



**AGENDA  
REGULAR MEETING  
CITY COUNCIL OF THE TOWN OF COLMA  
Wednesday, October 13, 2021  
Closed Session - 6:00 PM  
Regular Session - 7:00 PM**

*The City Council meeting will be conducted virtually pursuant to the provisions of Assembly Bill 361 amending the Ralph M. Brown Act and Government Code Section 54953(e) (and without compliance with section 54953(b)(3)) related to conducting public meetings during the COVID-19 pandemic based on the current State of Emergency and the existing State recommendations on social distancing. The Council Chambers will not be open to the public for this City Council meeting.*

*Members of the public may view the meeting by attending, via telephone or computer, the Zoom Meeting listed below:*

**Join Zoom Meeting:** <https://us02web.zoom.us/j/81289976261>  
**Passcode: 074407**

**Meeting ID: 812 8997 6261**  
**Passcode: 074407 One**  
**tap mobile**  
**+16699006833,,81289976261#,,,,,0#,,074407# US (San Jose)**  
**+13462487799,,81289976261#,,,,,0#,,074407# US (Houston)**

**Dial by your location**  
**+1 669 900 6833 US (San Jose)**  
**+1 346 248 7799 US (Houston)**  
**+1 253 215 8782 US (Tacoma)**  
**+1 312 626 6799 US (Chicago)**  
**+1 929 205 6099 US (New York)**  
**+1 301 715 8592 US (Germantown)**

**Meeting ID: 812 8997 6261**  
**Passcode: 074407**  
**Find your local number:** <https://us02web.zoom.us/u/kco5bgxkcc>

*Members of the public may provide written comments by email to the City Clerk at [ccorley@colma.ca.gov](mailto:ccorley@colma.ca.gov) before or during the meeting. Emailed comments should include the specific agenda item on which you are commenting or note that your comment concerns an item that is not on the agenda. The length of the emailed comment should be commensurate with the three minutes customarily allowed for verbal comments, which is approximately 250-300 words. Verbal comments will also be accepted during the meeting.*

**CLOSED SESSION – 6:00 PM**

**1. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION** - Pursuant to Government Code Section 54956.9(d)(1)

*Nelly Vasquez v. Town of Colma, Colma Police Department, et. al.*

San Francisco Superior Court Case No. CGC-21-594892

**PLEDGE OF ALLEGIANCE AND ROLL CALL – 7:00 PM**

**REPORT FROM CLOSED SESSION**

**ADOPTION OF AGENDA**

**PRESENTATION**

- Proclamation in Recognition of Italian Heritage Month
- Solar Installation at the Community Center

**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 September 22, 2021 Regular Meeting.
3. Motion to Approve Report of Checks Paid for September 2021.
4. Motion to Accept Informational Report on Recreation Department Programs, Activities, Events, and Trips for the Third Quarter of 2021.
5. Motion Approving the Town's Response to the Grand Jury Report Dated August 11, 2021, Regarding "San Mateo County: California's Ground Zero for Sea Level Rise."
6. Motion to Adopt a Resolution Supporting the Colma El Camino Real Bicycle and Pedestrian Improvement Plan Project and Authorizing the Submittal of an Application for Measure A and Measure W Highway Program Funding.
7. Motion Rejecting All Bids for the F Street Retaining Wall Improvement Project.
8. Motion to Adopt a Resolution of the City Council of the Town of Colma Supporting the Cities Gaming Initiative.

**PUBLIC HEARING**

**9. SB 1383 ORDINANCE – MANDATORY ORGANIC WASTE DISPOSAL REDUCTION**

*Consider:* Motion to Introduce and Waive a Further Reading of an Ordinance Amending Colma Municipal Code Subchapter 3.05 Relating to the Collection, Processing and Disposal of Solid Waste, Recycling and Organics to Include Provisions Related to Mandatory Organic Waste Disposal Reduction for Compliance with Senate Bill (SB) 1383 Regulations.

**NEW BUSINESS**

**10. CONTINUATION OF VIRTUAL MEETINGS**

*Consider:* Motion to Adopt a Resolution Making Findings and Determinations Under Assembly Bill 361

for the Continuation of Virtual Meetings.

## **STUDY SESSION**

### **11. PUBLIC ART IN COLMA**

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

## **REPORTS**

Mayor/City Council

City Manager

## **ADJOURNMENT**

The City Council Meeting Agenda Packet and supporting documents are available for review on the Town's website [www.colma.ca.gov](http://www.colma.ca.gov) or at Colma Town Hall, 1198 El Camino Real, Colma, CA. Persons interested in obtaining an agenda via e-mail should call Caitlin Corley, City Clerk at 650-997-8300 or email a request to [ccorley@colma.ca.gov](mailto:ccorley@colma.ca.gov).

### Reasonable Accommodation

Upon request, this publication will be made available in appropriate alternative formats to persons with disabilities, as required by the Americans with Disabilities Act of 1990. Any person with a disability, who requires a modification or accommodation to view the agenda, should direct such a request to Pak Lin, ADA Coordinator, at 650-997-8300 or [pak.lin@colma.ca.gov](mailto:pak.lin@colma.ca.gov). Please allow two business days for your request to be processed.



1. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION** - Pursuant to Government Code Section 54956.9(d)(1)

*Nelly Vasquez v. Town of Colma, Colma Police Department, et. al.*

San Francisco Superior Court Case No. CGC-21-594892

*This is a Closed Session item; there is no staff report for this item.*



**MINUTES  
REGULAR MEETING**

City Council of the Town of Colma  
Meeting Held Remotely via Zoom.us  
**Wednesday, September 22, 2021**  
**Closed Session - 6:00 PM**  
**Regular Session - 7:00 PM**

**CLOSED SESSION**

1. In Closed Session Pursuant to Government Code Section 54957.6 – Conference with Labor Negotiators.

Agency Negotiator:	Austris Rungis, IEDA
Employee Organizations:	Colma Peace Officers Association and Colma Communications/Records Association
Unrepresented Employees:	All

**PLEDGE OF ALLEGIANCE AND ROLL CALL**

Mayor Diana Colvin called the meeting to order at 7:00 p.m.

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

Staff Present – City Manager Brian Dossey, City Attorney Christopher Diaz, Administrative Services Director Pak Lin, Chief of Police John Munsey, Director of Public Works Brad Donohue, City Planner Farhad Mortazavi, Associate Planner Laurel Mathews, and City Clerk Caitlin Corley were in attendance.

The Mayor announced, “Welcome to another of our completely remote Council Meeting. A few notes about tonight’s meeting: We are accepting public comments through email or the chat function—you can email our City Clerk at [ccorley@colma.ca.gov](mailto:ccorley@colma.ca.gov) or use the chat function to let her know which item you would like to speak on. Please keep your comments to 3 minutes or less. Thank you.”

**REPORT FROM CLOSED SESSION**

Mayor Colvin announced, “No action was taken at tonight’s closed session.”

**ADOPTION OF THE AGENDA**

Mayor Colvin asked if there were any changes to the agenda; none were requested. She asked for a motion to adopt the agenda.

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

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
Diana Colvin, Mayor	✓				
Helen Fiscaro	✓				
Raquel Gonzalez	✓				
Joanne F. del Rosario	✓				
John Irish Goodwin	✓				
	5	0			

## PRESENTATION

- Cypress Lawn Arboretum Director Josh Gevertz gave a presentation on Arboretum Day.
- Director of Public Works and Planning Brad Donohue introduced new City Planner Farhad Mortazavi.

## PUBLIC COMMENTS

Mayor Colvin opened the public comment period at 7:19 p.m. and seeing no one request to speak, she closed the public comment period.

## CONSENT CALENDAR

2. Motion to Accept the Minutes from the September 8, 2021 Regular Meeting.
3. Motion to Adopt a Resolution Adjusting Salary for Part-Time Staff to Meet the Minimum Wage Requirement Set Forth by the State of California and Amending the Salary Schedule.

**Action:** Council Member Goodwin moved to approve the consent calendar items #2 and 3; the motion was seconded by Council Member del Rosario and carried by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
Diana Colvin, Mayor	✓				
Helen Fiscaro	✓				
Raquel Gonzalez	✓				
Joanne F. del Rosario	✓				
John Irish Goodwin	✓				
	5	0			

## NEW BUSINESS

### 4. GRAND JURY RESPONSE – RACIAL IDENTITY AND PROFILING ACT

Chief of Police John Munsey presented the staff report. Mayor Colvin opened the public comment period at 7:30 p.m. and seeing no one request to speak, she closed the public comment period. Council discussion followed.

**Action:** Council Member Goodwin moved to approve the Town's Response to the Grand Jury Report Dated July 27, 2021, Regarding "Building Better Trust Between the Community & Law Enforcement Via the Racial Identity and Profiling Act;" the motion was seconded by



Council Member del Rosario and carried by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
Diana Colvin, Mayor	✓				
Helen Fisticaro	✓				
Raquel Gonzalez	✓				
Joanne F. del Rosario	✓				
John Irish Goodwin	✓				
	5	0			

**5. REPORT ON AB 361 AND EXECUTIVE ORDER REGARDING REMOTE MEETINGS**

City Attorney Christopher Diaz presented the staff report. Mayor Colvin opened the public comment period at 7:47 p.m. and seeing no one request to speak, the Mayor closed the public comment period. Council discussion followed.

**Action:** Vice Mayor Fisticaro moved to Receive a Report on Assembly Bill 361 and the Status of the Governor’s Executive Order Regarding Remote Meetings, and Provide Input, if any; the motion was seconded by Council Member del Rosario and carried by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
Diana Colvin, Mayor	✓				
Helen Fisticaro	✓				
Raquel Gonzalez	✓				
Joanne F. del Rosario	✓				
John Irish Goodwin	✓				
	5	0			

**COUNCIL CALENDARING**

The next Regular Meeting will be on Wednesday, October 13, 2021 at 7:00 p.m.

**REPORTS**

City Manager Brian Dossey gave an update on the following topics:

- He will be attending the League of California Cities Conference on September 23 – 24, 2021.
- The C.A.P.E. program will be holding a Refresher Course for currently certified CERT members on Thursday, September 23, 2021.
- There will be a new C.A.P.E. course series beginning on September 30, 2021.
- The Annual Business Recognition event will be held on Thursday, October 7 at 11:30 p.m. at the Colma Community Center.

**ADJOURNMENT**

Mayor Colvin adjourned the meeting at 8:02 p.m.

Respectfully submitted,

Caitlin Corley  
City Clerk

Bank : first TRI COUNTIES BANK

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
53590	9/7/2021	00051	CALIFORNIA WATER SERVICE08/24/2021	8/24/2021	WATER BILLS	6,199.79	
			08/26/2021	8/26/2021	CA WATER	159.52	6,359.31
53591	9/7/2021	00057	CINTAS CORPORATION #2	9/2/2021	TOWN HALL SCRAPER MATS	189.61	189.61
53592	9/7/2021	00063	BEST, HARRY	9/3/2021	09/11/21 PICNIC 4-PIECE STE	1,600.00	1,600.00
53593	9/7/2021	00065	COLMA HISTORICAL ASSOCIATION	9/1/2021	DONATION IN HONOR OF MIC	100.00	100.00
53594	9/7/2021	00307	PACIFIC GAS & ELECTRIC	8/25/2021	PG&E	1,703.55	
			08/20/2021	8/20/2021	PG&E	102.31	1,805.86
53595	9/7/2021	00343	SMC COUNCIL OF CITIES	08/27/2021	08/27/21 DINNER MEETING J.	55.00	55.00
53596	9/7/2021	01037	COMCAST CABLE	8/26/2021	8155 20 022 0094769 TOWN C	15,232.37	15,232.37
53597	9/7/2021	01340	NAVIA BENEFIT SOLUTIONS	8/31/2021	SECTION 125 PARTICIPANT &	117.70	117.70
53598	9/7/2021	01565	BAY CONTRACT MAINTENANCE	7/10/2021	JANITORIAL SERVICES	2,661.35	2,661.35
53599	9/7/2021	01629	R. J. RICCIARDI INC., CPAS	8/31/2021	AUDIT SERVICES	1,028.75	1,028.75
53600	9/7/2021	02637	Z.A.P. MANUFACTURING INC. 5928	8/30/2021	CUSTOM SIGNS 2 EA. 24X24	1,796.88	
			5927	8/30/2021	4 EA. 24X 30 SIGNS H.I.P. 30	262.50	2,059.38
53601	9/7/2021	02849	U.S. BANK PARS ACCOUNT, 6 Sept 2021	9/7/2021	OPEB CONTRIBUTION	126,504.00	126,504.00
53602	9/7/2021	02965	HAPPYCAKE FACE PAINTING 686800	8/27/2021	09/11/21 PICNIC 3.5 HOUR CA	1,267.88	1,267.88
53603	9/7/2021	03416	GOVERNMENT JOBS.COM, INC(INV-23345	9/1/2021	09/01/21-02/28/22 SUBSCRIPT	2,500.00	2,500.00
9072021	9/7/2021	00282	CALIFORNIA PUBLIC EMPLOY 1000000165274	8/16/2021	MEDICAL INSURANCE	5,776.90	5,776.90
<b>Sub total for TRI COUNTIES BANK:</b>						<b>167,258.11</b>	

15 checks in this report.

Grand Total All Checks:

167,258.11

Bank : first TRI COUNTIES BANK

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
53604	9/7/2021	00020	ASSOCIATED SERVICES INC 121070033	7/1/2021	WATERLOGIC RENTAL	40.00	
			121070032	7/1/2021	MTN H/C BWC	9.00	49.00
53605	9/7/2021	00112	DEPARTMENT OF JUSTICE 524431	8/12/2021	PD ACCOUNT #140503	98.00	98.00
53606	9/7/2021	00373	STATE CONTROLLER FTB-00004041	8/23/2021	FTB OFFSETS PROGRAM AD	65.97	65.97
53607	9/7/2021	00534	SMC INFORMATION SERVICE:1YCL12107	7/31/2021	MICROWAVE MUX DSO	82.25	82.25
53608	9/7/2021	01037	COMCAST CABLE 08/17-09/16	8/12/2021	8155 20 022 0188769 HD TECI	55.18	55.18
53609	9/7/2021	01399	WESTLAKE ECO SOFT TOUCH July 2021	8/1/2021	PD CAR WASH	83.65	83.65
53610	9/7/2021	02143	ENTENMANN-ROVIN COMPAN0157831	4/9/2021	UNIFORM HAT PINS	436.70	436.70
<b>Sub total for TRI COUNTIES BANK:</b>							<b>870.75</b>

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7 checks in this report.

Grand Total All Checks:

870.75

Bank : first TRI COUNTIES BANK

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
53611	9/10/2021	01340	NAVIA BENEFIT SOLUTIONS 09102021 B	9/10/2021	DEPENDENT CARE: PAYMEN	1,516.66	
			09102021 B	9/10/2021	FLEX 125 PLAN: PAYMENT	597.83	2,114.49
53612	9/10/2021	01375	NATIONWIDE RETIREMENT S09102021 B	9/10/2021	NATIONWIDE: PAYMENT	4,343.75	
			09102021 M	9/10/2021	NATIONWIDE: PAYMENT	1,150.00	5,493.75
53613	9/10/2021	02377	CALIFORNIA STATE DISBURS09102021 B	9/10/2021	WAGE GARNISHMENT: PAYM	547.84	547.84
53614	9/10/2021	02944	PEACE OFFICERS RESEARCH09102021 B	9/10/2021	PORAC: PAYMENT	30.00	30.00
53615	9/10/2021	02945	PORAC LEGAL DEFENSE FUN09102021 B	9/10/2021	PORAC LDF: PAYMENT	168.00	168.00
94460	9/10/2021	00521	UNITED STATES TREASURY 09102021 M	9/10/2021	FEDERAL TAX: PAYMENT	901.93	901.93
94461	9/10/2021	01360	VANTAGE TRANSFER AGENT09102021 M	9/10/2021	ICMA CONTRIBUTION: PAYME	464.42	464.42
94462	9/10/2021	00631	P.E.R.S. 09102021 M	9/10/2021	PERS MISC NON-TAX: PAYME	871.61	871.61
94463	9/10/2021	00282	CALIFORNIA PUBLIC EMPLOY09102021 M	9/10/2021	SEPTEMBER 2021 ACTIVE PF	8,141.33	8,141.33
94464	9/10/2021	00130	EMPLOYMENT DEVELOPMEN09102021 B	9/10/2021	CALIFORNIA STATE TAX: PAY	13,146.16	13,146.16
94465	9/10/2021	00521	UNITED STATES TREASURY 09102021 B	9/10/2021	FEDERAL TAX: PAYMENT	57,186.79	57,186.79
94466	9/10/2021	00282	CALIFORNIA PUBLIC EMPLOY09102021 B	9/10/2021	SEPTEMBER 2021 ACTIVE PF	63,151.70	63,151.70
94467	9/10/2021	00631	P.E.R.S. 09102021 B	9/10/2021	PERS - BUYBACK: PAYMENT	40,767.64	40,767.64
94468	9/10/2021	01360	VANTAGE TRANSFER AGENT09102021 B	9/10/2021	ICMA CONTRIBUTION: PAYME	5,339.33	5,339.33
94469	9/10/2021	00068	COLMA PEACE OFFICER'S 09102021 B	9/10/2021	COLMA PEACE OFFICERS: P/	568.14	568.14

Sub total for TRI COUNTIES BANK:

198,893.13

15 checks in this report.

Grand Total All Checks:

198,893.13



Bank : first TRI COUNTIES BANK

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
53616	9/14/2021	00051	CALIFORNIA WATER SERVICE08/25/2021	8/25/2021	CA WATER	3,128.75	3,128.75
53617	9/14/2021	00071	CSG CONSULTANTS, INC. May 2021	9/7/2021	CSG	97,859.99	97,859.99
53618	9/14/2021	00093	CITY OF SOUTH SAN FRANCISCO:518527	8/26/2021	TRAFFIC SIGNAL MAINTENANCE	1,000.00	1,000.00
53619	9/14/2021	00095	CLEARLITE TROPHIES 87582	9/8/2021	CUSTOMER PERPETUAL PLA	25.00	25.00
53620	9/14/2021	00174	HOME DEPOT CREDIT SERVICE/August 10-26, 2021	8/30/2021	PW SUPPLY PURCHASES	1,232.99	1,232.99
53621	9/14/2021	00217	L. N. CURTIS & SONS INV520304	8/25/2021	INVISIO CUSTOM V10-LE KIT.	1,069.69	2,077.97
53622	9/14/2021	00254	INV510263	7/22/2021	MEDIUM FM54 TWINPORT SF	1,008.28	
53623	9/14/2021	00307	METRO MOBILE COMMUNICATIONS45601	8/23/2021	2 EA: KENWOOD NX-5800BK	3,011.88	
53624	9/14/2021	00364	210915	9/1/2021	MAINTENANCE CONTRACT	602.00	3,613.88
53625	9/14/2021	00414	9248309814-8	8/25/2021	PG&E	296.89	
53626	9/14/2021	00623	PACIFIC GAS & ELECTRIC 0567147369-1	9/1/2021	PG&E	161.48	458.37
53627	9/14/2021	01037	SMC SHERIFF'S OFFICE PS-INV103764	8/31/2021	LAB FEES	1,082.00	1,082.00
53628	9/14/2021	01280	TERMINEX INTERNATIONAL L411630937	9/8/2021	PEST CONTROL	133.00	
53629	9/14/2021	01565	411630938	9/8/2021	601 F St.	79.00	212.00
53630	9/14/2021	02499	August 2021	8/31/2021	UNIFORM SERVICE	539.60	
53631	9/14/2021	02787	August 2021	8/31/2021	FIRST AID SUPPLIES	159.00	698.60
53632	9/14/2021	02827	09/02-10/01/21	8/27/2021	8155 20 022 0097069 INTERNI	245.08	
53633	9/14/2021	02886	08/25-09/24 Intel	8/20/2021	8155 20 022 0097051 Internet	240.08	
			08/25-09/24 427	8/25/2021	8155 20 022 0097028 427 F ST	240.08	
			09/11-10/10 601	9/7/2021	8155 20 022 0096715 601 F ST	110.08	835.32
			9117143837	9/1/2021	SAFETY VEST CL3 MEDIUM (L)	94.50	94.50
			September 2021	9/10/2021	JANITORIAL SERVICES	9,083.28	
			26189	9/10/2021	COVID-19 BASE LINE DECON	7,885.12	16,968.40
			105293593	8/20/2021	A11 TOWN HALL COPY MACH	513.17	
			105293595	8/20/2021	A9 PD COPY MACHINE RENT,	274.76	
			105297570	8/23/2021	A10 CCC COPY MACHINE	274.76	1,062.69
			21974	9/1/2021	POLICE STATION FIRE ALARM	45.00	45.00
			INC.RS3310813	8/31/2021	STORAGE, PICKUP/DELIVER	106.69	106.69
			READY REFRESH BY NESTLE010036457661	9/8/2021	BOTTLED WATER SERVICE	95.90	95.90

Bank : first TRI COUNTIES BANK (Continued)

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
53634	9/14/2021	03015	U.S. BANK CORPORATE PMT	08/23/2021	Abell	2,672.03	
				08/23/2021	Wolli	2,366.80	
				08/23/2021	Lin	619.21	
				08/23/2021	Nave	491.54	
				08/23/2021	Gote	300.77	
				08/23/2021	Vela	97.95	
				08/23/2021	Corle	24.05	
				08/23/2021	Gog	17.99	
				08/23/2021	PD	2.00	6,592.34
53635	9/14/2021	03034	FLEX ADVANTAGE	8/31/2021		190.00	190.00
53636	9/14/2021	03061	NICK BARBIERI TRUCKING, LI2267968	8/31/2021		496.17	496.17
53637	9/14/2021	03086	TAPCO	8/30/2021	2 EA: U-BRACKET 2" CLAMP (	1,017.28	1,017.28
53638	9/14/2021	03273	THE HOME DEPOT PRO	9/1/2021	PW PURCHASES	1,362.23	
				8/30/2021	PW PURCHASES	313.80	1,676.03
53639	9/14/2021	03415	HAWK ANALYTICS, INC.	9/2/2021	09.02.21-09.01.22 CELLHAWK	4,995.00	4,995.00
<b>Sub total for TRI COUNTIES BANK:</b>							<b>145,564.87</b>

24 checks in this report.

Grand Total All Checks: 145,564.87

Bank : first TRI COUNTIES BANK

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
53640	9/21/2021	00004	AT&T	9/13/2021	C3-AVB-12-10-TS-01	1,521.85	1,521.85
53641	9/21/2021	00051	CALIFORNIA WATER SERVICE	9/14/2021	CA WATER	784.41	1,126.18
53642	9/21/2021	00054	C/CAG	9/9/2021	CA WATER	341.77	7,305.50
53643	9/21/2021	00057	CINTAS CORPORATION #2	9/1/2021	TRANSPORTATION DATA	7,305.50	189.61
53644	9/21/2021	00099	D.C. LOCK & SECURITY SERV	9/16/2021	OUTSIDE & INSIDE MATS AT -	189.61	27.47
53645	9/21/2021	00112	DEPARTMENT OF JUSTICE	6/22/2021	5 KEYS SC4DNDNB	27.47	64.00
53646	9/21/2021	00117	DELTA DENTAL OF CALIFORNIA	9/3/2021	HR ACCOUNT #145931	64.00	12,797.60
53647	9/21/2021	00280	OFFICE DEPOT, INC.	10/1/2021	DENTAL INSURANCE	12,797.60	122.07
53648	9/21/2021	00307	PACIFIC GAS & ELECTRIC	9/8/2021	OFFICE SUPPLIES	122.07	81.40
53649	9/21/2021	00349	SEGALE & CERINI, INC.	9/7/2021	OFFICE SUPPLIES	81.40	4,078.74
53650	9/21/2021	00388	SONITROL	9/9/2021	PG&E	4,078.74	18,939.00
53651	9/21/2021	00412	TELECOMMUNICATIONS ENG	8/31/2021	LANDSCAPE SERVICES	18,939.00	690.00
53652	9/21/2021	00534	SMC INFORMATION SERVICE	8/31/2021	IRRIGATION REPAIRS	690.00	1,109.81
53653	9/21/2021	00609	SMC MANAGER'S OFFICE	9/2/2021	MONTHLY MONITORING	1,109.81	1,515.00
53654	9/21/2021	01183	BEST BEST & KRIEGER LLP	9/10/2021	Facilities Mgmt & Maintenance	1,515.00	82.25
53655	9/21/2021	01184	PENINSULA UNIFORMS & EQ	8/31/2021	MICROWAVE MUX DSO	82.25	6,274.00
53656	9/21/2021	01414	VERANO OWNERS ASSOCIAT	9/1/2021	FY 2021-22 JPA OFFICE OF EI	6,274.00	19,859.00
53657	9/21/2021	01995	CELETTA INVESTIGATIVE SE	9/15/2021	CITY ATTORNEY SERVICES	19,859.00	1,927.80
53658	9/21/2021	02118	BAY AREA NEWS GROUP	9/15/2021	CITY ATTORNEY THIRD PART	1,927.80	886.10
53659	9/21/2021	02182	DALY CITY KUMON CENTER	9/15/2021	CITY ATTORNEY SPECIAL SE	886.10	428.46
53660	9/21/2021	02216	RAMOS OIL CO. INC.	9/2/2021	UNIFORMS	428.46	350.00
53661	9/21/2021	02224	STANDARD INSURANCE COM	10/1/2021	VERANO OWNERS ASSOCIA	350.00	1,080.00
53662	9/21/2021	02499	GE CAPITAL INFORMATION	9/3/2021	CARDROOM BACKGROUND	1,080.00	151.51
53663	9/21/2021	02542	JOHNSON CONTROLS SECUF	9/1/2021	08.11.21 BID NOTICE F STREI	151.51	2,350.00
53664	9/21/2021	02773	GRAPHICS ON THE EDGE	9/15/2021	TUTORING	2,350.00	1,888.38
				8/10/2021	PD GASOLINE PURCHASES 1	1,888.38	1,765.00
				8/20/2021	PD GASOLINE PURCHASES 1	1,765.00	1,527.77
				8/31/2021	PD GASOLINE PURCHASES 2	1,527.77	80.55
				8/20/2021	RECREATION GASOLINE PUF	80.55	43.41
				8/20/2021	ADMIN GASOLINE PURCHASI	43.41	191.50
				9/14/2021	LIFE INSURANCE	191.50	953.25
				9/1/2021	TH COPY FEES	953.25	592.98
				9/11/2021	FIRE SYSTEM AT SR. HOUSIN	592.98	246.80
				8/24/2021	DECALS: 4" REFLECTIVE FLA	246.80	

Bank : first TRI COUNTIES BANK (Continued)

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
53665	9/21/2021	02799	WAVE	9/1/2021	RIMS INTERNET W/SSF	400.00	400.00
53666	9/21/2021	02878	MENDOZA, DANIEL	9/14/2021	AUG 16-27, 2021 ICI CORE MK	556.19	556.19
53667	9/21/2021	02970	PRODUCTIVE PRINTING & GR35507	9/7/2021	#10 ENVELOPES	212.34	212.34
53668	9/21/2021	03034	FLEX ADVANTAGE	9/16/2021	HRA RETIREES	69,396.21	69,396.21
53669	9/21/2021	03204	WATERLOGIC AMERICAS LLC904664	9/8/2021	SERVICE AGREEMENT 42726	215.11	215.11
53670	9/21/2021	03224	DECORATIVE PLANT SERVICEf0025452	9/1/2021	MAINTENANCE GUARANTEE	157.45	157.45
53671	9/21/2021	03334	AT&T MOBILITY NATIONAL AC287296200335X	9/2/2021	WIRELESS	1,399.26	1,399.26
<b>Sub total for TRI COUNTIES BANK:</b>						<b>162,583.55</b>	

32 checks in this report.

Grand Total All Checks: 162,583.55

Bank : first TRI COUNTIES BANK

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
53672	9/24/2021	00047	09242021 B	9/24/2021	C.L.E.A. PAYMENT	196.00	196.00
53673	9/24/2021	01340	09242021 B	9/24/2021	NAVIA BENEFIT SOLUTIONS	1,516.66	
53674	9/24/2021	01375	09242021 B	9/24/2021	FLEX 125 PLAN: PAYMENT	597.83	2,114.49
53675	9/24/2021	02224	09242021 B	9/24/2021	NATIONWIDE RETIREMENT SOLL09242021 B	4,393.75	4,393.75
53676	9/24/2021	02377	09242021 B	9/24/2021	STANDARD INSURANCE COMPAN09242021 B	374.00	374.00
94470	9/24/2021	00130	09242021 B	9/24/2021	CALIFORNIA STATE DISBURSEMF09242021 B	547.84	547.84
94471	9/24/2021	00521	09242021 B	9/24/2021	EMPLOYMENT DEVELOPMENT D09242021 B	13,360.65	13,360.65
94472	9/24/2021	00631	09242021 B	9/24/2021	UNITED STATES TREASURY	56,121.75	56,121.75
94473	9/24/2021	01360	09242021 B	9/24/2021	P.E.R.S.	40,809.86	40,809.86
94474	9/24/2021	00068	09242021 B	9/24/2021	VANTAGE TRANSFER AGENTS	5,341.61	5,341.61
				9/24/2021	COLMA PEACE OFFICER'S	568.14	568.14
<b>Sub total for TRI COUNTIES BANK:</b>						<b>123,828.09</b>	

10 checks in this report.

Grand Total All Checks: 123,828.09



Bank : first TRI COUNTIES BANK

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
53677	9/28/2021	00057	CINTAS CORPORATION #2	7/29/2021	MAT CLEANING & SUPPLIES	477.97	
			4091490469	8/12/2021	MAT CLEANING & SUPPLIES	477.97	
			4092817156	8/26/2021	MAT CLEANING & SUPPLIES	477.97	
			4094137900	9/23/2021	MAT CLEANING & SUPPLIES	477.97	
			4096786658	3/5/2021	SERRAMONTE & HILLSIDE NI	3,727.09	1,911.88
53678	9/28/2021	00093	CITY OF SOUTH SAN FRANCISCO	9/16/2021	1198 EL CAMINO	4,151.08	3,727.09
53679	9/28/2021	00307	PACIFIC GAS & ELECTRIC	9/14/2021	PG&E	1,596.64	5,747.72
			0512181543-4	9/15/2021	POSTAGE METER RENTAL	899.64	899.64
53680	9/28/2021	00311	PITNEY BOWES INC.	8/26/2021	2021 HOLIDAY SEASON INST/	10,670.00	10,670.00
53681	9/28/2021	00357	SIERRA DISPLAY, INC.	9/19/2021	VISION SERVICE PLAN	952.01	
53682	9/28/2021	00432	VISION SERVICE PLAN	9/19/2021	VSP COBRA	51.46	1,003.47
			813286453	9/10/2021	JULY 2021	3,758.75	
53683	9/28/2021	01030	STEPFORD, INC.	9/10/2021	HOURS IN EXCESS OF CONT	2,596.25	
			2106556	9/10/2021	HOURS IN EXCESS OF CONT	1,472.50	7,827.50
			2106557	9/16/2021	EMPLOYEE ASSISTANCE PRG	99.20	99.20
53684	9/28/2021	01036	MANAGED HEALTH NETWORK/PRM-066149	9/15/2021	CELL PHONE SERVICE	342.09	342.09
53685	9/28/2021	01370	VERIZON WIRELESS SERVICE/9888483307	9/22/2021	COVID-19 BASE LINE DECON	1,328.86	
53686	9/28/2021	01565	BAY CONTRACT MAINTENAN/26259	9/22/2021	COVID-19 BASE LINE DECON	581.16	
			26256	9/22/2021	COVID-19 BASE LINE DECON	545.46	
			26260	9/22/2021	COVID-19 BASE LINE DECON	513.85	2,969.33
			26258	9/15/2021	PW GAS PURCHASES 1-15	420.20	420.20
53687	9/28/2021	03061	NICK BARBIERI TRUCKING, LI2270823	8/13/2021	STORM DRAIN CATCH BASIN	19,005.00	19,005.00
53688	9/28/2021	03102	REVEL ENVIRONMENTAL MFC50328	10/1/2021	MAINTENANCE GUARANTEE/	157.45	157.45
53689	9/28/2021	03224	DECORATIVE PLANT SERVICE/0025777				
<b>Sub total for TRI COUNTIES BANK:</b>						<b>54,780.57</b>	

13 checks in this report.

Grand Total All Checks: 54,780.57



# STAFF REPORT

TO: Mayor and Members of the City Council  
 FROM: Angelika Abellana, Recreation Coordinator  
 VIA: Brian Dossey, City Manager  
 MEETING DATE: October 13, 2021  
 SUBJECT: Recreation Services Department Quarterly Review, July - September 2021

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## RECOMMENDATION

Staff recommends that the City Council adopt:

MOTION TO ACCEPT INFORMATIONAL REPORT ON RECREATION DEPARTMENT PROGRAMS, ACTIVITIES, EVENTS, AND TRIPS FOR THE THIRD QUARTER OF 2021.

## EXECUTIVE SUMMARY

In the third quarter of 2021, a total of 1,325 participants attended 36 programs. This represents a decrease of 771 participants from the third quarter of 2020. Staff attributes the decrease to the cancellation of the Town's Community Events and modified in-person Summer Day Camp. While staff realizes these numbers do not reflect traditional recreation services programming, however it is important to demonstrate the continued service to the community while the COVID-19 pandemic continues.

Staff estimates that 27 percent of the population had a current Colma I.D. during the third quarter of 2021.

There was a total of 3 rentals, which is an increase of 2 rentals from the third quarter of 2020.

As the COVID-19 pandemic continues the Recreation Department is offering hybrid (in-person/remote) programs in an effort to keep the community and staff safe. Some in person programming that can be hosted safely outdoors has had some success and the remote programs continue to be popular. Also, some contract classes have been restarted with safety precautions being taken (i.e. social distance and/or vaccine requirement).

## **BACKGROUND**

### Participation

The Recreation Services Department offered programs, activities, events and trips for all age groups during the past quarter. Below is a summary of participation levels by demographic:

- A total of 58 adults and seniors participated in enrichment programs. This represents an increase of 33 participants from the third quarter of 2021. Staff attributes the increase in participation to due to the modifications to adult and senior programs to do at home, virtually or by delivery, and offering in person fitness classes.
- A total of 213 adults and seniors participated in trips and events. This represents an increase of 99 participants from the third quarter of 2021. Staff attributes the increase in participation due the modification of our luncheon program to be delivered and enjoyed at home.
- A total of 669 youth and teens participated in Enrichment Programs. This represents a decrease of 143 participants from the third quarter of 2021. Staff attributes the decrease due COVID related restrictions for in person guidelines for Summer Day Camp, and cancellation of programs per COVID-19 and Shelter-in-Place orders.
- A total of 5 youths and teens participated in events and trips. This represents an increase of 1 participant from the third quarter of 2021. Staff attributes the increase due to the interest of our Leaders in Training program (LIT) during the summer months.
- A total of 874 youth, adults and seniors participated in Community Programs. This represents a decrease of 267 participants from the third quarter of 2021. Staff attributes the decrease due to the cancellation of Community Fair, and the declining demand for food delivery services through the Second Harvest Foodbank that were in such high demand during the height of the COVID-19 pandemic.

The attachment contains a detailed breakdown of participation by program.

### Rental Activity

The Colma Community Center was rented for 3 different events:

- Resident Rental (one social)
- Colma Non-Profit (one fundraiser)
- In House Reservations (one blood drive)

The Sterling Park Recreation Center was not rented for the third quarter of 2021.

## **ATTACHMENTS**

- A. 2021 Recreation Services Department Quarterly Review – Participation Detail

**Recreation Services Department Quarterly Review  
July - September 2021  
Participation Detail**

**Adult/Senior Enrichment Programs**

<b>Program</b>	<b>Registered</b>	<b>Sessions</b>	<b>New or Existing Program</b>
Let's Get Crafty	16	3	Existing
Arm Chair Travel at Home	17	2	Existing
Colma Ladies Social	4	1	Existing
Boot Camp Fitness	2	1	Existing
Happy Chair Yoga	5	1	<i>NEW</i>
Zumba	8	1	Existing
Mixtiso Yoga	6	1	<i>NEW</i>

**Adult & Senior Trips & Events**

<b>Program</b>	<b>Registered</b>	<b>Sessions</b>	<b>New or Existing Program</b>
Virtual Breakfast and Bingo	40	3	Existing
Drive In Bingo	Cancelled	1	<i>NEW</i>
Senior Luncheon Deliveries	138	3	Existing
Wine and Canvas to (Gogh)	15	1	<i>NEW</i>
Veterans Village Colma ID Day	20	1	<i>NEW</i>

**Youth & Teen Enrichment Programs**

<b>Program</b>	<b>Registered</b>	<b>Sessions</b>	<b>New or Existing Program</b>
Duo Dance Academy	5	1	Existing
Kids' Club	23	2	Existing
Kumon Math Tutoring	24	3	Existing
Kumon Reading Tutoring	13	3	Existing
PNO to GO	Cancelled	1	Existing
Summer Camp Care Packages	Cancelled	1	Existing
Summer Day Camp	69	3	Existing
Summer Food Program	534	1	Existing
Tae Kwon Do	1	1	Existing

**Youth and Teen Events & Trips**

<b>Program</b>	<b>Registered</b>	<b>Sessions</b>	<b>New or Existing Program</b>
Cookies and Canvas	Cancelled	1	Existing
Dessert and Arts & Crafts	2	1	<i>NEW</i>
Open Teen Center	Cancelled	1	Existing
LIT Program	3	1	Existing
Teen ONLY Movie Night	Cancelled	1	<i>NEW</i>
Teen ONLY Game Night	Cancelled	1	<i>NEW</i>
SF Giants Game (Teen trip)	Cancelled	1	<i>NEW</i>

**Community Programs**

<b>Program</b>	<b>Registered</b>	<b>Sessions</b>	<b>New or Existing Program</b>
CAPE	23	2	Existing
Grandparents Day Celebration	Cancelled	1	<b><i>NEW</i></b>
Second Harvest Food Delivery Program	295	1	Existing
Summer Concert Series	350	2	Existing
Town Picnic	144	2	Existing
Virtual Family Bingo/Trivia	Cancelled	2	<b><i>NEW</i></b>
Town Picnic Virtual Bingo	60	1	<b><i>NEW</i></b>
Walk, Jog, Run and Bike Challenge	2	1	<b><i>NEW</i></b>

Note: Traditional summer programming (i.e. Community Fair) was cancelled due to COVID-19.



# STAFF REPORT

TO: Mayor and Members of the City Council  
 FROM: Brian Dossey, City Manager  
 MEETING DATE: October 13, 2021  
 SUBJECT: Grand Jury Response – “San Mateo County: California’s Ground Zero for Sea Level Rise.”

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## RECOMMENDATION

Staff recommends that the City Council make the following motion:

MOTION APPROVING THE TOWN’S RESPONSE TO THE GRAND JURY REPORT DATED AUGUST 11, 2021, REGARDING “SAN MATEO COUNTY: CALIFORNIA’S GROUND ZERO FOR SEA LEVEL RISE.”

## 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 San Mateo 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 August 11, 2021 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 October 13, 2021, 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 the *responsible* action because Sea Level Rise is a complex problem with an uncertain timetable that will demand long-term solutions.

## **CONCLUSION**

Staff recommends that the City Council approve, by motion, the Town's proposed response to the August 11, 2021 Grand Jury report regarding "San Mateo County: California's Ground Zero for Sea Level Rise."

## **ATTACHMENTS**

- A. Grand Jury Report
- B. Town's draft response letter for August 11, 2021 Grand Jury Report





Superior Court of California, County of San Mateo  
Hall of Justice and Records  
400 County Center  
Redwood City, CA 94063-1655

NEAL TANIGUCHI  
COURT EXECUTIVE OFFICER  
CLERK & JURY COMMISSIONER

(650) 261-5066  
FAX (650) 261-5147  
www.sanmateocourt.org

August 11, 2021

Town Council  
Town of Colma  
1198 El Camino Real  
Colma, CA 94014

Re: Grand Jury Report: "San Mateo County: California's Ground Zero for Sea Level Rise."

Dear Councilmembers:

The 2020-2021 Grand Jury filed a report on August 11, 2021 which contains findings and recommendations pertaining to your agency. Your agency must submit comments, within 90 days, to the Hon. Amarra A. Lee. Your agency's response is due no later than November 11, 2021. **Please note that the response should indicate that it was approved by your governing body at a public meeting.**

For all findings, your responding agency shall 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, as to each Grand Jury recommendation, your responding agency shall 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 of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
4. The recommendation will not be implemented because it is not warranted or reasonable, with an explanation therefore.

Kindly submit your responses in ALL of the following formats:

1. Responses to be placed on file with the Clerk of the Court by the Court Executive Office.
  - Prepare original on your agency's letterhead, indicate the date of the public meeting that your governing body approved the response address and mail to:  

**Hon. Amarra A. Lee  
Judge of the Superior Court  
c/o Jenarda Dubois  
Hall of Justice  
400 County Center; 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655.**
2. Responses to be placed at the Grand Jury website.
  - Scan response and send by e-mail to: [grandjury@sanmateocourt.org](mailto:grandjury@sanmateocourt.org). (Insert agency name if it is not indicated at the top of your response.)
3. Responses to be placed with the clerk of your agency.
  - File a copy of the response directly with the clerk of your agency. Do not send this copy to the Court.

For up to 45 days after the end of the term, the foreperson and the foreperson's designees are available to clarify the recommendations of the report. To reach the foreperson, please call the Grand Jury Clerk at (650) 261-5066.

If you have any questions regarding these procedures, please do not hesitate to contact David Silberman, Chief Deputy County Counsel, at (650) 363-4749.

Very truly yours,



Neal Taniguchi  
Court Executive Officer

Enclosure

cc: Hon. Amarra A. Lee  
David Silberman



## SAN MATEO COUNTY: CALIFORNIA'S GROUND ZERO FOR SEA LEVEL RISE

### ISSUE

The San Mateo County Flood and Sea Level Rise Resiliency District (“OneShoreline”) began operating in 2020. It was designed to coordinate countywide efforts to combat the harms of sea level rise caused by climate change. Is OneShoreline on course to adequately address the sea level rise challenge that has been assigned to it, and does it have the support it needs?

### SUMMARY

San Mateo County has been declared the California County most at risk from sea level rise (SLR). *Its Bayside communities have billions of dollars of residential and commercial property at risk.* Its five wastewater facilities and three airports, including San Francisco International, are all at risk for flooding from the rising sea. Transportation systems, schools, medical facilities, homes, and parks are all at risk. The Pacific coast communities are also vulnerable to flooding and erosion from higher seas.<sup>1</sup>

Sea level rise is a complex problem with an uncertain timetable that demands ongoing long-term solutions. It requires people to think differently and to truly collaborate. While solutions are still being developed, they will require planning, funding, and collaboration between affected cities, the County, and private entities.

OneShoreline was created from the County Flood Control District, has countywide jurisdiction, and focuses on SLR in addition to flooding from creeks. The official name for OneShoreline is the “San Mateo County Flood and Sea Level Rise Resiliency District.”

OneShoreline provides expertise in the complex process of designing and building SLR and flood mitigation projects, including guidance through the complex maze of federal and state funding for projects. Major SLR projects can take five to ten years to plan, engineer, permit, and construct. Each SLR project will require regulatory permitting by regional, state, and federal agencies. OneShoreline could also guide County officials and regional legislators as they lobby Congress and state and federal agencies for funding and regulatory reform to address this serious problem.

To effectively implement SLR projects, OneShoreline must earn the confidence of San Mateo County (SMC) residents. Some people may not see the need for the expensive SLR projects and will need convincing that the expense cannot be avoided. Others will prefer to simply delay

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<sup>1</sup> Hillary Papendick, Jasneet Sharma, Carolyn Raider, Avana Andrade, Emi Hashizume, Montserrat Plascencia, Sally Prowitt, et al. 2018, March, “County of San Mateo, Sea Level Rise Vulnerability Assessment” Final Report, Redwood City: County of San Mateo, [https://seachangesmc.org/wp-content/uploads/2018/03/2018-03-12\\_SLR\\_VA\\_Report\\_2.2018\\_WEB\\_FINAL.pdf](https://seachangesmc.org/wp-content/uploads/2018/03/2018-03-12_SLR_VA_Report_2.2018_WEB_FINAL.pdf)

projects, causing costs to increase dramatically. OneShoreline has an agreement with the San Mateo County Office of Sustainability, and others, to educate the public to ensure that the residents understand that SLR is a real threat and that waiting until flooding is imminent is not a viable choice. Powerfully effective public engagement campaigns about SLR will be necessary to meet such challenges.

Currently, OneShoreline's operational funding comes primarily from contributions by the County and its twenty cities and towns. It needs a stable source of funding, one that will not be vulnerable to competing concerns of the communities it serves. Obtaining funds for projects to reduce the damage caused by sea level rise is a major challenge. Such projects are very expensive and are often funded by a combination of federal, state, and local funds. Obtaining required funding can be a complicated, slow, and somewhat costly process.

This Grand Jury recommends that:

- the County and its cities and towns support steady, reliable funding for OneShoreline's basic operations;
- OneShoreline consider establishing and administering a low interest revolving loan fund to enable jurisdictions to prepare the initial engineering and planning necessary to obtain federal and state financial support for SLR projects; and
- the County, its cities, and OneShoreline, along with other Bay Area counties and cities, lobby the federal and state governments for regulatory changes to enable SLR projects to proceed more easily.

Additionally, this Grand Jury urges all residents of San Mateo County to keep themselves informed as to the risks of SLR, and the need to stay ahead of SLR in order to minimize the damage it could cause in San Mateo County. *The glaciers are melting, and the clock is ticking.*

## **GLOSSARY - TERMS**

**King Tide** – a non-scientific term for exceptionally high tides.

**MOU** – Memorandum of Understanding; defines a relationship among the parties that outlines terms and details of an agreement, without the terms of a legally enforceable contract.

**Reaches** – stretches of land bordered by water, often used in flooding projects as a way to divide the project into segments defined by the nature of the land and water.

**RFP** – Request for Proposal; announces a project, describes it, and solicits bids from qualified contractors to complete it.

**SLR** – sea level rise.

**Storm Surge** – the temporary rise in sea level caused by a strong storm's wind and waves.

## **GLOSSARY – AGENCIES**

**Army Corps** – United States Army Corps of Engineers – For SLR and flooding, the Army Corps is the primary agency for levees.

**BCDC** – San Francisco Bay Conservation and Development Commission was founded in the mid-1960s; and became a state agency in 2008 with the passage of AB 2094. It is the State agency responsible for leading the Bay Area’s preparedness for, and resilience to, rising sea level, tides, and storm surge due to climate change.

**FEMA** – the Federal Emergency Management Agency. For SLR & flooding, FEMA administers the national flood insurance program and manages mitigation efforts involving berms, dikes, and other efforts.

**LAO** – the California Legislative Analyst’s Office, the California Legislature’s nonpartisan fiscal and policy advisor.

**NFIP** – National Flood Insurance Program, overseen by FEMA.

**OneShoreline** – the short name for the San Mateo County Flood & Sea Level Rise Resiliency District; it is the successor to the San Mateo County Flood Control District.

**Office of Sustainability** – a department of the County of San Mateo that “strives to improve the sustainability of the County’s operations and the greater community.”<sup>2</sup>

**Resource Conservation District of San Mateo County** – a special district that helps “meet the need for voluntary resource conservation.”<sup>3</sup>

**SFCJPA** – San Francisquito Creek Joint Powers Authority – leads projects that mitigate the risk of flooding along San Francisquito Creek and the San Francisco Bay. The cities of East Palo Alto, Palo Alto, and Menlo Park, along with OneShoreline and the Santa Clara Valley Water District, are members of the JPA.

**USFWS** – United States Fish and Wildlife Service.

## **BACKGROUND – SEA LEVEL RISE AND THE THREAT TO SAN MATEO COUNTY**

### **How Big Is the Problem?**

Global sea level has been rising over the past century, and the rate has increased in recent decades. In 2014, global sea level was 2.6 inches above the 1993 average –

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<sup>2</sup> Contact Us – SMC Office of Sustainability ([smcustainability.org](https://www.smcustainability.org)), <https://www.smcustainability.org/contact-us/>

<sup>3</sup> About the RCD | San Mateo RCD, <http://www.sanmateorcd.org/about/>

the highest annual average in the satellite record (1993-present). Sea level continues to rise at a rate of about one-eighth of an inch per year.

Higher sea levels mean that deadly and destructive storm surges push farther inland than they once did, which means more frequent nuisance flooding. Disruptive and expensive, nuisance flooding is estimated to be from 300% to 900% more frequent within U.S. coastal communities than it was just fifty years ago.<sup>4</sup>

San Mateo County (SMC) covers 455 square miles with a 2019 population of 766,573. The County consists of twenty incorporated cities, twenty-three school districts, 78,000 acres of natural land (including 8,381 acres of wetlands), twenty County parks (over 17,000 acres), 190 miles of County and local trails, 12.9 miles of beaches, 21,528 businesses, and an employed workforce of 416,263.<sup>5</sup>

San Mateo County faces several complications from SLR. “Sea level rise has a clear and direct impact on any coastal or bayside community, any people or businesses within inundation zones, and any ecosystem subject to erosion and flooding. Sea level rise causes direct physical damage to property and habitats, and it can have huge economic repercussions for both individuals and communities.”<sup>6</sup> In addition to flooding, “waves crashing further up the shore will erode ... coastal cliff walls,” and “higher ocean water levels could force up the water levels underneath the ground as well, leading to flooding, saltwater intrusion into fresh groundwater supplies, and toxic contamination by carrying hazardous materials to the surface.”<sup>7</sup>

“Sea level rise (SLR) is one of the most serious consequences of climate change and it will have a significant effect on San Mateo County, which has more people and property value at risk from the rising sea than any other county in the state.”<sup>8</sup> Future flooding and coastal erosion could pose considerable risks to life, safety, critical infrastructure, the economy, and the County’s natural and recreational assets. Flood damage could exceed \$1 billion and assessed values of parcels exposed to erosion and flooding in the long term totals roughly \$39.1 billion. More than 30,000 residential parcels and 3,000 commercial parcels could be vulnerable in the long term. Vulnerable infrastructure includes wastewater treatment plants, schools, and essential transportation: BART, Caltrain, Highway 101, and Highway 1.<sup>9</sup> Electrical distribution facilities,

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<sup>4</sup> Is sea level rising? (noaa.gov), <https://oceanservice.noaa.gov/facts/sealevel.html>

<sup>5</sup> U.S. Census Bureau QuickFacts: San Mateo County, California (2019), <https://www.census.gov/quickfacts/sanmateocountycalifornia>

<sup>6</sup> Papendick, et al., *Vulnerability Assessment*, 2018

<sup>7</sup> Ehlers, Rachel. *What Threat Does Sea-Level Rise Pose to California*, 2020, LAO Publication, Sacramento: Legislative Analyst's Office, p. 4, <https://lao.ca.gov/reports/2020/4261/sea-level-rise-081020.pdf>

<sup>8</sup> C/CAG, Flood and Sea Level Rise Resiliency Agency Proposal, Dec. 21, 2018, [https://ccag.ca.gov/wp-content/uploads/2019/01/6.3\\_A3-Water-Agency-Proposal\\_122118.pdf](https://ccag.ca.gov/wp-content/uploads/2019/01/6.3_A3-Water-Agency-Proposal_122118.pdf)

<sup>9</sup> Papendick, et al., *Vulnerability Assessment*, 2018.

and facilities related to the San Francisco International Airport (SFO), located in SMC, are also at risk.

In addition to the monetary losses, SLR may impact “affordable” housing disproportionately. “Already half of East Palo Alto sits within a federally designated flood zone. According to projections, in 10 years or so up to two-thirds of the land within city limits may regularly experience flooding.”<sup>10</sup> Redwood City, Pacifica, and unincorporated areas of the County also have areas of affordable housing subject to flooding.<sup>11</sup>



*Flooding in a bayside mobile home park in south San Mateo County. (Photo from OneShoreline website)*

Additionally, SMC residents who do not live near a shoreline may think SLR is not their problem. This is incorrect. All residents, including inland residents, need: access to highway 101, to take Caltrain, or to use SFO. All key wastewater treatment plants are located at the shoreline, and everyone needs “toilets that flush.”<sup>12</sup>

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<sup>10</sup> What Can the Bay Area Do About Rising Seas? East Palo Alto Has a Few Great Answers | KQED, <https://www.kqed.org/science/1973805/climate-solutions-in-east-palo-alto>; see also the 2015 Preliminary FEMA, NFIP map for East Palo Alto and portions of Menlo Park, [https://www.cityofepa.org/sites/default/files/fileattachments/community\\_amp\\_economic\\_development/page/2531/fema\\_maps\\_2015\\_201509011239377956.pdf](https://www.cityofepa.org/sites/default/files/fileattachments/community_amp_economic_development/page/2531/fema_maps_2015_201509011239377956.pdf)

<sup>11</sup> Grand Jury interview.

<sup>12</sup> Grand Jury interviews.

An interactive map showing the effect of SLR and storm surges is available at <https://explorer.adaptingtorisingtides.org/explorer>. Below is an example showing the flooding from a 36-inch increase in water level along the Bay at the southern end of the County. As shown in the graphic below, a 36-inch increase can be experienced from no sea level rise and a “50-year” storm, six inches of sea level rise and a “25-year” storm, and other combinations.



### Options for Responding to Sea Level Rise

There are only few options for dealing with the threat of SLR. They are:

- **Protect** the land and structures by berms, levees, sea walls, pumping stations and other structures, and raise mudflats and bay marshes to prevent erosion or flooding.
- **Modify** assets to withstand periodic flooding.
- **Relocate** the facilities to higher land.
- **Abandon** land and structures that will be flooded.<sup>13</sup>

<sup>13</sup> Grand Jury interviews.



## Sea Level Rise is a Present Threat: Reports since 2016

In 2015 the San Mateo County Grand Jury issued a report titled: “Flooding Ahead: Planning for Sea Level Rise.”<sup>14</sup> That report called for the creation of a countywide agency to address the problems brought on by SLR. Since then, numerous other reports examined SLR in California, the Bay Area, and San Mateo County. New significant reports from governmental and non-governmental agencies appear several times a year. Some of the recent and more significant reports include:

In March 2018, the County Office of Sustainability issued: *County of San Mateo Sea Level Rise Vulnerability Assessment*.<sup>15</sup> This report focused on understanding sea level rise risk, the level of risk is in each area, how people are affected, and our adaptive capacity.<sup>16</sup> **The report cited San Mateo County as the county with the highest risk of damage in the Bay Area, and one of the hot spots in the nation.** At least 32% of the population live in vulnerable areas. (See Appendix A - Selected Demographics). San Mateo County’s three airports, San Francisco International, San Carlos, and Half Moon Bay, are all threatened by SLR. In addition, environmentally sensitive areas – closed landfills, former industrial sites, underground storage tanks and other contamination sites – may be damaged by SLR and contaminate the area. The County has 29 known sites classified as containing hazardous materials or cleanup sites that are vulnerable to flooding in the near term. Up to 665 sites are at risk in the long term.

Also in March 2018, Stanford Public Policy Program issued *Adaptation Planning for Sea Level Rise in San Mateo County - An Examination of 11 Bayside Cities*, a report prepared for the County Office of Sustainability.<sup>17</sup> It found that San Mateo County was “ground zero” for SLR vulnerability. That report noted that a mid-level projected sea level rise of 3.3 feet would impact 22,000 acres of land, 30,600 residential parcels, and five wastewater facilities. The Stanford study encouraged the cities and County to share up to date SLR information with the public.

In December 2019, the California Legislative Analyst Office (LAO) issued a report titled *Preparing for Rising Seas*,<sup>18</sup> which noted that SLR will impact California’s coastlines in extensive and expensive ways. It posits that most of the responsibility for SLR preparation will lie with local governments and private property owners – none of whom have faced anything like this before – and observes that delaying preparations will only increase the cost dramatically. The LAO’s report makes recommendations for the support of local adaptation efforts, and emphasizes the benefit of taking action early, as shown in the graphic below.

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<sup>14</sup> Flooding Ahead: Planning for Sea Level Rise (sanmateocourt.org), [http://www.sanmateocourt.org/documents/grand\\_jury/2014/sea\\_level\\_rise.pdf](http://www.sanmateocourt.org/documents/grand_jury/2014/sea_level_rise.pdf)

<sup>15</sup> Papendick, et al., *Vulnerability Assessment*.

<sup>16</sup> Ibid.

<sup>17</sup> Enrique, Alex, Isabelle Foster, and Will La Dow, *Adaptation Planning for Sea Level Rise in San Mateo County - An Examination of 11 Bayside Cities*, March 2018, Consulting Stanford, California: Stanford Public Policy.

<sup>18</sup> Ehlers, Rachel, *Preparing for Rising Seas: How the State Can Help Support Local Coastal Adaptation Efforts*, December 2019, LAO Publication, Sacramento: Legislative Analyst’s Office.

### Benefits of Taking Action Early to Prepare for Sea-Level Rise (SLR)

- ✓ **Planning Ahead Means Adaptation Actions Can Be Strategic and Phased.** Early planning can allow coastal communities to adopt a phased approach that undertakes escalating actions when certain predetermined conditions or “triggers” are reached.
- ✓ **Undertaking Near-Term Actions Can “Buy Time” Before More Intensive Responses are Needed.** Putting certain adaptation projects and strategies in place now can help postpone and extend the period before which subsequent, more difficult-to-implement actions are needed.
- ✓ **Early Implementation Provides the Opportunity to Test Approaches and Learn What Works Best.** Acting to implement adaptation strategies in the near term will provide the opportunity to monitor, evaluate, and revise them in the coming years before SLR threats become more pressing.
- ✓ **Taking Action Earlier May Make Overall Adaptation Efforts More Affordable.** Undertaking a multiyear, multistep strategic plan for coastal adaptation can allow local governments to spread costs over a longer period of time.
- ✓ **Coming Decade Is Key Window for SLR Preparation.** Some adaptation strategies—such as fortifying certain tidal marshes—may not be effective against SLR unless they are implemented before sea levels rise to higher levels.

In March 2020, The San Francisco Bay Conservation and Development Commission (BCDC), and the Metropolitan Transportation Commission/Association of Bay Area Governments (MTC/ABAG), issued: *Adapting to Rising Tides Bay Area: Regional Sea Level Rise Vulnerability and Adaptation Study*.<sup>19</sup> The report, available both in a long form (205 pages) and in a summary form (36 pages), focuses on “consequences the Bay Area may face as sea levels rise in the absence of coordinated, prioritized adaptation.”<sup>20</sup> The Adapting to Rising Tides “ART Portfolio” website contains tools and information tested and refined by BCDC. It offers key sector impact data, maps, sample projects, and guidance for cities seeking to develop adaptation strategies against sea level rise.<sup>21</sup>

In August 2020, the LAO issued another SLR report, titled: *What Threat Does SLR Pose to California?*<sup>22</sup> This report describes available research on how rising seas threaten California’s coast in seven categories of impacts: public infrastructure, private property, vulnerable

<sup>19</sup> Adapting to Rising Tides 2020. *Adapting to Rising Tides Bay Area: Regional Sea Level Rise Vulnerability and Adaptation Study*. San Francisco Bay Conservation and Development Commission (BCDC) and Metropolitan Transportation Commission/Association of Bay Area Governments (MTC/ABAG), March 2020, San Francisco, CA., [http://www.adaptingtorisingtides.org/wp-content/uploads/2020/03/ARTBayArea\\_Main\\_Report\\_Final\\_March2020\\_ADA.pdf](http://www.adaptingtorisingtides.org/wp-content/uploads/2020/03/ARTBayArea_Main_Report_Final_March2020_ADA.pdf)

<sup>20</sup> Adapting to Rising Tides 2020. *Adapting to Rising Tides Bay Area: Short Report Summary of Regional Sea Level Rise Vulnerability and Adaptation Study*. San Francisco Bay Conservation and Development Commission (BCDC) and Metropolitan Transportation Commission/Association of Bay Area Governments (MTC/ABAG), March 2020, San Francisco CA. at p. 5., [http://www.adaptingtorisingtides.org/wp-content/uploads/2020/07/ARTBayArea\\_Short\\_Report\\_Final\\_March2020\\_ADA.pdf](http://www.adaptingtorisingtides.org/wp-content/uploads/2020/07/ARTBayArea_Short_Report_Final_March2020_ADA.pdf)

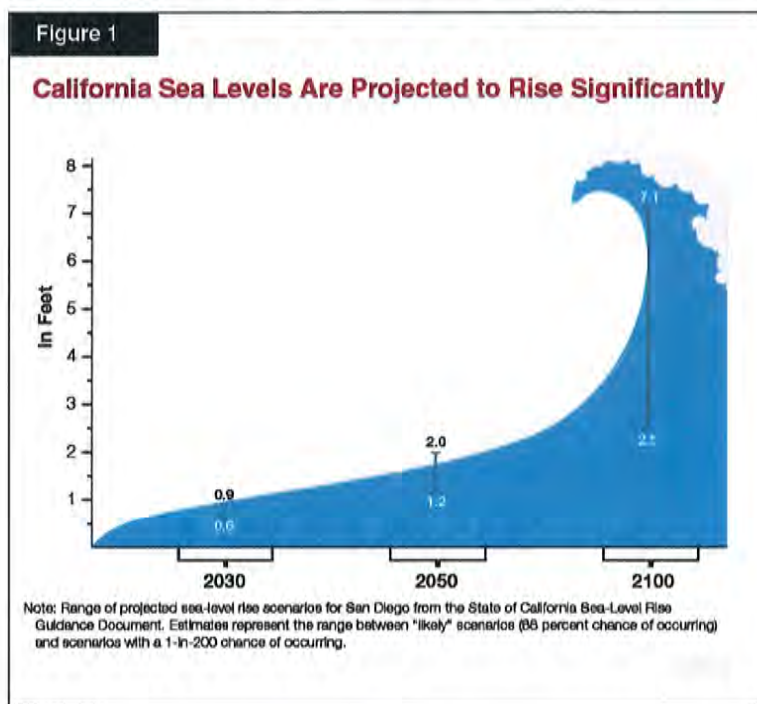
<sup>21</sup> Adapting to Rising Tides, <https://www.adaptingtorisingtides.org>

<sup>22</sup> Ehlers, Rachel. *What Threat Does Sea-Level Rise Pose*, *supra*.

communities, natural resources, drinking and agricultural water supplies, toxic contamination, and economic disruption.

In April 2021, the San Francisco Estuary Institute issued: *Sediment for Survival: A Strategy for the Resilience of Bay Wetlands in the Lower San Francisco Estuary*,<sup>23</sup> which proposes using sediment that is dredged from the Bay's shipping channels (and currently barged out to sea or to deep parts of the bay) to restore wetlands and mudflats in such a way that they could help in adapting to sea level rise. It estimates this approach could offer cost savings, in some locations, over building seawalls to protect homes, businesses, highways and airports. These reports offer a wealth of information on sea level rise in California, and the Bay Area in particular.

Figure 1, below, showing the variability in SLR projections, is from the August 2020, LAO report, *What Threat Does SLR Pose to California*, mentioned above.



### San Mateo County – Office of Sustainability

“Formed in July 2014, as a part of the County Manager’s Office, the Office of Sustainability strives to improve the sustainability of the County’s operations and the greater community through work in areas of renewable energy and energy efficiency; resource conservation;

<sup>23</sup> Dusterhoff, Scott, Katie McKnight, Letitia Grenier, and Nate Kauffman, *Sediment for Survival: A Strategy for the Resilience of Bay Wetlands in the Lower San Francisco Estuary*, April 2021, [https://www.sfei.org/sites/default/files/biblio\\_files/Sediment%20for%20Survival%20042121%20med%20res.pdf](https://www.sfei.org/sites/default/files/biblio_files/Sediment%20for%20Survival%20042121%20med%20res.pdf)

alternative transportation; and greenhouse gas emission reductions.”<sup>24</sup> An important part of its work is climate change, including SLR. In 2015, the Office of Sustainability launched a program called “Sea Change San Mateo County” which led to the San Mateo County Sea Level Rise Vulnerability Assessment, discussed above.

It also functions as a “communications department” for public engagement on sea level rise in the County. The Office of Sustainability provides curricula for schools on sea level change as well as managing a Youth Climate Ambassadors Leadership Program for 9th to 11th grade students from across the County. This program empowers youth to take climate action into their own hands by having them develop projects designed to drive change within the County.<sup>25</sup>

The Office of Sustainability’s description of SLR states: “San Mateo County is actively preparing for sea level rise. While the changing climate and rising sea pose many risks to the people and places in San Mateo County, together we can plan ahead to protect our people and manage our valuable resources responsibly.”<sup>26</sup>

### **Origin of OneShoreline**

In 2015, the San Mateo County Civil Grand Jury issued a report titled “Flooding Ahead: Planning for Sea Level Rise.” As a result of that report and efforts by members of the Board of Supervisors, State and Federal legislators, and others, San Mateo County and its twenty cities and towns agreed to convert the County’s Flood Control District to a new District called the “San Mateo County Flood and Sea Level Rise Resiliency District,” also known as “OneShoreline.” OneShoreline is perhaps the only countywide agency dedicated solely to sea level rise and flooding west of the Mississippi. A table comparing the basics of the old district to the new, is in Appendix D.

## **DISCUSSION**

### **San Mateo County Flood and Sea Level Rise Resiliency District – OneShoreline**

In 2019, state legislation created OneShoreline, which began operation on January 1, 2020. Its geographic boundaries and spheres of influence include addressing SLR in the entire County, not just flooding in the three creek flood zones.<sup>27</sup> Its seven-member board is made up of five city council members from different regions in the County, and two members of the County Board of

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<sup>24</sup> May 19, 2020 - New Director of Sustainability: San Mateo County on “Front Lines” of Regional Challenges | County Manager’s Office (smcgov.org), <https://cmo.smcgov.org/press-release/may-19-2020-new-director-sustainability-san-mateo-county-%E2%80%9Cfront-lines%E2%80%9D-regional>

<sup>25</sup> Youth Climate Ambassador – SMC Office of Sustainability (smcsustainability.org), <https://www.smcsustainability.org/climate-change/youth-climate-ambassador/>

<sup>26</sup> Office of Sustainability, Sea Change San Mateo County, <https://seachangesmc.org/>

<sup>27</sup> Our History – OneShoreline, <https://oneshoreline.org/our-history/>, see also Assembly Bill 825 (2019, Mullin) [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB825](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB825)

Supervisors.<sup>28</sup> The board hired the former director of the San Francisquito Creek Joint Powers Authority (SFCJPA) as the CEO of OneShoreline. Initial funding came from the County and the 20 cities, with contribution amounts varying by city population.

OneShoreline's mission is to address SLR, flooding, coastal erosion and large-scale storm water infrastructure improvements through integrated regional planning, design, permitting, project implementation and long-term operations and maintenance.<sup>29</sup>

OneShoreline was created to look at the SLR problem holistically, emphasizing collaboration among all affected by a SLR project. SLR is a complex issue that requires cities to work together. The old approach of designing a project with just enough protection to escape a requirement that property owners obtain flood insurance is inadequate. A rising sea level means that flood insurance maps will be revised more frequently, requiring expensive flood insurance or a new project to provide protection.<sup>30</sup>

OneShoreline monitors proposed development on the shoreline to urge cities to consider SLR in the planning, design, and engineering of projects built in vulnerable areas. Cities must be aware of the long-term risks posed by development projects that are inadequately designed and planned. SLR should not be ignored no matter the short-term benefits that a development project promises to the developer or the locality in the short term.<sup>31</sup> If development projects, whether commercial and residential neighborhoods, roadways, or infrastructure, are rushed through without fully contemplating the long-term effects of SLR, the inevitable result will be future problems that are much harder to fix.

OneShoreline's current operational funding is \$1.5 million per year for its first three years, plus portions of flood zone taxes when those areas have active projects. As more projects get underway, the OneShoreline staff of four will likely need to expand. Long-term, stable funding is critical to the success of this organization but does not currently exist. Many avenues of secure revenue streams for funding OneShoreline operations have been considered; currently OneShoreline is evaluating the support for a countywide parcel tax that would support both SLR and wildfire mitigation efforts<sup>32</sup>

Outreach and public engagement are essential for OneShoreline's success. To effectively implement SLR projects, OneShoreline must ensure public support from County residents. Some may not see the need for the expensive SLR projects and will require convincing that the expense cannot be avoided. OneShoreline will need to work with the County Office of Sustainability, and

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<sup>28</sup> AB 825, (2019, Mullin) San Mateo County Flood and Sea Level Rise Resiliency District, (2019), Section 4.5(a) prescribes the Board of Directors membership.

<sup>29</sup> OneShoreline, *FY2021 Audited Financial Statements*, [https://oneshoreline.org/wp-content/uploads/2020/12/FSLRRD-FY20\\_Financial\\_Statement.pdf](https://oneshoreline.org/wp-content/uploads/2020/12/FSLRRD-FY20_Financial_Statement.pdf)

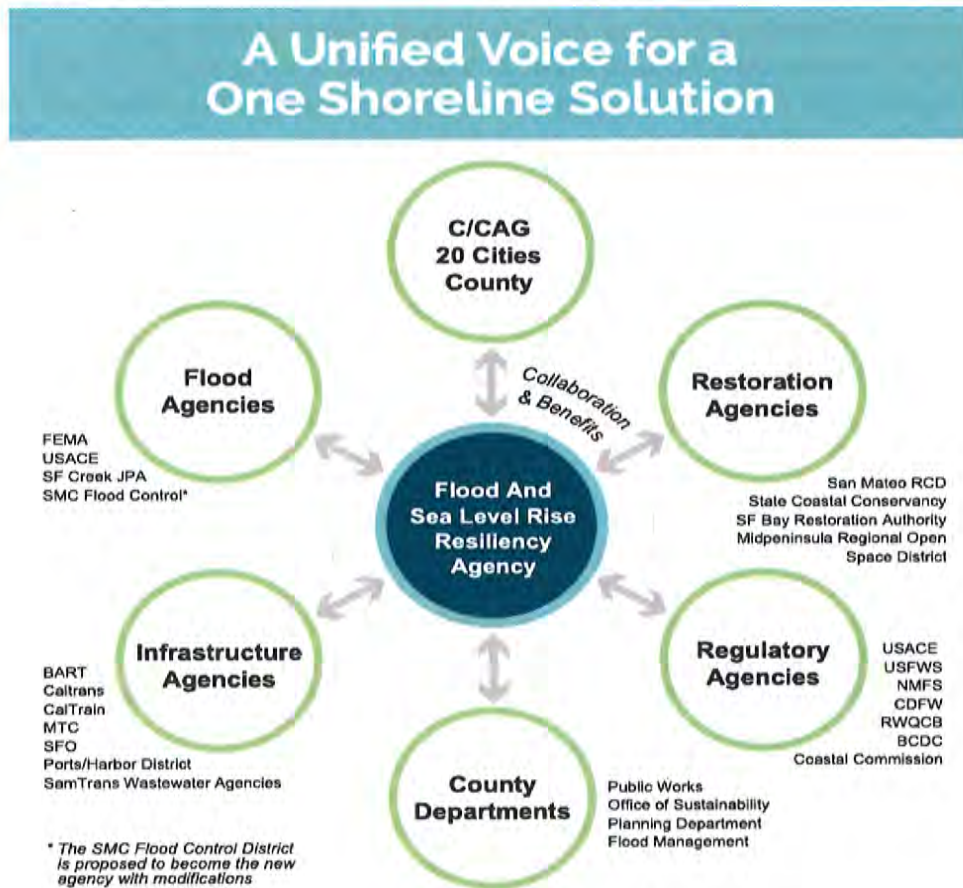
<sup>30</sup> Grand Jury interviews.

<sup>31</sup> Grand Jury interviews and Papendick, et al., *Vulnerability Assessment*.

<sup>32</sup> Grand Jury interviews.

others, to ensure that residents understand that SLR is real, and that waiting until flooding is imminent is not a reasonable choice. It is partnering with the League of Women Voters and other officials to provide six public forums on SLR in 2021.<sup>33</sup> OneShoreline representatives are also meeting with city and town managers, and councils. Educating city elected officials and staff about the hazards of SLR and mitigation strategies is essential, since turnover of city council members is high, and SLR projects can take many years to plan and build.

OneShoreline was envisioned as the hub connecting multiple interested parties in combating SLR as seen in this diagram.<sup>34</sup>



<sup>33</sup> The last two forums are on September 2 and October 14, 2021. South San Mateo County | MyLO (lww.org)South San Mateo County | MyLO (lww.org), <https://my.lww.org/california/south-san-mateo-county>

<sup>34</sup> Graphic from [https://resilientsanmateo.org/wp-content/uploads/2019/04/Brochure\\_ExecutiveSummaryProposal\\_122118\\_PRINT-11x17-1.pdf](https://resilientsanmateo.org/wp-content/uploads/2019/04/Brochure_ExecutiveSummaryProposal_122118_PRINT-11x17-1.pdf), on April 29, 2021, (website not accessible on June 7, 2021). Similar diagram in C/CAG, *Flood and Sea Level Rise Resiliency Agency Proposal*, Dec. 21, 2018, at p. 11.

## OneShoreline's First Year (2020)

In its first year of operations, OneShoreline set up its board of directors and commenced operations. The board is composed of elected representatives from different regions of the County. An executive director supervises a staff of four with expertise in flood prevention in San Mateo County. It maintains an informative website containing up-to-date documents on its projects, financing, and outreach efforts. By publishing a digital newsletter, OneShoreline has reached out to the city and town councils in the County. Importantly, the OneShoreline management and board are aware that its most pressing need is to secure a reliable source of funding for its operations.<sup>35</sup>

OneShoreline currently operates through a master services agreement with the County, under which it coordinates with the Office of Sustainability on outreach to keep the residents informed of SLR needs.

OneShoreline's current activities include:<sup>36</sup>

- obtaining long-term support, along with its constituent cities, to address funding of projects identified as necessary to mitigate hazards caused or exacerbated by sea level rise;
- addressing projects inherited from the San Mateo County Flood Control District;
- overseeing the Bayfront Canal project, with construction starting in 2021;
- offering to assist communities with other SLR and flooding projects;
- consulting with cities and towns about new projects; and
- managing multi-jurisdictional projects.

OneShoreline is most interested in working on projects: where meaningful objectives are achievable and enjoy local support; where OneShoreline can add value (such as projects involving multiple jurisdictions); and where the project makes fiscal sense.

In its interviews, the Grand Jury identified the following potential roles for OneShoreline:<sup>37</sup>

- *Work with the County and neighboring counties* to lobby state and federal governments for regulatory change for SLR projects;
- *Share expertise* for SLR and flooding projects;
- *Set standards* for determining the amount of SLR that cities and towns, the County, and private property owners must plan for;
- *Set guidelines* for the kinds of projects OneShoreline will prioritize;

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<sup>35</sup> Grand Jury interviews and OneShoreline website.

<sup>36</sup> Grand Jury interviews and OneShoreline website.

<sup>37</sup> Grand Jury interviews.

- *Assist in obtaining federal and state funding* for SLR and flooding projects, by providing a unified voice when communicating with governmental agencies;
- *Work with congressional representatives* for authorizations and appropriations for initial project studies; and
- *Reach out to the San Francisco District of the Army Corps* to identify problems and discuss possible projects for the County.<sup>38</sup>
- *Facilitate and coordinate between interested parties* and the various state and federal regulators for projects;
- *Assist the cities* in obtaining permits for projects;
- *Keep local governments and the County informed* – regarding its operation and SLR risks; and
- *Coordinate with the County Office of Sustainability* on SLR and flooding outreach programs for the schools and community organizations.

### **OneShoreline Projects**

OneShoreline’s website contains a current list of its projects at <https://onshoreline.org/projects>; brief descriptions of some of those projects are available in Appendix C. One project currently under construction is the Bayfront Canal & Atherton Channel Flood Protection and Ecosystem Restoration Project<sup>39</sup> which, among its several goals, will protect mobile home parks near the bayfront from flooding.

### **Funding OneShoreline Operations**

OneShoreline is working to build a strong reputation before its initial operational funding runs out in 2023. Many interviewees informed the Grand Jury that OneShoreline required secure funding commitments in order perform its functions beyond the initial three-year funding period.

Recently, the Strategic Planning Committee for OneShoreline’s Board of Directors examined various potential sources of long-term stable funds for OneShoreline operations, as well as project support. The only funding option identified that would provide long-term, stable yet flexible funding for projects and for operations was a countywide parcel tax. “Polling is

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<sup>38</sup> Grand Jury interviews.

<sup>39</sup> Bayfront Canal & Atherton Channel Flood Protection and Ecosystem Restoration Project – OneShoreline – at <https://onshoreline.org/projects/bayfront-atherton-flood-protection/>



beginning ... to test a few of these scenarios and public perceptions of this issue so that we may solidify potential ballot language."<sup>40</sup>

If such a tax is not feasible, OneShoreline may have to continue relying on contributions from cities and the County, renewed in multi-year commitments. OneShoreline has successfully obtained grants from the state for specific work (California Department of Water Resources \$1 million grant from the Urban Streams Restoration Program, and funds for the flood warning system). While private funding is an alternative source that OneShoreline has considered, interviewees expressed their concern that such funding sources are unlikely to be reliable as long-term funding.

### **Funding SLR Projects**

Levees, sea walls, raising marshes and mudflats, and similar capital projects are *expensive*. For example, Levee Improvement Bond Measure P passed by Foster City voters in 2018,<sup>41</sup> authorized Foster City to issue \$90 million in general obligation bonds to fund critical levee improvements. The property tax levy to repay this borrowing will continue for 30 years. The first-year rate was approximately \$36 per \$100,000 of assessed property value. Subsequently, the rate will be an estimated \$33 annually, with continuing decreases assuming assessed property valuations continue to rise.<sup>42</sup>



*Foster City Levee upgrade, March 26, 2021 (Grand Jury photo)*

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<sup>40</sup> OneShoreline Board of Directors presentation April 26, 2021. Available at: <https://oneshoreline.org/wp-content/uploads/2021/04/FSLRRD-Board-mtg.-4.26.2021-presentation.pdf>

<sup>41</sup> Measure P | Foster City California, <https://www.fostercity.org/cityclerk/page/measure-p>

<sup>42</sup> Frequently Asked Questions | Foster City Levee Project, <https://fostercitylevee.org/faqs/>

OneShoreline inherited funding that is limited for earmarked use in the flood areas in the County for established projects. Projects directly connected with one of the three creek flood zones (Colma, San Bruno, San Francisquito) may be funded from dedicated property taxes for the specific flood zone.<sup>43</sup>

State funding may be available if a proposed Bond Act is passed by the voters. This measure would raise approximately \$7 billion to fund climate change and sea level rise projects statewide.<sup>44</sup>

The Army Corps of Engineers and FEMA also provide funding for some SLR projects, but each agency has a complex set of requirements for such funding. For example, federal funding requires that a preliminary engineering and design study must be prepared prior to application for the funds. OneShoreline will serve as a valuable resource to guide projects through the study, engineering, and funding application phases. To receive federal funds, the community must contribute funds for the project. As a result of such complexities communities and agencies similar to OneShoreline typically hire consultants to guide a proposal through the federal process.<sup>45</sup>

OneShoreline could operate a revolving loan fund, or a portion of a regional loan fund, “capitalized by a federal investment, like the Clean Water State Revolving Fund, and offer below-market rates. Savings on insurance premiums from improved ratings under FEMA Community Rating Systems, among other sources, could repay the funds.”<sup>46</sup> The loan fund could be used to pay for the preliminary engineering and design studies required to apply for federal funding.

Delays in adapting to SLR can result in flood remediation costs of up to six times greater than the cost of planned adaptations. A “FEMA-sponsored study by the National Institute of Building Sciences found that for every \$1 the federal government invested in various types of pre-disaster mitigation activities in recent years, it avoided public and private losses totaling \$6.”<sup>47</sup>

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<sup>43</sup> FSLRRD-FY2020-21-Operations-and-Flood-Zones-Budgets-Approved-June-8-2020.pdf (onshoreline.org), <https://onshoreline.org/wp-content/uploads/2020/06/FSLRRD-FY2020-21-Operations-and-Flood-Zones-Budgets-Approved-June-8-2020.pdf>

<sup>44</sup> Bill Text - AB-1500 Safe Drinking Water, Wildfire Prevention, Drought Preparation, Flood Protection, Extreme Heat Mitigation, and Workforce Development Bond Act of 2022. (ca.gov), [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220AB1500](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1500)

<sup>45</sup> Grand Jury interview.

<sup>46</sup> Grand Jury interview and Four Key Actions to Solve for Coastal Flooding and Sea Level Rise in the Bay Area: a Governance Proposal | SPUR, <https://www.spur.org/news/2020-02-20/four-key-actions-solve-coastal-flooding-and-sea-level-rise-bay-area-governance>; <https://www.epa.gov/cwsrf>. See also: Fact Sheet | How Can Revolving Loan Funds Make Our Coasts More Resilient? | White Papers | EESI at <https://www.eesi.org/papers/view/fact-sheet-how-can-revolving-loan-funds-make-our-coasts-more-resilient>

<sup>47</sup> Ehlers, Rachel, LAO 2019, *Preparing for Rising Seas*, *supra*, at p.7.

## Will Regulatory Complexities Delay SLR Projects?

In addition to financial hurdles, sea level rise projects face serious regulatory delays. The “lengthy process for attaining approvals from state and federal agencies to implement adaptation projects is a significant barrier to getting more projects underway.”<sup>48</sup> It has been suggested that regulatory reform at both the federal and state level is needed to allow SLR projects to be proposed, designed, and constructed with less delay and cost. It would be beneficial if OneShoreline, along with the Board of Supervisors, the cities and towns, and neighboring counties, worked together to lobby state and federal governments for appropriate reform.<sup>49</sup>

Multiple regulatory agencies must evaluate, and issue permits for a single project. Large SLR projects (i.e., via the Army Corps of Engineers) can require a decade to design, approve, and build. Whether it is the San Francisco Bay Conservation and Development Commission or the California Coastal Commission, regulatory systems were not designed for the threat of SLR.

Regulatory complexity may be reduced by lobbying the federal and state governments for reform, or by forming interagency teams to streamline the permit application process under existing law and regulations. One example of the later approach is the SF Bay Restoration Regulatory Integration Team (BRITT),<sup>50</sup> which expedites and simplifies the permitting process across nine Bay Area counties for Measure AA projects (“multi-benefit wetland restoration projects and associated flood management and public access infrastructure” projects).<sup>51</sup> BRITT coordinates permit reviews across all the applicable state and federal agencies for those projects.

The complexity of even a relatively simple current project is illustrated below, where the project required five funding sources, land easements among multiple parties, and permits from six agencies.<sup>52</sup>

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<sup>48</sup> <https://lao.ca.gov/reports/2019/4121/coastal-adaptation-121019.pdf> at p. 26.

<sup>49</sup> Grand Jury Interviews; see also W. Chabot and others. April 28, 2021, during “Conversation With Kevin : Collaborating to Address Climate Change” hosted by Speaker Pro Tempore Kevin Mullin, video available at [Conversation With Kevin Collaborating to Address Climate Change \(facebook.com\)](https://www.facebook.com/102284836614761/videos/789035602040576/?_so__=channel_tab&_rv__=all_videos_card) [https://www.facebook.com/102284836614761/videos/789035602040576/?\\_so\\_\\_=channel\\_tab&\\_rv\\_\\_=all\\_videos\\_card](https://www.facebook.com/102284836614761/videos/789035602040576/?_so__=channel_tab&_rv__=all_videos_card).

<sup>50</sup> California State Coastal Conservancy, San Francisco Bay Restoration Authority, “San Francisco Bay Restoration Regulatory Integration Team (BRITT)”, <https://www.sfbayrestore.org/san-francisco-bay-restoration-regulatory-integration-team-brrit>

<sup>51</sup> [Combined Permitting overview, agreements, performance measures May 11 2018 \(00409201-5\).DOCX \(sfbayrestore.org\)](https://www.sfbayrestore.org/sites/default/files/2021-03/Permitting_agreements_and_performance_measures.pdf) [https://www.sfbayrestore.org/sites/default/files/2021-03/Permitting\\_agreements\\_and\\_performance\\_measures.pdf](https://www.sfbayrestore.org/sites/default/files/2021-03/Permitting_agreements_and_performance_measures.pdf)

<sup>52</sup> [4.26.2021 presentation \(oneshoreline.org\)](https://www.oneshoreline.org/wp-content/uploads/2021/04/FSLRRD-Board-mtg.-4.26.2021-presentation.pdf); <https://www.oneshoreline.org/wp-content/uploads/2021/04/FSLRRD-Board-mtg.-4.26.2021-presentation.pdf>

**OneShoreline's first construction project:**  
**Bayfront Canal and Atherton Channel Flood Protection and Ecosystem Restoration Project**

- Funding from 3 cities, County, and State
- Land Easements among OneShoreline, 2 cities, County, Cargill, plus land agreements with USFWS and Caltrans
- Permits: USACE, USFWS, NMFS, CDFW, RWQCB, BCDC

**The US Army Corps of Engineers – Expertise, Funding, and Regulation of SLR Projects**

The US Army Corps of Engineers (Army Corps) has decades of experience in protecting against flooding, especially with the use of levees. It serves a regulatory function in issuing permits, can be a source of funds, and can provide engineering expertise. Involving the Army Corps for federal funding is complex, involves Congressional action, and can take many years.<sup>53</sup>

An Army Corps project requires a local sponsor to provide initial funding for the design of the SLR protection. During planning and development, the local sponsor provides approximately 70% of the money and Army Corps provides the balance. During construction this reverses – the local sponsor provides approximately 30% and Army Corps provides the balance.

The Army Corps works best for big projects. Few communities can afford capital costs in the tens or hundreds of millions of dollars, or more. An article published by the Yale School of the Environment discussing the costs nationwide noted that, “In San Francisco, voters approved a \$425 million bond to pay a quarter of the costs of fortifying a sea wall.”<sup>54</sup> A simplified outline of the Army Corps process, as the Grand Jury understands it, is included in Appendix F.

<sup>53</sup>To get an idea of the complexity of applying for a permit see: San Francisco District > Missions > Regulatory > How to Apply for a Permit (army.mil), <https://www.spn.usace.army.mil/Missions/Regulatory/How-to-Apply-for-a-Permit>

<sup>54</sup> [Who Will Pay for the Huge Costs of Holding Back Rising Seas?](https://e360.yale.edu/features/who-will-pay-for-the-huge-costs-of-holding-back-rising-seas) - Yale E360 <https://e360.yale.edu/features/who-will-pay-for-the-huge-costs-of-holding-back-rising-seas>. See also [SF's Embarcadero seawall measure wins easily](#)

The Water Resources Development Act (WRDA) of 2020 changed how the Army Corps evaluates projects. New regulations are expected later in 2021 and will require the evaluation to be based on “best available, peer-reviewed science and data.”<sup>55</sup> The WRDA also requires an evaluation of the projected benefits of a project for a *50-year period* after the expected completion date.

The Army Corps evaluates socio-economic and environmental justice effects of a proposed plan during the study phase, and solicits public involvement, to understand the views and values of the community. The Army Corps is required to consider low-cost alternatives. One non-structural measure that might be considered is a managed retreat (relocation). The Army Corps considers the fair market value of vulnerable low-cost housing. If the cost to protect the housing is more expensive than replacing the housing elsewhere, then the Army Corps may prefer the relocation alternative. If a local sponsor wants to protect areas that the Army Corps does not consider economical, the cost difference will be borne by the local sponsor.<sup>56</sup>

### **FEMA – Flood Zone Maps, Mitigation, and Prevention**

The Federal Emergency Management Agency (FEMA), in addition to providing aid after a disaster, also provides flood hazard and risk data to help guide mitigation actions. Flood mapping is an important part of the National Flood Insurance Program (NFIP). Flood maps are the basis for the NFIP regulations and flood insurance<sup>57</sup> requirements. FEMA’s flood mapping program is called Risk Mapping, Assessment, and Planning, or Risk MAP.<sup>58</sup> FEMA maintains and updates data through flood maps and risk assessments.<sup>59</sup> FEMA redraws its maps as new SLR data is collected, so that NFIP requirements will increase over time.

Designating an area as a flood zone can impact property owners financially, because the consequence is that properties in the flood zone are required to carry flood insurance, which is expensive. In the Foster City example discussed above, residents chose to raise their property taxes to fund levee improvements, because doing so protected mortgage-holding residents from having their property designated as within a flood zone, and therefore requiring that they pay high flood insurance premiums.

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([sfchronicle.com](https://www.sfchronicle.com)); <https://www.sfchronicle.com/politics/article/SF-s-Embarcadero-seawall-measure-on-track-to-13369575.php>

<sup>55</sup> Section 113, Water Resources Development Act (WRDA) of 2020. Water Resources Development Act of 2020 (congress.gov), <https://crsreports.congress.gov/product/pdf/IF/IF11700>

<sup>56</sup> Grand Jury interviews.

<sup>57</sup> Flood Insurance | FEMA.gov, <https://www.fema.gov/flood-insurance>

<sup>58</sup> Risk Mapping, Assessment and Planning (Risk MAP) | FEMA.gov, <https://www.fema.gov/flood-maps/tools-resources/risk-map#>

<sup>59</sup> Flood Maps | FEMA.gov, <https://www.fema.gov/flood-maps>

States, communities, and private levee owners are responsible for maintaining and operating the levees they own according to specific design criteria.<sup>60</sup> While FEMA maps flood hazards impacted by levee systems, it does not build, own, or certify levees. Instead, other parties (such as the Army Corps) build, inspect, and maintain the levees they own.

FEMA can provide funds for flood mitigation projects (such as SLR projects) through a competitive application process. FEMA will become deeply involved with permitting for any project occurring in a floodplain.

### **Other Regulatory Agencies**

The **U.S. Fish and Wildlife Service** (USFWS) regulates projects that affect fish and wildlife.<sup>61</sup> A new USFWS online planning tool is available to streamline the USFWS environmental review.<sup>62</sup>

**National Oceanic and Atmospheric Administration – National Marine Fisheries Service** (NOAA Fisheries) is involved on the ocean-side of SMC. Under the Marine Mammal Protection Act and the Endangered Species Act, NOAA Fisheries, through its scientific support and permitting, protects ocean species while a construction project is ongoing.<sup>63</sup>

The **San Francisco Regional Water Quality Control Board** (Water Board) regulates discharges into the waters and requires cleanups of unplanned or illegal discharges. Regulating discharges is done through a variety of permits, including those that control erosion and storm water runoff during construction, as well as National Pollution Discharge Elimination System permits, and stream and vegetation permits. Under the federal Clean Water Act, either dredging or wetland fill activities require permits from the Army Corps. The Water Board must certify that those federal permits meet State water quality standards and that the projects minimize impacts on water quality. Most permits are adopted by the Water Board in public hearings after opportunities for public comment, which can increase delays.<sup>64</sup>

The **California Department of Fish & Wildlife** (CDFW) provides environmental review and permits in two key programs: the California Environmental Quality Act (CEQA) Review<sup>65</sup> and

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<sup>60</sup> FEMA, Cooperating Technical Partners and Engineers, accessed May 2021, <https://www.fema.gov/flood-maps/living-levees/technical-partners-engineers>

<sup>61</sup> U.S. Fish and Wildlife Service: An Overview - EveryCRSReport.com, [https://www.everycrsreport.com/reports/R45265.html#\\_Toc519853442](https://www.everycrsreport.com/reports/R45265.html#_Toc519853442)

<sup>62</sup> The tool is called IPac – Information for Planning and Consultation. IPaC: Home (fws.gov), <https://ecos.fws.gov/ipac/>

<sup>63</sup> Welcome to NOAA | NOAA Fisheries, <https://www.fisheries.noaa.gov>

<sup>64</sup> Permits We Issue | San Francisco Bay Regional Water Quality Control Board (ca.gov), [https://www.waterboards.ca.gov/sanfranciscobay/water\\_issues/programs/permits.html](https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/permits.html)

<sup>65</sup> California Environmental Quality Act (CEQA) Review, <https://wildlife.ca.gov/Conservation/Environmental-Review/CEQA>

the Lake and Streambed Alteration (LSA) Program.<sup>66</sup> Both programs have separate regulations and permits.

The **California Coastal Commission (CCC)** “is an independent, quasi-judicial state agency.” “In partnership with coastal cities and counties, [it] plans and regulates the use of land and water in the coastal zone. Development activities, which are broadly defined by the Coastal Act to include (among others) construction of buildings, divisions of land, and activities that change the intensity of use of land or public access to coastal waters, generally require a coastal permit from either the Coastal Commission or the local government.”<sup>67</sup> The CCC has a dedicated section on its website on Sea Level Rise Planning and Permitting.<sup>68</sup> A chart illustrating the CCC regulatory process is shown in Appendix E. The CCC does not regulate the land and water in San Francisco Bay. That area is under the jurisdiction of the BCDC.

Since 2008, the **San Francisco Bay Conservation and Development Commission (BCDC)** “has been the State agency responsible for leading the Bay Area’s preparedness for rising sea level, tides, and storm surge due to climate change.”<sup>69</sup> BCDC oversees the adaptation strategy to be used by the Bay Area’s regional agencies. All levels of government will need to collaborate with public and private property owners who are affected by rising sea level.<sup>70</sup> BCDC issues permits for work in the Bay or within 100 feet of the shoreline, including filling, dredging, dredged sediment disposal, shoreline development and other work. “A public hearing is mandatory for a major permit application<sup>71</sup> and the application may be reviewed by the Commission’s Design Review Board and/or the Engineering Criteria Review Board.” BCDC’s permitting process also includes an emphasis on environmental justice.

### **City Awareness of Sea Level Rise**

The 2014-15 Grand Jury SLR report “*Flooding Ahead: Planning for Sea Level Rise*”,<sup>72</sup> made recommendations that contributed to the formation of OneShoreline. That report also made recommendations that SMC cities and towns include the threat of SLR in their General Plans.<sup>73</sup> The current Grand Jury looked at the General Plans of South San Francisco, Pacifica, Redwood City, Woodside, Menlo Park, and East Palo Alto, and found that all, except South San Francisco, had SLR in their General Plans. Not all of the General Plans covered SLR protection of transportation and utility infrastructure, schools, public safety facilities and hazardous material

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<sup>66</sup> Lake and Streambed Alteration Program (ca.gov), <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>

<sup>67</sup> California Coastal Commission, <https://www.coastal.ca.gov/whoweare.html>

<sup>68</sup> Planning & Permitting (ca.gov), <https://www.coastal.ca.gov/climate/slr/planning-permitting/>

<sup>69</sup> BCDC - about us (ca.gov), <https://www.bcdc.ca.gov/aboutus/>

<sup>70</sup> Ibid.

<sup>71</sup> BCDC PERMIT APPLICATION FORM, <https://www.bcdc.ca.gov/forms/appform.pdf>

<sup>72</sup> *Flooding Ahead: Planning for Sea Level Rise* (sanmateocourt.org), [http://www.sanmateocourt.org/documents/grand\\_jury/2014/sea\\_level\\_rise.pdf](http://www.sanmateocourt.org/documents/grand_jury/2014/sea_level_rise.pdf)

<sup>73</sup> Recommendation 6 of *Flooding Ahead*, at pg. 18

sites. South San Francisco, which has active SLR projects, is in the process of amending its General Plan to include SLR.<sup>74</sup> For more information on the cities, see Appendix B.

This investigation also sought to determine whether city and town councils were aware of the nature of the SLR problem – its long-term impact and significant costs. Interviews with city employees revealed that, in general, the city and town councils, staff, and residents seem more aware of the impact of SLR now than they did six years ago. City representatives interviewed by this Grand Jury acknowledged the need to regularly update new council members on the SLR projects due to the prolonged time it takes for a SLR project to be designed, approved, funded, and built.<sup>75</sup>

### **OneShoreline – SMC’s Future for Responding to Sea Level Rise**

San Mateo County remains at risk from sea level rise and will continue to be for many generations. OneShoreline is the County’s special district with the mission to protect the County from SLR and flooding, and to work with cities, towns, and the County. Although it is just a year old, OneShoreline appears to be heading in the right direction. OneShoreline must be sustainably funded in order to do the work needed to protect San Mateo County from the unavoidable problems caused by sea level rise.

### **BEST PRACTICES**

- Cities and towns can respond to SLR by looking beyond the immediate FEMA-based flood insurance criteria and require project designs for new developments take into account long-term SLR. A project should not be viewed in isolation; consideration must be given to how it might affect nearby structures.<sup>76</sup>
- To build critical public support for sea level rise mitigation projects, public officials should demonstrate current and future sea level rise impacts to the community, emphasize the financial benefits of timely projects, and solicit community input in the choice of solutions to address the sea level rise problem.<sup>77</sup>

### **FINDINGS**

- F1. Sea level rise will seriously damage critical San Mateo County infrastructure and assets unless the County and its cities and towns prepare now.
- F2. Sea level rise infrastructure projects can take more than a decade to plan, fund and build.

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<sup>74</sup> South San Francisco, Request for Proposals, General Plan 2040, January 11, 2019, p. 4, <https://www.ssf.net/Home/ShowDocument?id=14571>

<sup>75</sup> Grand Jury interviews.

<sup>76</sup> Grand Jury interviews.

<sup>77</sup> Vulnerability Study, *supra*, at p. 201



- F3. Complex federal and state regulations and procedures delay and increase the costs of already expensive sea level rise mitigation projects. They need to be revised.
- F4. Delaying sea level rise projects will increase costs.
- F5. To remain effective, OneShoreline needs steady, long-term, operational funding.
- F6. Coordination between neighboring jurisdictions is important to reduce costs and improve the effectiveness of a SLR project.
- F7. Competing budget priorities among the entities in a sea level rise project make the projects difficult to fund and manage, leading to risk of delays and missed deadlines.
- F8. Numerous hazardous material sites in the County must be protected from sea level rise flooding.
- F9. Storm surge and sea level rise threaten the County's wastewater treatment plants affecting everyone in the County – even inland County residents.
- F10. OneShoreline is uniquely positioned to augment San Mateo County's ability to combat sea level rise by its planning, funding, permitting expertise, and guidance.
- F11. Destruction of low-cost housing on the Bay and coast by flooding and erosion due to sea level rise will further increase inequities in communities such as Belle Haven (Menlo Park), East Palo Alto, Redwood City, and Pacifica.
- F12. OneShoreline effectively collaborates with the Office of Sustainability and others on public engagement campaigns to educate individuals on how sea level rise will affect San Mateo County.
- F13. A loan program to provide cities and towns funds for the required preliminary engineering necessary to obtain partial state or federal funding for SLR projects would be beneficial.

## **RECOMMENDATIONS**

The Grand Jury recommends:

- R1. At a public meeting, each city and town council, or board of supervisors should take at least one concrete action toward establishing a continuing funding source for OneShoreline, identify that action in response to this report, and potentially adopt a resolution expressing support for a parcel tax or property tax by June 30, 2022.
- R2. A coordinated lobbying strategy with participation by the County, by San Mateo County cities and towns, by OneShoreline, and by other interested Bay Area cities and counties for federal and state regulatory simplification by January 31, 2022.
- R3. OneShoreline consider establishing and administering a low interest revolving loan fund to enable jurisdictions to prepare the initial engineering and planning necessary to obtain federal and state funding for SLR projects, establishing such program by December 31, 2021.

R4. The County Board of Supervisors and each city and town council, should ensure that their general plans regarding SLR protection include transportation and utility infrastructure, schools, public safety facilities, and hazardous material sites by March 31, 2022.

### **REQUEST FOR RESPONSES**

Pursuant to Penal Code Section 933.05, the Grand Jury requests responses as follows from the indicated government entities.

#### **Responses to the Findings:**

OneShoreline’s board of directors should respond to Findings:

F1 through F13.

The County Board of Supervisors should respond to Findings:

F1 through F13.

The City and Town Councils (or Governing Bodies) should respond to Findings:

F1 through F13.

Per Government Code Section 933.05(a), “as to each grand jury **finding**, the responding person or entity shall 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 therefor.”

#### **Responses to the Recommendations**

OneShoreline’s board of directors should respond to Recommendations:

R2 and R3.

The County Board of Supervisors should respond to Recommendations:

R1, R2 and R4.

The City and Town Councils should respond to Recommendations:

R1, R2 and R4.

Per Government Code Section 933.05(b), “as to each grand jury **recommendation**, the responding person or entity shall 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 timeframe for implementation.**
- 3) The recommendation requires further analysis, **with an explanation and the scope and parameters of an analysis or study, and a timeframe** for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. **This timeframe shall not exceed six months from the date of publication of the grand jury report.**
- 4) The recommendation will not be implemented because it is not warranted or is not reasonable, **with an explanation therefor.”**

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**

### **Documents**

Numerous reports, news articles, and webpages were consulted in preparation of this report, from the cities and towns, the County, OneShoreline, as well as the California Legislative Analyst’s Office and other organizations. For a complete list see the Bibliography below.

### **Interviews**

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.

All interviews were conducted via videoconference using Zoom or Google Meets, or via written questions. For this report the Grand Jury interviewed:

- City or Town managers or members of city or town councils.
- At least one County Supervisor.
- At least one member of the Board of the San Mateo County Flood and Sea Level Rise Resiliency District, aka OneShoreline.
- At least one member of the staff of OneShoreline.
- At least one officer of an Environmental Organization.
- At least one consultant with knowledge of FEMA and the Army Corps.

- Elected Legislators at the State and Federal Level or their designated staff.
- A representative of the Army Corps of Engineers.

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Appendix A: Selected Demographics for the County and Certain Cities<sup>78</sup>

Appendix A: Selected Demographics for the County and certain Cities								
CITY	POPULATION (2019 est.)	DENSITY (per square mile)	ELEVATION (in feet)	Housing Units	Owner- occupied housing (%)	Housing Density (per square mile)	Median Household Income (\$)	
East Palo Alto	29,593	11,596	20	7,819	42.8	2,993	44,006	
Foster City	33,997	8,138	7	12,458	57.9	3,317	135,470	
Menlo Park	34,138	3,271	72	13,085	56.1	1,337	82,609	
Pacifica	38,984	2,941	82	14,523	68.3	1,147	31,737	
Redwood City	85,784	3,956	20	29,167	50.6	1,502	69,679	
South SF	67,408	6,624	16	21,814	60.2	2,386	60,764	
Woodside	5,542	451	387	2,157	87.1	184	212,917	
SM County	767,423	2,753	n/a	284,471	Not available	789	69,306	

<sup>78</sup> US Census Bureau, 2019, <https://www.census.gov/quickfacts/sanmateocountycalifornia> and other sources.

## Appendix B – Examination of Selected Cities & SFO

This Grand Jury looked at certain cities and towns selected to represent the risks faced by the County as a whole. The cities are: South San Francisco, Pacifica, Redwood City, Woodside, Menlo Park, and East Palo Alto. This report added Foster City and the San Francisco International Airport, given their unique relevance to SLR today.

**South San Francisco** has levees, floodwalls, two wastewater treatment plants, a sealed hazardous waste area, parks and trails, a quarter of all outpatient health care facilities, acres of wetlands, Caltrain tracks and Highway 101, and a large biotech industrial district right on the SF Bay. All are at risk of SLR or flooding. Colma Creek frequently floods and has an established flood zone with a connected property tax.

SSF's General Plan, amended in 2018, does not mention SLR. In a recent presentation by OneShoreline, it was mentioned that OneShoreline was working with SSF to update its general plan regrading SLR and flooding.<sup>79</sup>

South San Francisco takes several approaches to sea level rise:

- Development planning and zoning for the future, utilizing SLR predictive models.
- Community awareness of the problems and recognizing the likelihood of needing resident's financial support for sea level rise mitigation projects in the future.
- Using consultants to work with federal agencies (e.g., the Army Corps of Engineers) in order to receive funding and expertise for project planning, design, and construction.
- Remediation of bay water seepage into existing landfills as the result of sea level rise.

Many parts of South San Francisco are in FEMA flood zones. South San Francisco has been proactive in seeking solutions to its own sea level rise challenges and hired consultants to work with the Army Corps of Engineers on a project to protect a \$1billion water treatment plant located on the shoreline which cannot be moved. The funding, when working with the Army Corps, breaks down as follows: for design and development – SSF pays 70% and Army Corps 30%; for construction – SSF pays 30% and Army Corps 70%.

South San Francisco expects to collaborate with OneShoreline on projects such as the reconstruction of Colma Creek, which is funded via an existing property tax. SSF is also planning a water reclamation project and will look to OneShoreline for both funding and construction assistance.<sup>80</sup>

**Pacifica** is susceptible to significant impacts due to SLR. High tides and severe storms result in shoreline erosion, especially in northern Pacifica. The high cliffs are particularly susceptible to erosion and required the city to condemn and remove apartment houses and infrastructure (e.g.,

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<sup>79</sup> Presentation by the League of Women Voters, OneShoreline, and others, April 8, 2021.

<sup>80</sup> Grand Jury interviews & city documents.

wastewater, telecom). Permanent fixes are complicated and expensive. Pacifica must also be prepared for tsunamis.



Properties along Esplanade Ave can be seen perched on the edge of an eroding cliff Dec. 23, 2015, in Pacifica, Calif. The center property is vacant.  
(Leah Millis/San Francisco Chronicle)

Pacifica adopted a Sea Level Rise Adaptation Plan because of the 2018 Sea Level Vulnerability Assessment. The city of Pacifica is looking to implement coastal resiliency strategies and policies that are consistent with Pacifica General Plan and Local Coastal Programs.

Pacifica's General Plan recognizes the importance of global climate change and its impact on SLR. The plan describes how SLR affects coastal neighborhoods and habitats and acknowledges that "coastline-altering structures [may] be needed in the future to protect new development." It recommends periodically conducting studies of the expected rate of coastal flooding and erosion.<sup>81</sup> Pacifica has popular beaches, canyons, creeks and "mini-watersheds" that contribute to

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<sup>81</sup> City of Pacifica, CA --- General Plan Documents,  
[https://www.cityofpacifica.org/depts/planning/general\\_plan\\_update/default.asp](https://www.cityofpacifica.org/depts/planning/general_plan_update/default.asp)

flooding from the inland areas. It constructed an Equalization Basin to handle wastewater overflow to prevent sewage from entering the ocean.

Pacifica must work closely with the California Coastal Commission, which regulates any development near the coast, causing delays when evaluating new projects. It has a Local Coastal Land Use Plan which specifies the land uses and an Implementation Program containing zoning and other elements.

Storm surges frequently cover the Pacifica Pier, a present-day reality of SLR, as shown in the photograph below.



Huge waves batter the coast on Beach Boulevard in Pacifica Jan. 23, 2016. The city of Pacifica has declared a local emergency due to El Nino storm damage.<sup>82</sup>

**Foster City**, built entirely on bay fill, is protected by levees and is currently raising those levees to avoid being mapped as a flood zone requiring flood insurance. The \$85 million project is being funded by a 2018 voter passed property tax.

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<sup>82</sup> Pacifica declares local emergency after damage to sea wall – Orange County Register (ocregister.com), <https://www.ocregister.com/2016/01/23/pacifica-declares-local-emergency-after-damage-to-sea-wall/>

Foster City's General Plan discusses SLR and describes other contributors to coastal flooding: tides, storm surge, wind-driven waves, El Nino events, and fresh-water flooding. The Plan recognizes secondary environmental conditions (rainfall, soil conditions, etc.); the impact of human mitigation measures (levees, control channels, and other flood-control features); and addresses specific hazards, studies, past mitigation efforts, as well as an "evaluation of future sea level rise."<sup>83</sup>

**Woodside** is not at *direct* risk from SLR and has minimal flooding risk. Woodside's General Plan does not consider SLR to be much of a threat to the town, local infrastructure, or residents.<sup>84</sup> However, the plan acknowledges it has a vested interest in SLR mitigation given that its sole wastewater treatment facility is the Silicon Valley Clean Water Regional Wastewater Treatment Plant located in Redwood City, a facility extremely vulnerable to SLR. "Everyone needs to flush their toilets."<sup>85</sup>

Woodside would also be impacted by flooding of Highway/U.S. 101, other transportation resources, the loss of County industry and employers, and other infrastructure such as local airports, hospitals, and County government facilities.

**Redwood City** is currently working on several SLR projects namely, the Bayfront Canal and Atherton Channel Flood Improvement project with Menlo Park, Atherton, the County and OneShoreline. Improvements to the levees around Redwood Shores are being planned, with \$500,000 initially budgeted for preliminary design. Also in progress is a salt pond restoration project next to Redwood Shores which will help reduce flooding during storms and high tides and protect the mouth of Redwood Creek. The City is working with property owners in the Seaport Centre and Seaport Plaza areas to raise those levees to 14 feet (at the highest point), to meet FEMA standards. Property owners are covering design and construction costs of approximately \$13.5 million, while the City will be responsible for operation and maintenance.

The Redwood City General Plan cites specific SLR hazards posed to the Port of Redwood City, and the extensive development of residential, industrial, critical infrastructure, and coastal ecosystems on both sides of U.S. 101. The plan discusses:

- discouragement of development on land where SLR cannot be adequately addressed;
- consideration and mitigation of SLR in the planning process;
- supporting research and preparing adaptation plans for the effects of climate change;
- intent to consult with public agencies responsible for flood control; and
- preparing public awareness campaigns about climate change and how residents might become actively involved in solutions.

Redwood City plans to institute several SLR programs:

- Sea Level Rise Response Strategy;

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<sup>83</sup> General Plan | Foster City California, <https://www.fostercity.org/commdev/page/general-plan>

<sup>84</sup> General Plan 2012 | Town of Woodside California (woodsidesideton.org), <https://www.woodsidesideton.org/planning/general-plan-2012-0>

<sup>85</sup> Grand Jury interview.

- Climate Change Consultation and Flooding Consultation;
- Upgrade levees to FEMA standards; and
- Improvements in the city’s abilities to contain and process stormwater.<sup>86</sup>

Redwood City looks to OneShoreline to help on regional efforts and projects that span multiple jurisdictions and require the coordination of various agencies (FEMA, Army Corps, CA Environmental Protection Agency, Bay Conservation and Development Commission, etc.), as well as establishing uniform sea level rise standards throughout the County. Of special importance is the need for Redwood City to update the Redwood Shores levee, which, if not accomplished within a certain timeframe, will result in a large residential area being re-mapped by FEMA into a special flood hazard area, requiring homeowners carry expensive flood insurance.

**Menlo Park** understands that it must work cooperatively with its neighbors to solve the shared threat of SLR. “Water is fungible – it moves around.”<sup>87</sup>

It is working with OneShoreline and the San Francisquito Joint Powers Authority (SFJPA) to address SLR and flooding. OneShoreline is currently leading project development pursuant to Memorandum of Understanding (MOU) for Bayfront Canal with Redwood City, Atherton, Menlo Park and the County. Menlo Park is also involved with OneShoreline and the San Francisquito Creek Joint Powers Authority to address concerns over flooding from the creek and the Bay in Menlo Park.

Menlo Park’s General Plan recognizes the need to “prepare the community for potential adverse impacts related to climate change, such as sea level rise...,” and includes a discussion of funding options. It acknowledges concerns of mortgage holders in the FEMA 100-year floodplain over the cost of mandatory flood insurance. Long-term planning for construction in SLR-vulnerable areas must be regulated to consider how development may be affected by SLR.

The Belle Haven area, located between the Bay and Highway 101, is particularly vulnerable to flooding from sea level rise. Menlo Park is working with OneShoreline, Redwood City, East Palo Alto, Atherton, PG&E and Facebook, to secure grants and other funding needed for levees to protect bayfront areas, including a PG&E substation – toward which PG&E has offered to contribute \$10 million.

**East Palo Alto** is laser-focused on finding solutions to its flooding threats. “The City of East Palo Alto has 335 acres of land at risk in the baseline scenario, 714 acres in the mid-level scenario, and 992 acres in the high-end scenario. A significant portion of East Palo Alto's population (nearly 60%) is vulnerable to sea level rise in the mid-level scenario.”<sup>88</sup> It is directly

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<sup>86</sup> Redwood City General Plan.

<sup>87</sup> Grand Jury interview.

<sup>88</sup> Papendick, Hilary, Jasneet Sharma, Carolyn Raider, Avana Andrade, Emi Hashizume, Montserrat Plascencia, Sally Prowitt, et al. 2018, March. *County of San Mateo, Sea Level Rise Vulnerability Assessment*. Final Report, Redwood City: County of San Mateo, at p. 130.

impacted both by SLR and freshwater flooding from the San Francisquito Creek. It has a history of involvement, with the SFCJPA, to address creek flooding and has SLR projects in the early stages of development.

East Palo Alto's General Plan discusses educating its residents to take personal steps to combat climate change as a basic approach to mitigating SLR. The plan addresses the history of flooding and future hazards posed by the proximity of several neighborhoods to San Francisquito Creek. East Palo Alto considers the inevitability of SLR in its general assessment and mitigation planning for all flooding.

East Palo Alto has already been hit hard by flooding, especially around "the Village." Many of its neighborhoods are in FEMA flood zones, obliging homeowners to purchase costly flood insurance. As the city seeks to approve new development, it requires builders to "build higher" to ensure that new construction is not compromised by flooding threats.

East Palo Alto has recently been awarded a grant for sea wall construction. The City, with the assistance of OneShoreline, is working on a project with three "reaches":

Reach 1: Protect the Garden area of East Palo Alto – this project is complete.

Reach 2: Replace bridges, including the Pope / Chaucer Bridge. OneShoreline is providing design assistance along with the Army Corps of Engineers. This reach is currently looking for funding.

Reach 3: Exploring options about the ongoing upstream protection of Stanford University.

### **San Francisco International Airport (SFO)**

San Francisco International Airport, while owned by the City and County of San Francisco, is in San Mateo County. This is the single most valuable asset in all the County. "In FY 2018, SFO directly accounted for almost \$11 billion in business revenues, which supported more than 46,000 jobs at the Airport. Off-Airport businesses that depend directly on air service at SFO ... raise the direct Airport contribution to the Bay Area economy to \$42.5 billion in business sales, with more than 188,000 jobs."<sup>89</sup>

SFO borders two cities and the County. The Airport is in the planning stage of a \$500 million project to increase the height of its levees. SFO has its own source of funding for SLR protection via airline ticket fees and other fees. SFO plans to work with OneShoreline to coordinate its SLR protection with its neighbors.

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<sup>89</sup> SFO Economic Impact Report 2019.pdf (flysfo.com), at p. 1,  
[https://www.flysfo.com/sites/default/files/SFO\\_Economic\\_Impact\\_Report\\_2019.pdf](https://www.flysfo.com/sites/default/files/SFO_Economic_Impact_Report_2019.pdf)

## **Appendix C – Some of OneShoreline’s Current Projects**

OneShoreline is involved in several flooding and sea level rise projects, many already in progress in various stages when the district was formed. Some of the currently active projects are summarized below. (For more details on any of these projects, check the OneShoreline website.<sup>90</sup>)

### **Bay Shoreline Project: Burlingame, Millbrae, and San Francisco International Airport**

The long-term objective is to raise shoreline and creek bank elevations along 1.6 miles of Bay shoreline and 1.5 miles of creeks. The project will remove properties from the current FEMA 100-year floodplain and protect them from an additional roughly six feet of sea level rise – a water level approximately 10 feet above current daily high tide. SFO has a revenue stream and will protect the airport. OneShoreline’s role is, in part, to coordinate with SFO and the neighboring cities, as well as to help the cities design and finance their projects.

### **Bay Shoreline Project: Redwood Shores and San Carlos**

Redwood Shores, built upon marshes of San Francisco Bay, is protected by a system of levees. In 2010, Redwood City raised the height of over three miles of levee surrounding Redwood Shores. In April 2020, FEMA notified Redwood City that the levees had to be raised again, or a certain residential area would be designated as a Special Flood Hazard Area requiring approximately 4,700 households to purchase flood insurance.

### **Bayfront Canal & Atherton Channel Flood Protection and Ecosystem Restoration Project**

The Atherton Channel converges with the Bayfront Canal at the border of Redwood City and Menlo Park and empties into San Francisco Bay through a tide control structure. High tides keep the Canal and Channel from draining to the Bay. Even minor rainfall resulted in flooding of nearby mobile home parks and businesses 40 times over the past 70 years, most recently in 2017.

In 2017, Redwood City, Menlo Park, Atherton, and the County signed an MOU to establish funding for the design, environmental documentation, and land access agreements. This project consists of an underground culvert to divert excess flow from the Atherton Channel and the Bayfront Canal into managed ponds within the Ravenswood Complex of the South Bay Salt Ponds Restoration Project (SBSRP). In 2020, OneShoreline assumed the lead role to complete the project working with the cities and the County.

### **Colma Creek, San Bruno Creek, Navigable Slough, and nearby areas of the shoreline**

Colma Creek, San Bruno Creek, and Navigable Slough are connected waterways within the cities of South San Francisco and San Bruno that are prone to flooding, especially during high tide levels in the San Francisco Bay. Colma Creek and San Bruno Creek comprise two of the three long-standing active flood zones that OneShoreline inherited from the former flood control

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<sup>90</sup> <https://oneshoreline.org/projects/>



district. OneShoreline has conducted a survey of these studies and potential projects to establish potential priorities for upcoming projects.

### **Countywide Flood Early Warning System and Flood Emergency Action Plans**

OneShoreline is managing a coordinated, countywide flood emergency preparedness and response program in collaboration with the Sheriff's Office and the County Office of Emergency Services. The program upgrades and expands the region's flood warning system (measurement and alarms) for emergency responders and the general public. The program includes extensive public outreach and emergency response personnel training, and the creation of a publicly accessible flood monitoring webpage.

OneShoreline is also leading the creation of site-specific Flood Emergency Action Plans (EAPs) to better define and coordinate emergency responsibilities before, during, and after flood events that cross jurisdictional boundaries for the following areas: Bayfront Canal and Atherton Channel; Belmont Creek; and Navigable Slough, Colma Creek, and San Bruno Creek.

1 **Appendix D – Comparing the Old District to OneShoreline**

Comparing the Old Flood Control District to OneShoreline		
	Flood Control District	OneShoreline
Formal name	San Mateo County Flood Control District	San Mateo County Flood and Sea Level Rise Resiliency District
Year Established	1959	2019
Governance	Board of Supervisors of the County	Independent seven-member Board of Directors appointed from elected County and City officials <sup>91</sup>
Staffing	None; borrowed from County and consultants	As of May 2021, full time staff of four professionals, and consultants
Area of operation	3 Areas near creeks <sup>92</sup>	Entire County
Focus	Flooding – 3 creeks	SLR and Flooding
Operating budget	No “operating” budget	\$1.5 million per year (2020-2022)
Funding	Property taxes from 3 flood zones by creeks	Operational: County & cities for approximately 3 years (with 2-year optional extension)  Property taxes from three creek-side neighborhoods
Project Budgets	Flood zone property taxes, with some grants and matching	Flood zone property taxes, with some grants and matching, other agreements, and other assessments approved by voters

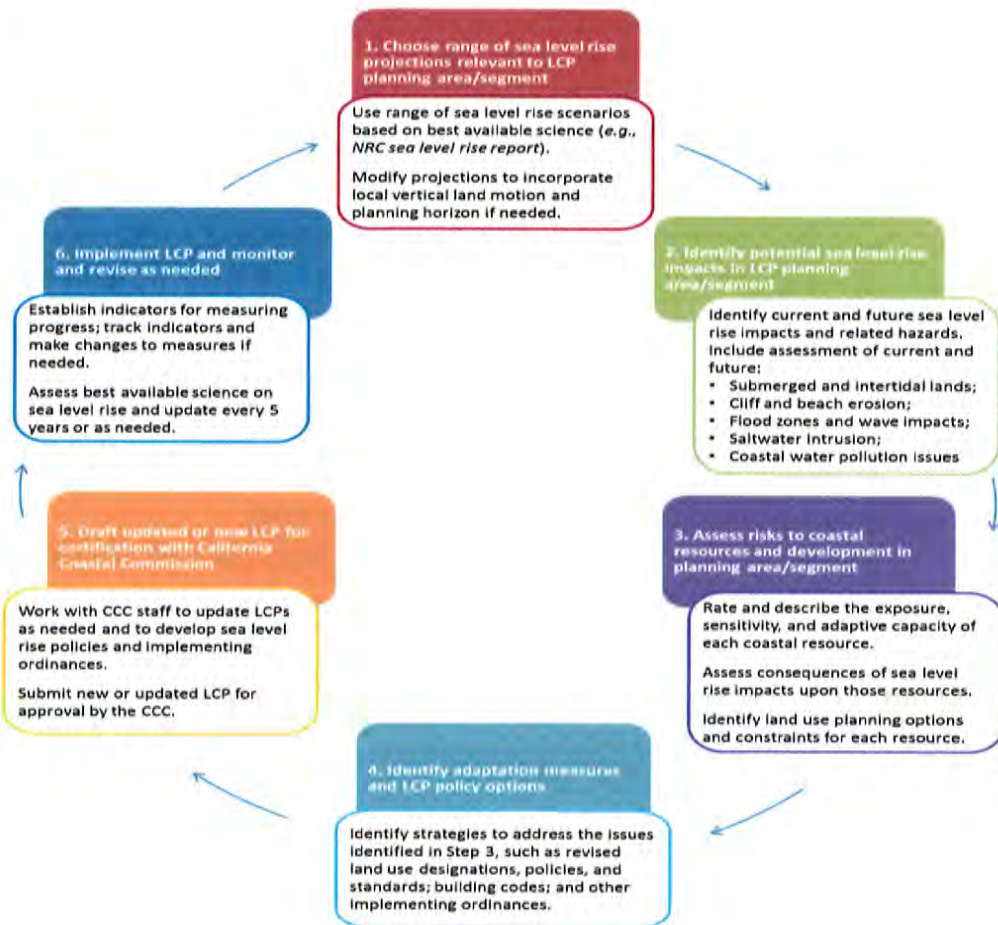
2

<sup>91</sup> Section 4.5(a) of the San Mateo County Flood Control Act, as amended.

<sup>92</sup> The three creeks are Colma, San Bruno, and San Francisquito.

## Appendix E – California Coastal Commission Regulatory Diagrams

As an illustration of the complexity of the regulatory process, a chart from the “CALIFORNIA COASTAL COMMISSION SEA LEVEL RISE POLICY GUIDANCE - Interpretive Guidelines for Addressing Sea Level Rise in Local Coastal Programs and Coastal Development Permits”<sup>93</sup> is shown below.<sup>94</sup> While this only deals specifically with the Coastal Commission, a similarly complex iterative regulatory process will also be encountered with the BCDC, the Army Corps, and other agencies.



<sup>93</sup> California Coastal Commission, “CALIFORNIA COASTAL COMMISSION SEA LEVEL RISE POLICY GUIDANCE - Interpretive Guidelines for Addressing Sea Level Rise in Local Coastal Programs and Coastal Development Permits,” updated Nov. 7, 2018. Available at [https://documents.coastal.ca.gov/assets/slr/guidance/2018/0\\_Full\\_2018AdoptedSLRGuidanceUpdate.pdf](https://documents.coastal.ca.gov/assets/slr/guidance/2018/0_Full_2018AdoptedSLRGuidanceUpdate.pdf)

<sup>94</sup> Ibid, p. 95.

## **APPENDIX F – The Army Corps of Engineers Procedures – “Simplified”<sup>95</sup>**

The sequential steps that are involved in an Army Corps flood control project include:

1. Non-federal sponsor identifies problem and requests feasibility study. The non-federal sponsor, typically a city, county, or state, has the legal and financial capability to provide its share of the project cost.
2. Congressional authorization to study required, and local sponsor submits letter of intent.
3. Funds appropriated and study authorized - funds can be requested by Army Corps from President’s budget, or Congress can appropriate funds.
4. Study process involves identifying problems, opportunities, objectives, and constraints, potential alternative plans, and identifies the:
  - a. National Economic Development (NED) based on maximizing net benefits relative to costs. Benefits are primarily avoiding economic damages from flooding. The costs are those of constructing and maintaining the project.
  - b. National Ecosystem Restoration (NER) alternative.
  - c. Local sponsors may identify plans beyond the NED or NER and can include those at their own cost; a levee built higher than what the NED plan included, for example
5. Draft integrated feasibility report which includes a draft environmental compliance plan.
6. Review of the draft by:
  - a. the public;
  - b. resource agencies;
  - c. stakeholders; and
  - d. Army Corps internal legal, policy and technical.
7. Recommended Plan includes greater level of design, economic, engineering, environmental, and other technical details.
8. Final Feasibility Study Report, including environmental.
  - a. Recommends project authorization.
9. Congressional Authorization and construction funding required.

The Army Corps in addition to looking primarily to avoid economic damages from flooding also evaluates based on:

- National Economic Benefit;
- Environmental Quality;
- Regional Economic Development;
- Other Social Effects;
- Views of the public;
- Federal regulatory agencies;
- State regulatory agencies; and
- Stakeholders.

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<sup>95</sup> Grand Jury interview.

Civil works studies and projects compete nationally for congressional appropriations. The Army Corps also has a set of nine existing authorities under the Continuing Authority Program (CAP) to plan, design, and construct water resources projects of limited scope and complexity. CAP studies and projects do not require project-specific authorization from Congress. Potentially applicable CAP authorities applicable to coastal and fluvial water resources problems include Section 103 (Beach erosion and storm risk reduction); Section 204 (Beneficial Reuse of Dredge Material); Section 205 (Flood risk management); and possibly others.





## TOWN OF COLMA

1198 El Camino Real • Colma, California • 94014-3212  
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October 13, 2021

Honorable Amarra A. Lee  
Judge of the Superior Court  
c/o Jenarda Dubois  
Hall of Justice  
400 County Center; 8<sup>th</sup> Floor  
Redwood City, CA 94063-1655

Re: Grand Jury Report: "San Mateo County: California's Ground Zero for Sea Level Rise."

Dear Judge Lee;

The City Council received the August 11, 2021 San Mateo Civil Grand Jury report titled, "San Mateo County: California's Ground Zero for Sea Level Rise."

The Town of Colma was requested to submit comments regarding the findings and recommendations no later than November 11, 2021.

The City Council of the Town of Colma has reviewed the recommendations in the Grand Jury Report that affect the Town and approved the responses at its public meeting on October 13, 2021.

### **Findings:**

The Town agrees with findings F1, F2, F3, F4, F6, F7, F8, F9, F11, and F13.

**F5.** To remain effective, OneShoreline needs steady, long-term operational funding.

### **Response:**

To the extent that we are aware, the Town agrees with this finding.

**F10.** OneShoreline is uniquely positioned to augment San Mateo County's ability to combat sea level rise by its planning, funding, permitting expertise, and guidance.

### **Response:**

To the extent that we are aware, the Town agrees with this finding.

**F12:** OneShoreline effectively collaborates with the Office of Sustainability and others on public engagement campaigns to educate individuals on how sea level rise will affect San Mateo County.

### **Response:**

To the extent that we are aware, the Town agrees with this finding.

Diana Colvin, Mayor  
Helen Fisicaro, Vice Mayor  
Raquel P. Gonzalez, Council Member • Joanne F. del Rosario, Council Member • John Irish Goodwin, Council Member • Brian Dossey, City Manager

**Recommendations:**

**R1.** At a public meeting, each city and town council, or board of supervisors should take at least one concrete action toward establishing a continuing funding source for OneShoreline, identify that action in response to this report, and potentially adopt a resolution expressing support for a parcel tax or property tax by June 30, 2022.

**Response:**

The recommendation requires further analysis, the Town of Colma would like to invite the San Mateo County Flood and Sea Level Rise Resiliency District to a future City Council meeting to hear the District's ideas for future funding and what the District's proposed plan is for a parcel or property tax initiative. Upon hearing the presentation from the San Mateo County Flood and Sea Level Rise Resiliency District the Town will then consider action for funding or support of a property or parcel tax at a future City Council meeting.

**R2.** A coordinated lobbying strategy with participation by the County, by San Mateo County cities and towns, by OneShoreline, and by other interested Bay Area cities and counties for federal and state regulatory simplification by January 31, 2022.

**Response:**

The recommendation requires further analysis, the Town of Colma would like to invite the San Mateo County Flood and Sea Level Rise Resiliency District to a future City Council meeting to hear the District's plans for a coordinated lobbying strategy. Upon hearing the presentation from the San Mateo County Flood and Sea Level Rise Resiliency District the Town will then consider participating in a coordinated lobbying strategy.

**R4.** The County Board of Supervisors and each city and town council, should ensure that their general plans regarding SLR protection include transportation and utility infrastructure, schools, public safety facilities, and hazardous material sites by March 31, 2022.

**Response:**

The recommendation has not yet been implemented, but will be implemented by the end of February 2022. The Town of Colma is in the process of updating its General Plan and the City Council is scheduled to hear, consider and adopt the General Plan update in early 2022.

The Town appreciates the efforts of the Grand Jury. Please contact City Manager Brian Dossey should you require any additional information. He can be reached at (650) 997-8318 or by email: [brian.dossey@colma.ca.gov](mailto:brian.dossey@colma.ca.gov).

Sincerely,

Diana Colvin

Mayor





# STAFF REPORT

TO: Mayor and Members of the City Council  
 FROM: Brad Donohue, Director of Public Works, CSG  
 VIA: Brian Dossey, City Manager  
 MEETING DATE: October 13, 2021  
 SUBJECT: 2021 Highway Program Measure A/W Funding Application

## RECOMMENDATION

Staff recommends that the City Council adopt the following:

RESOLUTION SUPPORTING THE COLMA EL CAMINO REAL BICYCLE AND PEDESTRIAN IMPROVEMENT PLAN PROJECT AND AUTHORIZING THE SUBMITTAL OF AN APPLICATION FOR MEASURE A AND MEASURE W HIGHWAY PROGRAM FUNDING.

## EXECUTIVE SUMMARY

At the January 22, 2021 City Council Meeting, staff presented the El Camino Real Bicycle and Pedestrian Master Plan (the Plan) The Plan outlined several enhancements along the ECR corridor that would improve continuous and accessible sidewalks, continuous bike paths, safety features such as landscape barriers to separate bicyclist and pedestrians from vehicles, improved bus stops, new interconnected signals to allow bikes and pedestrians to cross the highway safely and various landscape enhancements. The proposed improvements are estimated in the \$30 million range for the various ECR improvements. The vast majority of funding will need to come from outside funding sources, Federal, State and Local grant opportunities. The first steps in obtaining funding for this project would be to assemble the Project Initiation Documents (PID). Per CalTrans requirements, PIDs are required to be developed and approved by Caltrans before any major or high complexity project can be programmed and constructed on the State Highway System. The Town is requesting \$2,000,000 in funding (\$1.8 Million in grant funding, .2 million in local match) to complete the PID documents.

## FISCAL IMPACT

Should the Transit Authority (TA) Board award Measure A and/or Measure W Highway Program funds to the PID phase, the TA will require that the Town of Colma commence work on the PID phase within one year of TA Board action. Action on this item will have no fiscal impact for FY 2021-22 and the local match dollars in the amount of \$200,000 can be included during the Capital Improvement Program budget discussions for FY 2022-23.

## **BACKGROUND**

In 1988, San Mateo County voters passed the original Measure A sales tax, which included funding for specific highway projects listed in the 1988 Transportation Expenditure Plan. In 2004, the voters of San Mateo County reauthorized the Measure A Program and approved an extension of the existing half-cent transportation sales tax for 25 years from 2009 through 2033. The 2004 Transportation Expenditure Plan (TEP) provides that 27.5 percent of the sales tax revenue be dedicated to the highway program, with 17.3 percent committed to projects on state highways known as Key Congested Areas (KCA) and 10.2 percent for Supplemental Roadways (SR) for projects on highways and other roadways.

In 2018, the voters of San Mateo County approved Measure W, a new 30-year half-cent sales tax for transportation programs and projects that took effect July 1, 2019 and expires June 30, 2049. The Measure W Congestion Relief Plan (CRP) identifies that twenty-two and one-half percent of Measure W be dedicated to highway congestion improvements.

In 2021, the TA Board adopted the Short-Range Highway Plan (SRHP) and Capital Improvement Program (CIP) to support future investment decisions for the Measure A Highways & Measure W Countywide Highway Congestion categories. The SRHP incorporates the Measure A goals along with the new Measure W core principles and is the policy foundation for making highway program investment decisions. The SRHP uses the adopted Strategic Plan 2020-2024 evaluation criteria to benchmark how projects align with funding priorities for Measure A and W. To be eligible for the Call for Projects a project must be included in the CIP.

Based on the requirements, the Colma El Camino Real Bicycle and Pedestrian Improvement Project qualifies as an eligible project due to this corridor being part of the SR 82 (El Camino Real, Safety and Operational Improvement Project).

The Colma El Camino Real Bicycle and Pedestrian Plan is a collaborative planning effort to produce an actionable, community-based design. The project team employed a variety of tools, venues and platforms to facilitate education and information-sharing, gather input, and publicize the planning effort. Design treatments that address existing concerns on the corridor and align with the community's vision were developed and refined through an iterative design process. Potential cross sections for each segment were presented and discussed with Caltrans, stakeholders, and community members to define the final design.

With a grant from the Caltrans Sustainable Communities Program, the Town of Colma developed the El Camino Real Bicycle and Pedestrian Improvement Plan, which aims to improve safety and mobility for people who walk and bike along El Camino Real and to increase access to public transportation. The Plan was developed to serve the needs of all users of the corridor, including those of disadvantaged communities. Extensive community and technical stakeholder engagement were undertaken to understand existing issues and opportunities, discuss potential improvements, and ultimately arrive at a preferred set of recommendations that reflect the long-term local vision of the Colma community.

## **ANALYSIS**

The ultimate design and implementation of improvements along El Camino Real will require approval from Caltrans through the oversight process since El Camino Real is a state-owned roadway. The proposed improvements will require varying levels of documentation, additional study, and review to receive approval. During the Project Initiation Documentation (PID) phase of the project, a network traffic analysis is recommended as the most immediate next step to capture the effect of the full project build-out on traffic flow on El Camino Real and intersecting streets in Colma, as well as in the neighboring communities, South San Francisco and Daly City. The traffic analysis should be scoped in coordination with a Caltrans Project Study Report (PSR), another element of the PID, to identify appropriate analysis scenarios, likely including evaluation of No Build and Project scenarios for both present day and a future horizon year.

Town of Colma staff prepared a 2021 Highway Program Measure A and Measure W funding application for the above described PID phase. This application was submitted to the San Mateo County Transportation Authority on September 24, 2021 (Attachment B). The PID phase funding requirement is approximately \$2,000,000. The funding application was for a requested amount of \$1,800,000 with a 10% local match requirement of \$200,000.

To complete the funding application for the PID phase of the Project, a City Council adopted resolution supporting the Colma El Camino Real Bicycle and Pedestrian improvement plan project and authorizing submittal of an application for the 2021 Measure A and Measure W highway program funding is required.

## **COUNCIL ADOPTED VALUES**

The City Council approved a master plan that addresses bicycle and pedestrian safety and transportation deficiencies on El Camino Real in Colma. The master plan created a *vision* of how the highway could be reconstructed to accommodate all modes of transportation, a plan that endorses safety and promotes healthy modes of travel along El Camino Real. The approval of the resolution is a continuation of the *vision* that ECR can be viable for all modes of travel.

## **CONCLUSION**

Staff is requesting that City Council approve a resolution supporting the Colma El Camino Real Bicycle and Pedestrian Improvement Plan project and authorizing the submittal of an application for Measure A and Measure W Highway Program Funding to fund the PID phase of the project.

## **ATTACHMENTS**

- A. Resolution



**RESOLUTION NO. 2021-  
OF THE CITY COUNCIL OF THE TOWN OF COLMA**

**RESOLUTION SUPPORTING THE COLMA EL CAMINO REAL BICYCLE AND  
PEDESTRIAN IMPROVEMENT PLAN PROJECT AND AUTHORIZING SUBMITTAL OF AN  
APPLICATION FOR 2021 MEASURE A AND MEASURE W HIGHWAY PROGRAM  
FUNDING**

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

**1. Background**

(a) The El Camino Real corridor in Colma includes narrow and missing sidewalks, long and infrequent crosswalks, discontinuous bicycle facilities, and high travel speeds, and

(b) The Town of Colma developed the El Camino Real Bicycle and Pedestrian Improvement Plan, which aims to improve safety and mobility for people who walk and bike along El Camino Real and to increase access to public transportation, and

(c) It will cost \$2,000,000 to implement the Project Initiation Documents (PID) phase to include the Project Study Report (PSR) and the Network Traffic Analysis.

**2. Findings**

(a) The Town of Colma wishes to sponsor the submittal of an application for Measure A and Measure W grant funding for the development of the El Camino Real Improvement Project, Project Initiation Documents (PID) as required by the California Department of Transportation (CalTrans) when developing a highway improvement project that is constructed on the California Highway system, and

(b) The Town of Colma seeks \$1,800,000 for PID phase, and

(c) On June 7, 1988, the voters of San Mateo County approved a ballot measure to allow the collection and distribution by the San Mateo County Transportation Authority (TA) of a half-cent transactions and use tax in San Mateo County for 25 years, with the tax revenues to be used for highway and transit improvements pursuant to the Transportation Expenditure Plan presented to the voters (Original Measure A); and

(d) On November 2, 2004, the voters of San Mateo County approved the continuation of the collection and distribution by the TA of the half-cent transactions and use tax for an additional 25 years to implement the 2004 Transportation Expenditure Plan beginning January 1, 2009 (New Measure A); and

(e) On November 6, 2018, the voters of San Mateo County approved a ballot measure known as "Measure W," which increased the sales tax in San Mateo County by 1/2 percent, and tasked the TA with administering four of the five transportation program categories pursuant to the Congestion Relief Plan presented to the voters; and

(f) The TA issued a Call for Projects for the Measure A and Measure W Highway Program funds on August 6, 2021, and

(g) The TA requires applicants for Measure A and/or Measure W funds to submit a resolution in support of the application, in this case for \$1,800,000 in Measure A Highway Program funds for PID phase, and

(h) The TA also requires applicants to submit a resolution committing to the completion of the proposed project scope, in this case PID phase, and

(i) If the TA Board awards Measure A and/or Measure W Highway Program funds to the PID phase, the TA will require that the Town of Colma commence work on the PID phase within one year of TA Board action.

**3. Order**

The City Council of the Town of Colma hereby:

(a) Directs staff to submit an application for TA 2021 Measure A and Measure W Highway Program funds for \$1,800,000 for the Project Initiation Documents (PID) phase.

(b) Authorizes the City Manager to execute a funding agreement with the San Mateo County Transportation Authority for the Town of Colma to receive any Measure A and/or Measure W Highway Program funds awarded.

(c) Commits \$200,000 in Town matching funds for the completion of Project Initiation Documents (PID) phase, if awarded the requested TA Measure A and/or Measure W Highway Program funds.

(d) Directs the Town of Colma to commence work on Project Initiation Documents (PID) phase within one year of receiving an award of Measure A and/or Measure W Highway Program Funds.

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***Certification of Adoption***

I certify that the foregoing Resolution No. 2021-\_\_ was adopted at a regular meeting of the City Council of the Town of Colma held on October \_\_, 2021 by the following vote:

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

Dated \_\_\_\_\_

\_\_\_\_\_  
Diana Colvin, Mayor

ATTEST: \_\_\_\_\_  
Caitlin Corley, City Clerk







# STAFF REPORT

TO: Mayor and Members of the City Council  
 FROM: Brad Donohue, Director of Public Works, CSG  
 Nichol Bowersox, Project Manager  
 VIA: Brian Dossey, City Manager  
 MEETING DATE: October 13, 2021  
 SUBJECT: F Street Retaining Wall Improvement Project – Reject All Bids

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## RECOMMENDATION

Staff recommends that the City Council make the following motion:

MOTION REJECTING ALL BIDS FOR THE F STREET RETAINING WALL IMPROVEMENT PROJECT

## EXECUTIVE SUMMARY

Pursuant to Public Contract Code section 22038, a legislative body may reject any bids presented for a project. Staff now recommends that all bids for the F Street Retaining Wall Improvement Project received be rejected and rebid the project in early 2022. Early 2022 rebidding may increase the number of bidders as contractors will have more capacity for new jobs at the beginning of the construction season.

## FISCAL IMPACT

There is no fiscal impact associated with this action.

## BACKGROUND AND ANALYSIS

In 2019, the Town requested the Town's Engineering staff to review the existing wall and provide a report with condition assessments and recommendations. Based on the findings of the inspection and condition assessment, staff identified several repair measures to address the wall deficiencies. Repairs consisted of chipping away all unsound concrete, preparing concrete and steel surfaces and placing an epoxy concrete patch material. Cracks will be pressure injected with epoxy to seal the cracks and prevent water intrusion and corrosion of the reinforcement. Drain rock and weep holes will be added to the existing lower wall to reduce loading due to water pressure build up behind the wall.

Staff prepared project plans and bid specifications (“Bid Package”) for the F Street Retaining Wall Improvement Project (“Project”) and on July 28, 2021, the City Council approved the plans and adopted the resolution authorizing staff to advertise the Bid Package.

Two (2) bids were received and publicly opened on September 7, 2021. One bid received was for a base bid amount of \$299,800.00 and the second bid received was for a base bid amount of \$460,202.50. Both bids exceeded the Engineer’s Estimate of \$252,760 for the base bid scope of work. The higher-than-expected bid prices may be due to several factors including contractor supply and demand, and the potential cost implications as a result of COVID-19.

### **COUNCIL ADOPTED VALUES**

By moving to reject all bids, the City Council is acting *responsibly*, in that by rejecting all bids for the F Street Wall Improvement Project, the Town can go back out to bid when there may be a more competitive bidding climate.

### **SUMMARY**

Staff recommends that the City Council move to reject all bids for the F Street Retaining Wall Improvement Project.



# STAFF REPORT

TO: Mayor and Members of the City Council  
 FROM: Brian Dossey, City Manager  
 MEETING DATE: October 13, 2021  
 SUBJECT: Resolution Supporting Cities Gaming Initiative

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## RECOMMENDATION

Staff recommends that the City Council adopt the following:

RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF COLMA SUPPORTING THE CITIES GAMING INITIATIVE

## EXECUTIVE SUMMARY

This report advises the City Council of competing statewide ballot measures intended for the November 2022 ballot that would remake the laws on gaming in California.

Of the three ballot measures, one measure benefits the public's interest in gaming and provides new revenues to the State of California to allocate toward the social needs in California such as homelessness, affordable housing, mental health, and education for allocation to cities and counties. In addition, it provides new revenues to cities that permit gaming.

The three statewide gaming ballot measures are:

1. The California Sports Wagering Regulation and Unlawful Gambling Enforcement Act (hereafter called the "**Tribal Gaming Initiative**") that is advanced by the Tribal Chairmen of the Pechanga Indian Reservation Temecula Band of Luiseno Mission Indians, the Barona Band of Mission Indians, the Agua Caliente Band of Cahuilla Indians, and the Yocha Dehe Wintun Nation, each of which operates one or more Nevada Style Casinos on its tribal land in California.

2. The California Sports Wagering and Consumer Protection Act (hereafter called the "**Cities Gaming Initiative**") that is advanced by City Council Members of cities that license card clubs in their cities.

3. The California Solutions to Homelessness and Mental Health Support Act (hereafter called the "**Tribal Draft-Kings Initiative**") that is advanced by individuals named John J. Moffit and Kurt R. Oneto submitted on August 31, 2021.

The **Tribal Gaming Initiative** has qualified for the November 8, 2022, ballot while the **Cities Gaming Initiative** and the **Tribal Draft-Kings Initiative** are in the early stages of qualifying for the same ballot.

These three ballot measures propose to amend the California Constitution so as to permit sports wagering and other gambling games with fundamentally different outcomes to the people of the state of California. This report attached the side-by-side comparison of all three competing ballot measures prepared by the California Cities Gaming Authority, a joint powers authority of California Cities ("**CCGA**"). For a full side by side analysis please see attachment A.

## **INTRODUCTION**

Section 19 of Article IV of the State of California governs gambling in the state. In particular, subsection 19(a) prohibits lotteries and subsection 19(e) prohibits casinos in the entire State of California.

Subsection 19(e) provides as follows:

*The Legislature has no power to authorize, and shall prohibit, casinos of the type currently operating in Nevada and New Jersey.*

On March 7, 2000, a ballot measure known as Proposition 1A, adopted Section 19(f) to Article IV of the California Constitution. Section 19(f) relaxed the prohibition against Nevada style casinos by permitting only Indian Tribes to operate casinos on Indian lands that offer slot machines, lotteries and banking and percentage card games.

The **Tribal Gaming Initiative** and the **Cities Gaming Initiative** propose further amendments to Section 19 of Article IV of the California Constitution. The **Tribal Draft-Kings Initiative** proposes to add Section 19.5 to Article IV of the California Constitution.

This report summarizes all three initiatives based on the attached CCGA comparative analysis.

## **WILL THE PUBLIC BENEFIT FINANCIALLY FROM SPORTS WAGERING?**

### Cities Gaming Initiative

Yes. The public will benefit.

The public benefits flow from three elements of this Initiative. First, it permits many entities to conduct sports wagering - not just Indian Tribes but Indian Tribes are permitted to conduct sports wagering. Second, it taxes all revenues from sports wagering of all entities permitted to conduct sports wagering. Third, it requires the State Legislature to expend taxes from sports wagering to promote important social needs of the state.

### Tribal Gaming Initiative

No. There is no public benefit. Only gaming tribes will benefit.

This ballot measure does not require Indian Tribes to pay taxes on their existing Casino revenues nor on their additional revenues from sports wagering.

Racetrack Operators will be permitted to offer sports wagering at the racing tracks they operate, but racing tracks operated by state fairs are excluded. Thus, the **Tribal Gaming Initiative** permits sports wagering at the following four (4) racing tracks in California: Santa Anita Park, Del Mar Racetrack, Los Alamitos Race Course and Golden Gate Field.

#### Tribal-Draft Kings Initiative (DFS Gaming Initiative)

Minimal

Indian Tribes with Casinos and their appointed Operators will reap the entire benefit. They will acquire a monopoly over all online sports betting in the State of California.

The public will receive the license fees paid to the State Treasury by the licensed operators. The public also may receive some undeterminable amounts from a proposed surcharge payable only by the operators appointed by the Indian Tribes with Casinos. Since it is unknown which Indian Tribes will appoint operators, the amount of license fees paid to the State Treasury cannot be ascertained correctly.

### **WHAT ENTITIES WILL BE PERMITTED TO OPERATE SPORTS WAGERING?**

#### Cities Gaming Initiative

The following entities will be permitted to operate sports wagering at their facilities:

1. Licensed racing associations (Horse racing tracks)
2. Federally recognized Indian Tribes (Tribal casinos)
3. Licensed gambling establishments (Cardrooms)
4. Professional sports teams from Major league baseball, National Hockey League, National Basketball Association, National Football League, Women's National Basketball Association and Major League Soccer.
5. Online or mobile sports wagering operators. Sports wagering may be conducted on professional and collegiate events only – but not on high school events.

#### Tribal Gaming Initiative

The only entities that can offer sports wagering in California are Indian Tribes and Approved Racetrack Operators. The privilege is not extended to Card Clubs or Professional sports teams. The **Tribal Gaming Initiative** is a plan by Indian Tribes with Las Vegas Casinos to own gambling in the State of California – not just sports wagering.

The **Tribal Gaming Initiative** gives Indian Tribes powers sufficient to drive cardrooms out of business by establishing Indian Casinos on non-Tribal lands in the cities that license cardrooms. Cardrooms cannot compete with Indian Casinos that offer sports wagering, slot machines, craps, roulette, non-banked card games such as Blackjack and lotteries.

When cardrooms go out of business, city services to residents are cancelled or reduced drastically.

### Tribal-Draft Kings Initiative (DFS Gaming Initiative)

Indian Tribes that currently operate Nevada-style casinos in California are the only entities that will be permitted to operate online sports betting over the internet and on mobile devices to persons in California.

The privilege to conduct online sports betting is not extended to other licensed gaming entities such as licensed gambling establishments or Racing Tracks or to any Professional sports leagues or teams. The **DFS Gaming Initiative** also grants confidentiality to Indian Tribes and their appointed operators, and it requires the State of California to finance the implementation of online sports betting.

### **ARE TAXES PAYABLE BY OPERATORS OF SPORTS WAGERING?**

#### Cities Gaming Initiative

Yes.

Each sport wagering operator must pay a tax equal to 15% of gross revenues to the State Treasury.

The **Cities Gaming Initiative** requires the state legislature to appropriate all tax revenues to fund the issues of homelessness, affordable housing, public education and mental health except revenues designated for problem gambling programs.

In addition, card clubs will be required to pay taxes on the gross receipts derived from new games to the cities that license the card clubs.

#### Tribal Gaming Initiative

No. Indian Tribes pay no taxes.

Indian Tribes are not required to pay taxes to the State of California on their current gaming revenues.

Likewise, the **Tribal Gaming Initiative** does not require Indian Tribes to pay taxes to the State of California or any other governmental entity on revenues the Tribes derive from the new games authorized by the initiative.

### Tribal-Draft Kings Initiative (DFS Gaming Initiative)

No

Indian Tribes are not required to pay taxes to the State of California on their Casino gaming revenues.

Similarly, the **DFS Gaming Initiative** will not require Indian Tribes or their designated operators to pay taxes to the State of California or to any local governmental entity on revenues they derive from online sports betting. In fact, all revenues the Indian Tribes, or their

designated operators, derive from online sports betting are explicitly exempt from all forms of State and local taxation.

## **WILL CITIES AND CARDROOMS BENEFIT?**

### Cities Gaming Initiative

Yes.

Under the **Cities Gaming Initiative**, cities benefit because cardrooms will be permitted to offer games played with cards or tiles including "Blackjack", "21", and "Baccarat" that are not banked games. Cardrooms will be required to pay taxes on revenues from new games to the cities that license them.

### Tribal Gaming Initiative

No.

Under the **Tribal Gaming Initiative**, cities, unlike Indian Tribes, may not authorize cardrooms to offer *"roulette, games played with dice, and sports wagering."* Furthermore, cities may not authorize cardrooms to offer games played with cards or tiles including "Blackjack", "21", and "Baccarat" that are not banked games.

Thus, this initiative does not provide cities the opportunity to receive new tax revenues from cardrooms, because cities cannot authorize cardrooms to offer additional games.

### Tribal-Draft Kings Initiative (DFS Gaming Initiative)

No

This Initiative does not grant authority to cities or licensed gambling establishments to conduct online sports betting. Thus, the **DFS Gaming Initiative** does not provide cities the opportunity to receive new tax revenues from online sports betting.

## **WILL THE PUBLIC BE PROTECTED?**

### Cities Gaming Initiative

Yes.

Subsection 19(j) imposes requirements on operators of sports wagering, including Indian tribes, for the protection of the public.

### Tribal Gaming Initiative

Yes.

Subsection 19(i) excludes specified events from sports wagering.

### Tribal-Draft Kings Initiative (DFS Gaming Initiative)

Minimal

While persons under age 21 are prohibited from participating in online sports betting, violations by operators are punishable as infractions, but an unspecified disciplinary action may be imposed.

Operators also are required to permit individuals to remove themselves from online sports betting.

However, the public is granted no right to obtain information about the identity or finances of the persons who operate online sports betting in California.

## LOCAL GOVERNMENT AUTHORITY ON BALLOT MEASURES

Local governmental entities may expend public resources to provide factual information and analysis about the purpose, provisions, or estimated impact of bond issues or ballot measures in some circumstances. *Stanson v. Mott* (1976) 17 C.3d. 206; *Keller v. State Bar*(1989) 47 C.3d 1152; *Vargas v. City of Salinas* (2009) 46 Cal 4<sup>th</sup> 1.

*"in Stanson we explicitly recognized that a governmental agency "pursues a proper informational role when it ... authorizes an agency employee to present the department's view of a ballot proposal at a meeting of [a private or public] organization" (Stanson, supra, 17 Cal.3d at p. 221, 130 Cal.Rptr. 697, 551 P.2d 1), thus making it clear that it is permissible for a public entity to evaluate the merits of a proposed ballot measure and to make its views known to the public. Accordingly, we agree with those Court of Appeal decisions rendered after Stanson that explicitly have held that Stanson does not preclude a governmental entity from publicly expressing an opinion with regard to the merits of a proposed ballot measure, so long as it does not expend public funds to mount a campaign on the measure." Vargas v. City of Salinas (2009) 46 Cal 4<sup>th</sup> 1, 36.*

Further, the Supreme Court's statement, in *Stanson*, that a government "may not 'take sides' in election contests" means that a public entity's use of the public treasury to mount an election campaign is the potentially suspect conduct rather than precluding a public entity's analytically evaluating a proposed ballot measure and publicly expressing an opinion on its merits. *Vargas v. City of Salinas* (2009) 46 Cal 4<sup>th</sup> 1, 36.

## CONCLUSIONS AND RECOMMENDATIONS

The CCGA Comparative Analysis demonstrates a profound disparity in the public benefits and the private benefits from these initiatives.

The **Tribal Gaming Initiative** benefits Indian Tribes over all other entities engaged in gaming like cities, cardrooms and all other entities seeking to offer sports wagering like professional sport teams from major league baseball, basketball and football, etc. Moreover, the **Tribal Gaming Initiative** exempts all Indian Tribal gaming revenues from state or local taxation.

The **Tribal-Draft King Gaming Initiative** (DFS Gaming Initiative) benefits Indian Tribes with Casinos by granting them a constitutional right to conduct online sports betting exclusively over all other entities. The initiative also exempts all Indian Tribes with Casinos from state or



location taxation on all revenues from online sports betting. Instead, the state would receive the license fees paid by operators and there is a possibility of further revenue from a proposed 10% surcharge on operators appointed by the Tribes with Casinos.

Conversely, the **Cities Gaming Initiative** opens sports wagering to every entity licensed to conduct gaming in California including Indian Tribes and to all professional sports teams seeking to conduct sports wagering. Likewise, the **Cities Gaming Initiative** creates enormous tax revenues to the State of California on gross gaming revenues from sports wagering. It also directs the legislature to expend such revenues on homelessness, affordable housing, public education, mental health, and problem gambling programs.

Based on the foregoing, it is recommended the City Council adopt the attached resolution in support of the **Cities Gaming Initiative** and encourages all California Cities to do the same.

## **ATTACHMENTS**

- A. CCGA Comparative Analysis
- B. CCGA Resolution
- C. Proposed Resolution





# CALIFORNIA CITIES GAMING AUTHORITY

1700 WEST 162nd STREET / GARDENA, CALIFORNIA 90247-3732 / EMAIL: CCGAOTIES@GMAIL.COM / PHONE (310) 217-9503

September 27, 2021

Board of Directors  
California Cities Gaming Authority

**Re: Comparative Analysis of Statewide Ballot Measures to Amend the California Constitution to Authorize Sports Wagering in California**

Dear Board of Directors:

This report compares the following three statewide gaming ballot measures:

1. The California Sports Wagering Regulation and Unlawful Gambling Enforcement Act (hereafter called the "**Tribal Gaming Initiative**") that is advanced by the Tribal Chairmen of the Pechanga Indian Reservation Temecula Band of Luiseno Mission Indians, the Barona Band of Mission Indians, the Agua Caliente Band of Cahuilla Indians and the Yocha Dehe Wintun Nation, each of which operates one or more Nevada Style Casinos on its tribal land in California.
2. The California Solutions to Homelessness and Mental Health Act (hereafter called the **DFS Gaming Initiative**) that is advanced by Kurt Oneto and John Moffat. Kurt Onet is a partner in the Sacramento law firm of Nielsen Merksamer LLP who specializes in qualifying statewide ballot measures. John Moffat is a partner in the same law firm. However, Politico reports that the true backers include the Draft Kings and others who are partnering with Indian Tribes.<sup>1</sup>
3. The California Solutions to Homelessness, Public Education Funding, Affordable Housing and Reduction of Problem Gambling Act (hereafter called the **Cities Gaming Initiative**) that is advanced by City Council Members of cities that regulate licensed gambling establishments in their cities.

The **Tribal Gaming Initiative** has qualified for the November 8, 2022 ballot while the **DFS Gaming Initiative** and the **Cities Gaming Initiative** are in the early stages of qualifying for the same ballot.

These three ballot measures propose to amend the California Constitution so as to permit sports wagering and other gambling games with fundamentally different

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<sup>1</sup> Politico "Sports Betting Giants Back Online Betting Initiative in California" (08/31/2021)

outcomes to the people of the State of California. This report provides a side-by-side comparison of the fundamental elements of these three competing ballot measures.

## INTRODUCTION

Section 19 of Article IV of the State of California governs gambling in the state. In particular, subsection 19(a) prohibits lotteries and subsection 19(e) prohibits casinos in the entire State of California.

Subsection 19(e) provides as follows:

*The Legislature has no power to authorize, and shall prohibit, casinos of the type currently operating in Nevada and New Jersey.*

On March 7, 2000, a ballot measure known as Proposition 1A, adopted Section 19(f) to Article IV of the California Constitution. Section 19(f) relaxed the prohibition against Nevada style casinos by permitting only Indian Tribes to operate casinos on tribal lands that offer slot machines, lotteries and banking and percentage card games.

The **Tribal Gaming Initiative** and the **Cities Gaming Initiative** propose further amendments to Section 19 of Article IV of the California Constitution. The **DFS Gaming Initiative** proposes the addition of a new Section 19.5 to Article IV of the California Constitution and a new chapter to the Business & Professions Code.

This comparison analyzes the three ballot measures according to common topics in the form of questions germane to the three ballot measures.

### WILL THE PUBLIC BENEFIT FINANCIALLY FROM SPORTS WAGERING?

#### Cities Gaming Initiative

Yes. The public will benefit.

The public benefits flow from three elements of this Initiative. First, it permits many entities to conduct sports wagering - not just Indian Tribes but Indian Tribes are permitted to conduct sports wagering. Second, it taxes all revenues from sports wagering of entities permitted to conduct sports wagering. Third, it requires the State Legislature to expend taxes from sports wagering to promote important social needs of the State of California. The taxes and their uses are as follows:

- The 15% tax on gross revenues generated from sports wagering and all license fees, less regulatory costs associated with sports wagering, must be expended by the legislature consistent with the California Constitution and Proposition 98 for public education with all remaining funds directed to local governments (cities and counties) to combat homelessness, create affordable housing, and mental health.

- An additional 1% of gross revenues from sports wagering, not to exceed ten million dollars (\$10,000,000), must be expended on problem gambling programs.

Section 19(j)(10) of Article IV of the California Constitution.

### **Tribal Gaming Initiative**

No. There is no public benefit. Only Indian Tribes with Casinos will benefit.

This ballot measure does not require Indian Tribes to pay taxes on their existing Casino revenues nor on their additional revenues from sports wagering. Proposed Section 19(f) to Article IV of the California Constitution.

Racetrack Operators will be permitted to offer sports wagering at the racing tracks they operate, but racing tracks operated by State Fairs are excluded. Thus, the **Tribal Gaming Initiative** only permits sports wagering at the following four (4) racing tracks in California: Santa Anita Park, Del Mar Racetrack, Los Alamitos Race Course and Golden Gate Field. The Racetrack Operators will be required to pay a 10% tax on net revenues from sports wagering. This 10% tax will be distributed as follows: (a) 15% for problem gambling prevention and mental health, (b) 15% to the Bureau of Gambling Control for the implementation and enforcement of sports wagering, (c) 70% to the state general fund. Proposed Section 19(h) to Article IV of the California Constitution and Proposed Section 19670-19674 to the Business & Professions Code.

### **DFS Gaming Initiative**

Indian Tribes with Casinos and their appointed Operators will reap the entire benefit. They will acquire a monopoly over all online sports betting in the State of California.

No other persons or entities will be granted the right to operate online sports betting. The **DFS Gaming Initiative** excludes all licensed gaming establishments like cardrooms and Race Tracks. It also excludes all professional sports leagues and teams. These exclusions deprive the public of new tax revenues from online sports betting.

The public will receive the license fees paid to the State Treasury by the licensed operators. The public also may receive some undeterminable amounts from a proposed surcharge payable only by the operators appointed by the Indian Tribes with Casinos. Since it is unknown which Indian Tribes will appoint operators, the amount of license fees paid to the State Treasury cannot be ascertained correctly.

Neither the State of California nor any local governmental entity may impose a tax on Indian Tribes or their appointed operators on revenues they derive from online sports betting.

All license fees and possible surcharges are to be paid into the Online Sports Betting Fund. The money in the Fund is to be appropriated by the legislature as follows: (a) 85% to counties and cities for homelessness and mental health programs and the cost to administer online sports betting and (b) 15% for Indian tribes that do not participate in online sports betting.

## **WHAT ENTITIES WILL BE PERMITTED TO OPERATE SPORTS WAGERING?**

### **Cities Gaming Initiative**

The following entities will be permitted to operate sports wagering at their facilities:

1. Licensed racing associations (Horse racing tracks)
2. Federally recognized Indian Tribes (Tribal casinos)
3. Licensed gambling establishments
4. Professional sports teams from Major League Baseball, National Hockey League, National Basketball Association, National Football League, Women's National Basketball Association and Major League Soccer.
5. Online or mobile sports wagering operators.

Proposed Section 19(i)(2) to Article IV of the California Constitution.

Sports wagering may be conducted on professional and collegiate events only – but not on high school events. Proposed Section 19 (i)(12) to Article IV of the California Constitution.

### **Tribal Gaming Initiative**

The only entities that can offer sports wagering in California are Indian Tribes and Approved Racetrack Operators. The privilege is not extended to licensed gambling establishments or Professional sports teams. Proposed Sections 19(f) and 19(h) to Article IV of the California Constitution.

In addition, this Initiative will permit Indian Tribes to offer gambling games not permitted currently. Indians Tribes will be permitted to conduct and operate “***roulette and games played with dice.***” Proposed Section 19(f) to Article IV of the California Constitution. The existing Section 19(f) of Article IV does not permit Indian Tribes to conduct and operate roulette or craps, but some Tribal Casinos offer such games anyway.

The **Tribal Gaming Initiative** is a plan by Indian Tribes with Las Vegas Casinos to **own** gambling in the State of California – not just sports wagering. The plan consists of two foundational elements embedded in the Initiative that grant a monopoly to Indian Tribes

over all gambling in the State of California without any obligation to pay taxes on their gambling revenues.

The first element is the power to conduct three types of gambling that are currently prohibited in California. The initiative would permit Indian Tribes with Las Vegas Casinos to conduct “***roulette, games played with dice and sports-wagering.***” Section 19(f).

The second element is the exemption from taxation on all revenues derived from these three new types of gambling. The exemption is a continuation of the existing language of Section 19(f) of Article IV of the California Constitution that is devoid of any obligation to pay taxes from gambling revenues to the State of California or any other governmental entity.

Such powers far exceed what Indian Tribes with Las Vegas Casinos need to survive – a goal that was accomplished by the passage of Proposition 1A on March 7, 2000.

In contrast, Cities may only license and regulate licensed gambling establishments to play non-banked card games, which means that cardrooms, unlike Indian Tribes, cannot be the dealer or a player in any card game. Cities derive tax revenues from licensed gambling establishments to fund public services such as senior and youth services and events, as well as traditional police and fire services. Cities derive these revenues by imposing taxes ranging from 10% to 15% of a licensed gambling establishment’s gross revenues.

The **Tribal Gaming Initiative** gives Indian Tribes powers sufficient to drive licensed gambling establishments out of business. They cannot compete with Indian Casinos that offer sports wagering, slot machines, craps, roulette, banked card games such as Blackjack and lotteries.

When licensed gambling establishments go out of business, cities will not be able to replace lost gaming revenues, and city services to residents will be cancelled or reduced drastically.

### **DFS Gaming Initiative**

Indian Tribes that currently operate Nevada-style casinos in California are the only entities that will be permitted to operate online sports betting over the internet and on mobile devices to persons in California.

In addition, any such Indian Tribe may appoint a gaming entity to conduct online sports betting on behalf of the Indian Tribe.

Furthermore, the right to conduct online sports betting is made a constitutional right and granted to such Indian Tribes exclusively. Proposed Section 19.5 to Article IV of the California Constitution.

The privilege to conduct online sports betting is not extended to other licensed gaming entities such as licensed gambling establishments or Racing Tracks or to any Professional sports leagues or teams. The **DFS Gaming Initiative** also grants confidentiality to Indian Tribes and their appointed operators and it requires the State of California to finance the implementation of online sports betting.

- All license applications of Indian Tribes and their appointed operators including all attached documents, reports and data containing financial information or personal information will be exempt from disclosure to the public under the Public Records Act.
- In order to implement sports betting under this Initiative, the State will be required to loan \$30 Million to fund the commencement and regulation of online sporting betting, but no Indian Tribe or appointed operator will be required to repay any part of the loan. Instead, it will be repaid from license fees paid by the operators.

## **WILL INDIAN TRIBES OR THE STATE REGULATE SPORTS WAGERING?**

### **Cities Gaming Initiative**

This Initiative would authorize the California Department of Consumer Affairs to license all operators seeking to offer sports wagering and to investigate and audit all facilities that operate sports wagering unless otherwise provided in a tribal state compact.

The Department of Consumer Affairs also is directed to adopt all regulations necessary to implement sports wagering, protect consumers and prevent corruption. In addition, the California State Auditor is directed to perform an annual audit of the gross revenues from sports wagering of each operator so licensed.

Proposed Section 19(i) to Article IV of the California Constitution.

The new games proposed for cardrooms will continue to be regulated by the cities that license them, the California Gambling Control Commission and the Bureau of Gambling Control in the Department of Justice.

### **Tribal Gaming Initiative**

The **Tribal Gaming Initiative** grants to Indian Tribes the right to conduct “sports wagering” at Tribal Casinos and on Indian Lands without the need to obtain any license from the State of California or to comply with any state regulation on sports wagering. Proposed Section 19(f) to Article IV of the California Constitution.

This Initiative provides for amendments to existing tribal-state compacts to add sports wagering. Proposed Section 12012.101 to the Government Code.



The **Tribal Gaming Initiative** does not prohibit persons under 21 years of age from engaging in sports wagering at Indian Casinos or on Indian Lands. Persons under 21 years are prohibited from sports wagering at Racing Tracks. Proposed Section 19674 to the Business & Professions Code.

This Initiative authorizes the State Legislature to enact statutes that establish the events on which “sports wagering” is permitted and statutes that provide consumer protections and anti-corruption measures. Presumably, such statutes would be applicable to sports wagering at Tribal Casinos and on Indian Lands. Proposed Section 19(i) to Article IV of the California Constitution.

### **DFS Gaming Initiative**

Under the **DFS Gaming Initiative**, online sports betting will be largely unregulated by the State of California. Indian Tribes or their operators are required to apply for and obtain a license from the state which entities them to operate an online sports betting platform and to act as a sports betting supplier. Licenses are valid for five (5) years.

This Initiative grants virtual control over all online sports betting to the operators, whether the operators are Indian Tribes or their appointed gaming entities. The following elements of control are explicitly granted to the operators:

1. The adoption of rules for game play governing online sports betting transactions with its customers that include elements 2 - 6 below.
2. The method for calculating and paying winning bets.
3. The effect on bets, if any, of sports event schedule changes.
4. The method of notifying consumers of odds changes.
5. The method of funding an online sports betting account.
6. The circumstances under which an operator may void a bet and notifying the consumer thereof.
7. The determination and display of applicable lines, point spreads, odds, or other information pertaining to online sports betting; and the Department of Justice is explicitly prohibited from specifying such elements of sports betting and from requiring operators to disclose such information to the public.
8. Operators cannot be required to obtain prior Department of Justice review or approval of any advertisement or promotion; but operators are required to avoid targeting minors, persons ineligible to place bets or who have self-excluded.
9. Operators cannot be limited on the type or amount of free bets or promotional credits they may offer or issue.
10. Operators have the right to pool liquidity from other states in which they are licensed to conduct sports betting.
11. Operators have the right to maintain information about all bets placed including the identity of the bettor, the dollar amount and type of bet, the location from which the bet was placed and the outcome of each bet. However, the operators are required to provide such information to the Department of Justice upon request.

Proposed Sections 19755, 19756 and 19760 of the Business & Professions Code.

## **ARE TAXES PAYABLE BY OPERATORS OF SPORTS WAGERING?**

### **Cities Gaming Initiative**

Yes.

Sport wagering operators are required to pay a tax equal to 15% of their gross revenues to the State Treasury. Section 19 (j)(10A).

The sport wagering operators also must pay a sum equal to 1% of gross revenues from all sports wagering and each Indian tribe must pay a sum equal to 1% of gross revenues from online sports wagering, not to exceed ten million dollars (\$10,000,000), to the State Treasury to fund problem gambling programs. Section 19 (j)(10B).

Further, sports wagering platforms are required to pay a license fee of one million dollars (\$1,000,000) every four years and a one-time initial license fee of five million dollars (\$5,000,000) to the State Treasury. Section 19 (j)(10C).

All of the above revenues are to be deposited in the California Sports Wagering Fund in the State Treasury.

The **Cities Gaming Initiative** requires the state legislature to appropriate moneys in the California Sports Wagering Fund, less those designated for problem gambling problems and the regulatory costs associated with sports wagering, consistent with the California Constitution and Proposition 98 for public education with all remaining funds directed to local governments to fund the issues of homelessness, affordable housing, public education and mental health. Section 19 (j)(10E).

In addition, licensed gambling establishments will be required to pay taxes on the gross revenues derived from new games authorized by the Initiative to the cities that license the licensed gambling establishments according to their existing gaming ordinances.

### **Tribal Gaming Initiative**

No. Indian Tribes will pay no taxes.

Indian Tribes are not now required to pay taxes to the State of California on their Casino gaming revenues.

Although the **Tribal Gaming Initiative** authorizes Indian Tribes to conduct the games of “**roulette, games played with dice and sports wagering,**” it imposes no obligation on Indian Tribes to pay taxes on revenues they derive from such new games and from sports wagering. Proposed Section 19(f) to Article IV of the California Constitution.

While the **Tribal Gaming Initiative** places no tax on Indian Tribes, it will impose a “sports wagering tax” of 10% on net revenue of the four (4) racing tracks authorized to conduct sports wagering. Such tax revenues shall be paid to the State Treasury and expended as follows: (i) 15% for problem gambling prevention and mental health, (ii) 15% to the Bureau of Gambling Control for the cost of enforcement and implementation of sports wagering and (iii) 70% to the general fund. Proposed Sections 19671, 19672 and 19673 to the Business & Professions Code.

### **DFS Gaming Initiative**

No. Indian Tribes will not pay any taxes.

Indian Tribes are not required to pay taxes to the State of California on their Casino gaming revenues.

Similarly, the **DFS Gaming Initiative** will not require Indian Tribes or their designated operators to pay taxes to the State of California or to any local governmental entity on revenues they derive from online sports betting. In fact, all revenues the Indian Tribes, or their designated operators, derive from online sports betting are explicitly exempt from all forms of State and local taxation. Proposed Section 19.5(d) to Article IV of the California Constitution.

Instead, the **DFS Gaming Initiative** requires operators to pay license fees in order to obtain a license to operate an online sports betting platform. In addition, this Initiative will impose a “**surcharge**” on each online sports betting operator payable to the State Treasury; but Indian Tribes will not be required to pay any surcharge amount. Due to the Initiative’s exclusions, any revenue to the State Treasury from the proposed surcharge is largely illusory. Proposed Section 19775(a) to the Business & Professions Code.

The **DFS Gaming Initiative** states that the amount of the surcharge will be equal to 10% of each operator’s adjusted gross online betting receipts. In computing its adjusted gross online betting receipts, operators are permitted to deduct the amount of all winnings and prizes paid out. The Initiative contemplates that an operator’s adjusted gross online betting receipts will be a negative amount, in which case the operator would pay no surcharge amount to the State Treasury. Proposed Sections 19775 and 19794(a) to the Business & Professions Code.

In addition, the Indian Tribes appointed operators are entitled to deduct the entire amount of their initial license fee of one hundred million dollars (\$100,000,000) from any surcharge amount they would be obligated to pay to the State Treasury. Such operators may take the deduction in five annual increments of twenty million dollars (\$20,000,000), or in subsequent years if the operators renew their licenses. In addition, such operators are entitled to deduct the entire amount of their renewal license fees of ten million dollars (\$10,000,000) from any surcharge amount they would be obligated to

pay to the State Treasury. Proposed Section 19775(d) to the Business & Professions Code.

Furthermore, the **DFS Gaming Initiative** fails to empower the California Department of Justice or any other state regulatory agency to review and correct the amount of an operator's adjusted gross online betting receipts or the surcharge amount an operator may pay to the State Treasury. Thus, operators are granted complete discretion to calculate the amount of their gaming revenues and the amount of any surcharge they are obligated to pay the State Treasury. The Department of Justice is only authorized to request an operator to hire a private firm to perform an audit, which may have the effect of determining conclusively that the operator accurately calculated and paid the surcharge amount. The Department is not granted authority to override the audit findings; and it is unclear whether the Department has the authority to challenge them. The Department has the authority to adopt regulations to carry out the provisions of the Initiative, but it is not granted explicit authority to adopt regulations pertaining to the surcharge. Proposed Section 19775(f) and 19778 to the Business & Professions Code.

## **WILL CITIES BENEFIT?**

### **Cities Gaming Initiative**

Yes.

All Cities will benefit from the 15% tax on gross revenues generated from sports wagering and all license fees, less regulatory costs associated with sports wagering, as the revenues must be expended by the legislature consistent with the California Constitution and Proposition 98 for public education with all remaining funds directed to local governments (cities and counties) to combat homelessness, create affordable housing, and mental health.

Cities with licensed gambling establishments will continue to receive tax revenues from the games currently played and from the new games they will be authorized to play.

### **Tribal Gaming Initiative**

No.

The **Tribal Gaming Initiative** does not provide cities the opportunity to receive new tax revenues from licensed gambling establishments.

Furthermore, the **Tribal Gaming Initiative** grants new powers to Indian Tribes sufficient to drive licensed gambling establishments out of business. Licensed gambling establishments cannot compete with Indian Casinos that offer sports wagering, slot machines, craps, roulette, non-banked card games such as Blackjack and lotteries.

Finally, the **Tribal Gaming Initiative** establishes a complaint process that can be initiated by any person or entity against licensed gambling establishments for alleged gaming violations that will encourage frivolous and costly lawsuits against such establishments. However, the complaint process is not made available for use against Tribal Casinos.

### **DFS Gaming Initiative**

No.

This Initiative does not grant authority to cities or licensed gambling establishments to conduct online sports betting. Thus, the **DFS Gaming Initiative** does not provide cities the opportunity to receive new tax revenues from online sports betting.

## **WILL THE PUBLIC BE PROTECTED?**

### **Cities Gaming Initiative**

Yes.

Subsection 19(j) imposes the following requirements on operators of sports wagering for the protection of the public:

- Persons placing bets must be 21 years of age;
- Sports wagering shall not mimic slot machines or other casino-style game;
- Wages on officiating of any sport or the occurrence of injuries are prohibited;
- Marketing of sports wagering shall not be attractive to children;
- Official league or association data shall be used for live betting;
- Providers shall cooperate in barring individual who may harm the integrity of sports wagering.

In addition, the California Department of Consumer Affairs shall be required to perform all licensing, investigatory and auditing functions over facilities that operate sports wagering.

Furthermore, the California State Auditor shall be required to perform an audit of each licensee's gross revenue each year and make the audit results available to the public under the California Public Record Act.

Finally, any action to contest the scope of the validity of this Initiative shall be defended vigorously by an independent counsel, appointed by the Attorney General, in the event the Governor or Attorney General refuse to defend this Initiative.

## **Tribal Gaming Initiative**

No.

The **Tribal Gaming Initiative** does not prohibit persons under 21 years of age from engaging in sports wagering at Indian Casinos or on Indian Lands. Persons under 21 years are prohibited from sports wagering at Racing Tracks.

Only the following events are excluded from sports wagering at Tribal Casinos, Indian Lands and Racing Tracks:

- High school sport or athletic event;
- A sport or athletic event in which any California college team participates;
- Any sport or athletic event or horse race that has been completed; and
- Horse races and horse race meetings authorized by Subsection 19(b).

Subsection 19(i) to Article IV of the California Constitution.

## **DFS Gaming Initiative**

Minimal.

While persons under age 21 are prohibited from participating in online sports betting, violations by operators are punishable as infractions, but an unspecified disciplinary action may be imposed. Proposed Section 19752 of the Business & Professions Code.

Operators also are required to permit individuals to remove themselves from online sports betting. Proposed Section 19754 of the Business & Professions Code.

However, the public is granted no right to obtain information about the identity or finances of the persons who operate online sports betting in California.

## **LOCAL GOVERNMENT AUTHORITY ON BALLOT MEASURES**

Local governmental entities may expend public resources to provide factual information and analysis about the purpose, provisions, or estimated impact of bond issues or ballot measures in some circumstances. *Stanson v. Mott* (1976) 17 C.3d. 206; *Keller v. State Bar* (1989) 47 C.3d 1152; *Vargas v. City of Salinas* (2009) 46 Cal 4<sup>th</sup> 1.

*“in Stanson we explicitly recognized that a governmental agency “pursues a proper informational role when it ... authorizes an agency employee to present the department’s view of a ballot proposal at a meeting of [a private or public] organization” (Stanson, supra, 17 Cal.3d at p. 221, 130 Cal.Rptr. 697, 551 P.2d 1), thus making it clear that it is permissible for a public entity to evaluate the merits*

*of a proposed ballot measure and to make its views known to the public. Accordingly, we agree with those Court of Appeal decisions rendered after Stanson that explicitly have held that Stanson does not preclude a governmental entity from publicly expressing an opinion with regard to the merits of a proposed ballot measure, so long as it does not expend public funds to mount a campaign on the measure.” Vargas v. City of Salinas (2009) 46 Cal 4<sup>th</sup> 1, 36.*

Further, the Supreme Court's statement, in Stanson, that a government “may not ‘take sides’ in election contests” means that a public entity's use of the public treasury to mount an election campaign is the potentially suspect conduct rather than precluding a public entity's analytically evaluating a proposed ballot measure and publicly expressing an opinion on its merits. *Vargas v. City of Salinas (2009) 46 Cal 4<sup>th</sup> 1, 36.*

## **CONCLUSIONS AND RECOMMENDATIONS**

This comparative analysis of the three competing gaming initiatives described herein as the **Tribal Gaming Initiative**, **DFS Gaming Initiative** and the **Cities Gaming Initiative** demonstrates a profound disparity in the existence of benefits to the public versus the private benefits to gambling enterprises from these initiatives.

The **Tribal Gaming Initiative** benefits Indian Tribes over all other entities engaged in gaming like licensed gambling establishments and all other entities seeking to offer sports wagering like professional sport teams from major league baseball, basketball and football, etc.

Moreover, the **Tribal Gaming Initiative** exempts all Indian Tribal gaming revenues from state or location taxation including revenues from sports wagering.

The **DFS Gaming Initiative** benefits Indian Tribes with Casinos by granting them a constitutional right to conduct online sports betting exclusively over all other entities engaged in gaming like licensed gambling establishments, racing tracks and all other entities that may seek to offer online sports betting like professional sports teams from major league baseball, basketball and football, etc.

In addition, the **DFS Gaming Initiative** exempts all Indian Tribes with Casinos from state or location taxation on all revenues from online sports betting. Instead, the state would receive the license fees paid by operators and there is a possibility of further revenue from a proposed 10% surcharge on operators appointed by the Tribes with Casinos.

Conversely, the **Cities Gaming Initiative** opens sports wagering including online or mobile sports wagering to every entity licensed to conduct gaming in California including Indian Tribes and to all professional sports teams seeking to conduct sports wagering.

In addition, the **Cities Gaming Initiative** creates enormous revenues for the State of California through the imposition of several sources of tax revenues including a tax of 15% on gross gaming revenues derived from sports wagering. It also directs the legislature to expend such revenues to issues of homelessness, affordable housing, public education and mental health, as well as problem gambling programs.

Further, the **Cities Gaming Initiative** authorizes new games that can be played at licensed gambling establishments and revenues on the new games become available to the cities that license them through taxes under existing ordinances.

Given the three diverse outcomes of these initiatives on Californians as whole and on California gaming cities, the California Cities Gaming Authority and all California cities may take public positions on these initiatives.

Respectfully submitted,

Jimmy L. Gutierrez  
General Counsel



**RESOLUTION NO. \_\_\_\_\_**  
**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDENA**  
**SUPPORTING THE CITIES GAMING INITIATIVE**

WHEREAS, California's cities and counties are on the frontlines of service delivery and public policy formulation to address a whole host of challenges facing California and its people, including homelessness, lack of sufficient affordable housing, inadequate mental health service accessibility, underfunded public schools, and more;

WHEREAS, these challenges were already pulling at the seams of our social fabric prior to the breakout of the COVID 19 pandemic in 2020 with record numbers of homeless Californians and historically high home prices;

WHEREAS, the COVID-19 pandemic has wreaked havoc across society causing record levels of devastation to our economic, healthcare, and social systems as millions of Americans became ill and several hundred thousand perished;

WHEREAS, the COVID-19 devastation further strained local government's capacity to meet its existing challenges while simultaneously facing the added burdens generated by the pandemic and its effect of drawing down municipal treasuries;

WHEREAS, Federal efforts to backfill state and local coffers with stimulus funding will be depleted before the pandemic entirely recedes leaving local governments in need of additional funding sources;

WHEREAS, the People of the State of California have a vested interest in adequate funding for their governments to fulfill a social compact that includes robust public safety, life-saving public health programs, access to housing people can afford, among many other public goods;

WHEREAS, the right to legal, safe, and well-regulated wagering belongs to the public, and therefore, to the People of the State of California;

WHEREAS, Leisure activities, be they tourism, gaming, live entertainment gatherings, lodging, among many such examples, regularly serve as sources of revenue to public treasuries in order to pay for public goods to mitigate the impacts of those activities and/or to confer a public benefit to the communities where they occur;

WHEREAS, in May 2018, the United States Supreme Court held the federal prohibition on sports wagering to be unconstitutional. As a result, states now have the freedom to authorize sports wagering within their borders and to establish regulations, consumer protections, responsible gambling measures, and taxes on sports wagering.

WHEREAS, unregulated and untaxed sports wagering is happening throughout California without any consumer or responsible gambling protections. Experts estimate that black market sports betting runs at least \$10 billion dollars annually in California with operators being unlicensed and unregulated, paying

no taxes, are unaccountable to California consumers, and put the integrity of athletic contests at risk.

WHEREAS, the City of \_\_\_\_\_ licenses, regulates and taxes gaming establishments within its jurisdiction and whose residents benefit from those revenues;

WHEREAS, the mission of the City of \_\_\_\_\_ is to protect and promote the interests of all residents by licensing, regulating and taxing legal betting activities in cardrooms;

WHEREAS, City Council Members of California cities that seek the responsible regulation and taxation of wagering in California communities that allow such activities are proponents of a statewide initiative named the California Sports Wagering and Consumer Protection Act (hereafter called the **Cities Gaming Initiative**”), a measure aimed at conferring benefits on all Californians;

WHEREAS, the **Cities Gaming Initiative** grants rights to conduct sports wagering to all existing and licensed gaming entities in the State of California including horse racing tracks, Indian tribes and cardrooms and to entities currently unlicensed to offer gaming in the State of California including all professional sports teams from Major league baseball, National Hockey League, National Basketball Association, National Football League, Women’s National Basketball Association and Major League Soccer and online or mobile sports wagering operators;

WHEREAS, the **Cities Gaming Initiative** imposes an obligation on all gaming entities to pay taxes to the State of California from their net sports wagering revenues that will generate billions of dollars in funding for California local governments to address current societal ills at unprecedented levels;

WHEREAS, the **Cities Gaming Initiative** directs the legislature to appropriate funding to homelessness, mental health services, public schools, and affordable housing programs at the local level;

WHEREAS, the **Cities Gaming Initiative** protects children and consumers through tight regulation, including limiting wagering only to adults 21 years of age or older, prohibiting advertising or marketing of sports wagering directed to children where none currently exist; and

WHEREAS, the California Cities may lawfully state their opinions about the impact of sports wagering initiatives on the people of the State of California and on the residents of California cities.

NOW, THEREFORE, BET IT RESOLVED AS FOLLOWS:

1. The City Council of the City of \_\_\_\_\_ declares its support for the **Cities Gaming Initiative**; and \_
2. The City of \_\_\_\_\_ encourages all California cities to take and publish a similar position. \_

Adopted this \_\_\_\_\_ day of \_\_\_\_\_ 2021.

By: \_\_\_\_\_

, Mayor

City of \_\_\_\_\_



**RESOLUTION NO. 2021-\_\_\_**  
**OF THE CITY COUNCIL OF THE TOWN OF COLMA**

**RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF COLMA**  
**SUPPORTING THE CITIES GAMING INITIATIVE**

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

**1. Background and Findings.**

(a) California's cities and counties are on the frontlines of service delivery and public policy formulation to address a whole host of challenges facing California and its people, including homelessness, lack of sufficient affordable housing, inadequate mental health service accessibility, underfunded public schools, and more.

(b) These challenges were already pulling at the seams of our social fabric prior to the breakout of the COVID 19 pandemic in 2020 with record numbers of homeless Californians and historically high home prices.

(c) The COVID-19 pandemic has wreaked havoc across society causing record levels of devastation to our economic, healthcare, and social systems as millions of Americans became ill and several hundred thousand perished.

(d) The COVID-19 devastation further strained local government's capacity to meet its existing challenges while simultaneously facing the added burdens generated by the pandemic and its effect of drawing down municipal treasuries.

(e) Federal efforts to backfill state and local coffers with stimulus funding will be depleted before the pandemic entirely recedes leaving local governments in need of additional funding sources.

(f) The People of the State of California have a vested interest in adequate funding for their governments to fulfill a social compact that includes robust public safety, life-saving public health programs, access to housing people can afford, among many other public goods.

(g) The right to legal, safe, and well-regulated wagering belongs to the public, and therefore, to the People of the State of California.

(h) Leisure activities, be they tourism, gaming, live entertainment gatherings, lodging, among many such examples, regularly serve as sources of revenue to public treasuries in order to pay for public goods to mitigate the impacts of those activities and/or to confer a public benefit to the communities where they occur.

(i) In May 2018, the United States Supreme Court held the federal prohibition on sports wagering to be unconstitutional. As a result, states now have the freedom to authorize sports wagering within their borders and to establish regulations, consumer protections, responsible gambling measures, and taxes on sports wagering.

(j) Unregulated and untaxed sports wagering is happening throughout California without any consumer or responsible gambling protections. Experts estimate that black market sports betting runs at least \$10 billion dollars annually in California with operators being unlicensed and unregulated, paying no taxes, are unaccountable to California consumers, and put the integrity of athletic contests at risk.

(k) The Town of Colma licenses, regulates and taxes gaming establishments within its jurisdiction and whose residents benefit from those revenues.

(l) The mission of the Town of Colma is to protect and promote the interests of all residents by licensing, regulating and taxing legal betting activities in cardrooms.

(m) City Council Members of California cities that seek the responsible regulation and taxation of wagering in California communities that allow such activities are proponents of a statewide initiative named the California Sports Wagering and Consumer Protection Act (hereafter called the "**Cities Gaming Initiative**"), a measure aimed at conferring benefits on all Californians.

(n) The **Cities Gaming Initiative** grants rights to conduct sports wagering to all existing and licensed gaming entities in the State of California including horse racing tracks, Indian tribes and cardrooms and to entities currently unlicensed to offer gaming in the State of California including all professional sports teams from Major league baseball, National Hockey League, National Basketball Association, National Football League, Women's National Basketball Association and Major League Soccer and online or mobile sports wagering operators.

(o) The **Cities Gaming Initiative** imposes an obligation on all gaming entities to pay taxes to the State of California from their net sports wagering revenues that will generate billions of dollars in funding for California local governments to address current societal ills at unprecedented levels.

(p) The **Cities Gaming Initiative** directs the legislature to appropriate funding to homelessness, mental health services, public schools, and affordable housing programs at the local level.

(q) The **Cities Gaming Initiative** protects children and consumers through tight regulation, including limiting wagering only to adults 21 years of age or older, prohibiting advertising or marketing of sports wagering directed to children where none currently exist; and

(r) The California Cities may lawfully state their opinions about the impact of sports wagering initiatives on the people of the State of California and on the residents of California cities.

## 2. Order.

(a) The City Council of the Town of Colma declares its support for the **Cities Gaming Initiative**; and

(b) The Town of Colma encourages all California cities to take and publish a similar position.

### Certificate of Adoption

I certify that the foregoing Resolution No. 2021-\_\_ was duly adopted at a regular meeting of said City Council held on \_\_\_\_\_, 2021 by the following vote:

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

Dated \_\_\_\_\_

\_\_\_\_\_  
Diana Colvin, Mayor

Attest: \_\_\_\_\_  
Caitlin Corley, City Clerk







# STAFF REPORT

TO: Mayor and Members of the City Council  
 FROM: Kathleen Gallagher, Sustainability Programs Manager, CSG Consultants  
 Chris Diaz, City Attorney, BBK  
 VIA: Brian Dossey, City Manager  
 MEETING DATE: October 13, 2021  
 SUBJECT: SB 1383 Ordinance: Mandatory Organic Waste Disposal Reduction

## RECOMMENDATION

Staff recommends the City Council introduce and waive a further reading of the following ordinance:

ORDINANCE AMENDING COLMA MUNICIPAL CODE SUBCHAPTER 3.05 RELATING TO THE COLLECTION, PROCESSING AND DISPOSAL OF SOLID WASTE, RECYCLING AND ORGANICS TO INCLUDE PROVISIONS RELATED TO MANDATORY ORGANIC WASTE DISPOSAL REDUCTION FOR COMPLIANCE WITH SENATE BILL (SB) 1383 REGULATIONS.

## EXECUTIVE SUMMARY

Senate Bill (SB) 1383 (Chapter 395, Statutes of 2016) directed the California Department of Resources Recycling and Recovery (“CalRecycle”) to adopt regulations to reduce organic waste statewide by 50% from its 2014 baseline level by 2020 and 75% by 2025. The SB 1383 Regulations require jurisdictions to adopt and enforce an ordinance to implement relevant provisions of the SB 1383 Regulations. At the July 28<sup>th</sup> Council meeting, City Council received a presentation from staff regarding SB 1383 regulations and related requirements for jurisdictions. The Mandatory Organic Waste Disposal Reduction Ordinance is one of the requirements for compliance with SB 1383 Regulations.

The Town is required, by January 1, 2022<sup>1</sup>, to adopt the Ordinance to implement relevant provisions of the SB 1383 Regulations including regulation of residential and commercial generators of organic waste, commercial generators of edible food, waste haulers and include enforcement mechanisms and penalties for violations. The Regulations are to support achievement of statewide organic waste disposal reduction targets. This Ordinance was developed by staff using a model ordinance provided by CalRecycle and includes provisions unique to the Town regarding our collection services, our hauler, our partnership with San

<sup>1</sup> See information regarding Senate Bill (SB) 619 under the ‘Background and Analysis’ section of this staff report

Mateo County's Office of Sustainability for implementation of the Edible Food Recovery Program on behalf of the Town (an SB 1383 required program), and other provisions. Town staff met and discussed the ordinance with BBK staff, and BBK staff amended the ordinance for the Town's Municipal Code Subchapter 3.05 related to the collection, processing and disposal of solid waste, recycling, and organics.

## **FISCAL IMPACT**

There is no fiscal impact to adopt the ordinance; staff has been working on many components of SB 1383 requirements and their fiscal impact and staff will be returning to Council in the coming months to provide further information.

## **BACKGROUND AND ANALYSIS**

SB 1383 (Chapter 395, Statutes of 2016) directed the California Department of Resources Recycling and Recovery ("CalRecycle") to adopt regulations to reduce organic waste by 50% from its 2014 baseline level by 2020 and 75% by 2025. The SB 1383 Regulations require jurisdictions to adopt and enforce an ordinance to implement relevant provisions of the SB 1383 Regulations including regulation of residential and commercial generators of organic waste, commercial generators of edible food, waste haulers and include enforcement mechanisms and penalties for violations.

As presented at the July 28, 2021 Council Meeting, SB 1383 established requirements to reduce organic waste that are landfilled to reduce methane, a powerful greenhouse gas. SB 1383 regulations require jurisdictions to complete several requirements prior to January 1, 2022, which include adopt an enforceable ordinance, adopt an organics/recycled content procurement policy, require mandatory organics collection programs via enforceable mechanism (such as a franchise agreement) and include mandatory monitoring, reporting, route reviews and contamination audits, establish an edible food recovery program, and complete new compliance reporting to CalRecycle. By adopting the Ordinance, the Town is meeting one of the requirements of the SB 1383 Regulations and establishes authority for the Town to include mandatory organics collection and processing, require generators such as residents and businesses, haulers, and other entities to subscribe, participate, and separate the collected materials to be free of cross-contamination. The ordinance details requirements for education and outreach to generators, requirements for SB 1383 color-compliant bins, and includes enforcement and penalty information for non-compliance. Staff developed the Ordinance using the CalRecycle model and included provisions unique to the Town regarding our hauler, Republic Services, our partnership with San Mateo County's Office of Sustainability for implementation of the Edible Food Recovery Program on behalf of the Town (another SB 1383 requirement), and other provisions. Town staff met and discussed the ordinance with BBK staff and BBK amended the ordinance for the Town's Municipal Code Subchapter 3.05 related to the collection, processing and disposal of solid waste, recycling, and organics.

## **SB 619 Legislation Signed by Governor on October 5, 2021**

On October 5, 2021, Governor Newsom signed into law SB 619. SB 619 (Laird) gives jurisdictions more time for implementation of SB 1383 regulations and compliance without fear of penalty for twelve months, for 2022 calendar year. The bill's goal was to strike a balance between not delaying statewide organics diversion progress and not burdening jurisdictions with

penalties if they are making a reasonable effort to comply with the regulations. SB 619 provides jurisdictions with additional time and flexibility to meet the Regulations and takes into consideration the challenging impacts from COVID-19, and the impacts of the Regulations and requirements on jurisdictions, residents, and businesses. Since the Regulations were not finalized until November 2020, it only gave jurisdictions 13 months to fully implement key components of the Regulations. Now that SB 619 has been signed into law, jurisdictions can work with CalRecycle to communicate the steps they have taken towards compliance and state what they plan to implement to come into compliance in exchange for no penalties being imposed on their jurisdiction for the 2022 calendar year.

Prior to SB 619 approval, Town staff had been working expeditiously to complete the requirements of SB 1383 Regulations by January 1, 2022. Staff is currently considering the implications of SB 619 on the Town's timeline and any potential changes to possible project extension deadlines to early 2022. Staff will update Council on these potential deadline changes.

### *Summary of Mandatory Organic Waste Disposal Reduction Ordinance*

The Ordinance includes the following provisions:

- **Updates.** Updates the 'Findings, Purpose and Authority' in Article 1 to be inclusive of SB 1383 Regulations and updates the 'Definitions' to include the numerous new terms used in SB 1383 Regulations.
- **Mandatory collection, subscription, and correct levels of service for organics.** Requires all waste generators, residents, businesses, municipal facilities, etc. to **subscribe** to mandatory collection of organics, recycling, and solid waste, and **participate** in these services. Generators are to **subscribe to correct level of services** (e.g., don't subscribe to insufficient capacity of service).
- **Collection bins are to be SB 1383 color-compliant and include labels, graphics.** Requires that the three collection bins be SB 1383 color compliant as follows: Blue bins for recycling, green bins for organics and black/grey for garbage (also referred to as a 3-bin collection system). The containers are required to include labels with pictures and graphics of what materials are accepted in the container and what is prohibited in the container.
- **No cross-contamination of materials.** Requires generators to keep the three waste streams (organics, recycling, and solid waste) separate and not mix or **not contaminate** the materials. For example, a business should not place food/organic waste in their recycling bin.
- **Businesses are to provide indoor collection containers.** Requires that businesses that generate organics and recyclables provide indoor collection bins for these materials. Businesses are to annually train and provide information to employees to properly separate materials, and periodically inspect containers. For multi-family, provide educational materials within fourteen days of occupancy.

- **Allows the Town to issue de minimus waivers to businesses.** Provides the Town with the ability to provide a de minimus waiver to a business regarding compliance with some or all the collection requirements if the businesses submit an application and documentation that they don't generate sufficient levels of organics, or they have physical space limitations for collection containers at their place of business. (Note: there is a previous mandate that requires new construction/remodels to ensure that solid waste enclosures have sufficient space and capacity for the three waste streams).
- **Includes requirements for a Commercial Edible Food Recovery Program. (EFRP).** The Town approved an MOU with San Mateo County's Office of Sustainability to administer the Commercial Edible Food Recovery Program on behalf of the Town. The Office of Sustainability staff and legal counsel provided additional text and edits to be included in the Ordinance to jurisdictions participating in this program. The OOS required that jurisdictions include their text provided verbatim and this text has been included in the Town's Ordinance verbatim.
- The Ordinance includes these requirements regarding this Edible Food Recovery program:
  - Requires commercial edible food generators that meet specific thresholds to arrange and contract for recovery of excess edible food for collection/distribution to food recovery organizations (such as Pacifica Resource Center, Second Harvest Food Bank, or other food pantries). Note the Town has only 2 commercial food generators that meet these thresholds. The thresholds are established as 'Tier 1'<sup>2</sup> generators and include supermarkets, grocery stores (10,000+ sq. ft.), food service providers, food distributor, and wholesale food vendors. 'Tier 2' generators include restaurants (≥ 250 seats or 5,000 sq. ft.). The Office of Sustainability (OOS) will work with the Town's two generators to verify they have resources to meet the requirements on behalf of the Town. The OOS will ensure these generators arrange to have their edible food recovered that would otherwise be disposed and verify that they are complying with the commercial edible food generator recordkeeping requirements. Colma staff have been working with the San Mateo County Office of Sustainability who developed the countywide program at no cost to jurisdictions.
  - Places requirements on food recovery organizations to keep records and follow specific procedures on food recovery information as detailed by the Office of Sustainability; and provide information for sufficient edible food recovery capacity planning.
- **Organics Processing/Composting Facility/Requirements.** Require that haulers (e.g., Republic Services) transport collected organics to only qualifying organic processing facilities; The Regulations require reporting and verification.
- **Comply with Education/Outreach Requirements.** The education and outreach phase is from January 1, 2022, through December 31, 2023, and educational materials are to be provided to generators who do not comply with the requirements. The Town

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<sup>2</sup> Tier 1 requirements go into effect in 2022 and Tier 2 requirements are effective 2024.

already has a commercial outreach and education program in place via requirements of the current franchise agreement the Town has with Republic Services. Our franchise agreement requires Republic's Recycling Coordinator to complete a minimum of 24 hours every week to work with businesses to increase diversion, provide education, train staff, provide internal bins with labels and "right-size" bins to maximize recycling and organics collections. The Town will supplement this service with outreach and education resources and partner with Republic to provide a robust outreach and education phase which will continue through December 2023. The ordinance gives the Town or Town designee (such as Republic and the Office of Sustainability) the authority to inspect containers, records, and facilities, as well as enforce compliance.

- **Enforcement.** After January 1, 2024, fines may be imposed by the Town for non-compliance with Ordinance provisions.
- **Process for Enforcement.** After January 1, 2024, the process for enforcement includes monitoring accounts through required periodic route reviews and reporting. As part of the SB 1383 regulation requirements, Republic (as the Town's designee) will complete these periodic route reviews and inspections. The Town via Republic Services will complete annual compliance reviews of businesses (similar to what Republic is doing now to verify compliance with AB 1826 Mandatory Organics Recycling); The compliance review can be on site visits to businesses and or 'desk audits' that involves review of reports to verify that the required service is provided and that the businesses are complying. The periodic route reviews will include a process to monitor contamination issues. (Republic will complete this task) and verify generators subscription to required collection service (validating desk review) and seeing that the business has the appropriate capacity of external containers. Work is underway through discussions by Town staff and Republic staff to discuss modifications to the franchise agreement to ensure it includes SB 1383 regulation provisions. The amended franchise agreement will be provided for City Council's consideration in the coming months).
- **Penalties.** Note penalties for non-compliance on generators and other entities would not be imposed until after January 2024. The focus will be on education and outreach from January 2022 through December 2023 and not focus on penalties. For the period starting January 2024, the ordinance includes details regarding penalties on generators and haulers who fail to comply with ordinance requirements. The ordinance references the Town's current administrative citation fine schedule (CMC Section 1.05.020). The ordinance references the administrative penalty procedures (CMC Section 2.01.160 et seq.). The ordinance does not include fines on generators who have violations of contamination of container contents. The Town could choose to include this violation as potential fine imposition and could direct staff to change this section 3.05.340 (4) violation. Staff advises that the Town and Republic Services (as Designee) attain reduced contamination levels using a robust education and not imposition of fines.
- **Ordinance Effective Date.** The effective date of the ordinance is December 20, 2021.

## **Ongoing Discussions with Republic regarding amending Franchise Agreement to be SB 1383 Compliant**

Town staff have been discussing modifications to the Town's Franchise Agreement with Republic Services to ensure the agreement is SB 1383 compliant. This work has been in process for several months and additional work and discussions with Republic Services staff will continue over the next few months.

## **CalGreen, MWELO and Procurement Policy**

The model ordinance provided by CalRecycle states that jurisdictions will have to include other enforceable requirements to comply with specified CALGreen and Water Efficient Landscape Ordinance requirements (California Code of Regulations Title 24, Part 11), unless they already have such an enforceable mechanism in place. The Town already has the CalGreen and MWELO requirements in place therefore, they are not included in this ordinance.

The Town has had a Sustainability Procurement Policy in place since 2013 and this Policy is currently being updated to include SB 1383 compliant aspects such as the requirement to procure a specified quantity of organics annually and include other provisions. The amended procurement policy will be presented to City Council at the November Council meeting for consideration and is not included in this ordinance.

## **Council Adopted Values**

The adoption of this Ordinance is consistent with the Council value of *vision* and *responsibility* because it enables the Town to comply with SB 1383 Regulations and reduce organic waste to landfills, increase edible food donation/recovery, and reduce methane generation, a potent greenhouse gas.

## **Sustainability Impact**

Adoption of the Ordinance will improve sustainability by reducing organic waste to landfills, increase edible food donation and recovery, and reduce methane generation, a potent greenhouse gas (GHG). The Ordinance will also assist the Town in meeting the Town's Climate Action Plan 2030 GHG reduction targets.

## **ATTACHMENT**

- A. Mandatory Organic Waste Disposal Reduction Ordinance

**ORDINANCE NO. - \_\_\_\_\_**  
**OF THE CITY COUNCIL OF THE TOWN OF COLMA**

**AN ORDINANCE AMENDING COLMA MUNICIPAL CODE SUBCHAPTER 3.05 RELATING  
TO COLLECTION OF SOLID WASTE, RECYCLABLES, AND ORGANIC WASTE**

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

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**ARTICLE 1. FINDINGS, PURPOSE AND AUTHORITY**

The City Council of the Town of Colma finds:

- (a) SB 1383 (Chapter 395, Statutes of 2016) directed the California Department of Resources Recycling and Recovery ("CalRecycle") to adopt regulations to reduce organic waste by 50 percent from its 2014 baseline level by 2020 and 75 percent by 2025.
- (b) SB 1383 also requires the regulations to recover, for human consumption, at least 20 percent of edible food that is currently thrown away.
- (c) CalRecycle promulgated regulations as directed in SB 1383 in Chapter 12 (Short-Lived Climate Pollutants) of Division 7 of Title 14 of the California Code of Regulations ("SB 1383 Regulations").
- (d) The SB 1383 Regulations require cities, counties, and special districts providing solid waste collection services to adopt and enforce an ordinance or other enforceable mechanism to implement relevant provisions of the SB 1383 Regulations including regulation of waste haulers and generators of organic waste and edible food, and enforcement mechanisms and penalties for violations.
- (e) The SB 1383 Regulations requires the Town of Colma to adopt an ordinance to enforce the SB 1383 Regulations by January 1, 2022.
- (e) The City Council desires to amend Colma Municipal Code Subchapter 3.05 to comply with the SB 1383 Regulations.

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**ARTICLE 2. SUBCHAPTER 3.05 AMENDED**

Subchapter 3.05 of the Colma Municipal Code is hereby repealed and restated in its entirety to read as provided herein.

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**ARTICLE 3. SUBCHAPTER 3.05, DIVISION 1 – GENERAL**

The following sections are added to subchapter 3.05, Collection of Solid Waste, Recyclables, and Organic Waste, of the Colma Municipal Code as "Division 1 – General."

## Subchapter 5.04 - Collection of Solid Waste, Recyclables, and Organic Waste

### *Division 1: General*

#### **3.05.010 Findings; Purposes.**

- (a) The City Council finds and determines that:
- (1) It is in the public interest to:
    - (A) maximize waste reduction, Recycling and composting options;
    - (B) reduce the amount of Solid Waste, Recyclables and Organic Waste disposed in landfills;
    - (C) recycle paper, aluminum, metal containers, glass, corrugated cardboard, certain plastic containers, and other Recyclable Materials as may be determined from time to time by the City Council;
    - (D) grant franchises and permits to persons and businesses engaged in the collection of Recyclable Materials therein; and
    - (E) require comprehensive reporting of the collection of Recyclable Material by all haulers in the Town to assist in compliance with the CalRecycle Electronic Annual Report.
  - (2) The Town's Recycling program may be negatively impacted by unauthorized scavengers taking Recyclable Materials before those materials can be picked up by a Franchisee or Permittee.
- (b) State Recycling law, Assembly Bill 939, or the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000, et seq., as amended, supplemented, superseded, and replaced from time to time), requires cities and counties to reduce, reuse, and recycle (including composting) Solid Waste generated in their local jurisdictions to the maximum extent feasible before any incineration or landfill disposal of waste, to conserve water, energy, and other natural resources, and to protect the environment.
- (c) State Recycling law, AB 341 of 2011, places requirements on businesses and Multi-Family property owners that generate a specified threshold amount of Solid Waste to arrange for Recycling services and requires local jurisdictions to implement a Mandatory Commercial Recycling program.
- (d) State organics Recycling law, Assembly Bill 1826 of 2014, requires businesses and Multi-Family property owners that generate a specified threshold amount of Solid Waste, Recycling, and Organic Waste per week to arrange for Recycling services for that waste, requires local jurisdictions to implement a Recycling program to divert Organic Waste from businesses subject to the law, and requires local jurisdictions to implement a Mandatory Commercial Organics Recycling program.



(e) SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires local jurisdictions to adopt and enforce an ordinance or enforceable mechanism to implement relevant provisions of SB 1383 Regulations. The SB 1383 Regulations are intended to divert organic waste from landfills and recover edible food for human consumption.

(f) The purpose of this subchapter is to comply with the Recycling and reporting requirements of AB 939 (hereafter, the "Waste Management Act"), as amended from time to time, including amendments made by SB 1016, AB 341, AB 1826, SB 1383, and their implementing regulations. Specifically, but without limitation, this subchapter is intended to:

- (1) increase Recycling participation rates;
- (2) improve the recovery rates of Recyclable Materials;
- (3) improve reporting capabilities to CalRecycle;
- (4) comply with state Recycling laws;
- (5) reduce waste to landfill; and
- (6) maintain a cost effective, garbage, Recycling, and organic waste collection program for the residents, businesses and institutions of the Town.

### **3.05.020 Definitions.**

For the purpose of this subchapter, the following terms, phrases, words and their derivations shall have the meaning given herein. When consistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular include the plural number.

(a) "Blue Container" has the same meaning as in 14 CCR Section 18982.2(a)(5) and shall be used for the purpose of storage and collection of Source Separated Recyclable Materials.

(b) "CalRecycle" means the California Department of Resources Recycling and Recovery, which is the Department designated with responsibility for developing, implementing, and enforcing SB 1383 Regulations.

(c) "California Code of Regulations" or "CCR" means the State of California Code of Regulations. CCR references in this subchapter are preceded with a number that refers to the relevant Title of the CCR (e.g., "14 CCR" refers to Title 14 of CCR).

(d) "Charitable Entity" means any not-for-profit organization or entity maintained for community service, education or the public good, including service clubs, scouting organizations, religious and educational organizations and recognized charities.

(e) "Collect" or "Collection" means the operation of gathering together and transporting Solid Waste to a point of disposal and/or Recycling or composting.

(f) "Commercial Business" or "Commercial" means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, industrial

facility, or a multifamily residential dwelling, or as otherwise defined in 14 CCR Section 18982(a)(6).

(g) "Commercial Edible Food Generator" includes a Tier One or a Tier Two Commercial Edible Food Generator as defined in this subchapter.

(h) "Community Composting" means any activity that composts green material, agricultural material, food material, and vegetative food material, alone or in combination, and the total amount of feedstock and Compost on-site at any one time does not exceed 100 cubic yards and 750 square feet, as specified in 14 CCR Section 17855(a)(4), or, as otherwise defined by 14 CCR Section 18982(a)(8).

(i) "Compost" means the product resulting from the controlled biological decomposition of organic Solid Wastes that are Source Separated from the municipal Solid Waste stream, or which are separated at a centralized facility.

(j) "Compliance Review" means a review of records by the Town to determine compliance with this subchapter.

(k) "Construction and Demolition Debris" or "C&D" means materials resulting from construction, renovation, remodeling, repair or demolition operations and which has been segregated for Recycling, reuse or remanufacture. Materials include but are not limited to wood, asphalt, concrete, drywall, steel rebar, roofing material and other materials resulting construction, renovation, remodeling, repair or demolition operations.

(l) "Container" means a cart, bin, roll-off, compactor or similar receptacle used to temporarily store Solid Waste, Recyclable Materials, or Organic Waste for collection service.

(m) "Container Contamination" or "Contaminated Container" means a container, regardless of color, that contains Prohibited Container Contaminants, or as otherwise defined in 14 CCR Section 18982(a)(55).

(n) "Designee" means an entity that the Town contracts with or otherwise arranges to carry out any of the Town's responsibilities of this subchapter as authorized in 14 CCR Section 18981.2. A Designee may be a government entity, a franchised hauler, a private entity, or a combination of those entities.

(o) "Designee for Edible Food Recovery" means the County of San Mateo's Office of Sustainability with which the Town has a Memorandum of Understanding for the purposes of Edible Food Recovery including, but not limited to, inspection, investigation, and enforcement of the Edible Food Recovery provisions of this subchapter. Contact information for the Designee for Edible Food Recovery can be found on the County of San Mateo Office of Sustainability website.

(p) "Donate" or "donation" means the act of a generator of Recyclable Materials or Organic Waste giving or conveying items or materials to another person or company, without paying the recipient or providing any other form of consideration for taking and/or hauling away the donated materials.

(q) "E-waste" means electronic equipment nearing the end of its useful life and determined by the Department of Toxic Substances Control to be covered by the Electronic Waste Recycling Act of 2003. Computers, televisions, VCRs, stereos, copiers, and fax machines are common E-waste products.

(r) "Edible Food" means food intended for and fit for human consumption and collected or received from a Tier One or Tier Two Commercial Edible Food Generator.

(s) "Edible Food Recovery" means actions to collect, receive, and/or re-distribute Edible Food for human consumption from Tier One and Tier Two Commercial Edible Food Generators that otherwise would be disposed of.

(t) "Enforcement Action" means an action of the Town to address non-compliance with this subchapter including, but not limited to, issuing administrative citations, fines, penalties, or using other remedies.

(u) "Excluded Waste" means hazardous substance, hazardous waste, infectious waste, designated waste, volatile, corrosive, medical waste, infectious, regulated radioactive waste, and toxic substances or material that facility operator(s), which receive materials from the Town and its generators, reasonably believe(s) would, as a result of or upon acceptance, transfer, processing, or disposal, be a violation of local, State, or Federal law, regulation, or ordinance, including: land use restrictions or conditions, waste that cannot be disposed of in Class III landfills or accepted at the facility by permit conditions, waste that in the Town's, or its Designee's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Town, or its Designee, to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Single-Family or Multi-Family Solid Waste after implementation of programs for the safe collection, processing, Recycling, treatment, and disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code.

(v) "Food Distributor" means a company that distributes food to entities including, but not limited to, Supermarkets and Grocery Stores.

(w) "Food Facility" has the same meaning as in Section 113789 of the Health and Safety Code.

(x) "Food Recovery Organization" means an entity that engages in the collection or receipt of Edible Food from Tier One or Tier Two Commercial Edible Food Generators and distributes that Edible Food either directly or through other entities, including, but not limited to:

- (1) A food bank as defined in Section 113783 of the Health and Safety Code.
- (2) A nonprofit charitable organization as defined in Section 113841 of the Health and Safety code; and,
- (3) A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code.

- (y) "Food Recovery Service" means a person or entity that collects and transports Edible Food from a Tier One or Tier Two Commercial Edible Food Generator to a Food Recovery Organization or other entities for Edible Food Recovery.
- (z) "Food Service Provider" means an entity primarily engaged in providing food services to institutional, governmental, commercial, or industrial locations of others based on contractual arrangements with these types of organizations.
- (aa) "Food Scraps" means all food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and eggshells and other food materials and may be modified from time to time per Hauler's organics collection materials requirements. Food Scraps excludes fats, oils, and grease.
- (bb) "Food-Soiled Paper" is compostable paper material that has come in contact with food or liquid, such as, but not limited to, compostable paper plates, paper coffee cups, napkins, pizza boxes, and milk cartons and materials and may be modified from time to time per Hauler's organics collection materials requirements .
- (cc) "Food Waste" means all Food Scraps, Food-Soiled Paper, and includes Biodegradable Products Institute (BPI) certified container products and other materials which may be included in the organics collection.
- (dd) "Franchise Agreement" means an agreement between the Town and an individual, association or firm, organization or other business entity for the collection of Solid Waste, including Recyclables and Organic Waste.
- (ee) "Franchisee" means an individual, association, firm, organization or other business entity who has entered into a franchise agreement with the Town, whether or not said entity is operated for profit, for the collection of Solid Waste, including Recyclables, within the Town.
- (ff) "Gray Container" has the same meaning as in 14 CCR Section 18982.2(a)(28) and shall be used for the purpose of storage and collection of Gray Container Waste.
- (gg) "Gray Container Waste" means Solid Waste that is collected in a Gray Container that is part of a three-container Organic Waste collection service that prohibits the placement of Organic Waste in the Gray Container as specified in 14 CCR Sections 18984.1(a) and (b), or as otherwise defined in 14 CCR Section 17402(a) (6.5).
- (hh) "Green Container" has the same meaning as in 14 CCR Section 18982.2(a)(29) and shall be used for the purpose of storage and collection of Source Separated Green Container Organic Waste.
- (ii) "Greenhouse gas" or "GHG" means carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), sulfur hexafluoride (SF<sub>6</sub>), hydrofluorocarbons (HFC), perfluorocarbons (PFC), and other fluorinated greenhouse gases.
- (jj) "Grocery Store" means a store primarily engaged in the retail sale of canned food; dry goods; fresh fruits and vegetables; fresh meats, fish, and poultry; and any area that is not

separately owned within the store where the food is prepared and served, including a bakery, deli, and meat and seafood departments.

(kk) "Hauler" means a person or entity, or the agents or employees thereof, whom the Town shall have duly licensed, franchised, granted a permit to, or contracted with, to collect, carry, transport, compost, and/or recycle Solid Waste, Recyclables, and Organic Waste within the Town.

(ll) "Hauler Route" means the designated itinerary or sequence of stops for each segment of the Town's collection service area, or as otherwise defined in 14 CCR Section 18982(a) (31.5).

(mm) "Hazardous Waste" means any material, which by reason of its quality, concentration, composition or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious illness or pose a substantial threat or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise mismanaged or any waste which is defined or regulated as a hazardous waste, toxic waste, hazardous chemical substance or mixture, or asbestos under Applicable Law. If two or more governmental agencies having concurrent or overlapping jurisdiction over hazardous waste adopt conflicting definitions of "hazardous waste", for purposes of collection, transportation, processing and/or disposal, the broader, more expansive definition shall be employed for purposes of this subchapter. Hazardous Waste includes, but is not limited to any of the following:

- (1) Materials regulated by section 40141 of the California Public Resources Code, sections 25110.02, 25115, 25117, 25281 or 25316 of the California Health and Safety Code (the California Hazardous Waste Control Act), and section 13050 of the California Water Code;
- (2) Low-level radioactive waste regulated under Chapter 7.6 (commencing with § 28500) of Division 20 of the Health and Safety Code or under Chapter 6.1 (commencing with § 25015) of Division 20 of the Health and Safety Code);
- (3) Materials regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended (including, but not limited to, amendments thereto made by the Solid Waste Disposal Act Amendments of 1980), and related federal, State and local laws and regulations;
- (4) Materials regulated under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., as amended, and related federal State of California, and local laws and regulations, including the California Toxic Substances Account Act, California Health and Safety Code Section 25300 et seq.;
- (5) Materials regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq., as amended, and regulations promulgated thereunder; or materials regulated under any future amendments to or re-codification of these statutes or regulations promulgated thereunder and any future additional or substitute federal, State or local laws and regulations pertaining to the identification, transportation, treatment, storage or disposal of toxic substances or hazardous waste.

(nn) "High Diversion Organic Waste Processing Facility" means a facility that is in compliance with the reporting requirements of 14 CCR Section 18815.5(d) and meets or exceeds an annual average Mixed Waste organic content Recovery rate of 50 percent between January 1, 2022 and December 31, 2024, and 75 percent after January 1, 2025, as calculated pursuant to 14 CCR Section 18815.5(e) for Organic Waste received from the "Mixed waste organic collection stream" as defined in 14 CCR Section 17402(a)(11.5); or, as otherwise defined in 14 CCR Section 18982(a)(33).

(oo) "Household Hazardous Waste" means latex paint, batteries, oil filters, fluorescent lamps and tubes including compact fluorescent light bulbs (CFLs), motor oil and other petroleum-based products, cleaning supplies, fire extinguishers, mercury products including thermometers, thermostats, oil based paints, thinners, stains, fertilizers, pesticides, aerosols and antifreeze commonly used in residences.

(pp) "Inspection" means a site visit where the Town, the franchised hauler or other Designee reviews records, containers, and an entity's collection, handling, Recycling, or landfill disposal of Organic Waste or Edible Food handling to determine if the entity is complying with requirements set forth in this subchapter, or as otherwise defined in 14 CCR Section 18982(a)(35). "Inspection" for the purposes of Edible Food Recovery, "Inspection" means actions to review contracts and other records related to the recovery of Edible Food and may occur off-site via email and other forms of electronic communication, as well as the on-site review of an entity's records and collection, handling, and other procedures for the recovery of Edible Food to determine if the entity is complying with the requirements of this subchapter.

(qq) "Large Event" means an event, including, but not limited to, a sporting event or a flea market, that charges an admission price, or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event, at a location that includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for an event. If the definition in 14 CCR Section 18982(a)(38) differs from this definition, the definition in 14 CCR Section 18982(a)(38) shall apply to this subchapter.

(rr) "Large Venue" means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. For purposes of this subchapter and implementation of the SB 1383 Regulations, a venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of this subchapter and implementation of the SB 1383 Regulations, a site under common ownership or control that includes more than one Large Venue that is contiguous with other Large Venues in the site, is a single Large Venue. If the definition in 14 CCR Section 18982(a)(39) differs from this definition, the definition in 14 CCR Section 18982(a)(39) shall apply to this sun.

(ss) "Local Education Agency" means a school district, charter school, or county office of education that is not subject to the control of city or county regulations related to Solid Waste, or as otherwise defined in 14 CCR Section 18982(a)(40).

(tt) "Multi-Family Residential Dwelling" or "Multi-Family" means of, from, or pertaining to residential premises with five (5) or more dwelling units. Multi-Family premises do not include hotels, motels, or other transient occupancy facilities, which are considered Commercial Businesses.

(uu) "Non-Organic Recyclables" means non-putrescible and non-hazardous recyclable wastes including but not limited to bottles, cans, metals, plastics, and glass, or as otherwise defined in 14 CCR Section 18982(a)(43).

(vv) "Notice of Violation" or "NOV" means a notice that a violation has occurred that includes a compliance date to avoid an action to seek penalties, or as otherwise defined in 14 CCR Section 18982(a)(45) or further explained in 14 CCR Section 18995.4.

(ww) "Nuisance" means anything which is injurious to human health or is indecent or offensive to the senses and interferes with the comfortable enjoyment of life or property, and affects at the same time an entire community or neighborhood or any considerable number of persons although the extent of annoyance or damage inflicted upon the individual may be unequal, and which occurs as a result of the storage, removal, transport, processing or disposal of Solid Waste.

(xx) "Organic Waste" means Solid Waste containing material originated from living organisms and their metabolic waste products, including but not limited to food, green material, landscape and pruning waste, organic textiles and carpets, lumber, wood, Paper Products, Printing and Writing Paper, manure, biosolids, digestate, and sludges or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined by 14 CCR Section 18982(a).

(yy) "Organic Waste Generator" means a person or entity that is responsible for the initial creation of Organic Waste, or as otherwise defined in 14 CCR Section 18982(a)(48).

(zz) "Paper Products" include, but are not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling, or as otherwise defined in 14 CCR Section 18982(a)(51). Printing, writing papers including, but are not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications, or as otherwise defined in 14 CCR Section 18982(a)(54).

(aaa) "Permittee" means an individual, association, firm, organization or other business entity person which has a valid permit from the Town to collect Recyclables within the Town.

(bbb) "Prohibited Container Contaminants" means the following:

- (1) discarded materials placed in the Blue Container that are not identified as acceptable Source Separated Recyclable Materials for the Town's Blue Container.
- (2) discarded materials placed in the Green Container that are not identified as acceptable Source Separated Green Container Organic Waste for the Town's Green Container.

- (3) discarded materials placed in the Gray Container that are acceptable Source Separated Recyclable Materials and/or Source Separated Green Container Organic Wastes to be placed in Town's Green Container and/or Blue Container; and,
- (4) Excluded Waste placed in any container.

(ccc) "Recovered Organic Waste Products" means products made from California, landfill-diverted recovered Organic Waste processed in a permitted or otherwise authorized facility, or as otherwise defined in 14 CCR Section 18982(a)(60).

(ddd) "Recovery" means any activity or process described in 14 CCR Section 18983.1(b), or as otherwise defined in 14 CCR Section 18982(a)(49).

(eee) "Recyclable Materials" or "Recyclables" means Solid Waste which may be reused or processed into a form suitable for reuse through reprocessing or remanufacture consistent with the requirements of AB 939, as amended, including, without limitation: paper, newsprint, printed matter, pasteboard, paper containers, cardboard, glass, aluminum, PET, HDPE, and other plastics, metal, food and beverage containers, compostable materials (including food waste, yard waste and other organic materials); wood, brick and stone in reusable size and condition; and Construction and Demolition Debris.

(fff) "Recycle" or "Recycling" means the process of collecting, sorting, cleansing, treating, and/or reconstituting materials that would otherwise become Solid Wastes, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace. Recycling does not include transformation, as defined in Public Resources Code section 40201.

(ggg) "Recycled-Content Paper" means Paper Products and Printing and Writing Paper that consists of at least 30 percent, by fiber weight, postconsumer fiber, or as otherwise defined in 14 CCR Section 18982(a)(61).

(hhh) "Refuse" means all putrescible and non-putrescible Solid Wastes (except body wastes), whether combustible or non-combustible, including garbage, rubbish, ashes, street cleanings, dead animals, and solid industrial wastes.

(iii) "Remote Monitoring" means the use of the internet of things (IoT) and/or wireless electronic devices to see contents of Containers for purposes of identifying the quantity of materials in containers (level of fill) and/or presence of Prohibited Container Contaminants.

(jjj) "Renewable Gas" means gas derived from Organic Waste that has been diverted from a California landfill and processed at an in-vessel digestion facility that is permitted or otherwise authorized by 14 CCR to recycle Organic Waste, or as otherwise defined in 14 CCR Section 18982(a)(62).

(kkk) "Responsible Person" means an individual, association, firm, organization or other business entity, whether or not said entity is operated for profit, determined by the Town to be qualified and capable of performing each and every obligation imposed by this subchapter.



(lll) "Restaurant" means an establishment primarily engaged in the retail sale of food and drinks for on-premises or immediate consumption, or as otherwise defined in 14 CCR Section 18982(a)(64).

(mmm) "Roll-off containers" or "pull-on containers" means any large detachable containers, eight cubic yards or more in capacity, employed in a system of materials handling in which the loaded container is pulled onto the service vehicle mechanically and transported to an approved site for emptying.

(nnn) "Route Review" means a visual Inspection of containers along a Hauler Route for the purpose of determining Container Contamination and may include mechanical Inspection methods such as the use of cameras, or as otherwise defined in 14 CCR Section 18982(a)(65).

(ooo) "SB 1383" means Senate Bill 1383 (Chapter 395, Statutes of 2016), establishing methane emissions reduction targets in a Statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time.

(ppp) "SB 1383 Regulations" means the regulations developed by CalRecycle and contained within 14 CCR, Division 7, Chapter 12 and the amended portions of 14 CCR and 27 CCR.

(qqq) "Scavenge" means the act of removing Solid Waste, Recyclables, and/or Organic Waste from a can, bin, or other container into which the Solid Waste, Recyclables, and/or Organic Waste have been placed for collection by a Hauler. Removal by a Hauler shall not constitute scavenging.

(rrr) "Self-Hauler" means a person, who hauls Solid Waste, Organic Waste, or Recyclable Materials he or she has generated to another person. Self-Hauler also includes a person who back-hauls waste, or as otherwise defined in 14 CCR Section 18982(a)(66). Back-haul means generating and transporting Organic Waste to a destination owned and operated by the generator using the generator's own employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66)(A). For the purposes of Edible Food Recovery, "Self-Hauler" means a Commercial Edible Food Generator which holds a contract with and hauls Edible Food to a Food Recovery Organization or other site for redistribution according to the requirements of this subchapter.

(sss) "Single-Family" means of, from, or pertaining to any residential premises with fewer than five (5) units.

(ttt) "Solid Waste" means all putrescible and non-putrescible solid, semisolid, and liquid wastes, and all Recyclables and Organic Waste, including but not limited to garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semi-Solid Wastes, and other discarded solid and semi-solid Wastes, except that Solid Waste does not mean or include any of the following wastes:

- (1) Hazardous waste, as defined in Public Resources Code, section 40141;
- (2) Special waste, as defined in this subchapter;

- (3) Radioactive waste regulated pursuant to the Radiation Control Law (Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code); and
- (4) Medical waste regulated pursuant to the Medical Waste Management Act (Part 14 (commencing with Section 117600) of Division 104 of the Health and Safety Code). Untreated medical waste shall not be disposed of in a Solid Waste landfill, as defined in Section 40195.1. Medical waste that has been treated and deemed to be Solid Waste shall be regulated pursuant to this division.

(uuu) "Source Separated" means materials, including commingled recyclable materials, that have been separated or kept separate from the Solid Waste stream, at the point of generation, for the purpose of additional sorting or processing those materials for Recycling or reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products, which meet the quality standards necessary to be used in the marketplace, or as otherwise defined in 14 CCR Section 17402.5(b)(4). For the purposes of the subchapter, Source Separated shall include separation of materials by the generator, property owner, property owner's employee, property manager, or property manager's employee into different containers for the purpose of collection such that Source Separated materials are separated from Gray Container Waste or other Solid Waste for the purposes of collection and processing.

(vvv) "Source Separated Green Container Organic Waste" means Source Separated Organic Waste that can be placed in a Green Container that is specifically intended for the separate collection of Organic Waste.

(www) "Source Separated Recyclable Materials" means Source Separated Non-Organic Recyclables.

(xxx) "Special Waste" means any waste matter which is a Hazardous Waste or which requires special handling or processing, including any of the following: flammable waste; waste transported in a bulk tanker; liquid waste; sewage sludge; waste from a septic system or other wastewater treatment or pollution control process; residue and debris from the cleanup of a spill or release of any chemical substance; any soil, waste, residue, debris or other material contaminated by any hazardous material or hazardous waste; dead animals; manure; explosive substances or substances or materials that have been exposed to highly infectious or contagious diseases.

(yyy) "State" means the State of California.

(zzz) "Supermarket" means a full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000), or more, and which sells a line of dry grocery, canned goods, or nonfood items and some perishable items, or as otherwise defined in 14 CCR Section 18982(a)(71).

(aaaa) "Tier One Commercial Edible Food Generator" means a Commercial Edible Food Generator that is one of the following: Supermarket, Grocery Store with a total facility size equal to or greater than 10,000 square feet, Food Service Provider, Food Distributor or Wholesale Food Vendor. If the definition in 14 CCR Section 18982(a)(73) of Tier One

Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(73) shall apply to this subchapter.

(bbbb) "Tier Two Commercial Edible Food Generator" means a Commercial Edible Food Generator that is one of the following: Restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet, Hotel with an on-site Food Facility and 200 or more rooms, Health facility with an on-site Food Facility and 100 or more beds, Large Venue, Large Event or a State agency with a cafeteria with 250 or more seats or total cafeteria facility size equal to or greater than 5,000 square feet, or a Local Education Agency facility with an on-site Food Facility. If the definition in 14 CCR Section 18982(a)(74) of Tier Two Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(74) shall apply to this subchapter.

(cccc) "Town" means the Town of Colma, California.

(dddd) "Town Enforcement Official" means the city manager or their Designee who is responsible for enforcing the subchapter, including a Regional or County Agency Enforcement Official.

(eeee) "Universal waste" means materials that are hazardous wastes and are generated by several sectors of society, rather than a single source or industry. Universal wastes are not to be disposed of in the trash but are to be properly recycled and or handled in accordance with laws regarding Universal Waste. Universal waste include batteries, cell phones, computers, computer monitors, fluorescent light bulbs, televisions, non-empty aerosol cans, items containing mercury, electronic devices, or any other material, device or item meeting the definitions of "universal waste" or "electronic device" in 22 CCR Sections 66273.9 or 66261.9, as they may be amended.

(ffff) "Vector" means any insect or other arthropod, rodent or other animal capable of transmitting the causative agents of human disease, or disrupting the normal enjoyment of life by adversely affecting the public health and well-being.

(gggg) "Wholesale Food Vendor" means a business or establishment engaged in the merchant wholesale distribution of food, where food (including fruits and vegetables) is received, shipped, stored, prepared for distribution to a retailer, warehouse, distributor, or other destination, or as otherwise defined in 14 CCR Section 189852(a)(76).

### **3.05.030 Minimum Standards.**

The provisions of this subchapter shall be the minimum requirements for compliance with state Recycling and organic waste diversion mandates, and for protecting the, public health, safety, convenience and general welfare. Higher standards may be imposed by a franchise agreement or a permit.

### **3.05.040 No Hauling without a Franchise or Permit.**

Except as expressly provided in this subchapter, it is unlawful for any person to collect, transport over any of the streets of the Town, or dispose of, any Solid Waste generated or accumulated in the Town of Colma, including Recyclables and Organic Waste, unless such person has entered

into a franchise agreement with or has obtained a permit issued by the Town to collect and dispose of one or more types of Solid Waste, Recyclables, or Organic Waste.

### **3.05.050 Illegal Dumping.**

It is unlawful to dump or place Solid Waste, including Recyclables, Organic Waste, Special Waste or Hazardous Waste materials on any lot, land, street, avenue, alley, creek or highway within the Town, except to the extent that a temporary accumulation of such materials is allowed in a particular place under the provisions of a permit issued by the Town.

### **3.05.060 Duty to Properly Store, Dispose of Solid Waste, and Sort Recyclables, and Organic Waste.**

(a) It is unlawful to keep, deposit, bury or dispose of any Solid Waste (including Recyclables and Organic Waste), Special Waste and Hazardous Waste materials in or upon any public property, street, alley, sidewalk, gutter, park or upon the banks of any stream or creek in the Town, or in or upon any of the waters thereof, except as provided in this subchapter, and every person in the Town who disposes of Solid Waste materials shall dispose of same only in the manner provided in this subchapter.

(b) It is unlawful to keep, deposit, bury or dispose of any Solid Waste (including Recyclables and Organic Waste), Special Waste and Hazardous Waste materials in or upon any private property without the permission of the owner or occupant of that property. Each person who disposes of Solid Waste materials on private property shall dispose of same only in the manner provided in this subchapter.

(c) It is unlawful to store Solid Waste in such a manner so as to promote the propagation, harborage, attraction of vectors, or the creation of a nuisance, or dispose of refuse except as provided in this subchapter.

(d) Each person owning, operating, occupying or in charge of any vacant or occupied premises, business establishment, industry or other property in the Town shall be responsible for the safe and sanitary storage and disposal of Solid Waste (including Recyclables and Organic Waste), special waste and hazardous waste accumulated on the property.

### **3.05.070 Mandatory Subscription to Solid Waste, Recyclables, and Organic Waste Collection Services.**

(a) Each person owning, operating, occupying or in charge of any occupied premises, business establishment, industry or other property in the Town shall subscribe to Solid Waste, Recyclables, an Organic Waste collection service provided by an Franchisee or Permittee in compliance with the provisions of this subchapter.

(b) Single-Family Organic Waste Generators shall subscribe to the Town's Organic Waste collection services for all Organic Waste. Town or its Designee shall have the right to review the number and size of a generator's containers to evaluate adequacy of capacity provided for each type of collection service for proper separation of materials and containment of materials; and, Single-Family generators shall adjust its service level for its collection services as requested by the Town or its Designee.

(c) Generators that are Commercial Businesses, including Multi-Family Residential Dwellings, shall subscribe to Solid Waste, Recyclables, and Organic Waste collection service provided by an Franchisee or Permittee in compliance with the provisions of this subchapter, unless it receives a waiver under Section 3.05.130 or is otherwise exempt. Town or its Designee shall have the right to review the number and size of a generator's containers and frequency of collection to evaluate adequacy of capacity provided for each type of collection service for proper separation of materials and containment of materials; and, Commercial Businesses shall adjust their service level for their collection services as requested by the Town or their Designee.

(d) It is unlawful to arrange for Solid Waste, Recyclables, or Organic Waste collection services provided by any Franchisee or Permittee not holding a valid franchise or permit issued by the Town, whether such services are provided on an ongoing basis, as needed, or with any other frequency.

### **3.05.080 Design Requirements.**

The design of any new, substantially remodeled, or expanded building or other facility shall provide for the proper storage and collection of Solid Waste, Recyclables, and Organic Waste, and must be approved by the Building Official prior to commencement of construction.

### **3.05.090 Maintenance and Use of Containers.**

(a) *Preparation of Solid Waste.* All Solid Waste, including Recyclables and Organic Waste, shall be drained of free liquid before being deposited for collection.

(b) *Unlawful Use.*

(1) It is unlawful to use Solid Waste, Recycling, or Organic Waste containers provided by a Franchisee or Permittee for any purpose other than to facilitate collection by such Franchisee or Permittee.

(2) It is unlawful to use Solid Waste, Recycling, or Organic Waste containers provided by the owner or occupant of property for any purpose other than to facilitate collection of Solid Waste by the owner or occupant of the property or by persons authorized by the owner or occupant to use such containers.

(c) *Maintaining Solid Waste, Recycling, or Organic Waste Containers.* It is the duty of each person subscribing to services for the collection and handling of Solid Waste, Recyclables, and Organic Waste to maintain receptacles in a reasonably safe and secure manner; and all such receptacles shall be so placed and kept at the designated collection location so as to be readily accessible for removal and collection therefrom and placed such that they will not be a public nuisance or in any degree offensive.

(d) *Containers.* All Solid Waste, Recyclables, and Organic Waste containers for residents or businesses must be non-absorbent, water-tight, vector-resistant, durable, easily cleanable, and designed for safe handling. Containers should be of an adequate size and in sufficient numbers to contain, without overflowing, all the Solid Waste, Recyclables, and Organic Waste that a residence, business or other establishment generates within the designated removal period. Containers when filled shall not exceed weight limits established by the Hauler. Containers shall

be maintained in a clean, safe, sound condition, free from putrescible residue, and may not have ragged or sharp edges, or have any other defect liable to hamper or injure any person collecting the contents thereof.

(e) *Separation of Solid Waste from Recyclables and Organics.* Generators shall separate Solid Wastes from Recyclables and Organic Waste and are to be placed in separate containers. Solid Waste shall not be commingled with Recyclables or Organic Waste, and Recyclables shall not be commingled with Organic Waste. Generators shall place designated materials in designated containers and shall not place Prohibited Container Contaminants in collection containers. Using the three-container Collection service (Blue Container, Green Container, and Gray Container), Generator shall place Source Separated Green Container Organic Waste, including Food Waste, in the Green Container; Source Separated Recyclable Materials in the Blue Container; and Gray Container Waste in the Gray Container. Generators shall not place materials designated for the Gray Container into the Green Container or Blue Container.

(f) *Points of Collection.* Containers shall be placed for collection at ground level on the property, not within the right-of-way of a street or alley, and accessible to not more than forty feet from the side of the street or alley from which collection is made, provided that containers may be placed for collection at other than ground level and at a distance of more than forty feet when an additional payment for the extra service is agreed upon with the operator. Notwithstanding the provisions of this subsection, Containers used in automated collection service may be placed in a street or alley as directed by the Hauler.

(g) *Additional Requirements for Commercial Businesses.* Commercial Businesses (including Multi-Family Residential Dwellings) shall:

- (1) Supply and allow access to adequate number, size, and location of Town's Blue Container, Green Container, and Gray Container collection containers with sufficient labels that include language and or graphic images showing the materials accepted, and materials that are prohibited in that Container. (conforming with Sections 3.05.090(g)(3)(A) and 3.05.090(g)(3)(B) below) for employees, contractors, tenants, and customers, consistent with Town's Blue Container, Green Container, and Gray Container collection service.
- (2) Provide containers for collection of Source Separated Green Container Organic Waste and Source Separated Recyclable Materials in all indoor and outdoor areas where disposal containers are provided for customers, for materials generated by that business (excludes Multi-Family Residential Dwellings). If a Commercial Business does not generate any of the materials that would be collected in one type of container, then the business does not have to provide that container in all areas where disposal containers are provided for customers.
- (3) Pursuant to 14 CCR Section 18984.9(b), these Containers provided by the business shall have either:
  - (A) A body or lid that is color compliant: Green for Source Separated Organic Waste including Food Waste; Blue for Source Separated Recyclable Materials, Gray for non-Organic Waste and non-Recyclable Waste. A Business is not required to replace functional containers, including

containers purchased prior to January 1, 2022, that do not comply with the requirements of the subsection prior to the end of the useful life of those containers, or prior to January 1, 2036, whichever comes first.

- (B) Container labels that include language and or graphic images showing the materials accepted, and the materials that are prohibited in that Container and or Containers with imprinted text or graphic images that indicate the materials accepted and materials prohibited in the container. Pursuant 14 CCR Section 18984.8, the container labeling requirements are required on new containers commencing January 1, 2022.
- (4) Through education, training, Inspection, and/or other measures to the extent possible (excluding Multi-Family Residential Dwellings), prohibit employees from placing materials in a Container not designated for those materials per the Town's Blue Container, Green Container, and Gray Container collection service.
- (5) Periodically inspect Blue Containers, Green Containers, and Gray Containers for contamination and inform employees if containers are contaminated and of the requirements to keep Contaminants out of those containers pursuant to 14 CCR Section 18984.9(b)(3) (excluding Multi-Family Residential Dwellings).
- (6) Annually provide information to employees, contractors, tenants, and customers about Organic Waste Recovery requirements and about proper sorting of Source Separated Green Container Organic Waste and Source Separated Recyclable Materials.
- (7) Provide education information before or within fourteen (14) days of occupation of the premises to new tenants that describes requirements to keep Source Separated Green Container Organic Waste and Source Separated Recyclable Materials separate from Gray Container Waste (when applicable) and the location of containers and the rules governing their use at each property.
- (8) Provide access for Town or its Designee to their properties during all Inspections conducted in accordance with Section 3.05.330 to confirm compliance with the requirements of this subchapter.
- (9) Cooperate with Town's or its Designee's Inspection of the contents of containers for Prohibited Container Contaminants.
- (10) Nothing in this Section prohibits a generator from preventing or reducing waste generation, managing Organic Waste on site, or using a Community Composting site pursuant to 14 CCR Section 18984.9(c).
- (11) Commercial Businesses that are Tier One or Tier Two Commercial Edible Food Generators shall comply with Food Recovery requirements, pursuant to Section 3.05.190.

**3.05.100 Unauthorized Removal of Solid Waste, Recyclables, or Organic Waste from Containers.**

No person, other than the owner or occupant of premises generating the Solid Waste, Recyclables, and Organic Waste that has been placed for collection in a container, or an employee or agent of the Franchisee or Permittee, shall tamper with any Container or remove or scavenge its contents. Among other things, this section prohibits the scavenging of Recyclable Materials from any Container in which they have been placed for collection, but shall not be deemed to prohibit the generator of Recyclable Materials from selling or donating such materials to a buyer or donee other than a Hauler.

### **3.05.110 Disposal and Handling of Special Waste.**

(a) *Contagious Disease Refuse.* The removal of clothing, bedding or other Refuse from homes or other places where highly infectious or contagious diseases have prevailed should be performed under the supervision and direction of the County Health Officer. Such Refuse shall not be placed in Containers for regular Collection.

(b) *Inflammable or Explosive Refuse.* Highly inflammable or explosive material shall not be placed in containers for regular collection or refuse, but shall be disposed of as directed by the Colma Fire District Chief at the expense of the owner or processor thereof.

(c) *Special Waste and Universal Waste.* Notwithstanding any other provision of this subchapter, it shall be unlawful for any person, firm or corporation to dispose of, discard or place any Special Waste or universal waste in any receptacle or container placed and intended for Collection and disposal by a Hauler, unless otherwise authorized by the Hauler. All Special Waste and universal waste shall be disposed of in compliance with applicable state laws and regulations.

### **3.05.120 Frequency of Collection.**

(a) No person owning, operating, occupying, or in charge of any premises, business establishment, industry or other property, vacant or occupied, in the Town shall permit, allow or suffer any garbage to be, remain, or accumulate on any such premises for any period longer than one week.

(b) Each person engaged in selling or furnishing food or drink to members of the public, whether as a primary business or incidental to another business, such as but not limited to bars, soda fountains, restaurants, and theaters, shall remove, or cause to be removed, all garbage accumulated in connection therewith as often as necessary as directed by the County Health Officer, but not less than one time each week.

### **3.05.130 Waivers.**

(a) *De Minimis Waivers.* The Town may waive a Commercial Business' obligation (including Multi-Family Residential Dwellings) to comply with some or all the Organic Waste requirements of this subchapter if the Commercial Business provides documentation that the business generates below a certain amount of Organic Waste material as described in Section 3.05.130(a)(2) below. Commercial Businesses requesting a de minimis waiver shall:

- (1) Submit an application specifying the services that they are requesting a waiver from and provide documentation as noted in Section 3.05.130(a)(2) below.



- (2) Provide documentation that either:
  - (A) The Commercial Business' total Solid Waste collection service is two cubic yards or more per week and Organic Waste subject to collection in a Green Container comprises less than 20 gallons per week per applicable container of the business' total waste; or,
  - (B) The Commercial Business' total Solid Waste collection service is less than two cubic yards per week and Organic Waste subject to collection in a Green Container comprises less than 10 gallons per week per applicable container of the business' total waste.
- (3) Notify Town if circumstances change such that Commercial Business's Organic Waste exceeds threshold required for waiver, in which case waiver will be rescinded.
- (4) Provide written verification of eligibility for de minimis waiver every 5 years if Town has approved de minimis waiver.

(b) Physical Space Waivers. The Town may waive a Commercial Business' or property owner's obligations (including Multi-Family Residential Dwellings) to comply with some or all of the Recyclable Materials and/or Organic Waste collection service requirements if the Town has evidence from its own staff, a hauler, licensed architect, or licensed engineer demonstrating that the premises lacks adequate space for the collection Containers required for compliance with the Organic Waste collection requirements.

A Commercial Business or property owner may request a physical space waiver through the following process:

- (1) Submit an application form specifying the type(s) of collection services for which they are requesting a compliance waiver.
- (2) Provide documentation that the premises lacks adequate space for Blue Containers and/or Green Containers including documentation from its hauler, licensed architect, or licensed engineer.
- (3) Provide written verification to Town that it is still eligible for physical space waiver every five years if Town has approved application for a physical space waiver.

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**ARTICLE 4. SUBCHAPTER 3.05, DIVISION 2 – RECYCLING AND ORGANIC WASTE COLLECTION**

The following sections are added to subchapter 3.05, Collection of Solid Waste, Recyclables, and Organic Waste, of the Colma Municipal Code as "Division 2 – Recycling and Organic Waste Collection."

## **Subchapter 5.04 - Collection of Solid Waste, Recyclables, and Organic Waste**

### *Division 2: Recycling and Organic Waste Collection*

#### **3.05.140 Mandatory Recycling and Organic Waste Collection Services.**

(a) Each owner or operator of a Commercial Business shall arrange for Recycling and from a Franchisee or Permittee. Each owner or operator of a Commercial Business shall arrange for Organic Waste Collection from a Franchisee. Each owner or operator of a Commercial Business shall Source-separate Recyclable Materials and Organic Waste from Solid Waste and subscribe to Recycling and Organic Waste Collection services that includes collection, self-haul, or make other arrangements for the pick-up of Recyclable Materials or Organic Waste; or

(b) A property owner of a Multi-Family Residential Dwelling may require tenants to source separate their Recyclable Materials and Organic Waste to aid in compliance with this section.

#### **3.05.150 Preparation and Ownership of Recyclables and Organic Waste.**

(a) Containers containing Recyclable Materials for residential units shall be placed at curbside for collection by the Franchisee or Permittee, and Containers containing Organic Waste for residential units shall be placed at curbside for Collection by the Franchisee, but Containers shall not be placed at curbside earlier than twelve hours prior to the date and time for scheduled collection, nor left remaining at curbside longer than twelve hours following the date and time for scheduled Collection.

(b) Containers containing Recyclable Materials for a Multi-Residential Dwelling, Commercial and/or institutional locations shall be of a size and serviceability agreed to by the Franchisee or Permittee and thereafter placed at the designated collection location. Containers containing Organic Waste for a Multi-Residential Dwelling, Commercial and/or institutional locations shall be of a size and serviceability agreed to by the Franchisee and thereafter placed at the designated Collection location.

(c) From the time of placement of Recyclable Materials at a designated location for collection of Recyclable Materials, or in any Container used for Recycling provided by a Franchisee or Permittee, those Recyclable Materials shall be and become the property of the Franchisee or Permittee. From the time of placement of Organic Waste at a designated location for collection of Organic Waste, or in any Container used for Organic Waste collection provided by a Franchisee, that Organic Waste shall be and become the property of the Franchisee.

#### **3.05.160 Collection of Recyclables or Organic Waste By Unauthorized Persons Prohibited.**

(a) It is unlawful for any person, business or other entity to Collect Recyclable Materials or Organic Waste in the Town, except as otherwise provided in this subchapter.

(b) Any person engaged in the unauthorized Collection of Recyclable Materials or Organic Waste is guilty of an infraction. Any such unauthorized collections from one or more locations within the Town shall constitute a separate and distinct offense.

(c) As an alternative to criminal enforcement, both the Town and the Franchisee or Permittee have the independent authority to civilly enforce any provisions of this subchapter, to and including the authority to seek treble damages pursuant to California Government Code Section 66764. The City Manager may invoke these remedies, or any of them, whenever he or she deems it appropriate.

**3.05.170 Duty to Properly Use Recycling and Organic Waste Containers.**

(a) Each person subscribing to Recycling collection service shall, to the greatest extent practical, make use of the Recyclable Materials collection service provided by the Franchisee or Permittee, by separating Recyclable Materials from Refuse and Organic Waste and placing the Recyclable Materials in the container provided by the Franchisee or Permittee for this purpose.

(b) Each person subscribing to Organic Waste collection service shall, to the greatest extent practical, make use of the Organic Waste collection service provided by the Franchisee, by separating Organic Waste from Refuse and Recyclable Materials and placing the Organic Waste in the Container provided by the Franchisee for this purpose.

(c) Recyclable Materials for donation, sale, or collection by or to any person or entity, other than a Franchisee or Permittee, may not be stored or transferred by use of the Recycling Containers described in this subchapter, or any other containers used for Recycling provided by the Franchisee or Permittee. Storage of Recyclable Materials at the designated collection location other than for pickup by the Franchisee or Permittee as defined herein, is prohibited.

**3.05.180 Sale or Donation of Recyclable Materials or Organic Waste.**

Nothing in this subchapter shall prohibit the generator of Recyclable Materials or Organic Waste from selling or donating such materials to a buyer or donee, provided that, if the Town has awarded an exclusive franchise for the collection and disposal of Solid Waste, Recyclables, or Organic Waste, a generator may not pay any other person other than a Franchisee for collecting, Recycling, or disposing of Recyclables or Organic Waste.

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**ARTICLE 5. SUBCHAPTER 3.05, DIVISION 3 – EDIBLE FOOD RECOVERY**

The following sections are added to subchapter 3.05, Collection of Solid Waste, Recyclables, and Organic Waste, of the Colma Municipal Code as “Division – Edible Food Recovery.”

**Subchapter 5.04 - Collection of Solid Waste, Recyclables, and Organic Waste**

*Division 3: Edible Food Recovery*

**3.05.190 Requirements for Commercial Edible Food Generators.**

(a) Tier One Commercial Edible Food Generators must comply with the requirements of this Section commencing January 1, 2022, and Tier Two Commercial Edible Food Generators must comply commencing January 1, 2024, pursuant to 14 CCR Section 18991.3.

(b) Large Venue or Large Event operators not providing food services, but allowing for food to be provided by others, shall require Food Facilities operating at the Large Venue or Large Event to comply with the requirements of this Section, commencing January 1, 2024.

(c) Tier One and Tier Two Commercial Edible Food Generators shall comply with the following requirements:

- (1) Arrange to recover the maximum amount of Edible Food that would otherwise be disposed.
- (2) Use the CalRecycle Model Food Recovery Agreement or the contractual elements contained in the Requirements for Food Recovery Organizations and Food Recovery Services section of this subchapter to contract with, or otherwise enter into a written agreement with Food Recovery Organizations or Food Recovery Services for:
  - (A) the collection of Edible Food for Edible Food Recovery from the Tier One or Tier Two Commercial Edible Food Generator's premises; or,
  - (B) the acceptance of Edible Food that the Tier One or Tier Two Commercial Edible Food Generator self-hauls to the Food Recovery Organization.
- (3) Contract with Food Recovery Organizations and Food Recovery Services able to demonstrate a positive reduction in greenhouse gas emissions from their Edible Food Recovery activity. A list of Food Recovery Organizations and Food Recovery Services is available on the County of San Mateo Office of Sustainability website.
- (4) Shall not intentionally spoil Edible Food that is capable of being recovered by a Food Recovery Organization or a Food Recovery Service.
- (5) Allow Town's enforcement entity or its Designee for Edible Food Recovery to access the premises and inspect procedures and review records related to Edible Food Recovery and/or provide them electronically if requested by the Town or the Designee for Edible Food Recovery.
- (6) Keep records that include the following information:
  - (A) A list of each Food Recovery Organization or a Food Recovery Service that collects or receives Edible Food from the Tier One or Tier Two Commercial Edible Food Generator pursuant to a contract or written agreement as required by this subchapter.
  - (B) A copy of all contracts or written agreements established under the provisions of this subchapter.
  - (C) A record of the following information for each of those Food Recovery Services or Food Recovery Organizations:
    - (i) The name, address and contact information of the Food Recovery Service or Food Recovery Organization.

- (ii) The types of food that will be collected by or self-hauled to the Food Recovery Service or Food Recovery Organization.
  - (iii) The established schedule or frequency that food will be collected or self-hauled.
  - (iv) The quantity of food, measured in pounds recovered per month, collected or self-hauled to a Food Recovery Service or Food Recovery Organization for Food Recovery.
- (7) No later than June 30th of each year commencing no later than July 1, 2022 for Tier One Commercial Edible Food Generators and July 1, 2024 for Tier Two Commercial Edible Food Generators, they shall provide an annual Edible Food Recovery report to the Designee for Edible Food Recovery that includes, but is not limited to, the following information: a list of all contracts with Food Recovery Organizations and Food Recovery Services, the amount and type of Edible Food donated to Food Recovery Organizations and Food Recovery Services, the schedule of Edible Food pickup by Food Recovery Organizations and Food Recovery Services, a list of all types of Edible Food categories they generate, such as “baked goods,” that are not accepted by the Food Recovery Organizations and Food Recovery Services with whom they contract, the contact information for the manager and all staff responsible for Edible Food Recovery, and certification that all staff responsible for Edible Food Recovery have obtained a food handler card through an American National Standards Institute (ANSI) accredited training provider that meets ASTM International E2659-09 Standard Practice for Certificate Programs, such as ServSafe. Except for the food safety and handling training certification, Tier One and Tier Two Commercial Edible Food Generators may coordinate with their Edible Food Recovery contractors to supply this information. The Designee for Edible Food Recovery will assist in the preparation of these reports by providing guidance and a template located on the County of San Mateo Office of Sustainability website.
- (8) Mandate their Edible Food Recovery staff learn and follow the donation guidelines and attend trainings conducted by Food Recovery Organizations or Food Recovery Services with which they contract regarding best practices and requirements for the timely identification, selection, preparation, and storage of Edible Food to ensure the maximum amount of Edible Food is recovered and to avoid supplying food for collection that is moldy, has been improperly stored, or is otherwise unfit for human consumption.
- (9) Tier One and Tier Two Commercial Edible Food Generators who self-haul Edible Food shall require those transporting Edible Food for recovery to obtain a food handler card through an American National Standards Institute (ANSI) accredited training provider that meets ASTM International E2659-09 Standard Practice for Certificate Programs, such as ServSafe and follow the best practices and standards for proper temperature control, methods, and procedures for the safe handling and transport of food.

(d) Nothing in this subchapter shall be construed to limit or conflict with the protections provided by the California Good Samaritan Food Donation Act of 2017, the Federal Good Samaritan Act, or share table and school food donation guidance pursuant to Senate Bill 557 (Chapter 285, Statutes of 2017), as amended from time to time.

### **3.05.200 Requirements for Food Recovery Organizations and Services.**

(a) Food Recovery Services operating in the Town and collecting or receiving Edible Food directly from Tier One and/or Tier Two Commercial Edible Food Generators via a contract or written agreement established under the requirements of this subchapter, shall maintain the following records:

- (1) The name, address, and contact information for each Tier One and Tier Two Commercial Edible Food Generator from which the service collects Edible Food.
- (2) The quantity in pounds of Edible Food by type collected from each Tier One and Tier Two Commercial Edible Food Generator per month.
- (3) The quantity in pounds of Edible Food by type transported to each Food Recovery Organization or redistribution site per month.
- (4) The name, address, and contact information for each Food Recovery Organization or redistribution site that the Food Recovery Service transports Edible Food to for Edible Food Recovery.

(b) Food Recovery Organizations operating in the Town and collecting or receiving Edible Food directly from Tier One and/or Tier Two Commercial Edible Food Generators via a contract or written agreement established under the requirements of this subchapter, or receiving Edible Food from Food Recovery Services or from other Food Recovery Organizations, shall maintain the following records:

- (1) The name, address, and contact information for each Tier One and Tier Two Commercial Edible Food Generator, Food Recovery Service, or other Food Recovery Organization from which the organization collects or receives Edible Food.
- (2) The quantity in pounds of Edible Food by type collected or received from each Tier One or Tier Two Commercial Edible Food Generator, Food Recovery Service, or other Food Recovery Organization per month.
- (3) The name, address, and contact information for other Food Recovery Organizations or redistribution sites that the Food Recovery Organization transports Edible Food to for Edible Food Recovery.

(c) Food Recovery Organizations and Food Recovery Services operating in the Town shall inform Tier One and Tier Two Commercial Edible Food Generators from which they collect or receive Edible Food about California and Federal Good Samaritan Food Donation Act protection in written communications, such as in their contract or agreement established as required by this subchapter.

(d) Commencing no later than July 1, 2022, Food Recovery Organizations and Food Recovery Services operating in the Town and collecting or receiving Edible Food from Tier One and Tier Two Commercial Edible Food Generators or any other source shall report to the Designee for Edible Food Recovery the following: a detailed Edible Food activity report of the information collected as required under this subchapter, including weight in pounds by type and source of Edible Food, the schedule/frequency of pickups/drop-offs of Edible Food from/to each Edible Food source or redistribution site, brief analysis of any necessary process improvements or additional infrastructure needed to support Edible Food Recovery efforts, such as training, staffing, refrigeration, vehicles, etc., and an up to date list of Tier One and Tier Two Commercial Edible Food Generators with whom they have contracts or agreements established as required under this subchapter. The Designee for Edible Food Recovery will assist in the preparation of these reports by providing guidance and a template located on the County of San Mateo Office of Sustainability website. This Edible Food activity report shall be submitted quarterly, or at the discretion of the Designee for Edible Food Recovery, less frequently, and shall cover the activity that occurred since the period of the last submission.

(e) Food Recovery Organizations and Food Recovery Services operating in the Town shall contact the Designee for Edible Food Recovery to discuss the requirements of this subchapter before establishing new contracts or agreements with Tier One or Tier Two Commercial Edible Food Generators and to maintain existing contracts or agreements for the recovery of Edible Food with Tier One and Tier Two Commercial Edible Food Generators.

(f) In order to provide the required records to the State, the Town, or the Designee for Edible Food Recovery, and Tier One or Tier Two Commercial Edible Food Generators, contracts between Food Recovery Organizations and Food Recovery Services operating in the Town and Tier One and Tier Two Commercial Edible Food Generators shall either:

- (1) Use the CalRecycle Model Food Recovery Agreement and include a clause requiring the Food Recovery Organization or Food Recovery Service to report to the Tier One and Tier Two Commercial Edible Food Generators with whom they have contracts the annual amount of Edible Food recovered and to inform them of the tax benefits available to those who donate Edible Food to non-profits; or
- (2) Include in their contracts the following elements:
  - (A) List/description of allowable foods the Food Recovery Organization/Food Recovery Service will receive.
  - (B) List/description of foods not accepted by the Food Recovery Organization/Food Recovery Service.
  - (C) Conditions for refusal of food.
  - (D) Food safety requirements, training, and protocols.
  - (E) Transportation and storage requirements and training.
  - (F) A protocol for informing the Tier One or Tier Two Commercial Edible Food Generators of a missed or delayed pickup.

- (G) Notice that donation dumping is prohibited.
- (H) Provisions to collect sufficient information to meet the record-keeping requirements of this subchapter.
- (I) Fees/financial contributions/acknowledgement of terms for the pickup and redistribution of Edible Food.
- (J) Terms and conditions consistent with the CalRecycle Model Food Recovery Agreement.
- (K) Information supplying the Tier One or Tier Two Commercial Edible Food Generators with the annual amount of Edible Food recovered and informing them of the tax benefits that may be available to those who donate Edible Food to non-profits.
- (L) Contact name, address, phone number, and email for both responsible parties, including the current on-site staff responsible for Edible Food Recovery.
- (M) Food Recovery Organizations accepting self-hauling of Edible Food from Tier One and Tier Two Commercial Edible Food Generators must provide a schedule, including days of the week and acceptable times for drop-offs, and information about any limitation on the amount of food accepted, and/or the packaging requirements or other conditions of transport, such as, but not limited to, maintaining proper temperature control, and other requirements for the safe handling and transport of food, the self-hauler must follow for the Edible Food to be accepted.

(g) Food Recovery Organizations and Food Recovery Services operating in the Town shall demonstrate that all persons, including volunteers and contracted workers using their own vehicle, involved in the handling or transport of Edible Food, have obtained a food handler card through an American National Standards Institute (ANSI) accredited training provider that meets ASTM International E2659-09 Standard Practice for Certificate Programs, such as ServSafe.

(h) Food Recovery Organizations and Food Recovery Services operating in the Town shall use the appropriate temperature control equipment and methods and maintain the required temperatures for the safe handling of Edible Food recovered from Tier One and Tier Two Commercial Edible Food Generators for the duration of the transportation of the Edible Food for redistribution, including Edible Food transported by private vehicles.

(i) In order to ensure recovered Edible Food is eaten and to prevent donation dumping, Food Recovery Organizations and Food Recovery Services operating in the Town shall provide documentation that all redistribution sites which are not themselves Food Recovery Organizations to which they deliver Edible Food have a feeding or redistribution program in place to distribute, within a reasonable time, all the Edible Food they receive. Such documentation may include a website address which explains the program or pamphlets/brochures prepared by the redistribution site.



(j) Food Recovery Organizations and Food Recovery Services operating in the Town unable to demonstrate a positive reduction in GHG emissions for their Edible Food Recovery operational model cannot contract with Tier One and Tier Two Commercial Edible Food Generators in the Town for the purpose of recovering Edible Food as defined in this subchapter. Food Recovery Organizations and Food Recovery Services contracting to recover Edible Food from a Tier One and Tier Two Commercial Edible Food Generator for redistribution shall consult with the Town's Designee for Edible Food Recovery to document that their overall operational model will achieve a greenhouse gas emissions reduction. Such review may analyze route review, miles traveled for pick-up and redistribution, amount of food rescued, and the likelihood of consumption after redistribution.

(k) Food Recovery Organizations and Food Recovery Services operating in the Town shall visually inspect all Edible Food recovered or received from a Tier One and Tier Two Commercial Edible Food Generator. If significant spoilage is found, or if the food is otherwise found to be unfit for redistribution for human consumption, Food Recovery Organizations and Food Recovery Services shall immediately notify the Designee for Edible Food Recovery using the process found on the County of San Mateo Office of Sustainability's website. The notice shall include:

- (1) The type and amount, in pounds, of spoiled food or food unfit for redistribution for human consumption, or provide a photographic record of the food, or both.
- (2) The date and time such food was identified.
- (3) The name, address and contact information for the Tier One or Tier Two Commercial Edible Food Generator which provided the food.
- (4) The date and time the food was picked up or received.
- (5) A brief explanation of why the food was rejected or refused.
  - (A) Contracts between Tier One or Tier Two Commercial Edible Food Generators and Food Recovery Organizations or Food Recovery Services shall not include any language prohibiting Tier One or Tier Two Commercial Edible Food Generators from contracting or holding agreements with multiple Food Recovery Organizations or Food Recovery Services listed on the County of San Mateo Office of Sustainability website.

(l) Food Recovery Organizations and Food Recovery Services operating in the Town shall conduct trainings and develop educational material such as donation guidelines and handouts to provide instruction and direction to Tier One and Tier Two Commercial Edible Food Generators with whom they contract regarding best practices and requirements for the timely identification, selection, preparation, and storage of Edible Food to ensure the maximum amount of Edible Food is recovered and to avoid the collection of food that is moldy, has been improperly stored, or is otherwise unfit for human consumption.

(m) Edible Food Recovery Capacity Planning

- (1) Food Recovery Services and Food Recovery Organizations. To support Edible Food Recovery capacity planning assessments or other such studies, Food Recovery

Services and Food Recovery Organizations operating in the Town shall provide information and consultation to the Town and its Designee for Edible Food Recovery upon request, regarding existing, or proposed new or expanded, Edible Food Recovery capacity that could be accessed by the Town and its Tier One and Tier Two Commercial Edible Food Generators. A Food Recovery Service or Food Recovery Organization contacted by the Town, or its Designee for Edible Food Recovery shall respond to such requests for information within 60 days.

(n) Allow Town's enforcement entity or their Designee for Edible Food Recovery to access the premises and inspect procedures and review records related to Edible Food Recovery and/or provide them electronically if requested by the Town or the Designee for Edible Food Recovery.

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**ARTICLE 6. SUBCHAPTER 3.05, DIVISION 4 – REGULATION OF FRANCHISEES AND PERMITTEES, AND COLLECTION PRACTICES**

The following sections are added to subchapter 3.05, Collection of Solid Waste, Recyclables, and Organic Waste, of the Colma Municipal Code as "Division 4 – Regulation of Franchisees and Permittees, and Collection Practices."

**Subchapter 5.04 - Collection of Solid Waste, Recyclables, and Organic Waste**

*Division 4: Regulation of Franchisees and Permittees, and Collection Practices*

**3.05.210 Franchise to Collect Solid Waste, Recyclables, and Organic Waste.**

The City Council may, with or without having invited bids therefor, enter into an exclusive contract with any Responsible Person to collect and handle any or all Solid Waste, including Recyclables and Organic Waste, within the Town. The Franchisee with whom the Town has entered into an exclusive franchise agreement shall have the exclusive right to collect, convey, and transport Solid Waste, including Recyclables and Organic Waste, in, along, or over the public streets, alleys, and highways in the Town, or to designated properties or areas in the Town, for so long as the Franchisee is not in material breach of any term of the franchise agreement. A Franchisee with a franchise agreement shall pay the Town the franchise fee required under the franchise agreement; no permit fee shall be required of such Franchisee.

The Franchisee shall, through written notice to the Town annually on or before October 1st identify the facilities to which they will transport Organic Waste including facilities for Source Separated Recyclable Materials, Source Separated Green Container Organic Waste, and Mixed Waste as defined in 14 CCR, Division 7, Chapter 12, Article 2.

Franchisees, Facility Operators and Community Composting Operations. Owners of facilities, operations, and activities that recover Organic Waste, including, but not limited to, Compost facilities, in-vessel digestion facilities, and publicly owned treatment works shall, upon the Town's request, provide information regarding available and potential new or expanded capacity at their facilities, operations, and activities, including information about throughput and permitted capacity necessary for planning purposes. Entities contacted by the Town, or their Designee shall respond within 60 days. Community Composting operators, upon the Town's request, shall provide information to the Town to support Organic Waste capacity planning, including, but not

limited to, an estimate of the amount of Organic Waste anticipated to be handled at the Community Composting operation. Entities contacted by the Town shall respond within 60 days.

### **3.05.220 Permit to Collect Solid Waste.**

Upon finding that it is in the best interests of the Town to do so, the City Council may grant a permit, good for one year, to any Responsible Person to collect and handle any or all Solid Waste from such properties or areas in the Town that are not eligible for service by a Franchisee operating under an exclusive franchise agreement, and to convey, and transport such Solid Waste in, along, or over the public streets, alleys, and highways in the Town. The City Council may renew the permit each year if the permittee is not in material default of any provisions in its existing permit and renewal is in the best interests of the Town. The permittee shall pay the Town an annual permit fee set forth in the Master Fee Schedule.

### **3.05.230 Permit to Collect Recyclables.**

Upon finding that it is in the best interests of the Town to do so, the City Council may grant a permit, good for one year, to any Responsible Person to provide collect Recyclables only from any properties or areas in the Town, and to convey, and transport such Recyclables in, along, or over the public streets, alleys, and highways in the Town. Thereafter, the City Manager may renew the permit each year if the Permittee is not in material default of any provisions in its existing permit and renewal is in the best interests of the Town. A denial of a request to renew a Permit to Collect Recyclables may be appealed to the City Council in accordance with Colma Municipal Code section 1.02.270. The Permittee shall pay the Town an annual permit fee set forth in the Master Fee Schedule.

### **3.05.240 Franchisee or Permittee with Continuation Rights.**

(a) Nothing in this subchapter shall affect the continuation rights granted by section 49520 of the California Public Resources Code to any Franchisee or Permittee, provided that the Franchisee or Permittee shall have paid all required fees and is not in material breach of any term of the permit or franchise under which the Franchisee or Permittee is operating. Any Franchisee or Permittee claiming continuation rights shall be responsible for demonstrating to the Town how those rights have been acquired, and shall provide to the Town a list of that Hauler's customers as of the date upon which continuation rights are first claimed.

(b) To the extent that a Hauler is operating under continuation rights granted by section 49520 of the California Public Resources Code, and the Town gave such Hauler notice of termination of continuation rights prior to November 9, 2010, such Hauler may not commence service to any new customers from and after the effective date of any new Solid Waste, Recyclables or Organic Waste collection franchise granted by the Town.

### **3.05.250 Authorization for Haulers of Electronics Waste (E-waste).**

An approved E-Waste Recycler or Hauler may, without obtaining a permit, collect E-waste, including computers, televisions, copiers, fax machines, stereos and VCRs, that has been left at either the curbside in a marked container or a drop-off site, provided that such Recycler or Hauler has provided to the City Clerk its Covered Electronic Waste Identification (CEWID) number prior to collection of any E-waste.

### **3.05.260 Self-Haulers and Other Exemptions.**

(a) Nothing in this subchapter shall prohibit a self-hauler from personally collecting, conveying, Recycling, processing or disposing of such Solid Waste, Recyclables or Organic Waste without obtaining the permit required herein, provided that the self-hauler complies with other provisions of this subchapter and any other applicable law.

(b) Nothing herein contained shall prevent any person, business or other entity from allowing Recyclable Materials or Organic Waste to be picked up, dropped off, or otherwise donated to any Charitable Entity or community composting facility.

(c) Nothing herein contained shall inhibit, regulate or restrict any Recycling center, nonprofit dropoff program or Recycling processor as permitted by the Solid Waste Management Resource and Recovery Act of 1972 or the California Beverage Container Recycling and Litter Reduction Act of 1986.

(d) Nothing herein shall prohibit a contractor from Recycling, re-using, or disposing of demolition and construction debris, provided that such contractor shall comply with all Town diversion, recordkeeping and reporting requirements set forth in this subchapter.

### **3.05.270 Terms of a Franchise or Permit.**

(a) A Franchise agreement or permit shall be in writing, naming the holder of the franchise or permit, and shall include such terms and conditions as the City Council shall establish to further the purposes of this subchapter, which may include but are not limited to:

- (1) Requirements pertaining to the manner, time and frequency of collection;
- (2) Requirements pertaining to collecting and handling Recyclable Materials or Organic Waste;
- (3) Indemnification and insurance provisions satisfactory to the Town;
- (4) Provisions requiring the Franchisee or Permittee to provide requested Solid Waste, Recycling, and Organic Waste diversion reports to the Town, cooperate with the city in reporting requirements, Solid Waste generation studies and the preparation of waste stream and container contamination audits, and to implement measures to reach the Recycling and organic waste diversion targets mandated by the Waste Management Act (California Public Resources Code Section 40000 et seq.), SB 1016, AB 341, AB 1826, and SB 1383, and their implementing regulations, as they may be amended from time to time; and
- (5) Reporting Requirements, as more fully described elsewhere in this subchapter.

### 3.05.280 Records and Reporting.

(a) Each Franchisee shall prepare the following reports and submit them to the City Manager within 45 days after the close of the reporting period:

- (1) A monthly *Service Complaints Report* containing all complaints by residents or businesses in the Town of Colma relating to service, including missed pickups, and a description of how each complaint was handled.
- (2) A biannual *AB 341/SB 1383 Report* on the implementation and monitoring of the legislation referenced in Section 3.05.270(a)(4), which shall include information about the:
  - (A) The number of businesses subject to AB 341 and the SB 1383 Regulations, modifications to service compared to the prior reporting period, and the related disposal and Recycling generated from each account and each account's address.
  - (B) Information about the businesses that are out of compliance with AB 341 and the SB 1383 Regulations and the legislation referenced in Section 3.05.270(a)(4).
- (3) A quarterly *Recycling and Disposal - by Sector - Report*, which shall include the amount of disposed Solid Waste, Recycled Materials, and Organic Waste from each of the three sectors: commercial, residential, and debris box service, the Recycling and Organic Waste Recycling rate for the commercial, residential sectors and debris box service and the total Recycling rate for the Town.
- (4) An annual *Recycling and Disposal by Sector-Cumulative Annual Report* that includes the residential, commercial and roll-off/debris box disposed and diverted amounts in a year-to-year comparison.
- (5) An annual *Household Hazardous Waste Report* to be sent to the Town prior to August 30 of each year that details the amount and type of Household Hazardous Waste that was collected in the Town.

(b) Each Hauler (and if applicable, the Permittee, as it relates to Organic Waste) shall prepare the following reports and submit them to the City Manager within 45 days after the close of the reporting period:

- (1) A monthly *Service Complaints Report* containing all complaints by residents or businesses in the Town relating to service, including missed pickups, and a description of how each complaint was handled.
- (2) A quarterly *Recyclable Materials Report*, which shall be submitted by the Hauler 45 days after the close of the reporting period, and which shall state for the reporting period:

- (A) Each location name and address serviced by Hauler, and the monthly Solid Waste, Recycling and Organic Waste subscription level for each customer;
- (B) Type and quantity of Recyclable Materials collected monthly, e.g., cardboard, paper, beverage containers, mixed Recyclables, wood waste and scrap metal, collected;
- (C) Type and quantity of Organic Waste collected monthly, e.g., green waste, food waste, and paper, collected;
- (D) The name of the Material Recovery Facility, authorized Recycling facility, or authorized processing facility where the Recyclable Materials and Organic Waste were delivered and processed; and
- (E) Colma Permit number (if applicable), address, phone number, contact person, email of Hauler.

### **3.05.290 Collection Practices.**

(a) *Collection of Solid Waste.* No person may convey Solid Waste, including Recyclables and Organic Waste, over the streets of the Town except in equipment that is water-tight, vector-resistant, durable, easily cleanable and designed for safe hauling, and so operated as to prevent offensive odors escaping there from and garbage from being blown, dropped or spilled.

(b) *Hauler vehicles.* No Hauler shall collect, convey over the streets and alleys of the Town, dispose of any refuse except in equipment that is water-tight, vector-resistant, durable, easily cleanable and designed for safe hauling, and so operated as to prevent offensive odors escaping there from and garbage from being blown, dropped or spilled.

(c) *Disposal.* Disposal of Solid Waste, Recyclables and Organic Waste shall be made outside the Town limits, at a transfer station or disposal facility that is operating in compliance with all applicable laws and holds all permits and other authorizations required for its operations.

(d) *Equipment Safety.* Vehicles and equipment used in the transport of Solid Waste, Recyclables, and Organic Waste shall be constructed and maintained in such a manner to minimize the health and safety hazards to collection personnel and the public.

(e) *Equipment Parking.* For reasons of nuisance and vector problems, uncleaned Solid Waste collection vehicles containing putrescible material shall not be stored on public streets or roads except under emergency conditions. The Hauler must designate a location where the vehicles will be parked when not in service.

(f) *Identification of Hauler.* Each vehicle used for the collection and transport of Solid Waste, Recyclables, and Organic Waste shall be clearly marked with the name of the agency or firm operating the vehicle.

(g) *Time of Collection.* No person shall remove any Solid Waste, Recyclables, or Organic Waste between the hours of 5:00 p.m. and 2:30 a.m. the following date. A Hauler shall provide regular

collection service, in compliance with any schedule established by the franchise between the Hauler and the Town, or permit issued by the Town, and the requirements of this subchapter.

### **3.05.300 Delivery and Recycling and Disposal Requirements.**

(a) Solid Waste other than Recyclables or Organic Waste may only be delivered to a licensed landfill site or licensed transfer station for disposal.

(b) Recyclable Materials may only be delivered, after having been separated from other Solid Wastes, to a material recovery facility (MRF) or other authorized Recyclable collection facility.

(c) Organic Waste may only be delivered to an approved composting facility or a facility that allows diversion credit for the delivered organics materials.

(d) Construction and Demolition Debris may only be delivered to certified construction and demolition Recycling facility or other authorized collection site. The Town's Construction and Demolition ordinance reporting requirements for projects in Colma remain in full effect and the reporting requirements in the subchapter are not modified.

### **3.05.310 Modification or Revocation.**

The City Council may modify or revoke a franchise or permit to collect Solid Waste, Recyclables, or Organic Waste for failure to comply with any provision of this subchapter.

### **3.05.320 Franchisee's Existing Rights.**

Nothing in this subchapter shall modify, limit, or abrogate in any manner any franchise or permit previously granted or extended by the Town, or the existing right of a person or business to sell or donate its Recyclable Materials or Organic Waste.

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## **ARTICLE 7. SUBCHAPTER 3.05, DIVISION 5 – INSPECTIONS AND ENFORCEMENT**

The following sections are added to subchapter 3.05, Collection of Solid Waste, Recyclables, and Organic Waste, of the Colma Municipal Code as "Division 5 – Inspections and Enforcement."

### **Subchapter 5.04 - Collection of Solid Waste, Recyclables, and Organic Waste**

#### *Division 5: Inspections and Enforcement*

### **3.05.330 Inspections and Investigations**

(a) Town representatives and/or Designee, including the Designee for Edible Food Recovery are authorized to conduct Inspections and investigations, at random or otherwise, of any collection container, collection vehicle loads, or transfer, processing, or disposal facility for materials collected from generators, or Source Separated materials to confirm compliance with this subchapter by Organic Waste Generators, Commercial Businesses (including Multi-Family Residential Dwellings), property owners, Tier One and Tier Two Commercial Edible Food Generators, haulers, Self-Haulers, Food Recovery Services, and Food Recovery Organizations, subject to applicable laws. This Section does not allow Town to enter the interior of a private

residential property for Inspection. Town may conduct container Inspections for Prohibited Container Contaminants using Remote Monitoring, and Commercial Businesses shall accommodate and cooperate with the Remote Monitoring.

(b) Regulated entity shall provide or arrange for access during all Inspections (except for residential property interiors) and shall cooperate with the Town's employee, Designee or Designee for Edible Food Recovery during such Inspections and investigations. Such Inspections and investigations may include confirmation of proper placement of materials in containers, Edible Food Recovery activities, records, or any other requirement of this subchapter described herein. Failure to provide or arrange for: (i) access to an entity's premises; (ii) installation and operation of Remote Monitoring equipment (optional); or (iii) access to records for any Inspection or investigation is a violation of this subchapter and may result in penalties described.

(c) Town or its Designee are authorized to conduct Inspections and investigations, at random or otherwise, of any collection container, collection vehicle loads, or transfer, processing, or disposal facility for materials collected from generators, or Source Separated materials to confirm compliance with this subchapter by Organic Waste Generators, Commercial Businesses (including Multi-Family Residential Dwellings), property owners, Commercial Edible Food Generators, haulers, Self-Haulers, Food Recovery Services, and Food Recovery Organizations, subject to applicable laws.

(d) The regulated entity shall provide or arrange for access during all Inspections (except for residential property interiors) and shall cooperate with the Town's employee or its designated entity/Designee during such Inspections and investigations. Such Inspections and investigations may include confirmation of proper placement of materials in containers, Edible Food Recovery activities, records, or any other requirement of this subchapter described herein. Failure to provide or arrange for: (i) access to an entity's premises; access to records for any Inspection or investigation is a violation of this subchapter and may result in penalties described.

(e) Any records obtained by the Town, or its Designee during its Inspections and other reviews shall be subject to the requirements and applicable disclosure exemptions of the Public Records Act as set forth in Government Code Section 6250 et seq.

(f) Town or its Designee are authorized to conduct any Inspections or other investigations as reasonably necessary to further the goals of this subchapter, subject to applicable laws.

(g) Town or its Designee shall receive written complaints from persons regarding an entity that may be potentially non-compliant with SB 1383 Regulations, including receipt of anonymous complaints.

### **3.05.340 Enforcement.**

(a) Violation of any provision of this subchapter shall constitute grounds for issuance of a Notice of Violation and assessment of a fine by a Town Enforcement Official, Designee for Edible Food Recovery, or representative. Enforcement Actions under this subchapter are issuance of an administrative citation and assessment of a fine. The Town's procedures on imposition of administrative fines under Section 2.01.160 et seq. shall govern the imposition, enforcement, collection, and review of administrative citations issued to enforce this subchapter and any rule



or regulation adopted pursuant to this subchapter, except as otherwise indicated in this subchapter.

(b) Responsible Entity for Enforcement.

- (1) Enforcement pursuant to this subchapter may be undertaken by the Town Enforcement Official, which may be the city manager or their designated entity or combination thereof.
- (2) Enforcement may also be undertaken by a Regional or County Agency Enforcement Official, Town's franchised Hauler, or other Designee in consultation with Town Enforcement Official.
  - (A) Town Enforcement Official, Regional or County Agency Enforcement Official will interpret subchapter; determine the applicability of waivers, if violation(s) have occurred; implement Enforcement Actions; and, determine if compliance standards are met.
  - (B) Town Enforcement Official(s), Regional Agency Enforcement Official, or Designee for Edible Food Recovery may issue Notices of Violation(s).

(c) Process for Enforcement.

- (1) Town Enforcement Official, the Town's franchised Hauler or Regional or County Enforcement Officials and/or Town's Designee for Edible Food Recovery will monitor compliance with the subchapter randomly and through Compliance Reviews, Route Reviews, investigation of complaints, and an Inspection program.
- (2) Town or its Designee for Edible Food Recovery may issue an official notification to notify regulated entities of its obligations under this subchapter.
- (3) The Town or its Designee for Edible Food Recovery will issue a Notice of Violation to any Tier One or Tier Two Commercial Edible Food Generator found to have Edible Food in any waste container or to any Food Recovery Organization or Food Recovery Service found to have Edible Food recovered from a Tier One or Tier Two Edible Food Generator in a waste collection container which has not been documented by a notice of significant spoilage as required in this subchapter. Such notice will be provided by email communication immediately upon identification of the violation or within three (3) calendar days after determining that a violation has occurred. If the Town or its Designee for Edible Food Recovery observes Edible Food in a Tier One or Tier Two Commercial Edible Food Generator, or Food Recovery Organization, or Food Recovery Service waste container on more than two (2) consecutive occasion(s), the Town or its Designee for Edible Food Recovery may assess an administrative citation and fine, pursuant to the Edible Food Recovery penalties provisions contained in Section 1.05.020 et. seq., on the Tier One or Tier Two Commercial Edible Food Generator, Food Recovery Organization, or Food Recovery Service.

- (4) Except for violations of generator contamination of container contents, Town shall issue a Notice of Violation requiring compliance within 60 days of issuance of the notice.
- (5) Absent compliance by the respondent within the deadline set forth in the Notice of Violation, Town shall commence an action to impose penalties, via an administrative citation and fine, pursuant to Sections 1.05.020 and 2.01.160 et seq.

For the purposes of Edible Food Recovery, the Designee for Edible Food Recovery shall commence an action to impose penalties, via an administrative citation and fine, pursuant to the Edible Food Recovery penalties provision contained in this subchapter.

Notices shall be sent to "owner" at the official address of the owner maintained by the tax collector for the Town or if no such address is available, to the owner at the address of the dwelling or Commercial property or to the party responsible for paying for the collection services, depending upon available information.

(d) Violations and Penalty Amounts for Types of Violations.

- (1) Any person violating any of the provisions of this subchapter which result in noncompliance with the SB 1383 Regulations, shall be subject to the fines set forth in section 1.05.020 et seq. of the Colma Municipal Code.
- (2) For violations other than Section 3.05.340(d)(1):
  - (A) Any person violating this subchapter shall be guilty of a misdemeanor, which shall be punishable as set forth in Section 1.05.010 et seq.
  - (B) Keeping or maintaining any property or condition in violation of this subchapter is declared to be a public nuisance, which may be abated pursuant to the procedures set forth in the Property Maintenance and Nuisance Abatement subchapter of the Town of Colma (Colma Municipal Code, subchapter 2.01).

(e) Compliance Deadline Extension Considerations.

The Town may extend the compliance deadlines set forth in a Notice of Violation issued in accordance with this section if it finds that there are extenuating circumstances beyond the control of the respondent that make compliance within the deadlines impracticable, including the following:

- (1) Acts of God such as earthquakes, wildfires, flooding, and other emergencies or natural disasters.
- (2) Delays in obtaining discretionary permits or other government agency approvals; or,

- (3) Deficiencies in Organic Waste recycling infrastructure or Edible Food Recovery capacity and the Town is under a corrective action plan with CalRecycle pursuant to 14 CCR Section 18996.2 due to those deficiencies.

(f) Appeals Process.

Persons receiving an administrative citation containing a penalty for an uncorrected violation may request a hearing to appeal the citation pursuant to Section 2.01.230 et seq. A hearing will be held only if it is requested within the time prescribed and consistent with Town's procedures in the Town's codes for appeals of administrative citations. Evidence may be presented at the hearing. The Town will appoint a hearing officer who shall conduct the hearing and issue a final written order.

(g) Education Period for Non-Compliance

Beginning January 1, 2022 and through December 31, 2023, Town and or their Designee will conduct Inspections, Remote Monitoring, Route Reviews or waste evaluations, and Compliance Reviews, depending upon the type of regulated entity, to determine compliance, and if Town or their Designee determines that Organic Waste Generator, Self-Hauler, hauler, Tier One Commercial Edible Food Generator, Food Recovery Organization, Food Recovery Service, or other entity is not in compliance, it shall provide educational materials to the entity describing its obligations under this subchapter and a notice that compliance is required by January 1, 2022, and that violations may be subject to administrative civil penalties starting on January 1, 2024.

(h) Civil Penalties for Non-Compliance

Beginning January 1, 2024, if the Town determines that an Organic Waste Generator, Self-Hauler, franchised Hauler, Tier One or Tier Two Commercial Edible Food Generator, Food Recovery Organization, Food Recovery Service, or other entity is not in compliance with this subchapter, it shall document the noncompliance or violation, issue a Notice of Violation, and take Enforcement Action pursuant to this section, as needed.

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**ARTICLE 8. SEVERABILITY**

If any section, subsection, subdivision, paragraph, sentence, clause or phrase added by this ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses or phrases are declared unconstitutional, invalid or ineffective.

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**ARTICLE 9. CEQA COMPLIANCE**

The City Council finds that the changes made to the Codes are exempt from environmental review requirements pursuant to California Environmental Quality Act ("CEQA") Section 15378(b)(5) because adoption of this Ordinance is not a project. The Ordinance is an organizational or administrative activity of the government that will not result in direct or indirect physical changes in the environment.

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**ARTICLE 10. EFFECTIVE DATE**

This ordinance shall take effect on December 20, 2021.

### Certification 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 October 13, 2021, and adopted at a regular meeting of the City Council of the Town of Colma held on October 27, 2021, by the following vote:

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
Diana Colvin, Mayor

Attest: \_\_\_\_\_  
Caitlin Corley, City Clerk





# STAFF REPORT

TO: Mayor and Members of the City Council  
 FROM: Christopher J. Diaz, City Attorney  
 VIA: Brian Dossey, City Manager  
 MEETING DATE: October 13, 2021  
 SUBJECT: Resolution Making Findings and Determinations Under Assembly Bill 361 for the Continuation of Virtual Meetings

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## RECOMMENDATION

Staff recommends that the City Council adopt the following:

RESOLUTION MAKING FINDINGS AND DETERMINATIONS UNDER ASSEMBLY BILL 361  
 FOR THE CONTINUATION OF VIRTUAL MEETINGS

## EXECUTIVE SUMMARY

On March 17, 2020, in the face of the COVID-19 pandemic, Governor Gavin Newsom issued Executive Order N-29-20 suspending certain provisions of the Ralph M. Brown Act in order to allow for local legislative bodies to conduct their meetings completely telephonically or by other electronic means.

The provisions in the Brown Act that were suspended by the Governor's Executive Order are contained at Government Code Section 54953(b)(3) and require that when teleconferencing is used, outside of a statewide emergency, that the following occur:

- An agenda is required to be posted at all locations, including any teleconference locations
- Each teleconference location must be identified on the actual agenda
- Each teleconference location shall be accessible to the public
- A quorum of the legislative body must be in the jurisdiction

With the Governor's Executive Order, the four above requirements were suspended allowing councilmembers to not have to post an agenda at their teleconference location, not have to identify their location on the meeting agenda, not have to ensure public accessibility at the teleconference location, and the legislative body did not need a quorum in the jurisdiction. As

the City Council is well aware, this allowed City Council meetings to be conducted by Zoom with councilmembers, staff, and the public, all joining from remote virtual locations.

The suspension of certain provisions of the Brown Act was further extended by the Governor on June 11, 2021 by the issuance of Executive Order N-08-21 which continued to allow for complete virtual meetings until September 30, 2021.

With the expiration of the Governor's Executive Order along with the uncertainty that surrounded the Governor's potential recall last month, the State Legislature also took the remote meeting issue into its own hands through the adoption of Assembly Bill 361.

## **ANALYSIS**

On September 16, 2021, the Governor signed AB 361, which allows legislative bodies to meet virtually provided there is a state of emergency declared by the Governor, and either:

- (1) state or local officials have imposed or recommended measures to promote social distancing; or
- (2) the legislative body determines by majority vote that meeting in person would present imminent risks to the health and safety of attendees.

The Governor by executive order signed on September 20, 2021, suspended the effective date of AB 361 to October 1, 2021. As a result, if the City desires to have virtual meetings on or after October 1, 2021, it must do so consistent with the requirements of AB 361.

AB 361 preserves many of the provisions of the earlier executive orders, including the suspension of the four teleconferencing requirements noted above, while also adding new requirements to the management of remote and teleconference public meetings in order to better achieve the levels of transparency that the Brown Act demands. Specifically, AB 361 imposes two new rules on remote public meetings:

1. Local governments and agencies hosting teleconference meetings in lieu of traditional in-person public meetings must permit direct public comment during the teleconference, and must leave open the opportunity for public comment until the comment period for a given item is closed during the ordinary course of the meeting. The opportunity to make public comment must be of a sufficient duration so as to allow actual public participation.
2. Any action by the governing body during a public teleconference meeting must occur while the agency is actively and successfully broadcasting to members of the public through a call-in option or an internet-based service option. If a technical disruption within the agency's control prevents members of the public from either viewing the meeting of the public agency, or prevents members of the public from offering public comment, the agency must cease all action on the meeting agenda until the disruption ends and the broadcast is restored. Action taken during an agency-caused disruption may be challenged as a violation of the Brown Act.

In order to continue to qualify for AB 361's waiver of in-person meeting requirements, the City Council must, within thirty (30) days of its first meeting under AB 361, and every thirty (30) days



thereafter, make findings that (a) state or local officials continue to recommend measures to promote social distancing, or that (b) an in-person meeting would constitute an imminent risk to the safety of attendees.

Lastly, it is important to note that AB 361 is optional. If the City Council wishes, it may meet in person. In addition, hybrid meetings are permissible where Council attends in person and the public attends remotely via Zoom.

### **FISCAL IMPACT**

The City Council's adoption of the resolution to continue with virtual meetings will maintain the status quo and no financial impact is anticipated by the adoption of the resolution.

### **ENVIRONMENTAL ISSUES**

The City Council's adoption of the resolution is not a project under the California Environmental Quality Act (CEQA) Guideline 15378(b)(5) as it constitutes an organizational or administrative activity of the government that will not result in direct or indirect physical changes in the environment. Further, virtual meetings are likely to reduce certain impacts associated with vehicular travel related to in-person public meetings.

### **RECOMMENDATION**

Adopt the resolution making findings and determinations under Assembly Bill 361 for the continuation of virtual meetings.

### **ATTACHMENTS**

- A. Resolution



**RESOLUTION 2021-\_\_**  
**OF THE CITY COUNCIL OF THE TOWN OF COLMA**

**RESOLUTION MAKING FINDINGS AND DETERMINATIONS**  
**UNDER AB 361 FOR THE CONTINUATION OF VIRTUAL MEETINGS**

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

**1. Background**

(a) The Ralph M. Brown Act (Gov. Code § 54950 *et seq.*) generally requires local agencies meeting via teleconference, including through other virtual or electronic means, to, among other things, provide public access at each location in which members of the legislative body are teleconferencing; and

(b) The Legislature recently enacted Assembly Bill 361 (AB 361), which amended Government Code section 54953 to allow local agencies to meet fully virtually, without fully adhering to the rules otherwise applicable to teleconferencing, during a proclaimed state of emergency if state or local officials have imposed or recommended measures to promote social distancing, or where the City Council finds that meeting in person would present imminent risks to the health and safety of attendees; and

(c) The Governor issued a proclamation declaring a state of emergency on March 4, 2020 due to the COVID-19 pandemic, pursuant to section 8625 of the California Emergency Services Act, and this proclaimed state of emergency currently remains in effect.

**2. Findings**

(a) The City Council of the Town of Colma has considered the circumstances of the state of emergency; and

(b) State or local officials continue to recommend measures to promote social distancing to prevent the spread of COVID-19, in particular, Cal-OSHA regulation 3205 recommends physical distancing in the workplace generally and regulates a "close contact" defined as being within 6 feet of another under certain circumstances; and

(c) In order to continue to impose social distancing while holding in-person meetings there is a high likelihood that members of the public would not all be able to be present in the meetings spaces, and there is a current health risk with meeting in person based on the current imminent health risks associated with COVID-19 in indoor locations; and

(d) The continuation of virtual meetings will allow for full participation by members of the public until social distancing recommendations are no longer necessary and the health risks have been alleviated; and

(e) The City Council of the Town of Colma desires that the City Council, and any other legislative bodies subject to the Brown Act, continue to hold virtual meetings pursuant to AB 361 and Government Code section 54953(e).

**3. Order**

(a) The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

(b) The City Council, and any other legislative bodies of the Town of Colma who are required to hold open and public meetings under the Brown Act, shall continue to meet virtually in accordance with Government Code section 54953(e) and without compliance with section 54953(b)(3) based upon the findings and determinations hereby made by the City Council.

(c) This resolution shall become effective upon adoption.

***Certification of Adoption***

I certify that the foregoing Resolution No. 2021-\_\_ was adopted at a regular meeting of the City Council of the Town of Colma held on October 13, 2021 by the following vote:

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

Dated \_\_\_\_\_

\_\_\_\_\_  
Diana Colvin, Mayor

ATTEST: \_\_\_\_\_  
Caitlin Corley, City Clerk



# STAFF REPORT

TO: Mayor and Members of the City Council  
 FROM: Farhad Mortazavi APA, City Planner  
 Laurel Mathews, Associate Planner  
 VIA: Brian Dossey, City Manager  
 SUBJECT: Public Art in Colma

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## RECOMMENDATION

Staff recommends that the Council consider whether they would like to move forward with a Public Art program as described in the 2020-2022 Strategic Plan.

## EXECUTIVE SUMMARY

The purpose of this study session is to explore Colma's options for adding a public mural to one of its retaining walls, and to outline for the Mayor and the City Council some details of how jurisdictions fund, make decisions about, and maintain Public Art programs.

## FISCAL IMPACT

Public Art displays (i.e. murals) can range in cost from about \$10,000 to \$300,000, with most staying under \$100,000. Cost depends on the mural size, the level and type of public engagement around the mural, the experience level of the artist, the complexity of the decision-making process and the associated staff time, equipment and materials, and lifespan (how long the mural is maintained before it is taken down or painted over). The highest costs are likely to be associated with:

- Staff or consultant time to set up the program, policies, committee, and funding ordinances
- Staff or consultant time to create the mural workplan, vision, and call for artists
- Staff or consultant time to review submissions, conduct interviews, and select the artist
- Artist fee for the design and installation of the mural

Costs associated with a Wall Mural are likely to be highest in the first 1-3 years of the project (planning and implementation), but will also require a much smaller amount of yearly funding for on-going maintenance and eventual removal of the mural.

Other types of public art can be installed for much less cost than murals. For example, painted utility boxes have an artist fee of \$200-\$500 each.

## **BACKGROUND**

The Town of Colma Strategic Plan for 2020-2022 includes an objective of developing a public art and wayfinding programing, in the interest of building upon our community identity and maintaining quality of life. In addition, the Town recently embarked on a project to repair the F Street Retaining wall and install additional drainage to prevent future damage. Once this wall has been repaired, it might be a candidate for a piece of public art.

Before pursuing the idea for a mural on the F Street retaining wall, the City Planning Department, in coordination with the City Manager, decided to widen their lens and explore opportunities to add a mural anywhere in the Town of Colma.

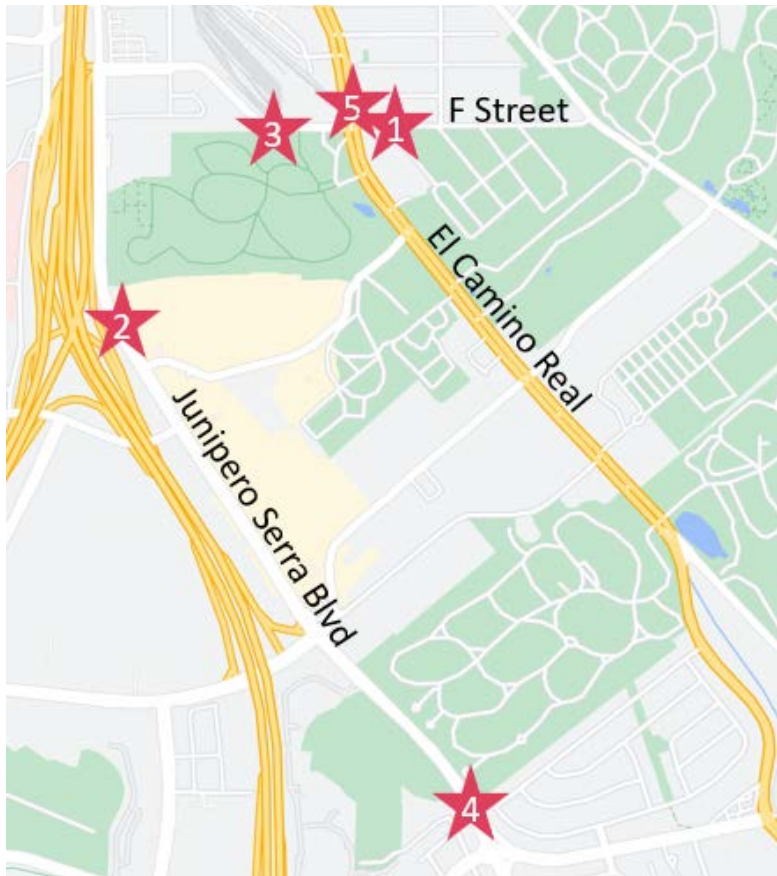
This staff report summarizes the Planning Department's survey of blank surfaces in Colma and research about the process and considerations for what it takes to commission a public mural. It also builds on a previous effort to implement a wall mural in Colma. The purpose of this staff report is not to make a recommendation, but instead to present available options to support Council in their decision as to whether a mural should be commissioned in Colma. This study session will be presented to Council at the meeting on October 13, 2021.

## **ANALYSIS**

### *Potential public mural locations in Colma*

The Planning Department, in coordination with the City Manager, identified four retaining walls where a mural could be located:

1. F Street at El Camino Real (Owned by Town of Colma)
2. Junipero Serra Boulevard north of Colma Blvd (Owned by Caltrans)
3. D Street at its transition to F Street (Owned by Town of Colma, very close to the border with Unincorporated San Mateo County)
4. Junipero Serra Blvd North of Hickey Blvd (Appears to be owned by Town of Colma, further analysis is required if this location is chosen)
5. BART overpass at El Camino Real and F Street (Owned by BART)



*Figure 1: Map of potential locations for a wall mural in Colma. Numbers on the map correspond to the numbered list above.*

### Content and Impact

Murals can:

- **Tell a story about history:** Many towns use murals as an opportunity to bring history to life by telling a story about their history. This can be a depiction of a notable event, a story of a town's evolution over time, or a depiction of something that has stayed consistent over time, like a persevering tradition, building, or industry.
- **Honor a person or organization:** Murals often honor individual people, for historic or sometimes recent accomplishments and contributions. Many small towns include murals depicting local leaders, notable activists, honorable residents, or famous people buried in a local cemetery.
- **Express an idea or value:** Many murals have a goal of invoking a particular feeling, like peace, joy, or unity. They can also promote more concrete ideas, like the importance of education or the welcoming of new immigrants to the community.
- **Communicate the context of a place:** In addition to providing historic context, murals can also communicate the natural, economic, political, architectural, or social

context of a place. Many murals depict the dominant industry that has supported their town's development, or native animals and plants.

- **Beautify a public place:** Murals can serve as a visually striking statement piece for a landscape. They can enliven a streetscape while highlighting what is already beautiful about the space. Public art can make a commercial center or business district memorable and attractive to customers.

The above is an incomplete list of what a mural can accomplish. Many murals accomplish multiple of the above goals, and some accomplish a different set of goals entirely.

### Decision-making

Decisions about public murals are typically made by a multi-stakeholder committee or commission. The most typical structure is to convene one selection committee with the power to make final decisions, and one advisory committee to do research, collaborate with the artist, and make recommendations to the selection committee. The artist is also an important part of the decision-making team. For a small art project that is not politically contentious, an advisory committee may not be necessary.

The Selection Committee is typically made of 3-5 people, representing a range of affected stakeholders. These people can be members of a local historical commission or local museum, local arts organizations, business owners (and developers if the art is on the site of a new development), residents, city staff (usually public works or planning), and/or one or two city members.

The Selection Committee and Advisory Committee should make some key decisions up front:

- Project timeline and meeting schedule
- Key goals and guidelines
- Limitations and constraints
- Roles, responsibilities, and how to resolve conflicts

Public input can be an important part of commissioning and installing a public mural, especially if it is in a very visible location or if the goal of the mural is to engage the community. The public should be brought into the vision-making and goal-setting process before the call for artists is drafted. In some cases, the public is also given an opportunity to view and comment on the first draft of the mural design. However, the artist and the selection committee should set expectations with the public about what can and can't be changed late in the process once a preliminary design has already been completed. Other ways to engage the public about a mural include building a plaque on site describing the project, building seating onsite to support viewing of the mural, posting information about the mural project on the town website, and inviting the public to the mural's unveiling ceremony.

Finally, the decision-making process varies based on local arts ordinances and who owns the site. In a piece of public art on the site of a new development, the developer will have



significant say in the decision-making process. If the City Council decides to commission a mural on the Caltrans or BART wall, the agency with ownership will need to approve the project up front and they will have final approval or veto power over the mural design. The agency who owns the wall will also need to coordinate with the Town on who will conduct routine maintenance on the mural and what permissions may be required to do so.

### Financing

The most common framework for funding public art is through a “percent for the arts” ordinance. These ordinances devote 0.5 – 2% of a funding bucket to public art. They take many different forms, including:

- **City discretionary funding/General Fund contribution/surplus:** Some communities vote to contribute a small percentage of the General Fund (or a smaller bucket of the General Fund) toward public art. This can take the form of a one-time contribution or a yearly contribution. On top of the general fund contribution to ensure some consistent program funding over time, some cities add an additional surplus provision, which stipulates that some percentage of a budget surplus will fund public art.
- **Developer fee:** Often, communities create a development impact fee of 0.5-2% of the construction cost of a new development to support public art. If the city doesn't want to administer or manage the public art project, they can instead give the developer to add their own piece of on-site public art equivalent to the same percentage of the project cost. If a jurisdiction is uncomfortable with the fee model, they can offer incentives to developers, like more density or more stories, in exchange for the developer building public art or paying a public art fee. Finally, in jurisdictions where developers frequently have to complete environmental impact assessments and pay environmental mitigation fees, the jurisdiction can devote a percentage of each environmental mitigation fee toward public art.
- **Capital Improvement Project:** In a jurisdiction that frequently funds capital improvement projects, there are examples of devoting a percentage of each capital improvement project budget toward a public art fund. Alternatively, a community may include the mural in their Capital Improvement Plan to be funded directly as a one-time Capital Improvement Project.

A mural project budget should consider and include: staff time, cost to prepare the site, artist fee, general liability insurance for the work site, sidewalk closures/cordoning, on-site signage, unveiling ceremony, routine maintenance and inspections for the mural's lifespan, and mural removal. Budgeting for a ten percent contingency is a best practice.

### Maintenance

Murals often require routine maintenance for the duration of their lifetimes, including retouching, repair, and graffiti removal. A maintenance plan should be developed with the artist up front. In some cases, the artist can be contractually required to draft a materials declaration document, which lists all materials used and makes maintenance recommendations. This materials declaration can be kept on file with the commissioning agency to support future maintenance efforts.

A mural that is routinely maintained can be expected to last 10-15 years. After 10-15 years, the community has two options: They can either do a major restoration or remove the mural. If the city would prefer a shorter-term mural, they are free to set a shorter lifespan. In some cases, a shorter life span can make a mural more likely to resonate with the public's political and cultural views.

### Non-mural public art

In addition to murals, there are many other opportunities to add public art in Colma, in line with the strategic plan. Painted utility boxes, sculptures in parks, plazas, and medians, other outdoor installations, and lighting installations can all be commissioned through a similar process to the one described above for murals. Later staff reports can dive into these options in more detail, if the council is interested.

### Council Adopted Values

Public Art could support the Council-adopted value of **Community**, since it can build upon our community identity and maintain quality of life.

### The California Environmental Quality Act (CEQA)

In most cases, a mural consists of exterior alterations to an existing public facility with negligible or no expansion of use. Therefore, a mural project is likely to be exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Article 19, 15301(a) of California CEQA Guidelines.

## **CONCLUSION**

City Council is encouraged to participate in the presentation by providing comments and direction to staff and the consultant team on their interest in a public mural in the Town of Colma. Staff encourages feedback and discussion on:

- Is the City Council interested in using existing retaining walls for murals?
- If yes, what funding ideas appeal to members of City Council?
- What are the next steps with respect to forming a selection committee and/or public art advisory committee?

**UPDATED  
MINUTES**

**REGULAR MEETING**

City Council of the Town of Colma  
Meeting Held Remotely via Zoom.us

**Wednesday, September 22, 2021**

**Closed Session - 6:00 PM**

**Regular Session - 7:00 PM**

**CLOSED SESSION**

1. In Closed Session Pursuant to Government Code Section 54957.6 – Conference with Labor Negotiators.

Agency Negotiator:	Austris Rungis, IEDA
Employee Organizations:	Colma Peace Officers Association and Colma Communications/Records Association
Unrepresented Employees:	All

**PLEDGE OF ALLEGIANCE AND ROLL CALL**

Mayor Diana Colvin called the meeting to order at 7:00 p.m.

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

Staff Present – City Manager Brian Dossey, City Attorney Christopher Diaz, Administrative Services Director Pak Lin, Chief of Police John Munsey, Director of Public Works Brad Donohue, City Planner Farhad Mortazavi, Associate Planner Laurel Mathews, and City Clerk Caitlin Corley were in attendance.

The Mayor announced, “Welcome to another of our completely remote Council Meeting. A few notes about tonight’s meeting: We are accepting public comments through email or the chat function—you can email our City Clerk at ccorley@colma.ca.gov or use the chat function to let her know which item you would like to speak on. Please keep your comments to 3 minutes or less. Thank you.”

**REPORT FROM CLOSED SESSION**

Mayor Colvin announced, “No action was taken at tonight’s closed session.”

**ADOPTION OF THE AGENDA**

Mayor Colvin asked if there were any changes to the agenda; none were requested. She asked for a motion to adopt the agenda.

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

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
Diana Colvin, Mayor	✓				
Helen Fiscaro	✓				
Raquel Gonzalez	✓				
Joanne F. del Rosario	✓				
John Irish Goodwin	✓				
	5	0			

## PRESENTATION

- Cypress Lawn Arboretum Director Josh Gevertz gave a presentation on Arboretum Day.
- Director of Public Works and Planning Brad Donohue introduced new City Planner Farhad Mortazavi.

## PUBLIC COMMENTS

Mayor Colvin opened the public comment period at 7:19 p.m. and seeing no one request to speak, she closed the public comment period.

## CONSENT CALENDAR

2. Motion to Accept the Minutes from the September 8, 2021 Regular Meeting.
3. Motion to Adopt a Resolution Adjusting Salary for Part-Time Staff to Meet the Minimum Wage Requirement Set Forth by the State of California and Amending the Salary Schedule.

**Action:** Council Member Goodwin moved to approve the consent calendar items #2 and 3; the motion was seconded by Council Member del Rosario and carried by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
Diana Colvin, Mayor	✓				
Helen Fiscaro	✓				
Raquel Gonzalez	✓				
Joanne F. del Rosario	✓				
John Irish Goodwin	✓				
	5	0			

## NEW BUSINESS

### 4. GRAND JURY RESPONSE – RACIAL IDENTITY AND PROFILING ACT

Chief of Police John Munsey presented the staff report. Mayor Colvin opened the public comment period at 7:30 p.m. and seeing no one request to speak, she closed the public comment period. Council discussion followed.

**Action:** Council Member Goodwin moved to approve the Town's Response to the Grand Jury Report Dated July 27, 2021, Regarding "Building Better Trust Between the Community & Law Enforcement Via the Racial Identity and Profiling Act;" the motion was seconded by

Council Member del Rosario and carried by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
Diana Colvin, Mayor	✓				
Helen Fisticaro	✓				
Raquel Gonzalez	✓				
Joanne F. del Rosario	✓				
John Irish Goodwin	✓				
	5	0			

**5. REPORT ON AB 361 AND EXECUTIVE ORDER REGARDING REMOTE MEETINGS**

City Attorney Christopher Diaz presented the staff report. Mayor Colvin opened the public comment period at 7:47 p.m. and seeing no one request to speak, the Mayor closed the public comment period. Council discussion followed.

**Action:** Vice Mayor Fisticaro moved to Receive a Report on Assembly Bill 361 and the Status of the Governor’s Executive Order Regarding Remote Meetings, and Provide Input, if any; the motion was seconded by Council Member del Rosario and carried by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
Diana Colvin, Mayor	✓				
Helen Fisticaro	✓				
Raquel Gonzalez	✓				
Joanne F. del Rosario	✓				
John Irish Goodwin	✓				
	5	0			

**COUNCIL CALENDARING**

The next Regular Meeting will be on Wednesday, October 13, 2021 at 7:00 p.m.

**REPORTS**

City Manager Brian Dossey gave an update on the following topics:

- He will be attending the League of California Cities Conference on September 23 – 24, 2021.
- The C.A.P.E. program will be holding a Refresher Course for currently certified CERT members on Thursday, September 23, 2021.
- There will be a new C.A.P.E. course series beginning on September 30, 2021.
- The Annual Business Recognition event will be held on Thursday, October 7 at 11:30 p.m. at the Colma Community Center.

**ADJOURNMENT**

Mayor Colvin adjourned the meeting at 8:02 p.m.

Respectfully submitted,

Caitlin Corley  
City Clerk