

TOWN OF BEAUX ARTS VILLAGE  
ORDINANCE NO \_\_\_\_

**AN ORDINANCE OF THE TOWN OF BEAUX ARTS VILLAGE REGARDING SMALL WIRELESS DEPLOYMENT IN THE TOWN RIGHTS OF WAY; ADOPTING NEW BAVMC CHAPTER 13.25, RELATING TO SMALL WIRELESS FACILITIES IN THE RIGHTS-OF-WAY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, the Town acknowledges that the growing use of personal wireless devices creates a need for wireless data transmission, and therefore deems it in the public interest to adopt code that will allow the Town to comply with federal guidelines by integrating necessary provisions into the municipal code for the franchise approval and the review and management of such deployments; and

**WHEREAS**, the Town acknowledges that telecommunications companies are anticipating deployments within the Town thereby requiring the Town to adopt code that will properly oversee and manage such deployments within the Town's public and non-residential private property; and

**WHEREAS**, adoption of franchise and land-use controls will allow for the thoughtful integration of these facilities into the unique and special environment of Beaux Arts Village; and

**WHEREAS**, the Town Planning Commission met to discuss this topic over the course of several meetings and held a public hearing on the proposed code on \_\_\_\_\_, after such public hearing was properly noticed according to law; and

**WHEREAS**, all persons desiring to comment on the proposal were give a full and complete opportunity to be heard; and

**WHEREAS**, environmental review was done on the proposed code and a Determination of Nonsignificance (DNS) was issued on \_\_\_\_\_, with required notice sent to the State of Washington; and

**WHEREAS**, the comment period and appeal period for the DNS expired on \_\_\_\_\_; and

**WHEREAS**, after consideration from testimony taken at the public hearing, the Planning Commission recommends approval of the proposed ordinance; **NOW, THEREFORE**,

**BE IT ORDAINED BY THE TOWN OF BEAUX ARTS VILLAGE AS FOLLOWS:**

**Section 1. New Beaux Arts Village Municipal Code Chapter 13.25 (Small wireless facilities in the Rights-of-Way) Adopted.** A new Chapter 13.25 of the Beaux Arts Village Municipal Code is hereby adopted to read as follows:

**13.25.010 Purpose.** The purpose of this chapter is to set forth the regulations for the overall franchise approval, placement, design, development, permitting and removal of small wireless facilities in the Town rights-of-way, including the following:

- (1) Permit and manage reasonable access to the rights-of-way of the Town for communication purposes on a nondiscriminatory basis.
- (2) Establish clear guidelines and standards for the exercise of local authority with respect to the regulation of right-of-way use.
- (3) Conserve the limited physical capacity of the public rights-of way held in public trust by the Town.
- (4) Ensure that all service providers maintaining wireless facilities or providing services within the Town comply with the ordinances, rules, and regulations of the town.
- (5) Ensure that the Town can continue to fairly and responsibly protect the public health, safety, welfare, aesthetic beauty, and neighborhood character .
- (6) Enable the Town to discharge its public trust consistent with rapidly evolving federal and state regulatory policies industry competition, and technological development.

**13.25.020 Definitions.**

- (1) “Antenna” means any exterior apparatus designed for telephonic, radio, data, internet or other communications through the sending and/or receiving of radio frequency signals including, but not limited to, equipment attached to a tower, utility pole, building or other structure for the purpose of providing wireless service.
- (2) “Applicant” means any person or corporation submitting an application for a franchise or a Small Wireless Facility Permit.
- (3) “Franchise” or “Franchise Agreement” for Small Wireless Facility is a contract by which a grantee is allowed to use Town right-of-way for the purpose of carrying on the business in which it is generally engaged, including furnishing service to members of the public.

- (4) “Grantee” means the person, firm or corporation to whom or which a franchise, as defined in this section, is granted by the Town Council under this Chapter and the lawful successor, transferee or assignee of such person, firm, or corporation.
- (5) “Grantor” means the Town of Beaux Arts Village, acting through its Town Council.
- (6) “Person” includes corporations, companies, associations, joint stock companies, firms, partnerships, limited liability companies, other entities, and individuals.
- (7) “Town right-of-way” or “right-of-way” means land acquired or dedicated for public roads and streets but does not include:
  - A. Land dedicated for roads and streets not opened and not improved for motor vehicle use by the public; and/or
  - B. Structures, including poles and conduits, located within the right-of-way.
- (8) “Small Wireless” and “Small Wireless Facility” has the same meaning as defined in 47 CFR 1.6002.
- (9) “Structure” means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).
- (10) “Telecommunications facilities” means the plant, equipment and property including, but not limited to cables, wires, conduits, ducts, pedestals, electronics, and other appurtenances used or to be used to transmit, receive, distribute, provide or offer wireless telecommunications service.
- (11) “Town” means the Town of Beaux Arts Village.
- (12) “Town property” means any real property owned by the Town.
- (13) “Town Representative” means the person authorized to act on behalf of the Town for purposes of permitting wireless facilities, as designated by the Mayor and/or Council of the Town of Beaux Arts Village.

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

**13.25.030 Franchise Required.** A franchise shall be required of any small wireless telecommunications provider who desires to make use of telecommunications facilities that occupy rights-of-way within the town. The franchise is a “master permit” within the meaning of RCW 35.99.010(3). Any franchise granted pursuant to this chapter shall be nonexclusive and shall not preclude the Town from granting other or further franchises or permits or preclude the Town from using any public rights-of-way, streets, or other public properties for any lawful purpose or affect its jurisdiction over them or any part of them, or limit the full power of the town to make such changes, as the town shall deem necessary, including the dedication, establishment, maintenance, and improvement of all new public rights-of-way and other public properties. An entity without a franchise will apply for a franchise as well as a small wireless facility permit for its initial deployment, and the applications will be processed concurrently.

**13.25.040 Franchise Application.** An applicant for an initial franchise to construct, operate, and maintain small wireless telecommunications facilities within Town rights-of-way shall file an application in a form prescribed by the Town, accompanied by a nonrefundable filing fee as deemed appropriate established by the town council by resolution.

**13.25.050 Determination by the Town.** Within the time periods established by state and/or federal law, after receiving a complete franchise application for small wireless, the Town Council shall grant or deny a franchise application. If the Town Council denies a franchise, such denial must be supported by substantial evidence contained in a written record.

**13.25.060 Rights.** No franchise granted shall convey any right, title, or interest in the rights-of-way, but shall be deemed a franchise only to use and occupy the rights-of-way for the limited purposes and term stated in the agreement. No franchise granted shall authorize or excuse a grantee from securing such further easements, leases, permits or other approvals as may be required to lawfully occupy and use the rights-of-way. Grantee shall obtain the written approval of the facility or structure owner, including the Town, if the grantee does not own it, prior to attaching to or otherwise using a facility.

**13.25.070 Term of Grant.** The duration of a franchise granted pursuant to this chapter shall be for a period of time appropriate to the circumstances of the particular grant.

**13.25.080 Franchise Conditions.** All grantees, before commencing any construction in the rights-of-way, shall comply with the following requirements:

(1) Map of Wireless Facilities. Each grantee shall provide the Town with an accurate as-built map or maps certifying the location of all telecommunications facilities within the Town and particularly within rights-of-way. Each grantee shall provide updated as-built maps annually.

(2) Insurance and Indemnity. As consideration for the issuance of a franchise, the franchise shall include an insurance provision as acceptable to the Town's insurer. The franchise shall further include an indemnity clause in a form and content acceptable to the Town Attorney.

(3) Performance and construction surety. Before a franchise granted pursuant to this Chapter is effective, and as necessary thereafter, the grantee shall provide and deposit such monies, bonds, letters of credit or other instruments in form and substance acceptable to the Town as may be required by the Town of Beaux Arts Village. Further, each grantee shall establish a permanent security fund with the Town by depositing the amount of \$50,000, or such other amount as deemed necessary by the Town Representative, with the Town in cash, bond, or an unconditional letter of credit, based upon both operating history in rights-of-way and the cost of removal of the grantee's facilities, other ways and Town property which fund shall be maintained at the sole expense of the grantee so long as any of the grantee's telecommunications facilities are located within the rights-of-way. The fund shall serve as security for the full and complete performance of this Chapter and the franchise including any costs, expenses, damages, or loss the Town pays or incurs, including civil penalties, because of any failure attributable to the grantee to comply with the codes, ordinances, rules, regulations, or permits of the Town applicable to the construction, maintenance, repair, or removal of telecommunications facilities in the rights-of-way or upon Town property.

(4) Performance and warranty bond. A grantee performing work in the rights-of-way must provide a performance bond written by a corporate surety acceptable to the Town equal to at least 125% of the estimated cost of completing or removing the facilities and restoring the rights-of-way or Town property to its pre-construction condition. This bond may be placed for the entirety of the grantee's projects provided that Grantee is able to quantify the full estimated cost of its deployment of telecommunications facilities. If a grantee provides a bond on a per project basis, such grantee is permitted to increase the bond for future projects, or if a project is complete, grantee may apply the bond to other projects in the rights-of-way. The purpose of this bond is to guarantee completion or removal of partially completed or nonconforming telecommunications facilities, and to fully restore the rights-of-way and Town property to their pre-construction condition. If required by the Town, a grantee shall furnish a two (2) year warranty bond, or other surety acceptable to the Town, upon the completion of grantee's construction work,

including any restoration work, within the rights-of-way. The warranty bond amount will be equal to 125% of the documented final cost of the construction and restoration work.

**13.25.090 Acceptance.** Within 60 days after the effective date of the ordinance granting a franchise, or within such extended period of time as the council in its discretion may authorize, a grantee shall file with the town clerk its written acceptance of the franchise and all of its terms and conditions, in a form satisfactory to the town attorney, together with any bond required by this Chapter and/or the franchise, evidence of insurance required by this Chapter and/or the franchise, and any other security required by this chapter of a franchise. If a grantee fails to file a timely acceptance, the franchise shall be null and void.

**13.25.100 Police Powers.** By accepting a franchise, a grantee acknowledges that its rights thereunder are subject to the legitimate exercise of the police power of the town to adopt and enforce general ordinances necessary to protect the safety and welfare of the public and it agrees to comply with all applicable general laws enacted by the town pursuant to such power. The town council expressly reserves unto itself all its police powers to adopt ordinances necessary to protect the health, safety and welfare of the general public in relation to the rights granted under this chapter. The town reserves the right to use, occupy, and enjoy any public rights-of-way or other public places for any lawful purpose, including, without limitation, the construction of any water, sewer, or storm drainage system, installation of traffic signals, street lights, trees, landscaping, bicycle paths and lanes, equestrian trails, sidewalks, pedestrian amenities, town services, and other public street improvement projects.

**13.25.110 Rules and regulations by the town.** In addition to the inherent powers of the Town to regulate and control any franchise it issues, the authority granted to it by law, and those powers expressly reserved by the Town, or agreed to and provided for in a franchise, the right and power is hereby reserved by the Town to promulgate such additional regulations of general applicability as it may find necessary in the exercise of its lawful police powers. The Town council reserves the right to delegate its authority for franchise administration to a designated agent.

**13.25.120 Implementation – Small wireless facilities Use Permits.**

The rights granted under a franchise are implemented through the issuance of small-wireless-facilities use permits. A franchise application may be accompanied by one or more applications for a small-wireless-facilities use permit to deploy small wireless facilities. An initial franchise and any related small-wireless-facilities use permit applications will be processed concurrently. A small-wireless-facilities use permit shall bind an applicant to all of the provisions contained in Chapter 12.05 BAVMC.

(1) Issuance of a small wireless facilities permit to install small wireless facilities will be contingent upon approval of a franchise under this Chapter 13.25, or the possession of a valid franchise.

(2) Any element of a deployment that qualifies as an eligible facilities request under 47 CFR 1.6100 will be specifically designated by the applicant and may be addressed separately by the Town Representative in order to comply with the shot clocks established by federal law.

(3) The Town Representative may approve, deny, or conditionally approve all or any portion of the sites proposed in a small-wireless-facilities use permit application. Any denial of an application under this chapter must be made in writing and be supported by substantial evidence.

(4) Any application for a small-wireless-facilities use permit that contains an element that is not exempt from SEPA review will simultaneously submit a SEPA Environmental Checklist.

(5) The Town recognizes that the Federal Telecommunications Act of 1996 gives the Federal Communications Commission sole jurisdiction in the field of regulation of electromagnetic radio frequency emissions and small wireless facilities that meet Federal Communications Commission standards will not be conditioned or denied on the basis of radio frequency or electromagnetic frequency impacts. Applicants for small wireless facilities will be required to provide the Town information on compliance with the Federal Communications Commission requirements.

(6) All small wireless facilities will be constructed or installed according to applicable Federal Communications Commission (FCC), Federal Aviation Administration (FAA), state and Town regulations and standards, including Town design/aesthetic standards contained in Chapter 18.20 BAVMC.

### **13.25.130 Small-Wireless-Facility Use Permit Review Process.**

(1) Review of the site locations proposed by the applicant will be governed by the provisions of 47 USC 253 and 47 USC 332 and applicable regulations and case law. Applicants for small cell facilities shall not be subject to unreasonable discrimination from other service providers whose facilities are similarly situated in terms of structure, placement, or cumulative impacts. Small-wireless-facilities use permit review under this chapter will neither prohibit nor have the effect of prohibiting the ability of an applicant to provide telecommunications services.

(2) The Town Representative will review applications for small-wireless-facilities use permits for consistency with relevant franchise exhibits and design standards.

(3) Small-wireless-facilities use permits to install facilities will be processed within the time frames set by applicable federal regulations.

(4) The decision of the Town Representative to approve a small-wireless-facility use permit shall be final.

(5) The town reserves the right to authorize a third-party technical review for the purposes of engineering and other technical and or health and safety examinations, including but not limited to, evaluating whether the right-of-way has sufficient capacity to accommodate the proposed small wireless facility. The expense of such review shall be borne by the applicant. Notwithstanding the above, nothing in this section shall authorize the City to engage an expert for purposes of making a determination as to whether the site chosen by the applicant is necessary with respect to network design or require an applicant to establish that a proposed site is necessary to close a significant gap in coverage.

#### **13.25.140 Construction standards.**

(1) All small wireless facilities constructed under this chapter shall be placed and maintained at such places and positions as shall not interfere with the passage of traffic and the use of adjoining property, and shall conform to the applicable section of the National Electrical Code, codes of the state of Washington, and town rules, regulations, ordinances, codes, standards and policies pertaining to such construction.

(2) At least seven days prior to any intended construction, a grantee shall inform all residents in the affected area that a construction project will commence, the dates and nature of the project, and provide a toll-free telephone number which the resident, property owner, or subscriber may call for further information. A preprinted door hanger may be used for this purpose.

(3) The town reserves the right, as the interest of the public may require, to ensure that (a) the public rights-of-way have the capacity to accommodate the proposed facilities, and (b) the proposed construction is consistent with the town's present and future use of the public rights-of-way.

(4) At least 24 hours prior to entering private property or easements adjacent to or on such private property to perform new construction or reconstruction, a notice indicating the nature and location of the work to be performed shall be physically posted upon the affected property. A grantee shall make a good faith effort to comply with the property owner/resident's preferences, if any, on location or placement of underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths), consistent with sound engineering practices.

(5) After performance of work, a grantee shall restore private property as nearly as possible to its condition prior to construction. Any disturbance of landscaping, fencing, or other improvements on private property shall, at the sole expense of a grantee, be promptly repaired and restored within seven (7) days of completion or as otherwise agreed by the grantee and the private property owner.

(6) A grantee shall, at all times, keep full and complete plans, plat or plats, specifications, profiles and records showing the location, height, and size of all the facilities constructed in the town. These records shall be subject to inspection by the proper officials and agents of the town, and a copy of these plans, plat or plats, specifications, profiles, and records shall be furnished to the town within 10 days of request.

### **13.25.150 Construction in right-of-way.**

(1) No work, other than emergency repairs or standard installations, shall commence without a small-wireless-facilities use permit. Emergency repairs may be made immediately with notification given to the town no later than the next business day. Prior to work in the right-of-way, the Town Engineer shall photograph and document the condition of the right-of-way at the site of such work.

(2) In accordance with the permit issued, all facilities, equipment, and/or structures shall be located and installed so as to cause minimum interference with the rights and convenience of property owners, and at all times shall be maintained in a safe condition, and in good order and repair. Suitable barricades, flags, lights, flares, or other devices shall be used at such times and places as are reasonably required for the safety of the public. Any poles or other fixtures placed in any street by a grantee shall be placed in such manner as not to interfere with the usual travel on such public way.

(3) When installing, locating, laying, or maintaining system facilities, a grantee shall not interfere with the use of any street to any greater extent than is necessary, and shall leave the surface of any such street in as good condition as it was prior to performance by grantee of such work. Provided, however, that the town engineer may, in his or her discretion, require a lower standard of restoration when he or she is aware of future construction projects that would obviate the immediate need for full restoration of the street surface. In either case, the town engineer shall have final authority to determine whether the surface of such streets has been adequately restored. Any facility, apparatus, or improvement under this chapter shall be laid, installed, located, or maintained in conformance with town rules, regulations, ordinances, standards and policies. Except as provided herein, a grantee shall, at its own expense, and to the satisfaction of the town in accordance

with the terms of the right-of-way permit, restore to town standards and specifications any damage or disturbance caused to streets as a result of grantee's construction or operations.

(4) A grantee shall, at its own expense, protect, support, temporarily disconnect, relocate, or remove any of its facilities or property within the public rights-of-way when, in the judgment of the town, the same is required by reason of traffic conditions, public safety, improvements by governmental agencies, and/or any other town use of the franchise area. The town shall give at least 60 days' advance written notice prior to requiring the same. Nothing herein shall be deemed a taking of the property of a grantee, and grantee shall be entitled to no surcharge by reason of this section.

(5) If the grantee fails to commence, pursue, or complete any work required by the provisions of this chapter or fails to comply with any applicable federal, state or town laws, ordinances, rules, regulations or standards to be performed on any street, the town may, at its option, cause such work to be done, and a grantee shall pay to the town the actual cost thereof, including overhead and administrative expense, within 30 days after receipt of demand. Provided, however, that the town shall give a grantee at least 10 days' prior written notice before causing such work to be done.

(6) Within thirty (30) days after construction of the small wireless facility, the grantee shall provide the Town with site photographs and as-builts of the small wireless facilities demonstrating compliance with the permit.

(7) A grantee shall comply with all requirements under Chapter 12.05 BAVMC.

**13.25.160 Safety requirements.**

(A) A grantee, in accordance with applicable federal, state, and local safety requirements, shall, at all times, perform work in a safe manner and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public. All structures and all lines, equipment and connections in, on, over, under, across and upon public rights-of-way or places of a franchise area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair.

(B) The town reserves the right to see that the facilities of a grantee are constructed and maintained in a safe condition.

**13.25.170 Tree trimming.** A grantee may, at its sole expense, trim trees upon and overhanging streets and public rights-of-way within the franchise area so as to

prevent the branches of such trees from coming in contact with the facilities of a grantee. A grantee shall be responsible for debris removal from such activities. A grantee shall secure advance approval from the town prior to commencing such activities, and all such activities shall be done in accordance with all town ordinances, policies, and standards. Unless otherwise provided in the town's approval, all tree trimming shall be under the direction of an arborist certified by the International Society of Arboriculture. Provided, however, that the requirements of this section shall not apply to the removal or trimming of specific trees during a bona fide emergency when said trees threaten to damage, or have damaged, a grantee's system.

**13.25.180 Removal and abandonment of property of grantee.**

(1) The town may direct a grantee to temporarily disconnect any equipment in order to complete street construction or modification or install and remove underground utilities. Such removal, relocation, or other requirement shall be at the sole expense of a grantee.

(2) In the event that the use of any part of the system is discontinued for any reason for a continuous period of six months, or in the event such system or property has been installed in any street or public place without complying with the requirements of the franchise or other town ordinances or the franchise has been terminated, canceled or has expired, a grantee shall promptly, upon being given 10 days' written notice, remove, at its expense, within 90 days from the streets or public places all such property and poles of such system other than any which the town may permit to be abandoned in place. Following such removal, a grantee shall promptly restore the street or other areas from which such property has been removed to a condition satisfactory to the town.

(3) Any property of a grantee remaining in place 90 days after the termination or expiration of the franchise shall be considered permanently abandoned. The town may extend such time not to exceed an additional 90 days; provided, however, that a grantee may not abandon any of its property within public rights-of-way, streets, or other places without the prior written consent of the town.

(4) Upon permanent abandonment of the property of a grantee in place, the property shall become that of the town, and a grantee shall submit to the town clerk an instrument in writing, to be approved by the town attorney, transferring to the town the ownership of such property.

(5) Any bond required by the grant of the franchise, shall remain in place for a period of one (1) year after abandonment of all facilities within the Town or insolvency of the Grantee to guarantee removal of facilities.

**Section 2. Severability.** If any section, sentence, clause phrase of this ordinance should be held to be invalid or un-constitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this ordinance.

**Section 3. Effective Date.** This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the Town and shall take effect and be in full force upon publication.

Passed by the Town Council of the Town of Beaux Arts Village, the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
John Gillem, Mayor

Attest/Authenticated:

Approved as to Form:

\_\_\_\_\_  
Sue Ann Spens, Clerk/Treasurer

\_\_\_\_\_  
David Linehan, Town Attorney

TOWN OF BEAUX ARTS VILLAGE  
ORDINANCE NO \_\_\_\_

**AN ORDINANCE OF THE TOWN OF BEAUX ARTS VILLAGE ADOPTING NEW  
BEAUX ARTS VILLAGE MUNICIPAL CODE CHAPTER 18.20, RELATING TO  
SMALL WIRELESS FACILITIES DEPLOYMENT; PROVIDING FOR  
SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE**

**WHEREAS**, the Town acknowledges that the growing use of personal wireless devices creates a need for wireless data transmission, and therefore deems it in the public interest to adopt code that will allow the Town to comply with federal guidelines by integrating necessary provisions into the municipal code for the review and management of such deployments; and

**WHEREAS**, adoption of land use controls will allow for the thoughtful integration of these facilities into the unique and special environment of Beaux Arts Village; and

**WHEREAS**, the Town Planning Commission met to discuss this topic over the course of several meetings and held a public hearing on the proposed code on \_\_\_\_\_, after such public hearing was properly noticed according to law; and

**WHEREAS**, all persons desiring to comment on the proposal were give a full and complete opportunity to be heard; and

**WHEREAS**, environmental review was done on the proposed code and a Determination of Nonsignificance (DNS) was issued on \_\_\_\_\_, with required notice sent to the State of Washington; and

**WHEREAS**, the comment period and appeal period for the DNS expired on \_\_\_\_\_; and

**WHEREAS**, after consideration from testimony taken at the public hearing, the Planning Commission recommends approval of the proposed ordinance. **NOW, THEREFORE**,

**BE IT ORDAINED BY THE TOWN OF BEAUX ARTS VILLAGE AS FOLLOWS:**

**Section 1. A new Beaux Arts Village Municipal Code Chapter 18.20, Small Wireless Deployment, Adopted.** The Town adopts new Beaux Arts Village Municipal Code Chapter 18.20, Small Wireless Deployment to read as follows:

**18.20 Small Wireless Facility Deployment**

**18.20.010. Purpose.** In order to balance the need to accommodate new and evolving technologies with the preservation of the natural and aesthetic

environment of the Town, the Town of Beaux Arts Village has adopted this process for the deployment of small wireless facilities. The Town Representative is authorized to establish land use permit and other application forms to gather the information required by this ordinance from applicants and to determine the completeness of the application process.

**18.20.020. Small Wireless Land Use Permit Required; Application Content.**

Small wireless facilities (as defined by 47 CFR 1.6002) shall be a permitted use in all zones within the Town of Beaux Arts Village. An applicant to deploy a small wireless facility within the Town shall apply for a small-wireless-facility land-use permit. The following information shall be provided by all applicants for a small-wireless-facility land use permit:

A. The application shall provide specific locational information including GIS coordinates of all proposed small wireless facilities and specify where the small wireless facilities will utilize existing, replacement or new poles, or other structures. Ground mounted equipment, conduit, junction boxes and fiber and electrical connections necessary for and intended for use in the deployment shall also be specified regardless of whether the additional facilities are to be constructed by the applicant or leased from a third party. Detailed schematics and visual renderings of the small wireless facilities, including engineering and design standards, shall be provided by the applicant. The application shall have sufficient detail to identify:

1. The specific trees, structures, improvements, facilities, lines and equipment, and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate and a landscape plan for protecting, trimming, removing, replacing, and restoring any trees or areas to be disturbed during construction; and

2. Compliance with the design standards and aesthetic requirements contained within this Chapter 18.20.

B. The applicant must show written approval from the owner of any pole or structure for the installation of its small wireless facilities on such pole or structure. To extent that the pole or structure is not owned by the property owner, the applicant shall demonstrate in writing that they have authority from the property owner to install the small wireless facility on the pole or structure. Such written approval shall include approval of the specific pole, engineering and design standards from the pole owner, unless the pole owner is the Town. For Town-owned poles or structures, the applicant must obtain a lease from the Town prior to or concurrent with the small wireless permit application and must submit as part of the application the information required in the lease for the Town to evaluate the usage of a specific pole or structure.

C. The applicant may batch multiple small wireless facility sites in one application. The applicant is encouraged to batch the small wireless facility sites within an application in a contiguous service area.

D. Any application for a small wireless facility located in the right-of-way adjacent to a parcel zoned for residential use shall demonstrate that it has considered the following:

1. Whether the proposed small wireless facility could be located on a street corner rather than in the middle of a block.

2. Whether a small wireless facility is currently installed on an existing pole in front of the same residential parcel and if so, whether collocation on the existing pole is technically feasible.

3. Whether the proposed small wireless facility can be screened from residential view by choosing a pole location that is not directly in front of a window or views.

E. Any application for a small wireless permit which contains an element which is not exempt from SEPA review shall simultaneously apply under Chapter 43.21C RCW and BAVMC Chapter 16.05. Further, any application proposing small wireless facilities to be located within Shoreline Management Zones must indicate that the application is exempt from Shoreline Management review; otherwise such application shall comply with the review processes in the Town's Shoreline Management ordinances and regulations.

F. The applicant shall submit a sworn affidavit signed by an RF Engineer with knowledge of the proposed project affirming that the small wireless facilities will be compliant with all FCC and other governmental regulations in connection with human exposure to radio frequency emissions for every frequency at which the Small Wireless facility will operate. The applicant may provide one emissions report for the entire small wireless deployment if the applicant is using the same small wireless facility configuration for all installations within that batch or may submit one emissions report for each subgroup installation identified in the batch. However, the Town recognizes that the Federal Telecommunications Act of 1996 gives the Federal Communications Commission sole jurisdiction in the field of regulation of electromagnetic radio frequency emissions and small wireless facilities that meet Federal Communications Commission standards will not be conditioned or denied on the basis of radio frequency or electromagnetic frequency impacts.

G. The applicant shall provide proof of applicable FCC and other regulatory approvals required to provide the service(s) or utilize the technologies sought to be installed.

H. A professional engineer licensed by the State of Washington shall certify in writing, over his or her seal, that both construction plans and final construction of the small wireless facilities and structure or pole and foundation are designed to reasonably withstand wind and seismic loads as established by the International Building Code. Further, the construction drawings shall depict all existing and proposed improvements related to the proposed location, including but not limited to poles, driveways, ADA ramps, equipment cabinets, trees and structures within 250 feet from the proposed site. The construction drawings shall also include the applicant's plan for electric and fiber utilities, all conduits, cables, wires, handholes, junctions, meters, disconnect switches and any other ancillary equipment or construction necessary to construct the small wireless facility.

I. A traffic control plan developed through consultation with the Town Engineer (if required by the Town Representative).

#### **18.20.030. Review Process**

A. Review. The following provisions relate to review of applications for a small wireless facility permit.

1. Only complete applications for small wireless facilities containing all required submission elements shall be considered by the Town. Applications that are not made complete within 60 days of initial submission of application materials shall be deemed withdrawn.

2. In any zone, upon application for a small-wireless-facility land-use permit, the Town will permit small wireless facility deployment on existing or replacement utility poles conforming to the Town's generally applicable development and design standards adopted within this Chapter, except as provided in subsection B below.

3. For deployments in the public rights-of-way, vertical clearance shall be reviewed by the Town Representative to ensure that the small wireless facilities will not pose a hazard to other users of the rights-of-way.

4. Replacement poles and new poles shall comply with the Americans with Disabilities Act (ADA), Town construction and sidewalk clearance standards, traffic warrants, Town ordinances, and state and federal statutes and regulations in order to provide a clear and safe passage within

the rights-of-way. Further, the location of any replacement pole or new pole must be physically possible, cannot obstruct vehicular or pedestrian traffic or the clear zone, and cannot interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices).

5. No equipment shall be operated so as to produce noise in violation of town and state codes.

6. Small wireless facilities may not encroach onto or over private property or property outside of the right of way without a recorded easement from the property owner .

B. Review of Facilities. Review of the site locations proposed by the applicant shall be governed by the provisions of 47 USC 253 and 47 USC 332 and other applicable statutes, regulations, and case law. Applicants for wireless facility permits shall not be subject to unreasonable discrimination from other service providers, utilizing supporting infrastructure which is functionally equivalent, that is, service providers whose facilities are similarly situated in terms of structure, placement, or cumulative impacts. Small-wireless-facility land-use permit review under this Chapter shall neither prohibit nor have the effect of prohibiting the ability of an applicant to provide telecommunications services.

C. Final Decision. The Town Representative shall review and make a determination on all applications to site small wireless facilities under this Chapter. The Town Representative's decision shall be final and not appealable to the Town Hearing Examiner.

D. Shot Clocks. The Town shall make every practical effort consistent with any applicable provisions of state or federal law, and the preservation of the Town's health, safety and aesthetic environment, to comply with the Federal presumptively reasonable time periods for review of facilities for the deployment of small wireless facilities to the fullest extent possible.

E. Public Comment. The Town shall provide notice of a complete application for a small wireless facility permit on the Town's website with a link to the application. The notice shall include an email contact and telephone number for the applicant to answer citizen inquiries. The applicant is encouraged to host informational meetings for the public regarding the deployment. The Town shall post meeting notices, if any for informational meetings on its website. These meetings are entirely within the control of the applicant and are for the public's information and are neither Town hearings nor part of any land use appeal process.

F. **Withdrawal.** Any applicant may withdraw an application at any time, provided the withdrawal is in writing and signed by all persons who signed the original application or their successors in interest. When a withdrawal is received, the application shall be deemed null and void. If such withdrawal occurs, there shall be no refund of all or any portion of any applicable application fee.

#### **18.20.040. Permit Requirements.**

A. The permittee of any permit granted under this Chapter shall comply with all of the requirements within the small-wireless-facility land-use permit. However, additional permits may be required of an applicant prior to construction, such as, but not limited to, a right-of-way use permit, construction permit, and/or shoreline permit.

B. **Permit Time Limit.** Construction of the small wireless facility must be completed within six (6) months after the approval date by the Town. The permittee may request one (1) extension to be limited to three (3) months, if the applicant cannot construct the small wireless facility within the original six (6) month period.

C. **Site Safety and Maintenance.** The permittee must maintain the small wireless facilities in a safe and working condition. The permittee shall be responsible for the removal of any graffiti or other vandalism and shall keep the site neat and orderly, including but not limited to following any maintenance or modifications on the site.

**18.20.050. Modifications to small wireless facilities.** If a permittee desires to make a modification to an existing small wireless facility, including but not limited to expanding or changing the antenna type, increasing the equipment enclosure, placing additional pole-mounted or ground-mounted equipment, or modifying the concealment elements, then the applicant shall apply for a new small-wireless-facility land-use permit. A small wireless facility permit shall not be required for routine maintenance and repair of a small wireless facility within the rights-of-way, or the replacement of an antenna or equipment of similar size, weight, and height, provided that such replacement does not defeat the concealment elements used in the original deployment of the small wireless facility, does not impact the structural integrity of the pole, and does not require pole replacement. Further, a small wireless facility permit shall not be required for replacing equipment within the equipment enclosure or reconfiguration of fiber or power to the small wireless facility. Right-of-way use permits may be required for such routine maintenance, repair or replacement consistent with BAVMC 12.20. Eligible facilities modification requests shall be processed consistent with section 18.20.070, below.

**18.20.060. Design and concealment standards.** Small-wireless-facility deployments within the Town shall conform to the following design standards:

A. Attachment to existing or replacement poles.

1. A pole at a proposed location may be replaced with a taller pole for the purpose of accommodating a small wireless facility; provided, that the replacement pole shall not exceed a height that would exceed the limits contained within the definition of “small wireless facilities” provided in 47 CFR 1.6002(l)(1).

2. A pole extender may be used instead of replacing an existing pole but may not increase the height of the existing pole by greater than the limits contained within the definition of “small wireless facilities” provided in 47 CFR 1.6002(l)(1). A “pole extender” as used herein is an object affixed between the pole and the antenna for the purpose of increasing the height of the antenna above the pole. The pole extender shall be painted to approximately match the color of the pole and shall substantially match the diameter of the pole measured at the top of the pole.

3. Replacement poles must either match the approximate color and materials of the replaced pole or shall be the standard new pole used by the pole owner in the Town.

4. Antennas, equipment enclosures, and all ancillary equipment, boxes, and conduit shall be colored or painted to match the approximate color of the surface of the pole on which they are attached.

5. Panel antennas shall not be mounted more than twelve (12) inches from the surface of the pole.

6. Antennas should be placed in an effort to minimize visual clutter and obtrusiveness. Multiple antennas are permitted on a pole provided that each antenna enclosure shall not be more than three (3) cubic feet in volume.

7. A canister antenna may be mounted on top of an existing pole, which may not exceed the height requirements described in subsection A(1) above. A canister antenna mounted on the top of a pole shall be colored or painted to match the pole. The canister antenna must be placed to look as if it is an extension of the pole. In the alternative, the applicant may propose a side mounted canister antenna, so long as the inside edge of the antenna is no more than twelve (12) inches from the surface of the pole. All cables

shall be concealed either within the canister antenna or within a sleeve between the antenna and the pole or within the pole.

8. The furthest point of any antenna or equipment enclosure may not extend more than twenty (20) inches from the face of the pole.

9. An omni-directional antenna may be mounted on the top of an existing pole, provided such antenna complies with the height criteria contained in 47 CFR 1.6002(1)(1) and is mounted directly on the top of a pole or attached to a sleeve made to look like the exterior of the pole as close to the top of the pole as technically feasible. All cables shall be concealed within the sleeve between the bottom of the antenna and the mounting bracket or within the pole.

10. If technically feasible, the pole and small wireless facility overall height shall be consistent with the maximum height of residential structures defined in BAV 18.10.080 in order to maintain neighborhood character aesthetics and provide the most protection of existing trees, tree canopy, and vegetation.

11. All related equipment, including but not limited to ancillary equipment, radios, cables, associated shrouding, microwaves, and conduit which are mounted on poles shall not have an inside edge within six (6) inches of the surface of the pole, unless a further distance is technically required, and is confirmed in writing by the pole owner.

12. Equipment for small wireless facilities must be attached to the pole, unless otherwise permitted to be ground mounted pursuant to this Chapter. The equipment must be placed in the smallest enclosure possible for the intended purpose. The equipment enclosure and all other wireless equipment associated with the utility pole, including wireless equipment associated with the antenna and any pre-existing associated equipment on the pole, may not exceed twenty-eight (28) cubic feet. Multiple equipment enclosures may be acceptable if designed to more closely integrate with the pole design and does not cumulatively exceed twenty-eight (28) cubic feet. The applicant is encouraged to place the equipment enclosure behind any banners or road signs that may be on the pole, provided that such location does not interfere with the operation of the banners or signs.

13. An applicant who desires to enclose both its antennas and equipment within one unified enclosure may do so, provided that such enclosure is the minimum size necessary for its intended purpose and the enclosure and all other wireless equipment associated with the pole, including wireless equipment associated with the antenna and any pre-

existing associated equipment on the pole does not exceed twenty-eight (28) cubic feet. To the extent possible, the unified enclosure shall be placed so as to appear as an integrated part of the pole or behind banners or signs. The unified enclosure may not be placed more than six (6) inches from the surface of the pole, unless a further distance is required and confirmed in writing by the pole owner. To the extent possible, unified enclosure shall be placed so as to appear as an integrated part of the pole or behind any banners or signs that may be on the pole, provided that such location does not interfere with the operation of the banners or signs.

14. The use of a pole for the siting of a small wireless facility shall be considered secondary to the primary function of the pole. If the primary function of a pole serving as the host site for a small wireless facility becomes unnecessary, the pole shall not be retained for the sole purpose of accommodating the small wireless facility and the small wireless facility and all associated equipment shall be removed. In the event that the pole serving as the host for a small wireless facility becomes unnecessary and the small wireless facility must be removed, the applicant shall first attempt to site the small wireless facility on a remaining utility pole and may install a new pole at that same location only if such other suitable location does not exist.

15. The diameter of a replacement pole shall comply with the Town's sidewalk clearance requirements and shall not be more than a 25% increase by volume of the existing utility pole measured at the base of the pole.

16. All cables and wires shall be routed through conduit along the outside of the pole or within the pole. Any outside conduit shall be colored or painted to match the pole. The number of conduits shall be minimized to the number technically necessary to accommodate the small wireless facility(ies).

B. Small wireless facilities attached to existing non-residential buildings or non-residential structures other than poles shall conform to the following design criteria:

1. Small wireless facilities shall utilize the smallest mounting brackets necessary in order to provide the smallest offset from the building or structure.

2. Skirts or shrouds shall be utilized on the sides and bottoms of antennas in order to conceal mounting hardware, create a cleaner

appearance, and minimize the visual impact of the antennas. Exposed cabling/wiring is prohibited.

3. Small wireless facilities shall be painted, colored, and/or textured to match the adjacent building surfaces if doing so does not interfere with the functioning of the equipment.

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

1. Each strand-mounted facility shall not exceed three (3) cubic feet in volume;

2. Only one strand-mounted facility is permitted per cable between any two existing poles;

3. The strand-mounted devices shall be placed as close as possible to the nearest utility pole, in no event more than five (5) feet from the pole unless a greater instance is technically necessary or is required by the pole owner for safety clearance;

4. No strand-mounted device shall be located in or above the portion of the roadway (public or private) open to vehicular traffic or a private driveway;

5. Ground-mounted equipment to accommodate a shared mounted facility is not permitted except when placed in pre-existing equipment cabinets;

6. Pole-mounted equipment shall comply with the requirements of subsections A and B above.

7. Such strand-mounted devices must be installed to cause the least visual impact and without excess exterior cabling or wires (other than the original strand).

D. General requirements.

1. Ground-mounted equipment in the rights-of-way is discouraged, unless such facilities are placed under ground or the applicant can demonstrate that pole-mounted or undergrounded equipment is infeasible for the site or proposed deployment. If ground-mounted equipment is necessary, then the applicant shall submit a concealment element plan, in which plant material for screening will be preferred. Generators located in the rights of way are prohibited.

2. No equipment shall be operated so as to produce noise in violation of local and state regulations.

3. Replacement poles and new poles shall comply with the Americans with Disabilities Act (ADA), Town construction and sidewalk clearance standards, Town ordinance, and state and federal laws and regulations in order to provide a clear and safe passage within the rights-of-way. Further, the location of any replacement or new pole must: be physically possible, comply with applicable traffic warrants, not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices), and not adversely affect the public welfare, health or safety. Further, the centerline of any new pole must be aligned with the centerlines of existing poles on the same sidewalk or street segment. Alternate locations will be considered where there is conflict with overhead utility lines and facilities.

4. Replacement poles shall be located as near as possible to the existing pole with the requirement to remove the abandoned pole within 10 days of the installation of the replacement pole.

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

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

7. Side-arm mounts for antennas or equipment must be the minimum extension necessary and the inside edge of the antenna or equipment may be no more than twelve (12) inches off the pole.

8. The preferred location of a small wireless facility on a pole is the location with the least visible impact that preserves existing vegetation within the right-of-way. Removal of a significant tree or landmark tree, as defined in BAVMC 16.25, is prohibited.

9. If fencing is required for any equipment, chain link fencing material is prohibited.

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

E. Applicants for facilities to be located in the public rights-of way must have a valid franchise agreement. New poles within the rights-of-way or on private roadways (with property owner permission) are permitted if the applicant affirmatively certifies that:

1. The proposed small wireless facility cannot be located on an existing pole or structure while meeting deployment objectives;
2. The proposed small wireless facility meets the aesthetic requirements/design standards contained in this Chapter 18.20;
3. For private streets, the property owner has given permission for the placement of a new pole;
4. The proposed small wireless facility complies with Shoreline Management Act and SEPA, if applicable;
5. Any new pole shall be installed at the point closest to the side property line as possible.

F. Prior to the issuance of a permit to construct a new pole or ground-mounted equipment in the right-of-way, the applicant must obtain a site-specific agreement from the Town to locate such new pole or ground mounted equipment. This requirement also applies to replacement poles.

~~G.~~

#### **18.20.070 Eligible Facilities Requests**

A. Definitions. The following definitions shall apply to Eligible Facilities Requests only as described in this section.

1. “Applicant” means the entity or person, and such entity or person’s successor in interest, owning and/or operating the transmission equipment proposed in an eligible facilities modification application to be collocated, removed, or replaced.

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

- a Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- b Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems (“DAS”) and small wireless networks).
- c Any structure other than a tower that, at the time the relevant application is filed (with jurisdiction) under this section, supports or houses equipment described in subparagraph (a) and (b) above that has been reviewed and approved under the applicable siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.
- d The term does not include any structure that, at the time a completed eligible facilities modification application is filed with the Town under this section, does not support or house equipment described in subparagraph (a) and (b) above.

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

4. “Conceal” or “concealment” means eligible support structures and transmission facilities designed to look like some feature other than a wireless tower or base station, and that was part of a prior approval.

5. “Deemed approved” means an eligible facilities modification application that has been deemed approved upon the Town’s failure to act, and has become effective, as provided pursuant to the FCC Eligible Facilities Request Rules.

6. “Eligible Facilities Request” means any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: the collocation of new transmission equipment, the removal of transmission equipment, or the replacement of transmission equipment.

7. “Eligible facilities modification application” or “application” shall, unless the context clearly requires otherwise, mean a written document submitted to the city pursuant to this section 18.20.070 for review and approval of a proposed facilities modification.

8. “Eligible facilities modification permit” or “permit” shall, unless the context clearly requires otherwise, mean a written document issued by the approval authority pursuant to this chapter approving an eligible facilities modification application.

9. “Eligible support structure” means any tower or base station as defined in this chapter, provided that it is existing at the time the relevant application is filed with the Town.

10. “Existing” means a constructed tower or base station that has been reviewed and approved under the applicable zoning or siting process of the Town, or under any other State, county, or local regulatory review process; provided, that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

11. “FCC” means the Federal Communications Commission or its successor.

12. “FCC Eligible Facilities Request Rules” means 47 C.F.R. 1.6100 or as may be thereafter amended.

13. “Site” shall, for towers other than towers in the public rights-of-way, mean the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, shall mean and be further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

14. “Spectrum Act” means the “Middle Class Tax Relief and Job Creation Act of 2012” (Public Law 112-96; codified at 47 U.S.C. Section 1455(a)).

15. “Substantial Change” means a modification that substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

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

i. Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings’ rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act;

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

c. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

d. It entails any excavation or deployment outside the current site;

e. It would defeat the concealment elements of the eligible support structure; or

- f. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment; provided, however, that this limitation does not apply to any modification that is noncompliant only in manner that would exceed the thresholds identified in this section.

16. “Toll” means to stop a review period.

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

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

B. Application. The Town Representative shall prepare and make publicly available an application form used to consider whether an application is an Eligible Facilities Request. The application may not require the applicant to demonstrate a need or business case for the proposed modification.

C. Qualification as an Eligible Facilities Request. Upon receipt of an application for a complete Eligible Facilities Request, the Town Representative shall review such application to determine whether the application qualifies as an Eligible Facilities Request.

D. Timeframe for Review. Within sixty (60) days of the date on which an applicant submits a complete Eligible Facilities Request application, less any time period that may be excluded under the tolling provisions of this chapter or a tolling agreement between an applicant and the approval authority, the Town Representative shall approve the application unless it determines that the application is not subject to this section 18.20.070, or the proposed facilities modification will substantially change the physical dimension of an eligible support structure.

E. Tolling of the Time Frame for Review. The sixty (60) day review period begins to run when the application is filed and submits written documentation showing that the proposed modification is an Eligible Facilities Request. The sixty-day review period may be tolled only by mutual agreement by the Town Representative and the applicant or in cases where the Town Representative determines that the application is incomplete. The timeframe for review of an Eligible Facilities Request is not tolled by a moratorium on the review of applications.

1. To toll the timeframe for incompleteness, the Town Representative shall provide written notice to the applicant within thirty (30) days of receipt of the application, clearly and specifically delineating all missing documents or information required in the application. A notice of incompleteness from the Town will be deemed received by the applicant upon the earlier of personal service upon the authorized person, delivery by electronic mail to the authorized person (if such delivery is authorized for receipt of notice by the authorized person), or three days from deposit of the notice in the United States Mail, postage prepaid, and in an envelope properly addressed to the authorized person using the address set forth in the application.

2. The timeframe for review begins running again when the applicant makes a supplemental submission in response to the Town Representative's notice of incompleteness.

3. Following a supplemental submission, the Town Representative will notify the applicant within ten (10) days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this sub-section. Second or subsequent notice of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

F. Determination That Application Is Not an Eligible Facilities Request. If the Town Representative determines that the applicant's request does not qualify as an Eligible Facilities Request, the Town Representative shall deny the application.

G. Failure to Act. In the event the Town Representative fails to approve or deny a request for an Eligible Facilities Request within the timeframe for review (accounting for any tolling), the request shall be deemed granted, except as may be otherwise determined by a court of competent jurisdiction, and shall be subject to generally applicable enforcement and compliance requirements in the same manner

as an eligible facilities modification permit issued pursuant to this chapter. The deemed grant does not become effective until the applicant notifies the Town in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

**18.20.080 Appeals.** Permit decisions made by the Town Representative pursuant to this Chapter are final decisions appealable only to Superior Court.

**Section 2. Severability.** If any section, sentence, clause phrase of this ordinance should be held to be invalid or un-constitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this ordinance.

**Section 3. Effective Date.** This ordinance or a summary thereof consisting of the title shall be published upon publication.

Passed by the Town Council of the Town of Beaux Arts Village, the \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
John Gillem, Mayor

Attest/Authenticated:

Approved as to Form:

\_\_\_\_\_  
Sue Ann Spens, Clerk/Treasurer

\_\_\_\_\_  
David Linehan, Town Attorney