



WORKSHOP MEETING NOTICE OAK HARBOR CITY COUNCIL

NOTICE IS HEREBY GIVEN that the Oak Harbor City Council will hold a Workshop Meeting on:

Date: Wednesday, September 23, 2015

Time: 3:00 p.m. – 5:00 p.m.

Location: City Hall Council Chambers, 865 SE Barrington Drive, Oak Harbor, WA 98277

Note that no action will be taken.

AGENDA

1. Pending Agenda Items

- a. Wireless Facilities Modification (10/20) – Dev/Services
- b. Proposed Amendments to the Council Rules of Procedure (10/06) – Admin
- c. Upcoming Purchase Authorizations (10/06) – PW
- d. Park Board Recommendation to Name the Leash Free Dog Park to “Sunrise Rotary Dog Park” (10/06) – PW
- e. Lease Agreement with Island County Emergency Services Communication Center (I-COM) (10/06) – PD

2. Departmental Briefing

- a. Clean Water Facility Project Update

Anna M. Thompson
City Clerk
Posted on September 21, 2015

POSTED: City Hall Bulletin Boards
www.oakharbor.org

EMAILED: editor@whidbeynewsgroup.com
news@skagitpublishing.com
media@whidbey.net
Mayor Scott Dudley
Oak Harbor City Council
Directors

REMOVE: After September 23, 2015

The City Council may meet informally in workshop sessions (open to the public) to do concentrated strategic planning, to review forthcoming programs of the City, receive progress reports on current programs or projects, or receive other similar information from the City Administrator, provided that all discussions and conclusions thereon shall be informal. Council shall make no disposition of any item at a workshop meeting. Public comment is not normally allowed at workshop meetings, although Council may allow, or request participation.

Please contact the City Clerk at 360-279-4539 within 24 hours advance notice for special accommodations.



Workshop Item

Pending Agenda Items

Item 1.a Wireless Facilities Modification

Steve Powers, Development Services Director

Attachments

Attachment A: Wireless Facilities Modifications Report

**City of Oak Harbor
Report to the City Council**

Date: September 23, 2015
Subject: Wireless Facilities Modifications
– Code Amendment

FROM: Steve Powers, AICP,
Development Services Department, Director

PURPOSE

This report presents a required code amendment to establish an expedited review process for modifications to existing wireless communications towers and base stations.

BACKGROUND

In 2012 the US Congress passed the “Middle Class Tax Relief and Job Creation Act of 2012”. Section 6409 of this Act (a.k.a. the “Spectrum Act”) has mandated that “local governments approve, and *cannot deny*, an application requesting modification of an existing tower or base station if such modification does not substantially change the physical dimensions of such tower or base station.” The purpose of this act is to facilitate and expedite the deployment of equipment and infrastructure to meet the demand for wireless capacity. Attachment 1 provides the full text of Section 6409. The Federal Communications Commission issued a report and order on October 21, 2014 clarifying and implementing statutory requirements included in Section 6409. The full text of this report and order may be found at <https://www.fcc.gov/document/wireless-infrastructure-report-and-order>.

An amendment to the Oak Harbor Municipal Code (OHMC) is necessary to accommodate the Spectrum Act’s requirements. This amendment is anticipated to create a new Chapter (19.30) in the OHMC titled “Wireless Facilities Modifications.”

DISCUSSION

Chapter 19.29, OHMC (Wireless Communications Facilities – Attachment 2) establishes locations and options for wireless facilities including: micro facilities¹; mini facilities²; monopole I³; and monopoles II⁴. Chapter 19.29 focuses primarily on the construction of new facilities, while this chapter permits collocation of wireless facilities on existing structures, it does not provide an expedited application and review process nor provide for mandatory approval if specific criterion are not met.

Creation of Chapter 19.30 is a legislative action and is consistent with goals and policies established in the City of Oak Harbor Comprehensive Plan (November 2014) and serves to implement Goal 2 and policy 2d of the Utility Element.

¹ A micro facility is an attached wireless communication facility which consists of antennas equal to or less than four feet in height and with an area not more than 580 square inches.

² A mini facility is an attached wireless communication facility which consists of antennas equal to or less than 10 feet in height and with an area not more than 50 square feet.

³ A monopole I is a wireless communications facility which consists of a support structure (maximum 60 feet in height) and antenna equal to or less than 15 feet in height.

⁴ A monopole II is a wireless communication facility which consists of a support structure (maximum 150 feet in height) and antenna equal to or less than 15 feet in height.

Utilities Goal 2: *Process permit requests for utilities in a fair and timely manner to ensure predictability.*

Utilities Policy 2d: *The City should review and amend existing regulations as necessary to provide clear and objective standards for maintenance, repair, installation and replacement of utilities. Such changes shall be consistent with other Goals and Policies of the Comprehensive Plan for construction practices, restoration of City property/right-of-way, environmental protection and oak tree preservation.*

This expedited review is contingent upon the determination that the modification does not substantially change the physical dimensions of such tower or base station. Substantially change is defined as:

- a) The proposed facilities modification would not increase the height of the eligible support structure by more than ten percent (10%), or twenty (20) feet, whichever is greater; or
- b) The mounting of equipment that would involve adding an appurtenance to the body of the eligible support structure would not protrude from the edge of the structure more than twenty (20) feet, or more than the width of the structure at the level of the appurtenance, whichever is greater.

A modification meeting these criteria is also exempt from the requirements of the State Environmental Policy Act (RCW 43.21C.0384).

This amendment establishes application submittal requirements, permit classification, timing for permit review, and the approval process. Following adoption of this amendment, Development Services staff will prepare an application based on the new Chapter 19.30 guidelines and requirements. Staff will also amend Schedule A of the Master Fee Schedule to include this application and review fee. The proposed Chapter 19.30 is Attachment 3.

This amendment is categorically exempt from the State Environmental Policy Act (WAC 197-11-800(19)). The following steps represent a proposed schedule for this code amendment:

- 9/22 PC Public Hearing
- 9/23 CC Workshop
- 10/20 CC Public Hearing/Adoption

RECOMMENDATION

No action is necessary at this meeting.

ATTACHMENTS

1. Section 6409 of the Spectrum Act
2. Chapter 19.29, OHMC, Wireless Communications Facilities
3. Proposed Ordinance No. 1744 (Wireless Facilities Modifications)

47 USC 1455.

SEC. 6409. WIRELESS FACILITIES DEPLOYMENT.

§ 1455. Wireless facilities deployment

(a) FACILITY MODIFICATIONS.—

(1) In General - Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104–104) or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

(2) Eligible Facilities Request - For purposes of this subsection, the term “eligible facilities request” means any request for modification of an existing wireless tower or base station that involves:

- (A) collocation of new transmission equipment;
- (B) removal of transmission equipment; or
- (C) replacement of transmission equipment.

(3) Applicability of Environmental Laws - Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969.

(b) FEDERAL EASEMENTS AND RIGHTS-OF-WAY

(1) Grant - If an executive agency, a State, a political subdivision or agency of a State, or a person, firm, or organization applies for the grant of an easement or right-of-way to, in, over, or on a building or other property owned by the Federal Government for the right to install, construct, and maintain wireless service antenna structures and equipment and backhaul transmission equipment, the executive agency having control of the building or other property may grant to the applicant, on behalf of the Federal Government, an easement or right-of-way to perform such installation, construction, and maintenance.

(2) Application - The Administrator of General Services shall develop a common form for applications for easements and rights-of-way under paragraph (1) for all executive agencies that shall be used by applicants with respect to the buildings or other property of each such agency.

(3) Fee

(A) In general, notwithstanding any other provision of law, the Administrator of General Services shall establish a fee for the grant of an easement or right-of-way pursuant to paragraph (1) that is based on direct cost recovery.

(B) Exceptions - The Administrator of General Services may establish exceptions to the fee amount required under subparagraph (A)—

- (i) in consideration of the public benefit provided by a grant of an easement or right-of-way; and

(ii) in the interest of expanding wireless and broadband coverage.

(4) Use of fees collected - Any fee amounts collected by an executive agency pursuant to paragraph (3) may be made available, as provided in appropriations Acts, to such agency to cover the costs of granting the easement or right-of-way.

(c) MASTER CONTRACTS FOR WIRELESS FACILITY SITINGS

(1) In general - notwithstanding section 704 of the Telecommunications Act of 1996 or any other provision of law, and not later than 60 days after February 22, 2012, the Administrator of General Services shall—

(A) Develop 1 or more master contracts that shall govern the placement of wireless service antenna structures on buildings and other property owned by the Federal Government; and

(B) In developing the master contract or contracts, standardize the treatment of the placement of wireless service antenna structures on building rooftops or facades, the placement of wireless service antenna equipment on rooftops or inside buildings, the technology used in connection with wireless service antenna structures or equipment placed on Federal buildings and other property, and any other key issues the Administrator of General Services considers appropriate.

(2) Applicability - The master contract or contracts developed by the Administrator of General Services under paragraph (1) shall apply to all publicly accessible buildings and other property owned by the Federal Government, unless the Administrator of General Services decides that issues with respect to the siting of a wireless service antenna structure on a specific building or other property warrant nonstandard treatment of such building or other property.

(3) Application - The Administrator of General Services shall develop a common form or set of forms for wireless service antenna structure siting applications under this subsection for all executive agencies that shall be used by applicants with respect to the buildings and other property of each such agency.

(d) EXECUTIVE AGENCY DEFINED - In this section, the term “executive agency” has the meaning given such term in section 102 of title 40.
(Pub. L. 112–96, title VI, § 6409, Feb. 22, 2012, 126 Stat. 232.)

Chapter 19.29

WIRELESS COMMUNICATIONS FACILITIES

Sections:

- 19.29.010 Purpose.**
- 19.29.020 Development standards for micro facilities.**
- 19.29.030 Development standards for mini facilities.**
- 19.29.040 Development standards for macro facilities.**
- 19.29.050 Development standards for monopole I.**
- 19.29.060 Development standards for monopole II.**
- 19.29.070 Additional permit criteria for monopole I and monopole II.**
- 19.29.080 Exemption.**
- 19.29.090 Obsolescence.**

19.29.010 Purpose.

In addition to the general purposes of the comprehensive plan and this title, this chapter is included in order to provide for a wide range of locations and options for wireless communications providers while minimizing the unsightly characteristics associated with wireless communications facilities and to encourage creative approaches in locating wireless communications facilities which will blend in with the surroundings of such facilities. (Ord. 1555 § 12, 2009).

19.29.020 Development standards for micro facilities.

- (1) Micro facilities are permitted in all zones.
- (2) A micro facility shall be located on existing buildings, poles or other existing support structures. A micro facility may locate on buildings and structures; provided, that the interior wall or ceiling immediately adjacent to the facility is not designated residential space.
- (3) Antennas equal to or less than four feet in height (except omni-directional antennas which can be up to six feet in height) and with an area of not more than 580 square inches in the aggregate (e.g., one-foot diameter parabola or two-foot by one-and-one-half-foot panel as viewed from any one point) are exempt from the height limitation of the zone in which they are located. Structures which are nonconforming with respect to height may be used for the placement of omni-directional antennas providing they do not extend more than six feet above the existing structure. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure.
- (4) The micro facility shall be exempt from design review if the antenna and related components are the same color as the existing building, pole or support structure on which it is proposed to be located.
- (5) The shelter or cabinet used to house radio electronic equipment shall be contained wholly within a building or structure, or otherwise appropriately concealed, camouflaged or located underground.

(6) In single-family residential (PRE, R-1 and R-2) zones, micro facilities for a specific wireless provider shall be separated by a distance equal to or greater than 1,320 linear feet from other micro facilities of the same wireless provider. (Ord. 1555 § 12, 2009).

19.29.030 Development standards for mini facilities.

(1) Mini facilities are permitted in all zones except single-family residential (PRE, R-1 and R-2) zones.

(2) The mini facility may be located on buildings and structures; provided, that the immediate interior wall or ceiling adjacent to the facility is not a designated residential space.

(3) The mini facility shall be exempt from design review if the antenna and related components are the same color as the existing building, pole or support structure on which it is proposed to be located.

(4) The shelter or cabinet used to house radio electronic equipment shall be contained wholly within a building or structure, or otherwise appropriately concealed, camouflaged or located underground.

(5) Mini facilities shall comply with the height limitation specified for all zones except as follows: Omni-directional antennas may exceed the height limitation by 10 feet or, in the case of nonconforming structures, the antennas may extend 10 feet above the existing structure. Panel antennas may exceed the height limitation if affixed to the side of an existing nonconforming building and they blend in architecturally with the building. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure. (Ord. 1555 § 12, 2009).

19.29.040 Development standards for macro facilities.

(1) Macro facilities are permitted in all zones except single-family residential (PRE, R-1 and R-2) zones.

(2) Macro facilities may be located on buildings and structures; provided, that the immediate interior wall or ceiling adjacent to the facility is not a designated residential space.

(3) The macro facility shall be exempt from design review if the antenna and related components are the same color as the existing building, pole or support structure on which it is proposed to be located.

(4) The shelter or cabinet used to house radio electronic equipment shall be contained wholly within a building or structure, or otherwise appropriately concealed, camouflaged or located underground.

(5) Macro facilities shall comply with the height limitation specified for all zones, except as follows: Omni-directional antennas may exceed the height limitation by 15 feet, or, in the case of nonconforming structures, the antennas may extend 15 feet above the existing structure. Panel antennas may exceed the height limitation if affixed to the side of an existing building and architecturally blends in with the building. Placement of an antenna on a nonconforming

structure shall not be considered to be an expansion of the nonconforming structure. (Ord. 1555 § 12, 2009).

19.29.050 Development standards for monopole I.

- (1) Monopole I facilities are only permitted in the industrial (I) zone.
- (2) Monopole I facilities are permitted in community commercial (C-3), highway service commercial (C-4), highway corridor commercial (C-5), planned business park (PBP), planned industrial park (PIP), and public facilities (PF) zones with a conditional use permit.
- (3) Monopole I facilities are not permitted in residential (PRE, R-1, R-2, R-3 and R-4), residential office (RO), neighborhood commercial (C-1) or central business district (CBD) zones, except when expressly provided for in this chapter.
- (4) Antennas equal to or less than 15 feet in height or up to four inches in diameter may be a component of a monopole I facility. Antennas which extend above the wireless communications support structure shall not be calculated as part of the height of the monopole I wireless communications support structure. For example, the maximum height for a monopole I shall be 60 feet and the maximum height of antennas which may be installed on the support structure could be 15 feet, making the maximum permitted height of the support structure and antennas 75 feet (60 feet plus 15 feet).
- (5) Co-location on an existing support structure shall be permitted. Macro facilities are the largest wireless communications facilities allowed on monopole I.
- (6) The shelter or cabinet used to house radio electronics equipment and the associated cabling connecting the equipment shelter or cabinet to the monopole I facilities shall be concealed, camouflaged or placed underground. Monopole I facilities shall be subject to review by the planning commission using the procedures and review criteria specified in Chapter 19.48 OHMC and this chapter.
- (7) Monopole I facilities shall be landscaped in conformance with Chapter 19.46 OHMC.
- (8) Monopole I facilities adjacent to a single-family zone shall be set back a distance equal to the height of the wireless communications support structure from the nearest single-family lot line. (Ord. 1555 § 12, 2009).

19.29.060 Development standards for monopole II.

- (1) Monopole II facilities are only permitted in the industrial (I) zone; provided the wireless communications support structure shall be designed to accommodate two or more wireless communications facilities.
- (2) Monopole II facilities are permitted in highway service commercial (C-4), planned business park (PBP), planned industrial park (PIP), and public facilities (PF) zones with a conditional use permit.

(3) Monopole II facilities are not permitted in residential (PRE, R-1, R-2, R-3 and R-4), residential office (RO), neighborhood commercial (C-1) or central business district (CBD) zones, except when expressly provided for in this chapter.

(4) Monopole II facilities which exceed 60 feet in height or are located within 300 feet of a residential zone shall require a conditional use permit.

(5) Co-location of wireless communications facilities on an existing support structure shall be permitted.

(6) Macro facilities are the largest permitted wireless communications facilities allowed on a monopole II facility. Antennas which extend above the monopole II wireless communications support structure shall not be calculated as part of the height of the wireless communications support structure. For example, the maximum height for a monopole II facility shall be 150 feet and the maximum height of antennas which may be installed on the support structure could be 15 feet, making the maximum permitted height of the support structure and antennas 165 feet (150 feet plus 15 feet).

(7) The shelter or cabinet used to house radio electronics equipment and the associated cabling connecting the equipment shelter or cabinet to the monopole I facilities shall be concealed, camouflaged or placed underground. Monopole I facilities shall be subject to review by the planning commission using the procedures and review criteria specified in Chapter 19.48 OHMC and this chapter.

(8) Monopole II facilities shall be landscaped in conformance with Chapter 19.46 OHMC.

(9) Monopole II facilities adjacent to a single-family zone shall be set back a distance equal to the height of the wireless communications support structure from the nearest single-family lot line.

(10) Monopole II facilities shall be separated from each other by a distance equal or greater than 1,320 feet. (Ord. 1555 § 12, 2009).

19.29.070 Additional permit criteria for monopole I and monopole II.

In addition to the permit criteria specified in Chapters 19.48 and 19.67 OHMC, the following specific criteria shall be met before a site plan review or conditional use permit can be granted:

(1) Antennas may not extend more than 15 feet above their supporting structure, monopole, building or other structure.

(2) Site location and development shall preserve the pre-existing character of the surrounding buildings and land uses and the zone district to the extent consistent with the function of the communications equipment. Wireless communications towers shall be integrated through location and design to blend in with the existing characteristics of the site to the extent practical. Existing on-site vegetation shall be preserved or improved, and disturbance of the existing topography shall be minimized, unless such disturbance would result in less visual impact of the site to the surrounding area.

(3) Accessory equipment facilities used to house wireless communications equipment should be located within buildings or placed underground when possible. When they cannot be located in buildings, equipment shelters or cabinets shall be screened and landscaped in conformance with Chapter 19.46 OHMC.

(4) No equipment shall be operated so as to produce noise in levels above 45 dB as measured from the nearest property line on which the attached wireless communications facility is located.

(5) In any proceeding regarding the issuance of site plan review or a conditional use permit under the terms of this chapter, federal law prohibits consideration of environmental effects of radio frequency emissions to the extent that the proposed facilities comply with the Federal Communications Commission regulations concerning such emission.

(6) Towers, antennas or other objects that penetrate the 100:1 angle slope criteria established in Federal Aviation Regulation (FAR) Part 44 (Sections 77.13(a)(1) and 77.13(a)(2)(I), respectively) shall be reviewed for compatibility with airport operations. No tower, antenna or other object shall constitute a hazard to air navigation, interfere with the safe operation of aircraft or deny the existing operational capability of Ault Field. (Ord. 1555 § 12, 2009).

19.29.080 Exemption.

The following are exempt from the requirement of a conditional use permit, and shall be considered a permitted use in all zones where wireless and attached wireless communications facilities are permitted: Minor modifications of existing wireless communications facilities and attached wireless communications facilities, whether emergency or routine, so long as there is little or no change in the visual appearance. Minor modifications are those modifications, including the addition of antennas, to conforming wireless and attached wireless communications facilities that meet the performance standards set forth in this chapter. (Ord. 1555 § 12, 2009).

19.29.090 Obsolescence.

A wireless communications facility or attached wireless communications facility shall be removed by the facility owner within six months of the date it ceases to be operational or if the facility falls into disrepair. (Ord. 1555 § 12, 2009).

ORDINANCE NO. 1744

AN ORDINANCE OF THE CITY OF OAK HARBOR ADDING A NEW CHAPTER 19.30 TO THE OAK HARBOR MUNICIPAL CODE ENTITLED "WIRELESS FACILITIES MODIFICATIONS" RELATING TO COLLOCATION, REMOVAL AND REPLACEMENT OF WIRELESS FACILITIES; ESTABLISHING DEVELOPMENT REGULATIONS FOR COLLOCATION, REMOVAL AND REPLACEMENT OF WIRELESS TRANSMISSION FACILITIES TO CONFORM TO FEDERAL LAW AND REGULATIONS; ESTABLISHING AN APPLICATION SUBMITTAL AND APPROVAL PROCESS; PROVIDING FOR TERMINATION OF NON-CONFORMING STRUCTURES; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, in 1934, Congress enacted the Communications Act of 1934, creating the FCC and granting it authority over common carriers engaged in the provision of interstate or foreign communications services; and

WHEREAS, in 1996 Congress enacted Pub. L. No. 104-104, 110 Stat. 70 (the "1996 Act"), amending the Communications Act of 1934 and implementing regulations applicable to both wireless and wireline communications facilities for the purpose of removal of barriers to entry into the telecommunications market while preserving local government zoning authority except where specifically limited under the 1996 Act; and

WHEREAS, in the 1996 Act, Congress imposed substantive and procedural limitations on the traditional authority of state and local governments to regulate the location, construction, and modification of wireless facilities and incorporated those limitations into the Communications Act of 1934; and

WHEREAS, the City has adopted regulations that have been codified as part of the Municipal Code of the City establishing local requirements for the location, construction and modification of wireless facilities; and

WHEREAS, in 2012 Congress passed the "Middle Class Tax Relief and Job Creation Act of 2012" (the "Spectrum Act") (PL-112-96; codified at 47 U.S.C. §1455(a)); and

WHEREAS, Section 6409 (hereafter "Section 6409") of the Spectrum Act implements additional substantive and procedural limitations upon state and local government authority to regulate modification of existing wireless antenna support structures and base stations; and

WHEREAS, Congress through its enactment of Section 6409 of the Spectrum Act has mandated that local governments approve, and cannot deny, an application requesting modification of an existing tower or base station if such modification does not substantially change the physical dimensions of such tower or base station; and

WHEREAS, the 1996 Act empowers the Federal Communications Commission (the "FCC") to prescribe such rules and regulations as may be necessary in the public interest to carry out the

provisions of the 1996 Act and subsequently added portions of the 1996 Act such as Section 6409; and

WHEREAS, the FCC, pursuant to its rule making authority, adopted and released a Notice of Proposed Rulemaking in September of 2013 (*in re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 13-122) which focused in part upon whether or not the FCC should adopt rules regarding implementation of Section 6409; and

WHEREAS, on October 21, 2014, the FCC issued its report and order, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 14-153, in the above-described proceeding (the "Report and Order" or "Order") clarifying and implementing statutory requirements related to state and local government review of infrastructure siting, including Section 6409, with the intent of facilitating and expediting the deployment of equipment and infrastructure to meet the demand for wireless capacity; and

WHEREAS, the rules adopted by the FCC in its Report and Order implementing Section 6409 are intended by the FCC to spur wireless broadband deployment, in part, by facilitating the sharing of infrastructure that supports wireless communications through incentives to collocate on structures that already support wireless facilities; and

WHEREAS, the Report and Order also adopts measures that update the FCC's review processes under the National Environmental Policy Act of 1969 ("NEPA") and section 106 of the National Historic Preservation Act of 1966 ("NHPA"), with a particular emphasis on accommodating new wireless technologies that use smaller antennas and compact radio equipment to provide mobile voice and broadband service; and

WHEREAS, on January 5, 2015, the FCC released an Erratum to the Report and Order making certain amendments to the provisions of the Report and Order related to NEPA and Section 106 of the NHPA; and

WHEREAS, that part of the Report and Order related to implementation of Section 6409, amends 47 C.F.R. Part 1 (PART 1 – PRACTICE AND PROCEDURE) by adding new Subpart CC §1.40001 and establishing both substantive and procedural limitations upon local government application and development requirements applicable to proposals for modification to an existing antenna support structure or an existing base station ("Eligible Facility Request Rules"); and

WHEREAS, the Order, among other things, defines key terms utilized in Section 6409, establishes application requirements limiting the information that can be required from an applicant, implements a 60-day shot clock and tolling provisions, establishes a deemed approved remedy for applications not timely responded to, requires cities to approve a project permit application requesting modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, and establishes development standards that govern such proposed modifications; and

WHEREAS, the Report and Order provides that the Eligible Facility Request Rules will be effective ninety (90) days following publication in the Federal Register; and

WHEREAS, the Order was published in the Federal Register on Thursday, January 8, 2015, Federal Register; Vol. 80; No. 5, resulting in the Eligible Facility Request Rules becoming effective on April 8, 2015; and

WHEREAS, the Order is subject to appeal, however, even if an appeal is filed, the appeal will not automatically result in delay of implementation of the Eligible Facility Request Rules; and

WHEREAS, the City Council finds that it is required under Section 6409 of the Spectrum Act and the Eligible Facility Request Rules established in the Order, to adopt and implement local development and zoning regulations that are consistent with Section 6409 and the Order; and

WHEREAS, in accordance with RCW 36.70A.106 and WAC 365-196-630, a notice of intent to adopt the proposed new development regulations was sent to the State of Washington Department of Commerce and to other state agencies to allow for a sixty (60) day review and comment period, which comment period ended prior to adoption of this ordinance; and

WHEREAS, on the 22nd day of September, 2015, the Planning Commission held a duly noticed public hearing related to the proposed interim development and zoning regulations set forth in the proposed ordinance; and

WHEREAS; the City Council considered the proposed development and zoning regulations on the 20th day of October, 2015; and

WHEREAS, the City Council finds that the proposed development and zoning regulations are reasonable and necessary in order to bring the City's development regulations into compliance with the mandate imposed upon the City by Congress pursuant to Section 6409 and the regulations imposed upon the City by the FCC pursuant to its Report and Order, and are therefore in the public interest;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

Section One. There is hereby added a new Chapter 19.30 entitled "Wireless Facilities Modifications" to the Oak Harbor Municipal Code to read as follows:

CHAPTER 19.30
WIRELESS FACILITIES MODIFICATIONS

Sections:

19.30.010	Title
19.30.020	Adoption of Findings and Conclusions
19.30.030	Purpose and Intent
19.30.040	Definitions
19.30.050	Applicability – Relationship to Other Rules and Regulations
19.30.060	Permit Classification
19.30.070	Application Submittal Requirements
19.30.080	Review of Application; Approval
19.30.090	Substantial Change Criteria
19.30.100	Nonconforming Structure; Termination
19.30.110	Enforcement

19.30.010 Title. This chapter shall be known and referred to as the "Wireless Facilities Modification Code" or "WFM Code". Unless the context indicates otherwise, a reference herein to "this code" or "this chapter" shall mean and refer to the Wireless Facilities Modification Code.

19.30.020 Adoption of Findings and Conclusion. The recitals set forth in the ordinance adopting this code are adopted as findings and conclusions of the City Council.

19.30.030 Purpose and Intent. The purpose and intent of this chapter are to:

- (1) To implement §6409 of the "Middle Class Tax Relief and Job Creation Act of 2012" (the "Spectrum Act") (PL-112-96; codified at 47 U.S.C. §1455(a)) which requires the City to approve any eligible facilities request for a modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station;
- (2) To implement the FCC rules set forth at 47 C.F.R. Part 1 (PART 1 – PRACTICE AND PROCEDURE) new Subpart CC §1.40001 (Wireless Facility Modifications), which rules implement §6409 of the Spectrum Act;
- (3) To establish procedural requirements and substantive criteria applicable to review and approval or denial of applications for an eligible facilities modification;
- (4) To ensure that application submittal requirements are related to information reasonably necessary to the determination of whether or not the proposed modification will result in a substantial change in the physical dimensions of the eligible support structure;
- (5) To exempt facilities modifications approval under this chapter as eligible facilities requests from zoning and development regulations that are inconsistent with or preempted by Section 6409 of the Spectrum Act;

- (6) To preserve the City's right to continue to enforce and condition approvals under this chapter on compliance with generally applicable building, structural, electrical and safety codes and with other laws codifying objective standards reasonably related to health and safety;
- (7) To promote timely decisions under this chapter;
- (8) To ensure that decisions are made consistently and predictably;
- (9) To incorporate provisions of RCW 43.21C.0384 that exempt eligible facilities modifications from review under RCW 43.21C.030(2)(c), (State Environmental Policy Act);
- (10) To recognize that Section 6409(a)(1) of the Spectrum Act operates to preempt any provision of the State Environmental Policy Act (RCW Ch. 43.21C) to the extent that any such provision, including RCW 43.21C.030(2)(c), would prohibit a City from approving any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station; and
- (11) To provide for termination of wireless facilities modifications approved pursuant to this chapter, as nonconforming structures in the event that §6409(a) of the Spectrum Act is found to be unconstitutional or otherwise determined to be invalid or unenforceable and such modifications would otherwise have been in derogation of development regulations in place at the time of receipt of a completed application.

19.30.040 Definitions. The following definitions shall apply in the interpretation and enforcement of this chapter, unless the context clearly requires otherwise. Any term or phrase not defined herein shall have the meaning that is given to that term or phrase in Section 19.08 of the Oak Harbor Municipal Code. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is always mandatory and not merely directory and the word "may" is always discretionary. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law, regulation or rule referred to herein be renumbered or amended, then the reference shall be read to refer to the renumbered or amended provision.

- (1) "Approval authority" is the public official, or designee, who has authority under the Oak Harbor Municipal Code to administratively issue project permit approvals.
- (2) "Applicant" shall mean and refer to the person, and such 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.
- (3) "Authorized person" is the person, employees, agents, consultants, and contractors, authorized in writing by applicant to complete and submit an eligible facilities

modification application on behalf of applicant and who is authorized to receive any notices on behalf of applicant of any action taken by the City regarding the application.

- (4) "Base station" shall mean and refer to the structure or equipment at a fixed location that enables wireless communications licensed or authorized by the FCC, between user equipment and a communications network. The term does not encompass a tower as defined in this chapter or any equipment associated with a tower.
- (a) The term includes, but is not limited to, 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) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).
- (c) The term includes any structure other than a tower that, at the time an eligible facilities modification application is filed with the City under this chapter, supports or houses equipment described in paragraphs (i) – (ii) above, and that has been reviewed and approved under the applicable zoning or siting process, or under another State, county or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.
- (d) The term does not include any structure that, at the time a completed eligible facilities modification application is filed with the City under this section, does not support or house equipment described in paragraphs (a) – (b) above.
- (5) "City" shall mean and refer to the City of Oak Harbor.
- (6) "City Code" shall mean and refer to the codified ordinances of the City.
- (7) "Collocation" shall mean and refer to the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.
- (8) "Conceal" or "Concealment" shall mean and refer to eligible support structures and transmission facilities designed to look like some feature other than a wireless tower or base station.
- (9) "Deemed approved" shall mean and refer to a wireless facilities modification application that has been deemed approved upon the City's failure to act, and has become effective, as provided pursuant to the FCC Eligible Facilities Request Rules.

- (10) "Eligible support structure" shall mean and refer to any existing tower or base station as defined in this chapter, provided that it is in existence at the time the eligible facilities modification application is filed with the City under this chapter.
- (11) "Existing" shall, for purpose of this chapter and as applied to a tower or base station, mean and refer to a constructed tower or base station that has been reviewed and approved under the applicable zoning or siting process of the City, or under another 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.
- (12) "Proposed facilities modification" shall mean and refer to a proposal submitted by an applicant to modify an eligible support structure which the applicant asserts is subject to review under Section 6409 of the Spectrum Act, and involving:
- (a) collocation of new transmission equipment;
 - (b) removal of transmission equipment; or
 - (c) replacement of transmission equipment.
- (13) "FCC" shall mean and refer to the Federal Communications Commission or its successor.
- (14) "FCC Eligible Facilities Request Rules" shall mean and refer to 47 C.F.R. Part 1 (PART 1 – PRACTICE AND PROCEDURE), Subpart CC §1.40001 as established pursuant to its Report and Order in, *In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 14-153, or as may be thereafter amended.
- (15) "Site" shall, for towers other than towers in the public rights-of-way, mean and refer to 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.
- (16) "Small cell facility" shall mean and refer to a personal wireless services facility that meets both of the following qualifications:
- (a) Each antenna is located inside an antenna enclosure of no more than three (3) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three (3) cubic feet; and
 - (b) Primary equipment enclosures are no larger than seventeen (17) cubic feet in volume. The following associated equipment may be located outside the primary equipment enclosure and if so located, are not included in the calculation of

equipment volume: electric meter, concealment, telecomm demarcation box, ground-based enclosures, battery back-up power systems, grounding equipment, power transfer switch, and cut-off switch.

- (17) "Small cell network" shall mean and refer to a collection of interrelated small cell facilities designed to deliver personal wireless services.
- (18) "Spectrum Act" shall mean and refer to the "Middle Class Tax Relief and Job Creation Act of 2012" (Public Law 112-96; codified at 47 U.S.C. §1455(a)).
- (19) "Substantial change criteria" shall mean and refer to the criteria set forth in this chapter at OHMC 19.30.090.
- (20) "Transmission Equipment" shall mean and refer to equipment that facilitates transmission for any wireless communication service licensed or authorized by the FCC, 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.
- (21) "Tower" shall mean and refer to any structure built for the sole or primary purpose of supporting any antennas and their associated facilities, licensed or authorized by the FCC, 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.
- (22) "Wireless facilities modification" shall mean and refer to any proposed facilities modification that has been determined pursuant to the provisions of this chapter to be subject to this chapter and which does not result in a substantial change in the physical dimensions of an eligible support structure.
- (23) "Wireless facilities modification application" or "application" shall, unless the context clearly requires otherwise, mean and refer to a written document submitted to the City pursuant to this chapter for review and approval of a proposed facilities modification.
- (24) "Wireless facilities modification permit" or "permit" shall, unless the context clearly requires otherwise, mean and refer to a written document issued by the approval authority pursuant to this chapter approving an eligible facilities modification application.

19.30.050 Applicability – Relationship to Other Rules and Regulations.

- (1) Sole and Exclusive Procedure. Except as may be otherwise provided in this chapter, and notwithstanding any other provisions in the City Code, the provisions of this chapter shall be the sole and exclusive procedure for review and approval of a proposed facilities

modification which the applicant asserts is subject to review under Section 6409 of the Spectrum Act. To the extent that other provisions of the City Code establish a parallel process for review and approval of a project permit application for a proposed facilities modification, the provisions of this chapter shall control. In the event that any part of an application for project permit approval includes a proposed wireless facilities modification, the proposed wireless facilities modification portion of the application shall be reviewed under the provisions of this chapter. In the event that an application for project permit approval includes a proposal to modify an eligible support structure, and the applicant does not assert in the application that the proposal is subject to review under Section 6409 of the Spectrum Act, such proposal shall not be subject to review under this chapter and may be subject to review under other applicable provisions of the City Code.

- (2) Non-conforming Structures. This chapter shall not apply to a proposed facility modification to an eligible support structure that is not a legal conforming, or legal non-conforming, structure at the time a completed eligible wireless facilities modification application is filed with the City. To the extent that the non-conforming structures and use provisions of the City Code would operate to prohibit or condition approval of a proposed facilities modification application otherwise allowed under this chapter, such provisions are superseded by the provisions of this chapter and shall not apply.
- (3) Replacement of Eligible Support Structure. This chapter shall not apply to a proposed facility modification to an eligible support structure that will involve replacement of the tower or base station.
- (4) First Deployment; Base Station. This chapter shall not apply to a proposed wireless facility modification to a structure, other than a tower, that does not, at the time of submittal of the application, already house or support transmission equipment lawfully installed within or upon, or attached to, the structure.
- (5) Interpretation. Interpretations of this chapter shall be guided by Section 6409 of the Spectrum Act; the FCC Eligible Facilities Request Rules, the FCC's Report and Order in, *In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 14-153; and Sections 19.30.020 (Adoption of Findings and Conclusions) and 19.30.030 (Purpose and Intent) of this Code.
- (6) SEPA Review. Unless otherwise provided by law or regulation, decisions pertaining to an eligible wireless facilities modification application are not subject to, and are exempt from, the requirements of RCW 43.21C.030(2)(c), if:
 - (a) The proposed wireless facilities modification would not increase the height of the eligible support structure by more than ten percent (10%), or twenty (20) feet, whichever is greater; or
 - (b) The mounting of equipment that would involve adding an appurtenance to the body of the eligible support structure would not protrude from the edge of the

structure more than twenty (20) feet, or more than the width of the structure at the level of the appurtenance, whichever is greater; (See RCW 43.21C.0384 and WAC 197-11-800(25))

- (c) The authority to condition or deny an application pursuant to Chapter 43.21 RCW is preempted, or otherwise supplanted, by Section 6409 of the Spectrum Act.
- (7) Reservation of Authority. Nothing herein is intended or shall operate to waive or limit the City's right to enforce, or condition approval on, compliance with generally acceptable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health and safety.

19.30.060 Permit Classification. An eligible wireless facilities modification permit shall be classified as an administrative permit subject to review and approval or denial by the approval authority.

19.30.070 Application Submittal Requirements; Determination of Completeness.

- (1) Purpose. This section sets forth the submittal requirements for an eligible wireless facilities modification application. The purpose of the submittal requirements is to ensure that the City has all information and documentation that is reasonably necessary to determine if the applicant's proposed facilities modification will substantially change the physical dimensions of an eligible support structure. The submittal requirements are not intended to require the applicant to establish the need for the proposed modifications or to justify the business decision to propose such modification.
- (2) Submittal Requirements. No eligible wireless facilities modification application shall be deemed complete unless it is, in writing, accompanied by the applicable application and review fee, includes the required submittals, and is attested to by the authorized person submitting the application on behalf of the applicant, certifying the truth and accuracy of the information provided in the application. The application shall include the following submittals, unless waived by the approval authority:
 - (a) The following contact information for the Authorized Person:
 - (i) Name;
 - (ii) Title;
 - (iii) Mailing Address;
 - (iv) Phone Number; and
 - (v) Electronic Mail Address (optional).
 - (b) The legal and dba names, mailing address, Washington tax number, and contact phone number(s) of Applicant.
 - (c) If a corporation, the name and address of the registered agent of Applicant in Washington State, and the state of incorporation of Applicant.

- (d) If Applicant is an entity, other than a corporation, such as a partnership or limited liability company, the names and business addresses of the principals.
- (e) An assertion that the proposed wireless facilities modification is subject to review under Section 6409 of the Spectrum Act.
- (f) If the applicant is not the owner or person in control of the eligible support structure and/or site, the following shall be required:

An attestation that the owner or person in control of the eligible support structure and/or site has consented to the proposed wireless facilities modification. If the eligible support structure is located in a public right-of-way, the applicant must also attest that applicant has authorization to install, maintain and operate transmission equipment in, under and above the public right-of-way.

- (g) If the applicant proposes a modification involving collocation of transmission equipment or the replacement of transmission equipment, the following shall be required:

Complete copies of the underlying land use approvals for siting of the tower or base station proposed to be modified, establishing that, at the time of submittal of the application, such tower or base station constituted an eligible support structure.

- (h) If the applicant proposes a modification that will result in an increase in height of the eligible support structure, the following shall be required:

Record drawings, as-built plans, or the equivalent, showing the height of the eligible support structure, (a) as originally constructed and granted approval by the City or other applicable zoning or similar regulatory authority, or (b) as of the most recent modification that received city, or other local zoning or regulatory approval, prior to the passage of the Spectrum Act, whichever height is greater.

- (i) If the applicant proposes a modification to an eligible support structure, which structure, or proposed modification of the same, is subject to pre-existing restrictions or requirements imposed by a reviewing official or decision-making body pursuant to authority granted under the City Code, or an ordinance or a municipal code of another local government authority, the following shall be required:

A copy of the document (e.g., CUP or SUP) setting forth such pre-existing restrictions or requirements together with a certification that the proposed wireless facilities modification conforms to such restrictions or requirements; provided that, such certification shall have no application to the extent the proposed facilities modification relates solely to an increase in height, increase in width,

addition of cabinets, or new excavation, that does not result in a substantial change in the physical dimensions of the eligible support structure.

- (j) If the applicant proposes a modification to an eligible support structure, which structure, or proposed modification of the same, is subject to pre-existing concealment restrictions or requirements, or was constructed with concealment elements, the following shall be required:

Applicant shall set forth the facts and circumstances demonstrating that the proposed modification would not defeat the existing concealment elements of the eligible support structure. If the proposed modification will alter the exterior dimensions or appearance of the eligible support structure, applicant shall include a detailed visual simulation depicting how the eligible support structure will appear after the proposed modification is complete. The visual simulation shall depict to scale the eligible support structure in relation to the trees, landscaping and other structures adjacent to, or in the immediate vicinity of, the eligible support structure.

- (k) If the applicant proposes a modification that will protrude from the edge of a non-tower eligible support structure, the following shall be required:

Record drawings, as-built plans, or the equivalent, showing at a minimum the edge of the eligible support structure at the location of the proposed modification.

- (l) If the applicant proposes a modification to an eligible support structure that will (a) include any excavation, (b) would result in a protrusion from the edge of a tower that exceeds an existing protrusion of any transmission equipment attached to a tower, or (c) would protrude from the edge of a non-tower eligible support structure, the following shall be required:

A description of the boundaries of the site together with a scale drawing based on an accurate traverse, with angular and lineal dimensions, depicting the boundaries of the site in elevation and dimensions of the new or replacement transmission equipment. The City may require a survey by a land surveyor licensed in the state of Washington when, in the judgment of the approval authority, a survey is reasonably necessary to verify the boundaries of the site to determine if the proposed facilities modification would result in a substantial change in the physical dimensions of the eligible support structure.

- (m) If the applicant proposes a modification to the eligible support structure that includes hardening through structural enhancement, the following shall be required:

A technical report by a qualified engineer accredited by the state of Washington, demonstrating that the structural enhancement is performed in connection with and is necessary to support the proposed collocation, removal, or replacement of

transmission equipment and conforms to applicable code requirements. The City may retain the services of an independent technical expert to review, evaluate and provide an opinion regarding the applicant's demonstration of necessity.

- (n) If the applicant proposes a modification to a tower, the following shall be required:

A stamped report by a state of Washington registered professional engineer demonstrating that the tower with the proposed modifications will comply with applicable structural, electrical and safety codes, including by way of example, and not limitation, EIA/TIA-222-Revision G, published by the American National Standards Institute (as amended), allowable wind speed for the applicable zone in which the tower is located, and describing the general structural capacity of the tower with the proposed modifications, including:

- (i) The number and type of antennas that can be accommodated;
- (ii) The basis for the calculation of capacity; and
- (iii) A written statement that the proposal complies with all federal guidelines regarding interference and ANSI standards as adopted by the FCC, including but not limited to nonionizing electromagnetic radiation (NIER) standards.

The City may retain the services of an independent technical expert to review, evaluate, and provide an opinion regarding the applicant's demonstration of compliance.

- (o) If the applicant proposes a modification to a base station, the following shall be required:

A stamped report by a state of Washington registered professional engineer demonstrating that the base station, with the proposed modifications, will comply with applicable structural, electrical and safety codes.

- (p) If the applicant proposes a modification requiring, alteration to the eligible support structure, excavation, installation of new equipment cabinets, or any other activities impacting or altering the land, existing structures, fencing, or landscaping on the site, the following shall be required:

A detailed site plan and drawings, showing the true north point, a graphic scale and, drawn to an appropriate decimal scale, indicating and depicting, (a) the location, elevation and dimensions of the existing eligible support structure, (b) the location, elevation and dimensions of the existing transmission equipment, (c) the location, elevation and dimensions of the transmission equipment, if any, proposed to be collocated or that will replace existing transmission equipment, (d)

the location, elevation and dimensions of any proposed new equipment cabinets and the intended use of each, (e) any proposed modification to the eligible support structure, (f) the location of existing structures on the site, including fencing, screening, trees, and other significant site features, and (g) the location of any areas where excavation is proposed showing the elevations, depths, and width of the proposed excavation and materials and dimensions of the equipment to be placed in the area excavated.

- (q) Copies of any environmental documents required by any federal agency. These shall include the environmental assessment required by 47 C.F.R. Part 1 (PART 1 – PRACTICE AND PROCEDURE), Section 1.1307, as amended, or, in the event that an FCC environmental assessment is not required, a statement that described the specific factors that obviate the requirement for an environmental assessment.
- (3) Waiver of Submittal Requirement. The approval authority may waive any submittal requirement upon determination that the required submittal, or part thereof, is not reasonably related to the substantial change criteria. A waiver, to be effective, must be in writing and signed by the Development Services Director.
- (4) When Received. An eligible wireless facilities modification application, and any supplemental submittals, shall be deemed received by the City upon the date such application, or supplemental submittal, is filed with the Development Services Department. An application, and any supplemental submittals, must be filed in person during regular business hours of the City and must be accompanied by the applicable permit review fee(s). Any application received by the City without contemporaneous payment, or deposit, of the applicable permit review fees will be rejected.
- (5) Completed Application; Determination; Tolling.
- (a) Determination of Completeness. The approval authority shall, within thirty (30) days of receipt of the application, review the application for completeness. An application is complete if it includes the applicable permit review fee(s) and contains all of the application submittal requirements set forth at OHMC 19.30.070(2) of this chapter, unless waived by the Development Services Department pursuant to OHMC 19.30.070(3). The determination of completeness shall not preclude the Development Services Department from requesting additional information or studies either at the time of the determination of completeness or subsequently if new or additional information is required, or substantial changes in the proposed action occur, or the proposed wireless facilities modification is modified by applicant, as determined by the Development Services Director.
- (b) Incomplete Application. The Development Services Director shall notify the applicant within thirty (30) days of receipt of the application that the application is incomplete. Such notice shall clearly and specifically delineate all missing documents or information.

- (c) Tolling Timeframe for Review. The application review period begins to run when the application is received, and may be tolled when the approval authority determines that the application is incomplete and provides notice as set forth below. The application review period may also be tolled by mutual agreement of the Development Services Director and applicant. The timeframe for review is not tolled by a moratorium on the review of eligible facility modification applications.
- (i) To toll the timeframe for review for incompleteness, the Development Services Director must provide written notice to the applicant within thirty (30) days of the date of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to submittals set forth in OHMC 19.30.070(2) and any supplemental information requested by the approval authority that is reasonably related to determining whether the proposed wireless facilities modification will substantially change the physical dimension of an eligible support structure.
 - (ii) The timeframe for review begins running again when the City is in receipt of applicant's supplemental submission in response to the Development Services Director's notice of incompleteness.
 - (iii) Following a supplemental submission, the a Development Services Department shall have ten (10) days to notify the applicant 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 paragraph (5)(c)(iii). Except as may be otherwise agreed to by the applicant and the Development Services Department, second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.
 - (iv) A notice of incompleteness from the City 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 (3) 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.
- (d) Modification of Application. In the event that after submittal of the application, or as a result of any subsequent submittals, applicant modifies the proposed wireless facilities modification described in the initial application, the application as modified will be considered a new application subject to commencement of a

new application review period; provided that, applicant and the approval authority may, in the alternative, enter into a mutually agreeable tolling agreement allowing the City to request additional submittals and additional time that may be reasonably necessary for review of the modified application.

19.30.080 Review of Application; Approval.

- (1) Review of Application. The Development Services Department shall review an eligible wireless facilities modification application to determine if the proposed facilities modification is subject to this chapter, and if so, if the proposed wireless facilities modification will result in a substantial change to the physical dimensions of an eligible support structure.
- (2) Timeframe for Review. Within sixty (60) days of the date on which the City receives an eligible wireless facilities modification application, less any time period that may be excluded under the tolling provisions of this chapter or a tolling agreement between the applicant and the Development Services Department, the Department shall approve the application and contemporaneously issue a wireless facilities modification permit unless the Development Services Department determines that the application is not subject to this chapter, or the proposed wireless facilities modification will substantially change the physical dimension of an eligible support structure.
- (3) Approval; Denial. A wireless facilities modification application shall be approved, and a wireless facilities modification permit issued, upon determination by the Development Services Department that the proposed facilities modification is subject to this chapter and that it does not substantially change the physical dimensions of an eligible support structure. An eligible facilities application shall be denied upon determination by the Development Services Department that the proposed wireless facilities modification is not subject to this chapter or will substantially change the physical dimensions of an eligible support structure. A proposed wireless facilities modification will substantially change the physical dimensions of an eligible support structure if it meets any of the substantial change criteria.
- (4) Deemed Approved Application. An application that has been deemed approved shall be and constitute the equivalent of a wireless facilities modification permit, 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 a wireless facilities modification permit issued pursuant to this chapter.
- (5) Denial of Application. A denial of a wireless facilities modification application shall set forth in writing the reasons for the denial and shall be provided to the applicant.
- (6) Code Requirements. Any wireless facilities modification permit issued pursuant to this chapter, and any application that has been deemed approved, shall be and is conditioned upon compliance with any generally applicable building, structural, electrical, and safety codes and other laws codifying objective standards reasonably related to health and

safety. Violation of any such applicable code or standard shall be deemed to be a violation of the wireless facilities modification or deemed approved application.

- (7) Term of Wireless Facilities Modification Permit. A wireless facilities modification permit issued pursuant to this chapter, and any deemed approved application, shall be valid for a term of one hundred eighty (180) days from the date of issuance, or the date the application is deemed approved.
- (8) Remedies. Notwithstanding any other provisions in the City Code, no administrative review is provided for review of a decision to condition, deny or approve an application. Applicant and the City retain any and all remedies that are available at law or in equity, including by way of example and not limitation, those remedies set forth in the FCC Eligible Facilities Request Rules and remedies available under the Land Use Petition Act. In the event no other time period is provided at law for bringing an action for a remedy, any action challenging a denial of an application or notice of a deemed approved remedy, shall be brought within thirty (30) days following the date of denial or following the date of notification of the deemed approved remedy. (Note: The FCC Report and Order in *In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 14-153, Par's 234-236, provides that the City shall have thirty (30) days from the date of notification by the applicant of a deemed granted remedy to bring a legal action in a court of competent jurisdiction to challenge the deemed granted remedy, and that the applicant shall have thirty (30) days from the date of denial to bring a legal action in a court of competent jurisdiction challenging a denial of the application.)

19.30.090 Substantial Change Criteria. A proposed facilities modification will substantially change the physical dimensions of an eligible support structure if it meets any of the following criteria:

- (1) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than ten percent (10%) or by the height of one (1) 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 ten percent (10%) or more than ten (10) feet, whichever is greater;

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. (Note: The FCC Report and Order in *In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 14-153, Par's 234-236, provides that the City shall have thirty (30) days from the date of notification by the applicant of a deemed granted remedy to bring a legal action in a court of competent jurisdiction to challenge the deemed granted remedy, and that the applicant shall have thirty (30) days from the date of denial to bring a legal action in a court of competent jurisdiction challenging a denial of the application.)

- (2) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower

more than twenty (20) feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) feet.

- (3) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets; or, for towers in the public right-of-way and the 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 associated with the structure, or else involves installation of ground cabinets that are more than ten percent (10%) larger in height or overall volume than any other ground cabinets associated with the structure;
- (a) it entails any excavation or deployment outside the current site;
 - (b) it would defeat the concealment elements of the eligible support structure; or
 - (c) 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 a manner that would not exceed the thresholds identified in this section OHMC 19.30.090.

(Note: The FCC rules refer to the date of passage of the Spectrum Act. The Spectrum Act was enacted on February 22, 2012. Presumably the FCC intended to refer to the date of enactment as the date of passage.)

19.30.100 Non-conforming Structure; Termination.

- (1) Application. The provisions of this section OHMC 19.30.100 shall apply to any facilities modification constructed, installed, placed or erected pursuant to a wireless facilities modification permit, or pursuant to a deemed approved remedy, which facilities modification did not conform to zoning and/or development regulations, exclusive of this chapter, in effect at the time the completed wireless facilities modification application was filed.
- (2) Non-conforming Structure Determination. A facilities modification to which this section applies is subject to termination as a non-conforming structure upon the following conditions:
- (a) Final, Non-Appealable Decision. An appellate court, in a final and non-appealable decision, determines that §6409(a)(1) of the Spectrum Act is unconstitutional or otherwise determined to be invalid or unenforceable; and
 - (b) Notice of Non-Conforming Structure Determination. The City provides written notice to the applicant that the City has determined that the facilities modification

did not conform to zoning and/or development regulations, exclusive of this chapter, in effect at the time the completed wireless facilities modification application was filed and that the facilities modification constitutes a non-conforming structure pursuant to the provisions hereof and must be made conforming or the facilities modification terminated.

(3) Conformance; Termination. Upon receipt of notice of the City's non-conforming structure determination, applicant shall abate the non-conformance by either, confirming the site to the zoning and development regulations in effect at the time the completed wireless facilities modification application was filed, or removing the facilities modification and returning the site to the condition that existed prior to the construction, installation, placement or erection of the facilities modification. The time period for conformance shall be one (1) year from the date of the City's notice of the non-conforming structure determination.

(4) Health and Safety Codes. Nothing in this section shall relieve the applicant from compliance with applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health and safety.

(5) Administrative Appeal. The applicant, or its successors or assigns, may appeal the City's determination of non-conformance to the City Hearing Examiner by filing a notice of appeal within ten (10) calendar days of the date of the determination of non-conformance, excluding holidays.

19.30.110 Enforcement; Violation. Compliance with the provisions of this chapter is mandatory. Any violation hereof is subject to enforcement under the code enforcement provisions set forth under Chapter 19.100, Oak Harbor Municipal Code.

Section Two. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section Three. Effective Date. This Ordinance shall be in full force and effect five (5) days after publication.

PASSED by the City Council this _____ day of _____, 2015.

Veto ()
Approve ()

THE CITY OF OAK HARBOR

By _____
Scott Dudley, Mayor

Dated: _____

Attest:

Anna Thompson, City Clerk

Approved as to Form:

Nikki Esparza, City Attorney

Published: _____