

# TOWN OF HILLSBOROUGH

San Mateo County

Shawn M. Christianson, Mayor  
Alvin L. Royse, Vice Mayor  
Jess E. Benton, Councilmember  
Marie Chuang, Councilmember  
Laurence M. May, Councilmember



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Hillsborough, CA 94010  
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Phone 650-375-7400

## **A G E N D A**

### **FRIDAY, AUGUST 14, 2020**

### **SPECIAL CITY COUNCIL MEETING**

### **3:00 pm CLOSED SESSION**

### **Hillsborough Town Hall**

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 the August 14, 2020 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](https://zoom.us).

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

<https://zoom.us/j/91565264362?pwd=OTBSQk1WNjN0a0Q5b3A2bDd4Q1MvZz09>

Meeting ID: 915 6526 4362

Passcode: 941448

One tap mobile

+1 301 715 8592 / 915 6526 4362# US (Germantown)

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

Members of the public may provide public comments via the Zoom platform by using the "raised 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 "raised 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.

## **SPECIAL CITY COUNCIL MEETING**

**CLOSED SESSION** (3:00 pm)

**CALL TO ORDER**

**ROLL CALL**

### **PUBLIC COMMENT:**

*Members of the public may provide public comments on any item on the Closed Session agenda via the Zoom platform by using the “raised 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 up to three minutes. All members of the public will be limited to one comment per Closed Session item. 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.*

### **PUBLIC ANNOUNCEMENT OF CLOSED SESSION ITEMS**

#### **A. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

Government Code Section 54956.9(d)(1)  
Crown Castle NG West LLC v. Town of Hillsborough, et al.  
United States District Court for the Northern District of California  
Case No. C 18-22473 JSC

#### **B. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

Pursuant to Government Code Section 54956.9(d)(2)  
Hillsborough Citizens Alliance’s August 6, 2020 correspondence indicating that they are exploring their legal options under Government Code Section 91003 (See attached correspondence)

### **REPORT FROM CLOSED SESSION**

### **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 City Council meetings. Media items can be emailed to [myokoyama@hillsborough.net](mailto:myokoyama@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.*

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August 6, 2020

## Via E-mail

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Miyuki Yokoyama  
Clerk, Town of Hillsborough  
1600 Floribunda Avenue  
Hillsborough, CA 94010  
myokoyama@hillsborough.net

Re: Conflict Of Interest Issues

Dear Mr. Diaz and Clerk Yokoyama:

We are writing on behalf of the Hillsborough Citizens Alliance (“HCA”) regarding the revelation of Councilmember Benton’s conflict of interest related to the Town’s settlement with Crown Castle and the Council’s efforts to modify the wireless communications ordinance. HCA joins with Hillsborough’s citizens to express its grave concerns over Councilmember Benton’s conduct, which came to light for the first time during the July 27 meeting. Specifically, Councilmember Benton’s Form 700 reveals that he invested up to \$100,000 in Crown Castle in June 2019, while he was participating in the Town’s closed-door negotiations to resolve Crown Castle’s lawsuit. After making that investment, Councilmember Benton was obligated to recuse himself, yet he proceeded to participate in several closed sessions concerning Crown Castle and participated in multiple Council meetings supporting the Town’s efforts to grant concessions to wireless carriers by weakening WCF design standards.

Making a substantial investment in Crown Castle at the same time the Town was engaging in confidential negotiations with the company is not only unseemly, it would appear to violate the Political Reform Act: “No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.” Gov. Code § 87100. The Political Reform Act “was enacted to assure an independent, impartial and honest government,” and economic conflicts of interest “undermine [this] goal by providing an economic incentive for deciding a particular official matter without regard to its merits, or with regard to its effect upon the official’s pocketbook.” *Cty. of Nevada v. Macmillen*, 11 Cal.

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3d 662, 673–74 (1974); *accord Witt v. Morrow*, 70 Cal.App.3d 817, 822–23 (1977) (“[T]he whole purpose of the Political Reform Act of 1974 is to preclude a government official from participating in decisions where it appears he may not be totally objective because the outcome will likely benefit a corporation or individual by whom he is also employed.”).

Councilmember Benton’s investment also appears to violate the duty of undivided loyalty he owed to the citizens of Hillsborough. “The government’s right to the absolute, undivided allegiance of a public officer is diminished as effectively where the officer acts with a hope of personal financial gain as where he acts with certainty.” *People v. Honig*, 48 Cal.App.4th 289, 325 (1996). And “[a] person is disqualified to discharge the services of a position in a municipal government when he has a personal interest which might interfere with the unbiased discharge of his duty to the public or prevent his exercise of absolute loyalty and undivided allegiance to the best interests of the city.” *Raymond v. Bartlett*, 77 Cal. App.2d 283, 285–86 (1946).

By participating in the Town’s decision-making related to Crown Castle despite his conflict of interest, Councilmember Benton has tainted the entire process and called into question the validity of the Town’s actions. “The conflict of interest laws . . . establish an objective standard ‘directed not only at dishonor, but also at conduct that tempts dishonor;’ they are preventive, acting upon tendencies as well as prohibited results. A violation occurs not only when the official participates in the decision, but when he influences it, directly or indirectly.” *Comm’n On Cal. State Gov. Org. & Econ. v. Fair Political Practices Comm’n*, 75 Cal.App.3d 716, 723 (1977).

Under the FPPC’s regulations, Councilmember Benton was required to disclose his conflict of interest publicly, recuse himself, and leave the room because it was foreseeable that the Crown Castle settlement agreement (and, by extension, the design standards adopted to benefit Crown Castle) would have material financial effect on his financial interest. 2 CCR § 18707; *see also, e.g.*, FPPC Advice Letter No. A-16-155 (Sondergren) (mayor’s ownership of more than \$2,000 in Costco stock required recusal from city’s decisions related to a local Costco). Here, a material effect occurred under the law because Councilmember Benton owned more than \$2,000 in Crown Castle stock which itself was the subject of action by the Town in multiple respects. As a result of Councilmember Benton’s participation in the negotiations, the Town’s approval of the Crown Castle settlement agreement may well be void. *See Gov. Code* § 91003(b). HCA is exploring its options in this regard.

Finally, Councilmember Benton’s actions implicate multiple provisions of the Town of Hillsborough’s conflict of interest policy, which declares that a conflict of interest exists when a Town employee:

Participates in his or her capacity as a Town employee in the issuing of a . . . contract in which he or she has a private pecuniary interest, direct or indirect, or performs in regard to such contract some function requiring the exercise of discretion on behalf of the Town.

Has a financial interest or personal interest in any legislation coming before the City Council and participates in discussion with or gives an official opinion to the

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City Council unless the employee discloses on the record of the Council the nature and extent of such interest.

Town of Hillsborough Policy 205A, subs. (c) & (g).

Now that Councilmember Benton's conduct has come to light, HCA believes the Town must take prompt and thorough action to restore the public trust. To that end, HCA requests:

1. That the Town take no further action to ratify the settlement agreement or its terms until an independent investigation is completed into Councilmember Benton's conduct and the citizens of Hillsborough have the opportunity to review the results of that investigation.

2. That the Town review the financial disclosure statements of each councilmember dating back to January 2018 to confirm that they completely and accurately disclose all investments and financial interests as required by California law, and specifically confirm that the councilmembers do not have investments in telecommunications stock or other investments or financial interests that create a conflict of interest related to the Town's efforts to modify the wireless communications ordinance. Note that the statements of economic interest must include "any investments . . . held at any time" during the reporting period, and the Political Reform Act defines "investment" broadly to include investments made through other entities or by members of the official's immediate family. Gov. Code §§ 87203; 82034. To that end, we have reviewed the 2019 Form 700s for each councilmember other than Councilmember Benton and were surprised to see that not a single member has disclosed owning a single stock. Indeed, Mayor Christianson and Councilmember Chuang claimed to have no reportable interests at all, while Councilmember May disclosed no investment interests at all. (In addition, HCA requests copies of the Form 700s from 2016 through the present for all council members, the City Manager, City Attorney, Public Works Director, and Planning Director.)

3. That the Town hold a community meeting to restore public trust that has been strained due to the Council's rush to adopt WCF design standards that were intended to conform to the settlement agreement with Crown Castle.

Thank you for your attention to these matters.

Sincerely,

*s/ Bradley A. Benbrook*

Bradley A. Benbrook