

## RESOLUTION NO. 20-

### RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF HILLSBOROUGH AMENDING POLICY NO. 19-01 ESTABLISHING LOCATION AND DESIGN STANDARDS FOR WIRELESS COMMUNICATION FACILITIES AND OTHER INFRASTRUCTURE DEPLOYMENTS

#### RECITALS

**WHEREAS**, pursuant to the California Constitution, Article XI, section 7; California Government Code section 37100 and other applicable law, the City Council may make and enforce within its limits all local, police, sanitary and other ordinances, resolutions and other regulations not in conflict with general laws.

**WHEREAS**, the Town regulates wireless communication facilities (“WCFs”) by regulations contained in Hillsborough Municipal Code Chapter 15.32, which the city council of the Town of Hillsborough (the “Town Council”) adopted by Ordinance No. 720 (March 9, 2015) and amended by Ordinance No. 738 (July 11, 2016) and Ordinance No. 754 (February 11, 2019).

**WHEREAS**, the City Council adopted Policy No. 19-01 Design Standards for Wireless Communication Facilities (WCF) and Other Infrastructure Deployments on January 14, 2019 to provide aesthetic and operational regulations that supplement Chapter 15.32 and provided a flexible and nimble process that would allow the Town to amend if necessary and appropriate the standards applicable to WCFs and other infrastructure deployments by resolution.

**WHEREAS**, since the adoption of Policy No. 19-01, the Town has received comments from stakeholders including the public and wireless facility providers.

**WHEREAS**, on June 9, 2020 the Federal Communications Commission (“FCC”) adopted a Declaratory Ruling and Notice of Proposed Rulemaking related to Section 6409 modification requests (eligibility facilities requests) that, among other things, impacts local authority to enforce aesthetic standards for concealment of wireless facilities.

**WHEREAS**, between November 2019 and June 2020 the Wireless Communications Advisory Committee (WCAC), an ad hoc committee to the City Manager, held a series of meetings to conduct an in-depth review of the Town’s existing Wireless Communication Facility (WCF) Design Standards in order to develop proposed revisions to clarify ambiguities and respond to recent changes in FCC regulations and stakeholder comments where appropriate while continuing to respect the Town's desire of maintaining aesthetic design standards for the Town's unique residential community

**WHEREAS,** the in-depth review included the following key issues:

- Integrated Pole and Base Design
- Undergrounding and Vaults
- Tree Replacement
- Shrouds
- Equipment Volume
- Pole Height
- Setbacks from Intersections and Other Pathways
- Setbacks from Residential Dwellings
- Power and Metering
- Concept Designs
- Exceptions
- Facilities on Public Property
- revisions to address the new FCC 6409 Order

**WHEREAS,** the community was informed of the progress of the review and given the opportunity to provide input through various means, including Town e-announcements, presentations at City Council meetings in November 2019 and January 2020, and the posting of public and industry comments, and staff presentations and proposed revisions for public information and review on the Town's website.

**WHEREAS,** on July 13, 2020, the City Council held a public hearing to consider this Resolution and the amendments to Council Policy No. 19-01 at which the City Council received, reviewed and considered the staff report, written and oral testimony from the public and other information in the record.

**WHEREAS,** City Council Policy No. 19-01, attached hereto as Exhibit "A" and incorporated herein by this reference, revises and updates the standards adopted on January 14, 2019 to reflect the changes in law, respond to stakeholder feedback and preserve the Town's police powers to protect the public health, safety and welfare to the maximum extent feasible.

**NOW, THEREFORE, THE CITY COUNCIL HEREBY FINDS, DETERMINES AND RESOLVES AS FOLLOWS:**

**1. Findings.** The City Council finds that: (a) the facts set forth in the recitals in this Resolution are true and correct and incorporated by reference; (b) the recitals constitute findings in this matter and, together with the staff report, other written reports, public testimony and other information contained in the record, are an adequate and appropriate evidentiary basis for the actions taken in this Resolution; (c) the provisions in this Resolution and Council Policy No. 19-01, as amended, are consistent with the General Plan, Municipal Code and applicable federal and state law; and (d) neither this Resolution nor Council Policy No. 19-01, as amended, will be detrimental to the public interest, health, safety, convenience or welfare.

**2. Council Policy No. 19-01.** The City Council approves and adopts the revised Council Policy No. 19-01 as set forth in Exhibit A.

**3. Environmental Review.** Pursuant to California Environmental Quality Act (“CEQA”) Guidelines § 15378 and California Public Resources Code § 21065, the City Council finds that this Resolution is not a “project” because its adoption is not an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment. Even if this Resolution qualified as a “project” subject to CEQA, the City Council finds that, pursuant to CEQA Guidelines § 15061(b)(3), there is no possibility that this project will have a significant impact on the physical environment. This Resolution merely restates substantially the same standards as previously contained in Chapter 15.32 but in a manner that complies with new federal regulations. This Resolution does not directly or indirectly authorize or approve any actual changes in the physical environment. Applications for any new WCF or change to an existing WCF would be subject to additional environmental review on a case-by-case basis. Accordingly, the City Council finds that this Resolution is not subject to CEQA or, in the alternative, is exempt from CEQA under the general rule.

**4. Severability.** If any section, subsection, paragraph, sentence, clause, phrase or term (each a “Provision”) in this Resolution or Council Policy No. 19-01, or any Provision’s application to any person or circumstance, is held illegal, invalid or unconstitutional by a court of competent jurisdiction, all other Provisions not held illegal, invalid or unconstitutional, or such Provision’s application to other persons or circumstances, shall not be affected. The City Council declares that it would have passed this Resolution and Council Policy No. 19-01, and each Provision therein, whether any one or more Provisions be declared illegal, invalid or unconstitutional.

**5. Effective Date.** This Resolution and revised Council Policy No. 19-01 will become immediately effective and applicable to all pending and future WCF applications submitted pursuant to Chapter 15.32 upon adoption by the City Council and will remain effective until amended, superseded or repealed by a separate resolution adopted by the City Council.

**6. Publication.** The City Clerk shall cause this Resolution and Council Policy No. 19-01 to be published in electronic form on the Town’s website, in physical form for public inspection at Town Hall and at least two other public places within the Town and in any other manner required by law.

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Mayor of the Town of Hillsborough

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Attest: City Clerk

This resolution was adopted by the City Council of the Town of Hillsborough at its regular meeting held on the 13th day of July 2020, by the following vote of the members thereof:

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

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

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

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

**EXHIBIT "A"**

**COUNCIL POLICY NO. 19-01**

(Begins behind this coversheet)