

**ORDINANCE NO. 693  
OF THE CITY COUNCIL OF THE TOWN OF COLMA**

**ORDINANCE AMENDING SECTIONS 1.02.390 TO 1.02.420 AND 5.15.030 to 5.15.080  
AND ADDING SECTION 1.02.430, RELATING TO ADA GRIEVANCE PROCEDURES**

The City Council of the Town of Colma does hereby ordain as follows:

**ARTICLE 1. COLMA MUNICIPAL CODE SECTION 1.02.390-420 AMENDED.**

Sections 1.02.390 through 1.02.420 of Subchapter 2 of Chapter 1 of the Colma Municipal Code entitled "City Council and Mayor" shall be and hereby are amended to read as follows:

**1.02.390 Request for Reasonable Accommodations - Application Requirements.**

(a) *Application.* A request for reasonable accommodation shall be initiated by submitting to the appropriate Department Director a completed application form, signed by the disabled individual or authorized agent, containing the following information:

- (1) The applicant's name, address and telephone number;
- (2) The basis for the claim that the individual is considered disabled under the Acts;
- (3) The Town service, program, or activity in connection with which access through a reasonable accommodation is being requested; and
- (4) An explanation of why the reasonable accommodation is necessary to make the Town service, program or activity accessible to the individual.

(b) *Request for Auxiliary Aid for Public Meeting.* Notwithstanding subsection (a), requests for reasonable accommodations involving the provision of auxiliary aids or services in connection with a public meeting or hearing must be made to the ADA Coordinator at least 2 business days in advance of the meeting or hearing.

(c) *Request Related to Land Use/Entitlement.* Notwithstanding subsection (a), if the request for reasonable accommodation is being made in connection with a development project or some other land use or zoning related entitlement for which planning approval is required (such as a use permit, variance, design review permit, zone change, general plan amendment or subdivision), then the applicant shall submit the request for accommodation to the City Planner pursuant to Section 5.15.050, *et seq.* of this Code.

**1.02.400 Role and Duties of ADA Coordinator.**

(a) *Request Filed with ADA Coordinator.* A request for reasonable accommodation filed with the ADA Coordinator shall be deemed filed with the appropriate Department Director, and the ADA Coordinator shall direct the request to the appropriate Department Director.

(b) *Assistance with Preparation of Request.* The ADA Coordinator may assist any person requesting reasonable accommodation with the preparation and presentation of his or her request. The ADA Coordinator shall assist any person with a disability in submitting a request

for reasonable accommodation, or an appeal from a denial of the same, through an alternative method where the individual is unable to submit the request as required above because of his/her disability.

#### **1.02.410 Findings and Decision.**

(a) *Consideration of Request.* In considering whether to grant or deny a request for a reasonable accommodation, the Department Director shall consider all resources available to the Town for use in the funding and operation of the service, program, or activity.

(b) *Findings.* The written decision to grant or deny a request for reasonable accommodation shall be based on consideration of the factors set forth below.

- (1) Whether the Town service, program or activity, which is the subject of the request, will be used by an individual with a disability under the Acts.
- (2) Whether the request for reasonable accommodation is necessary to make the Town service, program or activity available to an individual with a disability.
- (3) Whether there is an alternative accommodation which may provide an equivalent level of benefit. However, the Department Director shall give primary consideration to the accommodation requested by the applicant, and shall endeavor to provide the requested accommodation, unless the Town's alternative will provide an equivalent level of benefit and the accommodation requested would fundamentally alter the nature of the program, service, or activity, or result in an undue financial or administrative burden.
- (4) Whether the requested reasonable accommodation would impose an undue financial or administrative burden on the Town.
- (5) Whether the requested reasonable accommodation would require a fundamental alteration in the nature of the Town service, program or activity. If the Department Director determines that a requested accommodation would result in a fundamental alteration or an undue financial or administrative burden, the Town may take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive equal access to the benefits or services provided by the Town.

(c) *Conditions of Approval.* In granting a request for reasonable accommodation, the Department Director may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation would comply with the findings required in subsection (b) of this section.

#### **1.01.420 Appeal of Determination.**

A determination by the Department Director to grant or deny a request for reasonable accommodation may be appealed in accordance with Section 1.02.430 of this Code.

## **ARTICLE 2. COLMA MUNICIPAL CODE SECTION 1.02.430 ADDED.**

Section 1.02.430 shall be and hereby is added to Subchapter 2 of Chapter 1 of the Colma Municipal Code entitled "City Council and Mayor" to read as follows:

### **1.02.430 ADA Grievance Procedures; Appeal from Denial of Request for Reasonable Accommodation.**

(a) *Appeal from Denial of Request for Reasonable Accommodation.* An appeal from a denial for a request for reasonable accommodation made under Section 1.02.390, or Section 5.15.010, *et seq.* of this Code shall be considered a complaint within the meaning of this Section and processed in accordance with this Section.

(b) *Filing a Grievance Complaint.* Any individual may file a written complaint alleging that the Town has discriminated against him or her on the basis of his or her disability in the provision of its services, activities, facilities or programs. The complaint shall be filed with the City Manager no later than 60 days from the date that the alleged discrimination occurred. If a complaint is based on the denial of a requested reasonable accommodation, the date that the alleged discrimination occurred shall be the date that the requested accommodation was denied.

(c) *Incomplete Complaint.* The complaint shall contain all information necessary to allege that the discrimination occurred. If the complaint fails to contain all necessary information, the City Manager shall notify the complainant in writing of any additional information that is needed to complete the complaint within fifteen (15) days of receiving it. If the complainant fails to complete the complaint form following notice from the City Manager, the City Manager shall close the complaint without prejudice.

(d) *Response to Complaint.* Within fifteen (15) calendar days after receipt of a complete complaint, the City Manager shall contact the complainant to discuss the complaint and possible resolutions. The City Manager shall provide the complainant with a written response determining whether the alleged discrimination has occurred, and offering options for resolution of the complaint, where applicable, within thirty (30) calendar days of the meeting. This deadline is not mandatory, and may be extended where necessary for the City Manager to work with other Town staff to formulate alternative resolution options by providing written notice to the complainant. The written notice shall inform the complainant of the amount of additional time needed and estimated date of decision.

(e) *Appeal.* If a complainant contests the City Manager's response, or contends that the options for resolution will not satisfactorily resolve the complaint, he or she may appeal the response to the City Council in accordance with Section 1.02.270 of the Colma Municipal Code.

(f) *Document Retention.* The Town shall keep all written complaints received pursuant to this Section; all Town written responses to those complaints; and all related written appeals and written appeal responses, for no less than three (3) years following their submission to the respective party.

(g) *Responding to Requests for Structural Improvements.* In responding to complaints regarding structural improvements, the City Manager is limited to the funds in established

Capital Improvement Projects and other miscellaneous funds. In the event that these allocated funds are insufficient to fund the improvement, already allocated, or otherwise inappropriate for the use the complainant is requesting, the City Manager shall direct the ADA Coordinator to include the requested improvements in the Town's ADA Transition Plan and the City Council shall prioritize and schedule the improvements as it deems appropriate.

(h) *Accessibility Accommodations.* If a complainant is unable to submit a written complaint or appeal under this Section as a result of his or her disability, the Town shall assist a complainant in completing the complaint form or submitting a complaint or appeal through an alternative format, such as a personal interview, or tape recording, upon request. Similarly, the Town shall provide the responses required by this Section in alternative accessible formats such as large print, Braille, or audio tape, where necessary to accommodate a complainant with a disability upon request.

(i) *Not Exclusive or Required.* The use of the grievance procedure set forth in this Section does not preclude filing a complaint of discrimination with any appropriate state or federal agency, and is not a prerequisite to the pursuit of other legal remedies.

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### **ARTICLE 3. SECTIONS 5.15.030 THROUGH 5.15.080 AMENDED.**

Sections 5.15.030 through 5.15.080 of Subchapter 15 of Chapter 5 of the Colma Municipal Code entitled "Requests for Reasonable Accommodations in Housing or Land Use Elements" shall be and hereby are amended to read as follows:

#### **5.15.030 Application Requirements.**

(a) *Application.* A request for reasonable accommodation sought to obtain equal access to housing or the use of land within the Town of Colma by a qualified individual with a disability shall be initiated by submitting to the City Planner a completed application form, signed by the property owner or authorized agent, containing the following information:

- (1) The applicant's name, address and telephone number;
- (2) Address of the property for which the request is being made;
- (3) The current use of the property;
- (4) The basis for the claim that the individual is considered disabled under the Acts;
- (5) The code provision or other Town regulation or policy from which accommodation is being requested; and
- (6) An explanation of why the accommodation is necessary to make the specific property accessible to the individual.

(b) *Review with Other Planning Applications.* If the request for reasonable accommodation is being made in connection with a project or other land use that also requires some other planning approval (such as a use permit, variance, design review permit, zone change, general

plan amendment or subdivision), then the applicant shall file the application containing the information required by subsection (a) with the City Planner together for concurrent review with the application(s) for approval.

**5.15.040 [Repealed.]**

**5.15.050 Public Notice.**

Written notice of a request for reasonable accommodation shall be given as follows:

- (a) *No Related Discretionary Approval.* If there is no discretionary approval sought other than the request for reasonable accommodation, notice shall be mailed to the owners of record of all properties which are immediately adjacent to the property which is the subject of the request at least fifteen (15) days prior to the decision.
- (b) *Related Discretionary Approval.* If the request is made in conjunction with another discretionary planning approval, notice of the requested accommodation shall be transmitted along with and in the manner prescribed for the other planning application.
- (c) *Notice of Proposed Decision.* The notice required by this section shall inform adjacent property owners of the requested accommodation; the proposed decision whether to grant or deny the request; and that any person may make a request for a hearing with the City Planner to contest the proposed decision within 10 days of the date the notice is mailed. If no request for a hearing is received, the proposed decision shall become final on the date the notice of decision required by Section 5.15.070 (g) below is issued.

**5.15.060 Consideration of Request; Public Hearing.**

- (a) *Consideration of Request.* In considering whether to grant or deny a request for reasonable accommodation, the City Planner shall consider all resources available to the Town for use in the funding and operation of the service, program or activity.
- (b) *Public Hearing.* If a hearing is requested pursuant to Section 5.15.050(c), the City Planner shall notice and conduct a public hearing on the request for reasonable accommodation as set forth in Sections 1.02.230-1.02.240 of this Code.
- (c) *Findings.* The written decision to grant or deny a request for reasonable accommodation shall be based on consideration of the factors set forth below.
  - (1) Whether the housing, which is the subject of the request, will be used by an individual with a disability under the Acts.
  - (2) Whether the request for reasonable accommodation is necessary to make specific housing available to an individual with a disability under the Acts.
  - (3) Whether there is an alternative accommodation which may provide an equivalent level of benefit. However, the City Planner shall give "primary consideration" to the accommodation requested by the applicant, and shall endeavor to provide that accommodation, unless the Town's alternative will provide an equivalent

level of benefit and the requested accommodation would fundamentally alter the nature of the program, service, or activity, or result in an undue financial or administrative burden.

- (4) Whether the requested accommodation would negatively impact surrounding uses or properties.
- (5) Whether the requested reasonable accommodation would impose an undue financial or administrative burden on the Town.
- (6) Whether the requested reasonable accommodation would require a fundamental alteration in the nature of the Town program or law, including, but not limited to, land use and zoning. If the Town determines that a requested accommodation would result in a fundamental alteration or an undue financial or administrative burden, the Town may take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive equal access to the benefits or services provided by the Town.

(d) *Conditions of Approval.* In granting a request for reasonable accommodation, the City Planner may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation would comply with the findings required in subsection (a) of this section.

#### **5.15.070 Notice of Decision.**

A written notice of decision either granting or denying the request, including any reasonable conditions, shall be issued in the same manner as provided in Section 5.15.050 above, after the required 10 day notice period has ended. The notice of decision shall contain the factual findings, conclusions and reasons for the decision. A decision to deny a request shall include the reasons why providing the requested accommodation would fundamentally alter the nature of the service or program in question or would result in an undue financial or administrative burden.

#### **5.15.080 Appeal Of Determination.**

A determination by the City Planner to grant or deny a request for reasonable accommodation may be appealed to the City Manager in accordance with section 1.02.430 of the Colma Municipal Code.

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#### **ARTICLE 4. CMC § 5.15.040 REPEALED.**

Section 5.15.040 of the Colma Municipal Code is repealed.

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#### **ARTICLE 5. SEVERABILITY.**

Each of the provisions of this Ordinance is severable from all other provisions. If any article, section, subsection, paragraph, sentence, clause or phrase of this Ordinance is for any reason

## ARTICLE 5. SEVERABILITY.

Each of the provisions of this Ordinance is severable from all other provisions. If any article, section, subsection, paragraph, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

## ARTICLE 6. NOT A CEQA PROJECT.

The City Council finds that adoption of this Ordinance is not a "project," as defined in the California Environmental Quality Act because it does not have a potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment and concerns general policy and procedure making.

## ARTICLE 7. EFFECTIVE DATE.

This Ordinance, or a summary thereof prepared by the City Attorney, shall be posted on the three (3) official bulletin boards of the Town of Colma within 15 days of its passage and is to take force and effect thirty (30) days after its passage.

### Certification of Adoption

I certify that the foregoing Ordinance No. 693 was duly introduced at a regular meeting of the City Council of the Town of Colma held on July 14, 2010 and duly adopted at an adjourned regular meeting of said City Council held on September 8, 2010 by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
Diana Colvin, Mayor					
Helen Fisicaro					
Raquel "Rae" Gonzalez					
Joanne F. del Rosario					
Joseph Silva					
<i>Voting Tally</i>					

Dated 9/20/10



Diana Colvin, Mayor

Attest:

  
Laura Allen, City Clerk