



**AGENDA
REGULAR MEETING**

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

Wednesday, July 25, 2018
CLOSED SESSION – 5:30 PM
REGULAR SESSION - 7:00 PM

CLOSED SESSION – 5:30 PM

1. **In Closed Session under Government Code § 54957 – PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Title: City Manager

PLEDGE OF ALLEGIANCE AND ROLL CALL – 7:00 PM

ADOPTION OF AGENDA

PRESENTATIONS

- Certificate of Appreciation for Alpha Phi Omega

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

2. Motion to Accept the Minutes from the July 11, 2018 Regular Meeting.
3. Motion Directing the Mayor to Sign Letter Supporting Enforcement Action Against Caltrans for Failing to Clean Bay Area Trash on Roadways and Allowing Trash to Flow Unabated into Local Creeks and the Bay.
4. Motion Approving the Town's Response to the Grand Jury Report Dated June 28, 2018, Regarding "Law Enforcement Officers + Narcan = Lives Saved From Opioid Overdoses."

NEW BUSINESS

5. **PRIMARY ARGUMENT FOR TOT BALLOT MEASURE**

Consider: Motion Authorizing No More Than Two Council Members to Draft a Primary Argument in Favor of the Colma Transient Occupancy ("Hotel") Tax Measure for the November 6, 2018

Statewide General Election.

6. **FIRST AMENDMENT TO EMPLOYMENT CONTRACT FOR CITY MANAGER**

Consider: Motion to Adopt a Resolution Approving First Amendment to Employment Contract with Brian Dossey.

PUBLIC HEARING

7. **SMOKING CONTROL ORDINANCE**

Consider: Motion to Introduce an Ordinance Adding Subchapter 2.08 to the Colma Municipal Code, Relating to Smoking Control and Determining Such Action to be Categorically Exempt from Environmental Review Pursuant to CEQA Guidelines 15061(b)(3) and 15308, and Waive a Further Reading of the Ordinance.

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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1. In Closed Session under Government Code § 54957 – PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: City Manager

There is no staff report associated with this item.



**MINUTES
REGULAR MEETING**

City Council of the Town of Colma
Colma Community Center, 1520 Hillside Boulevard
Colma, CA 94014
Wednesday, July 11, 2018

CLOSED SESSION – 6:00 PM

1. **In Closed Session under Government Code § 54957 – PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Title: City Manager

2. **In Closed Session Pursuant to Government Code § 54957.6 – CONFERENCE WITH LABOR NEGOTIATORS**

Agency Negotiators: Christopher Diaz, City Attorney
Unrepresented Employees: City Manager

CALL TO ORDER – 7:00 PM

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, Diana Colvin and Helen Fisicaro were all present.

Staff Present – City Manager Brian Dossey, City Attorney Christopher Diaz, Chief of Police Kirk Stratton, Administrative Service Director Pak Lin, Director of Public Works Brad Donohue, City Planner Michael Laughlin, and City Clerk Caitlin Corley 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 Colvin 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	✓				
	5	0			

REPORT FROM CLOSED SESSION

City Attorney Christopher Diaz announced that the Council would reconvene the Closed Session after the regular agenda items.

PRESENTATIONS

- Randy Uang from Breath California gave a presentation on the impacts of second hand smoke in multi-unit residential housing.

PUBLIC COMMENTS

Mayor Gonzalez opened the public comment period at 7:26 p.m. Dustin Chase of Lucky Chances thanked the Council for their attendance at the Lucky Chances 20th Anniversary Celebration. The Mayor closed the public comment period at 7:27 p.m.

CONSENT CALENDAR

3. Motion to Accept the Minutes from the June 27, 2018 Regular Meeting.
4. Motion to Approve Report of Checks Paid for June 2018.
5. Motion to Accept Informational Report on Recreation Department Programs, Activities, Event and Trips for the Second Quarter of 2018.
6. Motion to Adopt a Resolution Authorizing the City Manager to Execute Agreements with the California Department of Transportation for the El Camino Real Bicycle and Pedestrian Improvement Plan and Amending the Town’s 2018-2019 Capital Improvement Plan.
7. Motion to Adopt a Resolution Approving Bid Document Package and Authorizing Staff to Advertise Notice Inviting Bids for the Sterling Park Playground Improvement Project.

Action: Council Member Fiscaro moved to approve the Consent Calendar items #3 through #7; 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 Fiscaro	✓				
	5	0			

NEW BUSINESS

8. SERRAMONTE BOULEVARD & COLLINS AVENUE MASTER PLAN AND CONCEPTS

City Planner Michael Laughlin introduced consultants from Dyette & Bhatia to give the presentation. The Mayor called for a short break from 8:23 p.m. to 8:39 p.m. for the Council and public to examine posters of proposed roadway changes. Mayor Gonzalez opened the public comment period at 8:39 p.m. Residents Tom Taylor, Liz Taylor and business owner Victor Hung made comments. The Mayor closed the public comment period at 8:49 p.m. Council discussion followed.

Action: Council Member Fiscaro moved to direct staff to bring concepts for Serramonte West back at a future Council Meeting for further consideration, and to move forward developing plan for Concept 1 on Serramonte East, Concept 1 on Collins Avenue and Concept 1 on the Serramonte/Junipero Serra Intersection Modification; 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 Fisicaro	✓				
	5	0			

COUNCIL CALENDARING

The next Regular City Council Meetings will be on Wednesday, July 25, 2018 at 7:00 p.m.
The Regular City Council Meeting on August 8, 2018 will be cancelled.

REPORTS

Raquel "Rae" Gonzalez

Council of Cities Dinner, hosted by East Palo Alto, 6/29/18

John Irish Goodwin

League of California Cities Executive Forum, 6/27/18 – 6/28/18

City Manager Brian Dossey gave a report on the following topics:

- The Colma Community Fair will be on Saturday, July 14, 2018.
- There will be a possible Closed Session at 5:30 p.m. on Wednesday, July 25, 2018.
- Colma Police Department did a great job handling two major funerals this past week.

ADJOURNMENT

Mayor Gonzalez adjourned the regular session of the meeting at 9:51 p.m. in memory of Roger Peters, former City Attorney for the Town for over 20 years.

Council returned to the Closed Session. The Mayor adjourned the meeting at 10:30 p.m.

Respectfully submitted,

Caitlin Corley
City Clerk





STAFF REPORT

TO: Mayor and Members of the City Council
 FROM: Brian Dossey, City Manager
 MEETING DATE: July 25, 2018
 SUBJECT: Letter of Support – Save the Bay/CalTrans

RECOMMENDATION

Staff recommends the City Council adopt the following motion:

MOTION DIRECTING THE MAYOR TO SIGN LETTER SUPPORTING ENFORCEMENT ACTION AGAINST CALTRANS FOR FAILING TO CLEAN BAY AREA TRASH ON ROADWAYS AND ALLOWING TRASH TO FLOW UNABATED INTO LOCAL CREEKS AND THE BAY.

EXECUTIVE SUMMARY

On July 10, 2018, members of the City Council received an e-mail from “Save the Bay” (attachment A) requesting the Town’s support, via letter, urging the Regional Water Quality Control Board to take enforcement action against Caltrans for failing to clean Bay Area roadways and allowing trash to flow unabated into local creeks and the Bay.

Attached is a sample of the letter (attachment B) for the Mayor to sign as well as an “Open Forum” article in the San Francisco Chronicle from February 2018, by Save the Bay Executive Director, David Lewis (attachment C) that details CalTrans behavior when it comes to following the Clean Water Act.

FISCAL IMPACT

None

BACKGROUND

The Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. The basis of the CWA was enacted in 1948 and was called the Federal Water Pollution Control Act, but the Act was significantly reorganized and expanded in 1972. “Clean Water Act” became the Act’s common name with amendments in 1972.

Under the CWA, EPA has implemented pollution control programs such as setting wastewater standards for industry. EPA has also developed national water quality criteria recommendations for pollutants in surface waters.

The CWA made it unlawful to discharge any pollutant from a point source into navigable waters, unless a permit was obtained. EPA's [National Pollutant Discharge Elimination System \(NPDES\)](#) permit program controls discharges. Each industrial, municipal, and other facilities must obtain permits if their discharges go directly to surface waters. The Town has to abide by the NPDES permit program controls.

Save the Bay is requesting that cities throughout the Bay Area sign the attached letter urging the San Francisco Bay Regional Water Quality Control Board to take immediate enforcement action against Caltrans for failing to implement trash control measures and protect the Bay from roadway pollution.

Save The Bay is the largest regional organization working to protect, restore and celebrate San Francisco Bay since 1961. Save The Bay mobilizes thousands of Bay Area residents to protect and restore the Bay for future generations, both as advocates in their community and volunteers on the shoreline. In this era of climate change and a growing population, they work with scientists and policymakers to protect the Bay as our region's most important natural resource--essential to the environment, economy, and quality of life.

ANALYSIS

Staff recommends the City Council make a motion directing the Mayor to sign the attached letter supporting enforcement action against CalTrans for failing to clean Bay Area trash of roadways and allowing trash to flow unabated into local creeks and the Bay. According to Save the Bay, "CalTrans has been in violation of its storm water permit requirements for several years, and still does not have a credible plan for reducing trash in our region, despite the San Francisco Bay Regional Water Quality Control Board's December 2016 Notice of Violation (NOV)."

It appears Caltrans has partnered with a handful of Bay Area communities to prevent and clean up trash, however the agency has yet to install trash capture devices along El Camino Real in Colma, whereas the Town has had to install them along a majority of their roadways to remain in compliance with NPDES permit requirements.

By signing this letter, staff hopes CalTrans will take notice and begin to partner with agencies to install trash capture devices along their roadways and highways, as well as remove trash and debris before it flows into creeks and the Bay.

The following agencies have also signed this letter; Contra Costa County, Fremont, Palo Alto, San Mateo, City of Santa Clara, Milpitas, Mountain View, San Rafael, Morgan Hill, Cupertino, and San Jose.

Alternatives

Staff has identified the following options for Council's consideration:

1. The Council could choose not to sign the letter request from Save the Bay.

Values

This action is consistent with the Council adopted value of Responsibility because protecting the environment is consistent with our Climate Action Plan.

CONCLUSION

Staff recommends the City Council make a motion directing the Mayor to sign the attached letter supporting enforcement action against CalTrans for failing to clean Bay Area trash of roadways and allowing trash to flow unabated into local creeks and the Bay.

Attachments

- A. E-mail request from Save the Bay
- B. Letter of Support
- C. Open Forum Article from Save the Bay



From: Amanda Cobb [<mailto:baysmartfellow@savesfbay.org>]
Sent: Tuesday, July 10, 2018 12:00 PM
To:
Subject: Caltrans Letter Signature Request

Dear Council Member,

I am contacting you today to request your signature on a letter urging the Regional Water Quality Control Board to take enforcement action against Caltrans for failing to clean Bay Area roadways and allowing trash to flow unabated into local creeks and the Bay.

The agency has been in violation of clean water requirements for several years and has yet to provide a plan for coming into compliance and preventing trash from polluting the Bay. Trash on Caltrans highways and state roads also makes its way into city and county storm drains, which increases the burden on our local agencies to comply with their own trash reduction requirements. Over 8,000 Save The Bay supporters have signed our petition directed at the Water Board (www.savesfbay.org/caltrans), and the issue has also garnered recent media attention; please see the attached San Francisco Chronicle op-ed from our Executive Director David Lewis.

Will you join Save The Bay in calling upon the Water Board to require Caltrans to clean its roadways immediately? Thank you for your consideration, and I'm happy to answer any questions you might have

Amanda Cobb
Policy Fellow, Save The Bay
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510.463.6838
www.saveSFbay.org

SAVE
THE
BAY





TOWN OF COLMA

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City Council

Raquel P. Gonzalez
Mayor

Joanne F. del Rosario
Vice Mayor

John Irish Goodwin
Council Member

Diana Colvin
Council Member

Helen Fiscaro
Council Member

City Manager

Brian Dossey
City Manager

San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

July 25, 2018

Re: Trash on Bay Area Caltrans roads

Dear Chair Young and Board members,

As local, county, state and congressional elected officials representing the Bay Area, we urge the San Francisco Bay Regional Water Quality Control Board to take immediate enforcement action against Caltrans for failing to implement trash control measures and protect the Bay from roadway pollution. The agency has been in violation of its storm water permit requirements for several years, and still does not have a credible plan for reducing trash in our region, despite the Board's December 2016 Notice of Violation (NOV).

On the Bay Area's roads, Caltrans' failure is all too visible. Litter on Bay Area freeways and state roads continues to pile up, blow and flow through storm drains into creeks and San Francisco Bay, where it poisons fish and wildlife, smothers wetland habitat, and defaces the shoreline. Caltrans' neglect also places a heavy burden on our cities to clean up trash that originates on Caltrans roads. Once trash from state roads enters a storm drain or creek, the cost to remove it shifts from Caltrans to local jurisdictions already striving to meet their own trash reduction requirements.

While Caltrans has partnered with a handful of Bay Area communities to prevent and clean up trash, the agency needs to do much more to address its pervasive trash problem. We urge the Board to require the following immediately in an enforcement order to Caltrans:

- Install trash capture devices in "very high" and "high" trash generation areas wherever feasible;
- Increase frequency of trash removal; and
- Collaborate with municipalities and local agencies to implement these solutions.

As we work to protect the Bay Area and California from rollbacks of federal environmental protections, you must ensure that Caltrans obeys the law and complies with the Clean Water Act. You should require the agency to clean up trashy roads, install full trash capture devices in the most littered areas, and pursue appropriate penalties for its many years of permit violations.

Sincerely,

Raquel "Rae" Gonzalez, Mayor
Town of Colma

San Francisco Chronicle

OPEN FORUM February 16, 2018

Caltrans, stop trashing San Francisco Bay

By David Lewis

Litter on California's freeways and state roads is a disgrace, and it's also one of the biggest reasons San Francisco Bay is choked with trash. Every time it rains, trash from freeways and busy state roads, like El Camino Real and San Pablo Avenue, pours through storm drains into creeks and, ultimately, San Francisco Bay. Bottles, wrappers, Styrofoam, straws and cigarettes poison fish and wildlife, smother wetland habitat and deface the shoreline.

It's time for our state transportation agency, Caltrans, to obey the law and stop polluting our waters. For years, Caltrans has violated the federal Clean Water Act and state storm water permits that prohibit uncontrolled trash flows from its roads. Who bears the burden of that violation? Bay Area cities, which are already striving to meet their own legal obligation to allow zero trash flow to the bay by 2022.

That's because trash that drains off state roads becomes the local city's responsibility. So Caltrans ignoring road trash means cities from Oakland to Santa Clara face higher cleanup bills, or even fines for polluting the bay. That's not fair. And when a state agency ignores the law, it becomes tougher to hold private individuals and companies accountable for polluting the bay.

Fortunately, the solutions are clear. Caltrans must remove roadside litter more often, and put trash-capture devices in storm drains on highways and right-of-ways. A few of these devices have been installed in problem locations, but only where cities pressed Caltrans hard for action. In Richmond, Caltrans paid to install two trash separators in storm drains near I-580 that will screen water draining off 831 acres of urban streets. In San Jose, Caltrans agreed to fund a partnership with the city's Conservation Corps to increase freeway cleanups.

Those efforts stop only a fraction of the trash headed from state roads to the bay. In most of the identified trash hot spots, Caltrans is doing nothing — even where trash separators could be incorporated into needed road maintenance. The agency is years behind in dedicating money and setting a specific timeline to cut trash pollution, claiming funding constraints even though its budget this year is \$11.3 billion.

The San Francisco Bay Regional Water Quality Control Board called Caltrans' behavior "deficient" more than three years ago, and issued a formal notice of violation over a year ago. But the board has not used its power to mandate actions and penalties for these violations. The victims are seals, pelicans and other wildlife choked and poisoned by trash in the bay.

It's unacceptable for our state agencies to keep violating the Clean Water Act, especially as Gov. Jerry Brown and the state Legislature proclaim our state will uphold federal environmental laws that the Trump administration is trying to erode. The regional water board should immediately take enforcement action against Caltrans and require the agency to obey the law by cleaning up road litter and installing full trash-capture devices in the worst areas.

Continued violations deserve penalties and fines, just like a private polluter would face. Until that reckoning, the state is shirking its duty to protect San Francisco Bay, our fish and wildlife, and public health. So clean up your roads, Caltrans. Stop making San Francisco Bay wildlife and Bay Area cities pay for your pollution.

David Lewis is the executive director of Save The Bay. More at www.saveSFbay.org/caltrans





STAFF REPORT

TO: Mayor and Members of the City Council
FROM: Kirk Stratton, Chief of Police
VIA: Brian Dossey, City Manager
MEETING DATE: July 25, 2018
SUBJECT: Grand Jury Response

RECOMMENDATION

Staff recommends that the City Council make the following motion:

MOTION APPROVING THE TOWN'S RESPONSE TO THE GRAND JURY REPORT DATED JUNE 28, 2018, REGARDING "LAW ENFORCEMENT OFFICERS + NARCAN = LIVES SAVED FROM OPIOID OVERDOSES."

EXECUTIVE SUMMARY

The City Council is required under California penal code section 933.05 to respond to the Grand Jury Report. The draft response letter is attached as Attachment B.

FISCAL IMPACT

There are no fiscal implications associated with the approval of the Town's response to the Grand Jury report.

Background

The County Grand Jury is a volunteer body of 19 citizens, selected at random from a pool of nominees, to investigate local governmental agencies and make recommendations to improve the efficiency of local government. The June 28, 2018 Grand Jury report contains findings and recommendations on a number of subjects that are applicable to agencies in San Mateo County. The Presiding Judge of the County Superior Court has formally requested that the Town review the report and file a written response indicating the following:

- That the Town agrees or disagrees, in whole or in part, with the findings;

- That the recommendation has been implemented, will be implemented, requires further analysis, or will not be implemented; and
- An explanation of the reason for any disagreement with findings or recommendations;
- The response was approved by your governing body at a public meeting.

ANALYSIS

Grand Jury Findings

The proposed July 25, 2018 Grand Jury response, which includes the Grand Jury's findings and recommendations, is attached as Attachment B.

Council Adopted Values

Approving the Town's Grand Jury response is in the best interest of the Town and allows the police department to continue to provide quality services with regards to public safety.

CONCLUSION

Staff recommends that the City Council approve, by motion, the Town's proposed response to the June 28, 2018 Grand Jury report regarding "Law Enforcement Officers + Narcan = Lives Saved From Opioid Overdoses."

ATTACHMENTS

- A. Copy of Grand Jury Report
- B. Town's draft response letter for June 28, 2018 Grand Jury Report



LAW ENFORCEMENT OFFICERS + NARCAN = LIVES SAVED FROM OPIOID OVERDOSES¹

[Issue](#) | [Summary](#) | [Background](#) | [Discussion](#) | [Findings](#) | [Recommendations](#)
[Request for Responses](#) | [Methodology](#) | [Bibliography](#) | [Glossary](#) | [Appendixes](#) | [Responses](#)

ISSUE

Should law enforcement officers and public employees in San Mateo County be trained and equipped to provide emergency opioid overdose medication to prevent deaths?

SUMMARY

The opioid epidemic is not somebody else's problem. Over 42,000 Americans died of opioid overdose in 2016.² In that year, opioid deaths in California exceeded 1,900, including 19 people in San Mateo County (the County).³

Opioids of all varieties can kill. Abuse of heroin and prescription opioids are the leading causes of opioid overdose in the County. New opioids pose an even greater threat. Fentanyl and its derivatives are opioids 50 to 100 times more powerful than prescription opioids (such as Oxycodone) and heroin. While not yet reported being found in the County, carfentanil, an illegal laboratory-created analog that is estimated to be 10,000 times more powerful than morphine, has been increasingly implicated in overdose deaths nationwide.

Carfentanil and other powerful fentanyl derivatives not only endanger the lives of users but also present a potential source of accidental exposure (through skin contact or breathing airborne particles) for law enforcement officers and other first responders.⁴ A lethal dose of Fentanyl may be as low as 2 to 3 milligrams, less than 3 grains of salt.⁵

Opioid overdose may induce respiratory failure which, if left untreated, will lead to severe brain damage and death within minutes.⁶ Administration of naloxone is the standard emergency treatment to reverse opioid overdose. Naloxone is safe, fast acting, and effective, having been used by medical personnel in its injectable form since 1971.⁷

¹ NARCAN® (naloxone HCl) Nasal Spray is the first and only FDA-approved nasal form of naloxone for the emergency treatment of a known or suspected opioid overdose. Use of the term "Narcan" in this report is neither an endorsement of NARCAN nor Adapt Pharma, Inc. Narcan is used in this report as a generic reference to intranasal naloxone.

² Centers for Disease Control. "Understanding the Epidemic" Last modified August 30, 2017.

<<https://www.cdc.gov/drugoverdose/epidemic/index.html>>.

³ California Department of Public Health, "San Mateo Numbers at a Glance" *California Opioid Overdose Surveillance Dashboard* (2018). Accessed February 26, 2018. <https://pdop.shinyapps.io/ODdash_v1>

⁴ DEA Public Affairs, "DEA Warning to Police and Public: Fentanyl Exposure Kills" *Drug Enforcement Agency*, June 10, 2016. <<https://www.dea.gov/divisions/hq/2016/hq061016.shtml>>

⁵ U.S. Department of Justice, "A Briefing Guide for First Responder" *Drug Enforcement Agency*, June 6, 2017: 9. <https://www.dea.gov/druginfo/Fentanyl_BriefingGuideforFirstResponders_June2017.pdf>.

⁶ Zawn Villines, "What Happens After a Lack of Oxygen to the Brain" *Spinalcord.com*. Last Modified June 13, 2016. <<https://www.spinalcord.com/blog/what-happens-after-a-lack-of-oxygen-to-the-brain>>

⁷ Food and Drug Administration. "Summary Review for Regulatory Action: NARCAN® (naloxone hydrochloride) nasal spray," *FDA Approved Drug Products*. Last modified January 24, 2017.

<https://www.accessdata.fda.gov/drugsatfda_docs/summary_review/2017/208411s001SumR.pdf>

Equipping law enforcement officers with intranasal naloxone (trade name Narcan®) can expedite treatment for overdose victims and officers who are accidentally exposed to powerful fentanyl derivatives.

Law enforcement officers can be the first to respond to an opioid overdose, particularly in more sparsely populated areas.⁸ Even when paramedics are the first to respond to an overdose, if the scene compromises their safety, paramedics must wait until law enforcement arrives and secures the area before offering medical assistance.

Lethal doses of fentanyl derivatives can be accidentally absorbed, posing a risk of overdose to those individuals whose jobs bring them into potential proximity. In particular, law enforcement officers and employees in the Coroner's Office and the Sheriff's Forensic Laboratory are at heightened risk of exposure.⁹ Equipping these at-risk employees with intranasal naloxone can mitigate their risk from accidental exposure. Police dogs in K-9 units are also at special risk and can also be protected with naloxone.

Law enforcement officers, following approximately one hour of training, can easily administer intranasal naloxone to opioid overdose victims. Available in the United States since November 2015, all first responders in the County are authorized to carry intranasal naloxone subject to being able to fulfill EMS standards and requirements. Although the San Mateo County Joint Narcotics Task Force (the NTF) is currently developing an officer-carry naloxone pilot program, no law enforcement agencies in the County train and equip their personnel to carry and administer intranasal naloxone.¹⁰ The only emergency responders within the County currently carrying naloxone are fire department and ambulance paramedics (paramedics).¹¹

In 2017, the White House Commission on Combating Drug Addiction and the Opioid Crisis concluded: "We must equip all law enforcement in the United States with naloxone to save lives."¹² Over 1,200 law enforcement agencies in 39 states have authorized officers to carry naloxone. In California, 36 law enforcement agencies currently equip officers with naloxone and 6 agencies have approved, but not yet implemented, naloxone programs (Appendix 1).¹³

The 2017-18 San Mateo County Civil Grand Jury recommends that all law enforcement officers in the County, and employees of the Sheriff's Forensic Lab and County Coroner's Office be equipped with intranasal naloxone on their person or in their vehicles as a minimum standard of practice.

⁸ Emergency Medical Services, "When Every Second Counts: San Mateo County Emergency Medical Services System Overview 2015-2016" *County of San Mateo*. Accessed on March 5, 2018.

<https://www.smchealth.org/sites/main/files/file-attachments/ems_annual_final_0.pdf>

⁹ DEA Public Affairs, "DEA Warning to Police and Public: Fentanyl Exposure Kills" *Drug Enforcement Agency*, June 10, 2016. <<https://www.dea.gov/divisions/hq/2016/hq061016.shtml>>

¹⁰ Ibid.

¹¹ Grand Jury interviews with law enforcement agencies and other County officials.

¹² The President's Commission on Combating Drug Addiction and the Opioid Crisis, "Final Report Draft", Presidential Commission Reports. by Chris Christie, Charlie Baker, Roy Cooper, Patrick J. Kennedy, Bertha Madras, and Pam Blondi. Last Modified November 1, 2017: 119.

<https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Final_Report_Draft_11-1-2017.pdf>.

¹³ Grand Jury interviews and investigations.

Defined Terms

The County	San Mateo County
K-9	Canine Law Enforcement Unit
Paramedics	Fire department and ambulance paramedics in San Mateo County (County)
NTF	Narcotics Task Force (County)
CDC	Centers for Disease Control and Prevention (Federal)
DEA	Drug Enforcement Administration (Federal)
SWAT	Special Weapons and Tactics Unit (County)
CHS	San Mateo County Health System (County)
EMS	Emergency Medical Services (County)
FDA	U.S. Food and Drug Administration (Federal)
HHS	U.S. Department of Health and Human Services (Federal)
NIDA	National Institute of Drug Abuse
NIH	National Institutes of Health
NCHS	National Center for Health Statistics

BACKGROUND

On October 26, 2017, the U.S. Department of Health and Human Services declared the opioid crisis a nationwide public health emergency.¹⁴ Opioid overdoses killed over 42,000 Americans in 2016 (an average of over 115 per day).¹⁵ More than 2.5 million Americans abused opioids in 2015.¹⁶

¹⁴ Eric D. Harden, “Determination that a Public Health Emergency Exists” *Office of the Assistant Secretary for Preparedness and Response*, Last modified October 26, 2017.

<<https://www.phe.gov/emergency/news/healthactions/phe/Pages/opioids.aspx>>

¹⁵ California Department of Public Health, *San Mateo Numbers at a Glance* (2018).

¹⁶ Department of Health and Human Services, “Key Substance Use and Mental Health Indicators in the United States: Results from the 2015 National Survey on Drug Use and Health” *Substance Abuse and Mental Health Services Administration*. Last modified September 2016. <<https://www.samhsa.gov/data/sites/default/files/NSDUH-FFR1-2015/NSDUH-FFR1-2015/NSDUH-FFR1-2015.pdf>>.

Opioids

Opioids are powerful pain relievers prescribed to alleviate moderate to severe pain.¹⁷ Prescription opioids, including codeine, hydrocodone, morphine, and oxycodone, are among the most prescribed drugs in the country. They are ordinarily safe and reliable when prescribed as part of a strictly supervised, short-term treatment plan to relieve suffering caused by acute pain.¹⁸ But, patients using opioids to treat chronic pain are at risk of abuse and addiction.¹⁹ Among patients who take opioids for more than 30 days in the first year, 47 percent continued to do so for three years or longer.²⁰ The Centers for Disease Control and Prevention (CDC) reports that up to 25 percent of patients who are prescribed opioids for long-term pain management struggle with addiction.²¹ Of the more than 42,000 opioid overdose deaths in 2016, an estimated 14,400 were the result of prescription opioid overdose.²²

In response to the opioid epidemic, the medical community is restricting access to prescription opioids.²³ When opioid abusers lose access to their prescriptions, they often turn to illegal means of obtaining opioids.²⁴ Among the most dangerous opioids they can obtain are certain synthetic opioids, such as fentanyl, carfentanyl, and their derivatives (fentanyl derivatives). Fentanyl derivatives are chemically related to, and utilize the same neurological pathways as other opioids such as morphine and codeine. However, fentanyl derivatives can be extraordinarily potent, delivering more than 50 times the dose of opioids as morphine.²⁵

Opioid abusers who have lost their prescriptions are increasingly turning to these fentanyl derivatives due to their relatively low cost, accessibility, and potency. As a result, synthetic opioid-related deaths nationwide have increased from 3,000 in 2013, to 20,100 in 2016 – an increase of over 500 percent.²⁶

¹⁷ National Institute on Drug Abuse, “Opioids” *National Institutes of Health*. Accessed February 26, 2018. <<https://www.drugabuse.gov/drugs-abuse/opioids>>

¹⁸ Ibid.

¹⁹ Brady Dennis, “Opioids are among the most prescribed drugs. Here are the most common versions” *Washington Post*, April 14, 2014. <www.washingtonpost.com/news/to-your-health/wp/2014/04/14/ban-some-pain-killers-here-are-6-common-opioids/>

²⁰ National Institute of Drug Abuse, “Opioid Prescribers Play a Key Role in Stopping the Opioid Overdose Epidemic” *National Institutes of Health*. Last modified March 2017.

<<https://www.drugabuse.gov/publications/improving-opioid-prescribing/improving-opioid-prescribing>>

²¹ Centers for Disease Control and Prevention, “Prescription Opioid Overdose Data” Last Modified August 1, 2017. <<https://www.cdc.gov/drugoverdose/data/overdose.html>> .

²² Ibid.

²³ Bloomberg School of Public Health, and the Clinton Foundation, Clinton Health Matters Initiative, “*The Opioid Epidemic from Evidence to Impact*” Johns Hopkins, October 2017. Pg. 13.

<<https://www.jhsph.edu/events/2017/americas-opioid-epidemic/report/2017-JohnsHopkins-Opioid-digital.pdf>>

²⁴ German Lopez, “The opioid epidemic, explained” *Vox*, December 21, 2017. <<https://www.vox.com/science-and-health/2017/8/3/16079772/opioid-epidemic-drug-overdoses>>

²⁵ “Synthetic Opiates List--Drugs that Derive from Opium,” *Opium.com*, Accessed on February 26, 2018.

<<http://www.opium.org/synthetic-opiates-list-drugs-derive-opium.html>>

²⁶ Josh Katz, “The First County of Fentanyl Deaths in 2016: Up 540% in Three Years” *New York Times*, September 2, 2017. <<https://www.nytimes.com/interactive/2017/09/02/upshot/fentanyl-drug-overdose-deaths.html>>

Naloxone

Naloxone (naloxone hydrochloride) is an opioid antidote that blocks opioid overdose and reverses its symptoms. It is a safe, non-narcotic drug that can be easily administered nasally or by injection.²⁷ Naloxone is considered safe enough to administer as a diagnostic tool with unresponsive patients to eliminate opioid overdose as a possible cause.²⁸ Narcan[®], the brand of naloxone that is commonly used by emergency responders, is a nasal aerosol spray.

An opioid overdose may cause respiratory failure, which can lead to asphyxiation, cardiac arrest, and death.²⁹ Once administered, naloxone can reverse the overdose and restore breathing within minutes.³⁰ However, prompt medical attention thereafter is essential because the effects of naloxone can wear off before the opioids.³¹

Timely emergency administration of naloxone is essential. As Figure 1. shows, when opioid overdose causes breathing to stop, permanent damage can result within minutes.³²

Figure 1.	
Timeline after Breathing Stops	
Between 30-180 seconds	Loss of consciousness
After one minute	Brain cells begin dying
After three minutes	Brain damage is likely
After five minutes	Coma and brain damage are almost inevitable
After ten minutes	Death is imminent

While paramedics in the County carry naloxone, they may not arrive at the scene of an opioid overdose in time to save the victim. The required Emergency Medical Services (EMS) response times for the County shown in Figure 2. are illustrative. Law enforcement response times may be substantially less.³³

²⁷Centers for Disease Control and Prevention, “Expanding Naloxone use could reduce drug overdose deaths and save lives” CDC Office of Media Relations, April 24, 2015. <<https://www.cdc.gov/media/releases/2015/p0424-naloxone.html>>

²⁸ Grand Jury interview with County official.

²⁹ Department of Health and Human Services, “Opioid Overdose Toolkit” *Substance Abuse and Mental Health Services Administration*, January 2017: 15. <https://store.samhsa.gov/shin/content/SMA14-4742/Overdose_Toolkit.pdf>

³⁰ German Lopez, “How Fentanyl became America’s leading cause of overdose deaths” *Vox*, December 21, 2017. <<https://www.vox.com/science-and-health/2017/5/8/15454832/fentanyl-carfentanil-opioid-epidemic>>

³¹ Peter Lurie, et al. “Multiple Naloxone Administrations Among Emergency Medical Service Providers is Increasing” *Journal of Prehospital Emergency Care* (Vol. 21: 4) 2017: 1. <<https://www.tandfonline.com/doi/full/10.1080/10903127.2017.1315203>>

³²Zawn Villines, “What Happens After a Lack of Oxygen to the Brain” (2016)

³³ Grand Jury Interviews with City and County law enforcement leadership.

Figure 2.			
Emergency Medical Services - Permitted Response Times³⁴			
EMS Required Response Times	Area Type	Emergency Ambulance	Fire-Paramedic Non-Transport
Priority Response 1³⁵	Urban/Suburban	< 13 minutes	< 7 minutes
	Rural	< 20 minutes	< 12 minutes
	Remote	< 30 minutes	< 22 minutes
Priority Response 2	Urban/Suburban	< 23 minutes	< 15 minutes
	Rural	< 60 minutes	< 25 minutes
	Remote	< 60 minutes	< 30 minutes

The White House Commission on Opioids made the following recommendation regarding naloxone:

Naloxone is a lifesaver that rapidly reverses opioid overdose. It is the first line of defense in many parts of our country; if we lose someone to overdose we obviously have no chance to treat them and return them to a productive life. We urge you to mandate, with federal assistance, that naloxone be in the hands of every law enforcement officer in the United States...The Federal Government should ensure that naloxone is made available when there is the greatest chance for an overdose.³⁶

DISCUSSION

Equipping law enforcement with naloxone

Equipping law enforcement officers with intranasal naloxone empowers them to protect the public and themselves from opioid overdose. Officer-carry naloxone programs are increasingly common and implemented by law enforcement agencies with minimal training and cost. These programs do not expose officers to criminal or civil liability.³⁷

³⁴ Emergency Medical Services, “When Every Second Counts: San Mateo County Emergency Medical Services System Overview 2015-2016” *County of San Mateo*. Accessed on March 5, 2018. <https://www.smchealth.org/sites/main/files/file-attachments/ems_annual_final_0.pdf>
³⁵ Emergency Medical Services, “When Every Second Counts: San Mateo County Emergency Medical Services System Overview 2015-2016” pg. 10.
³⁶ The President’s Commission on Combating Drug Addiction and the Opioid Crisis, “Final Report Draft” (2017)
³⁷ California Assembly Bill No. 635, October 10, 2013. <http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0601-0650/ab_635_bill_20130912_enrolled.htm>

Fentanyl derivatives, including fentanyl, carfentanil and other analogs, can be absorbed into the body through any physical contact, including injection, oral ingestion, inhalation, transdermal transmission (through the skin), and contact with any mucus membranes.³⁸ While, in each individual case the size of a lethal dose depends on individual tolerance and body mass, per the Drug Enforcement Administration (DEA), a lethal dose of fentanyl may be as low as 2 to 3 milligrams, the equivalent of a few grains of salt. (See Figure 3.)

Figure 3.



The threat of accidental exposure is present in any instance where an officer is in proximity to fentanyl derivatives. The DEA identified the following situations, among others, as presenting a heightened risk of exposure: while purchasing fentanyl during undercover operations, processing drug evidence containing fentanyl or fentanyl-related substances, and processing non-drug evidence which may be contaminated with these substances or while providing aid to overdose victims.³⁹

While all law enforcement officers in proximity to fentanyl derivatives are at risk of accidental exposure, the degree of risk corresponds to the individual officer's duties. Per DEA's policy guidance and Grand Jury interviews, law enforcement officers in the following units in San Mateo County are at a heightened risk of exposure to fentanyl derivatives: narcotics units, crime suppression units, Special Weapons and Tactics (SWAT) teams, K-9 units,⁴⁰ and evidence-handling units.^{41 42}

Law enforcement officers have been exposed to fentanyl derivatives when responding to opioid overdoses, serving search warrants, supporting national law enforcement actions, and during narcotics operations. Fortunately, however, no law enforcement officers in the County have, as of the date of this report, suffered overdose as the result of accidental exposure to fentanyl

³⁸ U.S. Department of Justice, "A Briefing Guide for First Responder" *Drug Enforcement Agency*, June 6, 2017: 9. <https://www.dea.gov/druginfo/Fentanyl_BriefingGuideforFirstResponders_June2017.pdf>.

³⁹ Ibid.

⁴⁰ K-9's can suffer the full effects of an opioid overdose, and due to the nature of their duties are at heightened risk of exposure. Naloxone is also an effective antidote for opioid overdose in canines. "New drug kits save police dogs from opioid overdoses" *CBS News*, June 1, 2017. <<https://www.cbsnews.com/news/new-drug-kits-save-police-dogs-from-opioid-overdoses/>>. V.S. Copland, S.C. Haskins, J. Patz, "Naloxone reversal of oxymorphone effects in dogs" *American Journal of Veterinary Research* 50 (1989): 1854-8. <<https://www.ncbi.nlm.nih.gov/pubmed/2482683>>.

⁴¹ U.S. Department of Justice, "A Briefing Guide for First Responder" (2017): 13.

⁴² Grand Jury Interviews with law enforcement leadership.

derivatives.⁴³ As fentanyl derivatives continue to become more common in the County, the risk of exposure will continue to increase. The DEA recommends that, where an individual may have been exposed to fentanyl derivatives, immediate medical attention be sought.⁴⁴

Law enforcement agencies across the U.S. have successfully implemented officer-carry naloxone programs. As of December 2016, over 1,200 law enforcement agencies in 39 states have equipped their officers with intranasal naloxone.⁴⁵

As of the date of this report, 40 agencies in 24 California counties have implemented programs for their officers to carry naloxone. Another six agencies have approved an officer-carry naloxone program but have not yet implemented it. For a complete list of agencies that equip officers with Narcan in California, see Appendix 1.

Only eight California agencies have, as of the date of this report, published information regarding officer-administered naloxone “rescues” of overdose victims.⁴⁶ Those eight have reported a total of 103 rescues. As a majority of these agencies have not reported on their rescues, the actual number may well be higher than 103.

Officer-carry naloxone programs can be implemented with as little as one hour of training and can be added into existing annual first aid certification programs.⁴⁷ Such programs are readily available through a variety of sources.⁴⁸ Additionally, using “train-the-trainer” methods, agencies can quickly and efficiently train their entire force with minimal impact.⁴⁹

The Commission on Peace Officer Standards and Training (POST) sets minimum selection and training standards for California law enforcement.⁵⁰ While the POST has yet to establish training protocols for the administration of naloxone, in October 2014 POST and California Emergency Medical Standards Authority began the process of developing course content and competencies for naloxone administration as an “optional skill.”⁵¹

⁴³ Grand Jury Interviews with law enforcement leadership.

⁴⁴ U.S. Department of Justice, “A Briefing Guide for First Responder” (2017): 16.

⁴⁵ “US Law Enforcement Who Carry Naloxone” North Carolina Harm Reduction Coalition Last modified February 12, 2018 <<http://www.nchrc.org/law-enforcement/us-law-enforcement-who-carry-naloxone>>.

⁴⁶ The Grand Jury counts a “rescues,” as an intervention in which a trained officer administered nasal naloxone, the naloxone reversed the effects of an opioid overdose, the patient survived the incident, and the law enforcement agency publicized the results.

⁴⁷ Rian Fisher, Daniel O’Donnell, Bradley Ray, and Daniel Rusyniak “Police Officers Can Safely and Effectively Administer Intranasal Naloxone” *Journal of Prehospital Emergency Care* (Vol. 20:6, 2016): 675-680. DOI: 10.1080/10903127.2016.1182605

⁴⁸ “Law Enforcement Training Safety Videos and Resources” North Carolina Harm Reduction Coalition. Accessed on April 5, 2018 <<http://www.nchrc.org/law-enforcement/law-enforcement-safety-videos-and-resources>>

⁴⁹ Grand Jury Interviews with law enforcement leadership.

⁵⁰ “About POST” *The Commission on Peace Officer Standards and Training*. Accessed on: May 10th, 2018 <<https://post.ca.gov/About-U.S>>

⁵¹ POST Monthly Reports, “Monthly Report: October 2014” *The Commission on Peace Officer Standards and Training* Accessed on May 10th, 2018. <<https://post.ca.gov/October-2014-Report>>

Equipping Officers with intranasal naloxone is inexpensive. The Los Angeles Police Department's (LAPD's) naloxone program provides a cost example for a complete and self-contained Narcan field kit. The LAPD determined that each Narcan field kit costs \$137.95 and should contain:

Figure 4. Narcan Field Kit and Costs

- Narcan atomizer unit (two doses) (\$75.00)
- Bag/pouch (\$4.95)
- Expiration Pull Tight Security Seal (\$17.99)
- Gloves (\$6.00)
- A Safety Shield Face Mask (\$35.00)⁵²



Based on the LAPD numbers, the cost of initially equipping a police department with 50 units of Narcan field kits would be approximately \$6,900. Costs of supplying a unit with Narcan can be reduced to \$75 where only the atomizer unit is purchased (and carried in existing first aid bags), rather than a full field kit. Narcan atomizer units do expire and must be replaced every eighteen to twenty-four months. But the ongoing cost should not be prohibitive. Some County law enforcement agencies stated that the estimated cost of equipping officers with Narcan could be absorbed within existing department budgets.⁵³

Partnerships with public and private entities can further reduce these costs. For instance, the LAPD received a donation of 6,000 Narcan doses from Adapta Pharmaceuticals, Los Angeles Sheriff's Department received 5,000 Narcan doses from the California Department of Public Health, and San Francisco received a donation of 3,600 doses of Narcan from the Drug Overdose Prevention and Education Project.⁵⁴ The Santa Cruz Police Department financed the purchase of Narcan for their initial implementation with funds from Janus, a local nonprofit organization, through a Substance Abuse Block Grant.⁵⁵

⁵² Kevin Bayona, "Factsheet: NARCAN Program" *Los Angeles Police Department Evaluation and Administration Unit*, January 2017. Last modified March 1, 2017. <http://www.lapdpolicecom.lacity.org/031417/BPC_17-0077.pdf>.

⁵³ Grand Jury Interviews with law enforcement leadership.

⁵⁴ "California Comprehensive Overdose Treatment Protection Signed by Governor" *Harm Reduction Coalition* Accessed on February 26, 2018 <<http://harmreduction.org/overdose-prevention/caoverdoseprev/>>.

⁵⁵ Ryan Masters, "Santa Cruz police issue overdose antidote in nasal spray form to officers" *Santa Cruz Sentinel*, December 5, 2016. <<http://www.santacruzsentinel.com/article/NE/20161205/NEWS/161209867>>.

Officer-carry naloxone programs will not expose officers to criminal or civil liability. California Civil Code Section 1714.22 protects trained first responders from professional review, liability in a civil action, or criminal prosecution for possession or administration of an opioid antagonist.⁵⁶ However, an analysis of any possible claims that might be pursued for failure to administer naloxone is beyond the scope of this report.

Opioids in San Mateo County

In February 2017, San Mateo County Health System (CHS) issued the public health alert *Opioid Dependency and Deaths in San Mateo County*.⁵⁷ The alert reported that an estimated 7,800 County residents were dependent upon opioids, that prescription opioid use in adolescents was increasing, and that “the prevalence of synthetic fentanyl laced drugs [in the County] is likely to increase.”⁵⁸ The California Department of Public Health confirmed 19 opioid overdose fatalities in the County during 2016.⁵⁹ Fortunately, rates of opioid abuse, including prescription and street drugs, are currently lower in the County than in many other Bay Area communities.⁶⁰ The CHS updated its February 2017 alert in October 2017, to report that “...the County does not seem to be experiencing anywhere near the same level of morbidity and mortality that other jurisdictions in the United States are experiencing.”⁶¹

San Mateo County has taken steps to address opioid abuse. The CHS is monitoring opioid prescription rates and educating prescribers about best practices. The CHS is also tracking the presence of fentanyl derivatives in the County in conjunction with law enforcement, the Coroner’s Office, and other agencies.

Fentanyl derivatives are becoming more prevalent in the County. The Sheriff’s Forensic Laboratory, which conducts chemical testing on suspect substances seized in law enforcement operations, saw the number of fentanyl samples triple between 2016 and 2017.⁶² The County’s close proximity to San Francisco, a major point of entry for fentanyl derivatives imported from abroad, further exposes County law enforcement and residents to fentanyl derivatives.⁶³

At present, the only first responders in the County authorized to carry naloxone are fire department and ambulance paramedics. While the Sheriff’s Office is considering implementing a naloxone carry program for the NTF, no law enforcement agencies in the County have

⁵⁶ These protections were added by California Assembly Bill No. 635, October 10, 2013.

<http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0601-0650/ab_635_bill_20130912_enrolled.htm>

⁵⁷ Scott Morrow, “Public Health Alert: Opioid Dependency and Deaths in San Mateo County” *County of San Mateo Health System* February 7, 2017: 1. <http://www.smchealth.org/sites/main/files/file-attachments/opioid_health_alert_-_020717.pdf>.

⁵⁸ Ibid.

⁵⁹ California Department of Public Health, “San Mateo Numbers at a Glance” *California Opioid Overdose Surveillance Dashboard* (2018).

⁶⁰ Detailed information comparing opioid abuse statistics for the County to other California counties is available at <https://pdop.shinyapps.io/ODdash_v1>.

⁶¹ Scott Morrow, Greg Gilbert, “Open Letter to Sheriff Bolanos and Police Chiefs in San Mateo County” *County of San Mateo Health System* October 24, 2017.

⁶² Grand Jury Interviews with Sheriff’s Forensic laboratory leadership.

⁶³ Grand Jury Interviews with law enforcement leadership.

authorized officers to carry naloxone. Employees in the Coroner’s Office and Forensic Laboratory are also at heightened risk of accidental exposure, and are not equipped with naloxone.

Despite the lack of official authorization, the risk posed by accidental synthetic opioid exposure is such that some individual County employees, including one County official, have purchased intranasal naloxone using their own funds to safeguard themselves and their colleagues. Another County official advised employees to buy their own naloxone to protect themselves.⁶⁴

Arguments against equipping law enforcement with naloxone include:

- The number of “rescues” that law enforcement in the County could make is uncertain, and therefore the public health benefits of officer-carry naloxone programs are uncertain.
- Any program comes with costs, including the “cost” of not pursuing other opportunities to enhance public safety.
- Additionally, there are concerns that law enforcement officers are not medical professionals and should not be relied upon to provide medical treatment to opioid overdose victims.

However, the Grand Jury finds that the potential benefits of officer-carry naloxone programs outweigh these concerns.

- As fentanyl derivatives continue to become more prevalent and more dangerous, it is reasonable to assume--based on “rescues” reported by other agencies--that some lives in the County will be saved if officers carry naloxone.
- The costs of an officer-carry intranasal naloxone program are small; therefore the reasonably expected future benefits outweigh the costs.
- Narcan (which is administered intranasally) is not intravenous naloxone--administration does not require an IV, shot, or other medical procedure. Law enforcement agencies in California and nationwide who have already implemented an officer-carry Narcan program recognize that trained officers are fully capable of administering this safe, fast acting, and effective drug.
- By equipping officers with Narcan, San Mateo County is not pioneering a new program. Rather, the County will be following the recommendations of federal agencies and a White House commission by implementing a program that has already been put in place by over 1,200 police agencies nationwide.

Those who survive an overdose are still in considerable danger. Continuous care, readily accessible, medically assisted treatment for overdose patients, ongoing community education and diligent oversight is essential to protect residents and County personnel from the effects of the opioid epidemic. Equipping officers to carry naloxone is a necessary first step.

⁶⁴ Grand Jury Interviews with law enforcement leadership.

FINDINGS

The 2017-2018 San Mateo County Civil Grand Jury finds the following to be true:

- F1. Untreated opioid overdose can cause brain damage and death.
- F2. Naloxone is a safe, nontoxic drug that can stop and reverse the effects of opioid overdose.
- F3. Narcan[®] is a brand of intranasal naloxone, which can be successfully administered with no more than one hour of training.
- F4. Fire department and ambulance paramedics are the only emergency responders within the County currently carrying naloxone.
- F5. Law enforcement officers may arrive at the scene of opioid overdose before paramedics.
- F6. Law enforcement officers' risk of accidental exposure to fentanyl derivatives varies based on their roles and responsibilities. Narcotics units, crime suppression units, SWAT teams, K-9 units, and evidence-handling units are at a heightened risk of exposure.
- F7. Certain law enforcement officers and Sheriff's Forensic Lab and Coroner's Office personnel are at heightened risk of exposure to fentanyl derivatives.
- F8. Equipping and training officers with intranasal naloxone is inexpensive and the associated costs can be absorbed into existing programs and budgets.

RECOMMENDATIONS

The 2017-2018 San Mateo County Civil Grand Jury recommends that the San Mateo County Sheriff's Office, the Broadmoor Police Protection District, and the Police Departments of Atherton, Belmont, Brisbane, Burlingame, Colma, Daly City, East Palo Alto, Foster City, Hillsborough, Menlo Park, Pacifica, Redwood City, San Bruno, San Mateo, and South San Francisco, do the following by December 31, 2018:

- R1. Train and equip law enforcement officers at heightened risk of exposure to fentanyl derivatives with intranasal naloxone as a minimum standard of practice.
- R2. Evaluate training and equipping all law enforcement officers with intranasal naloxone in order to protect themselves and the general public.

The 2017-2018 San Mateo County Civil Grand Jury further recommends that the San Mateo County Coroner do the following by December 31, 2018:

R3. Train and equip Coroner's Office personnel at a heightened risk of exposure to fentanyl derivatives with intranasal naloxone.

The 2017-2018 San Mateo County Civil Grand Jury further recommends that the San Mateo County Sheriff do the following by December 31, 2018:

R4. Train and equip Sheriff's Forensic Lab personnel at a heightened risk of exposure to fentanyl derivatives with intranasal naloxone.

REQUEST FOR RESPONSES

Pursuant to Penal Code Section 933.05, the Grand Jury requests the following to respond to the foregoing Findings and Recommendations referring in each instance to the number thereof:

- San Mateo County cities and the Broadmoor Police Protection District to respond no later than 90 days after the date of this Grand Jury Report.
- San Mateo County Sheriff to respond no later than 60 days after the date of this Grand Jury Report.
- The San Mateo County Board of Supervisors to respond no later than 90 days after the date of this Grand Jury Report.
- The Coroner to respond no later than 60 days after the date of this Grand Jury Report.

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda, and open meeting requirements of the Brown Act.

METHODOLOGY

The Grand Jury interviewed law enforcement officers from these organizations within the County:

- Belmont Police Department
- Daly City Police Department
- East Palo Alto Police Department
- Menlo Park Police Department
- San Mateo County Narcotics Task Force
- Redwood City Police Department
- San Mateo County Sheriff's Office
- San Mateo Police Department
- South San Francisco Police Department

The Grand Jury interviewed individuals at the County Coroner's Office, the Sheriff's Forensic Laboratory, and the County Health System.

The Grand Jury reviewed numerous publications and materials regarding the opioids epidemic, including without limitation those listed in the bibliography.⁶⁵

⁶⁵ The Grand Jury's source for local statistical and demographic information regarding the opioid crisis comes from the California Department of Public Health's (CDPH) California Opioid Overdose Surveillance Dashboard. https://pdop.shinyapps.io/ODdash_v1/ The CDPH collected this data in conjunction with the Office of Statewide Health Planning and Development, the Department of Justice, and the California Health Care Foundation. Data sources include; Multiple Cause of Death Files, Emergency Department Visit & Inpatient Discharge Data, and Controlled Substance Utilization Review and Evaluation System (CURES) prescription drug data. The Grand Jury also utilized data from county entities. National data is from the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services, the Commission on Combating Drug Addiction and the Opioid Crisis Final Report Draft, Drug Abuse, the National Institutes of Health (NIH), National Institute on Drug Abuse, NIDA, Drug Enforcement Administration (DEA), Substance Abuse and Mental Health Services Administration (SAMHSA), North Carolina Harm Reduction Coalition.

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GLOSSARY OF TERMS

Analog - a chemical compound with a molecular structure analogous to another compound.

Antidote - a substance taken to counteract a poison or the effects of a drug.

Derivative- a substance or compound obtained from, or regarded as derived from, another substance or compound.

Opioid - all drugs having morphine-like effects and high abuse and addiction potential, including opiates, semi-synthetic opioids derived from opiates (and synthetic opioids *Not all opioids are opiates, but all opiates are not opioids.* They are listed as Schedule II drugs., Side effects include: constipation, sweating, and increased sensitivity to pain, dependency.

Generic	Brand Name
Hydrocodone	Vicodin, Lorcet, Lortab, Norco, Zohydro
Oxycodone	Percocet, OxyContin, Roxicodone, Percodan
Morphine	MSContin, Kadian, Embeda, Avinza
Codeine	Tylenol with Codeine, Tyco, Tylenol #3
Fentanyl	Duragesic
Heroin	
Hydromorphone	Dilaudid
Oxymorphone	Opana
Meperidine	Demerol
Methadone	Dolophine, Methadose
Buprenorphine	Suboxone, Subutex, Zubsolv, Burnavail, Butrans

Carfentanil - a synthetic opioid analgesic a derivative of fentanyl, 100 times more potent than fentanyl, and 10,000 times more potent than morphine. Two milligrams of carfentanil can be lethal. As a prescription drug, Carfentanil (trade name Wildnil) is sold as a general anesthetic for elephants and other large animals. It can cause respiratory depression in humans, leading to death. Unique derivatives of carfentanil continue to be created, as they can be manufactured at a low cost and cut into heroin.

Fentanyl - a synthetic opioid, an analogue of morphine but 50 to 100 times its strength. Fentanyl is a synthetic that is legally made as a pharmaceutical drug to treat pain, or illegally made and sold as an additive to intensify the effects of other drugs, such as heroin. As a Schedule II prescription drug, it is typically used to treat patients with severe or chronic pain or to manage post-surgical pain. Fentanyl is known by such names as Actiq®, Duragesic®, and Sublimaze® in prescription form. Street names: Fentanyl or for fentanyl-laced heroin are Apache, China girl, China white, dance fever, friend, Goodfella, jackpot, murder 8, tatch, Tango and Cash, and TNT.

Naloxone – an opioid antagonist drug given by injection, nasal inhalation or subcutaneously to block opioid effects in case of overdose. It works within minutes to reverse the effects of opioid overdose; effects last about 30-90 minutes; it is not effective with respiratory depression caused

by non-opioid drugs (such as cocaine, LSD, ecstasy (Molly), sedatives, tranquilizers or marijuana) or alcohol; antagonizes opioid effects such as respiratory depression, analgesia, and miosis. Repeat doses often needed due to naloxone's action time being shorter than the effects of many opioids.

Intranasal Naloxone - a mucosal atomization device, drug is a fine mist sprayed into nasal cavity; works quickly and painlessly in vascular mucosa to absorb naloxone directly into the bloodstream (slightly slower than intramuscular or intra-venous injections), minimal training involved for law enforcement personnel and trained friends or relatives of overdose victims to use; may need repeated doses. Commonly known brand name for intranasal naloxone is Narcan®.

Narcan® - the commercial brand name of the intranasal prescription medicine, naloxone (HCL), used for the treatment of an opioid emergency such as a possible overdose with signs of breathing problems, severe sleepiness or nonresponsiveness. NARCAN Nasal Spray is the FDA-approved nasal form of naloxone for the emergency treatment of a known or suspected life-threatening opioid overdose. The side-effects of Narcan are minimal, though its use may result in symptoms of acute opioid withdrawal in overdose patient.

Opioid Overdose - an opioid overdose (OD) is the body's response to being overwhelmed or poisoned by too much of a substance. Overdoses can be but are not always life-threatening or life ending. They can result in unconsciousness, respiratory depression or failure, sleepiness, contracted pupils, unresponsive, seizures, possible bluish skin color indicating lack of oxygen, cold, clammy skin, irregular or stopped, faint pulse. failed breathing, heart failure, and seizures. Many overdoses are the result of taking drugs of inconsistent or unknown strength or drugs that are mixed with other substances.

Scheduled Drugs - in 1971, under Title II of the Comprehensive Drug Abuse Prevention and Control Act, a federal drug policy was established for the United States regulating the manufacture, import, use, possession and distribution of categories of specific substances. Five Schedules (or classifications) were created, identifying drugs and other substances that met the qualifications and restrictions for each category. The Drug Enforcement Administration (DEA) classifies opioids and other drugs into three schedules (II, III, and IV), based upon their abuse potential and relative risks. For example, Schedule II includes drugs such as heroin or other substances with high potential for abuse, having no medical use, and determined medically unsafe.

APPENDIX 1: CALIFORNIA LAW ENFORCEMENT AGENCIES WITH NASAL NALOXONE PROGRAMS BY COUNTY

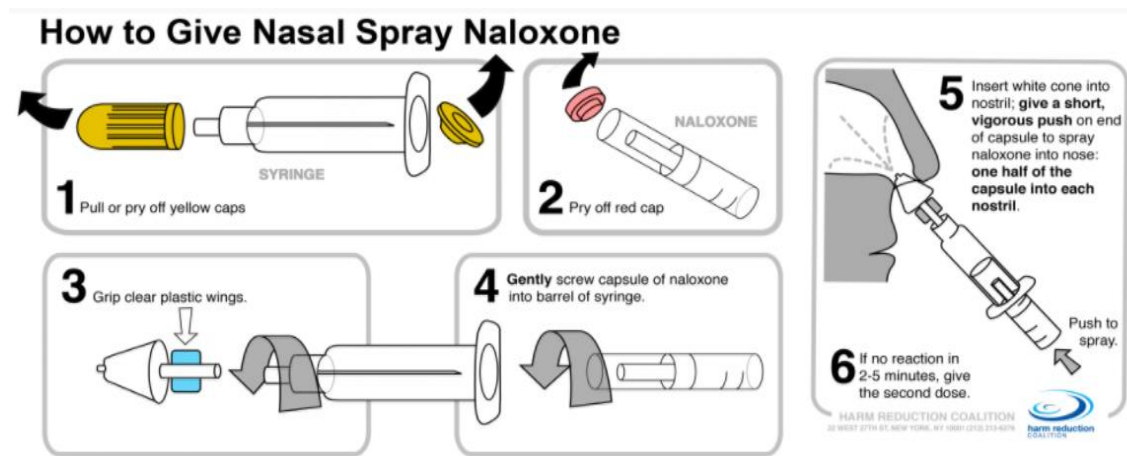
COUNTY	DEPARTMENT	DATE STARTED
Alameda	Alameda Sheriff/ K-9	July 2017
Alameda	Fremont	January 2018* ⁶⁶
Alameda	Newark	January 2018*
Amador	Amador Sheriff	November 2017
Butte County	Chico Police	February 2018
Contra Costa	Brentwood Police	March, 2018
Contra Costa	Contra Costa Sheriff	November 2017
Contra Costa	Lafayette Sheriff	November 2017
Contra Costa	Orinda Police	November 2017*
Contra Costa	Pleasant Hill Police	November 2017
Contra Costa	Pinole Police	November 2017*
Contra Costa	San Pablo Police	November 2017*
Fresno	Fresno Police	Spring, 2018
Fresno	Sheriff	November, 2017
Humboldt	Arcata Police	June 2016
Kern	Kern County Sheriff	August 2016
Kings	Hanford Police	August 2017
Kings	Kings County Sheriff	July 2017
Los Angeles	Glendora Police	2015

⁶⁶ * Department has approved an officer-carry naloxone program, but deployment is pending completed training.

COUNTY	DEPARTMENT	DATE STARTED
Los Angeles	Long Beach	Fall, 2017
Los Angeles	Los Angeles Police	Spring 2017
Los Angeles	Los Angeles Sheriff	June 2017
Marin	Central Marin Police Authority	April 2017
Marin	Fairfax Police	April 2017
Marin	Marin City Police	April 2017
Marin	San Rafael Police	April 2017
Monterey	Carmel Police	September 2017
Monterey	Pacific Grove Police	September 2017
Monterey	Seaside Police	November, 2017
Nevada	Grass Valley Police	September 2016
Orange	Orange County Sheriff	October 2015
Orange	Anaheim Police	September 2017
Placer	Roseville Police	July 2017
Sacramento County	Sacramento Police	February 2018
Sacramento County	Sacramento Sheriff	February 2018
San Diego	San Diego Sheriff	July 2014
San Francisco	San Francisco Police	March 2015
Santa Barbara	Santa Barbara Sheriff	April 2017
Santa Clara	Campbell Police	March 2017
Santa Cruz	Santa Cruz Police	December 2016

COUNTY	DEPARTMENT	DATE STARTED
Shasta	Redding Police	December 2018
Shasta	Shasta Sheriff	August 2016
Solano	Benicia Police	January 2018
Solano	Vallejo Police	March 2018
Sonoma	Petaluma Police	April 2018
Tehama	Tehama Police	September 2017*

APPENDIX 2: NASAL NALOXONE ADMINISTRATION INSTRUCTIONS



Issued: June 28, 2018



TOWN OF COLMA

1198 El Camino Real • Colma, California • 94014-3212
Tel 650-997-8300 • Fax 650-997-8308

July 25, 2018

City Council

Raquel P. Gonzalez
Mayor

Joanne F. del Rosario
Vice Mayor

John Irish Goodwin
Council Member

Diana Colvin
Council Member

Helen Fiscaro
Council Member

City Manager

Brian Dossey
City Manager

Honorable V. Raymond Swope
Judge of the Superior Court
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

Re: Grand Jury Report: "Law Enforcement Officers + Narcan = Lives Saved From Opioid Overdoses"

Dear Judge Swope:

The City Council received the San Mateo Civil Grand Jury report titled, "Law Enforcement Officers + Narcan = Lives Saved From Opioid Overdoses"

The Town was requested to submit comments regarding the findings and recommendations within 90 days and no later than September 26, 2018. The Town of Colma's response to both the findings and recommendations are listed below.

The Grand Jury instructed each agency in San Mateo County to respond to findings 1-8 (F1-F8) and recommendations 1-2 (R1-R2).

For the "findings", the Town was to indicate one of the following;

1. The respondent agrees with the finding.
2. The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

Additionally, for each Grand Jury "recommendation", the Town was requested to report one of the following actions;

1. The recommendation has been implemented, with a summary regarding the implemented action.
2. The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
3. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body

4. of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
5. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
6. The recommendation will not be implemented because it is not warranted or reasonable, with an explanation therefore.

The following are responses to findings 1-8;

F1. Untreated opioid overdose can cause brain damage and death.

Town Response: The Town of Colma agrees with this finding.

F2. Naloxone is a safe, nontoxic drug that can stop and reverse the effects of opioid overdose.

Town Response: The Town of Colma agrees with this finding.

F3. Narcan is a brand of intranasal naloxone, which can be successfully administered with no more than one hour of training.

Town Response: The Town of Colma agrees with this finding.

F4. Fire department and ambulance paramedics are the only responders within the county currently carrying naloxone.

Town Response: The Town of Colma agrees with this finding.

F5. Law enforcement officers may arrive at the scene of an opioid overdose before paramedics.

Town Response: The Town of Colma agrees with this finding.

F6. Law enforcement officers' risk of accidental exposure to fentanyl derivatives varies based on their roles and responsibilities. Narcotics units, crime suppression units, SWAT teams, K-9 units, and evidence-handling units are at a heightened risk of exposure.

Town Response: The Town of Colma agrees with this finding.

F7. Certain law enforcement officers and Sheriff's Forensic Lab and Coroner's Office personnel are at heightened risk of fentanyl derivatives.

Town Response: The Town of Colma agrees with this finding.

F8. Equipping and training officers with intranasal naloxone is inexpensive and the associated costs can be absorbed into existing programs and budgets.

Town Response: The Town of Colma agrees with this finding.

The following are responses to recommendations 1-2;

R1. Train and equip law enforcement officers at heightened risk of exposure to fentanyl derivatives with intranasal naloxone as a minimum standard of practice.

Town Response: The recommendation has not yet been implemented but will be implemented by December 31, 2018.

R2. Evaluate training and equipping all law enforcement officers with intranasal naloxone to protect themselves and the public.

Town Response: The recommendation has not yet been implemented but will be implemented by December 31, 2018.

This response was approved by the City Council at the July 25, 2018 public meeting.

On behalf of the Town of Colma, I would like to thank the Grand Jury for their work on this report.

Sincerely,

Raquel P. Gonzalez
Mayor





STAFF REPORT

TO: Mayor and Members of the City Council
 FROM: Caitlin Corley, City Clerk
 VIA: Brian Dossey, City Manager
 MEETING DATE: July 25, 2018
 SUBJECT: Primary Arguments for TOT Ballot Measure

RECOMMENDATION

Staff recommends that the City Council adopt the following motion:

MOTION AUTHORIZING NO MORE THAN TWO COUNCIL MEMBERS TO DRAFT A
 PRIMARY ARGUMENT IN FAVOR OF THE COLMA TRANSIENT OCCUPANCY ("HOTEL")
 TAX MEASURE FOR THE NOVEMBER 6, 2018 STATEWIDE GENERAL ELECTION

EXECUTIVE SUMMARY

The Town has placed the Colma Transient Occupancy ("Hotel") Tax Measure on the ballot for the November 6, 2018 Statewide General Election. San Mateo County publishes a sample ballot booklet, which includes arguments in support of and against proposed measures. Staff recommends that the City Council authorize no more than two Council Members to draft the primary argument in support of the measure to be included in the sample ballot booklet.

FISCAL IMPACT

The 2018-19 Adopted Budget included \$12,500 for election services. The cost of printing primary arguments was considered when the budget was proposed. This action has no additional fiscal impact.

BACKGROUND AND ANALYSIS

On February 28, 2018, the City Council approved resolutions placing on the ballot a measure to establish a Transient Occupancy Tax and consolidating with the County to conduct this election. Proponents or other interested parties, including the City Council, may submit arguments of up to 300 words in support of or against the measure, which are then included in the sample ballot booklet produced by the County.

If multiple ballot arguments are submitted, the Elections Official shall choose the arguments for publication based on the following priority:

1. The legislative body, or member or members of the legislative body authorized by that body.
2. The individual voter, or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors or proponents of the measure.
3. Bona fide associations of citizens.
4. Individual voters who are eligible to vote on the measure.

Because arguments written by a board member authorized by the legislative body will be given priority, staff recommends that the Council authorize no more than two Council Members to write the primary argument in favor of the measure to be included in the County's sample ballot.

If a Council Member is not authorized by the City Council, and submits an argument, that Council Member would qualify under the last priority as an "individual voter." Arguments submitted by citizen associations would be given priority. If no argument is submitted, no argument will be printed in the sample ballot booklet.

Written Argument Specifications and Deadlines

Primary arguments in favor of or against the above measure may be submitted in writing to the City Clerk's Office, Town Hall, 1188 El Camino Real, Colma, California, 94014, for printing and distribution to the voters, pursuant to provisions of the California Elections Code, by 5:00 P.M. on August 17, 2018. Rebuttal arguments by authors of said primary arguments may be filed in like manner by 5:00 P.M. on August 27, 2018.

Printed arguments submitted to voters shall be titled either "Argument in Favor of Measure ____" or "Argument Against Measure ____", and "Rebuttal to Argument in Favor of Measure ____" or "Rebuttal to Argument Against Measure ____" respectively.

All arguments concerning the above measure must be accompanied by the following form statement to be signed by each author and proponent, if different, from the argument:

The undersigned proponent(s) or author(s) of the _____ (primary/rebuttal) argument _____ (in favor of/against) Ballot Measure ____ at the _____ (title of election) for the _____ (name of jurisdiction) to be held on _____ (date of election), hereby state that such argument is true and correct to the best of _____ (his/her/their) knowledge and belief.

Signed

Date

No primary argument shall exceed 300 words in length. Only one argument in favor of and one argument against the measure will be selected for printing and distribution to the voters. No more than five signatures shall appear with any argument.

The authors of the primary arguments in favor of or against the measure may prepare and submit rebuttal arguments not exceeding 250 words. The authors may authorize in writing any other person or persons to prepare, submit, or sign the rebuttal argument. No more than five signatures shall appear with any rebuttal argument.

Word count for ballot materials is calculated as follows:

- Punctuation is not counted.
- All proper nouns, including geographical names, are considered one word. For example, "Town of Colma" is one word.
- Each abbreviation for a word, phrase or expression is counted as one word.
- Hyphenated words that appear in any generally available dictionary are considered one word. Otherwise, each part of all other hyphenated words are counted as a separate word. For example, "up-to-date" would be one word.
- Dates are counted as one word.
- Any number consisting of digit(s) is considered one word. Any number spelled out is considered separate words. For example, "100" is one word but "one hundred" is two words.
- Telephone numbers are one word.
- Internet web addresses are one word.

Council Adopted Values

The staff recommendation is consistent with the Council adopted values of **responsibility** because the TOT measure considers the long term economic diversity and stability of the Town, and presenting a clear, thoughtful argument in favor of the measure helps communicate that to the public.

Alternatives

The Council could decide not to authorize any council Members to draft the primary argument in favor of the ballot measure. If no Council Members are authorized, the Town would accept arguments from individual voters or organizations as the primary argument in favor of the measure. If no argument is submitted, no argument would be printed in the sample ballot booklet.

CONCLUSION

Staff recommends that the Council authorize no more than two Council Members to draft a primary argument in favor of the Colma Transient Occupancy ("Hotel") Tax Measure to be included in San Mateo County's Sample Ballot.





STAFF REPORT

TO: Mayor and Members of the City Council
 FROM: Christopher J. Diaz, City Attorney
 MEETING DATE: July 25, 2018
 SUBJECT: First Amendment to Employment Contract for City Manager

RECOMMENDATION

Staff recommends that the City Council adopt the following resolution:

RESOLUTION APPROVING FIRST AMENDMENT TO EMPLOYMENT CONTRACT WITH BRIAN DOSSEY

EXECUTIVE SUMMARY

The First Amendment will make a change to the City Manager’s employment contract. It will increase the City Manager’s base salary from \$190,088.00 to \$199,508.40.

FISCAL IMPACT

The City Council’s adoption of the resolution and execution of the First Amendment will cause a slight financial impact on the Town based on the payment of a higher salary to the City Manager.

BACKGROUND

On December 18, 2017, the City Council entered into an employment contract with Brian Dossey to serve as the Town’s City Manager. On July 11, 2018, the City Council conducted a performance evaluation of Mr. Dossey and authorized an increase to his base salary. The City Council is now seeking to amend the City Manager’s employment contract to increase his base salary.

ANALYSIS

Base Salary

Under the terms of the First Amendment, which modifies section 4(a) “Salary and Benefits” of the City Manager’s employment contract, the City Manager’s salary will increase from the current \$190,088.00 per year to \$199,508.40 per year, a total increase of \$9,420.40.

All other terms and conditions of the employment contract would remain unchanged.

Values

Approval of the First Amendment to the City Manager's employment contract is a *responsible* action because the Council has already authorized this modification to the contract and this amendment will formalize that authorization.

Alternatives

The City Council could choose not to adopt the resolution and choose not to execute the First Amendment to the City Manager's employment contract. Doing so is not recommended as the City Council has already authorized this modification to the contract.

CONCLUSION

The City Council should adopt the resolution approving the first amendment to the employment contract with Mr. Dossey.

ATTACHMENTS

- A. Resolution
- B. First Amendment
- C. Original Employment Contract

RESOLUTION NO. 2018-__
Of the City Council of the Town of Colma

**RESOLUTION APPROVING FIRST AMENDMENT TO
EMPLOYMENT CONTRACT WITH BRIAN DOSSEY**

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

1. Background

(a) On December 18, 2018, the City Council entered into an employment contract with Brian Dossey to serve as the Town's City Manager.

(b) The City Council now seeks to amend the City Manager's contract to address an increase in his base salary, subject to approval of an amendment to the employment contract. Such increase in salary shall be retroactive to July 11, 2018, when the City Council conducted a performance evaluation of the City Manager and approved an increase pursuant to salary negotiations.

2. Order

(a) The First Amendment to the employment contract between the Town of Colma and Brian Dossey, a copy of which is on file with the City Clerk, shall be and hereby is approved by the City Council of the Town of Colma.

(b) The Mayor shall be, and hereby is, authorized to execute this First Amendment on behalf of the Town of Colma, with such technical amendments as may be deemed appropriate by the Mayor and the City Attorney.

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Certification of Adoption

I certify that the foregoing Resolution No. 2018-__ was duly adopted at a regular meeting of said City Council held on July 25, 2018 by the following vote:

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

Dated _____

Raquel Gonzalez, Mayor

Attest: _____
Caitlin Corley, City Clerk

**FIRST AMENDMENT TO
EMPLOYMENT CONTRACT WITH BRIAN DOSSEY**

This First Amendment is made and entered into by and between the Town of Colma, a municipal corporation and general law city ("Employer"), and Brian Dossey ("Employee"), who are sometimes individually referred to as a "Party" and collectively as "Parties" in this First Amendment. For reference purposes, this First Amendment is dated July 11, 2018.

Recitals.

This First Amendment is made with reference to the following facts:

- (a) On December 18, 2017, Employer and Employee entered into an Employment Contract ("Contract") for Employee to serve as City Manager.
- (b) The Employer and Employee now seek to amend the Contract to increase the Employee's base salary pursuant to a performance review and salary negotiations that occurred on July 11, 2018.
- (c) Employer and Employee now desire to enter into this First Amendment to increase Employee's base salary.

NOW, THEREFORE, BASED ON THE MUTUAL PROMISES AND CONSIDERATION CONTAINED IN THIS FIRST AMENDMENT AND THE CONTRACT, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Subsection (a) of Section 4, "Salary and Benefits," of the Contract is hereby modified as follows:

- (a) *Salary.* Employer shall pay Employee a salary of \$199,508.40 per year, or such greater amount as may hereafter be approved by the City Council, which shall be subject to all appropriate deductions and withholdings, and which shall be paid at the same time and in the same manner as salaries are usually paid to Miscellaneous Employees of the Town.

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Execution. In Witness thereof, the parties hereto have signed this First Amendment on the respective dates shown below and this First Amendment and the Contract constitutes the entire Agreement between the Parties.

Dated: _____

Brian Dossey, Employee

Dated: _____

TOWN OF COLMA (Employer)

By _____
Raquel Gonzalez, Mayor

EMPLOYMENT CONTRACT WITH BRIAN DOSSEY

This Employment Contract ("Contract") is made and entered into by and between the Town of Colma, a municipal corporation and general law city ("Employer"), and Brian Dossey ("Employee"), who are sometimes individually referred to as a "Party" and collectively as "Parties" in this Contract. For reference purposes, this Contract is effective December 18, 2017.

1. Recitals. This Contract is made with reference to the following facts:

- (a) Employer desires to employ the services of Employee as City Manager, as provided by the Municipal Code of the Town of Colma and by the laws of the State of California; and
- (b) Employee desires to serve as City Manager of the Town of Colma on the terms and conditions set forth herein.

2. Employment and Duties

- (a) Beginning December 18, 2017, Employer shall employ Employee as City Manager on the terms and conditions set forth herein, and Employee shall serve in said employment on these terms and conditions. Employment under this Contract shall continue until either party gives notice of termination as provided below.
- (b) Employee shall perform the functions and duties of a City Manager, as specified in the laws of the State of California and the ordinances and resolutions of the Town of Colma. Employee shall also perform such other legally permissible and proper duties and functions as the City Council shall, from time to time, assign.
- (c) Employee is expected to devote necessary time, within and outside normal business hours, to the business of the Town and to fulfill the duties of the City Manager, and Employee shall be allowed flexibility in setting his own office hours to accommodate such activities.
- (d) Employee has a duty of loyalty and a general fiduciary duty to the Town. Employee shall devote the whole of Employee's working time, skill, experience, knowledge, ability, labor, energy, attention and best effort exclusively to the Town's business and affairs. Employee shall remain in the exclusive employ of Employer until termination of employment as hereinafter provided
- (e) Employee shall not engage in any employment, activity, consulting service, or other enterprise, for compensation or otherwise, which is actually or potentially in conflict with or which interferes with the performance of Employee's duties to the Town. Further, Employee shall not, during the term of this Agreement, engage in any activity which is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office under California law. Employee will complete annual disclosure forms required by law.

(f) On reasonable notice to the City Council, Employee may, and is encouraged, to attend conferences, professional development meetings and conventions as a part of his duties, provided that the subject matter is related to Employee's duties and that attendance does not unduly interfere with performance of his regular duties.

(g) The City Manager shall be subject to and shall comply with the standards of conduct and ethical principles set forth in the Town's ordinances and resolutions, and with the ICMA Code of Ethics, a copy of which is attached as Exhibit A.

3. City Council Commitments

(a) *Annual Strategic Plan Workshops.* The City Council recognizes that to meet the challenges facing the Town, it must exercise decisive policy leadership. As one step in carrying out this leadership responsibility, the City Council commits to spending time each year outside of regular City Council meetings to work with the City Manager and staff on creating and revisiting the City's strategic plan, setting goals and priorities for the City government, and working on issues that may be inhibiting the maximum achievement of the Town's goals. Each year, between January 1 and March 31, the City Council and the City Manager shall meet at an Annual Strategic Plan Workshop to review the City's existing Strategic Plan, review and establish goals and priorities for the City Manager to implement prior to the City Manager's annual performance evaluation or such other dates as determined in the course of the meeting, and to establish a relative priority among those goals and objectives within the Strategic Plan.

(b) *Performance Evaluations.* Beginning in 2018, the City Council shall meet with the Employee during the month of May to conduct an initial performance evaluation and consider a potential salary increase. The City Council shall meet with the Employee each May thereafter to evaluate his performance, discuss performance expectations and other objectives, and consider an increase in his base salary. The annual performance review and evaluation shall be in accordance with specific criteria developed jointly by the City Council and the City Manager during the strategic planning and goal setting workshops. Such criteria may from time to time be added to or deleted as the City Council determines in consultation with the City Manager.

(c) *Standards of Conduct and Ethics.* Neither the City Council nor any of its members will give the City Manager any order, direction, or request that would require the City Manager to violate the ICMA Code of Ethics or the City Council Protocols set forth in the Colma Administrative Code, subchapter 1.02, as amended from time to time.

4. Salary and Benefits

(a) *Salary.* Employer shall pay Employee a salary of \$190,008.00 per year, or such greater amount as may hereafter be approved by the City Council, which shall be subject to all appropriate deductions and withholdings, and which shall be paid at the same time and in the same manner as salaries are usually paid to Miscellaneous Employees of the Town.

(b) *Deductions. CalPERS Contribution and Employment Taxes.* Employee shall be responsible for, and shall pay by deduction from Employee's pay check, Employee's contributions to the California Public Employees' Retirement System (Cal PERS) and all employment taxes to be paid by law by Employee including, but not limited to, the Federal Insurance Contributions Act (FICA), the Federal Unemployment Act (FUTA), and the State Unemployment Insurance Act (SUI).

(c) *No Reduction.* Employer shall not, at any time during this Contract, reduce the salary, compensation or other financial benefits of Employee except to the degree of such reduction across the board for all employees of Employer who are classified as "Local Miscellaneous Members" of the California Public Employees Retirement System.

(d) *Catch-all.* Except as specifically provided herein, Employee shall be entitled to receive all benefits of employment generally available to Employer's other executive and managerial employees when and as he becomes eligible for them.

(e) *Management leave.* Employee will accrue management leave in accordance with the Town's Personnel Policies and Procedures Manual. Under this Contract, Employee will be credited with ten (10) days on January 1, 2018, and annually thereafter.

(f) *Bonds.* Employer shall pay the cost of any employment bonds required for Employee by Employer.

(g) *Reservation of Rights.* Employer reserves the right to modify, suspend or discontinue any and all benefit plans, policies, and practices at any time without notice to or recourse by Employee, so long as such action is taken generally across the board for all employees of Employer.

(h) *Auto Allowance.* Employer shall provide Employee an auto allowance of \$300 per month for traveling to meetings, events, conferences and workshops.

5. Expenses and Allowances

(a) *Expense Policies.* Town shall pay for or provide the City Manager reimbursement for all actual business expenses consistent with Government Code section 53234 et seq., also known as "AB 1234" and subchapter 3.07 of the Colma Administrative Code.

(b) *Professional Development.* Employer shall pay for subscriptions, dues and membership fees and similar expenses to local, state and national professional associations and the International City Manager's Association (ICMA). Payment or reimbursement of reasonable travel, lodging and meals incurred in connection with attendance at professional meetings is subject to an annual limit of \$3,000.00, or such higher amount as may be approval by the City Council either through approval of the expense as a budget item or specific approval of a particular event.

(c) *Technology.* Employer shall, at Employer's expense, provide Employee with a Town-paid cell phone and laptop and associated phone and data plans.

6. Personnel Policies and Procedures Manual

(a) Except as explicitly provided to the contrary in this Contract, all provisions of the Town of Colma Personnel Policies and Procedures Manual in effect from time to time will be applicable to the City Manager.

(b) Employer may take disciplinary action relating to Employee without following the procedures set forth in the Colma Personnel Policies and Procedures Manual for imposing discipline. Nothing herein is intended to authorize any disciplinary action that would change Employee's status as an exempt employee under federal or state employment laws or as an at-will employee.

7. City Treasurer

(a) Employer may also appoint Employee as City Treasurer of the Town to perform the functions and duties specified in the Municipal Code of the Town of Colma and to perform other legally permissible and proper duties and functions as the City Council shall, from time to time, assign. There shall be no additional compensation for services as City Treasurer.

(b) Notwithstanding any other provision in this Contract, Employer may terminate Employee as City Treasurer at any time, and Employee shall not be entitled to any severance pay upon such termination.

8. At-will Employment; Termination by Employer; Severance Pay

(a) *At-will.* Notwithstanding any Town ordinance, resolution, or policy, this employment is "at-will," which may be terminated by either party, with or without notice, and with or without cause, except as expressly provided in this Contract. Employee understands and agrees that Employee has no constitutionally protected property or other interest in Employee's employment as City Manager. Employee understands and agrees that Employee works at the pleasure of the Council, and that Employee may be terminated, or asked to resign, at any time, with or without cause.

(b) *Termination for Cause.* Employer may terminate this Contract at any time for cause. No severance shall be paid in the event of termination for cause.

(i) For purposes of this Contract, "cause" shall mean willful commission of a material act of dishonesty; willful disclosure of confidential information without prior authorization by the City Council; commission of an act punishable as a felony under California law; the habitual or willful neglect of duties, commission of a material act of moral turpitude; the Town has a reasonable good faith belief that Employee has engaged in theft, embezzlement, fraud, or any other material act of dishonesty in matters affecting the Town, the inability to fully perform the essential duties of this contract due to drug or alcohol abuse; repeated and extended unexcused absences from the City Manager's office and duties; or a

willful and serious violation of the Town's Standards of Conduct, as set forth in subchapter 3.03 of the Colma Administrative Code.

(ii) Employer must give written notice of its intent to terminate for cause. The Town shall provide thirty (30) days' advance notice. Within three calendar (3) days after delivery to Employee of such notice of termination for cause, Employee may, by written notification to the City Council, request a name-clearing hearing before the City Council. Thereafter, the City Council shall fix a time for the hearing, which shall be held at the usual meeting place, and should be held within thirty (30) days of receipt of the written request from Employee, at which Employee shall appear and be heard, with or without counsel. The meeting shall be informal, and shall not involve the taking of testimony. The Parties agree that the purpose of this hearing is to allow Employee to present any "name-clearing" information he wishes to provide. The City Council has the sole and absolute discretion to terminate, and its action shall be final and binding and shall not depend upon any particular showing or degree of proof at the hearing.

(c) *Severance Pay.* If the City Council terminates Employee's employment without cause or requests the Employee's resignation, the Town shall pay Employee, on the effective date of termination, a lump sum cash payment equal to the Employee's base salary for six months, and shall pay COBRA premiums for medical and dental insurance for six months or until Employee becomes re-employed, whichever occurs first. The Employee's base salary shall be determined without regard to the value of any benefits provided to Employee.

9. Termination by Employee

(a) *Notice.* Subject to the limitation hereinafter set forth in this section, the Employee may resign at any time from the Employee's position with Employer upon giving the City Council at least thirty (30) days' notice in writing of Employee's intention to resign. No severance shall be paid in the event of Employee's voluntary resignation or retirement.

(b) *Not in May.* Notwithstanding the foregoing, Employee agrees that voluntary resignation shall not take effect during the month of May, unless the City Council expressly agrees thereto. The purpose of this restriction is to minimize disruption to year-end budget planning.

(c) *No Personal Leave.* During the 30-day period after giving notice of termination, Employee agrees not to take any vacation leave or management leave without the express consent of the City Council. Employee further agrees, during said period, to assist in transition of duties to the new City Manager as may be directed by the City Council.

(d) *No Other Restrictions.* Nothing in this Contract shall prevent, limit, or otherwise interfere with the right of the Employee to resign at any time from such position with Employer, subject only to the provisions set forth in this Contract.

10. Notice

Any notice required or permitted to be given under this Contract shall be sufficient if in writing and if sent by first class mail, postage prepaid, to Employee's residence in the case of the Employee, or to the City Attorney or to the Mayor in the case of the Employer.

11. Waiver of Terms

A waiver of any of the terms and conditions hereof shall not be construed as a general waiver by Employer, and the Employer shall be free to reinstate such part or clause.

12. Applicable Law

This Contract shall be governed by and shall be construed in accordance with the laws of the State of California.

13. Disputes

Any dispute that arises under or relates to this Contract (whether contract, tort, or both) shall be resolved in a court of competent jurisdiction located in San Mateo County. If an action is commenced by either party in connection with this Contract the prevailing party shall be entitled to an award of reasonable attorneys' fees

14. Investigation and Advice

Employee acknowledges that he has fully and independently apprized himself of the facts prior to entering into this contract and that he has been given a reasonable opportunity to consult with an attorney of his own choosing. Employee acknowledges that he has not received legal advice from the City Attorney and is not relying on any statements or representations of the City Attorney.

15. Entire Contract

This instrument supersedes all prior contracts between the parties and contains the entire contract of the parties. It may not be changed orally but only by an amendment in writing signed by the party (and, with respect to Employer, approved by the City Council) against whom enforcement of any waiver, change, modification, extension or discharge is sought.

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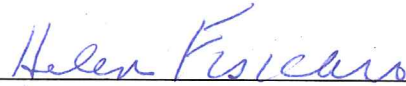
Execution. In Witness thereof, the parties hereto have signed this Contract on the respective dates shown below.

Dated 12/6/17


Brian Dossey, Employee

Dated: 12/6/17

TOWN OF COLMA (Employer)

By 
Helen Fisicaro, Mayor





STAFF REPORT

TO: Mayor and Members of the City Council
 FROM: Michael Laughlin, City Planner
 Christopher Diaz, City Attorney
 VIA: Brian Dossey, City Manager
 MEETING DATE: July 25, 2018
 SUBJECT: Smoking Control Ordinance

RECOMMENDATION

Staff recommends that the City Council introduce:

ORDINANCE ADDING SUBCHAPTER 2.08 TO THE COLMA MUNICIPAL CODE, RELATING TO SMOKING CONTROL AND DETERMINING SUCH ACTION TO BE CATEGORICALLY EXEMPT FROM ENVIRONMENTAL REVIEW PURSUANT TO CEQA GUIDELINES 15061(B)(3) AND 15308, AND WAIVE A FURTHER READING OF THE ORDINANCE

EXECUTIVE SUMMARY

The City Council held a study session to consider types of local smoking regulations. A majority of the City Council expressed interest in adopting regulations creating buffer zones for commercial business entrances, for special events and outdoor dining areas and directed staff to receive feedback from businesses and the public prior to preparing an ordinance.

FISCAL IMPACT

Ordinance implementation may result in a minor increase in code enforcement services which can be accommodated within the current code enforcement and Police Department budgets. In addition, enforcement assistance is available from the San Mateo County Tobacco Education Coalition (TEC).

BACKGROUND

On March 28, 2018, the City Council held a study session where staff presented a range of options for types of local smoking controls. After staff's presentation, the City Council heard from groups and individuals who support smoking controls. The City Council was interested in seeking input prior to enacting any smoking controls. Since the study session, staff has met with many business owners and shopping center managers to discuss proposed smoking

controls, and found general support for the types of controls included in this ordinance. The proposed ordinance does not include provisions for smoking control in either multi-family rental properties or condominium/townhouse ownership units. Staff is still conducting outreach to property owners, property managers and homeowners concerning regulations for these types of properties. Staff received an indication from the City Council to move forward with primary smoking controls for public places as an initial step. Town staff has mailed a public notice for this evening's meeting to all commercial businesses within the town.

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).

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.

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.

ANALYSIS

The draft ordinance would regulate smoking in the following ways:

Prohibition on smoking within a 20' 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.

State law already prohibits smoking within 20' of the entrance to any public building such as Town Hall, the Police Station, the Recreation Center and the Community Center. In addition,

state law prohibits smoking within 20' of any operable window or exit from a public building. This restriction is noted in the ordinance.

Daly City, East Palo Alto (for City owned and leased property), Foster City, Redwood City, and San Carlos (for City-owned and operated properties) prohibit smoking within 20' of a building entrance. Staff is recommending the same 20' buffer zone in the proposed ordinance. This distance is consistent with current state law for the entrance to public buildings such as Town Hall, the Recreation Center and Community Center.

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. In conversations with many of the stand-alone auto businesses, cemetery managers, Lucky Chances and shopping center managers, there was no opposition to the proposed additional regulation. Several managers expressed support since the regulation will reduce or eliminate awkward conversations with or between patrons about smoking.

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. The owner of Vivana Fair has marked the outdoor dining area with no smoking signs, and supports a local smoking restriction. The manager of Serra Center also supports a restriction.

To keep the restriction consistent with other buffer zones, it is recommended that no smoking occur within 20' of outdoor dining or waiting areas.

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.

Special Event Permits and Town Events

The Town has an existing Special Event Permit process for private and public events. The attached ordinance would prohibit smoking at all special events open to the public and within 20 feet of the location where people are gathering. All Town sponsored events would also be restricted.

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.

Enforcement

Enforcement is through complaints filed by citizens or observations by the Town. Enforcement is typically carried out by the Police Department and the Code Enforcement Officer. Usually an individual will refrain from smoking once made aware of the local law. For individuals not responding to a warning, a violation of the smoking ordinance is a misdemeanor, or may be deemed a public nuisance.

Outreach and Public Education

If an ordinance is adopted by the City Council, staff will conduct public outreach about the ordinance. Staff envisions preparation of a simple brochure which will explain the provisions of the ordinance. In addition, staff will include in the brochure a list of businesses where no-smoking stickers and signs can be purchased. The ordinance includes a section that requires the Town to carry out ongoing public education and information.

Council Adopted Values

The recommendation is consistent with the Council value of **responsibility** because it considers the impact of smoking on the public and places reasonable controls on smoking.

Sustainability Impact

Additional restrictions on smoking serve to improve health. The ordinance may also reduce the number of cigarette butts in public places. Both of these side benefits would have a positive sustainability impact.

Alternatives

The City Council could choose not to introduce the ordinance. If this alternative is chosen, the only restriction on smoking would be existing State Law and the local restriction of not smoking in public parks [CMC § 2.07.060 (19)].

CONCLUSION

Staff recommends the City Council introduce and adopt the ordinance.

ATTACHMENTS

- A. Ordinance

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

**AN ORDINANCE ADDING SUBCHAPTER 2.08 TO THE COLMA MUNICIPAL CODE,
RELATING TO SMOKING CONTROL AND DETERMINING SUCH ACTION TO BE
CATEGORICALLY EXEMPT FROM ENVIRONMENTAL REVIEW
PURSUANT TO CEQA GUIDELINES 15061(B)(3) AND 15308**

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

ARTICLE 1. FINDINGS

- (a) The City Council of the Town of Colma hereby finds that:
- i. Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution; and
 - ii. Reliable studies have shown that breathing second-hand smoke, which has been classified as a carcinogen, is a significant health hazard for all persons; and
 - iii. Health hazards induced by breathing second-hand smoke include lung cancer, respiratory function, bronchoconstriction, and bronchospasm; and
 - iv. Nonsmokers with allergies, respiratory diseases and those who suffer other ill effects of breathing second-hand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to same; and
 - v. There have been some studies that indicate that there are second-hand effects to those exposed to electronic cigarette vapors; and
 - vi. Accordingly, the City Council finds and declares that the purpose of this chapter is to protect the public health and welfare by prohibiting smoking in public places and places of employment as set forth herein.
- (b) Notice of a public hearing on the proposed ordinance was posted on the Town's three bulletin boards, was mailed to all businesses in the Town, and provided to any person who has filed written request for such notice at least 10 days before the hearing.
- (c) A public hearing on this matter was held on July 25, 2018, and evidence was taken.
- (d) The City Council has reviewed and considered the proposed ordinance, the staff report, and evidence presented at the public hearing.

ARTICLE 2. SUBCHAPTER 2.08 ADDED TO COLMA MUNICIPAL CODE.

The Colma Municipal Code is amended by adding thereto subchapter 2.08 to Chapter Two, to state as follows:

Subchapter 2.08: Smoking Control

2.08.010 Purpose.

This ordinance shall be construed and applied to promote its basic purposes and policies which are:

- (a) To protect the public health and welfare by prohibiting or limiting smoking in public places, as hereinafter set forth.
- (b) To strike a reasonable balance between the needs of persons who smoke and the need of nonsmokers to breathe smoke-free air, and to recognize that, where these needs conflict, the need to breathe smoke-free air should have priority.

2.08.020 Definitions.

For the purpose of this chapter, unless the context clearly requires a different meaning, the words, terms, and phrases set forth in this section have the meanings given to them in this section.

- (a) "Dining area" means any indoor or outdoor area which is available to, or customarily used by, the general public and which is designed, established or regularly used for consuming food or drink.
- (b) "Electronic Cigarette" means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, as an aerosol or vapor, including any component, part, or accessory of such a device, whether or not sold separately. "Electronic Cigarette" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, vape pen or any other product name or descriptor. (c) "Employee" means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity or other employer.
- (c) "Employer" means any person, partnership, corporation, or non-profit entity, including a municipal corporation, who employs the services of one or more persons.
- (d) "Enclosed" means closed in by a roof and four walls with appropriate openings for ingress, egress, and windows.
- (e) "Public place" means any area to which the public is invited or in which the public is permitted whether publicly or privately owned and regardless of any fee or age requirement. A private residence is not a public place, except when the residence is utilized as a health care facility, child care facility, family care home, foster care center, group home or senior care home.
- (f) "Primary entrance" means an entryway prominently delineated with signage and used by members of the public as the main source of access for ingress/egress to a facility.

(g) "Service area" means any publicly or privately-owned area, including sidewalks, that is designed to be used or is regularly used by one or more persons to receive a service, wait to receive a service or to make a transaction, whether or not such a service or transaction includes the exchange of money. The term "service area" includes, but is not limited to, information kiosks, automatic teller machines (ATMs), ticket lines, bus stops, or mobile vendor lines.

(h) "Smoking" means possessing a lighted, heated or ignited tobacco, nicotine or marijuana product or paraphernalia; or engaging in an act that generates smoke (including, but not limited to, possessing a lighted, heated or ignited pipe, hookah pipe, cigar, electronic cigarette or cigarette of any kind); or lighting, heating or igniting a pipe, hookah pipe, cigar, electronic cigarette or a cigarette of any kind. Smoking includes the use of any product which emits smoke in the form of gases, particles, vapors or other byproducts released by electronic cigarettes, tobacco cigarettes, herbal cigarettes, marijuana cigarettes and any other type of cigarette, pipe or other implement for the purpose of inhalation of vapors, gases, particles or their byproducts released as a result of combustion or ignition.

(i) "Special Event" means any event or gathering to which the public is invited or in which the public is permitted, and for which a Special Event Permit is required by the Town of Colma. This includes any Town sponsored special event.

(j) "Tobacco product" means any substance containing tobacco leaf, including cigarettes, cigars, loose tobacco, snuff or any other preparation of tobacco which may be used for smoking, chewing, inhalation or other means of ingestion; and any electronic cigarette or other electronic device used to generate smoke or vapors; and any product or formulation or matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for the use in treating nicotine or tobacco dependence.

(k) "Unenclosed Area" means any area that is not an enclosed area.

2.08.030 Areas where smoking is prohibited.

The Town of Colma recognizes that the State of California regulates smoking in many areas, including but not limited to, in enclosed places of employment (Labor Code §6404.5). The Town desires to supplement the smoking restrictions found in state law by prohibiting smoking in the areas listed below. Therefore, within the Town of Colma, smoking shall be prohibited:

(a) Within and around Town of Colma Structures. This includes any enclosed structure owned or leased by the Town of Colma wherever located; and within twenty (20) feet of an exit, entrance or operable window as prohibited by Government Code §7597;

(b) In unenclosed dining and service areas; and within twenty (20) feet of unenclosed dining and service areas.

(c) Within twenty (20) feet in any direction from the primary entrance or exit to any enclosed public place.

(d) At any special event. This includes any enclosed or unenclosed special event, whether held on public or private property, and within a distance of twenty (20) feet around the perimeter and primary entrance to the area occupied by event participants.

2.08.040 Private restrictions.

Notwithstanding any other provision of this chapter any owner, proprietor, manager or other person who controls any place described in this section may declare their entire property as nonsmoking.

2.08.050 Posting requirements.

Each owner, operator, manager or other person having control of public places within which smoking is regulated by this chapter shall conspicuously post "No Smoking" and/or "No Smoking within 20 feet of entrance" signs with letters not less than one inch in height or the international "No Smoking" symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it. At least one sign shall be placed at the entrances to every applicable facility or unenclosed area.

2.08.060 Enforcement.

(a) It is the responsibility of the City Manager or his/her designee to enforce the provisions of this chapter.

(b) Any owner, manager, operator or employer of any establishment or property subject to this chapter shall have the responsibility to inform any apparent violator, whether public or employee, about any smoking restrictions in said establishment or on the property. In the case of public property, the City Manager or his/her designee shall have the responsibility to inform any apparent violator about any smoking restrictions on public property.

(c) Any citizen who wishes to register a complaint hereunder may do so in writing addressed to the City Manager or his/her designee.

(d) Notice of these requirements shall be given to every new business license applicant.

2.08.070 Violations and penalties.

(a) It is unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this chapter to fail to comply with any of its provisions.

(b) It is unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this chapter.

(c) It is unlawful for any person who owns or controls premises subject to the prohibitions of this chapter to fail to post sign(s) as required by this chapter.

(d) A violation of section 2.08.030 is a misdemeanor, punishable as set forth in subchapter 1.05 of the Colma Municipal Code.

(e) A violation of any other provision of this subchapter is an infraction, punishable as set

forth in subchapter 1.05 of the Colma Municipal Code.

(f) A violation of this subchapter shall also be deemed to be a public nuisance under section 2.01.060 of the Colma Municipal Code, and may be abated pursuant to the procedures set forth in subchapter 2.01 of the Code. Notwithstanding any other provision in subchapter 2.01: the authority granted the Code Enforcement Officer in subchapter 2.01 may also be exercised by a Colma peace officer.

2.08.080 Public education

The City Manager or his/her designee shall engage in a continuing program to explain and clarify the purposes of this chapter to citizens affected by it and guide owners, operators and managers in their compliance with it.

ARTICLE 3. 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 4. CEQA DETERMINATION

Based on all the evidence presented in the administrative record, including but not limited to the staff report for the proposed ordinance, the City Council hereby finds and determines that this Ordinance is exempt from the California Environmental Quality Act ("CEQA") under 14 Cal. Code Regs. Section 15061(b)(3) because it can be seen with certainty that there is no possibility that its adoption will have a significant adverse effect on the environment. It is also categorically exempt under 14 Cal. Code Regs. Section 15308 because the Ordinance constitutes a regulatory activity whose purpose is to protect air quality and prevent the adverse health effects of air pollutants caused by smoking.

ARTICLE 5. 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.

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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 July 25, 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