

Chapter 15.32 - WIRELESS COMMUNICATIONS FACILITIES⁴¹

Footnotes:

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Editor's note— Ord. No. 720, § 1, adopted March 9, 2015, amended chapter 15.32 in its entirety to read as herein set out. Former chapter 15.32, §§ 15.32.010—15.32.190, pertained to similar subject matter. See the Code Comparative Table for complete derivation.

15.32.010 - Purpose, intent, and application.

- A. The purpose of this chapter is to reasonably regulate, to the extent permitted under California and federal law, the installations, operations, collocations, modifications, replacements and removals of various wireless communications facilities ("WCFs") in the town recognizing the benefits of wireless communications while reasonably respecting other important town needs, including the protection of public health, safety, and welfare, aesthetics and local values.
- 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:
 - 1. Minimizing the visual and physical effects of WCFs through appropriate design, siting, screening techniques and location standards;
 - 2. Encouraging the installation of WCFs at locations where other such facilities already exist; and
 - 3. Encouraging the installation of such facilities where and in a manner such that 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 ten years, and to reevaluate existing WCFs at the end of each term.
- D. It is not the purpose or intent of this chapter to:
 - 1. Prohibit or to have the effect of prohibiting wireless communications services; or
 - 2. Unreasonably discriminate among providers of functionally equivalent wireless communications services; or
 - 3. Regulate the placement, construction or modification of WCFs on the basis of the environmental effects of radio frequency ("RF") emissions where it is demonstrated that the WCF does or will comply with the applicable FCC regulations; or
 - 4. Prohibit or effectively prohibit collocations or modifications that the town must approve under state or federal law.
- E. The provisions in this chapter shall apply to all permit applications to install, operate or change, including, without limitation, to collocate, modify, replace or remove, any new or existing wireless tower or base station within the town. 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, or towers as defined and governed by Chapter 15.36, except to the extent that such towers may be used to support WCFs.
- F. Nothing in this chapter is intended to allow the town to preempt any state or federal law or regulation applicable to a WCF.
- G. The provisions of this chapter are in addition to, and do not replace, any obligations a WCF permit holder may have under any franchises, licenses, or other permits issued by the town.

(Ord. No. 720, § 1, 3-9-2015; Ord. No. 738, § 1, 7-11-2016)

15.32.020 - Definitions.

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

"Section 6409(a)" means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, codified as 47 U.S.C. section 1455(a), as may be amended or interpreted in judicial or administrative decisions.

"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.

"Antenna array" shall mean two 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.

"Base station" means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(1), as may be amended, which defines that term as follows:

"A structure or equipment at a fixed location that enables [FCC]-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in [47 C.F.R. § 1.40001(b)(9)] or any equipment associated with a tower."

- (i) 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.
- (ii) 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).
- (iii) The term includes any structure other than a tower that, at the time the relevant application is filed with the state or local government under this section, supports or houses equipment described in paragraphs (b)(1)(i) through (ii) of this section that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.
- (iv) The term does not include any structure that, at the time the relevant application is filed with the state or local government under this section, does not support or house equipment described in paragraphs (b)(1)(i)-(ii) of this section.

As an illustration and not a limitation, the FCC's definition refers to any structure that actually supports wireless equipment even though it was not originally intended for that purpose. Examples include, but are not limited to, wireless facilities mounted on buildings, utility poles and transmission towers, light standards or traffic signals. A structure without wireless equipment replaced with a new one designed to bear the additional weight from wireless equipment constitutes a base station.

"Building and planning director" means the Town of Hillsborough's director of the building and planning department or his or her designee.

"Camouflaged or concealed WCF" means a wireless communications facility that (i) is integrated as an architectural feature of an existing structure such as (but not limited to) a cupola, or (ii) is integrated in an outdoor fixture such as (but not limited to) a flagpole; or (iii) uses a design which mimics and is consistent with nearby natural, or architectural features, or is incorporated into or replaces existing permitted facilities (including but not limited to stop signs or other traffic signs or freestanding light standards) so that the presence of the WCF is not readily apparent.

"City council" means the city council of the Town of Hillsborough, California.

"City manager" shall mean the city manager of the Town of Hillsborough, California, or his or her designee.

"Code" means the Hillsborough Municipal Code.

"Collocation" means, (a) for the purposes of any Section 6409(a) modification, the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(2), as may be amended, which defines that term as "[t]he 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." As an illustration and not a limitation, the FCC's definition means to add transmission equipment to an existing facility and does not necessarily refer to two or more different facility operators in the same location; and (b) for all other purposes, the same as defined in 47 C.F.R. § 1.6002(g)(1) and (2), as may be amended, which defines that term as (1) mounting or installing an antenna facility on a pre-existing structure, and/or (2) modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

"CPUC" means the California Public Utilities Commission.

"Distributed antenna system" or "DAS," means a network of one or more antennas and related fiber optic nodes typically mounted to streetlight poles, or utility poles, which provide access and signal transfer for wireless service providers. A 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 facilities to provide the signal transfer services.

"FCC" means the Federal Communications Commission.

"Lattice tower" means an open framework structure used to support one or more antennas, typically with three or four support legs.

"Minor WCF" means a new WCF of a type or in an area approved by the city council for streamlined processing (a) where granting the application would not violate any of the terms or conditions of an existing permit and (b) where:

1. Granting the application would not create a safety hazard, whether from wind loading, stress on the support structure or wireless tower, or in any other manner;
2. Granting the application would not intrude upon or additionally burden any environmentally sensitive area, or incommode the public in its use of any rights-of-way;
3. The application would not alter the visible size of any structure or outdoor fixture to which the transmission equipment is attached;
4. The application would not result in any visible transmission equipment from any publicly accessible spaces; and
5. The application would not result in an alteration of a structure or support structure otherwise inconsistent with the Code.

"Monopole" means a single freestanding pole used to act as or support an externally mounted antenna or antenna arrays.

"OTARD antennas" means antennas covered by the "over-the-air reception devices" rule in 47 C.F.R. sections 1.4000 et seq. as may be amended or replaced from time to time.

"Outdoor fixture" has the same meaning as "outdoor fixture" under Section 12.12.010 of this Code.

"Public property" means property owned or under the control of the town and specifically excludes the town's rights-of-way. By way of example and not limitation, public property includes structures and outdoor fixtures owned by the town.

"Public works director" means the director of public works of the town or his or her designee.

"Radome" means a visually-opaque, radio frequency transparent enclosure which may contain transmission equipment.

"Rights-of-way" refers to public streets and rights-of-way, as those terms are defined in Section 1.04.010(K) and Section 17.08.220 of this Code.

"Section 6409(a) modification" means a collocation or modification of transmission equipment at an existing wireless tower or base station that does not result in a substantial change in the physical dimensions of the existing wireless tower or base station. For the purposes of a Section 6409(a) modification, the term "substantial change" means:

1. For wireless towers outside the public right-of-way, a substantial change occurs when:
 - a. The proposed collocation or modification increases the overall height more than ten percent or the height of one additional antenna array not to exceed twenty feet (whichever is greater); or
 - b. The proposed collocation or modification increases the width more than twenty feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or
 - c. The proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or
 - d. The proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site.
2. For wireless towers within the public right-of-way and for all base stations, a substantial change occurs when:
 - a. The proposed collocation or modification increases the overall height more than ten percent or ten feet (whichever is greater); or
 - b. the proposed collocation or modification increases the width more than six feet from the edge of the wireless tower or base station; or
 - c. The proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or
 - d. The proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or
 - e. The proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent larger in height or volume than any existing ground-mounted equipment cabinets; or
 - f. The proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.
3. For all proposed collocations and modifications, a substantial change occurs when:
 - a. The proposed collocation or modification involves more than the standard number of new equipment cabinets for the technology involved, but not to exceed four equipment cabinets;
 - b. The proposed collocation or modification would defeat the concealment elements of the support structure; or
 - c. The proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval that is inconsistent with the thresholds for a substantial change described in this section.

The thresholds and conditions for a "substantial change" described in this section are disjunctive—the violation of any individual threshold or condition results in a substantial change. The height and width thresholds for a substantial change described in this section are cumulative for each individual wireless tower or base station. The cumulative limit is measured from the physical dimensions of the original

structure for base stations and all sites in the public rights-of-way, and from the smallest physical dimensions that existed on or after February 22, 2012, for wireless towers on private property.

"Small WCFs" means the same as defined by the FCC in 47 C.F.R. § 1.6002(l) as may be amended, which are personal wireless services facilities that meet the following conditions that, solely for convenience, have been set forth below:

1. The facilities:
 - a. Are mounted on structures fifty feet or less in height, including antennas, as defined in 47 C.F.R. § 1.1320(d), or
 - b. Are mounted on structures no more than ten percent taller than other adjacent structures, or
 - c. Do not extend existing structures on which they are located to a height of more than fifty feet or by more than ten percent, whichever is greater;
2. Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. § 1.1320(d)), is no more than three cubic feet in volume;
3. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than twenty-eight cubic feet in volume;
4. The facility does not require antenna structure registration under 47 C.F.R. Part 17;
5. The facility is not located on Tribal lands, as defined under 36 C.F.R. § 800.16(x); and
6. The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).

"Structure" has the same meaning as "structure" under Section 17.08.270 of this code but for purposes of this chapter does not include utility poles or towers as defined in Chapter 15.36.

"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 antenna or antennas but specifically excluding the base station.

"Support structure(s)" means a structure, outdoor fixture, tower as defined in Chapter 15.36, or utility pole capable of safely supporting a WCF, but does not necessarily include a wireless tower or base station.

"Town" means the Town of Hillsborough, California.

"Transmission equipment" means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(8), as may be amended, which defines that term as "[e]quipment that facilitates transmission for any [FCC]-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services included, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul."

"Utility pole" means a steel or wood pole or structure located in the rights-of-way and dedicated to use by multiple utilities and providers of communications franchised by the state or town. A wireless tower is not a utility pole.

"Whip antenna" means an omni-directional antenna.

"Wireless" means any FCC licensed or authorized communication service transmitted over frequencies in the electromagnetic spectrum.

"Wireless communications facility" or "WCF" means a facility used to "provide personal wireless services" as defined at 47 U.S.C. section 332(c)(7)(C); or wireless information services provided to the

public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services; or any other FCC licensed or authorized service. A WCF does not include a facility entirely enclosed within a permitted building outside of the rights-of-way where the installation does not require a modification of the exterior of the building; nor does it include a device attached to a building, used for serving that building only and that is otherwise permitted under other provisions of the Code. A WCF consists of an antenna or antennas, including, but not limited to, directional, omni-directional and parabolic antennas, base station, support equipment, and (if applicable) a wireless tower. It does not include the support structure to which the WCF or its components is attached. 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, nor does it include other facilities specifically excluded from the coverage of this chapter.

"Wireless tower" means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(9), as may be amended, which defines that terms as "[a]ny structure built for the sole or primary purpose of supporting [FCC]-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site." Examples include, but are not limited to, monopoles, mono-trees and lattice towers. This does not include structures that were installed to replace or collocate upon existing power poles, light poles, energy transmission towers, or buildings. A support structure which is modified or replaced to allow for the installation of transmission equipment retains its prior use as its primary use, and the wireless use is only a secondary use thereof, even if the transmission equipment is the only attachment to the support structure.

(Ord. No. 720, § 1, 3-9-2015; Ord. No. 723, §§ 1, 2, 4-13-2015; Ord. No. 738, § 1, 7-11-2016; Ord. No. 751, §§ 5—8, 1-14-2019; Ord. No. 754, §§ 4—7, 2-11-2019)

15.32.030 - Permitted use.

Subject to compliance with this chapter and other applicable provisions of this code and other law, WCFs are a permitted use in the residence district ("RD") which includes the rights-of-way.

(Ord. No. 720, § 1, 3-9-2015; Ord. No. 738, § 1, 7-11-2016)

15.32.040 - Permit required; estimated deposits; pre-application meetings.

- A. A WCF may not be installed, collocated or modified without a permit, except as provided herein. Complete removal of a WCF does not require a permit under this chapter, but removal must be performed in strict compliance with this chapter.
- B. A permit shall not be issued:
 - 1. Unless the applicant shows that it has the necessary permission to place the WCF as proposed on private property or public property that it proposes to occupy (including the authority to make modifications to any support structure or wireless tower associated with the installation or modification); and
 - 2. In the case of a WCF in the rights-of-way unless the applicant holds a franchise, license or similar authorization from the town or the state that entitles it to occupy the rights-of-way to install or modify a WCF.
- C. A permit shall not be effective and shall not authorize installation, collocation or modification of any WCF or installation or modification of a support structure or wireless tower unless the conditions of this paragraph are satisfied. A permit may be revoked prior to its effective date.

1. Applicant must obtain all other required permits, authorizations, approvals or declarations that may be required for installation or modification of the WCF or for installation or modification of the support structure under federal, state or local law, including but not limited to building permits, CEQA declarations, or FCC approvals. A WCF permit is not in lieu of any other permit required under the Code, except as specifically provided herein, nor is it a franchise, license or other authorization to occupy the rights-of-way, or a license, lease or agreement authorizing occupancy of any other private or public property. It does not create a vested right in occupying any particular location, and a permittee may be required to move and remove facilities at its expense consistent with other provisions of applicable law.
 2. Applicant must provide proof to the town that it has obtained all insurance and/or security required by the Code, and must pay any fees owed to the town.
- D. A permit issued in error, based on incomplete or false information submitted by an applicant or that conflicts with the provisions of this chapter is not valid.
 - E. The applicant shall submit an application as specified in Section 15.32.050 together with a deposit, estimated by the city manager, to cover the town's application processing costs.
 - F. Where the tendered deposit has been consumed in the processing of the application, the city manager may require the applicant to promptly tender additional deposit(s).
 - G. The applicant shall also deposit with the town the amount estimated to pay for any compliance report required under Section 15.32.100 of this chapter.
 - H. If required by the city manager 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 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.
 - I. Upon the approval, denial, or termination of the application any unexpended portion of the deposits shall be returned to the applicant. If the deposits did not cover the town's costs, the town will charge the applicant therefore, and in the event of an approval of the WCF the town shall not issue the permit until such charge is fully paid.
 - J. Two pre-application meetings with town staff are recommended for WCFs. The first meeting should take place at the earliest stage of site location research and should include a service area map and description of the type of WCF sought. The second meeting should take place after the site is selected and should include a preliminary site plan and visual impact drawings. These meetings are voluntary.

(Ord. No. 720, § 1, 3-9-2015; Ord. No. 738, § 1, 7-11-2016)

15.32.050 - Application required; contents of permit application.

- A. In all cases an applicant for a WCF permit shall utilize the form of application required by the town. The city manager is authorized to prepare forms of application, and may develop forms of application that distinguish between different types of installations and modifications in order to streamline processing of applications, and to comply with legal requirements. The city manager may also from time to time require additional application materials and/or information in any publicly-stated format.
- B. An applicant shall tender a WCF permit application and any revisions thereto by appointment only. Applicants may submit one application per appointment but may schedule successive appointments for multiple applications whenever feasible as determined by the town. The town shall ensure that applicant's appointments are scheduled no later than five business days following the applicant's request.
- C. At a minimum, an application for a WCF permit must include the following information:

1. The name and contact information of the entity or entities that will own, and be responsible for the installation and maintenance of the WCF and any support structure installed as part of the installation of the WCF;
 2. A written and technically accurate and reliable narrative explaining the nature of the permit sought (new installation, modification of existing installation, minor WCF, small WCF, Section 6409(a) modification or other modification); the authorizations required for the installation, collocation or modification, and steps that applicant has taken to comply with the code;
 3. Documentation of all current and proposed radio frequency emissions from the WCF shall be provided on the form found in Appendix A of the FCC publication, "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance" dated June 2, 2000 (the "Guidance"), or on a form that contains all of the same information as in Appendix A of the Guidance, or on a form or in a manner promulgated by the FCC;
 4. Information regarding the ownership of the property and support structure or wireless tower on which the WCF will be located, showing applicant has authorization from the owner(s) of the property and/or support structure or wireless tower to pursue the WCF application;
 5. Information showing applicant has authorization from the owner(s) of the support structure or wireless tower to place its proposed WCF on the support structure or wireless tower, including all structural, windloading and other safety analyses performed to determine whether (and, if applicable, with what modifications or replacements) the support structure or wireless tower can safely support the proposed WCF in compliance with CPUC General Order 95 and General Order 128, and/or other applicable building and safety standards, as they may be amended or replaced;
 6. Any CEQA-related determinations with respect to the proposed collocation, modification or installation;
 7. For installations in the rights-of-way, written evidence of a franchise, license or similar authorization from the town or the state that entitles the applicant to occupy the rights-of-way;
 8. Materials needed for the town to provide notice of the application to all owners of real property in the vicinity of the proposed WCF location as provided in Section 15.32.060.B. These materials shall be in the form and include the content that the city manager may from time-to-time require in any publicly stated format, but at a minimum must include a plain language description and photosimulations or illustrations of the proposed WCF;
 9. A photo image of the storyboard proposed to meet the requirements of Section 15.32.060.E; and
 10. Any other information or materials that the city manager may from time-to-time require in any publicly stated format.
- D. Where a WCF is part of a network of WCFs that will be installed contemporaneously or sequentially, such as a distributed antenna system or DAS, the applications for each of the facilities in the proposed network shall be submitted simultaneously.
- E. To promote efficient review and timely decisions, an application will be automatically deemed withdrawn when an applicant fails to tender a substantive response within sixty days after the town deems the application incomplete as set forth in a written notice to the applicant. The city manager may in the city manager's discretion grant a written extension for up to an additional thirty days upon a written request for an extension received prior to the sixtieth day. The city manager may grant further written extensions only for good cause, which includes circumstances outside the applicant's reasonable control.

(Ord. No. 720, § 1, 3-9-2015; Ord. No. 738, § 1, 7-11-2016; Ord. No. 751, § 9, 1-14-2019; Ord. No. 754, § 8, 2-11-2019)

15.32.060 - Review of permit application; noticing.

- A. The city manager shall review all WCF permit applications for completeness and compliance with the provisions of this chapter and other applicable laws and regulations. Generally, the city manager will designate the public works director to be lead reviewer for applications for placement and/or modification of WCFs in the rights-of-way, and will designate the building and planning director to be lead reviewer for applications for placement and/or modification of WCFs on private property and public property.
- B. No more than three business days after the WCF permit application has been submitted to the city manager with complete noticing materials as required by this code, a type A notice (as described in Chapter 1.20 of this code) of the WCF shall be provided by the town to all owners of real property any part of which is located within five hundred feet of the real property, or if the WCF is to be located in the town's rights-of-way within five hundred feet of the proposed WCF location. If the city manager determines that certain different types of proposed WCF installations and modifications should be subject to broader notice requirements, the city manager may increase the notice radius by specifying the broader notice requirement in the WCF permit application form prepared pursuant to Section 15.32.050.
- C. Notwithstanding the above, for a minor WCF, a Section 6409(a) modification, or for modifications of facilities in the rights-of-way, a type B notice (as described in Chapter 1.20 of this code) shall be provided to all owners of real property any part of which is located adjacent to the real property upon which the WCF is located, or if the WCF is to be located in the town's rights-of-way to owners of real property any part of which is located adjacent to the WCF location.
- D. No more than thirty days but not less than twenty-five days before the date the applicant believes the applicable timeframe for review expires, the applicant must provide notice to all persons entitled to notice in accordance with code Section 15.32.060, as modified in this subsection D. The provisions in this subsection do not apply to Section 6409(a) modifications or small WCF applications.
 - 1. The notice must contain the following statement: "California Government Code section 65964.1 may deem the application approved in thirty days unless the Town approves or disapproves the application, or the Town and applicant reach a mutual tolling agreement."
 - 2. In addition to all persons entitled to notice in accordance with this code Section 15.32.060, the applicant must deliver written notice to the city manager, which contains the same statement required in subsection D.1., above, and a mailing list for public notices sent out under this subsection (B). The applicant may tender such notice in person or by certified United States mail.
- E. No more than two business days after filing an application for a WCF permit, the applicant must post a storyboard at the proposed WCF location that does not interfere with local traffic or use of the public right-of-way and consists of a color image of the proposed WCF, printed on a weatherproof material and mounted on a wood frame.

(Ord. No. 720, § 1, 3-9-2015; Ord. No. 738, § 1, 7-11-2016; Ord. No. 751, §§ 10—12, 1-14-2019; Ord. No. 754, §§ 9—11, 2-11-2019)

15.32.070 - Design standards.

- A. The purpose of this section is to identify preferences and requirements for the location and design of WCFs, to provide guidance to prospective applicants as they seek appropriate WCF locations within the town, and to provide guidance to the city manager in determining whether to grant, grant with conditions, or to deny a WCF application.

- B. This section applies to all new WCFs and to all collocations and modifications to existing WCFs, except collocations and modifications to existing WCFs that qualify as a Section 6409(a) modification.
- C. The location for a WCF should take into consideration the following preference order (with (1) being the highest preference):
 - 1. Public property;
 - 2. Existing utility poles (with poles without electric distribution lines being favored over poles supporting electric distribution lines); or other support structures or wireless towers where collocation has been pre-approved (where the application is consistent with the pre-approval);
 - 3. Existing support structures or wireless towers on nonresidential private property; and
 - 4. New concealed WCF in the rights-of-way or on private property.
- D. The city council shall adopt design and development standards for WCFs, consistent with the requirements of this section.

(Ord. No. 720, § 1, 3-9-2015; Ord. No. 738, § 1, 7-11-2016; Ord. No. 751, § 13, 1-14-2019; Ord. No. 754, § 12, 2-11-2019)

15.32.080 - Approval or disapproval of an application.

- A. The city manager may approve or conditionally approve an application only after:
 - 1. The application is deemed complete;
 - 2. At least fifteen days has elapsed from the postmark date required under Section 15.32.060.B. or C. of this chapter (if applicable); and
 - 3. Any action required under Section 2.12.070 has been taken.
- B. The city manager may disapprove an application in any of the following instances:
 - 1. The applicant has not shown that the application conforms to the requirements of this chapter; or
 - 2. The applicant has failed to submit any additional information requested by the city manager by the due date specified by the city manager; or
 - 3. The applicant has not provided to the town all of the required information required by this chapter to permit the city manager to approve, approve with conditions, or deny the application taking into account legal deadlines affecting the town's consideration of the application.
- C. It is the applicant's burden to show that a permit should be granted. In reviewing an application, the city manager may consider the WCF as proposed, and as it may be modified as a matter of right should the application be granted. In determining whether to grant, deny or condition an application, the city manager may consider the following and such other matters as the city manager may be entitled or required to consider as a matter of law:
 - 1. Except as to Section 6409(a) modifications, whether the WCF and support structure additions and modifications proposed are consistent with the general plan and will not adversely affect the policies and goals set forth therein or alter the rural character of the community;
 - 2. Except as to minor WCFs, Section 6409(a) modifications or where the town is prohibited from considering it by law, whether the applicant has shown that denial of the proposed WCF would result in an effective prohibition of personal wireless services or telecommunications services, or that denial is otherwise preempted by state or federal law;

3. Except as to Section 6409(a) modifications, whether the WCF and support structure modifications and additions proposed, comply with the design standards herein, and other applicable provisions of the code and in applicable city council resolutions;
 4. Whether the WCF and support structure modifications and additions proposed comply with applicable safety codes and laws (including without limitation the ADA);
 5. Except as to Section 6409(a) modifications, whether the WCF and support structure modifications and additions interfere with the public's use of rights-of-way, or create undue risks to persons or property;
 6. Whether the applicant has made the required affirmation regarding compliance with the FCC's RF regulations, as the same may be amended;
 7. Whether the applicant is authorized to file the application;
 8. Whether the applicant has or will have necessary local, state or federal regulatory approvals required in connection with the WCF (including but not limited to necessary CEQA approvals, if any; and approvals for utility box design under this Code, or for structures on private property under Section 2.12); and
 9. Except as to Section 6409(a) modifications, whether alternative designs or locations would be more consistent with the general plan and otherwise minimize the impact of the WCF and support structure modifications and additions required.
- D. If the city manager determines that an application should be approved, denied, or should be conditionally approved, he or she shall make written findings referencing substantial evidence in the town's written administrative record in support of the action. The applicant and each owner of real property who was entitled to notice of the application as provided in Section 15.32.060.B. shall receive a copy of the town's written decision and findings with respect to the decision. Such copy shall also plainly state the process and deadline for filing an appeal to the city council. Unless timely appealed, the decision will be final except as provided in Sections 15.32.040.C. and 15.32.080.E. herein.
- E. Notwithstanding any other provision of this chapter to the contrary, the city manager may recommend to the city council that, notwithstanding the evidence supporting denial, an application be approved if he or she makes a finding that the applicant has demonstrated that the refusal to grant such an exception and approve the application would prohibit or have the effect of prohibiting the provision of personal wireless services within the meaning of 47 U.S.C. section 332(c)(7), or finds that the town authority to deny the application is otherwise preempted or prohibited by state or federal law. If a recommendation is made under this provision, the recommendation will be promptly submitted to the city council for final determination.
- F. A WCF located on private property shall also be subject to the provisions of Chapter 2.12 of this code to the extent that it involves a modification to a support structure which is also subject to review under the provisions of Chapter 2.12.
- G. Notwithstanding the foregoing, the following provisions shall apply to Section 6409(a) modifications:
1. Pursuant to 47 U.S.C. Section 1455(a), the city manager may not deny a Section 6409(a) modification except when:
 - a. The collocation or modification would result in a substantial change (see "Section 6409(a) modification," defined in Section 15.32.020, pg. 316) to the existing wireless tower or base station;
 - b. The collocation or modification would violate any applicable building code, electrical code, structural code, fire code or any other law, regulation, rule or prior condition of approval based on objective factors and reasonably related to public health and safety;
 - c. The collocation or modification involves the replacement of the wireless tower or other support structure; or

- d. 47 U.S.C. Section 1455(a) does not apply to the collocation or modification for any lawful reason.
 2. Any denial of a Section 6409(a) modification shall be without prejudice. Subject to subsection G.3. below, the applicant may submit the same or substantially the same permit application, together with all required fees and deposits, for either a WCF permit or a Section 6409(a) modification permit.
 3. The town shall be entitled to recover the reasonable costs for its review of any Section 6409(a) modification permit application, whether approved, deemed granted or denied without prejudice. In the event that the city manager denies a Section 6409(a) permit, the town shall return any unused deposit fees within sixty days after a written request from the applicant. If the fees in the deposit account do not cover the reasonable cost for the town's review, an applicant shall not be allowed to submit an application for the same or substantially the same change unless all fees for the prior-denied permit application are paid in full.
- H. Notwithstanding the foregoing, the following provisions shall apply to small WCFs:
1. The city manager shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:
 - a. The facility is not detrimental to the public health, safety, and welfare;
 - b. The facility complies with this chapter and all applicable design and development standards; and
 - c. The facility meets applicable requirements and standards of state and federal law.

(Ord. No. 720, § 1, 3-9-2015; Ord. No. 738, § 1, 7-11-2016; Ord. No. 751, §§ 14—18, 1-14-2019; Ord. No. 754, §§ 13—17, 2-11-2019)

15.32.090 - Appeal to city council.

- A. Within fifteen calendar days following the date of the city manager's written decision on the WCF application or within seven days for WCF applications for small WCFs or EFRs, any person or entity may appeal the decision to the city council.
- B. Where an appeal is timely filed, the city manager 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 is sent shall be governed by Section 15.32.060.B. or C. of this chapter 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. The appellant shall bear all costs for the appeal. In all other cases not described herein, a type B notice of the appeal shall be mailed consistent with this section.
- D. The city council shall hear the appeal at the next regular city council meeting after allowing for sufficient time for the city manager to prepare the written report. To prevent applicants from withholding information or otherwise abusing the appeal process, the city council has the discretion but is not required to hear additional evidence, and may decide the matter solely on the record that was before the city manager.
- E. The city council may accept or reject, wholly or in part, or may modify, the decision or any recommendations made by the city manager. 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 manager to prepare written finding(s) referencing substantial evidence in the town's written administrative record and such writing finding shall be provided to the city council for adoption. The

applicant and any appellant on the application shall receive a copy of the final written decision approved by the city council.

- F. The city council may also remand the application to the building and planning director or public works director for further consideration with such instructions as the city council deems appropriate.

(Ord. No. 720, § 1, 3-9-2015; Ord. No. 738, § 1, 7-11-2016; Ord. No. 751, §§ 19—21, 1-14-2019; Ord. No. 754, §§ 18—20, 2-11-2019)

15.32.100 - Standard conditions.

All WCF permits, whether approved in accordance with this code or deemed approved or deemed granted by the operation of law, shall be subject to the standard conditions of approval provided in the city council resolution which may add, remove or modify any conditions of approval as necessary or appropriate to protect and promote the public health, safety and welfare.

(Ord. No. 720, § 1, 3-9-2015; Ord. No. 738, § 1, 7-11-2016; Ord. No. 751, §§ 22—24, 1-14-2019; Ord. No. 754, § 21—23, 2-11-2019)

Editor's note— Ord. No. 751, § 22, adopted January 14, 2019, repealed § 15.32.100, which pertained to compliance reports and derived from Ord. No. 720, adopted March 9, 2015; and Ord. No. 738, adopted July 11, 2016. Ord. No. 751, § 23, renumbered former § 15.32.110 as 15.32.100.

15.32.110 - Modification of a WCF permit.

- A. The town may modify a permit before its termination date where necessary to protect public health and safety, or where the permit as issued is no longer enforceable in accordance with its terms.
- B. A permit holder may modify a permit by seeking either a Section 6409(a) modification or other modification. Modifications other than Section 6409(a) modifications shall be treated the same as requests for a new WCF.
- C. Requests for modifications will be reviewed in accordance with the provisions of the Code at the time modification is sought, and not at the time the permit initially issued.

(Ord. No. 720, § 1, 3-9-2015; Ord. No. 738, § 1, 7-11-2016; Ord. No. 751, § 26, 1-14-2019; Ord. No. 754, § 25, 2-11-2019)

Editor's note— Ord. No. 751, § 26, renumbered former § 15.32.130 as 15.32.110.

15.32.120 - Revocation of a WCF permit.

- A. A WCF permit may be revoked if permittee is not in compliance with permit conditions, if the permit conditions are not enforceable, or for a failure to comply with any provision of the Code relating to the permit, or relating to the WCF associated with the permit ("default event"). By way of example and not limitation, a refusal to timely remove facilities located in the rights-of-way where required in connection with a public works project would be a default event.
- B. The city manager may revoke a WCF permit only after:
 - 1. Written notice of the default event 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 default event occurred.
- C. If the WCF permit holder fails to cure, the city council or the city council through a designee shall conduct a noticed public hearing where the WCF permit holder shall be afforded an opportunity to speak and be heard and to provide written material prior to the 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 revoke the permit.
- D. 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.

(Ord. No. 720, § 1, 3-9-2015; Ord. No. 738, § 1, 7-11-2016; Ord. No. 751, §§ 25, 27, 1-14-2019; Ord. No. 754, §§ 24, 26, 2-11-2019)

Editor's note— Ord. No. 751, § 25, adopted January 14, 2019, repealed § 15.32.120, which pertained to operational regulations and derived from Ord. No. 720, adopted March 9, 2015; and Ord. No. 738, adopted July 11, 2016. Ord. No. 751, § 27, adopted January 14, 2019, renumbered former § 15.32.140 as 15.32.120.

15.32.130 - 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, but as a matter of policy, shall be designed and located consistent with the design requirements of this chapter.

(Ord. No. 720, § 1, 3-9-2015; Ord. No. 738, § 1, 7-11-2016; Ord. No. 751, § 30, 1-14-2019; Ord. No. 754, § 29, 2-11-2019)

Editor's note— Ord. No. 751, § 30, renumbered former § 15.32.170 as 15.32.130.

15.32.140 - 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 dollars. 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.

(Ord. No. 720, § 1, 3-9-2015; Ord. No. 738, § 1, 7-11-2016; Ord. No. 751, § 31, 1-14-2019; Ord. No. 754, § 30, 2-11-2019)

Editor's note— Ord. No. 751, § 31, renumbered former § 15.32.180 as 15.32.140.

15.32.150 - Controlling provisions.

In the event of any inconsistency between the provisions of this chapter and any other provision of the 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, except as provided in Section 15.32.070 F.1.

(Ord. No. 720, § 1, 3-9-2015; Ord. No. 738, § 1, 7-11-2016; Ord. No. 751, §§ 28, 32, 1-14-2019; Ord. No. 754, §§ 27, 31, 2-11-2019)

Editor's note— Ord. No. 751, § 28, adopted January 14, 2019, repealed § 15.32.150, which pertained to abandonment, removal or relocation of facilities and derived from Ord. No. 720, adopted March 9, 2015; and Ord. No. 738, adopted July 11, 2016. Ord. No. 751, § 32, renumbered former § 15.32.190 as 15.32.150.

15.32.160. - Reserved.

Editor's note— Ord. No. 751, § 29, adopted January 14, 2019, repealed § 15.32.160, which pertained to transfer of an interest and derived from Ord. No. 720, adopted March 9, 2015; and Ord. No. 738, adopted July 11, 2016.