

**ORDINANCE #2018-09-014**

**AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON ESTABLISHING REGULATIONS FOR THE DEPLOYMENT OF SMALL CELL TELECOMMUNICATIONS FACILITIES IN CITY RIGHT-OF-WAY BY CREATING A NEW BELLINGHAM MUNICIPAL CODE CHAPTER 13.16 AND AMENDING BELLINGHAM MUNICIPAL CODE CHAPTERS 20.13 AND 21.10**

**WHEREAS**, the City of Bellingham is the trustee of the public right-of-way within its corporate limits and holds such right-of-way for its primary purpose of transportation and for many secondary uses, including the construction and maintenance of facilities for the provision of utilities, telecommunications and cable television services to the public; and

**WHEREAS**, Chapter 20.13 of the Bellingham Municipal Code ("BMC") establishes the design, location and dimensional standards applicable to wireless communications facilities throughout the City of Bellingham; and

**WHEREAS**, Chapter 20.13 was drafted and adopted at a time when telecommunications antennas were huge and bolted to the top of tall, bulky towers typically located on private property ("macrocell towers"); and

**WHEREAS**, macrocell towers still exist and will continue to exist, but there are now a variety of complementary and alternative "small cell" technologies that are far less obtrusive and can be collocated on existing utility poles and city light poles in the public right-of-way; and

**WHEREAS**, the FCC and the wireless industry have identified small cell technology as the next wave of wireless infrastructure deployment and a necessary component of meeting the public's ever increasing demand for wireless communications services; and

**WHEREAS**, the City has received applications from wireless communication facility operators and/or infrastructure providers seeking authorization to install small cell facilities in the right-of-way on new, existing and replacement utility poles and city light poles; and

**WHEREAS**, the citizens of Bellingham benefit by access to high quality wireless service in a number of ways, including reliable access to emergency services, ready access to communications for the increasing number of wireless-only households, and access to robust data and data processing services for commercial and industrial businesses; and

**WHEREAS**, it is in the best interests of the City to facilitate the availability of reliable wireless communication services throughout the City by permitting the placement of small-cell facilities in the right-of-way, subject to reasonable regulations ensuring that such facilities do not adversely affect public health, safety, welfare and aesthetic values of the city; and

**WHEREAS**, the City's existing design standards and permitting requirements for wireless communications facilities contained in Chapter 20.13 BMC are not well suited to small cell facilities and, therefore, new regulations are needed; and

**WHEREAS**, the federal Telecommunications Act of 1996 and Chapter 35.99 RCW authorize the City to enact regulations for the placement of telecommunications infrastructure in the public right-of-way, provided such regulations do not unreasonably discriminate among providers of functionally equivalent services or prohibit or have the effect of prohibiting the provision of personal wireless services within the City; and

**WHEREAS**, the City has reviewed regulatory recommendations from representatives of the wireless communications industry and the power industry as well as examples of small cell ordinances from other jurisdictions; and

**WHEREAS**, City Council has determined that it is in the best interest of the City to amend the Bellingham Municipal Code in order to provide for the deployment of small cell facilities in the right-of-way as follows:

1. Amend Title 13 to create a new Chapter 13.16 Small Cell Permits in order to facilitate and regulate the deployment of wireless facilities in the right-of-way; and
2. Amend Chapters 20.13 Wireless Communication Facilities and 21.10 Procedures and Administration to exclude wireless facilities in the right-of-way from review under those chapters because such facilities will now be separately regulated under the new Chapter 13.16 Small Cell Permits.

**WHEREAS**, a determination of non-significant environmental impact was issued by the responsible official under the procedures of the State Environmental Policy Act (SEPA).

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BELLINGHAM DOES HEREBY ORDAIN THAT:**

**Section 1.**

A new Chapter 13.16 BMC is adopted as follows:

**Chapter 13.16  
SMALL CELL PERMITS**

Sections:

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#### **13.16.010 Purpose.**

The purpose of this chapter is to establish a permit process to facilitate the deployment of small cell facilities in the right-of-way, consistent with state and federal law, to provide citizens with the benefits of advanced wireless communications services in a manner that minimizes visual impact and does not adversely affect the public's safe and convenient use of the right-of-way for its primary purpose of transportation.

#### **13.16.020 Definitions.**

"Accessory equipment" means any equipment, other than an antenna, used in conjunction with a wireless communications facility. The term includes, but is not limited to, the following: radios, power amplifiers, fiber optic and coaxial cables, generators, fans, air conditioning units, electrical panels, equipment shelters, equipment cabinets, pedestals, meters, vaults, splice boxes, grounding equipment, cut-off switches and other similar pieces of equipment.

"Antenna" means communication equipment that transmits or receives radio frequency signals used in the provision of wireless communications service.

"Applicant" means a person who has applied for a small cell permit or a modification permit pursuant to this chapter.

"City light pole" means a light pole owned by the city and located in the right-of-way.

"Collocation" means the placement or installation of transmission equipment on an existing pole.

"Day" means calendar day.

"Department" means the department of public works.

"Director" means the director of public works or his designee.

"Eligible facilities request" means a request to modify a permitted small cell facility that involves (a) collocation of new transmission equipment, (b) removal of transmission equipment or (c) replacement of transmission equipment. An "eligible facilities request" does not mean or include any proposed modification that substantially changes the physical dimensions of the permitted facility. A proposed modification "substantially changes" the physical dimensions of the facility if it: (1) increases the structure's height by more than 10% or more than 10 feet, whichever is greater; (2) adds an appurtenance to the body of the existing structure that would protrude from the edge of the structure by more than 6 feet; (3) adds more than the standard number of new equipment cabinets for the technology involved, or more than 4 cabinets; (4) installs equipment cabinets on the ground if there are not equipment cabinets on the ground associated with the existing facility; (5) installs new ground cabinets that are more than 10% larger in height or volume than any ground cabinets associated with the existing facility; (6) excavates or deploys transmission equipment outside the location of the existing facility; or (7) defeats any elements that conceal the transmission equipment on the existing facility. An eligible facilities request does not mean or include replacement of the pole.

"FCC" means the Federal Communications Commission.

"Light pole" means a pole designed and primarily used to support lighting for the illumination of streets and sidewalks. The term does not include poles designed and primarily used to support traffic signals.

"Permittee" means a person who is granted a small cell permit or modification permit pursuant to this chapter.

"Person" means any natural person, corporation, business entity, partnership or governmental entity.

"Pole" means a single shaft of wood, steel, or concrete or other material capable of supporting the equipment mounted thereon, without guy wires, in a safe and adequate manner, and includes utility poles and light poles as defined herein.

"Public health compliance standard" means (a) any potential exposure to radio frequency emissions from a proposed small cell facility is within FCC guidelines and (b) any noise



generated by or emanating from the small cell facility, at any time of the day or night, is not greater than 45 dBA as measured at a distance of 3 feet from any residential building façade.

"Right-of-way" means land acquired or dedicated for public roads and streets, but does not include:

1. State highways;
2. Land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public;
3. Vacated streets, except utility easements retained therein through the vacation process.
4. Structures, including poles and conduits, located within the right-of-way;
5. Federally granted trust lands or forest board trust lands;
6. Lands owned or managed by the state parks and recreation commission; or
7. 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.

"SEPA" means the State Environmental Policy Act, Chapter 43.21 RCW, as adopted by the City of Bellingham.

"Small cell facility" means a small wireless communications facility designed for attachment to a light pole or utility pole located within the right-of-way.

"Small cell network" means a collection of interrelated small cell facilities designed to deliver personal wireless services.

"Transmission equipment" means equipment that facilitates transmission of wireless communications services, including, but not limited to, antennas and accessory equipment.

"Utility pole" means a pole located in the right-of-way that is designed and primarily used for the support of electrical power lines, telephone wires, television cables or wireless communications facilities.

"Wireless communications facility" means transmission equipment, installed at a fixed location, which provides or facilitates the provision of wireless communications services.

"Wireless communications services" (or "wireless services") means FCC licensed or authorized wireless services, including personal wireless services as defined in 47 U.S.C. § 332.

"Wireless provider" means any person who provides wireless service or who owns, operates, or manages wireless communications facilities.

#### **13.16.030 Small cell permit.**

A. Requirement. It is unlawful for any person to construct, install, operate or maintain any wireless communications facility within the right-of-way without first obtaining a small cell permit for such facility pursuant to this chapter.

B. Eligibility. Only persons who hold, and are in good standing under, a telecommunications franchise granted under Chapter 13.15 BMC (or former Chapter 6.70 BMC) are eligible to apply for a small cell permit under this chapter.

C. Batching. Applicants may seek permission from the department to file a consolidated application for up to 15 small cell facilities that are part of a small cell network and receive a single consolidated permit for such facilities. The city may grant, condition or deny the batching request in its sole discretion, including by conditioning approval on applicant's agreement to extend the timeframe for processing the application.

D. Conditions. The department may include in a small cell permit such conditions, in addition to those already set forth in this chapter and other applicable law, as may be required to govern the location, appearance, construction, installation, maintenance, repair, removal or replacement of small cell facilities in the right-of-way to protect and benefit the public health, safety and welfare, including aesthetic concerns. Without limiting the generality of the foregoing, the department may consider the cumulative visual impact of proposed and existing small cell facilities in deciding whether to approve, condition, or deny a permit application.

E. Exemption for city or other government facilities. This chapter shall not apply to any wireless facilities owned and operated by the city. The city may, in its sole discretion, authorize other governmental entities to construction, install, modify or replace wireless communications facilities in the right-of-way by agreement entered into under the Interlocal Cooperation Act, Chapter 39.34 RCW, in lieu of following the procedures and requirements of this chapter.

#### **13.16.040 Application.**

A. Form and contents. The director shall specify, in writing, application submittal requirements and provide official application forms. The director may waive specific submittal requirements determined to be unnecessary for review of any particular application. The director may require additional material when the director determines



such material is needed to adequately assess the proposed project.

B. Application fee. All applications for small cell permits pursuant to this chapter shall be accompanied by a reasonable application fee in an amount to be determined by city council by periodic resolution to cover the cost of processing the application, including application review, permit issuance and facility inspection.

C. SEPA. If the proposal is not categorically exempt from SEPA review, then the application shall include a SEPA environmental checklist, together with any required fee, in accordance with BMC 16.20.110.

D. Complete Application. A complete application shall consist of the completed application form with all required information, a SEPA environmental checklist if the proposal is not categorically exempt from SEPA review, and the application fee.

#### **13.16.050 Processing.**

A. The department will process applications on a first-come, first-served basis. Except as otherwise approved in connection with a batching request, an applicant shall not submit applications for more than 15 proposed small cell facilities at any given time.

B. Pre-submittal conference. Prior to submitting an application for a small cell permit, applicants are encouraged (but not required) to schedule and attend a pre-submittal conference with department staff to receive informal feedback on the proposed facility and application materials. The pre-submittal conference is intended to identify potential concerns and streamline the formal application review process after submittal.

C. Completeness review – Time frame. The department shall notify the applicant within 10 business days of receiving the application whether the application is complete.

1. If the application is complete, the department shall process the application.
2. If the application is incomplete, the department shall provide the applicant with a written statement listing the additional information that is needed to make the application complete and the basis for requiring the submission of such information.
3. The department may issue additional notices that an application is incomplete if any supplemental submittal does not contain all of the information requested by the department in the original notice of incompleteness. The department shall issue any such additional notices within 10 business days of receipt of the supplemental submittal.

4. If the applicant does not supply a complete response within 120 days of the department's initial request, the department may deem the application expired. If so, a new complete application may be resubmitted, with new fee(s).

D. Action on permit – Time frame. The department's decision to grant, condition or deny the application shall be based on its determination of whether the proposed facility meets the requirements of this chapter. Unless another date is specified in writing between the city and the applicant, the department shall issue its final decision within the following time frames:

1. Within 30 days of receipt of a complete application, the department shall either (a) issue its final written decision or (b) notify the applicant in writing of the amount of additional time required to make the final decision, subject to the maximum review periods stated in subsection 2 below.

2. In all cases, the department shall issue its final decision within the following maximum review periods:

- a. For collocation applications, the department shall issue its final decision within 90 days of receipt of the original application, subject to tolling.

- b. For applications other than collocation, the department shall issue its final decision within 150 days of receipt of the original application, subject to tolling.

- c. Tolling. The maximum time periods stated in subparts (a) and (b) above shall commence on the date of submission of the original application, whether or not complete, provided that the running of the maximum time period shall be tolled upon timely issuance by the department of a notice that the application is incomplete. The maximum review period shall restart on the date that the applicant has provided the department with all of the information required for a complete application.

- d. SEPA. If the SEPA official requires an Environmental Impact Statement, the maximum time period shall be tolled upon timely issuance of a notice requiring the EIS. The maximum review period shall restart on the date that the Final EIS is complete.

E. SEPA. Proposals that are not categorically exempt from SEPA review shall comply with SEPA, as adopted under Chapter 16.20 BMC, prior to and as a condition of permit issuance. When required, SEPA review shall be conducted in accordance with the procedures set forth in BMC 21.10.110. SEPA review shall occur concurrently with the permit review process prescribed in this chapter.

F. Denial. If the permit application is denied, the reasons for the denial shall be stated in writing and supported by substantial evidence.



G. Suspension or denial of application for lack of compliance. The department may suspend review of or deny a complete application for a small cell permit if the department has issued to the applicant a notice of deficiency related to any existing permitted facilities and the applicant has not corrected the deficiency within the reasonable deadline required in the notice of deficiency as provided in this chapter.

#### **13.16.060 Term.**

A small cell permit shall expire concurrently with the termination or final expiration of the permittee's franchise, as the same may be renewed from time-to-time.

#### **13.16.070 Requirements.**

Small cell facilities shall be designed and maintained in accordance with the requirements of this chapter. Failure to do so shall be grounds for adverse action, including but not limited to permit denial or revocation.

A. Support structures. Small cell facilities may be mounted to poles or cables strung between poles, in accordance with the requirements of this section. No other support structures are permitted.

B. Pole mounted facilities.

1. All pole-mounted transmission equipment shall be attached to existing poles or replacement poles, unless an exception is granted pursuant to this subpart allowing installation of a new pole (not replacing an existing pole). An exception may be granted allowing a new pole if the applicant submits a new pole justification report demonstrating to the reasonable satisfaction of the director that no pole currently exists within the right-of-way within a 500-foot radius of the proposed new pole that is available for use by the applicant and that would provide substantially equivalent functionality. If an exception is granted, such new pole shall:

- a. Resemble existing poles in the right-of-way near that location, with the exception of pole designs that are scheduled to be removed and not replaced; and

- b. Be located at least 180 feet from any existing pole, unless the applicant demonstrates to the department's reasonable satisfaction that (i) the minimum separation requirement cannot be satisfied for technical reasons and (ii) placement of the small cell facility at a distance less than 180 feet from an existing pole will meet the intent of reducing visual clutter to the greatest extent practicable.

2. Replacement poles shall be designed to resemble the appearance and dimensions of existing poles near the proposed location, including materials, style and color, with the exception of pole designs that are scheduled to be removed and not replaced.

Replacement poles shall be located as near as practicable to the existing pole, consistent with applicable city standards, and the abandoned pole shall be removed at applicant's expense.

C. Strand mounted facilities. Small cell facilities mounted on cables strung between existing poles shall conform to the following standards, in addition to all other requirements in this section:

1. Each strand mounted facility shall not exceed 3 cubic feet in volume;
2. Pole mounted equipment for strand mounted facilities shall meet the requirements for pole mounted small cells.
3. Only one strand mounted facility is permitted per cable between any two existing poles;
4. The strand mounted device shall be placed as close as possible to the nearest pole and in no event more than 6 feet from the pole unless a greater distance is technically necessary or 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. Strand mounted devices shall be installed to cause the least visual impact, including by utilizing the minimum amount of exterior cabling or wires (other than the original strand) necessary to meet the technological needs of the facility.

D. Height and volume limits. Small cell facilities are subject to the following height and volume limits:

1. Pole height.
  - a. Existing poles. A pole extender may be used to attach a small cell facility to an existing pole, but may not increase the height of the existing pole by more than 10 feet, inclusive of the antenna.
  - b. Replacement poles. A replacement pole, inclusive of its antenna, shall not exceed the height of the existing pole by more than 10 feet nor shall it exceed a total height of 50 feet, unless the applicant demonstrates in writing that a further height increase is necessary to provide sufficient separation and/or clearance from electrical and/or wireline facilities. In no event may any replacement pole exceed 60 feet in height, inclusive of the antenna.



c. New poles. New poles shall not exceed 50 feet in height, inclusive of the antenna.

2. Equipment volume.

a. Each antenna shall be located inside an antenna enclosure of no more than 3 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements shall be capable of fitting within an imaginary enclosure of no more than 3 cubic feet; and

b. Each primary equipment enclosure shall be no larger than 17 cubic feet in volume. The following associated equipment may be located outside the primary equipment enclosures and, if so located, are not included in the calculation of equipment volume: associated conduit, mounting bracket or extension arm, electric meter, concealment, telecomm demarcation box, ground-based enclosures, battery back-up power systems, grounding equipment, power transfer switch and cut-off switch. Underground equipment enclosures and equipment located within the interior of the pole are not included in the calculation of equipment volume.

E. Electrical service. Applicant shall comply with all relevant legal requirements for connecting its equipment to electrical power. The city is not responsible for providing electricity to any permittee. Generators are not permitted for small cell facilities. A battery backup may be permitted.

F. Obstructions. Each component of the small cell facility shall be located so as not to cause any physical or visual obstruction or safety hazard to pedestrian or vehicular traffic and shall comply with all local, state and federal laws, regulations and orders regarding clear and safe passage within the right-of-way.

G. Non-interference. Small cell facilities shall not interfere with existing use of the right-of-way for transportation, public or private utilities, street trees (except as may be approved in a street tree permit issued under Chapter 13.40 BMC) and landscaping, or public health or safety facilities, including fire hydrants.

H. Structural strength. Each small cell facility shall be properly designed and engineered to withstand seismic, wind and ice loads.

I. Concealment requirements. Small cell facilities are subject to the following concealment requirements:

1. The facility shall not exceed the height and volume limits imposed by this chapter.
2. The applicant shall employ screening, camouflaging and/or other stealth techniques to minimize the visual impact of the small facility. The purpose of this

requirement is to maximize the extent to which the small cell facility will blend into the surrounding environment and minimize visual clutter.

3. Equipment enclosures shall be underground, incorporated and concealed within street furniture, or incorporated into the base of the pole to the maximum extent feasible. Equipment enclosures shall be no larger than is necessary to enclose the equipment.

4. Pole mounted equipment shall be flush mounted, except as otherwise required by applicable safety codes, and shall be painted or otherwise colored to match the pole.

5. Cables and wires shall be routed within the interior of the pole to the maximum extent feasible. Where interior installation is infeasible, conduit and cables attached to the exterior of the poles shall be flush mounted, except as otherwise required by applicable safety codes, and shall be painted to match the pole.

6. The small cell facility shall not be illuminated.

J. Public health compliance standard. The small cell facility shall comply with the public health compliance standard defined herein.

#### **13.16.080 Replacement and removal of transmission equipment.**

A permittee may replace or remove transmission equipment used at a permitted small cell facility without obtaining a modification permit under Section 13.16.090 when:

A. Such replacement equipment is the same or smaller in size than the previously permitted equipment that is being replaced; and

B. The overall height of the facility (measured from the ground to the top of the highest component of the facility) is not increased.

#### **13.16.090 Small cell modification permit.**

A. Small cell modification permit required. A small cell modification permit is required prior to (1) replacing transmission equipment at a permitted small cell facility that increases the overall volume or height of the small cell facility or (2) adding new transmission equipment to a permitted small cell facility.

B. Application. The director shall specify, in writing, application submittal requirements and provide official application forms. The director may waive specific submittal requirements determined to be unnecessary for review of any particular application. The director may require additional material when the director determines such material is needed to adequately assess the proposed project.



C. Application Fee. All applications for small cell permits pursuant to this chapter shall be accompanied by a reasonable application fee in an amount to be determined by city council by periodic resolution to cover the city's costs in processing the application, including application review, permit issuance and facility inspection.

D. Completeness review. The department shall notify the applicant within 10 business days of receiving the application whether the application is complete.

1. If the application is complete, the department shall process the application in accordance with this section.
2. If the application is incomplete, the department shall provide the applicant with a written statement listing the additional information that is needed to make the application complete and the basis for requiring the submission of such information. The department shall not process an application until the applicant has submitted all of the required information.
3. The department may issue additional notices that an application is incomplete if any supplemental submittal does not contain all of the information requested by the department in the original notice of incompleteness. The department shall issue any such additional notices within 10 business days of receipt of the supplemental submission to which such additional notice pertains.

E. Action on permit. The department shall issue its final decision within the following timeframes.

1. The department shall approve a modification application that constitutes an "eligible facilities request" (as defined in this chapter) within 60 days of submittal of the application, subject to tolling, unless another time period is agreed to in writing. If the modification application constitutes an eligible facilities request and the department has not issued a final decision approving or denying the application within 60 days of submittal, accounting for any tolling, the applicant may notify the department in writing that the permittee has deemed the application granted. Absent such a notice, the applicant may not claim the application has been deemed granted.
2. The department shall approve, condition or deny all other modification applications within 90 days of submittal of the application, subject to tolling, unless another time period is agreed to in writing. The department's determination shall be based upon whether the proposed modified facility complies with the requirements of this chapter.
3. Tolling. The applicable time period shall commence on the date of submission of the original modification application, whether or not complete, provided that the running of the applicable time period shall be tolled upon timely issuance by the

department of a notice that the application is incomplete. The review period shall restart on the date that the applicant has provided the department with all of the information required for a complete application.

**13.16.100 Routine maintenance or repair.**

Routine maintenance or repair of an existing, permitted small cell facility does not require notice to, or approval of, the city. Work that triggers the requirements of BMC 13.16.090 shall not be considered "routine maintenance or repair" for purposes of this section.

**13.16.110 Franchise requirements.**

Small cell facilities permitted under this chapter are subject to and shall comply with all obligations and requirements of the permittee's franchise agreement with the city and Chapter 13.15 BMC.

**13.16.120 City light poles.**

The department shall not issue a small cell permit involving attachment to any city light pole unless the applicant demonstrates that it has obtained permission from the city in the form of a license, lease or other similar contractual arrangement approved by the mayor. The mayor's decision to grant, condition or deny any request to attach to a city light pole is proprietary (rather than regulatory) in nature and wholly discretionary.

**13.16.130 Nonexclusive grant.**

No permit or approval issued under this chapter shall confer or be construed to confer any exclusive right to occupy or use the right-of-way for any purpose whatsoever.

**13.16.140 No property interest.**

No permit or approval issued under this chapter shall grant or be construed to grant any warranty of title or transfer or any property right, real or personal.

**13.16.150 Computation of time.**

In computing any period of time prescribed or allowed by this chapter, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it falls on a Saturday, Sunday or official holiday observed by the city, in which event the period runs until the end of the next day which is neither a Saturday, Sunday or official holiday observed by the city.



#### **13.16.160 Exceptions.**

The director may grant an exception from any requirement contained in this chapter upon finding, in his or her sole discretion, that the applicant has demonstrated by clear and convincing evidence that the requested exception is consistent with the purpose of this chapter. Such exception shall be supported by written findings entered by the director.

#### **13.16.170 Other laws and regulations.**

A. Exempt from land use review. The installation, modification, or replacement of small cell facilities in the right-of-way pursuant to a small cell permit shall be a permitted use exempt from land use review under Chapter 20.13 BMC and Chapter 21.10 BMC.

B. Except as otherwise provided, permittees shall comply with all applicable laws, regulations and codes in the design, construction, operation and maintenance of permitted small cell facilities, including, but not limited to, Chapter 16.55 BMC (Critical Areas) and Title 22 BMC (Shorelines Master Program); provided, however, that work authorized under this chapter is exempt from the requirement to obtain a construction permit under BMC 13.15, a street obstruction permit under BMC 13.12 or right-of-way use permit under BMC 13.14.

#### **13.16.180 Work within the right-of-way.**

A. For purposes of this section, the term "permit" shall mean the small cell permit, replacement authorization or modification permit authorizing the work.

B. Permittee and its contractor, if any, are jointly and severally responsible for carrying out the work in accordance with the requirements of this chapter.

C. Permittee shall commence work within 60 days of issuance of the permit and shall diligently pursue all work to completion so as to minimize disruption of the right-of-way and other public and private property. All work, including restoration, must be completed within 120 days of the date of issuance of the permit.

D. All work shall fully comply with the permit. Authorized representatives of the city shall be provided access to the work and such further information as is required to ensure compliance.

E. Permittee shall maintain a copy of the permit and approved plans at the construction site, which shall be made available for inspection by the city at all times when construction work is occurring.

F. All work shall comply with applicable laws, regulations and codes, including Washington State locate laws.

G. All work shall be conducted in a manner that minimizes interference with the use of the right-of-way by the city, public and other franchise holders.

H. Permittee shall, at its own expense, promptly repair any and all public and private property improvements, fixtures, plantings, structures and facilities damaged during the course of construction, restoring the same as nearly as practicable to its condition before the start of construction. The city may elect to repair any property damaged by permittee and permittee shall promptly reimburse the city for the cost of such repair.

I. All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, repair or replacement of facilities shall be replaced or restored as nearly as may be practicable to the condition existing prior to performance of work, at permittee's expense.

J. All restoration work within the public ways shall be done in accordance with landscape plans approved by the city.

K. All work within the right-of-way is subject to the requirements and obligations of permittee's franchise and Chapter 13.15 BMC.

**13.16.190 Notice of completion; Inspection.**

A. Upon completion of construction of the small cell facility, permittee shall provide the city with a written notice of completion and photograph of the completed facility.

B. The department may inspect the facility.

C. The department shall issue a notice of deficiency to the permittee if, after inspection, it is determined that the facility is not in compliance with the terms of the permit.

**13.16.200 Notice of deficiency.**

A. A notice of deficiency issued by the department shall:

1. State the basis for the department's determination that a permitted small cell facility is not in compliance with a small cell permit, this chapter, or franchise agreement;
2. Give permittee reasonable time to correct the deficiency. If the notice of deficiency concerns a violation of the public health compliance standard, the department may require immediate compliance;
3. State the department's remedies if permittee fails to take corrective action, which may include revocation of the small cell permit; and



4. Notify permittee whether the department intends to suspend review of or deny other pending applications for small cell permits should permittee fail to timely correct the deficiency.

**B. Compliance with notice of deficiency.**

1. Permittee shall timely comply with a notice of deficiency.
2. If permittee should fail to timely comply with a notice of deficiency, the department may take the corrective action set forth in the notice.

**13.16.210 Conflicts.**

This chapter shall supersede any conflicting provision of the Bellingham Municipal Code adopted prior to the adoption of the conflicting provision of this chapter.

**13.16.220 Severability.**

If any section, subsection, subdivision, sentence or phrase of this chapter or any part thereof is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter.

**13.16.230 Applicability.**

This chapter applies to all proposed wireless facilities in the right-of-way not permitted prior to the adoption of this chapter.

**13.16.240 Third-party technical review.**

The city may desire to have a third party expert review the technical data submitted by a permit applicant. The city may require such third-party technical review as part of the small cell permitting process. The cost of the technical review shall be borne by the applicant. The selection of the third-party expert may be by mutual agreement between the applicant and the city, or at the discretion of the city, with a provision for the applicant and interested parties to comment on the proposed expert and review its qualifications. The expert review is intended to address interference and public safety issues and be a site-specific review of technical aspects of the facilities or a review of the applicant's methodology and equipment used and not a subjective review of the site which was selected by the applicant. Based on the results of the expert review, the city may require changes to the applicant's application. The expert review shall address the following:

- A. The accuracy and completeness of the submissions;
- B. The applicability of analysis techniques and methodologies;

C. The validity of conclusions reached; and

D. Any specific technical issues designated by the city.

### **13.16.250 Appeal**

A. The department's final decision to grant, condition or deny a permit under this chapter may be appealed to the hearing examiner within 14 days of the date of the decision being appealed. The appeal shall be conducted in accordance with the provisions of Chapter 2.56 BMC.

B. A final decision of the hearing examiner may be appealed to Whatcom County Superior Court. The appeal must be filed and served within 21 days of the date of the decision. The standard for review and burden of proof shall be as set forth in RCW 36.70C.130 and relief shall be limited to injunctive relief.

### **Section 2.**

Chapter 20.13 of the Bellingham Municipal Code is amended as shown below. Strikethrough indicates a deletion; underline indicates an addition. Only those sections being amended are shown.

### **20.13.030 Applicability/exemptions**

The requirements of this chapter shall apply to all new personal wireless communications facilities within the city of Bellingham and the expansion and/or alteration of any existing personal wireless communications facilities. The following are exempt from the provisions of this chapter:

...

G. Wireless communications facilities located in the public right-of-way subject to the provisions of BMC 13.16.

### **20.13.060 Development standards.**

...

H. General Design Standards

...

5. Antennas on utility poles shall be limited to whip antennas no more than two feet in length and no more than one per pole. No utility pole shall be extended in height in order to accommodate an antenna. No antennas shall be allowed on light standards.



Without limiting the generality of the exemption listed in BMC 20.13.030(G), it is specifically noted that the restrictions contained in this subsection do not apply to wireless facilities in the public right-of-way. Wireless facilities in the public right-of-way are separately regulated under Chapter 13.16 BMC.

#### **20.13.140 Special exceptions.**

...

##### **A. Special Exception Criteria.**

...

4. Requests for special exceptions for setback reductions shall also be judged based on the following criteria:

- a. The extent to which screening and camouflaging will be employed to mitigate the effects of the structure versus the value of the setback in providing such screening.
- b. The need for the setback reduction to facilitate a location or design that better satisfies the criteria of this chapter.
- c. The impact on adjacent properties.
- ~~d. Location in a street right-of-way.~~

#### **Section 3.**

Chapter 21.10 of the Bellingham Municipal Code is amended as shown below. Strikethrough indicates a deletion; underline indicates an addition. Only those sections being amended are shown.

#### **21.10.070 Exemptions.**

...

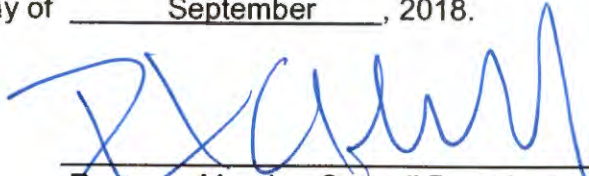
C. As authorized by RCW 36.70B.140(1), the following actions are exempt from the requirements of RCW 36.70B.060 through 36.70B.080 and 36.70B.110 through 36.70B.130:

1. Bellingham register of historic places (landmark) designations (Type V);
2. Street vacations;
3. Temporary right-of-way use permits;

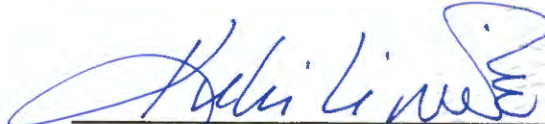
4. Street tree permits;
5. Sidewalk cafe approvals;
6. Sidewalk vendor cart approvals; **and**
7. Final plats (Type IV); **and**.
8. Small cell permits.

...


**PASSED** by City Council this 10<sup>th</sup> day of September, 2018.

  
\_\_\_\_\_  
Roxanne Murphy, Council President  
Dan Hammill, Council President  
Pro Tempore

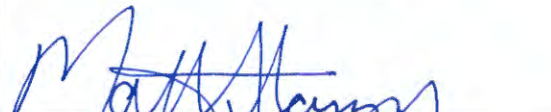
**APPROVED** by me this 18<sup>th</sup> day of September, 2018.

  
\_\_\_\_\_  
Kelli Linville, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Brian Henshaw, Finance Director  
Andrew Anderson

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Office of the City Attorney

**PUBLISHED:**

September 14, 2018  
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