



# TOWN OF FAIRFAX

## STAFF REPORT

### December 7, 2022

**TO:** Mayor and Town Council

**FROM:** Loren Umbertis, Public Works Director

**SUBJECT:** Adopt a Resolution Confirming the Continuing Existence of a Local Emergency at or Near 195 Pine Drive, Fairfax, and Continuing Authorization for the Emergency Procurement of Materials and Labor without Competitive Bidding

---

#### **RECOMMENDATION**

Adopt a Resolution, by a minimum of a four-fifths vote, confirming that the recitals in Emergency Resolution Nos. 22-21, 22-25, 22-29, 22-31, 22-49, 22-62, 22-71, 22-78 and 22-89 remain true and correct and continuing authorization for the emergency procurement of materials and labor without competitive bidding. Continue making progress with construction work pursuant to the signed contract with Maggiora & Ghilotti Inc. executed on June 13, 2022.

#### **DISCUSSION**

At a special meeting on March 30, 2022, the Town Council adopted Emergency Resolution No. 22-21, finding and determining the existence of a local emergency at or near 195 Pine Drive. The resolution ordered and authorized the Town Manager to provide for the emergency repair or replacement of those public facilities necessary to stabilize and reopen the roadway. It also directed the Town Manager to procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts. The Town Manager was authorized to let said contract(s) for design/construction management costs without further approval by the Town Council and said funding was deemed budgeted and appropriated for the improvements.

Pursuant to the Public Contract Code, the Council is required to review the emergency action at every regularly scheduled meeting thereafter until the work ordered hereby is terminated and determine by a minimum of a four-fifths vote that there is a need to continue the work.

#### **FISCAL IMPACT**

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

#### **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 195 PINE DRIVE, 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, her 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 was forced to close a portion of the roadway at or near 195 Pine Drive on March 29, 2022, due to the collapse of a residential structure at that location, and limit travel to residential traffic only 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 Pine Drive 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 unanimous passing and adoption of Emergency Resolution 22-21 at a special meeting of the Town Council on the 30<sup>th</sup> day of March 2022, and similarly Emergency Resolution 22-25 on April 6, 2022, Emergency Resolution 22-29 on May 4, 2022, Emergency Resolution 22-31 on June 1, 2022, Emergency Resolution 22-49 on July 6, 2022, and Emergency Resolution 22-62 on August 3, 2022, and Emergency Resolution 22-71 on September 7, 2022, and Emergency Resolution 22-78 on October 6, 2022, and Emergency Resolution 22-89 on November 2, 2022 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 minimum of 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 minimum of 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 195 Pine Drive, 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 195 Pine Drive, 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 \$481,000 for construction and \$70,000 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 minimum of 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 a minimum of 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 7th day of December 2022 by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
Mayor

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