



**AGENDA
REGULAR MEETING**

**City Council of the Town of Colma
Colma Community Center
1520 Hillside Boulevard
Colma, CA 94014**

**Wednesday, March 28, 2018
7:00 PM**

PLEDGE OF ALLEGIANCE AND ROLL CALL

ADOPTION OF AGENDA

PRESENTATIONS

- San Mateo County Mosquito and Vector Control District Update
- Annual Mayors' Water Challenge

PUBLIC COMMENTS

Comments on the Consent Calendar and Non-Agenda Items will be heard at this time.
Comments on Agenda Items will be heard when the item is called.

CONSENT CALENDAR

1. Motion to Accept the Minutes from the March 14, 2018 Regular Meeting.
2. New PACE Program GSFA Ygrene
 - a. Motion to Adopt a Resolution Consenting to the Inclusion of Properties Within the Town of Colma in the Golden State Finance Authority Community Facilities District No. 2014-1 (Clean Energy) to Finance Renewable Energy Improvements, Energy Efficiency and Water Conservation Improvements, Electric Vehicle Charging Infrastructure and Other Improvements and Approving Associate Membership in the Joint Exercise of Powers Authority
 - b. Motion to Adopt a Resolution Consenting to the Inclusion Of Properties Within the Town of Colma in the Golden State Finance Authority Program to Finance Renewable Energy Generation, Energy and Water Efficiency Improvements, Electric Vehicle Charging Infrastructure, and Other Improvements and Approving Associate Membership in the Joint Exercise of Powers Authority.

PUBLIC HEARING

3. SEWER SERVICE RATES AND CHARGES FOR SSF USERS

Consider: Motion to Introduce an Ordinance Amending Subchapter 3.04.160 of the Colma Municipal Code, Relating to Sewer Rates and Charges, and Waive Further Reading.

4. OFF STREET PARKING FACILITIES

Consider: Motion to Introduce an Ordinance Adding Colma Municipal Code Section 6.01.075 Relating to Privately Owned and Maintained Off-Street Parking Facilities and Waive a Further Reading of the Ordinance.

STUDY SESSION

5. SMOKING ORDINANCE

This item is for discussion only; no action will be taken at this meeting.

REPORTS

Mayor/City Council

City Manager

ADJOURNMENT

The City Council Meeting Agenda Packet and supporting documents are available for review at the Colma Town Hall, 1188 El Camino Real, Colma, CA during normal business hours (Mon – Fri 8am-5pm). Persons interested in obtaining an agenda via e-mail should call Caitlin Corley at 650-997-8300 or email a request to ccorley@colma.ca.gov.

Reasonable Accommodation

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**MINUTES
REGULAR MEETING**

City Council of the Town of Colma
Colma Community Center, 1520 Hillside Boulevard
Colma, CA 94014

Wednesday, March 14, 2018

7:00 p.m.

CALL TO ORDER

Mayor Raquel Gonzalez called the Regular Meeting of the City Council to order at 7:02 p.m.

Council Present – Mayor Raquel “Rae” Gonzalez, Vice Mayor Joanne F. del Rosario, Council Members John Irish Goodwin and Helen Fisicaro were present. Council Member Diana Colvin was absent.

Staff Present – City Manager Brian Dossey, City Attorney Christopher Diaz, Chief of Police Kirk Stratton, Director of Public Works Brad Donohue, City Planner Michael Laughlin and Administrative Technician Darcy De Leon were in attendance.

ADOPTION OF THE AGENDA

Mayor Gonzalez asked if there were any changes to the agenda. None were requested. The Mayor asked for a motion to adopt the agenda.

Action: Vice Mayor del Rosario moved to adopt the agenda; the motion was seconded by Council Member Goodwin and carried by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
Raquel Gonzalez, Mayor	✓				
Joanne F. del Rosario	✓				
John Irish Goodwin	✓				
Diana Colvin					✓
Helen Fisicaro	✓				
	4	0			

PUBLIC COMMENTS

Mayor Gonzalez opened the public comment period at 7:04 p.m. and seeing no one come forward to speak, she closed the public comment.

CONSENT CALENDAR

1. Motion to Accept the Minutes from the February 28, 2018 Regular Meeting.
2. Motion to Approve Report of Checks Paid for February 2018.
3. Motion to Adopt a Resolution Awarding a Construction Contract to and Directing the City Manager to Execute the Construction Contract with VAS Security Systems, Inc. for the Access Control Project (CIP 983).
4. Motion Accepting the 2017 Annual Report on the Implementation of the General Plan, Including the Housing Element.

5. Motion to Adopt a Resolution Supporting the Reducing Crime and Keeping California Safe Act of 2018.

Action: Council Member Goodwin moved to approve the Consent Calendar items #1 through #5; the motion was seconded by Council Member Fiscaro and carried by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
Raquel Gonzalez, Mayor	✓				
Joanne F. del Rosario	✓				
John Irish Goodwin	✓				
Diana Colvin					✓
Helen Fiscaro	✓				
	4	0			

NEW BUSINESS

6. MIDYEAR BUDGET REVIEW

City Manager Brian Dossey presented the staff report along with Financial Advisor Brian Moura from Regional Government Services. Mayor Gonzalez opened the public comment period at 7:25 p.m. and seeing no one come forward to speak, she closed the public comment. Council discussion followed.

Action: Council Member Goodwin moved to Adopt a Resolution Amending Budget Appropriations for Fiscal Year 2017-18; the motion was seconded by Vice Mayor del Rosario and carried by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
Raquel Gonzalez, Mayor	✓				
Joanne F. del Rosario	✓				
John Irish Goodwin	✓				
Diana Colvin					✓
Helen Fiscaro	✓				
	4	0			

COUNCIL CALENDARING

The next Regular City Council Meeting will be on Wednesday, March 28, 2018 at 7:00 p.m.

REPORTS

Raquel Gonzalez

First National Bank Reception 03/08/18
DCPLA Fundraiser Luncheon 03/13/18

Helen Fiscaro

First National Bank Reception 03/08/18
DCPLA Fundraiser Luncheon 03/13/18

ADJOURNMENT

Mayor Gonzalez adjourned the meeting at 7:29 p.m.

Respectfully submitted,

Darcy De Leon





STAFF REPORT

TO: Mayor and Members of the City Council

FROM: Michael P. Laughlin, AICP, City Planner, CSG Consultants
Jonathan Kwan, Assistant Planner, CSG Consultants

VIA: Brian Dossey, City Manager

MEETING DATE: March 28, 2018

SUBJECT: New Property Assessed Clean Energy (PACE) Program in Colma: Golden State Finance Authority, Ygrene

RECOMMENDATION

Staff recommends that the City Council adopt:

RESOLUTION CONSENTING TO THE INCLUSION OF PROPERTIES WITHIN THE TOWN OF COLMA IN THE GOLDEN STATE FINANCE AUTHORITY COMMUNITY FACILITIES DISTRICT NO.2014-1 (CLEAN ENERGY) TO FINANCE RENEWABLE ENERGY IMPROVEMENTS, ENERGY EFFICIENCY AND WATER CONSERVATION IMPROVEMENTS, ELECTRIC VEHICLE CHARGING INFRASTRUCTURE AND OTHER IMPROVEMENTS AND APPROVING ASSOCIATE MEMBERSHIP IN THE JOINT EXERCISE OF POWERS AUTHORITY

RESOLUTION CONSENTING TO THE INCLUSION OF PROPERTIES WITHIN THE TOWN OF COLMA IN THE GOLDEN STATE FINANCE AUTHORITY PROGRAM TO FINANCE RENEWABLE ENERGY GENERATION, ENERGY AND WATER EFFICIENCY IMPROVEMENTS, ELECTRIC VEHICLE CHARGING INFRASTRUCTURE, AND OTHER IMPROVEMENTS AND APPROVING ASSOCIATE MEMBERSHIP IN THE JOINT EXERCISE OF POWERS AUTHORITY

EXECUTIVE SUMMARY

Property Assessed Clean Energy (PACE) is a loan program that allows for the financing of energy improvements with repayment through an existing property tax bill. The Town is required to take actions so that property owners within the jurisdiction can utilize the financing entity. The proposed resolutions would authorize the addition of a well-known PACE financing provider, Ygrene, to provide loans to property owners in the Town. Staff supports this action since the Town is encouraging property owner to make energy improvements to their properties, and adding Ygrene would add another available financing option.

FISCAL IMPACT

The Town will not incur any noticeable fiscal impact by authorizing the additional PACE program. However, property improvements can potentially result in a very minor increase in sales and property tax revenue to the Town.

BACKGROUND

Several PACE financing providers, including CaliforniaFIRST, Figtree, and HERO have already been authorized by City Council to operate in Colma. PACE financing is one option for property owners to finance energy efficiency and water conservation improvements. Improvements commonly implemented through PACE include solar energy systems, heating and cooling system upgrades, window replacement, and insulation upgrades. It is an alternative to other financing mechanisms, such as using cash, a home equity line of credit, or a credit card, to finance these improvements. PACE financing is unique in that qualifying for PACE financing is based primarily on a property owner's equity and timeliness of property tax and mortgage payments rather than individual credit rating or debt-to-income ratio. PACE debt is linked to the property rather than the property owner. It does not appear on the property owner's individual credit report. PACE programs offer fixed long-term interest rates, the term of which is generally equal to the useful life of the improvement, which might be longer than the normal term of other loans. As such, PACE financing offers advantages over other forms of financing to some borrowers.

ANALYSIS

Ygrene is one of several PACE providers. Ygrene is different from the other PACE programs in that the project minimum is only \$5,000 for commercial projects, which allows more small and mid-size commercial property owners to participate in the program. The following paragraphs describe the financing mechanism.

Golden State Finance Authority ("GSFA"), which was formerly known as the California Home Finance Authority, is a joint exercise of powers authority established pursuant to Chapter 5 of Division 7, Title 1 of the Government Code of the State of California (Section 6500 and following) (the "Act") and the Joint Power Agreement entered into on July 1, 1993, as amended from time to time (the "Authority JPA"). GSFA contracts with Ygrene Energy Fund CA LLC (Ygrene) to serve as the program administrator and to operate the Ygrene Works for California PACE financing program.

GSFA established two PACE programs under the legislative authority of two separate California PACE laws:

- SB 555 PACE Community Facilities District:

Senate Bill 555 amended the Mello-Roos Community Facilities Act to allow for the creation of Community Facilities Districts ("CFDs") for the purpose of financing or refinancing the acquisition, installation, and improvement of energy efficiency, water conservation, renewable energy and electric vehicle charging infrastructure improvements permanently affixed to private or publicly-owned real property.

Individual properties can be annexed into the district and be subject to the special tax that is imposed to repay project financing only if (i) the Council adopts a resolution

consenting to the inclusion of parcels in the incorporated areas of the City within the CFD and (ii) each participating owner provides its unanimous written approval for annexation of its property into the PACE CFD.

- AB 811 PACE Contractual Assessment Program:

The passage of Assembly Bill 811 authorized cities and counties to establish voluntary contractual assessment programs for the purpose financing private property improvements that promote renewable energy generation, energy and water efficiency and electric vehicle charging infrastructure.

As with the SB 555 CFD, properties can be annexed into the AB 811 PACE program and be subject to the property tax assessment that is imposed to repay project financing only if (i) the Council adopts a resolution consenting to the inclusion of parcels in the incorporated areas of the City within the program and (ii) each participating owner consents in writing to the annexation of its property into the PACE program.

To participate in the GSFA PACE programs, the City must become an Associate Member of GSFA (JPA Agreement attached). Associate membership requires no dues or other costs to the City but permits participation in all GSFA programs including the PACE program. The attached resolutions approve joining the JPA as an Associate Member. Pursuant to the JPA Agreement and GSFA Board Resolution 15-01, the Executive Director has the authority to approve the addition of new Associate Members to the JPA.

Approval of the two resolutions will allow both of the GSFA PACE programs to operate within the Town. The Town has previously approved participation in other PACE programs. Adding the GSFA PACE programs, to be administered by Ygrene, provides more options for City property owners. It will not add to or require any additional responsibilities for the City.

Council Adopted Values

The recommendation is consistent with the Council value of *responsibility* because the recommended decision will provide additional financing options to Colma property owners, thereby furthering the Town's sustainability goals. The recommendation is also consistent with the Council value of *vision* because the recommended decision will promote innovation and energy efficiency and water conservation projects in the Town.

Sustainability Impact

Although the Town has not estimated the number of property owners that might participate in a PACE program nor the associated positive environmental and economic impacts to the Town, staff does expect that there will be some increase in the number of energy efficiency and water conservation projects.

Alternatives

The City Council could choose not to adopt the resolutions authorizing GSFA PACE programs to operate in the Town. This option is not recommended, however, as it will limit the number of PACE financing providers for businesses and residents to choose from in the Town.

CONCLUSION

Staff recommends the City Council adopt the Resolution to provide Colma property owners with further increased PACE financing options.

ATTACHMENTS

- A. Resolution for Senate Bill 555
- B. Resolution for Assembly Bill 811
- C. Letter from Ygrene

**RESOLUTION NO. 2018-##
OF THE CITY COUNCIL OF THE TOWN OF COLMA**

**RESOLUTION CONSENTING TO INCLUSION OF PROPERTIES WITHIN
THE TOWN OF COLMA IN THE GOLDEN STATE FINANCE AUTHORITY
COMMUNITY FACILITIES DISTRICT NO.2014-1 (CLEAN ENERGY) TO
FINANCE RENEWABLE ENERGY IMPROVEMENTS, ENERGY EFFICIENCY
AND WATER CONSERVATION IMPROVEMENTS, ELECTRIC VEHICLE
CHARGING INFRASTRUCTURE AND OTHER IMPROVEMENTS AND
APPROVING ASSOCIATE MEMBERSHIP IN THE JOINT EXERCISE OF
POWERS AUTHORITY**

The Town of Colma City Council does resolve as follows:

1. Background

- (a) The City Council has considered the staff report.

2. Findings

- (a) The Golden State Finance Authority, a California joint powers authority formerly known as California Home Finance Authority (the "Authority"), has established the Community Facilities District No. 2014-1(Clean Energy) in accordance with the Mello-Roos Community Facilities Act, set forth in sections 53311 through 53368.3 of the California Government Code (the "Act") and particularly in accordance with sections 53313.5(l) and 53328.1(a) (the "District").
- (b) The purpose of the District is to finance or refinance (including the payment of interest) the acquisition, installation, and improvement of energy efficiency, water conservation, renewable energy and electric vehicle charging infrastructure improvements permanently affixed to private or publicly-owned real property (the "Authorized Improvements").
- (c) The Town of Colma is committed to development of renewable energy generation and energy and water efficiency improvements, reduction of greenhouse gases, and protection of the environment.
- (d) In the Act, the Legislature has authorized a parcel within the territory of the District to annex to the District and be subject to the special tax levy of the District only (i) if the city or county within which the parcel is located has consented, by the adoption of a resolution by the applicable city council or county board of supervisors, to the inclusion of parcels within its boundaries in the District and (ii) with the unanimous written approval of the owner or owners of the parcel when it is annexed (the "Unanimous Approval Agreement"), which, as provided in section 53329.6 of the Act, shall constitute the election required by the California Constitution.
- (e) The Town wishes to provide innovative solutions to its property owners to achieve energy efficiency and water conservation and in doing so cooperate with Authority in

order to efficiently and economically assist property owners the Town in financing such Authorized Improvements.

- (f) The Authority has established the District, as permitted by the Act, the Authority JPA, originally made and entered into July 1, 1993, as amended to date, and the Town, desires to become an Associate Member of the JPA by acknowledgement of the JPA Agreement, a copy of which is attached as Exhibit "A" hereto, to participate in the programs of the JPA and, to assist property owners within the incorporated area of the Town in financing the cost of installing Authorized Improvements.
- (g) The Town will not be responsible for the conduct of any special tax proceedings; the levy and collection of special taxes or any required remedial action in the case of delinquencies in the payment of any special taxes in connection with the District.

3. CEQA

- (a) The City Council hereby finds that adoption of this Resolution is not a "project" under the California Environmental Quality Act, because the Resolution does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by CEQA Guideline 15378(b)(4).

4. Order

- (a) This City Council finds and declares that properties in the Town's incorporated area will be benefited by the availability of the Authority CFD No. 2014-1 (Clean Energy) to finance the installation of the Authorized Improvements.
- (b) This City Council consents to inclusion in the Authority CFD No. 2014-1 (Clean Energy) of all of the properties in the incorporated area within the Town and to the Authorized Improvements, upon the request of and execution of the Unanimous Approval Agreement by the owners of such properties when such properties are annexed, in compliance with the laws, rules and regulations applicable to such program; and to the assumption of jurisdiction thereover by Authority for the purposes thereof.
- (c) The consent of this City Council constitutes assent to the assumption of jurisdiction by Authority for all purposes of the Authority CFD No. 2014-1 (Clean Energy) and authorizes Authority, upon satisfaction of the conditions imposed in this resolution, to take each and every step required for or suitable for financing the Authorized Improvements.
- (d) This City Council hereby approves joining the JPA as an Associate Member and authorizes the execution by appropriate Town officials of any necessary documents to effectuate such membership.
- (e) Town staff is authorized and directed to coordinate with Authority staff to facilitate operation of the Authority CFD No. 2014-1 (Clean Energy) within the Town, and report back periodically to this City Council on the success of such program.

- (f) This Resolution shall take effect immediately upon its adoption. The City Clerk is directed to send a certified copy of this resolution to the Secretary of the Authority.

Certification of Adoption

I certify that the foregoing Resolution No. 2018-## was duly adopted at a regular meeting of said City Council held on March 28, 2018 by the following vote:

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

Dated _____

Raquel "Rae" Gonzalez, Mayor

Attest: _____
Caitlin Corley, City Clerk

Exhibits:

- (a) JPA Agreement



GOLDEN STATE FINANCE AUTHORITY

AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT

(Original date July 1, 1993 and as last amended and restated May 5, 2015)

THIS AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT ("Agreement") is entered into by and among the counties listed on Attachment 1 hereof and incorporated herein by reference. All such counties are referred to herein as "Members" with the respective powers, privileges and restrictions provided herein.

RECITALS

A. WHEREAS, the California Rural Home Mortgage Finance Authority ("CRHMFA") was created by a Joint Exercise of Powers Agreement dated July 1, 1993 pursuant to the Joint Exercise of Powers Act (commencing with Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Act"). By Resolution 2003-02, adopted on January 15, 2003, the name of the authority was changed to CRHMFA Homebuyers Fund. On December 10, 2014, the name of the authority was changed to California Home Finance Authority. The most recent amendment to the Joint Exercise of Powers Agreement was on December 10, 2014..

B. WHEREAS, the Members of California Home Finance Authority desire to update, reaffirm, clarify and revise certain provisions of the joint powers agreement, including the renaming of the joint powers authority, as set forth herein.

C. WHEREAS, the Members are each empowered by law to finance the construction, acquisition, improvement and rehabilitation of real property.

D. WHEREAS, by this Agreement, the Members desire to create and establish a joint powers authority to exercise their respective powers for the purpose of financing the construction, acquisition, improvement and rehabilitation of real property within the jurisdiction of the Authority as authorized by the Act.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Members individually and collectively agree as follows:

1. Definitions

Unless the context otherwise requires, the following terms shall for purposes of this Agreement have the meanings specified below:

"Act" means the Joint Exercise of Powers Act, commencing with Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, including the Marks-Roos Local Bond Pooling Act of 1985, as amended.

"Agreement" means this Joint Exercise of Powers Agreement, as the same now exists or as it may from time to time be amended as provided herein.

"Associate Member" means a county, city or other public agency which is not a voting member of the Rural County Representatives of California, a California nonprofit corporation ("RCRC"), with legal power and authority similar to that of the Members, admitted pursuant to paragraph 4.d. below to associate membership herein by vote of the Board.

"Audit Committee" means a committee made up of the Executive Committee.

"Authority" means Golden State Finance Authority (GSFA) formerly known as California Home Finance Authority ("CHF"), or CRHMFA Homebuyers Fund or California Rural Home Mortgage Finance Authority.

"Board" means the governing board of the Authority as described in Section 7 below.

"Bonds" means bonds, notes, warrants, leases, certificates of participation, installment purchase agreements, loan agreements and other securities or obligations issued by the Authority, or financing agreements entered into by the Authority pursuant to the Act and any other obligation within the meaning of the term "Bonds" under the Act.

"Delegate" means the Supervisor designated by the governing board of each Member to serve on the Board of the Authority.

"Executive Committee" means the Executive Committee of the Board established pursuant to Section 10 hereof.

"Member" means any county which is a member of RCRC, has executed this Agreement and has become a member of the Authority.

"Obligations" means bonds, notes, warrants, leases, certificates of participation, installment purchase agreements, loan agreements and other securities or obligations issued by the Authority, or financing agreements entered into by the Authority pursuant to the Act and any other financial or legal obligation of the Authority under the Act.

"Program" or "Project" means any work, improvement, program, project or service undertaken by the Authority.

"Rural County Representatives of California" or "RCRC" means the nonprofit entity incorporated under that name in the State of California.

"Supervisor" means an elected County Supervisor from an RCRC member county.

2. Purpose

The purpose of the Authority is to provide financing for the acquisition, construction, improvement and rehabilitation of real property in accordance with applicable provisions of law for the benefit of residents and communities. In pursuit of this purpose, this Agreement provides for the joint exercise of powers common to any of its Members and Associate Members as provided herein, or otherwise authorized by the Act and other applicable laws, including assisting in financing as authorized herein, jointly exercised in the manner set forth herein.

3. Principal Place of Business

The principal office of the Authority shall be 1215 K Street, Suite 1650, Sacramento, California 95814.

4. Creation of Authority; Addition of Members or Associate Members

a. The Authority is hereby created pursuant to the Act. As provided in the Act, the Authority shall be a public entity separate and distinct from the Members or Associate Members.

b. The Authority will cause a notice of this Agreement or any amendment hereto to be prepared and filed with the office of the Secretary of State of California in a timely fashion in the manner set forth in Section 6503.3 of the Act.

c. A county that is a member of RCRC may petition to become a member of the Authority by submitting to the Board a resolution or evidence of other formal action taken by its governing body adopting this Agreement. The Board shall review the petition for membership and shall vote to approve or disapprove the petition. If the petition is approved by a majority of the Board, such county shall immediately become a Member of the Authority.

d. An Associate Member may be added to the Authority upon the affirmative approval of its respective governing board and pursuant to action by the Authority Board upon such terms and conditions, and with such rights, privileges and responsibilities, as may be established from time to time by the Board. Such terms and conditions, and rights, privileges and responsibilities may vary among the Associate Members. Associate Members shall be entitled to participate in one or more programs of the Authority as determined by the Board, but shall not be voting members of the Board. The Executive Director of the Authority shall enforce the terms and conditions for prospective Associate Members to the Authority as provided by resolution of the Board and as amended from time to time by the Board. Changes in the terms and conditions for Associate Membership by the Board will not constitute an amendment of this Agreement.

5. Term and Termination of Powers

This Agreement shall become effective from the date hereof until the earlier of the time when all Bonds and any interest thereon shall have been paid in full, or provision for such payment shall have been made, or when the Authority shall no longer own or hold any interest in a

public capital improvement or program. The Authority shall continue to exercise the powers herein conferred upon it until termination of this Agreement, except that if any Bonds are issued and delivered, in no event shall the exercise of the powers herein granted be terminated until all Bonds so issued and delivered and the interest thereon shall have been paid or provision for such payment shall have been made and any other debt incurred with respect to any other financing program established or administered by the Authority has been repaid in full and is no longer outstanding.

6. Powers; Restriction upon Exercise

a. To effectuate its purpose, the Authority shall have the power to exercise any and all powers of the Members or of a joint powers authority under the Act and other applicable provisions of law, subject, however, to the conditions and restrictions herein contained. Each Member or Associate Member may also separately exercise any and all such powers. The powers of the Authority are limited to those of a general law county.

b. The Authority may adopt, from time to time, such resolutions, guidelines, rules and regulations for the conduct of its meetings and the activities of the Authority as it deems necessary or desirable to accomplish its purpose.

c. The Authority shall have the power to finance the construction, acquisition, improvement and rehabilitation of real property, including the power to purchase, with the amounts received or to be received by it pursuant to a bond purchase agreement, bonds issued by any of its Members or Associate Members and other local agencies at public or negotiated sale, for the purpose set forth herein and in accordance with the Act. All or any part of such bonds so purchased may be held by the Authority or resold to public or private purchasers at public or negotiated sale. The Authority shall set any other terms and conditions of any purchase or sale contemplated herein as it deems necessary or convenient and in furtherance of the Act. The Authority may issue or cause to be issued Bonds or other indebtedness, and pledge any of its property or revenues as security to the extent permitted by resolution of the Board under any applicable provision of law. The Authority may issue Bonds in accordance with the Act in order to raise funds necessary to effectuate its purpose hereunder and may enter into agreements to secure such Bonds. The Authority may issue other forms of indebtedness authorized by the Act, and to secure such debt, to further such purpose. The Authority may utilize other forms of capital, including, but not limited to, the Authority's internal resources, capital markets and other forms of private capital investment authorized by the Act.

d. The Authority is hereby authorized to do all acts necessary for the exercise of its powers, including, but not limited to:

- (1) executing contracts,
- (2) employing agents, consultants and employees,
- (3) acquiring, constructing or providing for maintenance and operation of any building, work or improvement,
- (4) acquiring, holding or disposing of real or personal property wherever

- located, including property subject to mortgage,
- (5) incurring debts, liabilities or obligations,
- (6) receiving gifts, contributions and donations of property, funds, services and any other forms of assistance from persons, firms, corporations or governmental entities,
- (7) suing and being sued in its own name, and litigating or settling any suits or claims,
- (8) doing any and all things necessary or convenient to the exercise of its specific powers and to accomplishing its purpose
- (9) establishing and/or administering districts to finance and refinance the acquisition, installation and improvement of energy efficiency, water conservation and renewable energy improvements to or on real property and in buildings. The Authority may enter into one or more agreements, including without limitation, participation agreements and implementation agreements to implement such programs.

e. Subject to the applicable provisions of any indenture or resolution providing for the investment of monies held thereunder, the Authority shall have the power to invest any of its funds as the Board deems advisable, in the same manner and upon the same conditions as local agencies pursuant to Section 53601 of the Government Code of the State of California.

f. All property, equipment, supplies, funds and records of the Authority shall be owned by the Authority, except as may be provided otherwise herein or by resolution of the Board.

g. Pursuant to the provisions of Section 6508.1 of the Act, the debts, liabilities and obligations of the Authority shall not be debts, liabilities and obligations of the Members or Associate Members. Any Bonds, together with any interest and premium thereon, shall not constitute debts, liabilities or obligations of any Member. The Members or Associate Members hereby agree that any such Bonds issued by the Authority shall not constitute general obligations of the Authority but shall be payable solely from the moneys pledged to the repayment of principal or interest on such Bonds under the terms of the resolution, indenture, trust, agreement or other instrument pursuant to which such Bonds are issued. Neither the Members or Associate Members nor the Authority shall be obligated to pay the principal of or premium, if any, or interest on the Bonds, or other costs incidental thereto, except from the revenues and funds pledged therefor, and neither the faith and credit nor the taxing power of the Members or Associate Members or the Authority shall be pledged to the payment of the principal of or premium, if any, or interest on the Bonds, nor shall the Members or Associate Members of the Authority be obligated in any manner to make any appropriation for such payment. No covenant or agreement contained in any Bond shall be deemed to be a covenant or agreement of any Delegate, or any officer, agent or employee of the Authority in an individual capacity, and neither the Board nor any officer thereof executing the Bonds or any document related thereto shall be liable personally on any Bond or be subject to any personal liability or accountability by reason of the issuance of any Bonds.

7. Governing Board

a. The Board shall consist of the number of Delegates equal to one representative from each Member.

b. The governing body of each Member shall appoint one of its Supervisors to serve as a Delegate on the Board. A Member's appointment of its Delegate shall be delivered in writing (which may be by electronic mail) to the Authority and shall be effective until he or she is replaced by such governing body or no longer a Supervisor; any vacancy shall be filled by the governing body of the Member in the same manner provided in this paragraph b..

c. The governing body of each Member of the Board shall appoint a Supervisor as an alternate to serve on the Board in the absence of the Delegate; the alternate may exercise all the rights and privileges of the Delegate, including the right to be counted in constituting a quorum, to participate in the proceedings of the Board, and to vote upon any and all matters. No alternate may have more than one vote at any meeting of the Board, and any Member's designation of an alternate shall be delivered in writing (which may be by electronic mail) to the Authority and shall be effective until such alternate is replaced by his or her governing body or is no longer a Supervisor, unless otherwise specified in such appointment. Any vacancy shall be filled by the governing body of the Member in the same manner provided in this paragraph c..

d. Any person who is not a member of the governing body of a Member and who attends a meeting on behalf of such Member may not vote or be counted toward a quorum but may, at the discretion of the Chair, participate in open meetings he or she attends.

e. Each Associate Member may designate a non-voting representative to the Board who may not be counted toward a quorum but who may attend open meetings, propose agenda items and otherwise participate in Board Meetings.

f. Delegates shall not receive compensation for serving as Delegates, but may claim and receive reimbursement for expenses actually incurred in connection with such service pursuant to rules approved by the Board and subject to the availability of funds.

g. The Board shall have the power, by resolution, to the extent permitted by the Act or any other applicable law, to exercise any powers of the Authority and to delegate any of its functions to the Executive Committee or one or more Delegates, officers or agents of the Authority, and to cause any authorized Delegate, officer or agent to take any actions and execute any documents for and in the name and on behalf of the Board or the Authority.

h. The Board may establish other committees as it deems necessary for any lawful purpose; such committees are advisory only and may not act or purport to act on behalf of the Board or the Authority.

i. The Board shall develop, or cause to be developed, and review, modify as necessary, and adopt each Program.

8. Meetings of the Board

- a. The Board shall meet at least once annually, but may meet more frequently upon call of any officer or as provided by resolution of the Board.
- b. Meetings of the Board shall be called, noticed, held and conducted pursuant to the provisions of the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part I of Division 2 of Title 5 of the Government Code of the State of California.
- c. The Secretary of the Authority shall cause minutes of all meetings of the Board to be taken and distributed to each Member as soon as possible after each meeting.
- d. The lesser of twelve (12) Delegates or a majority of the number of current Delegates shall constitute a quorum for transacting business at any meeting of the Board, except that less than a quorum may act to adjourn a meeting. Each Delegate shall have one vote.
- e. Meetings may be held at any location designated in notice properly given for a meeting and may be conducted by telephonic or similar means in any manner otherwise allowed by law.

9. Officers; Duties; Official Bonds

- a. The Board shall elect a chair and vice chair from among the Delegates at the Board's annual meeting who shall serve a term of one (1) year or until their respective successor is elected. The chair shall conduct the meetings of the Board and perform such other duties as may be specified by resolution of the Board. The vice chair shall perform such duties in the absence or in the event of the unavailability of the chair.
- b. The Board shall contract annually with RCRC to administer the Agreement and to provide administrative services to the Authority, and the President and Chief Executive Officer of RCRC shall serve *ex officio* as Executive Director, Secretary, Treasurer, and Auditor of the Authority. As chief executive of the Authority, the Executive Director is authorized to execute contracts and other obligations of the Authority, unless prior Board approval is required by a third party, by law or by Board specification, and to perform other duties specified by the Board. The Executive Director may appoint such other officers as may be required for the orderly conduct of the Authority's business and affairs who shall serve at the pleasure of the Executive Director. Subject to the applicable provisions of any indenture or resolution providing for a trustee or other fiscal agent, the Executive Director, as Treasurer, is designated as the custodian of the Authority's funds, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Act. The Executive Director, as Auditor, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Act.
- c. The Legislative Advocate for the Authority shall be the Rural County Representatives of California.

d. The Treasurer and Auditor are public officers who have charge of, handle, or have access to all property of the Authority, and a bond for such officer in the amount of at least one hundred thousand dollars (\$100,000.00) shall be obtained at the expense of the Authority and filed with the Executive Director. Such bond may secure the faithful performance of such officer's duties with respect to another public office if such bond in at least the same amount specifically mentions the office of the Authority as required herein. The Treasurer and Auditor shall cause periodic independent audits to be made of the Authority's books by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act.

e. The business of the Authority shall be conducted under the supervision of the Executive Director by RCRC personnel.

10. Executive Committee of the Authority

a. Composition

The Authority shall appoint no fewer than nine (9) and no more than eleven (11) members of its Board to serve on an Executive Committee. The Chair and Vice Chair of the Authority shall serve on the Executive Committee.

b. Powers and Limitations

The Executive Committee shall act in an advisory capacity and make recommendations to the Authority Board. Duties will include, but not be limited to, review of the quarterly and annual budgets, service as the Audit Committee for the Authority, periodically review this Agreement; and complete any other tasks as may be assigned by the Board. The Executive Committee shall be subject to all limitations imposed by this Agreement, other applicable law, and resolutions of the Board.

c. Quorum

A majority of the Executive Committee shall constitute a quorum for transacting business of the Executive Committee.

11. Disposition of Assets

Upon termination of this Agreement, all remaining assets and liabilities of the Authority shall be distributed to the respective Members in such manner as shall be determined by the Board and in accordance with the law.

12. Agreement Not Exclusive; Operation in Jurisdiction of Member

This Agreement shall not be exclusive, and each Member expressly reserves its rights to carry out other public capital improvements and programs as provided for by law and to issue other obligations for those purposes. This Agreement shall not be deemed to amend or alter the

terms of other agreements among the Members or Associate Members.

13. Conflict of Interest Code

The Authority shall by resolution adopt a Conflict of Interest Code as required by law.

14. Contributions and Advances

Contributions or advances of public funds and of personnel, equipment or property may be made to the Authority by any Member, Associate Member or any other public agency to further the purpose of this Agreement. Payment of public funds may be made to defray the cost of any contribution. Any advance may be made subject to repayment, and in that case shall be repaid in the manner agreed upon by the advancing Member, Associate Member or other public agency and the Authority at the time of making the advance.

15. Fiscal Year; Accounts; Reports; Annual Budget; Administrative Expenses

a. The fiscal year of the Authority shall be the period from January 1 of each year to and including the following December 31, except for any partial fiscal year resulting from a change in accounting based on a different fiscal year previously.

b. Prior to the beginning of each fiscal year, the Board shall adopt a budget for the succeeding fiscal year.

c. The Authority shall establish and maintain such funds and accounts as may be required by generally accepted accounting principles. The books and records of the Authority are public records and shall be open to inspection at all reasonable times by each Member and its representatives.

d. The Auditor shall either make, or contract with a certified public accountant or public accountant to make, an annual audit of the accounts and records of the Authority. The minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code of the State of California, and shall conform to generally accepted auditing standards. When an audit of accounts and records is made by a certified public accountant or public accountant, a report thereof shall be filed as a public record with each Member (and also with the auditor of Sacramento County as the county in which the Authority's office is located) within 12 months after the end of the fiscal year.

e. In any year in which the annual budget of the Authority does not exceed five thousand dollars (\$5,000.00), the Board may, upon unanimous approval of the Board, replace the annual audit with an ensuing one-year period, but in no event for a period longer than two fiscal years.

16. Duties of Members or Associate Members; Breach

If any Member or Associate Member shall default in performing any covenant contained herein, such default shall not excuse that Member or Associate Member from fulfilling its other obligations hereunder, and such defaulting Member or Associate Member shall remain liable for the performance of all covenants hereof. Each Member or Associate Member hereby declares that this Agreement is entered into for the benefit of the Authority created hereby, and each Member or Associate Member hereby grants to the Authority the right to enforce, by whatever lawful means the Authority deems appropriate, all of the obligations of each of the parties hereunder. Each and all of the remedies given to the Authority hereunder or by any law now or hereafter enacted are cumulative, and the exercise of one right or remedy shall not impair the right of the Authority to any or all other remedies.

17. Indemnification

To the full extent permitted by law, the Board may authorize indemnification by the Authority of any person who is or was a Board Delegate, alternate, officer, consultant, employee or other agent of the Authority, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a Delegate, alternate, officer, consultant, employee or other agent of the Authority. Such indemnification may be made against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Authority and, in the case of a criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful and, in the case of an action by or in the right of the Authority, acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

18. Immunities

All of the privileges and immunities from liabilities, exemptions from law, ordinances and rules, all pension, relief, disability, workers' compensation and other benefits which apply to the activity of officers, agents or employees of any of the Members or Associate Members when performing their respective functions, shall apply to them to the same degree and extent while engaged as Delegates or otherwise as an officer, agent or other representative of the Authority or while engaged in the performance of any of their functions or duties under the provisions of this Agreement.

19. Amendment

This Agreement may be amended by the adoption of the amendment by the governing bodies of a majority of the Members. The amendment shall become effective on the first day of the month following the last required member agency approval. An amendment may be initiated by the Board, upon approval by a majority of the Board. Any proposed amendment, including the text of the proposed change, shall be given by the Board to each Member's Delegate for presentation and action by each Member's board within 60 days, which time may be extended by

the Board.

The list of Members, Attachment 1, may be updated to reflect new and/or withdrawn Members without requiring formal amendment of the Agreement by the Authority Board of Directors.

20. Withdrawal of Member or Associate Member

If a Member withdraws as member of RCRC, its membership in the Authority shall automatically terminate. A Member or Associate Member may withdraw from this Agreement upon written notice to the Board; provided however, that no such withdrawal shall result in the dissolution of the Authority as long as any Bonds or other obligations of the Authority remain outstanding. Any such withdrawal shall become effective thirty (30) days after a resolution adopted by the Member's governing body which authorizes withdrawal is received by the Authority. Notwithstanding the foregoing, any termination of membership or withdrawal from the Authority shall not operate to relieve any terminated or withdrawing Member or Associate Member from Obligations incurred by such terminated or withdrawing Member or Associate Member prior to the time of its termination or withdrawal.

21. Miscellaneous

a. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

b. **Construction.** The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section referred to.

c. **Approvals.** Wherever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

d. **Jurisdiction; Venue.** This Agreement is made in the State of California, under the Constitution and laws of such State and is to be so construed; any action to enforce or interpret its terms shall be brought in Sacramento County, California.

e. **Integration.** This Agreement is the complete and exclusive statement of the agreement among the parties hereto, and it supersedes and merges all prior proposals, understandings, and other agreements, whether oral, written, or implied in conduct, between and among the parties relating to the subject matter of this Agreement.

f. **Successors; Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto. Except to the extent expressly provided herein, no Member may assign any right or obligation hereunder without the consent of the Board.

g. **Severability.** Should any part, term or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State of California, or otherwise be

rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions hereof shall not be affected thereby.

The parties hereto have caused this Agreement to be executed and attested by their properly authorized officers.

AS ADOPTED BY THE MEMBERS:

Originally dated July 1, 1993
Amended and restated December 10, 1998
Amended and restated February 18, 1999
Amended and restated September 18, 2002
Amended and restated January 28, 2004
Amended and restated December 10, 2014
Amended and restated May 5, 2015

[SIGNATURES ON FOLLOWING PAGES]

**ATTACHMENT 1
GOLDEN STATE FINANCE AUTHORITY MEMBERS**

As of May 5, 2015

Alpine County
Amador County
Butte County
Calaveras County
Colusa County
Del Norte County
El Dorado County
Glenn County
Humboldt County
Imperial County
Inyo County
Lake County
Lassen County
Madera County
Mariposa County
Mendocino County
Merced County
Modoc County
Mono County
Napa County
Nevada County
Placer County
Plumas County
San Benito County
Shasta County
Sierra County
Siskiyou County
Sutter County
Tehama County
Trinity County
Tuolumne County
Yolo County
Yuba County

SIGNATURE PAGE FOR NEW ASSOCIATE MEMBERS

NAME OF COUNTY OR CITY:

Dated: _____

By: _____

Name: _____

Title: _____

Attest:

By _____
[Clerk of the Board Supervisors or City Clerk]

**RESOLUTION NO. 2018-##
OF THE CITY COUNCIL OF THE TOWN OF COLMA**

**RESOLUTION CONSENTING TO THE INCLUSION OF PROPERTIES
WITHIN THE TOWN OF COLMA IN THE GOLDEN STATE FINANCE
AUTHORITY PROGRAM TO FINANCE RENEWABLE ENERGY GENERATION
ENERGY AND WATER EFFICIENCY IMPROVEMENTS, ELECTRIC VEHICLE
CHARGING INFRASTRUCTURE, AND OTHER IMPROVEMENTS AND
APPROVING ASSOCIATE MEMBERSHIP IN THE JOINT EXERCISE OF
POWERS AUTHORITY**

The Town of Colma City Council does resolve as follows:

1. Background

- (a) The City Council has considered the staff report.

2. Findings

- (a) The Golden State Finance Authority ("Authority") is a joint exercise of powers authority established pursuant to Chapter 5 of Division 7, Title 1 of the Government Code of the State of California (Section 6500 and following) (the "Act") and the Joint Power Agreement entered into on July 1, 1993, as amended from time to time (the "Authority JPA").
- (b) Authority has established a property-assessed clean energy ("PACE") Program (the "Authority PACE Program") to provide for the financing of renewable energy generation, energy and water efficiency improvements, electric vehicle charging infrastructure, and other improvements (the "Improvements") pursuant to Chapter 29 of the Improvement Bond Act of 1911, being Division 7 of the California Streets and Highways Code ("Chapter 29") within counties and cities throughout the State of California that elect to participate in such program.
- (c) The Town of Colma is committed to development of renewable energy generation and energy and water efficiency improvements, reduction of greenhouse gases, and protection of the environment.
- (d) In Chapter 29, the Legislature has authorized cities and counties to assist property owners in financing the cost of installing Improvements through a voluntary contractual assessment program.
- (e) Installation of such Improvements by property owners within the jurisdictional boundaries of the counties and cities that are participating in the Authority PACE Program would promote the purposes cited above.
- (f) The Town of Colma wishes to provide innovative solutions to its property owners to achieve energy and water efficiency, and in doing so cooperate with Authority in order to efficiently and economically assist property owners within the Town in financing such Improvements.

- (g) Authority has established the Authority PACE Program, which is such a voluntary contractual assessment program, as permitted by the Act, the Authority JPA, originally made and entered into July 1, 1993, as amended to date, and the Town, desires to become an Associate Member of the JPA by acknowledgment of the JPA Agreement, a copy of which is attached as Exhibit "A" hereto, to participate in the programs of the JPA and to assist property owners within the jurisdiction of the Town in financing the cost of installing Improvements.
- (h) The Town will not be responsible for the conduct of any assessment proceedings; the levy and collection of assessments or any required remedial action in the case of delinquencies in the payment of any assessments or the issuance, sale or administration of any bonds issued in connection with the Authority PACE Program.

3. CEQA

- (a) The City Council hereby finds that adoption of this Resolution is not a "project" under the California Environmental Quality Act, because the Resolution does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by CEQA Guideline 15378(b)(4).

4. Order

- (a) This City Council finds and declares that properties in the Town's incorporated area will be benefited by the availability of the Authority PACE Program to finance the installation of the Improvements
- (b) This City Council consents to inclusion in the Authority PACE Program of all of the properties in the jurisdictional boundaries of the Town and to the Improvements, upon the request by and voluntary agreement of owners of such properties, in compliance with the laws, rules and regulations applicable to such program; and to the assumption of jurisdiction thereover by Authority for the purposes thereof.
- (c) The consent of this City Council constitutes assent to the assumption of jurisdiction by Authority for all purposes of the Authority PACE Program and authorizes Authority, upon satisfaction of the conditions imposed in this resolution, to take each and every step required for or suitable for financing the Improvements, including the levying, collecting and enforcement of the contractual assessments to finance the Improvements and the issuance and enforcement of bonds to represent such contractual assessments.
- (d) This City Council hereby approves joining the JPA as an Associate Member and authorizes the execution by appropriate Town officials of any necessary documents to effectuate such membership.
- (e) Town staff is authorized and directed to coordinate with Authority staff to facilitate operation of the Authority PACE Program within the Town, and report back periodically to this City Council on the success of such program.

5. Effective Date

- (a) This Resolution shall take effect immediately upon its adoption. The City Clerk is directed to send a certified copy of this resolution to the Secretary of the Authority.

Certification of Adoption

I certify that the foregoing Resolution No. 2018-## was duly adopted at a regular meeting of said City Council held on March 28, 2018 by the following vote:

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

Dated _____

Raquel "Rae" Gonzalez, Mayor

Attest: _____
Caitlin Corley, City Clerk

Exhibits:

- (a) JPA Agreement



GOLDEN STATE FINANCE AUTHORITY

AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT

(Original date July 1, 1993 and as last amended and restated May 5, 2015)

THIS AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT ("Agreement") is entered into by and among the counties listed on Attachment 1 hereof and incorporated herein by reference. All such counties are referred to herein as "Members" with the respective powers, privileges and restrictions provided herein.

RECITALS

A. WHEREAS, the California Rural Home Mortgage Finance Authority ("CRHMFA") was created by a Joint Exercise of Powers Agreement dated July 1, 1993 pursuant to the Joint Exercise of Powers Act (commencing with Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Act"). By Resolution 2003-02, adopted on January 15, 2003, the name of the authority was changed to CRHMFA Homebuyers Fund. On December 10, 2014, the name of the authority was changed to California Home Finance Authority. The most recent amendment to the Joint Exercise of Powers Agreement was on December 10, 2014..

B. WHEREAS, the Members of California Home Finance Authority desire to update, reaffirm, clarify and revise certain provisions of the joint powers agreement, including the renaming of the joint powers authority, as set forth herein.

C. WHEREAS, the Members are each empowered by law to finance the construction, acquisition, improvement and rehabilitation of real property.

D. WHEREAS, by this Agreement, the Members desire to create and establish a joint powers authority to exercise their respective powers for the purpose of financing the construction, acquisition, improvement and rehabilitation of real property within the jurisdiction of the Authority as authorized by the Act.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Members individually and collectively agree as follows:

1. Definitions

Unless the context otherwise requires, the following terms shall for purposes of this Agreement have the meanings specified below:

"Act" means the Joint Exercise of Powers Act, commencing with Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, including the Marks-Roos Local Bond Pooling Act of 1985, as amended.

"Agreement" means this Joint Exercise of Powers Agreement, as the same now exists or as it may from time to time be amended as provided herein.

"Associate Member" means a county, city or other public agency which is not a voting member of the Rural County Representatives of California, a California nonprofit corporation ("RCRC"), with legal power and authority similar to that of the Members, admitted pursuant to paragraph 4.d. below to associate membership herein by vote of the Board.

"Audit Committee" means a committee made up of the Executive Committee.

"Authority" means Golden State Finance Authority (GSFA) formerly known as California Home Finance Authority ("CHF"), or CRHMFA Homebuyers Fund or California Rural Home Mortgage Finance Authority.

"Board" means the governing board of the Authority as described in Section 7 below.

"Bonds" means bonds, notes, warrants, leases, certificates of participation, installment purchase agreements, loan agreements and other securities or obligations issued by the Authority, or financing agreements entered into by the Authority pursuant to the Act and any other obligation within the meaning of the term "Bonds" under the Act.

"Delegate" means the Supervisor designated by the governing board of each Member to serve on the Board of the Authority.

"Executive Committee" means the Executive Committee of the Board established pursuant to Section 10 hereof.

"Member" means any county which is a member of RCRC, has executed this Agreement and has become a member of the Authority.

"Obligations" means bonds, notes, warrants, leases, certificates of participation, installment purchase agreements, loan agreements and other securities or obligations issued by the Authority, or financing agreements entered into by the Authority pursuant to the Act and any other financial or legal obligation of the Authority under the Act.

"Program" or "Project" means any work, improvement, program, project or service undertaken by the Authority.

"Rural County Representatives of California" or "RCRC" means the nonprofit entity incorporated under that name in the State of California.

"Supervisor" means an elected County Supervisor from an RCRC member county.

2. Purpose

The purpose of the Authority is to provide financing for the acquisition, construction, improvement and rehabilitation of real property in accordance with applicable provisions of law for the benefit of residents and communities. In pursuit of this purpose, this Agreement provides for the joint exercise of powers common to any of its Members and Associate Members as provided herein, or otherwise authorized by the Act and other applicable laws, including assisting in financing as authorized herein, jointly exercised in the manner set forth herein.

3. Principal Place of Business

The principal office of the Authority shall be 1215 K Street, Suite 1650, Sacramento, California 95814.

4. Creation of Authority; Addition of Members or Associate Members

a. The Authority is hereby created pursuant to the Act. As provided in the Act, the Authority shall be a public entity separate and distinct from the Members or Associate Members.

b. The Authority will cause a notice of this Agreement or any amendment hereto to be prepared and filed with the office of the Secretary of State of California in a timely fashion in the manner set forth in Section 6503.3 of the Act.

c. A county that is a member of RCRC may petition to become a member of the Authority by submitting to the Board a resolution or evidence of other formal action taken by its governing body adopting this Agreement. The Board shall review the petition for membership and shall vote to approve or disapprove the petition. If the petition is approved by a majority of the Board, such county shall immediately become a Member of the Authority.

d. An Associate Member may be added to the Authority upon the affirmative approval of its respective governing board and pursuant to action by the Authority Board upon such terms and conditions, and with such rights, privileges and responsibilities, as may be established from time to time by the Board. Such terms and conditions, and rights, privileges and responsibilities may vary among the Associate Members. Associate Members shall be entitled to participate in one or more programs of the Authority as determined by the Board, but shall not be voting members of the Board. The Executive Director of the Authority shall enforce the terms and conditions for prospective Associate Members to the Authority as provided by resolution of the Board and as amended from time to time by the Board. Changes in the terms and conditions for Associate Membership by the Board will not constitute an amendment of this Agreement.

5. Term and Termination of Powers

This Agreement shall become effective from the date hereof until the earlier of the time when all Bonds and any interest thereon shall have been paid in full, or provision for such payment shall have been made, or when the Authority shall no longer own or hold any interest in a

public capital improvement or program. The Authority shall continue to exercise the powers herein conferred upon it until termination of this Agreement, except that if any Bonds are issued and delivered, in no event shall the exercise of the powers herein granted be terminated until all Bonds so issued and delivered and the interest thereon shall have been paid or provision for such payment shall have been made and any other debt incurred with respect to any other financing program established or administered by the Authority has been repaid in full and is no longer outstanding.

6. Powers; Restriction upon Exercise

a. To effectuate its purpose, the Authority shall have the power to exercise any and all powers of the Members or of a joint powers authority under the Act and other applicable provisions of law, subject, however, to the conditions and restrictions herein contained. Each Member or Associate Member may also separately exercise any and all such powers. The powers of the Authority are limited to those of a general law county.

b. The Authority may adopt, from time to time, such resolutions, guidelines, rules and regulations for the conduct of its meetings and the activities of the Authority as it deems necessary or desirable to accomplish its purpose.

c. The Authority shall have the power to finance the construction, acquisition, improvement and rehabilitation of real property, including the power to purchase, with the amounts received or to be received by it pursuant to a bond purchase agreement, bonds issued by any of its Members or Associate Members and other local agencies at public or negotiated sale, for the purpose set forth herein and in accordance with the Act. All or any part of such bonds so purchased may be held by the Authority or resold to public or private purchasers at public or negotiated sale. The Authority shall set any other terms and conditions of any purchase or sale contemplated herein as it deems necessary or convenient and in furtherance of the Act. The Authority may issue or cause to be issued Bonds or other indebtedness, and pledge any of its property or revenues as security to the extent permitted by resolution of the Board under any applicable provision of law. The Authority may issue Bonds in accordance with the Act in order to raise funds necessary to effectuate its purpose hereunder and may enter into agreements to secure such Bonds. The Authority may issue other forms of indebtedness authorized by the Act, and to secure such debt, to further such purpose. The Authority may utilize other forms of capital, including, but not limited to, the Authority's internal resources, capital markets and other forms of private capital investment authorized by the Act.

d. The Authority is hereby authorized to do all acts necessary for the exercise of its powers, including, but not limited to:

- (1) executing contracts,
- (2) employing agents, consultants and employees,
- (3) acquiring, constructing or providing for maintenance and operation of any building, work or improvement,
- (4) acquiring, holding or disposing of real or personal property wherever

- located, including property subject to mortgage,
- (5) incurring debts, liabilities or obligations,
- (6) receiving gifts, contributions and donations of property, funds, services and any other forms of assistance from persons, firms, corporations or governmental entities,
- (7) suing and being sued in its own name, and litigating or settling any suits or claims,
- (8) doing any and all things necessary or convenient to the exercise of its specific powers and to accomplishing its purpose
- (9) establishing and/or administering districts to finance and refinance the acquisition, installation and improvement of energy efficiency, water conservation and renewable energy improvements to or on real property and in buildings. The Authority may enter into one or more agreements, including without limitation, participation agreements and implementation agreements to implement such programs.

e. Subject to the applicable provisions of any indenture or resolution providing for the investment of monies held thereunder, the Authority shall have the power to invest any of its funds as the Board deems advisable, in the same manner and upon the same conditions as local agencies pursuant to Section 53601 of the Government Code of the State of California.

f. All property, equipment, supplies, funds and records of the Authority shall be owned by the Authority, except as may be provided otherwise herein or by resolution of the Board.

g. Pursuant to the provisions of Section 6508.1 of the Act, the debts, liabilities and obligations of the Authority shall not be debts, liabilities and obligations of the Members or Associate Members. Any Bonds, together with any interest and premium thereon, shall not constitute debts, liabilities or obligations of any Member. The Members or Associate Members hereby agree that any such Bonds issued by the Authority shall not constitute general obligations of the Authority but shall be payable solely from the moneys pledged to the repayment of principal or interest on such Bonds under the terms of the resolution, indenture, trust, agreement or other instrument pursuant to which such Bonds are issued. Neither the Members or Associate Members nor the Authority shall be obligated to pay the principal of or premium, if any, or interest on the Bonds, or other costs incidental thereto, except from the revenues and funds pledged therefor, and neither the faith and credit nor the taxing power of the Members or Associate Members or the Authority shall be pledged to the payment of the principal of or premium, if any, or interest on the Bonds, nor shall the Members or Associate Members of the Authority be obligated in any manner to make any appropriation for such payment. No covenant or agreement contained in any Bond shall be deemed to be a covenant or agreement of any Delegate, or any officer, agent or employee of the Authority in an individual capacity, and neither the Board nor any officer thereof executing the Bonds or any document related thereto shall be liable personally on any Bond or be subject to any personal liability or accountability by reason of the issuance of any Bonds.

7. Governing Board

a. The Board shall consist of the number of Delegates equal to one representative from each Member.

b. The governing body of each Member shall appoint one of its Supervisors to serve as a Delegate on the Board. A Member's appointment of its Delegate shall be delivered in writing (which may be by electronic mail) to the Authority and shall be effective until he or she is replaced by such governing body or no longer a Supervisor; any vacancy shall be filled by the governing body of the Member in the same manner provided in this paragraph b..

c. The governing body of each Member of the Board shall appoint a Supervisor as an alternate to serve on the Board in the absence of the Delegate; the alternate may exercise all the rights and privileges of the Delegate, including the right to be counted in constituting a quorum, to participate in the proceedings of the Board, and to vote upon any and all matters. No alternate may have more than one vote at any meeting of the Board, and any Member's designation of an alternate shall be delivered in writing (which may be by electronic mail) to the Authority and shall be effective until such alternate is replaced by his or her governing body or is no longer a Supervisor, unless otherwise specified in such appointment. Any vacancy shall be filled by the governing body of the Member in the same manner provided in this paragraph c..

d. Any person who is not a member of the governing body of a Member and who attends a meeting on behalf of such Member may not vote or be counted toward a quorum but may, at the discretion of the Chair, participate in open meetings he or she attends.

e. Each Associate Member may designate a non-voting representative to the Board who may not be counted toward a quorum but who may attend open meetings, propose agenda items and otherwise participate in Board Meetings.

f. Delegates shall not receive compensation for serving as Delegates, but may claim and receive reimbursement for expenses actually incurred in connection with such service pursuant to rules approved by the Board and subject to the availability of funds.

g. The Board shall have the power, by resolution, to the extent permitted by the Act or any other applicable law, to exercise any powers of the Authority and to delegate any of its functions to the Executive Committee or one or more Delegates, officers or agents of the Authority, and to cause any authorized Delegate, officer or agent to take any actions and execute any documents for and in the name and on behalf of the Board or the Authority.

h. The Board may establish other committees as it deems necessary for any lawful purpose; such committees are advisory only and may not act or purport to act on behalf of the Board or the Authority.

i. The Board shall develop, or cause to be developed, and review, modify as necessary, and adopt each Program.

8. Meetings of the Board

- a. The Board shall meet at least once annually, but may meet more frequently upon call of any officer or as provided by resolution of the Board.
- b. Meetings of the Board shall be called, noticed, held and conducted pursuant to the provisions of the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part I of Division 2 of Title 5 of the Government Code of the State of California.
- c. The Secretary of the Authority shall cause minutes of all meetings of the Board to be taken and distributed to each Member as soon as possible after each meeting.
- d. The lesser of twelve (12) Delegates or a majority of the number of current Delegates shall constitute a quorum for transacting business at any meeting of the Board, except that less than a quorum may act to adjourn a meeting. Each Delegate shall have one vote.
- e. Meetings may be held at any location designated in notice properly given for a meeting and may be conducted by telephonic or similar means in any manner otherwise allowed by law.

9. Officers; Duties; Official Bonds

- a. The Board shall elect a chair and vice chair from among the Delegates at the Board's annual meeting who shall serve a term of one (1) year or until their respective successor is elected. The chair shall conduct the meetings of the Board and perform such other duties as may be specified by resolution of the Board. The vice chair shall perform such duties in the absence or in the event of the unavailability of the chair.
- b. The Board shall contract annually with RCRC to administer the Agreement and to provide administrative services to the Authority, and the President and Chief Executive Officer of RCRC shall serve *ex officio* as Executive Director, Secretary, Treasurer, and Auditor of the Authority. As chief executive of the Authority, the Executive Director is authorized to execute contracts and other obligations of the Authority, unless prior Board approval is required by a third party, by law or by Board specification, and to perform other duties specified by the Board. The Executive Director may appoint such other officers as may be required for the orderly conduct of the Authority's business and affairs who shall serve at the pleasure of the Executive Director. Subject to the applicable provisions of any indenture or resolution providing for a trustee or other fiscal agent, the Executive Director, as Treasurer, is designated as the custodian of the Authority's funds, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Act. The Executive Director, as Auditor, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Act.
- c. The Legislative Advocate for the Authority shall be the Rural County Representatives of California.

d. The Treasurer and Auditor are public officers who have charge of, handle, or have access to all property of the Authority, and a bond for such officer in the amount of at least one hundred thousand dollars (\$100,000.00) shall be obtained at the expense of the Authority and filed with the Executive Director. Such bond may secure the faithful performance of such officer's duties with respect to another public office if such bond in at least the same amount specifically mentions the office of the Authority as required herein. The Treasurer and Auditor shall cause periodic independent audits to be made of the Authority's books by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act.

e. The business of the Authority shall be conducted under the supervision of the Executive Director by RCRC personnel.

10. Executive Committee of the Authority

a. Composition

The Authority shall appoint no fewer than nine (9) and no more than eleven (11) members of its Board to serve on an Executive Committee. The Chair and Vice Chair of the Authority shall serve on the Executive Committee.

b. Powers and Limitations

The Executive Committee shall act in an advisory capacity and make recommendations to the Authority Board. Duties will include, but not be limited to, review of the quarterly and annual budgets, service as the Audit Committee for the Authority, periodically review this Agreement; and complete any other tasks as may be assigned by the Board. The Executive Committee shall be subject to all limitations imposed by this Agreement, other applicable law, and resolutions of the Board.

c. Quorum

A majority of the Executive Committee shall constitute a quorum for transacting business of the Executive Committee.

11. Disposition of Assets

Upon termination of this Agreement, all remaining assets and liabilities of the Authority shall be distributed to the respective Members in such manner as shall be determined by the Board and in accordance with the law.

12. Agreement Not Exclusive; Operation in Jurisdiction of Member

This Agreement shall not be exclusive, and each Member expressly reserves its rights to carry out other public capital improvements and programs as provided for by law and to issue other obligations for those purposes. This Agreement shall not be deemed to amend or alter the

terms of other agreements among the Members or Associate Members.

13. Conflict of Interest Code

The Authority shall by resolution adopt a Conflict of Interest Code as required by law.

14. Contributions and Advances

Contributions or advances of public funds and of personnel, equipment or property may be made to the Authority by any Member, Associate Member or any other public agency to further the purpose of this Agreement. Payment of public funds may be made to defray the cost of any contribution. Any advance may be made subject to repayment, and in that case shall be repaid in the manner agreed upon by the advancing Member, Associate Member or other public agency and the Authority at the time of making the advance.

15. Fiscal Year; Accounts; Reports; Annual Budget; Administrative Expenses

a. The fiscal year of the Authority shall be the period from January 1 of each year to and including the following December 31, except for any partial fiscal year resulting from a change in accounting based on a different fiscal year previously.

b. Prior to the beginning of each fiscal year, the Board shall adopt a budget for the succeeding fiscal year.

c. The Authority shall establish and maintain such funds and accounts as may be required by generally accepted accounting principles. The books and records of the Authority are public records and shall be open to inspection at all reasonable times by each Member and its representatives.

d. The Auditor shall either make, or contract with a certified public accountant or public accountant to make, an annual audit of the accounts and records of the Authority. The minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code of the State of California, and shall conform to generally accepted auditing standards. When an audit of accounts and records is made by a certified public accountant or public accountant, a report thereof shall be filed as a public record with each Member (and also with the auditor of Sacramento County as the county in which the Authority's office is located) within 12 months after the end of the fiscal year.

e. In any year in which the annual budget of the Authority does not exceed five thousand dollars (\$5,000.00), the Board may, upon unanimous approval of the Board, replace the annual audit with an ensuing one-year period, but in no event for a period longer than two fiscal years.

16. Duties of Members or Associate Members; Breach

If any Member or Associate Member shall default in performing any covenant contained herein, such default shall not excuse that Member or Associate Member from fulfilling its other obligations hereunder, and such defaulting Member or Associate Member shall remain liable for the performance of all covenants hereof. Each Member or Associate Member hereby declares that this Agreement is entered into for the benefit of the Authority created hereby, and each Member or Associate Member hereby grants to the Authority the right to enforce, by whatever lawful means the Authority deems appropriate, all of the obligations of each of the parties hereunder. Each and all of the remedies given to the Authority hereunder or by any law now or hereafter enacted are cumulative, and the exercise of one right or remedy shall not impair the right of the Authority to any or all other remedies.

17. Indemnification

To the full extent permitted by law, the Board may authorize indemnification by the Authority of any person who is or was a Board Delegate, alternate, officer, consultant, employee or other agent of the Authority, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a Delegate, alternate, officer, consultant, employee or other agent of the Authority. Such indemnification may be made against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Authority and, in the case of a criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful and, in the case of an action by or in the right of the Authority, acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

18. Immunities

All of the privileges and immunities from liabilities, exemptions from law, ordinances and rules, all pension, relief, disability, workers' compensation and other benefits which apply to the activity of officers, agents or employees of any of the Members or Associate Members when performing their respective functions, shall apply to them to the same degree and extent while engaged as Delegates or otherwise as an officer, agent or other representative of the Authority or while engaged in the performance of any of their functions or duties under the provisions of this Agreement.

19. Amendment

This Agreement may be amended by the adoption of the amendment by the governing bodies of a majority of the Members. The amendment shall become effective on the first day of the month following the last required member agency approval. An amendment may be initiated by the Board, upon approval by a majority of the Board. Any proposed amendment, including the text of the proposed change, shall be given by the Board to each Member's Delegate for presentation and action by each Member's board within 60 days, which time may be extended by

the Board.

The list of Members, Attachment 1, may be updated to reflect new and/or withdrawn Members without requiring formal amendment of the Agreement by the Authority Board of Directors.

20. Withdrawal of Member or Associate Member

If a Member withdraws as member of RCRC, its membership in the Authority shall automatically terminate. A Member or Associate Member may withdraw from this Agreement upon written notice to the Board; provided however, that no such withdrawal shall result in the dissolution of the Authority as long as any Bonds or other obligations of the Authority remain outstanding. Any such withdrawal shall become effective thirty (30) days after a resolution adopted by the Member's governing body which authorizes withdrawal is received by the Authority. Notwithstanding the foregoing, any termination of membership or withdrawal from the Authority shall not operate to relieve any terminated or withdrawing Member or Associate Member from Obligations incurred by such terminated or withdrawing Member or Associate Member prior to the time of its termination or withdrawal.

21. Miscellaneous

a. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

b. **Construction.** The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section referred to.

c. **Approvals.** Wherever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

d. **Jurisdiction; Venue.** This Agreement is made in the State of California, under the Constitution and laws of such State and is to be so construed; any action to enforce or interpret its terms shall be brought in Sacramento County, California.

e. **Integration.** This Agreement is the complete and exclusive statement of the agreement among the parties hereto, and it supersedes and merges all prior proposals, understandings, and other agreements, whether oral, written, or implied in conduct, between and among the parties relating to the subject matter of this Agreement.

f. **Successors; Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto. Except to the extent expressly provided herein, no Member may assign any right or obligation hereunder without the consent of the Board.

g. **Severability.** Should any part, term or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State of California, or otherwise be

rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions hereof shall not be affected thereby.

The parties hereto have caused this Agreement to be executed and attested by their properly authorized officers.

AS ADOPTED BY THE MEMBERS:

Originally dated July 1, 1993
Amended and restated December 10, 1998
Amended and restated February 18, 1999
Amended and restated September 18, 2002
Amended and restated January 28, 2004
Amended and restated December 10, 2014
Amended and restated May 5, 2015

[SIGNATURES ON FOLLOWING PAGES]

**ATTACHMENT 1
GOLDEN STATE FINANCE AUTHORITY MEMBERS**

As of May 5, 2015

Alpine County
Amador County
Butte County
Calaveras County
Colusa County
Del Norte County
El Dorado County
Glenn County
Humboldt County
Imperial County
Inyo County
Lake County
Lassen County
Madera County
Mariposa County
Mendocino County
Merced County
Modoc County
Mono County
Napa County
Nevada County
Placer County
Plumas County
San Benito County
Shasta County
Sierra County
Siskiyou County
Sutter County
Tehama County
Trinity County
Tuolumne County
Yolo County
Yuba County

SIGNATURE PAGE FOR NEW ASSOCIATE MEMBERS

NAME OF COUNTY OR CITY:

Dated: _____

By: _____

Name: _____

Title: _____

Attest:

By _____
[Clerk of the Board Supervisors or City Clerk]



March 9, 2018

Hi Brian,

I'm reaching out to you regarding the Ygrene PACE Program. Your Council has already approved other PACE programs: HERO, PACE Funding, CaliforniaFIRST, and Dividend; however, Ygrene fills a very important gap on the commercial side of PACE. CaliforniaFIRST has a \$200K and Dividend a \$100K project minimum requirement, while HERO and PACE Funding are residential only programs. Ygrene's project minimum is only \$5K for commercial, allowing your town's small and mid-size commercial property owners to participate in the program.

Ygrene is the second largest PACE program in the nation and has been adopted in 296 jurisdictions in California, including Burlingame, Foster City, Pacifica, Redwood City, San Mateo, South San Francisco, and unincorporated San Mateo County (<https://ygreneworks.com/serviceareas-california>). The program has financed close to \$1 Billion in projects and created 13,807 jobs; saved property owners \$1.9B on their utility bills; abated 1.1M tons of CO2 emissions; and saved 4B gallons of water. ***All of our project data is shared with staff to help your town achieve its Climate Action Plan and workforce development goals.***

Council simply needs to pass a resolution to make this voluntary program available. Attached are the adoption documents, including a draft staff report. ***There is No Cost, No Risk, and No Admin for participating jurisdictions.***

I'm available to present to Council; however, most jurisdictions with multiple PACE programs have added additional programs on the consent calendar, since Council is already familiar with PACE and is simply making one more option available.

I look forward to hearing back from you.

Best,
Eve

Eve Perez
Government Relations Director
www.ygreneworks.com
c: 831-419-6741





STAFF REPORT

TO: Mayor and Members of the City Council
 FROM: Brad Donohue, Director of Public Works
 Christopher J. Diaz, City Attorney
 VIA: Brian Dossey, City Manager
 MEETING DATE: March 28, 2018
 SUBJECT: Post Year 2018 – 2019 Sewer Service Rates and Charges for Users on the South San Francisco

RECOMMENDATION

Staff recommends that the City Council introduce the following:

ORDINANCE AMENDING SUBCHAPTER 3.04.160 OF THE COLMA MUNICIPAL CODE,
 RELATING TO SEWER RATES AND CHARGES, AND WAIVE FURTHER READING

EXECUTIVE SUMMARY

The Town of Colma ("Town") contracts with the City of South San Francisco ("SSF") to provide sanitary sewer service to properties located in the Town. Pursuant to this contractual arrangement, the Town must pay SSF sewer service charges for properties within the Town that are connected to the sewer system at the same rate that SSF charges its own users. SSF has notified the Town of their rate increase for fiscal years 2018/19 through 2022/23, effective July 1, 2018, through and including July 1, 2022. The Town's sewer rates imposed on properties that are served by SSF must be increased to match the rate increases imposed by SSF.

FISCAL IMPACT

The total amount owed to SSF is budgeted and paid by the Town through the General Fund. The Town receives reimbursement for the Town wide sewer charges from property fees collected through the property tax rolls. The proposed rates are a direct pass-through of the rates adopted by SSF, per the Colma Municipal Code section 3.04, costs that are charged to the users cannot exceed the cost of the services that are charged by SSF.

BACKGROUND AND ANALYSIS

South San Francisco "SSF" Sewer Rates

Proposed Rate Increase

The Town of Colma contracts with the City of South San Francisco (SSF) to provide sewer collection and treatment services to properties located in the southern portion of the Town. The Town pays SSF for the cost of these services through an annual sewer service charge for each property that utilizes the sewer system. The amount charged is based on costs billed to the Town by SSF and in accordance with an agreement between the Town and SSF.

SSF has adopted a rate increase for the sewer services it provides to the Town for fiscal year 2018/19 through 2022/23. The Town is proposing to pass through these rate increases and future rate increases imposed on the Town by SSF to sewer users who are served by SSF. If approved, the rate increases will commence on July 1, 2018 and may be adjusted annually for a period of five years for any future rate increases imposed by SSF on the Town in an amount not to exceed 10% per fiscal year, and as set forth in Section 3.04.160 of the Colma Municipal Code (CMC) and the Schedule in Attachment B.

How Rates are Calculated

The rate structure is comprised of six customer classes: Residential (Single-Unit, Multi-Unit, and Trailer Unit), Restaurant, Institutional, Commercial (Light and Moderate), Industrial, and Septage Haulers. The rate for residential users is calculated by multiplying the number of dwelling units on each property by the annual rate. The dwelling unit rate for a Single Unit Residential user assumes an "average" annual wastewater discharge (i.e., flow) from a home into the sanitary sewer system of 84 HCF (8,400 cubic feet). The Multi-Unit Residential and Trailer Unit rate assumes an "average" annual sewer flow of 75 HCF (7,500 cubic feet). Restaurant, Institutional and Commercial rates are calculated by: (1) measuring the annual metered water use at each property (in one hundred cubic feet or HCF) and multiplying this usage by the flow rate; or (2) measuring the annual sewer flow (in one hundred cubic feet or HCF) from each property and multiplying the measured flow by the effluent rate. Commercial and Industrial charges are calculated based on the annual amount of metered water use at each property, and the strength of the wastewater discharged (i.e., chemical oxygen demand and total suspended solids) into the system from each property. Separate sewer rates are calculated for each component and then added for the total sewer service charge for each property. Annual measurement and testing are performed at each property to confirm the flow and strength. Septage rates are calculated by multiplying the gallons of flow discharged from the septic pumper by the septage rate.

The annual SSF sewer service charge is determined by calculating the domestic water used annually based on every 100 cubic feet or HCF. (1 HCF of water equals 748 gallons.) Once the annual HCF is determined this annual water usage number is attained, that number multiplied by the appropriate rate shown in Attachment B becomes that property's annual sewer charge.

Rate Increases for Single Unit Residential Users

If approved, the maximum sewer service rate for residential users, beginning July 1, 2018, will be an annual flat charge of \$664 for each single unit residential dwelling, an approximately 13% increase from last year. The rate for the sewer service charge will not exceed the amounts shown in the Schedule in Attachment B. The maximum sewer service rates are proposed to increase on July 1st of each year thereafter, through and including July 1, 2022, in accordance with the rates set forth in the attached Schedule.

Rate Increases for Multi-Unit Residential, Trailer Unit, Restaurants, Institutional, Commercial, Industrial, and Septage Users

If approved, the maximum rates for sewer service charges for Multi-Unit Residential, Restaurant, Institutional, Commercial, and Industrial users, beginning July 1, 2018, will not exceed the amounts shown in the Schedule in Attachment B. The maximum sewer service rates are proposed to increase on July 1st of each year thereafter, through and including July 1, 2022, in accordance with the rates set forth in the attached Schedule. The minimum charge that may be imposed annually for each of these customers is also set forth in the attached Schedule.

Pass-Through Rate Adjustments

To ensure that there are sufficient revenues to provide sewer services to our customers, the Town is also proposing to annually pass through to our customers any increases in the rates for wholesale sewer collection and treatment services and any other charges that SSF may impose on the Town that are greater than those set forth in the Schedule below (each a "Pass-Through Adjustment"). If approved, commencing July 1, 2019, and each July 1 thereafter through, and including, July 1, 2022, The Town may annually implement any Pass-Through Adjustment, provided, however, that: (1) any increase in the rates as a result of any Pass-Through Adjustment shall not exceed 10% per year; and (2) in no event shall such rates be increased as a result of a Pass-Through Adjustment by more than the cost of providing sewer service. Prior to implementing any increase in the rates for the sewer service charges as a result of any pass-through adjustment, the Town will give written notice of any applicable rate increase to each property on which the increased rate is to be imposed not less than 30 days prior to the effective date of such rate increase.

Municipal Code Revisions

This action would also amend Subchapter 3.04.160 of the Colma Municipal Code to account for revisions in the rates and charges. Because the Town is adopting a 5 year rate schedule, for administrative ease, the schedule of rates will no longer be included in the Municipal Code itself. The schedule of rates will be available at all times at the office of the City Clerk, and staff will also explore posting the schedule of rates on the Town's website. This will allow the Town to avoid making amendments to the Municipal Code as the rates change year to year.

Public Noticing Requirements

California's Proposition 218 creates certain procedural requirements relating to all property-related charges. Sewer service charges are a property-related charge under Proposition 218.

The Town must provide written notice to each property owner of any new or increased sewer charges advising the owners of the proposed rates and the right to file a "written protest." Only one protest vote is allowed per property.

Specifically, under Proposition 218, the Town must provide each property owner of record with at least than 45 days prior written notice of the proposed new/increased rates or charges. The notice must, at a minimum, identify: (1) the amount of the rate increase or new rate; (2) the basis upon which the new/increased rate was calculated; (3) the reason for the new/increased

rate; and (4) the date, time, location for the public hearing on the new/increased rate. Written notices were mailed on February 5, 2018.

If a majority of the property owners (50% plus 1) files written protests, the City Council may not adopt the new or increased rates. Upon conclusion of the hearing, any written protests received must be tallied to determine whether a "majority protest" has occurred. In the event that the majority protest does not occur, the Town can then proceed with imposition of the new/increased rate or charge.

During the Proposition 218 process, staff has maintained a protest log (Attachment C). This log is a summary of written protests that have been submitted to the Town. Within the log is the property address, name, and reason for the protest.

COUNCIL ADOPTED VALUES

Before adopting the proposed rate increases and assessing new sewer charges on the County Tax Rolls against those properties that are served by the SSF Sanitary Sewer System, the City Council will have allowed a 45-day written protest period along with a public hearing allowing the effected property owners to protests to the City Council regarding the rate increase of their annual sanitary sewer charge. Through this process, City Council has promoted a process where as the City Council can review and rule on such protests in a fair and unbiased manner.

ALTERNATIVES

The City Council could choose to not adopt the ordinance to pass through rate increases as proposed and adopted by the City of South San Francisco. If the City Council decided to not adopt the rate increases, the Town would still be liable to SSF to pay for the SSF Sanitary Sewer Rates increases.

CONCLUSION

Staff recommends that the City Council introduce an Ordinance to increase sewer rates for the properties served by the City of South San Francisco sewer system. Sewer rates are merely pass-through costs paid by the Town to SSF and the proposed rate increases are necessary to recover the costs paid by the Town to SSF.

ATTACHMENTS

- A. Regular Ordinance
- B. SSF Sewer Rate Increase Schedule
- C. Proposition 218 Protest log

ORDINANCE NO. _____
OF THE CITY COUNCIL OF THE TOWN OF COLMA

**ORDINANCE AMENDING SUBCHAPTER 3.04.160 OF THE COLMA MUNICIPAL CODE,
RELATING TO SEWER RATES AND CHARGES**

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

ARTICLE 1. RECITALS.

(a) The Town of Colma (the "Town") provides sewer service to customers within its jurisdiction through contracting either with the City of South San Francisco ("SSF") or the North San Mateo County Sanitation District, and is authorized to impose fees and charges for the provision of such service.

(b) Pursuant to the Town's contractual arrangement with SSF, the Town pays SSF sewer service charges for properties within the Town that are connected to the SSF sewer system at the same rate that SSF charges its own customers. The Town imposes sewer service charges ("Charges") to its customers served by SSF in order to generate sufficient revenue to cover its own obligation to SSF.

(c) SSF has informed the Town that SSF now intends to increase its rates for sewer service charges, effective July 1, 2018, with increases scheduled each July 1 thereafter, through and including July 1, 2022. In order to ensure the Town recovers sufficient revenue to cover its costs, the Town has determined that it is necessary to increase the rates for the Charges to the same levels imposed by SSF.

(d) The Town has six customer classes serviced by SSF: residential (including single-unit residential, multi-unit residential, and trailers), restaurants, institutional, commercial (light and moderate), industrial/monitored, and septage haulers. Each customer class or subclass is further defined in the Subchapter 3.04.160 of the Code.

(e) The particular rate for the Charge for each customer class is determined based on the customer class, and taking into account the amount and certain assumptions regarding concentration of wastewater discharged.

(f) Residential customers are charged based on the number of dwelling units (or in the case of trailers, the number of trailer units), assuming an average annual effluent flow of 84 HCF for single-unit residential, and 75 HCF for multi-unit residential and trailers. Restaurants, institutional, and commercial customers are charged either a minimum charge, which is determined from flow and strength, or are charged on volume based on a rate per one HCF, whichever is greater. Industrial/monitored customers are charged based on inflow or effluent, as well as chemical oxygen demand and total suspended solids (measured in pounds), and are also subject to a minimum charge. Septage haulers are charged based on gallons of flow contributed to the sewer system.

(g) In addition to the rates charged by SSF to the Town, SSF is authorized to pass through to its customers certain wholesale costs associated with sewer collection and treatment.

- (h) In order to ensure that the Town has sufficient revenues to account for such pass-throughs, the Town is proposing to include in the Charges the authorization to pass through such increases to the Town's customers, commencing July 1, 2018 through and including July 1, 2022, in an amount not to exceed 10% (the "Pass-Through").
- (i) The revenues derived from the proposed Charges will not exceed the funds required to provide the services, represent only a pass-through of the cost imposed on the Town by SSF for providing such services to the Town's customers, and shall be used exclusively to pay the Town's costs for providing sewer service to its customers.
- (j) The Charges are equitable to all customer classes.
- (k) The amount of the proposed Charges will not exceed the proportional cost of the services attributable to each parcel upon which they are proposed for imposition.
- (l) The proposed Charges will not be imposed on a parcel unless the services are actually used by, or immediately available to, the owner of the parcel.
- (m) Article XIII D, section 6 of the California Constitution ("Article XIII D") requires that prior to imposing any new property-related fee such as the Charges, or increasing the existing Charges, the Town shall provide written notice (the "Notice") by mail of the proposed increases to the record owner of each parcel upon which the Charges are proposed for imposition and any tenant directly liable for payment of the Charges. The notice further must detail the amount of the Charges proposed to be imposed on each parcel, the basis upon which the Charges were calculated, the reason for the Charges, and the date time and location of a public hearing (the "Hearing") on the proposed Charges.
- (n) Pursuant to Article XIII D such Notice is required to be provided to the affected property owners and tenants directly liable for the payment of the Charges not less than forty-five days prior to the Hearing on the proposed Charges.
- (o) The Town did provide such Notice to the affected property owners and tenants in compliance with Article XIII D. The Hearing was held on March 28, 2018, noticed in the manner and for the time required by law.
- (p) At the Hearing, the City Council ("Council") considered all written materials and written protests to the proposed new or increased Charges received prior to the close of the Hearing, and heard oral testimony concerning the establishment and imposition of the proposed Charges, and at the close of the Hearing, the City Council determined that it did not receive written protests against the establishment and imposition of the proposed Charges from a majority of the affected property owners or tenants directly liable for the payment of such Charges.
- (q) The Council now desires to adopt the Charges for a five-year period in the maximum amounts and on the dates set forth in Exhibit A, effective July 1, 2018, provided, however, that the Council shall not impose the Charges at a rate in excess of the rate imposed by SSF.
- (r) The Council further desires to authorize the Pass-Through for a five-year period.

(s) The Council has further determined that it is appropriate to amend Subchapter 3.04.160 of the Code to reflect the increased rates for the Charges, and for other clarifying changes.

(t) The Charges are being adopted in accordance with the procedures set forth in California Health and Safety Code section 5471 *et seq.* in order to preserve the authority to place the Charges on the property tax roll for collection by the County.

ARTICLE 2. INCORPORATION OF RECITALS.

The Council hereby finds that all of the foregoing recitals and the staff report presented herewith are true and correct and are hereby incorporated and adopted as findings of the Council as if fully set forth herein.

ARTICLE 3. INCONSISTENCY WITH OTHER FEES AND CHARGES.

To the extent the Charges are inconsistent with any other fees, charges, or exactions previously adopted by the Council, it is the explicit intention of the Council that the Charges adopted pursuant to this Ordinance shall prevail.

ARTICLE 4. ADOPTION OF CHARGES.

The Council hereby establishes, adopts and imposes the Charges in the maximum amounts and effective on the dates set forth in Exhibit A, attached hereto and incorporated herein by this reference.

ARTICLE 5. PASS-THROUGH ADJUSTMENTS.

Commencing July 1, 2019, and each July 1 thereafter through and including July 1, 2022, the Town may annually implement any Pass-Through adjustment to pass through any increases in the rates for wholesale sewer collection and treatment services and any other charges that SSF may impose on the Town that are greater than those set forth in Exhibit A hereto; provided, however, that: (1) any increase in the rates as a result of any Pass-Through adjustment shall not exceed 10% per year; and (2) in no event shall such rates be increased by more than the cost of providing sewer service. Prior to implementing any increase in the rates for the Charges as a result of any Pass-Through adjustment, Town staff is directed to give written notice to each property on which the increased rate is to be imposed not less than 30 days prior to the effective date of such rate increase.

ARTICLE 6. AMENDMENT TO SUBCHAPTER 3.04.160 OF COLMA MUNICIPAL CODE.

Table 3.04.160 of the Code is hereby deleted in its entirety.

Subchapter 3.04.160, subsections (c), (d), and (e) are hereby amended as follows:

(c) *Rates for all Properties. ~~for Fiscal Year 2016-2017.~~* From and after the effective date of this Ordinance through fiscal year 2016-2017 subsection and until this Subchapter is repealed or amended to provide otherwise, all users in each class connected to the sewerage works of the City of South San Francisco shall pay annual sewer service charges to the Town of Colma calculated in the manner set forth in paragraph (e) of this section, using the rates set forth in in ~~Table 3.04.160 of this subchapter~~ the schedule on file with the City Clerk.

(d) *Pass-through Rates for all Properties ~~for Fiscal Year 2017-2018 through 2020-2021.~~* Until this Subchapter is repealed or amended to provide otherwise, all users in each class connected to the sewerage works of the City of South San Francisco shall pay annual sewer service charges to the Town of Colma calculated in the manner set forth in paragraph (e) of this section, using the rates hereafter adopted by the City of South San Francisco, provided, however, that the Town shall give written notice of any applicable rate increase to each property on whom the increased rate is to be imposed not less than thirty days prior to the effective date of such rate increase. In no event shall the rates for sewer service imposed by the Town of Colma pursuant to this section exceed the rates in effect for the prior fiscal year by more than 10%.

(e) *Calculation of Sewer Service Charges for all User Classes.*

(1) Sewer service charges imposed on users within the residential class are calculated by multiplying the number of dwelling units on the assessor's parcel by the annual rate per dwelling unit. The dwelling unit rate for single residential assumes an average annual effluent flow of 84 CCF. The multiple residential and trailer unit rate assumes an average annual effluent flow of 75 CCF.

(2) The annual rate set forth in ~~Table 3.04.160~~ the schedule on file with the City Clerk shall be applied to institutional, commercial and non-monitored industrial classes unless the volume charge exceeds the minimum charge, in which event the volume charge shall be applied. The minimum charge shall be applied to monitored industrial classes unless the volume charge or surcharge for suspended solids or surcharge for chemical oxygen demand, or any combination thereof, exceeds the minimum charge, in which event the applicable charge shall be computed by adding the volume charge, surcharge for suspended solids and surcharge for chemical oxygen demand.

(3) Sewer service charges imposed on users within the institutional, light commercial, and moderate commercial classes are calculated by: (a) measuring the annual water use at the parcel and multiplying this number by the flow rate shown in ~~Table 3.04.160~~ the schedule on file with the City Clerk or (b) measuring the annual sewer flow from the parcel and multiplying this number by the effluent rate shown in ~~Table 3.04.160~~ the schedule on file with the City Clerk for restaurant, institutional, or commercial users.

(4) Sewer service charges imposed on users within the industrial and monitored classes are calculated by measuring the annual amount of wastewater flow, chemical oxygen demand and solids discharged from the parcel and multiplying these numbers by the respective rates shown in ~~Table 3.04.160~~ the schedule on file with the City Clerk. Separate sewer rates are calculated for each component and then added for the total sewer service charge for the parcel.

(5) Sewer service charges imposed on septage waste haulers are calculated by multiplying the gallons of flow discharged by the septage waste hauler by the rate shown in ~~Table 3.04.160~~ the schedule on file with the City Clerk.

ARTICLE 7. AUTHORIZATION; FUTURE AMENDMENTS.

The City Manager is hereby authorized and directed to take all actions necessary to implement and collect the Charges, as set forth herein. The City Manager, or his or her authorized designee, is hereby authorized and directed to revise Subchapter 3.04.160 of the Colma Municipal Code, in substantially the form set forth in Article 6 of this Ordinance, to reflect the increased rates. The City Manager, or his or her designee, is authorized to revise Subchapter 3.04.160, to the extent such revision is necessary to reflect the new Charges adopted herein.

In addition, the Town hereby authorizes future amendments or revisions to this Ordinance, including amendments or revisions to the rates established hereby, to be accomplished by resolution.

ARTICLE 8. CEQA COMPLIANCE.

The Council finds that the administration, operation, maintenance, and improvements of the sewer system, which is to be funded by the Charges and set forth herein, are necessary to maintain service within the sewer system as described herein. The Council further finds that the administration, operation, maintenance and improvements of the sewer system, to be funded by the Charges will not expand the sewer system. The Council further finds that the adoption of the rates for the Charges is necessary and reasonable to fund the administration, operation, maintenance and improvements of the sewer systems. Based on these findings, the Council determines that the adoption of the Charges established by this Ordinance is exempt from the requirements of the California Environmental Quality Act pursuant to section 21080(b)(8) of the Public Resources Code and section 15273(a) of the State CEQA Guidelines. The documents and materials that constitute the record of proceedings on which these findings have been based are located at the Town, 1198 El Camino Real, Colma, CA 94014. The custodian for these records is the City Clerk.

ARTICLE 9. 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 10. 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.

Certificate of Adoption

I certify that the foregoing Ordinance No. ___ was duly introduced at a regular meeting of the City Council of the Town of Colma held on March 28, 2018 and duly adopted at a regular meeting of said City Council held on _____, 2018 by the following vote:

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

Dated _____

Raquel "Rae" Gonzalez, Mayor

Attest: _____
Caitlin Corley, City Clerk

EXHIBIT A
SCHEDULE OF MAXIMUM SEWER RATES FOR THE CHARGES
EFFECTIVE JANUARY 1, 2018, AND EVERY JULY 1 THEREAFTER
(PAGE 1 OF 2)

User Group	Basis of Calculation	Maximum Rate FY 2018-2019 \$/Unit/Year	Maximum Rate FY 2019-2020 \$/Unit/Year	Maximum Rate FY 2020-2021 \$/Unit/Year	Maximum Rate FY 2021-2022 \$/Unit/Year	Maximum Rate FY 2022-2023 \$/Unit/Year
Single Unit Residential	Dwelling Unit	664	730	745	760	775
Multi-Unit Residential	Dwelling Unit	596	655	668	682	695
Trailer Unit Residential	Dwelling Unit	596	655	668	682	695
Light Strength Commercial	Minimum Charge	664	730	745	760	775
	Hundred Cubic Feet Inflow	8.5324	9.3856	9.5734	9.7648	9.9601
	Or Effluent	9.4805	10.4285	10.6371	10.8498	11.0668
Moderate Strength Commercial	Minimum Charge	664	730	745	760	775
	Hundred Cubic Feet Inflow	13.3528	14.6880	14.9818	15.2814	15.5871
	Or Effluent	14.8363	16.3200	16.6464	16.9793	17.3189
Restaurants	Minimum Charge	664	730	745	760	775
	Hundred Cubic Feet Inflow	19.5090	21.4599	21.8891	22.3269	22.7734
	Or Effluent	21.6767	23.8443	24.3212	24.8077	25.3038

[CONTINUED ON NEXT PAGE]

EXHIBIT A
SCHEDULE OF MAXIMUM SEWER RATES FOR THE CHARGES
EFFECTIVE JANUARY 1, 2018, AND EVERY JULY 1 THEREAFTER

(PAGE 2 OF 2)

User Group	Basis of Calculation	Maximum Rate FY 2018-2019 \$/Unit/Year	Maximum Rate FY 2019-2020 \$/Unit/Year	Maximum Rate FY 2020-2021 \$/Unit/Year	Maximum Rate FY 2021-2022 \$/Unit/Year	Maximum Rate FY 2022-2023 \$/Unit/Year
Industrial	Minimum Charge	664	730	745	760	775
	Hundred Cubic Feet Inflow	5.1116	5.6227	5.7352	5.8499	5.9669
	Or Effluent	5.6795	6.2474	6.3724	6.4998	6.6298
	Chemical Oxygen Demand Pounds	0.5300	0.5830	0.5946	0.6065	0.6186
	Total Suspended Solids Pounds	1.7159	1.8875	1.9252	1.9638	2.0030
Institutions	Minimum Charge	664	730	745	760	775
	Hundred Cubic Feet Inflow	6.8824	7.5706	7.7220	7.8765	8.0340
	Or Effluent	7.6470	8.4118	8.5800	8.7516	8.9266
Septage Haulers	Gallons	0.3639	0.4002	0.4083	0.4164	0.4247

TOWN OF COLMA
Attachment B - Proposed Sewer Rate Increase
(Rates Constructed by City of South San Francisco)

How rates are calculated:

Residential Rates. Rates for residential properties are calculated by multiplying the number of dwelling units on each property by the annual rate. The dwelling unit rate for Single Residential assumes an "average" annual effluent flow of 8,400 cubic feet. The Multi-Unit Residential and Trailer Unit rate assumes an "average" annual effluent flow of 7,500 cubic feet.

Commercial and Institutional Rates. Restaurant, Institutional and Commercial Rates are calculated by: A) Measuring the annual water use at each property and multiplying this usage by the inflow rate; or by B) Measuring the annual sewer flow from each property and multiplying by the effluent rate.

Industrial Rates. Industrial Rates are calculated based on the annual amount of flow, chemical oxygen demand and total suspended solids from each property. Separate sewer rates are calculated for each component and then added for the total sewer fee for each property. Annual measurement and testing are performed at each property to confirm flow and loading.

Septage Rates. Septage Rates are calculated by multiplying the gallons of flow discharged from the septage pumper by the septage rate.

Attachment B - Proposed Sewer Rate Increases over the next 5 years

User Group	Basis of Calculation	Existing Rate FY 2017-2018 \$/Unit/Year	Proposed Maximum Rate FY 2018-2019 \$/Unit/Year	Proposed Maximum Rate FY 2019-2020 \$/Unit/Year	Proposed Maximum Rate FY 2020-2021 \$/Unit/Year	Proposed Maximum Rate FY 2021-2022 \$/Unit/Year	Proposed Maximum Rate FY 2022-2023 \$/Unit/Year
Single Unit Residential	Dwelling Unit	588	664	730	745	760	775
Multi-Unit Residential	Dwelling Unit	527	596	655	668	682	695
Trailer Unit Residential	Dwelling Unit	527	596	655	668	682	695
Light Strength Commercial	Minimum Charge	588	664	730	745	760	775
	Hundred Cubic Feet Inflow	7.5508	8.5324	9.3856	9.5734	9.7648	9.9601
	Or Effluent	8.3898	9.4805	10.4285	10.6371	10.8498	11.0668
Moderate Strength Commercial	Minimum Charge	588	664	730	745	760	775
	Hundred Cubic Feet Inflow	11.8166	13.3528	14.6880	14.9818	15.2814	15.5871
	Or Effluent	13.1295	14.8363	16.3200	16.6464	16.9793	17.3189
Restaurants	Minimum Charge	588	664	730	745	760	775
	Hundred Cubic Feet Inflow	17.2646	19.5090	21.4599	21.8891	22.3269	22.7734
	Or Effluent	19.1829	21.6767	23.8443	24.3212	24.8077	25.3038
Industrial	Minimum Charge	588	664	730	745	760	775
	Hundred Cubic Feet Inflow	4.5235	5.1116	5.6227	5.7352	5.8499	5.9669
	Or Effluent	5.0261	5.6795	6.2474	6.3724	6.4998	6.6298
	Chemical Oxygen Demand Pounds	0.4690	0.5300	0.5830	0.5946	0.6065	0.6186
	Total Suspended Solids Pounds	1.5185	1.7159	1.8875	1.9252	1.9638	2.0030
Institutions	Minimum Charge	588	664	730	745	760	775
	Hundred Cubic Feet Inflow	6.0906	6.8824	7.5706	7.7220	7.8765	8.0340
	Or Effluent	6.7673	7.6470	8.4118	8.5800	8.7516	8.9266
Septage Haulers	Gallons	0.3220	0.3639	0.4002	0.4083	0.4164	0.4247



ATTACHMENT C

ATTACHMENT C - Proposition 218 Protest Log				
No.	Date	Name	Address	Protest
1				
2				
3				
4				
5				
6				
7				
8				

** The written protest is attached*





STAFF REPORT

TO: Mayor and Members of the City Council
 FROM: Kirk Stratton, Chief of Police
 VIA: Brian Dossey, City Manager
 MEETING DATE: March 28, 2018
 SUBJECT: Off-Street Parking Facilities

RECOMMENDATION

Staff recommends the City Council introduce the following ordinance:

ORDINANCE ADDING COLMA MUNICIPAL CODE SECTION 6.01.075 RELATING TO
 PRIVATELY OWNED AND MAINTAINED OFF-STREET PARKING FACILITIES, AND WAIVE
 A FURTHER READING OF THE ORDINANCE.

EXECUTIVE SUMMARY

The Town of Colma has various off-street parking facilities that are privately owned and open to the general public for purposes of vehicular parking. Some of these facilities have signage allowing the Town to enforce certain vehicle code violations such as illegal parking in Fire Lanes and Handicap parking spaces. Most of these signs are outdated and some even refer to older or non-existent Municipal Code sections. The California Vehicle Code authorizes enforcement under CVC sections 21107.8(e) and 21107.6 and requires the City Council to adopt an ordinance for enforcement. The off-street parking facilities would require proper signage posted in conspicuous locations at the entrance to the property. The Town would be authorized to approve the signage and criteria.

FISCAL IMPACT

None

BACKGROUND

Last year, 2017, staff identified the need for consistent signage at various off-street parking facilities in the Town of Colma. Staff found that some of the signage located at the entrances to off-street parking facilities included non-existent Municipal Code sections and other incorrect information. Refer to exhibit A and exhibit B in the attachments.

Colma Municipal Code Section 6.01.075 would declare, under California Vehicle Code Section 21107.8, that there are privately owned and maintained off-street parking facilities within the Town of Colma that are generally held open to the public for purposes of vehicular parking. Some of the off-street parking facilities include but are not limited to:

- 1) 280 Metro Mall
- 2) Serra Center
- 3) Babies R Us
- 4) Kohl's
- 5) Lucky Chances Casino
- 6) Molloy's Tavern

California Vehicle Codes 22350 – Speeding, 22103 – Reckless Driving, and 23109 – Speed Contest, and the provisions of Division 16.5 (Commencing with section 38000) would apply to the designated off-street parking facilities upon the posting of proper signage by the owner or operator.

Enforcement would not apply to off-street parking facilities unless the owner or operator has posted in a conspicuous place at each entrance, a notice not less than 17 by 22 inches in size with lettering not less than one inch in height, to the effect that the off-street parking facility is subject to public moving vehicle laws and violators may be subject to citation.

Council Adopted Values

Introducing the ordinance to add Colma Municipal Code 6.01.075 regarding privately owned and maintained off-street parking facilities to allow enforcement of specific sections of the vehicle code to include reckless driving, speeding, speed contest, and miscellaneous equipment violations is the *responsible* thing to do as it is in the Town's best interests of the health, safety, and general welfare of the residents of Colma.

ALTERNATIVES

The following alternative course of action is available to the City Council:

1. Do not introduce the ordinance.
2. Introduce the ordinance authorizing specified vehicle code enforcement on off-street parking facilities privately owned and open to the public.

CONCLUSION

Staff is recommending City Council introduce the ordinance adding Colma Municipal Code Section 6.01.075 regarding off-street parking facilities subject to specified traffic laws.

ATTACHMENTS

- A. Ordinance
- B. Exhibit A
- C. Exhibit B

ORDINANCE NO. ____
OF THE CITY COUNCIL OF THE TOWN OF COLMA

**ORDINANCE ADDING COLMA MUNICIPAL CODE SECTION 6.01.075 RELATING TO
 PRIVATELY OWNED AND MAINTAINED OFF-STREET PARKING FACILITIES**

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

ARTICLE 1. RECITALS.

(a) California Vehicle Code, Section 21107.8, authorizes a city or town, by ordinance or resolution, to find and declare that there are privately owned and maintained off-street parking facilities as described in the ordinance or resolution that are generally held open for use of the public for purposes of vehicular parking.

(b) Upon enactment by a city or town of said ordinance or resolution, California Vehicle Code Sections 22350, 23103, and 23109 and the provisions of Division 16.5 (commencing with Section 38000) shall apply to the designated off-street parking facilities upon the posting of required signage by the owner or operator. These specified traffic laws include basic speed law, reckless driving, speed contests and exhibitions of speed, and other various Vehicle Code provisions.

(c) The Town of Colma finds that enforcement of California's public moving vehicle laws on the privately owned and maintained off-street parking facilities designated herein is in the best interests of the health, safety, and general welfare of the residents of Colma.

ARTICLE 2. INCORPORATION OF RECITALS.

The City Council hereby finds that all of the foregoing recitals and the staff report presented herewith are true and correct and are hereby incorporated and adopted as findings of the City Council as if fully set forth herein.

ARTICLE 3. CMC SECTION 6.01.075 ADDED.

Colma Municipal Code shall be amended to add Section 6.01.075 as set forth in full as follows:

6.01.075 Off-street Parking Facilities Subject to Specified Traffic Laws.

(a) The City Council finds and declares that there are privately owned and maintained off-street parking facilities within the Town of Colma that are generally held open for use of the public for purposes of vehicular parking. It is the intent of the City Council that California Vehicle Code, Sections 22350, 23103, and 23109 and the provisions of Division 16.5 (commencing with Section 38000) shall apply to privately owned and maintained off-street parking facilities designated herein.

(b) This section applies to every privately owned and maintained off-street parking facility located within the Town of Colma that is generally held open for use of the public for purposes of vehicular parking, including but not limited to:

- 1) 280 Metro Mall
- 2) Serra Center
- 3) Babies R Us
- 4) Kohl's
- 5) Lucky Chances Casino
- 6) Molloy's Tavern

(c) Notwithstanding subsection (b) above, this section does not apply to an off-street parking facility unless the owner or operator has caused to be posted in a conspicuous place at each entrance to that off-street parking facility a notice not less than 17 by 22 inches in size with lettering not less than one inch in height, to the effect that the off-street parking facility is subject to public moving vehicle laws and violators may be subject to citation.

(d) The Town is hereby authorized to approve additional sign locations and to establish uniform sign sizes, colors, sizes of lettering, and other information that may be required on all signs in order to be in compliance with this section. If the Town establishes such criteria, all signs required by this section shall be brought into compliance within 180 days.

ARTICLE 4. 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 5. NOT A CEQA PROJECT.

The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

ARTICLE 6. 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.

Certificate of Adoption

I certify that the foregoing Ordinance No. ____ was duly introduced at a regular meeting of the City Council of the Town of Colma held on March 28, 2018 and duly adopted at a regular meeting of said City Council held on _____, 2018 by the following vote:

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

Dated _____

Raquel "Rae" Gonzalez, Mayor

Attest: _____
Caitlin Corley, City Clerk



Exhibit A

PRIVATE PROPERTY

PARKING FOR CUSTOMERS WHILE SHOPPING AND TENANTS OF SERRA CENTER. UNAUTHORIZED VEHICLES WILL BE TOWED AWAY AT OWNERS EXPENSE PER 22558(a) OF VEHICLE CODE. COLMA POLICE: 997-8321. PUBLIC TRAFFIC REGULATION ENFORCED IN PARKING LOT PER CMC SECT. 6.223



NOTICE to the PUBLIC
The Property Comprising
SERRA CENTER
is Private Property

SOLICITATION or
DISTRIBUTION of Handbills
is absolutely PROHIBITED
on this property

Serra Center Management Association
1451 39th Street
San Francisco, California 94104
415.791.2222

2017/01/19



Exhibit B

280 Metro Mall



UNAUTHORIZED VEHICLES NOT DISPLAYING
DISTINGUISHING PLACARDS OR LICENSE PLATS
ISSUE FOR PHYSICALLY HANDICAPPED PERSON
WILL BE TOWED AWAY AT OWNER'S EXPENSE.
C.V.C. 22511.8

PRIVATE PROPERTY

UNAUTHORIZED OR IMPROPERLY PARKED
VEHICLES ARE SUBJECT TO IMMEDIATE TOW
AT OWNER'S EXPENSE:
PARKING IS RESERVED FOR CUSTOMERS THEN
SHOPPING AT WESTLAKE SHOPPING CENTER.
NO OVERNIGHT PARKING. NO PARKING IN EXCESS
OF FOUR (4) HOURS.
C.V.C. 22658 (a)

- FIRE LANES -

NO PARKING IN RED ZONES - C.V.C. 22500.1
FOR TOWED VEHICLES CALL D.C.P.D. 650-991-8119
BIG GUYS TOWING 650-359-5163

2017/01/19

HA

CONTRACT

ENTAL

PRO
CONTRACTOR STORE





STAFF REPORT

TO: Mayor and Members of the City Council
 FROM: Michael Laughlin, City Planner, CSG Consultants
 Christopher Diaz, City Attorney
 VIA: Brian Dossey, City Manager
 MEETING DATE: March 28, 2018
 SUBJECT: Smoking Ordinance Study Session

RECOMMENDATION

This item is a study session for informational purposes only. No City Council action is required; however, staff seeks comments, questions, impressions and opinions from each Council member regarding issues and concerns.

EXECUTIVE SUMMARY

Colma's only local smoking prohibition is in Town parks and 20' from an entrance to a park. State law prohibits smoking in restaurants and bars, 20 feet from entryways and operable windows of government buildings and limits smoking within 25 feet of playgrounds. Local San Mateo County ordinances (and ordinances within the state) have been adopted based on local preference and circumstances. The City Council can choose not to place any further local restrictions on smoking or can adopt local regulations to place additional restrictions on smoking. The purpose of the study session is to present types of local regulations for the City Council to consider.

FISCAL IMPACT

None.

BACKGROUND

The Town of Colma does not currently have a stand-alone ordinance regulating smoking. Smoking and second-hand smoke are public health issues that the Town can address by increasing the number of smoke-free environments in the Town. Smoking-related diseases are the leading cause of preventable death in the United States. The U.S. Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke.

Existing state law regulates smoking in certain public and private spaces, including but not limited to: prohibiting smoking within 25 feet of playgrounds and tot lots and expressly authorizes local communities to enact additional restrictions (Health & Safety Code § 104495); prohibiting smoking within 20 feet of entryways and operable windows of government buildings (Govt. Code § 7597); prohibiting smoking of tobacco products in most enclosed places of employment, with some limited exceptions (Labor Code § 6404.5).

State law was amended in 2016 to include “e-cigarettes” in the definition of a tobacco product, and the use of e-cigarettes in the definition of smoking. (Business & Professions Code § 22950.5).

ANALYSIS

The Council can consider regulations in the following policy areas if the Council desires to direct staff to craft an ordinance. A summary of San Mateo County local ordinance provisions is attached as Exhibit A.

Prohibition on smoking within a designated buffer zone

Creating a buffer distance provides a smoke-free zone around entrances to buildings where smoking is prohibited and protects public health by ensuring smoke will not waft or be blown into those buildings.

Daly City, East Palo Alto (for City owned and leased property), Foster City, Redwood City (multi-unit residences), and San Carlos (for City-owned and operated properties) prohibit smoking within 20’ of a building entrance. East Palo Alto prohibits smoking within 30 feet of entrances to City-owned buildings. Many ordinances include an exception for individuals passing by the entrance on the way to another destination to ensure practical enforcement of the ordinance and to avoid an unreasonable burden on the public. A local example of an area where an exception would make sense is Lucky Chances. They have chosen to limit smoking within 20’ of entrances, even though there is no local ordinance which requires this restriction. However, there is a smoking area on the east side of the building along an existing walkway where people who choose to walk that direction would be exposed to second hand smoke as they are walking by.

Currently, the Town has not received any smoking complaints from patrons at the Town’s two shopping centers, freestanding retail stores or any auto dealerships where smoking is currently permitted in all outdoor areas.

Sidewalks, Walkways and Common Areas

In addition to creating a smoke-free zone around entrances to buildings, cities such as Daly City have addressed smoking by restricting it from various public places and walkways. Some key provisions include a smoking prohibition:

- Public places (public and private properties where people can gather);
- Multi-unit residence common areas, except that a landlord may designate a portion of the outdoor area as a smoking area.

- All sidewalks in or adjacent to common interest developments, apartments, shopping centers, and commercial properties with retail establishments, except while actively passing to another destination.

Foster City permits smoking on sidewalks in front of single family residences only. It is not permitted on any other sidewalks in the City.

Outdoor Dining and Service/Waiting Areas

Some jurisdictions have chosen to prohibit smoking in dining and service areas open to the public, including unenclosed dining areas and bus stops. Prohibiting smoking in all public dining areas is meant to protect diners from secondhand smoke. Currently, Colma only has two small outdoor dining areas at Vivana Fair (Starbucks and Chipotle). An outdoor dining area has been approved for Round Table Pizza which will open later this year.

Municipalities with regulations on unenclosed dining and/or service areas include: Belmont, Daly City, Menlo Park, San Bruno and South San Francisco. Foster City allows smoking for 50% of outdoor dining areas.

Multi-Family Apartments and Multi-Family Residences

Below is an inventory of multi-family housing in Colma:

Unit Type	Number of properties	Number of Units
Apartment (5+ units)*	2	23
Fourplex	2	8
Triplex	7	21
Duplex or home w/ADU	36	72
Condominium	1	7
Townhouses	2	81
	Total	212

*One of the properties is a town owned 18-unit senior apartment complex where the lease prohibits smoking in units.

In considering provisions for multi-family residential, it is important to distinguish between types of structures. The Town has a number of duplexes, tri-plexes, four-plexes and some apartments – with a majority in the Sterling Park neighborhood. These are typically in one building with shared walls. They may or may not have shared systems or utilities. Older multi-family buildings typically have shared single walls or ceilings and/or unsealed heating ducts that can allow for the passage of smoke. Most cities only restrict smoking in these types of buildings, where there is a shared ceiling/floor and shared single walls. Some ordinances exempt duplexes or homes with accessory dwelling units (ADU's). If this level of restriction is applied in Colma, it would only apply to approximately 34 units. Some property owners and management companies prohibit smoking through lease restrictions.

The Town has one condominium project on lower B Street. The seven units and ground floor offices are in two buildings. These units have separate walls between units and do not share

common systems – they have their own gas, electric and heating systems and are effectively townhomes (with the exception of the ground floor office area on one of the buildings).

The Town has two attached single-family or townhouse style residential communities – Hoffman and Verano. Each of these units is freestanding with their own exterior walls which abut one another. They do not share building systems or utilities. Since the exterior walls are not shared, most ordinances in San Mateo County (except Foster City) exempt these types of developments from the interior smoking prohibition. However, some entrances to units are close to one another. The City of Foster City includes this prohibition in their ordinance.

In 2014, Berkeley updated their ordinance to restrict smoking in all multi-family units (including townhouses and condominiums) and common areas with two or more units. This restriction is required to be disclosed to future buyers. Most communities that add smoking restrictions to existing condominium and townhouse developments provide for a phase-in period to allow for community outreach and education. The attached article (Exhibit B) provides information on the regulation of smoking by HOA's. In addition to enacting a grace period, local restrictions can grandfather in existing conditions and only apply to new buyers, or, restrictions can be limited to new construction only.

Special Event Permits and Town Events

The Town has an existing Special Event Permit process for private and public events. Provisions within a smoking ordinance could prohibit smoking at these events, or, where the event will have anyone under age 21. All Town sponsored events could also be restricted. However, since Town sponsored events are typically at Town facilities and parks where smoking is prohibited, a separate provision may not be necessary.

Municipalities with similar regulations include: Belmont (City-sponsored events such as parades or fairs), Daly City (city-sponsored events or parades), East Palo Alto (city-sponsored events), Foster City (community-wide special events), and Menlo Park (city-sponsored events). Half Moon Bay is considering adding provisions which apply to private special event permits.

Interplay with Cannabis Restrictions

State law does not permit any person to smoke or ingest cannabis or cannabis in a public place. (H&S Code § 11362.3(a)(1).) However, state law does not define “public place.” State law also does not permit any person to smoke cannabis in a place where smoking tobacco is prohibited. (H&S Code § 11362.3(a)(2).) In response, many communities have chosen to amend their local tobacco smoking ordinances to expressly include and apply to smoking cannabis.

Enforcement

Under most ordinances, enforcement is through complaints filed by citizens. Enforcement could also come through observations by the Town. Enforcement is typically carried out by the Police Department and the Code Enforcement Officer. Typically, a violation of a smoking ordinance is an infraction and a public nuisance, subject to a fine of one hundred dollars (\$100.00) for the first offense, a fine of two hundred dollars (\$200.00) for a second offense committed within one year, and a fine of five hundred dollars (\$500.00) for a third and each additional offense

committed within one year. Enforcement may also occur through administrative citation and fine.

Tobacco Retailer's Permit

In 2008, the Town adopted the San Mateo County's Tobacco Retailer's Permit requirements. Under the County's enabling ordinance, the County Environmental Health Division is authorized to enforce state and local regulations within the Town. Local land use regulations and restrictions can be added, including standards and the requirement for a Conditional Use Permit or a prohibition on certain products, such as flavored cigarettes and vaping liquids. Staff believes that the only retail location for tobacco products in Town is Lucky Chances Casino. If the City Council is interested in future restrictions on the locations where tobacco retailers can locate, the addition of provisions (beyond the Retailer's Permit requirement) can be considered.

Council Adopted Values

The study session is consistent with the Council value of responsibility because it allows the City Council to consider aspects of smoking policy.

Sustainability Impact

N/A

Alternatives

None

CONCLUSION

The City Council is encouraged to ask questions and provide direction to staff. Specifically, staff would like the City Council to discuss and consider the following questions:

1. Should the Town maintain existing smoking policy (no smoking in parks and compliance with state law)? If yes, then there is no need to discuss other questions.
2. Should the Town consider buffer zones at building entrances?
3. Should the Town consider restrictions on private walkways, common areas on private property and public sidewalks?
4. Should the Town consider restrictions around outdoor dining and service/waiting areas?
5. Should the Town consider restrictions for multi-family apartments only, where there are shared walls and floors/ceilings?
6. Should the Town consider restrictions for smoking in Townhomes and Condominiums?
7. Should the Town consider restrictions for smoking at public and private events?
8. Should the Town place additional restrictions on retail tobacco sales?

ATTACHMENTS

- A. Summary Table of San Mateo County Smoking Ordinances
- B. How To Make a Condo Complex Smoke Free by Change Lab Solutions, September 2011



San Mateo County Jurisdiction Tobacco/Smoking Policies --- Last Updated: December 26, 2017

If viewing online (available at www.smhealth.org/TEC), click the underlined jurisdiction name with a "*" symbol to access the jurisdiction's Smoking or Tobacco Retail Permit Policy.

EXHIBIT A

<p>MULTI-UNIT HOUSING (MUH) COMMON AREAS</p> <ul style="list-style-type: none"> Belmont Brisbane Burlingame* Daly City <u>EPA (elevators)*</u> Foster City Menlo Park Redwood City San Bruno <u>San Carlos*</u> San Mateo SSF Unincorporated Areas 	<p>PARKS</p> <ul style="list-style-type: none"> Atherton (rooms in parks)* Belmont* Brisbane (select City-owned parks) Burlingame <u>Cohuna*</u> Daly City* East Palo Alto (EPA) Menlo Park* San Bruno San Carlos (City-owned) South San Francisco (SSF)* Unincorporated Areas* <p>TOBACCO RETAIL PERMIT/LICENSE (TRL)</p> <ul style="list-style-type: none"> Brisbane* <u>Colma*</u> Daly City* <u>EPA*</u> Menlo Park* Millbrae* Pacifica* Portola Valley* Redwood City* San Bruno* San Carlos* San Mateo* SSF* Unincorporated Areas* 	<p>TICKET AREA, INDOOR OR SHELTERED BOARDING, WAITING AREAS OF PUBLIC TRANSIT DEPOTS</p> <ul style="list-style-type: none"> Brisbane Belmont Burlingame (enclosed) Daly City Foster City (enclosed) Menlo Park Millbrae (enclosed) Redwood City (max 50% waiting area as smoking area & separate waiting areas of equal size for smokers & nonsmokers) San Bruno San Carlos San Mateo (enclosed) Woodside (enclosed) 	<p>SPORTS FIELDS, ACTIVITIES, & OTHER CITY EVENTS</p> <ul style="list-style-type: none"> Belmont Brisbane (select City-owned outdoor sports facilities) Burlingame Daly City EPA Foster City (enclosed sports arenas & convention halls) Hillsborough (enclosed mtg/public assembly place)* Menlo Park Millbrae (enclosed)* <u>Redwood City (enclosed)*</u> San Bruno San Carlos (City-owned) San Mateo (enclosed) SSF
<p>INDIVIDUAL UNITS IN MUH</p> <ul style="list-style-type: none"> Belmont (share floor or ceiling) Brisbane Burlingame Daly City (condos exempt) Foster City Redwood City San Bruno San Mateo SSF Unincorporated Areas 	<p>TOBACCO SAMPLING/COUPONS</p> <ul style="list-style-type: none"> Brisbane Daly City Unincorporated Areas <p>CHEMICAL STORAGE AREAS</p> <ul style="list-style-type: none"> Atherton 	<p>BEACHES</p> <ul style="list-style-type: none"> Brisbane (select City-owned beaches) Daly City Pacifica* Unincorporated Areas <p>OUTDOOR EATING AREA</p> <ul style="list-style-type: none"> Belmont Daly City Foster City (50%)* Menlo Park <u>San Mateo*</u> SSF (on City-owned property if designated by City Manager) 	<p>SERVICE LINES</p> <ul style="list-style-type: none"> Belmont Burlingame (indoor service lines) Daly City EPA (enclosed business establishments) Foster City (indoor service lines) Hillsborough Menlo Park Millbrae (enclosed) Redwood City (enclosed) San Bruno San Carlos (enclosed) San Mateo Woodside (enclosed)
<p>E-CIGARETTES, VAPES, ETC.</p> <ul style="list-style-type: none"> Belmont Brisbane Daly City EPA (excludes TRL) Foster City Hillsborough Portola Valley (TRL) Redwood City (MUH) San Bruno San Mateo SSF (City props, rec areas, Downtown, TRL, MUH) Unincorporated Areas 	<p>SIDEWALKS</p> <ul style="list-style-type: none"> Daly City (in/adjacent to common interest developments, apts, shopping centers, & commercial properties w/ retail establishments, except while actively passing to another destination) Foster City (except those adjacent to single-family homes) San Bruno (unless actively moving to another destination) San Mateo (grounds surrounding the buildings, facilities or areas owned or leased by City) 	<p>TOBACCO RETAILER SHOPS</p> <ul style="list-style-type: none"> San Bruno <p>LAGOONS AND WATERWAYS</p> <ul style="list-style-type: none"> San Mateo <p>TOBACCO-FREE PHARMACIES</p> <ul style="list-style-type: none"> Daly City 	



EXHIBIT B

How to Make a Condo Complex Smokefree

July 2008 (revised September 2011)

Although California laws protect people from secondhand smoke at work and in restaurants, shops, and other places, many residents still find themselves exposed to unwanted secondhand smoke in their homes—especially if they live in multi-unit buildings. In condos, where each unit is owned separately, addressing this problem can be especially challenging.¹ This fact sheet answers common questions about how condo owners can make their entire complex, including individual units, smokefree.

Why make a condo complex smokefree?

In addition to the health-related harm drifting tobacco smoke can cause,² it can increase condo maintenance costs (for sealing and repainting walls and cabinets, replacing carpets, and cleaning the ventilation system) and decrease a unit's resale value.³ Trying to block smoke from drifting between units by using air filters, installing an exhaust fan, or sealing crevices is usually ineffective.⁴ Prohibiting smoking altogether is the only sure way to avoid unwanted exposure to this toxic substance.⁵

Who can create a smokefree policy?

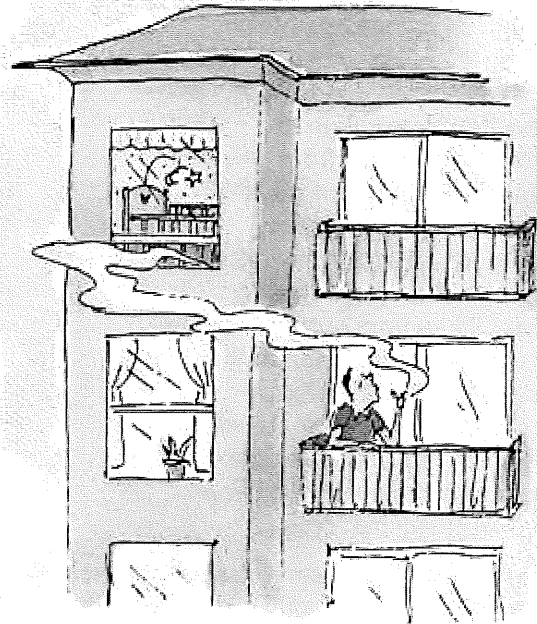
Most people assume that when they buy a home, they will be the ones making decisions about their property. If you live in a condo, however, much of the decision-making power lies with the homeowners' association (HOA).⁶ The HOA, either through its elected board of directors ("the board") or by a vote of the full membership, has the power to enforce or enact regulations controlling the use of property within the complex.

Owning a unit automatically means you are a member of the HOA, and any member of the HOA can begin the process of making a complex smokefree. Many board members are unaware that condos may legally prohibit smoking in part or all of the complex, so it is often up to the HOA members to educate the board. This fact sheet can help.

What areas can be designated smokefree?

Smoking can be restricted on the entire property or only in certain areas.

Indoor common areas: Lobbies, elevators, stairwells, laundry facilities, mail-rooms, and other indoor common areas can be designated smokefree by the HOA. Smoking is already prohibited in such areas in many condo complexes, through HOA restrictions or state or local law.⁷



Illustrations by Janet Cleland
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This fact sheet focuses on options for condo owners. If you are *renting* (either a condo or an apartment unit), see our other fact sheets on smokefree housing available at www.changelabsolutions.org/tobacco-control.



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Law & policy innovation for the common good.

www.changelabsolutions.org • www.changelabsolutions.org/tobaccoquestions

Outdoor common areas:

Courtyards, pools, playgrounds, sandboxes, gardens, pathways, parking areas, and other common areas can also be designated smokefree.⁸ In addition to protecting residents from exposure to unwanted smoke, a smokefree outdoor policy can reduce litter from cigarette butts on condo property and keep children from putting discarded butts in their mouths. Designated smoking areas in the outdoor common space are recommended so that people who smoke can do so away from shared recreational areas.



Individual units: HOAs may even restrict smoking in individual units, which would prohibit all current and future owners, renters, and guests from smoking there. A smoking restriction could include the “exclusive-use” common areas such as balconies and patios.

How can a condo complex be made smokefree?

In addition to state laws that regulate all condominiums, each complex has its own governing documents. These include the *Declaration of Covenants, Conditions, and Restrictions (CC&Rs)*⁹ and the *Rules*.¹⁰

CC&Rs describe restrictions on the use of property in the complex—for example, the number or ages of people permitted to live in a unit. Because the CC&Rs are legally binding restrictions that automatically apply to the buyer, they must be disclosed at the time of sale and officially recorded, like a deed.¹¹ Members of the HOA must vote to approve any changes to the CC&Rs.

Rules contain additional restrictions on the use of property and typically expand upon areas not fully defined in the CC&Rs—for example, whether private barbecue grills are permitted on balconies or what types of vehicles may park in the parking lot. Changes to the Rules only require a vote by the board. Because Rules are easier to pass than CC&Rs, Rules may change relatively frequently.

There are three ways to address smoking in a condo complex using these governing documents:

1. Have the HOA members (the condo owners) vote to **amend the CC&Rs to restrict smoking** in common areas and/or units.
2. Have the HOA members vote to **amend the CC&Rs’ nuisance provision** to include drifting secondhand smoke. (A condo owner can already apply the nuisance provision to unwanted secondhand smoke, but unless the provision expressly states that secondhand smoke is a nuisance, it can be difficult to prove that the amount of drifting smoke is severe enough to be considered a violation of the nuisance provision.)
3. Have the board of the HOA **adopt a new Rule restricting smoking** in common areas and/or units.

People do not have a “right” to smoke—especially in multi-unit housing, where others can be affected. See “There Is No Constitutional Right to Smoke,” a fact sheet available at www.changelabsolutions.org/tobaccoquestions.

Comparing Three Ways to Make a Condo Complex Smokefree

	Amend CC&Rs to prohibit smoking in units or common areas	Amend nuisance provision of CC&Rs to state that secondhand smoke is a nuisance	Adopt a Rule prohibiting smoking in units or common areas
Voting	Requires vote of condo owners, using formal voting procedures.	Requires vote of condo owners, using formal voting procedures.	Voted on only by the board, not all HOA members.
Drafting	The new provision should be written by a lawyer.	The new provision should be written by a lawyer but isn't overly complicated.	Doesn't need to be written by a lawyer.
Expense	Can be expensive due to lawyer fees for drafting and cost to HOA for printing and distributing ballots.	Can be expensive, due to cost of printing and distributing ballots, though lawyer fees should be less than amending the CC&Rs to prohibit smoking because drafting is less complicated.	Very inexpensive because it doesn't incur lawyer fees or ballot costs.
Enforcement	The board has a duty to enforce CC&Rs by fining, restricting the rights of, or suing the noncompliant owner. Individual owners can also enforce CC&Rs by suing the noncompliant owner (and possibly by suing the board if it failed to act to enforce the provision).	The board has a duty to enforce CC&Rs by fining, restricting the rights of, or suing the noncompliant owner. Individual owners can also enforce CC&Rs by suing the noncompliant owner (and possibly by suing the board if it failed to act to enforce the provision).	Only the board can enforce a Rule, usually by fining the noncompliant owner.
Important considerations	Requires votes from enough owners to get passed. Because the owners vote to change the CC&Rs, their participation in the decision may make them more likely to comply with the new no-smoking policy. If there is a violation, CC&Rs may be enforced in more ways than a Rule.	Adding smoking to the nuisance provision would not eliminate smoking in the condo—it would just allow homeowners to more easily use the nuisance provision if secondhand smoke were entering their units. This approach may be useful if a ban on smoking in units isn't feasible.	Because a Rule is only voted on by the board, this approach may work best for making the common areas nonsmoking—a less controversial restriction than smokefree units (although there is nothing preventing a Rule from prohibiting smoking in all parts of the complex). Adopting a smokefree Rule may work better for complexes where the board actively enforces Rules.

How do these three approaches differ?

Amending the CC&Rs is stronger and more enforceable than adopting a new Rule, but it's also potentially more expensive and time consuming. What follows are three areas to consider when weighing the options.

Voting Procedures: With any change to the CC&Rs, HOA members will have to vote using a fairly complicated balloting procedure that must be followed precisely to ensure that the vote is valid.¹² A new Rule, on the other hand, only needs to be voted on by the board rather than all of the HOA members, so it can be done relatively quickly—but it can also be overturned just as quickly by the same or a subsequent board.

Expense: Because the CC&Rs are a legally binding document, a new amendment should be drafted by a lawyer. This can be expensive, but it is important to ensure that the amendment is legally appropriate and enforceable.¹³ (Drafting attorneys may find it helpful to review a sample at www.smokefreeapartments.org/condos.html.) Amending the CC&Rs means the HOA must buy and print the ballots and envelopes required for the voting procedure; making a Rule change doesn't involve these costs. You also don't need to hire a lawyer to draft a new Rule, though it is encouraged. If you draft the Rule without a lawyer, make sure it clearly states what activity is prohibited, which portions of the condo complex are affected, and the penalty for failing to comply with the Rule.

Enforcement: Either the board or an individual owner can act to enforce the CC&Rs, whether it's a new policy prohibiting smoking or an amendment to the nuisance clause.¹⁴ Ordinarily, the board enforces the CC&Rs because it has a legal duty to do so,¹⁵ either by assessing a fine or suspending the unit owner's right to use recreational facilities in the condo. If the board fails or refuses to enforce the CC&Rs, an owner may sue the owner violating the CC&R *and*, in some cases, sue the HOA, if it did not act to enforce the CC&R.¹⁶ (Before bringing suit, the owner may need to first participate in a process to resolve the dispute without going to court.¹⁷)

When it comes to enforcing Rules, however, only the board of the HOA can take action—an owner cannot sue another owner for failing to comply.¹⁸ The board could fine the person who is not following the Rule. Even though individual condo owners cannot enforce the Rules against each other, if the board fails to enforce the Rules, owners can work to recall the board and elect new directors who will enforce them.

How should I decide which approach to take?

A first step could be to find out how the other condo owners in your complex feel about a no-smoking policy. You may want to distribute a survey, especially if you live in a large complex.¹⁹ Then you can assess whether and where owners are willing to restrict smoking.

If you want to restrict smoking inside units, a CC&R amendment is probably better suited than a new Rule, because there are more ways to enforce CC&Rs. Board members also may be reluctant to adopt a Rule that restricts smoking in units because they don't want to upset residents who smoke, so they may be more comfortable putting the decision in the hands of the HOA membership by calling for a vote on whether to amend the CC&Rs instead.

Limiting smoking in common areas will probably be much less controversial than restricting smoking in units, so using the more informal and less costly approach of creating a new Rule might be a more appropriate route.

Another factor that will help you decide between a new Rule and a CC&R change is whether the board



tends to enforce the Rules your complex already has. Because owners cannot enforce Rules, passing a new one is not likely to solve a drifting smoke problem if your board is lax about enforcing Rules to begin with. Also, consider that if the new restriction is ever challenged in court, CC&Rs are more likely than Rules to be upheld by a judge.²⁰

If you are concerned that the condo owners or the board won't vote for a change prohibiting smoking in units because they are hesitant to "tell others what to do," it may be easier to add secondhand smoke to the nuisance provision of the CC&Rs.²¹ However, amending the nuisance clause will not create much (if any) immediate change unless the board or an owner takes action to enforce it, so it should be pursued only if the HOA members seem unwilling to vote for the stronger measure of prohibiting smoking in units.

Changing your condo's policies can be a slow and political process. Getting the votes you need to support a change takes diplomacy and patience: it often can take months from the time you first raise your concerns until the day the votes are counted. For ideas about how to gather support for a new smoking policy, see www.center4tobaccopolicy.org/organizing-introduction.

When should the smokefree provision go into effect?

While restrictions can generally be put into effect immediately,²² delaying implementation—especially for new restrictions on smoking inside units—will give residents time to adjust.²³ A reasonable delay could be anywhere from 60 to 180 days from when the change is approved.

You can also include a "grandfather clause" exempting *current* residents from a new restriction: this exemption would apply only to current owners (or tenants, if a unit is rented), not to future owners or tenants. In general, grandfather clauses are not recommended. Residents who are already suffering from drifting secondhand smoke will not experience any relief, nor will they see other benefits of a smokefree complex such as a reduced fire hazard. Beyond that, new owners—who are not grandfathered in—can complain that they are subject to restrictions that others aren't; if they sue over the smoking ban, a court may agree that enforcing the provision only against certain owners is unfair and decide that the restriction is not legal.²⁴ Still, a grandfather clause may provide a compromise if there is significant opposition and allow a smokefree policy to get enough votes to pass.

If grandfathering seems necessary, it is a good idea to simultaneously alter the CC&Rs' nuisance provision to include secondhand smoke. This way, residents who suffer from secondhand smoke drifting from grandfathered units may be able to more easily enforce the nuisance provision.

What if my complex won't adopt a new Rule or change the CC&Rs?

You may be able to enforce the existing nuisance provision in your condo's CC&Rs, even if it doesn't specifically list smoking as a nuisance. If you have a disability that is made worse by secondhand smoke, you may be able to pursue a disability discrimination claim. You may also be able to bring a lawsuit against a neighbor whose smoke is causing you harm. For more information about each of these options, see our fact sheet, "Options for Condo Owners Suffering from Drifting Secondhand Smoke."

You can also encourage your elected officials to pass a local law against smoking in multi-unit housing. This way, apartments and condos throughout your city or county—not just your own building—could be made smokefree.²⁵

This material was made possible by funds received from the California Department of Public Health, under contract #04-35336. ChangeLab Solutions formerly existed under the name Public Health Law & Policy (PHLP). Any references to PHLP in this publication should now be understood to refer to ChangeLab Solutions. ChangeLab Solutions is a nonprofit organization that provides legal information on matters relating to public health. The legal information provided in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

¹ Although the term *condominium* or *condo* will be used in this document, the information in this fact sheet may also apply to co-ops, subdivisions, common interest developments (CID), planned unit developments (PUD), or other housing that is subject to a declaration of covenants and restrictions and managed by a homeowners' association.

² For more information about the negative health impacts of exposure to secondhand smoke, see US Department of Health and Human Services, Centers for Disease Control and Prevention. *Fact Sheet – Secondhand Smoke*. 2006. Available at: www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm. See also US Department of Health and Human Services, Office of the Surgeon General. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General—Executive Summary*. 2006. Available at: www.surgeongeneral.gov/library/secondhandsmoke/report/executivesummary.pdf.

³ Lingering tobacco residue can make a home difficult to sell and drive down the selling price. Clean-up costs can range from \$1,500 to \$10,000 and do not guarantee that the smell or the harmful chemicals left behind from the smoke will be fully removed. Martin A. "On Tobacco Road, It's a Tougher Sell." *New York Times*, February 8, 2004. Available at: www.nytimes.com/2004/02/08/realestate/on-tobacco-road-it-s-a-tougher-sell.html

⁴ "Exposures of nonsmokers to secondhand smoke cannot be controlled by air cleaning or mechanical air exchange." US Department of Health and Human Services, Office of the Surgeon General. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. 2006, p. 649. Available at: www.surgeongeneral.gov/library/secondhandsmoke/report/chapter10.pdf. See also Center for Energy and Environment. *Reduction of Environmental Tobacco Smoke Transfer in Minnesota Multifamily Buildings Using Air Sealing and Ventilation Treatments*. 2004. Available at: www.mncee.org/Innovation-Exchange/Reports-and-Technical-Documents/Reduction-of-Environmental-Tobacco-Smoke-Transfer/.

⁵ The California Air Resource Control Board declared secondhand smoke a "toxic air contaminant" and concluded that there is no safe level of exposure. Resolution 06-01, Cal. Air Resources Bd. (2006) at 5. Available at: www.arb.ca.gov/regact/ets2006/res0601.pdf.

⁶ This fact sheet uses the term *HOA* to refer to all homeowners' associations, even though some complexes may use a different name.

⁷ If the indoor common area is a place where people such as security guards or maintenance staff work, the California smokefree workplace law prohibits smoking there. See Cal. Lab. Code § 6404.5 (West 2008). Some local governments have passed additional laws banning smoking in indoor common areas, eliminating the need for the condominium association to regulate these areas. Many condo complexes also have restrictions against smoking in indoor common spaces already in their governing documents.

⁸ As with indoor common areas, many condos already have restrictions on smoking in outdoor common areas either in their governing documents or under local law.

⁹ Some condominium associations may use a different term for this document, such as *declaration* or *restrictive covenants*, but this fact sheet will use the term *CC&R* to mean any of these documents.

¹⁰ Many condos also have Bylaws, a Condominium Plan, or Articles of Incorporation, but because those cannot be used to restrict smoking, they will not be discussed here.

¹¹ Cal. Civ. Code § 1353(a) (West 2008).

¹² Although the precise voting procedures vary, all HOAs must distribute secret ballots and two envelopes to each member 30 days

before the deadline for voting. The ballot must be put into one envelope, which is put inside a second envelope. The voter is identified on the outside envelope only. These ballots and envelopes must be prepared by the HOA.

¹³ The chances are fairly small that another owner will sue to overturn your HOA's new smoking prohibition. If that happens, it's helpful to know that there has been at least one case in another state where a court upheld a new CC&R banning smoking in units. An owner who wished to continue smoking in the unit challenged the legality of a new CC&R restricting smoking inside the condos, but the court held that the new CC&R was valid. See *Christiansen, et al., v. Heritage Hills #1 Condo. Ass'n*, WL 4585750 (Colo. Dist. Ct. Nov. 7, 2006). Available at: <http://davis-stirling.com/ds/pdf/smoking.pdf>.

¹⁴ Cal. Civ. Code § 1354(a) (West 2008).

¹⁵ *Duffey v. Superior Court*, 3 Cal. App. 4th 425, 431 (4th Dist. 1992) (noting legal duty of HOAs to enforce CC&Rs); *Cohen v. Kite Hill Cmty. Ass'n*, 142 Cal. App. 3d 642, 650-51 (4th Dist. 1983) (noting that HOAs owe a fiduciary duty to their members).

¹⁶ *Posey v. Leavitt*, 229 Cal. App. 3d 1236, 1246-47 (4th Dist. 1991). However, Boards have some discretion when it comes to enforcement of the governing documents. Boards can weigh the cost of litigation, the gravity of the violation, and the likely outcome of the litigation, and make a good faith determination not to litigate a particular violation. *Beehan v. Lido Isle*, 70 Cal. App. 3d 858, 866-67 (1977).

¹⁷ Cal. Civ. Code § 1369.520 (West 2008).

¹⁸ The method of enforcement used by the board will be different for each HOA and will be described in the governing documents.

¹⁹ A sample survey can be found at www.smokefreeapartments.org/condos.html

²⁰ CC&Rs are presumed valid by courts, "unless the restriction is arbitrary, imposes burdens on the use of lands it affects that substantially outweigh the restriction's benefits to the development's residents, or violates a fundamental public policy." *Nahrstedt v. Lakeside Village Condo. Ass'n*, 8 Cal. 4th 361, 386 (1994) (italics in original).

²¹ Some CC&Rs' nuisance provisions list specific examples of what would be considered a nuisance, such as loud noise at certain hours and foul odors, while others merely make a general statement that any activity or thing affecting residents' health or welfare will not be permitted. If secondhand smoke is expressly defined as a nuisance in the CC&Rs, individuals affected by the smoke no longer have to prove that the impact of the drifting smoke constitutes a "substantial and unreasonable interference" with the use of the unit. This makes it much easier to enforce the nuisance provision.

²² Your HOA's governing documents may require a brief notice period before changes go into effect.

²³ A short delay in implementation of a new smoking restriction may also make the provision seem more reasonable to a judge, if the provision is ever challenged in court by residents who disagree with the policy. As mentioned above, this scenario is unlikely but possible.

²⁴ See *Liebler v. Point Loma Tennis Club*, 40 Cal. App. 4th 1600, 1610-11 (4th Dist. 1995) (holding that enforcement of CC&R restrictions must be "uniformly applied" and not place a burden on the individual owner that is "disproportionate to the benefit to the whole").

²⁵ See Public Health Law & Policy, Technical Assistance Legal Center. *Sample California Ordinance Regulating Smoking in Multi-Unit Residences (with Annotations)*. 2005. Available at: <http://www.phlpnet.org/tobacco-control/products/smokefree-housing-ordinance>.