provisions of adopted fire codes, the shoreline master program, and/or the building code:

**Table 18.12.040: Permitted Setback/Height Modifications**

Type of Encroachment	Encroachment Permitted	Conditions
<b>Permitted Setback Modifications</b>		
Fence or combined fence and berm up to 6 feet high	In any required setback subject to applicable regulations in BIMC Title <a href="#">15</a>	Except as provided in BIMC <a href="#">18.12.040</a> .B and Chapter <a href="#">16.12</a> BIMC
Nonscreening fences or combined nonscreening fence and berm up to 8 feet high	In any required setback subject to applicable regulations in BIMC Title <a href="#">15</a>	Except as provided in Chapter <a href="#">16.12</a> BIMC
Chimneys, flues, awnings, bay windows, and greenhouse windows	Up to 18 inches into any required setback	
Covered porches, bay windows and eaves within the Ericksen Avenue overlay district	Up to 5 feet into the front yard	Bay windows must be cantilevered outward from the wall, and may not result in any portion of the building floor area extending into the setback
Any structures, including but not limited to uncovered steps, porches, and decks less than or equal to 30 inches in height	Up to 2 feet into front and side setbacks. Up to 5 feet into required rear setbacks.	
Eaves	May extend up to 24 inches in any required setback except shoreline structure setback	
At or near grade structures such as uncovered patios, sidewalks, and driveways	In any required setback	May not exceed 4 inches in height
Signs	In any required setback	Must conform to Chapter <a href="#">15.08</a> BIMC

**Table 18.12.040: Permitted Setback/Height Modifications**

Type of Encroachment	Encroachment Permitted	Conditions
<u>Overhead or underground accessory utilities-accessory to a single-family residence</u>	In any required setback	<u>Must conform to Chapters 16.12 and 16.20 BIMC. Does not apply to above ground utilities such as propane tanks.</u>
Composting bins	In side or rear setback areas	
Bioretention/rain gardens	In any required setback	In accordance with Chapter <a href="#">15.20</a> BIMC
Rain barrels/cisterns	In any required setback	In accordance with Chapter <a href="#">15.20</a> BIMC
Wall-mounted on-demand hot water heaters	Up to 18 inches into side or rear setbacks	Permitted if buffered or enclosed to prevent noise impacts to neighboring properties
Below-ground geothermal equipment	In any required setback	Permitted if any excavated areas are promptly re-landscaped after installation is complete
Rockeries and retaining walls less than 4 feet in height	In any required setback	<u>Rockeries and retaining walls greater than 4 feet in height may be permitted with Qqualified</u> geotechnical engineer determination, and city concurrence, that it is necessary for slope stabilization
Public communications tower	In any required setback subject to applicable regulations in BIMC Title <a href="#">15</a>	Must conform to Chapters <a href="#">16.12</a> and <a href="#">16.20</a> BIMC
<b>Permitted Height Modifications</b>		
Small wind energy generators	Up to 18 inches above the maximum building height in the district	
Solar panels	Up to 18 inches above the maximum building height in the district	
Noncommercial, nonparabolic antennas affixed to noncommercial communication towers	Up to 50 feet in height above grade	
One flagpole per parcel	Up to 45 feet in height above grade	
Public communications tower	Up to 120 feet in height above grade	A building permit is required for a public communications tower. A conditional use permit shall be required for a public communications tower to be constructed between 71 feet and

**Table 18.12.040: Permitted Setback/Height Modifications**

Type of Encroachment	Encroachment Permitted	Conditions
		120 feet above grade. A public communications tower shall not exceed 120 feet in height.
Distribution utility poles	Up to 55 feet in height above grade	Replacement poles over 55 feet in height, see BIMC <a href="#">18.09.030.F.2.b</a> . For new distribution utility facilities or corridors, see Table <a href="#">18.09.020</a> . Poles shall not be moved more than 20 feet from the original location unless permitted under BIMC <a href="#">18.09.030.F.2.b</a> .
Transmission utility poles	Up to a 25 percent increase above existing pole height above grade with a maximum height of 100 feet	Replacement poles over the 25 percent increase or 100 feet in height, see BIMC <a href="#">18.09.030.F.2.b</a> . For new transmission utility facilities or corridors, see Table <a href="#">18.09.020</a> . Poles shall not be moved more than 20 feet from the original location unless permitted under BIMC <a href="#">18.09.030.F.2.b</a> .
Utility structures existing on the effective date of the ordinance codified in this subsection	Existing height	May also be replaced or modified; provided, that the structure is not larger or taller than the original structure and is not moved more than 20 feet from its original location

**18.12.050 Rules of measurement.**

The following rules of measurement shall apply in determining compliance with the requirements of this title. When a required calculation results in a fraction greater than or equal to one-half, the requirement shall be rounded up to the next whole number.

G. Floor Area Ratio (FAR). “Floor area ratio” is a figure that expresses the total floor area as a multiple of the lot area. This figure is determined by dividing the floor area of all buildings on a lot by the lot area prior to removal of lot area for dedication. **Portions of parking located underground or underneath occupiable space a building footprint are not counted in floor area ratio calculations.**

I. Grade. “Grade” (adjacent ground elevation) is the computed average of the lowest and the highest points of elevation of the original surface of the ground, or existing paving or sidewalk within the area between the building and the property line, or when the property line is more than five feet from the building, between the building and a line five feet from the building. On waterfront parcels as defined in the shoreline master program, the definition of grade from the shoreline master programs shall be used **(WAC 173-27-14-030(3)).**

**18.15.020 Parking and loading.**

**Table 18.15.020-2: Off-Street Parking Spaces Required in Mixed Use Town Center Districts and High School Road Districts [1]**

Land Use	Spaces Required					
	Central Core Overlay	Madison Avenue Overlay	Ericksen Avenue Overlay	Gateway Overlay	Ferry Terminal Overlay	High School Road I and II
Commuter-Oriented Retail	Not Permitted				1 space per peak shift employee	Not Permitted
<b>Other Commercial and Nonresidential Uses</b>						
Minimum spaces per 1,000 sq. ft. [2]	2, except 3 in the Parfitt-Waterfront area	4			1	4
Entertainment facilities	1 per 4 fixed seats	Not Permitted				1 per 4 fixed seats
Maximum above-ground spaces per 1,000 sq. ft.	5				3	5

**18.36.030 Definitions.**

For the purposes of this chapter and Chapters 2.14 and 2.16 BIMC, the following definitions shall apply unless the context clearly requires otherwise.

1. "Abutting" means bordering or touching, such as sharing a common lot line. Lots that are separated by a street or right-of-way are not abutting, they are adjoining.
  
5. "Accessory agricultural retail" includes community kitchens and stables, and also means the sale of (a) crops grown or livestock raised by a farmer, or (b) value-added products made from crops grown or livestock raised by the farmer, and (c) incidental associated agricultural products sold on site where agricultural crops or livestock are grown or raised that is subordinate to the actual agriculture on-site. Products sold shall be (a) primarily Island-grown crops, (b) value-added products if the defining ingredient was Island-grown, and (c) associated products that are incidental to the agricultural activity on the site.
  - a. "Accessory agricultural retail, minor" means agricultural retail that (1) generates less than 36 round trips per day on average, and (2) does not conduct more than four non-agricultural special events each year. This category includes farm stands and joint use of farm stands by multiple

producers and the use of retail sites for pick-up of community-supported agricultural deliveries. See “Farm stand.”

b. “Accessory agricultural retail, major” means agricultural retail that is more intensive than minor agricultural retail.

6. “Accessory agricultural tourism” means agriculturally related accessory uses that are subordinate to the growing of crops or the raising of livestock, designed to bring the public to the farm on a temporary or continuous basis, such as U-pick farm sales, farm mazes, pumpkin patches, farm animal viewing and petting, wagon rides, farmland and facility tours, horticulture nurseries and associated display gardens, cider pressing, classes or workshops, wine or cheese tasting, etc. Accessory agricultural tourism does not include overnight stays for guests such as a bed and breakfast or farm-stay type use.

XX. “Adjacent” means that which is near or close; for example, a property located across the road or highway shall be considered as adjacent. NOTE: same definition in SMP BIMC 16.12.080

14. “Adjoining” means immediately abutting or separated only by a street or right-of-way.

XX. “Commercial/Residential Mixed Use” means having commercial and residential uses on the same property.

69. “Day care center” means a building or structure in which an agency, person, or persons regularly provide care for 13 or more people in any 24-hour period and could include a public or private school. Businesses that offer care only before and after school are considered educational facilities. SEE BELOW

168. “Motor vehicle sales lot” means any land or buildings used primarily for the sale of new or used motor vehicles fit for transportation.

191. “Parfitt-Waterfront area” is defined as that area south of the boundary created by the following parcels and streets; starting at the northern property line of 272502-4-1130-2000; proceeding eastward along Blue Bjune Drive to its western intersection with Brien Drive; proceeding eastward along Brien Drive to its intersection with Bjune and Shannon Drives; and proceeding southward along Shannon Drive to the south property line of 4114-005-001-0003; and proceeding eastward to Winslow Ravine.

192. Park, Active Recreation. “Active recreation park” means a park where the primary uses are athletic fields, playgrounds, swimming facilities, sports courts, camping or other activities that require specialized fields or equipment.

XX. “Temporary Construction Staging” means an area on a property that is not under construction where construction related equipment, small temporary buildings, vehicles or materials are stored during a private or public construction project. Temporary Construction Staging is located outside of the City right-of-way on individual properties, and may be permitted when there is no available space on a construction site for staging.



CITY OF  
BAINBRIDGE ISLAND

## Planning Commission Public Participation Meeting Agenda Bill

**MEETING DATE:** October 24, 2019

**ESTIMATED TIME:** 45 Minutes

**AGENDA ITEM:** (7:45 PM) Ordinance No. 2019-38, Adopting Small Wireless Facilities Design Standards,

**AGENDA CATEGORY:** Ordinance

**PROPOSED BY:** Robbie Sepler

### PREVIOUS PLANNING COMMISSION

**REVIEW DATE(S):** September 12, 2019.

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

### RECOMMENDED MOTION:

I move to set a public hearing on Ordinance No. 2019-38, adopting small wireless facilities design standards, as part of the agenda for the November 14, 2019, Planning Commission meeting.

### SUMMARY:

Continued Planning Commission consideration of small wireless facilities 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 are set to expire on November 14, 2019, unless extended by the City Council.

On October 8, 2019, the Council set a public hearing on Ordinance No. 2019-31, proposing to extend the Interim SWFs Design Standards until May 14, 2020. The City Council is scheduled to hold a public hearing on, and consider approval of, Ordinance No. 2019-31 at the Council's October 22, 2019 Business Meeting. If the Council approves Ordinance No. 2019-31, the Interim SWFs Design Standards will be extended and remain in effect, until May 14, 2020, unless terminated earlier by the City Council.

For Planning Commission's consideration, also attached are industry comments on the Interim SWFs Design Standards. Note, that the City's outside counsel, Daniel Kenny, has provided initial responses to these comments and will be prepared to answer questions from the Planning Commission. Note: T-Mobile provided a comment regarding BIMC 18.10A.040.B, which comment was too lengthy to be included in the track changes with the other industry comments. Therefore, it has been included as a separate PDF with the agenda materials.

**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 [insert outcome of City Council consideration]; and

**WHEREAS**, on October 24, 2019, the Planning Commission [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 <a href="#">16.12.030.C.7</a> .																					
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 Service Centers;
3. HS Road 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

## **ORDINANCE NO. 2019-15**

**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; Adopting findings in support of the foregoing; Requiring a post-adoption public hearing on the foregoing; Providing for severability; Declaring a public emergency and establishing an immediate effective date.

**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 City Council finds 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 aesthetic design and concealment standards that govern deployment of small wireless facilities will become part of Chapter 18.10A BIMC; and

**WHEREAS**, contemporaneous with the consideration of this ordinance, the City Council 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**, 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 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 finds that the adoption of this interim official control ordinance will allow 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**, the City Council finds that adopting interim official control as set forth herein for up to six (6) months is necessary for the immediate preservation of the public peace, health, or safety.

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

**Section 1. Purpose.** The purpose of this ordinance is to adopt and establish interim aesthetic requirements and revisions to the City’s wireless communications facilities code provisions in response to the FCC Order for a period of six (6) months, or until such earlier time as permanent regulations may be adopted.

**Section 2. Findings.** The recitals set forth above are hereby adopted as the City Council’s initial findings of fact in support of the interim official control established by this ordinance. The City Council further finds that this ordinance is necessary, in conjunction with Ordinance No. 2019-11, to address potential applications for small wireless facilities within the presumptive safe harbor review periods prescribed by the FCC Order. As such, a public emergency exists requiring that this ordinance take effect immediately upon passage.

**Section 3. 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 4. 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	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	P	C	F-2
Public Communications Tower	P	P	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	
Wireless Communication Facilities, Facility II	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>B-5</u>										

**Section 5. 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 6. 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 Service Centers;
3. HS Road 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 7. 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 8. Public Hearing.** Pursuant to RCW 36.70A.390, the City Council shall hold a public hearing at a City Council meeting within 60 days of adoption of this ordinance in order to take public testimony. Pursuant to RCW 36.70A.390, the City Council may adopt additional legislative findings in support of this ordinance at the conclusion of said hearing.

**Section 9. 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 10. 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 11. Declaration of Emergency; Effective Date; Duration.** This ordinance, as a public emergency ordinance necessary for the protection of the public health, public safety, public property, and public peace, shall take effect and be in full force immediately upon passage. Pursuant to *Matson v. Clark County Board of Commissioners*, 79 Wn. App. 641 (1995), non-exhaustive underlying facts necessary to support this emergency declaration are included in the "Whereas" clauses above, all of which are adopted by reference as findings of fact as if fully set forth herein. This interim official control shall take effect immediately and shall remain effective for six (6) months, unless terminated earlier by the City Council. Provided, that the Council may, at its sole discretion, renew the interim official control for one or more six month periods in accordance with state law.

PASSED by the City Council this 14th day of May, 2019.

APPROVED by the Mayor this 14th day of May, 2019.

By:   
Kol Medina, Mayor

ATTEST/AUTHENTICATE:  
  
Christine Brown, CMC, City Clerk

FILED WITH THE CITY CLERK:	May 10, 2019
PASSED BY THE CITY COUNCIL:	May 14, 2019
PUBLISHED:	May 17, 2019
EFFECTIVE DATE:	May 14, 2019
ORDINANCE NUMBER:	2019-15

**INDUSTRY COMMENTS RECEIVED FROM VERIZON, T-MOBILE, AND CROWN CASTLE**

**COMMENTS/REVISIONS ARE NOTED IN TRACK CHANGES COMMENT BOXES WITH THE COMPANY NAME FOLLOWED BY THE SPECIFIC COMMENT. THE CITY'S RESPONSE TO EACH COMMENT IS IN REPLY FORM.**

**ORDINANCE NO. 2019-15**

**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; Adopting findings in support of the foregoing; Requiring a post-adoption public hearing on the foregoing; Providing for severability; Declaring a public emergency and establishing a date effective date.

**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 City Council finds 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 aesthetic design and concealment standards that govern deployment of small wireless facilities will become part of Chapter 18.10A BIMC; and

**WHEREAS**, contemporaneous with the consideration of this ordinance, the City Council 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**, 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 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 finds that the adoption of this interim official control ordinance will allow 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**, the City Council finds that adopting interim official control as set forth herein for up to six (6) months is necessary for the immediate preservation of the public peace, health, or safety.

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

**Section 1. Purpose.** The purpose of this ordinance is to adopt and establish interim aesthetic requirements and revisions to the City’s wireless communications facilities code provisions in response to the FCC Order for a period of six (6) months, or until such earlier time as permanent regulations may be adopted.

**Section 2. Findings.** The recitals set forth above are hereby adopted as the City Council’s initial findings of fact in support of the interim official control established by this ordinance. The City Council further finds that this ordinance is necessary, in conjunction with Ordinance No. 2019-11, to address potential applications for small wireless facilities within the presumptive safe harbor review periods prescribed by the FCC Order. As such, a public emergency exists requiring that this ordinance take effect immediately upon passage.

**Section 3. 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 4. 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 <a href="#">16.12.030.C.7</a> .																				
ZONING DISTRICT	R-0.4	R-1	R-2	R-2.9	R-3.5	R-4.3	R-5	R-6	R-8	R-14	Winslow Mixed Use Town Center					HSR I and II	NC	B/I	WD-1	Use-Specific Standards BIMC 18.09.030
USE CATEGORY/TYPE											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	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	P	C	F-2
Public Communications Tower	P	P	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	
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>B-5</u>										

**Section 5. 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.

**Commented [DPK1]:** VERIZON - This will need to be modified to address private drives where the poles are on private property with residential uses.

**Commented [DPK2R1]:** CITY - Agreed. Private drives need to be considered and discussed by the Planning Commission.

**Section 6. 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 Service Centers;
3. HS Road 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.

**Commented [DPK3]:** VERIZON - It would be helpful to see these mapped.

**Commented [DPK4R3]:** 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.

**Commented [DPK5]:** VERIZON – proposed revision from 500 feet down to 200 feet. 5G antennas have a limited range, especially in a heavily treed environment.

**Commented [DPK6R5]:** CITY – because small wireless facilities have a radius of 500-1000 feet, 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.

**Commented [RS7]:** T-MOBILE submitted a comment related to this section. Due to its length, the comment has been included as a separate document in the agenda packet for the 10-24-19 Planning Commission meeting. The City’s response is included in the separate document.

D.

**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.

**Commented [DPK8]:** 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.

**Commented [DPK9R8]:** 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.

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

**Commented [DPK10]:** T-MOBILE - A unified enclosure small cell design should be allowed on City poles.

**Commented [DPK11R10]:** CITY – Unified Enclosures are specifically addressed in B12 below.

This requirement 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.

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.

**Commented [DPK12]:** T-MOBILE – proposed addition of “a unified enclosure or”

**Commented [DPK13R12]:** 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.

**Commented [DPK14]:** Same T-MOBILE comment and CITY response as immediately prior.

(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.

**Commented [DPK15]:** 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.

**Commented [DPK16R15]:** 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.

(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.

**Commented [DPK17]:** 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.

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.

**Commented [DPK18R17]:** 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.

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.

**Commented [DPK19]:** T-MOBILE – proposed revision: “equipment or cabling within the base of the pole”

**Commented [DPK20R19]:** 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 be an issue. It would be new.

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.

**Commented [DPK21]:** 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.

**Commented [DPK22R21]:** CITY – the requirement to be colored or painted to match would not preclude tinting, which would achieve the colored requirement.

**Commented [DPK23]:** CITY – propose clarifying this is 16 inches in diameter.

Height is controlled by either B1 or B2.

**Commented [DPK24]:** CROWN CASTLE - canister antennas range in height from 2'-4' tall. 16" won't work.

**Commented [DPK25R24]:** CITY- Height is covered by B.1 and B2, this is for diameter.

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.

**Commented [DPK26]:** T-MOBILE – proposed addition to end of sentence:  
“...banners or signs or the equipment itself.”

**Commented [DPK27R26]:** CITY – Agree with the proposed additional language.

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.

**Commented [DPK28]:** CROWN CASTLE - we like to ask for 4 cu. ft. to account for power supplies.

**Commented [DPK29R28]:** CITY - I would encourage the City to research load capacity for this type of installation. This is required under #3.

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.

**Commented [DPK30]:** T\_MOBILE – Proposed revision:

“greater instance distance is technically...”

**Commented [DPK31R30]:** CITY – Agreed with proposed revision.

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;

**Commented [DPK32]:** VERIZON – still confirming whether this will work with Verizon designs.

**Commented [DPK33]:** VERIZON - This is another place to address private drives.

**Commented [DPK34R33]:** CITY – Agreed. Private drives need to be considered and discussed.

**Commented [DPK35]:** T-MOBILE - Attachment to multi-family buildings should be allowed.

**Commented [DPK36R35]:** 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.

**Commented [DPK37]:** T-MOBILE - This provision requiring alternative sites analysis raises similar concerns to those outlined in Comment 1 above.

**Commented [DPK38R37]:** 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 limited approvals.

**Commented [DPK39]:** T-MOBILE – Proposed revision:

“...particular technology or which interferes with the provider’s technologically effective network design.”

**Commented [DPK40R39]:** 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.”

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.

**Commented [DPK41]:** T-MOBILE - This has the effect of dictating technology and/or network design, see initial comment from T-Mobile..

**Commented [DPK42R41]:** CITY - this provision has multiple points of relief for industry. This does not dictate technology or network design.

**Commented [DPK43]:** T-MOBILE - See initial comment from T-Mobile.

**Commented [DPK44R43]:** CITY - A new pole would always be the best option for industry because it wouldn't be tied to any existing location or design.

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 7. 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).

**Commented [DPK45]:** T-MOBILE – proposed revision:

“The requirement also applies to the placement of replacement City-owned poles when the replacement of the City-owned pole is necessary for the installation or attachment of the small wireless facility...”

**Commented [DPK46R45]:** CITY – reject proposed change. The placement of a replacement pole would be a new location within the ROW that must have an appropriate permit.

**Commented [DPK47]:** 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 or which interferes with the provider’s technologically effective network design.”

**Commented [DPK48R47]:** 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.”

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 8. Public Hearing.** Pursuant to RCW 36.70A.390, the City Council shall hold a public hearing at a City Council meeting within 60 days of adoption of this ordinance in order to take public testimony. Pursuant to RCW 36.70A.390, the City Council may adopt additional legislative findings in support of this ordinance at the conclusion of said hearing.

**Commented [DPK49]:** CROWN CASTLE – Proposed revision:

“...is not covered by 47 CFR §1.40001 and this Chapter 18.11 BIMC.”

**Commented [DPK50R49]:** CITY – This proposed revision is fine – that is the effectuating provision.

**Commented [DPK51]:** CROWN CASTLE – proposed revision:

“...within ten (10) days if ~~that~~ the supplemental submission”

**Commented [DPK52R51]:** CITY – agree with revision.

**Section 9. 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 10. 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 11. Declaration of Emergency; Effective Date; Duration.** This ordinance, as a public emergency ordinance necessary for the protection of the public health, public safety, public property, and public peace, shall take effect and be in full force immediately upon passage. Pursuant to *Matson v. Clark County Board of Commissioners*, 79 Wn. App. 641 (1995), non-exhaustive underlying facts necessary to support this emergency declaration are included in the “Whereas” clauses above, all of which are adopted by reference as findings of fact as if fully set forth herein. This interim official control shall take effect immediately and shall remain effective for six (6) months, unless terminated earlier by the City Council. Provided, that the Council may, at its sole discretion, renew the interim official control for one or more six month periods in accordance with state law.

PASSED by the City Council this 14th day of May, 2019.

APPROVED by the Mayor this 14th day of May, 2019.

/s/  
\_\_\_\_\_  
Kol Medina, Mayor

ATTEST/AUTHENTICATE:

/s/  
\_\_\_\_\_  
Christine Brown, CMC, City Clerk

FILED WITH THE CITY CLERK:	May 10, 2019
PASSED BY THE CITY COUNCIL:	May 14, 2019
PUBLISHED:	May 17, 2019
EFFECTIVE DATE:	May 14, 2019
ORDINANCE NUMBER:	2019-15

### **T-Mobile Comment Regarding BIMC 18.10A.040.B:**

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.

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.

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).

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.

### **City's Response to T-Mobile's Comment:**

First, this code was written specifically to not materially limit or inhibit T-Mobile's (or any other applicant's) participation or business.

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.

Finally, this is not based on the outdated significant gap in coverage test.



CITY OF  
BAINBRIDGE ISLAND

## Planning Commission Public Participation Meeting Agenda Bill

**MEETING DATE:** October 24, 2019

**ESTIMATED TIME:** 30 Minutes

**AGENDA ITEM:** (8:15 PM) Ordinance No. 2019-32 Amending BIMC 2.16.020.S. Housing Design Demonstration Projects (HDDP) Program,

**STRATEGIC PRIORITY:** Green, Well-Planned Community

**PRIORITY BASED BUDGETING PROGRAM:**

**AGENDA CATEGORY:** Ordinance

**PROPOSED BY:** Planning & Community Development

### RECOMMENDED MOTION:

Discussion only. As directed by the City Council, the Planning Commission will hold a public hearing on November 7, 2019 and make a recommendation on Ordinance 2019-32 to the City Council by mid-November 2019.

### SUMMARY:

Ordinance No. 2018-31 (see attached) was approved by the City Council on August 28, 2018. This ordinance limited application of the HDDP program to projects where 100% of the units were designated as affordable housing. This change was recommended by the Planning Commission and approved by the Council as a de facto suspension of the HDDP program until the City's update to subdivision standards was completed. See attached Planning Commission Minutes from the June 21, 2018 meeting. The City's new subdivision standards were approved by the Council on September 24, 2019 (via Ordinance No. 2019-03).

On October 1, the Council discussed next steps for the Suzuki Affordable Housing project, which is currently being planned as a HDDP project. During that discussion, a majority of the Council indicated support to extend the HDDP program and remove the provision added in 2018 with approval of Ordinance No. 2018-31 (see above, and attached).

Ordinance No. 2019-32 as proposed removes the sentence that was added by Ordinance No. 2018-31. With removal of that sentence, the existing three-tier incentive structure of the HDDP would be left in place as is. Tier 2 HDDP development projects must integrate 10% of units as affordable housing, and Tier 3 HDDP development projects require at least 50% of units to be designated as affordable housing. See attached summary of the HDDP program and projects submitted to date, and BIMC Section 2.16.020.S, the HDDP program codified.

The HDDP program was originally approved as a demonstration program with a sunset date. The HDDP program currently expires on December 31, 2019. Ordinance No. 2019-32 proposes to extend the program until December 31, 2021.

The Planning Commission is scheduled to make a recommendation on Ordinance No. 2019-32 to the City

Council by mid-November 2019 so that the City Council has time to discuss and take action on the ordinance before the end of 2019.

**FISCAL IMPACT:**

<b>Amount:</b>	
<b>Ongoing Cost:</b>	
<b>One-Time Cost:</b>	
<b>Included in Current Budget?</b>	

**BACKGROUND:** Ordinance No. 2018-31 (see attached) was approved by the City Council on August 28, 2018. This ordinance limited application of the HDDP program to projects where 100% of the units were designated as affordable housing. This change was recommended by the Planning Commission and approved by the Council as a de facto suspension of the HDDP program until the City's update to subdivision standards was completed. See attached Planning Commission Minutes from the June 21, 2018 meeting. The City's new subdivision standards were approved by the Council on September 24, 2019 (via Ordinance No. 2019-03).

**ATTACHMENTS:**

[DRAFT ORD 2019-32 HDDP Program](#)

[PLANNING COMMISSION MINUTES 062118.pdf](#)

[Ordinance No. 2018-31 Limiting the Housing Design Demonstration Project Program to Affordable Housing Approved 082818](#)

[HDDP Program Summary for PC](#)

[BIMC 2.16.020.S HDDP Program](#)

**FISCAL DETAILS:**

**Fund Name(s):**

**Coding:**

**ORDINANCE NO. 2019-32**

**AN ORDINANCE** of the City of Bainbridge Island, Washington, amending Bainbridge Island Municipal Code (BIMC) Section 2.16.020.S., revising and extending the Housing Design Demonstration Project program.

**WHEREAS**, on August 12, 2009, the City Council adopted Ordinance No. 2009-06, establishing a pilot Housing Design Demonstration Project (HDDP) program to allow for the development of projects to increase the variety of housing choices available to residents of all economic segments and to encourage sustainable development through the use of development standard incentives; and

**WHEREAS**, Ordinance No. 2009-06 established a sunset date of August 26, 2012, for the HDDP program; and

**WHEREAS**, on July 18, 2012, the City Council approved Ordinance No. 2012-09, extending the HDDP program until December 31, 2013, to allow time for the City to further evaluate the program; and

**WHEREAS**, the City Council convened an Ad Hoc Committee made up of a Planning Commissioner, three City Councilmembers, a member of the Design Review Board, and a representative from the Housing Resources Board to evaluate and make recommendations on the HDDP program; and

**WHEREAS**, the Ad Hoc Committee recommended changes to the HDDP program, including extending the HDDP program until the end of 2016 to allow time for the construction of approved projects; and

**WHEREAS**, on December 11, 2013, the City Council adopted those recommendations with the approval of Ordinance No. 2013-25, extending the HDDP program to December 31, 2016; and

**WHEREAS**, on September 27, 2016, the City Council adopted Ordinance No. 2016-27, extending the HDDP program until December 31, 2019, to allow time to review the program and compare it to other affordable housing tools the City may choose to utilize, as envisioned by the draft 2016 Comprehensive Plan; and

**WHEREAS**, on February 28, 2017, the City Council adopted Ordinance No. 2017-01, approving the 2016 Comprehensive Plan; and

**WHEREAS**, the 2016 Comprehensive Plan includes several policies related to promotion of sustainable development and affordable housing; and

**WHEREAS**, the purpose of the existing HDDP program is to allow the development of housing design demonstration projects that increase the variety of housing choices available to residents across underserved portions of the socioeconomic

spectrum, promote compact, low-impact development where it is most appropriate, and encourage high quality and innovation in building design, site development, and “green” building practices; and

**WHEREAS**, the Affordable Housing Task Force was created by the City Council on May 9, 2017, and was instructed to make recommendations for specific actions, programs, and strategies the City of Bainbridge Island and the City Council can take in the near-term to improve access to affordable housing across the economic spectrum; and

**WHEREAS**, Ordinance No. 2018-02 imposed a temporary six-month moratorium on the acceptance of certain development (development moratorium), stating the City Council’s concerns regarding likely adverse impacts related to growth and development under existing regulations; and

**WHEREAS**, Tier 3 HDDP projects require 50% of dwelling units be designated for affordable housing and these Tier 3 HDDP projects are exempt from the development moratorium; and

**WHEREAS**, in 2018 and early 2019, the Design Review Board and Planning Commission worked on revisions to Title 17 of the Bainbridge Island Municipal Code (BIMC) relating to subdivisions to improve consistency between subdivision development and the City’s Comprehensive Plan; and

**WHEREAS**, in 2017-2018, the Planning Commission expressed concern during project review and recommendation meetings related to HDDP land use applications that the existing HDDP program is difficult to implement and is not achieving its stated purpose and goals; and

**WHEREAS**, on June 21, 2018, the Planning Commission recommended that the City Council suspend the existing HDDP program until work on revisions to Title 17 BIMC are completed; and

**WHEREAS**, the City Council discussed the issue of suspending the HDDP program as recommended by the Planning Commission on July 24, 2018, and held a public hearing on and approved Ordinance No. 2018-31 on August 28, 2018; and

**WHEREAS**, Ordinance 2018-31 was a de facto suspension of the HDDP program except for projects that produced 100% of units as affordable housing, exceeding the underlying Tier 3 HDDP provisions that require at least 50% of units be designated as affordable housing; and

**WHEREAS**, on September 24, 2019, the City Council approved updated subdivision standards via Ordinance 2019-03; and

**WHEREAS**, with the approval of Ordinance 2019-03, the subdivision regulations were completed, and therefore the impetus for Ordinance 2018-31, limiting HDDP projects to those with 100% affordable housing, has been addressed; and

**WHEREAS**, the City's Affordable Housing Task Force issued a final report in July 2018 with many recommendations on how to increase housing affordability and diversity on Bainbridge Island, which include similar goals as the HDDP program described above; and

**WHEREAS**, the City is still working to accomplish many of the recommendations made by Task Force's final report and implement City green building standards, and both affordable housing and green building are required as part of the HDDP program; and

**WHEREAS**, the HDDP program is currently set to expire on December 31, 2019; and

**WHEREAS**, on October 1 and 22, 2019, a majority of the City Council indicated support for extending the HDDP program until December 31, 2021; and

**WHEREAS**, the Planning Commission discussed Ordinance 2019-32 on October 24, 2019 and held a public hearing on and made a recommendation on Ordinance No. 2019-32 on November 7, 2019; and

**WHEREAS**, notice was given on XXXXXX, 2019 to the Office of Community Development at the Washington State Department of Commerce in conformance with RCW 36.70A.106;

**WHEREAS**, the City Council discussed Ordinance 2019-32 on XXX, 2019 and held a public hearing on and approved Ordinance No. 2019-32 on XXX, 2019.

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

**Section 1.** Section 2.16.020.S.2 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

2. Applicability. This subsection S is applicable to all properties located within the Winslow sanitary sewer system service area. An application for a housing design demonstration project may be applied to single-family residential subdivisions, mixed-use/multifamily and multifamily developments. ~~The city will only accept applications for housing design demonstration projects where 100 percent of the housing units created will constitute affordable housing, as defined by BIMC 18.36.030.16, for one or more of the income groups defined in BIMC 18.21.020.A.~~ Since the purpose is to provide housing projects as demonstrations, the city will accept projects for consideration and approval prior to the sunset date

of the ordinance codified in this chapter. The city will limit acceptance of Tier 3 and 4 projects outlined in this section to three projects in each tier.

**Section 2.** Section 2.16.020.S.10. of the Bainbridge Island Municipal Code is hereby amended to read as follows:

10. Demonstration Period. This subsection S and related provisions of BIMC Titles 2, 17, and 18 shall expire on December 31, ~~2021~~2019.

**Section 3.** This ordinance shall take effect on \_\_\_\_\_, 2019.

PASSED BY THE CITY COUNCIL this \_\_\_\_ day of \_\_\_\_\_, 2019.

APPROVED BY THE MAYOR this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Kol Medina, 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:                           2019-32

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CALL TO ORDER – Call to Order, Agenda Review, Conflict Disclosure  
ORDINANCE 2018-20 SUBDIVISION DESIGN STANDARDS AND PROCESS – Study  
Session/Recommendation  
PUBLIC COMMENT  
NEW/OLD BUSINESS  
ADJOURN

---

**CALL TO ORDER – Call to Order, Agenda Review, Conflict Disclosure**

Chair J. Mack Pearl called the meeting to order at 6:33 PM. Planning Commissioners in attendance were William Chester, Jon Quitslund, Michael Killion, Lisa Macchio, Don Doman and Kimberly McCormick Osmond. City Staff present were Planning Director Gary Christensen, Long Range Senior Planner Christy Carr and Administrative Specialist Jane Rasely who monitored recording and prepared minutes.

The agenda was reviewed. There were not any conflicts noted.

The Planning Commission decided William Chester would become Chair in July and J. Mack Pearl would become Vice-Chair.

**ORDINANCE 2018-20 SUBDIVISION DESIGN STANDARDS AND PROCESS – Study  
Session/Recommendation**

Senior Long Range Planner Christy Carr led the discussion beginning with BIMC 2.14.

**Motion: I move to recommend to move to the City Council the changes that we have made to Chapter 2.14, the changes we have made to the table in 2.16 and any conforming changes in the text of 2.16 to reflect the changes in the table.**

**McCormick Osmond/Killion – Passed Unanimously**

**Motion: We move to recommend to the Council that they suspend the HDDP Ordinance until we have had a chance to review the proposed design guidelines in conjunction with the existing HDDP Ordinance.**

**McCormick Osmond/Quitslund – Passed Unanimously**

Commissioner Macchio asked for clarification on timing of the above motion. It was decided the suspension of the HDDP Ordinance was requested until the Planning Commission had completed their review of the subdivision guidelines.

**Motion: I move to amend 2.16.180 to conform the language to the scope of review the Planning Commission is currently undertaking.**

**McCormick Osmond/Chester – Passed Unanimously**

**PUBLIC COMMENT**

**Sarah Blossom, Citizen** – Spoke about short plats and whether the Planning Commission would be able to handle the volume and to take into consideration the balance of what they want to achieve with the costs to property owners.

**Betty Wiese, Citizen** – Spoke about the code being the biggest part of the foundation and not who makes the decisions.

**NEW/OLD BUSINESS**

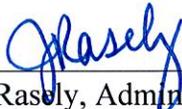
None.

**ADJOURN**

The meeting was adjourned at 9:24 PM.

Approved by:

  
\_\_\_\_\_  
J. Mack Pearl, Chair

  
\_\_\_\_\_  
Jane Rasely, Administrative Specialist



CITY OF  
BAINBRIDGE ISLAND

**Planning Commission Special Meeting**  
**Thursday, June 21, 2018**  
**7:00 pm – 9:00 pm**

**PLEASE PRINT**

Name	Address	Phone/ E-Mail	Join ListServ Yes/No

## 2018 Planning Commission Project Schedule

PROJECT	JUNE		JULY		AUGUST		STAFF
	21	28	12	26	9	23	
<b>LEGISLATIVE WORK</b>							
Tree Regulations BIMC 16.18 & 18.15.010				SS/R			Jennifer Sutton
SMP Amendment Phase 2			SS	SS	SS	SS	Christy Carr
Subdivision Design Guidelines & Standards	SS/R		SS/R				Christy Carr
AHTF Recommendations					B		Jennifer Sutton
Capital Improvement Plan Update			B/PH				Finance/PW
Island Center Subarea Planning						B	Jennifer Sutton
Green Building							James Weaver
<b>DEVELOPMENT PROJECTS TO REVIEW</b>							
CKCB Madison SPR/SSDP							Olivia Sontag

**PACKETS DUE AT NOON ON FRIDAY BEFORE MEETING**

**SS = Study Session    W = Workshop    PH = Public Hearing    PM = Public Meeting    R = Recommendation**  
**A = Action    P = Process    B = Briefing    D = Decision    JM = Joint Meeting    OH = Open House**

Last modified: June 21, 2018

**ORDINANCE NO. 2018-31**

**AN ORDINANCE** of the City of Bainbridge Island, Washington, limiting the Housing Design Demonstration Project program to projects consisting entirely of affordable housing.

**WHEREAS**, on August 12, 2009, the City Council adopted Ordinance No. 2009-06, establishing a pilot Housing Design Demonstration Project (HDDP) program to allow for the development of projects to increase the variety of housing choices available to residents of all economic segments and to encourage sustainable development through the use of development standard incentives; and

**WHEREAS**, Ordinance No. 2009-06 established a sunset date of August 26, 2012, for the HDDP program; and

**WHEREAS**, on July 18, 2012, the City Council approved Ordinance No. 2012-09, extending the HDDP program until December 31, 2013, to allow time for the City to further evaluate the program; and

**WHEREAS**, the City Council convened an Ad Hoc Committee made up of a Planning Commissioner, three City Councilmembers, a member of the Design Review Board, and a representative from the Housing Resources Board to evaluate and make recommendations on the HDDP program; and

**WHEREAS**, the Ad Hoc Committee recommended changes to the HDDP program, including extending the HDDP program until the end of 2016 to allow time for the construction of approved projects; and

**WHEREAS**, on December 11, 2013, the City Council adopted those recommendations with the approval of Ordinance No. 2013-25, extending the HDDP program to December 31, 2016; and

**WHEREAS**, on September 27, 2016, the City Council adopted Ordinance No. 2016-27, extending the HDDP program until December 31, 2019, to allow time to review the program and compare it to other affordable housing tools the City may choose to utilize, as envisioned by the draft 2016 Comprehensive Plan; and

**WHEREAS**, on February 28, 2017, the City Council adopted Ordinance No. 2017-01, approving the 2016 Comprehensive Plan; and

**WHEREAS**, the 2016 Comprehensive Plan includes several policies related to promotion of sustainable development and affordable housing; and

**WHEREAS**, the purpose of the existing HDDP program is to allow the development of housing design demonstration projects that increase the variety of housing choices available to residents across underserved portions of the socio-economic spectrum, promote compact, low-impact development where it is most appropriate, and encourage high quality and innovation in building design, site development, and “green” building practices; and

**WHEREAS**, the goals of the existing HDDP program are to increase the housing supply and the choice of housing styles available in the community, to promote socio-economic diversity by adding to the stock of income-qualified housing, to encourage development of smaller homes, at reasonable prices, in neighborhoods attractive to a mix of income and age levels, and to demonstrate that innovative design and building techniques (conserving water and energy, using sustainably sourced materials, limiting environmental impacts) are compatible with market considerations; and

**WHEREAS**, the Affordable Housing Task Force (AHTF) was created by the City Council on May 9, 2017, and was instructed to make recommendations for specific actions, programs, and strategies the City of Bainbridge Island and the City Council can take in the near-term to improve access to affordable housing across the economic spectrum; and

**WHEREAS**, the City Council has expressed significant concerns about development and growth in the City under current regulations in the context of the vision and goals of the City's Comprehensive Plan, and wishes to revise development regulations to best accommodate growth and development in both general and specific ways; and

**WHEREAS**, Ordinance No. 2018-02 imposed a temporary six-month moratorium on the acceptance of certain development (development moratorium), stating the City Council's concerns regarding likely adverse impacts related to growth and development under existing regulations; and

**WHEREAS**, Tier 3 HDDP projects require 50% of dwelling units be designated for affordable housing and these Tier 3 HDDP projects are exempt from the development moratorium; and

**WHEREAS**, the Planning Commission and Design Review Board are working on revisions to Title 17 of the Bainbridge Island Municipal Code (BIMC) relating to subdivisions to improve consistency between subdivision development and the City's Comprehensive Plan; and

**WHEREAS**, the Planning Commission expressed concern during project review and recommendation meetings related to HDDP land use applications that the existing

HDDP program is difficult to implement and is not achieving its stated purpose and goals; and

**WHEREAS**, on June 21, 2018, the Planning Commission recommended that the City Council suspend the existing HDDP program until work on revisions to Title 17 BIMC are completed; and

**WHEREAS**, the AHTF Final Report, as accepted by the City Council on July 24, 2018, contains several priority recommendations including amending the BIMC to facilitate an increase in the diversity of housing types and supply of affordable housing; and

**WHEREAS**, on August 28, 2018, the City Council discussed the issue of suspending the HDDP program, as recommended by the Planning Commission, and held a public hearing on Ordinance No. 2018-31; and

**WHEREAS**, on August 13, 2018, notice was given to the Office of Community Development at the Washington State Department of Commerce in conformance with RCW 36.70A.106.

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

**Section 1.** Section 2.16.020.Q.2 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

2. Applicability. This subsection Q is applicable to all properties located within the Winslow sanitary sewer system service area. An application for a housing design demonstration project may be applied to single-family residential subdivisions, mixed-use/multifamily and multifamily developments. The city will only accept applications for housing design demonstration projects where 100% of the housing units created will constitute affordable housing, as defined by BIMC 18.36.030.16, for one or more of the income groups defined in BIMC 18.21.020.A. Since the purpose is to provide housing projects as demonstrations, the city will accept projects for consideration and approval prior to the sunset date of the ordinance codified in this chapter. The city will limit acceptance of Tier 3 and 4 projects outlined in this section to three projects in each tier.

**Section 2.** This ordinance shall take effect and be in force five (5) days from its passage, approval, and publication as required by law.

PASSED BY THE CITY COUNCIL this 28th day of August, 2018.

APPROVED BY THE MAYOR this 28th day of August, 2018.

  
\_\_\_\_\_  
Kol Medina, Mayor

ATTEST/AUTHENTICATE:

  
\_\_\_\_\_  
Christine Brown, City Clerk

FILED WITH THE CITY CLERK:	August 24, 2018
PASSED BY THE CITY COUNCIL:	August 28, 2018
PUBLISHED:	September 7, 2018
EFFECTIVE DATE:	September 12, 2018
ORDINANCE NUMBER:	2018-31

# Housing Design Demonstration Project (HDDP) Program

## OVERVIEW

- **2009 3-year Pilot Program applies in the greater Winslow area Revised in 2013; Revised in 2016 to reflect LID requirements, extended until 2019.**
- **Promotes green building, sustainable site development, and housing diversity & affordability using development standard flexibility & density incentives**
- **4 Tiers: Density incentives scaled to amount of Green Building and Infrastructure, and Housing Diversity**
- **1,600 square foot maximum dwelling unit size for all HDDP units**
- **2018 Recommendation by Planning Commission: Ordinance 2018-31 limited HDDP to those with 100% affordable housing until subdivision regulations updated.**



Excerpt Table 2.16.020.Q-1: Housing Design Demonstration Project Scoring System

Density Incentives	Requirements to Receive Incentives	
	Green Building and Innovative Site Development	Housing Diversity
<b>Tier 4</b>		
<b>2.5 x Base Density OR Max. Bonus Mixed-Use FAR</b>	Living Building Challenge (ILFI) OR Passive House (Passive House Institute US/International)	Home size not greater than 1,600 sq. ft.
	30 Points in Innovative Site Development Practices	10 pts/10% of units affordable housing
<b>Tier 3</b>		
<b>2.5 x Base Density OR Max. Bonus Mixed-Use FAR</b>	LEED Silver, BuiltGreen 4, or Evergreen Sustainable Development	50% affordable housing
	25 Points in Innovative Site Development Practices	Home size not larger than 1,600 sq. ft.
<b>Tier 2</b>		
<b>1.5 x Base Density (R-8 and R-14); OR</b>	LEED Silver, BuiltGreen 4, or Evergreen Sustainable Development	Home size not larger than 1,600 sq. ft.
<b>2.0 x Base Density not to exceed R-8 density (R-2, R-2.9, R-3.5, and R-4.3); OR</b>		10% of units affordable housing
<b>Max. Bonus Mixed-Use FAR</b>	25 Points in Innovative Site Development Practices	Projects with ≥ 20 units must get 3 points in “Unit Type” category
<b>Tier 1</b>		
<b>No Density Bonus</b>	LEED Certification, BuiltGreen 4, or Evergreen Sustainable Development	•Home size not larger than 1,600 sq. ft.
		•4 points (projects with < 20 units) in “Housing Diversity” category
	14 Points in Innovative Site Development Practices	•5 points (projects with ≥ 20 units) in “Housing Diversity” category
		•Projects with ≥ 20 units must get 2 points in “Unit Type” category

**Table 2.16.020.S-2 Housing Diversity Scoring Method**

		Affordable Housing			Unit Size		Unit Type	
		Project includes a number of housing units that are designated affordable for a period of 50 years to the spectrum of income levels as defined by BIMC 18.36.030.16 and 18.21.020.A. Rental housing is encouraged by awarding more points for the creation of rental housing.			Project includes a variety of unit sizes, excluding garages, that provide for a broad mix of income levels and family size. In order to score a point in a unit size range, the project shall provide at least 10% of the total number of units in that range. For example, in a 40-unit development, at least 4 units sized between 1,001 and 1,200 ft <sup>2</sup> would be needed to score points in that range.		Unit type: Project includes a variety of housing unit types (i.e., single-family style, townhouse, flat, age-in-place, ADUs, cottages) or innovative type of housing. In order to score points for different unit types, the project shall provide at least 10% of the total number units of that type. For example, in a 40-unit development of townhomes and duplexes, at least 4 units of townhomes would be needed to score points for having 2 different unit types.	
TIER	Total Housing Diversity Points Required	Affordable Units	Ownership Value	Rental Value	Unit Size Range	Value	Number of Different Unit Types	Value
		10%	10	12	< 800 ft <sup>2</sup>	1	2	2
		11 – 15%	12	14	801 – 1,000 ft <sup>2</sup>	1	3	3
		16 – 20%	14	16	1,001 – 1,200 ft <sup>2</sup>	1	4	4
		21 – 25%	16	18	1,201 – 1,400 ft <sup>2</sup>	1	5	5
		> than 25%	20	22	1,401 – 1,600 ft <sup>2</sup>	1	<b>Min. Pts. Required</b>	
		<b>Minimum % Required</b>			<b>Size Requirement</b>	<b>Min. Pts. Required</b>	<b>Min. Pts. Required</b>	
4	10 pts	10%			Max. home size 1,600 ft <sup>2</sup>	NA	NA	
3	20 pts	50%			Max. home size 1,600 ft <sup>2</sup>	NA	NA	
2	12 pts (projects < 20 units) 15 pts (projects ≥ 20 units)	10%			Max. home size 1,600 ft <sup>2</sup>	NA	Projects ≥ 20 units must get 3 pts in “unit type”	
1	4 pts (projects < 20 units) 5 pts (projects ≥ 20 units)	NA			Max. home size 1,600 ft <sup>2</sup>	NA	Projects ≥ 20 units must get 2 pts in “unit type”	

**Table 2.16.020.S-3 Innovative Site Development Scoring Method**

TIER	Minimum Site Development Point Requirement	WATER QUALITY & CONSERVATION		LANDSCAPING & OPEN SPACE			TRANSPORTATION																																				
		REQUIREMENT	VALUE	% OF OPEN SPACE	VALUE	VALUE IF PUBLIC	TRANSPORTATION COMPONENTS	VALUE																																			
		<p>Projects use methods to decrease water usage and improve stormwater runoff quality through an integrated approach to stormwater management such as greywater use, stormwater collection in cisterns, green roofs and covered parking. All HDDP projects will follow the stormwater manual adopted in Chapter <a href="#">15.20</a> BIMC.</p>		<p>Project provides well-designed common open space, with at least 5 percent of the gross land area, set aside as open space and designed as an integrated part of the project rather than an isolated element. The common open space must be outside of critical areas and their buffers and required roadside buffers. Appropriate community amenities such as playgrounds, composting and neighborhood gardens promoting the production of locally grown food are encouraged. Resident neighborhood community gardens can be in common open space areas, and shall be appropriately located for solar exposure, and include water availability, soil amenities, and storage for garden tools. Required growing space for neighborhood gardens is 60 square feet per dwelling unit, not including any existing orchard area. Open space dedicated to the public pursuant to the standards of BIMC Sections 17.12.030. A1, A2, A3, A6 &amp; A7 is encouraged.</p>			<p>Project design provides enhanced sensitivity to pedestrian and bicycle travel to promote the people getting around without a car, a reduced carbon footprint, improved health of humans, and lower pollution levels. Project internally preserves existing informal internal connection to external non-motorized facilities, furthering the Island-wide Transportation Plan (IWTP) and using such solutions as woonerfs, green streets, and natural trails and paths. Project reduces reliance on automobiles and trip counts, and promotes alternative transportation, such as integrating parking and charging facilities for electric cars, or bus shelters.</p>																																				
4	30	<p>Number of dwelling units that integrate greywater reuse components into building design:</p> <table border="1"> <tr><td>10%</td><td>1</td></tr> <tr><td>11-20%</td><td>2</td></tr> <tr><td>21-30%</td><td>3</td></tr> <tr><td>Over 31%</td><td>4</td></tr> </table>		10%	1	11-20%	2	21-30%	3	Over 31%	4	<table border="1"> <tr><td>5-10%</td><td>2</td><td>4</td></tr> <tr><td>11-15%</td><td>4</td><td>6</td></tr> <tr><td>16-20%</td><td>6</td><td>8</td></tr> <tr><td>21-25%</td><td>8</td><td>10</td></tr> <tr><td>Greater than 25%</td><td>10</td><td>12</td></tr> </table>			5-10%	2	4	11-15%	4	6	16-20%	6	8	21-25%	8	10	Greater than 25%	10	12	<table border="1"> <tr><td>Project preserves, creates or integrates internal and external non-motorized connections.</td><td>2</td></tr> <tr><td>Provides public walkways, separated paths, or bike lanes. No points for facilities required by IWTP.</td><td>3</td></tr> <tr><td>On-site car sharing program</td><td>1 per each car</td></tr> <tr><td>Electric vehicle charging stations for 3% of vehicle parking capacity.</td><td>3</td></tr> <tr><td>Covered, consolidated bike parking for subdivisions</td><td>3</td></tr> <tr><td>Bus Shelter</td><td>2</td></tr> </table>		Project preserves, creates or integrates internal and external non-motorized connections.	2	Provides public walkways, separated paths, or bike lanes. No points for facilities required by IWTP.	3	On-site car sharing program	1 per each car	Electric vehicle charging stations for 3% of vehicle parking capacity.	3	Covered, consolidated bike parking for subdivisions	3	Bus Shelter	2
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Bus Shelter	2																																										
3	25	<p>Percentage of total roof area qualifying as "green roofs":</p> <table border="1"> <tr><td>15-30%</td><td>2</td></tr> <tr><td>Over 31%</td><td>4</td></tr> </table>		15-30%	2	Over 31%	4	<p>Incorporates neighborhood garden</p> <table border="1"> <tr><td></td><td>2</td><td></td></tr> </table>				2																															
15-30%	2																																										
Over 31%	4																																										
	2																																										
2	25	<p>Project integrates cisterns: % of total roof area directed to cisterns:</p> <table border="1"> <tr><td>15-30%</td><td>2</td></tr> <tr><td>Over 31%</td><td>4</td></tr> </table>		15-30%	2	Over 31%	4	<p>Preserves tree that qualifies as a "Heritage tree" under City Program. The tree is not otherwise required to be preserved.</p> <table border="1"> <tr><td></td><td>2 per tree</td><td></td></tr> </table>				2 per tree																															
15-30%	2																																										
Over 31%	4																																										
	2 per tree																																										
1	14	<p>Percentage of total parking spaces that are covered (i.e. parking garage, carport):</p> <table border="1"> <tr><td>5-20%</td><td>1</td></tr> <tr><td>21-40%</td><td>2</td></tr> <tr><td>41-60%</td><td>3</td></tr> <tr><td>61-80%</td><td>4</td></tr> <tr><td>Over 81%</td><td>5</td></tr> </table>		5-20%	1	21-40%	2	41-60%	3	61-80%	4	Over 81%	5	<p>All Private yard areas ≤ 20% turf</p> <table border="1"> <tr><td></td><td>4</td><td></td></tr> </table>				4																									
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Over 81%	5																																										
	4																																										
				<p>Project landscaping integrates at least 60% native or drought tolerant plants</p> <table border="1"> <tr><td></td><td>4</td><td></td></tr> </table>				4																																			
	4																																										

Summary of HDDP Projects							
HDDP Project	Tier	Zone	Max. Base Density	# & Type of Dwelling units	Green Building Certification Requirement	# of Affordable (AH) Units	Status
<b>**Ferntcliff Village (HRB)</b>	3	R-3.5	20	40: Single-family (SF) & Townhomes (TH)	Evergreen Sustainable Development	40	Completed
<b>**Grow Community</b>	2	R-14	112	149: SF, Apartments (Apts.), Condos & Townhomes	Built Green 5	0	Mostly Built
Ericksen Urban Cottages	1	MUTC/ Ericksen	0.6 Res. FAR	16 SF	LEED Certified Required, Achieved LEED Platinum	0	Completed
Madrona Townhomes (The Walk)	1	MUTC/ Core	1.0 Res. FAR	52 SF TH & ADUs	LEED Certified	5	Under Construction
Bainbridge Landing	1	MUTC/ Ferry TD	1.1 Res. FAR	140: SF TH, Apts.& Age-in-Place	LEED Certified or Built Green 4	0	Under Construction
<b>**Wallace Cottages</b>	2	R-4.3	10	19 SF & Age-in-Place	LEED Silver or Built Green 4	2	Under Construction
Madison Place	1	MUTC/ Madison	0.6 Res. FAR	18 SF & Duplexes	LEED Certified or Built Green 4	0	Under Construction
Ericksen Gardens	1	MUTC/ Ericksen	0.6 Res. FAR	5 SF (including 1 ADU)	LEED Certified or Built Green 4	0	Under Construction <sup>174</sup>
Total HDDP Units Permitted				439	Total Designated AH Units	47	
<b>**# of Bonus Units Achieved Through HDDP</b>				66			

## 2.16.020 General provisions.

### S. Housing Design Demonstration Projects.

1. Purpose and Goals. The purpose of this subsection S is to allow the development of housing design demonstration projects that increase the variety of housing choices available to residents across underserved portions of the socio-economic spectrum, and to promote compact, low-impact development where it is most appropriate. Further, its purpose is to encourage high quality and innovation in building design, site development, and “green” building practices.

The goals of this program are to increase the housing supply and the choice of housing styles available in the community; to promote socio-economic diversity by adding to the stock of income-qualified housing; to encourage development of smaller homes, at reasonable prices, in neighborhoods attractive to a mix of income and age levels; and to demonstrate that innovative design and building techniques (conserving water and energy, using sustainably sourced materials, limiting environmental impacts) are compatible with market considerations.

2. Applicability. This subsection S is applicable to all properties located within the Winslow sanitary sewer system service area. An application for a housing design demonstration project may be applied to single-family residential subdivisions, mixed-use/multifamily and multifamily developments. The city will only accept applications for housing design demonstration projects where 100 percent of the housing units created will constitute affordable housing, as defined by BIMC 18.36.030.16, for one or more of the income groups defined in BIMC 18.21.020.A. Since the purpose is to provide housing projects as demonstrations, the city will accept projects for consideration and approval prior to the sunset date of the ordinance codified in this chapter. The city will limit acceptance of Tier 3 and 4 projects outlined in this section to three projects in each tier.

3. Review and Approval Process. Housing design demonstration project applications shall be reviewed as specified in the same manner as other applications for the same type of underlying land use permit (see BIMC 2.16.030 through 2.16.210), with additional review steps done in the order below as outlined in this subsection.

a. Conceptual Proposal Review. Applicants proposing a demonstration project shall meet with city staff during the conceptual phase to discuss the goals and evaluation parameters of the proposed project. The conceptual proposal review is an informal discussion between the applicant and city staff regarding a proposed project. There are no required application materials for this stage. Applicants shall contact the planning department staff to request a meeting, and the meeting shall be scheduled by staff for no more than three weeks after the request date. The purpose of the conceptual proposal review is to determine if the proposal is eligible to be considered as an application for a housing design demonstration project and to assist the applicant by identifying (i) requirements for submittal, including types of supplemental materials for application; (ii) compliance with applicable city plans, goals, policies, codes, or guidelines and possible revisions to the project that will enhance the proposal with respect to these requirements; (iii) areas of BIMC Title 18, Zoning, and BIMC Title 17, subdivisions, where the applicant seeks flexibility; and (iv) required plans, studies, reports, and/or other materials specific to the proposal that will provide necessary information for staff and the design review board, and to review the project under the criteria outlined in subsection S.4 of this section.

b. Public Participation Program. The applicant is required to participate in one or more community meetings, either through the city’s (i) public participation program following the procedures outlined in Resolution Nos. 2010-32 and 2001-11, or (ii) an equivalent public meeting that includes participation by city staff, as approved by the director.

c. Preapplication Conference. The applicant shall apply for a preapplication conference pursuant to subsection I of this section. Housing design demonstration projects shall be reviewed by both staff and the design review board, pursuant to subsection F of this section. The applicant shall submit a HDDP proposal consistent with the requirements in the administrative manual. The applicant shall consider input received during the public meetings and conceptual review with city staff in crafting the proposal. The proposal will be evaluated pursuant to subsection S.4 of this section by city staff with the design review board serving in an advisory role, in addition to their review of applicable design guidelines. The director shall prepare written findings of facts, and

applicants will receive preliminary notification from the director whether the proposal will qualify as a housing design demonstration project, or feedback about how to improve the proposal to qualify. If the applicant changes the proposal in any significant manner other than a response to feedback from the public meeting, conceptual review, or the preapplication review, an additional preapplication conference may be required.

d. Application Submittal. An applicant may submit a land use permit application (subdivision, site plan and design review, or conditional use permit) for a housing design demonstration project after completion of a required conceptual and preapplication review and notification by the city that the proposal qualifies as a housing design demonstration project. Upon receipt of an application, the director shall provide notice to the applicant and public in accordance with subsection M of this section, and commence the application review process. Housing design demonstration projects that require more than one land use permit must utilize the consolidated project review process outlined in BIMC 2.16.170. All housing design demonstration project applications, including subdivisions, shall be reviewed by the design review board and the planning commission at public meetings. The design review board and the planning commission shall make recommendations on all housing design demonstration projects.

e. Permit Decision. The decision to approve or deny a housing design demonstration project shall be made as part of underlying land use permit approval. The decision shall be based upon the decision criteria of the underlying planning permit, and the decision criteria outlined in subsection S.5 of this section. Housing design demonstration project approval conditions shall be included in the final permit approval and shall address any ongoing compliance requirements including compliance with approved design plans. The city may require that the applicant record covenants to ensure ongoing compliance or maintenance for required project components.

f. Building Permit. The applicant shall submit a building permit that is consistent with all conditions of the land use permit approval. The applicant shall also submit documentation that the project has applied for required certification by a green building rating system, such as Evergreen Sustainable Development, LEED, or BuiltGreen. Proof of ongoing certification shall be required during construction and project certification must be completed prior to final occupancy.

g. Living Building Challenge. For projects pursuing the Living Building Challenge standard of the International Living Building Institute, the applicant must show proof of pursuing ongoing certification during construction for all required elements. After construction and prior to issuance of the certificate of occupancy, the applicant must show proof of initial project compliance as to the Site, Materials, Indoor Quality and Beauty/Inspiration components of the Living Building Challenge and that the project is likely to achieve the elements of energy and water following 12 months of occupancy as required under Living Building Challenge certification. For those elements of energy and water that require occupancy of the building for 12 months for Living Building Challenge certification, the applicant must submit a report to the city following 12 months of occupancy, demonstrating its progress towards meeting these remaining elements of the Living Building Challenge standard. If certification of those elements has not been achieved, the applicant must provide quarterly reports of progress towards certification of these elements, including additional steps and timeline that will be taken to achieve certification.

4. Evaluation Method. Each project will be evaluated for innovation and achievement of the goals of this subsection S of this section using a number of factors. The evaluation factors are divided into three categories. Examples of sustainable development methods do not limit other mechanisms of meeting the evaluation factor. Projects that qualify as housing design demonstration projects are eligible to use the flexible development standard incentives outlined in subsections S.6 and 7 of this section. Projects qualifying as a Tier 2, 3, or 4 project are eligible for the residential incentives outlined below and in subsection S.8 of this section. Tables 2.16.020.S-1, S-2, and S-3 show how projects are scored to qualify for different tiers in the housing design demonstration project program.

**Table 2.16.020.S-1: Housing Design Demonstration Project Scoring System**

<b>Requirements to Receive Incentives</b>		
<b>Density Incentives</b>	<b>Green Building and Innovative Site Development</b>	<b>Housing Diversity</b>
<b>Tier 4</b>		
2.5 x Base Density OR Max. Bonus Mixed-Use FAR	Living Building Challenge (ILFI) OR Passive House (Passive House Institute US/International)	Home size not greater than 1,600 sq. ft.
	30 Points in Innovative Site Development Practices	10 pts/10% of units affordable housing
<b>Tier 3</b>		
2.5 x Base Density OR Max. Bonus Mixed-Use FAR	LEED Silver, BuiltGreen 4, or Evergreen Sustainable Development	50% affordable housing
	25 Points in Innovative Site Development Practices	Home size not larger than 1,600 sq. ft.
<b>Tier 2</b>		
1.5 x Base Density (R-8 and R-14); OR 2.0 x Base Density not to exceed R- 8 density (R-2, R-2.9, R-3.5, and R- 4.3); OR Max. Bonus Mixed-Use FAR	LEED Silver, BuiltGreen 4, or Evergreen Sustainable Development	Home size not greater than 1,600 sq. ft.
		10% of units affordable housing
	25 Points in Innovative Site Development Practices	Projects with ≥ 20 units must get 3 points in “Unit Type” category
<b>Tier 1</b>		
No Density Bonus	LEED Certification, BuiltGreen 4, or Evergreen Sustainable Development	Home size not greater than 1,600 sq. ft.
		4 points (projects with < 20 units) in “Housing Diversity” category
	14 Points in Innovative Site Development Practices	5 points (projects with ≥ 20 units) in “Housing Diversity” category
		Projects with ≥ 20 units must get 2 points in “Unit Type” category
NOTE: For Tiers 2 and 3 required affordable housing units: Home ownership projects: 50% of required affordable house units should serve ≤ 80% AMI Rental projects: 50% of required affordable house units should serve ≤ 60% AMI.		

**Table 2.16.020.S-2 Housing Diversity Scoring Method**

		Affordable Housing			Unit Size		Unit Type	
		Project includes a number of housing units that are designated affordable for a period of 50 years to the spectrum of income levels as defined by BIMC 18.36.030.16 and 18.21.020.A. Rental housing is encouraged by awarding more points for the creation of rental housing.			Project includes a variety of unit sizes, excluding garages, that provide for a broad mix of income levels and family size. In order to score a point in a unit size range, the project shall provide at least 10% of the total number of units in that range. For example, in a 40-unit development, at least 4 units sized between 1,001 and 1,200 ft <sup>2</sup> would be needed to score points in that range.		Unit type: Project includes a variety of housing unit types (i.e., single-family style, townhouse, flat, age-in-place, ADUs, cottages) or innovative type of housing. In order to score points for different unit types, the project shall provide at least 10% of the total number units of that type. For example, in a 40-unit development of townhomes and duplexes, at least 4 units of townhomes would be needed to score points for having 2 different unit types.	
TIER	Total Housing Diversity Points Required	Affordable Units	Ownership Value	Rental Value	Unit Size Range	Value	Number of Different Unit Types	Value
		10%	10	12	< 800 ft <sup>2</sup>	1	2	2
		11 – 15%	12	14	801 – 1,000 ft <sup>2</sup>	1	3	3
		16 – 20%	14	16	1,001 – 1,200 ft <sup>2</sup>	1	4	4
		21 – 25%	16	18	1,201 – 1,400 ft <sup>2</sup>	1	5	5
		> than 25%	20	22	1,401 – 1,600 ft <sup>2</sup>	1	<b>Min. Pts. Required</b>	
		<b>Minimum % Required</b>			<b>Size Requirement</b>	<b>Min. Pts. Required</b>		
<b>4</b>	10 pts	10%			Max. home size 1,600 ft <sup>2</sup>	NA	NA	
<b>3</b>	20 pts	50%			Max. home size 1,600 ft <sup>2</sup>	NA	NA	
<b>2</b>	12 pts (projects < 20 units) 15 pts (projects ≥ 20 units)	10%			Max. home size 1,600 ft <sup>2</sup>	NA	Projects ≥ 20 units must get 3 pts in “unit type”	
<b>1</b>	4 pts (projects < 20 units) 5 pts (projects ≥ 20 units)	NA			Max. home size 1,600 ft <sup>2</sup>	NA	Projects ≥ 20 units must get 2 pts in “unit type”	

**Table 2.16.020.S-3 Innovative Site Development Scoring Method**

TIER	Minimum Site Development Point Requirement	WATER QUALITY & CONSERVATION		LANDSCAPING & OPEN SPACE			TRANSPORTATION			
		Projects use methods to decrease water usage and improve stormwater runoff quality through an integrated approach to stormwater management such as greywater use, stormwater collection in cisterns, green roofs and covered parking. All HDDP projects will follow the stormwater manual adopted in Chapter 15.20 BIMC.		Project provides well-designed common open space, with at least 5 percent of the gross land area, set aside as open space and designed as an integrated part of the project rather than an isolated element. The common open space must be outside of critical areas and their buffers and required roadside buffers. Appropriate community amenities such as playgrounds, composting and neighborhood gardens promoting the production of locally grown food are encouraged. Resident neighborhood community gardens can be in common open space areas, and shall be appropriately located for solar exposure, and include water availability, soil amenities, and storage for garden tools. Required growing space for neighborhood gardens is 60 square feet per dwelling unit, not including any existing orchard area. Open space dedicated to the public pursuant to the standards of BIMC Sections 17.12.030. A1, A2, A3, A6 & A7 is encouraged.			Project design provides enhanced sensitivity to pedestrian and bicycle travel to promote the people getting around without a car, a reduced carbon footprint, improved health of humans, and lower pollution levels. Project internally preserves existing informal internal connection to external non-motorized facilities, furthering the Island-wide Transportation Plan (IWTP) and using such solutions as woonerfs, green streets, and natural trails and paths. Project reduces reliance on automobiles and trip counts, and promotes alternative transportation, such as integrating parking and charging facilities for electric cars, or bus shelters.			
4	30	<b>REQUIREMENT</b>		<b>VALUE</b>				<b>TRANSPORTATION COMPONENTS</b>		<b>VALUE</b>
		Number of dwelling units that integrate greywater reuse components into building design:						<b>% OF OPEN SPACE</b>	<b>VALUE</b>	<b>VALUE IF PUBLIC</b>
3	25		10%	1		5-10%	2	4	Project preserves, creates or integrates internal and external non-motorized connections.	2
			11-20%	2		11-15%	4	6	Provides public walkways, separated paths, or bike lanes. No points for facilities required by IWTP.	3
			21-30%	3		16-20%	6	8	On-site car sharing program	1 per each car
			Over 31%	4		21-25%	8	10	Electric vehicle charging stations for 3% of vehicle parking capacity.	3
2	25	Percentage of total roof area qualifying as "green roofs":				Greater than 25%	10	12	Covered, consolidated bike parking for subdivisions	3
			15-30%	2	Incorporates neighborhood garden		2		Bus Shelter	2
1	14	Project integrates cisterns: % of total roof area directed to cisterns:				Preserves tree that qualifies as a "Heritage tree" under City Program. The tree is not otherwise required to be preserved.		2 per tree		
			15-30%	2	All Private yard areas ≤ 20% turf		4			
		Percentage of total parking spaces that are covered (i.e. parking garage, carport):				Project landscaping integrates at least 60% native or drought tolerant plants		4		
			5-20%	1						
			21-40%	2						
			41-60%	3						
			61-80%	4						
			Over 81%	5						

a. Housing Diversity. Evaluation will review:

i. Unit Type. The project includes a variety of unit types, for example, single-family, townhomes, flats, duplex, cottages, age-in-place or accessory dwelling units;

ii. Unit Size. The project includes a variety of housing unit sizes that provide for a broad mix of income levels and family size; and

iii. Affordable Housing. The project includes housing units that are affordable to the spectrum of income levels as defined in Chapter 18.21 BIMC, Affordable Housing, except that affordable housing units required for a housing design demonstration project must use the Bremerton-Silverdale Average Median Income (AMI). Designated affordable housing shall remain affordable for 50 years from the time of final inspection on the affordable unit. The applicant shall record covenants that demonstrate how the unit will remain affordable and be managed for 50 years.

b. Innovative Site Development. Evaluation will review:

i. Water Quality and Conservation. Projects use methods to decrease water usage and improve stormwater runoff quality through an integrated approach to stormwater management such as greywater use, stormwater collection in cisterns, vegetated roofs and covered parking. All HDDP projects will follow the Department of Ecology's 2012 Stormwater Management Manual for Western Washington, as amended in December 2014.

ii. Landscaping. The project uses low maintenance landscaping that integrates a high proportion of native plants or drought-tolerant plants that are climate appropriate. The project limits the amount of "lawn" in private yards in favor of common open space. Projects are encouraged to use cisterns to collect rainwater for irrigation or garden use.

iii. Common Open Space. The project provides connected common open space area set aside as active open space and designed and integrated into the project. The open space could include active elements such as a neighborhood garden/pea patch and composting facilities, or a playground. Critical areas and their buffers and required roadside buffers do not contribute to "common open space" under the housing design demonstration project program.

iv. Transportation. The project (A) uses a design that provides enhanced sensitivity to pedestrian travel; (B) internally preserves existing informal, internal connection to external trail(s), or creates new connections where appropriate, to implement the Island-wide Transportation Plan (IWTP); (C) reduces reliance on automobiles and trip counts, and promotes alternative transportation and public transit; (D) minimizes the visual dominance of automobiles throughout the project; or (E) the project accommodates needs of alternative vehicles through techniques such as parking and charging facilities for electric cars, locating rechargeable electric vehicle (EV) parking in a conspicuous and preferred location close to a main building entrance, and integrating a parking space for a vehicle sharing program, such as Zipcar™.

c. Innovative Building Design. The project is constructed under a green building certification program that requires third-party verification such as the Evergreen Sustainable Development, Living Building Challenge standard of the International Living Building Institute, Passive House

Institute US/International, LEED or the BuiltGreen Program of the Master Builders of King and Snohomish Counties.

5. Approval Criteria. In addition to decision criteria required by the underlying planning permit or approval, an application for a housing design demonstration project may be approved if the following criteria are met:

- a. The applicant clearly demonstrates evaluation factors listed in subsection S.4 of this section as shown in the housing design demonstration project scoring system as evaluated by the planning department;
- b. The applicant has demonstrated how relief from specific development standards, including setback reductions, lot coverage and/or design guidelines, is needed to achieve the desired innovative design and the goals of this chapter;
- c. The project does not adversely impact existing public service levels for surrounding properties;
- d. The project complies with all other portions of the BIMC, except as modified through this housing design demonstration project process;
- e. If a project will be phased, each phase of a proposed project must contain adequate infrastructure, open space, recreational facilities, landscaping and all other conditions of the project to stand alone if no other subsequent phases are developed; and
- f. The applicant is meeting required housing diversity standards.

6. Development Standard Incentives – Development Projects in the Mixed-Use Town Center. The applicant may request that development standards from BIMC Titles 17 and 18 be modified as part of a housing design demonstration project. The city will review the request to modify development standards through the project review process outlined in subsection S.3 of this section. Requirements of BIMC Title 16 may not be modified. The following development standards may be modified:

- a. Minimum Lot Dimensions and Size. Reductions in lot size or dimensions are subject to approval by Kitsap County health district.
- b. Maximum Lot Coverage. Maximum lot coverage can be increased by five percent for Tier 1 projects, and 10 percent for Tier 2 projects. For example, for a Tier 1 project in the Madison overlay district, the 35 percent lot coverage limit may be increased to 40 percent. Tier 3 and 4 projects may increase lot coverage above zoning district requirements with no maximum.
- c. Open Space. For MUTC projects developed under BIMC Title 17, flexible lot subdivision, the prescriptive open space requirements in BIMC 17.12.030.A do not apply. Instead, the project shall integrate at least 50 square feet of open space per unit. The open space shall be located along a public or private street or driveway, or public walkway.
- d. Residential Parking. The parking requirements outlined in BIMC 18.15.020 may be modified to require one parking space for homes under 800 square feet and 1.5 parking spaces for homes between 800 and 1,200 square feet. This reduction may not be combined with any other reductions to result in less than one space per unit, and additional guest parking may be

required pursuant to BIMC Table 18.15.020-1. A limited number of parking spaces may be designed to accommodate alternative fuel or sub-compact vehicles such as Smart™ cars, with parking stall dimensional standards reduced from the standards outlined in BIMC 18.15.020.J. The applicants are encouraged to work with neighboring property owners to ensure street parking is not overburdened. If the project is requesting a reduction in required parking through the housing design demonstration project program, then the development shall integrate at least one guest parking space for every five dwelling units.

e. Setbacks. Unless required for public safety purposes, such as sight distance, setbacks required by BIMC Title 18 in any district other than the Mixed-Use Town Center or the High School Road zoning district may be reduced as described below. This section does not supersede lesser setback requirements in the MUTC/HS Road district zones, as outlined in Table 18.12.020-3.

i. Zoning Setback Reductions.

(A) Front setback within project: 10 feet.

(B) Rear setback within project: minimum of five feet.

(C) Side setback within project: minimum of five feet.

ii. Subdivision Setback Reductions.

(A) All interior subdivision setbacks: zero feet.

(B) Building to exterior subdivision boundary: five feet.

(C) Building to right-of-way or on-site private access: 10 feet.

f. Building Height. Buildings within the Mixed-Use Town Center or High School Road districts may achieve a maximum building height not to exceed the optional height outlined in Table 18.12.020-3.

7. Development Standard Incentives – Development Projects in Residential Zones. The applicant may request that development standards from BIMC Titles 17 and 18 be modified as part of a housing design demonstration project. The city will review the request to modify development standards through the project review process outlined in subsection S.3 of this section. Requirements of BIMC Title 16 may not be modified. The following development standards may be modified:

a. Minimum Lot Dimensions and Size. Reductions in lot size or dimensions are subject to approval by Kitsap County health district.

b. Maximum Lot Coverage. Maximum lot coverage can be increased by five percent for Tier 1 projects, and 10 percent for Tier 2 projects. For example, for Tier 1 projects in the R-4.3 district, the 25 percent lot coverage limit may be increased to 30 percent. Tier 3 and 4 projects may increase lot coverage above zoning district requirements with no maximum.

c. Open Space. For residentially zoned projects developed under BIMC Title 17, flexible lot subdivision, the prescriptive open space requirements in BIMC 17.12.030.A do not apply.

Instead, the project shall integrate at least 400 square feet of open space per unit. The open space shall be located along a public or private street or driveway, or public walkway. This common consolidated open space would be in addition to any protected critical areas or buffers.

d. Residential Parking. The parking requirements outlined in BIMC 18.15.020 may be modified to require one parking space for homes under 800 square feet and 1.5 parking spaces for homes between 800 and 1,200 square feet. This reduction may not be combined with any other reductions to result in less than one space per unit, and additional guest parking may be required pursuant to Table 18.15.020-1. A limited number of parking spaces may be designed to accommodate alternative fuel or sub-compact vehicles such as Smart™ cars, with parking stall dimensional standards reduced from the standards outlined in BIMC 18.15.020.J. The applicants are encouraged to work with neighboring property owners to ensure street parking is not overburdened. If the project is requesting a reduction in required parking through the housing design demonstration project, then the development shall integrate at least one guest parking space for every five dwelling units.

e. Setbacks. Unless required for public safety purposes, such as sight distance, zoning and subdivision setbacks required by BIMC Title 18 may be reduced as described below. Additional vegetative landscaping screen may be required by the director when reducing setbacks.

i. Zoning Setback Reductions.

(A) Front setback to on-site access: 10 feet.

ii. Subdivision Setback Reductions.

(A) All interior subdivision setbacks: zero feet.

(B) Building to on-site access: 10 feet.

8. Density Bonus Incentives. An increase in residential base density may be permitted as outlined in Table 2.16.020.S-4.

<b>Table 2.16.020.S-4: Housing Diversity Program Project Density Bonuses</b>	
<b>Tier 4</b>	
2.5 x Base Density <b>OR</b> Max. Bonus Mixed-Use FAR (all residential)	
<b>Tier 3</b>	
2.5 x Base Density <b>OR</b> Max. Bonus Mixed-Use FAR (all residential)	
<b>Tier 2</b>	
<ul style="list-style-type: none"> <li>• 1.5 x Base Density (R-8 and R-14) <b>OR</b></li> <li>• 2.0 x Base Density not to exceed R-8 density (for R-2, R-2.9, R-3.5, and R-4.3) <b>OR</b></li> <li>• Max. Bonus Mixed-Use FAR (all residential)</li> </ul>	
<b>Tier 1</b>	
No Density Bonus	

9. Housing Project Visit. In order to learn from the innovative design practices used, all projects completed under this subsection S shall allow city staff to conduct occasional site tours. City staff will make a request of the property owner prior to conducting a tour and will not access the properties for tours more than once every three months. The site tours will be limited to the exterior and common grounds of the property, and conducted during regular business hours. Visits will be coordinated through the staff and property owner, and the owner will receive written notice no less than two weeks in advance of each visit. Any additional access to private property or at alternative times shall be at the permission and cooperation of the individual homeowner only.

10. Demonstration Period. This subsection S and related provisions of BIMC Titles 2, 17, and 18 shall expire on December 31, 2019. (Ord. 2018-20 § 6, 2018; Ord. 2018-31 § 1, 2018; Ord. 2018-24 § 1, 2018; Ord. 2018-08 §§ 2 – 6, 2018; Ord. 2017-03 § 1, 2017; Ord. 2016-28 §§ 2, 3 (Exh. A), 2016; Ord. 2016-27 §§ 1 – 5, 2016; Ord. 2013-25 §§ 2, 3, 2013; Ord. 2012-09 § 1, 2012; Ord. 2011-02 § 2 (Exh. A), 2011)