

# City of Capitola Agenda

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



**REVISED**

## **CAPITOLA CITY COUNCIL REGULAR MEETING**

**THURSDAY, NOVEMBER 13, 2014**

**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 REAL PROPERTY NEGOTIATOR (Govt. Code § 54956.8)**

Property: APN 035-141-33, Capitola, CA (City of Capitola, Owner)  
City Negotiator: City Manager  
Negotiating Parties: Verizon Wireless  
Under Negotiation: Real Property Lease - Verizon cell tower license

### **CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Significant exposure to litigation pursuant to Govt. Code §54956.9(b)  
One potential case: Water Rock claim

### **PUBLIC EMPLOYEE PERFORMANCE EVALUATION (Govt. Code §54957)**

City Council's Performance Evaluation of the City Manager.

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

*All correspondences received prior to 5:00 p.m. on the Wednesday preceding a Council Meeting will be distributed to Councilmembers to review prior to the meeting. Information submitted after 5 p.m. on that Wednesday may not have time to reach Councilmembers, nor be read by them prior to consideration of an item.*

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

**2. PRESENTATIONS**

- A. Proclamation honoring Museum Board Member Thomas "Tom" McGranahan.
- B. Pancreatic Cancer Awareness Month Proclamation.
- C. Proclamation supporting the Mayors' challenge to end Veteran homelessness.

**3. REPORT ON CLOSED SESSION**

**4. ADDITIONAL MATERIALS**

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

- A. 8.J.  
DETAILS:  
Email from Gayle Ortiz.

**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.*

**CAPITOLA CITY COUNCIL REGULAR MEETING - Thursday, November 13, 2014**

**8. 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 October 23, 2014, Regular City Council Meeting Minutes.  
RECOMMENDED ACTION:  
Approve Minutes.
- B. Receive the November 6, 2014, Regular Planning Commission Action Minutes.  
RECOMMENDED ACTION:  
Receive Minutes.
- C. Consider an Ordinance amending Chapter 17.10 of the City Municipal Code (Green Building Ordinance) [2nd Reading].  
RECOMMENDED ACTION:  
Adopt Ordinance.
- D. Receive and approve the 2015 Meeting Schedules for City Council/Successor Agency, Planning Commission/Architectural and Site Review Committee.  
RECOMMENDED ACTION:  
Approve Meeting Schedules.
- E. Consider a Resolution approving the 2015 City Hall Closure Schedule.  
RECOMMENDED ACTION:  
Approve Resolution.
- F. Consider a request from the Capitola-Soquel Chamber of Commerce to offer free three-hour parking in Village Parking Zone A(1), November 26, 2014, through December 25, 2014; and consider a Resolution establishing temporary three-hour parking in Village Parking Zone A (1) November 26, 2014, through December 25, 2014.  
RECOMMENDED ACTION:  
Approve request and adopt Resolution.
- G. Consider a request from the Heritage Lane Home Owner's Association for the Mayor to send a letter to the USPS to request a Zip Code change from 95062 to 95010.  
RECOMMENDED ACTION:  
Authorize staff to prepare a letter for the Mayor's signature.
- H. Consider a liability claim of Water Rock Construction in the amount of \$674,260.  
RECOMMENDED ACTION:  
Deny Liability Claim.
- I. Consider approving a Notice of Completion for the Lower Pacific Cove Parking Lot Project.  
RECOMMENDED ACTION:  
Approve Notice of Completion.

## CAPITOLA CITY COUNCIL REGULAR MEETING - Thursday, November 13, 2014

- J. Consider a Resolution authorizing the execution of State Standard Agreement for Housing Related Parks Program Grant for Rispin Park.  
RECOMMENDED ACTION:  
Adopt Resolution.

### 9. 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. Consider approving the Wharf Road Mural Extension Public Art Project; and authorize the City Manager to enter into a professional services agreement with the artist, John Ton, for an amount not to exceed \$12,000.  
RECOMMENDED ACTION:  
1) Approve the Wharf Road Mural Extension Public Art Project; and 2) authorize the City Manager to enter into a professional services agreement.
- B. Receive Report regarding options to relocate the Capitola Mall Transit Center.  
RECOMMENDED ACTION:  
Receive Report and provide direction.
- C. Consider a professional services agreement with Kimley-Horn and Associates to prepare the City's 2015-2023 Housing Element Update, in an amount not to exceed \$41,036.  
RECOMMENDED ACTION:  
Approve agreement.

### 10. ADJOURNMENT

Adjourn to the next Regular Meeting of the City Council on Tuesday, November 25, 2014, 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.

**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 for review on the City's website: [www.cityofcapitola.org](http://www.cityofcapitola.org) and at Capitola City Hall and at the Capitola Branch Library, 2005 Wharf Road, Capitola, on the Monday prior to the Thursday meeting. Agendas are also available at the Capitola Post Office located at 826 Bay Avenue, Capitola. Need more information? Contact the City Clerk's office at 831-475-7300.

## **CAPITOLA CITY COUNCIL REGULAR MEETING - Thursday, November 13, 2014**

**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 rebroadcasted at 8:00 a.m. on the Wednesday following the meetings and at 1:00 p.m. on Saturday following the first rebroadcast 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.cityofcapitola.org](http://www.cityofcapitola.org) by clicking on the Home Page link "**Meeting Video**". Archived meetings can be viewed from the website at anytime.

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# City of Capitola Mayor's Proclamation

In Recognition and Appreciation to  
THOMAS "TOM" McGRANAHAN

For service to the Capitola Historical Museum  
1993 - 2014

*WHEREAS, Tom joined the Capitola Historical Museum Board of Trustees in June 1994 after serving as a volunteer for a year; and*

*WHEREAS, Tom dependably served seven consecutive terms as Board Treasurer; and*

*WHEREAS, during his many years of service to the museum, Tom participated in just about every aspect of the museum's operation including acting as a vintage baseball player in support of the Harry Hooper exhibit; and*

*WHEREAS, Tom helped move the museum's collection of artifacts out of the basement of the Rispin Mansion to a more secure location in 1993 and assembled shelving to fit the new storage trailers; and*

*WHEREAS, Tom used his carpentry skills to build display boards for the museum art projects and early exhibits; and*

*WHEREAS, in cooperation with the Capitola Art & Cultural Commission, Tom picked begonias, built and helped to install the 1994 begonia display on the Museum facade; and*

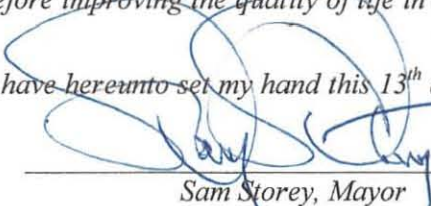
*WHEREAS, Tom used his culinary talents to provide food for many museum volunteer gatherings and was always on hand to cut the cake at exhibit grand opening events; and*

*WHEREAS, Tom brought a sense of humor and a creative problem solving approach to Board meetings; and*

*WHEREAS, Tom's efforts have contributed in many ways to the growth and development of the Capitola Historical Museum.*

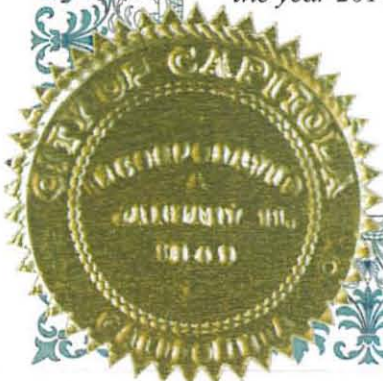
*NOW, THEREFORE, I, Sam Storey, Mayor of Capitola, hereby thank and honor Thomas "Tom" McGranahan for his leadership and service to the preservation of our history and development of our museum, therefore improving the quality of life in the City of Capitola and Santa Cruz County.*

*IN WITNESS WHEREOF, I have hereunto set my hand this 13<sup>th</sup> day of November, in the year 2014.*



Sam Storey, Mayor

Signed and sealed this 13th day of November 2014



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# City of Capitola Mayor's Proclamation

## Declaring the month of November "Pancreatic Cancer Awareness Month"

***WHEREAS**, in 2014, an estimated 46,420 people will be diagnosed with pancreatic cancer in the United States and 39,590 will die from the disease; and*

***WHEREAS**, pancreatic cancer is one of the deadliest cancers, is currently the fourth leading cause of cancer death in the United States and is projected to become the second by 2020; and*

***WHEREAS**, pancreatic cancer is the only major cancer with a five-year relative survival rate in the single digits at just six percent; and*

***WHEREAS**, when symptoms of pancreatic cancer present themselves, it is generally late stage, and 73 percent of pancreatic cancer patients die within the first year of their diagnosis while 94 percent of pancreatic cancer patients die within the first five years; and*

***WHEREAS**, approximately 4,150 deaths will occur in California in 2014; and*

***WHEREAS**, the Recalcitrant Cancer Research Act was signed into law in 2012, which calls on the National Cancer Institute to develop a scientific framework, or strategic plan, for pancreatic cancer and other deadly cancers, which will help provide the strategic direction and guidance needed to make true progress against these diseases; and*


***WHEREAS**, California has enacted a combined Senate Concurrent Resolution, SCR 134, introduced by Senator Jim Beall, designating the month of November 2014 "Pancreatic Cancer Awareness Month in California"; and*

***WHEREAS**, the Pancreatic Cancer Action Network is the national organization serving the pancreatic cancer community in Capitola and nationwide through a comprehensive approach that includes public policy, research funding, patient services, and public awareness and education related to developing effective treatments and a cure for pancreatic cancer; and*

***WHEREAS**, the Pancreatic Cancer Action Network and its affiliates in Capitola support those patients currently battling pancreatic cancer, as well as to those who have lost their lives to the disease, and are committed to nothing less than a cure; and*

***WHEREAS**, the good health and well-being of the residents of Capitola are enhanced as a direct result of increased awareness about pancreatic cancer and research into early detection, causes, and effective treatments.*

***NOW, THEREFORE, BE IT RESOLVED**, I, Sam Storey, Mayor of the City of Capitola, do hereby designate the month of November 2014, as "Pancreatic Cancer Awareness Month" in the Capitola.*

  
\_\_\_\_\_  
Sam Storey, Mayor  
Signed and sealed this 13<sup>th</sup> day of November 2014



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# City of Capitola Mayor's Proclamation

## Supporting the Mayors' Challenge to End Veteran Homelessness by 2015

*WHEREAS, 2013 data suggests there are approximately 395 military veterans experiencing homelessness in Santa Cruz County; and*

*WHEREAS, approximately 70% of the Santa Cruz County veteran homeless population experiences some form of disabling condition and most are considered chronically homeless; and*

*WHEREAS, approximately 87% of homeless veterans surveyed in 2013 in Santa Cruz County were not sheltered; and*

*WHEREAS, permanent supportive housing is recognized as a solution for chronically homeless; and*

*WHEREAS, there is need for Santa Cruz County to focus housing and support to homeless veterans who have served our Country; and*

*WHEREAS, recent efforts focused on homeless veterans across the nation have resulted in a 24% decrease in veteran homelessness; and*

*WHEREAS, strong local partnerships have formed to concentrate efforts to end veteran homelessness in Santa Cruz County; and*

*WHEREAS, local jurisdictions in Santa Cruz County have been invited to join in the Mayors' Challenge to End Veteran Homelessness;*

*NOW, THEREFORE, BE IT RESOLVED, I, Sam Storey, Mayor of the City of Capitola, and its elected officials hereby join in the Mayors' Challenge to End Veteran Homelessness in 2015.*

*Sam Storey, Mayor*

*Signed and sealed this 13th day of November 2014*

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**Sneddon, Su**

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**From:** GAYLE T ORTIZ [gayle@gocapitola.com]  
**Sent:** Monday, November 10, 2014 1:17 PM  
**To:** City Council; Grunow, Rich; Cattan, Katie  
**Subject:** Rispin Grant Project on Thursday's Council Agenda

The following email trail has some interesting points made by Kathryn Gualtieri and Carolyn Swift about the history of garden restoration efforts at the Rispin Estate and the estate's designation as a National Register historic district.

Kathryn reminds us of important information that I think will be valuable in your discussion on Thursday night.

Many thanks,  
Gayle Ortiz

Begin forwarded message:

**From:** [tkcapitola@aol.com](mailto:tkcapitola@aol.com)  
**Subject:** Rispin Grant Project on Thursday's Council Agenda  
**Date:** November 10, 2014 at 10:38:34 AM PST  
**To:** [gayle@gocapitola.com](mailto:gayle@gocapitola.com), [vlrsmith@sbcglobal.net](mailto:vlrsmith@sbcglobal.net)  
**Cc:** [slharlan@sbcglobal.net](mailto:slharlan@sbcglobal.net), [carolyn.swift@gmail.com](mailto:carolyn.swift@gmail.com)

Hi, Everyone,

I was perusing the City Council's agenda for this coming Thursday's meeting and came across Item J. on the Consent Calendar: "Consider a Resolution authorizing the execution of State Standard Agreement for Housing Related Parks Program Grant for Rispin Park." After reading the staff report, it sounds like a terrific opportunity to get the ball rolling again at the Rispin Mansion site.

Gayle, you were involved when the city of Capitola purchased the Rispin Mansion, and we both helped organize the Rispin Advisory Committee years ago when Anne Turner was the county's librarian. Our Committee worked hard to get the site cleaned up and although Anne was never interested in seeing our library within the restored mansion, we did make great progress on ways to develop the Rispin. I'm sure all of us recall the failed plan to make it a profitable B and B.

As a bit of history, Steve Burrell, Capitola's former city manager, and the City Council at that time authorized staff to prepare a nomination of the 6 acre site as a National Register of Historic Places historic district. The reason I bring all this up is that the staff report for Thursday's discussion describes, among other tasks, the restoration of the Rispin garden. I'm curious as to whether the current city manager and Council recall the work that was done on this project and whether they are planning to hire a consultant with historic and cultural landscaping credentials to help the city bring back the historic garden. With that in mind, see below for my e mail to Carolyn and her response. Hopefully, this new information will be brought up on Thursday night. I know all of us look forward to a time when we can celebrate the reopening of the historic Rispin grounds.

Kathryn

**Item #: 4.A. 8.J. Additional Material.pdf**

On Sun, Nov 9, 2014 at 9:53 AM, <[tkcapitola@aol.com](mailto:tkcapitola@aol.com)> wrote:

Hi Carolyn,

News flash: Did you see that the City Council has an item re the Rispin site/park on the Consent Calendar for this Thursday night's meeting? Apparently, they got a \$300,000+ grant from the State to restore the garden, put in disabled pathways, etc. What I'm wondering is if they remember that the entire Rispin site is a National Register historic district that was added to the list when I was still SHPO back in 1989. Barbara Bernie, a local landscape gardener, was a guiding force on our old Rispin advisory committee and she had created plans to bring back the garden. She had also enlisted the help of the Cabrillo College horticulture program and Frank Perry's wife Jill, who knew a great deal about the heritage roses in the arbor area. I wonder where the paperwork went and if the planning department has any idea that we did it? Do you recall what the museum files might hold?

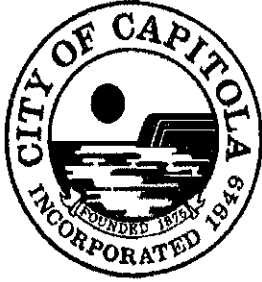
Thanks! Kathryn

Hi.

Yes, the museum might have some detail on that, particularly photographs. I think much of the detailed, larger materials on Rispin is all together in the storage documents room. It would be in one of the boxes. I'm not sure what is there related to the gardens, but it would be worth a look. The city planner just asked Frank some questions about the beach, and Frank was able to find some articles for him. Perhaps a note to Rich would prompt Frank to go take a peek in storage? There are big thick files about Rispin in Frank's office, too. I had gone through them so they shouldn't be too poorly organized.

Cheers.

Carolyn



# CITY COUNCIL AGENDA REPORT

## MEETING OF NOVEMBER 13, 2014

FROM: OFFICE OF THE CITY CLERK

SUBJECT: MINUTES OF THE OCTOBER 23, 2014, REGULAR COUNCIL MEETING

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**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. October 23, 2014, Regular Meeting Minutes.

Report Prepared By: Susan Sneddon, CMC  
City Clerk

Reviewed and Forwarded  
By City Manager:

A handwritten signature in black ink, appearing to be "J. B.", written over a horizontal line.

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**CAPITOLA CITY COUNCIL  
REGULAR MEETING ACTION SUMMARY  
THURSDAY, OCTOBER 23, 2014  
CLOSED SESSION – 6:30 PM  
CITY MANAGER'S OFFICE**

**CALL TO ORDER**

Mayor Storey called the meeting to order at 6:30 PM. He announced the items to be discussed in Closed Session, as follows:

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

Theresa Kloepfer, GAL for Kaitlin Kloepfer vs. the City of Capitola et al.  
[Santa Cruz County Superior Court, Case No. CV179725]

**CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

Significant exposure to litigation pursuant to Govt. Code §54956.9(b)  
One potential case: Water Rock claim

Mayor Storey noted that there was no one in the audience; therefore, the City Council recessed at 6:15 p.m. to the Closed Session in the City Manager's Office.

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

1. **ROLL CALL AND PLEDGE OF ALLEGIANCE**  
Council Members Stephanie Harlan, Dennis Norton, Ed Bottorff, Michael Termini, and Mayor Sam Storey.  
City Treasure McBroom was not present.
2. **PRESENTATIONS**
  - A. Presentation regarding the Government Finance Officers Association Excellence Award [GFOA Award]. [120-40]  
Jesse Takahashi, President of the Government Finance Officers, presented the GFOA Award.
  - B. Monte Foundation 20th Anniversary Fireworks Proclamation. [120-40]  
Mayor Storey presented a proclamation to Marc Monte for the Monte Foundation's many contributions to the community.
  - C. Legislative update provided by Assemblymember Mark Stone. [580-40]
3. **REPORT ON CLOSED SESSION**  
City Attorney Condotti reported on the two items on the agenda under Closed Session; there was no reportable action.
4. **ADDITIONAL MATERIALS**  
Mayor Storey stated that additional material was provided regarding Item 9.C.
5. **ADDITIONS AND DELETIONS TO AGENDA**  
None provided

**6. PUBLIC COMMENTS**

Gary Richard Arnold spoke about California forward's involvement in unethical political practices and involvement in unfair government decisions.

Council Member Harlan stated that the new Children's Museum of Discovery at the Capitola Mall will open on November 15, 2014.

Council Member Norton stated that voters received a brochure in the mail with false information regarding law enforcement supporting various candidates.

Council Member Termini stated that the annual Capitola Halloween Parade will be held on October 26th. He also stated that the Art and Cultural Commission is working on a free Santa Cruz County Symphony family concert at New Brighton Middle School and a Bach On the Beach event.

**7. CITY COUNCIL / CITY TREASURER / STAFF COMMENTS**

City Manager Goldstein stated that he will be in attendance at the October 24, 2014, Santa Cruz Metropolitan Transit District Board (Board) meeting when the Board will receive a status update regarding efforts to relocate the transit center at the Capitola Mall.

**8. CONSENT CALENDAR**

A. Consider approving the October 9, 2014, Regular City Council Meeting Minutes.

B. Approval of City Check Register Reports dated September 19, 2014; September 26, 2014; October 3, 2014; and October 10, 2014. [300-10]

Council Member Norton requested that ***Item 8.B.*** regarding the approval of the City Check Register Reports be pulled for discussion.

Council Member Norton requested staff to provide additional information on various City payments.

**ACTION Motion made by Council Member Harlan, seconded by Council Member Norton, to approve *Item 8.B.* with the exception of the two payments to Santa Cruz Regional 9-1-1. The motion was passed unanimously.**

**ACTION Motion made by Council Member Harlan, seconded by Council Member Bottorff, to approve the two payments to Santa Cruz Regional 9-1-1 listed in *Item 8.B.* The motion carried with the following vote: AYES: Council Members Termini, Bottorff, Harlan, and Mayor Storey. NOES: Council Member Norton. ABSENT: None. ABSTAIN: None.**

**ACTION Motion made by Council Member Harlan, seconded by Council Member Bottorff, to approve *Item 8.A.* The motion was passed unanimously.**

**9. GENERAL GOVERNMENT / PUBLIC HEARINGS**

A. Consider awarding a contract to MG Creations Skatepark Construction in the amount not to exceed \$50,000 to design and build the skate park portion of McGregor Park; and review the conceptual design for the skate park design. [1040-20]

Michael Greenwald, MG Creations Skatepark Construction, provided comments regarding the design of the proposed skate park.

The following Capitola residents stated that they do not support having the proposed skate park on the McGregor property.

- Trisha Proctor
- Marie Martorella

## CAPITOLA CITY COUNCIL ACTION SUMMARY – Thursday, October 23, 2014

**ACTION** Motion made by Council Member Termini, seconded by Council Member Norton, to award a contract to MG Creations Skatepark Construction in the amount not to exceed \$50,000 to design and build the skate park portion of McGregor Park; to amend the contract to include the provision that Phase 2 of the project shall not proceed until the final skate park design is approved by the City Council and that additional public input be obtained, and the City is not obligated to proceed with the construction if the skate park design is not approved by City Council. The motion carried unanimously.

- B. Introduction of an Ordinance regarding safety requirements for the McGregor Skate Park [1st Reading]. [1040-20]

Michael Greenwald, MG Creations Skatepark Construction, recommended that riders should be able to use scooters and bicycles at the skate park.

Assistant City Attorney Condotti, stated that the immunity the City is seeking is regarding hazardous recreational activities related to skateboarding and is not related to other recreational activities in the skate park. He will research this subject further.

There was City Council consensus to further discuss the skate park safety requirements at the next reading of the proposed Ordinance. In addition, the City Council asked staff to receive further input on whether or not to allow scooters and bicycles.

Marie Martorella, Capitola resident, commented on safety gear requirements and the flow of the riders at the proposed skate park.

**ACTION** Motion made by Council Member Termini, seconded by Council Member Norton, to introduce an Ordinance regarding safety requirements for the McGregor Skate Park. The motion carried unanimously.

- C. Presentation regarding a potential Santa Cruz Regional Public Libraries funding measure. [230-10]

Council Member Termini stated that he is the City's representative on the Santa Cruz County Library Joint Powers Board, and is requesting direction from the City Council regarding the potential Santa Cruz Regional Public Libraries Funding Measure.

Barbara Gorson, City's Library Ad Hoc Committee member, stated the urgency in getting the funding measure on the June 2015 ballot. In addition, she stated that the proposed facilities Measure and the distribution of funds should be tied to the Library Facilities Master Plan.

Teresa Landers, Director of Santa Cruz Public Libraries, provided comments regarding the potential Santa Cruz Regional Public Libraries Funding Measure.

Gail Ortiz, City's Library Ad Hoc Committee member, stated that the proposed Libraries Funding Measure is to provide funding for all the Santa Cruz libraries, and the Capitola is just one of the branches.

- D. Introduction of an Ordinance amending Chapter 17.10 of the City Municipal Code (Green Building Ordinance) [1st Reading]. [570-10/750-10]

**ACTION** Motion made by Council Member Norton, seconded by Council Member Harlan, to approve the first reading of the Ordinance amending Chapter 17.10 of the City Municipal Code (Green Building Ordinance). The motion carried unanimously.

10. ADJOURNMENT

At 9:20 PM Mayor Storey adjourned the meeting in honor of Bob Lee, former Santa Cruz County District Attorney, to the to the next Regular Meeting of the City Council on Thursday, November 13, 2014 at 7:00 PM, in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

\_\_\_\_\_  
Sam Storey, Mayor

ATTEST:

\_\_\_\_\_  
Liz Nichols, Deputy City Clerk

DRAFT



**ACTION SUMMARY MINUTES  
CAPITOLA PLANNING COMMISSION  
THURSDAY, NOVEMBER 6, 2014  
7 P.M. CITY COUNCIL CHAMBERS**

**1. ROLL CALL AND PLEDGE OF ALLEGIANCE**

Commissioners: Ron Graves, Mick Routh, Linda Smith and TJ Welch and Chairperson Gayle Ortiz

**2. ORAL COMMUNICATIONS**

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

**3. APPROVAL OF MINUTES**

- A. October 2, 2014, Draft Planning Commission Minutes

**ACTION: Approved 3-0, 2 Abstentions**

**4. CONSENT CALENDAR – No items**

**5. PUBLIC HEARINGS**

- A. **203 Central Avenue #14-040 APN: 036-111-08**

Design Permit, Variance for rear yard setback and parking, Conditional Use Permit, and Coastal Development Permit for a second story addition to a historic resource located in the R-1(Single Family Residential) Zoning District.

This project requires a Coastal Development Permit which is appealable to the California Coastal Commission after all possible appeals are exhausted through the City.

Environmental Determination: Categorical Exemption

Property Owner: Douglas Satzger

Representative: Richard Emigh, filed 3/13/14

**ACTION: Approved 4-1**

- B. **124 Central Avenue #14-116 APN: 036-122-13**

Design Permit and Conditional Use Permit for an addition to a Historic Single Family home located in the R-1 (Single-Family Residential) Zoning District.

This project is in the Coastal Zone and requires a Coastal Development Permit, which is appealable to the California Coastal Commission after all possible appeals are exhausted through the City.

Environmental Determination: Categorical Exemption

Property Owner: Douglas Edwards

Representative: Derek Van Alstine (filed 7/21/2014)

**ACTION: Tentatively approved, pending variance application for development of a non-conforming property over 80 percent value, 3-2**

**C. Capitola Municipal Code Chapter 17 Zoning Ordinance Update**

**ACTION: Information only**

- 6. DIRECTOR'S REPORT**
- 7. COMMISSION COMMUNICATIONS**
- 8. ADJOURNMENT**

Adjourned at 10:01 p.m., in honor of the memory of Jim Reding, to the next Planning Commission meeting Thursday, December 4, 2014, at 7 p.m., in the Capitola City Council Chambers, 420 Capitola Ave., Capitola, California.



## CITY COUNCIL AGENDA REPORT

MEETING OF NOVEMBER 13, 2014

FROM: OFFICE OF THE CITY CLERK

SUBJECT: ORDINANCE AMENDING CHAPTER 17.10 OF THE CITY MUNICIPAL CODE  
(GREEN BUILDING ORDINANCE) [2<sup>ND</sup> READING]

---

**RECOMMENDED ACTION:** Adopt the proposed Ordinance amending Chapter 17.10 of the City Municipal Code (Green Building Ordinance) [2<sup>nd</sup> Reading].

**BACKGROUND:** The draft Ordinance amending Chapter 17.10 of the City Municipal Code (Green Building Ordinance) is presented for a second reading. The City Council approved the first reading of this Ordinance at the Council meeting held on October 23, 2014. The proposed Ordinance is before the City Council for its second reading and final adoption.

**FISCAL IMPACT:** None

**ATTACHMENTS:**

1. Proposed Ordinance

Report Prepared By: Susan Sneddon  
City Clerk

Reviewed and Forwarded  
By City Manager 

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## ORDINANCE NO. \_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPITOLA  
AMENDING TITLE 17 OF THE CAPITOLA MUNICIPAL CODE, CHAPTER 17.10,  
GREEN BUILDING REGULATIONS**

**RECITALS:**

**WHEREAS**, increases in population continually raise the demand on natural resources; and

**WHEREAS**, there is a limited supply of energy, materials and services related to the construction of new buildings, both residential and non-residential; and

**WHEREAS**, the City of Capitola has previously committed to the finding and application of solutions to Global Climate Change, water conservation, and storm water pollution prevention; and

**WHEREAS**, the City of Capitola desires to be a leader in the development of a public education and participation program in green building practices, water conservation, storm water pollution prevention, and greenhouse gas reduction measures; and

**WHEREAS**, the Green Building Ordinance is consistent with the General Plan of the City of Capitola as expressed in the Land Use, Open Space and Conservation, Mobility, Energy Conservation Element and in the Housing Elements (specifically: Housing Opportunities (B): Opportunities for Energy Conservation), as well as in Policy 19 of the Capitola Local Coastal Program (specifically sections A, B and C); and

**WHEREAS**, the most effective method of public and private participation is the requirement for mandatory compliance with a responsible compliance methodology that is designed to enhance green building construction techniques, water conservation, storm water pollution prevention, and greenhouse gas reduction measures without being over-burdensome; and

**WHEREAS**, the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant adverse effect on the environment, the activity is not subject to CEQA (Subdivision (b)(3) of Section 15061 of the California Environmental Quality Guidelines (14 CCR 15000 et seq)).

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CAPITOLA DOES HEREBY ORDAIN AS FOLLOWS:**

Section 1. Chapter 17.10 is hereby added to the Capitola Municipal Code to read as follows:

"Chapter 17.10  
Green Building Regulations

## Sections:

17.10.010	Purpose and Findings
17.10.020	Definitions
17.10.030	Standards for Compliance
17.10.040	Exceptions
17.10.050	Maintenance of Document
17.10.060	Method of Compliance
17.10.070	Exceptional Design
17.10.080	Creation of Green Building Educational Resource Fund

**17.10.010 Purpose and Findings**

The City finds that green building design, construction and operation can have a significant positive effect on energy and resource efficiency, waste and pollution generation, and the health and productivity of a building's occupants over the life of the building. The second purpose is to create healthy work and living environments increasing the productivity of workers and residents and visitors to the city by improving indoor air quality and lighting.

The intent of this section is to help promote the environmental sustainability of natural resources and improvement of the interior environment by efficiently redirecting the use of recyclable materials away from landfills, by introducing recycled-content and materials created with a low embodied energy materials in construction, and by reducing the energy consumption needs of structures by making use of efficient construction methods.

The City also finds that green design and construction decisions made by the City in the construction and remodeling of City buildings can result in significant cost savings to the City over the life of the buildings. The City also recognizes that it must lead by example in order to have the general populace follow suit and therefore commits itself to the practice of green building for all new and remodeling construction on City owned buildings and structures.

The City additionally finds that water conservation, storm water pollution prevention, and greenhouse gas reductions advance the City's General Plan goals to promote resource conservation, clean and healthy air and water, and overall environmental sustainability.

**17.10.020 Definitions**

Addition: A structure expansion that is physically connected to a previously existing building.

Interior remodel: Change or alteration in only the interior of a building that does not increase its net square footage.

New construction: A new building not physically connected to a previously existing building.

Non-habitable residential structure: A building on a residential property that is not legally habitable, such as a garage or shed.

Non-residential: Not meeting the definition of "residential".

Residential: Single-family, accessory dwelling units, or multi-family residences.

Remodel: Change or alteration in a building that does not increase its net square footage.

**17.10.030 Standards for Compliance**

Persons constructing a new building, adding to or substantially remodeling a building in the City of Capitola shall participate in the Capitola Green Building Program. In order to obtain a building permit for any new building, addition or substantial remodel in excess of those exempted in Section 17.10.040, each project must include elements from the program checklist equal to or exceeding the following:

TABLE 1: NON-RESIDENTIAL (COMMERCIAL) ACTIONS AND POINT REQUIREMENTS

Total points possible	75
Action	Points required to receive action:
C-1. Receipt of Building Permit*	7
C-2. Green Building Award	40

\*Exceptions: These points are not required for non-residential additions and remodels totaling less than 1000 square feet, or interior-only non-residential remodels of any size.

ORDINANCE NO.

TABLE 2: RESIDENTIAL NEW CONSTRUCTION ACTIONS AND POINT REQUIREMENTS

Total Points Available	460	
Action	Points required to receive action:	
	First 350 Square Feet	Each Additional 100 Square Feet or fraction thereof
R-N-1. Receipt of building permit	10	1.5
R-N-2. Green Building Award	60	3.5

TABLE 3: RESIDENTIAL REMODEL AND ADDITION ACTION POINT REQUIREMENTS

Total Points Available	464	
Action	Points required to receive action:	
	First 350 Square Feet	Each Additional 100 Square Feet or fraction thereof
R-A/R-1. Receipt of building permit*	5	1.1
R-A/R -2. Green Building Award	35	2.5

\*Exception: These points are not required for additions and/or remodels of less than 350 square feet.

#### 17.10.040 Exceptions

The following are exempt from the provisions of this Section:

- Additions and remodels of less than three hundred fifty (350) square feet of any residential dwelling structure.
- Additions and remodels of less than one thousand (1000) square and interior remodels of any non-residential structure.
- Equipment and non-structural modifications of any residential or non-residential structure.
- Non-habitable residential structures of less than one thousand (1000) square feet.
- General maintenance of any structure.
- Historical structures where the historic fabric would be compromised.

#### 17.10.050 Maintenance of Document

Building and planning staff shall update the Green Building Program documentation and checklist to reflect advances in green building techniques and materials and to make necessary modifications in program implementation on an annual basis.

#### 17.10.060 Method of Compliance

The Chief Building Official and/or the Community Development Director shall maintain the following documents for the public:

- *City of Capitola: Standards for Green Building Compliance*
- *New Home Green Points Check List for Residential Buildings*
- *New Building Green Points Check List for Non-Residential Buildings*

These documents shall be to aid in the design and certification of new residential and non-residential buildings and significant remodels and additions thereto. Every applicant of a building permit not exempted by 17.10.040 (Exemptions) above shall complete and submit the

**Item #: 8.C. Attach 1.pdf**

ORDINANCE NO. \_\_\_\_\_

appropriate check list for their project as well along with the standard application documents. All compliance measures shall be clearly delineated on plan sets.

**17.10.070 Exceptional Design**

Designers and builders employing exceptional design, construction practices and/or maintenance features may have their project modified from the strict interpretation of the program if in the opinion of the Community Development Director or Building Official such features exhibit at least a 20 percent increase in points over the minimum standards for a Green Building Award as outlined in 17.10.30 Standards for Compliance above. Exceptional designs shall also be recognized by the City and eligible to receive a plaque that may be displayed on the structure.

**17.10.080 Creation of Green Building Educational Resource Fund**

Building permits which are required to comply with the Green Building Regulations shall be assessed a fee equal to .0025 times the overall valuation of the project. Revenues collected shall be maintained by the Finance Department as a revolving Green Building Education Fund and shall be used only for program management, training, publications, and public educational purposes, incentive programs, and materials and supplies necessary to promote sustainable development, water conservation, storm water pollution prevention, and climate action planning activities.

Section 2. Severability

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of the Section, or any part thereof, is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Section or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause and phrase of this Section irrespective of the fact that one or more sections, subsections, paragraphs, sentences, clauses, or phrases be declared unconstitutional, invalid or effective. To this end, the provisions of this Section are declared to be severable.

Section 3. This Ordinance shall take effect and be in full force on December 1, 2014

This Ordinance was introduced on the 23<sup>rd</sup> day of October, 2014, and was passed and adopted by the City Council of the City of Capitola on the 13th day of November, 2014, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

APPROVED: \_\_\_\_\_  
Sam Storey, Mayor

ATTEST:

\_\_\_\_\_, CMC  
Susan Sneddon, City Clerk



## CITY COUNCIL AGENDA REPORT

**MEETING OF NOVEMBER 13, 2014**

FROM: CITY CLERK'S OFFICE

SUBJECT: 2015 MEETING SCHEDULES FOR THE CITY COUNCIL/SUCCESSOR AGENCY & THE PLANNING COMMISSION/ARCHITECTURAL AND SITE REVIEW COMMITTEE

**RECOMMENDED ACTION:** Receive the 2015 City meeting schedules as an informational item and direct staff to post this information at City Hall, the Capitola Branch Library, on the City's website, and distribute to department heads, newspapers, and various groups that regularly submit items to the City.

**DISCUSSION:** At the end of each calendar year staff prepares the meeting schedules for the following year. Attached are the proposed schedules for City Council/Successor Agency, Planning Commission, and Architectural and Site Review Committee for 2015.

Regular meetings of the City Council are held on the second and fourth Thursday of the month at 7:00 p.m., with the exception of the following:<sup>1</sup>

- ✓ Wednesday, February 11<sup>th</sup> due to the February 12<sup>th</sup> Lincoln's Birthday holiday; and
- ✓ Tuesday, November 24<sup>th</sup> due to the November 25<sup>th</sup> Thanksgiving holiday.

There is no second meeting held in December due to the Christmas holiday. Pursuant to past practice one meeting has been scheduled for the month of August. The Successor Agency meetings are held on an as needed basis.

Regular meetings of the Planning Commission are held on the first Thursday of the month at 7:00 p.m. in the City Hall Council Chambers. Since City Hall offices will be closed December 21 - 25, 2015, and City Council will meet on Thursday, January 8, 2015, the regular meeting of the Planning Commission for January has been scheduled for Thursday, January 15, 2015. In addition, the July 2015 Planning Commission meeting is scheduled for Thursday, July 16, 2015, due to the July 4<sup>th</sup> holiday, and City Council meeting on Thursday, July 9, 2015.

Regular meetings of the Architectural & Site Review Committee are generally held on the second and fourth Wednesday of each month at 3:30 p.m. with the exception of Wednesday, November 18<sup>th</sup> due to the Thanksgiving holiday. In the event there are no items for review by the Committee, meetings would be cancelled and noticed accordingly.

All regular meetings of the City Council, Successor Agency, and Planning Commission are televised "Live" on Charter Communications Cable Channel 8, and rebroadcast by Community Television of Santa Cruz County following the meetings on Charter Cable Channel 71 and Comcast Cable Channel 25. In addition, "Live Streaming" and "On Demand" replay of the meetings can be viewed via the Internet from the City's website at: [www.cityofcapitola.org](http://www.cityofcapitola.org).

**FISCAL IMPACT:** None

**ATTACHMENTS:**

1. 2015 City Council/Successor Agency Meeting Dates and Deadline for Submittal of Agenda Items.
2. 2015 Meeting Schedules for the Planning Commission/Architectural & Site Review Committee

Report Prepared By: Susan Sneddon, City Clerk  
City Clerk

**Reviewed and Forwarded  
By City Manager**

<sup>1</sup> There will be a Special City Council Workshop on Tuesday, January 6<sup>th</sup>, at 6:00 p.m., held Capitola Community Center, 4400 Jade Street, Capitola.

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**2015 CITY OF CAPITOLA  
City Council and Successor Agency Meeting Dates  
and Deadline for Submittal of Agenda Items**

SUBMITTAL DATE <sup>1</sup>	MEETING DATE <sup>2</sup>
DECEMBER 29, 2014	TUESDAY, JANUARY 6 (Special Workshop)
DECEMBER 29, 2014	JANUARY 8
JANUARY 12	JANUARY 22
FEBRUARY 2	WEDNESDAY, FEBRUARY 11▲
TUESDAY, FEBRUARY 17	FEBRUARY 26
MARCH 2	MARCH 12
MARCH 16	MARCH 26
MARCH 30	APRIL 9
APRIL 13	APRIL 23
APRIL 27	MAY 14
MAY 11	MAY 28
JUNE 1	JUNE 11
JUNE 15	JUNE 25
JUNE 29	JULY 9
JULY 13	JULY 23
AUGUST 3	AUGUST 13
AUGUST 31	SEPTEMBER 10
SEPTEMBER 14	SEPTEMBER 24
SEPTEMBER 28	OCTOBER 8
TUESDAY, OCTOBER 13	OCTOBER 22
NOVEMBER 2	NOVEMBER 12
NOVEMBER 16	TUESDAY, NOVEMBER 24▲▲
NOVEMBER 30	DECEMBER 10

Items to be included on a particular agenda must be submitted to the City Manager's Office NO LATER than 5 p.m. on the submittal date so that a staff report may be prepared. Items received after that date may be scheduled for the next available agenda.

NOTE: ▲ DUE TO LINCOLN'S BIRTHDAY HOLIDAY, THE MEETING WILL BE HELD ON WEDNESDAY  
 ▲▲ DUE TO THANKSGIVING HOLIDAY, THE MEETING WILL BE HELD ON TUESDAY

<sup>1</sup> Submittal dates are on Mondays, with the exception of Tuesdays that follow a holiday as indicated above.

<sup>2</sup> Regular Meetings of the City Council/ Successor Agency are held on the 2nd & 4th Thursdays of each month. The Regular City Council meetings begin at 7:00 p.m. (or in no event earlier than 6:00 p.m.) in the Capitola City Hall Council Chambers, 420 Capitola Avenue, Capitola, CA.

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**CITY OF CAPITOLA**  
**2015 MEETING SCHEDULES**  
**ARCHITECTURAL & SITE REVIEW COMMITTEE AND PLANNING COMMISSION**

● SUBMITTAL	■ ARCH & SITE REVIEW	● SUBMITTAL	◆ PLANNING COMMISSION
DECEMBER 15, 2014	JANUARY 14	DECEMBER 16, 2014	JANUARY 15**
DECEMBER 19, 2014	JANUARY 28		
JANUARY 12	FEBRUARY 11	JANUARY 6	FEBRUARY 5
JANUARY 26	FEBRUARY 25		
FEBRUARY 9	MARCH 11	FEBRUARY 3	MARCH 5
FEBRUARY 23	MARCH 25		
MARCH 9	APRIL 8	MARCH 3	APRIL 2
MARCH 23	APRIL 22		
APRIL 13	MAY 13	APRIL 7	MAY 7
APRIL 27	MAY 27		
MAY 11	JUNE 10	MAY 5	JUNE 4
MAY 25	JUNE 24		
JUNE 8	JULY 8	JUNE 16	JULY 16**
JUNE 22	JULY 22		
JULY 13	AUGUST 12	JULY 7	AUGUST 6
JULY 27	AUGUST 26		
AUGUST 10	SEPTEMBER 9	AUGUST 4	SEPTEMBER 3
AUGUST 24	SEPTEMBER 23		
SEPTEMBER 14	OCTOBER 14	SEPTEMBER 1	OCTOBER 1
SEPTEMBER 28	OCTOBER 28		
OCTOBER 19	NOVEMBER 18*	OCTOBER 6	NOVEMBER 5
N/A	CANCELED NOV. 25		
NOVEMBER 9	DECEMBER 9	NOVEMBER 3	DECEMBER 3
N/A	HOLIDAY DEC. 23		

**Meetings are held at Capitola City Hall, 420 Capitola Avenue, and are generally scheduled as follows:**

- **Submittal Date:** Although applications may be submitted by the deadline, it does not guarantee a hearing date. Application completeness, staff review and analysis shall be completed prior to scheduling an application for a meeting date.
- **Architectural and Site Review Meetings:** 2<sup>nd</sup> and 4<sup>th</sup> Wednesday of each month at 3:30 p.m. in the City Hall Council Chambers. **NOTE:** \*The November Architectural & Site Review Committee will be held on the third Wednesday due to the Thanksgiving holiday.
- ◆ **Planning Commission Meetings:** 1<sup>st</sup> Thursday of each month at 7 p.m. in the City Hall Council Chambers. **NOTE:** \*\*The January and July Planning Commission meetings will be held on the third Thursday due to the holidays.

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## CITY COUNCIL AGENDA REPORT

MEETING OF NOVEMBER 13, 2014

FROM: CITY CLERK'S OFFICE

SUBJECT: RESOLUTION ESTABLISHING DAYS FOR CLOSURE OF CITY OFFICES DURING  
THE 2015 CALENDAR YEAR

---

**RECOMMENDED ACTION:** Adopt the proposed Resolution establishing days for closure of City Offices during the 2015 Calendar Year.

**DISCUSSION:** Ordinance No. 497 provides that *"The City Council may, from time to time, designate holidays which shall be granted to employees with pay. The Council may also by Resolution designate holidays upon which the City offices shall be closed."* In November of each year staff reviews the calendar for the following year as it relates to holidays and prepares a Resolution for adoption by the City Council.

A draft Resolution for the 2015 Calendar Year is attached for your consideration. As has been done for the past several years and is consistent with employee Memoranda of Understanding, the proposed Resolution identifies the holiday closure of City Hall offices during the week between the Christmas and the New Year's Day holidays.

**FISCAL IMPACT:** None

**ATTACHMENTS:**

1. Draft Resolution

Report Prepared By: Susan Sneddon, CMC  
City Clerk

Reviewed and Forwarded  
By City Manager

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RESOLUTION NO. \_\_\_\_\_

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA  
ESTABLISHING DAYS FOR CLOSURE OF CITY OFFICES  
DURING THE 2015 CALENDAR YEAR**

**WHEREAS**, Ordinance No. 497 provides that days for closure of City offices may, from time to time, be set by Council Resolution; and

**WHEREAS**, it is the desire of the City Council of the City of Capitola to establish days for closure of City offices during the 2015 calendar year.

**NOW, THEREFORE, BE IT HEREBY RESOLVED** by the City Council of the City of Capitola as follows: City Offices, except for essential City services such as the Police Department, shall be closed on the following days occurring in calendar year 2015, unless otherwise noted:

January 1 (Thursday)	New Years Day
January 19 (Monday)	Martin Luther King, Jr. Birthday
February 12 (Thursday)	Lincoln's Birthday
February 16 (Monday)	Presidents' Day
May 25 (Monday)	Memorial Day
July 3 (Friday)	Independence Day
September 7 (Monday)	Labor Day
October 12 (Monday)	Columbus Day
November 11 (Wednesday)	Veterans Day
November 26 & 27 (Thursday & Friday)	Thanksgiving Holiday
December 25 (Friday)	Christmas Holiday
December 21, 22, 23, & 24 (Monday, Tuesday Wednesday & Thursday)	Holiday Closure

The foregoing does not preclude the scheduling of any City Council or Planning Commission meetings on such days. For purposes of Government Code Section 6704, Saturdays and Sundays are also days for closure of the City business office.

The foregoing is not in any sense intended to define holidays, for which employees do or do not receive additional compensation. Employees paid holidays are defined in relevant Memoranda of Understanding.

**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 13<sup>th</sup> day of November, 2014, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

\_\_\_\_\_  
Sam Storey, Mayor

ATTEST: \_\_\_\_\_, CMC  
Susan Sneddon, City Clerk

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## CITY COUNCIL AGENDA REPORT

MEETING OF NOVEMBER 13, 2014

FROM: POLICE DEPARTMENT

SUBJECT: CONSIDER A REQUEST FROM THE CAPITOLA-SOQUEL CHAMBER OF COMMERCE TO OFFER FREE THREE-HOUR PARKING IN VILLAGE PARKING ZONE A(1), NOVEMBER 26, 2014 THROUGH DECEMBER 25, 2014; AND CONSIDER A RESOLUTION ESTABLISHING TEMPORARY THREE-HOUR PARKING LIMIT IN VILLAGE PARKING ZONE A(1) NOVEMBER 26, 2014 THROUGH DECEMBER 25, 2014

### RECOMMENDED ACTION:

1. Authorize the suspension of the two-hour parking limit in the Village, Zone A (1), from November 26, 2014, through December 25, 2014; and
2. Approve the proposed Resolution to establish a three-hour parking limit in Zone A (1), from November 26, 2014, through December 25, 2014.

**BACKGROUND:** The Capitola-Soquel Chamber of Commerce has submitted their annual request to the Council to offer free parking in the Village for a maximum three-hour time limit during the holiday season. The Council has been authorizing this program since 2001, with the exception of 2003.

**DISCUSSION:** The purpose of the parking meters has been to encourage parking rotation for the Village business community. Although the late fall through early winter is not as filled with tourists as the early spring through early fall season, the need for the parking meters still prevails.

The Capitola-Soquel Chamber of Commerce has submitted a letter requesting that the Council authorize the suspension of the two-hour parking limit, and allow free three-hour parking limits in the Village, Zone A (1), from November 26, 2014, through December 25, 2014, in order to encourage holiday shopping. The Capitola City Council has established parking zones, meter rates, and fines for parking violations in accordance with Chapter 10.36 Capitola Municipal Code (CMC). More specifically, Section 10.36.290 CMC, authorizes the City Council, by Resolution, to limit the period of time in which a vehicle may be parked within a designated area of the streets.

It was brought to the attention of City staff by the local Business Improvement Area (BIA) community, that there was no enforcement mechanism in place to enforce the three-hour time limit violations. Without the ability to enforce the three-hour time limits, visitors and Village employees were parking in the free spaces longer than the three-hour time periods; therefore defeating the purpose of encouraging parking rotation.

If the free three-hour time limit is granted, the proposed Resolution would allow for the enforcement of parking violations as described in 10.36.045 CMC. The parking fines for a three-hour time limit violation will remain the same as currently listed on the approved fee schedule as \$36.00.

**FISCAL IMPACT:** It is estimated that last year's suspension of the parking meters and pay stations cost the City \$10,000. The Fiscal Year 2013/2014 takes into account temporarily suspending parking meter and pay station enforcement for this time period. Therefore, there is no budget impact.

### ATTACHMENTS:

1. Letter dated October 6, 2014, from the Capitola Soquel-Chamber of Commerce;
2. Draft Resolution

Report Prepared By: Rudy Escalante  
Chief of Police

Reviewed and Forwarded  
By City Manager 

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716-G Capitola Avenue  
Capitola, CA 95010  
Phone: (831) 475-6522  
Fax: (831) 475-6530

capitola soquel  
CHAMBER OF COMMERCE

October 6, 2014

City of Capitola  
Mayor Storey and  
City Council Members  
420 Capitola Avenue  
Capitola, Ca. 95010

Mayor Storey and City Council Members:

The Capitola-Soquel Chamber of Commerce would like to request that metered parking in the Village become free with a 3 hour limit for Holiday Shoppers starting Thursday, November 26<sup>th</sup> thru Christmas Day, December 25<sup>th</sup> 2014.

The Capitola Village Businesses have enjoyed more Holiday Sales during this period of time and appreciate the City of Capitola's consideration of this item.

cc: Carin Hanna - BIA

Sincerely,  
  
Toni Castro  
Chief Executive Officer

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RESOLUTION NO. \_\_\_\_

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA  
ESTABLISHING TEMPORARY PARKING TIME LIMITS  
WITHIN DESIGNATED PARKING METER ZONE A (1)**

**WHEREAS**, Capitola Municipal Code Section 10.36.290 authorizes the City Council by Resolution, to limit the period of time in which a vehicle may be parked within a designated area of the street; and

**WHEREAS**, said parking time limits in Parking Meter Zone A (1) established in Capitola Municipal Code Section 10.36.055, were established as a two-hour time limit; and

**WHEREAS**, The Capitola-Soquel Chamber of Commerce has submitted an annual letter requesting that the Council authorize the suspension of the two-hour parking limit, and allow free three-hour parking limits in Zone A (1), from November 26, 2014, through December 25, 2014, in order to encourage holiday shopping; and

**NOW, THEREFORE, BE IT HEREBY RESOLVED** by the City Council of the City of Capitola as follows:

1. The following time limits shall be established in the Parking Meter Zone A (1) from November 26, 2014, through December 25, 2014:  
Zone A (Village Area) Three Hours
2. These time limits shall not apply to all green, yellow, or white parking spaces established under Capitola Municipal Code Section 10.37.037 within these zones.

**I HEREBY CERTIFY** that the foregoing Resolution was passed and adopted by the City Council of the City of Capitola on the 13<sup>th</sup> day of November, 2014, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

ATTEST:

\_\_\_\_\_  
Sam Storey, Mayor

\_\_\_\_\_, CMC  
Susan Sneddon, City Clerk

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## CITY COUNCIL AGENDA REPORT

**MEETING OF NOVEMBER 13, 2014**

FROM: COMMUNITY DEVELOPMENT DEPARTMENT  
SUBJECT: ZIP CODE BOUNDARY ADJUSTMENT REQUEST

**RECOMMENDED ACTION:** Staff recommends the City Council authorize the Mayor to send a letter to the United States Postal Service requesting a Zip Code Boundary Adjustment to align the Zip Code boundary with the City's municipal boundary.

**BACKGROUND:** The Heritage Lane Homeowner's Association (HOA) has requested the City's support and assistance with processing a Zip Code Boundary Adjustment through the United States Postal Service (USPS). Heritage Lane, as well as other properties located in west Capitola, currently have a 95062 Zip Code.

The Zip Code system was created and designed to provide an efficient postal distribution and delivery network. Zip Code assignments are based on factors such as mail volume, delivery area size, geography, and topography. While the USPS assigns Zip Codes primarily based on delivery efficiency, they also consider municipal identity and review boundary adjustment requests to align Zip Codes with municipal boundaries.

In September, 2011, then Mayor Norton sent a letter to the USPS requesting a Zip Code Boundary Adjustment for Heritage Lane. The USPS considered, but ultimately denied the request based on service and safety impacts (Attachment 2).

**DISCUSSION:** The Heritage Lane HOA has requested the City support a renewed effort to change their Zip Code from 95062 to 95010. To improve the likelihood of success, the new request would ask the USPS to consider a broader Zip Code Boundary Adjustment which would include other nearby properties to minimize potential issues with service efficiencies. The HOA has reviewed and endorsed a draft letter prepared by staff (Attachment 5).

**FISCAL IMPACT:** None.

**ATTACHMENTS:**

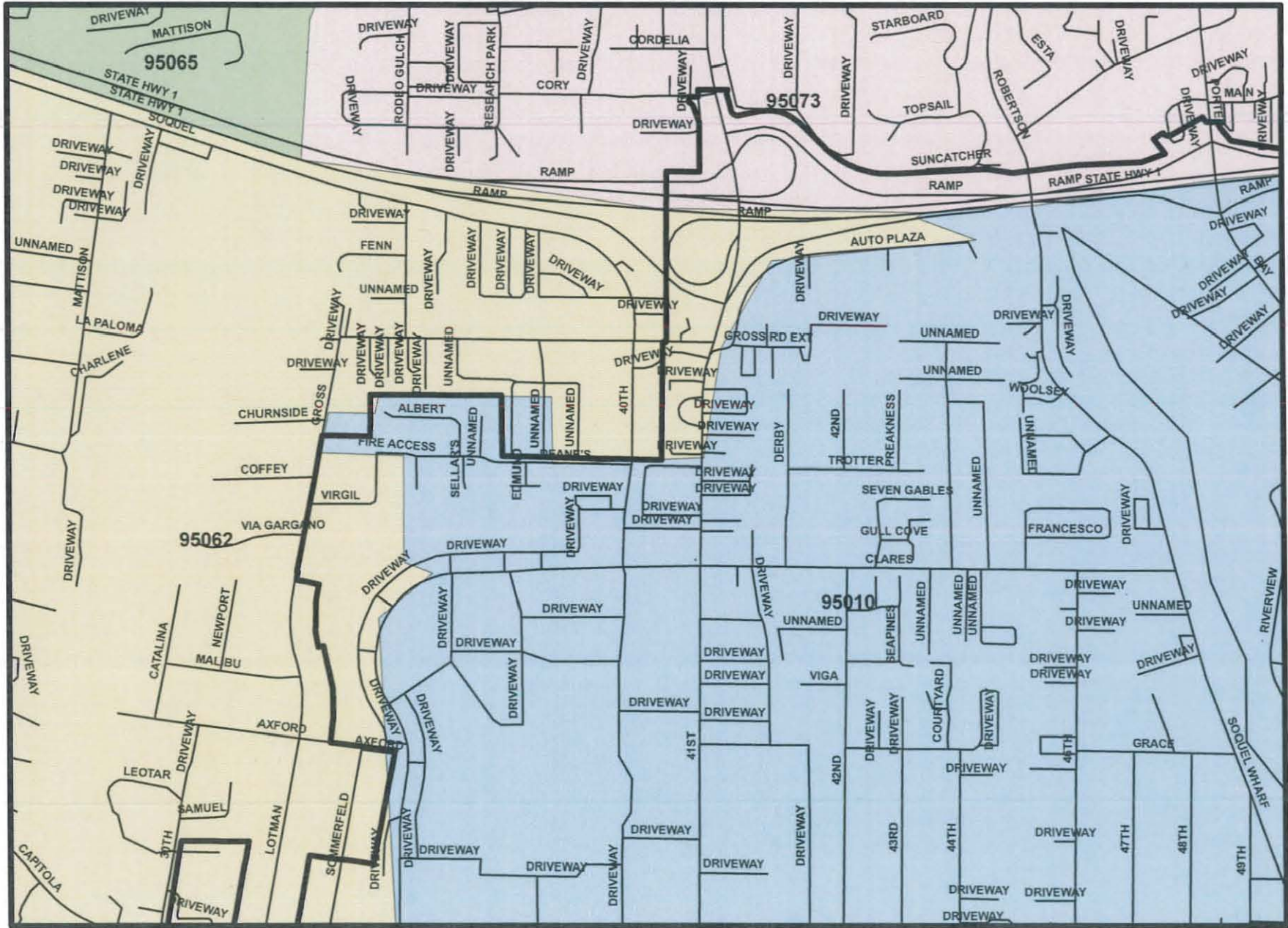
1. Zip Code Boundary Map
2. September 12, 2011 Letter from USPS
3. 2014 Letter from HOA to City Council
4. Draft Letter to USPS

Report Prepared By: Richard Grunow  
Community Development Director

Reviewed and Forwarded  
By City Manager

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# City of Capitola Zip Code Map Northwest Corner

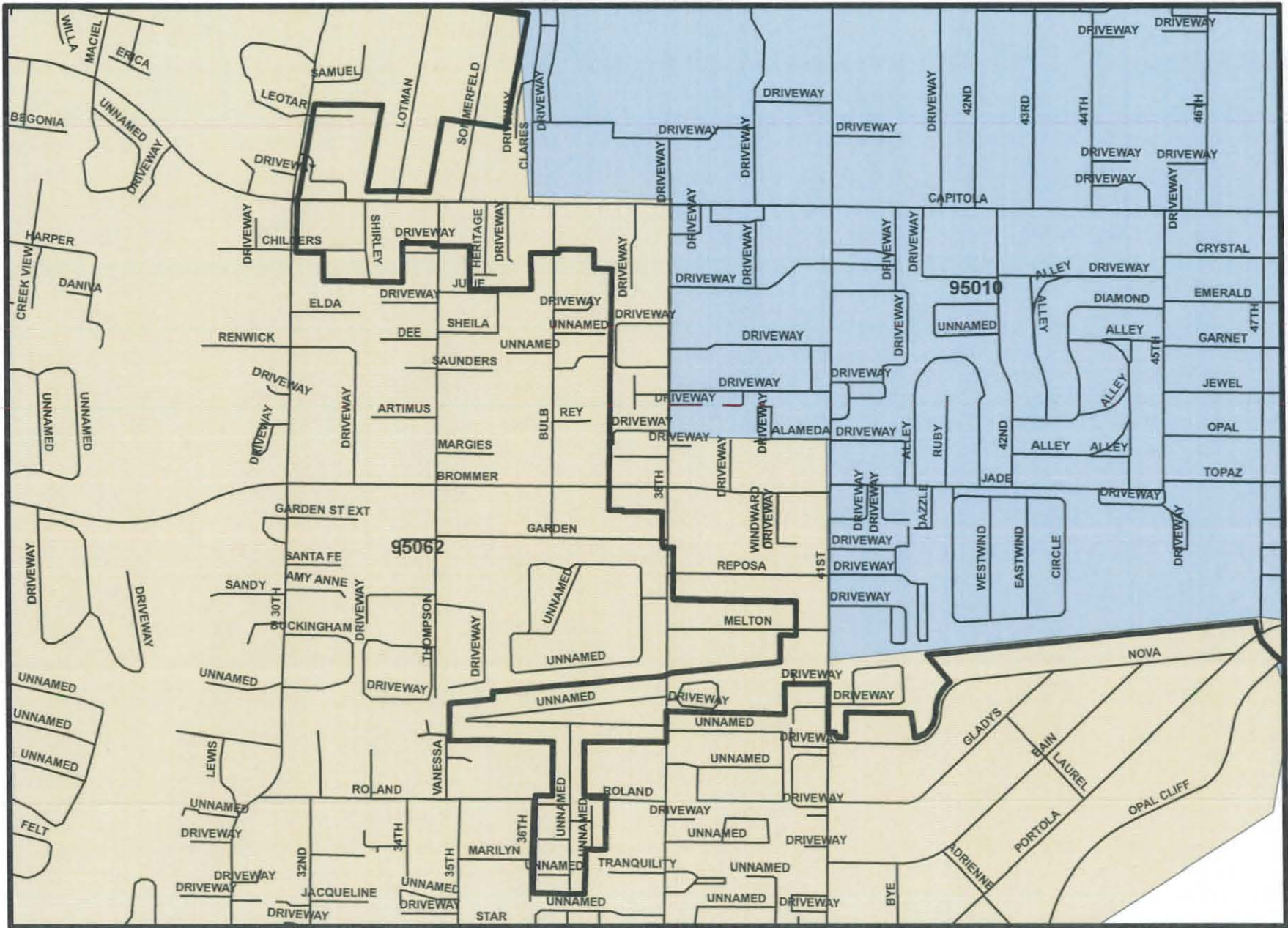


1 inch = 633 feet



City of Capitola

# City of Capitola Zip Code Map Southwest Corner



1 inch = 633 feet





## ADDRESS MANAGEMENT SYSTEMS



September 12, 2011

Mayor Dennis Norton  
420 Capitola Ave  
Capitola CA 95010-3399

Thank you for your interest in the Capitola/East Santa Cruz ZIP Code boundary situation, specifically Heritage Lane.

The Postal Service's ZIP Code system was designed specifically as a tool for mail processing and delivery. Postal delivery designations and boundaries are not adjusted solely for the purpose of providing local identity and do not necessarily coincide with city, county or township boundaries. Regrettably, problems have arisen when others try to use ZIP Codes for purposes unrelated to postal functions.

Recognizing the difficulties that result from these non-postal uses of the ZIP Codes, the Postal Service has developed a uniform review process for communities that request ZIP Code changes. When a request is received, a careful analysis of the cost, safety and service implications of the change is initiated. Should it be determined that the both the fiscal, safety and customer service impacts are non-existent, a formal survey would be sent out to all residents concerned to express their opinion on the matter. Only after compiling all the data and meeting with the local municipalities involved, would a final decision be rendered.

Unfortunately, there are service and safety impacts with this proposal. The territory immediately surrounding Heritage Lane is delivered by East Santa Cruz. A change would not be cost effective for the Postal Service as the East Santa Cruz carrier would still by-pass these deliveries to make surrounding deliveries. The only access to Heritage Lane is off of Capitola Road and would necessitate a carrier from Capitola making an unsafe u-turn.

Thank you for your concern in this matter. Should you have any further questions or concerns, please contact Denise Galaviz, Address Management Systems Specialist (408) 723-6271.

Thank you,

Dorothy Wilson  
Manager, Address Management Systems  
Bay Valley District

1675 7<sup>TH</sup> STREET ROOM 120M  
OAKLAND CA 94615-9321  
(510) 847-8573

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Lou Scalzo, *President*

Heritage of Capitola HOA, c/o Shoreline Property Management · 1100 Water Street, Suite 1A ·  
Santa Cruz, CA 95062 · (925) 519-0898 · lscalzo1389@gmail.com

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[Insert Councilmember/Mayor Address]

To: Stephanie Harlan, City Council Member

The Heritage of Capitola Homeowners Association (Heritage) is a homeowners association that represents a community of twelve homes, located directly across the street from the Capitola Mall. Heritage is unquestionably within the municipal boundary of the City of Capitola (The City), but the United State Postal Service (USPS) has assigned Heritage a Santa Cruz ZIP Code. While it may seem trivial, this ZIP Code has tangible economic effects on the residents of Heritage. Although Heritage has lobbied the USPS to change its ZIP Code to reflect its location in The City as opposed to Santa Cruz, those requests have been denied. The USPS has made it clear that when municipalities directly request or join in proposed ZIP Code Changes the USPS must make greater efforts to accommodate those requests as opposed to requests directly from community groups. The purpose of this letter is to build a coalition between The City and Heritage to assist Heritage in successfully requesting that the USPS change its ZIP Code to accurately reflect Heritage's location in The City.

#### I. Background On The Heritage Subdivision

The houses in Heritage were offered for sale from 2005 to 2006. All of the information given to the purchasers confirmed that the houses' ZIP Code was 95010. All purchaser's mortgage and closing documents reflected that the development would receive The City's ZIP Code. Heritage President, Lou Scalzo, spoke with Gary Lindeke, the builder, in early 2007 wherein he promised to work on the ZIP Code issue saying it was probably a "clerical" error. Between 2008 and 2009, Gary Lindeke relinquished control of Heritage to Heritage's Board of Directors. Simply put, all members of Heritage were led to believe at the time of purchase that their homes would receive The City's ZIP Code.<sup>1</sup>

#### II. Local Support Is A Pre-Requisite

USPS designed their ZIP Code system for efficient distribution of mail; however, USPS is cognizant of the fact that ZIP Codes may have a substantive effect on an individual or community group's identity. As a result, and through congressional direction, USPS has created a process for ZIP Code Boundary Review. (See Attached.)

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<sup>1</sup> Heritage is no way asserting presently that The City or builder in any way intentionally or negligently mislead them into purchasing in Heritage.

Lou Scalzo, *President*

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However, the accommodations provided differ sharply between a direct request from a municipality as opposed to a local community group. When a municipality requests a ZIP Code change “in order to provide municipal identity . . . every reasonable effort will be made to [accommodate the request].” (ZIP Code Boundary Review Process, at p. 1.) On the other hand, no language referencing accommodations is present within the section regarding community groups and “[d]ocumented endorsement of the request by the local government is strongly recommended.” (*Id.*) What these provisions disclose is that local support is a pre-requisite to any successful accommodation for a ZIP Code change. Most importantly, municipal requests are entitled to great deference because USPS *must* make every reasonable effort to accommodate the municipality’s ZIP Code change request.

### III. The City’s Government Should Request A ZIP Code Change On Behalf Of Heritage

Heritage residents are undoubtedly a part of The City. They live directly across the street from the Capitola Mall. Heritage benefits from The City’s Services, e.g., fire, police, water, garbage, and sanitation. Moreover, it was the intent of Heritage purchasers to *buy* into the City’s community. The currently assigned ZIP Code cannot change the fact that each member of Heritage feels inextricably intertwined with The City’s community. These facts should also assuage any concern of an additional burden on The City’s services as a result of a ZIP code change because The City is already servicing the addresses.

More importantly, Heritage residents suffer current, and prospective, economic harm as a result of Heritage being labeled a Santa Cruz ZIP Code. The property values within Heritage are significantly reduced because land value is tied to properties’ ZIP Code. One member recently tried to sell his house and found it significantly devalued. Other tax issues arise because of Heritage’s ZIP Code. For instance, one member purchased a car and had to pay a higher sales tax because of Heritage’s ZIP Code. These tangible economic harms will not dissipate until a property remedy is found—unfortunately the only remedy is a ZIP Code change.

Accordingly, given the identity and economic concerns, the City should assist Heritage in securing a ZIP Code change. As noted, a direct request by The City would receive greater deference as opposed to a request directly from Heritage. It’s Heritage’s hope that we can work with The City Councilmembers and the Mayor to draft a request on the part of The City to request a ZIP Code change. In the alternative, Heritage would like to have the full endorsement of all members of The City body in the event that it must propound its own request.

Lou Scalzo, *President*

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Santa Cruz, CA 95062 · (925) 519-0898 · lscalzo1389@gmail.com

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To be sure, this is not Heritage's first attempt at a ZIP Code change. In 2009 Heritage's Board began to communicate with both USPS and The City to attempt to resolve the ZIP Code issue. During 2010, Heritage's Board President communicated with The City's now former Mayor, Mayor Norton. In 2010, Mayor Norton wrote a letter to USPS (Heritage never received a copy). In that letter, he purportedly requested that USPS consider changing Heritage's ZIP Code. On September 12, 2011, the President of Heritage's board was copied on a response to Mayor Norton from USPS refusing the ZIP Code change. (See Attached.) USPS' rationale was that the postal service vehicle would have to make an unsafe U-turn.

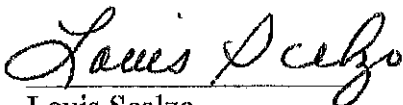
However, this present attempt would be different than Mayor Norton's prior attempt. It is unclear whether Mayor Norton enlisted the help of the entire City. Nor is it clear whether Mayor Norton sent a personal letter as opposed to one on The City's behalf. In short, a coalition between Heritage and The City is more likely to succeed as opposed to the appeal made by Mayor Norton three years ago because of the guidance provided by the USPS with respect to municipal requests for a ZIP Code Change.

This has been an eight year process for Heritage. Heritage was previously unaware of the USPS ZIP Code Boundary Review Process. Finally, Heritage has identified a more effective avenue to address the issue which requires The City's direct support. Given the strong ties Heritage has to The City, and given the fact that The City provides all the essential services to Heritage, it would be in The City's best interest to form a coalition with Heritage to effectuate a change in Heritage's ZIP Code.

We have retained counsel in order to expedite this matter. It is our hope that you will work with them to create some form of correspondence between The City and USPS. We look forward to you meeting with our representatives in person to further discuss this matter in detail.

Thank you in advance for your support.

Very Truly Yours,



Louis Scalzo

President, Heritage of Capitola Homeowners Association

# CRS Report for Congress

Received through the CRS Web

## Changing Postal ZIP Code Boundaries

June 23, 2006

Nye Stevens  
Specialist in American National Government  
Government and Finance Division

## Changing Postal ZIP Code Boundaries

### Summary

Ever since the ZIP Code system for identifying address locations was devised in the 1960s, some citizens have wanted to change the ZIP Code to which their addresses are assigned. Because ZIP Codes are often not aligned with municipal boundaries, millions of Americans have mailing addresses in neighboring jurisdictions. This can cause higher insurance rates, confusion in voter registration, misdirected property and sales tax revenues for municipalities, and property value effects. Some communities that lack a delivery post office complain that the need to use mailing addresses of adjacent areas robs them of a community identity.

Because the ZIP Code is the cornerstone for the U.S. Postal Service's (USPS's) mail distribution system, USPS long resisted changing ZIP Codes for any reason other than to improve the efficiency of delivery. Frustrated citizens frequently have turned to Members of Congress for assistance in altering ZIP Code boundaries. In the 101<sup>st</sup> Congress, a House subcommittee heard testimony from Members, city officials, and the Government Accountability Office (GAO) that USPS routinely denied local requests for adjusting ZIP Code boundaries in a peremptory manner. It considered three bills that would allow local governments to determine mailing addresses for their jurisdictions.

Since then, USPS has developed a "ZIP Code Boundary Review Process" that promises "every reasonable effort" to consider and if possible accommodate municipal requests to modify the last lines of an acceptable address and/or ZIP Code boundaries. The process places responsibility on district managers, rather than local postmasters, to review requests for boundary adjustment, to evaluate costs and benefits of alternative solutions to identified problems, and to provide a decision within 60 days. If the decision is negative, the process provides for an appeal to the manager of delivery in USPS headquarters, where a review based on whether or not a "reasonable accommodation" was made is to be provided within 60 days.

The boundary review process, coupled with a more flexible attitude on the part of USPS than was formerly the case, offers enhanced possibilities of accommodating community desires. One accommodation that can often be made is to allow the alternative use of more than one city name in the last line of the address, while retaining the ZIP Code number of the delivery post office. This can help with community identity problems, though not with problems such as insurance rates or tax remittances being directed by ZIP Code.

Members of Congress who are contacted by constituents desiring a ZIP Code accommodation should first ensure that the constituents are aware of the boundary review process requirements. Constituents should be made aware that simply having approached a local postmaster and having been told that an adjustment would be disruptive and impractical is not part of the process. The local postmaster has no power to make changes and may be unaware of the headquarters instructions to make "every reasonable effort" to reach an accommodation.

This report will be updated only if there is a change in the ZIP Code process.

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## Changing Postal ZIP Code Boundaries

Citizens often turn to Members of Congress for assistance in securing changes to ZIP Code boundaries, usually because their mailing addresses do not correspond to the geographical and political boundaries of their jurisdictions. This report explains why ZIP Code boundaries often are not aligned with political jurisdiction boundaries, describes the kinds of problems that occur because of the misalignment, and discusses efforts by the Postal Service and Congress to address these problems.

### Background

The Post Office Department began dividing large cities into delivery zones in 1943, inserting two digits between the city and the state in the lower address line. In 1963, the whole country was divided into five-digit postal delivery codes, termed ZIP Codes by the Post Office, that corresponded to the post offices where final sorting of mail was done and from which letter carriers were dispatched to make deliveries. The term itself, originally trademarked and always capitalized, was an acronym for "Zoning Improvement Plan." Mass mailers were required to use ZIP Codes in 1967, and today their use is virtually universal.

Almost all mail is now automatically sorted, and the basis for it is a code that has now expanded to 11 digits, allowing mail to be directed to a unique delivery point or mail box. Most customers still know only their five-digit codes. The first three direct mail to a large regional sorting facility, where mail is sorted for distribution to a specific delivery post office, identified by the fourth and fifth digits. For example, the ZIP Code for Alturas, the county seat of Modoc County in the northeastern corner of California, is 96101. The 961 directs mail to the processing facility in Reno, Nevada, which is the distribution point for some California post offices such as Alturas, Cedarville (96104), Fort Bidwell (96112), and Likely (96116), distinguished by the last two digits of the code. Reno is also the processing facility for ZIP Codes in Nevada beginning with 894, 895, and 897.

### ZIP Codes Are Widely Used by Others

The Postal Service has always contended that the ZIP Code system's only purpose is to facilitate the efficient and orderly delivery of the mail. Nevertheless, ZIP Code information is readily available to the public, and both private and governmental entities have found it a convenient and accessible tool for many purposes unrelated to mail delivery. Postal Service competitors like FedEx and UPS use the ZIP Code. But the ZIP Code also has been adopted by non-delivery entities as a geographic locator, providing a convenient if imperfect means of targeting populations for performing demographic research, setting insurance rates, estimating housing values, remitting state tax revenues back to localities, and directing advertising messages.

Because ZIP Codes are based on the location of delivery post offices, they often do not correspond to political jurisdiction boundaries. This means that millions of Americans receive their mail from a post office in an adjacent town, village, or neighborhood, and their mailing address reflects the name and ZIP Code of that post office rather than the jurisdiction where they actually live. This situation was not uncommon when ZIP Codes were first assigned 40 years ago, and it has become more common since then, particularly in rapidly growing suburban areas. The boundaries of many jurisdictions have changed with growth, annexation, and the incorporation of new communities on the outskirts. At the same time, USPS has sought to reduce rather than expand the number of post offices as its retail business model has changed, and in order to concentrate expensive labor-saving investments rather than duplicate them in nearby facilities.

### **Problems Caused by Misalignment with Municipal Boundaries.**

The widespread use of ZIP Codes for non-postal purposes has exacerbated problems for those citizens whose mailing addresses do not match their actual town or city of residence, and frequently for the municipalities as well. A sample of the problems that have been brought to congressional attention includes:

- Higher automobile insurance rates for drivers who live in the suburbs but are charged city rates based on their ZIP Code.
- Residents who are confused about where to vote in municipal elections because they do not distinguish between their voting and mailing addresses.
- Sales tax revenues rebated by states to the cities where they are collected are often misdirected because they are collected by merchants with ZIP Codes in different jurisdictions, or by merchants who mail their products to customers knowing only their Zip Codes.
- Citizens being sent jury duty notices when they are not eligible to serve based on their actual residence.
- Emergency service vehicles being misdirected by confusion over what town a call has come from, based on mailing address information.
- Homeowners in an expensive neighborhood complaining that their housing values are diminished because their mailing addresses place them in a less prestigious community.

In addition, many communities lack a delivery post office and complain that the need to use mailing addresses from neighboring towns robs them of their community identity. For example, even though Haddon Township, NJ, is an incorporated municipality with a 2000 population of 14,651 people, it has no delivery post office and its residents receive mail from seven different nearby post offices, each with a

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different ZIP Code. The mailing address of the Haddon Township Municipal Building is 135 Haddon Avenue, Westmont, NJ 08108.<sup>1</sup>

### **Congressional Hearing Registers Concern**

These problems and others were aired in a 1990 hearing of a House postal subcommittee.<sup>2</sup> Ten Members of Congress described ZIP Code alignment problems in their districts, and statements were received from many local governments, as well as the National League of Cities. The hearing considered three bills (H.R. 2380, H.R. 2902, and H.R. 4827) that would allow local governments, rather than the Postal Service, to determine local addresses or ZIP Code boundaries, as a solution to the widespread problems.

USPS expressed strong opposition to these bills and said that depriving USPS of control over “the most basic tool of the postal trade—the mailing address” would be “disastrous.”<sup>3</sup> A USPS boundary survey found that more than 11 million deliveries were served by carriers who cross municipal boundaries, and estimated that if delivery boundaries were realigned to match municipal boundaries, 1,600 new postal facilities and 10,500 new carriers would be needed.<sup>4</sup> Also to be considered was the availability of additional ZIP Codes in certain large areas. At the end of 1989, 924 of the 1,000 possible three-digit combinations had already been assigned; in 20 areas, 90 or more of the 100 possible ZIP Codes had already been assigned; and in Houston, all 100 possible ZIP Codes had been used.<sup>5</sup>

These arguments may have proved persuasive because the legislation never advanced, nor have similar bills introduced in later Congresses. However, USPS also earned some criticism because of its “peremptory denials” of local suggestions and an approach to local suggestions that was variously characterized as “cold and haughty,” “cursory,” “unresponsive,” “stonewalling,” and “uncaring.”<sup>6</sup> The Government Accountability Office (GAO, then the General Accounting Office) examined postal case files on 26 municipal requests for ZIP Code changes, only 2 of which were approved by USPS. GAO reported that USPS could not only do a better job of providing facts and reasoning to explain its decisions in individual cases, it also could “do more to ... resolve problems caused by conflicts between municipal and ZIP Code boundaries.”<sup>7</sup>

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<sup>1</sup> See [<http://www.haddoutwp.com/township.php>].

<sup>2</sup> U.S. Congress, House Committee on Post Office and Civil Service, Subcommittee on Postal Operations and Service, *ZIP Code Boundaries*, hearing on H.R. 2380, H.R. 2902, and H.R. 4827, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess., June 7, 1990 (Washington: GPO, 1990). Hereafter cited as “ZIP Code Boundary Hearing.”

<sup>3</sup> ZIP Code Boundary Hearing, p. 105.

<sup>4</sup> ZIP Code Boundary Hearing, p. 92.

<sup>5</sup> ZIP Code Boundary Hearing, p. 92.

<sup>6</sup> ZIP Code Boundary Hearing, pp. 3, 38, 49, 95, 97.

<sup>7</sup> U.S. General Accounting Office, *Conflicts Between Postal and Municipal Boundaries*, (continued...)

## Postal Service Attempts To Resolve Problems

### Current USPS Process for Realigning ZIP Codes.

In the years since the 1990 hearing and GAO's investigation, USPS has made a concerted effort to develop a process for the regular review of ZIP Code boundaries. Under Section 439 of the *Postal Operations Manual*, postmasters are responsible for reviewing ZIP code assignments in their areas and proposing changes if operational and financial conditions justify them. Increased growth in a geographic area is the most common precipitating factor in such changes. A rule of thumb is that the establishment of 25,000 new deliveries,<sup>8</sup> or 50 carrier routes, is the threshold for review of the need for a ZIP Code change and possibly a new delivery station. Because changes are invariably sensitive locally, and often involved considerable coordination and investment, approval from the area (regional) office and headquarters is required before changes can take effect.

Most of the analysis required is based on operational considerations, but one of the questions postmasters must address asks whether municipal boundaries will be crossed, and another asks whether municipal officials have been asked to comment on the revised boundaries. The guidance requires that "officials should consider municipal boundaries and customer interests in all zone splits. If a ZIP Code that is being considered for adjustment crosses municipal boundaries, consult municipal offices before submitting the proposal, and consider all reasonable solutions."<sup>9</sup>

Proposed changes must be sent to the area office by December in order for a change to take place in July of the following year. Changes are made once per year, on July 1, because mail volume is at a low point then. Concentrating changes on this date is also advantageous to large mailers, who generate most of the mail volume, because they can make the necessary changes to their mailing lists in one operation before the heavy autumn mailings begin.

### Process for Considering Community or Municipality Suggestions.

While the requirement for a regular review of ZIP Code boundaries has long existed because it is an operational necessity, the process for considering requests from municipalities and community groups for ZIP Code changes dates to March 1991, not long after the congressional hearing referenced above. It has taken some time for the process to become a settled practice and for USPS to adopt a willingness to consider requests for boundary adjustments that are based solely on "community identity" concerns. A key event was a November 18, 1999, directive to the vice presidents in charge of each of the nine postal areas from John E. Potter (now

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<sup>7</sup> (...continued)

GAO/T-GGD-90-47, June 7, 1990, pp. 14-16, 23.

<sup>8</sup> "Deliveries" would be a fraction of population growth in an area, since most delivery points are households with multiple occupants.

<sup>9</sup> U.S. Postal Service, *Postal Operations Manual*, Section 439.211, Washington, DC, Nov. 29, 2001.

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Postmaster General, then senior vice president for operations) and Deborah Wilhite, senior vice president for government relations and public policy. The memorandum noted that a review of correspondence with the public on the issue of ZIP Code changes "has indicated a need for general improvement." The memorandum then reemphasized in emphatic language the expectation that USPS would give careful, objective consideration to community wishes, even if they are based only on "identity" considerations.

As indicated when the Review Process was first implemented in 1991, "just saying no" does not make identity issues go away. In fact, growth and the increasing use of ZIP Codes as database links and demographic tools tend to make them worse over time. **If you receive a municipal identity request and a reasonable means of full or partial accommodation can be identified, offer it, apply the customer survey process, and move on.** Requests can be denied, but only based on appropriate, objective reasons that are consistent with the Review Process....

(P)ostal policy is to offer any reasonable administrative or operational accommodation that can correct, or alleviate, the municipal identity concerns. **The objective is to find ways to say "yes," not excuses for saying "no."** Do not deny a request out of concern that "other communities will want the same thing." Others *will* make requests.... In the case of identity, customers measure the Postal Service by its impact on their daily lives. When mailing identities generate negative effects on our customers' properties, households and associations, even when caused by third-party actions, they are perceived as "bad service" and intrusive bureaucracy. (Emphasis in original.)

### **What the Process Requires.**

The boundary review process requires municipality and community groups that desire a ZIP Code change to submit the request *in writing* to the manager of the district (there are 80 districts), with any rationale and justification. The local postmaster is not the decision maker; his or her only responsibility is to forward any requests received to the district level and provide information if requested for the evaluation. District managers are to identify all relevant issues and potential solutions to them, quantify the specific operational impacts and feasibility of the request, meet with proponent groups to discuss issues and explain potential alternatives, and provide a determination within 60 days. If the proposal is denied, the district manager must advise the proponent in writing, giving the specific reasons for denial. The response must be based on the results of the analysis and must advise the proponent of the appeal process.

If the request is feasible, the process then requires a formal survey of all of the customers who would be affected by the proposed change. This is an important step, because it might reveal that the proponent group was an activist minority and most customers would prefer not to notify their correspondents, change their magazine subscriptions, replace their stationery, go to a different post office to pick up left-notice mail, or perhaps to identify with a different "community identity." A simple majority of the survey respondents is adequate for approval.

Finally, there is a process in place for customers to appeal to headquarters an adverse USPS determination of a community's request for a change in ZIP Code boundaries when "municipal identity" issues are involved. Any proponent may appeal an adverse decision to the manager of delivery operations, except in cases where a potential accommodation was not implemented because a majority of affected customers did not support it in the survey.

Within delivery operations at headquarters, an operations specialist who works full time on boundary review appeals takes over the case file and investigates to determine whether the district provided "reasonable accommodation" to the proposed change. Having knowledge of situations all over the country, and a variety of accommodations that have been implemented, the operations specialist is in a good position to judge whether the district manager has fully applied the spirit and letter of the 1999 guidance (made available to proponents on request) to "find ways to say 'yes.'" The manager of delivery operations must make a final decision on the appeal within 60 days.

There is some evidence that the boundary review process is having some positive effect. USPS has not kept statistics on resolutions in recent years, but it did report that in 1991, the first year, accommodations were reached in 64% of the first 28 reviews to be completed.<sup>10</sup> Steve Burkholder, mayor of Lakewood, CO, and point person for the National League of Cities on the issue, told CRS that he believed USPS was open to constructive dialogue and sincerely interested in resolving problems, and that if other cities followed the boundary review procedure, a reasonable accommodation could often be reached.<sup>11</sup>

### **Possible Accommodations To Resolve ZIP Code Complaints**

The most common form of request to the Postal Service (and to Members of Congress) is for "a new ZIP Code" for a specific area. Most customers do not realize that a new, unique ZIP Code usually accompanies the creation of a new delivery post office. They also do not realize that a delivery post office (as opposed to a retail station) is a major investment, requiring lots of space, loading docks, sorting equipment, access to major transportation routes, and negotiations with several unions over work assignments. However, USPS believes that such requests "are fundamentally identity issues" and are made because customers perceive a new ZIP Code as "the only means of achieving postal identity."<sup>12</sup> In fact, other options are often available and much simpler to achieve.

Sometimes, when excess capacity exists, fairly minor adjustments in carrier routes can be made that will solve at least part of a community's boundary problem. It is complicated to make changes in the status quo, and therefore a disincentive

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<sup>10</sup> U.S. Postal Service, *Comprehensive Statement on Postal Operations, 1991* (Washington, 1992), p. 47.

<sup>11</sup> Telephone interview, June 14, 2006.

<sup>12</sup> USPS Internal Memorandum to Vice Presidents, Area Operations, "Proper Treatment of Appeals, ZIP Code Boundary Review Process," Nov. 18, 1999, p. 2.

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exists to do so, but sometimes it can be accomplished without unacceptable disruption.

A compromise solution that does not involve changing USPS delivery structure is to allow customers to use an alternative city name in the last line of their address, while not changing the ZIP Code. For example, the rapidly growing city of Windsor Heights, IA, still lacks its own post office, but USPS sorting machines will accept the use of "Windsor Heights, IA, 50311" rather than requiring that customers in that area use "Des Moines, IA 50311," which is where their post office is located. USPS will also accept Windsor Heights as a valid city name for ZIP Codes 50312 and 50322 — post offices in Des Moines and Urbandale, respectively, that deliver the rest of the mail to Windsor Heights residents.<sup>13</sup> When a large portion of the mail was sorted manually, this option could have caused mis-sorting and delayed mail, but today almost all mail is sorted by computer. It should be noted that this alternative can help ameliorate community identity issues, but not issues arising from use of ZIP Codes for demographic "redlining."

Another option that can address community identity concerns is for municipalities and individuals to use a community designation on the second line (above the street designation) of their address. Since USPS sorting technology pays attention only to the last two lines, this does not disrupt delivery and does not require special permission.

Finally, USPS routinely works with large mailers to improve their address files, sorting in some cases to 11 digits rather than the ZIP Code's 5 digits. If mailers care, it should not be difficult to refine municipal mailing lists to conform to political jurisdictions and eliminate errors based on crude use of the five-digit code.

### **What Can a Member of Congress Do?**

When a Member's office receives a request for assistance in persuading USPS that a new ZIP Code or a new post office is needed in a certain area, the most important thing to ascertain at the outset is the underlying reason for the request. If the constituents are complaining about poor delivery service, then the Postal Service is likely to take the complaints seriously, determine if they have merit, and look for causes if they do. USPS is a customer service organization, and realizes it cannot ignore allegations of shortfalls in service expectations. If indeed population growth or obsolescence of a delivery facility are leading to service problems, USPS wants to know it and to resolve the problems, including any that may be traced to the condition of a delivery facility or confusion over ZIP Code boundaries. Although Congress does not appropriate money for postal construction projects, and there is no role for Congress in the process by which facilities investments are given priority, a Member can expect that a referral of service complaints to the USPS government relations staff will get attention and a response, though quite possibly no more than the citizens would get by bringing their complaints to USPS directly.

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<sup>13</sup> ZIP Codes can be accessed online at [<http://zip4.usps.com/zip4/citytown.jsp>].

More likely, the request has nothing to do with delivery service, but rather stems from community identity issues, and concern centers on the ZIP Code. Constituents are frequently unaware of the boundary review process. In many cases, constituents or municipal officials have approached a letter carrier or local postmaster and been told that an adjustment would be disruptive and impractical. The local postmaster has no power or incentive to make changes and may be unaware of the headquarters instructions to make "every reasonable effort" to reach an accommodation.

When informed of the boundary review process, and of the availability of a formal appeal if a satisfactory accommodation is not reached, municipal officials and community groups should feel empowered to take the steps that the process requires. While in the past USPS tended to brush off complaints based on community identity issues, there is considerable evidence that this is no longer the case. Its internal policies (as described above) quite firmly state that a cursory, negative response is no longer permissible. Even if an accommodation cannot be reached, the requirement to fully explain the reasons why based on a comprehensive review of operational and cost data is insisted on by headquarters. A full explanation at least defuses the argument that the constituents are dealing with an uncaring, unresponsive bureaucracy that can only be brought to heel through congressional pressure.

Occasionally, Members will be requested to introduce legislation to force USPS to align ZIP Code boundaries in a certain way, often to correspond to municipal boundaries. Legislation of this nature has never succeeded in the past, and constituents should not expect that such legislation would receive serious consideration. Even behind-the-scenes pressure is less effective on the Postal Service than it can be with other, less independent agencies. USPS receives no appropriations from Congress for its operations,<sup>14</sup> and the Postal Reorganization Act of 1970<sup>15</sup> has several provisions designed to shield it from political interference.

Finally, constituents should not be advised that they may simply substitute their preferred city name before the ZIP Code in an address line, without receiving USPS permission to do so. USPS computers have internal checks that compare the ZIP Code with the proper city name, and if the two do not match, default sequences come in to play and mail will very likely be directed to the wrong delivery post office, certainly causing delay and possibly causing the mail to be returned as undeliverable.

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<sup>14</sup> For more explanation, see CRS Report RS21025, *The Postal Revenue Forgone Appropriation: Overview and Current Issues*, by Nye Stevens.

<sup>15</sup> P.L. 91-375; 84 Stat. 719; 39 U.S.C. 101 et seq.





420 Capitola Avenue  
Capitola, California 95010  
Telephone: (831) 475-7300  
FAX: (831) 479-8879  
Website: [www.ci.capitola.ca.us](http://www.ci.capitola.ca.us)

November 10, 2014

Mr. Mark Martinez, District Manager  
United States Postal Service  
Bay Valley District  
1750 Lundy Avenue  
San Jose, CA 95101-7024

**Subject: ZIP CODE BOUNDARY ADJUSTMENT REQUEST**

Dear Mr. Martinez:

This letter is to request a ZIP Code boundary adjustment to realign the postal boundary to coincide with the City of Capitola municipal boundary. Specifically, the City requests the 95062 ZIP Code currently applied to Heritage Lane and surrounding streets be changed to 95010.

The 95010 ZIP Code is entirely contained within the City of Capitola, whereas the 95062 ZIP Code largely represents eastern portions of the City of Santa Cruz and unincorporated Santa Cruz County. Capitola residents who live within the 95062 ZIP Code area have reported ongoing issues with the assigned east Santa Cruz ZIP Code, including diminished property values, incorrect sales tax assessments, voter confusion, emergency service issues, and a lack of community identity.

The City of Capitola understands that ZIP Code designations are assigned to ensure efficient mail processing and delivery. Accordingly, the City would like to work with USPS to identify a ZIP Code boundary adjustment which maintains safe and efficient delivery service while also recognizing the municipal identity of west Capitola residents.

A previous request to change the ZIP Code designation on Heritage Lane was considered by the USPS in 2011. Unfortunately, USPS declined the request based on service and safety impacts. Unlike the previous boundary adjustment request which focused solely on Heritage Lane, the City respectfully requests the USPS examine an adjustment scenario which includes Heritage Lane AND any surrounding streets necessary to provide a logical, safe, and efficient geographic delivery area. By considering a larger geographic area, it is our hope that a postal delivery model can be developed which avoids undesirable u-turn movements or service inefficiencies. Surrounding streets which should be considered as part of this request include, but are not limited to: Capitola Road, Thompson Avenue, Bulb Avenue, 38<sup>th</sup> Avenue, and Clares Street.

Thank you for your consideration. If you have any questions, please contact Rich Grunow, Community Development Director, at 831.475.7300 or by email at [rgrunow@ci.capitola.ca.us](mailto:rgrunow@ci.capitola.ca.us).

Respectfully,

Sam Storey, Mayor  
City of Capitola

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## CITY COUNCIL AGENDA REPORT

MEETING OF NOVEMBER 13, 2014

FROM: CITY MANAGER'S DEPARTMENT

SUBJECT: LIABILITY CLAIM

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**RECOMMENDED ACTION:** Deny liability claim.

**DISCUSSION:**

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

1. Water Rock Construction, \$674,260

**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 OCTOBER 23, 2014

FROM: DEPARTMENT OF PUBLIC WORKS

SUBJECT: LOWER PACIFIC COVE PARKING LOT PROJECT  
NOTICE OF COMPLETION

**RECOMMENDED ACTION:** Accept the Lower Pacific Cove Parking Lot Project, constructed by Water Rock Construction, as complete at a final cost of \$1,342,502, and authorize the Director of Public Works to release the contract retention of \$64,864.30 in 35 days following the recordation of the attached Notice of Completion.

**BACKGROUND:** Water Rock Construction has completed all work on the new parking lot in the former Pacific Cove Mobilehome Park. The parking lot first opened for weekends on May 3, 2014, for the Open Streets Capitola event and was fully opened on May 23, 2014.

Since the opening, the contractor and the City have been in discussions regarding final pay quantities and amounts, and a dispute has arisen and litigation threatened. Approval of the Notice of Completion is based on the City's approved costs and will allow release of the retention amount to the contractor. The City will retain the right to seek liquidated damages from the contractor should they continue to pursue claims against the City.

**DISCUSSION:** The final contract cost of \$1,342,502 included eleven contract change orders and several agreed upon adjustments to the quantities. The final cost was \$246,631 higher than the amended contract amount. A project cost summary is included as Attachment 2.

**FISCAL IMPACT:** Financing for this project was obtained through the combination of a \$1.3 million low interest rate loan through the California Infrastructure and Economic Development Bank (IBank) and \$200,000 of City funds to repair retaining walls damaged in the 2011 flood. The City has received payment from the loan for all but \$68,625 which will be received following the filing of the Notice of Completion.

### **ATTACHMENTS**

1. Notice of Completion
2. Final Cost Summary

Report Prepared By: Steven Jesberg  
Public Works Director

Reviewed and Forwarded  
By City Manager:

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RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Capitola  
Public Works Department  
Attn: Steven Jesberg  
420 Capitola Avenue  
Capitola, California 95010

SPACE ABOVE THIS LINE FOR RECORDER'S USE

THIS INSTRUMENT IS BEING RECORDED FOR THE BENEFIT OF THE CITY OF CAPITOLA.  
NO RECORDING FEE IS REQUIRED PURSUANT TO GOVERNMENT CODE §27383.

**NOTICE OF COMPLETION**

NOTICE IS HEREBY GIVEN that the City of Capitola, owner of the property hereinafter described, whose address is 420 Capitola Avenue, Capitola, California, has caused a work of improvements more particularly described as follows:

PROJECT NAME: Lower Pacific Cove Parking Lot Project

PROJECT DESCRIPTION: Surface Parking Lot Construction

to be constructed on property more particularly described as follows:

DESCRIPTION:

ADDRESS: 426 Capitola Avenue, Capitola, CA 95010

APN: 035-141-33

The work of the improvement was completed by:

CONTRACTOR: Water Rock Construction

ADDRESS: 2314 Walsh Avenue, Santa Clara, CA 95051

The work of the improvements was actually completed on the 23<sup>rd</sup> day of May 2014, and accepted by the City Council of said City on the 13<sup>th</sup> day of November 2014

Signature of City Official: \_\_\_\_\_

The undersigned certifies that he is an officer of the City of Capitola, that he has read the foregoing Notice of Completion and knows the content thereof; and that the same is true of his own knowledge, except as to those matters which are therein stated on information or belief, and as to those matters that he believes to be true. I certify under penalty of perjury that the foregoing is true and correct. Executed at the City of Capitola, County of Santa Cruz, State of California.

Steven E. Jesberg  
Director of Public Works

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

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City of Capitola  
Final Cost Summary

Project: Lower Pacific Cove Parking Lot

Item No.	Item Description	Unit	Bid Quantity	Actual Final Quantity	Diff	Unit Cost	Final Cost	Difference
1	MOBILIZATION	LS	1	1	0	\$ 50,000.00	\$ 50,000.00	\$ -
2	TREE REMOVAL	EA	13	9	-4	\$ 698.00	\$ 6,282.00	\$ (2,792)
3	TREE PROTECTION FENCING	LF	261	268	7	\$ 11.00	\$ 2,948.00	\$ 77
4	DEMOLITION	SF	92,642	92642	0	\$ 0.50	\$ 46,321.00	\$ -
5	EARTHWORK	LS	1	1	0	\$ 80,000.00	\$ 80,000.00	\$ -
6	SLIDE REPAIR	LS	1	1	0	\$ 42,000.00	\$ 42,000.00	\$ -
7	SITE RETANING WALLS	SF	1,192	1920.1	728	\$ 112.00	\$ 215,054.00	\$ 81,550
	New Wood Walls	SF		77.17	77	\$ 75.00	\$ 5,788.00	\$ 5,788
	Wood Wall Repairs	SF		41	41	\$ 75.00	\$ 3,075.00	\$ 3,075
	Wood Tie-Ins	SF		60.20	60	\$ 56.00	\$ 3,371.00	\$ 3,371
8	ASPHALT CONCRETE BERM / DIKE	LF	911	816.55	-94	\$ 11.00	\$ 8,982.00	\$ (1,039)
9	FLUSH CONCRETE CURB	LF	160	215.5	56	\$ 41.00	\$ 8,835.50	\$ 2,276
10	WHEEL STOPS	EA	223	223	0	\$ 50.00	\$ 11,150.00	\$ -
	Wheel Stop Steaks	LS		1	1	\$ 2,354.00	\$ 2,354.00	\$ 2,354
11	DECOMPOSED GRANITE	CY	50	67	17	\$ 294.00	\$ 19,698.00	\$ 4,998
12	GRAVEL GRID PAVER	SF	35,743	34242	-1,501	\$ 3.00	\$ 102,726.00	\$ (4,503)
13	3/8" CLEAN CRUSHED DRAIN ROCK	CY	120	120	0	\$ 94.00	\$ 11,280.00	\$ -
14	3/4" CLEAN CRUSHED DRAIN ROCK	CY	721	721	0	\$ 92.00	\$ 66,332.00	\$ -
15	MIRAFI HP 370 FABRIC	SY	4,149	4149	0	\$ 4.00	\$ 16,596.00	\$ -
16	ASPHALT PAVEMENT	TON	890	810.1	-80	\$ 142.00	\$ 115,034.20	\$ (11,346)
17	CALTRANS CLASS 2 AGGREGATE BASE ROCK	TON	2,830	2789.23	-41	\$ 23.00	\$ 64,152.29	\$ (938)
18	SUBGRADE RECOMPACTION	CY	2,880	0	-2,880	\$ 7.00	\$ -	\$ (20,160)
19	6 MIL LINER	LF	2,244	2244	0	\$ 4.00	\$ 8,976.00	\$ -
20	SDCO	EA	33	39	6	\$ 336.00	\$ 13,104.00	\$ 2,016
21	SDMH	EA	3	3	0	\$ 12,000.00	\$ 36,000.00	\$ -
22	SDMH MODIFY EXISTING	EA	4	4	0	\$ 1,600.00	\$ 6,400.00	\$ -
23	PERMEABLE PAVERS	SF	1,596	1596	0	\$ 5.00	\$ 7,980.00	\$ -
24	CATCH BASIN 18X18	EA	3	12	9	\$ 2,500.00	\$ 30,000.00	\$ 22,500
25	BUBBLER CATCH BASIN 18X18	EA	1	2	1	\$ 445.00	\$ 890.00	\$ 445
26	OUTLET CONTROL STRUCTURE BIO 18X18	EA	6	9	3	\$ 1,200.00	\$ 10,800.00	\$ 3,600
27	OUTLET CONTROL STRUCTURE 12X12	EA	23	24	1	\$ 750.00	\$ 18,000.00	\$ 750
	Catch Basin Behind Wall	EA		6		\$ 500.00	\$ 3,000.00	\$ -
28	BIORETENTION	SF	2,699	2699	0	\$ 3.00	\$ 8,097.00	\$ -

29	4" PERFORATED SD LINE	LF	726	726	0	\$ 1.00	\$ 726.00	\$ -
30	6" SD LINE	LF	435	503	68	\$ 15.00	\$ 7,545.00	\$ 1,020
31	8" SD LINE	LF	909	979	70	\$ 25.00	\$ 24,475.00	\$ 1,750
32	12" SD LINE	LF	50	50	0	\$ 35.00	\$ 1,750.00	\$ -
33	THERMO PLASTIC STRIPING AND MARKINGS	SF	2,152	2152	0	\$ 8.00	\$ 17,216.00	\$ -
	Credit for Thermoplastic	LS		-1	-1	\$ 3,180.00	\$ (3,180.00)	\$ (3,180)
34	LIGHTING	LS	1	1	0	\$ 52,000.00	\$ 52,000.00	\$ -
35	LANDSCAPING	LS	1	1	0	\$ 19,600.00	\$ 19,600.00	\$ -
36	RESTROOM REMODEL	LS	1	0	0		\$ -	\$ -
37	Concrete Curb & Gutter	LF	130	179.4	49	\$ 40.00	\$ 7,176.00	\$ 1,976
38	Concrete Sidewalk	SF	665	840.4	175	\$ 15.00	\$ 12,606.00	\$ 2,631
39	Pay Station Slabs	EA	3	3	0	\$ 1,300.00	\$ 3,900.00	\$ -
40	1-1/2" Water Line	LF	500	380	-120	\$ 23.00	\$ 8,740.00	\$ (2,760)
41	Concrete Shower Slab	LS	1	0	-1		\$ -	\$ -
42	Adjust Utility to Finish Grade	EA	10	10	0	\$ 355.00	\$ 3,550.00	\$ -
43	Remove and Replace Pavement	SF	2,000	2343	343	\$ 4.00	\$ 9,372.00	\$ 1,372
						<b>Contract Bid Items Total</b>	<b>\$ 1,190,702</b>	
	<b>Contract Change Orders</b>							
CCO#1	SWPPP	LS	1	1.0	0.0	\$ 2,800.00	\$ 2,800.00	\$ 2,800
CCO#2	Prepare Building Pad for Modular Building (+2 days)	LS	1	1.0	0.0	\$ 2,200.00	\$ 2,200.00	\$ 2,200
CCO#3	Cut, Handle, Bag & Dispose of ACP sanitary pipe	T&M	1	0.9	-0.1	\$ 5,000.00	\$ 4,259.00	\$ 4,259
CCO#4	Misc. Items (Trash,Wall Demo,Modular Footings)	T&M	1	1.0	0.0	\$ 10,000.00	\$ 9,938.00	\$ 9,938
CCO#5	Lean Concrete Cap on ex. 72" CMP	T&M	1	0.0	-1.0	\$ 12,000.00	\$ 575.00	\$ 575
CCO#6	Install 8" of 3" stone over Mirafi 500x or equivalent (T&M)	T&M	1	0.7	-0.3	\$ 37,500.00	\$ 26,837.00	\$ 26,837
CCO#7	Dispose of AC with Petromat	Ton	482	431.5	-50.5	\$ 8.29	\$ 3,577.00	\$ 3,577
CCO#8	Utilities @ Modular, Sanitary repair & Misc. items	T&M	1	0.9	-0.1	\$ 18,000.00	\$ 16,075.00	\$ 16,075
CCO#9	Additional Work @ Modular & Misc. Work	T&M	1	0.9	-0.1	\$ 15,000.00	\$ 13,973.00	\$ 13,973
CCO#10	Railing @ Modular, Railing @ City Hall & Misc. Work	T&M	1	0.9	-0.1	\$ 30,000.00	\$ 26,356.00	\$ 26,356
CCO #11	Misc. Quantity Adjustments	LS	1	1.0	0.0	45209.62	\$ 45,209.52	\$ 45,210
						<b>Total Change Orders</b>	<b>\$ 151,799.52</b>	

**Summary**

Original Bid:	\$	1,095,871
Changes:	\$	246,631
Final Cost:	\$	1,342,502

Final Contract Costs	\$	1,342,502
5% Retention	\$	64,864.30
Paid to date	\$	1,277,637.21

CCO #11 paid in full



## CITY COUNCIL AGENDA REPORT

MEETING OF NOVEMBER 13, 2014

FROM: PUBLIC WORKS DEPARTMENT

SUBJECT: RESOLUTION AUTHORIZING EXECUTION OF STATE STANDARD AGREEMENT  
FOR HOUSING RELATED PARKS PROGRAM GRANT FOR RIPSIN PARK

**RECOMMENDED ACTION:** Adopt a Resolution authorizing execution of State Standard Agreement for Housing Related Parks Program Grant for renovation of Rispin Park.

**BACKGROUND:** The State of California, Department of Housing and Community Development (Department) issued a Notice of Funding Availability dated October 2, 2013 (NOFA), under its Housing-Related Parks (HRP) Program. This program is funded through the Housing and Emergency Shelter Trust Fund Act of 2006 (Prop 1C). The 2013 NOFA made \$25 million available to fund the creation and renovation of parks and community recreation facilities that benefit the community and add to the quality of life.

On December 12, 2013, the City Council authorized submittal of a grant application. The grant awards were calculated based upon the number of bedrooms in qualifying affordable housing units assisted by Capitola between January 1, 2010, and June 30, 2013. Qualifying units must have been newly-built or preserved, with affordability covenants. Two affordable housing projects met the criteria: Bay Avenue Senior Apartments (all 108 units, including 33 new units); and Castle Mobile Home Park (33 units).

The City was recently notified that it has received the award. Awards were calculated based upon the number of bedrooms in qualifying affordable housing units. The City also qualified for Bonus Awards for new construction units, infill units, very-low income units, and park-deficient communities. Using the State's calculation algorithm, the City was awarded \$383,925 for renovation of Rispin Park.

**DISCUSSION:** These grant funds would be used for improvements at the Rispin property, including: (1) Restoration of Rispin Gardens; (2) Accessible pathways; (3) Lighting for security and public access throughout the property; (4) Interpretive elements focusing on the historic site and existing natural resources; and (5) Partial removal/lowering of the wall along Wharf Road, increasing property visibility from the road while retaining elements of the historical wall.

This Resolution is to authorize execution of the State of California Standard Agreement Housing Related Parks Program Grant.

**ATTACHMENTS:**

1. Draft Resolution

Report Prepared By: Steve Jesberg  
Public Works Director

Reviewed and Forwarded  
By City Manager: \_\_\_\_\_

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RESOLUTION NO. \_\_\_\_

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA  
AUTHORIZING EXECUTION OF STATE STANDARD AGREEMENT  
FOR HOUSING RELATED PARKS PROGRAM GRANT**

**WHEREAS:**

- A. The State of California Department of Housing and Community Development (the Department) issued a Notice of Funding Availability dated October 2, 2013 (NOFA), under its Housing-Related Parks (HRP) Program.
- B. By Resolution No. 3972, the City of Capitola was authorized to apply for a HRP Program Grant and submitted the 2013 Designated Program Year Application Package released by the Department for the HRP Program.
- C. The Department is authorized to approve funding allocations for the HRP Program, subject to the terms and conditions of the NOFA, Program Guidelines, Application Package, and Standard Agreement.
- D. The Department awarded the City of Capitola an HRP Program Grant in the amount of \$383,925.

**THEREFORE, IT IS RESOLVED THAT:**

- 1. The City of Capitola is hereby authorized and directed to enter into, execute, and deliver a State of California Standard Agreement (Standard Agreement), for an HRP Program Grant in the amount of \$383,925, and any and all other documents required or deemed necessary or appropriate to secure the HRP Program Grant from the Department, and all amendments thereto (collectively, the "HRP Grant Documents").
- 2. The City of Capitola shall be subject to the terms and conditions as specified in the Standard Agreement. Funds are to be used for allowable capital asset project expenditures to be identified in **Exhibit A** of the Standard Agreement. The application in full is incorporated as part of the Standard Agreement. Any and all activities funded, information provided, and timelines represented in the application are enforceable through the Standard Agreement. Applicant hereby agrees to use the funds for eligible capital asset(s) in the manner presented in the application as approved by the Department and in accordance with the NOFA and Program Guidelines and Application Package.
- 3. That the City Manager is authorized to execute the HRP Grant Documents as required by the Department for participation in the HRP Program.

**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 13th day of November, 2014, by the following vote:

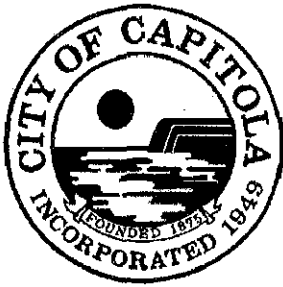
AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
Sam Storey, Mayor

ATTEST:

\_\_\_\_\_, CMC  
Susan Sneddon, City Clerk

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## CITY COUNCIL AGENDA REPORT

MEETING OF NOVEMBER 13, 2014

FROM: CITY MANAGER'S DEPARTMENT

SUBJECT: WHARF ROAD MURAL EXTENSION — PUBLIC ART PROJECT

**RECOMMENDED ACTION:** 1) Approve the Wharf Road Mural Extension Public Art Project; and 2) authorize the City Manager to enter into a professional service agreement with the artist, John Ton for an amount not to exceed \$12,000.

**BACKGROUND:** The City Council authorized the original Wharf Road Mural project in July of 2010. The current mural is located on the retaining wall on the west side of Wharf Road, between the railroad trestle and Prospect Avenue. The selected artist was Jon Ton, a well known mural artist in northern California. The Art & Cultural Commission is recommending the extension of the mural by the same artist along Wharf Road under the railroad trestle.

**DISCUSSION:** The original mural depicts beach goers traveling to the Village surrounded by begonia flowers. The new concept envisioned by the Art & Cultural Commission is to extend the same scene along the railroad trestle walls. The area for the mural extension is owned by the Santa Cruz County Regional Transportation Commission (RTC), therefore this project will also need to be brought to their board for consideration. Mr. Ton has agreed to perform the work with the assistance of a local artist, Mia Negre who assisted him with the original mural.

The Art & Cultural Commission approved the design concept at their meeting held on October 14, 2014. If the City Council should approve the mural extension, staff will bring the project to the RTC for their consideration in December. If approved by the RTC, work can begin as soon as January 2015, dependant upon the weather.

According to Capitola Municipal Code Section 2.56.050, the City Council must approve the art work and artist before finalizing the project.

**FISCAL IMPACT:** Total funding required for this project is \$12,000 from the Public Art Fund. \$10,000 for the installation, and \$2,000 for additional expenses related to the installation. Funding is derived from development fees as required by the Municipal Code. This fund is restricted in its use for the acquisition, installation, and improvement of public art projects.

**ATTACHMENTS:**

1. Contract
2. Proposed design (to be displayed at the meeting)

Report Prepared By: Lisa G. Murphy  
Administrative Services Director

Reviewed and Forwarded  
by City Manager: 

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**CITY OF CAPITOLA**  
**PROFESSIONAL SERVICES AGREEMENT**  
Wharf Road Mural Extension  
John Ton

THIS AGREEMENT is entered into on \_\_\_\_\_, 201\_, by and between the City of Capitola, a Municipal Corporation, hereinafter called "City" and John Ton, hereinafter called "Consultant".

WHEREAS, City desires certain services described in Appendix One and Consultant is capable of providing and desires to provide these services;

NOW, THEREFORE, City and Consultant for the consideration and upon the terms and conditions hereinafter specified agree as follows:

**SECTION 1**  
**Scope of Services**

The services to be performed under this Agreement are for the Wharf Road Mural Extension and further detailed in Appendix One.

**SECTION 2**  
**Duties of Consultant**

All work performed by Consultant, or under its direction, shall be sufficient to satisfy the City's objectives for entering into this Agreement and shall be rendered in accordance with the generally accepted practices, and to the standards of, Consultant's profession.

Consultant shall not undertake any work beyond the scope of work set forth in Appendix One unless such additional work is approved in advance and in writing by City. The cost of such additional work shall be reimbursed to Consultant by City on the same basis as provided for in Section 4.

If, in the prosecution of the work, it is necessary to conduct field operations, security and safety of the job site will be the Consultant's responsibility excluding, nevertheless, the security and safety of any facility of City within the job site which is not under the Consultant's control.

Consultant shall meet with Lisa Murphy, called "Director," or other City personnel, or third parties as necessary, on all matters connected with carrying out of Consultant's services described in Appendix One. Such meetings shall be held at the request of either party hereto. Review and City approval of completed work shall be obtained monthly, or at such intervals as may be mutually agreed upon, during the course of this work.

**SECTION 3**  
**Duties of the City**

City shall make available to Consultant all data and information in the City's possession which City deems necessary to the preparation and execution of the work, and City shall actively aid and assist Consultant in obtaining such information from other agencies and individuals as necessary.

The Director may authorize a staff person to serve as his or her representative for conferring with Consultant relative to Consultant's services. The work in progress hereunder shall be reviewed from time to time by City at the discretion of City or upon the request of Consultant. If the work is satisfactory, it will

## Item #: 9.A. Attach 1.pdf

Professional Services Agreement November 13, 2014  
Wharf Road Mural  
John Ton  
Page 2

be approved. If the work is not satisfactory, City will inform Consultant of the changes or revisions necessary to secure approval.

### SECTION 4 Fees and Payment

Payment for the Consultant's services shall be made upon a schedule and within the limit, or limits shown, upon Appendix Two. Such payment shall be considered the full compensation for all personnel, materials, supplies, and equipment used by Consultant in carrying out the work. If Consultant is compensated on an hourly basis, Consultant shall track the number of hours Consultant, and each of Consultant's employees, has worked under this Agreement during each fiscal year (July 1 through June 30) and Consultant shall immediately notify City when the number of hours worked during any fiscal year by any of Consultant's employees reaches 900 hours. In addition each invoice submitted by Consultant to City shall specify the number of hours to date Consultant, and each of Consultant's employees, has worked under this Agreement during the current fiscal year.

### SECTION 5 Changes in Work

City may order major changes in scope or character of the work, either decreasing or increasing the scope of Consultant's services. No changes in the Scope of Work as described in Appendix One shall be made without the City's written approval. Any change requiring compensation in excess of the sum specified in Appendix Two shall be approved in advance in writing by the City.

### SECTION 6 Time of Beginning and Schedule for Completion

This Agreement will become effective when signed by both parties and will terminate on the earlier of:

- The date Consultant completes the services required by this Agreement, as agreed by the City; or
- The date either party terminates the Agreement as provided below.

Work shall begin on or about January 1, 2014.

In the event that major changes are ordered or Consultant is delayed in performance of its services by circumstances beyond its control, the City will grant Consultant a reasonable adjustment in the schedule for completion provided that to do so would not frustrate the City's objective for entering into this Agreement. Consultant must submit all claims for adjustments to City within thirty calendar days of the time of occurrence of circumstances necessitating the adjustment.

### SECTION 7 Termination

City shall have the right to terminate this Agreement at any time upon giving ten days written notice to Consultant. Consultant may terminate this Agreement upon written notice to City should the City fail to fulfill its duties as set forth in this Agreement. In the event of termination, City shall pay the Consultant for all services performed and accepted under this Agreement up to the date of termination.

Professional Services Agreement November 13, 2014  
 Wharf Road Mural  
 John Ton  
 Page 3

## SECTION 8 **Insurance**

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, or employees.

### ***Minimum Scope of Insurance***

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial Liability coverage (Occurrence Form CG 0001).
2. Insurance Services office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California.
4. Errors and Omissions Liability insurance appropriate to the consultant's profession. Architects' and engineers' coverage shall include contractual liability.

### ***Minimum Limits of Insurance***

Consultant shall maintain limits no less than:

- |  |  |
|--|--|
| 1. General Liability:<br>(including operations, products and completed operations) | <b>\$1,000,000</b> per occurrence and \$2,000,000 in aggregate (including operations, for bodily injury, personal and property damage. |
| 2. Automobile Liability:   | <b>\$1,000,000</b> per accident for bodily injury and property damage.   |
| 3. Errors and Omissions Liability:<br>Limits                                       | <b>\$1,000,000</b> per claim and in the aggregate.   |

### ***Other Insurance Provisions***

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Capitola, its officers, officials, employees and volunteers are to be covered as additional insured's as respects: liability arising out of work or operations performed by or on behalf of the Consultant or automobiles owned, leased, hired or borrowed by the Consultant.
2. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees

## Item #: 9.A. Attach 1.pdf

Professional Services Agreement November 13, 2014  
Wharf Road Mural  
John Ton  
Page 4

- or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, returned receipt requested, has been given to the City.
  4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

### ***Acceptability of Insurers***

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

### ***Verification of Coverage***

Consultant shall furnish the City with original certificates and amendatory endorsements affecting coverage by this clause. The endorsements should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

## **SECTION 9 Indemnification**

Consultant agrees to indemnify, defend, and hold harmless the City, its officers, agents and employees, from and against any and all claims, demands, actions, damages, or judgments, including associated costs of investigation and defense arising in any manner from consultant's negligence, recklessness, or willful misconduct in the performance of this agreement.

## **SECTION 10 Civil Rights Compliance/Equal Opportunity Assurance**

Every supplier of materials and services and all consultants doing business with the City of Capitola shall be in compliance with the applicable provisions of the Americans with Disabilities Act of 1990, and shall be an equal opportunity employer as defined by Title VII of the Civil Rights Act of 1964 and including the California Fair Employment and Housing Act of 1980. As such, consultant shall not discriminate against any person on the basis of race, religious creed, color, national origin, ancestry, disability, medical condition, marital status, age or sex with respect to hiring, application for employment, tenure or terms and conditions of employment. Consultant agrees to abide by all of the foregoing statutes and regulations.

## **SECTION 11 Legal Action/Attorneys' Fees**

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which he or she may be entitled. The laws of the State of California shall govern all matters relating to the validity, interpretation, and effect of this Agreement and any authorized or alleged changes, the performance of any of its terms, as well as the rights and obligations of Consultant and the City.

**SECTION 12  
Assignment**

This Agreement shall not be assigned without first obtaining the express written consent of the Director after approval of the City Council.

**SECTION 13  
Amendments**

This Agreement may not be amended in any respect except by way of a written instrument which expressly references and identifies this particular Agreement, which expressly states that its purpose is to amend this particular Agreement, and which is duly executed by the City and Consultant. Consultant acknowledges that no such amendment shall be effective until approved and authorized by the City Council, or an officer of the City when the City Council may from time to time empower an officer of the City to approve and authorize such amendments. No representative of the City is authorized to obligate the City to pay the cost or value of services beyond the scope of services set forth in Appendix Two. Such authority is retained solely by the City Council. Unless expressly authorized by the City Council, Consultant's compensation shall be limited to that set forth in Appendix Two.

**SECTION 14  
Miscellaneous Provisions**

1. *Project Manager.* Director reserves the right to approve the project manager assigned by Consultant to said work. No change in assignment may occur without prior written approval of the City.
2. *Consultant Service.* Consultant is employed to render professional services only and any payments made to Consultant are compensation solely for such professional services.
3. *Licensure.* Consultant warrants that he or she has complied with any and all applicable governmental licensing requirements.
4. *Other Agreements.* This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter, and no other agreement, statement or promise related to the subject matter of this Agreement which is not contained in this Agreement shall be valid or binding.
5. *City Property.* Upon payment for the work performed, or portion thereof, all paintings, drawings, specifications, records, documents or any tangible work product generated by Consultant pursuant to this Agreement are, and shall remain, the property of the City whether the project for which they are made is executed or not. The Consultant shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information and reference in connection with the City's use and/or occupancy of the project. The drawings, specifications, records, documents, and Consultant's other work product shall not be used by the Consultant on other projects, except by agreement in writing and with appropriate compensation to the City.
6. *Consultant's Records.* Consultant shall maintain accurate accounting records and other written documentation pertaining to the costs incurred for this project. Such records and documentation shall be kept available at Consultant's office during the period of this Agreement, and after the term of this Agreement for a period of three years from the date of the final City payment for Consultant's services.

**Item #: 9.A. Attach 1.pdf**

Professional Services Agreement November 13, 2014  
Wharf Road Mural  
John Ton  
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7. *Independent Contractor.* In the performance of its work, it is expressly understood that Consultant, including Consultant's agents, servants, employees, and subcontractors, is an independent contractor solely responsible for its acts and omissions, and Consultant shall not be considered an employee of the City for any purpose.

8. *Conflicts of Interest.* Consultant stipulates that corporately or individually, its firm, its employees and subcontractors have no financial interest in either the success or failure of any project which is, or may be, dependent on the results of the Consultant's work product prepared pursuant to this Agreement.

9. *VARA Waiver.* All work performed by Consultant pursuant to this Agreement shall be subject to the provisions of Appendix Three, attached hereto and incorporated herein by reference.

10. *Notices.* All notices herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given and fully received when made in writing and deposited in the United States mail, certified and postage prepaid, and addressed to the respective parties as follows:

CITY  
CITY OF CAPITOLA  
420 Capitola Avenue  
Capitola, CA 95010  
831-475-7300

CONSULTANT  
JOHN TON  
365 Petaluma Blvd N.  
Petaluma, Ca 94952  
(707) 322-0009

By: \_\_\_\_\_  
Benjamin Goldstein, City Manager

By: \_\_\_\_\_  
John Ton, Muralist

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
John G. Barisone, City Attorney

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### **APPENDIX ONE Scope of Services**

The mural surface is located along the entryway to the Capitola Village on an existing concrete retaining wall just beneath the Union Pacific Railroad Crossing on Wharf Road where it descends down the hill into Capitola Village at Stockton Bridge. The wall dimensions are approximately 40' in length and ranges from approximately 15' to 25' in height.

Task 1: \$10,000

The Artist will be responsible for:

- Preparing the design
- Preparing and priming the wall
- Providing all materials, including scaffolding or other equipment
- Painting the Mural according to submitted and approved design by the City Council
- Providing any necessary security during the mural construction
- Graffiti coating the mural

Reimbursement: Maximum of \$2,000. Artist (John Ton) will be reimbursed for actual and necessary expenses incurred for mileage and lodging when traveling to Capitola for work on the Wharf Road Mural. Artist will submit all receipts for described expenses above for approval prior to reimbursement and within 30 days of the date of the travel. Mileage will be reimbursed based on the 2014 IRS Mileage Rate.

## Item #: 9.A. Attach 1.pdf

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Wharf Road Mural  
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### APPENDIX TWO Fees and Payments

For the services performed, City will pay consultant on a time-charge plus expense basis, monthly as charges accrue, the sum of consultant's salary expenses and non-salary expenses.

Salary expenses include the actual direct pay of personnel assigned to the project (except for routine secretarial and account services) plus payroll taxes, insurance, sick leave, holidays, vacation, and other fringe benefits. The percentage of compensation attributable to salary expenses includes all of Consultant's indirect overhead costs and fees. For purposes of this Agreement, Consultant's salary expenses and non-salary expenses will be compensated at the rates set forth in the fee schedule attached to this appendix and in accordance with the terms set forth therein. Non-salary expenses include travel, meals and lodging while traveling, materials other than normal office supplies, reproduction and printing costs, equipment rental, computer services, service of subconsultants or subcontractors, and other identifiable job expenses. The use of Consultant's vehicles for travel shall be paid at the current Internal Revenue Service published mileage rate.

Salary payment for personnel time will be made at the rates set forth in the attached fee schedule for all time charged to the project. Normal payroll rates are for 40 hours per week. Consultant shall not charge the City for personnel overtime salary at rates higher than those set forth in the attached fee schedule without the City's prior written authorization.

In no event shall the total fee charged for the scope of work set forth in Appendix One exceed the total budget of \$\_\_\_\_\_ (\_\_\_\_\_ Thousand Dollars and Zero Cents), without specific, written advance authorization from the City.

Payments shall be made monthly by the City, based on itemized invoices from the Consultant which list actual costs and expenses. Such payments shall be for the invoice amount. The monthly statements shall contain the following affidavit signed by a principal of the Consultant's firm:

"I hereby certify as principal of the firm of \_\_\_\_\_, that the charge of \$\_\_\_\_\_ as summarized above and shown in detail on the attachments is fair and reasonable, is in accordance with the terms of the Agreement dated \_\_\_\_\_, \_\_, and has not been previously paid."



Professional Services Agreement November 13, 2014  
 Wharf Road Mural  
 John Ton  
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**APPENDIX THREE  
 VARA/CAPA Waiver**

As a material part of the consideration provided by Consultant under the terms of this Agreement, Consultant waives any and all rights Consultant may have with respect to the mural produced under the terms of this Agreement (the "Work") pursuant to the federal Visual Artists Rights Act of 1990 (17 U.S.C. sections 106A and 113(d)), the California Art Preservation Act (Cal. Civil Code section 987 et seq.), and any other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. section 106A, Cal. Civil Code section 987 et seq., or any other type of moral right protecting the integrity of works of art. Consultant expressly agrees that the Work performed hereunder is "Work Made for Hire" under the provisions of 17 U.S.C. section 101. The provisions of this Appendix Three shall apply to modify Artist's rights of attribution and integrity as set out in the Visual Artists Rights Act, 17 U.S.C §§106A and 113(d) ("VARA"), the California Art Preservation Act, Cal. Civil Code §§ 987 and 989 ("CAPA"), and any rights arising under United States federal or state law or under the laws of another country that convey rights of the same nature as those conveyed under VARA and CAPA, as against the City of Capitola ("City") and its officers, employees or agents. The City has the absolute right to change, modify, destroy, remove, relocate, move, replace, transport, repair or restore the Work, in whole or in part, in City's sole discretion. Consultant bears the sole responsibility for providing the City with any changes to the Artist's Address for Notice. Notice of changes must be mailed to the City at the address for notice set forth in Paragraph 10, above.

CONSULTANT

\_\_\_\_\_  
 John Ton

Date: \_\_\_\_\_

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## CITY COUNCIL AGENDA REPORT

MEETING OF NOVEMBER 13, 2014

FROM: CITY MANAGER'S DEPARTMENT

SUBJECT: MALL TRANSIT CENTER RELOCATION AND MALL REDEVELOPMENT  
PROJECT UPDATE

**RECOMMENDED ACTION:** Support conceptual plans to relocate the Capitola Mall transit center to a new location on the property between Kohl's and Macy's, and direct staff to continue to work with the Mall owners (Macerich) to pursue options to help finance the overall Mall redevelopment project and/or modify the project scope to meet budget constraints.

**BACKGROUND:** In 2011 the Redevelopment Agency and Macerich entered into an agreement for the Agency to provide \$1.03 million in funding to support public improvements associated with Mall redevelopment.

The Agreement obligated the City and Agency to fund public improvements associated with Mall redevelopment including: widening sidewalks within public right of way; installing landscaping, street trees, and street furniture within public right-of-way; assisting with the reconstruction of the existing public transit center currently located on the Capitola Mall property to improve public access and circulation; and improving bicycle access.

Agency funding is predicated on Macerich commencing Mall redevelopment, which includes construction of frontage improvements along 41<sup>st</sup> Avenue and updating existing architectural features, and various other site improvements. If the redevelopment project is not built, the Agency is under no obligation to fund public improvements under this Agreement.

**DISCUSSION:** One of the challenges that Macerich has identified with Mall redevelopment is the current location of the Transit Center, which currently occupies a large amount of space directly between the Mall and 41<sup>st</sup> Avenue. Macerich has stated they view that space as an opportunity to create more indoor/outdoor commercial space and to improve the Mall's 41<sup>st</sup> Avenue frontage.

In an effort to resolve this issue, City staff has held numerous meetings with the Transit Center operator, Santa Cruz Metro, and Macerich. Progress has been difficult, however at this point all parties have identified the site between Kohl's and Macys as the most viable option to relocate the Transit Center.

That option was reviewed by the Metro Board on Oct. 24. At that hearing the Metro Board unanimously supported continuing the design process to relocate the Transit Center to the new location, and adopted negotiating principles to help direct that process. Those principles are included in Attachment (X). The new location would accommodate six buses simultaneously, modern shelters and lighting, and a new entrance to the Mall adjacent to the relocated Transit Center (Attachment Y).

Finding a viable location for the Transit Center has been seen by Macerich as the first step in a Mall redevelopment process. Unfortunately, after the Oct. 24 Metro Board hearing Macerich contacted City staff and indicated the estimated costs to relocate the Transit Center and improve the Mall's 41<sup>st</sup> Ave frontage exceeded their project budget. Macerich has indicated that they do not intend to continue pursuing this project at this time.

## Item #: 9.B. Staff Report.pdf

AGENDA STAFF REPORT NOVEMBER 13, 2014

MALL TRANSIT CENTER RELOCATION AND MALL REDEVELOPMENT PROJECT

Given the work involved to date, and the importance of the Mall to the City's economic future, staff is recommending the City Council: support the new location for the transit center, and direct staff to continue to work with Macerich to pursue options to help finance the overall Mall redevelopment project and/or modify the project scope to meet budget constraints.

**FISCAL IMPACT:** The 2011 Agreement pledges \$1.03 million in Redevelopment Agency funds to the City for Mall Redevelopment from future tax increment receipts. That obligation has been carried on the Successor Agency Recognized Obligation Schedule (ROPS) since 2012, and has been approved by the Oversight Board and the State Department of Finance.

### **ATTACHMENTS:**

1. Metro negotiating principles
2. Conceptual plans
3. 2011 Public Infrastructure Agreement

Report Prepared By: Jamie Goldstein  
City Manager

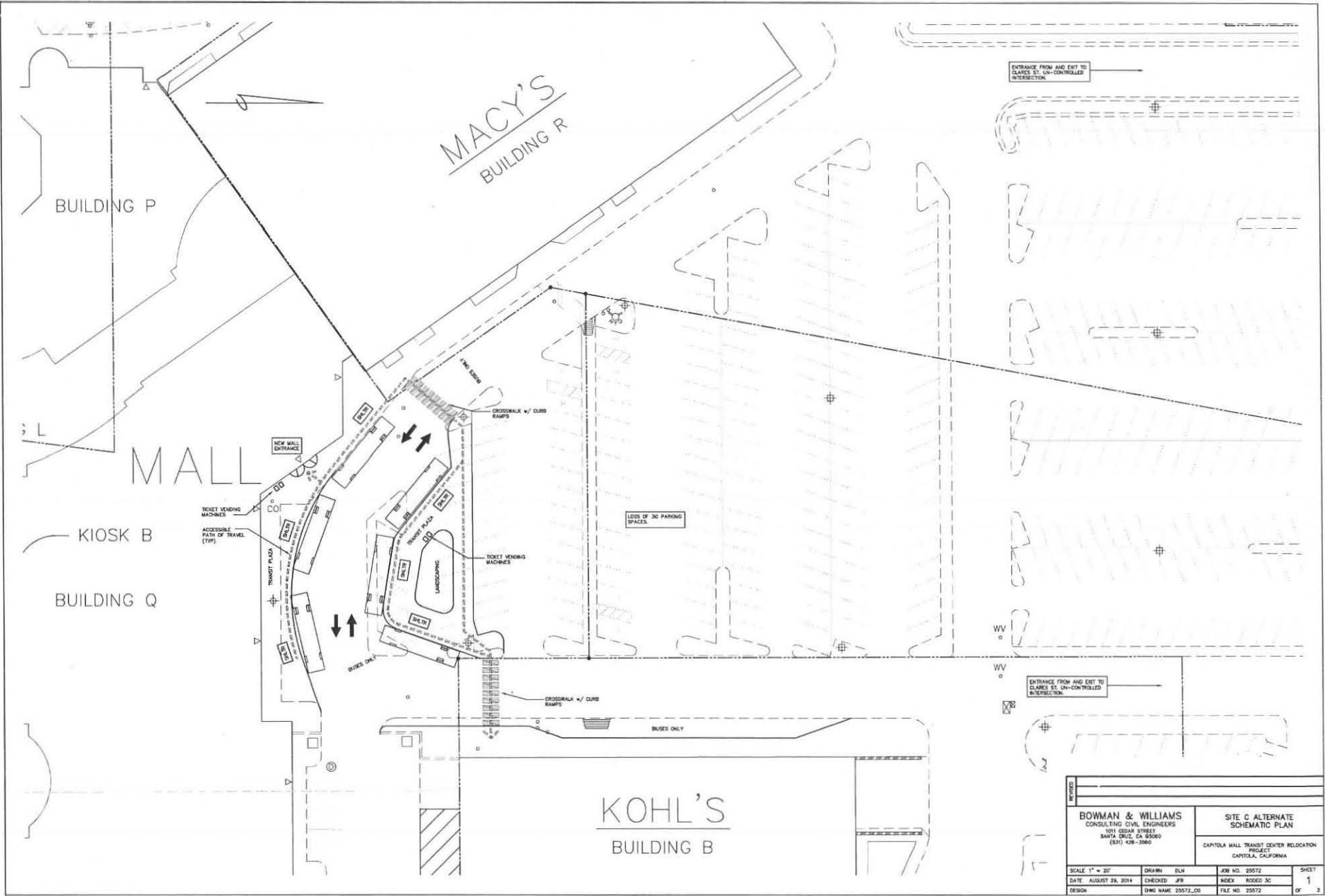
Reviewed and Forwarded  
by City Manager: 

## SANTA CRUZ METROPOLITAN TRANSIT NEGOTIATING PRINCIPLES

- An agreement that ensures that SC METRO receives a like property easement in exchange for the one we currently have.
- An agreement that includes language establishing, without question, SC METRO's right to be on Mall property in perpetuity.
- The alternate Transit Center site location decided on is not to be outside of the Mall footprint and within close proximity to the main Mall building structure.
- The design is to include adequate safe ingress and egress for buses to and from the Transit Center.
- The Transit Center is to be of sufficient size to accommodate six buses simultaneously.
- Shelter and lighting design to meet with SC METRO's approval.
- Design of an aesthetically pleasing and inviting Mall entrance from the Transit Center into the Mall.
- Design of an aesthetically pleasing and inviting Transit Center entrance from inside the Mall to the Transit Center.
- Transit Center design to meet with all ADA accessibility requirements.
- Provide a designated restroom facility for SC METRO Operators within close proximity to the newly proposed Transit Center entrance approved by SC METRO.
- SC METRO will not be expected to fund any part of the relocation and improvements proposed.

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<b>BOWMAN &amp; WILLIAMS</b> CONSULTING CIVIL ENGINEERS 1011 CEDAR STREET SANTA CRUZ, CA 95060 (831) 426-3360		<b>SITE C ALTERNATE          SCHEMATIC PLAN</b>  CAPITOLA MALL TRANSIT CENTER RELOCATION PROJECT CAPITOLA, CALIFORNIA	
SCALE 1" = 20'	DRAWN: BLM	JOB NO: 25572	SHEET
DATE: AUGUST 28, 2014	CHECKED: JPB	INDEX: 80503 3C	1
DESIGN:	DWG NAME: 25572_00	FILE NO: 25572	OF 2

Item #: 9.B. Attach 2.pdf



**Santa Cruz Metro - Capitola Transit Center  
Site C: Rendering 1 - Original**





Santa Cruz Metro - Capitola Transit Center  
Site C: Rendering 1



**Santa Cruz Metro - Capitola Mall Transit Center  
Site C - Rendering Original**



**Santa Cruz Metro - Capitola Mall Transit Center  
Site C - Rendering**



**Santa Cruz Metro - Capitola Transit Center  
Site C: Rendering 2, Original**



Santa Cruz Metro - Capitola Transit Center  
Site C: Rendering 2, Original

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## PUBLIC INFRASTRUCTURE AGREEMENT

This Public Infrastructure Agreement, dated as of April 6, 2011, (the "Effective Date") is entered into by and among the Redevelopment Agency of the City of Capitola, a public body, corporate and politic (the "Agency"), the City of Capitola, a municipal corporation (the "City"), and Macerich Property Management Company, LLC, a Delaware limited liability company (the "Developer"), with reference to the following recitals.

### RECITALS

- A. Pursuant to the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*; the "Redevelopment Law"), the City Council of the City has adopted and the Agency is responsible for implementing the Redevelopment Plan (the "Redevelopment Plan") for the Capitola Redevelopment Project Area (the "Project Area").
- B. To assist in implementing the Redevelopment Plan, the Agency has adopted an implementation plan (the "Implementation Plan") pursuant to Section 33490 of the Redevelopment Law.
- C. Pursuant to Health and Safety Code Section 33220(b) and (c), the City is authorized to enter into this Agreement to assist the Agency in causing public infrastructure to be installed in the Project Area.
- D. On February 24, 2011, City and Agency entered into that certain Cooperation Agreement, as further amended by the City and Agency on March 8, 2011 (the "Cooperation Agreement"), whereby the City agreed to carry out certain projects for the Agency, including but not limited to the expenditure of funds to further the redevelopment of the Capitola Mall.
- E. Developer is the managing agent for the current owner of certain improved real property comprising portions of the shopping center called the Capitola Mall, which fronts on 41<sup>st</sup> Avenue in the City (the "Property"). The Property is improved with commercial retail buildings, associated parking facilities, and various site improvements. The Developer intends to construct frontage improvements along the 41<sup>st</sup> Avenue frontage, including but not limited to pedestrian access improvements, landscaping, and updating to existing architectural features, and various site improvements (the "Private Developer Project").
- F. The Redevelopment Plan and Implementation Plan include public improvements to 41<sup>st</sup> Avenue adjacent to and fronting on the Capitola Mall, and further include improved and relocated public transit facilities on the Property. These public improvements are described in Exhibit A to this Agreement (the "Public Infrastructure").

G. Implementing the Public Infrastructure concurrently with the Private Developer Project would avoid disruption to the public due to multiple construction projects, costly duplication of activities that are necessary to construct the Public Infrastructure and the Private Developer Project, and possible inconsistencies between projects that may result if the Private Developer Project and Public Infrastructure are constructed separately. Further, the Agency and City have determined that it is impractical from an architectural, engineering and construction standpoint to separately construct the Public Infrastructure improvements because of their physical interrelationship with the Private Developer Project improvements to be constructed by the Developer; that timely completion of the Public Infrastructure is essential to the elimination of blight at the Capitola Mall and to the successful redevelopment of the Property; that the Public Infrastructure would be a complementary enhancement to the Private Development Project; and that the construction of the Public Infrastructure pursuant to this Agreement would result in a lower public cost and greater benefit than if such Public Infrastructure were separately bid and constructed by the Agency or City.

H. Based on the above finding, the parties desire that the Developer will undertake the construction of the Public Infrastructure. The City and Agency have requested and the Developer has agreed that the Developer will perform the Public Infrastructure work in accordance with City standards and the City will reimburse the Developer from Agency funds for the costs associated with such work.

I. The Private Developer Project and the Public Infrastructure improvements are located within the Project Area.

J. The Public Infrastructure Improvements and the Private Developer Project are consistent with the Implementation Plan, the Redevelopment Plan, and the City's adopted General Plan and will promote the goals and objectives of the Redevelopment Plan to revitalize the Project Area. The City is currently considering the adoption of modifications to the City's General Plan (the "General Plan Update") which will include policies for the development of the Property and the Capitola Mall.

K. The Developer has represented that it has the necessary experience, skill, and ability to carry out the commitments contained in this Agreement.

L. Prior to execution of this Agreement, the City found that the Public Infrastructure improvements are exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Sections 15301, "Existing Facilities," in that the improvements related to 41<sup>st</sup> Avenue consist of improvements to existing streets, sidewalks, and similar facilities; and pursuant to CEQA Guidelines Section 15302, in that the relocation and modifications to the transit center consist of the replacement of the existing facility, which will be located on the same site as the center being replaced, and will have the same purpose and capacity as any structure being replaced.

M. Pursuant to Health and Safety Code Sections 33421.1 and 33445, the Agency and the City Council have found that the Public Infrastructure improvements are of benefit to the Project Area, that the Public infrastructure improvements are consistent



with the Redevelopment Plan and the Agency's Implementation Plan, that there are no other reasonable means of financing the Public Infrastructure available to the community and that the public financial assistance for the Public Infrastructure will assist in the elimination of blight conditions in the Project Area. These findings are based on the information contained in the staff report and other information provided to the Agency and the City Council.

N. Pursuant to California Health & Safety Code Section 33205, and to assist the City in carrying out projects pursuant to the Cooperation Agreement, the Agency desires to delegate to the City all of its powers and functions with respect to the Public Infrastructure included in this Agreement and to authorize the City to carry out and perform such powers and functions for the Agency in connection with such activities.

O. As more fully set forth below, this Agreement does not authorize or guarantee the granting of any governmental approvals related to the Private Developer Project or to the Public Infrastructure, and in no way limits the discretion of the City and Agency in any permit or approval process.

NOW, THEREFORE, for good and valuable consideration as set forth herein, the parties agree as follows:

## AGREEMENT

The foregoing recitals are hereby incorporated by reference and made part of this Agreement.

### ARTICLE 1 CONSTRUCTION REQUIREMENTS

#### Section 1.1 Public Infrastructure.

The Developer agrees to commence construction of the Public Infrastructure shown on the attached Exhibit A, as required by the terms and conditions of this Agreement, no later than three (3) years following City Council approval of the General Plan Update or six years after the Effective Date of this Agreement, whichever is earlier. The City Manager may grant a maximum of two (2) one-year extensions at the City Manager's sole discretion. After commencing construction of the Public Infrastructure, Developer agrees to diligently prosecute construction of the Public Infrastructure to completion in accordance with a construction schedule to be approved by the City. Should the Public Infrastructure not be completed within the time established in this Section 1.1, subject to extension of time for enforced delay pursuant to the provisions of Section 3.3, this Agreement shall be terminated.

#### Section 1.2 Construction Contract.

Prior to commencement of construction, the Developer shall enter into contracts for the construction of the Public Infrastructure with reputable general contractors.

Those contracts shall provide for the Public Infrastructure work to be performed for fixed and specified maximum amounts pursuant to final construction plans and specifications (the "Final Construction Plans") approved by the City Public Works Director. Prior to starting construction, the Developer shall make available for review by the City and the Agency on a confidential basis, to the extent allowed by the Public Records Act, a copy of each construction contract for the Public Infrastructure for purposes of determining the following: (a) that the scope and cost of work have been clearly fixed and determined and are consistent with the scope and cost set forth in the Final Construction Plans and this Agreement; (b) that the contract conforms or will conform to the requirements of this Agreement, including without limitation the prevailing wages requirements in Section 1.10; and (c) that no changes to the contract that would cause the contract to be out of compliance with this Agreement may be made without the prior written consent of the City and the Agency. Unless the Agency and City notify the Developer in writing within seven (7) days of review of a contract that the contract has been disapproved, it shall be deemed approved.

Section 1.3 Surety and Improvement Agreement; Guarantee.

Prior to commencement of construction, the Developer shall deliver labor and material bonds and performance bonds issued by a reputable insurance company licensed to do business in California, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction of the Public Infrastructure, or as otherwise reasonably required by the Public Works Director. The bonds shall name the City and Agency as co-obligees. The Developer shall cause the Public Infrastructure contractor to guarantee all labor, materials, and workmanship to be free from all defects for a period of one (1) year after acceptance by the City, and the Public Works Director may require customary security for such guarantee.

Section 1.4 Evidence of Availability of Funds; Redevelopment of Mall.

(a) Before Developer commences construction of the Public Infrastructure or expends funds in expectation of reimbursement pursuant to this Agreement, Developer may request Agency and City to verify to the Developer in writing that the Maximum Reimbursement Amount, as described in Section 1.11, does not exceed the Maximum Grant Amount, as described in Section 1.12. If the Maximum Reimbursement Amount exceeds the Maximum Grant Amount, then the scope of the Public Infrastructure may be reduced by mutual agreement of City, Agency, and Developer so as not to exceed the Maximum Grant Amount; or Developer may agree to accept a lower Maximum Reimbursement Amount for construction of the Public Infrastructure; or the parties may mutually agree to terminate this Agreement. City and Agency agree that the Maximum Grant Amount shall not be reduced following written verification by City and Agency pursuant to this subsection (a).

(b) Prior to commencing construction of the Public Infrastructure, the Developer shall submit to the Agency a budget for completion of the Public Infrastructure, including all costs for which Developer intends to seek reimbursement,

and evidence reasonably satisfactory to the Agency that sufficient funds will be available for constructing the Public Infrastructure.

(c) Prior to commencing construction of the Public Infrastructure or expending funds in expectation of reimbursement pursuant to this Agreement, Developer shall have received all permits necessary to complete the Private Developer Project, including but not limited to all discretionary permits, all building permits, and all other permits required for construction; shall submit to the Public Works Director for approval a schedule for completion of the Public Infrastructure; and shall have provided evidence satisfactory to the City and Agency that Developer will construct the Private Developer Project.

#### Section 1.5 Insurance.

Prior to starting construction, the Developer shall submit to the Agency evidence that the insurance requirements of Section 3.8 have been satisfied.

#### Section 1.6 Completion of the Construction.

Subject to extension of time for enforced delay pursuant to Section 3.3, once Developer commences construction of the Public Infrastructure, the Developer shall diligently prosecute to completion the construction of the Public Infrastructure as provided in Section 1.1 of this Agreement.

#### Section 1.7 Construction Pursuant to Plans.

Unless modified by operation of Section 1.8, all work of construction of the Public Infrastructure shall be done in accordance with the approved Final Construction Plans.

#### Section 1.8 Material Change In Plans.

(a) If the Developer desires to make any material change in the Final Construction Plans for the Public Infrastructure, the Developer shall submit the proposed change to the City for its approval. A change is "material" if it, by itself, has a cost consequence of greater than Ten Thousand Dollars (\$10,000), or if it, cumulatively with previous changes, has a cost consequence of greater than Ten Thousand Dollars (\$10,000), or if it alters the Final Construction Plans, or if it is reasonably likely to shorten the useful life of the Public Infrastructure or increase the maintenance cost of the Public Infrastructure.

(b) Unless such proposed change is rejected by the City within ten (10) business days, it shall be deemed approved. If rejected within such time period, the previously approved Final Construction Plans shall continue to remain in full force and effect.

Section 1.9 Development In Compliance With Law.

(a) The Developer shall cause all construction of the Public Infrastructure to be performed in compliance with (a) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, and (b) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the Developer shall be responsible to the City and the Agency for the procurement and maintenance thereof, as may be required of the Developer and all entities engaged in work on the Public Infrastructure.

(b) The City and Agency approve the Developer's construction of the Public Infrastructure without undertaking a competitive bidding process, based on the findings incorporated into the recitals to this Agreement.

Section 1.10 Prevailing Wages.

The Developer shall cause its contractors and subcontractors to pay prevailing wages as those wages are determined pursuant to Labor Code Section 1720 et seq. and implementing regulations of the Department of Industrial Relations (the "DIR"), to employ apprentices pursuant to Labor Code Section 1777.5 et seq. and implementing regulations of the DIR, and to comply with other applicable provisions of Labor Code Section 1720 et seq. and the implementing regulations of the DIR, in each case with respect to the construction of the Public Infrastructure. The Developer shall and shall cause its contractors and subcontractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Labor Code Section 1720 et seq. and that apprentices have been employed as required by Labor Code Section 1777.5. During the construction of the Public Infrastructure, the Developer shall or shall cause the contractor to post at the Public Infrastructure construction site the applicable prevailing rates of per diem wages. The Developer shall indemnify, hold harmless and defend (with counsel reasonably selected by the City) the Agency and the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Developer, its contractor and subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., and implementing regulations of the DIR, to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., or to comply with the other applicable provisions of Labor Code Sections 1720 et seq., and the implementing regulations of the DIR in connection with the construction of the Public Infrastructure. The Developer's obligation to indemnify under this Section 1.10 shall be interpreted broadly to apply to any legal or administrative proceeding, arbitrations, or enforcement action.

### Section 1.11 Reimbursement.

(a) The City, within thirty (30) days after completion and City acceptance of all the Public Infrastructure by the City, shall reimburse the Developer for all costs incurred by the Developer in constructing the Public Infrastructure, including construction costs and normal and customary soft costs including without limitation design, bonds, construction, project management, and permit fees, in an amount not to exceed One Million Thirty Thousand Dollars (\$1,030,000) (the "Maximum Reimbursement Amount") from Agency funds the City is holding for payment for this work. Developer shall provide the City with copies of invoices and payment records as well as lien releases from all contractors and subcontractors prior to the City disbursing any funds to the Developer.

(b) Notwithstanding any other provision of this Agreement, in no event shall the Maximum Reimbursement Amount exceed the Maximum Grant Amount.

### Section 1.12 Maximum Grant Amount.

The Agency hereby grants to the City, and the City hereby grants to the Developer, the "Grant" for use by the City and Developer to fulfill the obligations of this Agreement. The sources of the Grant from the Agency to the City and Developer consist of:

(a) All funds currently held by the Agency, except the funds held in the Low and Moderate Income Housing Fund, and not previously encumbered by binding contract for other activities, projects, or programs (the "Available Funds"); and

(b) All future tax increment revenue allocated to, made available to, or otherwise received by the Agency or any Successor, to the extent such tax increment revenue (1) is or would be required pursuant to the Redevelopment Plan and the Redevelopment Law in effect as of the date of this Agreement to be provided to the Agency, and (2) is available to the Agency or Successor after the Agency or Successor makes all necessary annual payments required to be made with Agency monies with respect to then existing debt obligations of the Agency with respect to debt obligations existing as of the date of this Agreement, including, without limitation, bonded indebtedness, written agreements with other persons or entities, and all obligations of the City and Agency included in the Cooperation Agreement (the "Pledged Funds"); and

(c) All program income received from any source by the Agency or Successor that is required by the Redevelopment Law in effect as of the date of this Agreement to be provided to the Agency, including, without limitation, land sale proceeds, lease revenues, and loan repayments (the "Program Income").

The Available Funds, Pledged Funds, and Program Income together constitute the Maximum Grant Amount.

In no event shall the Grant or the Maximum Reimbursement Amount exceed the Maximum Grant Amount.

As used in this Agreement, "tax increment revenue" means and includes taxes allocated to, or made available to, or otherwise received by the Agency or a Successor pursuant to Health and Safety Code Section 33670 et seq. or other provision of the Redevelopment Law, or pursuant to any applicable constitutional provision, statute, or other provision of law now existing or adopted in the future to pay the debts and obligations of the Agency.

As used in this Agreement, "Successor" includes any lawful successor of the Agency, and/or any lawful successor to any powers and rights of the Agency, pursuant to any applicable constitutional provision, statute or other provision of law now existing or adopted in the future.

Section 1.13 Indebtedness of the Agency. The obligation of the Agency to pay the Grant funds from the sources set forth in Section 1.12 to the City, and the obligation of the City to pay the Maximum Reimbursement Amount to the Developer, pursuant to this Agreement shall constitute an indebtedness of the Agency incurred in carrying out this Agreement and a pledge of tax increment revenue received by the Agency or Successor from the Project Area to repay such indebtedness under the provisions of Article XVI, Section 16 of the Constitution of the State of California, the Redevelopment Law, and the Redevelopment Plan, or under any applicable constitutional provision, statute, or other provision of law now existing or adopted in the future.

## ARTICLE 2. DEFAULTS AND REMEDIES

### Section 2.1 Defaults and Remedies.

(a) Default. Failure by a party to observe any material provision of this Agreement shall constitute a default hereunder. Notwithstanding the foregoing or any other provision of this Agreement to the contrary, the parties agree that: (i) the failure of Developer to commence construction of the Public Infrastructure within the time specified in Section 1.1 or at all shall not constitute a default or breach by Developer, and the City and Agency's remedies under this Agreement on account thereof shall be limited to termination of this Agreement as specified in Section 1.1; and (ii) a reduction in the Maximum Reimbursement Amount to equal the Maximum Grant Amount shall not constitute a default by City or by Agency.

(b) Notice and Cure. The non-defaulting party or parties shall give written notice of a default to the defaulting party, specifying the nature of the default and the required action to cure the default. If a default remains uncured thirty (30) days after receipt by the defaulting party of such notice, or within such further time as the non-defaulting party or parties determine is reasonable to cure such default, such default shall be deemed to constitute an "Event of Default" by the defaulting party, and the non-defaulting party may exercise the remedies set forth in Section 2.1(c).

(c) Limitation of Remedies. City, Agency, and Developer acknowledge that the purpose of this Agreement is to carry out the parties' objectives as set forth in the recitals. City, Agency, and Developer agree that to determine a sum of money which would adequately compensate any party for choices they have made which would be foreclosed should the Public Infrastructure not be installed as contemplated by this Agreement is not possible and that damages would not be an adequate remedy. Therefore, City, Agency, and Developer agree that in the event of a breach or default of this Agreement, the only remedies available to the non-breaching party shall be: (1) suits for specific performance to remedy a specific breach, (2) suits for declaratory or injunctive or other equitable relief, (3) suits for mandamus under Code of Civil Procedure Section 1085, or special writs, and (4) termination or cancellation of this Agreement. Except for attorney's fees and associated costs as set forth herein, monetary damages shall not be awarded to any party. This exclusion of damages is not intended to limit, and shall not preclude, actions by a party to enforce payments of monies due or the performance of obligations requiring the expenditures of money under the terms of this Agreement. All of these remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of these remedies shall not constitute a waiver or election with respect to any other available remedy.

Section 2.2 Survival.

Upon termination of this Agreement, the indemnification obligation in Section 3.7 shall survive (along with all other sections whose survival is reasonably necessary to carry out the sections' clear intent). This Section 2.2 exists for reference purposes only, and does not alter the scope or nature of the surviving provisions.

ARTICLE 3.  
GENERAL PROVISIONS

Section 3.1 Notices, Demands and Communications.

Formal notices, demands, and communications among the Agency, the City and the Developer shall be sufficiently given if, and shall not be deemed given unless, secured personally, or dispatched by certified mail, return receipt requested, or by facsimile transmission or reputable overnight delivery service with a receipt showing date of delivery, to the principal offices of the Agency, the City and the Developer as follows:

Agency:	Redevelopment Agency of the City of Capitola 420 Capitola Ave. Capitola, CA 95010 Attn: Executive Director
---------	---

City: City of Capitola  
420 Capitola Ave.  
Capitola, CA 95010  
Attn: City Manager

Developer: Macerich Property Management Company, LLC  
401 Wilshire Blvd., Suite 700  
Santa Monica, CA 90401  
Attn: Charles W. Davis, Jr., Vice-President, Development

With a copy to: Macerich Property Management Company, LLC  
401 Wilshire Blvd., Suite 700  
Santa Monica, CA 90401  
Attn: Chief Legal Officer

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section 3.1. Delivery shall be deemed to have occurred at the time indicated on the receipt for delivery or refusal of delivery.

Section 3.2 Non-Liability of Officials, Employees and Agents.

No member, official, employee or agent of the Agency or the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Agency or the City or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement.

Section 3.3 Enforced Delay.

In addition to specific provisions of this Agreement, performance by any party shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; quarantine restrictions; freight embargoes; lack of transportation; or court order; or any other similar causes (other than lack of funds or the Developer's inability to finance the construction of the Public Infrastructure) beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the party claiming such extension is sent to the other within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other party within ten (10) days of receipt of the notice. In no event shall the City and Agency be required to agree to cumulative delays prior to commencement of construction of the Public Infrastructure in excess of one hundred eighty (180) days, or to cumulative delays after commencement of construction of the Public Infrastructure in excess of one year. Times of performance under this Agreement may also be extended by written agreement of the Agency, the City and the Developer.



Section 3.4 Time of the Essence.

Time is of the essence in this Agreement.

Section 3.5 Inspection of Books and Records.

The Agency and the City have the right at all reasonable times to inspect on a confidential basis the books, records and all other documentation of the Developer pertaining to its obligations under this Agreement.

Section 3.6 Title of Parts and Sections.

Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any of its provisions.

Section 3.7 Indemnity.

The Developer shall indemnify, defend and hold the City and Agency harmless against any and all claims, suits, actions, losses and liability of every kind, nature and description made against it and expenses (including reasonable attorneys' fees) which arise out of or in connection with this Agreement, including but not limited to Developer's construction of the Public Infrastructure, except to the extent such claim arises from the gross negligence or willful misconduct of the City, the Agency, or any of their respective agents or employees. The provisions of this section shall survive the expiration of this Agreement.

Section 3.8 Liability Insurance.

The Developer shall cause to have in full force and effect during the construction of the Public Infrastructure insurance under the terms and conditions as required by the Public Works Director; provided that, at a minimum, Developer and its general contractor shall have liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and Five Million Dollars (\$5,000,000) combined, which insurance shall name the Agency and City as additional insureds.

Section 3.9 Rights and Remedies Cumulative.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by any party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default by another party.

Section 3.10 Applicable Law.

This Agreement shall be interpreted under the laws of the State of California.

### Section 3.11 Severability.

If any term, provision, covenant or condition of this Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, void or unenforceable, then the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such holding of invalidity.

### Section 3.12 Legal Actions.

In the event legal action is commenced by a third party or parties, the effect of which is to directly or indirectly challenge or compromise the enforceability, validity, or legality of this Agreement and/or the power and ability of the Agency and the City to enter into this Agreement or perform their obligations hereunder, any of the City, the Agency or the Developer may (but shall have no obligation to) defend such action. Upon commencement of any such action, the Agency, the City and the Developer shall meet in good faith to seek to establish a mutually acceptable method of defending such action. If, thirty (30) days after the commencement of any such action, a mutually acceptable method of defense has not been established, the Developer may (but shall have no obligation to) provide written notice of its intention to defend such action.

### Section 3.13 Equal Opportunity.

For purposes of this Agreement and Developer's obligations hereunder regarding the Public Infrastructure, the Developer and its successors, assigns, contractors and subcontractors will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, national origin, veteran's status or physical or mental disability. Such action will include and apply to the employment of contractors, subcontractors, and applicants for employment. During construction of the Public Infrastructure by the Developer, the Developer agrees to post and to cause its contractors and subcontractors to post, in conspicuous places, available to all employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

### Section 3.14 Identity and Authority.

The person executing this Agreement on behalf of the Developer does hereby covenant and warrant that the Developer is a duly authorized and existing Delaware limited liability company; that the Developer has, is and shall remain in good standing and qualified to do business in the State of California; that the Developer has full right, power and authority to enter into this Agreement and to carry out all actions on its part contemplated by this Agreement; that the execution and delivery of this Agreement were duly authorized by proper action of the Developer and no consent, authorization or approval of any person is necessary in connection with such execution and delivery or to carry out all actions on the Developer's part contemplated by this Agreement, except as have been obtained and are in full force and effect; that the persons executing this Agreement on behalf of the Developer have full authority to do so; and that this Agreement constitutes the valid, binding and enforceable obligation of the Developer.

### Section 3.15 Assignment

(a) City and Agency are entering into this Agreement based on the experience, skill, and ability to perform of Developer. This Agreement shall not be assigned by the Developer without first obtaining the express written consent of the City and Agency, which consent shall not be unreasonably withheld. Any disapproval shall specify the City's or Agency's objections in reasonable detail; such objections may reasonably include a request for additional information regarding the experience, skill, and ability to perform of the proposed assignee. Failure of the City or Agency to disapprove any assignment by written notice to Developer within thirty (30) days after receipt of Developer's written request for consent shall be deemed to be the consent of the City or the Agency to the assignment.

(b) Notwithstanding anything to the contrary herein, neither the City's nor the Agency's consent shall be required for any assignment of this Agreement by Developer to any of the following entities: (a) an entity in which The Macerich Company, a Maryland corporation ("Macerich"), or The Macerich Partnership, L.P., a Delaware limited partnership ("Macerich LP"), owns fifty percent (50%) or more of the ownership interests; (b) an entity in which Macerich or Macerich LP has the right, under the governing agreements or documents of the controlled entity, to manage and operate the entity; or (c) any entity that acquires an ownership interest in Capitola Mall any time after commencement of construction of the Public Infrastructure has occurred in conformance with this Agreement, provided that all bonds and guarantees stipulated in Section 1.3, and elsewhere in this Agreement, are binding with respect to the obligations of the assignee. City and Agency shall be provided with written notice of any assignment pursuant to this subsection within ten (10) days after such assignment.

### Section 3.16 Assignment Between Agency and City; Delegation of Powers

(a) Pursuant to California Health & Safety Code Section 33205, the Agency delegates to the City all of its powers and functions with respect to the planning and undertaking of activities necessary to effectuate the implementation of this Agreement, and authorizes the City to carry out and perform such powers and functions for the Agency in connection with such development. The City hereby accepts such delegation from the Agency.

(b) The City may assign to the Agency any power delegated to the City by this Agreement; and the Agency may assign to the City any power delegated to the Agency by this Agreement. Should any enacted statute or voter initiative temporarily or permanently prohibit the Agency from taking any action required by this Agreement, then those actions may be taken by the City without need for Agency action.

### Section 3.17 Binding Upon Successors.

This Agreement shall be binding upon and inure to the benefit of the successors in interest and assigns of each of the parties. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor or assign of such

party who has acquired an interest in compliance with the terms of this Agreement or under law, provided that any assignment must be consistent with the provisions of Section 3.15 of this Agreement.

Section 3.18 Parties Not Co-Venturers.

Nothing in this Agreement is intended to or does establish the parties as partners or co-venturers.

Section 3.19 Interpretation.

Each party to this Agreement has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, neither party shall rely upon Civil Code Section 1654 in order to interpret any uncertainty in the meaning of the Agreement.

Section 3.20 Entire Understanding of the Parties.

This Agreement (including the exhibits) constitutes the entire understanding and agreement of the parties with respect to the construction and use of the Public Infrastructure.

Section 3.21 Approvals.

(a) Whenever this Agreement calls for Agency approval, consent, or waiver, the written approval, consent, or waiver of the Agency Executive Director shall constitute the approval, consent, or waiver of the Agency, without further authorization required from the Agency Board. The Agency hereby authorizes the Agency's Executive Director to deliver such approvals or consents as are required by this Agreement, or to waive requirements under this Agreement, on behalf of the Agency.

(b) Whenever this Agreement calls for City approval, consent, or waiver, the written approval, consent, or waiver of the City Manager shall constitute the approval, consent, or waiver of the City, without further authorization required from the City Council. The City hereby authorizes the City Manager to deliver such approvals or consents as are required by this Agreement, or to waive requirements under this Agreement, on behalf of the City.

(c) All approvals under this Agreement shall be subject to a reasonableness standard, except where a sole discretion standard is specifically provided.

(d) Developer acknowledges that execution of this Agreement by the City and Agency does not constitute approval by the City or Agency of any required additional governmental approvals for the Private Developer Project or for the Public Infrastructure, including but not limited to any discretionary planning approvals, construction permits, and operating permits, and that this Agreement in no way limits the discretion of the City and Agency in any permit or approval process..

Section 3.22 Amendments.

The parties can amend this Agreement only by means of a writing signed by all parties.

Section 3.23 Multiple Originals; Counterparts.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

AGENCY:

REDEVELOPMENT AGENCY OF THE CITY OF  
CAPITOLA, a public body, corporate and politic

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

Name: Jamie Goldstein

Its: Executive Director

CITY:

CITY OF CAPITOLA, a municipal corporation

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

Name: Jamie Goldstein

Its: City Manager

DEVELOPER:

Macerich Property Management Company, LLC, a  
Delaware limited liability company

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

Name: Stephen L. Spector

Its: SVP, General Counsel

EXHIBIT A

## PUBLIC INFRASTRUCTURE

The Public Infrastructure to be installed under this Agreement includes the following:

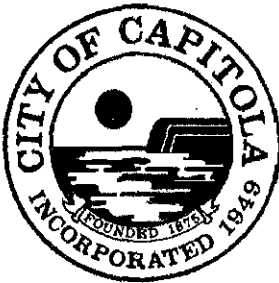
**Reconstruct existing public improvements adjacent to the Private Developer Project**

- Widen sidewalks within public right of way
- Install landscaping, street trees, and street furniture within public right-of-way
- Reconstruct existing public transit center currently located within the Capitola Mall to improve public access and circulation
- Improve bicycle access

If the total costs for the above improvements that are eligible for reimbursement pursuant to Section 1.11 are less than the Maximum Reimbursement Amount, Agency, City, and Developer may agree to increase the scope of the Public Infrastructure to incorporate curbs, gutters, drainage, and similar improvements.

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## CITY COUNCIL AGENDA REPORT

**MEETING OF NOVEMBER 13, 2014**

**FROM:** COMMUNITY DEVELOPMENT DEPARTMENT

**SUBJECT:** PROFESSIONAL SERVICES CONTRACT WITH KIMLEY-HORN TO PREPARE THE CITY'S 2015-2023 HOUSING ELEMENT UPDATE

**RECOMMENDED ACTION:** Authorize the City Manager to enter into an agreement with Kimley-Horn and Associates to prepare the City's 2015-2023 Housing Element Update in an amount not-to-exceed \$41,036.

**BACKGROUND:** State law requires all cities and counties in California to update the General Plan Housing Element every eight years. The City's current Housing Element for the 2007-2014 housing cycle was adopted by the City Council on February 11, 2010, and certified by the California Department of Housing and Community Development (HCD) on April 6, 2010. The deadline to adopt the 2015-2023 Housing Element update is December 31, 2015.

On June 11 2014, the Association of Monterey Bay Area Governments (AMBAG) approved the Regional Housing Needs Allocation (RHNA) for the 2015-2023 housing cycle. The City's 2015-2023 RHNA obligation is 143 units, which is the same as the previous housing cycle.

**DISCUSSION:** City staff issued a request for proposals for qualified professional planning firms to prepare the City's 2014-2023 Housing Element update on August 6, 2014. A total of three firms submitted proposals. All three firms were invited to present their qualifications to a Selection Committee consisting of the City's Community Development Director, Senior Planner, a Planning Commission representative, and a Capitola resident who previously served as a Capitola Planning Commissioner and is currently employed as a professional planner for the City of Santa Cruz.

After a careful review of each firm's qualifications, proposals, and presentations, the Selection Committee recommended awarding a contract to Kimley-Horn. Kimley-Horn has assigned a team of highly qualified planners who have extensive experience with preparing successful Housing Element updates, including cities in the Monterey Bay region. Furthermore, Kimley-Horn recently opened an office in Capitola and their Principal-in-Charge, Bill Wiseman, has extensive experience working on both public and private projects in Capitola.

**FISCAL IMPACT:** Funds for the Housing Element update are available from the City's General Plan Maintenance Fund.

**ATTACHMENTS:**

1. Draft Professional Services Contract

Report Prepared By: Richard Grunow  
Community Development Director

Reviewed and Forwarded  
By City Manager: 

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**CITY OF CAPITOLA  
PROFESSIONAL SERVICES AGREEMENT  
2015-2023 HOUSING ELEMENT UPDATE PREPARATION  
KIMLEY-HORN & ASSOCIATES**

THIS AGREEMENT is entered into on November 24, 2014, by and between the City of Capitola, a Municipal Corporation, hereinafter called "City" and Kimley-Horn & Associates, hereinafter called "Consultant".

WHEREAS, City desires certain services described in Appendix One and Consultant is capable of providing and desires to provide these services;

NOW, THEREFORE, City and Consultant for the consideration and upon the terms and conditions hereinafter specified agree as follows:

**SECTION 1  
Scope of Services**

The services to be performed under this Agreement are for preparation of the City's 2015-2023 Housing Element update and further detailed in Appendix One.

**SECTION 2  
Duties of Consultant**

All work performed by Consultant, or under its direction, shall be sufficient to satisfy the City's objectives for entering into this Agreement and shall be rendered in accordance with the generally accepted practices, and to the standards of, Consultant's profession.

Consultant shall not undertake any work beyond the scope of work set forth in Appendix One unless such additional work is approved in advance and in writing by City. The cost of such additional work shall be reimbursed to Consultant by City on the same basis as provided for in Section 4.

If, in the prosecution of the work, it is necessary to conduct field operations, security and safety of the job site will be the Consultant's responsibility excluding, nevertheless, the security and safety of any facility of City within the job site which is not under the Consultant's control.

Consultant shall meet with the Community Development Director, called "Director," or other City personnel, or third parties as necessary, on all matters connected with carrying out of Consultant's services described in Appendix One. Such meetings shall be held at the request of either party hereto. Review and City approval of completed work shall be obtained monthly, or at such intervals as may be mutually agreed upon, during the course of this work.

**SECTION 3  
Duties of the City**

City shall make available to Consultant all data and information in the City's possession which City deems necessary to the preparation and execution of the work, and City shall actively aid and assist Consultant in obtaining such information from other agencies and individuals as necessary.

The Director may authorize a staff person to serve as his or her representative for conferring with Consultant relative to Consultant's services. The work in progress hereunder shall be reviewed from time to time by City at the discretion of City or upon the request of Consultant. If the work is satisfactory, it will

## **Item #: 9.C. Attach 1.pdf**

Professional Services Agreement November 24, 2014  
2015-2023 Housing Element Update  
Kimley-Horn & Associates  
Page 2

be approved. If the work is not satisfactory, City will inform Consultant of the changes or revisions necessary to secure approval.

### **SECTION 4 Fees and Payment**

Payment for the Consultant's services shall be made upon a schedule and within the limit, or limits shown, upon Appendix Two. Such payment shall be considered the full compensation for all personnel, materials, supplies, and equipment used by Consultant in carrying out the work. If Consultant is compensated on an hourly basis, Consultant shall track the number of hours Consultant, and each of Consultant's employees, has worked under this Agreement during each fiscal year (July 1 through June 30) and Consultant shall immediately notify City when the number of hours worked during any fiscal year by any of Consultant's employees reaches 900 hours. In addition each invoice submitted by Consultant to City shall specify the number of hours to date Consultant, and each of Consultant's employees, has worked under this Agreement during the current fiscal year.

### **SECTION 5 Changes in Work**

City may order major changes in scope or character of the work, either decreasing or increasing the scope of Consultant's services. No changes in the Scope of Work as described in Appendix One shall be made without the City's written approval. Any change requiring compensation in excess of the sum specified in Appendix Two shall be approved in advance in writing by the City.

### **SECTION 6 Time of Beginning and Schedule for Completion**

This Agreement will become effective when signed by both parties and will terminate on the earlier of:

- The date Consultant completes the services required by this Agreement, as agreed by the City; or
- The date either party terminates the Agreement as provided below.

Work shall begin on or about December 1, 2014.

In the event that major changes are ordered or Consultant is delayed in performance of its services by circumstances beyond its control, the City will grant Consultant a reasonable adjustment in the schedule for completion provided that to do so would not frustrate the City's objective for entering into this Agreement. Consultant must submit all claims for adjustments to City within thirty calendar days of the time of occurrence of circumstances necessitating the adjustment.

### **SECTION 7 Termination**

City shall have the right to terminate this Agreement at any time upon giving ten days written notice to Consultant. Consultant may terminate this Agreement upon written notice to City should the City fail to fulfill its duties as set forth in this Agreement. In the event of termination, City shall pay the Consultant for all services performed and accepted under this Agreement up to the date of termination.

## SECTION 8 Insurance

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, or employees.

### ***Minimum Scope of Insurance***

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial Liability coverage (Occurrence Form CG 0001).
2. Insurance Services office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California.
4. Errors and Omissions Liability insurance appropriate to the consultant's profession. Architects' and engineers' coverage shall include contractual liability.

### ***Minimum Limits of Insurance***

Consultant shall maintain limits no less than:

- |  |  |
|--|--|
| 1. General Liability:<br>(including operations,<br>products and completed<br>operations) | <b>\$1,000,000</b> per occurrence and \$2,000,000 in<br>aggregate (including operations, for bodily injury,<br>personal and property damage. |
| 2. Automobile Liability:   | <b>\$1,000,000</b> per accident for bodily injury and<br>property damage.  |
| 3. Errors and Omissions<br>Liability:<br>Limits  | <b>\$1,000,000</b> per claim and in the aggregate.   |

### ***Other Insurance Provisions***

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Capitola, its officers, officials, employees and volunteers are to be covered as additional insured's as respects: liability arising out of work or operations performed by or on behalf of the Consultant or automobiles owned, leased, hired or borrowed by the Consultant.
2. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees

## Item #: 9.C. Attach 1.pdf

Professional Services Agreement November 24, 2014

2015-2023 Housing Element Update

Kimley-Horn & Associates

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- or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, returned receipt requested, has been given to the City.
  4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

### ***Acceptability of Insurers***

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

### ***Verification of Coverage***

Consultant shall furnish the City with original certificates and amendatory endorsements affecting coverage by this clause. The endorsements should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

## **SECTION 9 Indemnification**

Consultant agrees to indemnify, defend, and hold harmless the City, its officers, agents and employees, from and against any and all claims, demands, actions, damages, or judgments, including associated costs of investigation and defense arising in any manner from consultant's negligence, recklessness, or willful misconduct in the performance of this agreement.

## **SECTION 10 Civil Rights Compliance/Equal Opportunity Assurance**

Every supplier of materials and services and all consultants doing business with the City of Capitola shall be in compliance with the applicable provisions of the Americans with Disabilities Act of 1990, and shall be an equal opportunity employer as defined by Title VII of the Civil Rights Act of 1964 and including the California Fair Employment and Housing Act of 1980. As such, consultant shall not discriminate against any person on the basis of race, religious creed, color, national origin, ancestry, disability, medical condition, marital status, age or sex with respect to hiring, application for employment, tenure or terms and conditions of employment. Consultant agrees to abide by all of the foregoing statutes and regulations.

## **SECTION 11 Legal Action/Attorneys' Fees**

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which he or she may be entitled. The laws of the State of California shall govern all matters relating to the validity, interpretation, and effect of this Agreement and any authorized or alleged changes, the performance of any of its terms, as well as the rights and obligations of Consultant and the City.

## SECTION 12 Assignment

This Agreement shall not be assigned without first obtaining the express written consent of the Director after approval of the City Council.

## SECTION 13 Amendments

This Agreement may not be amended in any respect except by way of a written instrument which expressly references and identifies this particular Agreement, which expressly states that its purpose is to amend this particular Agreement, and which is duly executed by the City and Consultant. Consultant acknowledges that no such amendment shall be effective until approved and authorized by the City Council, or an officer of the City when the City Council may from time to time empower an officer of the City to approve and authorize such amendments. No representative of the City is authorized to obligate the City to pay the cost or value of services beyond the scope of services set forth in Appendix Two. Such authority is retained solely by the City Council. Unless expressly authorized by the City Council, Consultant's compensation shall be limited to that set forth in Appendix Two.

## SECTION 14 Miscellaneous Provisions

1. *Project Manager.* Director reserves the right to approve the project manager assigned by Consultant to said work. No change in assignment may occur without prior written approval of the City.
2. *Consultant Service.* Consultant is employed to render professional services only and any payments made to Consultant are compensation solely for such professional services.
3. *Licensure.* Consultant warrants that he or she has complied with any and all applicable governmental licensing requirements.
4. *Other Agreements.* This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter, and no other agreement, statement or promise related to the subject matter of this Agreement which is not contained in this Agreement shall be valid or binding.
5. *City Property.* Upon payment for the work performed, or portion thereof, all drawings, specifications, records, or other documents generated by Consultant pursuant to this Agreement are, and shall remain, the property of the City whether the project for which they are made is executed or not. The Consultant shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information and reference in connection with the City's use and/or occupancy of the project. The drawings, specifications, records, documents, and Consultant's other work product shall not be used by the Consultant on other projects, except by agreement in writing and with appropriate compensation to the City.
6. *Consultant's Records.* Consultant shall maintain accurate accounting records and other written documentation pertaining to the costs incurred for this project. Such records and documentation shall be kept available at Consultant's office during the period of this Agreement, and after the term of this Agreement for a period of three years from the date of the final City payment for Consultant's services.

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7. *Independent Contractor.* In the performance of its work, it is expressly understood that Consultant, including Consultant's agents, servants, employees, and subcontractors, is an independent contractor solely responsible for its acts and omissions, and Consultant shall not be considered an employee of the City for any purpose.

8. *Conflicts of Interest.* Consultant stipulates that corporately or individually, its firm, its employees and subcontractors have no financial interest in either the success or failure of any project which is, or may be, dependent on the results of the Consultant's work product prepared pursuant to this Agreement.

9. *Notices.* All notices herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given and fully received when made in writing and deposited in the United States mail, certified and postage prepaid, and addressed to the respective parties as follows:

CITY  
CITY OF CAPITOLA  
420 Capitola Avenue  
Capitola, CA 95010  
831-475-7300

CONSULTANT  
Kimley-Horn and Associates  
824 Bay Avenue, Suite #10  
Capitola, CA 95010  
831-316-1430

By: \_\_\_\_\_  
Benjamin Goldstein, City Manager

By: \_\_\_\_\_  
Enda Melvin, P.E.

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
John G. Barisone, City Counsel



## APPENDIX ONE Scope of Services

The Consultant shall be responsible for preparing the City of Capitola's 2015-2023 Housing Element update and performing all necessary background studies, research, public outreach, and coordination with the California Department of Housing and Community Development (HCD) as further detailed below:

### Task 1: Housing Element Assessment

- 1.1 Document Review:** The consultant shall review all applicable City, regional, and State documents pertaining to the Housing Element update, including but not limited to the General Plan, Municipal Code, building permit data, census data, and any other City housing policies, programs, and codes. The consultant shall be responsible for identifying and resolving any information gaps.
- 1.2 Evaluate the Current Housing Element:** The consultant shall review and evaluate the current Housing Element and its programs, including:
- Evaluate the status, effectiveness, and appropriateness of the current housing policy programs and identify any barriers to implementation;
  - Compare identified goals from the adopted Housing Element to actual accomplishments during the plan period;
  - Evaluate the existing Housing Element in relation to current State housing laws and identify any omissions or deficiencies;
  - Prepare a Housing element assessment memo summarizing the results from this analysis and recommending specific changes to be incorporated into the Housing Element update;
  - Considering the findings of the Housing Element assessment memo, prepare a detailed outline for the Housing Element Update.

#### Deliverables:

- One electronic copy (in native file format and .pdf format) of the Housing Element assessment memo;
- One electronic copy (in native file format and .pdf format) of the Housing Element update outline.

### Task 2: Community Workshop

The consultant shall conduct a community outreach meeting to solicit public comments on the Housing Element Update prior to initiating work on Housing Element components. The consultant shall prepare and deliver a powerpoint presentation, informational handouts, visual aids, and other materials to help participants understand the update process, issues to resolve (as identified during the current Housing Element Evaluation), and potential solutions. In collaboration with City staff, the consultant shall identify key stakeholders. City staff will schedule, coordinate, organize, and provide noticing, facilities, set-up, and general meeting facilitation for the workshop.

#### Deliverables:

- Electronic copies (in .pdf format) of draft presentation, handouts, etc. at least two weeks prior to workshop. Consultant shall revise materials as directed by City staff.

### Task 3: Prepare Housing Element Components

The consultant shall prepare the components of a draft Housing Element that addresses the requirements of State law, with an emphasis on any new statutory requirements since the last update

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of the Housing Element. In preparing the Housing Element update, the consultant shall proactively identify issues, immediately bring those issues to the attention of City staff, identify potential solutions, and coordinate with City staff as to the best course of action. The consultant will regularly communicate and meet with City staff as necessary to resolve issues.

**3.1 Needs Analysis:** The consultant shall complete a housing assessment and needs analysis pursuant to Government Code Section 65583(a) and SB 375. The consultant shall obtain and analyze demographic, economic, and housing data for the City and develop a housing needs assessment using State-approved criteria. The assessment shall include, but is not limited to:

- Population, demographic, and employment trends with the accompanying analysis of the existing and projected share of regional housing needs for all income levels;
- Housing cost, affordability, housing characteristics, housing stock, and market conditions (including overcrowding and overpayment);
- Housing stock characteristics, including at-risk units and vacant and underutilized land;
- Potential for increased residential development under existing zoning requirements and General Plan policies;
- Special housing needs (e.g. large families, seniors, homeless, etc.);
- Verify with the California Housing Partnership Commission (CHPC) the number of units at risk of conversion to market rate.

**3.2 Housing Resources and Opportunities:** The consultant shall identify housing resources, including programmatic, physical, and financial. In addition, the consultant shall prepare an "adequate sites analysis" showing the relationship between the City's RHNA and the dwelling unit capacity and availability of potential housing sites based on zoning and General Plan policies, requirements, and limitations. The analysis will evaluate and include:

- Funding resources;
- Regulatory incentives for housing;
- Opportunities for energy conservation for residential development;
- Existing assisted housing developments that are eligible to change designation from low-income housing during the Housing Element planning period;
- An inventory of vacant and/or undeveloped land and its suitability for housing development.

**3.3 Housing Constraints:** The consultant shall identify potential and actual governmental and non-governmental constraints to housing production. These may include, but are not limited to, land use controls (including code requirements, permitting fees, and permitting processes), physical/environmental constraints, infrastructure, financial, and market constraints. If governmental or non-governmental fees or processes have been changed, the consultant shall revise the Housing Element as necessary. Where constraints exist, the consultant shall identify and develop housing programs to remove the constraints where feasible.

**3.4 Housing Policy Program and Quantified Objectives:** The consultant shall build upon existing Housing Element policy program and the needs and constraints analysis to formulate a housing policy program and implementation plan. This task includes preparation of a "Review of Past Performance" analysis and will build upon the analysis of the previous Housing Element's policy program. The Plan must include appropriate housing goals, policies, and quantified objectives relative to the production, conservation, maintenance, preservation, and improvement of housing. The policy program will be specific, practical, and tailored to the

unique needs and challenges of the City. The policy program will also satisfy the requirements of Housing Element law, including:

- Ensuring that housing opportunities are available for all persons in the City, including special needs populations;
- Preserving and improving the existing stock of affordable housing, including assisted housing developments;
- Facilitating development of adequate housing to meet RHNA goals and needs of extremely low, very low, low, and moderate income households;
- Removing any governmental constraints to housing production, improvement and/or maintenance, including barriers to persons with disabilities.

**3.5 Implementation Program:** The consultant shall propose an implementation program including monitoring procedures and milestones for assessment purposes.

#### **Task 4: HCD Coordination**

The consultant shall serve as the City's representative and liaison with HCD during the Housing Element Update process. The consultant will be HCD's primary contact and will communicate with HCD staff as necessary to answer questions about the document and resolve any issues that arise during the review process. The consultant shall be responsible for the following:

- Pre-submittal consultation with HCD staff, as necessary, depending on any issues that arise during preparation of the Public Review Draft;
- Submittal of Public Review Draft Housing Element to HCD;
- Completion and submittal of Implementation Review worksheet, Completeness Checklist, and any other documentation needed for the HCD streamlined update process, if the City qualifies for streamlined review;
- Submittal of additional information or data requested by HCD;
- Meetings and conference calls with HCD staff to discuss issues or comments;
- Preparation of written responses to HCD comments;
- Preparation of changes to the Public Review Draft Housing Element required for HCD certification;
- Consultation with HCD staff regarding changes requested by the Planning Commission or City Council;
- Submission of the Final Housing Element to HCD for review and certification.

#### **Task 5: Public Review Draft Housing Element**

The consultant shall prepare a Screencheck Draft and Public Review Draft Housing Element. The consultant shall prepare the HCD transmittal letter and streamline checklist for the Public Review Draft.

**5.1 Screencheck Draft:** The consultant shall prepare and submit a Screencheck Draft Housing Element to the City for review. The Screencheck Draft shall be a complete draft and include all required components of a Housing Element as described in Task 2, and will include all tables, maps, and graphics.

#### **Deliverables:**

- One electronic copy (in native file format and .pdf format) of the Screencheck Draft Housing Element for City review and comment.
- Three hard copies of the Screencheck Draft Housing Element.

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- 5.2 Public Review Draft:** The consultant shall prepare a Public Review Draft Housing Element based on City staff's comments on the Screencheck Draft. City staff will provide the consultant with comments on the Screencheck Draft within 14 calendar days for preparation of the Public Review Draft. The consultant shall resolve any issues and make requested revisions to the Screencheck Draft to the satisfaction of the City.

### **Deliverables:**

- One electronic copy (in native file format and .pdf format) of the Public Review Draft Housing Element.
- 12 hard copies of the Public Review Draft Housing Element

- 5.3 HCD Submittal:** The consultant shall prepare the HCD Streamline Review Checklist and a transmittal letter to HCD detailing how the Housing Element meets State requirements. The consultant shall submit the checklist, transmittal letter, and Public Review Draft Housing Element to HCD for review and comment.

### **Deliverables:**

- One electronic copy (in native file format and .pdf format) of the transmittal letter and checklist to HCD.

- 5.4: Community Workshop #2:** The consultant shall facilitate a community workshop to discuss the Public Review Draft Housing Element. The consultant shall prepare and deliver a powerpoint presentation, informational handouts, visual aids, and other materials. In collaboration with City staff, the consultant shall identify key stakeholders. City staff will schedule, coordinate, organize, and provide noticing, facilities, set-up, and general meeting facilitation for the workshop.

### **Deliverables:**

- Electronic copies (in .pdf format) of draft presentation, handouts, etc. at least two weeks prior to workshop. Consultant shall revise materials as directed by City staff.

- 5.5: Responses to Comments:** The consultant shall assist City staff with preparing responses to any public or agency comments (including HCD) on the Public Review Draft Housing Element.

### **Task 6: Final Draft Housing Element**

The consultant shall revise the Public Review Draft Housing Element based on public and agency comments as directed by City staff. The Final Draft Housing Element shall be presented at public hearings before the Planning Commission and City Council.

### **Deliverables:**

- One electronic copy (in native file format and .pdf format) of the Final Draft Housing Element.
- 16 hard copies of the Final Draft Housing Element

### **Task 7: Public Hearings**

The Consultant shall attend two public hearings (one Planning Commission hearing and one City Council hearing). The consultant shall be responsible for preparing and delivering a powerpoint presentation and responding to questions at the public hearings. The consultant may also be required to attend additional public hearings as necessary. Please include a per-meeting cost item in the Cost Proposal.

**Deliverables:**

- Electronic copies (in .pdf format) of draft presentation, handouts, etc. at least two weeks prior to public hearings. Consultant shall revise materials as directed by City staff.

**Task 8: Final Housing Element/HCD Certification**

Based on City Council direction, the consultant shall make final revisions and prepare a Final Housing Element for HCD review and approval. The consultant shall transmit the Final Housing Element to HCD for certification.

**Deliverables:**

- One electronic copy (in native file format and .pdf format) of the Final Housing Element
- 12 hard copies of the HCD-certified Final Housing Element

**Task 9: Additional Community Workshop (Optional)**

At the City's sole discretion, the Consultant shall conduct an additional community workshop.

**Deliverables**

The format for all text documents, tables, charts, and illustrations shall be 8-1/2 x 11" vertical. If oversized documents are necessary, they will be 11" x 17". Document covers for all related documents shall be coordinated so they appear as a "set". All hard copy administrative drafts, drafts, and final documents shall be two-sided, black ink, on white or light recycled stock paper.

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### APPENDIX TWO Fees and Payments

For the services performed, City will pay consultant on a not-to-exceed, lump sum basis upon satisfactory completion of the services and delivery of work products. Payments will be issued monthly as charges accrue, the sum of consultant's salary expenses and non-salary expenses.

Consultant hereby represents and warrants, based upon Consultant's independent determination of the time and labor, including overtime, which will be required to perform said services, that Consultant will provide all said services at a cost which will not exceed the maximum price set forth in this agreement for Consultant's services. Consultant hereby assumes the risk that Consultant will perform said services within this maximum price constraint and Consultant acknowledges that its inability to do so shall not excuse completion of the services and shall not provide a basis for additional compensation.

Salary expenses include the actual direct pay of personnel assigned to the project plus payroll taxes, insurance, sick leave, holidays, vacation, and other fringe benefits. The percentage of compensation attributable to salary expenses includes all of Consultant's indirect overhead costs and fees. For purposes of this Agreement, Consultant's salary expenses and non-salary expenses will be compensated in accordance with the terms set forth therein. Non-salary expenses include travel, meals and lodging while traveling, materials other than normal office supplies, reproduction and printing costs, equipment rental, computer services, service of subconsultants or subcontractors, and other identifiable job expenses. The use of Consultant's vehicles for travel shall be paid at the current Internal Revenue Service published mileage rate.

Salary payment for personnel time will be made at the rates set forth in the attached fee schedule for all time charged to the project. Normal payroll rates are for 40 hours per week. Consultant shall not charge the City for personnel overtime salary at rates higher than those set forth in the attached fee schedule without the City's prior written authorization.

In no event shall the total fee charged for the scope of work set forth in Appendix One exceed the total budget of \$41,036 (Forty-One Thousand Thirty-Six Dollars and Zero Cents), without specific, written advance authorization from the City. The total budget includes \$34,645 to prepare the Housing Element update and associated tasks contained in the scope of work, plus a \$2,660 optional task to conduct an additional community workshop, plus \$3,731 (10%) contingency. The optional task and contingency allowances may only be expended if authorized by the City.

Payments shall be made monthly by the City, based on itemized invoices from the Consultant which list actual costs and expenses. Such payments shall be for the invoice amount. The monthly statements shall contain the following affidavit signed by a principal of the Consultant's firm:

"I hereby certify as principal of the firm of \_\_\_\_\_, that the charge of \$\_\_\_\_\_ as summarized above and shown in detail on the attachments is fair and reasonable, is in accordance with the terms of the Agreement dated \_\_\_\_\_, \_\_, and has not been previously paid."

**APPENDIX THREE**  
**Consultant Fee Schedule**

**City of Capitola Housing Element**  
**PROFESSIONAL FEES FOR PLANNING CONSULTING SERVICE**

Task	PM	PL	AS	AS	AS	KS	Total
	(Hr)	(Hr)	(Hr)	(Hr)	(Hr)	(Hr)	Cost
<b>Task 1: Housing Element Assessment</b>							
1.1 Project Kick-Off/Document Review	2	2	8		8		\$2,320
1.2 Evaluate the Current Housing Element		2	4		8		\$1,760
<b>Task 2: Community Outreach</b>							
2.1 Community Workshop #1	2	4	4		8	2	\$2,660
2.2 Community Workshop #2	2	4	4		8	2	\$2,660
<b>Task 3: Prepare Housing Element Components</b>							
3.1 Needs Analysis			2		10		\$1,320
3.2 Housing Resources and Opportunities			4		10		\$1,660
3.3 Housing Constraints			2		10		\$1,320
3.4 Housing Policy Program and Quantified Objectives		4	4		10		\$2,410
3.5 Implementation Program		2	4		8		\$1,760
<b>Task 4: HCD Coordination</b>		2	18				\$2,840
<b>Task 5: Draft Housing Element</b>							
5.1: Screencheck Draft	1	1	2		4	2	\$1,330
5.2: Public Review Draft	1	1	2		4		\$1,180
5.3: HCD Submittal	1	1	2				\$710
5.4: Response to Comments		4	8		8		\$2,740
<b>Task 6: Final Draft Housing Element</b>	1	2	4			2	\$1,386
<b>Task 7: Public Hearings</b>	2	4	8			2	\$2,300
<b>Task 8: Final Housing Element/HCD Certification</b>			2		4		\$990
<b>Task 9: Ongoing Coordination and Project Management</b>			16				\$2,160
<b>Task A: Additional Community Workshop (optional) *per workshop</b>							\$2,660
<b>Project Expenses (copies, fax, mileage, etc.)</b>							\$1,500
<b>TOTAL HOURS</b>	<b>12</b>	<b>33</b>	<b>94</b>	<b>9</b>	<b>94</b>	<b>10</b>	
<b>TOTAL FEE (including optional tasks)</b>							<b>\$37,305</b>

- 1) All work will be performed at a "Not to exceed" contract price, which will become the firm fixed price upon completion of negotiations with staff authorized to negotiate an agreement. Any revisions shall be with prior approval of the City.
- 2) The total budget includes all miscellaneous costs for reproduction, reimburseables, telephone, postal, delivery, reference materials and incidental expenses. Kimley-Horn will receive payment either on a percentage basis using milestones or by monthly billing, as determined by the Client. The Kimley-Horn project manager reserves the right to make adjustments to staff allocations as necessary within the overall budget.
- 3) The proposed fee will be valid for ninety days from date of receipt. Should project extend beyond estimated timeline, Kimley-Horn reserves the right to negotiate fees based on yearly fee increase occurring in February of each calendar year.
- 4) Any scope revisions or budget augmentation request shall be only upon written approval of City staff.



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