

ORDINANCE NO. ___ N. S.

**AN ORDINANCE OF THE TOWN COUNCIL
OF THE TOWN OF TIBURON AMENDING
PROVISIONS OF CHAPTER 16 (ZONING)
OF THE TIBURON MUNICIPAL CODE REGARDING
WIRELESS COMMUNICATION FACILITIES**

The Town Council of the Town of Tiburon does ordain as follows:

Section 1. Findings.

- A. The Town Council has held duly noticed public hearings on _____, 2005 and _____, 2005, and has heard and considered public testimony on the proposed amendments.
- B. The Town Council finds that all notices and procedures required by law attendant to the adoption of this Ordinance have been followed.
- C. The Town Council finds that the amendment actions made by this Ordinance are necessary for the protection of the public health, safety, and welfare.
- D. The Town Council has found that the amendments made by this Ordinance are consistent with the goals and policies of the Tiburon General Plan and other adopted ordinances and regulations of the Town of Tiburon.
- E. The Town Council finds that this project is categorically exempt from the requirements of the California Environmental Quality Act per Section 15308 of the CEQA Guidelines and under the “general rule”, pursuant to Section 15061(b)(3) of the CEQA Guidelines.

Section 2. Amendments to Chapter 16.

- A. Chapter 16, Section 16-1.5 of the Tiburon Municipal Code is hereby amended to add the following definitions:

Antenna: Any device or system of devices, such as poles, panels, rods, reflecting discs or similar or other objects, used for the transmission or reception of electromagnetic signals, including but not limited to radio waves and microwaves.

Antenna, Amateur Radio: A ground-, building-, or tower-mounted antenna operated by a federally licensed amateur radio operator as part of the Amateur Radio Service and as designated by the Federal Communications Commission (FCC).

Antenna, Building-mounted: An antenna or antenna structure mounted on a building or rooftop, including a water tank.

Antenna, Direct Broadcast Satellite Service (DBS): An antenna, usually a small home receiving dish, designed to receive direct broadcast from a satellite.

Antenna, Ground-Mounted: Any antenna or antenna structure which is not mounted on a building or rooftop, and usually anchored directly to the ground.

Antenna, Multipoint Distribution Services (MDS): An antenna designed to receive video programming services via multipoint distribution services, including multipoint multi-channel distribution services, instructional television fixed services, and local multipoint distribution services.

Antenna, Reception Window: The area within the direct line between a satellite antenna and orbiting communications satellites transmitting signals.

Antenna, Satellite: Any antenna used to receive and/or transmit radio or television signals from orbiting communications satellites.

Antenna, Satellite Earth Station (SES): An antenna designed to receive and/or transmit radio frequency signals directly to and/or from a satellite.

Antenna, Television Broadcast Service (TVBS): An antenna designed to receive only television broadcast signals.

Antenna Structure: An antenna and its associated support structure, such as a mast or tower (but not to include a suspended simple wire antenna) that is used for the purpose of transmitting and/or receiving electromagnetic signals, including but not limited to radio waves and microwaves.

Antenna Structure, Freestanding: An antenna structure or mast that is not attached to a building, fence or other such structure. Freestanding antenna structures include communications towers, wooden utility poles, standard or decorative concrete and steel monopoles. If the total height of the structure, including the antenna, exceeds fifteen (15) feet it shall be treated as a Monopole.

Antenna Structure, Monopole: A ground-mounted antenna structure, often tubular in shape, made of metal, reinforced concrete or wood, which exceeds fifteen (15) feet in height.

Electromagnetic Field (EMF): Fields of radiation produced by all electromagnetic waves, from gamma rays to radio waves. The EMF produced by wireless communication facilities is radio frequency (RF) radiation.

Satellite Dish: See “Satellite Antenna” under “Antenna, Satellite”.

Wireless Communication Facility (WCF): A facility that transmits and/or receives electromagnetic signals, including, without limitation, antennas, monopole and/or accessory structures and related equipment.

Wireless Communication Facility - Co-located: A wireless communication facility comprised of a single telecommunication tower or building supporting one or more antennas or similar devices owned or used by more than one public or private entity.

Wireless Communication Facility - Shared Location: More than one telecommunications facility comprised of multiple antenna structures and other structures used for the support of antennas operated by one or more carriers where such antenna structures and other structures are located on the same lot or parcel..

Wireless Communication Facility Standards: A set of standards, adopted by Resolution of the Town Council, applying generally to review of applications for wireless communication facilities.

- B. Chapter 16, Section 16-2.2.2(k) of the Tiburon Municipal Code is hereby amended to read as follows:

(k) Wireless communication facility; radio, microwave, and TV transmitter and broadcasting station, including amateur and professional;

- C. Chapter 16, Section 16-2.4.2(k) of the Tiburon Municipal Code is hereby amended to read as follows:

(k) Wireless communication facility; radio, microwave, and TV transmitter and broadcasting station, including amateur and professional;

- D. Chapter 16, Section 16-2.5.2(k) of the Tiburon Municipal Code is hereby amended to read as follows:

(k) Wireless communication facility; radio, microwave, and TV transmitter and broadcasting station, including amateur and professional;

- E. Chapter 16, Section 16-2.6.2(k) of the Tiburon Municipal Code is hereby amended to read as follows:

(k) Wireless communication facility; radio, microwave, and TV transmitter and broadcasting station, including amateur and professional;

- F. Chapter 16, Section 16-2.7.2(f) of the Tiburon Municipal Code is hereby amended to read as follows:

(f) Wireless communication facility; radio, microwave, and TV transmitter and broadcasting station, including amateur and professional;

- G. Chapter 16, Section 16-2.8.2(f) of the Tiburon Municipal Code is hereby amended to read as follows:

(f) Wireless communication facility; radio, microwave, and TV transmitter and broadcasting station, including amateur and professional;

- H. Chapter 16, Section 16-2.10.2(d) of the Tiburon Municipal Code is hereby amended to read as follows:

(d) Wireless communication facility; radio, microwave, and TV transmitter and broadcasting station, including amateur and professional;

- I. Chapter 16, Section 16-2.11.2(52) of the Tiburon Municipal Code is hereby renumbered as Section 16-2.11.2(53).

- J. Chapter 16, Section 16-2.11.2(52) of the Tiburon Municipal Code is hereby added to read as follows:

(52) Wireless communication facility; radio, microwave, and TV transmitter and broadcasting station, including amateur and professional;

- K. Chapter 16, Section 16-2.13.2(f) of the Tiburon Municipal Code is hereby renumbered as Section 16-2.13.2(g).

- L. Chapter 16, Section 16-2.13.2(f) of the Tiburon Municipal Code is hereby added as follows:

(f) Wireless communication facility; radio, microwave, and TV transmitter and broadcasting station, including amateur and professional;

- M. Chapter 16, Section 16-4.1(d) of the Tiburon Municipal Code is hereby amended to read as follows:

(d) Secondary dwelling unit permits;

- N. Chapter 16, Section 16-4.1(k) of the Tiburon Municipal Code is hereby deleted.

- O. Chapter 16, Section 16-4.2.2(c) is hereby amended to read as follows:

(c) Placement or installation of swimming pools and/or spas; placement or

erection of satellite dishes greater than one meter in diameter, skylights, and/or devices of a similar nature, as determined by the Planning Director or his designee. (Please note that the placement of signs does not require Site Plan & Architectural Review, but does require a "sign permit", pursuant to Chapter 16A of the Tiburon Town Code.)

- P. Chapter 16, Section 16-4.13 of the Tiburon Municipal Code is hereby added to read as follows:

16-4.13.00 Antennas and Wireless Communication Facilities

Sec. 16-4.13.010. Purpose and Intent.

The purpose of this section is to establish a comprehensive set of zoning requirements for antennas and wireless communication facilities (hereinafter "WCFs"). These regulations are intended to provide for the managed development of antennas and WCFs in a manner that recognizes and enhances the community benefits of wireless communication technology and reasonably accommodates the needs of citizens and wireless communication service providers in accordance with federal and State rules and regulations, while at the same time protects neighbors from potential adverse impacts of such facilities; preserves the visual character of the established community and the natural beauty of hillsides and ridgelines.

Sec. 16-4.13.020. Exemptions.

The requirements imposed by this section shall not apply to certain antennas or antenna structures, as set forth in this subsection, unless otherwise specified herein. Each such exempt facility listed below shall fully comply with any other applicable requirements of the Municipal Code to the extent not specially exempted in this subsection, including but not limited to the California Building Code, California Electrical Code, California Plumbing Code, California Mechanical Code, and California Fire Code.

(a) Direct Broadcast Satellite (DBS) antennas and Multipoint Distribution Services (MDS) antennas measuring one (1) meter or less in diameter (or diagonal measurement).

(b) Television Broadcast System (TVBS) antennas provided: a) the antenna is located entirely on and/or above the subject property, and b) no portion of any ground mounted antenna is within a required front yard setback for the main building, in front of the main building, within a required side yard setback of a corner lot, or adjacent to a street. All TVBS antennas greater than three (3) feet in height shall require site plan and architectural review and building permits pursuant to the Tiburon Municipal Code for review of placement to insure that maximum safety is maintained.

(c) Satellite Earth Station (SES) antennas measuring two (2) meters or less in diameter (or diagonal measurement) located on a property within any Commercial, Office, or Public Zoning District, provided that: a) the antenna is located entirely on and/or above the subject property; and b) no portion of any ground mounted antenna is within a required front yard

setback for the main building, in front of the main building, within a required side yard setback of a corner lot or adjacent to a street. All SES antennas shall require measuring more than one (1) meter in diameter shall require site plan and architectural review and building permits pursuant to the Tiburon Municipal Code for review of placement to insure that maximum safety is maintained.

(d) Antennas and antenna structures constructed by or for Federal Communications Commission (FCC)-licensed Amateur Radio operators shall require a conditional use permit pursuant to Section 16-4.4 of this Code, a site plan and architectural review permit if required under Section 16-4.2.2 of this Code, and shall be subject to provisions of subsection 16-4.13.060, but shall not be subject to review under the Town of Tiburon *Wireless Communication Facilities Standards*.

(e) A proposed facility shall be exempt from the provisions of this section if, and to the extent that, rules and regulations of the FCC or the provisions of a permit issued by the California Public Utilities Commission (CPUC) specifically provide that the facility is exempt from Town regulation.

Section 16-4.13.030. Public Notice of Application Filing.

Within fifteen (15) days after the filing of a conditional use permit application for a WCF with the Town, the Town shall give written notice of said filing to all property owners within a six hundred (600) foot radius of the proposed facility, to a newspaper of general circulation within Tiburon, and to the presidents or their designees for receipt of notices of each of the affected homeowners associations as determined by the Director of Community Development. Notice of the filing of the application shall also be posted on the Town's public notice bulletin board outside Town Hall by the Planning Division within fifteen (15) days of the date of the filing of the application, and such notice shall remain in such location for a period of at least thirty (30) days thereafter.

Section 16-4.13.040. Review and Approval.

(a) Any person who proposes to install or operate a WCF shall first obtain approval of a conditional use permit pursuant to Section 16-4.4 of this Code, unless the facility is exempt from securing said permit under subsection 16-4.13.020. The acting body may approve a conditional use permit application for a WCF only upon making the finding that the project is consistent with this section and is in substantial compliance with applicable requirements of the most current Town of Tiburon *Wireless Communication Facilities Standards* adopted by resolution of the Town Council.

(b) Any person who proposes to install or operate a WCF shall first obtain approval of a site plan and architectural review permit pursuant to Section 16-4.2.2 of this Code, unless the facility is exempt from securing said permit under subsection 16-4.13.020.

(c) Exceptions. The acting body may grant an exception to any requirement of this section 16-4.13 or any mandatory standard contained within the *Wireless Communication*

Facilities Standards upon making findings that: a) strict compliance precludes the reasonable accommodation of the communication needs of the operator as set forth in federal and/or State rules and regulations; b) there are no other feasible alternatives; and c) either state or federal law require the Town to issue the exception or the exception will serve the public interest despite the conflict with the mandatory standards.

Section 16-4.13.050. Length of Permit; Mandatory Review.

A conditional use permit for a WCF shall be valid for an initial period of one (1) year from the date of final discretionary approval, and shall, upon application by the permit holder, have conducted a mandatory review by the Planning Commission prior to its expiration. The permit may be extended for a period no longer than five (5) years after the holding of a public hearing for the purposes of verifying continued compliance with the findings and conditions of approval under which the application was originally approved, as well as compliance with any other applicable provisions provided for in the Municipal Code. Additional reviews are required every five (5) years, unless a longer time period is approved by the acting body. The permit holder shall be solely responsible for timely filing of, and for all costs associated with, the processing of applications for mandatory reviews.

Section 16-4.13.060. Amateur Radio Antennas and Antenna Structure; Special Provisions.

(a) Amateur radio antennas and antenna structures shall be the minimum height and size necessary to reasonably accommodate the operator's communication needs, in accordance with FCC regulations as set forth in FCC Order "PRB-1" and Section 97.15 of Title 47 of the Code of Federal Regulations, and in accordance with California Government Code Section 65850.3, or the respective successor sections thereto.

(b) No portion of any antenna, support structure or related equipment shall overhang a property line that is not part of the subject site at any time.

(c) Retractable monopoles may be required for antenna structures over thirty (30) feet in height that are in or within three hundred (300) feet of any Residential Zoning District, as set forth in section 16-2.1 of the Tiburon Municipal Code. At times when not in operation, the monopole may be required to be retracted to the lowest elevation possible in order to maintain a safe clearance above any nearby building, accessory structure, overhead utility, landscaping and/or any other site improvements.

(d) No amateur radio antenna or facility shall be sited or operated in such a manner that it poses, either by itself or in combination with other WCFs, a potential threat to the public health. To that end, no facility or combination of facilities shall produce at any time power densities in any inhabited area that exceed the FCC's Maximum Permissible Exposure (MPE) limits for electric and magnetic field strength and power density for transmitters or any applicable more restrictive standard subsequently adopted by the Town, county, state or federal government. Absolute compliance with FCC Office of Engineering Technology (OET) Bulletin No. 65 or any successor document thereto, is mandatory, and any violation shall be grounds for

the Town to immediately terminate any permit granted hereunder, or to order the immediate service termination of any non-complying facility within the Town.

Section 16-4.13.070. Correction of Interference Problems.

To the extent allowed under applicable federal rules and regulations, the operator of a WCF shall correct interference problems experienced by any person or entity with respect to equipment, including but not limited to television, radio, computer, and telephone reception or transmission, when said interference is caused by the WCF. If a federal agency with jurisdiction over such matters finds that a WCF is operating in violation of federal standards regarding interference, the operator shall bring the WCF into conformance with such standards within the conformance period established by the federal agency. In the event that the federal agency does not establish a conformance period, the operator shall bring the WCF into conformance within thirty (30) days of notification by the federal agency. The operator is under an affirmative duty to provide, within fifteen (15) days, the Director of Community Development with a copy of any notice of such violation issued by any federal agency. Any violation of the provisions of this section shall be grounds for the Town to terminate any permit granted hereunder and/or to order the immediate termination of service from the WCF. The operator shall be responsible for all labor and equipment costs for determining the source of the interference, all costs associated with eliminating the interference, (including but not limited to filtering, installing radio frequency cavities, installing directional antennas, powering down systems and engineering analysis), and all costs arising from third party claims against the Town attributable to such interference.

Section 16-4.13.080. Removal of Discontinued Facilities Required.

Antennas, support structures and related equipment shall be removed within one hundred eighty (180) days of the discontinuation of the use of a WCF and the site shall be restored to its previous condition. The service provider shall provide the Director of Community Development with a notice of intent to vacate the site a minimum of thirty (30) calendar days prior to vacation. For facilities located on Town property, this requirement shall be included in the terms of the lease, license or other such agreement. For facilities located on other sites, the property owner shall be responsible for removal of all antennas, structures and related equipment within one-hundred eighty (180) days of the discontinuation of the use. A monetary security, in a form and amount acceptable to the Town Attorney, shall be required as a guarantee for WCF removal and site restoration.

Section 16-4.13.090. Nonconforming Facilities.

Any WCF in existence prior to [the effective date of this ordinance] that is nonconforming to the provisions of this section may continue to be used. Such nonconforming facilities may continue to be operated, repaired, and maintained but shall not be enlarged, expanded, relocated or modified in any material manner, as determined within the reasonable discretion of the Director of Community Development, without conforming to provisions of this Section 16-4.13.

Section 16-4.13.100. Maintenance of List and Map of WCF Locations.

The Town shall maintain a map and list of the location of all WCFs within the Town permitted under this Section and shall make this information readily available to the public through a combination of methods such as availability at the Community Development Department and posting on the Town's web site. The map and list shall refer interested parties to the Community Development Department for additional information.

Section 3. Severability.

If any section, subsection, clause, sentence, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of a Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The Town Council of the Town of Tiburon hereby declares that it would have passed this Ordinance, any section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases may be declared invalid or unconstitutional.

Section 4. Effective Date.

This Ordinance shall take effect and be in force thirty (30) days after the date of passage. Pursuant to the provisions of Government Code Section 36933, a summary of this ordinance shall be prepared by the Town Attorney. At least five (5) days prior to the Council meeting at which adoption of the ordinance is scheduled, the Town Clerk shall (1) publish the summary, and (2) post in the office of the Town Clerk a certified copy of this ordinance. Within fifteen (15) days after the adoption of this ordinance, the Town Clerk shall (1) publish the summary, and (2) post in the office of the Town Clerk a certified copy of the full text of the ordinance along with the names of those Council members voting for and against the ordinance.

This ordinance was introduced at a regular meeting of the Town Council of the Town of Tiburon on _____, 2005, and was adopted at a regular meeting of the Town Council of the Town of Tiburon on _____, 2005, which was noticed pursuant to Government Code Section 65091, by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

MILES BERGER, MAYOR
TOWN OF TIBURON

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK