



Item No. 2 Town of Atherton

CITY COUNCIL STAFF REPORT – STUDY SESSION

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: GEORGE RODERICKS, CITY MANAGER

DATE: NOVEMBER 5, 2014

SUBJECT: REVIEW OF THE DRAFT WIRELESS TELECOMMUNICATIONS FACILITY ORDINANCE

RECOMMENDATION

Review and Discuss.

BACKGROUND

The Town's does not current have a Wireless Telecommunications Facility Ordinance. This ordinance would create a new chapter within the Town's Municipal Code – Chapter 12.05 Wireless Telecommunications Facilities.

The Town currently processes installations and modifications through the Town's encroachment ordinance essentially only regulating the actual work within the public right-of-way. Wireless facilities on private property are currently processed via a Conditional Use Permit.

Two years ago, in recognition of the issues presented by new or modified antenna locations the Town added a public component to the review process. Upon receipt of an application for access and modification, staff requested plans sets and noticed the neighborhood around the site (500-foot radius) of the planned improvements. Staff facilitated the public meetings fielding concerns expressed by the neighbors and working with the applicant to address them. Thus far, all applicants have been cooperative throughout the process and addressed as many of the concerns as reasonably possible.

As a reminder, at this time the Town does not have a wireless telecommunications facility ordinance, the public meetings while cooperative and collaborative are voluntary, and the Town cannot unreasonably deny any applications. The field of telecommunications regulation is fully occupied by the Federal Government. Lastly, as the City Attorney will advise this evening, there are pending FCC regulations that may substantially uproot anything the Town ultimately adopts.

FINDINGS

Regulation of telecommunications facilities is challenging at the local level. Staff has made attempts over the years to address concerns raised by residents with respect to specific installations, but without a local ordinance, there is little in the way of standard specifications.

The Town of Hillsborough recently enacted an ordinance to address the installation of wireless facilities. The Town adopted the ordinance contemporarily with threats of litigation and larger installations by cellular providers. The intent of Hillsborough's ordinance was not to prevent the installation of facilities; rather to regulate the time, place, and manner of the installation or modification. Representatives from the Town of Hillsborough were very clear that they could not legally prevent any installation that did not pose a public safety threat. Given the similarity of the two communities and the issues raised, staff obtained Hillsborough's ordinance and revised it for Atherton's use. Staff will not be going through the ordinance line by line; rather, staff will cover the ordinance in broad application and hit the highlights. The ordinance is not yet ready for formal adoption, but before staff moves farther forward with its drafting it is appropriate to have a check-in with the Council with respect to what can be done, what the expectations of regulation encompass, and the proposed methodology.

What does the ordinance regulate?

The ordinance regulates the installation and operation of the various types of wireless telecommunications facilities while attempting to minimize the visual and physical affects of the facilities. The ordinance encourages appropriate design, siting, screening, and location. The ordinance limits the duration of permits to 10 years and re-evaluates existing facilities at the end of each term.

The ordinance does not prohibit the installation of facilities nor does it regulate based on the environmental effects of radio frequency emissions so long as the installation complies with applicable FCC regulations. Lastly, the ordinance does not discriminate amongst the varying providers.

What are some of the key definitions?

As you read through the ordinance, there are some key definitions that are important.

A *Wireless Telecommunications Facility* is the antenna(s), base station, support equipment and tower. It does not include the support structure to which the components are attached.

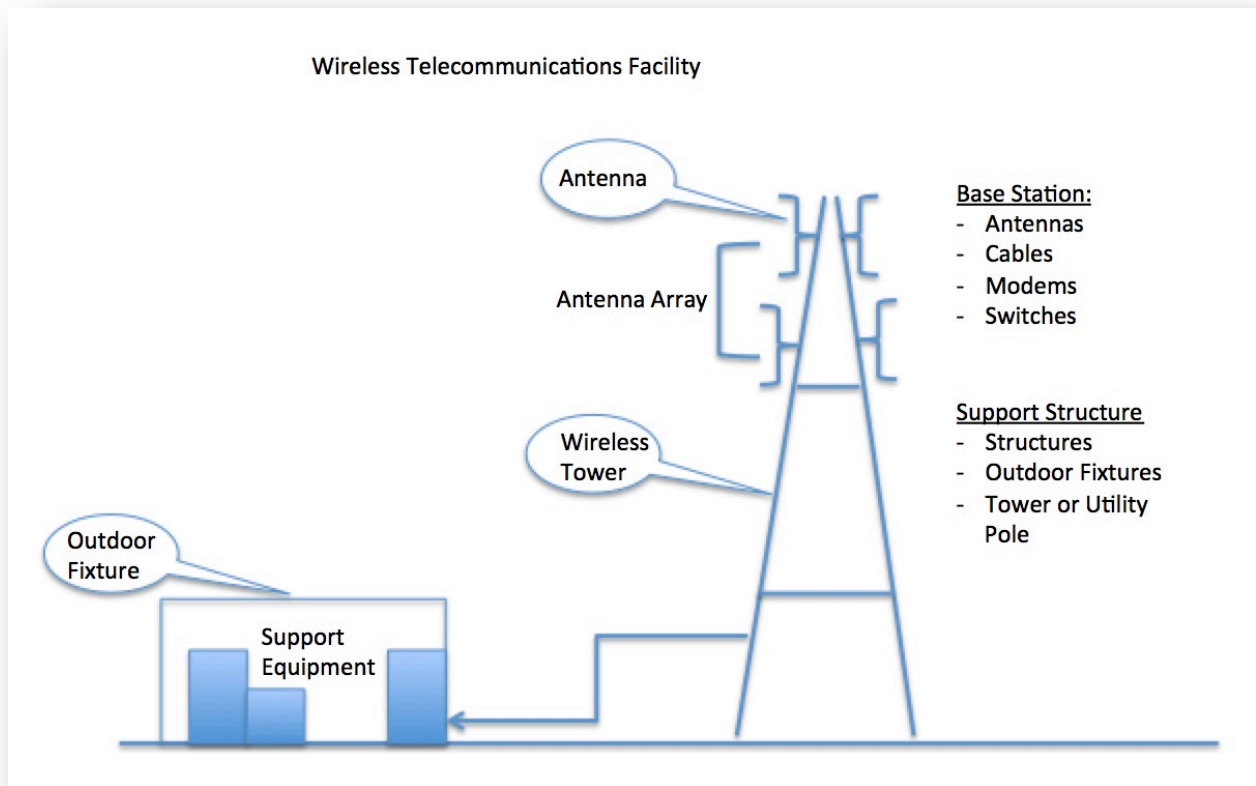
An *antenna* is basically any device used to transmit or receive radio or electromagnetic waves. Virtually any type of device is an antenna – panel antennas, discs, dishes, whip antennas, etc. An *antenna array* is 2 or more antennas together.

A *base station* is the antenna(s), cables, modems, switching equipment, and other types of transmission equipment. A base stations does not include the support structure(s), the tower itself, or the support equipment. A *support structure* is the compilation of the structure, outdoor

fixtures, towers or utility poles that are capable of safely supporting a wireless facility but does not include the tower itself.

Support Equipment is the physical, electrical or electronic equipment included within a facility. This is the equipment that houses, powers, or processes signals to/from the antenna. This does not include the base station. The *outdoor fixtures* are essentially the walls, utility boxes, fences, gates, columns, posts, or other types of fixtures related to the installation.

Staff created the diagram below as a means of distinguishing amongst the various definitions.



The “catch-all” definitions are Support Structure, Base Stations, and Wireless Telecommunications Facility. These are relevant in later portions of the ordinance addressing the percentage change related to a proposed modification.

Also within the definitions section is *Minor Modification*. A minor modification is an application for streamlined processing to alter or replace an existing Wireless Telecommunications Facility or to collocate a Facility, or to install a new Facility. These applications must meet specified criteria discussed later. The exact process to be used for a minor modification has not yet been worked out.

What is the process for review/approval?

A wireless facility may not be installed or modified without a permit. In order to issue a permit, the applicant must show that it has any required permission(s) to occupy the property. In the case of Town right-of-way, that the applicant has any applicable lease, license, or authorization from the Town.

The applicant must obtain all other required permits or approvals – these include building permits, CEQA declarations, and FCC approvals; and the applicant must provide proof of insurance and/or security deposits; and have paid all fees owed to Town.

There are two “pre-application” meetings recommended under the Ordinance. These are pre-meetings with staff to discuss pre-siting issues, research, preliminary site planning, aesthetics, and visual impacts.

The applicant then submits an application, as specified by the Town, together with any required processing costs. This includes any required fees for a compliance report and/or any required 3rd party reviews that might be required by the Town pursuant to the Ordinance.

Once an application is submitted it is reviewed for completeness. This is a review simply to determine if the applicant has submitted all the required information. This is typically a 30-day process. Once the application has been “deemed complete” notice is provided to property owners within 500 feet of the subject facility. Written comments must be provided within 30 days of the notice.

A public meeting is held for all *new* wireless telecommunication facility proposals. A public meeting is optional for modifications to existing facilities. If staff feels that the proposed modifications are minor or insignificant, a public meeting would likely not be held. However, if staff feels that the proposed modifications are significant or cumulative, a public meeting would be held.

Applications are reviewed and approved at the staff level. Applications may be approved, conditionally approved or denied.

Applications must include, at a minimum:

- Name of entity and Ownership of Facility information
- Subjectivity to 47 U.S.C. Section 332(c)(7) (local zoning authorities)
- Subjectivity to 47 U.S.C. Section 1455(a) or California Government Code Section 65850.6 (exemption from local discretionary permitting requirements)
- Scaled Site Plans and Elevations
- Written and technical narrative of the Application
- Purpose and need for the facility (new installations or non-minor modifications) to include addressing coverage gap issues

- Signal coverage maps
- Alternatives considered
- Site photos and visual simulations
- Documentation of RF compliance
- CEQA-related determinations

What are the Design Standards and Conditions of Approval?

The ordinance attempts to establish a set of basic preferences and requirements for the location and design of facilities in an effort to provide some guidance to applicants. When siting a facility, applicants should look first to public property, then to existing utility poles, then to existing structures or towers on non-residential private property, and lastly to new concealed facilities in the right-of-way or on private property.

Applicants are directed that facilities should collocate with existing facilities if within 1,500 of an existing facility, unless the Town determines that the proposed siting would not create excessive visual clutter or would otherwise create harms the Town cannot ameliorate.

For facilities located in the Town’s rights-of-way, they should be located on an existing utility pole serving another utility, or located in a concealed facility consistent with other existing natural or manmade features in the right-of-way near the location. If there are no reasonable alternatives, the applicant is authorized to construct a new utility pole.



Figure 1 - 140 Selby (T-Mobile)



Figure 2 - 298 Park (AT&T)

Pole-mounted components of the facility on a utility pole should be consistent with the size and shape of pole-mounted equipment installed by communications companies on poles near the facility. Ground-mounted components should be consistent with other utility boxes and should be located flush to grade where necessary. If permitted above ground, they should be screened, landscaped, and camouflaged to blend in.

With noted exceptions, towers are limited at their highest point to no more than 35 feet above surrounding ground level. If a tower was already above 35 feet at the time the ordinance was adopted it is an exception. Further, if the tower is a concealed facility that mimics its surroundings, it can be an exception to the height requirement.

All facilities must be designed and located to minimize their impact on the surrounding neighborhood. Exceptions are solely limited to when there is no less intrusive alternative to close a significant gap in service. Facilities shall be the least intrusive design in terms of size, mass, visual and physical impact and effects on surrounding properties. They should be designed to blend in or be screened from view when viewed from any part of the Town. This can be accomplished by paint, texture or other camouflaging techniques.

What are Minor Modifications?

The ordinance provides that there can be applications for “minor modifications.” These can be applications to collocate, modify an existing site, or install a new facility in an area approved by the Council. The minor modification process is designed for streamlined processing. An example might be a like-for-like replacement of older or malfunctioning equipment or the installation of a new facility in an area that the Council established as permissible. There are specific criteria for such applications and staff is still working out some of the details of how to actually process such an application.

Some of the specific criteria include:

- the installation would not create a safety hazard;
- if the existing installation is camouflaged or concealed, the modification remains so;
- there is no additional incommoding of the public right-of-way;
- no actual structure or outdoor fixture is increased by 10% in any direction;
- antennas are not vertically increased by more than 6 feet from the support structure;
- there is less than a 10% change in the height or area of any structure or object enclosing the facility;
- the depth, circumference or horizontal radius of antennas are not increased by more than 10%; and
- the visibility of the base station or support equipment is not increased.

Bottom line, the adjustment, modification, or addition should have little or no negative visual affect. It is staff’s expectation that these types of modifications should be processed quickly. It is also important to note that minor modifications are cumulative such that successive changes are measured toward the 10% changes. Cumulative changes that result in greater than 10% changes cannot be processed as minor modifications.



Figure 3 - Alameda N Atherton (AT&T)



Figure 4 - Austin - Almendral (T-Mobile)

Where can antennas be located?

Antennas can be located in any zone in Town and within the Town's rights-of-way.

Is there an Appeals process?

Yes. Appeals are to the City Council within 15 days of the City Manager's determination on an application.

What are the fees?

Permit fees and/or any leasing or licensing fees have not yet been worked through at this time. At a minimum, the fee for processing any application will include the base staff time necessary to review the application. However, staff anticipates that there will be an annual leasing/permit fee associated with installations within the Town's right-of-way. Staff will be collecting survey data from other jurisdictions to determine the best financial return for these types of installations.

Is there a written agreement or term?

Yes. Any permit granted is effective for a period of ten (10) years from the date of original issuance. Requests for renewal must be provided 6-12 months prior to the expiration of the current permit and must include any fees and deposits for a new application.

Can permits be revoked?

Yes. A permit may be revoked if the facility or permittee fails to comply with the permit conditions. The City Manager may revoke a permit only after written notice and a reasonable opportunity to cure any deficiency.

If the permit holder fails to correct the deficiencies, the City Council or the City Council through a designee shall conduct a noticed public hearing. If the City Council, after the public hearing, finds that the facility or permit holder has failed to comply, the City Council can revoke the permit. Once revoked, the City Council may require the removal of the facility or take any other legally permissible action to protect the health and welfare of the Town.

What is a Compliance Report?

Within thirty days after installation of a facility, the applicant is required to demonstrate that the facility, as constructed and operating, fully complies with the conditions of the permit. This addresses issues of height, safety, noise, RF emission, screening, camouflage, etc.

The compliance report must be in writing and contain all of the technical details necessary and be certified as true and accurate by qualified professionals. The compliance report is prepared by the applicant and reviewed by the Town at the sole expense of the applicant. If the facility does not comply, the permit is suspended until the applicant demonstrates compliance. The applicant

is required to reimburse the Town for its compliance review expenses. For example, if the Town engaged an engineer to review the report, the applicant reimburses the Town for that expense. If the report required is not submitted, the Town may, but is not required to, prepare any investigations necessary to prepare the report itself.

If a facility cannot be brought into compliance, the Town can ultimately revoke the permit and require removal of the facility.

FISCAL IMPACT

None.

Permit fees and/or any leasing or licensing fees have not yet been worked through at this time. At a minimum, the fee for processing any application will include the base staff time necessary to review the application. However, staff anticipates that there will be an annual leasing/permit fee associated with installations within the Town's right-of-way. Staff will be collecting survey data from other jurisdictions to determine the best financial return for these types of installations.



Figure 5 - Sacred Heart

Besides the site at Town Hall, there are 3 tower or structure locations – Sacred Heart Water Tower, Menlo-Atherton High School, and Atherton/Alameda. There are approximately 20-24 utility pole installations throughout Town rights-of-way. The revenue from that tower at Town Hall is approximately \$48,000 per year.

ATTACHMENTS

Attachment A –Chapter 12.05 – Wireless Telecommunications Facilities

ORDINANCE NO. ____

**ORDINANCE OF THE TOWN OF ATHERTON ADOPTING A NEW CHAPTER
12.05 OF THE ATHERTON MUNICIPAL CODE REGARDING
WIRELESS TELECOMMUNICATIONS FACILITIES**

THE CITY COUNCIL OF THE TOWN OF ATHERTON DOES ORDAIN as follows:

A new Chapter 12.05 of the Atherton Municipal Code is hereby adopted to read as follows:

“Chapter 12.05

WIRELESS TELECOMMUNICATIONS FACILITIES

Sections:

- 12.05.010 - Purpose, intent, and application.**
- 12.05.020 - Definitions.**
- 12.05.030 - Permitted use.**
- 12.05.040 - Permit required; estimated deposits; pre-application meetings.**
- 12.05.050 - Application required; contents of permit application.**
- 12.05.060 - Review of permit application; noticing; public meetings.**
- 12.05.070 - Design standards.**
- 12.05.080 - Approval or disapproval of an application.**
- 12.05.090 - Appeal to City Council.**
- 12.05.100 - Compliance report.**
- 12.05.110 - Standard conditions.**
- 12.05.120 - Operational regulations.**
- 12.05.130 - Modification of a WTF permit.**
- 12.05.140 - Revocation of a WTF permit.**
- 12.05.150 - Abandonment, removal or relocation of facilities.**
- 12.05.160 - Transfer of an interest.**
- 12.05.170 - Exemption for municipal facilities**
- 12.05.180 - Violations are infractions**
- 12.05.190 - Controlling provisions; severability.**

12.05.010 Purpose, intent, and application.

A. The purpose of this Chapter is to regulate the installations and operations of various Wireless Telecommunications Facilities (“WTFs”) in the Town recognizing the benefits of wireless telecommunications while reasonably respecting other important Town needs, including the protection of public health, safety and welfare.

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

1. Minimizing the visual and physical effects of WTFs through appropriate design,

siting, screening techniques, and location standards,

2. Encouraging the installation of WTFs at locations where other similar 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 WTF permits, in most cases, to terms of 10 years, and to reevaluate existing WTFs 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 telecommunications services, or to regulate the placement, construction or modifications of WTFs on the basis of the environmental effects of radio frequency (RF) emissions where it is demonstrated that the WTF does or will comply with the applicable FCC regulations, or

2. Unreasonably discriminate among providers of functionally equivalent wireless telecommunications services.

E. This Chapter does not apply to WTFs owned by or exclusively operated for government agencies, amateur radio stations, satellite dish or other television Antennas or other Over-The-Air Receiving Device (OTARD) Antennas, or towers as defined and governed by Chapter 12.05, except to the extent that such towers may be used to support WTFs.

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

G. The provisions of this Chapter are in addition to, and do not replace, obligations a WTF permit holder may have under franchises, licenses, or other permits issued by the Town.

12.05.020 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 Telecommunications Facility, but does not include the Support Structure, Wireless Tower, Support Equipment or structures that do not at the time of application support or house base station components.

D. "Building Official" means the Town of Atherton's Building Official.

E. "Camouflaged or Concealed WTF" means a Wireless Telecommunications Facility that (i) is integrated as an architectural feature of an existing Structure such as a cupola, or (ii) is integrated in an Outdoor Fixture such as 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 WTF is not readily apparent.

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

G. "City Manager" shall mean the City Manager of the Town of Atherton, California or

his or her designee.

H. "Code" means the Atherton Municipal Code.

I. "Co-location" or "Collocation" or "Collocated" means the mounting or installation of new Base Station equipment on a Support Structure or Wireless Tower to which Base Station equipment associated with a WTF is already attached by a different legal entity.

J. "CPUC" means the California Public Utilities Commission.

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 Poles, 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 facilities to provide the signal transfer services.

L. "FCC" means the Federal Communications Commission.

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

N. "Minor Modification" means an application to alter or replace an existing WTF, or to collocate a WTF, or to install a new WTF 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 all of the following conditions are met, where applicable:

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; and
2. For a Camouflaged or Concealed WTF, the proposed modification is consistent with the design of the prior-existing Camouflaged or Concealed WTF, and would not result in a WTF being more visible. By way of example, an alteration to a WTF disguised as a tree that made the tree larger than other vegetation in the vicinity would make the WTF more visible, even if the increase in size is consistent with other provisions of this Chapter; and
3. 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; and
4. The application would not alter the size of any Structure or Outdoor Fixture to which the Antenna is attached, and would not change by more than ten percent (10%) in any direction any of the following: the height or width in any direction of any other type of Support Structure or Wireless Tower, or the area required for facilities required to support the Support Structure or Wireless Tower, such as guy wires. The ten percent (10%) change shall be measured against the size of the Wireless Tower or Support Structure at the time a WTF was first attached to it. By way of example, if a Collocation had previously been approved that added 10% to the height of a Wireless Tower, and a subsequent application was filed that would increase the height by an additional 10%, the second application would be treated as a major modification. Notwithstanding this provision, if a Wireless Tower and Support Structure was 35 feet or less above ground level, and the proposed application would increase the size of the Wireless Tower or Support Structure so that it is higher than 35 feet above ground level, the modification shall be not be considered a Minor Modification; and
5. The application would not result in an Antenna extending more than six (6) feet vertically from the Support Structure or Wireless Tower. Notwithstanding this provision, if the highest point of an Antenna was 35 feet or less above ground level, and the proposed application would result in an Antenna whose highest point is higher than 35 feet above ground level, the modification shall not be considered a Minor Modification; and

6. The application would not require changing by more than ten percent (10%) any of the height or area encompassed within any Structure or object enclosing a WTF, or a part of a WTF such as a fence or line of bushes; and

7. The application would not require changing any of an existing Antenna or Antenna Array depth, circumference or horizontal radius (whether by addition of Antennas or modification of the existing Antennas) in any direction by more than ten percent (10%); and

8. The application would not increase the visibility of any part of the Base Station or Support Equipment other than the Antenna, or require installation of three or more new cabinets or enclosures, but excluding equipment and cabinets that will be installed underground; and

9. The application would not result in an alteration of a Structure or Support Structure otherwise inconsistent with the Code.

Notwithstanding the foregoing, a Minor Modification also includes any Collocation or modification that was pre-approved by the Town unless it is determined that conditions at the location have changed substantially since the pre-approval; and any Collocation approved pursuant to Cal. Gov. Code Section 65850.6.; and any modification deemed by the City Manager to have little or no negative visual effect.

O. "Major Modification" means any modification not meeting the criteria under the definition of "Minor Modification" as set forth immediately above.

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

Q. "OTARD Antennas" means Antennas covered by the "Over-the-Air Reception Devices" rule in 47 C.F.R. Section 1.4000 *et seq.* as may be amended or replaced from time to time.

R. "Outdoor Fixture" means any wall (excluding any retaining wall eighteen inches or less in height), utility box, fence, gate, column, pillar, post, flag pole, light post or similar lighting fixture (excluding any standard mail box, as defined in this section), either freestanding or incorporated into a fence or wall.

S. "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.

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

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

V. "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.

W. "Structure" means anything constructed or erected that requires location on the ground or attached to something having location on the ground, but not including outdoor fixtures, and not including hardscape. Examples of a structure include, but are not necessarily limited to, any dwelling, building, second unit, garage, carport, tool house, guest house, green house, pool house, satellite dish antenna, solar collector panel, tree house or other play structure, swimming pool, tennis court, play court, and deck, but for purposes of this Chapter does not include Utility Poles or Towers as defined herein.

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

Y. "Support Structure(s)" means a Structure, Outdoor Fixture, Tower as defined herein,

or Utility Pole capable of safely supporting a WTF, but does not include a Wireless Tower.

Z. "Town" means the Town of Atherton, California.

AA. "Unipole" means 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.

BB. "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.

CC. "Whip Antenna" means a vertically-oriented omni-directional Antenna.

DD. "Wireless Telecommunications Facility" or "WTF" 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. A WTF 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 WTF 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 WTF 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.

EE. "Wireless Tower" means any structure, such as a Lattice Tower, Monopole or Unipole, built for the sole or primary purpose of supporting a WTF. A Support Structure which is modified or replaced to allow for the installation of all or a portion of a WTF retains its prior use as its primary use, and the wireless use is only a secondary use thereof, even if the WTF is the only attachment to the Support Structure.

12.05.030 Permitted use.

WTFs are a permitted use in all zones, including the public Rights-of-Way, provided they comply with this Chapter and other applicable provisions of this Code and other laws.

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

A. A WTF may not be installed or modified without a permit, unless specifically excepted herein. Removal of a WTF 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 unless:

1. The applicant shows that it has the necessary permission to place the WTF 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 WTF in the Rights-of-Way, 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 WTF.

C. A permit shall not be effective and shall not authorize installation or modification of

any WTF or installation or modification of a Support Structure or Wireless Tower unless the conditions of this paragraph are satisfied:

1. Applicant must obtain all other required permits, authorizations, approvals or declarations that may be required for installation or modification of the WTF 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 WTF permit is not in lieu of any other permit required under the Town 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 Town, and must pay all 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 WTF applicant shall submit an application as specified by the Town 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 WTF applicant shall also deposit with the Town the amount estimated to pay for any compliance report required under Section 12.05.100 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 WTF 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 WTF applicant therefore, and in the event of an approval of the WTF the Town shall not issue the permit until such charge is fully paid.

J. Two pre-application meetings with Town staff are recommended for WTFs. 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 WTF 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.

12.05.050 Application required; contents of permit application.

A. In all cases an applicant for a WTF 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.

B. An applicant shall tender a WTF 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 following the applicant's request.

C. Pending development of the form of application by the City Manager, applicants may apply for a WTF permit by submitting the following information:

1. The name of the entity or entities that will own, and be responsible for the installation and maintenance of the WTF and any Support Structure installed as part of the installation of the WTF;
 2. Whether applicant believes that the WTF is subject to the provisions of 47 U.S.C. Section 332(c)(7), and if so, who the entity is that will be providing personal wireless services;
 3. Whether and why the applicant believes that the WTF is subject to 47 U.S.C. Section 1455(a) or Cal. Gov. Code Section 65850.6;
 4. Scaled Site Plans and Elevations, including structural safety information, and clearly identifying the components and location of the proposed WTF (including any utility boxes meaning any transformer, switch box, telephone, cable television box, service panel, meter or similar device. and the Support Structure, if any, that will be utilized;
 5. A written and technically accurate and reliable narrative explaining the nature of the permit sought (new installation, modification of existing installation, Minor Modification, other modification); the authorizations required for the installation or modification, and steps that applicant has taken to comply with the Code;
 6. For new installations, or modifications other than Minor Modifications, the purpose and need for the WTF or for the modification of the WTF, and whether applicant contends that the WTF or modification of the WTF is required to close a significant gap in coverage;
 7. For new installations or modifications other than Minor Modifications, signal coverage maps if applicant contends that the WTF or modification of the WTF is required to close a significant gap in coverage;
 8. For new installations or modifications other than Minor Modifications, the alternatives considered;
 9. Site photos and visual simulations of the proposed WTF as constructed or modified;
 10. Documentation of all current and proposed radio frequency emissions from the WTF 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;
 11. Information regarding the ownership of the property and Support Structure or Wireless Tower on which the WTF will be located, showing applicant has authorization from the owner(s) of the property and/or Support Structure or Wireless Tower to pursue the WTF application;
 12. Any CEQA-related determinations made with respect to the proposed modification or installation; and
 13. 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.
- D. Where a WTF is part of a network of WTFs 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.

12.05.060 Review of permit application; noticing; public meetings.

A. The City Manager shall review all WTF 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 Superintendent to be lead reviewer for applications for placement of WTFs in the Rights-of-Way, and will designate the Building Official and/or Planning Manager to be lead reviewer for applications for placement of WTF on private property and Public Property.

B. Once the WTF permit application has been deemed complete, appropriate notice shall be given to all owners of real property any part of which is located within 500 feet of the subject WTF or, if the WTF 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 WTF location. Any such notice shall inform property owners that they have thirty (30) days from the date of the notice in which to provide written comment regarding the application to the City Manager.

C. A public meeting shall be held for all permit applications for new WTFs. A public meeting may be held for proposed modifications to existing WTFs at the City Manager's discretion.

12.05.070 Design standards.

A. The purpose of this Section is to identify preferences and requirements for the location and design of WTFs, to provide guidance to prospective applicants as they seek appropriate WTF locations within the Town, and to provide guidance to the City Manager in determining whether to grant, grant with conditions, or to deny a WTF application.

B. The location for a WTF 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 WTF in the Rights-of-Way or on private property.

C. WTFs should be collocated with existing WTFs, if within 1,500 feet of an existing visible WTF, unless the Town determines that the particular design proposed would not create excessive visual clutter or would otherwise create harms the Town cannot ameliorate.

D. A WTF located in the Rights-of-Way:

1. Shall, with respect to its pole-mounted components, be located on an existing Utility Pole serving another utility, or
2. Shall be located in a Concealed WTF consistent with other existing natural or manmade features in the Rights-of-Way near the location where the WTF is to be located; or
3. Shall, with respect to its pole-mounted components, be located on a new Utility Pole where other telephone distribution lines are aerial, if there are no reasonable alternatives, and the applicant is authorized to construct new Utility Poles.

E. The pole-mounted components of a WTF on a Utility Pole shall, whether in or outside of the Rights-of-Way:

1. Comply with CPUC General Order 95 and General Order 128 as they may be amended or replaced;

2. Be consistent with the size and shape of pole-mounted equipment installed by communications companies on Utility Poles near the WTF.

F. The ground-mounted components of a WTF shall, whether in or outside of the Rights-of-Way,:

1. To the extent the structures are utility boxes within the meaning of this Code, be reviewed and subject to the same approvals as utility boxes installed by other communications companies; and

2. Shall be located flush to grade where necessary to avoid incommoding the public or creating a hazard;

3. To the extent permitted aboveground, shall otherwise be appropriately screened, landscaped and camouflaged to blend in with the surroundings, and non-reflective paints shall be used.

G. Unless it is determined that there is no less intrusive alternative available to close a significant gap in the service provided by a WTF; or it is determined that the Town is legally required to approve an application, the City Manager may not approve an application for a WTF whose highest point would be more than 35 feet above surrounding ground level except as follows:

1. The Support Structure or Wireless Tower to which the WTF would be attached is an existing Support Structure or Wireless Tower, was taller than 35 feet above the immediate surrounding ground level on January 1, 2014, and the WTF will not be higher than ten feet above the highest point of the Support Structure or Wireless Tower and attachments thereto in existence on January 1, 2014;

2. The WTF will be a Concealed WTF, whose height and design is consistent with the surrounding features it mimics.

H. Unless it is determined by the Town that there is no less intrusive alternative available to close a significant gap in the service provided by a WTF; or it is determined that the Town is legally required to approve an application, the City Manager may not approve an application for a WTF where the application proposes a design that would require extensions from any Support Structure inconsistent in size with the extensions otherwise permitted under the Code.

I. A WTF and all subsequent modifications shall be designed and located to minimize the impact on the surrounding neighborhood, and to maintain the character and appearance of the Town, consistent with other provisions of the Code. To that end, WTFs should:

1. Employ the least intrusive design for the proposed location in terms of size, mass, visual and physical impact, and effects on properties from which the WTF is visible; and

2. Accommodate Collocation consistent with the other design requirements of this Chapter.

3. Be consistent with the General Plan.

J. Without limiting the foregoing, all portions of a WTF affixed to a Support Structure shall be designed to blend in or be screened from view in a manner consistent with the Support Structure's architectural style, color and materials, when viewed from any part of the Town. WTFs shall be painted and textured or otherwise camouflaged to match the color and texture of the Support Structure on which they are mounted. Where the Support Structure is a building, the WTF, including without limitation Base Station cabinets, remote transmitters and receivers, and Antenna amplifiers, shall be placed within the building or mounted behind a parapet screened from public view unless that is not feasible. If the City Manager 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 City Manager.

K. WTFs shall not be lighted except with the authorization of the City Manager. The City Manager 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 WTF; or
3. Where such lighting is required by the City Manager to protect public health or welfare, or as part of the camouflage for a particular design.

L. No advertising signage shall be displayed on any WTF except for government-required signs shown in the WTF permit application. Additionally site identification, address, warning and similar information plates may be permitted where approved by the City Manager.

M. The WTF shall comply with all requirements of the Americans With Disabilities Act of 1990 (“ADA”) as may be amended or replaced.

N. The WTF shall not incommode the public (including without limitation, persons with disabilities) in its use of any Structure, or any portion of the Rights-of-Way.

O. All new Wireless Towers shall be concealed. The installation of an uncamouflaged Wireless Tower is prohibited.

12.05.080 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; and
2. Fifteen days has elapsed from the postmark date of appropriate notice required under Section 12.05.060(B) or (C) of this Chapter (if applicable); and
3. Any required public meeting has been held.

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.
4. The applicant has not paid any required fees to the Town.

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 WTF 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. Whether the WTF 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 Modifications, or where the Town is prohibited from considering it by law, whether the applicant has shown that the proposed WTF is necessary to close a significant gap in coverage and has further shown that its proposal is the least intrusive means of closing a significant gap;

3. Whether the WTF and Support Structure modifications and additions proposed, comply with the design standards herein, and other applicable provisions of the Code;
4. Whether the WTF and Support Structure modifications and additions proposed comply with applicable safety codes and laws (including without limitation the ADA), interfere with the public's use of Rights-of-Way, or create undue risks to persons or property;
5. Whether the applicant has made the required affirmation regarding compliance with the FCC's RF regulations, as the same may be amended;
6. Whether the applicant is authorized to file the application;
7. Whether the applicant has or will have necessary local, state or federal regulatory approvals required in connection with the WTF (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; and
8. Whether alternative designs or locations would be more consistent with the General Plan and otherwise minimize the impact of the WTF and Support Structure modifications and additions required.

Nothing herein permits the City Manager to impose conditions or conduct a review inconsistent with any pre-approval or with Cal. Gov. Code Section 65850.6, where applicable in connection with a particular application.

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 person submitting comments on the application 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 12.05.040(C) and 12.05.080(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.

12.05.090 Appeal to City Council.

A. Within fifteen (15) calendar days following the date of the City Manager's written decision on the WTF application, 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, and shall make the written record available to the City Council.

C. The appeal before the City Council shall be a public hearing and shall be appropriately noticed; the mailing list of persons to whom the permit application is sent shall be governed by Section 12.05.060(B) or (C) of this Chapter, and provided further that the appellant shall be deemed the person requesting the public hearing. The appellant shall bear all costs for

the appeal.

D. The City Council shall hear the appeal at the next regular City Council meeting or at a special meeting of the City Council called for the purpose of hearing the appeal, after allowing for sufficient time for the City Manager to prepare the written report and compile the written record. 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 WTF appeal is to deny the WTF or conditionally approve the WTF, the City Council shall direct the Manager to prepare written findings 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 Official or Public Works Director Superintendent for further consideration with such instructions as the City Council deems appropriate.

12.05.100 Compliance report.

A. Within thirty days after installation of a WTF, the applicant shall demonstrate to the City Manager that its WTF—as constructed and normally-operating—fully complies with the conditions of the permit, including height restrictions, and applicable safety codes, including structural engineering codes. The demonstration shall be provided in writing to the City Manager containing all technical details to demonstrate such compliance, and certified as true and accurate by qualified professional engineers, or, in the case of height or size restrictions, by qualified surveyors. 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. The City Manager may require additional proofs of RF emission compliance as part of the application process and on an ongoing basis to the extent the Town may do so consistent with federal law.

B. If the report required in subsection A of this section shows that the WTF does not so comply, the permit shall be deemed suspended, and all rights thereunder of no force and effect, until the applicant demonstrates to the Town's satisfaction that the WTF is compliant. Applicant shall promptly reimburse the Town for its compliance review expenses.

C. If the initial report required by this section is not submitted within the time required, the City Manager or his or her selected and qualified professionals may, but are not required to, undertake such investigations as are necessary to prepare the report described in paragraph A. Applicant shall within five (5) days after receiving written notice from the City Manager that the Town is undertaking the review, shall deposit such additional funds with the City Manager to cover the estimated cost of the Town obtaining the report. Once the Town obtains this report, the Town shall then timely refund any unexpended portion of the applicant's deposit. A copy of the report shall be provided to the applicant. If the report shows that the applicant is non-compliant, the Town may suspend the permit until the applicant demonstrates to the Town's satisfaction that the WTF is compliant. During the suspension period, the Applicant shall be allowed to activate the WTF for short periods, not to exceed one hundred twenty (120) minutes during any twenty-four (24) hour period for the purpose of testing and adjusting the site to come into compliance.

D. If the WTF is not brought into compliance promptly, the Town may revoke the permit and require removal of the WTF.

12.05.110 Standard conditions.

A. Any validly-issued WTF permit granted hereunder shall be effective for a period of exactly ten (10) years from the date of original issuance notwithstanding any subsequent Minor Modifications, except where a shorter term is authorized by Cal. Gov. Code Section 65964(b) as may be amended or replaced. Any renewal application must be tendered to the City Manager between 365 days and 180 days prior to the expiration of the current WTF permit, and shall be accompanied by all required fees and deposits for a new WTF application as then in effect.

B. As a condition of every permit issued pursuant to this Chapter, the City Manager may establish a reasonable construction build-out period for a WTF.

C. The WTF permit holder shall also comply with Chapter 12.06 and all other requirements of this Code.

D. The WTF permit holder shall obtain and maintain all other applicable permits, approvals, and agreements necessary to install and operate the WTF in conformance with federal, state, and local laws, rules, and regulations.

E. The Town may inspect permitted facilities and property and may enter onto a site to inspect facilities upon reasonable notice to the WTF permit holder. In case of an emergency or risk of imminent harm to persons or property within the vicinity of permitted facilities, the Town reserves the right to enter upon the site of the WTF and to support, disable, or remove those elements of the WTF posing an immediate threat to public health and safety.

F. The WTF permit holder shall maintain on file with the Town and onsite at the WTF contact information of all parties responsible for maintenance of the WTF.

G. The WTF permit holder and, if applicable, the private property owner shall defend, indemnify and hold harmless the Town of Atherton, its agents, officers, officials, and employees (i) from any and all damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs of mandamus, and other actions or proceedings brought against the Town or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void or annul the Town's approval of the WTF permit, and (ii) from any and all damages, liabilities, injuries, losses, costs and expenses and any and all claims, demands, law suits, or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the WTF permit holder or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors, or independent contractors ((i) and (ii) collectively are "Actions"). Further, WTF permit holders shall be strictly liable for interference caused by their WTFs with the Town's communications systems. The WTF permit holder shall be responsible for costs of determining the source of the interference, all costs associated with eliminating the interference, and all costs arising from third party claims against the Town attributable to the interference ("Claims"). In the event the Town becomes aware of any such Actions or Claims the Town shall promptly notify the WTF permit holder and the private property owner and shall reasonably cooperate in the defense. It is expressly agreed that the Town shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the Town's defense, and the property owner and/or WTF permit holder (as applicable) shall reimburse Town for any costs and expenses directly and necessarily incurred by the Town in the course of the defense.

H. A permit may be terminated if the Town determines that the permit was granted

based on false, misleading or incomplete information; if a material provision of the permit is no longer enforceable; or if the permit holder violates a condition of the permit, or modifies the WTF or Support Structures without permission.

I. The WTF permit holder shall file with the Town, and shall maintain in good standing throughout the term of the WTF permit, a performance bond or other surety or another form of security for the removal of the WTF in the event that the use is abandoned or the permit expires, or is revoked, or is otherwise terminated. The security shall be in the amount equal to one hundred fifteen percent (115%) of the cost of physically removing the WTF and all related facilities and equipment on the site. The WTF permit holder shall reimburse the Town for staff time associated with the processing and tracking of the bond, based on established hourly rates. Reimbursement shall be paid when the security is posted.

J. The WTF permit holder shall make a good faith effort to minimize project-related disruptions to adjacent properties. Site improvement and construction work, including set-up, loading or unloading of materials or equipment, performed as part of this project is subject to the provisions of Section 8.16.050. Emergency maintenance and repairs are exempt from the restricted hours. Violation of this condition may result in issuance of a Stop Work Order or administrative citations.

12.05.120 Operational regulations.

A. All WTFs within the Town shall be designed, maintained, and shall be operated at all times to 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 WTF;
2. Rules, regulations, and standards of the state and federal governments and the Town, including without limitation the FCC, the CPUC; and the Code;
3. Easements, covenants, conditions, and/or restrictions on or applicable to 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 WTF, including the California Environmental Quality Act (CEQA).

B. Without limiting the foregoing, all WTFs shall be maintained in good working condition and to the visual standards established at the time of approval over the life of the WTF Permit. The WTF and surrounding area shall remain free from trash, debris, litter, graffiti, and other forms of vandalism. Any damage shall be repaired as soon as is practicable, and in no instance more than ten (10) calendar days from the time of notification by the Town or after discovery by the WTF permit holder. If landscaping was required, the landscaping must be maintained by the permittee.

12.05.130 Modification of a WTF 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 Minor Modification or other modification. Modifications other than Minor Modifications shall be treated the same as requests for a new WTF.

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.

12.05.140 Revocation of a WTF permit.

A. A WTF 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 WTF 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 WTF permit only after:

1. Written notice of the Default Event has been provided to the WTF permit holder;
2. The WTF 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 WTF permit holder fails to cure, the City Council or the City Council through a designee shall conduct a noticed public hearing where the WTF 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 WTF or the WTF permit holder has violated any law regulating the WTF or has failed to comply with the requirements of this Chapter, the WTF 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 WTF or take any other legally permissible action or combination of actions necessary to protect the health and welfare of the Town.

12.05.150 Abandonment, removal or relocation of facilities.

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

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

C. Upon declaration of the City Manager that the WTF is abandoned or discontinued, as to private property, the WTF 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, within which to complete one of the following actions:

1. Reactivate use of the WTF;
2. Transfer the rights to use the WTF to another entity (who shall be subject to all the provisions of this Chapter) and the entity immediately commences use of the WTF; or
3. Remove the WTF and any Supporting Structures installed solely in connection with the WTF, 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 the WTF is deemed abandoned. The City

Manager shall provide notice of such finding to the WTF permit holder and to the telecom carrier last known to use the WTF 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 WTF, subject to the terms and conditions of the applicable WTF permit;
2. Transfer the rights to use the WTF to another operator (who shall be subject to all the provisions of this Chapter); or
3. Remove the WTF and any Supporting Structures installed solely in connection with the WTF, 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 WTF, 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 WTF, the Town may, but shall not be required to, store the removed WTF or any part thereof, and may use it, sell it or dispose of it in any manner deemed by the Town to be appropriate. The entity that abandoned the WTF, or its successor in interest, and if on private property, the private property owner 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 WTF permit to recover such costs.

F. Until the cost of removal, repair, restoration and storage is paid in full, a lien shall be placed on the WTF and any related personal property and any private real property on which the WTF 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 WTF permit holder, the City Council may require the relocation, at the WTF permit holder's expense and according to the then-existing standards for WTFs, of any WTF located in the Rights-of-Way, as necessary for maintenance or reconfiguration of the Town's Rights-of-Way or for other public projects, or take any other action or combination of actions necessary to protect the health and welfare of the Town.

H. If an existing Utility Pole that hosts a WTF must be replaced, the WTF permit holder shall within 30 days after the installation of the replacement pole either relocate its WTF in the same configuration on the replacement pole, or remove the prior-existing WTF rather than relocate it, and notify the City Manager of the removal, and surrender its WTF permit for cancellation by the City Manager.

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

J. Anyone seeking to remove a WTF for any reason must obtain prior approval from the Town's Building Department and comply with any other relevant laws.

12.05.160 Transfer of an interest.

A WTF permit holder shall not assign or transfer any interest in its permits for WTFs without advance written notice to the Town. The notice shall specify the identity of the assignee or transferee of the permit, as well as the assignee or transferee's address, telephone number, name of primary contact person(s), and other applicable contact information, such as an e-mail address or facsimile number. The new assignee or transferee shall comply with all of the WTF's

terms and conditions of approval, and shall submit to the Town a written acceptance of the WTF permit's terms and conditions and a written assumption of the obligations thereafter accruing under such permit prior to the date that such assignment or transfer is intended to take effect.

12.05.170 Exemption for municipal facilities.

WTFs 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.

12.05.180 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.

12.05.190 Controlling provisions; severability.

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, WTFs 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 12.05.070(F)(1).

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held to be unconstitutional or otherwise invalid by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the Town of Atherton hereby declares that it would have adopted the remainder of this ordinance, including each section, subsection, sentence, clause, phrase, or portion irrespective of the invalidity of any other article, section, subsection, sentence, clause, phrase, or portion.”

Mayor of the Town of Atherton

Attest: City Clerk

ORDINANCE NO. ____ of the Town of Atherton introduced on _____, 2014, and adopted on _____, by the following vote of the City Council:

AYES: Councilmembers _____

NOES: Councilmembers _____

ABSENT: Councilmembers _____

ABSTAIN: Councilmembers _____