

City of Capitola Agenda

Mayor: Stephanie Harlan
Vice Mayor: Sam Storey
Council Members: Ed Bottorff
Dennis Norton
Michael Termini
Treasurer: Vacant



CAPITOLA CITY COUNCIL REGULAR MEETING

THURSDAY, AUGUST 8, 2013

CITY HALL COUNCIL CHAMBERS
420 CAPITOLA AVENUE, CAPITOLA, CA 95010

CLOSED SESSION – 6:15 PM CITY MANAGER'S OFFICE

An announcement regarding the items to be discussed in Closed Session will be made in the City Hall Council Chambers prior to the Closed Session. Members of the public may, at this time, address the City Council on closed session items only. There will be a report of any final decisions in City Council Chambers during the City Council's Open Session Meeting.

CONFERENCE WITH LABOR NEGOTIATOR (Govt. Code §54957.6)

Negotiator: Lisa Murphy, Administrative Services Director
Employee Organizations: Capitola Police Officers Association, Capitola Police Captains,
and Police Chief

PUBLIC EMPLOYEE PERFORMANCE EVALUATION (Govt. Code §54957)

City Council's Performance Evaluation of the City Manager

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Govt. Code §54956.9)

Monterey Bay Confederation of Clubs, Steve Verhagen v. City of Santa Cruz, et al.
[United States District Court, Northern District of California, Case No. 13-01231 PSG]

LIABILITY CLAIMS (Govt. Code §54956.95)

Claimant: Scott McCann
Agency claimed against: City of Capitola

REGULAR MEETING OF THE CAPITOLA CITY COUNCIL – 7:00 PM

All matters listed on the Regular Meeting of the Capitola City Council Agenda shall be considered as Public Hearings.

1. ROLL CALL AND PLEDGE OF ALLEGIANCE

Council Members Dennis Norton, Sam Storey, Ed Bottorff, Michael Termini and Mayor Stephanie Harlan

2. PRESENTATION

A. Presentation of a Certificate of Appreciation to Sandra Williams for her service as the City of Capitola's representative on the Advisory Council to the Area Agency on Aging of the Santa Cruz and San Benito Counties from November 2007 through December 2012.

3. REPORT ON CLOSED SESSION

4. ADDITIONAL MATERIALS

Additional information submitted to the City Council after distribution of the agenda packet.

5. ADDITIONS AND DELETIONS TO AGENDA

6. PUBLIC COMMENTS

Oral Communications allows time for members of the Public to address the City Council on any item not on the Agenda. Presentations will be limited to three minutes per speaker. Individuals may not speak more than once during Oral Communications. All speakers must address the entire legislative body and will not be permitted to engage in dialogue. All speakers are requested to print their name on the sign-in sheet located at the podium so that their name may be accurately recorded in the minutes. A MAXIMUM of 30 MINUTES is set aside for Oral Communications at this time.

7. CITY COUNCIL / CITY TREASURER / STAFF COMMENTS

City Council Members/City Treasurer/Staff may comment on matters of a general nature or identify issues for staff response or future council consideration.

8. BOARDS, COMMISSIONS AND COMMITTEES APPOINTMENTS

9. CONSENT CALENDAR

All items listed in the "Consent Calendar" will be enacted by one motion in the form listed below. There will be no separate discussion on these items prior to the time the Council votes on the action unless members of the public or the City Council request specific items to be discussed for separate review. Items pulled for separate discussion will be considered following General Government.

Note that all Ordinances which appear on the public agenda shall be determined to have been read by title and further reading waived.

A. Consider approving the City Council Minutes of the July 25, 2013, Regular City Council Meeting.

RECOMMENDED ACTION:

Approve Minutes.

CAPITOLA CITY COUNCIL REGULAR MEETING - August 8, 2013

- B. Receive Planning Commission Action Minutes for the Regular Meeting of August 1, 2013.
RECOMMENDED ACTION:
Receive Minutes.
- C. Consider denying liability claim of Scott McCann in the amount of \$2,229.00 and forward to the City's liability insurance carrier.
RECOMMENDED ACTION:
Deny Liability Claim.
- D. Consider approving a Contract Amendment for the Police Chief.
RECOMMENDED ACTION:
Approve Contract Amendment.
- E. Consider approving the Memorandum of Understanding (MOU) with the Police Officers Association.
RECOMMENDED ACTION:
Approve MOU.
- F. Consider authorizing the Finance Department to issue a request for proposals (RFP) for banking services.
RECOMMENDED ACTION:
Direct the Finance Department to accept and review proposals, and provide a recommendation to the City Council for its consideration.

10. GENERAL GOVERNMENT / PUBLIC HEARINGS

General Government items are intended to provide an opportunity for public discussion of each item listed. The following procedure is followed for each General Government item: 1) Staff explanation; 2) Council questions; 3) Public comment; 4) Council deliberation; 5) Decision.

- A. Request for a Coastal Development Permit and a Vesting Tentative Map to allow the Surf and Sand Mobile Home Park to convert to an owner-occupied park.
RECOMMENDED ACTION:
Adopt the Resolution to approve the Vesting Tentative Map and Coastal Development Permit.

11. ADJOURNMENT

Adjourn to the next Regular Meeting of the City Council on Thursday, September 12, 2013, at 7:00 PM, in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

Note: Any person seeking to challenge a City Council decision made as a result of a proceeding in which, by law, a hearing is required to be given, evidence is required to be taken, and the discretion in the determination of facts is vested in the City Council, shall be required to commence that court action within ninety (90) days following the date on which the decision becomes final as provided in Code of Civil Procedure §1094.6. Please refer to code of Civil Procedure §1094.6 to determine how to calculate when a decision becomes "final." Please be advised that in most instances the decision become "final" upon the City Council's announcement of its decision at the completion of the public hearing. Failure to comply with this 90-day rule will preclude any person from challenging the City Council decision in court.

CAPITOLA CITY COUNCIL REGULAR MEETING - August 8, 2013

Notice regarding City Council: The Capitola City Council meets on the 2nd and 4th Thursday of each month at 7:00 p.m. (or in no event earlier than 6:00 p.m.), in the City Hall Council Chambers located at 420 Capitola Avenue, Capitola.

Agenda and Agenda Packet Materials: The City Council Agenda and the complete agenda packet are available on the Internet at the City's website: www.ci.capitola.ca.us. Agendas are also available at the Capitola Post Office located at 826 Bay Avenue, Capitola.

Agenda Document Review: The complete agenda packet is available at City Hall and at the Capitola Branch Library, 2005 Wharf Road, Capitola, on the Monday prior to the Thursday meeting. Need more information? Contact the City Clerk's office at 831-475-7300.

Agenda Materials Distributed after Distribution of the Agenda Packet: Pursuant to Government Code §54957.5, materials related to an agenda item submitted after distribution of the agenda packet are available for public inspection at the Reception Office at City Hall, 420 Capitola Avenue, Capitola, California, during normal business hours.

Americans with Disabilities Act: Disability-related aids or services are available to enable persons with a disability to participate in this meeting consistent with the Federal Americans with Disabilities Act of 1990. Assisted listening devices are available for individuals with hearing impairments at the meeting in the City Council Chambers. Should you require special accommodations to participate in the meeting due to a disability, please contact the City Clerk's office at least 24-hours in advance of the meeting at 831-475-7300. In an effort to accommodate individuals with environmental sensitivities, attendees are requested to refrain from wearing perfumes and other scented products.

Televised Meetings: City Council meetings are cablecast "Live" on Charter Communications Cable TV Channel 8 and are recorded to be replayed at 12:00 Noon on the Saturday following the meetings on Community Television of Santa Cruz County (Charter Channel 71 and Comcast Channel 25). Meetings are streamed "Live" on the City's website at www.ci.capitola.ca.us by clicking on the Home Page link "View Capitola Meeting Live On-Line." Archived meetings can be viewed from the website at anytime.

City of Capitola
Certificate of Appreciation

to

SANDRA WILLIAMS

for Service as the City's Representative on the

Advisory Council of the Area Agency on Aging
from November 2007 through December 2012

Stephanie Harlan

Stephanie Harlan, Mayor

Signed and sealed this 8th day of August, 2013

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CITY COUNCIL AGENDA REPORT

MEETING OF AUGUST 8, 2013

FROM: OFFICE OF THE CITY CLERK

SUBJECT: APPROVAL OF THE CITY COUNCIL MEETING MINUTES OF THE JULY 25, 2013,
REGULAR CITY COUNCIL MEETING

RECOMMENDED ACTION: Approve the subject minutes as submitted.

DISCUSSION: Attached for City Council review and approval are the minutes of the subject meeting.

ATTACHMENTS:

1. July 25, 2013, Regular City Council Meeting minutes.

Report Prepared By: Susan Sneddon, CMC
City Clerk

Reviewed and Forwarded
By City Manager: 

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**CAPITOLA CITY COUNCIL
REGULAR MEETING ACTION SUMMARY
THURSDAY, JULY 25, 2013 - 7:00 PM**

**CLOSED SESSION – 6:00 PM
CITY MANAGER’S OFFICE**

CALL TO ORDER

Mayor Harlan called the meeting to order at 6:00 p.m. and announced the items to be discussed in Closed Session, as follows:

CONFERENCE WITH LABOR NEGOTIATOR (Govt. Code §54957.6)

Negotiator: Lisa Murphy, Administrative Services Director
Employee Organizations: Capitola Police Officers Association, Capitola Police Captains, and Police Chief

PUBLIC EMPLOYEE PERFORMANCE EVALUATION (Govt. Code § 54957)

City Council’s Performance Evaluation of the City Manager

LIABILITY CLAIMS (Govt. Code §54956.95)

Claimant: Sally Donnelly
Agency claimed against: City of Capitola

Mayor Harlan noted that there was no one in the audience; therefore, the City Council recessed at 6:05 PM to the City Manager’s Office.

REGULAR MEETING OF THE CAPITOLA CITY COUNCIL – 7:00 PM

1. ROLL CALL AND PLEDGE OF ALLEGIANCE

Council Members Dennis Norton, Sam Storey, Ed Bottorff, Council Member Termini, and Mayor Stephanie Harlan.

2. PRESENTATIONS

- A. Introduction of Jesse Franchi, Maintenance Worker and Frank Perry, Museum Curator.
- B. Proclamation in recognition and appreciation to Capitola Historical Museum Coordinator Carolyn Swift for 20 years of service to the Citizens of Capitola from July 1993 through July 2013.

3. REPORT ON CLOSED SESSION

City Attorney Barisone stated that Administrative Services Director Murphy reported on labor negotiations with the Capitola Police Officers Association, the Capitola Police Captains, and the Police Chief; there was no reportable action. He also stated that the Council discussed the tort claim from Sally Donnelly; there was no reportable action (this item is agendaized for the regular meeting this evening).

Item #: 9.A. Attach 1.pdf

CAPITOLA CITY COUNCIL ACTION SUMMARY – Thursday, July 25, 2013

4. ADDITIONAL MATERIALS

City Clerk Sneddon listed additional material received after the posting of the July 25, 2013, City Council agenda packet.

5. ADDITIONS AND DELETIONS TO AGENDA (none provided)

6. PUBLIC COMMENTS

Ernie Tavilla, 615 Riverview Drive, stated concerns regarding the recent repaving of Gilroy Drive and Riverview Drive. (Public Works Director Jesberg responded that this was a slurry seal project and explained the technique in applying slurry seals).

Council Member Norton requested that staff provide a review of the slurry seal project in one month.

Sandy Erickson, 117 Cabrillo Street, stated concerns regarding the posted speeds at Park Avenue between Cabrillo Street and Coronado Street. In addition, she suggested that a cross walk be added near the bus stop on the other side of Cabrillo Street near Coronado Street.

Joan Leitner, 1710 47th Avenue, suggested a dog park on the Rispin property in memory of Joshua Lavene.

Melissa VanNess, 47th Avenue, stated that she supports a dog park on the Rispin property in memory of Joshua Lavene.

7. CITY COUNCIL / CITY TREASURER / STAFF COMMENTS

Council Member Termini suggested that a loading zone be established in front of Capitola Knolls on Kennedy Drive for loading/unloading of Lift Line passengers. In addition, he stated that a non-profit group in the Bay Area received funding to convert a building into a museum on property similar to the Rispin property.

Council Member Bottorff stated that he attended an Association of Monterey Bay Area Governments (AMBAG) meeting; one of the topics of discussion was sustainable community's strategy scenario development for the Metropolitan Transportation Plan. In addition, he showed a picture of the new "Surf Capitola – Practice Aloha" wall tiles in the Esplanade.

Mayor Harlan stated that the Santa Cruz Capitola Wharf to Wharf Race will be held on Sunday, July 28th.

Council Member Norton suggested that AMBAG's sustainable community transportation scenarios should include Santa Clara County as part of the master plan study.

8. BOARDS, COMMISSIONS AND COMMITTEES APPOINTMENTS (none provided)

9. CONSENT CALENDAR

Council Member Norton requested that Item 9.C. (City Check Register Report) be pulled from the Consent Calendar for discussion.

- A. Consider approving the City Council Minutes of the June 27, 2013, and the July 11, 2013, Regular City Council Meetings.

CAPITOLA CITY COUNCIL ACTION SUMMARY – Thursday, July 25, 2013

- B. Receive Planning Commission Action Minutes for the Regular Meeting of July 18, 2013.
- C. Approval of City Check Register Reports dated June 21, 2013; June 28, 2013; July 5, 2013, and July 12, 2013.
- D. Adoption of **Ordinance No. 985** adding Chapter 13.16 to the Capitola Municipal Code establishing regulations for storm water pollution prevention and protection [2nd Reading].
- E. Consider an agreement with Carolyn Flynn for professional services related to Affordable Housing Programs, grant writing, and grant management.
- F. Consider approving the Public Works Department going out to bid for the 2013 Street Striping Project.
- G. Consider denying liability claim of Sally Donnelly for an undetermined amount; and forward to the City's liability insurance carrier

ACTION **Motion made by Council Member Termini, seconded by Council Member Norton, to approve the following Consent Calendar items: 8.A.; 8.B.; 8.D.; 8.E.; 8.F. and 8.G. The motion was passed unanimously.**

THE FOLLOWING CONSENT CALENDAR ITEM WAS PULLED FOR SEPARATE DISCUSSION:

- 8.C. Approval of City Check Register Reports dated June 21, 2013; June 28, 2013; July 5, 2013, and July 12, 2013.

ACTION **Motion made by Council Member Termini, seconded by Council Member Norton, to approve Item 8.C. The motion was passed unanimously.**

10. GENERAL GOVERNMENT / PUBLIC HEARINGS

- A. Discussion regarding use options for the McGregor property.
Public Works Director Jesberg presented this item.
City Manager Goldstein stated that one of the City Council goals is to establish a use plan for the McGregor site.
Joan Leitner, 1710 47th Avenue, stated that the McGregor property is located too far from the Village to be used for a dog park.
Michaela Scott, 750 47th Avenue, stated that she supports a dog park at the McGregor property and a skateboard park at the Rispin property.
Mayor Harlan suggested holding off on a final decision regarding the McGregor property until the City contacts California State Parks to ascertain if they would consider selling to the City a portion of the property adjacent to the McGregor property.

Item #: 9.A. Attach 1.pdf

CAPITOLA CITY COUNCIL ACTION SUMMARY – Thursday, July 25, 2013

Council Member Storey requested staff to agendaize for a future Council meeting a discussion regarding long-term plans for the Rispin property.

ACTION

Motion made by Council Member Norton, seconded by Council Member Storey, for staff to bring back to Council permanent recreational uses for the McGregor property. The motion carried on the following vote: AYES: Council Member Norton, Council Member Storey, Council Member Termini, and Mayor Harlan. NOES: Council Member Bottorff. ABSENT: None. ABSTAIN: None.

B. Presentation regarding the General Plan Budget.

Public Works Director Grunow presented this item.

Steve Noack and Ben Noble, DC&E, provided comments regarding the City's General Plan budget.

City Council received the report.

C. Consider options to fill the vacant City Treasurer position.

City Manager Goldstein presented this item.

City Attorney Barisone stated that Council can authorize a City Treasurer appointment to serve the remainder of former City Treasurer DeWitt's term (November 2016), and consider a ballot measure asking the voters if they desire to change the City Treasurer position from elected to appointed.

Glenn Hanna, former City Treasurer, commented on the process of appointing a City Treasurer.

ACTION

Motion made by Council Member Termini, seconded by Council Member Bottorff, for staff to advertise for a September 12, 2013, City Treasurer appointment, and also at the September 12, 2013, Council meeting to appoint a City Treasurer for the remaining term ending in November 2016; or consider adopting a Resolution to hold a special election either at the June 2014 Statewide Direct Primary Election, or the November 2014 General Municipal Election, with a ballot measure changing the City Treasurer position from elected to appointed. The motion was passed unanimously.

11. ADJOURNMENT

Mayor Harlan adjourned the meeting at 9:25 PM to the next Regular Meeting of the City Council on Thursday, August 8, 2013 at 7:00 PM, in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

Stephanie Harlan, Mayor

ATTEST:

_____, CMC
Susan Sneddon, City Clerk



**ACTION SUMMARY MINUTES
CAPITOLA PLANNING COMMISSION
THURSDAY, AUG. 1, 2013
7 P.M. CITY COUNCIL CHAMBERS**

1. ROLL CALL AND PLEDGE OF ALLEGIANCE

2. ORAL COMMUNICATIONS

- A. Additions and Deletions to Agenda
- B. Public Comments
- C. Commission Comments
- D. Staff Comments

3. APPROVAL OF MINUTES

- A. July 18, 2013, Regular Meeting Minutes

ACTION Approved 5-0

4. CONSENT CALENDAR

- A. 1840 Wharf Road #13-090 APN: 035-031-40

Emergency Coastal Permit for a slope stabilization system to be installed due to a landslide in the AR/R-1 (Automatic Review/Single-Family Residence) Zoning District. This project requires a Coastal Permit which is appealable to the California Coastal Commission after all possible appeals are exhausted through the City.

Environmental Determination: Categorical Exemption

Property Owner: Linda White, filed 7/8/13

Representative: Jeffrey Dunton

ACTION Approved 5-0

5. PUBLIC HEARINGS

- A. 2001 41st Avenue #13-083 APN: 034-511-16

Design Permit to remodel an existing commercial building, master sign program, and tree permit to remove a tree in the CC (Community Commercial) Zoning District.

Environmental Determination: Categorical Exemption

Property Owner: Joel and Priscilla Brown, filed 6/19/13

Representative: Steve Thomas

ACTION Approved 5-0

6. DIRECTOR'S REPORT

7. COMMISSION COMMUNICATIONS

8. ADJOURNMENT

Adjourned at 8:10 p.m. to the next Planning Commission meeting Thursday, Sept. 5, 2013, at 7 p.m., in the Capitola City Council Chambers, 420 Capitola Ave., Capitola, California.



CITY COUNCIL AGENDA REPORT

MEETING OF AUGUST 8, 2013

FROM: CITY MANAGER'S DEPARTMENT

SUBJECT: LIABILITY CLAIMS

RECOMMENDED ACTION: Deny liability claim and forward to the City's liability insurance carrier.

DISCUSSION:

The following claimant has filed a liability claim against the City of Capitola:

1. Scott McCann; \$2,229.00

ATTACHMENTS: None

Report Prepared By: Liz Nichols
Executive Assistant to the City Manager

Reviewed and Forwarded
by City Manager: 

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CITY COUNCIL AGENDA REPORT

MEETING OF AUGUST 8, 2013

FROM: CITY MANAGER'S DEPARTMENT

SUBJECT: CHIEF OF POLICE EMPLOYMENT AGREEMENT, 1ST AMENDMENT

RECOMMENDED ACTION: Authorize the City Manager to approve the 1st Amendment to the Chief of Police Employment Agreement.

BACKGROUND: The non-sworn bargaining groups and the department directors negotiated memorandums of understanding and employment agreements in July of 2012. Parts of the agreements were improvements to employee health benefits. The Chief of Police had been recently hired in April of 2012 and was not a part of those negotiations; therefore he did not receive the health benefit increase that all other employees received in 2012 and in July 2013.

The current rate for the Police Chief and the proposed rate are as follows:

	Police Chief's Current Rate	Proposed Rate – same as all other bargaining units
Employee Only	\$650	\$700
Employee + 1	\$799	\$899
Employee + 2	\$999	\$1,099

In addition, in July of 2014, the other bargaining units will receive an additional 2.5% health benefit increase which is also included in the Chief of Police's amendment.

FISCAL IMPACT: The fiscal impact will be an additional \$1,200 per year.

ATTACHMENT:

1. 1st Amendment to the Police Chief's Employment Agreement

Report Prepared By: Lisa G. Murphy
Administrative Services Director

Reviewed and Forwarded
by City Manager: 

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FIRST AMENDMENT TO
POLICE CHIEF EMPLOYMENT AGREEMENT

This first Amendment to Police Chief Employment Agreement is entered into on _____, 2013 with an effective date of _____, 2013, by and between the City of Capitola, a municipal corporation (hereinafter referred to as "City"), and Rudolph Escalante, an individual (hereinafter referred to as "Employee"), and is intended to amend that particular Police Chief Employment Agreement April 1, 2012 (hereinafter collectively referred to as the "Original Agreement").

1. Section 13 of the Original Agreement is hereby amended to read as follows:

"13. Flexible Spending Arrangement Contributions. The City makes a flexible spending arrangement ("Flex Plan") contribution on behalf of each qualified employee for medical, dental & Vision coverage. The contribution for full-time regular employee is:

Employee Only	\$700 per month
Employee + 2	\$899 per month
Employee + 2 or more	\$1,099 per month

Effective July 1, 2014 the City will increase its contribution by 2.5%

IN WITNESS WHEREOF, the parties have executed this First Amendment to the Police Chief Employment Agreement the day and year written above.

Dated: _____

CITY OF CAPITOLA

By: _____
Benjamin Goldstein, City Manager

Dated: _____

EMPLOYEE

By: _____
Rudolph Escalante

Approved as to Form

John G. Barisone, City Attorney

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CITY COUNCIL AGENDA REPORT

MEETING OF AUGUST 8, 2013

FROM: CITY MANAGER'S DEPARTMENT

SUBJECT: POLICE OFFICERS ASSOCIATION MEMORANDUM OF UNDERSTANDING FOR THE PERIOD OF JULY 1, 2013 THROUGH JUNE 30, 2018

RECOMMENDED ACTION: Authorize the City Manager to execute the Capitola Police Officers Association Memorandum of Understanding with the negotiated changes in benefits for July 1, 2013 through June 30, 2018.

BACKGROUND: The Capitola Police Officers Association (POA) Bargaining Unit Memorandum of Understanding (MOU) expired on June 30, 2013. As required by state law the City has negotiated with the bargaining unit on working conditions, salary and benefit changes.

DISCUSSION: After several weeks of good faith negotiations with the POA bargaining unit the City's negotiating team recommends a new five-year contract. The contract includes no salary increase in year 1, and an annual salary increase based on the CPI in years 2 – 5; however that salary increase is capped at 3% in year 2 and 3.5% in each year thereafter. The contract also includes increases in the health care allowance, to offset rising health insurance costs for employees. The contract includes a merit pay increase of 5% for employees with 20 years of service, which matches the City's non-sworn bargaining units who also have a 5% increase after 20 years of service, and a 2.5% specialty pay for officers assigned to motorcycle duty. The contract includes no change to the City's cap on PERS contributions, therefore all PERS rate increases will be paid by employees.

Below are the negotiated changes listed by the implementation year the changes and the ensuing costs:

	FY13/14	FY14/15	FY15/16	FY16/17	FY17/18
Health Care	4.0%	2.5%	2.5%	2.5%	2.5%
Salary COLA: Cap	0.0%	CPI: Cap 3%	CPI: Cap 3.5%	CPI: Cap 3.5%	CPI: Cap 3.5%
Longevity 5% @ 20yr	5%				
Motorcycle Pay 2.5%	2.5%				
TOTAL COST	\$ 23,000	Up to \$ 95,000	Up to \$111,000	Up to \$109,000	Up to \$113,500

Finally, the City's non-sworn bargaining unit contracts, which were negotiated last year, contained a clause stating that if the POA obtained a greater salary or health care increase during the term of their contract they would receive the same increase. The contracts for the non-sworn bargaining units had no health care increase in Fiscal Year 2014/2015; therefore if this contract with the POA is approved, the non-sworn units will receive a 2.5% health care increase. That cost will be an additional \$5,800 in Fiscal Year 2014/2015.

Item #: 9.E. Staff Report.pdf

AUGUST 8, 2013: CITY MEMORANDUM OF UNDERSTANDING AGREEMENT

FISCAL IMPACT: The estimated cost for each year is as follows:

Year One	\$23,500
Year Two*	up to \$95,000
Year Three	up to \$111,000
Year Four	up to \$109,000
Year Five	up to \$113,500

*Year Two will include an additional \$5,800 for the miscellaneous employee groups.

ATTACHMENTS:

1. MOU for the Police Officers Association Employees' Bargaining Unit.

Report Prepared By: Lisa G. Murphy
Administrative Services Director

Reviewed and Forwarded
by City Manager: 

**MEMORANDUM OF UNDERSTANDING
BETWEEN
CAPITOLA POLICE OFFICERS' ASSOCIATION
AND CITY OF CAPITOLA
PERIOD 7/1/2013 – 6/30/2018**

TABLE OF CONTENTS		Page
Article 1.00	Term	1
Article 2.00	Definitions	1
	2.01 Employer	1
	2.02 Association	1
	2.03 Employee/Representation Unit	1
	2.04 Patrol Vehicle	1
	2.05 Peace Officer/Sworn Personnel	2
Article 3.00	Management Rights Clause	2
Article 4.00	Association Recognition, Rights and Security	2
	4.01 Association Recognition	2
	4.02 Notice of Recognized Association	2
	4.03 Payroll Deductions and Pay Over	2
	4.04 Hold Harmless	3
	4.05 Bulletin Boards	3
	4.06 Use of Employer Facilities	3
	4.07 Bargaining	3
Article 5.00	Hiring Provisions	3
	5.01 Non-Discrimination	3
	5.02 Employment	3
	5.03 Signing Bonus	4
Article 6.00	Job Classification	4
	6.01 New Job Classifications	4
Article 7.00	Hours of Work, Shift, Schedules, and Rest Periods	4
	7.01 Work Schedule and Change of Shifts	4
	7.02 Shift	4
	7.03 Assigning Shifts	4
	7.03.01 Successive Shifts	4
	7.03.02 Special Event Assignment	5
	7.04 Meal and Rest Periods	5
Article 8.00	Overtime	5
	8.01 Regular/Overtime Hours	5
	8.02 Compensation/Overtime Authorizations	5
	8.03 Compensation/Overtime	5
	8.04 Overtime not Cumulative	5
	8.05 Fractions of Less than Fifteen Minutes	6
	8.06 Other	6

Item #: 9.E. Attach 1.pdf

Article 9.00	Health and Safety	6
Article 10.00	Uniforms	6
Article 11.00	Holidays	7
Article 12.00	Flexible Spending Arrangement Contributions	7
Article 13.00	Insurance	8
Article 14.00	Educational Incentive Program	8
	14.01 Sworn Police Personnel	8
	14.02 Education Cap	8
	14.03 Education Reimbursement – Community Service Officer	8
	14.04 POST Certificate Pay - Police Officers	9
	14.05 POST Certificate Pay - Police Sergeants	9
	14.06 Career Officer Program	9
Article 15.00	Callback Pay – Police Officers, Sergeants and Records Manager	9
Article 16.00	Night Differential – Police Officers, Sergeants, and Records Manager	10
Article 17.00	Court Appearances	10
Article 18.00	Training Compensation	10
Article 19.00	Specialty Pay	10
Article 20.00	Additional Compensation	11
	20.01 For Temporary Assignment to a Higher Level Vacancy	11
	20.02 Positions Designated Bilingual	11
Article 21.00	Leaves of Absence	11
	21.01 Leave May Not Exceed One Year	11
	21.02 No Leave to Accept Outside Employment	11
	21.03 Military Leave	11
	21.04 Leave for Jury Duty	11
Article 22.00	Vacation Schedule	12
	22.01 Vacation Schedule	12
	22.02. Maximum Vacation Accumulation	12
	22.03 Vacation Cash Out On Termination	12
	22.04 Vacation Mandatory Cash out before termination	13
	22.05 Vacation Accrual and Usage Beginning Dates	13
	22.06 Maximum/Minimum Annual Vacation Leave	13
	22.07 Effect on Leave Without Pay on Vacation Credit	13
	22.07.01 When Vacation May be Taken–All Employees but Sergeants and Records Supervisor	13
	22.07.02 When Vacation May be Taken- Sergeants and Records Supervisor	13
	22.08 Rate of Vacation Pay	14

Article 23.00	Sick Leave	14
	23.01 Accrual	14
	23.02 Labor Code Section 4850	14
	23.03 Sick Leave Usage	14
	23.04 Medical Report	14
	23.05 Emergency Leave. Sickness in Immediate Family	14
	23.06 Bereavement Leave	15
Article 24.00	Wages & Employment Status	15
	24.01 Wage Schedule/Hourly Rates	15
	24.02 Service	15
	24.03 Types of Appointment	16
	24.04 Beginning Salary Rates	16
	24.05 Advancement Within the Schedule	16
	24.06 Promotion to New Position	17
	24.07 Effective Date of Pay Increase	17
	24.08 Pay Increase Schedule	17
Article 25.00	Grievances	18
	25.01 Definition	18
	25.02 Department Review and Adjustment of Grievances	18
	25.03 Effect of Failure of Timely Action	19
	25.04 Limitation on Stale Grievances	19
	25.05 Exclusion of Non-Recognized Organizations	19
Article 26.00	Departmental Vehicles and Equipment	20
Article 27.00	Retirement - Public Employees Retirement System	20
Article 28.00	Physical Examinations	22
Article 29.00	Family & Medical Leave Act of 1993	22
Article 30.00	Miscellaneous	22
Article 31.00	Drug Policy	22
Article 32.00	Fair Labor Standards Act	22
Article 33.00	Personnel Rules	22
Article 34.00	Layoff Procedures	23
Article 35.00	Mileage Reimbursement	23
Article 36.00	Savings Clause	23
Article 37.00	Enactment	23

ATTACHMENTS:

A: Wage Schedule

**MEMORANDUM OF UNDERSTANDING
BETWEEN
CAPITOLA POLICE OFFICERS' ASSOCIATION
AND CITY OF CAPITOLA**

This MEMORANDUM OF UNDERSTANDING is made and entered into by and between CAPITOLA POLICE OFFICERS' ASSOCIATION and the CITY OF CAPITOLA for and on behalf of its members hereinafter identified. This MOU embodies all items agreed upon by and between the City of Capitola and the Capitola Police Officers' Association.

ARTICLE 1.00 TERM

The term of this Memorandum of Understanding shall commence July 1, 2013 and shall expire on June 30, 2018.

ARTICLE 2.00 DEFINITIONS

2.01 EMPLOYER

The term "Employer" as used herein refers to the City of Capitola. The words "Management", "Department Head", "Police Chief", may also be used to refer to "Employer" in appropriate contexts.

2.02 ASSOCIATION

The term "Association" as used herein shall refer to the Capitola Police Officers' Association.

2.03 EMPLOYEE/REPRESENTATION UNIT

The term "Employee" or "Covered Employee", as used herein, means all persons employed by the Employer in the Police Department who are classified as Community Services Officer-Community Services Officer-Lifeguard Captain, Police Officer, Records Manager and Sergeant. Those positions constitute the unit represented by Capitola Police Officers' Association.

2.04 PATROL VEHICLE

The term "patrol vehicle" as used herein shall refer to any motor vehicle as defined under the provisions of Sections 415 and 165 of the California Vehicle Code.

2.05 PEACE OFFICER/SWORN PERSONNEL

The terms “peace officers” or “sworn personnel” means “police officers” as defined in Penal Code Sections 830 and 830.1.

ARTICLE 3.00 MANAGEMENT RIGHTS CLAUSE

Except as otherwise specifically set forth in this MOU, the CITY retains all management prerogatives. These include but are not limited to: determining the mission of its constituent departments; setting standards of service; determining the procedures and standards of selection for employment and promotion; directing its employees; taking disciplinary action; relieving its employees from duty because of lack of work or for other legitimate reasons; maintaining the efficiency of governmental operations; determining the methods, means, and personnel by which government operations are to be conducted; taking all necessary actions to carry out its mission in emergencies; and exercising control and discretion over its organization and the technology of performing its work.

Nothing in this article shall be construed to limit, amend, decrease, revoke, or otherwise modify the rights vested in the CITY by state law, city ordinances, or resolutions or other laws regulating, authorizing, or empowering the CITY to act or refrain from acting.

ARTICLE 4.00 ASSOCIATION RECOGNITION, RIGHTS AND SECURITY

4.01 ASSOCIATION RECOGNITION

Except as limited by Government Code Section 3502, the Employer hereby recognizes the Capitola Police Officers Association (P.O.A), as the exclusive collective bargaining agent of all covered Employees in this unit.

4.02 NOTICE OF RECOGNIZED ASSOCIATION

The Employer/Association shall post within the employee work or rest area a written notice which sets forth the classifications included and referred to in Section 2.03 hereof and the name and address of Association as the recognized employee organization for such units. The P.O.A. shall also give a written notice to persons newly employed in representation unit classifications, which notice shall contain the name and address of the employee organization recognized for such unit.

4.03 PAYROLL DEDUCTIONS AND PAYOVER

The unit defined in Section 2.03 shall be an “agency shop” as defined in Government Code Section 3512.5 (Chapter 901 of Stats. 2000). Consequently, Employer shall deduct Association dues from employee’s pay in conformity with State and local regulations. The Employer shall promptly pay over to the designated payee all sums so deducted on a monthly basis.

4.04 HOLD HARMLESS

Association shall indemnify and hold Employer harmless from any and all claims, demands, suits, or any other action arising from an employee claim relating to legality, or implementation, of Section 4.03.

4.05 BULLETIN BOARDS

Reasonable space shall be allowed on bulletin boards as specified by the Police Chief for use by the Association to communicate on relevant subjects with departmental employees. Material shall be posted upon the bulletin board space as designated, and not upon the walls, doors, filing cabinets or any other place. Posted material shall not be obscene, defamatory, or of a partisan political nature, nor shall it pertain to public issues which do not involve the Employer or its relations with City employees. All posted material shall bear the identity of the sponsor, shall be neatly displayed, and shall be removed when no longer timely.

4.06 USE OF EMPLOYER FACILITIES

Employer facilities such as the City Hall Community Room may be made available upon timely application for use by employees and the Association. Such use shall not occur during regular duty hours, other than the lunch period. Application for such use shall be made to the management person under whose control the facility is placed.

4.07 BARGAINING

Employee members of the Association's bargaining committee shall be allowed time to absent themselves from duties for a reasonable period without loss of pay, for the purpose of participating in contract negotiations. Employee members of Association's bargaining committee shall be extended the same privilege to participate in any meetings mutually called by the parties during the term of this agreement for review of grievances and contract compliance questions.

ARTICLE 5.00 HIRING PROVISIONS

5.01 NON-DISCRIMINATION

No Employee covered by this Agreement shall be discriminated against by the Employer, or by the Association by reason of race, color, religion, sex, age, national origin, or sexual orientation or any other factors consistent with State and Federal Law.

5.02 EMPLOYMENT

The Employer shall not discharge or otherwise discriminate against any Employee by reason of any Association activity not interfering with the proper performance of his/her work.

5.03 SIGNING BONUS

Sworn employees hired as a Lateral Officer after August 5, 2012 may receive a one-time signing bonus of up to \$2,000 upon the successful completion of probation and obtaining regular full time employment status. A Lateral Officer is defined as an applicant who is currently working for a recognized law enforcement agency, has successfully completed the probation period for that agency, and possesses a State of California Basic POST Certificate. The City Manager shall make the determination as to the amount. The amount of the signing bonus shall be specified in the hire-letter.

ARTICLE 6.00 JOB CLASSIFICATION

6.01 NEW JOB CLASSIFICATIONS

If an Employee covered by this Agreement is assigned work of a substantially new or different nature so as to constitute a new job classification, the Employer and the Association will negotiate regarding the wage rate applicable to such new job classification

ARTICLE 7.00 HOURS OF WORK, SHIFT, SCHEDULES, AND REST PERIODS

7.01 WORK SCHEDULE AND CHANGE OF SHIFT

Prior to the applicable pay period, the Police Chief or his/her designated representative shall prepare a schedule showing the hours each employee of the department is, at the time of posting, to work. The Police Chief shall make every effort to assure that no employee shall have more than one change of shift in any calendar month. This paragraph does not limit the Police Chiefs authority to revise schedules as need permits.

7.02 SHIFT

For sworn personnel and Community Service Officers, hours of work in the normal workday shall be ten (10) hours for police officers and police sergeants, except for detective bureau personnel, which is (8) hours. While they are assigned to the detective bureau, the sick leave accrual provisions of this MOU that are applicable to 5/8 employees will be applicable to such employees.

7.03 ASSIGNING WORK SHIFTS

In assigning work shifts, the department shall give due regard to assigning shifts which will not disrupt or interrupt any employee's education or training programs and schedules. Undesirable work shifts shall not be used as punishment, intimidation, or harassment. Shift assignments shall be carried out in accordance with department policy.

7.03.01 SUCCESSIVE SHIFTS

It is understood that the assignment of shifts is a prerogative of management that has been delegated to the Chief of Police. It has been the practice to assign at an officer's request, on the basis of seniority, the same shift for two successive shift changes. It is understood that this practice will be continued for the duration of this MOU. Although the

assignment of successive shifts remains with the Chief of Police, should an officer allege that such assignment has been made in an arbitrary or discriminatory manner, the matter may be reviewed through the City Manager level of the Grievance Procedure.

7.03.02 SPECIAL EVENT ASSIGNMENTS

The parties agree that except as required in Departmental Order No. 2, "Manpower Deployment" dated December 15, 1987, Item III A, Holiday Staffing and III B Overtime Shifts, any special event outside of a member's work schedule shall receive 30 days notice which will include the following: location, time and hours to be worked. If this condition is not met, the officer or sergeant will not be required to work the event (a special event is not an emergency).

7.04 MEAL AND REST PERIODS

A meal period of 30 minutes shall be provided to all other employees during each assigned shift no sooner than 3 hours after commencement of the shift and not later than 3 hours prior to the end of the shift. Such meal period for sworn officers (including those on detective assignment) and community service officers shall be considered time worked.

ARTICLE 8.00 OVERTIME

8.01 REGULAR/OVERTIME HOURS

The normal workweek for all bargaining unit employees shall consist of forty (40) hours. Except as provided in section 18.02 (regarding canine care), all work in excess of forty hours in a workweek shall be considered overtime and shall be compensated pursuant to the provisions of Sections 8.00-8.06 of this agreement.

8.02 COMPENSATION/OVERTIME AUTHORIZATION

No employee shall receive compensation for overtime, whether in cash, or in time off, or a combination, unless such overtime work has been approved by the Police Chief or his designated representative.

8.03 COMPENSATION/OVERTIME

All overtime work shall be compensated at the rate of one and one-half times the hourly rate in cash. Overtime compensation shall be paid in the paycheck covering the pay period in which the overtime was worked. Except as otherwise provided in Labor Code Section 204.3, at the option of the employee, compensatory time off may be earned in lieu of cash. Up to 120 hours may be accumulated. Any time over that maximum shall be in cash at time and one-half. Compensatory time off will be scheduled by means of management responding to the requests of the employees. Such requests will not be arbitrarily or unreasonably denied.

8.04 OVERTIME NOT CUMULATIVE

Any hours worked which qualify as overtime under one measurement may not be used under another measurement.

8.05 FRACTIONS OF LESS THAN FIFTEEN MINUTES

No overtime payment shall be allowed for any period of less than fifteen minutes, and fractions of less than fifteen minutes of overtime worked may not be accumulated in order to total fifteen minutes or more, except where such fractions are part of a regularly scheduled shift.

8.06 OTHER

Court appearances and callbacks may also, at times, result in overtime. See Articles 17.00 and 15.00 respectively. Overtime may occur as a result of the last paragraph of section 11.00.

ARTICLE 9.00 HEALTH AND SAFETY

9.01 Employer shall comply with all applicable state, federal, and local safety regulations and shall furnish to all employees safety equipment required by law or deemed necessary by the Police Chief.

9.02 The City and the Association agree during the term of this agreement to establish a labor management committee that will seek to reduce the incidents and cost of industrial injury and provide opportunities to improve employee fitness.

ARTICLE 10.00 UNIFORMS

10.01 The employer will purchase initial uniforms for newly hired uniformed employees and will repair or replace uniforms including uniform boots, on an as-needed basis.

The City will designate a police captain to whom the officer will submit the uniform request for authorization for repair or replacement. If the officer disagrees with the captain's decision with regard to the necessity for repair or replacement, he or she may have the dispute reviewed by the Chief of Police through the grievance procedure included in this MOU.

In addition, the employer will cover the cost of reasonable cleaning of departmentally authorized uniforms. Employees will be responsible for delivering uniforms to, and retrieving uniforms from, the employer-designated cleaning establishment.

Police Officers and Sergeants assigned to the Detective unit shall be eligible to choose EITHER the repair, cleaning and replacement policy for their official uniforms as provided in Section 10.01 above OR a uniform allowance of \$50.00 per month for the duration of their assignment to the Detective Division. (The latter choice will be shown as taxable income on an Employee's W-2 form.)

Compensation paid or the monetary value for the purchase, rental and/or maintenance of required uniforms will be reported to CalPERS, to the extent allowable by CalPERS.

10.02 Employer agrees to provide the following items for Police Officers and Sergeants assigned to motorcycle duty: two pairs of motorcycle pants; one pair motorcycle boots

and one pair of gloves. Police Officers shall also be entitled to an allowance for safety glasses not to exceed \$20.00.

ARTICLE 11.00 HOLIDAYS

Holidays will be expressed as an annual (calendar year) bank of hours and taken as scheduling permits. Employees working 4/10 schedules shall receive 150 hours per calendar year and employees working 5/8 schedules shall receive 120 hours per calendar year. Upon termination, if an employee has not actually taken as much holiday time as a pro-rated amount, he/she will be entitled to compensation for the unused portion. For instance, if a 4/10 employee whose last day was June 30 had taken only 55 hours of holiday time, (s)he would be entitled to 20 hours of compensation. Personal Holidays are included in the foregoing 150/120 hourly figures, and not in addition to them. Employees working 4/10 schedules will be debited for 10 holiday hours when they take time off as a holiday; those working 5/8 schedules will be debited for 8 hours.

For Sergeants and Records Manager, December 25th will be a paid holiday if not worked (and 10 hours and 8 hours, respectively, of holiday time will be consumed). If worked, employee will be paid time and one half.

ARTICLE 12.00 FLEXIBLE SPENDING ARRANGEMENT CONTRIBUTIONS

The City makes a flexible spending arrangement (Flex Plan) contribution on behalf of each employee. For those employees who have selected health coverage through PERS, from the monthly contribution set forth herein, \$115 effective January 1, 2013 will be paid to PERS for what is sometimes referred to as "employer contribution". This amount is the minimum amount required by PERS, recognizing that state law may increase this minimum from time to time requiring compliance by City. For all employees who receive a Flex Plan contribution, a \$1.50 per paycheck plan fee is paid from the monthly contribution set forth herein. Effective 8/18/13, the contribution for full time regular employees in this unit is:

Employee Only: \$700 per month
Employee + 1: \$899 per month
Employee + 2 or more: \$1,099 per month

Effective July 1, 2014 the City will increase its contribution by 2.5% to:

Employee Only \$718
Employee +1 \$921
Employee+2 or more \$1,126

Effective July 1, 2015 the City will increase its contribution by 2.5% to:

Employee Only \$735
Employee +1 \$945
Employee+2 or more \$1,155

Effective July 1, 2016 the City will increase its contribution by 2.5% to:

Employee Only \$754
Employee +1 \$968
Employee+2 or more \$1,184

Effective July 1, 2017 the City will increase its contribution by 2.5% to:

Employee Only	\$773
Employee +1	\$992
Employee+2 or more	\$1,213

Employees who can verify to the City's satisfaction that: they have equivalent health coverage for medical (including dental & vision) provided through their spouse, which will remain in effect until the next enrollment date; or who purchase a Cal PERS Health Plan and dental and vision coverage, but do not use their entire monthly contribution, may use the remaining funds to purchase benefits other than medical (including dental & vision) coverage or take this amount in cash for the employee only contribution amount. (If a cash payment is taken, it is not included in the employee's compensation for the Cal PERS retirement plan).

The City reserves the option of adding additional programs to the cafeteria plan, as they may become available.

ARTICLE 13.00 INSURANCE

The City provides full time members of the Association term life insurance in the amount of \$50,000 and long-term disability insurance.

ARTICLE 14.00 EDUCATIONAL INCENTIVE PROGRAM

SWORN PERSONNEL

14.01 After successful completion of the probationary period, sworn police personnel and the Records Manager shall be eligible to have base pay increased by an additional two and one-half (2.5%) for completion of thirty (30) college units, five (5%) percent for completion of sixty (60) college units, and seven and a half (7.5%) percent for completion of a Bachelor's Degree from an accredited institution. College units may include graduate level work. Courses and degrees must be work related as approved by the Department Head and City Manager.

To receive Educational Incentive Pay, the Employee shall write a memo to his/her supervisor and include a copy of transcripts as evidence of the number of units required for the appropriate incentive pay. The supervisor will review the memo and send it to the Police Chief, who, in turn, will review it and send it to the City Manager for approval.

14.02 Beginning July 1, 2008 the education incentive is limited to a maximum of \$500 per year per employee; beginning July 1, 2009 the limited maximum amount will increase to \$1,000 per year per employee, with 100% textbook reimbursement. It is agreed by the City and the Association to negotiate in good faith on this provision upon the termination of the Memorandum of Understanding.

14.03 Community Service Officer Education Reimbursement: Beginning July 1, 2008, the City will reimburse employees for tuition upon the completion of courses with a grade C or better, approved in advance by the City Manager, up to a maximum of

\$500 per calendar year for classes completed in that same calendar year. Beginning July 1, 2009 the limited maximum amount will increase to \$1,000 per year per employee, with 100% textbook reimbursement.

14.04 P.O.S.T. CERTIFICATE PAY - POLICE OFFICERS

P.O.S.T. Certificate Pay was eliminated effective 7/1/90, however, all police officers receiving P.O.S.T. Certificate Pay at that time will continue to receive it. This Certificate Pay may not be collected in addition to education incentive pay or career officer program pay.

14.05 P.O.S.T. CERTIFICATE PAY - POLICE SERGEANTS

Sergeants shall be eligible to receive 2.5% increase in base pay for completion of the intermediate P.O.S.T. Certificate; 5% for completion of the Advanced P.O.S.T. Certificate; and 7.5% for completion of the P.O.S.T. Supervisory Certificate provided the employee has an A.A., A.S. or equivalent Degree. This Certificate Pay may not be collected in addition to education incentive pay. This program became effective 7-1-85.

To receive P.O.S.T. pay, the Sergeant shall write a memo to his/her supervisor including a copy of the appropriate P.O.S.T. Certificate. The Supervisor shall review the memo and send it to the Police Chief, who, in turn, shall review it and send it to the City Manager for review, and, if approved, it will be effective the first of the month after approval.

14.06 CAREER OFFICER PROGRAM - POLICE OFFICERS ONLY

In accordance with standards set by Personnel Directive #4 dated November 15, 1988 the City agrees to compensate police officers qualifying under the career officer program by increasing base pay rates in the following percentages:

- Senior Officer I 2.5%
- Senior Officer II Additional 2.5% more than Senior Officer I
- Master Officer Additional 2.5% more than Senior Officer II

An officer is eligible for either the Educational Incentive Program or for the Career Officer Program but may not receive payment under both programs.

ARTICLE 15.00 CALLBACK PAY - POLICE OFFICERS, POLICE SERGEANTS AND RECORDS MANAGER

Any Police Officer, Police Sergeant or Records Manager who has departed from his/her work location and is called back to work shall be guaranteed a minimum of four hours compensation at the overtime rate for each call-back. If the employee is no longer needed and at the employee's request, he/she can leave the work location and be paid at overtime rates for time actually worked. When called back, the canine officer and Detectives will receive a minimum of two hours pay at the overtime rate regardless of the number of hours actually worked. All hours worked in excess of the minimum call back shall be paid at overtime rates.

ARTICLE 16.00 NIGHT DIFFERENTIAL - POLICE OFFICERS, POLICE SERGEANTS & RECORDS MANAGER

The Employer shall compensate Police Officers, Police Sergeants and Records Manager who on a regularly scheduled basis work fifty percent (50%) or more per month of their time on swing or graveyard shift, a night differential pay of \$.50 per hour for hours worked on swing shift, and \$.75 per hour for hours worked on graveyard shift. Temporary assignments or emergency assignments for a short period of time and not on a regularly scheduled basis shall not be eligible for night differential pay.

ARTICLE 17.00 COURT APPEARANCES

Any employee who is required to testify in court in connection with an employee's usual, official duties, or in connection with a case in which the City is a party, during his normal working hours shall be allowed to do so without any loss of pay. For hours in court outside of normal assigned duty hours, employees shall be compensated for a minimum of four (4) hours pay at time and a half pay. If notice of cancellation is made to employee either through the recorded telephone message from the court or from the officer's personal voice mailbox by 6:00 p.m. the day prior to scheduled appearance, no payment will be made.

ARTICLE 18.00 TRAINING OFFICER COMPENSATION

Those positions designated by the Police Chief as Field Training Officer or Patrol Training Officer shall receive an additional five percent (5%) of salary, or pro-rated portion thereof, per month for the period actually engaged in training.

ARTICLE 19.00 SPECIALTY PAY

- 19.01 Detective Pay. Individuals assigned to the Detective Bureau shall be additionally compensated at the rate of five (5%) percent of base pay for performing detective duties. It is understood that this assignment is a rotational one and movement from the Detective Bureau shall not be considered a disciplinary action unless done for disciplinary reasons.
- 19.02 Canine Pay. Police Officers assigned as Canine Officers will receive additional compensation at the rate of five (5%) percent of base pay for the care and maintenance of their dog, whether the actual time is slightly more or less than that. The parties mutually agree that this is adequate for care and maintenance.
- 19.03 Longevity Pay: Upon completion of ten (10) continuous years of service with the City, all employees covered by this MOU will receive additional compensation of five (5) percent of base pay. Effective the first full pay period after Union ratification and Council adoption of this MOU, upon completion of twenty (20) continuous years of service with the City of Capitola, all employees covered by this MOU will receive additional compensation of and additional five (5%) percent of base pay.
- 19.04 Motorcycle Patrol Pay. Effective the first full pay period after Union ratification and

Council adoption of this MOU, Police Officers assigned by the Department to Motor Cycle Patrol will receive additional compensation at the rate of two and one half (2.5%) percent of base pay while in that assignment in full time status.

ARTICLE 20.00 ADDITIONAL COMPENSATION

20.01 FOR TEMPORARY ASSIGNMENT TO A HIGHER LEVEL VACANCY

An employee specifically assigned on a temporary basis to a higher level position shall be compensated at the pay rate for the higher level position if the service in such position exceeds a total of twenty days at any one time in any twelve-month period, which payment shall be retroactive to the first day of such services; provided, however, that the employee meets the minimum qualifications for the higher level position and the full range of duties of the higher level position is assigned. The out-of-title pay level shall be the lowest step of the salary schedule of the temporarily assigned position that will provide a salary increase of at least 5%.

20.02 POSITIONS DESIGNATED BILINGUAL

Upon the recommendation of the Police Chief or his designated representative and the approval of the City Manager, no more than two persons occupying a position designated as requiring fluency in a language other than English shall receive an additional five percent (5%) of salary.

ARTICLE 21.00 LEAVES OF ABSENCE

21.01 LEAVE MAY NOT EXCEED ONE YEAR

A leave of absence without pay may be granted by the City Manager upon the request of the employee seeking such leave. Each request will be evaluated on a case-by-case basis.

21.02 NO LEAVE TO ACCEPT OUTSIDE EMPLOYMENT

A leave of absence without pay may not be granted to a person accepting either private or public employment outside the service of the City of Capitola.

21.03 MILITARY LEAVE

The Employer agrees to provide employees all military leave benefits guaranteed under federal, state and case law.

21.04 LEAVE FOR JURY DUTY

Leave of absence with pay shall be granted to a person while serving on jury duty, including time spent going to and from court and serving on jury duty. Any jury fee awarded to such person shall be deposited with the City Treasurer. Any person assigned to an afternoon or evening shift shall be entitled to equal time off leave with pay from his or her next regularly scheduled shift for all time spent while going to and from court and serving jury duty.

ARTICLE 22.00 VACATION

22.01 Accrual: Effective 12/1/00, all employees in this unit shall accrue vacation as set forth in the following chart. The rates shown are for full time employees. On the effective date of this plan, all employees in the unit are full time. If a position hereafter is occupied on less than a full time basis, the rates of accrual will be adjusted as set forth in Section 4 (b) of the attached standard provisions. The rate at which vacation accrues is not affected by whether or not overtime is worked in a pay period. Vacation accrues while on sick leave, except that it does not accrue after the date of separation. Employees working 4/10 schedules and those working 5/8 schedules will both be debited for 40 hours of vacation for each complete week (Sunday through Saturday) of vacation taken. For partial weeks, a 4/10 employee will be debited 10 hours for each day of vacation taken that the employee would have been scheduled to work if vacation had not been taken; 8 hours for 5/8 employees.

Year of Service	Number of Hours/Years
1	80
2	80
3	100
4	100
5	120
6	130
7	140
8-9	150
10-14	160
15-17	170
18-19	180
20+	200

An employee is in the first 'year of service' from the first through the 365th day of employment and (except leap years) on the 366th day is in the second year of service.

22.02 MAXIMUM VACATION ACCUMULATION

- (1) An employee may generally not accumulate more than, but instead each year must cash out pursuant to Section 22.04, below, all accumulated vacation in excess of 504 hours; except that
- (2) An employee who had accumulated more than 504 hours as of 6/30/94 may maintain that level: provided, however, that if accumulated vacation falls below 504 hours, the provisions of (1), above, shall thereafter apply.

22.03 VACATION CASH OUT ON TERMINATION

Upon termination, an employee shall be paid for all accumulated vacation to the separation date, at a rate equal to 100% of his/her current hourly pay rate.

22.04 VACATION – MANDATORY CASH OUT BEFORE TERMINATION

An employee who has accumulated more than 504 hours as of the last pay period in April of any year shall be paid in cash at a rate equal to 100% of his/her current hourly pay rate for all hours in excess of 504 except that such payment shall not exceed the employees annual vacation accrual amount. These cash out payments will be included with the paycheck for the first full pay period in May.

22.05 VACATION ACCRUAL AND USAGE BEGINNING DATES

Vacation will begin to accrue as of the date of employment. An employee may take vacation upon the completion of one year of service.

22.06 MAXIMUM/MINIMUM ANNUAL VACATION LEAVE

In all instances, the Employee shall have the right to take the earned equivalent of one year's vacation accumulation at one time. In the event the Employee wishes to take more than one year's accumulation, approval of the supervisor is required.

22.07 EFFECT ON LEAVE WITHOUT PAY ON VACATION CREDIT

No vacation credit shall be earned during the period when an employee is absent on leave without pay.

22.07.01 WHEN VACATION MAY BE TAKEN - ALL EMPLOYEES BUT SERGEANTS AND RECORDS SUPERVISOR

On December 1st of each year, the Patrol Captain and POA President will post a vacation schedule calendar. All such employees will pick one "major" block of vacation in order of seniority. All vacation picks will be made with regard to Section 21.07.03 of this Memorandum and current Department policy. The calendar will be submitted to the Patrol Captain no later than January 15th.

Other vacation requests will be submitted in accordance with current practice and seniority will prevail in the event of conflicts between employees. The POA President and the Association will handle all conflicts.

22.07.02 WHEN VACATION MAY BE TAKEN - SERGEANTS AND RECORDS SUPERVISOR

The Police Chief or his designated representative shall in each case determine when vacation leave may be taken. Sergeants and records supervisors shall be allowed to divide their vacation leave in any calendar year into segments.

22.07.03 Seniority in the City service among employees in a classification and working unit, consistent with department operating requirements, shall be the basis on which vacation schedule conflicts are resolved. In any calendar year, the first such conflict shall be resolved in favor of the most senior employee. Subsequent vacation schedule conflicts shall be resolved in favor of the most

senior employee who has not, by virtue of his senior position, previously had such a conflict resolved in his favor during the calendar year. In the event of vacation schedule conflicts among such employees, all of whom have, by virtue of their senior positions, had such conflicts resolved in their favor during the calendar year, the senior employee who has had the least number of such conflicts resolved in his favor shall prevail. Vacation leave can be started on any day of the week.

22.08 RATE OF VACATION PAY

Compensation during vacation shall be at the rate of compensation that such person would have been entitled to receive if working at the time vacation occurs.

ARTICLE 23.00 SICK LEAVE

23.01 ACCRUAL

Sick leave accrues at rate of 120 hours per year for sworn officers and Community Service Officers, and all unit employees working a 5/8 shift including Detectives and the Records Manager shall accrue ninety six (96) hours of sick leave per year. The rate at which 'sick leave accrues is not affected by whether or not overtime is worked in a pay period. Sick leave accrues on a prorated basis, based upon a 30 day month. Accrued but unused sick leave has no cash value and shall not be cashed out.

23.02 LABOR CODE SECTION 4850

Nothing in this article will be deemed to supersede Labor Code Section 4850.

23.03 SICK LEAVE USAGE

A 4/10 employee will be debited 10 hours for each day of sick leave taken that the employee would have been scheduled to work if sick leave had not been taken; 8 hours for a 5/8 employee.

23.04 MEDICAL REPORT

To the maximum extent allowable under the Family and Medical leave Act and the Family Rights Act, the Police Chief, as a condition, of granting sick leave with pay, may require medical evidence of sickness or injury acceptable to the Police Chief, which may include a statement of diagnosis and treatment from a licensed physician or a medical clearance to return to work. Absent exceptional circumstances, no medical evidence will be requested for absences of three or less consecutive days.

23.05 EMERGENCY LEAVE: SICKNESS IN IMMEDIATE FAMILY

Leave of absence with pay because of sickness or injury or disability in the immediate family of an employee may be granted by the Police Chief during the time reasonably necessary to care for the sick person or arrange for care of the sick person by others, but not to exceed the amount of accrued sick leave of such person. Time taken for leave of

absence under the provisions of this subsection shall be deducted from the accrued sick leave of such person. For the purposes of this subsection "immediate family" means mother, step-mother, father, step-father, husband, wife, son, step-son, daughter, step-daughter, foster parent, foster child, or any person sharing the relationship of in loco parentis; and when living in the household of the employee, a brother, sister, brother-in-law, sister-in-law, mother-in-law, father-in-law and grandparents. The chief's discretionary authority under this section does not lessen any employee rights under the FMLA or CFRA.

23.06 BEREAVEMENT LEAVE

Leave of absence with pay because of death in the immediate family of an employee shall be granted for a period not to exceed three days. Entitlement to leave of absence under this section shall be in addition to any other entitlement for sick leave, or any other leave. For purposes of this section, "immediate family" means mother, step-mother, father, step father, husband, wife, son, step-son, daughter, step-daughter, brother, sister, foster parent, foster child, brother-in-law, sister-in-law, mother-in-law, father-in-law and grandparents.

ARTICLE 24.00 WAGES & EMPLOYMENT STATUS (SEE ATTACHMENT A)

All wages for employees covered by this Agreement shall be paid in accordance with the provisions of the attached wage schedule and progression through the steps will be in accordance with Article 24.05.

24.01. WAGES SCHEDULES/HOURLY RATES

The wage schedules contained in, or attached to, this Memorandum of Understanding set forth the base pay, subject to such adjustments (such as longevity pay) as are specifically set forth in this MOU. Letters, such as "A" to "F", designate the respective pay steps for each position. The rates contained in the wage schedule do not include overtime or benefits.

Whenever it is necessary to compute an hourly pay rate in order to apply any provision of this MOU, that will be done by multiplying any monthly rate by 12 in order to derive an annual rate, and dividing the annual rate by 2080 (or proportionate number of hours for part time positions, e.g., 1040 for a half-time position).

24.02. SERVICE

The word "service" as used in this Memorandum of Understanding means continuous full-time service in the position in which the employee is being considered for salary advancement, service in a higher position, or service in a position allocated to the same salary schedule and having generally similar duties and requirements. A lapse of service of any employee for a period of time longer than thirty days by reason of resignation or discharge shall serve to eliminate the accumulated length of service time of such employee, and any such employee re-entering the service of the City shall be considered as a new employee.

24.03. TYPES OF APPOINTMENT

a. Probationary Appointment

A probationary appointment is for a specified period of time, during which job performance is evaluated as a basis for subsequent regular appointment

b. Regular Appointments

A regular appointment ordinarily follows successful completion of a probationary period. "Regular" means a position that is, regardless of the number of hours worked per week, intended to be continuous and uninterrupted (except for authorized paid or unpaid leave). Positions intended to be seasonal, of a limited term, on call only, emergency, intermittent, substitute, or on any other irregular basis are not "regular." The positions set forth in the wage schedule are all regular positions, and unless specifically stated, the pay rate is applicable to a full-time position. All positions covered by this section are half time or more.

c. Acting appointments

An acting appointment occurs when an employee is temporarily assigned to, and performs all the duties of, a position other than the position he/she normally occupies, or when an employee is assigned an acting appointment pending evaluation of the employee's ability to perform the duties of the position.

d. Accruals for part time positions

When a position is less than full time it will be classified by a fraction. For example "half-time" regular employment is expected to average 20 hours per week, "three-quarters" employment is expected to average 30 hours per week. Vacation accrual, sick leave accrual, Flex Plan contributions, holidays, personal holidays are paid or accrued according to these classifications. Thus, compared to a full time employee, a half-time employee, even if actual time occasionally exceeds or falls below 20 hours in a week, when compared to a full time employee: receives one-half the Flex Plan contribution; accrues one-half the number of hours of vacation or sick leave; and is paid for four hours on a holiday or personal holiday.

24.04. BEGINNING SALARY RATES

A new employee's base pay shall be computed by using the rate shown as step "A" in the schedule allocated to the class of employment for which the employee has been hired, except that upon recommendation of the department head under whom the employee will serve and with the approval of the City Manager, such new employee may be employed at a higher step, depending upon the employee's qualifications.

24.05. ADVANCEMENT WITHIN THE SCHEDULE

The following provisions govern salary advancement within the schedule:

a. Probationary advancement

Upon successful completion of probation, an employee (except an employee that was hired at the top step) will advance one step.

b. Regular Merit advancement

An employee, may be considered for advancement upon completion of the minimum length of service specified for step increases. Unless specifically otherwise stated, this will be 12 months for full-time appointments and proportionately adjusted for other appointments. For instance half-time appointments will be evaluated for regular merit adjustments every 24 months. Advancement to higher steps shall be granted only for continued meritorious and efficient service and continued improvement by the employee in the effective performance of the duties of the position held.

c. Special Merit advancement

When an employee consistently demonstrates exceptional ability and proficiency in the performance of assigned duties, the supervising department head may recommend to the City Manager that said employee be advanced to a higher pay step without regard to the minimum length of service provisions contained in this MOU. The City Manager may approve and effect such advancement.

d. Denial of advancement

When an employee has not been approved for advancement to the next higher wage step, such employee may be reconsidered for such advancement after the completion of three months of additional service.

24.06. PROMOTION TO A NEW POSITION

When an employee is promoted to a position in a higher classification, such employee shall be assigned to step "A" in the appropriate schedule for the higher classification. However, if such employee is already being paid at a rate equal to or higher than step "A", he/she shall be placed in the step in the appropriate salary schedule which will grant such employee a salary increase of not less than 5%.

24.07. EFFECTIVE DATE OF A PAY INCREASE

A merit pay advancement for an employee shall become effective on the first day of the pay period in which the minimum length of service has been satisfactorily completed. All other pay rate changes, except those given a specific calendar date herein, shall become effective at the beginning of a two week pay period as approved by the City Manager.

24.08 PAY INCREASE SCHEDULE

- There shall be no salary increases during the 2013 – 2014 fiscal year
- Effective the first full pay period in July 2014, the salary range for each

classification in this Unit shall be adjusted based on the U.S. Department of Labor, Bureau of Labor Statistics, San Francisco-Oakland-San Jose Consumer Price Index, All Items 1982-84 = 100 for All Urban Consumers, Annual Average January - December changes for calendar year 2013 up to a maximum of 3%.

- Effective the first full pay period in July 2015, the salary range for each classification in this Unit shall be adjusted based on the U.S. Department of Labor, Bureau of Labor Statistics, San Francisco-Oakland-San Jose Consumer Price Index, All Items 1982-84 = 100 for All Urban Consumers, Annual Average January - December changes for calendar year 2014) up to a maximum of 3.5%.
- Effective the first full pay period in July 2016, the salary range for each classification in this Unit shall be adjusted based on the U.S. Department of Labor, Bureau of Labor Statistics, San Francisco-Oakland-San Jose Consumer Price Index, All Items 1982-84 = 100 for All Urban Consumers, Annual Average January - December changes for calendar year 2015) up to a maximum of 3.5%.
- Effective the first full pay period in July 2017, the salary range for each classification in this Unit shall be adjusted based on the U.S. Department of Labor, Bureau of Labor Statistics, San Francisco-Oakland-San Jose Consumer Price Index, All Items 1982-84 = 100 for All Urban Consumers, Annual Average January - December changes for calendar year 2016) up to a maximum of 3.5%.

ARTICLE 25.00 GRIEVANCES

25.01 DEFINITION

A grievance is defined as an allegation by an employee or group of employees that the Employer has failed to provide a condition of employment, which is established by law, Memorandum of Understanding, by written City or departmental rules, provided that the enjoyment of such right is not made subject to the discretion of the Police Chief or the Employer by the terms of this Memorandum of Understanding and, provided further, that the conditions of employment which is the subject matter within the scope of representation as defined in California Government Code Section 3504.

25.02 DEPARTMENT REVIEW AND ADJUSTMENT OF GRIEVANCES

The following is the procedure to be followed in the resolution of grievances.

- 25.02.01 An employee having a grievance shall have the right to consult with and be assisted by a representative of his own choice in this and all succeeding steps of this subparagraph 23.02 and may thereafter file a grievance in writing with his immediate supervisor. Within five actual working days after receipt of any written grievance, the immediate supervisor shall return a copy of the written grievance to the employee with his answer thereto, in writing.

If the grievance is not resolved at the first level, the employee shall have five actual working days after receipt of the answer within which to file an appeal with the Captain. The Captain shall have five actual working days in which to review and answer the grievance in writing. If the grievance is not resolved at this second level, the employee shall have five actual working days after receipt of the answer within which to file an appeal with the Police Chief. The Police Chief shall have five actual working days in which to review and answer the grievance in writing. If the grievance is not resolved at this third level, the employee shall have five actual working days from receipt of the answer within which to file an appeal with the City Manager.

25.02.02 The City Manager shall have five actual working days in which to review, and if necessary, hold hearings, and answer the grievance in writing. Unless waived by the mutual agreement of the employee or his representative and the City Manager, a hearing is required at this step, and the employee, and his representative, shall have the right to be present at, and participate in such hearing. The time limit at this step may be extended by mutual agreement between the City Manager and the employee or his representative. The Union may, in its own name, file a grievance alleging that the Employer has failed to provide it some organizational right which is established by law, provided that such right is not made subject to the discretion of the Police Chief or Employer. Such Union grievances shall be filed with the City Manager and heard and determined pursuant to the provisions of this step of the grievance procedure.

25.02.03 In the event that the grievance is not resolved at the City Manager's level, the Employee may, within ten (10) working days, request that the grievance be heard by the City Council.

25.03 EFFECT OF FAILURE OF TIMELY ACTION

Failure of the employee to file an appeal within the required time limit at any step shall constitute an abandonment of the grievance. Failure of the Employer to respond within the time limit at any step shall result in an automatic advancement of the grievance to the next step.

25.04 LIMITATION ON STALE GRIEVANCES

A grievance shall be void unless presented within twenty-one (21) calendar days from the day upon which the Employer has allegedly failed to provide a condition of employment, or within twenty-one (21) calendar days from the time at which an employee might reasonably have been expected to have learned of such alleged failure to provide. In no event shall any grievance include a claim for money relief for more than the twenty-one day period plus such reasonable discovery period.

25.05 EXCLUSION OF NON-RECOGNIZED ORGANIZATIONS

For the purpose of this section, the provisions of Article 4.00 of this agreement shall not be construed to limit the employee's right of selection of a representative to the extent that the agents of any other employee organization which is not party to this agreement, are specifically excluded from so acting. In those cases in which an employee elects to

represent himself or arranges for other representation, Association shall have the right to participate in the resolution procedure for the purpose of protecting the interest of its members in negotiated conditions of employment.

ARTICLE 26.00 DEPARTMENTAL VEHICLES AND EQUIPMENT

- 26.01 Patrol Vehicles (Defined). Any motor vehicle as defined under the provisions of Sections 415 and 165 of the California Vehicle Code.
- 26.02 All necessary repairs and maintenance of vehicles (as defined 'in Section 25.01) shall be performed as necessary to insure the safety of the operator of the vehicle.
- 26.03 Under no circumstances will a Supervisor or the Department require an employee to operate an unsafe patrol vehicle or other equipment.
- 26.04 An employee may refuse to operate a vehicle that is unsafe. The watch commander shall determine the vehicle's condition upon an employee complaining of safety hazards. The patrol vehicle shall not be used until repaired if a determination is made of safety problems.
- 26.05 Routine maintenance of a patrol vehicle shall be no less than required by the manufacturer. Only high quality parts and tires will be used on the vehicles.
- 26.06 Capitola Police Officers' Association may review and make recommendations on any new patrol or emergency vehicle purchased or leased by the City for use by its members prior to putting out bids for purchase purposes.
- 26.07 Any equipment necessary for the safety of any operator shall be provided for the departmental vehicles.
- 26.08 All patrol vehicles will be fitted as nearly as practical with identical controls for activating emergency lighting, siren and communication equipment. As new equipment is purchased, every effort will be made to locate the controls in the same general area in the patrol vehicle.

ARTICLE 27.00 RETIREMENT - PUBLIC EMPLOYEES RETIREMENT SYSTEM

- 27.01 Non-Sworn: The City participates in the Public Employees Retirement System (PERS) operated by the State of California. Benefits provided are detailed in separate publications, depending upon the plan. City agrees to provide 2.5% at 55 Retirement Plan for non-sworn employees in the Unit and the single-highest-year option. Each member of the bargaining unit agrees to a cap on the amount that the City will pay to PERS. The cap for existing employees is 16.488%. For all eligible employees hired on or after August 5, 2012 the City's PERS contribution rate shall be capped at no more than 11.488% of reportable salary. Once an employee hired on or after August 5, 2012 accrues five (5) years of total service, s/he shall be entitled to the same terms that apply to all other current employees. Employer Paid Member Contribution (EPMC), if any and the Value

of EPMC, if any will be the same for employees hired after August 5, 2012 as employees hired prior to that date unless otherwise determined by CalPers.

All employees hired prior to August 5, 2012 the City's contribution cap shall remain as stated above at 16.488%.

- 27.02 Sworn: The City pays both employee and employer contributions to the plan and has the 3% at 50 program for safety employees. The parties understand that when the City's PERS Excess Assets have significantly decreased, the City's Total Employer Rate will increase: Each member of the bargaining unit agrees to a cap on the amount that the City will pay to PERS. The cap for existing employees is 28.291%. For all eligible employees hired on or after August 5, 2012 the City's PERS contribution rate shall be capped at no more than 23.291% of reportable salary. Once an employee hired on or after August 5, 2012 accrues five (5) years of total service, s/he shall be entitled to the same terms that apply to all other current employees. Employer Paid Members Contribution (EPMC), if any and the Value of EPMC, if any will be the same for employees hired after August 5, 2012 as employees hired prior to that date unless otherwise determined by CalPers.

All employees hired prior to August 5, 2012 the City's contribution cap shall remain as stated above at 28.291%.

- 27.03 Should at any time the PERS costs to the City exceed the percentages defined above, the employees agree that the portion of the employer paid employee costs or employer paid contributions will be reduced and assumed by the employee in an equal percent or any part of a percent that actual PERS costs exceed the above caps. If at any time the employer paid employee costs or employer paid member contributions are wholly paid by the employee and PERS costs continue to increase the employee will also assume those increases. It is agreed by the City and the Association that this provision expires with the termination of this Memorandum of Understanding and is open for negotiation for renewal of the next Memorandum of Understanding.
- 27.04 With regard to the "Amortization of Side Fund" portion of the employer rate, i.e. the portion of the employer rate attributable to the City's unfunded liability, if PERS should in the future decrease that rate as a direct result of a City payment to reduce the Side Fund, the City's cap would reduce by the percentage decrease that PERS identifies as resulting from the City payment. This also applies to the 2007 Capitola Pension Obligation Bond.
- 27.05 The City shall expeditiously implement the PERS Credit for Unused Sick Leave and employee paid Military Service Credit options.
- 27.06 Public Employees Pension Reform Act for Safety Employees hired by the City on or after January 1, 2013 and do not qualify as Classic members as determined by CalPERS: For new safety employees hired by the City of Capitola on or after January 1, 2013 and who do not qualify as classic members as defined by CalPERS, CalPERS has by statute implement a 2.7% @ 55 pension formula, based on a three year average compensation. Employees in this category shall pay 50% of the normal cost rate as determined by CALPERS.

ARTICLE 28.00 PHYSICAL EXAMINATIONS

City agrees to pay up to \$100 over the amount covered by the health insurance for an annual physical exam.

ARTICLE 29.00 FAMILY & MEDICAL LEAVE ACT OF 1993

The City shall follow the provisions provided for family leave as specified in the federal Family & Medical Leave Act of 1993 (FMLA), and the California Family Rights Act (CFRA) as they apply to public employers.

ARTICLE 30.00 MISCELLANEOUS

30.01 POA agrees to waive the Police Department's past practice of giving a 30-day notice for the current shift change.

30.02 During the term of this agreement, each sworn employee that, in response to the Chief's directive, purchased a tape recorder before 2/15/01 will be reimbursed up to forty (\$40) of the recorder's cost. After that date the City will choose between either supplying such recorders, or reimbursing the employee up to \$40 for such recorders.

ARTICLE 31.00 DRUG POLICY

The City has adopted Administrative Policy Number II-6 "USE OF ALCOHOL/DRUGS DURING HOURS OF EMPLOYMENT; POSSESSION OF ALCOHOL/DRUGS IN/ON PROPERTY; ADVERSE EFFECTS OF USE OF ALCOHOL/DRUGS OUTSIDE HOURS OF EMPLOYMENT ON JOB PERFORMANCE".

ARTICLE 32.00 FAIR LABOR STANDARDS ACT

All positions included in this Memorandum of Understanding are covered by appropriate sections of the Fair Labor Standards Act of 1935, as amended.

ARTICLE 33.00 PERSONNEL RULES

The City retains the right to amend and create personnel rules, provided they are not in conflict with specific provisions of this MOU. Where appropriate, City will meet and confer with applicable employee group or groups consistent with the MMBA requirement

(Government Code Section 3500 and following), before amending or creating new personnel rules.

ARTICLE 34: LAYOFF PROCEDURES

Layoffs shall be governed by Personnel Rule 12, in addition, all sworn members of this unit, if being reinstated after a layoff, must be certified by a physician as able to fully perform the duties of the sworn position. The member may choose their own physician, or at the member's request the City will pay for its choice of physician. The sworn member must have a current basic POST certificate prior to reinstatement.

ARTICLE 35 MILEAGE REIMBURSEMENT

Employees required to use their personal vehicles while on City business will be reimbursed at the rate set by the Internal Revenue Service.

ARTICLE 36.00 SAVINGS CLAUSE.

If any provision of this Agreement shall be held invalid by operation of law or by any court of competent jurisdiction, or if compliance with enforcement of any provision shall be restrained by any tribunal the remainder of this Agreement shall not be affected thereby, and the parties shall enter into negotiations for the sole purpose of arriving at a mutually satisfactory replacement for such provision.

ARTICLE 37.00 ENACTMENT

This Memorandum will be effective on July 1, 2013. All terms shall become effective on August 9, 2013 unless otherwise provided herein.

CITY OF CAPITOLA

CAPITOLA POLICE OFFICERS' ASSOC.

Jamie Goldstein
City Manager

Richard A. Reed

Kevin D. [unclear] 527
[Signature] #504

Date

Date

ATTACHMENT A

SALARY SCHEDULE AS OF AUGUST 9, 2013

POA	Step A	Step B	Step C	Step D	Step E	Step F
August 9, 2013						
Community Service Officer	\$ 4,337	\$ 4,554	\$ 4,782	\$ 5,022	\$ 5,274	\$ 5,538
Police Officer	\$ 5,478	\$ 5,752	\$ 6,040	\$ 6,342	\$ 6,660	\$ 6,993
Records Manager	\$ 4,997	\$ 5,247	\$ 5,510	\$ 5,786	\$ 6,076	\$ 6,380
Sergeant	\$ 6,710	\$ 7,046	\$ 7,399	\$ 7,769	\$ 8,158	\$ 8,566

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CITY COUNCIL AGENDA REPORT

MEETING OF AUGUST 8, 2013

FROM: FINANCE DEPARTMENT

SUBJECT: CONSIDERATION OF AUTHORIZING THE CITY MANAGER TO ISSUE A REQUEST FOR PROPOSALS (RFP) FOR BANKING SERVICES

RECOMMENDED ACTION: Direct the Finance Department to accept and review proposals and provide a recommendation to the City Council for consideration.

BACKGROUND: The City has maintained a banking relationship with Bank of America for more than 18 years. Bank of America currently provides the City with checking, merchant credit card processing, and purchasing card services. The Government Finance Officers Association (GFOA) recommends that state and local governments establish a procurement process and assure periodic reviews of banking services. GFOA indicates this is recommended to assist governments in retaining appropriate and cost-effective banking services; protection of funds, and reducing reputational risk.

DISCUSSION: In 1994, the City initiated a contract for banking services with Bank of America. Bank of America has a large portfolio of government clients nationwide, with more than 100 years of experience servicing governmental agencies. Bank of America meets with the City annually to review customer satisfaction, new technologies, and the existing banking services. The City has six bank accounts, with monthly fees calculated based on the volume of transactions, net of interest earning credits. In Fiscal Year 2012/2013, the City spent approximately \$6,000 in account maintenance fees and \$27,000 in parking-related merchant credit card fees.

Based on GFOA, staff recommends the City issue a Request for Proposal (RFP) to review its banking services. This proposal will reference the needs specific to Capitola and include a review of optional new technologies and services. The document will also incorporate information contained in GFOA's Best Practices in the Procurement of Banking Services [Attachment I], relevant sections of the GFOA Banking RFP Checklist, and the applicable sections of the California Government Code. This includes Section 53635.2, which states:

"To be eligible to receive local agency money, a bank, savings association, or federally insured industrial loan company shall have received an overall rating of not less than "satisfactory" in its most recent evaluation by the appropriate federal financial supervisory agency of its record of meeting the credit needs of California's communities, including low- and moderate-income neighborhoods, pursuant to Section 2906 of Title 12 of the United States Code."

The bank must be able to collateralize the deposits of City funds and invest City funds in compliance with Sections 53601, et seq. of the Government Code as listed in the City's Investment Policy [Attachment 2].

Item #: 9.F. Staff Report.pdf

8-8-13 CITY COUNCIL AGENDA ITEM
STAFF REPORT: Banking Staff Report

A tentative timeline for the RFP process is provided in Attachment 3. It is anticipated that at least one member of the Finance Advisory Committee will participate in the scoring process. The scoring results will be reviewed with the Finance Advisory Committee before returning to Council with a discussion on the selection process and recommendations. The ranking process on all qualifying proposals will take into account the City's policy regarding local vendors.

FISCAL IMPACT: This action is administrative; however selection of a new bank may result in cost-savings. If a new bank is selected, it is estimated that the transition to a new bank will require additional staffing time or a delay in projects.

ATTACHMENTS:

1. GFOA Recommend Practice – Procurement Services
2. City's Investment Policy, Administrative Policy III-1
3. Estimated RFP Timeline

Report Prepared By: Tori Hannah
Finance Director

Reviewed and Forwarded
by City Manager: 



BEST PRACTICE

Procurement of Banking Services (1997, 2004, 2005, and 2010) (TIM)

Background. State and local governments use a wide variety of banking services for the deposits, disbursement, and safekeeping of public funds. Prudent procurement practices require the reevaluation of banking services on a periodic basis. In addition, continual changes in technology, treasury management practices, and banking industry structure offer public funds managers opportunities to reevaluate banking services and costs.

Recommendation. The Government Finance Officers Association (GFOA) recommends that state and local governments establish a procurement process and assure periodic reviews of banking services. Adhering to a defined due diligence in selecting banking services and establishing proper controls will help a government achieve its objectives of appropriate and cost-effective banking services while protecting its funds and reducing risk to its reputation. Governments should consider including the following practices in their procurement of banking services:

1. Periodically initiate a process of competitive procurement in accordance with the state and local laws and regulations, for major banking services. The process should use a request for proposals (RFP) that should include services, fees, earnings credit rates, and availability schedules for deposited funds. In addition, it is important to utilize independent bank evaluation services to verify creditworthiness of the financial institution prior to award of a contract and throughout the contract period.
2. Have contracts for banking services that specify services, fees, and other components of compensation. If applicable, this should include tri-party depository contracts that require that the custodian complies with collateral requirements.
3. Identify a primary relationship manager who will serve as a central point of contact, understand the needs of the entity and be able to offer recommendations for service improvements.
4. Evaluate the relative benefits and costs of paying for services through direct fees, compensating balances, or a combination of the two (blended). Factors to consider in this evaluation are the earnings credit rate, reserve requirements and insurance fees on deposits.
5. Evaluate the government's needs in comparison to the costs and benefits of specific banking services, including:
 - Electronic
 - balance and transaction-reporting services (image access and usage)
 - stop payments
 - payment capabilities
 - deposit capabilities
 - transmitted analysis and statements
 - digitized storage of paid checks and statements
 - stale date check management
 - access to safekeeping/custodial information
 - access to investment performance reporting
 - Accounts

Item #: 9.F. Attach 1.pdf

- controlled disbursement
 - collection account
 - zero-balance
 - interest-bearing
 - investment sweep account
- Security features
 - positive pay services including payee positive pay service (which is payee matching)
 - reconciliation services
 - Automated Clearing House (ACH) blocking/filtering services
 - check to ACH conversion
 - Non-sufficient funds (NSF)/ACH conversion for representation of NSF check (Represented Check Entries, RCK)
 - collateral requirements (reporting by the custodian required)
 - Treasury management services
 - lock-box services
 - credit card receipt merchant services
 - safekeeping or custody arrangements (delivery versus payment, DVP)
 - procurement cards
 - stored value (payroll) cards
 - Web links for Internet payment for services
6. A treasury management review and comprehensive evaluation should be performed prior to the issuance of an RFP to ensure that the treasury manager asked for all required and optional banking services. Consider using a Request for Information (RFI) or meeting with several banks in advance of the RFP process to determine if there are any products/services available that your jurisdiction would be interested in adding. This preliminary work is necessary periodically to take advantage of changes in banking services and technology as new services become available. In the event that these services are procured through the use of a request for proposal, the request for proposal and the vendor response should be included as part of the contract.

References.

- *An Introduction to Treasury Agreements*, Linda Sheimo, GFOA, 1993.
- *An Introduction to Treasury Management Practices*, GFOA, 1998.
- *Banking Relations: A Guide for Governments*, Nicholas Greifer, GFOA, 2004.
- GFOA Best Practice, *Collateralization of Public Deposits*, 2007.

Approved by the GFOA's Executive Board, March 5, 2010.



ADMINISTRATIVE POLICY

Number: III-1
Issued: May 9, 1996
Revised: August 9, 2001
Confirmed: May 24, 2012
Confirmed: May 23, 2013
Jurisdiction: City Council

INVESTMENT POLICY

The policy for the investment of public funds shall at all times conform, by law, to Section 53601, et seq., of the California Government Code. In order of importance, the investment policy shall:

1. Provide for the safety of the funds
2. Assure the liquidity of the funds
3. Acquire earnings of the funds

This investment policy, or any modification thereof, shall be formulated by the City Treasurer and approved by the City Council and copies made available upon request.

The Treasurer's investment portfolio contains pooled investments of funds by both the City and of benefit assessment districts within the City. The earnings from pooled investments are shared proportionately with each investor.

City investment funds shall only be invested in the following permitted investments:

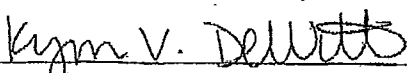
1. State of California Local Agency Investment Fund
2. U.S. Treasury T-Bills
3. Negotiable Certificates of Deposit
4. Guaranteed Investment Contracts (GIC) of AAA quality, for a term not to exceed fifteen (15) months*

The following limitations shall apply to permitted investments:

T-Bills: Total dollar investment not to exceed 60% of total portfolio at time of investment.

Certificates of Deposit:

- A. Total dollar investment not to exceed 20% of total portfolio at time of investment.
- B. Maturity date of securities shall not be more than 365 days from date of purchase.
- C. Issuer must be one of top 20 national or state chartered banks, one of top 20 state or federal savings associations, or one of top 10 state licensed foreign banks as compiled by American Banker from Merrill Lynch.
- D. CD's may be purchased only from the issuer, a federal or state chartered bank, a federal or state association, or a brokerage firm designated as a primary dealer by the Federal Reserve Bank.
- E. The deposit shall not exceed the total of the paid-up capital and the surplus of any depository bank, nor shall the deposit exceed the net worth of any depository association.


 Kym DeWitt, City Treasurer

[City Council Resolution No. 2788, 5/9/96; Amended 3/22/01 by Resolution No. 3120 and 8/9/01 by Resolution No. 3149;
 Confirmed: 6/12/03; 6/10/04; 6/9/05; 5/25/06; 5/24/07; 6/12/08; 5/28/09; 5/13/10; 5/26/11, 5/24/12, 5/23/13]
 R:\ADMIN POLICIES\Draft Policies\III-1 Investment Policy 5-23-13.doc

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Estimated Timeline

REQUEST FOR PROPOSAL FOR BANKING SERVICES

Task	Date
Distribution of RFP	September 3, 2013
Closing Date	October 3, 2013
Proposals Reviewed Beginning	October 15, 2013
Oral Interviews Beginning	October 28, 2013
Review Recommendations with FAC	November 19, 2013
Recommendations to Council	November 26, 2013

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CITY COUNCIL AGENDA REPORT

MEETING OF AUGUST 8, 2013

FROM: COMMUNITY DEVELOPMENT DEPARTMENT

SUBJECT: **750 47TH AVENUE** **#12-144** **APN: 034-551-01**

Coastal Development Permit and Vesting Tentative Map to subdivide the Surf and Sand Mobile Home Park; The Planning Commission considered this project application at the June 6, 2013 meeting and voted 5-0 to recommend approval of the project; Environmental Determination: Categorical Exemption
Property Owner/Applicant: Surf and Sand, LLC, and Ronald Reed; Filed: 11/6/2012
Representative: Mark Alpert – Hart, King, & Coldren

RECOMMENDED ACTION: For project application #12-144 staff recommends the City Council:

1. Find the proposed project is exempt from CEQA pursuant to CEQA Guidelines 15301;
2. Adopt the proposed Resolution for approval of:
 - a. The Vesting Tentative Map to subdivide APN 34-551-01 into 73 lots and 4 common owned lots; and
 - b. The Coastal Development Permit for the conversion of Surf and Sand Mobile Home Park (MHP) from a rental MHP on a single parcel to an owner occupied MHP with each dwelling on a separate parcel, including the finding that the Mello Act does not apply to this project (Attachment 1) subject to recommended conditions (Exhibit A of Attachment 1).

BACKGROUND: In 2009, the City Council considered a Coastal Development Permit (CDP) and Relocation Impact Report (RIR) for the closure of the Surf and Sand MHP. At the conclusion of those hearings, the City Council denied the CDP and found the RIR to be insufficient. In late 2009, the property owner submitted a new and substantially different application to subdivide the MHP similar to the current project. The Planning Commission considered the application in December 2009 and recommended denial of the project. The City Council held two public hearings to consider the application and adopted Resolution No. 3811 denying the project on May 13, 2010. Reasons for denial included near-unanimous resident opposition to the project, admission by the applicant that the real goal of the project was to terminate rent control and inconsistency with the Mello Act.

DISCUSSION: Current Application and Settlement Agreement

In November 2012, the applicant submitted the subject application which has substantially addressed previous issues related to resident support and Mello Act compliance. In June, 2013, the City Council entered into a settlement agreement (Attachment 3) with Surf and Sand, LLC which stipulates that the conditions related to the Mello Act, including affordable housing replacement, would not be imposed on the project. In exchange, the applicant has agreed to undertake the City's obligation to provide economic support for the existing homeowners who currently receive subsidies from the City. The settlement agreement does not oblige the City to approve the proposed subdivision, and the agreement will only go into effect upon City Council approval of the project.

Item #: 10.A. Staff Report.pdf

8-8-13 AGENDA REPORT: Surf and Sand Mobile Home Park

The application to subdivide the MHP is governed by several sections of law, including: the Subdivision Map Act, the Coastal Act, the City's Local Coastal Plan, and the Mello Act, which specifies requirements for replacement housing in the Coastal Zone.

Subdivision Map Act: Government Code Sections 66498.1, et seq. and 66427.4, et seq.

Government Code Section 66498.1– 66498.9 of the Subdivision Map Act (Attachment 4) allows an applicant the option of submitting a *vesting* tentative map which, if approved, confers a vested right to the applicant to proceed with the project in compliance with the local Ordinances, official policies and standards at the time the project application was made.

Government Code Sections 66427.4 and 66427.5 of the Subdivision Map Act (Attachment 5) specify requirements for the subdivision of mobile home parks. Section 66427.4 requires the applicant to file a report on the impact of the conversion upon the residents of the MHP to be converted. In determining the impact of the conversion on MHP residents, the report shall address the potential for residents to become displaced and to discuss the availability of adequate replacement space in MHPs. The applicant prepared an impact report (Attachment 6) and it was mailed to each resident of the MHP prior to the Planning Commission's July 18, 2013 meeting.

Section 66427.5 and judicial interpretation of the Subdivision Map Act in *Sequoia Park Associates v. County of Sonoma, 2009*, limits the City's discretion to require General Plan and Municipal Code compliance. Further, the City's discretionary review of the proposed mobile home park conversion cannot include compliance with minimum lot size, setbacks and/or any other local development standards.

The City's review of the proposed subdivision is limited in scope to compliance with Government Code Section 66427.5 and related State law. Section 66427.5 includes requirements regarding the rights of existing tenants to purchase their lots or to continue as tenants, and sets limits on rent increases. Specifically, this Section stipulates that the subdivider of a MHP shall avoid the economic displacement of residents by:

- Offering each existing tenant the opportunity to purchase their lot or to continue as a tenant;
- Requiring the subdivider to file a report with the local jurisdiction on the impact of the proposed conversion on park residents;
- Obtaining a survey of support of the park residents with the results considered as part of the public hearing on subdivision application;
- Holding a hearing before the legislative body of the local agency;
- Limiting the rent increase of the non-purchasing low income residents to not exceed increases in the Consumer Price Index for the same period;
- Moderating the rent increases of the rents of the non-purchasing residents who are not low income to market rate rents by phasing the increase over a four-year period;

The applicant appears to have met these requirements. An impact report was prepared and mailed to residents of the MHP. Among other items, the report explains all existing tenants will have the right to purchase lots or continue as tenants and specifies the limitations on rent increases after the conversion. Therefore, the report concludes there will not be any displacement of residents. In addition, the applicant has obtained a survey of support for the proposed conversion. The survey was conducted in accordance with an agreement between the park owner and the resident homeowners' association (Attachment 7). The results were submitted to the City, and show that 89% of those responding to the survey support the conversion to owner-occupied mobile home park. The survey was delivered to 42 households that owned their own mobile home dwelling in September 2012. Of these 42 owner-occupied dwellings, 24 stated they support the conversion; 3 households were opposed; and 2 abstained but offered written comments (Attachment 8). These

8-8-13 AGENDA REPORT: Surf and Sand Mobile Home Park

results greatly differ from that of the previous survey conducted in 2009. Survey results are to be considered in public hearings on the project¹

Mello Act: Government Code Section 65590

The Mello Act, Government Code Section 65590 (Attachment 9) was adopted in 1981 to preserve residential housing units occupied by low or moderate-income persons or families within the coastal zone. This statute amended the Housing Element Law pertaining to General Plans and constitutes an important facet of State Housing Policy within the coastal zone. The Mello Act imposes a mandatory duty on local governments to require replacement housing as a condition of granting a permit to convert housing units or mobile homes which are located within the coastal zone and occupied by low or moderate income persons. The Mello Act defines conversion to include the subdivision of a mobile home park. The applicable Mello Act section provides:

*"The conversion or demolition of existing residential dwelling units occupied by persons and families of low or moderate income, ..., shall not be authorized unless provision has been made for the replacement of those dwelling units with units for persons and families of low or moderate income."*²

The Mello Act also includes a provision specifying when it does not apply. This provision states:

*"The requirements of this subdivision for replacement dwelling units shall not apply to the following types of conversion... conversion or demolition of a residential structure located within the jurisdiction of a local government which has within the area encompassing the coastal zone, and three miles inland therefrom, less than 50 acres, in aggregate, of land which is vacant, privately owned and available for residential use".*³

Capitola does not have 50 acres or more of land available for new residential use; and therefore the City can determine the Mello Act does not apply to this project.

The Coastal Act and Coastal Development Permit

The Capitola Municipal Code, as well as the Coastal Act, define "development" as a "...change in the density or intensity of the use of land, including but not limited to, subdivisions, and any other division of land, including lot splits."⁴

The Surf and Sand MHP is located within the coastal zone; therefore, the subdivision of the MHP requires a Coastal Development Permit. Staff review of the City's Local Coastal Plan (LCP) concludes that the project is consistent with all applicable LCP policies. The City's implementing Ordinances of the LCP includes required findings necessary for the issuance of the Coastal Development Permit. Those findings include:

*"17.46.090 D.14 -.Project complies with coastal housing policies and applicable ordinances including condominium conversion and mobile home ordinances;"*⁵

The project complies with Coastal Housing Policy as described in the discussion of the Mello Act above. Further, the applicable sections of the Subdivision Map Act preclude applying local Ordinances to mobile home park conversions.

¹ Government Code §. 66427.5 does not require minimum thresholds for resident support to approve a proposed mobile home park subdivision/conversion. On October 11, the Governor vetoed AB 566, which would have clarified this code section to allow cities and counties to consider the level of support among residents when deciding whether to approve or disapprove conversions of mobile home parks to resident ownership.

² Govt. Code § 65590(b)

³ Govt. Code § 65590(b) and (b) 3;

⁴ Capitola Municipal Code § 17.46.030 I 4 and 6; California Public Resources. Code § 30106

⁵ Capitola Municipal Code § 17.46.090 D.14

Item #: 10.A. Staff Report.pdf

8-8-13 AGENDA REPORT: Surf and Sand Mobile Home Park

Inclusionary Housing Requirement

The City's adopted Inclusionary Ordinance requires 15% of the units in a project to be affordable to low and moderate-income buyers. The City's Inclusionary Ordinance applies to the conversion/subdivision of mobile home parks. However, in keeping with the Ninth Circuit Court of Appeal decision in the *Sequoia Park Associates v. County of Sonoma* case, the City has very limited discretion to require compliance with local ordinances; therefore, staff recommends that the City's Inclusionary Ordinance not be applied to this project.

California Environmental Quality Act (CEQA) Review

CEQA exempts certain categories of projects from Environmental Review because the legislature has determined these classes of projects will not have a significant effect on the environment. CEQA Guidelines Section 15301 specifies such an exemption for "existing facilities". This "Class 1" exemption consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The proposed project will not involve any physical changes to the environment and fits this class of project. A Categorical Exemption has been prepared for this project.

ATTACHMENTS:

Attachment 1 Resolution to Approve Application 12-144

Attachment 2 Tentative Map (Full size plans distributed to the City Council only. Plans are available for review at the Community Development Department)

Attachment 3 Settlement Agreement between Surf and Sand, LLC and the City of Capitola

Attachment 4 Excerpt for Government Code Section 66498.1– 66498.9

Attachment 5 Excerpt of Government Code Section 66427.4 and 66427.5

Attachment 6 Tenant Impact Report

Attachment 7 Agreement between park owner and residents' homeowner association

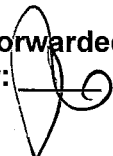
Attachment 8 Survey of resident support tally sheet

Attachment 9 Excerpt from Government Code Section 65590 (Mello Act)

Attachment 10 Correspondence

**Report Prepared By: Kim Tschantz,
Contract Planner**

**Reviewed and Forwarded
by City Manager:**



RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
APPROVING A VESTING TENTATIVE SUBDIVISION MAP AND COASTAL DEVELOPMENT
PERMIT TO CONVERT THE SURF AND SAND MOBILE HOME PARK TO AN OWNER-
OCCUPIED MOBILE HOME PARK AT 750 47TH AVENUE**

Project: Application #12-1444:
750 47TH Avenue, Vesting Tentative Subdivision Parcel Map and Coastal
Development Permit
APN: 034-551-01

WHEREAS, an application for a Vesting Tentative Subdivision Map and Coastal Development Permit on a .4.35-acre parcel located at 750 47nd Avenue in the City of Capitola, was submitted by Mark Alpert for Surf and Sand, LLC on November 6, 2012; and

WHEREAS, the above noted Vesting Tentative Subdivision Map proposes to create seventy-three (73) residential lots and four (4) common-owned lots to convert a tenant-occupied mobile home park to an owner-occupied mobile home park; and

WHEREAS, the City Council has considered, at a duly noticed public hearing the proposed Vesting Tentative Subdivision Map and Coastal Development for the project; and

WHEREAS, the Planning Commission at its July 18, 2013 meeting recommended approval of the project; and

WHEREAS, Government Code Sections 65863.7 and 66427.5 specify certain requirements for the subdivision of mobile home parks regarding preparation of an impact report, the rights of existing tenants to purchase their lots or to continue as tenants, setting limits on rent increases and conducting a survey determining resident support for the conversion; and

WHEREAS, Government Code Section 66427.5(d), requires a survey of resident support for a proposed subdivision of a mobile home park and the results of the survey shall be considered by local decision-makers in consideration of the proposed subdivision; and

WHEREAS, Government Code Section 66427.5 limits review of mobile home park conversions to compliance with applicable State law and the local jurisdiction conducting the public hearing on subdivision of a mobile home park cannot require compliance with local subdivision, zoning or development standards; and

WHEREAS, the City Council is the final decision-making body on this application and can approve, deny, or direct continuance for redesign; and

WHEREAS, the City Council has considered the documentary record for the project, including the Planning Commission Staff Reports and appropriate minutes of the Planning Commission meeting, and oral and written communications at the August 8, 2013 public hearing of the Council prior to taking action.

NOW, THEREFORE, BE IT HEREBY RESOLVED, that the City Council of the City of Capitola, makes the following findings regarding the proposed application:

Item #: 10.A. Attach 1.pdf

RESOLUTION NO.

1. FINDING: Government Code Section 66427.5 specifies certain requirements for the subdivision of mobile home parks regarding preparation of an impact report, the rights of existing tenants to purchase their lots or to continue as tenants, setting limits on rent increases and conducting a survey determining resident support for the conversion; and the applicant has met these requirements.
2. FINDING: The Applicant prepared a report on the impact of converting the mobile home park to a subdivided owner-occupied park and this report was made available to the residents of the Surf and Sand Mobile Home Park at least 15 days prior to the Planning Commission hearing on this application.
3. FINDING: The Applicant has met the requirements of Government Code 66427.5(a) by agreeing to offer each existing tenant the option to either purchase their subdivided lot created by the conversion to a resident ownership mobile park or to continue their residency as a tenant.
4. FINDING: The Applicant conducted a survey of resident support for the subdivision in accordance with an agreement between the Applicant and the Surf and Sand Homeowners Association, the results of which were submitted to the City, and show that of the 42 mobile home residents who own their homes, 25 households support the application; 3 households oppose the application and 2 households abstained.
5. FINDING: The results of the Applicant-conducted survey were submitted to the City and upon review, the City agrees with the survey results showing resident support for the proposed subdivision.
6. FINDING: Government Code Section 66427.5 further stipulates that the local jurisdiction conducting the public hearing on subdivision of a mobile home park cannot require compliance with local subdivision, zoning or development standards and in compliance with the Government Code the proposed mobile home park subdivision has been reviewed for compliance with applicable State law and standards and the requirements of the Subdivision Map Act, codified at California Government Code Sections 66425-66431 have been met.
7. FINDING: The project to convert Surf and Sand Mobile Home Park to a subdivided owner-occupied park meets the requirements of Municipal Code Section 16.70.070 pertaining to required findings for mobile home park conversions in that:
 - a. A survey of resident support was conducted with the results of 60% of respondents in support of the said conversion as specified in paragraph 3 of this resolution, and the results of the Applicant-conducted survey were submitted to the City and upon review, the City agrees with the survey results showing resident support for the proposed subdivision;
 - b. A tenant impact report has been completed and filed with the City in accordance with all requirements of California Government Code Section 66427.5; and
 - c. The project is a bona fide conversion as evidenced by the vote of support for the proposed conversion by residents of Surf and Sand Mobile Home Park.
8. FINDING: The California Coastal Act, at Public Resources Code Section 30106, defines the term "development" to include "change in the density or intensity of use of land, including but not limited to, subdivisions, and any other division of land." Similarly, the City of Capitola's Local Coastal Program, at Capitola Municipal Code Section 17.46.030.1.4 defines "development" to include "subdivisions, and any other division of land...".

RESOLUTION NO.

9. FINDING: The California Coastal Act, at Public Resources Code Section 30600, provides that any person wishing to perform or undertake any development in the coastal zone shall obtain a coastal development permit. Public Resources Code Section 30600 further provides that after certification of a local coastal program by the California Coastal Commission, the local government for the jurisdiction covered by the certified local coastal program shall be responsible for the issuance or denial of coastal development permits within that jurisdiction. The City of Capitola has a certified local coastal program and, accordingly, it, rather than the California Coastal Commission, is legally responsible for processing and considering applications for coastal development permits relative to coastal zone development in the City of Capitola.
10. FINDING: The project entails the subdivision of the Surf and Sand Mobile Home Park into 73 lots for mobile home dwellings, and four common area lots. The Surf and Sand Mobile Home Park property is located in the coastal zone of the City of Capitola. The project is one which calls for a subdivision of land. Accordingly, the project constitutes "development" for purposes of the California Coastal Act and the City's certified Local Coastal Program and, in turn, requires a coastal development permit from the City of Capitola.
11. FINDING: Pursuant to the City of Capitola's Local Coastal Program, certified by the California Coastal Commission in December, 1981, the City must find, in accordance with Capitola Municipal Code Section 17.46.090.D "A coastal permit shall be granted only upon adoption of specific written factual findings supporting the conclusion that the proposed development conforms to the certified Local Coastal Program ..." before it can issue a Coastal Development Permit for that project.
12. FINDING: Findings can be made that the project conforms to all applicable polices of the City's Local Coastal Program and associated implementing ordinances, including all applicable provisions of Capitola Municipal Code Section 17.46.090. Specifically, the project and the property where the project is located have the characteristics which allow an exemption from the requirements of Section 17.46.090 in that:
 - a. The project will have no effect on existing open space or recreational facilities in or near the City as no new construction nor an increase in the existing residential density will occur from the project;
 - b. The project will not obstruct or otherwise affect existing vertical or horizontal coastal or recreational accesses as the project property is not located at the shoreline or on a coastal bluff or at an area that provides potential access to the beach or other outdoor recreational resource areas;
 - c. A description and analysis of anticipated changes to shoreline processes, including erosion or accretion, character and sources of sand, wave and sand movement, is not applicable to the project site as it is located 2,000 feet from the seaward edge of the nearest coastal bluff and it not located between the first through road and the ocean;
 - d. There is no evidence that any portion of the site has been used by the public during the last 5 years for active or passive recreation or coastal access;
 - e. The City's LCP does not identify the project site as containing important coastal resources or for future coastal access dedication; and
 - f. The project is not one where a management plan should be created to guide development. No new development will occur as a result of converting an existing tenant-occupied mobile home park to a subdivided owner-occupied mobile home park.

13. FINDING: The conversion of Surf and Sand Mobile Home Park to a subdivided owner-occupied park will occur on land designated by the City's Local Coastal Program as "Mobile Home Exclusive" land use and said conversion is a use permitted in the land use designation.
14. FINDING: The Mello Act, codified at California Government Code Section 66590, constitutes coastal housing policy for the State of California, as articulated by the California State Legislature, relative to the preservation of low-income and moderate-income housing in the California coastal zone. The Mello Act, at subsection (b), specifies that its provisions and requirements do not apply if a project is located within a local jurisdiction which has less than 50 acres, in aggregate, of land which is vacant, privately owned and available for residential use and the City of Capitola has, within its boundaries, less than 50 acres, in aggregate, of land which is vacant, privately owned and available for residential use.
15. FINDING: In light of the foregoing, the City Council hereby finds and determines that the Mello Act does not apply to Coastal Development Permit Application 12-144.

BE IT FURTHER RESOLVED that the City Council approves the proposed Vesting Tentative Subdivision Map and Coastal Development Permit subject to, and contingent upon, the conditions of approval attached as Exhibit "A".

I HEREBY CERTIFY that the above and foregoing resolution was passed and adopted by the City Council of the City of Capitola at its regular meeting held on the 8th day August, 2013 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Susan Sneddon, City Clerk

CMC

Stephanie Harlan, Mayor

RESOLUTION NO.

Exhibit "A"

750 47th Avenue
Application #12-144

CONDITIONS OF APPROVAL

1. The project is a subdivision of APN 34-551-01 into 73 privately owned lots for mobile home dwelling use and 4 common-owned lots as shown on the Vesting Tentative Map prepared by DeWitt and Associates consisting of 5 sheets, dated October 24, 2012. This approval converts 73 individual mobile home rental spaces to 73 ownership lots. Internal streets serving the mobile home lots will be the same internal streets that served the mobile home spaces on one single lot. This approval will place internal streets in common-owned lots shown as Lots A, B and D on the tentative map. A common-owned lot, shown as Lot C on the tentative map, will provide a clubhouse/meeting room/laundry building and its associated parking area. No new construction of streets, utilities or similar improvements is proposed or authorized as a result of this approval.
2. The applicant shall submit a Final Map to the Director of Public Works for review and approval. The Final Map shall be in substantial conformance with the approved Vesting Tentative Map. The Final Map shall show the following:
 - a. The locations of all property lines and internal roadway rights-of-way;
 - b. The locations of all utility easements;
 - c. Identification of all common-owned lots that differentiates them from privately owned lots;
 - d. All utility easements shall be shown in a manner which meets the requirements of the utility companies and the Director of Public Works;
 - e. A notation that no new construction will occur associated with the approval of the Final Map.
3. Submittal of the Final Map to the Public Works Department shall include reproducible mylars and electronic files of the plans. These documents shall become the property of the City of Capitola at the time of approval.
4. Prior to recordation of the Final Map, the applicant shall submit CC&Rs to the Community Development Department and the City Attorney for review and approval. The CC&Rs shall include the legal establishment of a Homeowners Association (HOA) with the following rights and responsibilities:
 - a. Authority to administer and enforce the CC&Rs;
 - b. Voting rights of mobile home owners shall be consistent with state law and applicable regulations;
 - c. A form of security to ensure management and repair of internal streets and all improvements on the four common-owned lots; and
 - d. Collection of dues on an equal basis from each owner of the 73 privately owned lots to fund the management, repair and security for the common-owned lots.

5. Prior to recordation of the Final Map, the applicant shall submit to the Community Development Department and the City Attorney for review and approval a form of the proposed rental/purchase option agreement to be reviewed only for compliance with California Government Code Sec.66427.5 The form of agreement shall offer each existing tenant the opportunity to purchase their lot or to continue as a tenant. Such form will not be modified except to 1) comply with the requirements of state or federal law; or, 2) conform to requirements of state regulatory agencies which have jurisdiction over any aspect of the mobile home park subdivision; facilities, infrastructure, or lot sales; or, 3) as mutually agreed upon by applicant and tenant. This agreement shall include the following limits on future rents for non-purchasing home owners who are not subject to a long term lease:
 - a. Limiting the rent increase of the non-purchasing low income home owners to not exceed increases in the Consumer Price Index for the same period;
 - b. Phasing any rent increases for non-purchasing home owners who are not low income to market rate rents by phasing the increase in equal increments over a four-year period.
6. Preparation of the final plans shall proceed in compliance with all applicable state and federal laws. The subdivider shall comply with all of the provisions of the approved Vesting Tentative Map and all pertinent provisions of State Law and the Capitola Local Coastal Plan.
7. Planning Fees associated with permit #12-144 shall be paid in full prior to recordation of the Final Map.

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Tentative Map

Full size plans distributed to the City Council only.

Plans are available for review at the
Community Development Department.

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SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made as of June 3, 2013 ("Agreement Effective Date"), by and between Surf and Sand, LLC ("Surf and Sand") and the City of Capitola ("City") on its own behalf

RECITALS

- A. WHEREAS, Surf and Sand owns the manufactured home community commonly known as Surf and Sand Mobilehome Park ("Park") located within the City of Capitola.
- B. WHEREAS, the City is a general law city duly formed, operated and governed in accordance with state law and its own municipal code.
- C. WHEREAS, Surf and Sand desires to subdivide the Park pursuant to the procedures outlined in Government Code section 65863.7 and Chapter 17.90 of the City's Municipal Code and has filed an application with the City for that purpose (the "Project").
- D. WHEREAS, the Mello Act imposes a duty on local governments to provide replacement housing, if such replacement housing is feasible, as a condition of granting a permit to demolish or convert housing units which are located within the coastal zone and are occupied by persons of low or moderate income.
- E. WHEREAS, the Mello Act further requires local jurisdictions such as the City having less than 50 acres of vacant, privately owned land in the coastal zone and three miles inland which is available for residential use and which is in their jurisdiction to determine if replacement housing is feasible, and further provides that the Mello Act shall not apply under these circumstances unless the local jurisdiction determines that replacement housing is feasible.
- F. WHEREAS, because Surf and Sand does not own the coaches located within the Park, Surf and Sand is unable to effectively ensure the continuing affordability of coaches after the Park is subdivided without placing restrictions on other people's personal property.
- G. WHEREAS, Surf and Sand does not own any other land zoned to allow residential development, and is incapable of acquiring any such land due to the fact that sufficient property-zoned land for this purpose in the City is not readily available.
- H. WHEREAS, there are currently more than 20 residents living in the Park with a long term lease that protects the affordability of their unit.
- I. WHEREAS, the overall design of proposed project will result in units which the City believes will be affordable to moderate income buyers at market rate.
- J. WHEREAS, the obligations set forth in this Agreement will mitigate potentially adverse affordable housing inventory impacts attributable to the Project by securing funding for the continued economic support of certain low-income residents within the Park.

Settlement Agreement
38019.037/4833-9262-7476v.1
Surf and Sand Mobile Home Park

AGREEMENT

1. City agrees to deem the Subdivision Application Complete and set the Application for hearing before the Planning Commission and, if necessary the City Council. The Parties agree they will undertake their best efforts to cause the Application to be heard by the Planning Commission no later than July 18, 2013.

2. This Agreement becomes effective only in the event the Subdivision Application, with only the agreed upon conditions, as set forth in paragraph 3 of this agreement, becomes final as defined in paragraph 4 of this Agreement.

3. This Agreement will only become effective on Approval of the Subdivision Application without the imposition of conditions related to compliance with the Mello Act, including affordable housing replacement, except as specified in this Agreement.

4. For the purposes of this Agreement, the Final approval of the Subdivision Application is defined as the later as the approval, execution and service of a resolution approving the Subdivision Application, consistent with the terms of this Agreement, which has become final.

5. Upon the initiation of any Subdivision of the Park (defined as the sale of a single lot within the Park), Surf and Sand agrees it will support and/or undertake the City's obligation to provide economic support for the existing home owners of the following 6 spaces currently receiving such support from the City, while they continue to own their home and reside in the space full time ("Existing City Subsidy"):

750 47th Avenue #52
750 47th Avenue #59
750 47th Avenue #46
750 47th Avenue #38
750 47th Avenue #10
750 47th Avenue #55

6. Surf and Sand's obligation to provide support for the Existing City Subsidy under the following terms:

- a. The subsidy shall be paid under the same conditions and limitations as imposed by the City, as set forth in attached Exhibit I;
- b. The amount of the monthly subsidy shall not exceed \$175.00 per space;
- c. From the date of initiation of the Subdivision until January 1, 2021, Surf and Sand shall have no obligation to provide such subsidy except to the extent that the City loses funding for such services, and in the event of the loss of funding, Surf and Sand's contribution shall not exceed 50 percent of the City's obligation. If City's source of funding is reduced, but not eliminated from the date of initiation of the Subdivision until January 1, 2021, Surf and Sand agrees to pay or credit 50 percent of any reduction in funding to the City.

City agrees to exercise good faith efforts to secure funding from the program from the existing and similar available sources and City represents it is not aware of any information indicating its funding for the program will be eliminated; and

- d. Beginning January 1, 2021 or on the date of initiation of the Subdivision, whichever is later, Surf and Sand agrees to pay or credit 100 percent of the subsidy, to the extent the home owners receiving the subsidy remain as residents in the Park and otherwise qualify for the program.

7. This Agreement will be deemed void and invalid in the event of any administrative appeal, voter action, legal challenge or other event which results in the invalidation of the approval of the Subdivision App Fees and costs or a material change to the conditions imposed upon the Subdivision Application. A material change is defined as a change that will materially impact the economic and/or legal benefit contemplated by this Agreement. For the purposes of this Agreement, the imposition of housing replacement requirements pursuant to the Mello Act is stipulated to be a material term.

8. Authority to enter Agreement. The persons signing this Agreement represent and warrant that they are duly authorized to enter into this Agreement and that their signatures on this Agreement shall be binding on them in their respective individual and representative capacities and on the entities they represent.

9. Binding on successors and related entities. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, officers, directors, principals, employees, subsidiaries, parent entities, affiliated agents and corporations, attorneys, and representatives.

10. Merger. This Agreement constitutes the entire agreement between the parties, and all other prior agreements, arrangements or understandings, written or oral, are merged into and superseded by the terms of this Agreement which may not be altered, modified, or otherwise changed except by a writing signed by the duly authorized representatives of the parties to this Agreement.

11. No Admissions. As this Agreement is intended to be a compromise of disputed claims by all parties, nothing in this Agreement shall be construed to be an admission of liability by any party with respect to any of the issues raised in any of the proceedings specified in Section 1.

12. Freely and voluntarily entered into. Surf and Sand and the City have read and understand the terms of this Agreement. Surf and Sand and the City mutually warrant and represent that this Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any party hereto. Surf and Sand and the City acknowledge that they have been represented by counsel of their choice in negotiations for and in the preparation of this Agreement, that each has had this Agreement explained by counsel, and that Surf and Sand and the City are both fully aware of the contents of this Agreement and of its legal effect.

13. Controlling law. This Agreement shall be construed in accordance with, and all disputes governed by, the laws of the State of California.

14. Headings. Section headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text or as conveying substantive meaning or rights.

15. Construction of this Agreement. Any rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not be applied to the interpretation of this Agreement.

16. No waiver. No breach of any provision of this Agreement can be waived unless in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provision hereof. This Agreement may be amended only by a written agreement executed by the parties-in-interest at the time of modification.

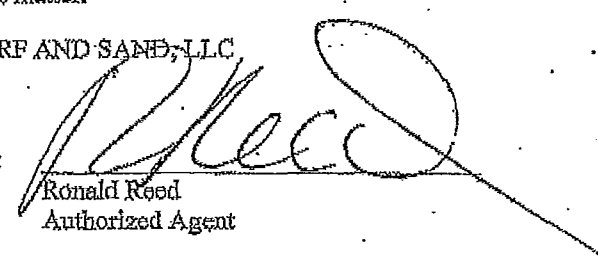
17. Counterparts. This Agreement may be executed in counterparts. Facsimile signatures shall be deemed to be as effective as originals for the purposes of this stipulation.

18. THIS AGREEMENT HAS BEEN ENTERED INTO AS OF THE DATE SET FORTH ABOVE.

19. By executing this agreement, the agent signing on behalf of the City attests that he or she has the authority to bind the City in this matter.

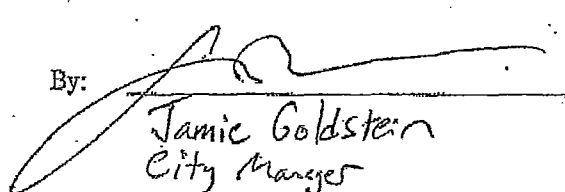
Dated: _____, 2013

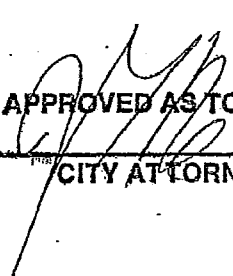
SURF AND SAND, LLC

By: 
Ronald Reed
Authorized Agent

Dated: 6/7, 2013

CITY OF CAPITOLA

By: 
Jamie Goldstein
City Manager


APPROVED AS TO FORM
BY _____ 5-31-13
CITY ATTORNEY

EXCEPT FROM CALIFORNIA GOVERNMENT CODE 66498.1-66498.9

66498.1. (a) Whenever a provision of this division requires that a tentative map be filed, a vesting tentative map may instead be filed. (b) When a local agency approves or conditionally approves a vesting tentative map, that approval shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies, and standards described in Section 66474.2. However, if Section 66474.2 is repealed, that approval shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies, and standards in effect at the time the vesting tentative map is approved or conditionally approved. (c) Notwithstanding subdivision (b), the local agency may condition or deny a permit, approval, extension, or entitlement if it determines any of the following: (1) A failure to do so would place the residents of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both. (2) The condition or denial is required in order to comply with state or federal law. (d) The rights conferred by this section shall expire if a final map is not approved prior to the expiration of the vesting tentative map. If the final map is approved, the rights conferred by this section shall be subject to the periods of time set forth in subdivisions (b), (c), and (d) of Section 66498.5. (e) Consistent with subdivision (b), an approved or conditionally approved vesting tentative map shall not limit a local agency from imposing reasonable conditions on subsequent required approvals or permits necessary for the development and authorized by the ordinances, policies, and standards described in subdivision (b).

66498.2. If the ordinances, policies, or standards described in subdivision (b) of Section 66498.1 are changed subsequent to the approval or conditional approval of a vesting tentative map, the subdivider, or his or her assignee, at any time prior to the expiration of the vesting tentative map pursuant to subdivisions (b), (c), and (d) of Section 66498.5, may apply for an amendment to the vesting tentative map to secure a vested right to proceed with the changed ordinances, policies, or standards. An application shall clearly specify the changed ordinances, policies, or standards for which the amendment is sought.

66498.4. Notwithstanding any provision of this chapter, a property owner or his or her designee may seek approvals or permits for development which depart from the ordinances, policies, and standards described in subdivision (b) of Section 66498.1 and subdivision (a) of Section 66498.3, and local agencies may grant these approvals or issue these permits to the extent that the departures are authorized under applicable law.

66498.6. (a) This chapter does not enlarge, diminish, or alter the types of conditions which may be imposed by a local agency on a development, nor in any way diminish or alter the power of local agencies to protect against a condition dangerous to the public health or safety. (b) The rights conferred by this chapter shall relate only to the imposition by local agencies of conditions or requirements created and imposed by local ordinances. Nothing in this chapter removes, diminishes, or affects the obligation of any subdivider to comply with the conditions and requirements of any state or federal laws, regulations, or policies and does not grant local agencies the option to disregard any state or federal laws, regulations, or policies.

66498.9. By the enactment of this article, the Legislature intends to accomplish all of the following objectives: (a) To establish a procedure for the approval of tentative maps that will provide certain statutorily vested rights to a subdivider. (b) To ensure that local requirements governing the development of a proposed subdivision are established in accordance with Section 66498.1 when a local agency approves or conditionally approves a vesting tentative map. The private sector should be able to rely upon an approved vesting tentative map prior to expending resources and incurring liabilities without the risk of having the project frustrated by subsequent action by the approving local agency, provided the time periods established by this article have not elapsed. (c) To ensure that local agencies have maximum discretion, consistent with Section 66498.1, in the imposition of conditions on any approvals occurring subsequent to the approval or conditional approval of the vesting tentative map, so long as that discretion is not exercised in a manner which precludes a subdivider from proceeding with the proposed subdivision.

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EXCERPT FROM CALIFORNIA GOVERNMENT CODE SECTIONS 66427.4 and 66427.5

66427.4. (a) At the time of filing a tentative or parcel map for a subdivision to be created from the conversion of a mobilehome park to another use, the subdivider shall also file a report on the impact of the conversion upon the displaced residents of the mobilehome park to be converted. In determining the impact of the conversion on displaced mobilehome park residents, the report shall address the availability of adequate replacement space in mobilehome parks.

(a) The subdivider shall make a copy of the report available to each resident of the mobilehome park at least 15 days prior to the hearing on the map by the advisory agency or, if there is no advisory agency, by the legislative body.

(c) The legislative body, or an advisory agency which is authorized by local ordinance to approve, conditionally approve, or disapprove the map, may require the subdivider to take steps to mitigate any adverse impact of the conversion on the ability of displaced mobilehome park residents to find adequate space in a mobilehome park.

(d) This section establishes a minimum standard for local regulation of conversions of mobilehome parks into other uses and shall not prevent a local agency from enacting more stringent measures.

66427.5. At the time of filing a tentative or parcel map for a subdivision to be created from the conversion of a rental mobilehome park to resident ownership, the subdivider shall avoid the economic displacement of all nonpurchasing residents in the following manner:

(a) The subdivider shall offer each existing tenant an option to either purchase his or her condominium or subdivided unit, which is to be created by the conversion of the park to resident ownership, or to continue residency as a tenant.

(b) The subdivider shall file a report on the impact of the conversion upon residents of the mobilehome park to be converted to resident owned subdivided interest.

(c) The subdivider shall make a copy of the report available to each resident of the mobilehome park at least 15 days prior to the hearing on the map by the advisory agency or, if there is no advisory agency, by the legislative body.

(d) (1) The subdivider shall obtain a survey of support of residents of the mobilehome park for the proposed conversion.

(2) The survey of support shall be conducted in accordance with an agreement between the subdivider and a resident homeowners' association, if any, that is independent of the subdivider or mobilehome park owner.

(3) The survey shall be obtained pursuant to a written ballot.

(4) The survey shall be conducted so that each occupied mobilehome space has one vote.

(5) The results of the survey shall be submitted to the local agency upon the filing of the tentative or parcel map, to be considered as part of the subdivision map hearing prescribed by subdivision (e).

(e) The subdivider shall be subject to a hearing by a legislative body or advisory agency, which is authorized by local ordinance to approve, conditionally approve, or disapprove the map. The scope of the hearing shall be limited to the issue of compliance with this section.

(f) The subdivider shall be required to avoid the economic displacement of all nonpurchasing residents in accordance with the following:

(1) As to nonpurchasing residents who are not lower income households, as defined in Section 50079.5 of the Health and Safety Code, the monthly rent, including any applicable fees or charges for use of any preconversion amenities, may increase from the preconversion rent to market levels, as defined in an appraisal conducted in accordance with nationally recognized professional appraisal standards, in equal annual increases over a four-year period.

(2) As to nonpurchasing residents who are lower income households, as defined in Section 50079.5 of the Health and Safety Code, the monthly rent, including any applicable fees or charges for use of any preconversion amenities, may increase from the preconversion rent by an amount equal to the average monthly increase in rent in the four years immediately preceding the conversion, except that in no event shall the monthly rent be increased by an amount greater than the average monthly percentage increase in the Consumer Price Index for the most recently reported period.



Mark D. Alpert
malpert@hkclaw.com

May 30, 2013

Our File Number: 38019.037/4851-7226-7284v.1

VIA EMAIL AND MAIL

Richard Grunow
Community Development Director
City of Capitola
420 Capitola Avenue
Capitola, CA 95010

Re: *Subdivision and Coastal Permit Application for Surf and Sand Mobilehome Park*

Dear Mr. Grunow,

Enclosed please find a revised relocation impact report for the proposed tentative tract map and Coastal Development Permit for Surf and Sand Mobile Home Park. Please be advised that it is the Applicant's position that, under the Permit Streamlining Act, the City does not have authority to demand additional material in order to deem Surf and Sand's application complete, other than information requested regarding compliance with the Mello Act, as that was the only incompleteness item identified in the City's prior determination of incompleteness. I have addressed several other issues belatedly raised by the City's contract planner in correspondence directed to him.

This additional information is provided "under protest" for the purposes of facilitating a hearing on the Applications and should in no way be interpreted as Surf and Sand waiving its right to assert that the City's demands violated the Permit Streamlining Act.

With this submission, I hope the City will promptly deem the Applications complete and set them for hearing, keeping in mind that the Applicant is required to provide homeowners 15 days' notice of the Planning Commission and City Council hearings on the Applications.

Thank you for your attention to this matter.

Respectfully Submitted,

HART, KING & COLDREN

A handwritten signature in black ink, appearing to read 'Mark D. Alpert', is written over the printed name and firm name.

Mark D. Alpert

MDA/sm

cc: Surf and Sand, LLC
Kim Tschantz (via email)

A Professional Law Corporation
4 Hutton Centre Drive, Suite 900, Santa Ana, California 92707
Ph 714.432.8700 | www.hkclaw.com | Fx 714.546.7457



REVISED REPORT ON IMPACT OF CONVERSION UPON RESIDENTS

Surf and Sand Mobilehome Park

May 30, 2013

SECTION I. SCOPE OF REPORT

This "Report on Impact of Conversion upon Residents" ("**Report**") is submitted by the "**Applicant**" for a Tentative Tract Map subdividing the Surf and Sand Mobilehome Park ("**Park**"). The subdivision will be created by the conversion of the Park from rental spaces to resident owned lots. The Park is located at 750 47th Avenue, City of Capitola ("**City**"), California. The Report is being filed with the City as part of the Tentative Tract Map Application and will be made available to the Park residents prior to the City's hearing on the Application pursuant to California Government Code Section 66427.5, a copy of which is attached hereto as Exhibit "A." The Report contains the Applicant's assessment of the impact upon the Park residents of conversion to resident ownership.

The Park currently has 73 spaces. The park is no longer subject to rent control as the City of Capitola rescinded its rent control ordinance. The park spaces are rented under long term leases and some monthly rental agreements. In addition, a number of spaces are occupied by park owned rental homes. At the time the resident survey described herein was conducted, there were 42 rental spaces in the Park.

SECTION II DEFINITIONS

2.1 Conversion Date: The "**Conversion Date**" is the date after the subdivision final map has been approved by the City and after the Department of Real Estate has approved the subdivision for sale and is the date on which the first Lot in the Park is sold.

2.2 Hearing Date: The "**Hearing Date**" is the date on which the subdivision Application is first heard by the City Planning Commission or City Council.

2.3 Home: The "**Home**" is the manufactured home that occupies the Space where the Resident is living as of the Hearing Date.

2.4 Lot: A "**Lot**" is the land and fixed improvements within the Space on which the Resident's Home is located as of the Hearing Date, plus a 1/73rd share of the common area and facilities and one membership in the Homeowners' Association to be formed as part of the subdivision process.

2.5 Resident: A "**Resident**" is a Homeowner living in a Home in the Park who meets the requirements for receiving protections afforded by applicable law.

38019.037/4823-7066-7284v.1

A Professional Law Corporation
4 Hutton Centre Drive, Suite 900, Santa Ana, California 92707
Ph 714.432.8700 | www.hkclaw.com | Fx 714.546.7457



Report on Impact of Subdivision to Residents

May 30, 2013

Page 2

- 2.6 **Space:** The "Space" is the leased premises on which the Resident's Home is located as of the Hearing Date.

SECTION III NO ECONOMIC DISPLACEMENT OF RESIDENTS FROM CONVERSION BECAUSE OF STATUTORY RIGHT TO PURCHASE OR CONTINUE LEASING

Upon conversion, all Residents will have the opportunity to either purchase the Lot on which their Home is situated or to continue leasing their Space with statutory protections on rental rates after the Conversion Date. (Govt. Code § 66427.5(a),(f)) Therefore, upon conversion of the Park to resident ownership, the Residents are statutorily protected against economic displacement. As there is no rent control in the City of Capitola, the conversion will actually result in the implementation of rent protection under the provision of Govt. Code § 66427.5(f).

3.1 No Economic Displacement from Sale of the Lots

The Residents are protected from economic displacement pertaining to sale of the Lots upon conversion by having both the purchase option of their Lots at the eventual sales price and the option to continue leasing their Space. Gov't Code § 66427.5 (a) requires the subdivider to "offer each Resident an option to either purchase his or her ... subdivided unit, which is to be created by the conversion of the park to resident ownership, or to continue residency as a tenant." Thus, if any Resident cannot purchase his or her Lot upon conversion, the Resident is not required to move and may continue to lease his or her Space following the Conversion Date. As previously noted, the initiation of conversion would actually enhance economic protection for residents who continue to wish to rent.

This Report cannot make determinations about "potential" impacts to the Residents resulting from the eventual sale price of the Lots under the purchase option. That is because the sale price of the Lots will not be established until some time after the tentative tract map and subdivision approval. The Residents cannot make a rational decision to buy, continue to rent, or move his or her mobilehome until the tenant is given an option purchase price and a proposed rental price. (See *El Dorado Palm Springs Ltd. v. City of Palm Springs* (2002) 96 Cal.App.4th 1153, 1179-1180)

After tentative map approval, the subdivider must next follow procedures and obtain approval of the subdivision from the Department of Real Estate under the Subdivided Lands Act. Only after approval by the Department of Real Estate will all of the factors that affect the Lot purchase price be established. The Resident will learn the option price for his or her Lot only after the Department of Real Estate approves the subdivision and issues its public report on the subdivision, when the subdivider offers the lots for sale.



Report on Impact of Subdivision to Residents

May 30, 2013

Page 3

The subdivider is not required to disclose an offer price at the time of filing of the Application and of this Report, and indeed is forbidden by the Subdivided Lands Act from making such a disclosure at that time. The first time that the Resident may become aware of even a tentative offer price for the Lot will be several weeks or months later, just prior to filing a notice of intention to sell with the Department of Real Estate under the Subdivided Lands Act. (See Bus. & Prof. Code § 11010.9 (c); See *El Dorado Palm Springs Ltd. v. City of Palm Springs* (2002) 96 Cal.App.4th 1153, 1179-1180)

Nevertheless, because the Resident has the option to either purchase his or her Lot or to continue leasing his or her Space under whatever lease arrangement may be existing on the Conversion Date with the statutory rental rate protections discussed below, the Residents will be protected against economic displacement from sale of the Lots upon conversion.

3.2 No Economic Displacement from Continued Lease of the Spaces

The Residents who do not exercise the option to purchase their Lots and instead exercise the option to continue renting their Spaces are protected from economic displacement by statutory restrictions on rental rates after the "Conversion Date." Government Code § 66427.5 (f) limits the amount of rent increases for Residents that can take place upon conversion, thereby avoiding economic displacement, if any, from any rental increases after the Conversion Date.

For non-purchasing Residents who are not lower income households, the monthly rent, including any applicable fees or charges for use of any pre-conversion amenities, may only increase to market levels as determined by appraisal, and then only over a period of four years.

For non-purchasing Residents who are lower income households (as defined in California Health and Safety Code § 50079.5), the monthly rent, including any applicable fees or charges for use of any pre-conversion amenities, may only increase by an amount equal to the average monthly increase in rent in the four years immediately preceding the conversion, except that in no event shall the monthly rent be increased by an amount greater than the average monthly percentage increase in the Consumer Price Index for the most recently reported period.

"Low Income Households" are defined in California Health & Safety Code Section 50079.5 as "those persons and families whose income does not exceed the qualifying limits for low income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937."

Thus, under the current statutory scheme, the Legislature has defined the exclusive and preempted scope of "mitigations" respecting any "economic displacement," assuming, without admitting, that increases in rent can be considered an economic displacement.



Report on Impact of Subdivision to Residents
May 30, 2013
Page 4

3.3 Benefits of Conversion

Subdivision of the Park provides Residents with a choice to own or rent the Lot on which their Home is located. Lot ownership gives the Residents greater flexibility with regard to financing for their Homes and other credit opportunities. Lot ownership allows the Residents to control their economic future. Residents do not have to be tied to monthly rental payments if they choose. Lot ownership also gives the Residents the freedom to use their Lot without all of the restrictions or costs that a landlord might impose. The Residents will have the opportunity to control the Park amenities that they will enjoy and pay for through the Homeowner's Association.

SECTION IV NO CLOSURE OR CHANGE IN ZONING

4.1 No Change in Zoning or Closure

The Park is currently zoned consistent with a mobile home park use. The Application does not request a zoning change. The Application does not request closure of the Park. The Application seeks merely to convert the existing Spaces to Lots available for purchase. Therefore, the conversion to Resident ownership will not result in economic displacement that might occur with a zoning change or closure of the Park.

4.2 Technical "Conversion" or "Change in Use" Only

The term "conversion" relating to a mobilehome park sometimes is used to describe the closure of the park to enable an alternative use. This is NOT what is occurring as a result of subdivision of the Park. The Park will remain a manufactured housing community, with the existing Residents having the right to either buy their Lot or to remain and rent their Space.

4.3 Relocation Assistance Not Applicable

When a subdivision is created from conversion of a rental mobilehome park to resident ownership, a different type of impact report is required than when a subdivision created from a change of use to a non-mobilehome park use or when the mobilehome park is closed.

Government Code Section 66427.5 governs the type of report that must be prepared for a subdivision which is created from conversion of a rental mobilehome park to resident ownership. This Government Code Section 66427.5 Report, which does not deal with a change in use of the property or closure of the Park, is simply required to explain the options of the Residents regarding their choice to purchase their Lot or to rent their Space.

This Report need not discuss displacement of Residents, replacement housing or mitigation of the reasonable costs of relocation, which issues would be involved in any



Report on Impact of Subdivision to Residents

May 30, 2013

Page 5

subdivision resulting from a change of use of a mobilehome park or from closure of a mobilehome park. In fact Government Code Sections 66427.4 and 65863.7, which apply to subdivisions created from change of use to a non-mobilehome park use or to closure of a mobilehome park, expressly exempt from their requirements subdivisions that are created from conversion of a rental mobilehome park to resident ownership. (See Govt. Code §§ 66427.4 (e), 65863.7 (a))

SECTION V RESIDENT SURVEY (DEMOGRAPHICS)

Pursuant to Government Code Section 66427.5(d)(1), the a survey of support of the residents was conducted with the agreement of the Homeowner's Association. A copy of the agreement is attached as Exhibit B. As part of the agreement, the park owner and the HOA agreed upon the form of the survey, which is appended to Exhibit B. The park owner and HOA agreed upon the timing and manner in which the survey was conducted. By agreement, the survey included only homeowners. By agreement the survey results were sent directly to the City Clerk who was to tally the results.

The Survey was delivered to all 42 Park homeowners who owned homes in the park as of the date the survey was sent on September 28, 2012 to their address. Each occupied Space was allowed one (1) vote.

The City Clerk reported the following results of the survey counting every response received as of October 18, 2012:

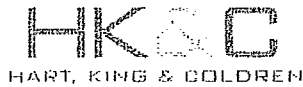
A total of 30 of 42 spaces responded.

- 25 stated they support of the subdivision.
- 3 stated they opposed the subdivision
- 2 did not support or oppose, but offered written comments.

The vast majority of residents who responded supported the subdivision. Approximately 83 percent of those responding indicated support for the Application. Only ten percent of those who responded opposed the subdivision. In addition, even considering those who did not respond, approximately 60 percent of the 42 spaces indicated their support, while approximately 7 percent of the surveyed residents stated opposition.

SECTION VI AFFORDABLE HOUSING ISSUES/MELLO ACT COMPLIANCE

Surf and Sand contends that pursuant to Government Code § 66427.5, the City may only consider compliance with the requirements of that section in considering the Tentative Map Application of Surf and Sand. Surf and Sand contends this precludes any consideration of purported requirements of the Mello Act to provide replacement housing. However, the



Report on Impact of Subdivision to Residents

May 30, 2013

Page 6

California Supreme Court has ruled that local governments can consider compliance with the affordable housing requirements of the Mello Act in reviewing a subdivision application pursuant to Section 66427.5. In addition, there is no affordable housing located at the park. The park owner is not subject to any program to assure that homes will be affordable. Recent transactions (prior to the notice of closure) have sale prices which are not affordable to low income persons.

To the extent the Mello Act is deemed to apply, there will be no loss of affordable housing in the park. On conversion, those residents who are low income are entitled to continue to rent and will have rent protection under state statutes while they remain in the Park. In the event the Park does not convert, there is no limitation in place that would assure the combined housing cost would remain affordable. As a result, it would not be feasible to impose affordable housing limitations effectively because of the split ownership. While Surf and Sand could agree to restrictions on the sale price of the lots, such restrictions could not limit the sale price of the homes on the land. The result would be an artificial inflation of the sale price of the home, resulting in no net gain in affordability.

SECTION VII. CONCLUSION

This Report discusses the impacts upon the Residents of conversion to Resident ownership pursuant to subdivision of the Park. Upon conversion, the Residents are statutorily protected from economic displacement by the option to either purchase their Lots or continue renting their Spaces with statutory restrictions on rent increases. Existing homeowners on rental agreements of less than 12 months and residents on long-term leases (of 12 months or longer) will continue to have the right of continued occupancy under such rental agreements or long leases after the Conversion Date.

All of the Resident protections discussed in this Report are based upon the Applicant's assessment of the currently existing statutory scheme, and are not a promise, representation, or warranty on the part of the Applicant or its agents. The operative date for the time frame and protections described above is the Conversion Date as described in Section 2.1 above. Of course, should the law change, the Applicant reserves the right to implement the conversion in accordance with the applicable valid and enforceable laws.

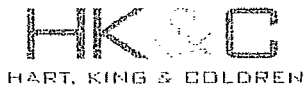
Dated: May 30, 2013

Hart, King & Coldren

By: 

Mark D. Alpert

Attorneys for Applicant



Report on Impact of Subdivision to Residents
May 30, 2013
Page 7

Exhibit A

California Government Code Section 66427.5

California Government Code section 66427.5.

At the time of filing a tentative or parcel map for a subdivision to be created from the conversion of a rental mobilehome park to resident ownership, the subdivider shall avoid the economic displacement of all nonpurchasing residents in the following manner:

(a) The subdivider shall offer each existing tenant an option to either purchase his or her condominium or subdivided unit, which is to be created by the conversion of the park to resident ownership, or to continue residency as a tenant.

(b) The subdivider shall file a report on the impact of the conversion upon residents of the mobilehome park to be converted to resident owned subdivided interest.

(c) The subdivider shall make a copy of the report available to each resident of the mobilehome park at least 15 days prior to the hearing on the map by the advisory agency or, if there is no advisory agency, by the legislative body.

(d) (1) The subdivider shall obtain a survey of support of residents of the mobilehome park for the proposed conversion.

(2) The survey of support shall be conducted in accordance with an agreement between the subdivider and a resident homeowners' association, if any, that is independent of the subdivider or mobilehome park owner.

(3) The survey shall be obtained pursuant to a written ballot.

(4) The survey shall be conducted so that each occupied mobilehome space has one vote.

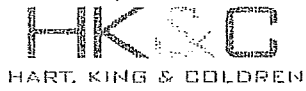
(5) The results of the survey shall be submitted to the local agency upon the filing of the tentative or parcel map, to be considered as part of the subdivision map hearing prescribed by subdivision (e).

(e) The subdivider shall be subject to a hearing by a legislative body or advisory agency, which is authorized by local ordinance to approve, conditionally approve, or disapprove the map. The scope of the hearing shall be limited to the issue of compliance with this section.

(f) The subdivider shall be required to avoid the economic displacement of all nonpurchasing residents in accordance with the following:

(1) As to nonpurchasing residents who are not lower income households, as defined in Section 50079.5 of the Health and Safety Code, the monthly rent, including any applicable fees or charges for use of any preconversion amenities, may increase from the preconversion rent to market levels, as defined in an appraisal conducted in accordance with nationally recognized professional appraisal standards, in equal annual increases over a four-year period.

(2) As to nonpurchasing residents who are lower income households, as defined in Section 50079.5 of the Health and Safety Code, the monthly rent, including any applicable fees or charges for use of any preconversion amenities, may increase from the preconversion rent by an amount equal to the average monthly increase in rent in the four years immediately preceding the conversion, except that in no event shall the monthly rent be increased by an amount greater than the average monthly percentage increase in the Consumer Price Index for the most recently reported period.



Report on Impact of Subdivision to Residents
May 30, 2013
Page 8

Exhibit B
Survey Agreement

SURF AND SAND MOBILEHOME PARK
RESIDENT SUPPORT SURVEY AGREEMENT

This Agreement for conducting a homeowner survey of support is entered into between Surf and Sand, LLC and the Surf and Sand Mobilehome Park Residents' Association pursuant to the requirements of California Government Code Section 66427.5. (d).

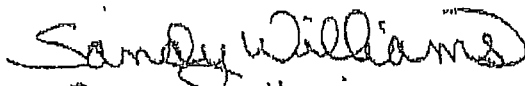
1. **Survey Ballot:** The attached Survey Ballot (Exhibit A) is the form that shall be used for distribution to the resident households of Surf and Sand Mobilehome Park (the Homeowners) pursuant to this Agreement between the Surf and Sand Residents Association (the Association) and the Park Owner. This Survey Ballot shall be revised before distribution to the Homeowners only for the purpose of inserting the "Deadline Date" as discussed in Paragraph 3, below. No other information shall be included in the Ballot Packets other than a letter in the form of Exhibit B and an stamped, addressed envelope for the return of the ballots.

2. **Distribution Date:** The Survey Ballots shall be distributed by Park Owner to each Homeowner by October 1, 2012, the Homeowners will have until October 12, 2012 to return the Survey Ballots by mail if feasible. If this date is not feasible, Park Owner will distribute at the earliest available date and Homeowners will have 12 days from receipt to return the Survey Ballots.

3. **Return of Completed Survey Ballots:** The Homeowners shall mail the completed Survey Ballots to the City Clerk, City of Capitola. The Ballot packets shall contain stamped envelopes addressed to the City Clerk, City of Capitola and containing each resident household's return address along with the blank Survey Ballots to the Homeowners.

4. **Tabulation, Inspection and Submittal:** The Capitola City Clerk ("Clerk") will receive and maintain the surveys. Clerk shall count the surveys and provide counsel for the Park Owner and the Association President with the results and with copies of the completed Survey Ballots after the count is tabulated. On request, Clerk shall provide a list of the persons who responded to the survey for the purposes of confirming only qualified homeowners responded and only a single response was received per household.

On Behalf of the Resident Association



SANDY WILLIAMS

Print Name: Sandy Williams
Association President

Date: 9/26/12

On Behalf of the Parkowner



Print Name: Ron Reed

Date: 9-28-12



Mark D. Alpert
malpert@hkclaw.com

September 28, 2010

Our File Number: 38019.037/4816-0009-2689v.1

Residents, Surf and Sand Mobile Home Park
Capitola, California,

Re: Surf and Sand Mobile Home Park

Dear Residents:

As you know, we represent the owners of Surf & Sand Mobile Home Park ("Surf & Sand" or "Park"). Surf & Sand is considering to once again submit an application to subdivide the Park. As you know, as part of the process, we are required to conduct a resident survey. I have worked with the President of your HOA, Sandy Williams, who has agreed to the content of this letter and the accompanying survey.

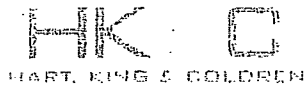
I am sure many of you have many concerns relating to a potential subdivision. The purpose of this letter is to address those concerns the best we can.

First, it is important you understand that this proposed subdivision will have no impact on the leases we have agreed upon. These leases will be honored. In addition, at the expiration of any lease, you will continue to have the right to rent your space. You will not be forced to purchase the lot under any scenario. You are not going to be asked to give up any protections you negotiated as part of any of settlement agreements. The initiation of a subdivision under California Government Code § 66427.5 gives you the option to purchase.

Second, at the initiation of any subdivision (which occurs when the first lot is sold), a subdivision actually creates a form of rent protection that is required by law. For low income residents, it prevents your rents from being increased annually more than 100 percent of the CPI. Thus, some of you who did not qualify for low income leases as part of the settlement may be entitled to similar rent protection if, at the time a subdivision is initiated, you have retired and are low income. For moderate income residents, rents can be increased to fair market levels over four years after the subdivision is initiated.

Third, Surf and Sand has completed improvements to the infrastructure, including the clubhouse and a new sewer system. I recall that this was a particular concern that was raised in conjunction with the prior subdivision application. In any event, as part of the offer process regulated by the California Department of Real Estate process, Surf and Sand is required to disclose to you information regarding any future infrastructure improvements needed, a cost estimate to complete those improvements, and your estimated association fees before you make the decision whether to purchase your lot. So you will make the decision whether to buy or not with information regarding the condition of the existing improvements, their expected useful life and the estimated costs associated with funding any necessary repair and replacement of the existing improvements. Once a subdivision is initiated, the park owner pays the association fees for any unsold lots.

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Residents
Surf & Sand Mobile Estates
September 28, 2012
Page 2

We have also enclosed a survey form for you to return, along with a stamped, addressed envelope providing a return address at the City of Capitola for the collection of surveys. This is the process your HOA agreed to utilize and the survey is a form agreed upon by the HOA. Please mail the ballot to the City no later than October 10, 2012.

Only those residents who own homes will be allowed to vote. By law, each homeowner is allowed one vote. There will be no votes counted for the park owned homes. Of course, the results of the survey will be reported to the residents.

If you have any questions or concerns, we urge you to contact Sandy Williams who will relay the questions and concerns to us. We will respond to questions in writing in order to avoid miscommunications. Please do not contact the on site property managers or Ron Reed regarding this matter.

Thank you for your attention to this matter.

Sincerely,

HART, KING & COLDREN

Mark D. Alpert
MDA/sm

cc: Jamie Goldstein, Capitola City Manager
Surf and Sand, LLC

SURF AND SAND MOBILEHOME PARK
PARKSURVEY OF COMMUNITY RESIDENTS
BALLOT FORM

This ballot is provided to you pursuant to the requirements of Government Code § 66427.5. The purpose of the ballot is to show Surf and Sand Mobilehome Park resident support for the proposed subdivision of the Park to change it from a rental mobilehome community to a resident owned mobilehome community subdivision. Each occupied space shall have one vote. Please indicate below whether or not you support the subdivision and please sign and date where indicated below.

I support the subdivision of Surf and Sand Mobilehome Park to convert it from a rental mobilehome community to a resident-owned community.

I do not support the subdivision of Surf and Sand Mobilehome Park to convert it from a rental mobilehome community to a resident-owned subdivision.

I understand that this form does not constitute an offer to sell at a specific price, nor is it a commitment to purchase an interest in the mobilehome community. It is merely an indication of support/non-support for the subdivision.

Signed: _____

Space # _____

Name: _____

Date: _____

**SURF AND SAND MOBILEHOME PARK
RESIDENT SUPPORT SURVEY AGREEMENT**

This Agreement for conducting a homeowner survey of support is entered into between Surf and Sand, LLC and the Surf and Sand Mobilehome Park Residents' Association pursuant to the requirements of California Government Code Section 66427.5. (d).


1. **Survey Ballot:** The attached Survey Ballot (Exhibit A) is the form that shall be used for distribution to the resident households of Surf and Sand Mobilehome Park (the Homeowners) pursuant to this Agreement between the Surf and Sand Residents Association (the Association) and the Park Owner. This Survey Ballot shall be revised before distribution to the Homeowners only for the purpose of inserting the "Deadline Date" as discussed in Paragraph 3, below. No other information shall be included in the Ballot Packets other than a letter in the form of Exhibit B and an stamped, addressed envelope for the return of the ballots.

2. **Distribution Date:** The Survey Ballots shall be distributed by Park Owner to each Homeowner by October 1, 2012, the Homeowners will have until October 12, 2012 to return the Survey Ballots by mail if feasible. If this date is not feasible, Park Owner will distribute at the earliest available date and Homeowners will have 12 days from receipt to return the Survey Ballots.

3. **Return of Completed Survey Ballots:** The Homeowners shall mail the completed Survey Ballots to the City Clerk, City of Capitola. The Ballot packets shall contain stamped envelopes addressed to the City Clerk, City of Capitola and containing each resident household's return address along with the blank Survey Ballots to the Homeowners.

4. **Tabulation, Inspection and Submittal:** The Capitola City Clerk ("Clerk") will receive and maintain the surveys. Clerk shall count the surveys and provide counsel for the Park Owner and the Association President with the results and with copies of the completed Survey Ballots after the count is tabulated. On request, Clerk shall provide a list of the persons who responded to the survey for the purposes of confirming only qualified homeowners responded and only a single response was received per household.

On Behalf of the Resident Association


SANDY WILLIAMS
Print Name: Sandy Williams
Association President

Date: 9/26/12

On Behalf of the Parkowner


Print Name: Ron Reed

Date: 9-28-12

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Surf & Sand Mobile Home Park
Survey of Residents Pursuant to Government Code Section 66427.5
Tally of Survey Ballots Received as of October 10, 2012

Space #	Name of Resident	Support	Oppose	Date Received
2	Julie Lewis	X		10/9/2012
4	Veronica Shepardson	X		10/3/2012
10	Shirley M. Hill	X		10/9/2012
22	Tim & Tammy Brackett	X		10/3/2012
24	Davina Baker	X		10/9/2012
29	Dorothy Takatsuno	X		10/9/2012
30	Robin W. Russell	X		10/9/2012
38	Roscoe W. Smith	X		10/10/2012
44	Nancy Brewer	X		10/5/2012
46	Michaela K. Scott	X		10/11/2012
48	Joyce Carlson	X		10/4/2012
52	Heidi Hoffacker	X		10/9/2012
57	Chris Rekse	X		10/2/2012
58	John Alsman	X		10/10/2012
59	Carolyn Hightower	X		10/5/2012
60	Valerie Tudor	X		10/4/2012
61	Robert Parkinson	X		10/4/2012
62	Jeff Martin	X		10/11/2012
64	Mary Loubier-Rieca	X		10/10/2012
65	Leslie Ann Cone	X		10/9/2012
66	Jovita Haberle	X		10/10/2012
67	J. Budd Sage		X	10/10/2012
69	Eleanor S. Skrondal		X	10/3/2012
70	Judith Young		X	10/9/2012
71	Sandra Williams	X		10/4/2012
73	William L. Newman	X		10/3/2012
74	Beatrice C. Piggott	X		10/11/2012
		24	3	TOTALS

Tally of Survey Ballots Received Received after the October 10, 2012 Deadline

Space #	Name of Resident	Support	Oppose	Date Received
13	Tom & Cindy Bush	X		10/18/2013
32	Madeline Chiauetta	X		1/25/2013
35	Madeline Chiauetta	X		1/25/2013
49	Lynda Swannie	X		11/6/2012
54	Dale Berman & Gruce Simas	X		10/22/2012
56	Henry & Carina Ryan		X	10/22/2012

P:\City Clerk\Records Mgmt\Record Requests\Surf & Sand Mobile Home Park\2013\[Surf & Sand Park Tally Ballot Survey.xlsx]Sheet1

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**EXCERPT FROM CALIFORNIA GOVERNMENT CODE SECTIONS 65590
(Mello Act)**

65590. (a) In addition to the requirements of Article 10.6 (commencing with Section 65580), the provisions and requirements of this section shall apply within the coastal zone as defined and delineated in Division 20 (commencing with Section 30000) of the Public Resources Code. Each respective local government shall comply with the requirements of this section in that portion of its jurisdiction which is located within the coastal zone. (b) The conversion or demolition of existing residential dwelling units occupied by persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, shall not be authorized unless provision has been made for the replacement of those dwelling units with units for persons and families of low or moderate income. Replacement dwelling units shall be located within the same city or county as the dwelling units proposed to be converted or demolished. The replacement dwelling units shall be located on the site of the converted or demolished structure or elsewhere within the coastal zone if feasible, or, if location on the site or elsewhere within the coastal zone is not feasible, they shall be located within three miles of the coastal zone. The replacement dwelling units shall be provided and available for use within three years from the date upon which work commenced on the conversion or demolition of the residential dwelling unit. In the event that an existing residential dwelling unit is occupied by more than one person or family, the provisions of this subdivision shall apply if at least one such person or family, excluding any dependents thereof, is of low or moderate income.

The requirements of this subdivision for replacement dwelling units shall not apply to the following types of conversion or demolition unless the local government determines that replacement of all or any portion of the converted or demolished dwelling units is feasible, in which event replacement dwelling units shall be required:

(1) The conversion or demolition of a residential structure which contains less than three dwelling units, or, in the event that a proposed conversion or demolition involves more than one residential structure, the conversion or demolition of 10 or fewer dwelling units.

(2) The conversion or demolition of a residential structure for purposes of a nonresidential use which is either "coastal dependent," as defined in Section 30101 of the Public Resources Code, or "coastal related," as defined in Section 30101.3 of the Public Resources Code....

(3) The conversion or demolition of a residential structure located within the jurisdiction of a local government which has within the area encompassing the coastal zone, and three miles inland therefrom, less than 50 acres, in aggregate, of land which is vacant, privately owned and available for residential use.

(4) The conversion or demolition of a residential structure located within the jurisdiction of a local government which has established a procedure under which an applicant for conversion or demolition will pay an in-lieu fee into a program, the various provisions of which, in aggregate, will result in the replacement of the number of dwelling units which would otherwise have been required by this subdivision....

The requirements of this subdivision for replacement dwelling units shall not apply to the demolition of any residential structure which has been declared to be a public nuisance under the provisions of Division 13 (commencing with Section 17000) of the Health and Safety Code, or any local ordinance enacted pursuant to those provisions.....

For purposes of this subdivision, no building, which conforms to the standards which were applicable at the time the building was constructed and which does not constitute a substandard building, as provided in Section 17920.3 of the Health and Safety Code, shall be deemed to be

a public nuisance solely because the building does not conform to one or more of the current provisions of the Uniform Building Code as adopted within the jurisdiction for new construction. (c) The conversion or demolition of any residential structure for purposes of a nonresidential use which is not "coastal dependent", as defined in Section 30101 of the Public Resources Code, shall not be authorized unless the local government has first determined that a residential use is no longer feasible in that location. If a local government makes this determination and authorizes the conversion or demolition of the residential structure, it shall require replacement of any dwelling units occupied by persons and families of low or moderate income pursuant to the applicable provisions of subdivision (b). (d) New housing developments constructed within the coastal zone shall, where feasible, provide housing units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code. Where it is not feasible to provide these housing units in a proposed new housing development, the local government shall require the developer to provide such housing, if feasible to do so, at another location within the same city or county, either within the coastal zone or within three miles thereof. In order to assist in providing new housing units, each local government shall offer density bonuses or other incentives, including, but not limited to, modification of zoning and subdivision requirements, accelerated processing of required applications, and the waiver of appropriate fees. (e) Any determination of the "feasibility" of an action required to be taken by this section shall be reviewable pursuant to the provisions of Section 1094.5 of the Code of Civil Procedure. (f) The housing provisions of any local coastal program prepared and certified pursuant to Division 20 (commencing with Section 30000) of the Public Resources Code prior to January 1, 1982, shall be deemed to satisfy all of the requirements of this section. Any change or alteration in those housing provisions made on or after January 1, 1982, shall be subject to all of the requirements of this section. (g) As used in this section: (1) "Conversion" means a change of a residential dwelling, including a mobilehome, as defined in Section 18008 of the Health and Safety Code, or a mobilehome lot in a mobilehome park, as defined in Section 18214 of the Health and Safety Code, or a residential hotel as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, to a condominium, cooperative, or similar form of ownership; or a change of a residential dwelling, including a mobilehome, or a mobilehome lot in a mobilehome park, or a residential hotel to a nonresidential use. (2) "Demolition" means the demolition of a residential dwelling, including a mobilehome, as defined in Section 18008 of the Health and Safety Code, or a mobilehome lot in a mobilehome park, as defined in Section 18214 of the Health and Safety Code, or a residential hotel, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, which has not been declared to be a public nuisance under Division 13 (commencing with Section 17000) of the Health and Safety Code or any local ordinance enacted pursuant to those provisions. (3) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technical factors. (h) With respect to the requirements of Sections 65583 and 65584, compliance with the requirements of this section is not intended and shall not be construed as any of the following: (1) A statutory interpretation or determination of the local government actions which may be necessary to comply with the requirements of those sections; except that compliance with this section shall be deemed to satisfy the requirements of paragraph (2) of subdivision (c) of Section 65583 for that portion of a local government's jurisdiction which is located within the coastal zone. (2) A limitation on the program components which may be included in a housing element, or a requirement that a housing element be amended in order to incorporate within it any specific provision of this section or related policies. Any revision of a housing element pursuant to Section 65588 shall, however, take into account any low- or moderate-income housing which has been provided or required pursuant to this section. (3) Except as otherwise specifically required by this section, a requirement that a local government adopt individual ordinances or programs in order to implement the requirements of this section. (i) No provision of this section shall be construed as increasing or decreasing the authority of a local

government to enact ordinances or to take any other action to ensure the continued affordability of housing. (j) Local governments may impose fees upon persons subject to the provisions of this section to offset administrative costs incurred in order to comply with the requirements of this section. (k) This section establishes minimum requirements for housing within the coastal zone for persons and families of low or moderate income. It is not intended and shall not be construed as a limitation or constraint on the authority or ability of a local government, as may otherwise be provided by law, to require or provide low- or moderate-income housing within the coastal zone which is in addition to the requirements of this section.

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Mark D. Alpert
malpert@hkclaw.com

July 15, 2013

Our File Number: 38019.037/4833-0013-5444v.1

VIA EMAIL AND MAIL

Richard Grunow
Community Development Director
City of Capitola
420 Capitola Avenue
Capitola, CA 95010

Re: *Subdivision and Coastal Permit Application for Surf and Sand Mobilehome Park*

Dear Mr. Grunow,

I am writing on behalf of Surf and Sand, LLC. to offer comments regarding the proposed conditions for approval of the subdivision of APN 34-551—01. We are generally pleased with the staff report and I believe we can accept the conditions with some corrections and clarifications which I hope the Planning Commission will consider. These comments are based, in part, on comments from engineer Robert Dewitt, who will be available at the Planning Commission hearing to address these issues and any other questions staff may have.

Condition 1: This propose condition is acceptable without revision.

Condition 2: The final map should be limited to disclosing record title information. Thus, utility easements will be shown rather than the physical location of utilities. Proposed condition 2b should be modified to delete the reference to "utilities."

Condition 3: This proposed condition refers to the submission of "plans and profiles of said improvements." As you are aware, no improvements are proposed. This reference should be deleted. Of course, the Applicant has no objection to submitting the final map in electronic form.

Condition 4: This condition is generally acceptable with modifications. As you know, the California Department of Real Estate has the ultimate jurisdiction over approval of CC&Rs. This condition should be clarified to make clear that the role of Community Development and the City Attorney is limited to reviewing for compliance with the conditions of approval and the City's approval will not be withheld as to provisions and language mandated by DRE. In addition, I do not understand the reference in 4c to the CC&R's providing "security for internal streets." We request that the reference to security be deleted. If staff has something specific in mind with this condition, we are prepared to discuss it, but generally we would defer to the homeowner's association to determine what security measures are appropriate.

Condition 5: This proposed condition requires review and approval of the rental/purchase option by Community Development and the City Attorney. This is problematic for several reasons. The option to purchase would not be offered until after the final map was recorded and the purchase price would not be known until immediately prior to the lots being sold. Thus, a final option to purchase could not be prepared until well after the final map would be recorded. In addition, we do not contemplate any "option to rent" would be prepared. The existing

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Richard Grunow, Community Development Director
City of Capitola
July 15, 2013
Page 2

residents have an option to rent by operation of law. As a practical matter, most of the tenants in the park are on long term leases that are controlling their rents. New tenants would be coming in at fair market rents. In other words, it is unlikely that any tenants would be subject to the four year step up in rent.

Surf and Sand is prepared to agree that prior to implementing any rent increases after the initiation of the subdivision, that the affected tenant will be given notice of the provisions governing increases in rents under Section 66427.5. Surf and Sand will agree to the review and approval of the form of this notice, provided that review is limited to compliance with Government Code § 66427.5. As you know, the City's scope of review, by law, is limited to compliance with Government Code § 66427.5. Thus, to the extent the City wishes to insist on a right of review under this proposed condition or proposed condition 4, it should be clear that the City's review role is limited to determining compliance with Section 66427.5 and any conditions agreed upon by Surf and Sand.

Condition 6: Again this proposed condition references final improvement plans and the construction of homes. The proposed condition should be modified to refer only to the preparation of the final map in compliance with the approved Vesting Tentative Map. Presumably, the conditions of the map already comply with state law and the Capitola Local Coastal Plan, so that incorporating these provisions again creates some confusion and uncertainty.

Condition 7: Acceptable without revision.

We hope staff will support the requested changes to the conditions of approval. Thank you for your attention to this matter.

Respectfully Submitted,

HART, KING & COLDREN

A large, stylized handwritten signature in black ink, which appears to read 'Mark D. Alpert'. The signature is written over the printed name and extends across the width of the page.

Mark D. Alpert

MDA/sm

cc: Surf and Sand, LLC
Jamie Goldstein
Robert DeWitt