

**AN ORDINANCE RELATING TO LAND USE, AMENDING TITLE 20 OF BELLINGHAM MUNICIPAL CODE TO ADD A NEW CHAPTER 20.13, ADOPTING STANDARDS FOR THE PLACEMENT, DEVELOPMENT, PERMITTING AND REMOVAL OF WIRELESS COMMUNICATION FACILITIES; AMENDING 20.08.020 P.(11), PUBLIC UTILITY DEFINITION; AMENDING 20.10.170 B. REGARDING HEIGHT EXEMPTIONS; AND AMENDING THE FOLLOWING SECTIONS REGARDING PERMITTED, ACCESSORY AND CONDITIONAL USES: 20.30.030, 20.32.030, 20.34.030, 20.36.030, 20.38.030, 20.38.050 AND 20.42.050.**

**WHEREAS**, Section 704 of the federal Telecommunications Act of 1996, 47 USC Sec. 332(c)(7), provides that local governments may, pursuant to their inherent zoning authority, regulate the placement, construction, and modification of personal wireless telecommunications service facilities, provided that the local governments do not unreasonably discriminate among providers of functionally equivalent services, or prohibit or have the effect of prohibiting the provision of personal wireless services; and

**WHEREAS**, the City Council finds that personal wireless service facilities often require large structures or towers, whose height and footprint may not be compatible with adjoining uses; and,

**WHEREAS**, the City Council further finds that the public interest is best served by enacting specific siting regulations which will provide for placement of personal wireless facilities in areas least likely to negatively affect residential property; and,

**WHEREAS**, the City of Bellingham adopted an interim ordinance on February 2, 1998 regulating the placement of certain wireless telecommunication facilities until final regulations could be developed, and

**WHEREAS**, the City has reviewed published regulatory recommendations from representatives of the wireless communication industry, examples of ordinances from other jurisdictions and involved representatives from the public and the industry in reviewing proposed regulations; and

**WHEREAS**, the Planning and Development Commission held a public hearing on May 21, 1998 to take testimony on the proposed amendment and thereafter recommended approval of the amendment, and

**WHEREAS**, the City Council held a public hearing on July 6, 1998 to take testimony on the proposed amendment, and

**WHEREAS**, a determination of non-significant environmental impact was issued by the responsible official under the procedures of the Environmental Policy Act, and

**WHEREAS**, the City Council hereby adopts the Findings of Fact and Conclusions of the Planning Commission;

**NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:**

**Section 1.** A new chapter is added to Title 20 of the Bellingham Municipal Code, the Land Use Development Ordinance, as follows:

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**20.13.010 Purpose**

In addition to accomplishing the general purposes of the Land Use Development Ordinance and the comprehensive plan, the purpose of this chapter is to set forth the regulations for the placement, development, permitting, and removal of personal wireless communications facilities including support structures and antennas. These standards were designed to comply with the Telecommunications Act of 1996. They are intended to protect property values and minimize visual impact while furthering the development of enhanced telecommunication services in the city.

The provisions of this Chapter are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting personal wireless services. This Chapter shall not be applied in such a manner as to unreasonably discriminate between providers of functionally equivalent personal wireless services.

In reviewing any application to provide personal wireless service or to install personal wireless service facilities, the City shall act within a reasonable period of time, taking into account the nature and scope of the application and the required notice and review process. Any decision to deny an application shall be in writing, supported by substantial evidence contained in a written record.

#### 20.13.020 Definitions

As used in this ordinance, the following terms shall have the following meaning. Other words and terms shall have the meaning assigned to them by Chapter 20.08 BMC or if not defined in this ordinance or Chapter 20.08 BMC, the meaning customarily assigned to them.

Accessory Equipment Structure shall mean an un-staffed structure used to house and protect the equipment necessary for processing wireless communications signals. Associated equipment may include air conditioning and emergency generators.

Amateur or "ham" radio shall mean radio facilities operated for non-commercial purposes by individuals licensed by the FCC with an interest in construction and operation of radio equipment, usually as a hobby or vocation.

Antennas shall mean any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of radio frequency signals. Types of antennas include, but are not limited :

Directional antenna (also known as a panel antenna) which transmits signals in a directional pattern of less than 360 degrees.

Omni-directional antenna (also known as a whip antenna) which transmits signals in a 360 degree pattern.

Parabolic antenna (also known as a dish antenna) is a bowl shaped device that receives and transmits signals in a specific directional pattern (e.g. point-to-point).

Attached antenna is a wireless communication antenna that is affixed to an existing structure other than a wireless communication support structure. Examples of attached antennas include antennas affixed to or erected upon existing buildings, water tanks, or other existing structures.

Citizens band radio shall mean two-way radio facilities operated for short-range personal and business communications, without necessity of a federal license, pursuant to 47 CFR Part 95.

Clustering shall mean the placement of more than one wireless communication support structure on a single site.

Collocation shall mean the use of a single wireless communications support structure, or the use of a site by more than one wireless communications provider.

Direct-to-Home Satellite Service shall mean the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite.

"FAA" shall mean the Federal Aviation Administration.

"FCC" shall mean the Federal Communications Commission.

Satellite Earth Station shall mean the facilities used for reception and processing of programming services from a satellite prior to transfer to terrestrial distribution systems or for processing of programming and services from a terrestrial source before transmission via satellite.

Unlicensed Wireless Services means commercial mobile services that operate on public frequencies and do not need a FCC license.

Wireless Communications Facilities shall mean the site, wireless communications support structures, antennas, accessory equipment structures, and appurtenances used to transmit, receive, distribute, provide or offer personal wireless communications services.

Wireless communications facilities includes, but are not limited to antennas, poles, towers, cables, wires, conduits, ducts, pedestals, vaults, buildings, electronic an switching equipment.

Wireless Communications Service, or Personal Wireless Communication Service shall mean the sending and receiving of radio or microwave signals used for communication, including, but not limited to cellular telephone, personal communications services (PCS), enhanced/specialized mobile radio (ESMR), commercial paging services, and any other technology which provides similar wireless services licensed by the FCC and unlicensed wireless services.

Wireless Communications Support Structure (or "wireless tower") shall mean a structure erected to support wireless communications antennas and connecting appurtenances. The primary purpose is to elevate an antenna above the surrounding terrain or structures and may be attached to an existing building or other permanent structures or constructed as a free-standing structure. Wireless communications support structures may include, but are not limited to:

- A. Lattice tower shall mean a wireless communications support structure which consists of a network of vertical and horizontal supports and crossed metal braces, forming a tower which is usually triangular or square in cross-section.
- B. Monopole tower shall mean a wireless communications support structure consisting of a single pole to support antennas and connecting appurtenances.

- C. Guyed tower shall mean any variety of wireless communication support structure, including but not limited to lattice towers or monopoles, using wire guys connecting above grade portions of a communication support structure diagonally with the ground or structure on which the tower is placed to provide support for wireless communications towers, antennas, and connecting appurtenances.

#### 20.13.030 Applicability/ Exemptions.

The requirements of this ordinance 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 ordinance:

- A. Satellite earth stations using antenna(s) not more than two (2) meters in diameter in commercial and industrial districts and direct-to-home satellite services.
- B. Send and receive citizen band radio antennas or antennas operated by federally licensed amateur ("ham") radio operators.
- C. Industrial, scientific and medical equipment using frequencies regulated by the FCC.
- D. Military and government radar antennas and associated communication towers used for navigational purposes as regulated by the FCC by 47 CFR Parts 97 and 95 respectively.
- E. Military and federal, state and local government communications facilities used for emergency preparedness and public safety purposes; and
- F. Normal, routine and emergency maintenance and repair of existing wireless communications facilities and related equipment which do not increase the size, footprint or bulk of such facilities and which otherwise comply with the city, state, and federal law and regulations.

#### 20.13.040 Nonconforming Uses and Structures.

Wireless communications uses and structures in existence as of the effective date of this ordinance which are nonconforming as to the use or development standards of this ordinance shall be subject to the nonconforming provision of Chapter 20.14 BMC. Routine maintenance shall be permitted on existing towers and antennas. However, new construction other than routine maintenance on existing towers, antennas, buildings or other facilities shall comply with the requirements of this Chapter.

20.13.050 Priority of Locations and Prohibited Locations.

In reviewing applications for new personal wireless communication facilities, preference shall be given to locations in the following order:

- A. Attachment on existing structures shall be preferred to the construction of new support structures. In all cases, sites that are in areas identified in the neighborhood plan as having a special condition of "view", "historic" or "design review" will have a lower priority than other sites in the same zone. Attachment to non-residential structures will have a higher priority than attachment to residential structures. In all cases, antennas should not have a negative impact on views from public recreational areas such as parks or trails. Locations for attached antennas are prioritized as follows:
1. Existing towers: Collocation on an existing tower where a legal wireless communication facility is currently located.
  2. Industrial zones. Public zones on structures used for utility functions. On structures in Industrial zones if the facility will not have a negative impact on water views. Public zones (particularly Utility or Governmental Services zones) or sites containing similar government services if the facility will not have a negative impact on water views or views from recreational areas and the use does not adversely affect other public uses on the site.
  3. Commercial zones, Institutional zones and other Public zones. Neighborhood and Waterfront Commercial zones are a lower priority than other commercial zones.
  4. Residential Multi-Multiple, mixed zones allowing offices or commercial uses.
  5. Residential zones: Non-residential structures will have priority over residential structures.
- B. A new support structure should only be considered when the applicant demonstrates that it is necessary to provide acceptable service and there are no suitable and available locations on existing structures. Support structures are **prohibited** within (1) the Shoreline Management Act jurisdictional area, (2) sites in any general use type, other than Industrial, designated with a "historic" special condition in the neighborhood plan, (3) sites in any general use type, other than sites owned by the City of Bellingham, designated with a "view" special condition in the neighborhood plan and (4) sites in the Fairhaven Design Review District as identified in the Fairhaven Neighborhood Plan. Sites that contain residential structures will have a lower priority than other sites in the same zone. In all cases, towers should not be visible from public recreational areas such as parks and trails. Locations for support structures are prioritized as follows:

1. Heavy Industrial zones located east of Interstate-5.
2. Clustering on existing tower sites when additional impacts will be negligible.
3. Industrial zones. In Industrial zones if the WCF will not have a negative impact on waterfront views and the area is not developed primarily for commercial uses. Generally these areas will be located east of Interstate-5.
4. Planned Commercial and Institutional zones. Public zones on sites already used for utility structures when the tower will not be visible from public recreational facilities.
5. Other commercial zones.
6. Residential and other Public zones. Sites that are not used for residential purposes are preferred.

#### 20.13.060 Development Standards.

The following minimum development standards shall apply to all wireless communications facilities in addition to any development standards or project review process which applies in the underlying district in which a wireless communication facility is located. In the event of a conflict between the standards of this section and the general development standards of the Land Use Development Ordinance or project review process or of the wireless development standards of this ordinance for a particular land use designation, the more stringent standards shall govern.

- A. Anti-climbing devices. All wireless communications support structures and required fencing shall be equipped with appropriate anti-climbing devices.
- B. Attachment to trees prohibited. It is prohibited to attach any wireless communication facility or portion thereof to any tree.
- C. Signage. All wireless communications support structures shall be identified with a non-illuminated sign not exceeding four (4) square feet. The sign shall list the wireless service provider's name and emergency telephone number and shall be posted in a place visible to the general public. No advertising signs shall be located on support structures or antennas, however antennas may be camouflaged as otherwise permitted signs.
- D. Historical Registry/District. Wireless communications facilities locating on any site or existing building that is registered as a local landmark through BMC Chapter 17.80 or is located in the Fairhaven Design Review District, or any other design review district regulated by the City of Bellingham, shall be subject to the applicable design standards and shall obtain necessary approvals prior to the issuance of building permits.

- E. Lighting. Wireless communications facilities shall not be illuminated except where required by the FAA.
- F. Painting. Wireless communications facilities shall be painted or finished in a manner which blends with the dominant color of the background except where otherwise required by the FAA. The applicant and the operator of the facility shall have a continuing duty to maintain such paint or finish.
- G. Noise from accessory equipment. Facilities shall comply with State noise level standards under WAC 173.60, as amended. Generators may only be permitted for emergency operation purposes. If air conditioning or other noise generating equipment is proposed, the applicant shall provide information detailing the expected noise level and any proposed abatement measures. The City may require noise attenuation devices or other mitigation measures to minimize impacts.
- H. General Design Standards.
  - 1. Attached antennas (excluding collocated antennas on existing WCF structures) shall be designed or placed to blend with the predominant background or architectural features as seen from abutting residential uses, roadways or other public rights of way.
  - 2. When located on buildings, panel antennas shall be placed closely against walls or parapets and not extend above the wall or parapet unless an alternative design is required to a) achieve better compatibility with the building design or b) to obtain antenna function.
  - 3. Accessory equipment structures shall be placed underground or wholly enclosed in an existing structure or building, or designed to blend into the architecture and landscaping of the surrounding buildings or structures. When equipment boxes are placed at ground level, landscaping shall be used to screen them.
  - 4. Ground mounted dishes shall be located outside of any required landscaped area and preferably located in service areas or other less visible locations. They shall be solidly screened to at least as high as the center of the dish when viewed from off the site. Solid screening shall be provided as high as the top of the dish on sides adjacent residential zones.

Roof-mounted dishes shall be solidly screened at least as high as the center of the dish. The screening shall be of a material and design compatible with the building, and can include penthouse screening, parapet walls, or other similar screening. They should be placed as close to the center of the roof as possible.



5. Antennas on utility poles shall be limited to whip antennas no more than two (2) 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.

I. **Setbacks Applicable.** The following setback standards shall apply to wireless communications facilities:

1. Accessory equipment structures shall comply with the setback requirements for main buildings in the underlying district. Support structures attached to buildings or permanent structures shall comply with the setback requirements for main buildings in the underlying district that are determined by the Director to be those applicable to a building of a height equal to that of the combined building/structure and antenna.

2. Free standing wireless communications support structures located in a residential district shall be set back from any property line by a distance equal to the height of the wireless communications support structure or the setback of the underlying use district, whichever is greater.

3. Free standing wireless communications support structures located in any other type of district shall be set back from any WCF site property line abutting or adjacent to a residential use district by a distance equal to the height of the wireless communications support structure or the setback of the underlying use district, whichever is greater.

4. Setbacks for free standing wireless communications support structures shall be measured from the ground-level base of the structure.

5. The setback in any district may be reduced at the sole and absolute discretion of the City subject to satisfaction of the special exception criteria in Section 20.13.140.

J. **Landscaping Standards.** Wireless communications facilities shall be subject to the following landscaping and screening standards:

1. The perimeter of the wireless communication support structure and any guyed wires and anchors shall be enclosed by a fence or wall at least 6 feet in height. A row of evergreen shrubs, spaced not more than 5 feet apart and capable of growing to form a continuous hedge at least five (5) feet high within 5 years of planting, and at least one row of evergreen trees or shrubs spaced not more than ten (10) feet apart nor less than six (6) feet high when planted. These materials shall be installed on the outside of fences.

2. Landscape material should be selected and sited to produce a hardy and drought-resistant landscape area.

3. Maintenance of the landscaped area shall be the responsibility of the applicant and/or operator of the facility. Required landscaping must be maintained in a healthy manner. Trees and shrubs that die must be replaced with healthy in-kind materials. Temporary irrigation shall be provided to help ensure survival during the plant establishment period.
  4. The City may allow the use of any combination of existing vegetation, topography, walls, decorative fences or other features instead of landscaping, if they achieve the same degree of screening as the required landscaping. The City may waive the standards for those sides of the facility that will not be visible from public streets or adjoining properties.
  5. Existing vegetation shall be preserved to the maximum extent practicable.
  6. When landscaping installation is required, a maintenance bond, assignment of funds or other financial guarantee acceptable to the City shall be provided in the amount of 50% of the value of the labor and materials. The guarantee shall be in effect for two years from the date of planting.
- K. General Height Standards. The following standards shall apply to wireless communications facilities:
1. The height of a wireless communications facility shall include the support structure and any attached antennas proposed at the time of application.
  2. The applicant shall demonstrate that the tower and antenna is the minimum height required to function satisfactorily. No tower or antenna that is taller than this minimum height shall be approved.
  3. A lightning rod, not to exceed ten (10) feet in height or FAA required lighting shall not be included within the height limitations;
  4. The height limitation exemptions of BMC 20.10.070 B shall not apply to wireless communications support structures and antennas.
  5. The height of attached antennas may exceed the height limit of the underlying zone provided the height limits of this chapter shall apply.
- L. Parking. Each wireless communications support structure shall be provided with at least one (1) adjacent parking space or more if needed to accommodate staff. All un-staffed facilities for antennas shall have access to parking for maintenance personnel, however such parking may be shared or public parking at the discretion of the City. Staffed facilities shall require one parking space per staff under the standard provisions of the zone in which it is located.

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- M. Performance Bond. The operator of the facility shall obtain and keep in force throughout the time the facility is located on the site a performance bond payable to the City of Bellingham in the amount of 150 percent of the estimated cost of removal as determined by the Director, but not less than \$1000. The bond is intended to cover the costs of removal of such facility at such time as the facility may be required to be removed pursuant to BMC 20.13.180.
- N. Building and Utility Permits. The applicant for a permit pursuant to this ordinance shall apply for building and any other applicable permits and obtain these permits prior to installation.

20.13.070 Additional Standards for Residential Single and Residential Multi Districts.

A. SUPPORT STRUCTURES

- 1. Lattice towers are prohibited. Monopole support structures are prohibited on sites containing residential uses.
- 2. Monopole wireless communication support structures shall not be located on sites that contain residential uses. The height limits of the zone may be exceeded by 15 feet provided the applicant demonstrates the structure height is the minimum necessary to adequately function. An additional 15 feet may be allowed when collocation is specifically provided for on the tower.

B. ATTACHED ANTENNAS

- 1. Antennas are prohibited on single family dwellings, duplexes and their accessory structures. Dish antennas shall not be mounted on roofs without a special exception under the provisions of Section 20.13.140.
- 2. The following antennas may be permitted through a WCF permit:
  - a. Collocation on an existing wireless communication support structure provided no more than 16 feet is added to the height of the facility.
  - b. Attachment to a non-residential structure on a site not used exclusively for residential purposes provided the antenna does not extend more than 16 feet above the roof.
  - c. Ground mounted dish antennas may be located on sites not used exclusively for residential purposes provided the antenna is not more than 15 feet in height above ground level nor more than 12 feet in diameter.

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3. Antennas on a site used exclusively for residential purposes or attached to residential structures require conditional use permit approval. The height limits in (2) above shall apply.
4. Special provisions for Planned Residential zones. Sites without a development contract, or sites with a development contract that allows public utilities and was in effect as of the date of this code amendment, are allowed to install any facility allowed in a residential zone through a WCF permit. Any WCF facility allowed through a conditional use permit in non-planned residential zones may be allowed through a planned development contract.

#### 20.13.080 Additional Standards for Commercial Districts.

##### A. SUPPORT STRUCTURES

1. Support structures shall require a conditional use permit. The height limit of the zone may be exceeded provided the maximum height shall be 100 feet, with a bonus of an additional 20 feet of height if the structure provides for collocation.

##### B. ATTACHED ANTENNAS

1. Antennas shall not be attached to single family residences, duplexes or their accessory structures.
2. Except in the Central Commercial zone, antennas on sites used exclusively for residential purposes and antennas attached to residential structures shall require a conditional use permit.
3. Other attached antennas, ground mounted dishes and collocated antennas shall require a WCF permit.
4. Antennas attached to structures shall not extend more than 16 feet above the roof or parapet. Collocated antennas shall not extend more than 16 feet above the support structure.

- C. Special provisions for Planned Commercial zones. Sites without a development contract, or sites with a development contract that allows public utilities and was in effect as of the date of this code amendment, are allowed to install any facility allowed in a commercial zone through a WCF permit. Any WCF facility allowed through a conditional use permit in non-planned commercial zones may be allowed through a planned development contract.

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20.13.190 Additional Standards for Industrial Districts.

A. SUPPORT STRUCTURES

1. Support structures shall require a conditional use permit and shall not exceed a height of 100 feet. A bonus of 20 feet in height may be granted if the facility provides for collocation.

B. ATTACHED ANTENNAS

1. Antennas shall not be attached to single family residences and duplexes or their accessory structures.
2. Attached antennas shall not extend more than 16 feet above the roof or parapet
3. Collocated antennas shall not extend more than 16' above the existing structure.
4. Attached antennas, ground mounted dishes and collocated antennas shall require a WCF permit.

- C. Special provisions for Planned Industrial zones. Sites without a development contract, or sites with a development contract that allows public utilities and was in effect as of the date of this code amendment, are allowed to install any facility allowed in an industrial zone through a WCF permit. Any WCF facility allowed through a conditional use permit in non-planned industrial zones may be allowed through a planned development contract.

20.13.100 Additional Standards for Institutional Districts.

- A. Any WCF facility allowed through a WCF approval in a residential zone may be allowed in a Institutional zone through a WCF permit if the facility does not conflict with the provisions of the master plan, site plan approval and other agreements.
- B. Any other WCF may be permitted if it is allowed under the institutional master plan and site plan approval or other applicable agreement.

20.13.110 Additional Provisions for Public Zones.

- A. In Public-Utilities zones any WCF facility allowed through a WCF approval in a commercial zone may be permitted through a WCF permit and shall be subject to the same performance criteria. In other Public zones, any WCF facility allowed through a WCF approval in a residential zone may be allowed through a WCF permit and shall be subject to the same performance criteria.

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- B. Any other WCF facility may be considered through a Conditional Use Permit.
- C. Support structures shall not exceed 100 feet in height. A bonus of 20 feet may be granted if the facility provides for collocation.

#### 20.13.120 Temporary Uses.

Wireless communication facilities may be permitted as a temporary use with review by the Director of Planning and Community Development or his or her designate in order to facilitate continuity in wireless communications service during repair or maintenance of existing wireless communications facilities or prior to completion of construction of new wireless communications facilities. Such temporary wireless communications facilities shall operate for not more than sixty (60) days within a six (6) month period commencing when transmission from such facility begins. The wireless communications facilities shall be removed within thirty (30) days after the facility is no longer needed for telecommunications purposes.

#### 20.13.130 Wireless Communication Facility Permit.

A Wireless Communication Facility (WCF) permit shall be administratively approved by the Planning and Community Development Director. The Director may refer any application to the Technical Review Committee for recommendation.

Applications that are categorically exempt from SEPA review under WAC 197-11-800 shall also be exempt from the public notice requirements of BMC Title 21.

Non-exempt applications shall provide notice of completeness, notice of application and notice of decision as required under BMC Title 21. Notice of application shall be mailed to property owners within 300 feet of the site and posted on the site. A notice of decision shall be mailed to the applicant, to any person who, prior to rendering the decision, requested notice of the decision or submitted substantive comments on the application and published in the local newspaper.

#### 20.13.140 Special Exceptions.

When adherence to all development standards of this section would result in a physical barrier which would block signal reception or transmission or prevent effective communication in all permissible locations, a Special Exception may be permitted provided criteria outlined below are met. Exceptions do not apply to variations from the Uniform Building Code. A variance pursuant to BMC 20.18 or 20.38 is required for variations from applicable zoning regulations not described in this section.

The approval authority for granting of the Special Exception shall be the same as that of the permit approving the antenna location. A request for a Special Exception shall be processed in conjunction with the permit approving the antenna location.

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Upon review of Special Exception requests, the approval authority shall consider first those standards having the least effect upon the resulting aesthetic compatibility of the antenna or tower with the surrounding environment. The approval authority shall review setback, size, screening requirements, and height limits.

**A. Special Exception Criteria.**

1. The applicant shall justify the request for a Special Exception by demonstrating that the obstruction or inability to receive a communication signal is the result of factors beyond the property owner's or applicant's control. Pictures, scaled drawings, maps and/or manufacturer's specifications, and other technical information as necessary, should be provided to demonstrate to the City that the Special Exception is necessary.
2. The applicant for a Special Exception shall demonstrate that the proposed materials, shape, and color of the antenna will minimize negative visual impacts on adjacent or nearby residential uses to the greatest extent possible. The use of certain materials, shapes and colors may be required in order to minimize visual impacts.
3. Attached antennas requesting a special exception for height shall be reviewed through the same process as a support structure in the zone in which the antenna is located.
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 vs. 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.

**20.13.150 Application Requirements and Conditions of Issuance.**

Applicants shall submit the following information in addition to standard application materials:

- A.** A scaled site plan clearly indicating the location of the proposed facility, all other structures and uses on the site, adjacent roadways, proposed means of access, parking, existing and proposed landscaping and setbacks from property lines.

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Elevation drawings of the proposed tower, the equipment structure, existing structure with proposed antenna, fencing, buffering/screening, type of architectural treatment, and any other feature necessary to show compliance with the applicable standards.

- B. Photo-simulations of the proposed facility from adjacent residential properties, public properties and public rights-of-way.
- C. Legal description and ownership of the parcel.
- D. A valid agreement for collocation on an existing WCF support structure or on an existing building or structure; or a location evaluation study as described in E. below.
- E. For new free standing support structures, a location evaluation study shall be provided as follows:
  - 1. A study shall be provided showing that the structure is required for present and future network coverage, that the height requested is the minimum necessary to provide for the function and potential collocated antennas and why the antennas could not be collocated on an existing structure. In residential zones, the applicant shall provide adequate proof that the facility could not be located in a non-residential zone.
- F. The applicant shall submit a letter of credit, performance bond or other security acceptable to the City, as described in Section 20.13.060 M., to cover the future costs of removal of the antenna and/or tower.
- G. A report from a licensed professional engineer documenting:
  - 1. That the support structure is designed for collocation of other antennas (if applicable.)
  - 2. A projection of the wireless communication facilities which the applicant and/or prospective operator of the facility reasonably anticipates will be sited by his company within the Bellingham urban growth boundary during the next 5 years.
- H. Proof of license by the FCC, if applicable.
- I. A copy of the findings from the FAA's Aeronautical Study Determination regarding the proposed wireless communication support structure.
- J. A declaration under penalty of perjury or sworn statement by the applicant:

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1. That the antenna usage will not interfere with other adjacent or neighboring transmission or reception communications signals.
  2. That any tower will comply with all applicable federal and state laws, including specifically FCC and FAA regulations and the Bellingham Municipal Code.
- K. If a leased site, a lease agreement which specifies or shows that it does not preclude the site owner from entering into leases on the site with other providers.

20.13.160 General Criteria for Issuance of Permits.

- A. Any applicant for a land use permit (other than a building permit) proposing to install an antenna support structure or mount an antenna on an existing structure shall demonstrate by engineering evidence that:
1. The antenna must be located at the site to satisfy its function in the applicant's local grid system. The City may require the applicant to provide feasibility studies which demonstrate that locations on existing structures and/or in higher priority locations have been explored and are not feasible or available.
  2. The height requested is the minimum height necessary to fulfill the site's function within the grid system.
- B. In addition to standard criteria, the authority granting the permit shall find that:
1. The facility is to be collocated with an existing wireless communications facility; or
  2. The facility is to be located on an existing building or structure; or
  3. That all reasonable measures to collocate the facility or to locate the facility to an existing building or structure have been considered by the applicant and are not feasible.
- C. When antennas are proposed to be located in areas with a "view" special condition in the neighborhood plan the City must find that installation design will minimize impacts on views from adjacent residential properties, public properties and public rights-of-way.
- D. When antennas are proposed to be located within the Fairhaven Design Review District, as identified in the Fairhaven Neighborhood Plan, they shall generally be considered to be "construction of a structure" or "exterior alteration of a building" and shall be subject to approval of a design review contract in the Core and

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Influence sub-areas of the district unless the Director determines the installation is not externally visible or is sufficiently incorporated in an authorized feature in such a way as to exempt it from the design review process.

E. The permit may include requirements which:

1. Minimize visual impacts to the greatest extent possible by maximum feasible use of camouflage or screening, including but not limited to fencing, landscaping, strategic placement adjacent to existing buildings or live or simulated vegetation, undergrounding of accessory equipment structures, incorporation of wireless communications support structures, antennas and other appurtenances into the architectural features of existing buildings or structures and by requiring compatibility with key design elements in the surrounding area; for example: use of brick or other material similar to that used in adjacent buildings or structures; incorporation of support structures into compatible architectural features such as flag poles, bell towers or cornices; or use of simulated vegetation to camouflage support structures.
2. Locate wireless communication facilities so as to minimize the visibility of the facility to residentially zoned land and so as to minimize the obstruction of scenic views from residentially zoned land.
3. Require the mounting of the facility on existing buildings or structures, or use of other, alternatives with less visual, aesthetic or safety impacts, as an alternative to use of a monopole or lattice tower.

#### 20.13.170 Federal Requirements.

All wireless communications support structures must meet or exceed current standards and regulations of the FAA, the FCC and any other agency of the federal government with the authority to regulate wireless communications support structures and antennas. If such standards and regulations are changed, owners of the wireless communication support structure, antennas and electronic equipment governed by this ordinance shall bring such wireless communication support structure, antennas and electronic equipment into compliance with such revised standards and regulations within the compliance schedule of the federal agency. Failure to bring wireless communication support structures and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the wireless communication support structure, antenna or electronic equipment at the owner's expense.

#### 20.13.180 Removal of Antennas and Support Structures.

No less than 30 days prior to the date that a personal wireless service provider plans to abandon or discontinue operation of a facility, the provider must notify the City of Bellingham Planning and Community Development Director by certified U.S. mail of the

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proposed date of abandonment or discontinuation of operation. The owner of the facility shall then remove the antenna within 90 days of discontinuation or abandonment unless an additional period of time is authorized by the City. In any case, if the City finds that any antenna or wireless communication support structure has not operated for a continuous period of six (6) months, the owner or lessee of the property on which the wireless communication support structure or antenna is situated or the owner of the wireless communications antenna or support structure shall remove the facility within ninety (90) days of receipt of notice to remove from the City. If the antenna and/or wireless communication support structure is not removed within said time period, the City may remove the antenna or wireless communication support structure at the owner's expense. If there are two or more wireless communications providers on a single wireless communication support structure, this provision shall not become effective until all providers cease using the wireless communication support structure.

#### 20.13.190 Third Party Review.

Personal wireless service providers use various methodologies and analyses, including geographically-based computer software, to determine the specific technical parameters of their services and low power mobile radio service facilities, such as expected coverage area, antenna configuration, topographic constraints that affect signal paths, etc. In certain instances, a third party expert may need to review the technical data submitted by a provider. The City may require a technical review as part of a permitting process. The cost of the technical review shall be borne by the provider.

The selection of the third party expert may be by mutual agreement between the provider and the City, or at the discretion of the City, with a provision for the provider 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 providers' methodology and equipment used and not a subjective review of the site which was selected by a provider.

Based on the results of the expert review, the City may require changes to the provider's application. The expert review shall address the following:

- A. The accuracy and completeness of 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.

#### **Section 2.** BMC 20.08.020 P. (11) shall be amended as follows:

**Public Utility:** A use owned or operated by a public or publicly licensed or franchised agency which provides essential public services such a telephone exchanges, electric substations, radio and television stations, gas and water regulation stations and other

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facilities of this nature. Wireless communication facilities as defined herein are not included in this definition.

**Section 3.** BMC 20.08.020 W (5) and (6) are hereby added as follows:

- (5) Wireless Communications Facilities shall mean the site, wireless communications support structures, antennas, accessory equipment structures, and appurtenances used to transmit, receive, distribute, provide or offer wireless telecommunications services. Wireless communications facilities includes, but are not limited to antennas, plies, towers, cables, wires, conduits, ducts, pedestals, vaults, buildings, electronic an switching equipment.
- (6) Wireless Communications Service, or Personal Wireless Communication Service shall mean the sending and receiving of radio or microwave signals used for communication, including, but not limited to cellular telephone, personal communications services (PCS), enhanced/specialized mobile radio (ESMR), commercial paging services, and any other technology which provides similar wireless services licensed by the FCC and unlicensed wireless services.

**Section 4.** BMC 20.10.070 B. is hereby amended as follows:

- B. Spires, towers, domes, steeples, flag poles, chimneys, smokestacks, and/or ventilators may be erected above the height limitation provided no useable floor space above the height limit is added thereby. This exception shall not apply to wireless communication facilities. No over height object shall be used for advertising of any kind.

**Section 5.** BMC 20.30.030 A. (9) regarding permitted uses in Residential Single districts is hereby added as follows:

- (9) Wireless Communication Facilities, subject the provisions of Chapter 20.13.

**Section 6.** BMC 20.30.030 B. (17) regarding conditional uses in the Residential Single district is hereby added as follows:

- (17) Wireless Communication Facilities, subject to the provisions of Chapter 20.13.

**Section 7.** BMS 20.32.030 A. DUPLEX (10) regarding permitted uses in Residential Multi districts is hereby added as follows:

- (10) Wireless Communication Facilities, subject to the provisions of Chapter 20.13.

**Section 8.** BMC 20.32.030 B. (22) regarding conditional uses in the Residential Multi district is hereby added as follows:

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- (22) Wireless Communication Facilities, subject to the provisions of Chapter 20.13.

**Section 9.** BMC 20.34.030 A. NEIGHBORHOOD (21) regarding permitted uses in Commercial districts is hereby added as follows:

- (21) Wireless Communication Facilities, subject to the provisions of Chapter 20.13.

**Section 10.** BMC 20.34.030 A. AUTO (18) regarding permitted uses in Commercial districts is hereby added as follows:

- (18) Wireless Communication Facilities, subject to the provisions of Chapter 20.13.

**Section 11.** BMC 20.34.030 A. WATERFRONT (24) is hereby added as follows:

- (24) Wireless Communication Facilities, subject to the provisions of Chapter 20.13.

**Section 12.** BMC 20.34.030 A. CENTRAL (30) is hereby added as follows:

- (30) Wireless Communication Facilities, subject to the provisions of Chapter 20.13.

**Section 13.** BMC 20.34.030 B. NEIGHBORHOOD (12) is hereby added as follows:

- (12) Wireless Communication Facilities, subject to the provisions of Chapter 20.13.

**Section 14.** BMC 20.34.030 B. AUTO (5) is hereby added as follows:

- (5) Wireless Communication Facilities, subject to the provisions of Chapter 20.13.

**Section 15.** BMC 20.34.030 B. WATERFRONT (4) is hereby added as follows:

- (4) Wireless Communication Facilities, subject to the provisions of Chapter 20.13.

**Section 16.** BMC 20.34.030 B. CENTRAL CORE ONLY (3) and CORE, FRINGE, APPROACH (3) are hereby added as follows:

- (3) Wireless Communication Facilities, subject to the provisions of Chapter 20.13.

**Section 17.** BMC 20.36.030 A. LIGHT (14) is hereby added as follows:

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- (14) Wireless Communication Facilities, subject to the provisions of Chapter 20.13.

**Section 18.** BMC 20.36.030 A. HEAVY (9) is hereby added as follows:

- (9) Wireless Communication Facilities, subject to the provisions of Chapter 20.13.

**Section 19.** BMC 20.36.030 A. MARINE (7) is hereby added as follows:

- (7) Wireless Communication Facilities, subject to the provisions of Chapter 20.13.

**Section 20.** BMC 20.36.030 B. (5) is hereby added as follows:

- (5) Wireless Communication Facilities, subject to the provisions of Chapter 20.13.

**Section 21.** BMC 20.38.030 C. is hereby amended as follows:

- C. Non-Conforming Buildings And Uses. Any existing building and/or existing use located upon property designated as planned without having gained approval of a planned ordinance shall be deemed nonconforming subject to the limitations found within Chapter 20.14. PROVIDED, however, that the following shall be permitted:

- (1) A change of occupancy to a use enumerated within the permitted uses listed in Subsection 20.38.050 hereof corresponding to the applicable general use type. For wireless communication facilities, see Chapter 20.13 for additional regulations pertaining to properties designated as planned.
- (2) Interior renovations involving no exterior expansion, to a use enumerated within the permitted uses listed in Subsection 20.38.050 hereof corresponding to the applicable general use type.
- (3) A one time expansion not to exceed 50% of the existing floor area, or 5,000 sq. ft. whichever is less for an existing use which is enumerated within the permitted uses listed in Subsection 20.38.050 hereof corresponding to the applicable general use type.

Such expansion must be accomplished in conformance with the following regulations:

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- (1) for property designated planned residential, all applicable regulations within the Residential Multi Chapter related to a "multiple" use qualifier;
- (2) for property designated planned commercial, all applicable regulations within the Commercial Chapter related to a "neighborhood" use qualifier;
- (3) for property designated planned industrial, all applicable regulations within the Industrial Chapter related to a "light" use qualifier;
- (4) for wireless communication facilities, the provisions of Chapter 20.13 shall apply.

**Section 22.** BMC 20.38.050 B. (2) (m) regarding permitted uses in Planned Residential zones is hereby added as follows:

- (m) Wireless Communication Facilities, subject to the provisions of Chapter 20.13.

**Section 23.** BMC 20.38.050 C. (2) (y) regarding permitted uses in Planned Commercial zones is hereby added as follows:

- (y) Wireless Communication Facilities, subject to the provisions of Chapter 20.13.

**Section 24.** BMC 20.38.050 D. (2) (n) regarding permitted uses in Planned Industrial zones is hereby added as follows:

- (n) Wireless Communication Facilities, subject to the provisions of Chapter 20.13.

**Section 25.** BMC 20.42.050 B. (2) regarding accessory uses in Public zones is hereby added as follows:

- (2) Wireless communication facilities may only be allowed under the provisions of Chapter 20.13 pertaining to the location of these facilities in Public zones.

**Section 26.** BMC 20.42.050 C. (2) regarding conditional uses in Public zones is hereby added as follows:

- (2) Wireless communication facilities may only be allowed under the provisions of Chapter 20.13 pertaining to the location of these facilities in Public zones.

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**Section 27.** The City shall conduct a review of this ordinance six (6) months after its effective date. The purpose of the review shall be to solicit additional public comment, report on the staff's experience in administering the ordinance, consider any new technologies and initiate consideration of any necessary amendments. The Planning and Community Development Dept. shall prepare a report for the City Council for use in conducting the review.

**Section 28.** Ordinance 10922, as amended, is hereby repealed.

**PASSED** by the Council this 20th day of July, 1998.

Bob Ryan  
\_\_\_\_\_  
Council President

**APPROVED** by me this 28th day of July, 1998

Mark Hand  
\_\_\_\_\_  
Mayor

Attest: Juan Carpenter  
\_\_\_\_\_  
Finance Director

Approved as to Form:

R. Astwood  
\_\_\_\_\_  
Office of the City Attorney

Published: July, 31, 1998

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**CITY OF BELLINGHAM WASHINGTON**

**ORDINANCE NUMBER:** 1998-07-057  
**COUNCIL BILL NUMBER:** 12406  
**AGENDA BILL NUMBER:** 13613  
**1ST/2ND READING/INTRODUCTION:** 7.13.98  
**3RD/FINAL READING:** 7.20.98  
**PUBLISHED:** 7-31-98

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**CC: LEGISLATIVE COORDINATOR**  
**LEGAL SECRETARY**  
**ITSD (TO SCAN)**  
**OTHER:** JSS-Linda  
\_\_\_\_\_