

**PROPOSED WIRELESS COMMUNICATIONS FACILITIES ORDINANCE  
FOR FIRST READING AT THE SEPT. 9<sup>TH</sup> CITY COUNCIL MEETING**

**Chapter 15 - WIRELESS COMMUNICATIONS FACILITIES**

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**15.32.010 - Purpose, intent, and application.**

A. The purpose of this chapter is to regulate the installations and operations of various Wireless Communications Facilities (“WCFs”) in the Town recognizing the benefits of wireless communications while reasonably respecting other important Town needs.

B. The overarching intent of this chapter is to make wireless communications reasonably available while preserving the essential rural character of the Town. This will be realized by:

(i) reducing the visual and physical effects of WCFs on public streetscapes and in the Town’s public right-of-way by requiring the minimization of above-ground equipment at WCF locations and undergrounding as possible elements of WCFs located in the Town’s right-of-way,

(ii) encouraging the installation of wireless communications facilities at locations where other such facilities already exist, and

(iii) encouraging the installation of such facilities where potential adverse impacts to the Town are minimized.

C. To allow the Town to better preserve the established rural character of the Town, it is the intent to limit the duration of WCF permits, in most cases, to terms of 10 years, and to reevaluate existing WCFs at the end of each term.

D. It is not the purpose or intent of this chapter to:

(i) prohibit or to have the effect of prohibiting wireless communications services, or to regulate the placement, construction or modifications of WCFs on the basis of the environmental effects of radio frequency emissions where it is demonstrated that the WCF does or will comply with the applicable FCC regulations, or

(ii) unreasonably discriminate among providers of functionally equivalent wireless communications services.

E. This chapter does not apply to WCFs owned by or exclusively operated for government agencies, amateur radio stations, satellite dish or other television antennas or other OTARD antennas.

F. Nothing in this section is intended to allow the Town to preempt any state or federal law or regulation applicable to a WCF.

### **15.32.020 - Definitions.**

For the purposes of this chapter, certain terms shall have meanings as follows:

A. "Antenna" means a device used to transmit and/or receive radio or electromagnetic waves such as but not limited to panel antennas, reflecting discs, panels, microwave dishes, whip antennas, directional and non-directional antennas consisting of one or more elements, multiple antenna configurations, or other similar devices and configurations.

B. "Antenna Array" shall mean two (2) or more Antennas having active elements extending in one or more directions, and directional Antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and Antenna support, all of which elements are deemed to be part of the Antenna.

C. "Base Station" shall mean the antennas, cables, signal modulating and demodulation transmission and switching equipment associated with a Wireless Communications Facility, excluding the Wireless Tower.

D. "Building and Planning Director" means the Town of Hillsborough's Director of the Building and Planning Department

E. "Camouflage" means a Wireless Communications Facility in which the Antenna and antenna-related equipment, and the Wireless Tower if one is associated with the project, are hidden from view, or effectively disguised as may reasonably be determined by the Town in a faux tree, monument, cupola, or other concealing Structure which either mimics, or which also serves as, a natural or architectural feature. Concealing Structures which are not such a natural or

architectural feature to the average observer do not qualify within this definition.

F. "City Council" means the City Council of the Town of Hillsborough, California.

G. "City Engineer" shall mean the City Engineer of the Town of Hillsborough, California.

H. "City Manager" shall mean the City Manager of the Town of Hillsborough, California.

I. "Code" means the Hillsborough Municipal Code.

J. "Co-location" or "Collocation" means an arrangement whereby multiple Wireless Communications Facilities owned or operated by different legal entities share the same antenna Structure or site. A Collocation also means an "Eligible Facilities Request" (as that term is defined in 47 U.S.C.1455(a)(2) as may be amended or replaced) for a modification of an existing wireless tower or base station that does not a substantially change the physical dimensions of such tower or base station

K. "Distributed Antenna System", "DAS" means a network of one or more Antennas and related fiber optic nodes typically mounted to streetlight poles, or utility Structures, which provide access and signal transfer for wireless service providers. DAS also includes the equipment location, sometimes called a "hub" or "hotel" where the DAS network is interconnected with one or more wireless service provider's base stations to provide the signal transfer services.

L. "FCC" means the Federal Communications Commission.

M. "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account environmental, physical, legal, costs and technological factors.

N. "Guy" means a means or device for shunting physical forces to the ground by means of one or more wires, poles, arms, and/or anchors.

O. "Lattice tower" means an open framework structure used to support one or more Antennas, typically with three (3) or four (4) support legs.

P. "Monopole" means a single freestanding pole used to act as or support an externally mounted Antenna or Antenna Arrays.

Q. "OTARD" means "Over the Air Receiving Devices" as defined in 47 C.F.R. § 1.4000 et seq. of the FCC rules as may be amended or replaced.

R. "Public Property" means property owned in fee by the Town and specifically excludes the Town's public right-of-way.

S. "Public Works Director" means the Director of Public Works of the Town or his or her designee.

T. "Radome" means a visually-opaque, radio frequency transparent enclosure which may contain one or more antennas, cables and related facilities therein.

U. "Structure" includes those things defined as "structure" under Section 17.08.270 of this Code and those things defined as "outdoor fixture" under Section 12.12.010 of this Code.

V. "Substantial change in the physical dimensions" means a single change, or a series of changes over time (whether made by the same or different entities) viewed against the initial Town approval(s) for a WCF that existed on February 22, 2012 or for any new WCF granted on

or after the effective date of this chapter of the following:

1. Changing any physical dimension of the Wireless Tower or Base Station in a manner that creates a safety hazard, whether from wind loading, stress on the Wireless Tower, or in any other manner.

2. Changing one or more of the physical dimensions of a Camouflaged Wireless Tower, where such change(s) would be inconsistent with the design of the prior-existing Camouflaged Wireless Tower, or make the Wireless Tower more visible.

3. Changing the physical dimensions would require work that would intrude upon the Town's public right-of-way, or any environmentally sensitive area.

4. Changing by more than ten percent (10%) in any direction any of the following: the height or width in any direction of the Wireless Tower, or the area required for Structures required to support the Wireless Tower, such as guy wires as approved and constructed through the discretionary permit process; provided that in no event shall the height exceed the greater of the maximum height permitted under the Town's regulations or ten percent (10%) above the height of the Wireless Tower as it existed on February 22, 2012 by valid Town permit. The ten percent (10%) change shall be measured against the size of the Wireless Tower and Base Station if they existed on February 22, 2012 or the date of the validly issued Town permit of the Wireless Tower and Base Station if they were initially approved after February 22, 2012.

5. Changing by more than ten percent (10%) any of: the height or area encompassed within any Structure or object enclosing the Wireless Tower, such as a fence or line of bushes.

6. Changing any of an existing Antenna or Antenna Array depth, circumference or horizontal radius from the Wireless Tower in any direction by more than ten percent (5%).

7. Adding of one or more Antennas or Antenna Arrays to an existing Wireless Tower, or adding one or more Antenna Arrays that, if the array were an existing array, would be of such depth, circumference or radius as to fall outside of section 6, unless such arrays were approved pursuant to Government Code Section 65850.6 as may be amended or replaced.

8. The mounting of the new or replacement transmission equipment which would involve installing new equipment cabinet(s) not permitted under the initial approval and that will not fit within the existing enclosure for the Wireless Tower or Base Station or would require installation of three or more new cabinets or enclosures, but excluding equipment and cabinets that will be installed underground.

W. "Support equipment" means the physical, electrical and/or electronic equipment included within a Wireless Communications Facility used to house, power, and/or process signals from or to the facility's Antenna or Antennas but specifically excluding the Base Station.

X. "Town" means the Town of Hillsborough, California.

Y. "Town property" means all real property and improvements owned, operated or controlled by Town other than the land comprising the Town's public right-of-way, within the Town's jurisdiction. Town property includes, but is not limited to, Town Hall, Police and the Municipal Yard, and other Town owned property, facilities and traffic lights.

Z. "Unipole" shall mean a uniform width pole with one or more antennas and associated equipment and cables contained within the interior of the pole, and with a Radome at the top of the pole being the same width as the pole.

AA. "Utility tower" shall mean a steel or wood pole used to support electrical power transmission facilities.

BB. "Whip Antenna" shall mean a vertically-oriented omni-directional antenna.

CC. "Wireless Communications Facility," "WCF," or simply "facility" means an installation that sends and/or receives wireless radio frequency signals or electromagnetic waves, including, but not limited to, directional, omni-directional and parabolic Antennas, Structures or towers to support receiving and/or transmitting devices, supporting equipment and Structures, and the land or Structure on which they are situated. The term does not include mobile transmitting devices used by wireless service subscribers, such as vehicle or hand held radios/telephones and their associated transmitting Antennas.

DD. "Wireless Tower" shall mean any structure built for the sole or primary purpose of supporting Antennas and their associated facilities used to provide services by a FCC licensee. An existing Structure which is modified or replaced to allow for the installation of all or a portion of a WCF retains its prior use as its primary use, and the wireless use is only a secondary use thereof. A Wireless Tower excludes the Base Station.

### **15.32.030 - Development Standards, location, height, placement.**

A. A WCF may be located in the Town's right-of-way, or with the consent of the property owner on private or public property.

B. The location for a WCF shall be selected taking into consideration the following priority order (with 1 being the highest priority):

1. Town owned water tank sites, open space areas and pump station sites;
2. Existing utility pole or co-location Structure;
3. Nonresidential Structures or properties;
4. New camouflaged Structure.

C. A WCF located on private property shall also be subject to the provisions of Chapter 2.12 of this Code.

D. A WCF located in the Town's right-of-way shall:

- (i) only be located on an existing utility pole serving another utility, or
- (ii) in areas of the Town where all other utility lateral connections are located underground be located within a camouflaged pole.

E. Subject to these rules, all new WCFs shall be collocated on or adjacent to existing WCFs, and, if within the Town's right-of-way within 1,500 feet of an existing WCF, unless the Town determines from clear and convincing evidence submitted by the applicant that collocation is not technically feasible, or that additional collocated WCFs would create excessive visual clutter or public safety impacts at the existing WCF.

F. Where a WCF is to be located on an existing shared utility pole in the Town's right-of-way the WCF shall comply with CPUC General Order 95 and General Order 128 as they may be amended or replaced, and

- (i) the WCF shall be installed on a wood pole no less than eight feet above surrounding ground level, or the WCF shall be installed on any non-wood pole with the Base Station equipment located below ground level and the antennas installed on the non-wood pole, and

- (ii) the height of the existing pole including any antenna extension attached to the pole shall not be increased more than six feet to accommodate the WCF.

G. A WCF shall not exceed 35 feet in height above surrounding ground level except as follows:

- (i) A WCF located on a private or public Structure (as defined in 17.08.270 of this Code and those things defined as "outdoor fixture" under Section 12.12.010) may exceed the height restrictions for the Structure in this Code by a maximum of ten feet and shall not extend outside the envelope of the existing Structure.

- (ii) A WCF that is constructed as a camouflaged faux tree or flag pole with camouflaged antennas and associated features may be of such height above the height restrictions in this Code as the City Manager or his or her designee may approve.

- (iii) A WCF may be located on an existing shared utility pole that exceeds thirty-five feet (35'), provided that the top of the Antenna and Antenna enclosure shall not exceed six feet (6') above the top of the existing pole.

- (iv) A WCF located at a Town-owned water tank site.

H. The Base Station of a WCF located in the Town's right-of-way, along with the other equipment associated with the WCF shall to the maximum extent possible be placed

underground, with only the antennas and supporting Structure allowed above ground.

I. The installation of a new uncamouflaged monopole or other uncamouflaged Wireless Tower is prohibited.

J. The WCF permittee shall also comply with Chapter 12.04 and all other requirements of this Code.

#### **15.32.040 Permit required; Estimated Deposits.**

A. Anyone wishing to install a WCF in the Town must obtain a WCF permit, and for the Town's public right-of-way shall also obtain an encroachment permit pursuant to Chapter 12.04 of this Code.

B. The WCF applicant shall provide the Town with a deposit, estimated by the City Manager or his or her designee, to cover the Town's application processing costs.

C. Where the tendered deposit has been consumed in the processing of the application, the City Manager or his or her designee may require the applicant to promptly tender additional deposit(s).

D. The WCF applicant shall also deposit with the Town the amount estimated to pay for the radio frequency emissions compliance report required under Section 15.32.100 of this chapter.

E. If required by the City Manager or his or her designee the applicant shall deposit with the Town funds sufficient to reimburse the Town for third-party review of an application, and any supplemental deposit required by the City Manager or his or her designee for the completion of the third-party review of the application and/or the third party reviewer providing testimony before the Town regarding the application.

F. Upon the approval, denial, or termination of the WCF application any unexpended portion of the deposits shall be returned to the applicant. No WCF permit shall be issued, or if issued valid, until the applicant pays to the Town all required fees.

#### **15.32.050 Application required; Contents of permit application; Noticing.**

A. In all cases an applicant for a WCF permit shall utilize the form of application required by the Town.

B. The City Manager or his or her designee may require that an applicant tender a WCF permit application and any revisions thereto, by appointment only. Where required, the Town shall ensure that applicant's appointments are scheduled no later than five (5) business days of the applicant's request.

C. The City Manager or his or her designee shall cause the initial development of and as necessary revisions to the Town's application form for a WCF permit to reflect changes in regulations, law, and technology.

D. The Town application for a WCF permit shall include at a minimum the following:

- (i) Scaled Site Plans and Elevations, including structural safety information;
- (ii) A written and technically accurate and reliable narrative explaining the purpose and need for the WCF;
- (iii) Signal coverage maps;
- (iv) Site photos and visual simulations of the proposed WCF;
- (v) Radio frequency emissions documentation;
- (vi) Site ownership information;
- (vii) Project-specific supporting materials; and
- (viii) California Environmental Quality Act ("CEQA") information.

#### **15.32.060 Review of permit application.**

A. The City Manager or his or her designee shall review all WCF permit applications for completeness and compliance with the provisions of this chapter and other applicable laws and regulations.

B. Once the WCF permit application has been deemed complete, written notice of the project shall be provided by the Town to all owners of real property any part of which is located within 500 feet of the real property, or if the project is to be located in the Town's public right-of-way within 500 feet of the project location. Public notices shall be mailed via the U.S. Mail so that they will be postmarked at least fifteen days prior to the date of any decision by the City Manager or his or her designee on the WCF permit application. The posting on the Town's three official bulletin boards of notice of the WCF permit application shall constitute public notice the WCF permit application.

#### **15.32.070 Design standards.**

A. All WCFs shall designed to employ the most efficient and diminutive design and configuration to minimize visual impacts of the WCF, and as applicable to minimize the impact on the Town's right-of-way.

B. The following criteria shall be considered by the applicant and to the extent feasible made a part of the processing a WCF permit application:

1. The extent to which the proposed WCF and all elements thereof will be camouflaged to blend into the environment or architecturally integrated into the Structure;
2. The extent to which the proposed WCF is concealed, screened or camouflaged by existing or proposed new topography, vegetation, or other Structures;
3. The total volume and massing of the proposed WCF, particularly in relation to surrounding and supporting Structures;
4. Whether the WCF will accommodate collocations at the site.
5. All antennas and ancillary equipment and cables affixed to a Structure shall be designed to blend in or be screened from view in a manner consistent with the Structure's architectural style, color and materials. The Director may require additional screening and design changes to minimize adverse visual impacts from higher elevations.
6. WCFs shall be painted and textured or otherwise camouflaged to match the color and texture of the Structure on which they are mounted.

C. Support Equipment.

1. For building-mounted installations, support equipment for the WCF including without limitation base station cabinets, remote transmitters and receivers, antenna amplifiers, etc. shall be placed within the building or mounted behind a parapet screened from public view. If the Director determines that such in-building placement is not feasible, the equipment shall be roof-mounted in an enclosure or otherwise screened from public view as approved by the Director. All screening associated with a building-mounted WCF shall be compatible with the architecture, color, texture and materials of the building to which it is mounted.

2. For above ground-mounted installations where allowed, support equipment shall be screened within an enclosure approved by the City Manager or his or her designee. The enclosure shall be non-reflective and painted or camouflaged to blend with its surroundings. Where landscaping is required, the applicant shall at all times be responsible for maintaining the landscaping.

D. To maximize the public's access to the Town's right-of-way, and to minimize visual blockage to pedestrians and drivers caused by above-grade equipment, WCF Base Station equipment located in the Town's right-of-way shall be placed within flush-to-grade enclosures to the greatest extent reasonably feasible.

E. WCFs shall not be lighted except with the authorization of the City Manager or his or her designee. The City Manager or his or her designee may permit lighting at the lowest intensity necessary:

1. for proximity-triggered and/or timer-controlled security lighting; or
2. to comply with regulations for the illumination of the any flag attached to a WCF; or
3. where such lighting is required by the City Manager or his or her designee.

F. No advertising signage shall be displayed on any WCF except for government required signs shown in the WCF permit application. Additionally site identification, address, warning and similar information plates may be permitted where approval by the City Manager or his or her designee.

G. It is the applicant's responsibility to ensure that its WCF complies at all times with all requirements of the Americans With Disabilities Act of 1990 ("ADA") as may be amended or replaced. The applicant shall indemnify, defend, and hold harmless the Town regarding the applicant's compliance with ADA.

#### **15.32.080 Approval or disapproval of an application.**

A. The City Manager or his or her designee shall approve, conditionally approve or disapprove the application only:

1. after the application is deemed complete; and
2. after fifteen days has elapsed from the postmark date required under Section 15.32.060(B) of this chapter; and
3. after the applicant has submitted or failed to submit a written response to any such comments and any additional information requested by the City Manager or his or her designee by the due date specified by the City Manager or his or her designee.

B. For a disapproval or conditional approval, the City Manager or his or her designee shall make written findings referencing substantial evidence in the Town's written administrative record. The applicant and each person submitting comments on the application shall receive a copy of the Town's decision and the written findings with respect to the decision. Such copy shall plainly state the process and deadline for filing an appeal to the City Council.

C. In order to approve the application, the City Manager or his or her designee shall consider the following factors in the written findings as to whether:

1. the WCF application makes wireless communications reasonably available while preserving the essential rural character of the Town
2. the applicant for a WCF on private or public property has demonstrated (a) a significant gap in coverage and (b) that this WCF will close that significant gap or reduce it to less than significant;
3. the proposed WCF is the least intrusive design consistent with this Code;

4. co-location is reasonably available;
5. project visibility is minimized from residences;
6. physical safety and ADA compliance have been demonstrated;
7. the occupancy of the Town's public right-of-way has been minimized;
8. aesthetics, including without limitation minimizing the visual impact of the proposed WCF are as required by this Code;
9. the WCF is designed to comply with the FCC rules and regulations and the design standards in section 15.32.070;
9. other factors specific to the project ensure compliance with this Code and all applicable laws and regulations.

#### **15.32.090 Appeal to City Council.**

A Within fifteen (15) calendar days following the date of the City Manager's or his or her designee's written decision on the WCF application, any party may appeal the decision to the City Council.

B. Where an appeal is timely filed, the City Manager or his or her designee shall prepare a staff report regarding the original decision and shall submit the report to the City Council along with the written notice of appeal submitted by the appellant.

C. The appeal before the City Council shall be a public hearing and shall be noticed as set forth in Section 1.20.010(A) of this Code; provided, however, that the mailing list of persons to whom the permit application was sent under Section 15.32.060(B) of this chapter shall be used instead of the Type A or Type B notice mailing list described in Section 1.20.010 of this Code and provided further that the appellant shall be deemed the person requesting the public hearing for purposes of Section 1.20.010(A)(3) of this Code.

D. The City Council shall hear the appeal de novo at the next regular City Council meeting after allowing for sufficient time to prepare the written report. If a federal or state time limit for action on the WCF application requires the Town to conduct a special meeting of the City Council to consider the appeal, and if the applicant is unwilling to toll all applicable statutory time limits until the next regular meeting of the City Council, the applicant shall bear and promptly pay all of the Town's costs and expenses connected with the special meeting, including without limitation all staff costs.

E. The City Council may accept or reject, wholly or in part, or may modify, the decision. If the decision of the City Council regarding the WCF appeal is to deny the WCF or conditionally approve the WCF, the City Council shall direct the City Manager or his or her designee to make written findings referencing substantial evidence in the Town's written

administrative record. The applicant and any appellant on the application shall receive a copy of the City Manager or his or her designee's written decision and the written findings with respect to the decision.

F. The City Council may also remand the application to the Director or City Engineer for further consideration with such instructions as the City Council deems appropriate.

#### **15.32.100 Radio frequency emissions compliance report.**

A. Within thirty days after installation of a WCF, the applicant shall demonstrate to the City Manager or his or her designee that its WCF as constructed and normally-operating fully complies with the FCC environmental regulations at 47 C.F.R. 1.1307 et seq as may be amended or replaced for uncontrolled/general population exposure in all publically-accessible areas. The demonstration shall be provided in writing to the City Manager or his or her designee containing all technical details to demonstrate such compliance, and shall be reviewed by the City Manager or his or her designee or its selected and qualified radio frequency engineer. This report shall be prepared by the applicant and reviewed by the Town at the sole expense of the applicant, which shall promptly reimburse the Town for its review expenses.

B. If the report required in subsection a of this section shows that the WCF does not so comply, the user of the WCF shall immediately suspend unattended transmissions from the WCF until compliance is achieved and a new report has been submitted by the applicant and reviewed by the City Manager or his or her designee or its selected and qualified radio frequency engineer at the applicant's expense confirming such compliance.

C. If the initial report required by this section is not submitted within the time required, the City Manager or his or her designee or its selected and qualified radio frequency engineer may obtain such report, which shall be used for the purposes stated in this section, and the applicant shall within five (5) days after receiving written notice from the City Manager or his or her designee of the required deposit, deposit such additional funds with the City Manager or his or her designee. The Town shall then timely refund the unexpended portion of the applicant's deposit.

#### **15.32.110 Permit term and renewal.**

A. Any validly-issued WCF permit granted hereunder shall be effective for a period of exactly ten (10) years from the date of issuance, except where:

1. a shorter term is authorized by California Government Code § 65964(b) as may be amended or replaced; or

2. the applicant proposes a temporary WCF (such as a Cell-on-Wheels or other similar temporary installation), in which case the permit term shall not commence prior to fourteen days before a planned event, and shall terminate no longer than fourteen days after the planned event;  
or

3. in the event of a local or regional emergency affecting the health and welfare of town residents, the Director, City Engineer or City Manager may immediately issue an emergency permit without a formal application for the placement of a temporary WCF on public property or in the Town's public right-of-way, or on private property with the written consent of the property owner, for a term not exceeding sixty days.

B. As a condition of every permit issued pursuant to this chapter, the City Manager or his or her designee may establish a reasonable construction build-out period for a WCF.

C. An applicant may apply to extend an existing WCF permit for additional five (5) year terms under the laws, rules, regulations, and codes in effect at the time such extension application is made to the Town. The extension application must be tendered to the City Manager or his or her designee between 365 days and 180 days prior to the expiration of the current WCF permit, and shall be accompanied by all required fees and deposits for a new WCF application as then in effect.

#### **15.32.120 - Operational regulations.**

All WCFs within the Town shall be designed, maintained, and shall be operated to at all times comply with the provisions of this chapter and the following other requirements:

1. Conditions in any permit or license issued by a local, state, or federal agency, which has jurisdiction over the WCF;

2. Rules, regulations, and standards of the state and federal governments and the Town, including without limitation Federal Communications Commission (FCC), the California Public Utilities Commission (CPUC); and the Code;

3. Easements, covenants, conditions, and/or restrictions on the underlying real property;

4. Rules, regulations, and standards of the Town governing underground utility districts;

5. All other laws, codes, and regulations applicable to a WCF.

#### **15.32.130 Revocation or modification of a WCF permit.**

A. Any WCF permit approved under this chapter is granted by the Town with the reservation of the right and jurisdiction to review and modify the permit (including the conditions of approval) based on changed circumstances all as permitted by law. Further, a WCF permit holder may apply to the City Manager or his or her designee to modify an existing WCF permit based on changed circumstances all as permitted by law. The standard of review for a

request to modify a WCF permit shall be the standards for WCFs in this Code at the time of the request. Changed circumstances include, but are not limited to, the following:

1. Any increase in the physical dimensions of the Wireless Tower or Base Station of the WCF exceeding five percent (5%) of the dimensions of the Town-granted WCF permit that was validly in force on the adoption date of this chapter;
2. Any increase in the physical dimensions or change in the location of the WCF not authorized by the Town;
3. Any change in radio frequency signal emissions that subjects publicly-accessible areas to radio frequency emissions in excess of the Uncontrolled/General Population standard of the FCC's environmental regulations in 47 C.F.R. § 1.307 et seq. as amended or replaced; and
4. Any other change or modification to the WCF not authorized by the Town and not permitted by applicable law, except for the routine maintenance of the WCF as permitted by the Town, for example and without limitation such as replacing one antenna for another of like kind and physical dimensions.

B. The WCF permit holder shall apply for and obtain a modification to its existing WCF permit where it proposes work that will result in changed conditions as described in subsections (A)(1) through (4) of this section. The standard of review for a request to modify a WCF permit shall be the standards for WCFs in this Code at the time of the request.

C. The City Manager or his or her designee may revoke or modify a WCF permit for material breach of any permit condition only after:

1. written notice of the breach has been provided to the WCF permit holder;
2. the WCF permit holder has been afforded a reasonable opportunity to cure and comply with its permit, or demonstrate that no material breach of the permit actually exists.

D. If the WCF permit holder fails to cure, the City Council shall hold a noticed public hearing designed to provide substantive and procedural due process to the WCF permit holder. The WCF permit holder shall be afforded an opportunity to speak and be heard by the City Council during the public hearing and to provide written material prior to the public hearing. If the City Council, after the public hearing, finds that the WCF or the WCF permit holder has violated any law regulating the WCF or has failed to comply with the requirements of this chapter, the WCF permit, any applicable agreement or any condition of approval the City Council may:

1. Waive the violation(s); or

2. Revoke or modify the WCF permit.

E. Upon revocation, the City Council may require the removal of the WCF or take any other legally permissible action or combination of actions necessary to protect the health and welfare of the Town.

#### **15.32.140 Removal or relocation of facilities.**

A. Any WCF permit holder who abandons or discontinues use of a WCF for a continuous period of ninety (90) days shall so notify the City Manager or his or her designee by certified mail within thirty (30) days after the ninety (90) day period.

B. If the City Manager or his or her designee believes a WCF has been abandoned or discontinued for a continuous period of ninety (90) days, the City Manager or his or her designee shall send a notice of abandonment or discontinuation to the WCF permit holder stating why the Town believes the WCF to be abandoned or discontinued. Failure of the WCF permit holder to reply to the City Manager or his or her designee in writing within thirty (30) days after receiving, rejecting, or returning the Town's certified letter shall be relied upon by the City Manager or his or her designee that the WCF is, in fact, abandoned or discontinued.

C. Upon declaration of the City Manager or his or her designee that the WCF is abandoned or discontinued, as to private property, the WCF permit holder or owner of the affected real property shall have ninety (90) days from the date of the declaration or a further reasonable time as may be approved by the City Manager or his or her designee, within which to complete one of the following actions:

1. Reactivate use of the WCF;
2. Transfer the rights to use the WCF to another entity (who shall be subject to all the provisions of this chapter) and the entity immediately commences use of the WCF; or
3. Remove the WCF and restore the site to be consistent with the then-existing surrounding area.

D. If after the ninety (90) day time period set forth in subsection C of this section none of the required actions in subsections (C)(1) through (C)(3) of this section has occurred, the City Council at a noticed public hearing may declare that a WCF is deemed abandoned. The City Manager or his or her designee shall provide notice of such finding to the WCF permit holder and to the telecom carrier last known to use the WCF and, if applicable, to the owner of the affected private real property, providing thirty (30) days from the date of the notice within which to complete one of the following actions:

1. Reactivate use of the WCF;
2. Transfer the rights to use the WCF to another operator (who shall be subject to all the provisions of this chapter); or
3. Remove the WCF and restore the site to be consistent with the then-existing surrounding area.

E. If there is no reactivation, transfer or removal as set forth in subsection D of this section, the Town may thereafter remove the abandoned WCF, repair any and all damages to the premises caused by such removal, and otherwise restore the premises as is appropriate to be in compliance with applicable codes. If the Town removes the WCF, the Town may, but shall not be required to, store the removed WCF or any part thereof. The owner of the private property upon which the abandoned WCF was located and all prior operators of the WCF shall be jointly liable for the entire cost of such removal, repair, restoration and storage and shall remit payment to the Town promptly after demand therefor is made. In addition, the City Council, at its option, may utilize any financial security required in conjunction with granting the WCF permit as reimbursement for such costs. Also, in lieu of storing the removed WCF, the Town may convert it to the Town's use, sell it or dispose of it in any manner deemed by the Town to be appropriate.

F. Until the cost of removal, repair, restoration and storage is paid in full, a lien shall be placed on the abandoned personal property and any private real property on which the WCF was located for the full amount of the cost of removal, repair, restoration and storage. The City Clerk shall cause the lien to be recorded with the San Mateo County recorder.

G. After adequate written notice to the WCF permit holder, the City Council may require the relocation, at the WCF permit holder's expense and according to the then-existing standards for WCFs, of any WCF located in the right-of-way, as necessary for maintenance or reconfiguration of the Town's right-of-way; or take any other action or combination of actions necessary to protect the health and welfare of the Town.

H If an existing shared utility pole must be replaced, the WCF permit holder shall within 30 days after the installation of the replacement pole either relocate its WCF in the same configuration on the replacement pole, or remove the prior-existing WCF rather than relocate it, and notify the City Manager or his or her designee of the removal, and surrender its WCF permit for cancellation by the City Manager or his or her designee.

I. If the WCF permit holder fails to relocate or remove the WCF as required by this subsection, the Town may elect to treat the WCF as abandoned and proceed as set forth in Sections 15.32.130 of this Code or treat the WCF as a nuisance to be abated as set forth in Section 8.16.035 of this Code.

#### **15.32.150 Exemption for municipal facilities.**

WCFs installed or operated at the direction of the Town for the sole use of the Town, regardless of where located in the Town, shall be exempt from this chapter.

#### **15.32.160 Violations are infractions.**

It is unlawful for any person to violate any provision or to fail to comply with any of the requirements of this chapter. Any person, firm, partnership, or corporation violating any provision of this chapter or failing to comply with any of its requirements will be deemed guilty of an infraction and upon conviction thereof will be punished by fine not exceeding One Thousand and No/100ths Dollars (\$1,000.00). Each such person, firm, partnership, or corporation will be deemed guilty of a separate offense for each and every day or any portion thereof during which any violation of any of the provisions of this chapter is committed, continued or permitted by such person, firm, partnership, or corporation, and will be deemed punishable therefor as provided in this chapter

**15.32.170—Controlling provisions.**

In the event of any inconsistency between the provisions of this chapter and any other provision of the Hillsborough Municipal Code, the more specific provision shall control. Without limiting the generality of the foregoing, WCFs shall be governed by the procedures set forth in this chapter and not by the procedures set forth in Section 12.12 of this Code.

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**15.36.010 Permit—Required.**

A. Every person or entity desiring to place, erect, construct or maintain, or cause to be placed, erected, constructed or maintained in the town: (1) any radio tower, television tower, wireless tower or other tower or aerial designed to transmit or receive radio or television or similar signals; (2) any satellite dish antenna greater than one meter in diameter; (3) any generating windmill; or (4) any solar panel (the above items (1) through (4) collectively referred to as "Towers" in the plural and "Tower" in the singular) shall first obtain approval of the Architecture and Design Review Board under Title 2 and next obtain a building permit as provided in this chapter.

B. The provisions of subsection A of this Section shall not apply to Wireless Communications Facilities regulated in Section 15.32 of this Code.