



**HILLSBOROUGH**  
*California*

**AGENDA ITEM 1: Conduct a Public Hearing, Adopt a Resolution Setting Hearing Procedures, and Direct Staff on Scheduling Public Hearing Dates to Consider Crown Castle Applications**

*City Council*  
*Town of Hillsborough*  
*May 20, 2021*



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## Overview and Background

- Town Team
- Why Are We Here?
- History of Wireless Litigation and Educational/Facilitated Sessions with Town Residents
- The Settlement Agreement
- Legal Constraints and the Process
  - What Can the City Council Consider in Deciding the Applications
  - Consider Hearing Procedures and Public Hearing Dates



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### *Town Staff*

- Ann Ritzma, City Manager
- Paul Willis, City Engineer/Public Works Director
- Sarah Fleming, Director of Building and Planning

### *Legal/Experts*

- Joseph Van Eaton, Telecommunications Counsel, City Attorney's Office
- Gail Karish, Telecommunications Counsel, City Attorney's Office
- Lee Afflerbach, CTC Technology and Energy, Public Agency Wireless Engineer



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## Why Are We Here?

- Wireless industry argues that Town cannot simply prohibit placement of wireless facilities in the public right-of-way under Public Utilities Code
  - Town has 96 miles of existing public right-of-way
- Town only has the ability to impose limited safety, aesthetic and location controls
  - Town has adopted wireless design standards to impose these controls
- Wireless carriers have been attempting to install in Hillsborough public rights-of-way for at least past 10 years
  - History of Wireless Litigation



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## History of Wireless Litigation

The Town has been in litigation with Crown Castle over wireless applications for almost a decade

- 2006 – Town adopted its first wireless ordinance
- 2012 – Crown Castle intended to install 13 wireless antenna nodes on poles in Town rights-of-way based on approval from the CPUC; Town adopted a moratorium on processing wireless applications; Crown Castle sued the Town regarding the moratorium; Town sued to set aside CPUC approval



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## History of Wireless Litigation

- 2013- Council held public meetings to develop effective rules and policies for how wireless should be deployed in the community; public and industry invited
- 2014 – New wireless ordinance adopted, moratorium lifted; litigation settled with Crown Castle withdrawing applications and Town refunding fees
- 2017 – A different Crown Castle entity submitted 16 applications to install new wireless facilities in the Town's right of way
- 2017 – City Manager denied 16 applications and Crown Castle appealed
- 2018 – City Council upheld City Manager decision



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## History of Wireless Litigation

- 2018 – Crown Castle sued the Town in both State court over the application review fees and Federal court over the denials; Federal case enters mediation
- January 2019 – after extensive consultation with the community, including facilitated discussions in a non-council meeting format, City Council updated wireless ordinance and standards in response to 2018 FCC Small Cell Order
- June 2020 – City Council approved a settlement in federal case (discussed below) which paused the litigation.
- 2019 and 2020 – Town participates in coalition of cities challenging various FCC Orders, including the Small Cell Order



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## **Education/Facilitated Discussions Leading to 2019 Update to Town's Wireless Regulations**

- 2018 - Town held two facilitated community discussions regarding wireless in the Town and to seek input on changes to wireless ordinance and standards on November 28 and December 13
  - Extensive educational presentations and materials
  - Substantial public participation and input provided
  - Small group format
  - Non Council meeting format



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## History of Education/Facilitated Discussions

- Other recent Council meetings where public was invited to discuss wireless:
  - March 12, 2018
  - March 26, 2018
  - November 13, 2018
  - Nov. 28 & Dec. 13 community meetings
  - January 7, 2019
  - January 14, 2019
  - February 11, 2019
  - November 12, 2019
  - December 9, 2019
  - January 13, 2020
  - July 13, 2020
  - July 27, 2020
  - March 8, 2021



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## The Settlement Agreement

### Federal Case Settlement Agreement:

- *Does* pause the litigation to allow Crown Castle to submit 13 applications for wireless facilities under the Town's new wireless regulations
- *Does* generally describe the type of facilities and locations that will be in the 13 applications
- *Does not* approve or pre-approve the 13 applications
- *Does* address how the litigation will proceed depending on the outcome of the Town's review and decision on the 13 applications
- *Does* establish a timeline for implementation of the settlement



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## The Settlement Agreement

- Settlement Agreement Implementation Timeline
  - ✓ July 31, 2020 – Town deadline to provide list of application submittal requirements
  - ✓ March 30, 2021 – Crown Castle deadline to submit the 13 applications
  - ✓ Within 10 days of Crown Castle submittal – Town deadline to issue notices of incompleteness
  - ✓ Within 60 days of resubmittal – Town deadline to take final action on the 13 applications set
- Town must make a final decision on all the applications by **July 3**



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## Legal Constraints

- In considering the applications, the City Council will be asked to apply the Municipal Code, Design Standards (for sites in the public right-of-way), and State and Federal Law
- Questions/Answers



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## General Legal Constraints

- **Can the City Council Just Say No to All Applications and Refuse to Allow Any Wireless Facilities in Town?**
  - *National Policy to Make Wireless Service Available* – Town cannot through a decision or regulation prohibit or effectively prohibit personal wireless service
- **Can the City Council Consider Health Effects of Radio Frequency Emissions?**
  - *National RF Emissions Standards* – FCC sets standards; Town can ensure applicant has shown it will comply with federal standards



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## General Legal Constraints

- **Can the City Council Stop the Processing or Pause Before Processing Any Wireless Applications?**
  - ***National Requirement for Timely Action*** – Town cannot impose a moratorium on applications; plus, Town must comply with FCC deadlines (“shot clocks”) for action on applications or risk litigation or deemed granted remedies for failure to act within these timelines
- **Can the City Council Prohibit All Wireless from Town Streets?**
  - ***State Franchise*** – telephone companies have a franchise in state law to “construct lines”...”along and upon any public road”...”and may erect poles” for supporting “necessary fixtures of their lines” so long as they do not “incommode the public use of the road.” Interpreted to reach wireless.



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## **Legal Constraints for Crown's Applications**

- **Can the City Council Change the Design Standards Applicable to These Applications?**
  - The settlement required the Town to provide the design standards applicable to Crown's applications by July 31, 2020. The 2019 Standards will be applied.
  - FCC regulations require advance publication of standards for certain facilities; do not allow delays to adopt new standards; and general limits on arbitrary action also apply.
- **Can the City Council Stop Processing These Applications to Adopt a Wireless Plan?**
  - Both under the settlement and federal shot clocks, the applications must be considered and acted on now under existing standards.



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## Legal Constraints

- **How do the Design Standards Impact the City Council decision-making process? What are they intended to do?**
  - HMC Section 15.32.030 states that WCFs are a “permitted use”, subject to compliance with Chapter 15.32 and other applicable provisions of the Hillsborough Municipal Code and other law.
  - The design standards establish the design and location criteria the City Council must use to evaluate the proposed facilities in the public rights-of-way. They are an expression of the Town’s preferences and requirements for where such facilities should be located and how they should look. The standards and Chapter 15.32 specify in what circumstances a WCF may deviate from those standards.



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## Summary

- *Town must act on these applications*
- *Town must apply its existing wireless regulations to these applications*
  - Town's regulations *allow* an applicant to submit an application for a WCF that does not comply with the Town's standards and argue that the application still must be granted to avoid an effective prohibition of service or other violation of state or federal law
  - If a proposed WCF does not meet the Town's standards and does not merit any exception to avoid an effective prohibition or other violation of state or federal law, the Town can say "no", so long as the decision is supported by substantial evidence and is in writing



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## The Process

- *Why is the City Council holding public hearings on the applications?*
  - City Manager exercised authority to send these applications to the City Council for formal decision.
  - Council is providing opportunities for public and for Crown Castle to comment on the applications so that a final decision can be based on the record.
- *Why is the WCAC not being asked for input to the City Council?*
  - WCAC is a staff committee and not a Council advisory committee.
  - WCAC only provides advice to the City Manager in making a decision.
  - City Manager is not making a decision on these applications.
  - WCAC members have been encouraged to provide input in their personal capacity as residents.



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## **The Process: Hearing Procedures and Hearing Dates**

- Proposed Hearing Procedures – consistent with past public hearings held by the Town:
  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)
    - b. Public comment (up to 3 minutes per 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.



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## **The Process: Hearing Procedures and Hearing Dates**

- Council will endeavor to take public comment from those residents who live within 500 feet of WCF site when that WCF is under consideration
- No ceding of time – Council wants to hear from all residents



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## The Process: Hearing Procedures and Hearing Dates

- Council is also being asked to continue public hearing to the following various dates depending on the type of WCF:
  - Thursday, May 27 - 5pm Hearing (Steel pole sites in ROW: H05, H07, H08, H19, H20, H21, H28, H31)
  - Thursday, June 3 – 5pm Hearing (Cont. steel pole sites in ROW *if needed*)
  - Saturday, June 12 – 9am Hearing (Wood pole sites in ROW: H30, H32)
  - Thursday, June 17 – 5pm Hearing (Town Owned Property sites: H02, H12, H27)
  - Saturday, June 19 – 9am Hearing (Cont. Town Owned Property sites *if needed*);
  - Monday, June 28 – 5pm Hearing (adopt resolutions of decision for all sites)



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## Staff Recommendation

- Open the Public Hearing
  - Applicant
  - Public Comment
  - Applicant Rebuttal, if Any
- Close the Public Hearing
  1. Adopt a Resolution Setting Hearing Procedures for Crown Castle's 13 Wireless Applications; and
  2. Move to continue public hearing to dates certain for certain wireless applications