



# TOWN OF FAIRFAX

## STAFF REPORT

### January 19, 2022

**TO:** Mayor and Town Council

**FROM:** Jonathon Goldman, Interim Public Works Director

**SUBJECT:** Adopt a Resolution Confirming the Continuing Existence of a Local Emergency at or Near 2378 Sir Francis Drake Boulevard, Fairfax, and Continuing Authorization for the Emergency Procurement of Materials and Labor without Competitive Bidding

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#### **RECOMMENDATION**

Adopt a Resolution, by a four-fifths vote, confirming that the recitals in Emergency Resolution No. 21-53 remain true and correct and continuing authorization for the emergency procurement of materials and labor without competitive bidding.

#### **BACKGROUND**

With action during a special meeting of December 15, 2021 the Town Council of the Town of Fairfax adopted Emergency Resolution No. 21-53 finding, by a four-fifths majority, that:

1. the recitals in said Emergency Resolution were true and correct; and
2. finding and determining based on substantial evidence in the staff report and oral testimony the existence of a local emergency at or in the vicinity of 2378 Sir Francis Drake Boulevard, Fairfax. These emergency findings were deemed to be entered into the minutes of the meeting at which this Emergency Resolution is passed.

On that basis, as documented in said Emergency Resolution No. 21-53, the Town Manager was ordered and authorized to:

3. provide for the emergency repair or replacement of those public facilities necessary to stabilize the roadway condition and reopen the roadway located at or near 2378 Sir Francis Drake Boulevard, Fairfax; and
4. to take any directly related and immediate action required by those emergency conditions, and to procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts pursuant to Public Contract Code Sections 22035 and 22050.

Similarly, the Town Manager was authorized to let said contract(s) in an amount not to exceed \$250,000 for construction and \$25,000 for design/construction management costs without further approval by the Town Council and said funding were deemed budgeted and appropriated for such improvements.

Pursuant to the cited Public Contract Code Sections, the Town Council is required to review the emergency action at its next regularly scheduled meeting and at every regularly scheduled meeting thereafter until the work ordered hereby is terminated. Such review shall be for the purpose of determining, by a four-fifths vote, that there is a need to continue the work. Said review may be conducted as a consent calendar item.

**DISCUSSION**

With the benefit of prompt, collaborative and effective response by the Town’s Consulting Engineer Miller-Pacific Inc., Maggiora & Ghilotti, Inc. (and its subcontractors), Restoration Design Group, Inc. and SPI Consulting, Inc., traffic and pedestrian safety have been addressed, the sinkhole has been exposed, its cause established, a steel sheet pile wall constructed and tied back, the steel sheet pile wall attached to a steel-reinforced failed retaining wall to result in an adequate factor of safety for retaining the roadway and its subgrade, curb and gutter constructed and an initial course of hot asphaltic paving placed and compacted. Relevant aquatic resource permitting agencies have been advised of the emergency and that a subsequent permanent repair will be designed, permitted and constructed at a future date. Staff has also submitted an Initial Damage Estimate to the California Department of Transportation for potential reimbursement and submitted a PWC-100 form with the California Department of Industrial Relations.

As of the date of writing this Staff Report, work to backfill the excavation remaining after the structural connections between the new and the failed wall are completed, forming and pouring of sidewalk, re-installation of thrie-beam guardrail and chain link fence sections, final paving and pavement markings remain to be completed.

**FISCAL IMPACT**

No change to the damage estimate or need for supplemental appropriation has been identified at this time.

**RECOMMENDATION**

Staff therefore respectfully recommends that the Town Council adopt, by a four-fifths majority, a resolution confirming that the recitals in Emergency Resolution No. 21-53 remain true and correct and continuing authorization for the emergency procurement of materials and labor without competitive bidding.

**ATTACHMENT**

Resolution

**EMERGENCY RESOLUTION 22-\_\_**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX  
CONFIRMING THE CONTINUED EXISTENCE OF A LOCAL EMERGENCY AT OR NEAR  
2378 SIR FRANCIS DRAKE BOULEVARD, FAIRFAX,  
AND CONTINUING AUTHORIZATION FOR THE EMERGENCY PROCUREMENT OF  
MATERIALS AND LABOR WITHOUT COMPETITIVE BIDDING**

**WHEREAS**, Sections 22035 and 22050 of the Public Contracts Code authorize the Town of Fairfax to proceed with awarding a public works contract to perform emergency work upon adoption by the Town Council by a four-fifths vote of a resolution declaring that the public interest and necessity demand the immediate expenditure of public funds to safeguard life, health, or property; and

**WHEREAS**, Public Contract Code Section 22050 also provides that the Town Council may, by resolution, delegate the authority to order any action required by the emergency and to procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let the contracts to the Town Manager, his designee, or any other officer; and

**WHEREAS**, the Town may exercise its emergency powers under Section 22050 by making a finding, based on substantial evidence set forth in the minutes of its meeting, that the emergency will not permit a delay resulting from a competitive solicitation for bids and that the Town's action is necessary to respond to the emergency; and

**WHEREAS**, the Town of Fairfax has had severe rainstorms during the Fall of 2021 which has resulted in a portion of the roadway located at or near 2378 Sir Francis Drake Boulevard, Fairfax, to become unstable, causing conditions of extreme peril to persons and property, including potential roadway failure; and

**WHEREAS**, the Town was forced to close a portion of the roadway at or near 2378 Sir Francis Drake Boulevard on December 13, 2021 and limit travel to one-way traffic in order to protect persons and property; and

**WHEREAS**, the Town finds that in order to stabilize the roadway at the above listed site, to prevent and mitigate loss or impairment of life, health, property, and reopen the road to the public, it must act in an expeditious manner; and

**WHEREAS**, the roadway condition at the above listed location on Sir Francis Drake Boulevard poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, and essential public services; and

**WHEREAS**, time does not permit the preparation of specifications and the solicitation of competitive bids before commencement of the emergency stabilization and road re-opening; and

**WHEREAS**, with the benefit of prompt, collaborative and effective response by the Town's Consulting Engineer Miller-Pacific Inc., Maggiora & Ghilotti, Inc. (and its subcontractors), Restoration Design Group, Inc. and SPI Consulting, Inc., traffic and pedestrian safety have been addressed, the sinkhole has been exposed, its cause established, a steel sheet pile wall constructed and tied back, the steel sheet pile wall attached to a steel-reinforced failed retaining wall to result in an adequate factor of safety for retaining the roadway and its subgrade, curb and gutter constructed and an initial course of hot asphaltic paving placed and compacted; and

**WHEREAS**, relevant aquatic resource permitting agencies have been advised of the emergency and that a subsequent permanent repair will be designed, permitted and constructed at a future date; an Initial Damage Estimate has been submitted to the California Department of Transportation for potential reimbursement and a PWC-100 form has been submitted to the California Department of Industrial Relations; and

**WHEREAS**, work to backfill the excavation remaining after the structural connections between the new and the failed wall are completed, forming and pouring of sidewalk, re-installation of three-beam guardrail and chain link fence sections, final paving and pavement markings remain to be completed; and

**WHEREAS**, with the unanimous passing and adoption of Emergency Resolution 21-53 at a special meeting of the Town Council of the Town of Fairfax held in said Town on the 15<sup>th</sup> day of December 2021 the Town Council is required to review the emergency action at its next regularly scheduled meeting and at every regularly scheduled meeting thereafter until the work ordered hereby is terminated; and

**WHEREAS**, such review shall be for the purpose of determining, by a four-fifths vote, that there is a need to continue the work.

**NOW, THEREFORE, BE IT RESOLVED** that the Town Council of the Town of Fairfax hereby declares and orders as follows:

**SECTION 1.** The Town Council hereby finds, by a four-fifths majority, that the recitals in this Emergency Resolution are true and correct, and constitute a continuing emergency. The Town Council finds and determines based on substantial evidence in the staff report and oral testimony the continued existence of a local emergency at or in the vicinity of 2378 Sir Francis Drake Boulevard, Fairfax. These emergency findings shall be deemed to be entered into the minutes of the meeting at which this Emergency Resolution is passed.

**SECTION 2.** The Town Manager is hereby ordered and authorized to continue to provide for the emergency repair or replacement of those public facilities necessary to stabilize the roadway condition and reopen the roadway located at or near 2378 Sir Francis Drake Boulevard, Fairfax to continue to take any directly related and immediate action required by those emergency conditions, and to procure the necessary equipment, services, and supplies

for those purposes, without giving notice for bids to let contracts pursuant to Public Contract Code Sections 22035 and 22050. Said contract(s) may exceed the Town Manager's purchasing authority, but shall not exceed \$250,000 for construction and \$25,000 for design/construction management costs without further approval by the Town Council

**SECTION 3.** The Town Council shall review the emergency action at its next regularly scheduled meeting and at every regularly scheduled meeting thereafter until the work ordered hereby is terminated. Such review shall be for the purpose of determining, by a four-fifths vote, that there is a need to continue the work. Said review may be conducted as a consent calendar item.

**SECTION 4.** This resolution shall be effective immediately upon adoption by four affirmative votes of the Town Council of the Town of Fairfax.

The foregoing resolution was duly passed and adopted by the Town Council of the Town of Fairfax at a duly noticed meeting held in said Town on the 19<sup>th</sup> day of January 2022 by the following vote:

AYES:  
NOES:  
ABSENT:

\_\_\_\_\_  
Stephanie Hellman, Mayor

Attest: \_\_\_\_\_  
Michele Gardner, Town Clerk