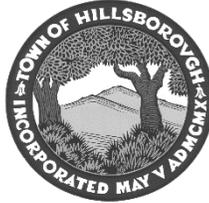


# TOWN OF HILLSBOROUGH

San Mateo County

Alvin L. Royse, Mayor  
Christine Krolik, Vice Mayor  
Marie Chuang, Councilmember  
Sophie Cole, Councilmember  
Laurence M. May, Councilmember



1600 Floribunda Avenue  
Hillsborough, CA 94010  
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Phone 650-375-7400

## A G E N D A

### THURSDAY, APRIL 15, 2021

### 5:00 PM SPECIAL CITY COUNCIL MEETING

*On March 17, 2020, the Governor issued Executive Order N-29-20 suspending certain provisions of the Ralph M. Brown Act in order to allow for local legislative bodies to conduct their meetings completely telephonically or by other electronic means. Pursuant to the Shelter-in-Place Order issued by the San Mateo County Health Officer on March 16, 2020, and which was updated and extended on March 31, 2020, April 29, 2020, May 15, 2020, and May 28, 2020, the statewide Shelter-in-Place Order issued by the Governor in Executive Order N-33-20 on March 19, 2020, and the CDC's social distancing guidelines which discourage large public gatherings, the Council Chambers will not be open to the public for this Town of Hillsborough Special City Council meeting.*

*The Town of Hillsborough will be conducting the City Council meeting via Zoom which is an independent platform not owned or controlled by the Town. Any member of the public joining the City Council meeting by Zoom should familiarize themselves with Zoom's various data and privacy policies which can be found at Zoom.us.*

*Members of the public may view the meeting by logging onto the Zoom meeting listed below.*

<https://zoom.us/j/92430037711?pwd=K3NMWjdPOTVQQXVnNHFJUDV6dWtFZz09>

Meeting ID: 924 3003 7711

Passcode: 676120

Dial by your location

- +1 669 900 9128 US (San Jose)
- +1 346 248 7799 US (Houston)
- +1 253 215 8782 US (Tacoma)
- +1 646 558 8656 US (New York)
- +1 301 715 8592 US (Washington DC)
- +1 312 626 6799 US (Chicago)

Meeting ID: 924 3003 7711

Passcode: 676120

Find your local number: <https://zoom.us/u/a6ffwiwK>

*Members of the public may provide public comments via the Zoom platform by using the "raise hand" feature or, if calling in by phone, by pressing \*9 on the telephone keypad. If a member of the public wants to provide public comment on a consent calendar item, agenda item, or non-agenda item during the general public comment portion, they shall request to speak by using the "raise hand" feature on Zoom or, if calling in by phone, by pressing \*9 on the telephone keypad prior to the consent calendar being heard, or prior to the close of the public comment period for agenda items or non-agenda items. In response, the Town will unmute the speaker and allow them to speak up to three minutes. All members of the public will be limited to one comment per consent calendar item, one comment per agenda item, and one comment for non-agenda items. The Town encourages all members of the public to limit any comments that might be repetitive of comments provided by other speakers on the same item.*

**I. CALL TO ORDER**

**II. ROLL CALL**

### **III. PLEDGE OF ALLEGIANCE**

### **IV. PUBLIC COMMENT I:**

*This portion of the meeting is reserved for persons wishing to address the City Council on any matter not on the agenda. Members of the public may provide comments via the Zoom platform by using the “raise hand” feature or, if calling in by phone, by pressing \*9 on the telephone keypad. In response, the Town will unmute the speaker and allow them to speak on any topic for up to three minutes. If there appears to be a large number of speakers, speaking time may be reduced to no less than 2 minutes, at the discretion of the Mayor. Members of the public are limited to one comment at this time. State law prohibits the Council from discussing or acting on non-agenda items, and generally limits the ability of the Council to respond to any public comments made regarding non-agenda items.*

### **V. ANNOUNCEMENT OF CONFLICT OF INTEREST**

*This portion of the agenda is for Councilmembers to disclose any conflict of interest related to any item on the agenda. Any Councilmember who has confirmed a conflict of interest or has reason to believe they have a conflict of interest should disclose the conflict for the record and abide by the disqualification requirements contained in FPPC regulations.*

### **VI. PUBLIC HEARING:**

1. CONDUCT PUBLIC HEARING TO CONSIDER AND ADOPT RESOLUTION SETTING HEARING PROCEDURES FOR CROWN CASTLE’S 13 WIRELESS APPLICATIONS AND TO DIRECT STAFF ON SCHEDULING PUBLIC HEARING DATES FOR CONSIDERING THE MERITS OF THOSE APPLICATIONS

### **VII. PUBLIC COMMENT II:**

*This portion of the meeting is reserved for persons wishing to address the City Council on any matter not on the agenda. Members of the public may provide comments via the Zoom platform by using the “raise hand” feature or, if calling in by phone, by pressing \*9 on the telephone keypad. In response, the Town will unmute the speaker and allow them to speak on any topic for up to three minutes. If there appears to be a large number of speakers, speaking time may be reduced to no less than 2 minutes, at the discretion of the Mayor. Members of the public are limited to one comment at this time. State law prohibits the Council from discussing or acting on non-agenda items, and generally limits the ability of the Council to respond to any public comments made regarding non-agenda items.*

### **VIII. ADJOURNMENT**

### **SPECIAL ACCOMMODATIONS:**

*If you need a disability-related modification or accommodation, including auxiliary aids or services, to participate in the City Council meeting, or if you need an agenda in an alternate form, please contact the City Clerk’s Office at 375-7412 at least 24 hours before the scheduled City Council meeting.*

### **ATTACHMENTS:**

*Any items listed as “Attachments” to the agenda are available on the Town’s website or at the City Clerk’s office.*

*Any writings or documents provided to a majority of the City Council regarding any item on this agenda, except as exempt from public disclosure under applicable law, will be made available for public inspection in the City Clerk’s Office located at 1600 Floribunda Avenue, Hillsborough, CA 94010, during normal business hours.*

### **AUDIO / VISUAL ADVISORY:**

*Those persons who wish to use PowerPoint or other mediums when presenting to the City Council will be required to submit media items to the City Clerk by 12:00 p.m. on the day of the meeting. Media items can be emailed to [lnatusch@hillsborough.net](mailto:lnatusch@hillsborough.net).*

### **AUDIO OR VIDEO RECORDINGS:**

*Please be advised that under the Brown Act, any person has the right to record the City Council meeting, including the audience in attendance, using an audio or video recording device subject to certain exceptions. Please be aware that by attending a City Council meeting, you may be audio or video recorded.*



# TOWN OF HILLSBOROUGH

San Mateo County  
1600 Floribunda Avenue  
Hillsborough, CA 94010

# 1

**PUBLIC HEARING  
CITY COUNCIL MEETING  
APRIL 15, 2021**

## AGENDA STAFF REPORT

### **ITEM SUBJECT: CONDUCT PUBLIC HEARING TO CONSIDER AND ADOPT RESOLUTION SETTING HEARING PROCEDURES FOR CROWN CASTLE'S 13 WIRELESS APPLICATIONS AND TO DIRECT STAFF ON SCHEDULING PUBLIC HEARING DATES FOR CONSIDERING THE MERITS OF THOSE APPLICATIONS**

**SUMMARY:** As the City Council is aware, on Tuesday, March 23, 2021, the Town of Hillsborough received 13 wireless communications facilities (WCF) applications from Crown Castle. The proposed WCFs would be used by Verizon Wireless. The applications were submitted pursuant to the approved settlement agreement that the Town entered into on June 8, 2020 that related to Crown Castle's lawsuit contesting the Town's 2018 denial of 16 WCF applications. The City Council is now being asked to:

- Hold a consolidated public hearing to consider and adopt a resolution setting procedures for the hearings on the merits of the applications, and
- Direct staff on the schedule of future hearing dates where the City Council will consider the merits of the various applications and take final action.

For background, Staff will provide the context for these applications, including the wireless litigation with Crown Castle and the settlement agreement, as well as the legal standard applicable to review and final action on these applications.

**BACKGROUND:** The Town of Hillsborough has been in litigation with Crown Castle on various wireless siting applications for nearly a decade. A general timeline of these legal disputes is detailed below:

2006 - Hillsborough first adopted a wireless communications ordinance to regulate the location of wireless communications facilities (WCFs) in the Town.

2012 – the Town learned that Newpath Networks (now, Crown Castle) intended to install a distributed antenna system of 13 new wireless antenna nodes in the Town's rights-of-way for use by Verizon Wireless. Without notice to the Town, the California Public Utilities Commission (CPUC) staff gave Crown Castle permission to construct the system for Verizon Wireless and determined the project qualified for a CEQA exemption. Crown Castle then submitted an application for a WCF Permit to Hillsborough for the installation of 4 of the 13 antenna nodes for the system pursuant to the Town's 2006 Wireless Communications Facilities ordinance. The Council adopted a moratorium on the processing of all WCF applications to develop a new Town wireless ordinance. Crown Castle attempted to submit an additional application for a WCF Permit for the remaining antenna nodes, which staff did not process due to the moratorium. Crown Castle filed a lawsuit against the Town in the San Mateo Superior Court alleging the wireless ordinance and moratorium were unenforceable.

The lawsuit sought a court order compelling the Town to approve the applications. The Town separately filed suit in the San Francisco Superior Court to set aside the CPUC approval and later filed a request with the CPUC for reconsideration of the CPUC staff approval of the project and the CEQA exemption

2013 – While the lawsuits remained pending, the Council conducted informational discussions during its regular meetings in order to help develop meaningful and effective rules and policies for how wireless services should be deployed in the community. All members of the public were invited to attend and participate in these meetings.

2014 – the Council introduced an amended wireless ordinance, held two hearings and adopted the amended wireless ordinance. The Council also introduced an ordinance to repeal the moratorium ordinance, held two public hearings and repealed the moratorium ordinance. The litigation settled. The prior Crown Castle applications were deemed withdrawn, and any application fees refunded. Crown Castle agreed that future applications for its facilities should be processed under the amended wireless ordinance.

2017 – A different Crown Castle entity submitted 16 applications to install and operate new wireless communications facilities (WCFs) in the Town's public right-of-way pursuant to the 2014 wireless ordinance. After reviewing all of the evidence, including extensive public input, the City Manager denied all 16 applications. That decision was appealed by Crown Castle to the City Council.

2018 – After holding a public hearing, the City Council upheld the City Manager's decision and took final action denying the 16 applications. Crown Castle then sued the Town in the United States Court of the Northern District of California for violations of federal law related to the denial and in state court related to the application review fees. After some preliminary motions, the federal case entered mediation.

January 2019 – in response to changes in federal law, specifically the adoption of the FCC's Small Cell Order and another order expanding on earlier FCC orders and banning moratoria, and after extensive consultation with the community, the Town once again updated its wireless regulations by amending its ordinance and adopting a policy with standards for wireless facility design and location.

June/July 2020 – as a result of the mediation, the City Council approved a settlement agreement with Crown Castle in the pending federal case. The settlement did not dismiss the litigation; instead, it temporarily paused the litigation to allow Crown Castle to apply under the Town's new 2019 wireless regulations for 13 sites substantially in conformance with the facilities described in the settlement agreement. The settlement did not approve or pre-approve any of the designs or locations described in the settlement agreement. Instead, it required the Town to provide to Crown Castle by July 31, 2020 a list of submittal requirements for the applications including a form of agreement for use of Town-owned property (which the Town sent on July 31, 2020), and it required Crown Castle to submit its applications by March 30, 2021 or dismiss the pending litigation with prejudice. The settlement also contemplated that if Crown Castle submitted applications, the litigation would end or continue, in whole or in part, depending on the action the Town takes on the 13 applications.

March/April 2021 – Crown Castle submitted the current 13 WCF applications pursuant to the approved settlement agreement. The Town issued notices of incompleteness for all 13 WCF applications.

During this same 10 year period there have also been numerous limits placed on local authority over wireless siting. Due to state and federal law changes, the Town updated its wireless ordinance in 2014 and in 2019 as mentioned above. Similarly, the Town considered, but ultimately did not adopt, further amendments to its wireless regulations in 2019 and 2020.

In addition to adopting local rules and regulations, the Town has also been involved in litigation in a coalition with other localities challenging the legality of some of these FCC orders. Notably, in 2020, this coalition was successful in convincing the Ninth Circuit to vacate a portion of the limits on local regulation of aesthetics contained in the FCC's Small Cell Order, and in March of 2021, the coalition filed a petition for certiorari to the United States Supreme Court asking the court to review portions of the Ninth Circuit's decision that upheld other aspects of the FCC Small Cell Order.

### **Processing the Applications Submitted Pursuant to the Settlement Agreement**

Under the terms of the approved settlement agreement, there is a negotiated shot clock to consider and take final action on the applications. Under the settlement agreement, the Town was provided one opportunity to issue a notice of incompleteness within the first 10 days after submittal of the applications, and Crown Castle is provided one opportunity to correct any incompleteness. The limitation in the settlement to one notice of incompleteness and one resubmittal does not prevent the Town from denying one or more of the applications on the ground such application was incomplete. The Town issued timely notices of incompleteness for all 13 applications on April 2, 2021. Because the notices of incompleteness were issued, the Town will have 60 days to process and take final action on the applications from the date Crown Castle responds to the notices.

In processing the applications, the Town has followed the requirements of the wireless regulations. On March 24, 2021, the City Manager referred the applications to the City Council for final determination because the applications cannot be denied without a determination on the federal law effective prohibition issue. Under Hillsborough Municipal Code (HMC) Section 13.52080(E), the City Manager is authorized to promptly submit the applications to the City Council for final determination.

Because the City Manager is not making a decision on the applications, and the Council will make the final decision, there was no formal role for the Wireless Communications Advisory Committee (WCAC). As the City Council is well aware, the WCAC is a staff created ad hoc committee designed to advise the City Manager in her consideration of applications when the City Manager is making a decision on the merits of the applications. The WCAC is not a Council advisory committee and there are legal constraints that made it inadvisable in these circumstances to formally involve the WCAC. Nonetheless, the members of the Wireless Communications Advisory Committee (WCAC) were provided the applications and encouraged to review them and submit comments to the City Council at the public hearings on the applications just like other members of the Hillsborough community.

Under the terms of the settlement agreement, the City Council must make its decisions on the applications by applying the requirements of the current existing wireless regulations. This is also

consistent with FCC rules upheld by the Ninth Circuit, which require decisions to be based on rules and regulations published prior to the submission of the applications. If the City Council were to approve all 13 applications, Crown Castle is obligated to dismiss the pending federal court case filed against the Town with prejudice, meaning they could not re-file the lawsuit. If the City Council were to deny all 13 applications, then Crown Castle would have the right to sue on the denial of the 13 applications or pursue its original lawsuit on the 2018 denial of the 16 applications. Finally, if the City Council approves some but not all of the 13 applications, Crown Castle could continue with its original lawsuit on the denial of the 16 applications, accept the approved applications and dismiss the original lawsuit, or sue the Town on the denial of some of the 13 applications.

**ANALYSIS:** The City Council will need to consider the following:

- Hearing Procedures for the Hearings on the Merits;
- Setting Dates for the Hearings on the Merits; and
- Legal Standard and Findings Applicable to the Applications.

*Resolution Adopting Hearing Procedures for the Continued Hearings on the Merits*

Staff has prepared a draft resolution detailing hearing procedures for the City Council to use in conducting the continued public hearings and considering the merits of the individual applications. Like any standard public hearing, the City Council should conduct the hearings on the merits as follows:

1. Staff presentation (15-20 minutes) (Council is free to ask clarifying questions of staff).
2. Open the continued public hearing
  - a. Applicant speaks first (15 minutes) (Council is free to ask clarifying questions of the applicant after the applicant speaks).
  - b. Public comment (up to 3 minutes per speaker) (Council is free to ask clarifying questions of any public comment speaker).
  - c. Applicant rebuttal time (5 minutes)
3. Close the public hearing
4. Council is free to deliberate, discuss and direct staff to prepare a resolution for final decision.

Staff is recommending that the City Council adopt the resolution to confirm the hearing procedures.

*Setting Public Hearing Dates*

Staff is recommending that the City Council conduct public hearings on the merits for the various applications on the following dates based on the type of application submitted as follows:

- Thursday, April 29th - 5pm – 10pm Hearing (Steel pole sites in ROW: H05, H07, H08, H19, H20, H21, H28, H31)
- Saturday, May 1st – 9am to Noon Hearing (Continue steel pole sites in ROW, if needed)
- Thursday, May 6th – 5pm to 10pm Hearing (Wood pole sites in ROW: H30, H32)
- Saturday, May 15th – 9am to Noon Hearing (Town Owned Property sites: H02, H12, H27)

- Thursday, May 20th – 5pm to 10pm Hearing (Continue Town Owned Property sites, if needed; adopt resolutions of decision for all sites)

If the City Council is in agreement, staff requests that by motion, the City Council continue the public hearings for the respective applications to the various dates listed above. Please note that at the time of writing this report, Crown Castle had not yet provided a response to the notices of incompleteness, meaning that the 60-day time period for acting on the applications under the settlement has not yet started. Depending on when those responses are received by the Town, Staff may propose a modified schedule, or may recommend that the scheduled hearings on the merits be set as above with the caveat that they may later need to be continued to a different date.

#### Applicable Legal Standard and Findings

As mentioned earlier, the applications for permits have been referred to the City Council by the City Manager pursuant to HMC Section 15.32.080(E). The City Council should apply its current existing wireless regulations in reviewing and acting on the applications.

#### *For All Applications*

As an initial matter, the City Council must determine whether any of the applications should be disapproved due to incompleteness under HMC Section 15.32.080(B) or alternatively have met the requirements under HMC Section 15.32.080(A) to be considered for decision on the merits.

In addition, as the applications were referred to the City Council pursuant to HMC Section 15.32.080(E), the City Council will have to make determinations as to whether denial of the applications would prohibit or have the effect of prohibiting the provision of personal wireless services within the meaning of 47 U.S.C. section 332(c)(7), or whether Town authority to deny the application is otherwise preempted or prohibited by state or federal law.

#### *For Sites in Public Rights-of-Way*

For applications that are determined to qualify as a small WCF in the ROW, under HMC Section 15.32.080(H), the City Council shall approve an application, if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:

- a. The facility is not detrimental to the public health, safety, and welfare;
- b. The facility complies with this chapter and all applicable design and development standards; and
- c. The facility meets applicable requirements and standards of state and federal law.

For other applications for WCFs in the ROW, under HMC Section 15.32.080(C), in determining whether to grant, deny or condition an application, the City Council may consider the following and such other matters as the City Council may be entitled or required to consider as a matter of law:

1. Whether the WCF and support structure additions and modifications proposed are consistent with the general plan and will not adversely affect the policies and goals set forth therein or alter the rural character of the community;
2. Except where the town is prohibited from considering it by law, whether the applicant has shown that denial of the proposed WCF would result in an effective prohibition of personal wireless

services or telecommunications services, or that denial is otherwise preempted by state or federal law;

3. Whether the WCF and support structure modifications and additions proposed, comply with the design standards herein, and other applicable provisions of the code and in applicable city council resolutions;

4. Whether the WCF and support structure modifications and additions proposed comply with applicable safety codes and laws (including without limitation the ADA);

5. Whether the WCF and support structure modifications and additions interfere with the public's use of rights-of-way, or create undue risks to persons or property;

6. Whether the applicant has made the required affirmation regarding compliance with the FCC's RF regulations, as the same may be amended;

7. Whether the applicant is authorized to file the application;

8. Whether the applicant has or will have necessary local, state or federal regulatory approvals required in connection with the WCF (including but not limited to necessary CEQA approvals, if any; and approvals for utility box design under the HMC, or for structures on private property under Section 2.12); and

9. Whether alternative designs or locations would be more consistent with the general plan and otherwise minimize the impact of the WCF and support structure modifications and additions required.

#### *For Sites on Town Property*

The same provisions of either HMC Section 15.32.080(H) for small WCFs, or HMC Section 15.32.080(C) for other WCFs, would apply, except that in analyzing factor b, or factor 3 above, the City Council Policy 19-01 would not apply.

Additionally, pursuant to the settlement agreement, for sites on Town Property, the City Council must decide whether to approve a communications license agreement for the site.

**FISCAL IMPACT:** The Town is anticipated to spend costs in processing the applications for which a deposit amount from Crown Castle has been collected. The Town and Crown Castle continue to address the amounts to be imposed on Crown Castle for processing the applications.

**ATTACHMENTS:** Resolution

**PREPARED BY:** Christopher J. Diaz, City Attorney

**RECOMMENDATION:** Staff recommends that the City Council:

1. Open the public hearing to consider the hearing procedures and schedule for the hearings that will address the merits of Crown Castle's 13 wireless applications, receive comments;

2. Adopt a resolution setting hearing procedures for Crown Castle's 13 wireless applications;  
and
3. By motion, continue the public hearings for the respective applications to the dates below at which time the applications will be considered on the merits:
  - Thursday, April 29th - 5pm – 10pm Hearing (Steel pole sites in ROW: H05, H07, H08, H19, H20, H21, H28, H31)
  - Saturday, May 1st – 9am to Noon Hearing (Continue steel pole sites in ROW, if needed)
  - Thursday, May 6th – 5pm to 10pm Hearing (Wood pole sites in ROW: H30, H32)
  - Saturday, May 15th – 9am to Noon Hearing (Town Owned Property sites: H02, H12, H27)
  - Thursday, May 20th – 5pm to 10pm Hearing (Continue Town Owned Property sites, if needed; adopt resolutions of decision for all sites)

## RESOLUTION NO. 21-

### RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF HILLSBOROUGH SETTING HEARING PROCEDURES FOR CROWN CASTLE'S 13 WIRELESS APPLICATIONS

**WHEREAS**, at its June 8, 2020 regular meeting, the Hillsborough City Council approved a proposed settlement agreement of one of the two lawsuits filed against the Town by Crown Castle in 2018 challenging the Council's denial of the applications for 16 wireless communication facility (WCF) sites; and

**WHEREAS**, the settlement agreement identified thirteen WCFs and locations, and by entering into the settlement agreement, the Town itself did not approve any of the thirteen WCFs nor did the settlement agreement mandate that the Town approve any of the thirteen WCF applications; instead it gave Crown Castle the opportunity to apply for the thirteen WCFs under the Town's current wireless regulations; and

**WHEREAS**, on March 23, 2021, pursuant to the settlement agreement, Crown Castle submitted thirteen WCF applications for the Town's consideration; and

**WHEREAS**, in order to meet the timeline for action on the applications in an orderly manner and to establish consistent hearing procedures in the consideration of the merits of the applications, the City Council is now being asked to approve hearing procedures to use in considering the merits of the thirteen applications as detailed in this resolution.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the Town of Hillsborough hereby approves and sets the following hearing procedures in its consideration of the merits of the thirteen WCF applications submitted by Crown Castle with such hearing procedures to be as follows:

1. Staff presentation (15-20 minutes) (Council is free to ask clarifying questions of staff).
2. Open the continued public hearing.
  - a. Applicant speaks first (15 minutes) (Council is free to ask clarifying questions of the applicant after the applicant speaks).
  - b. Public comment (up to 3 minutes per speaker) (Council is free to ask clarifying questions of any public comment speaker) (The City Council will not allow for the ceding of time from one speaker to another).
  - c. Applicant rebuttal time (5 minutes)
3. Close the public hearing.
4. Council is free to deliberate, discuss and direct staff to prepare a resolution for final decision.

**BE IT FURTHER RESOLVED** that the City Council of the Town of Hillsborough hereby affirms that it will endeavor to take public comment at a public hearing first from those speakers within 500 feet of the location where the WCF that is under consideration is proposed to be located. The City Council will use best efforts, but in the event public comment is taken first from a speaker who is not within 500 feet, such action shall not constitute a violation of any federal, state, or local law.

\_\_\_\_\_  
Mayor of the Town of Hillsborough

\_\_\_\_\_  
Attest: City Clerk

This resolution was adopted by the City Council of the Town of Hillsborough at its special meeting held on the 15th day of April 2021, by the following vote of the members thereof:

AYES: Councilmembers \_\_\_\_\_

NOES: Councilmembers \_\_\_\_\_

ABSENT: Councilmembers \_\_\_\_\_

ABSTAIN: Councilmembers \_\_\_\_\_