



**NOTICE OF AND AGENDA FOR  
SPECIAL MEETING OF THE CITY COUNCIL  
TOWN OF COLMA**

**Wednesday, August 10, 2022  
5:00 p.m.**

*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/j/81289976261>**

*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.*

**NOTICE IS HEREBY GIVEN that the City Council of the Town of Colma will hold a Special Meeting at the above time and place for transacting the following business:**

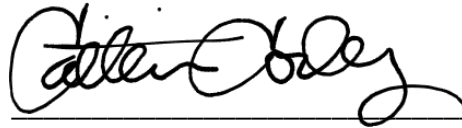
**CONSENT CALENDAR**

1. Motion to Reconfirm the Findings and Determinations Made in Resolution No. 2021-33 and Under Assembly Bill 361 for the Continuation of Virtual Meetings, with Acknowledgment that the California Department of Public Health has Updated the Definition of "Close Contact" in Regulation 3205 from Being within 6 Feet of Another Person to Sharing the Same Indoor Space with Another Person for 15 Minutes or More, Which Further Supports the Findings.

**NEW BUSINESS**

**2. OPTIONS FOR FILLING A CITY COUNCIL VACANCY**

**Consider:** Motion to 1. Determine whether to fill the vacancy on the City Council by appointment or special election; and 2. Provide direction to staff regarding the desired method of filling the vacancy.



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Caitlin Corley, City Clerk

Posted: August 5, 2022



# STAFF REPORT

TO: Mayor and Members of the City Council

FROM: Christopher J. Diaz, City Attorney

VIA: Brian Dossey, City Manager

MEETING DATE: August 10, 2022

SUBJECT: Motion to Reconfirm Findings and Determinations Under Resolution No. 2021-33 and Assembly Bill 361 for the Continuation of Virtual Meetings

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## RECOMMENDATION

Staff recommends that the City Council make the following motion:

MOTION TO RECONFIRM THE FINDINGS AND DETERMINATIONS MADE IN RESOLUTION NO. 2021-33 AND UNDER ASSEMBLY BILL 361 FOR THE CONTINUATION OF VIRTUAL MEETINGS, WITH ACKNOWLEDGMENT THAT THE CALIFORNIA DEPARTMENT OF PUBLIC HEALTH HAS UPDATED THE DEFINITION OF "CLOSE CONTACT" IN REGULATION 3205 FROM BEING WITHIN 6 FEET OF ANOTHER PERSON TO SHARING THE SAME INDOOR SPACE WITH ANOTHER PERSON FOR 15 MINUTES OR MORE, WHICH FURTHER SUPPORTS THE FINDINGS.

## 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, the State Legislature also took the remote meeting issue into its own hands through the adoption of Assembly Bill 361, which is explained more in depth in the Analysis section below.

On October 13, 2021 the City Council adopted Resolution No.2021-33 making findings under AB 361 that state or local officials continue to recommend social distancing measures to prevent the spread of COVID-19 and including reference in particular to Cal-OSHA regulation 3205, which recommends physical distancing in the workplace. By motion and majority vote, the City Council may renew the findings of Resolution No. 2021-33 to continue to hold virtual meetings pursuant to AB 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.

The above conditions continue to exist at this time, and staff recommends the City Council by motion reconfirm the findings and determinations made in Resolution No. 2021-33 so that the City Council may continue to meet virtually under AB 361.

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 motion to continue with virtual meetings will maintain the status quo and no financial impact is anticipated.

### **ENVIRONMENTAL ISSUES**

The City Council's approval of a motion to reconfirm findings does not constitute 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**

Move to reconfirm the findings and determinations made in Resolution No. 2021-33 and under Assembly Bill 361 for the continuation of virtual meetings.





# STAFF REPORT

TO: Mayor and Members of the City Council  
 FROM: Brian Dossey, City Manager  
 Christopher J. Diaz, City Attorney  
 MEETING DATE: August 10, 2022  
 SUBJECT: Options for Filling a City Council Vacancy

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## RECOMMENDATION

Staff recommends that the City Council:

1. Determine whether to fill the vacancy on the City Council by appointment or special election; and
2. Provide direction to staff regarding the desired method of filling the vacancy.

## BACKGROUND AND ANALYSIS

The Colma City Council consists of five Councilmembers, each elected at large to serve a four-year term. General municipal elections to elect Councilmembers are held on the first Tuesday after the first Monday in November of each even-numbered year. The next scheduled election year is this year, 2022.

On July 28, 2022 Councilmember Gonzalez tendered her resignation from the City Council. Pursuant to Government Code section 36512(b), the Council may fill the vacancy by appointment for the remainder of the term or call a special election to fill the vacancy. The City has sixty days from the date of the vacancy (i.e., until September 26, 2022) to choose and proceed with option 1 or option 2 below.

### Option 1: Appointment

If the Council fills the vacancy by appointment, the term of the person appointed to fill the vacancy will run until the end of the vacant seat's original term. Colma Municipal Code section 1.02.020 provides that the Council's policy is to fill a vacancy on the Council by appointment, and to offer as many citizens as may be interested the chance to apply. Section 1.02.020 does have a number of timing requirements which are based on a previous iteration of the state law governing the special election process, but that section also provides that it is directory (not mandatory), and so the Town should follow the timeline in current state law which allows for sixty days from the date of the vacancy for the City Council to select which method it would prefer to fill the vacancy (see, Gov. Code § 36512).

The process for filling the vacancy by appointment is recommended to be as follows:

1. The City Manager sends a notice by letter to all Town residents advising of the vacancy and inviting qualified citizens to submit a letter of interest. Interested persons should submit these letters to Town Hall by a date set by the Council or City Manager. The City Manager can also advise residents of the vacancy and invite letters of interest by publication in the local newspaper, if desired.
2. The application period will then close on a date set by the Council or City Manager, which date should give applicants sufficient time to submit their materials, but which allows the Council time to review the applications and hold interviews, if desired, before the 60 days available to the Town to fill the vacancy have elapsed.
3. All application materials received by the deadline are organized by Town staff and distributed to the Councilmembers. A meeting of the Council is scheduled to discuss the applications and (if desired) hold interviews. If interviews are held, they must be conducted in open session.
4. The Town holds a meeting to discuss the applications and (if desired) hold interviews. Following any discussion, interviews, and public comment, the Council publicly deliberates and selects one individual for the vacant seat. This will require an affirmative majority vote of the remaining Councilmembers.

Staff will also work to update section 1.02.020 of the Municipal Code to align with the changes to Government Code section 36512 that have been made since section 1.02.020 was originally adopted.

#### Option 2: Special Election

If a special election is called, it must be held on the next regularly established election date that is at least 114 days after the call for the special election. The Town incurs the costs of conducting the election, and the term of the person elected to fill the vacancy runs to the end of the vacant seat's original term. Pursuant to discussions with the San Mateo County Elections Office, staff anticipates that the approximate cost of a special election to fill the Council vacancy will be \$31,000 - \$37,200. To conduct an election to fill the vacant seat, the City Council must adopt a resolution formally calling for a special election. (Elections Code, § 12001.) Assuming the City Council adopted this resolution in the sixty day window allowed by state law, the special election would be held in March 2023, as that is the next regular election date that is more than 114 days from the call of the election, in accordance with Government Code section 36512. If the Council proceeds with this option, Councilmember Gonzalez's vacant seat would sit open until that election. If the City Council wishes to call a special election, staff will return to the City Council with the appropriate resolution to call the special election.

#### **Alternatives**

To fill the current Council seat vacancy, the Council should, within 60 days, do one of the following:

1. Appoint a resident to fill the vacancy, upon consideration of all interested parties' applications at a forthcoming special meeting.



2. Call a special election to fill the vacancy.

### **FISCAL IMPACT**

If the City Council fills the vacancy by appointment, minimal fiscal impacts are anticipated. A special election will have a greater fiscal cost.

### **ENVIRONMENTAL**

The City Council's action to fill the vacant Council seat is not a project subject to the California Environmental Quality Act, as it can be seen with certainty that the action will not have a significant effect on the environment pursuant to CEQA Guideline 15061(b)(3).

### **CONCLUSION**

Staff recommends that the City Council, by motion, determine whether it would prefer to proceed to fill the Council vacancy by special election or by appointment, and direct staff to take all necessary actions accordingly.

