

ATTACHMENT 2—STATEMENT OF CODE COMPLIANCE

**LAND USE APPLICATION—CUP
Wireless Telecommunications Facility
AT&T (SP4359 Othello Downtown NSB)**

EXHIBIT 2

STATEMENT OF CODE COMPLIANCE LAND USE APPLICATION—CUP Wireless Telecommunications Facility AT&T (SP4359 Othello Downtown NSB)

Submitted to City of Othello, Washington
Community Development Department

AT&T's proposal for a new wireless telecommunications facility (the "Facility") in the Residential District (R-2) is subject to and complies with the following applicable provisions of the Othello Municipal Code ("OMC"):

ZONING

- Chapter 17.21 R-2 RESIDENTIAL DISTRICT

WIRELESS FACILITIES STANDARDS

- Chapter 16.68 PERSONAL WIRELESS TELECOMMUNICATIONS FACILITIES

GENERAL DEVELOPMENT STANDARDS

- Chapter 17.75 LANDSCAPE BUFFER AND SCREENING REQUIREMENTS

ADDITIONAL REVIEW & PROCEDURAL REQUIREMENTS

- Section 17.05.050 Conditional Uses.
- Section 19.05.010 Application Forms.
- Section 19.05.020 Application fees and charges.
- Section 19.07.020 Formal preapplication meeting.
- Section 19.07.070 Notice of application.

PLEASE NOTE: AT&T's responses to applicable provisions are indicated below in *bold italicized blue text*. Any reference to an "Attachment" is referring to an attachment included in AT&T's CUP application for the proposed WTF.

ZONING

CHAPTER 17.21 R-2 Residential District

17.21.010 Permitted uses.

In an R-2 district, no building or premises shall be used, and no building shall be hereafter erected or structurally altered, unless otherwise provided in this title, except for one or more of the following uses:

- (a) Any use permitted in the R-1 district;
- (b) Two-family dwellings: units shall be completely separated by a one-hour fire wall and shall not be offered for rental on a shorter than month-to-month basis;

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- (c) Home occupations as permitted pursuant to Chapter 17.59 of this code;
- (d) All dwellings shall meet these minimum design requirements:
[REMAINDER OMITTED—Not applicable.]
- (e) Manufactured homes are permitted to be placed on individual lots in this district which meet the following requirements:
[REMAINDER OMITTED—Not applicable.]

AT&T: Pursuant to Chapter 16.68, wireless facilities are permitted in a residential zone upon approval of a conditional use permit ("CUP").

17.21.013 Conditional uses.

The following uses may be permitted by the hearing examiner as a conditional use in compliance with the provisions of this title:

- (a) Day care facility for the care of more than twelve children in the family abode of the person holding the license issued by the state of Washington, Department of Social and Health Services:
[REMAINDER OMITTED—Not Applicable]
- (b) Rental of an apartment appurtenant to a single-family residence.
- (c) Golf courses, including food service as an incidental use.
- (d) Mini golf courses, including food service as an incidental use.
[REMAINDER OMITTED—Not Applicable]

AT&T: Pursuant to Chapter 16.68, wireless facilities are permitted in a residential zone upon approval of a CUP.

17.21.015 Uses specifically prohibited.

In the R-2 residential district the following are prohibited:

- (a) Mobile homes;
- (b) Commercial activities not otherwise specifically permitted. (Ord. 948 § 2 (part), 1995).
AT&T: Not applicable. Pursuant to Chapter 16.68, wireless facilities are permitted in a residential zone upon approval of a CUP.

17.21.020 Front yard.

There shall be a front yard having a minimum depth of twenty feet; provided, however, where lots comprising twenty-five percent or more of the frontage on one side of a principal street between two intersecting streets shall at any particular time have been developed with buildings, no building thereafter erected or structurally altered on lots comprising any part of such frontage shall project beyond the average setback line of the buildings. (Ord. 962 § 1 (part), 1995: Ord. 948 § 2 (part), 1995).

AT&T: Not applicable. AT&T's proposed use is an unmanned wireless facility, not a dwelling.

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17.21.030 Side yard.

There shall be a side yard of not less than five feet in width on either side of a building, nor less than one-fifth of the height of the building; provided, however:

- (a) That the total of the two side yards of a building shall be not less than ten feet;
- (b) On corner lots, there shall be a side yard on the side of the intersecting street of not less than twenty feet when the house faces the front street;
- (c) When a house located on a corner lot faces the side street, there shall be a minimum setback of fifteen feet from the side street and twenty feet from the front street. (Ord. 962 § 1 (part), 1995: Ord. 948 § 2 (part), 1995).

AT&T: Not applicable. AT&T's proposed use is an unmanned wireless facility, not a dwelling.

17.21.035 Rear yard.

There shall be a minimum of five feet of setback from the back property line except where the back property line abuts an alley there is no setback required, unless the garage opens onto the alley. (Ord. 962 § 1 (part), 1995: Ord. 948 § 2 (part), 1995).

AT&T: Not applicable. AT&T's proposed use is an unmanned wireless facility, not a dwelling.

17.21.040 Building site area.

In the R-2 district, no single-family dwelling shall be hereafter erected upon any lot or plot having an area of less than seven thousand two hundred square feet. Two-family dwellings shall provide a lot or plot area of not less than thirty-five hundred square feet per family. Every dwelling shall front upon a street dedicated for public use and accepted by the city council as a public street, without any other building intervening between such dwelling and the street upon which it fronts. Two-family dwellings may, by special permission of the commission, face upon a court which fronts upon an accepted public street. However, these regulations shall not prohibit the erection of one single-family dwelling upon any lot, as shown by the last conveyance of record prior to the date of the ordinance codified in this title because such lot is of less area or width than required in this section. (Ord. 962 § 1 (part), 1995: Ord. 948 § 2 (part), 1995).

AT&T: Not applicable. AT&T's proposed use is an unmanned wireless facility, not a dwelling.

17.21.050 Height.

No building hereafter erected or structurally altered shall exceed twenty-eight feet, or two stories in height, except municipal buildings and structures may exceed this restriction. (Ord. 990 § 1, 1996: Ord. 962 § 1 (part), 1995: Ord. 948 § 2 (part), 1995).

AT&T: AT&T's proposed Facility conforms with the height limitations in Chapter 16.68.

17.21.060 Off-street parking area.

Off-street parking requirements shall be in conformance with Chapter 17.61. (Ord. 948 § 2 (part), 1995).

SEE HARDCOPY for AT&T's response..."use of existing parking lot...achieve compliance."

17.21.070 Maximum land coverage by buildings.

Maximum land coverage by buildings shall be as follows:

- (a) Interior lot, thirty-five percent;

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(b) Corner lot, thirty-five percent. (Ord. 948 § 2 (part), 1995).

AT&T: AT&T's proposed Facility will be located within a 30ft x 30ft (900ft) lease area. The approximate land coverage of the existing buildings and the proposed Facility would be approximately 15% of the 2.55 acre subject property. Please see Attachment 10—Zoning Drawings.

WIRELESS FACILITIES STANDARDS

CHAPTER 16.68

PERSONAL WIRELESS TELECOMMUNICATIONS FACILITIES

16.68.010 Purpose.

(a) These standards were developed to protect the public health, safety, and welfare, to protect property values and minimize visual impact while furthering the development of enhanced telecommunication services in the city. These standards were designed to comply with the Telecommunications Act of 1996. The provisions of this chapter are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting personal wireless services. This chapter shall not be applied in such a manner as to unreasonably discriminate between providers of functionally equivalent personal wireless services.

(b) To the extent that any provision of this chapter is inconsistent or conflicts with any other provisions of the Othello Municipal Code, this chapter shall control. Otherwise, this chapter shall be construed consistently with the other provisions and regulations of the city.

(c) In reviewing any application to provide personal wireless service or to install personal wireless service facilities, the city shall act within a reasonable period of time, taking into account the nature and scope of the application. Any decision to deny an application shall be in writing, supported by substantial evidence contained in a written record. The city shall approve, approve with conditions, or deny the application in accordance with the time frames set forth in Chapter 36.70B RCW and in accordance with other applicable provisions of this code. (Ord. 1268 § 2 (part), 2008).

AT&T: Please see the "Applicable Law" section of Attachment 1—Project Narrative for clarification of the review time frames established under federal law.

16.68.020 Definitions.

[OMITTED]

16.68.030 Exemptions.

The following are exempt from the provisions of this chapter and shall be permitted in all zones:

- (a) Industrial processing equipment and scientific or medical equipment using frequencies regulated by the FCC.
- (b) Antennas and related equipment no more than three feet in height that are being stored, shipped, or displayed for sale.
- (c) Radar systems for military and civilian communication and navigation.

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- (d) Wireless radio utilized for temporary emergency communications in the event of a disaster.
- (e) Licensed amateur (ham) radio stations.
- (f) Satellite dish antennas less than two meters in diameter, including direct to home satellite services, when used as a secondary use of the property.
- (g) Routine maintenance or repair of a personal wireless service facility and related equipment (excluding structural work or changes in height or dimensions of antennas, towers, or buildings); provided, that compliance with the standards of this chapter is maintained.
- (h) Subject to compliance with all other applicable standards of this chapter, a building permit application need not be filed for emergency repair or maintenance of a personal wireless service facility until thirty days after the completion of such emergency activity.
- (i) A COW or other temporary personal wireless telecommunications facility shall be permitted for a maximum of ninety days or during an emergency declared by the city. (Ord. 1268 § 2 (part), 2008).

AT&T: AT&T's proposed Facility does not qualify for exemption from the provisions of this chapter.

16.68.040 Policy statement.

(a) The city has been confronted with requests to locate towers and antennas. This chapter is to establish general guidelines for the siting of towers and antennas. The goals of this chapter are to: (1) enhance the ability of personal wireless service providers to provide such services throughout the city quickly, effectively, and efficiently; (2) encourage personal wireless service providers to locate towers and antennas in nonresidential areas; (3) encourage personal wireless service providers to co-locate on new and existing tower sites; (4) encourage personal wireless service providers to locate towers and antennas, to the extent possible, in areas where the adverse impact on city residents is minimal; and (5) encourage personal wireless service providers to configure towers and antennas in a way that minimizes any significant adverse visual impact. Accordingly, the city council finds that the promulgation of this chapter is warranted and necessary:

- (1) To manage the location of towers and antennas in the city;
- (2) To protect residential areas and land uses from potential adverse impacts of towers;
- (3) To minimize adverse visual impacts of towers through careful design, siting, landscape screening, and innovative camouflaging techniques;
- (4) To accommodate an increased need for towers to serve the wireless communications needs of city residents;
- (5) To promote and encourage co-location on existing and new towers as an option rather than construction of additional single-use towers, and to reduce the number of such structures needed in the future;
- (6) To consider the public health and safety of towers to the extent permitted by the Telecommunications Act of 1996; and

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- (7) To avoid potential damage to adjacent properties through sound engineering practices and the proper siting of antenna support structures.

(b) New Uses. All new antennas shall comply with this chapter after the date of passage of the ordinance codified herein.

AT&T: See AT&T's responses herein to all OMC provisions applicable to the proposed Facility.

(c) Existing Uses. All towers and antennas existing on the date of passage of the ordinance codified in this chapter shall be allowed to continue as they presently exist but will be considered nonconforming uses. Routine maintenance shall be permitted on existing towers and antennas. However, new construction other than routine maintenance on existing towers, antennas, buildings or other facilities shall comply with the requirements of this chapter. (Ord. 1268 § 2 (part), 2008).

AT&T: Not applicable.

16.68.050 Recognition of industry site selection criteria.

In establishing a new site, the industry requires a location that is technically compatible with the established network. A general area is to be identified based upon engineering constraints and the desired area of service. Specific locations within that general area will be evaluated using the following criteria which are not listed in order of priority:

- (a) Topography as it relates to line of sight transmissions for optimum efficiency in telephone service.
- (b) Availability of road access.
- (c) Availability of electric power.
- (d) Availability of land-based telephone lines or microwave capability.
- (e) Leaseable lands, and landlords who want facilities to be located on their properties consistent with zoning regulations.
- (f) Screening potential of existing vegetation, structures and topographic features.
- (g) Zoning that will allow low power mobile radio service facilities.
- (h) Compatibility with adjacent land uses.
- (i) The least number of sites to cover the desired area.
- (j) The greatest amount of coverage, consistent with physical requirements.
- (k) Opportunities to mitigate possible visual impact.
- (l) Availability of suitable existing structures for antenna mounting. (Ord. 1268 § 2 (part), 2008).

AT&T: Please see Attachment 1—Project Narrative and Attachment 3—RF Justification for information regarding AT&T's service objectives, targeted service area, search ring, and siting analysis for the proposed Facility.

16.68.060 Site selection criteria.

(a) Any applicant proposing to construct an antenna support structure, or mount an antenna on an existing structure, shall demonstrate by engineering evidence that the antenna must be located at the site to satisfy its function in the applicant's local grid system. Further, the applicant must demonstrate by engineering evidence that the height requested is the minimum height necessary to fulfill the site's function within the grid system.

AT&T: Please see Attachment 3—RF Justification for demonstration of AT&T's compliance with this requirement.

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(b) Applications for necessary permits will only be processed when the applicant demonstrates either that it is an FCC-licensed telecommunications provider or that it has agreements with an FCC-licensed telecommunications provider for use or lease of the support structure.

AT&T: AT&T is an FCC-licensed telecommunications provider. Please see Attachment 5—FCC Licenses Adams County for demonstration of AT&T's compliance with this requirement.

(c) Low power mobile radio service facilities shall be located and designed to minimize any significant adverse impact on residential property values. Facilities shall be placed in locations where the existing topography, vegetation, buildings, or other structures provide the greatest amount of screening.

AT&T: Not applicable, as AT&T's proposed Facility is not a mobile radio service facility.

(d) In all zones, location and design of facilities shall consider the impact of the facility on the surrounding neighborhood and the visual impact within the zone district. In all zones, towers shall be significantly screened by placing them in trees to the extent that it does not result in significant signal degradation. (Ord. 1268 § 2 (part), 2008).

AT&T: AT&T's proposed Facility has been designed to be fully camouflaged (bell tower) to minimize any adverse visual impact within the area. Please see Attachment 9—Photo Simulations and Attachment 10—Zoning Drawings, which demonstrate the full camouflaging and screening proposed for this Facility.

16.68.070 Priority of locations.

The order of priorities for locating new personal wireless service facilities shall be as follows:

(a) Place antennas on appropriate rights-of-way and existing structures, such as buildings, towers, water towers and smokestacks.

(b) Place antennas and towers in districts zoned industrial.

(c) Place antennas and towers in districts zoned commercial.

(d) Place antennas and towers on other nonresidential property.

(e) Place antennas on churches, parks, schools, utility facilities, or other appropriate public facilities or multifamily residential structures exceeding thirty feet in height.

AT&T: AT&T's proposed Facility is located on nonresidential property—a church—within a residential zone. Please see the Siting Analysis in Attachment 1—Project Narrative for additional information and explanation why the proposed Facility can not be located on a higher priority location.

(1) An applicant that wishes to locate a new antenna support structure in a residential zone shall demonstrate that a diligent effort has been made to locate the proposed communications facilities on a government facility, a private institutional structure, or other appropriate existing structures within a nonresidential zone, and that due to valid considerations including physical constraints, and economic or technological feasibility, no appropriate location is available.

AT&T: AT&T's proposed Facility is located on nonresidential property—a church—within a residential zone. Please see the Siting Analysis in Attachment 1—Project Narrative for

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additional information and demonstration of AT&T's diligent efforts to locate the proposed Facility on a higher priority location and why no such higher priority location is available.

- (2) Applicants are required to demonstrate that they:
 - (A) Have contacted the owners of structures in excess of thirty feet within a one-quarter-mile radius of the site proposed and which from a location standpoint could provide part of a network for transmission of signals;
 - (B) Have asked for permission to install the antenna on those structures; and
 - (C) Were denied for reasons other than economic feasibility.

AT&T: There are no such structures within a one-quarter-miles radius of the proposed Facility. Please see Attachment 3—RF Justification for demonstration of AT&T's compliance with this requirement.

- (3) The information submitted by the applicant shall include:
 - (A) A map of the area to be served by the tower or antenna;
 - (B) Its relationship to other cell sites in the applicant's network; and
 - (C) An evaluation of existing buildings taller than thirty feet, within one-quarter mile of the proposed tower or antenna which from a location standpoint could provide part of a network to provide transmission of signals.

AT&T: Please see Attachment 3—RF Justification for demonstration of AT&T's compliance with this requirement.

- (4) A conditional use permit is required for all personal wireless facilities located in a residential zone. (Ord. 1268 § 2 (part), 2008).

AT&T: AT&T has submitted a Land Use Application for a Conditional Use Permit and SEPA Checklist, with supporting documents including this Statement of Code Compliance, for the proposed Facility.

16.68.080 Siting priority on public property.

- (a) Where public property is sought to be utilized by an applicant, priority for the use of city-owned land for wireless antennas and towers will be given to the following entities in descending order:

[REMAINDER OMITTED—Not applicable.]

AT&T: Not applicable. AT&T's proposed Facility will not be located on public property.

16.68.090 Co-location.

- (a) To minimize adverse visual impacts associated with the proliferation of towers, co-location of personal wireless service facilities on existing or new towers is encouraged as follows:

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(1) Proposed facilities may, and are encouraged to, co-locate onto existing towers. Such co-location is permitted by right and new or additional conditional use permit approval is not required, except that any other permit, license, lease, or franchise requirements must be satisfied, and the co-location must be accomplished in a manner consistent with the policy, site criteria, and landscape/screening provisions contained in this chapter.

AT&T: AT&T evaluated additional alternative site locations within and directly adjacent to the search ring. No existing towers are technologically feasible for co-location of the proposed Facility to meet AT&T's service objectives for the Targeted Service Area. Please see the Siting Analysis in Attachment 1—Project Narrative and Attachment 3—RF Justification.

(2) The conditional use permit requirement for a facility may be waived in nonresidential zones if the applicant locates the antenna on an existing structure or an existing tower. The applicant must submit detailed plans to the planning department for administrative use permit to determine if the conditional use permit process and public hearing can be waived. No building permit will be issued until approval is granted by an administrative use permit or conditional use permit.

AT&T: Not applicable. The proposed Facility will be located in the R-2 residential zone.

(3) The city may deny an application to construct new facilities if the applicant has not shown by substantial evidence that it has made a diligent effort to mount the facilities on an existing structure or tower.

AT&T: AT&T made a diligent effort to evaluate additional alternative site locations within and directly adjacent to AT&T's search ring. No existing structures or towers are available and/or technologically feasible for co-location to meet AT&T's service objectives for the Targeted Service Area. Please see the Siting Analysis in Attachment 1—Project Narrative and Attachment 3—RF Justification.

(4) To reduce the number of antenna support structures needed in the city in the future, new proposed support structures shall be designed to accommodate antennas for more than one user, unless the applicant demonstrates why such design is not feasible for economic, technical or physical reasons.

AT&T: AT&T's proposed Facility has been designed to accommodate at least one additional future antenna RAD center for co-location. Please see Attachment 10—Zoning Drawings for demonstration of AT&T's compliance with this requirement.

(5) Unless co-location is not feasible: (A) an applicant's site plan shall reserve an area for other providers' equipment near the base of the applicant's tower. A first right of refusal (which is either executed or maintained while the provider's personal wireless facilities and services are in use) to lease the area at the base of the tower or mount for other providers will meet the reservation requirement; and (B) the site plan for towers in excess of one hundred feet above ground level must propose space for two comparable providers, while the site plan for towers one hundred feet or less must propose space for one comparable provider. To provide further incentive for co-location, an existing tower may be modified as a matter of right to accommodate co-location without new or additional CUPs, provided the additional antenna shall be of the same type as that on the existing tower unless additional height requires a conditional use permit and the following conditions are met:

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AT&T: AT&T's proposed Facility, including a 100ft tri-pole stealth tower, has been designed to accommodate a future antenna RAD center on the tower, and available ground space, for at least one additional co-location. Please see Attachment 10—Zoning Drawings for demonstration of AT&T's compliance with this requirement.

(A) Height. An existing tower may be modified or rebuilt to a taller height, not to exceed twenty feet over the tower's existing height and subject to the other provisions of this chapter including, by way of example and not limitation, any applicable requirements or conditional use and building permits. The height change may occur only once per tower.

AT&T: Not applicable. AT&T is proposing a new support structure.

(B) Except as set forth herein, no signs, banners or similar devices or materials may be attached to the tower, antenna support structures or antennas.

AT&T: AT&T does not propose any signage other than that required by certain state and federal law. AT&T intends to comply with this requirement.

(6) While co-location and the requirements herein are encouraged, co-location shall not take precedence over the construction of shorter towers with appropriate screening. (Ord. 1268 § 2 (part), 2008).

AT&T: AT&T acknowledges and understands this requirement. AT&T has proposed to build a new tower at the lowest height possible to best meet AT&T's service objectives within the targeted search area. While minimizing height, the proposed Facility will also be able to accommodate at least one additional future co-location, as noted.

16.68.100 Design criteria.

(a) As provided above, new facilities shall be designed to accommodate co-location, unless the applicant demonstrates why such design is not feasible for economic, technical, or physical reasons.

AT&T: AT&T's proposed Facility, including a 100ft tri-pole stealth tower, has been designed to accommodate a future antenna RAD center on the tower, and available ground space, for at least one additional co-location. Please see Attachment 10—Zoning Drawings for demonstration of AT&T's compliance with this requirement.

(b) Facilities shall be architecturally compatible with the surrounding buildings and land uses in the zoning district and screened or otherwise integrated, through location and design, to blend in with the existing characteristics of the site.

AT&T: The proposed 100ft tri-pole stealth church bell tower is architecturally compatible with the adjacent church and fully screens the antennas and accessory equipment to blend the tower in with the existing characteristics of the church's property. Please see Attachment 9—Photo Simulations and Attachment 10—Zoning Drawings, which demonstrate AT&T's compliance with this requirement.

(1) Setback. A tower's setback shall be measured from the base of the tower to the property line of the parcel on which it is located. In residential districts and residential land use areas, where permitted, towers shall be set back from all property lines a distance equal to one hundred percent of tower height as measured from ground level, except for unusual geographic limitations or other public policy considerations, as determined in the city's sole discretion. All other towers shall comply with the minimum setback requirements of the area in which they are located in all other zoning districts, but not less than twenty feet, unless there are unusual geographical

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limitations or other public policy considerations as determined in the sole and absolute discretion of the city.

Such considerations shall include, by way of illustration and not limitation, but are not limited to:

- (A) Impact on adjacent properties;
- (B) Alternative sites for personal wireless facilities; and
- (C) The extent to which screening and camouflaging will mitigate the effects of the personal wireless facilities.

AT&T: Please see Attachment 10—Zoning Drawings for demonstration of AT&T's compliance with this requirement.

(2) Right-of-Way Setback Exception. The setback requirement may be waived if the antenna and antenna support structure are located in the city right-of-way.

AT&T: Not Applicable. The proposed Facility will not be located in the city right-of-way.

(3) Color. Towers shall have a color generally matching the surroundings or background that minimizes their visibility, unless a different color is required by the FCC or FAA.

AT&T: AT&T intends to comply with this requirement and will specify in the final construction drawings use of a nonglare paint finish in a neutral color that is compatible with the existing church building. Please see Attachment 9—Photo Simulations for a visual depiction of the proposed Facility.

(4) Lights, Signals and Signs. No signals, lights, or signs shall be permitted on towers unless required by the FCC or the FAA. Should lighting be required, in cases where there are residents located within a distance which is three hundred percent of the height of the tower, then dual mode lighting shall be requested from the FAA.

AT&T: No artificial lighting of the support tower is proposed. Please see Attachment 6—FAA TOWAIR Determination as confirmation that no lighting is required per the FAA.

(5) Equipment Structures. Ground level equipment, buildings, and the tower base shall be screened from public view. The standards for the equipment buildings are as follows:

- (A) The maximum floor area is three hundred square feet and the maximum height is twelve feet. Except in unusual circumstances or for other public policy considerations, the equipment building may be located no more than two hundred fifty feet from the tower or antenna. Depending upon the aesthetics and other issues, the city, in its sole discretion, may approve multiple equipment structures or one or more larger structures.

AT&T: The proposed lease area will be 900sq.ft. and the proposed 8ft x 16ft equipment shelter to install within the lease area is under 12ft in height and will be located within 50ft of the tower. Please see Attachment 10—Zoning Drawings for demonstration of AT&T's compliance with this requirement.

- (B) Ground level buildings shall be screened from view by landscape plantings, fencing, or other appropriate means, as specified herein or in other provisions of this code.

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AT&T: All ground level equipment will be located within the lease area, and the proposed lease area will be screened by an 8ft high cedar fence with an additional landscaping buffer, as specified in this code. Please see Attachment 10—Zoning Drawings for demonstration of AT&T's compliance with this requirement.

(C) Equipment buildings mounted on a roof shall have a finish similar to the exterior building walls. Equipment for a roof-mounted antenna may also be located within the building on which the antenna is mounted.

AT&T: Not applicable.

(D) In instances where equipment buildings are located in residential zones, equipment buildings shall comply with setback requirements and shall be designed so as to conform in appearance with nearby residential structures.

AT&T: Please see Attachment 10—Zoning Drawings, which demonstrates AT&T's compliance with the setback requirements of the R-2 zone. As noted, all ground equipment will be located within the lease area and will be fully screened by the fencing and landscaping surrounding the lease area. Please see Attachment—9 Photo Simulations, which demonstrates the Facility's conformance in appearance with nearby structures.

Equipment buildings, antenna, and related equipment shall occupy no more than twenty-five percent of the total roof area of the building the facility is mounted on, which may vary in the city's sole discretion if co-location and an adequate screening structure is used.

AT&T: Not applicable.

The use must be approved on a site plan or final development plan, as applicable.

AT&T: Please see Attachment 10—Zoning Drawings, Sheet Z-2 & Z-3, which demonstrates the inclusion of all ground equipment in the proposed site plan for the proposed Facility.

(6) Federal Requirements. All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the federal government with the authority to regulate towers and antennas. If those standards and regulations are changed, then personal wireless service providers governed by this chapter shall bring their towers and antennas into compliance with the revised standards and regulations within three months of their effective date or the timelines provided by the revised standards and regulations, whichever time period is longer. The revised standards and regulations are not retroactively applicable to existing providers, unless otherwise provided or permitted by federal law. Failure to bring towers and antennas into compliance with the revised standards and regulations shall constitute grounds for the city to remove a provider's facilities at the provider's expense.

AT&T: AT&T acknowledges, understands, and intends to comply with this requirement. Please see Attachment 4—FCC-MPE Letter as demonstration of AT&T's compliance with the FCC's RF emissions standards, and Attachment 6—FAA TOWAIR Determination, which indicates that the proposed Facility is exempt from FAA regulations.

(7) Building Codes—Safety Standards. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable city building codes and the applicable standards for towers that are published by the Electronic

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Industries Association (“EIA”), as amended from time to time. If, upon inspection, the city concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty days to bring the tower into compliance with such standards. If the owner fails to bring its tower into compliance within thirty days, the city may remove the tower at the owner’s expense.

AT&T: AT&T acknowledges, understands, and intends to comply with this requirement.

(8) Structural Design. Towers shall be constructed to the EIA Standards, which may be amended from time to time, and to all applicable construction/building codes. Further, any improvements or additions to existing towers shall require submission of site plans stamped by a professional engineer which demonstrate compliance with the EIA Standards and all other good industry practices. The plans shall be submitted and reviewed at the time building permits are requested.

AT&T: AT&T acknowledges, understands, and intends to comply with this requirement.

(9) Fencing. A well-constructed wall or wooden fence not less than six feet in height from the finished grade shall be provided around each personal wireless service facility. Access to the tower shall be through a locked gate. The use of chain link, plastic, vinyl, or wire fencing is prohibited unless it is fully screened from public view by a minimum eight-foot-wide landscaping strip. All landscaping shall meet the standards of Othello Municipal Code Chapter 17.75.

AT&T: The proposed lease area will be surrounded by an 8ft wooden fence with access through a locked gate. An additional landscaping buffer that meets the standards of Chapter 17.75 will surround the fence. Please see AT&T’s responses to the applicable provisions of Chapter 17.75, below, and Attachment 10—Zoning Drawings for demonstration of AT&T’s compliance with this requirement.

(10) Tower and Antenna Height. The applicant shall demonstrate that the tower and antenna are the minimum height required to function satisfactorily. No tower or antenna that is taller than this minimum height shall be approved. A variance from the height limit may be granted if the applicant can show by clear and convincing evidence that the additional height is necessary to provide adequate service to the residents of the city and no other alternative is available. When granting a variance, the examiner shall require that a significant portion of the tower and related facilities be screened by existing trees or existing structures. In the commercial areas, a variance may only be granted in extraordinary circumstances. Variances shall meet the requirements of Title 17.

AT&T: Please see Attachment 3—RF Justification for demonstration of AT&T’s compliance with this requirement.

(11) Antenna Support Structure Safety. The applicant shall demonstrate that the proposed antenna and support structure are safe and the surrounding areas will not be negatively affected by support structure failure, falling ice, or other debris or interference. All support structures shall be fitted with anti-climbing devices, as approved by the manufacturers.

AT&T: Engineering certification of the structural stability of the proposed new tower will be included in the final construction drawings submitted as part of the building permit application. AT&T acknowledges, understands, and intends to comply with this provision and is agreeable to this being included as a condition of approval.

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(12) Required Parking. If the cell site is fully automated, adequate parking shall be required for maintenance workers. If the site is not automated, arrangements for adequate off-street parking shall be made and documentation thereof provided to the city. Security fencing should be colored or should be of a design which blends into the character of the existing environment.

AT&T: This is an unmanned wireless facility located adjacent to an existing church parking lot, which will provide adequate parking for maintenance workers. The wooden fencing around the lease area will be surrounded by a landscaping buffer and will be designed to blend into the character of the existing environment. Please see Attachment 10—Zoning Drawings and Attachment 9—Photo Simulations for demonstration of AT&T's compliance with this requirement.

(13) Tower Separation. In no case shall towers be located closer than five hundred feet from another tower, whether it is owned or utilized by the applicant or another provider, unless the city designates areas where multiple towers can be located in closer proximity.

AT&T: No other towers are located within five hundred feet of the proposed Facility. Please see the Siting Analysis in Attachment 1—Project Narrative and Attachment 3—RF Justification for demonstration of AT&T's compliance with this requirement.

(14) Antenna Criteria. Antennas on or above a structure shall be subject to the following:

(A) The antenna shall be architecturally compatible with the building and wall on which it is mounted and shall be designed and located so as to minimize any adverse aesthetic impact.

AT&T: AT&T is proposing to install antennas on a new tri-pole tower camouflaged as a church bell tower. To the extent this provision is applicable to the proposed Facility, the antennas will be fully screened within the bell tower structure. Please see Attachment 9—Photo Simulations and Attachment 10—Zoning Drawings for demonstration of AT&T's compliance with this requirement.

(B) The antenna shall be mounted on a wall of an existing building in a configuration as flush to the wall as technically possible and shall not project above the wall on which it is mounted unless it must be for technical reasons. In no event shall an antenna project more than sixteen feet above the roof line including parapets.

AT&T: Not applicable.

(C) The antenna shall be constructed, painted, or fully screened to match as closely as possible the color and texture of the building and wall on which it is mounted.

AT&T: AT&T is proposing to install antennas on a new tri-pole tower camouflaged as a church bell tower. To the extent this provision is applicable to the proposed Facility, the antennas will be fully screened within the bell tower structure. Please see Attachment 9—Photo Simulations and Attachment 10—Zoning Drawings for demonstration of AT&T's compliance with this requirement.

(D) The antenna may be attached to an existing conforming mechanical equipment enclosure which projects above the roof of the building, but may not project any higher than the enclosure.

AT&T: Not applicable.

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(E) If an accessory equipment shelter is present, it must blend with the surrounding buildings in architectural character and color.

AT&T: As noted, the ground equipment will be located within the proposed lease area and fully screened from view by the fencing and landscaping buffer. Please see Attachment 9—Photo Simulations and Attachment 10—Zoning Drawings for demonstration of AT&T's compliance with this requirement.

(F) The structure must be architecturally and visually (color, size, bulk) compatible with surrounding existing buildings, structures, vegetation, and uses. Such facilities will be considered architecturally and visually compatible if they are camouflaged to disguise the facility.

AT&T: As noted, AT&T is proposed to construct a tri-pole support-structure camouflaged as a church bell tower, which will fully disguise the proposed antennas and accessory tower equipment. Please see Attachment 9—Photo Simulations and Attachment 10—Zoning Drawings for demonstration of AT&T's compliance with this requirement.

(G) Site location and development shall preserve the pre-existing character of the site as much as possible. Existing vegetation should be preserved or improved, and disturbance of the existing topography of the site should be minimized, unless such disturbance would result in less visual impact of the site on the surrounding area. The effectiveness of visual mitigation techniques must be evaluated by the city, in the city's sole discretion.

AT&T: There is no existing vegetation at the site location. As noted, AT&T will be improving the site with a landscaping buffer pursuant to the requirements of 16.68.130. Please see Attachment 10—Zoning Drawings and Attachment 9—Photo Simulations for demonstration of AT&T's compliance with this requirement.

(H) For installations on buildings greater than thirty feet in height, see other applicable provisions of this chapter. In addition to the other requirements of this chapter, on buildings thirty feet or less in height, the antenna may be mounted on the roof if the following additional criteria are satisfied:

[REMAINDER OMITTED—Not applicable.]

AT&T: Not applicable.

(I) If a proposed antenna is located on a building or a lot subject to a site review, approval is required prior to the issuance of a building permit.

AT&T: Not applicable.

(J) No antenna shall be permitted on property designated as an individual landmark or as a part of a historic district, unless such antenna has been approved in accordance with this code.

AT&T: The subject property is not a landmark or part of an historic district.

(K) No personal wireless service provider or lessee or agent thereof shall fail to cooperate in good faith to accommodate co-location with competitors. If a dispute arises

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about the feasibility of co-locating, the city administrator may require a third-party technical study, at the expense of either or both parties, to resolve the dispute.

AT&T: AT&T acknowledges, understands, and intends to comply with this requirement.

(L) No personal wireless service provider or lessee shall fail to assure that its antenna complies at all times with the current applicable FCC standards. After installation, but prior to putting the antenna in service, each provider shall submit a certification by an independent professional engineer to that effect. In the event that an antenna is co-located with another antenna, the certification must provide assurances that FCC approved levels of electromagnetic radiation will not be exceeded by the co-location.

AT&T: AT&T acknowledges, understands, and intends to comply with this requirement and is agreeable to this being included as a condition of approval.

(M) No antenna shall cause localized interference with the reception of any other communications signals including, but not limited to, public safety, television, and radio broadcast signals.

AT&T: AT&T acknowledges, understands, and intends to comply with this requirement and is agreeable to this being included as a condition of approval.

(N) No person shall locate an antenna or tower for wireless communications services upon any lot or parcel except as provided in this chapter. (Ord. 1268 § 2 (part), 2008).

AT&T: AT&T's proposed Facility is compliance with all applicable provisions within this Chapter 16.68, as demonstrated by AT&T's responses herein.

16.68.110 Permits required.

Where a tower or antenna support structure will be sixty feet or less in height, in addition to the other provisions of this chapter, an applicant will be required to obtain a building permit. In the event that a proposed tower or antenna support structure will be located in a residential zone, or an unscreened tower in the commercial area, or will be more than sixty feet in height, in addition to the other provisions of this chapter, an applicant will be required to obtain a conditional use permit. With respect to the placement of an antenna on a tower or antenna support structure, the requirements for a conditional use permit or administrative use permit will be applicable based on the height of the tower and antenna or mount and antenna unless this chapter provides other requirements to the contrary.

Project permit review procedures are specified in this code. The following table specifies the permits required for the various types of personal wireless service facilities that meet the standards of this chapter:

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Type of Permit	Building	CUP	Site Development	Rights-of-Way Use	Administrative Use
Type of Facility					
Towers > 60 feet or towers or antennas in residential zones	X (if applicable)	X	X	X (if applicable)	
Structure-mounted wireless facilities	X (if applicable)			X (if applicable)	X
Building-mounted wireless facilities	X (if applicable)			X (if applicable)	X (unless waived)
Modification of existing facilities to accommodate co-location	X (if applicable)	X (if applicable)	X (if applicable)	X (if applicable)	X (if applicable)

AT&T: As AT&T's proposed Facility is located in a residential zone and is 100ft, AT&T has submitted a land use application for a CUP and SEPA Checklist, with supporting documents including this Statement of Code Compliance, for the proposed Facility. Pursuant to the above, upon approval of the CUP, AT&T will submit a building permit and site development permit application for the Facility.

To meet the standards of this chapter, a personal wireless service facility must also comply with the other requirements under this chapter and with the following:

For an antenna attached to the roof or sides of a building at least thirty feet in height, an existing tower, a water tank, or a similar structure:

[REMAINDER OMITTED—Not applicable.]

AT&T: Not applicable. AT&T is proposing to build a new support structure.

16.68.120 Inspection requirements.

Each year after a facility becomes operational, the facility operator shall conduct a safety inspection in accordance with the EIA and FCC standards and within sixty days of the inspection file a report with the city administrator. Submission of a copy of FCC-required, and duly filed, safety inspection report, or the facility operator's maintenance reports for the prior twelve months in the event no FCC report is required for such year, shall satisfy the requirements of this section. (Ord. 1268 § 2 (part), 2008).

AT&T: AT&T acknowledges, understands, and intends to comply with this requirement and is agreeable to this being included as a condition of approval.

16.68.130 Landscaping/screening.

(a) Landscaping. Landscaping, as described herein, shall be required to screen personal wireless service facilities as much as possible, to soften the appearance of the cell site. The city may permit any combination of existing vegetation, topography, walls, decorative fences or other features instead of landscaping, if they achieve the same degree of screening as the required landscaping. If the antenna is

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mounted flush on an existing building, and other equipment is housed inside an existing structure, landscaping shall not be required.

(b) Screening. The visual impacts of a personal wireless service facility shall be mitigated through landscaping or other screening materials at the base of the tower and ancillary structures. The following landscaping and buffering shall be required around the perimeter of the tower and accessory structures, except that the city may waive the standards for those sides of the facility that are not in public view. Landscaping shall be installed on the outside of fences. Further, existing vegetation shall be preserved to the maximum extent practicable and may be used as a substitute for or as a supplement to landscaping requirements.

(1) A row of evergreen trees a minimum of six feet tall at planting a maximum of six feet apart shall be planted around the perimeter of the fence; and

Please see Attachment 9—Photo Simulations and Attachment 10—Zoning Drawings for demonstration of AT&T's compliance with this requirement.

(2) A continuous hedge at least thirty-six inches high at planting capable of growing to at least forty-eight inches in height within eighteen months shall be planted in front of the tree line referenced above.

AT&T: Please see Attachment 9—Photo Simulations and Attachment 10—Zoning Drawings for demonstration of AT&T's compliance with this requirement.

(3) In the event that landscaping is not maintained at the required level, the city, after giving thirty days' advance written notice, may maintain or establish the landscaping and bill both the owner and lessee for such costs until such costs are paid in full. (Ord. 1268 § 2 (part), 2008).

AT&T: AT&T acknowledges, understands, and intends to comply with this requirement.

16.68.140 Nonuse/abandonment.

(a) Abandonment. No less than thirty days prior to the date that a personal wireless service provider plans to abandon or discontinue operation of a facility, the provider must notify the city of Othello by certified U.S. mail of the proposed date of abandonment or discontinuation of operation. In the event that a licensed carrier fails to give notice, the facility shall be considered abandoned upon the city's discovery of discontinuation of operation. Upon such abandonment, the provider shall have sixty days or additional period of time determined in the reasonable discretion of the city within which to:

(1) Reactivate the use of the facility or transfer the facility to another provider who makes actual use of the facility; or

(2) In the event that abandonment as defined in this chapter occurs due to relocation of an antenna at a lower point on the antenna support structure, reduction in the effective radiated power of the antenna or reduction in the number of transmissions from the antennas, the operator of the tower shall have six months from the date of effective abandonment to co-locate another service on the tower. If another service provider is not added to the tower, then the operator shall promptly dismantle and remove that portion of the tower which exceeds the minimum height required to function satisfactorily. Notwithstanding the foregoing, changes which are made to personal wireless facilities which do not diminish their essential role in providing a total system shall not constitute abandonment. However, in the event that there is a

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physical reduction in height of substantially all of the provider's towers in the city or surrounding area, then all of the towers within the city shall similarly be reduced in height.

(3) Dismantle and Removal Facility. If the tower, antenna, foundation, and facility are not removed within the sixty-day time period or additional period of time allowed by the city, the city may remove such tower, antenna, foundation, and related facility at the provider's expense. If there are two or more providers co-locating on a facility, except as provided for in subsection (a)(2) of this section, this provision shall not become effective until all providers cease using the facility. At the earlier of sixty days from the date of abandonment without reactivating or upon completion of dismantling and removal, city approval for the facility shall automatically expire. (Ord. 1268 § 2 (part), 2008).

AT&T: AT&T acknowledges, understands, and intends to comply with all provisions above

16.68.150 Third-party review.

Personal wireless service providers use various methodologies and analyses, including geographically based computer software, to determine the specific technical parameters of their services and low power mobile radio service facilities, such as expected coverage area, antenna configuration, topographic constraints that affect signal paths, etc. In certain instances, a third-party expert may need to review the technical data submitted by a provider. The city may require a technical review as part of a permitting process. The costs of the technical review shall be borne by the provider.

The selection of the third-party expert may be by mutual agreement between the provider and the city, or at the discretion of the city, with a provision for the provider and interested parties to comment on the proposed expert and review its qualifications. The expert review is intended to address interference and public safety issues and be a site-specific review of technical aspects of the facilities or a review of the providers' methodology and equipment used and not a subjective review of the site which was selected by a provider. Based on the results of the expert review, the city may require changes to the provider's application. The expert review shall address the following:

- (a) The accuracy and completeness of submissions;
- (b) The applicability of analysis techniques and methodologies;
- (c) The validity of conclusions reached; and
- (d) Any specific technical issues designated by the city. (Ord. 1268 § 2 (part), 2008).

AT&T: AT&T acknowledges, understands, and intends to comply with the above provisions.

16.68.160 Remedies.

(a) Any person violating any of the provisions of this chapter upon conviction shall be punishable by a fine not to exceed one thousand dollars or by imprisonment for a period of up to ninety days, or by both such fine and imprisonment, for each day during which an offense occurs.

(b) In addition to receiving any monetary remuneration, the city shall have the right to seek injunctive relief for any and all violations of this chapter, for relief under this code and all other remedies provided at law or in equity. (Ord. 1268 § 2 (part), 2008).

AT&T: AT&T acknowledges, understands the above provisions.

16.68.170 Severability.

If any section, sentence, clause or phrase of this chapter shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this chapter. (Ord. 1268 § 2 (part), 2008).

GENERAL DEVELOPMENT STANDARDS

CHAPTER 17.75

LANDSCAPING BUFFER AND SCREENING REQUIREMENTS

17.75.010 Purpose.

The intent of this chapter is to establish minimum natural screening and buffer requirements in order to promote safety, privacy and public well-being; protect and maintain property values, appearance and character of neighborhoods; to provide a method to mitigate adverse climatic, visual and auditory effects associated with intensified urban development and to enhance the city's appearance. This chapter provides an effective manner to achieve the above objectives. (Ord. 948 § 2 (part), 1995).

17.75.020 Applicability.

(a) New or Expanded Structures. The provisions of this chapter shall apply to all structures which are located in C-1, C-2, C-3, I-1, or I-2 zones, including parking lots so far as they are not otherwise covered under Chapter 17.61 of this code, and includes all new structures and all intensified, modified, expanded, repaired or altered existing uses and structures when the cost of such intensification, modification, expansion, repairs or alteration exceeds fifty percent of the existing value of said use or structure. Parking lots are included within the application of this chapter to permit the community development director to proceed to give notice to the owners of such properties and require compliance with this chapter or Chapter 17.61 within the time limits provided in this chapter.

(b) Existing Structures. These standards shall apply to all structures existing as of November 15, 1992, which must comply with the requirements of this chapter no later than July 1, 1997.

(c) The buffer and screening requirements of this chapter shall be required for every property line that is adjacent to, contiguous to, abuts, adjoins, fronts or borders a public street, public right-of-way, or public highway, including railroad rights-of-way, or a residential zone. (Ord. 948 § 2 (part), 1995).

AT&T: Though AT&T's proposed Facility is located in an R-2 zone, pursuant to 16.68.100(b)(9), the required landscaping for the Facility shall be in conformance with the requirements of this Chapter 17.75.

17.75.030 Plan submittal and review.

(a) All construction and development applications to which this chapter applies shall include detailed plans for screening and buffering required for compliance with this chapter. Plans shall be drawn to scale, shall include the materials and method(s) to be used to comply with this chapter, identify size

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and location of planted materials, identify and show existing trees or shrubs that are to remain, illustrate the method of tree and shrub protection of the landscaped area, shall identify any evergreen plants and trees by botanical and common names, and shall include information on the growing characteristics of the trees and plants, such as minimum and maximum mature height.

(b) The plans shall also include a description of the method(s) and material(s) required to maintain all vegetation in a healthy growing condition, including any proposed irrigation system. If the plans do not include an automatic irrigation system, the plans shall describe in detail the proposed irrigation method. All maintenance costs shall be borne by the property owner.

(c) All plans shall be submitted to the city for review and approval prior to the issuance of a building permit. No building permit may issue until plans have been submitted to and approved by the city.

(d) The city may reject any proposal deemed to be inadequate to accomplish the buffer and screening objectives of this chapter. (Ord. 948 § 2 (part), 1995).

AT&T: AT&T has provided a preliminary landscaping plan as part of its CUP application. See Attachment 10—Zoning Drawings. AT&T intends to submit a complete landscape plan, pursuant to the requirements above, as part of its building permit submittal.

17.75.040 Buffer and screening requirements.

The buffer and screening requirements of this chapter shall include a combination of the following:

(a) The provisions of this title shall not apply to vacant or undeveloped lots even though they are located wholly or in part in a C-1, C-2, C-3, I-1, or I-2 zone.

AT&T: Not applicable.

(b) The purpose of this title shall be to allow the city to provide a means of review and implementation of sight obscuring devices in connection with activities which are conducted, allowed or carried on in the affected zones. Specifically, the intent of this title is to provide for the screening from general public of garbage containers and solid waste compaction or collection devices; outdoor storage of equipment, materials, supplies or products, other than for commercial sale in limited and reasonable numbers including new vehicle display lots, truck working yards, gravel pits, equipment repair yards, mill yards, factory yards, loading docks, delivery depots, salvage yards, junk-yards, any area where loading, unloading, storage, manufacturing or processing is conducted on a continuous or frequent basis and recycling facilities; the direct view into operating or nonoperating facilities, mills, plants, shops, pits, hoists, or ramps; storage areas and holding areas in C-3 zone, and, like commercial or industrial activities which the community development director determines to be of such a nature as to require screening under this title. Parking lots and parking facilities related to commercial and industrial operations shall be screened and or landscaped as provided in the zoning and land use portions of this code.

AT&T: Not applicable. AT&T's proposed unmanned wireless facility is located in an R-2 zone.

(c) Landscaping. A landscaping buffer and screening is required for every property line referred to in Section 17.75.020. All such landscaping buffer and screening plantings shall be to a depth of sufficient amount to permit the passage of pedestrians along streets abutting the property line and to permit safe sight lines at intersections and driveways, which shall be determined by the city at the time of plan review and approval. All landscaping buffers and screening shall be accomplished by a continuous planting of evergreen trees and/or shrubs, except driveways and pedestrian walks, that will close together and

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produce a dense, sight-obscuring screen at least eight feet in height within three years of planting and shall be allowed to grow no higher than can be permitted to maintain the stability of the plantings during high winds and to avoid contact with any overhead cables, wires or lines. The horizontal sight area shall be no less than seventy percent obscured in less than three years.

AT&T: To the extent this provision is applicable to the proposed Facility to be built on a portion of the property, rather than development of the entire property, AT&T is proposing to install an 8ft wooden fence and additional landscaping buffer, pursuant to 16.68.100, around the proposed 30ft x 30ft lease area. Please see Attachment 10—Zoning Drawings.

(d) Fence. A solid fence, solid wall or chain link fence with filler strips is required for every property line referred to in Section 17.75.020 and shall be constructed and maintained of appropriate colors and materials as a backdrop to the landscaping buffer and screening plantings unless the community development director determines that landscaping alone will be sufficient to provide the buffering required by this chapter. If the fencing requirement is waived on condition landscaping will provide an adequate buffer and the landscaping is not developed, is allowed to die or is not maintained as initially indicated to the community development director, the community development director can require the installation of fencing as provided in this chapter. In addition to the provisions of this chapter, all fences or walls required by this chapter shall also comply with the provisions of Sections 17.56.060 and 17.56.140 of the Othello Municipal Code.

AT&T: To the extent this provision is applicable to the proposed Facility to be built on a portion of the property, rather than development of the entire property, AT&T is proposing to install an 8ft wooden fence around the proposed 30ft x 30ft lease area. Please see Attachment 10—Zoning Drawings.

Section 17.56.040 is not applicable to the proposed Facility, as the proposed lease area does not have a direct base line with any street intersections or alley entrances. Please see Attachment 10—Zoning Drawings. (To note: Though Section 17.56.060 is referenced in the code above, no such section exists. In reviewing Chapter 17.56, it would appear that the intent was to cite to Section 17.56.040).

Section 17.56.140 is not applicable as the proposed Facility is not an auto wrecking or junkyard.

(e) Any existing use or structure shall be subject to correction and compliance with Section 17.75.020(b) of this chapter but only after the city community development director has provided written notice of the need to comply with the provisions of this chapter. In that event, the property owner shall have no less than four years from the date of the notice to come into compliance with the provisions of this chapter.

Any property owner feeling aggrieved by a directive from the community development director to bring an existing structure or use into compliance with the provisions of this chapter shall have the right within ten days of the receipt of the written notice from the community development director to bring the property into compliance to appeal this determination to the hearing examiner. In such an appeal, the burden shall be upon the property owner appealing the directive of the community development director to establish that the property in question is not required to comply with the provisions of this chapter. (Ord. 948 § 2 (part), 1995).

AT&T: Not applicable. AT&T is proposing to build a new structure.

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17.75.050 Performance assurance.

Prior to the issuance of any building permits for the project, a performance bond shall be submitted to the city in an amount determined by the city to be sufficient to guarantee installation of the required landscaping and fencing and also cover the replacement of any vegetation that dies within the first year. Required landscaping and fencing shall be installed and constructed within three months of the date of final inspection or the issuance of a certificate of occupancy, whichever is later. The bond shall expire at the end of the first twelve months following installation of the landscaping and fencing. If the requirements of this chapter are not met, the city may use the bond to complete the required landscaping or fencing buffer and screening. (Ord. 948 § 2 (part), 1995).

AT&T: AT&T acknowledges, understands, and intends to comply with this requirement.

17.75.060 Alternative buffer and screening options.

The city may waive the buffer and screening requirements if the existing structure is situated on or in such close proximity to the property line or right-of-way that compliance with the buffer and screening requirements is impossible.

The city may approve a modification of the buffer and screening requirements if:

- (1) There is a proposed alternative which meets the purpose of this chapter; and
- (2) The alternative better accommodates the existing physical conditions of the property, topography or existing vegetation, or provides significant elements for visual screening, wind protection, solar access and shading, and the proposed alternative represents an equal or superior result than would be achieved if the requirements of this chapter were strictly followed. (Ord. 948 § 2 (part), 1995).

AT&T: Not applicable. AT&T is not requesting a modification of the buffer and screening requirements.

17.75.070 Maintenance.

(a) All landscaped areas required by this chapter shall be permanently maintained in a healthy growing condition in order to accomplish the purpose for which it was required. All fence or wall structures required by this chapter shall be permanently maintained in a state of good structural and aesthetic repair.

(b) Dead or diseased plants, as determined by the city, must be replaced within thirty days of notification, or as soon as practical in regard to freezing weather, or complex situations involving removal and replacement of large trees. Deteriorating fences or walls, as determined by the city, must be repaired or replaced within thirty days of notification.

(c) All plantings must be fertilized, irrigated and pruned at such intervals necessary to promote optimum growth. All landscaped areas shall be kept free of debris and weeds.

(d) The owners, their agents or assigns, are responsible for providing, protecting and maintaining all landscaping material in a healthy growing condition, replacing it when necessary, and keeping it free of refuse, weeds, and debris.

(e) The failure of a responsible person to maintain plantings in compliance with this section shall be deemed a violation of Othello Municipal Code Chapter 8.24 and shall subject the violator to all the remedies available to the city pursuant to that chapter. (Ord. 948 § 2 (part), 1995).

AT&T: AT&T acknowledges, understands, and intends to comply with this provision.

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17.75.080 Restrictions.

No buffer or screening required by this chapter shall be constructed or maintained so as to constitute a nuisance as defined by state law and/or Othello Municipal Code Chapter 8.24, and no buffer or screening required by this chapter shall be constructed or maintained in violation of Othello Municipal Code Chapter 8.24 or Section 17.56.110. (Ord. 948 § 2 (part), 1995).

AT&T: AT&T acknowledges, understands, and intends to comply with this provision.

17.75.090 Appeals.

Any person aggrieved by an action of the city in the enforcement of this chapter may appeal to the hearing examiner within seven days of the action taken. The hearing examiner's decision may be appealed to the city council within ten days of the hearing examiner's written decision. The city council's decision shall be final except for such relief as may be granted by a court of competent jurisdiction. Such court review must be sought within ten days of the city council's decision. (Ord. 948 § 2 (part), 1995).

AT&T: AT&T acknowledges and understands this provision.

17.75.100 Penalties for noncompliance.

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this title shall be deemed to have violated the terms of this title and will subject the offender to a civil penalty of one thousand dollars per violation as provided for in Chapter 1.10 of the Othello Municipal Code. (Ord. 948 § 2 (part), 1995).

AT&T: AT&T acknowledges, understands this provision.

ADDITIONAL REVIEW & PROCEDURAL REQUIREMENTS

CHAPTER 17.05

INTERPRETATION, PURPOSE, APPLICABILITY

17.05.050 Conditional uses.

Conditional uses shall only be permitted after a public hearing before the hearing examiner finding that:

(a) The use furthers the intent of the zone in which it will be located and conforms to the general plan.

AT&T: AT&T proposed Facility furthers the intent of the R-2 zone and conforms to the general plan by providing enhanced capacity for AT&T users, as well as improve essential 911 emergency response services and capabilities.

(b) The use will not create undesirable traffic congestion or parking problems.

AT&T: AT&T's proposed Facility will not create undesirable traffic congestion or parking problems, as the Facility is unmanned and will generate an average of only one trip per month for maintenance.

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(c) The use will not be detrimental to surrounding properties or their uses because of appearances, noise, use, or other undesirable features.

AT&T: AT&T's proposed Facility will not be detrimental to surrounding properties or their uses. The Facility will be unmanned and fully camouflaged as a church bell tower that is harmonized with the use and design of the existing church on the property.

(d) The use will meet all standards and regulations for the zone in which it is to be located.

AT&T: As evidenced by AT&T's responses herein, the proposed Facility will meet all standards and regulations for the R-2 zone.

(e) The use will not create undesirable environmental problems:

AT&T: The proposed Facility will not create undesirable environmental problems. The Facility's RF emissions will be well below the level prescribed by the FCC. (See Attachment 4—FCC-MPE Letter) The Facility will also not create any noise, light, or air pollution and is not introducing additional impervious surfaces that may affect stormwater management. Please see the SEPA Checklist submitted with AT&T's Land Use Application to demonstrate that the proposed Facility will not have a significant environmental impact.

(1) The hearing examiner can make special requirements in connection with his/her decision following a public hearing if they are necessary to more closely fulfill the intent of the zone in which a development is permitted.

AT&T: AT&T acknowledges and understands this provision.

(2) Conditions, if any, which may be imposed on any proposed project requiring a conditional use permit, shall be endorsed on the conditional use permit and failure to comply therewith shall be grounds for revocation of the conditional use permit. Revocation of the conditional use permit shall be final after thirty days' written notice of the violation is given by certified mail to the owner and/or occupant of the land or improvements for which the conditional use permit was issued if, in the meantime, the violation is not corrected.

AT&T: AT&T acknowledges and understands this provision.

(3) If no development has taken place on the proposal or if no building permits or subdivision applications have been issued or received within a twenty-four-month time limit from the date of issuance, the conditional use permit shall become null and void.

AT&T: AT&T acknowledges, understands, and intends to comply with this provision and is agreeable to this being included as a condition of approval.

(4) The decision of the hearing examiner in approving or conditionally approving a conditional use permit shall stipulate whether the conditional use permit is issued to a person or whether the permit shall run with the land. "Person" shall be defined as an individual, corporation, company, firm, association, partnership, or joint stock company, a state, and all political subdivisions of a state or any agency or any instrumentality thereof having an ownership interest in the land as an owner, renter, or lessee. A use permitted as a conditional use is subject to the limits in the permit and conveys no greater rights than expressly permitted. A request for a revision to a conditional use permit shall be processed as an application for a new conditional use permit. (Ord. 948 § 2 (part), 1995).

AT&T: AT&T acknowledges and understands this provision.

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CHAPTER 19.05 APPLICATION FORMS

19.05.010 Application forms.

(a) An application shall be made using the appropriate form provided by the city.

AT&T: AT&T has submitted a Land Use Permit form for a conditional use permit and SEPA Checklist, along with supporting documents including this Statement of Code Compliance.

(b) Each application form shall, at a minimum, include the following:

(1) The application form shall be filled out legibly, in blue or black ink, either hand printed, typewritten or mechanically printed.

AT&T: Please see AT&T's Land Use Application form for the proposed Facility.

(2) The name, mailing address and telephone number of each applicant.

AT&T: Please see AT&T's Land Use Application form and Attachment 1—Project Narrative.

(3) The name, mailing address and telephone number of the applicant's representative, if any.

AT&T: Please see AT&T's Land Use Application form and Attachment 1—Project Narrative.

(4) The name, mailing address and telephone number of each owner of the subject property, if different than the applicant(s).

AT&T: Please see AT&T's Land Use Application form and Attachment 1—Project Narrative.

(5) The name, mailing address, telephone number and contractor registration number of the applicant's prime contractor, if any.

AT&T: Please see Attachment 10—Zoning Drawings for indication of the Construction Manager.

(6) The parcel number, legal description and assessor's parcel map for each parcel which is the subject of the proposed development.

AT&T: Please see Attachment 10—Zoning Drawings.

(7) The signatures of each applicant or the applicant's representative, and each property owner if different than the applicant(s).

AT&T: Please see AT&T's Land Use Application form.

(8) Any other information, documents or materials, as determined by the city, which may be required in the body of the form or by an attachment to the form, e.g., a narrative description of the project.

AT&T: Please see Attachments 1-10 submitted with AT&T's Land Use Application form (of which this is Attachment 2) and the SEPA Checklist.

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(c) Each application form shall require designation of a single person or entity to receive determinations and notices required under this code or by Chapter 36.70B RCW. Where a determination or notice to the “applicant” is required by this code or Chapter 36.70B RCW, “applicant” shall mean the person or entity so designated.

AT&T: Please see AT&T’s Land Use Application Form and Attachment 1—Project Narrative.

(d) Each application shall contain the following statement: “This application shall be subject to all additions to and changes in the laws, regulations and ordinances applicable to the proposed development until a determination of completeness has been made pursuant to Chapter 19.07.” (Ord. 1308 § 1 (part), 2009).

AT&T: Please see the “Applicable Law” section of Attachment 1—Project Narrative.

19.05.020 Application fees and charges.

(a) The council shall adopt a resolution setting forth the fees, charges and rates for the various development applications, permits, and approvals authorized pursuant to this code and shall update said resolution as is appropriate and/or necessary for establishing such fees, charges and rates.

(b) In the review of a land use permit application, the city may determine that such review requires the retention of professional consultant services. In addition to any land use fees that an applicant is required to submit, the applicant shall also be responsible to reimburse the city for the cost of professional consultant services if the city determines such services are necessary to process and/or complete its review of the application submittal. These professional services may include, but shall not be limited to, planning, hearing examiner, engineering, traffic engineering, legal, financial and accounting, soils, mechanical and structural engineering, and electrical engineering, all contracted staff review expenses, publication costs and any consultant fees incurred to be able to review and process the application or permit request.

Additionally, the applicant shall be responsible for the costs of any independent inspector employed by the city to inspect installations of utilities to be delivered to the city upon completion as a condition of the platting process. The applicant is responsible for all costs for environmental impact studies, traffic studies, soil studies, and other reports required for project evaluation. The city may also require the applicant to deposit an amount with the city which is estimated, at the discretion of the administrator, to be sufficient to cover anticipated costs of retaining professional consultant services and to ensure reimbursement to the city for such costs.

(c) Fees paid are for administrative costs incurred in processing the application and are therefore nonrefundable, whether the permit is issued or not.

(d) Any application requiring the publication, mailing, and/or posting of notices or ordinances shall be required to reimburse the city for all such costs incurred by the city.

(e) The fees shall be billed to the applicant on a monthly basis based upon the time taken by city staff, city consultants, and/or the city attorney to review the subject applications (the invoice shall note the time and related charges). Any required deposit shall be due at the time of application. The deposit shall be held by the city and billed against the final invoice submitted by the city’s consultants. An administrative fee of ten percent shall also be added to cover the city’s administrative costs of processing

EXHIBIT 2

the applicant's invoices and billing expenses. If more than one application is required for a project, the applicant shall pay all deposits and fees as indicated for each required application.

Invoices shall be due and payable immediately upon receipt by the applicant. If the planning director ascertains that invoices are not paid within twenty-one days of mailing, the application shall be deemed incomplete and all processing shall stop until the invoice is paid in full. If the planning director ascertains that a deposit balance is less than the required minimum deposit balance, and said minimum balance is not restored within twenty-one days of mailing, the application shall be deemed incomplete and all processing shall stop until the minimum balance is restored. Where no deposit is required, the applicant will be billed for the overall costs not covered by any application fee.

All invoices not paid within thirty days of the date of mailing shall be assessed a twelve percent annual percentage rate (one percent per month) interest charge. If the final invoice exceeds the amount of the deposit, the applicant shall be responsible for paying the additional amount due. Permits or other approvals shall not be issued until the final invoice is paid in full. The city shall refund any funds left from the deposit after the final invoice is paid. (Ord. 1308 § 1 (part), 2009).

AT&T: AT&T acknowledges and understands the above provisions. Along with its Land Use Application form AT&T has submitted one (1) check totaling \$1,350.00 for all applicable review fees (\$1,000.00 for the Conditional Use Permit fee + \$200.00 for the SEPA review fee + \$150.00 for the Land Use Sign Fee).

CHAPTER 19.07 APPLICATION PROCESS

19.07.020 Formal preapplication meeting.

(a) All prospective applicants shall participate in a formal preapplication meeting. The city may waive the requirement of a formal preapplication meeting where proposed development is subject to Type I administrative review.

[REMAINDER OMITTED—Not applicable.]

AT&T: Not applicable. Please see Attachment 8—Jurisdiction Correspondence, confirming that a pre-application meeting was not required to submit this land use application, pursuant to the Community Development Director.

19.07.070 Notice of application.

(a) Within fourteen days after issuing a determination of completeness, the city shall issue a notice of application. The notice shall include, but not be limited to, the following:

- (1) The date of application, the date of the determination of completeness, and the date of the notice of application.
- (2) A description of the proposed project action, a list of permits required for the application, and, if applicable, a list of any studies requested.
- (3) The identification of other required permits not included in the application, to the extent known by the city.
- (4) The identification of existing environmental documents which evaluate the proposed development and the location where the application and any studies can be reviewed.

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(5) A statement of the public comment period, which shall be fourteen days following the date of the notice of application, and a statement of the right of any person to comment on the application, receive notice of and participate in any hearings, and request a copy of the decision once made, and a statement of any appeal rights.

(6) The date, time, location and type of hearing, if applicable, and scheduled at the date of the notice of application.

(7) A statement of the preliminary determination, if one has been made at the time of notice of application, of those development regulations that will be used for project mitigation and of consistency with the type of land use of the proposed site, the density and intensity of proposed development, infrastructure necessary to serve the development, and the character of the development.

(8) Any other information determined by the city to be appropriate.

AT&T: AT&T acknowledges and understands the above provisions.

(b) Informing the Public. The notice of application shall be posted in the following manner:

(1) It shall be posted on the subject property for the duration of the public comment period. The applicant shall be responsible for posting the property for site-specific proposals with notice boards provided by the city. Public notice shall be accomplished through the use of a four-foot by four-foot plywood face generic notice board to be issued by the city as follows:

(A) The applicant shall apply to the city for the issuance of a notice board and shall pay to the city the amount of money on the fee schedule currently approved by the city council and available at City Hall.

AT&T: AT&T acknowledges, understands, and intends to comply with this requirement. AT&T has submitted one (1) check totaling \$1,350.00, which includes the \$150 Land use sign fee.

(B) Posting of the property for site-specific proposals shall consist of one or more notice boards as follows:

(i) A single notice board shall be placed by the applicant in a conspicuous location on a street frontage bordering the subject property.

(ii) Each notice board shall be visible and accessible for inspection by members of the public.

(iii) Notice boards shall be maintained in good condition by the applicant during the notice period and must be in place at least fifteen calendar days prior to the end of any comment period.

(iv) Notice boards must be removed by the applicant after the expiration of the applicable notice period.

AT&T: AT&T acknowledges, understands, and intends to comply with the above provisions. The notice board will be placed at the corner of Elm and 7th Street and visible to the public.

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(C) An affidavit of posting shall be submitted to the city at least seven calendar days prior to the hearing. If the affidavits are not filed as required, any scheduled hearing or date by which the public may comment on the application may be postponed in order to allow compliance with the notice requirement.

AT&T: AT&T acknowledges, understands, and intends to comply with this provision.

(2) The city shall post the notice of application at City Hall.

(3) Where no other public notice, such as the required notice of a public hearing, is required, the notice of application shall be published once in the official newspaper for the city.

(c) The notice of application is not a substitute for any required notice of a public hearing.

(d) A notice of application is not required for the following actions when they are categorically exempt from SEPA or environmental review has been completed:

(1) An application for a single-family residence, accessory uses or other minor construction building permits;

(1) Application for a lot line adjustment;

(3) Any application for which Type I administrative review is determined applicable. (Ord. 1308 § 1 (part), 2009).

AT&T: Not applicable.